The Right to Cultural Identity in the Evolving Jurisprudential Construction of the Inter-American Court of Human Rights

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I. Introduction

There is increasing awareness of the international community in our times as to the importance of the preservation of the cultural identity of human beings, of human communities and of peoples. Although the right to cultural identity was not expressly spelled out as such at the time of the adoption of the American Convention on Human Rights (of 1969), it has in recent years (1993-2006) been brought to the attention of the Inter-American Court of Human Rights, in a succession of cases, in distinct contexts and circumstances.

In its jurisprudential construction on the matter, the Court has taken due account of the right to cultural identity, as a component of other rights protected under the American Convention. It is thus not surprising that cultural identity has come to the fore, and has found expression, in the recent and evolving case-law of the Inter-American Court. This is significant, and should not pass unnoticed, and is bound to have further developments in the future. The present article is intended to review, however succinctly, this reassuring jurisprudential construction, and to seek to extract some reflections and conclusions therefrom.

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II. Jurisprudential Construction

Reference can be made, in this connection, to the Court’s decisions in the cases of *Aloeboetoe and Others versus Suriname* (1993), of the “Street Children” (*Villagrán Morales and Others versus Guatemala*, 1999-2001), of *Bámaca Velásquez versus Guatemala* (2000-2002), the *Community Mayagna (Sumo) Awas Tingni versus Nicaragua* (2001), of the *Indigenous Communities Yakye Axa and Sawboyamaca versus Paraguay* (2006), and of the *Moiwana Community versus Suriname* (2005-2006). In pronouncing on the merits and/or reparations in those cases, the Inter-American Court has been attentive to the values, traditions and beliefs prevailing in the social *milieux* where the human rights breaches have occurred – be they those of the Saramacas in Suriname, of the Mayas in Guatemala, of the members of the Mayagna community in Nicaragua, or of the Yakye Axa and Sawboyamaca communities in Paraguay. The resulting jurisprudential construction is of relevance for the crystallization of the right to cultural identity in our days.

II.1. The Case of Aloeboetoe and Others versus Suriname (1993)

An early antecedent in this line of jurisprudential development by the Inter-American Court can be found in the case of *Aloeboetoe and Others versus Suriname* (Reparations, Judgment of 10.09.1993). In the *cas d’espèce*, as the respondent State had recognized its international responsibility (in 1991), the Court proceeded to the determination of the amount of reparations owed to the relatives of the seven murdered victims. To that end, it took into account the customary law itself of the Saramaca community (the maroons) in Suriname, to which they belonged, and wherein polygamy prevailed; the Court, accordingly, extended the amount of reparations to the several widows and their children.¹

The reparations ordered by the Court, of different kinds (pecuniary and non-pecuniary), included the establishment of two trust funds and the creation of a foundation, as well as the reopening of a school located in Gujaba and the functioning of the medical dispensary already in place. The contribution of the

¹ IACtHR, case of Aloeboetoe and Others versus Suriname (Reparations), Series C, n. 15, Judgment of 10.09.1993, pp. 3-49, paras. 1-116.