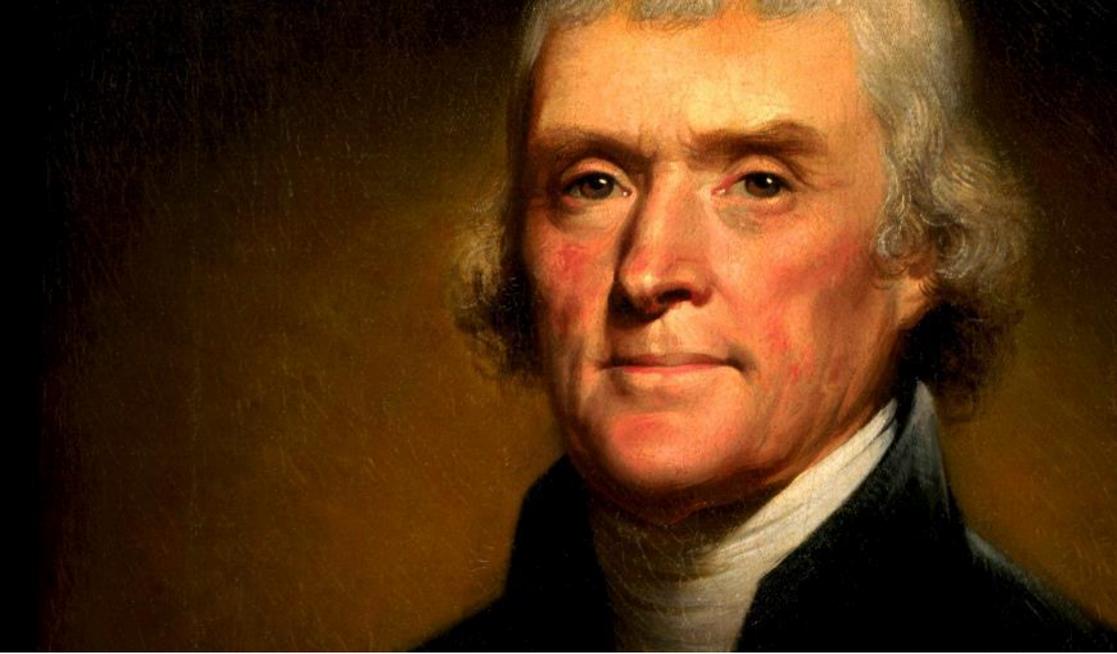
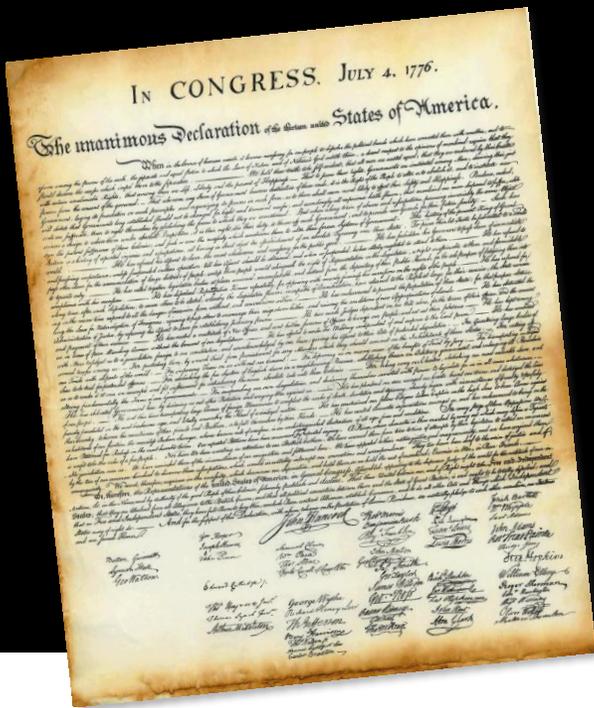


The Human Right *of* Property

José E. Alvarez

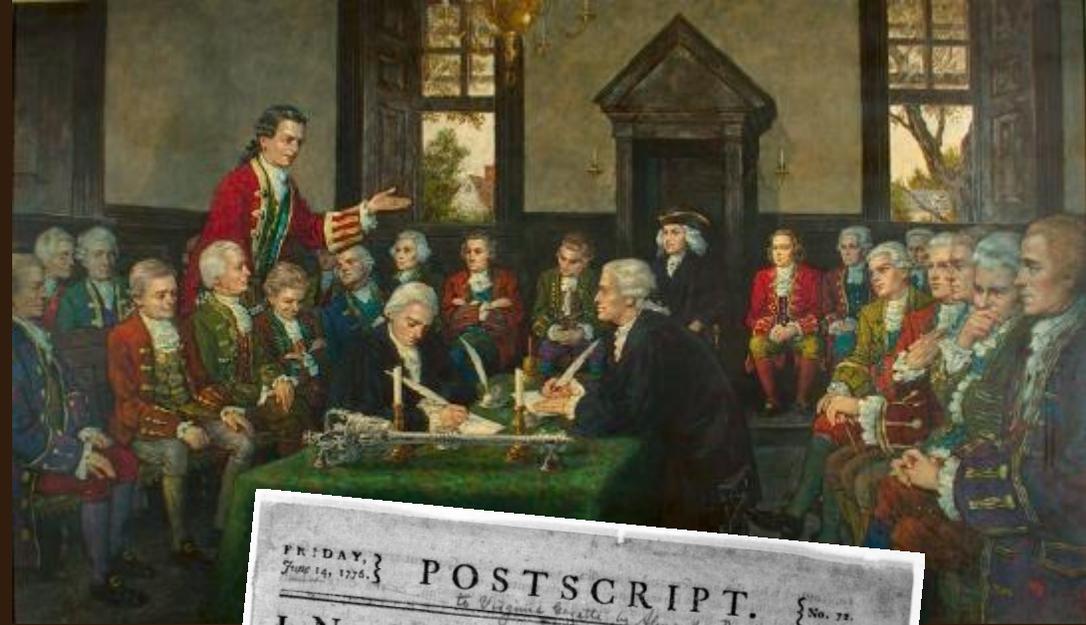


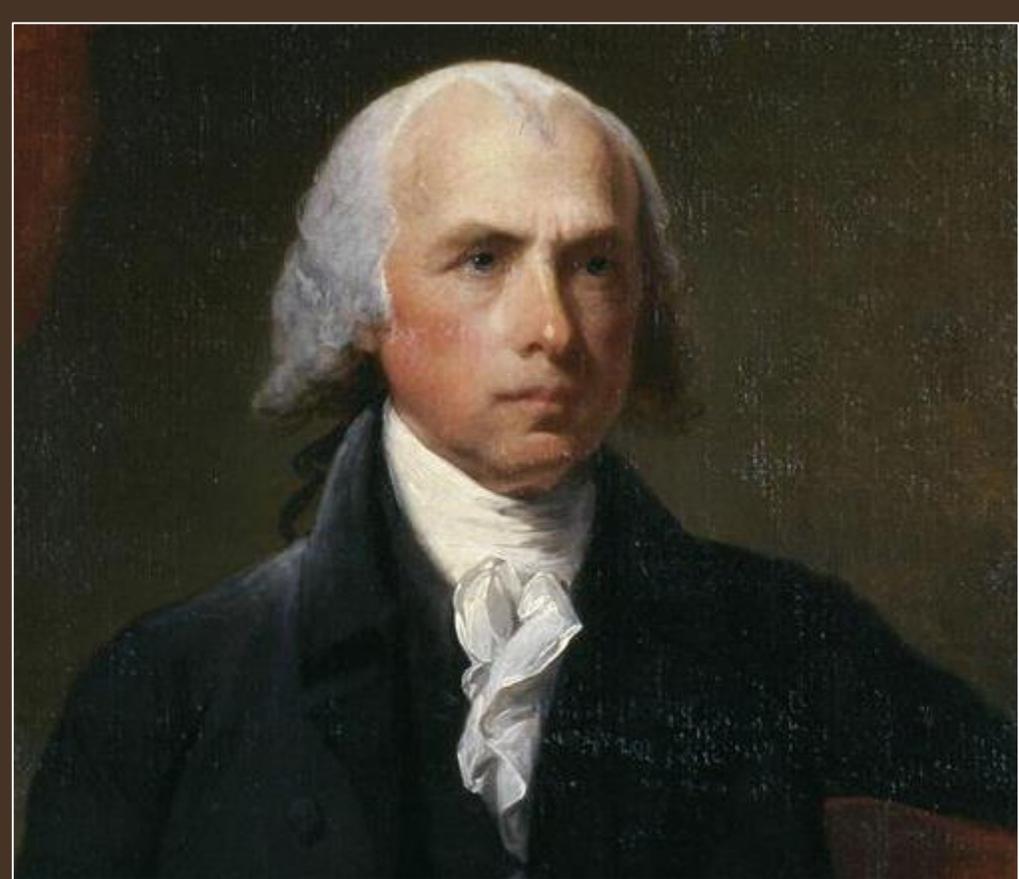
“all men are created equal, that they are endowed by Their Creator with certain inalienable rights, that among these are Life, Liberty, and the pursuit of Happiness.”

-Declaration of Independence, 1776

"All have inherent rights" which
when they enter into a state of society,
they cannot . . . deprive or divest their
posterity "including the means of
acquiring and possessing property"
Virginia Declaration of Rights

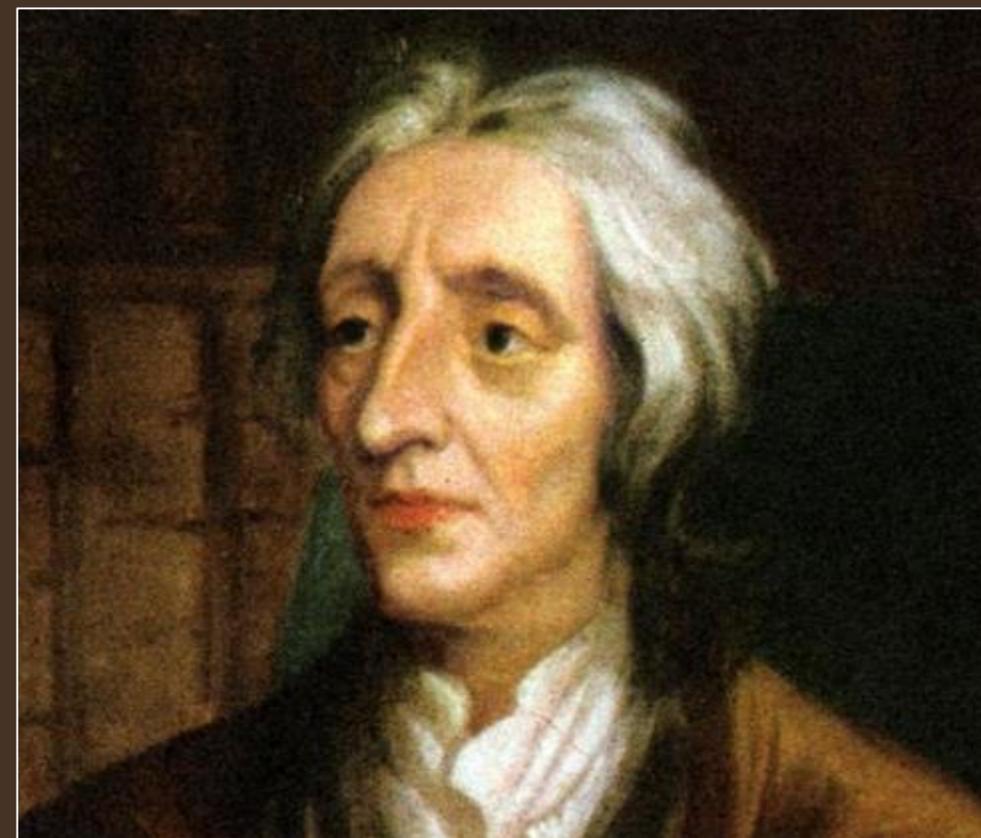
1776





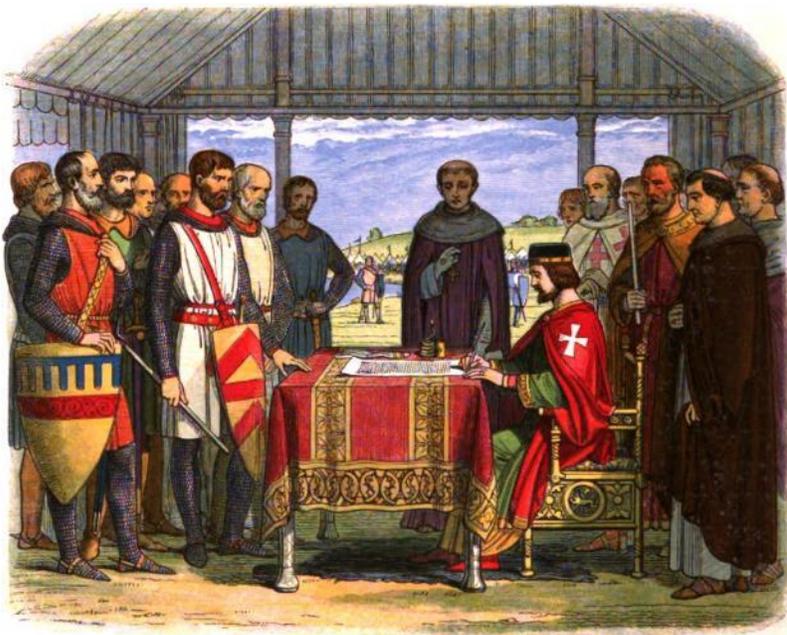
“Government is instituted no less for the protection of property than of the persons of individuals.”

- James Madison (1788)



“The great and chief end . . . of men uniting into commonwealths, and putting themselves under government is the preservation of their property.”

- John Locke (1681)



“All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us.”

Merchants Charter, Magna Carta (1215)

Congress of the United States,

begun and held at the City of New York on
Wednesday the fourth of March one thousand seven hundred and eighty seven.

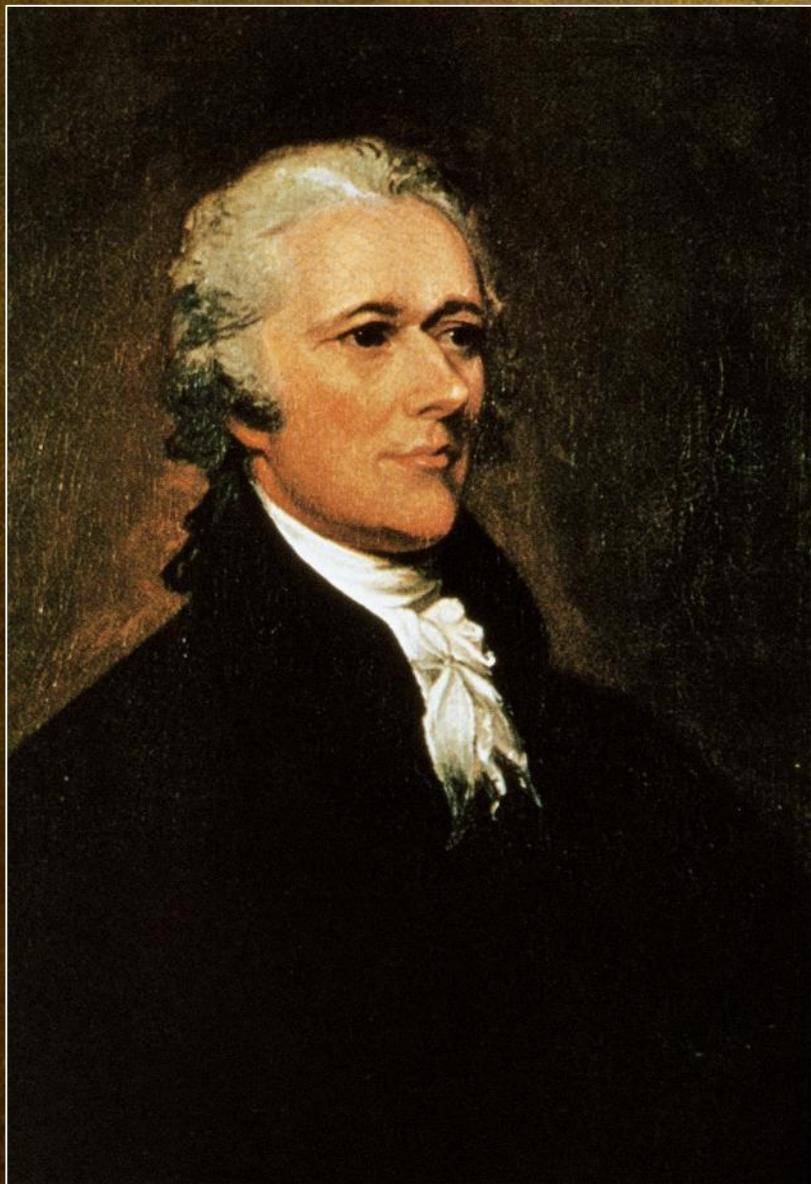
THE

RESOLVED

ARTICLE

“nor shall private property
be taken for public use,
without just compensation.”

U.S. Constitution,
Amendment V



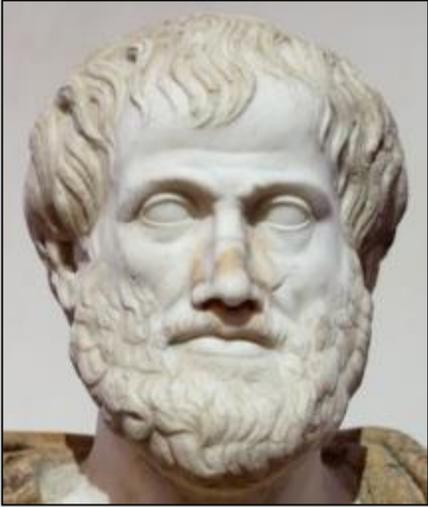
“No powers of language at my command can express the abhorrence I feel at the idea of violating the property of individuals.”

Alexander Hamilton, *The Defence*

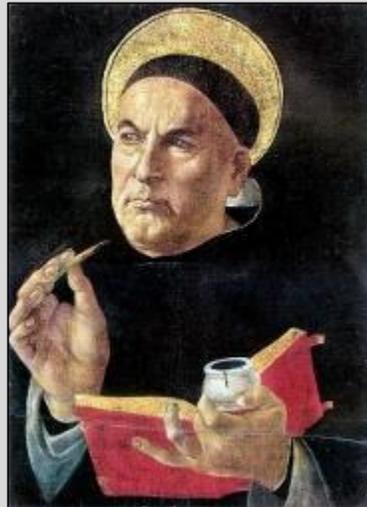
“States have a “duty . . . to protect that property, and to secure to the owner the full enjoyment of it” as “it tacitly promises protection and security.” Anything else is “inconsistent with the very notion of property” as it would violate the contract between the society and the individual ensuring that the latter retains his property and its use The property of a foreigner placed in another country, by permission of its laws, may justly be regarded as a deposit, of which the society is the trustee.”

- Alexander Hamilton, *The Defence*

Intellectual Forebears of Property Rights Writ Large



Aristotle



Aquinas



Francisco de Vitoria



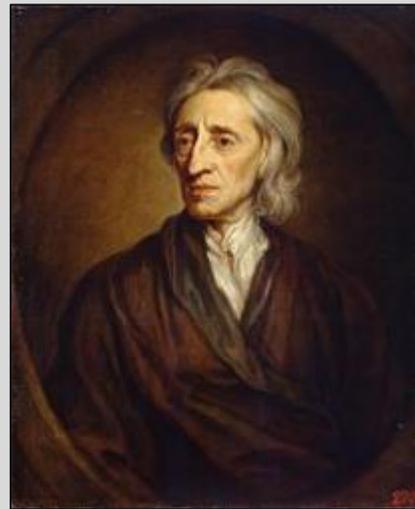
Domingo de Soto



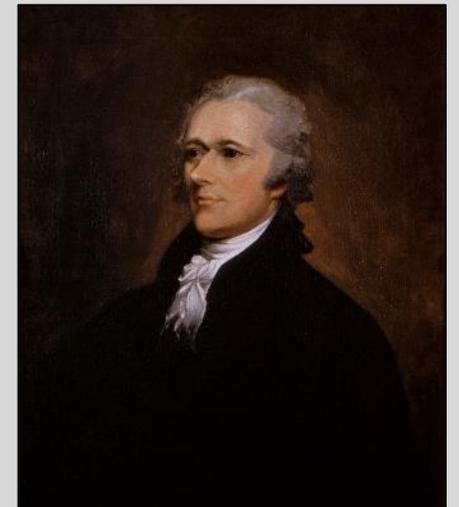
Hugo Grotius



Adam Smith



John Locke



Alexander Hamilton

Private Property as morally, politically, and legally justified because:

- It incentivizes diligence (efficiency)
- Promotes order (stability)
- Enables common interests in commerce (peace)

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Art. 29(2), Universal Declaration of Human Rights

“Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.”

Art. XXIII, American Declaration of the Rights and Duties of Man
(1948)

“Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.”

Mayagna (Sumo) Awas Tingni Community v. Nicaragua (Judgment), Inter-American Court of Human Rights Series C No 79 (31 August 2001), para. 149.

“(1) . . . traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title; 2) traditional possession entitles indigenous people to demand official recognition and registration of property title; 3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith; and 4) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality.”

Sawhoyamaya Indigenous Community v. Paraguay (Judgment), Inter-American Court of Human Rights Series C No 146 (29 March 2006), para. 128.

American Convention on Human Rights (1969)

Article 21

Right to Property

- 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment in the interest of society.**
- 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.**
- 3. Usury and any other form of exploitation of man by man shall be prohibited by law.**

African Charter on Human and Peoples' Rights (1981)

“Every individual shall have the right of access to public property and services in strict equality of all persons before the law.”

Art. 13(3)

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

Art. 14

“1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it

4. State parties of the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

5. State parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their natural resources.”

Art. 21

European Convention for the Protection of Human Rights, Protocol 1, Art. 1 (1952)

Article 1

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 payment of taxes or other contributions or penalties.

“The Court finds it opportune to underscore the particular gravity of the theft of the livestock of the inhabitants of El Aro . . . it is clear that there was a close relationship between the latter and their livestock, because their main means of subsistence was cultivating the land and raising livestock. Indeed, the damage suffered by those who lost their livestock, from which they earned their living, is especially severe. Over and above the loss of their main source of income and food, the way in which the livestock was stolen, with the explicit and implicit collaboration of members of the Army, increased the villagers’ feelings of impotence and vulnerability.”

Ituango Massacres v. Colombia (Judgment), Inter-American Court of Human Rights Series C No 148 (1 July 2006), para. 178.

“This Court also considers that setting fire to the houses in El Aro constituted a grave violation of an object that was essential to the population. The purpose of setting fire to and destroying the homes of the people of El Aro was to spread terror and cause their displacement, so as to gain territory in the fight against the guerrilla in Colombia (...). Therefore, the effect of the destruction of the homes was the loss, not only of material possessions, but also of the social frame of reference of the inhabitants, some of whom had lived in the village all their lives. In addition to constituting an important financial loss, the destruction of their homes caused the inhabitants to lose their most basic living conditions; this means that the violation of the right to property in this case is particularly grave.”

Ituango Massacres v. Colombia (Judgment), para. 182.

“Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.”

Art. 31, Arab Charter on Human Rights (2004)

“Every person has the right own, use, dispose of and give that person’s lawfully acquired possessions alone or in association with others. No person shall be arbitrarily deprived of such property.”

Art. 17, ASEAN Human Rights Declaration (2012)

Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Article 15

- 1. States Parties shall accord to women equality before the law.**
- 2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals...**

Article 16

- 1. State Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women.**