

THE RIGHT TO WATER IN THE INTER-AMERICAN COURT OF HUMAN RIGHTS: ANALYSIS OF THE GROUNDS OF THE LHAKA HONHAT VS. ARGENTINA CASE

*O DIREITO À ÁGUA NA CORTE INTERAMERICANA DE
DIREITOS HUMANOS: ANÁLISE DOS FUNDAMENTOS DO
CASO LHAKA HONHAT VS. ARGENTINA*

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Abstract

This article analyzed the legal grounds used by the Inter-American Court of Human Rights (IACHR) to recognize water as a common good, focusing on the case Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) vs. Argentina. The main objective was to understand how the right to water is consolidated within the international human rights protection system and to discuss its implications for the protection of vulnerable populations. The research employed a qualitative approach, guided by the deductive method and using a case study as the investigation technique. The results indicated that the Lhaka Honhat case represents a milestone in expanding the interpretation of human rights within the inter-American system, recognizing for the first time, autonomously, the rights to a healthy environment, adequate food, water, and cultural identity. However, it also revealed practical challenges, such as the need to comply

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with international standards regarding population relocation and the difficulty in implementing measures that ensure the effectiveness of these decisions. It concludes that consolidating the right to water as a common good requires greater articula-

tion between international law and national systems, as well as advancements in the formulation of public policies aimed at protecting traditional communities.

Keywords: Human right to water. Indigenous peoples. Biocultural rights. International Human Rights Protection System. Inter-American Court of Human Rights.

Resumo

Este artigo analisou os fundamentos jurídicos utilizados pela Corte Interamericana de Direitos Humanos (CIDH) para reconhecer a água como um bem comum, com foco no caso Comunidades Indígenas Membros da Associação Lhaka Honhat (Nuestra Tierra) vs. Argentina. O principal objetivo foi compreender como o direito à água se consolida no âmbito do sistema internacional de proteção dos direitos humanos e discutir suas implicações para a proteção de populações vulneráveis. A pesquisa adotou uma abordagem qualitativa, orientada pelo método dedutivo e utilizando o estudo de caso como técnica de investigação. Os resultados indicaram que o caso Lhaka Honhat representa um marco na ampliação da interpretação dos direitos humanos no sistema interamericano, ao reconhecer pela primeira vez, de forma autônoma, os direitos ao meio ambiente saudável, à alimentação adequada, à água e à identidade cultural. No entanto, também revelou desafios práticos, como a necessidade de observância aos padrões internacionais relativos à realocação de populações e as dificuldades na implementação de medidas que garantam a efetividade dessas decisões. Conclui-se que a consolidação do direito à água como bem comum exige maior articulação entre o direito internacional e os sistemas jurídicos nacionais, bem como avanços na formulação de políticas públicas voltadas à proteção das comunidades tradicionais.

Palavras-chave: Direito humano à água. Povos indígenas. Direitos bioculturais. Sistema Internacional de Proteção dos Direitos Humanos. Corte Interamericana de Direitos Humanos.

1. Introduction

In the 21st century, efforts to redefine water as an essential socio-environmental good have intensified, emphasizing its protection through international and constitutional instruments. United Nations General Assembly Resolution 70/169 (2015), which recognized the human right to water – even within a soft law framework – symbolizes a significant transition in this context (Guerra; Moura, 2017).

This redefinition has led to growing demands for the recognition of water as a human right, challenging its commodification and the limits of private control. Protecting water as a fundamental right involves a constant tension with other rights, such as the right to private property, safeguarded by the American Convention on Human Rights (ACHR) (Brasil, 1992). Frequently, this right prevails over the cultural and traditional values of vulnerable groups, such as Indigenous peoples, thus generating environmental conflicts and posing challenges for States in both the formulation of public policies and the judicial resolution of such cases (Faradori, 2021).

In this scenario, the case Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) vs. Argentina, decided in 2020 by the Inter-American Court of Human Rights (IACtHR), emerged as a landmark in the protection of human rights. The decision, which followed – and was certainly grounded in – Advisory Opinion OC-23/17 of the same international court, held Argentina accountable for violating the rights of 132 Indigenous communities. It was the first time the Court autonomously recognized the justiciability of the rights to a healthy environment, adequate food, water, and cultural identity. Furthermore, the Court ordered the evacuation of ancestral lands, the removal of settlers and livestock, and the issuance of property titles to the traditional communities (Faradori, 2021; Tigre, 2021; Alvarez, 2020).

Based on this case, the present study explores the legal grounds used by the IACtHR to protect water as a human right, analyzing the theoretical frameworks that consolidate its legal nature. It aims to discuss the Court's interpretation of the right to water, emphasizing the pathways to its realization and the debate surrounding water as a human right or common good versus its conception as a commodity, resource, or private property. The research adopts a qualitative approach, guided by the deductive method, and uses literature review and document analysis, with particular focus on the case study of the Lhaka Honhat (Nuestra Tierra) judgment—the Court's first autonomous treatment of environmental, food, water, and cultural identity rights in a contentious case.

The IACtHR's decision in the *Lhaka Honhat (Nuestra Tierra)* case is regarded as a milestone in the expansion of autonomous rights within the Inter-American human rights system, especially concerning the protection of Indigenous peoples. Nonetheless, significant challenges remain for the effective implementation of these decisions, evidencing the need for legal and institutional advancements to ensure their enforceability (Tigre, 2021).

To structure the discussion, this article is divided into three sections. The first presents the debate on water as a human right and as a commodity, highlighting the tensions between biocentric and anthropocentric perspectives in both national and international contexts. The second section addresses the global challenges and advancements in consolidating the human right to water, analyzing how legal norms and public policies navigate the duality between water as an economic good and as a universal right. Finally, the third section focuses on the *Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) vs. Argentina* case, emphasizing the legal grounds invoked to recognize water as a human right, as well as the practical challenges in implementing the Court's reparations and protecting the rights of the affected Indigenous communities.

2. Water in nature and the nature of water

Modern economic and scientific development has sought to improve upon nature but, paradoxically, has ended up confining it, feeding the illusion that it is possible to live disconnected from it, interacting only with a domesticated version of nature – whether in the "artificial paradises" mentioned by Ost (2003) or in the anthropization of the environment, incessantly transformed by human beings, who reshape it without restraint to serve their goals. This reductionist ideal viewed nature as an obstacle to human progress, something to be altered and dominated. However, the consequences of this process have become evident in the catastrophes caused by intense anthropization. Awareness of the risks posed by human actions, although recent, contrasts with the long history of environmental destruction that has accompanied the trajectory of civilization (Marés, 2017).

Until the 20th century, few were concerned with environmental degradation, and modern culture glorified progress as detached from nature. In urban settings, only elements deemed non-threatening were tolerated, while nature was systematically excluded from human environments. This exclusion – always violent – quickly evolved into a veritable war against the natural world. The environmental crisis, because of human action, is today manifested in disasters such as floods, droughts,

hurricanes, pandemics, and climate change, exposing the limits of this artificial disconnection (Marés, 2017).

There is a growing awareness that traditional development models often break ecological and cultural ties to place. However, the rise of social movements has promoted alternatives that value territories in their complexity, incorporating cultural, ecological, and economic practices that define their identities. Debates on post-development and political ecology have reintroduced "place" as a central element in globalization discussions, deconstructing the dichotomy between nature and culture and emphasizing their continuity (Escobar, 2005).

In Brazil – as in other Latin American countries – understanding the struggle for land and, consequently, for water requires considering not only economic expropriation, but also the social and cultural dimensions associated with these practices. Land and water, beyond their social and economic functions, constitute social territories deeply connected to the cultures and identities of local communities (Arruti, 1999).

Within this context, social movements have incorporated the protection of biodiversity into their agendas, demanding not only land, but land with environmental quality. Water, in turn, has become a central demand, essential for the production and reproduction of life, emerging as a political issue and a matter of socio-environmental justice – raised not by state managers or corporations, but by social groups (Porto-Gonçalves, 2020).

Water has thus ceased to be seen merely as a neutral element and has become a social variable. To advance the analysis of its various forms of appropriation, it is necessary to disassociate it from the notion of nature as an ahistorical gift (Silva, 2008).

In the 1990s, the debate around water intensified with the advance of neoliberalism, which, in several countries, promoted the privatization of water supply services, resulting in price increases and a decline in quality. In the 2000s, a new wave of re-nationalization exposed the incompatibility between corporate profit and the universal right of access to water (Ribeiro; Santos; Silva, 2019). Researchers remain divided between treating water as a common good or as an economic resource, with some authors emphasizing that, although it has economic value, it should not be treated as a commodity (Pompeu, 2006; Flores, 2011).

In Brazil, the fact that the National Water Resources Policy (Política Nacional de Recursos Hídricos – PNRH) has recognized water as a good with economic value¹ does not remove its status as a fundamental right about access. Constitution

¹“Art. 1. The National Water Resources Policy is based on the following principles: [...] II

enshrines the dignity of the human person as a foundational principle of the Republic², it is not possible to disregard the implicit guarantee of access to adequate living conditions - an idea that inherently includes access to water and, more broadly, to sanitation. More specifically, the City Statute reinforces this understanding by establishing, in Article 2, item I, the “right to sustainable cities,” which includes, among other aspects, the right to environmental sanitation³. Ultimately, the very objective expressed in the PNRH⁴, of ensuring the “necessary availability of water, in quality standards,” for present and future generations, as well as the goal of universalizing basic sanitation services, as set forth in the National Basic Sanitation Policy⁵, demonstrate that access to drinking water constitutes a fundamental right of all citizens.

The debate concerning the nature of water traverses both corporations and international organizations. Although institutions such as the World Bank and the United Nations have historically considered water a need rather than a human right, United Nations General Assembly Resolution 64/292 formally recognized, in 2010, the human right to safe drinking water and sanitation (United Nations, 2010).

The distinction between a need and a human right is crucial: a need may be satisfied through financial means, while a human right must be guaranteed regardless of the individual’s ability to pay (Barlow, 2001; Flores, 2011). This becomes even more relevant when considering the positive obligations associated with environmental rights, particularly access to water and sanitation.

Social movements, such as the Comissão Pastoral da Terra and Via Campesina, raise fundamental questions about whether water should be private or communal, and about what rights should be attributed to the people, the State, and corporations. These movements argue that water is a natural right, essential to

– water is a limited natural resource with economic value;” (Brasil, 1997, Freely translated from Portuguese by the authors).

²“Art. 1. The Federative Republic of Brazil, formed by the indissoluble union of the States, Municipalities, and the Federal District, is constituted as a Democratic State under the Rule of Law and is founded on: [...] III – the dignity of the human person;” (Brasil, 1988, Freely translated from Portuguese by the authors).

³“Art. 2. Urban policy aims to guide the full development of the social functions of the city and urban property, according to the following general guidelines: I – the guarantee of the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, work, and leisure, for present and future generations;” (Brasil, 2001, Freely translated from Portuguese by the authors).

⁴“Art. 2. The objectives of the National Water Resources Policy are: I – to ensure the necessary availability of water, in adequate quality standards for the respective uses, for present and future generations;” (Brasil, 1997, Freely translated from Portuguese by the authors).

⁵“Art. 2. Basic sanitation public services shall be provided based on the following fundamental principles: I – universal access and effective service delivery;” (Brasil, 2007, Freely translated from Portuguese by the authors).

both human survival and ecological balance. However, they also denounce that the commodification of water subjects this resource to market forces and profit motives, disregarding its environmental and social implications (Silva; Cunha, 2017; Mendonça, 2015).

Recognizing water as a fundamental right implies prioritizing principles such as human dignity and the right to a healthy environment in disputes over ownership and access. In this regard, the Resolution 64/292 affirms that access to safe drinking water and sanitation is essential for the realization of all other human rights (United Nations, 2010). This directly influences water governance, especially in relation to sanitation services, where the priority uses must be human consumption and livestock watering (Gomes, 2010).

Thus, there is a clear interrelation between the human right to water and other rights, as well as between basic sanitation and the very right to a healthy environment. As Sarlet and Fensterseifer (2013, p. 132) aptly state:

[...] The absence of, for example, sewage treatment networks in each locality results not only in a violation of the right to safe drinking water and basic sanitation for the individual and the community, but also directly affects the right to live in a healthy, balanced, and safe environment, due to the environmental pollution underlying such omission and violation perpetrated by the State entity⁶.

It is worth emphasizing that, in 2022, the United Nations General Assembly recognized, through Resolution 76/300, the human right to a clean, healthy, and sustainable environment – a right that is interconnected with other human rights proclaimed at the international level (United Nations, 2022). In doing so, the Assembly calls upon all actors, whether governmental or non-governmental, to adopt, among other measures, policies suitable for the implementation of this right.

In a different perspective, the idea of treating elements of nature as private property – widely associated with modern capitalism – is a recent and debatable construction, based on the notion that humans are separate from nature (Silva, 2022). This view privatizes resources such as water, reinforcing inequalities between owners and non-owners. Environmental movements advocate for shared and accessible use of water, while large corporations seek to expand the global market for this

⁶Freely translated from Portuguese by the authors.

resource under the discourse of water security, although often motivated by profit (Barlow, 2001).

Defining the legal nature of water is central to its governance and access. When treated as an economic good, water is subjected to market forces, which tend to limit access for vulnerable populations. Conversely, its conception as a human right emphasizes the need to ensure universal and equitable access, despite the considerable challenges related to practical implementation. In the international context, the fact that the UN resolution is classified as soft law gives rise to normative dissent and fragmentation of water management policies, further complicating the protection of this right in contexts of scarcity.

The difficulty in consolidating water as a human right stems from the complexity of the legal and political structures that regulate its access. International standards often conflict with national economic policies and local practices. Furthermore, the lack of clarity in the definition and enforcement of this right – which requires proactive and costly measures by States – creates ambiguities that hinder its effective protection. Thus, assessing how the human right to water has been consolidated in international debate, as well as its impact on countries that have ratified such norms, is essential for promoting a fairer and more equitable model of water governance.

3. International mechanisms for the protection of water: advances and gaps

Political and legal transformations over time have significantly altered the perception of water. Initially regarded as abundant and free, water came to be viewed through an economic-rationalist lens, resulting in market-oriented management models and, consequently, in crises and violations of human rights (Guerra; Moura, 2017).

During the 1980s and 1990s, the economic approach to water encouraged the development of mechanisms such as water markets, the polluter-pays principle, usage fees, and the privatization of water supply and sanitation sectors, effectively transforming water into an economic commodity (Guerra; Moura, 2017). However, this global commodification of water has been challenged due to its negative impacts on universal access, particularly for the poorest and most marginalized populations. In response, political and legal mechanisms – both constitutional and international – have emerged to reaffirm water as a human right (Guerra; Moura, 2017).

The normative evolution of water reflects a transition from a privatized model to a humanistic one (see Table 1), with emphasis on international protection instruments that recognize water as an essential human right (Guerra; Moura, 2017).

Tabela 1: Main Phases in the Legal and Regulatory Evolution of Water

Until the 1970s	Post–World War II in Europe	Present Day
Water was seen as a free good, but also as a crucial resource for industrial development. State control predominated, with a public management model centered on nationalization and the protection of economic interests, especially in the industrial and energy sectors.	Water nationalization and state intervention were intensified to promote efficiency, break up private monopolies, and stimulate regional development. This approach aimed to achieve economies of scale, reduce inequalities, and implement economic planning focused on post-war recovery.	There is a growing trend toward consolidating the recognition of water as a human right, linked to dignity and well-being, in contrast to the prevailing economic view. This new understanding has shaped regulatory and management models, reflecting a more integrated and humanized approach, guided by the concept of sustainable development.

Source: Prepared by the authors (2024), adapted from Guerra and Moura (2017).

Despite this trajectory of legal reform, in many countries water regulation continues to promote its rationalization and commodification through the privatization of water supply and sanitation services, often controlled by large corporations (Guerra; Moura, 2017).

The right to private property, as provided for in Article 21 of the American Convention on Human Rights (ACHR), allows the law to regulate its use in the public interest. However, it often fails to consider cultural and traditional aspects, particularly in Indigenous territories affected by projects such as hydroelectric dams, which cause serious impacts on local communities (Bentes; Lima, 2019).

The recognition of the human right to water by the United Nations in 2010, through a non-binding resolution, marked a shift in normative paradigms by emphasizing the essential nature of water for life and for the enjoyment of other human rights. It also reinforced the need for global cooperation and social participation (Barreiro, 2017; Melo, 2018; Carvalho; Rosa; Miranda, 2020). This international movement to enshrine the human right to water – described by Barlow (2012) as a pursuit of water justice often obstructed by powerful economic interests (States, corporations, and organizations) – constitutes a temporal milestone in the struggle for water protection.

Although significant, this recognition faces persistent challenges arising from

the dominant view of water as a commodity and the pressure for its privatization, often led by major corporations (Barreiro, 2017). Despite the formal acknowledgment of the right to drinking water, the UN's approach still reflects an anthropocentric perspective, focused on human access to potable water, without fully considering the interconnection between environmental sustainability, the rights of traditional communities, and ecosystem preservation. This limitation hinders the realization of a right to water that transcends the mere guarantee of access to drinking water.

Competition over resources such as water is among the main threats to global security (Marques Júnior, 2016), and significant normative gaps remain in global water governance, demanding greater attention. In this regard, international conferences such as the Mar del Plata Conference (1977) and the 2030 Agenda (2015) have contributed to advancing the debate, yet they still lack comprehensive approaches to water governance and intergovernmental coordination (see Table 2).

Tabela 2: Main Gaps in UN Water Conferences: 1977 to 2015

Theme	Main Gaps
Non-binding character	The commitments are declarations of principles rather than legally binding instruments, limiting effective action and accountability.
Water quality	Lack of detailed criteria for drinking water and measures to ensure safe human consumption, enabling divergent interpretations across countries.
Monitoring and accountability	Existing monitoring is insufficiently granular; stronger systems for data collection and indicators are needed to assess progress transparently.
North–South inequality	Insufficient and unclear financing commitments to support developing countries in implementing agreed environmental and sustainable development policies.
Intersectionality and vulnerability	Insufficient focus on how gender, race, ethnicity, disability, and other vulnerabilities affect access to water and sanitation.
Urban vs. rural contexts	No clear distinction between urban and rural settings despite markedly different infrastructure needs and challenges.
Climate change	Despite recognition of impacts, there is a lack of specific, adequate mitigation and adaptation strategies for water availability and quality.
Community participation	Limited guidance on ensuring meaningful and inclusive participation of local communities in water governance.
Interactions with other human rights	Water is not fully addressed in an integrated manner with other human rights; more holistic, synergistic approaches are needed.
Trade and development issues	Weak treatment of the interface between international trade policies and sustainable development, with persistent conflicts.
Rights of Indigenous peoples and traditional communities	Insufficient detail on specific needs and rights regarding water access and governance.
Insufficient technical detail	Technical areas (water quality, wastewater treatment, sanitation infrastructure) remain overly general, offering little implementable guidance.
Privatisation and commodification of water	Lack of critical discussion on implications for equitable and sustainable access.
Lack of urgency and ambition	Given accelerating environmental degradation and climate change, overall urgency and ambition remain below what is required.
Policy integration	Weak integration of water policy with agriculture, energy, health, and other SD policies; a more holistic approach is needed.

Source: Prepared by the authors (2024), based on Eco-92/Rio 92 (1992), GC No. 15 (2002), A/RES/64/292 (2010), Rio+20 (2012), and the 2030 Agenda (2015).

The gaps identified in UN water conferences (1977–2015) highlight the insufficiency of international commitments in addressing global challenges related to access to and management of water resources. The right to water, therefore, should be affirmed at the international level through a binding legal instrument, as clearly stated by Drobenko (2010, p. 111):

The United Nations has long affirmed the indivisible nature of fundamental rights. Thus, the right to water appears to be inherent to the rights to life, health, and housing. The United Nations Economic and Social Committee has adopted a precise resolution that allows for the characterization of the right to water. Without formal and tangible recognition, this right will continue to derive from the other rights. The developments observed at the international,

regional, and national levels demonstrate the relevance of the right to water⁷.

The non-binding nature of international resolutions and declarations prevents the effective accountability of States, making the agreed-upon goals dependent on voluntary interpretations and thus limiting the effectiveness of concrete actions. The lack of technical detail – such as a precise definition of “drinking water” and clear guidelines on infrastructure and sanitation – further weakens the practical implementation of these norms, generating significant disparities among States and undermining progress toward the universalization of access to water.

Moreover, crucial issues such as North-South inequalities, intersectional vulnerabilities, and water privatization remain insufficiently addressed. The absence of clear financial commitments to support developing countries and of a critical approach to the impacts of water commodification perpetuates the exclusion of the most vulnerable populations, especially Indigenous and traditional communities. Recognizing the interconnection between the right to water, environmental sustainability, and human rights requires a more integrated and holistic approach – one that includes the meaningful participation of local communities and promotes social and water justice as fundamental principles of water governance.

This is more necessary given the plurality of worldviews that shape the relationship between humans and the environment – of which nature is a central component. For the *homo urbanus*, water is often associated with more pragmatic needs – public supply, sanitation, industry – whereas for traditional populations, water becomes a vital thread that binds life, culture, religion, and even divinity itself, within a symbiotic and respectful relationship. In all such cases, recognizing the intrinsic value of water (and of access to it) as a fundamental right is of paramount importance, as it is connected to other human rights, including the guarantee of the very existence of traditional communities, whose cosmovision perceives the environment and its elements in ways distinct from those of urban societies.

This is why, in harmony with the provisions of the Escazú Agreement (2018)⁸, the rights of access to environmental matters – information, participation, and access to justice—must also be ensured in water-related issues for Indigenous peoples, ethnic groups, and local communities, in recognition of the multicultural nature of Latin American, Caribbean, and global societies.

⁷Freely translated from French by the authors.

⁸Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean, adopted in Escazú (Costa Rica) on March 4, 2018, and entered into force on April 22, 2021. Brazil is not yet a party to the Agreement, but only a signatory. Available at: <https://repositorio.cepal.org/server/api/core/bitstreams/29b2d738-4090-45c5-a289-428b465ab60c/content>. Accessed on March 24, 2025.

In any case, although international norms are not legally binding, they play a crucial role in the environmental arena, encouraging signatory countries to commit to their provisions in accordance with the principle of good faith under international law (Alter, 2013). In sum, recognizing water as a human right is essential to ensuring international water protection through specific legal and institutional mechanisms.

4. The inter-american court of human rights and the protection of water

In the context of the fragile enforcement of the human right to water, conflicts have intensified, posing significant challenges to States in the formulation of public policies and the resolution of legal disputes, particularly in matters related to economic, social, cultural, and environmental rights (Faradori, 2021).

A landmark example is the case *Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) vs. Argentina*, decided on February 6, 2020, in which the Inter-American Court of Human Rights (IACtHR) held Argentina responsible for violating the rights of 132 Indigenous communities in the Province of Salta. This case is groundbreaking as it marked the first time that the IACtHR autonomously addressed, in a contentious case, the rights to a healthy environment, adequate food, water, and cultural identity. The ruling exposed the State's failure to protect these rights and established a precedent by ordering specific reparatory measures, including adjustments to the legal framework and public policies of the State (Faradori, 2021).

The decision in *Lhaka Honhat* acknowledges the severity of the ecological crisis within the Inter-American system and employs human rights as a tool to confront environmental harm. Although this approach represents a significant step forward and opens new avenues for claims within the Inter-American system, more robust legal developments are still needed for this model to have a broader and more effective global impact (Tigre, 2021).

4.1. Human Rights Protection System: The Functioning of the IACtHR

The growing international attention to human rights has played a key role in the universalization and democratization of rights. According to Pereira (2009), the adoption of the International Bill of Human Rights by the United Nations—which

includes the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights, along with their Optional Protocols—marked the beginning of an important legislative process. This process led to the creation of a broad normative framework and institutions such as the Inter-American Commission and the Inter-American Court of Human Rights (IACtHR), representing a crucial advance against excessive state power (Pereira, 2009).

In this context, the concept of transconstitutionalism has gained prominence, reflecting the interaction between the Inter-American Human Rights System and the domestic legal orders of States Parties to the American Convention on Human Rights (ACHR). This interaction is evidenced by the willingness of the IACtHR and national courts to engage in dialogue on common constitutional issues, expanding the application of conventional law within domestic systems (Neves, 2014). In this way, transconstitutionalism fosters a constructive network of mutual learning, which is considered essential to resolving the tensions between internationalism and rigid nationalism – both of which may hinder the effective realization of human rights (Alter, 2013).

International courts have increasingly addressed matters previously considered within the exclusive domain of States, reviewing national governments' practices regarding human rights and economic policy. This trend reflects the growing judicialization of international relations, in which law and legalism become central elements of global politics. Although international courts are still widely perceived as bodies created primarily to resolve disputes between States, their actions are increasingly shaped by bottom-up demands, challenging the positions traditionally defended by powerful governments (Alter, 2013).

It should also be noted that not only contentious cases contribute to international jurisprudence; advisory opinions, issued *à la carte*, also play a significant role in expressing how international courts interpret specific themes or legal questions submitted to them.

In the environmental field, within the jurisdiction of the Inter-American Court of Human Rights, it is worth highlighting Advisory Opinion No. 23 of November 15, 2017. This opinion, in a certain way, elevated the human right to a healthy environment – as affirmed by the Protocol of San Salvador (Brazil, 1999) – to a justiciable norm within this jurisdiction, even though the treaty itself explicitly states otherwise⁹.

⁹According to Article 19, §6 of the Protocol, only the rights set forth in subparagraph “a” of Article 8 (the right of workers to organize and join trade unions) and in Article 13 (the right to education) may be subject to the individual petition system before the Court. As for the other

This Advisory Opinion represented a landmark in Inter-American environmental jurisprudence, as – even though it concerned a right not enforceable before the Court – it nonetheless presented the obligations of States arising from the right to a healthy environment, within the framework of the protection and guarantee of the rights to life and personal integrity, as established in Articles 4 and 5, in relation to Articles 1.1 and 2 of the 1969 Convention (Brazil, 1992) ¹⁰.

From a political-legal perspective, the recognition of the individual as a subject of international law was a fundamental milestone, as it enabled direct access to the IACtHR in pursuit of justice, even in the face of State sovereignty. This development created a new path to justice that goes beyond the traditional limits of the diplomatic protection system (Pereira, 2009). According to Crawford (2012), State sovereignty is compatible with the recognition of human rights, but it imposes on States the prerogative to implement adverse decisions in accordance with their international obligations, paradoxically reinforcing their own authority.

About Indigenous peoples, transconstitutionalism faces additional challenges related to the compatibility between traditional norms and State legal orders. The case *Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) vs. Argentina* exemplifies this challenge. In 2020, the IACtHR held Argentina responsible for violating the rights of 132 Indigenous communities, recognizing for the first time the rights to a healthy environment, adequate food, water, and cultural identity as autonomous rights within its jurisprudence (Faradori, 2021; Alvarez, 2020). This judgment highlights not only the evolution of Inter-American law but also the pressing need to overcome tensions between national legal systems and the cultural and traditional values of Indigenous peoples.

economic, social, and cultural rights provided for in the Protocol, §7 states that “the Inter-American Commission on Human Rights shall be able to formulate such observations and recommendations as it considers pertinent concerning [their] situation [...] in all or in some of the States Parties, which it may include in its annual report to the General Assembly or in a special report, as it deems appropriate” (Freely translated from Portuguese by the authors).

¹⁰“With regard to State obligations concerning environmental protection – and particularly in the face of transboundary environmental impacts – the Court emphasizes that States are obliged to respect the rights enshrined in the 1969 Convention for all persons under their jurisdiction. It further affirms that the exercise of jurisdiction by a State entails responsibility for actions attributable to it that constitute violations of rights established in the American Convention on Human Rights (Pact of San José) (Brazil, 1992c)” (Tietzmann; Silva; Pereira Júnior, 2020, p. 936).

4.2. The Case Lhaka Honhat vs. Argentina: Pathways Toward International Protection of the Right to Water

The Lhaka Honhat vs. Argentina case concerns the land claims of 132 Indigenous communities from the Association Lhaka Honhat (Nuestra Tierra), initiated in 1991. The communities alleged that the Argentine State failed to ensure the delimitation, demarcation, and titling of their ancestral lands, resulting in violations of their rights. Although regulations and measures adopted by the State in 1991, 2012, and 2014 formally recognized Indigenous land ownership, such actions were inconsistent and insufficient to ensure the inviolability of the territories, allowing for interference both by the State and by private individuals (Alvarez, 2020; Faradori, 2021).

On August 4, 1998, the Association submitted a petition to the Inter-American Commission on Human Rights (IACHR), alleging failures in the protection of communal property. The petition, supported by the Centro de Estudios Legales y Sociales (CELS) and the Center for Justice and International Law (CEJIL), denounced public infrastructure works and hydrocarbon exploration carried out in Indigenous territories without prior consultation, in addition to illegal activities such as cattle ranching and deforestation (Faradori, 2021; Tigre, 2021). Upon admitting the petition, the Commission emphasized that the State had several opportunities to protect the Association's rights but repeatedly delayed effective action. In its 2012 Merits Report, the Commission found violations of the American Convention on Human Rights (ACHR) and recommended the adoption of measures to guarantee territorial rights. However, the failure to implement those recommendations led the case to be submitted to the Inter-American Court of Human Rights in February 2018 (Tigre, 2021).

During the proceedings, it was found that the presence of criollo settlers in the Indigenous territory significantly altered the local ecosystem, leading to the depletion of essential natural resources such as water and food, and harming environmental conservation (Alvarez, 2020; Tigre, 2021). The Court's ruling reaffirmed its jurisprudence on Indigenous peoples' territorial rights, recognizing that the communities' relationship with their land is fundamental to their culture and identity. The Court held the Argentine State responsible for violations of Articles 21 (right to property), 8.1 and 25.1 (judicial guarantees and judicial protection), 2 (obligation to adopt domestic legal provisions), 23.1 (right to participation), and 26 (economic, social, cultural, and environmental rights) of the ACHR (Faradori, 2021).

Although the decision advanced the interpretation of the rights to a healthy

environment, water, food, and cultural identity as directly justiciable, there were disagreements among the judges regarding the full justiciability of the right to a healthy environment. Despite such divergences, the judgment established a landmark in jurisprudence by integrating economic, social, cultural, and environmental rights (ESCR) within the framework of the Inter-American human rights protection system (see Table 3).

Tabela 3: Main Justiciable Rights Recognized by the IACtHR in the *Lhaka Honhat vs. Argentina* Case (2020)

Right	Description
Right to a healthy environment	Considering this right essential for all living beings, the IACtHR adopted a concrete approach that emphasizes prevention of environmental harm and the need for State oversight and regulation. It required measures such as legislation, environmental impact assessments, contingency plans, and damage mitigation.
Right to Indigenous communal property	The Court expanded the notion of property to include land and natural resources, ruling that Argentina must guarantee delimitation, recognition, and secure tenure of these territories and resources.
Rights of access to information and community participation	The Court stressed free, prior, and informed consultation with Indigenous communities regarding projects that affect their lands and rights, ensuring equal access to information, participation, and justice in environmental matters, including translation into Indigenous languages.
Right to adequate food	Drawing on CESCR General Comment No. 12 (1999), the Court held that this right goes beyond calories and nutrients to include physical and economic access to adequate food. It promotes food security and health and recognizes food as cultural expression and a distinctive feature of social groups, thereby protecting cultural identity.
Right to water	In line with CESCR General Comment No. 15, the Court defined the right to water as sufficient, safe, acceptable, accessible, and affordable for personal and domestic use. It includes freedoms (e.g., freedom from interference) and entitlements (e.g., establishment of supply systems). Water was recognized as a social and cultural good, not merely an economic resource.

Source: Prepared by the authors (2024), adapted from Alvarez (2020), Faradori (2021), and Tigre (2021).

Table 4 underscores the historical significance of the decision in *Lhaka Honhat vs. Argentina*, as it consolidates rights often marginalized within the Inter-American system. The ruling was innovative in recognizing the interdependence among rights such as access to water, adequate food, a healthy environment, and the preservation of cultural identity, integrating them into a systemic and multidimensional approach. This recognition not only reinforces the role of the Inter-American Court of Human Rights (IACtHR) in the protection of economic, social, cultural, and environmental rights (ESCR), but also reflects a novel perspective by addressing these violations autonomously and requiring specific reparations for each right.

Nevertheless, the implementation of these guarantees faces substantial challenges, such as the need to harmonize international obligations with national le-

gislation and to overcome political, economic, and administrative resistance. By requiring prior consultations, environmental regulation, and reparatory measures, the IACtHR established robust parameters that are, however, highly dependent on the good faith and institutional capacity of the Argentine State. Measures such as the creation of a Community Development Fund, the elaboration of an action plan for water conservation, and the adoption of legislative norms ensuring legal security over Indigenous communal property illustrate the scope and depth of the obligations imposed by the Court (Faradori, 2021).

The judgment establishes a significant precedent by determining that, although ESCERs are interdependent, their violations must be addressed autonomously, with specific solutions tailored to each right. This innovation reaffirms the importance of continuous supervision and international monitoring to ensure that judicial decisions not only produce normative change but also transform the living conditions of the affected communities.

It is also important to emphasize that ESCERs cannot be subjected to the doctrine of the reserve of the possible, a principle often invoked fallaciously by so-called “Global South” States to justify the non-implementation of these rights (Brichambaut; Dobelle; Coulée, 2011).

Sarlet and Fensterseiffer (2013, pp. 116–117), in their analysis of the right to a healthy environment, further reinforce the link between the very existence of the State and the guarantee of human rights. These rights are rooted in and oriented toward the dignity of the human person and require the State “[...] to assume the duty of safeguarding and guaranteeing nothing less than a dignified life for individuals and social groups, which includes promoting the realization of fundamental rights, removing possible barriers to their fulfillment, and imposing protective and promotional measures”.

These are therefore indivisible and interdependent rights, and human dignity demands respect for all fundamental rights, from which arise both positive and negative obligations of the State. The reserve of the possible, therefore, is not an intrinsic part of human rights and should neither guide nor justify their enforcement in absolute terms, as it “[...] must be understood as a kind of condition of reality, requiring a minimum coherence between reality and the normative framework that is the object of legal regulation” (Olsen, *apud* Sarlet, 2015, p. 297).

The decision analyzed here, therefore, symbolizes per se – as well as within the broader context of the development of Inter-American jurisprudence – the consolidation of the IACtHR’s commitment to the comprehensive protection of human rights.

5. Final Considerations

Since its establishment, the Inter-American Court of Human Rights (IACtHR) has played a pivotal role in the defense of human rights throughout the Americas, particularly in relation to vulnerable groups, by restoring fundamental rights, ordering reparations, and adopting precautionary measures to prevent abuses. In the case of *Indigenous Communities Members of the Association Lhaka Honhat (Nuestra Tierra) v. Argentina*, the IACtHR reaffirmed its relevance by autonomously addressing economic, social, cultural, and environmental rights (ESCER), introducing a broader interpretation of human rights, and consolidating the right to water as a central element of such protection.

The research revealed that the Court's ruling represents a landmark in jurisprudence by treating ESCER as both interdependent and autonomous rights, thereby advancing the protection of Indigenous peoples. Furthermore, it was observed that transconstitutionalization in Latin America has deterritorialized legal issues, fostering collaboration between national and international legal systems to address constitutional and human rights conflicts.

Nevertheless, the implementation of the judgment faces significant practical challenges, such as the need to reconcile population relocation with international standards that respect the rights of affected communities. The inadequacy of domestic legal frameworks – both in Argentina and across other Latin American countries – highlights a gap in the ability of States to enforce international decisions, particularly in contexts of heightened social and economic vulnerability.

The research also showed that, while the IACtHR has established important benchmarks for recognizing the right to water and other ESCER, critical gaps remain in the practical enforcement of these decisions. Among them is the absence of binding international instruments that enshrine water as a universal human right, thereby undermining its legal enforceability. Moreover, the lack of coordination between national laws and international obligations – as well as political and economic resistance from certain States – further limits the scope and impact of the Court's rulings.

In conclusion, the Lhaka Honhat judgment reaffirms the importance of an integrated and responsive approach to the vulnerabilities of Indigenous populations, highlighting the need for progress not only in the normative framework but also in the development of public policies that prioritize social and environmental justice. Despite the jurisprudential advances achieved, the research found that the effective realization of these rights depends on a broader commitment – from both States and

the international community – to overcome structural barriers and to promote the universalization of fundamental human rights, such as access to water.

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