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The Right to Cultural Identity in the Case Law of the Inter-American Court of  
Human Rights: A New Global Standard for the Protection of Indigenous Rights  
and Future Generations?

*Abstract*

*This paper examines the protection of the right to cultural identity in the case law of the Inter-American Court of Human Rights (IACtHR), where this question has appeared in connection with the rights of indigenous peoples. Although not expressly guaranteed in the American Convention on Human Rights (ACHR), the right to cultural identity has received protection in the IACtHR's case law through an evolutionary interpretation of the rights to life and property, and other provisions under the ACHR. A landmark decision in the 2020 case of *Lhaka Honhat Association v. Argentina* has put into a new perspective the protection of the right to cultural identity. For the first time, it was clearly established that cultural rights are autonomous and judicially enforceable under Article 26 of the ACHR. The IACtHR's revolutionary approach offers new opportunities for the judicial protection of environmental rights claims, contributing to the debate on sustainable development and the protection of future generations as well. The IACtHR has risen to be a regional standard-setting treaty body in the Inter-American system. Simultaneously, its far-reaching approach to protecting cultural identity and land rights has made the IACtHR's case law a genuine reference point for other universal and regional international human rights organs.*

**Keywords:** Inter-American Court of Human Rights, the right to cultural identity, cultural rights, environmental rights, indigenous peoples, protection of future generations, sustainable development

## 1. Introduction

In January 2023, the UN Committee on the Economic, Social and Cultural Rights (CESCR) published its long-awaited General Comment No. 26 on Land and Economic, Social, and Cultural Rights,<sup>1</sup> which elaborates on the interrelations between the land and the effective enjoyment of human rights. For many communities world over, land, apart from being the main resource for the production of food and generation of income, constitutes the very foundation for social, cultural, and religious practices, and for the expression of cultural identity.<sup>2</sup> This is especially true for indigenous people, who either

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<sup>1</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 26 on Land and Economic, Social and Cultural Rights*, adopted by the CESCR at its seventy-second session (26 September – 14 October 2022), E/C.12/GC/26.

<sup>2</sup> *Ibid.*, paragraphs 1 and 10.



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manage or have tenure rights over at least 38 million square kilometres of land in 87 countries world over.<sup>3</sup> For indigenous communities, access to land is a vital precondition for the enjoyment of cultural and religious rights, and is closely linked to the right to internal self-determination. However, the continued and widespread disregard of indigenous land rights and large-scale land acquisitions contributes to the further dispossession of indigenous people worldwide.

While presenting its considerations on the essential role of land, the CESCR drew upon the case law of the Inter-American Court of Human Rights (IACtHR, or the Court), whose contribution to strengthening indigenous peoples' rights to land has been explicitly recognised.<sup>4</sup> In General Comment No. 26, the CESCR referred to the IACtHR's jurisprudence on several occasions: while identifying good practices in protecting indigenous peoples' rights to land and cultural identity, clarifying the scope of states' obligations, and providing examples of effective remedies for the violation of land rights.<sup>5</sup> This paper presents an overview of the case law of the IACtHR vis-à-vis indigenous peoples, in which the right to cultural identity enjoys protection on an unprecedentedly broad basis, primarily through the right to property, and since a landmark decision in 2020, through the rights to water, adequate food, and healthy environment. This encourages reflection on environmental justice and sustainable development, as well.

## 2. The right to cultural identity in the Inter-American system of human rights

According to O. Ruiz-Chiriboga, the right to cultural identity is the right of ethnic and cultural groups and their members to belong to a determined culture and be recognised as different; to maintain their characteristic culture and their cultural heritage; and to be protected from forced assimilation.<sup>6</sup> Some authors consider the right to cultural identity a general form of all cultural rights.<sup>7</sup> In the Inter-American system of human rights, the concern for the protection of cultural identity arises primarily in the context of indigenous people. They are descendants of the original inhabitants of Latin America, which was colonised by now-dominant groups, who have faced forced assimilation policies throughout their entire history, and to this day struggle to maintain their distinct culture.<sup>8</sup> Indigenous communities world over have a spiritual relationship with the land on which they live, which forms an essential part of their cultural identity, and which is linked to their traditional activities, such as hunting, fishing, herding, and gathering plants, medicine, and food.<sup>9</sup> Therefore, secure land tenure systems and access to natural

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<sup>3</sup> According to the UNCCD, indigenous people constitute over 6% of the world's population. All data after: UN Convention to Combat Desertification of Lands (UNCCD), *Global Land Outlook. Second Edition. Land Restoration for Recovery and Resilience*, Bonn 2022, 14.

<sup>4</sup> CESCR, General Comment No. 26, paragraph 16.

<sup>5</sup> *Ibid.*, paragraphs 11, 16, 27, 45 and 60.

<sup>6</sup> Ruiz-Chiriboga 2006, 45.

<sup>7</sup> Donders 2008, 320. For more on cultural human rights, see e.g.: Symonides 2000, 175–227; Zombory 2022, 255–257.

<sup>8</sup> Antkowiak 2013, 115–119; Raisz 2008, 36. For more on the concept and definition of the indigenous peoples, see e.g.: Martínez Cobo 1972, paragraph 34; Castellino & Cathal 2018.

<sup>9</sup> CESCR, General Comment No. 26, paragraph 16.

resources are crucial for the protection of indigenous communities. Owing to their way of life, which is directly dependent on the access to and availability of natural resources, indigenous peoples are also among the groups that are most affected by environmental degradation and negative effects of climate change.

Three international documents relevant to economic, social, and cultural rights have been adopted within the Inter-American framework for human rights: (1) the American Declaration of the Rights and Duties of Man, 1948 (ADRDM),<sup>10</sup> (2) the American Convention on Human Rights, 1969 (ACHR),<sup>11</sup> and (3) the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, 1988 (Protocol of San Salvador).<sup>12</sup> None of these instruments explicitly refers to the right to cultural identity. Article XIII of the ADRDM guarantees the right to participate in cultural life, but its practical significance is limited because it is not a binding international document. The ACHR, apart from establishing under Article 26, the obligation of states parties to progressively achieve the full realisation of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the OAS Charter,<sup>13</sup> does not contain provisions on cultural rights. The practical significance of Article 26 of the ACHR has long been disputed because of its programmatic nature,<sup>14</sup> yet in light of recent case law, it is justified to say that such guarantees may be suitable for protecting the cultural identity of indigenous people. The Protocol of San Salvador lays down under Article 14 paragraph 1(a) the right to participate in cultural life; nonetheless, as a rule, rights guaranteed in the Protocol are not justiciable before the IACtHR (except for the right to education and trade union rights).<sup>15</sup>

### 3. Overview of the IACtHR's case law

Although not guaranteed explicitly, the right to cultural identity, enjoys protection under the ACHR through the evolutionary interpretation of its provisions.<sup>16</sup> As Judge Abreu Burelli noted, the spectrum of legal guarantees that can be applied in order to protect cultural identity is very broad.<sup>17</sup> In cases affecting indigenous people, the IACtHR

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<sup>10</sup> The American Declaration of the Rights and Duties of Man, adopted in Bogotá on 2 May 1948.

<sup>11</sup> The American Convention on Human Rights, adopted in San José on 22 November 1969, UN Treaty Series No. 17955.

<sup>12</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights Protocol of San Salvador, adopted in San Salvador on 17 November 1988, OAS Doc. OAS/Ser.L/V/I.4 rev. 13.

<sup>13</sup> Charter of the Organization of American States, adopted in Bogotá on 30 April 1948, UN Treaty Series vol. 119, No. 1609 (OAS Charter).

<sup>14</sup> Ruiz-Chiriboga 2013, 160–162; Raisz 2010, 290.

<sup>15</sup> Article 19 paragraph 6 of the Protocol of San Salvador.

<sup>16</sup> Cançado Trindade 2009, 477–499; Ruiz-Chiriboga 2006, 51.

<sup>17</sup> According to A. Abreu Burelli, the right to cultural identity, while not explicitly set forth, is protected in the ACHR based on an evolutionary interpretation of the content of the rights embodied in its Articles: 1(1) (non-discrimination), 5 (right to humane treatment), 11 (right to privacy), 12 (freedom of conscience and religion), 13 (right to freedom of thought and expression), 15 (freedom of assembly), 16 (freedom of association), 17 (rights of the family), 18 (right to a name), 21 (right to property), 23 (right to participate in government) and 24 (right to equal

interprets the rights guaranteed in the ACHR as having collective dimensions or as creating collective rights.<sup>18</sup>

The distinct cultural identity and its various elements, such as the system of beliefs based on the bond between the living and dead, initially received protection through a broad interpretation of the right to life under Article 4 of the ACHR. This extensive interpretation offered a foundation for the *vida digna* concept, according to which the right to life comprises the conditions for living with dignity.<sup>19</sup> In the IACtHR's understanding, the protection of a dignified life requires respect for cultural customs and religious beliefs.<sup>20</sup> According to Judges Cançado Trindade and Ventura Robles, "*cultural identity is a component or is attached to the right to life lato sensu; thus, if cultural identity suffers, the very right to life of the members of said indigenous community also inevitable suffers*".<sup>21</sup> In the IACtHR's case law, the protection of indigenous people's cultural identity is intertwined with physical survival and the protection of life, which requires far-reaching protection in response to forced assimilation policies known in the historical and present-day contexts of the American continents. Several cases have highlighted the problem of cultural genocide and ethnocide of indigenous people.<sup>22</sup>

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protection), based on the facts of the case in question. See Judge Alirio Abreu Burelli's partially dissenting opinion in *Yakye Axa Indigenous Community*, paragraph 24: IACtHR, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142

<sup>18</sup> Hanson 2018, 162.

<sup>19</sup> Cançado Trindade 2009, 479. See also: Pasqualucci 2008, 1–32; Antkowiak 2013, 146–147 The broad interpretation of the right to life including the protection of *vida digna* is distinctive and unique. By contrast, the African Court of Human and Peoples' Rights (ACtHPR) considers it necessary to make a distinction between the classical meaning of the rights to life and decent existence of a group, and is of the opinion that the right to life, as guaranteed by Article 4 of the African Charter of Human and Peoples' Rights, relates to the physical rather than existential understanding of the right to life (see the ACtHPR's, *The African Commission on Human and Peoples' Rights v. Republic of Kenya*, judgement of 26 May 2017, application no. 006/2012, paragraphs 153–154).

<sup>20</sup> This interpretation prevailed in the IACtHR's decisions in cases such as: IACtHR, *Case of the 'Street Children' (Villagrán Morales et al.) v. Guatemala*, Merits. Judgment of November 19, 1999. Series C No. 63; IACtHR, *Case of Bámaca Velásquez v. Guatemala*, Merits. Judgment of November 25, 2000. Series C No. 70; IACtHR, *Case of the Yakye Axa Indigenous Community v. Paraguay*, Interpretation of the Judgment of Merits, Reparations and Costs. Judgment of February 6, 2006. Series C No. 142; IACtHR, *Case of the San'boyamaxa Indigenous Community v. Paraguay*, Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146.

<sup>21</sup> Separate dissenting opinion of judges A.A. Cançado Trindade and M.E. Ventura in the *Yakye Axa Indigenous Community v. Paraguay* case, para.18.

<sup>22</sup> Hanson 2018, 151; Xanthaki 2018, 274; Raisz 2008, 40–41. Considering the social and political reality of many states parties of the Inter-American human rights system, cases heard by the IACtHR often involve grave violations of human rights, including displacement, forced disappearance, murder, and/or massacre, and indigenous peoples' cases are not an exception, given the social and political characteristic of the Inter-American system of human rights protection, see more: Pasqualucci 2013, 4–5.

Since the landmark decision in *Mayagna (Sumo) Awas Tingni v. Nicaragua* (2001),<sup>23</sup> in which the IACtHR recognised indigenous peoples' collective ownership over ancestral lands, the right to cultural identity in the Inter-American system received protection primarily based on the right to property under Article 21 of the ACHR.<sup>24</sup> The IACtHR has, on several occasions, explained the connection between the ancestral land in possession of indigenous communities from time immemorial and their cultural identity. The close relationship between the indigenous communities and their land has an essential component, namely their cultural identity based on their worldviews, which, as distinct social and political actors in multicultural societies, must receive particular recognition and respect in a democratic society.<sup>25</sup> The intrinsic connection that indigenous and tribal people have with their territory should be recognised and understood as a fundamental basis for their cultures, spiritual lives, integrity, and economic survival.<sup>26</sup> According to the IACtHR, disregarding the ancestral right of the members of the indigenous communities to their territories can affect other basic rights, such as the right to cultural identity and the very survival of the indigenous communities and their members.<sup>27</sup> For indigenous communities, relationship with land is not merely a matter of possession and production, but also a material and spiritual element that they should be able to fully enjoy, to preserve their cultural heritage and transmit it to future generations.<sup>28</sup> Although this understanding of land ownership and possession do not conform to the classic concept of property, in the IACtHR's opinion, it deserves equal protection under Article 21 of the ACHR. Ignoring the specific forms of the right to the use and enjoyment of property based on the culture, practices, customs, and beliefs of each people, would be, according to the Court, tantamount to maintaining that there is

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<sup>23</sup> IACtHR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79.

<sup>24</sup> Since the decision in *Mayagna (Sumo) Awas Tingni v. Nicaragua*, the IACtHR has issued several judgments in which indigenous peoples' ties to land and natural resources received protection under Article 21 of the ACHR, for example: *Yakye Axa Indigenous Community v. Paraguay* (2006), *Sawhoyamaya Indigenous Community v. Paraguay* (2006), ICtHR, *Case of the Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007 Series C No. 17; ICtHR, *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations. Judgment of June 27, 2012. Series C No. 245; ICtHR, *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama*; Merits. Judgement of November 13, 2012; ICtHR, *Case of the Kaliña and Lokono Peoples v. Suriname*, Merits, Reparations and Costs. Judgment of November 25, 2015. Series C No. 309; ICtHR, *Case of the Xucuru Indigenous People and its members v. Brazil*, Preliminary Objections, Merits, Reparations and Costs. Judgment of February 5, 2017. Series C No. 346; ICtHR, *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400. See more: Raisz 2008, 35–51.

<sup>25</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 159.

<sup>26</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, paragraph 149. See also: Charters 2018, 396–397; Marinkás 2020, 141–143; Ruiz Chiriboga 2006, 59.

<sup>27</sup> *Yakye Axa Indigenous Community v. Paraguay*, paragraph 147; *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 212.

<sup>28</sup> *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, paragraph 149.

only one way to use and dispose of property, which would render protection under Article 21 of the ACHR illusory for millions of people.<sup>29</sup>

The protection of the right to communal indigenous property based on Article 21 of the ACHR, is intended to ensure that indigenous people may continue to enjoy their traditional way of life, and that their cultural identity, social structure, economic system, customs, beliefs, and distinctive traditions are respected, guaranteed, and protected by states.<sup>30</sup> The IACtHR has indicated that when states impose limitations or restrictions on the exercise of the rights of indigenous people to the ownership of their lands and natural resources, certain guidelines must be respected. Limitations must be established by law, necessary, proportionate, and aimed at achieving a legitimate objective in a democratic society without denying the right of an indigenous community to exist. In cases concerning natural resources on the territory of an indigenous community, aside from the above criteria, the state must ensure that these restrictions do not threaten the survival of indigenous people.<sup>31</sup> The scope of protection guaranteed under Article 21 of the ACHR is not limited to land ownership. The term 'property' under Article 21 of the ACHR includes all material objects that may be the object of possession, and any right that may be part of a person's patrimony. The concept of property covers all movable and immovable property and all tangible and intellectual elements that are capable of having value.<sup>32</sup>

Aside from the rights to life and property, the case law of the IACtHR on the prohibition of discrimination has laid down legal grounds to protect cultural rights. The principle of non-discrimination established under Article 1 paragraph 1 of the ACHR requires that respect for the right to cultural identity be considered while interpreting and implementing human rights guaranteed by the ACHR, vis-à-vis indigenous people.<sup>33</sup> In cases involving indigenous communities, the IACtHR has repeatedly found, typically parallel to an infringement of the right to property, that the state violated the prohibition of discrimination by not protecting the right of indigenous peoples to communal property to the same extent as the property rights of other citizens.<sup>34</sup> In several cases, the IACtHR has found a breach of the principle of non-discrimination in connection with the normative content of Article 21 of the ACHR, if the state did not ensure appropriate delimitation and land demarcation procedures. As the Court has emphasised, merely

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<sup>29</sup> Kichwa Indigenous People of Sarayaku v. Ecuador, paragraph 145.

<sup>30</sup> Kaliña and Lokono Peoples v. Suriname, paragraph 164.

<sup>31</sup> Kichwa Indigenous People of Sarayaku v. Ecuador, paragraph 156; Yakyé Axa Indigenous Community v. Paraguay, paragraphs 144-145; Saramaka People v. Suriname, paragraphs 128-129.

<sup>32</sup> Mayagna (Sumo) Awas Tingni Community v. Nicaragua, paragraph 144; Yakyé Axa Indigenous Community v. Paraguay, paragraph 137.

<sup>33</sup> Kichwa Indigenous People of Sarayaku v. Ecuador, paragraph 213.

<sup>34</sup> See e.g. Mayagna (Sumo) Awas Tingni Community v. Nicaragua; Yakyé Axa Indigenous Community v. Paraguay, Saramaka People v. Suriname; IACtHR, Case of the Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214; Kichwa Indigenous People of Sarayaku v. Ecuador; Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina.

abstract or juridical recognition of indigenous lands, territories, or resources, is meaningless if the property is not physically delimited and established.<sup>35</sup>

The international documents dedicated to the protection of indigenous peoples' rights establish the right to consultation,<sup>36</sup> which is closely related to the protection of land ownership and the right to participate in public affairs.<sup>37</sup> The obligation of states to carry out prior consultations, aside from being a treaty-based provision, is a general principle of international law.<sup>38</sup> The recognition of indigenous peoples' right to consultation stems directly from the rights to culture and cultural identity.<sup>39</sup> According to the IACtHR: "(...) *the right to cultural identity is a fundamental right - and one of a collective nature - of the indigenous communities, which should be respected in a multicultural, pluralistic and democratic society. This means that states have an obligation to ensure that indigenous peoples are properly consulted on matters that affect or could affect their cultural and social life, in accordance with their values, traditions, customs and forms of organisation.*"<sup>40</sup> The IACtHR imposes on the states the requirements otherwise set out in international law, according to which states should seek prior, free, and informed consultation. These consultations shall be carried out in good faith, using culturally acceptable procedures and should be aimed at reaching an agreement.<sup>41</sup> When large-scale development or investment projects that would have a major impact within indigenous territory are envisaged, states have a duty to consult with the indigenous community, and obtain their free, prior, and informed consent, according to their customs and traditions.<sup>42</sup> The right to prior consultation is protected under the IACtHR's case law based on the right to participate in public affairs, provided for under Article 23 of the ACHR. For example, in *Lhaka Honhat Association v. Argentina* (2020), the IACtHR found that Argentina did not ensure adequate mechanisms for a free, prior, and informed consultation, and thus violated the indigenous people's rights to property and participation vis-à-vis state obligations to respect and ensure these rights (Articles 21 and 23 paragraph 1 of the ACHR, in relation to Article 1 paragraph 1 of the ACHR).<sup>43</sup>

The IACtHR has protected indigenous peoples' cultural rights through a broad and dynamic interpretation of civil and political rights guaranteed under the ACHR. The IACtHR has thus merged the first- and second- generation human rights, blurring

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<sup>35</sup> See e.g. *Yakye Axa Indigenous Community v. Paraguay*, paragraph 143; *Saramaka People v. Suriname*, paragraph 115.

<sup>36</sup> See: Declaration on the Rights of Indigenous Peoples, UN General Assembly resolution of 13 September 2007, Articles A/RES/61/295, 10, 19, 29(2), 32(2), The Indigenous and Tribal Peoples Convention (ILO Convention No. 169), adopted in Geneva on 27 June 1989, UN Treaty Series vol. 1650, no. 28383, Article 6.

<sup>37</sup> Barelli 2018, 247.

<sup>38</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 164.

<sup>39</sup> According to the IACtHR, 'Respect for the right to consultation of indigenous and tribal communities and peoples is precisely recognition of their rights to their own culture or cultural identity', see: *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 159.

<sup>40</sup> *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 217.

<sup>41</sup> See e.g. *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 177; *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 174 and 184.

<sup>42</sup> *Saramaka People v. Suriname*, paragraph 134.

<sup>43</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 184.

the traditional division between both categories of human rights and reinforcing the view that all human rights are universal and indivisible.<sup>44</sup> In a recent case concerning indigenous peoples (*Lhaka Honhat Association v. Argentina*), the IACtHR derived the right to cultural identity directly from second-generation rights, specifically from the right to participate in cultural life, through the application of Article 26 of the ACHR. The latter was declared justiciable in an unprecedented manner, as before the *Lhaka Honhat Association v. Argentina* judgement, cultural rights were only indirectly enforceable before the IACtHR via one of the first-generation rights and freedoms (the significance the *Lhaka Honhat Association* case and the issue of autonomous justiciability of Article 26 ACHR will be discussed below). The IACtHR stated that the right to cultural identity is an integral part of the right to participate in cultural life, enshrined, *inter alia*, in the ADRDM (Article XIII) and the Protocol of San Salvador (Article 14 paragraph 1), as well as in the International Covenant on Civil and Political Rights (ICCPR, Article 27) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 15).<sup>45</sup>

#### 4. *Lhaka Honhat Association v. Argentina* (2020)

On 6 February 2020, the IACtHR issued a landmark judgement in *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*, brought by a civil society organisation representing several indigenous communities in Argentina. While the focus of the legal dispute revolved around land tenure issues and the lack of delimitation of communal property, the applicants sought the protection of their cultural identity, which had been threatened by economic activities carried out by non-indigenous settlers on ancestral lands, and the environmental degradation such activities have caused. The applicants claimed that the construction of the international bridge over the Pilcomayo River from Misión La Paz (Argentina) to Pozo Hondo (Paraguay) was carried out by the state without prior environmental and social impact assessment, and without prior consultation with indigenous communities whose territories had been affected by construction work.

##### 4.1. Facts

Since the 1980s, the indigenous communities in the province of Salta, Argentina, have struggled to obtain the official recognition of their collective ownership to the territories they have inhabited for several centuries. The recognition of a collective title, followed by the delimitation and demarcation of land has become an urgent need, as from the end of the 19<sup>th</sup> century onward, non-indigenous farmers (referred to in the

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<sup>44</sup> Pasqualucci 2013, 31. On the different categories of human rights, see: Domaradzki, Khvostova & Pupovac 2019, 423–443. The UN has emphasized that all human rights are universal, indivisible, and interdependent and interrelated, as expressed, *inter alia*, in paragraph 5 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, A/CONF. 157/23.

<sup>45</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 231–233.

IACtHR's decision as 'criollos'), began to settle on indigenous territories (Lots 14 and 55).<sup>46</sup> The livestock farming and illegal logging carried out by the criollo population, and the erection of wire fences, have had a negative impact on the environment and natural resources. Changes in biodiversity that have occurred as a result of the criollos' presence have seriously threatened the traditional way of life of indigenous communities and their access to water and food.<sup>47</sup>

In 1992, the indigenous communities in the Salta province established the Lhaka Honhat (Our Land) Association to assert their interests and claim the recognition of their communal ownership over indigenous lands (at the time of issuing the judgement, 132 indigenous communities were members of the Association). Their efforts led to the legal recognition by Argentina of collective land ownership. Over the years, there have been numerous legal regulations and agreements in this regard.<sup>48</sup> In 2012 and 2014, two decrees allocated a major part of the area (400,000 ha) to indigenous communities, whereas the smaller part (243,000 ha) remained occupied by non-indigenous settlers. In practice, the state did not take appropriate measures to give effect to these regulations. Their implementation required a precise determination and delimitation territories inhabited by indigenous and criollo populations, and the re-settlement of non-indigenous settlers from indigenous territories, neither of which had been carried out.

In 1998, the Lhaka Honhat Association, with the support of a human rights NGO (Centro de Estudios Legales y Sociales), filed its initial petition to the Inter-American Commission on Human Rights (IACmHR) to seek protection of their land rights and cultural rights. The IACmHR declared the petition admissible in 2006 and ruled on the merits of the case in 2012. It held that there had been a violation of the applicants' freedom of thought and expression (Article 13 of the ACHR), and rights to property (Article 21 of the ACHR), participate in government (Article 23 of the ACHR), fair trial (Article 8 of the ACHR), and judicial protection (Article 25 of the ACHR), resulting in non-compliance with the state's obligation under Article 1 paragraph 1 and Article 2 of the ACHR.<sup>49</sup> The IACmHR made several recommendations to Argentina in order to remedy the wrongdoings. Despite the fact that the deadline for the implementation of recommendations had been extended 22 times, Argentina had not fully complied with the IACmHR's recommendations. The IACmHR considered that although some progress had been made, there was no prospect that the recommendations would be implemented within a reasonable period of time. Therefore, in 2018 (i.e. 20 years after

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<sup>46</sup> The two lots are adjacent and together cover an area of approximately 643,000 hectares, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 47.

<sup>47</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 257-266. The presence of livestock led to overgrazing and the contamination of water sources with animal faeces, the destruction of several botanical species, and a general loss of biodiversity. Cattle-raising affected the composition and abundance of the wildlife that was a major source of protein for the indigenous population. The cattle consumed the produce that the indigenous population used for nutritional, religious, and medical purposes. Illegal logging destroyed forests, and the long stretches of wire fencing blocked access to the river and forest.

<sup>48</sup> In 1991, 1999, 2007, 2012, and 2014.

<sup>49</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 2.

the initial petition was submitted), the case was referred to the IACtHR. Aside from the initial pleadings and the IACmHR's finding, at the submission of the case to the IACtHR, the applicants alleged that there was also a violation of the right to recognition of juridical personality, the freedoms of association, movement, and residence, and the rights to cultural identity, adequate food, and a healthy environment that they alleged were contained in Article 26 of the ACHR.

#### 4.2. IACtHR's judgement

While examining the case, the IACtHR considered relevant circumstances and carried out an on-site visit in Salta. During this visit, the Court delegation met with an assembly of indigenous communities and representatives of the criollo families, visited indigenous areas to examine the presence of fencing and livestock, and visited the Misión La Paz International Bridge.<sup>50</sup> In its judgement, after careful consideration of the petition (and several *amicus curiae* briefs), the IACtHR found that several rights directly or indirectly guaranteed by the ACHR had been violated, thus establishing far-reaching and unprecedentedly broad foundations for protecting indigenous peoples' cultural identity. The IACtHR first examined the alleged violation of the indigenous land rights. It held that Argentina had violated the indigenous peoples' right to property (Article 21 of the ACHR), in relation to the right to a fair trial (Article 8 paragraph 1 of the ACHR) and the right to judicial protection (Article 25 paragraph 1 of the ACHR), and the obligations stemming from Article 1 paragraph 1 and Article 2 of the ACHR.<sup>51</sup> The IACtHR noted that in the Decrees of 2007 and 2014, Argentina had recognised the collective ownership to the ancestral lands but did not provide indigenous communities with an adequate title to the land that would have given them legal certainty. The ancestral land had not been demarcated and the presence of third parties on the ancestral territories continued.<sup>52</sup> The IACtHR declared that the adequate guarantee of communal property does not entail its nominal recognition, but requires the observance and respect for the autonomy and self-determination of the indigenous communities over their territory.<sup>53</sup> It referred to its previous case law on indigenous people (*Mayagna (Sumo) Awas Tingni v. Nicaragua*, *Kichwa Indigenous People of Sarayaku v. Ecuador*, *Saramaka People v. Suriname*, *Kaliña and Lokono Peoples v. Suriname*), in which it reaffirmed that indigenous communities are collective subjects of international law, who exercise some of the human rights collectively, such as the right to ownership of the land, and who are entitled to the enjoyment of the right to self-determination in relation to the ability to freely dispose of their natural resources.<sup>54</sup> It investigated the allegations of the petition relating to the construction of the international bridge Misión La Paz, connecting Argentina and

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<sup>50</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 10. The IACtHR carried out an on-site procedure (visit) for the first time while hearing the case *Kichwa Indigenous People of Sarayaku v. Ecuador*.

<sup>51</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 168.

<sup>52</sup> *Ibid.*, paragraph 167.

<sup>53</sup> *Ibid.*, paragraph 153.

<sup>54</sup> *Ibid.*, paragraph 144.

Paraguay, without consulting with indigenous communities. The IACtHR found that Argentina had breached its obligation to provide the indigenous communities affected by the construction project with a prior, free, and informed consultation procedure. Thus, their rights to property (Article 21 of the ACHR) and to participate in public affairs (Article 23 paragraph 1 of the ACHR), read in conjunction with Article 1 paragraph 1 of the ACHR had been violated.<sup>55</sup> It addressed the environmental damage caused by non-indigenous settlers and the state's responsibility for failing to adequately protect the environment and indigenous people's rights.

The IACtHR examined these issues in light of the rights to a healthy environment, food, water, and cultural identity. It found that the criollo settlers through their illegal logging and other activities on indigenous lands (livestock farming, erection of fences) had caused environmental degradation, and had put the traditional livelihoods of indigenous peoples (restricted access to water and food) at risk. Thus, the traditional way of life of indigenous communities had changed, followed by the loss of their cultural identity. The IACtHR elaborated on the concept of culture and explained the normative content and basis of the right to cultural identity, while drawing on the practice of international organisations.<sup>56</sup> It reaffirmed that the protection of culture includes the protection of a traditional way of life and its distinctive cultural characteristics.<sup>57</sup> In its interpretation, the right to cultural identity protects the freedom of individuals, when they act together or as a community, to identify with one or several communities or social groups, with a view to follow a way of life connected to the culture to which they belong and to take part in its development.<sup>58</sup> The right to cultural identity protects the distinctive features that characterise a particular social group, without denying the historical, dynamic, and evolving nature of culture itself.<sup>59</sup> The IACtHR cited its previous jurisprudence, in which it recognised cultural identity as a fundamental collective human right of indigenous communities that must be respected in a multicultural, pluralist, and democratic society.<sup>60</sup> It recalled that the right to participate in cultural life imposes a positive obligation on states, and requires the adoption of appropriate legislative, administrative, judicial, budgetary, promotional, and other measures aimed at the full realisation of this right. It imposes on the states the obligation to protect, which requires taking steps to prevent third parties from interfering with the right to take part in cultural life.<sup>61</sup>

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<sup>55</sup> *Ibid.*, paragraph 184.

<sup>56</sup> See: *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 231-242. In this context, the IACtHR referred to the documents adopted by UNESCO, the UN Human Rights Committee, and the UN Committee on Economic, Social and Cultural Rights.

<sup>57</sup> In accordance with the definition of culture adopted by the UN Human Rights Committee in its General Comment No. 23 on the Rights of Minorities.

<sup>58</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 240.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 231, see also: *Kichwa Indigenous People of Sarayaku v. Ecuador*, paragraph 217.

<sup>61</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 242.

The presence of criollo families and the economic activities they carried out on the indigenous lands, incompatible with the indigenous system of customs and traditions, resulted in a change in the cultural patterns of the indigenous people. The interference ran parallel to restricting the free access of indigenous peoples to their ancestral lands. It affected the access to natural resources, which limited the traditional ways in which the indigenous communities obtained water and food. Thus, there has been harm to cultural identity in relation to natural and food resources.<sup>62</sup> The Court acknowledged that the state had taken several actions to remedy the situation, but it had not been effective in preventing harmful activities, as a result of which, 28 years after the initial indigenous territorial claim, livestock, and fences were still present on indigenous lands.<sup>63</sup> The state did not guarantee the indigenous communities the possibility of deciding, freely or by adequate consultation, on the activities carried out on their territory.<sup>64</sup> Against this background, the IACtHR found that Argentina had violated the right of indigenous communities to take part in cultural life in relation to cultural identity, and the rights to a healthy environment, adequate food, and water, all of which are interrelated and protected under Article 26 of the ACHR.<sup>65</sup>

While determining reparations, the IACtHR took into consideration the complexity of the case, which affected the situation of a large number of people from indigenous and non-indigenous communities inhabiting the vast territory.<sup>66</sup> The applicants formulated their claims in connection with the activity of individual people, accusing non-indigenous settlers and peasant farmers, who otherwise also enjoy international legal protection under the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, of environmental damage.<sup>67</sup> The IACtHR ordered Argentina to delimit, demarcate, and grant a single collective title that recognised the ownership of their territory to all indigenous communities identified as victims, without any subdivisions or fragmentation.<sup>68</sup> To ensure the full exercise of the right to property of the indigenous communities, the Court ordered the state to relocate the criollo population outside indigenous territories, using procedures aimed at the voluntary relocation and endeavouring to avoid compulsory evictions.<sup>69</sup> It urged the state to take several actions to prevent further environmental degradation,<sup>70</sup> and ordered it to set up a community development fund to redress the harm to cultural identity, and as a compensation for the material and non-material damage suffered.<sup>71</sup> The state was ordered

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<sup>62</sup> Ibid., paragraph 284.

<sup>63</sup> Ibid., paragraph 287.

<sup>64</sup> Ibid., paragraph 288.

<sup>65</sup> Ibid., paragraph 289.

<sup>66</sup> Ibid., paragraph 320.

<sup>67</sup> UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, UN General Assembly Resolution of 17 December 2018, A/RES/73/165. In its case-law on indigenous peoples, the IACtHR has usually examined alleged violations of indigenous rights in connection with large investment projects involving governmental or multinational stakeholders.

<sup>68</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 327.

<sup>69</sup> Ibid., paragraph 329.

<sup>70</sup> Ibid., paragraph 333.

<sup>71</sup> Ibid., paragraphs 338–342.

to allocate the sum of USD 2 million to the fund, earmarked for actions aimed at the recovery of the indigenous culture, the use of which shall be decided by the indigenous communities and communicated to the state authorities.<sup>72</sup>

#### 4.3. The interrelated rights to cultural identity, healthy environment, adequate food, and water

The facts of the case provided the IACtHR with an excellent opportunity to reflect on the relationship between the cultural rights and the right to a healthy environment, and equally on the interplay among the rights to adequate food, water, and cultural identity. The Court's findings make a valuable contribution to the debate on cultural rights, and highlight the social impact of environmental change, which is worth considering in the context of what some scholars called 'environmental justice'.<sup>73</sup> The IACtHR recognised that the right to a healthy environment has universal value and is a fundamental right for the existence of humankind.<sup>74</sup> This approach was expressed in its earlier advisory opinion OC-23/17, in which it elaborated on the interrelationship between human rights and environmental protection.<sup>75</sup> In *Lhaka Honhat Association v. Argentina*, the IACtHR emphasised that environmental degradation can affect the exercise and enjoyment of human rights, especially for certain vulnerable groups, such as indigenous peoples and other communities whose livelihoods depend on the availability of natural resources. Under human rights law, states must confront these vulnerabilities based on the principle of equality and non-discrimination.<sup>76</sup> The IACtHR noted that for indigenous people, the right to a healthy environment is closely linked to the right to food, water, and cultural identity. Any interference with the natural environment may have a negative impact on the enjoyment of the right to food and water, and to take part in cultural life.<sup>77</sup>

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<sup>72</sup> Under Article 68 of the ACHR, states parties have the obligation to comply with the judgments of the IACtHR. The Court monitors state compliance with the reparations it orders until they have been completely fulfilled, see: Pasqualucci 2013, 303–306. In February 2023, the IACtHR issued an order that detail with which reparations specified in the 2020 judgement Argentina have already complied, and urged the state to take measures which have not been implemented yet: IACtHR, *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina (Monitoring Compliance with Judgment)*, order of 7 February 2023.

<sup>73</sup> According to Bándi, environmental justice refers to the fair and equal distribution of environmental quality between different social groups, Bándi 2020, 40–43; see also: Krznicar 2020, 71.

<sup>74</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 202–203. On the relationship between the environmental protection and the rights of indigenous peoples, see: Errico 2018, 450–454; Marinkás 2020, 143–144.

<sup>75</sup> IACtHR, *Advisory Opinion OC-23/17 of 15 November 2017 on the Environment and Human Rights*, requested by the republic of Colombia, paragraphs 56–68. For more on the *Advisory Opinion OC-23/17*, see: Marinkás 2020, 138–139.

<sup>76</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 209.

<sup>77</sup> *Ibid.*, paragraph 274.

According to the IACtHR, the right to food should not be understood and interpreted restrictively. The right to (adequate) food does not merely concern physical livelihood, as there is a significant cultural dimension that falls within its ambit, especially in the case of indigenous people.<sup>78</sup> It is not *any* food that meets the requirements of the right to food, but the food that is acceptable to a specific culture, meaning that values and criteria not necessarily directly related to nutrition need to be duly considered.<sup>79</sup> According to the Court, food can be considered one of the cultural characteristics of a given social group and it enjoys protection under the right to cultural identity.<sup>80</sup>

The IACtHR reflected on the interrelation between the right to water and enjoyment of other human rights. As seen in *Lhaka Honhat Association v. Argentina*, the right to water may be closely related to the right to take part in cultural life.<sup>81</sup> The right to water, like the rights to food and to take part in cultural life, is especially vulnerable to environmental impact and changes in the natural environment.<sup>82</sup> Applicant indigenous communities did not allege the violation of the right to water in their petition. Nonetheless, the facts of the case related to the enjoyment of this right, and based on the *iura novit curia* principle, the IACtHR established its competence to examine a potential infringement of the right to water.<sup>83</sup> It ruled on all four interrelated rights, namely the right to a healthy environment, adequate food, water, and to take part in cultural life, based on Article 26 of the ACHR. This was unprecedented and the first contentious case to derive the protection of these rights directly from Article 26 of the ACHR, which explains the broad considerations on the normative content of these rights, and their impact in the case of indigenous peoples.<sup>84</sup>

#### 4.4. The significance of the evolutionary interpretation of Article 26 of the ACHR in *Lhaka Honhat Association v. Argentina*

In *Lhaka Honhat Association v. Argentina*, the IACtHR reaffirmed its willingness and readiness to interpret the ACHR's substantive provisions in an evolutionary and multidimensional manner, to offer far-reaching and effective protection for the cultural rights of indigenous people. The novelty of the 2020 judgement lies in the fact that for the first time in a contentious case, the IACtHR recognised that the rights to cultural identity, healthy environment, food, and water can be derived directly from Article 26 of the ACHR, which is justiciable before the IACtHR. The claims concerning the alleged breach of Article 26 of the ACHR were raised in *Yakye Axa v. Paraguay* (2005) and *Kichwa Indigenous People of Sarayaku v. Ecuador*, but until *Lhaka Honhat Association*

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<sup>78</sup> *Ibid.*, paragraph 254.

<sup>79</sup> *Ibid.*, paragraph 274.

<sup>80</sup> *Ibid.*, paragraph 274.

<sup>81</sup> *Ibid.*, paragraph 222.

<sup>82</sup> *Ibid.*, paragraphs 228 and 245.

<sup>83</sup> *Ibid.*, 200. Although neither the ACHR, nor the Statute of the Inter-American Court includes specific provisions establishing the IACtHR's competence to decide questions of its jurisdiction, the IACtHR has declared that it has the inherent authority to determine the scope of its own competence, see: Pasqualucci 2013, 118.

<sup>84</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 201.

v. Argentina, the Court did not make use of the possibility of basing the protection of cultural rights directly on Article 26 of the ACHR.

In *Lhaka Honhat Association v. Argentina*, the IACtHR asserted its competence to determine violations of rights guaranteed by Article 26 of the ACHR.<sup>85</sup> The issue of enforceability and justiciability of Article 26 of the ACHR was a subject of a heated dispute, within the jurisprudence of IACtHR and in the legal doctrine. According to some authors, the main legal instruments in the Inter-American human rights system do not ensure the enforceability of economic, social, and cultural rights (with the exception of the right to education and trade union rights), therefore, the approach in favour of direct enforceability of Article 26 of the ACHR runs afoul of the ACHR and the Protocol of San Salvador.<sup>86</sup> In 2017, in *Lagos del Campo v. Peru*, the IACtHR took the position that Article 26 of the ACHR is enforceable in an autonomous manner.<sup>87</sup> This stand was ultimately reaffirmed in the *Lhaka Honhat Association v. Argentina*. However, during the deliberation of the Court, fundamental disagreements arose among the judges over the justiciability of cultural rights. Three of the six judges supported the autonomous enforceability of Article 26 of the ACHR, whereas the other three took the position that the IACtHR had no competence *ratione materiae* to examine violations of this provision. The vote of the presiding judge proved decisive in enabling the IACtHR to put on a new footing the protection of indigenous peoples' right to cultural identity, based on the direct judicial enforceability of the cultural rights guaranteed by Article 26 of the ACHR.<sup>88</sup> The right to cultural identity, which had received protection through the evolutionary interpretation of the right to property and procedural guarantees, can equally be protected under the right to participate in cultural life, the enforcement of which is possible through the direct application of Article 26 of the ACHR, hitherto considered a programmatic provision on the progressive realisation of social, cultural, and economic rights.

According to Judge Eduardo Ferrer Mac-Gregor Poisot, who was one of the supporters of the evolutionary interpretation of Article 26 of the ACHR, the judgement in the *Lhaka Honhat Association v. Argentina* represents a milestone in the Inter-American case law for three reasons.<sup>89</sup> First, it was the first occasion on which the IACtHR ruled autonomously on the economic, social, and cultural rights of indigenous people. Second, the judgement declared the violation of four rights that may be derived from and protected by Article 26 of the ACHR, namely the rights to cultural identity, take part in cultural life, and a healthy environment, food, and water. Third, the

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<sup>85</sup> *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 195–199.

<sup>86</sup> See for example Ruiz-Chiriboga 2013, 159–186.

<sup>87</sup> IACtHR, *Case Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340. The facts of the case were related to the dismissal of a trade union leader, therefore, the IACtHR focused on the protection of social and not cultural rights.

<sup>88</sup> In *Lhaka Honhat (Our Land) Association v. Argentina*, five separate opinions were presented by the judges, all of which are valuable contributions to the debate on the enforceability of economic, social, and cultural rights guaranteed by Article 26 of the ACHR, and on the IACtHR's competence to examine violations of this ACHR provision.

<sup>89</sup> Judge Eduardo Ferrer Mac-Gregor Poisot's separate opinion in the *Lhaka Honhat (Our Land) Association v. Argentina*, paragraph 4.

reparations ordered by the IACtHR have a differentiated focus in attempting to redress the violation of the social, cultural, and environmental rights that the judgement declared had been violated. According to the judge, the relevance of this case for the Inter-American and international case law can be described as 'settling a pending debt' with the indigenous and tribal people and communities of the region.<sup>90</sup> The judgement confirmed the approach taken by the IACtHR to ensure that all human rights – civil, political, economic, social, cultural, and environmental – are interdependent and indivisible, without any hierarchy among them. The state must respect and guarantee all human rights equally.<sup>91</sup> This is particularly important for indigenous people, who depend physically on the natural resources in their territory and have a spiritual symbiosis with them, while constantly struggling with extreme poverty and historic injustices.

The issue of paramount concern in *Lhaka Honhat Association v. Argentina* was the protection of cultural identity, endangered by actions causing environmental degradation. It was not new for the Court to consider the right to a healthy environment vis-à-vis cultural rights; this interplay was highlighted and thoroughly examined in several previous cases brought forth by indigenous communities. In *Lhaka Honhat Association v. Argentina*, however, the protection of the right to a healthy environment was derived for the first time by the IACtHR directly from Article 26 of the ACHR, in parallel with the right to cultural identity (more precisely, the right to participate in cultural life).<sup>92</sup> Before the 2020 judgement, the possibility of protecting the right to a healthy environment before the IACtHR based on Article 26 of the ACHR was established only within the IACtHR's advisory jurisdiction.<sup>93</sup> The judgement in *Lhaka Honhat Association v. Argentina* reaffirmed and reinforced the Court's earlier findings which highlighted the important role of indigenous people in the effective conservation of nature, related to the fact that traditional uses of natural resources entail sustainable practices.<sup>94</sup> According to the IACtHR, the respect for the rights of indigenous people may have a positive impact on environmental conservation. It justifies the interdisciplinary approach requiring that indigenous people's rights and international environmental laws be understood as complementary.<sup>95</sup>

## 5. Conclusions

The key documents in the Inter-American system of human rights do not explicitly guarantee the right to cultural identity. In the IACtHR's case law, however, indigenous

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<sup>90</sup> *Ibid.*, paragraph 7.

<sup>91</sup> *Ibid.*, paragraph 87. Judge Eduardo Vio Grossi in his partially dissenting opinion argued that the indivisibility of human rights and the link between civil and political rights and economic, social, and cultural rights is not a valid argument to justify that the latter are justiciable before the IACtHR, see: Judge Eduardo Vio Grossi's partially dissenting opinion in the *Lhaka Honhat (Our Land) Association v. Argentina*, paragraphs 91–92.

<sup>92</sup> The right of every person to live in a healthy environment is guaranteed by Article 11 paragraph 1 of the Protocol of San Salvador, although it is not judiciable before the IACtHR in terms of Article 19 paragraph 6 of the Protocol.

<sup>93</sup> Advisory Opinion OC-23/17, paragraph 57.

<sup>94</sup> See e.g. *Kaliña and Lokono Peoples v. Suriname*, paragraphs 173 and 181.

<sup>95</sup> *Ibid.*

people's cultural identity has received substantial protection, primarily through the dynamic and multidimensional interpretation of the fundamental rights and freedoms guaranteed under the ACHR. The right to cultural identity has long been protected by the IACtHR under the rights to property and life. The IACtHR's recent case law demonstrates that the right to cultural identity can be protected under Article 26 of the ACHR as well, alongside the rights to a healthy environment, water, and adequate food. The approach involving the evolutionary interpretation of the ACHR can be explained by the doctrine of 'living instrument' and by the IACtHR's commitment to supporting the indivisibility of human rights. The IACtHR's judgement dated 6 February 2020 puts on the front foot the protection of cultural rights in the Inter-American human rights system, while opening up new possibilities for the protection of environmental rights.

The IACtHR's contribution to human rights protection has been recognised by the UN Committee on the Economic, Social, and Cultural Rights in its General Comment No. 26 on land and economic, social, and cultural rights. The ground-breaking and path-paving approach of the IACtHR in protecting cultural rights inspired other regional treaty bodies, especially the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights.<sup>96</sup> The IACtHR's far-reaching approach to victim reparations is worth close attention, and should serve as a role model for other human rights organs, including the European Court of Human Rights. The latter has explicit formal powers to order reparations, but unlike the IACtHR, it does not indicate the means that a state should use to perform its obligations under international human rights law.<sup>97</sup>

The Court's ground-breaking considerations in *Lhaka Honhat Association v. Argentina* are worth reading in light of the broader concept of sustainable development. The legal components of sustainable development, identified by Bándi as intergenerational and intragenerational equity, public participation, cooperation, integration, precautionary principle, subsidiarity, and good governance, have environmental protection as their central attribute.<sup>98</sup> They aim to protect the rights of current generations, while caring for the welfare and needs of future ones. The concern for unborn generations lies at the heart of the decision-making of many indigenous people world over.<sup>99</sup> Achieving intergenerational equity is a great challenge in the Inter-American and European perspective, and requires *inter alia* a proper conceptual construction of the legal representation of humankind as a whole, comprising the present

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<sup>96</sup> See: African Commission on Human and Peoples' Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, decision of 25 November 2009, communication no: 276/03, paragraphs 159-162 and 284-294; African Court on Human and Peoples' Rights, The African Commission on Human and Peoples' Rights v. Republic of Kenya, judgement of 23 June 2022 (Reparations), application no. 006/2012, paragraphs 67, 72-74, 91-92, 142.

<sup>97</sup> See: Shelton 2015, 215-216.

<sup>98</sup> Bándi 2022, 36-38.

<sup>99</sup> See the rule of the seventh-generation decision-making in Krznaric 2020, 86-90; Bándi 2022, 40.

and future generations.<sup>100</sup> Finally, it is worth bearing in mind what Cançado Trindade wrote, that due attention to cultural identity awakens human awareness to the temporal dimension in the application of law.<sup>101</sup> Recent jurisprudence of the IACtHR, bringing into our circle of concern the need to both protect cultural identity and safeguard the environment, is a significant step in this direction.

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<sup>100</sup> Cançado Trindade 2009, 499; Bándi 2022, 61. For more on the Central European perspective on sustainable development and the protection of future generations, see e.g.: Szilágyi 2021, 211–214; Szilágyi 2022.

<sup>101</sup> Cançado Trindade 2009, 488–499.

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