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# The Inter-American Court of Human Rights' progressive interpretation of the right to a healthy environment

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**Abstract:** *The article examines the development of the right to a healthy environment by the Inter-American Court of Human Rights through a progressive interpretation of the American Convention on Human Rights. The Court exercises this through an evolutionary approach, lex specialis interpretation, the pro persona principle, the effet utile principle, and a broad use of external sources. It also introduces the Inter-American jurisprudence on environmental protection through the Advisory Opinion OC-23/17 on Environment and Human Rights, which recognised the environment as "fundamental to the existence of humankind", and landmark decisions in the cases of Lhaka Honhat Association (Our Land) v. Argentina and La Oroya Population v. Peru, broadening the scope of interpretation beyond civil and political rights to include State obligations such as prevention, precaution, cooperation, and procedural rights, access to information and public participation. The ongoing Advisory Opinion on Climate Emergency and Human Rights is expected to contribute to developing international environmental law through an innovative, clear, and well-argued decision, setting high standards for seeking justice. It will have important implications for the development of public policies and plans for mitigation, adaptation, and prevention in relation to climate change, as well as the protection of the right to a healthy environment, the right to food security, the right to adequate housing, and the protection of the self-determination of Indigenous people.*

**Keywords:** *environment; human rights; Inter-American jurisprudence; American Convention on Human Rights; State obligations.*

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## 1. Introduction

The Inter-American Court of Human Rights (IACtHR or the Court) has emerged as a leading institution in the development of international environmental law and the Inter-American jurisprudence environmental jurisprudence. The Court has considered the American Convention on Human Rights (ACHR) (OAS 1969) as a living instrument and has promoted its evolutionary interpretation, for example, by recognising the right to a healthy environment as an autonomous and fundamental right.

The analysis of the article begins with the evolutionary interpretation of the ACHR, the founding treaty of the IACtHR, following the provisions of Article 29 on the rules of interpretation of the instrument and the Vienna Convention on the Law of Treaties (VCLT) under Articles 31 and 31 on the general rules of interpretation of treaties. In this respect, the provisions under Article 29 of the ACHR reveal the application of the *pro persona* principle, the interpretation *lex specialis* of the ACHR, the principle of effective application (*effet utile*), and the use of external sources of international law.

The methodological approach of the article presents the development of the right to a healthy environment through the Inter-American jurisprudence supported by external sources of environmental law and human rights. It also explores a case study methodology focusing on the cases of *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* and *La Oroya Population v. Peru*, which declared the violation of the right to a health environment (RHE) in relation to civil and Indigenous populations. The analysis also presents the *Advisory Opinion OC-23/17 on Environment and Human Rights*, which established the obligations on States to respect and ensure the rights to life and personal integrity in the context of environmental protection.

In addition, the forthcoming *Advisory Opinion on Climate Emergency and Human Rights*, requested by Chile and Colombia, will extend the progressive interpretation of the ACHR's environmental jurisprudence, particularly in relation to current living conditions and the protection of vulnerable groups. It will have important procedural implications for the development of public policies and plans for mitigation, adaptation, and prevention of climate change, as well as for the protection of the rights to a healthy environment, food security, housing, and self-determination.

## 2. Rejecting originalism: The Inter-American Court of Human Rights' progressive interpretation of the American Convention on Human Rights

The IACtHR has developed a distinctive approach to the interpretation and application of the ACHR and other Inter-American and international

human rights instruments. It includes the evolutionary interpretation of the ACHR, seen as a "living instrument" keeping pace with the evolution of times and current living conditions, following the provisions under Article 29 related to the rules of interpretation and under Articles 31 and 32 of the VCLT on general rules of interpretation of treaties (IACtHR 2005).

In *grosso modo,* Article 29 of the ACHR is a provision exclusively applicable to the interpretation of the provisions of the same Convention concerning the enjoyment of the rights and freedoms established therein, international agreements and internal laws of the State Parties, the American Declaration of the Rights and Duties of Man, and other related treaties (Estrada Adán 2015).

It means the interpretation of the ACHR through Article 29 is referred to as *lex specialis* in matters of interpretation and constitutes a wide margin of action for the Inter-American judges, under the notion of interpreting a provision of the ACHR and achieving the desired effect of its creators, resulting in the application of the *pro persona* principle, the principle of effective application (*effet utile)*, and the evolutionary interpretation. The *lex specialis,* therefore, is a clause open to teleological interpretation, to the object and purpose of the treaty according to Article 31 of the VCLT (Estrada Adán 2015).

A closer examination reveals the application of the *pro persona* principle, which implies that the rule or interpretation most favourable to the people should be preferred and that the broadest sense should be used to protect human rights (Lixinski 2010). For example, in the case of *Hacienda Brasil Verde Workers v. Brazil*, the IACtHR expressed that Article 29 of the ACHR "does not permit an interpretation that limits the enjoyment of rights" and that the principle requires "the interpretation of the human rights recognised in the American Convention in the light of the most protective norm to which the persons under its jurisdiction are subject" (IACtHR 2016).

Furthermore, the Court relies on a broad use of external sources through a study of comparative law, e.g., the European Court of Human Rights' case law, customary international law, and the *corpu iuris* of international human rights law, which includes international treaties. Author García Maia presents a tripartite typology of the IACtHR's adoption of external sources in accordance with Article 29 of the ACHR and Article 31 of the VCLT. First, through norms binding on the State Party; second, by norms not binding on the State Party; and third, through soft law, e.g., United Nations resolutions, thereby not relying solely on hard law (Garcia Maia 2023; Lixinski 2010).

For example, in the *Advisory Opinion on Environment and Human Rights* (2017), the IACtHR supported the recognition of the right to a healthy

environment under Article 26 of the ACHR through the norms of the international *corpus iuris*, the Protocol of San Salvador under Article 11, the American Declaration, and the Organization of American States (OAS 1948) Charter derived from the economic, social, educational, scientific, and cultural provisions. In addition, external sources reinforced the interdependence and indivisibility between civil and political rights, and economic, social, and cultural rights, as they must be understood integrally and comprehensively as human rights, with no order of precedence, and enforceable before the competent authorities (para. 57).

Over the past decade, the IACtHR has expanded its jurisdiction in areas not initially foreseen in the ACHR, such as environmental rights, by repeatedly invoking international treaties and declarations using Article 29 of the ACHR as a buckler. This expansion has been possible through the evolutionary approach of the ACHR, which is seen as a living instrument, following the application of the *pro persona* principle, the *effet utile* principle, and the use of external sources.

## 3. Legal recognition and relevant content

The initial jurisprudence of the IACtHR starts with the obligation of States with respect to the protection of collective property of Indigenous people through the protection of healthy environment in connection with civil and political rights, along with the protection and access to the Indigenous communities' natural resources and traditional lands needed for the preservation of the environment, their survival, and preservation of their *modus vivendi* (Ferrer Mac-Gregor and González Domínguez 2024).

For example, in the case of *Saramaka People v. Suriname* (2007), the Court considered that logging concessions in Suriname had damaged the environment and deteriorated their traditional lands and natural resources, part of their communal property rights, hence in violation of Article 21 in relation to Article 1(1) of the ACHR (para. 154). Similarly, in the *Yakye Axa Indigenous Community v. Paraguay* case, the Court found a violation of communal property to the Indigenous community and considered that the deprivation of their land and natural resources had a negative impact on the right to health, access to clean water, nutrition, and food (paras. 163–69).

Subsequently, in the case of *Kawas Fernández v. Honduras* (IACtHR 2009), the Court declared a violation of the right to freedom of association in relation to the obligation to respect rights under Articles 16(1) and 1(1) of the ACHR. Mrs. Kawas Fernández was the president of an association promoting the establishment of public policies on environmental protection and carried out activities to raise awareness of natural resource preservation through education and reporting of environmental degradation (paras. 151–55).

Considering the violation of the right to freedom of expression, the Court highlighted the importance of protecting human rights defenders and to create legal and factual conditions to let them freely perform their duties, e.g., human rights monitoring, reporting, and promotion, which in this case were related to the protection of the environment (para. 146).

In a different direction, *Claude Reyes et al. v. Chile* (IACtHR 2006) was a case related to the denial of access to public information concerning a deforestation project on the Condor River with potential environmental degradation. The Court found the State of Chile responsible for violating Article 13 of the ACHR related to freedom of thought and expression for the refusal of information from State authorities and the lack of mechanisms to guarantee the right to access public information (Calderón Gamboa 2017).

In addition, the Inter-American Tribunal supported its arguments on the right to freedom of expression and the right to access public information with provisions from the International Covenant on Civil and Political Rights (ICCPR 1966) and the Universal Declaration of Human Rights, which establish a positive right to seek and receive information (IACtHR 2006a, para. 76).

However, until 2017, with the *Advisory Opinion OC-23/17 on the Environment and Human Rights* (IACtHR 2017), requested by the State of Colombia, the IACtHR recognised the right to a healthy environment as autonomous and not derived from civil and political rights, expanding its scope and limits and paving the way for the decisions of upcoming cases.

The Advisory Opinion addressed the general considerations of the RHE and essential components of the environment such as forests, rivers, and seas, as well as the interrelationship between human rights and the environment, the human rights linked through the substantive and procedural rights, the autonomy of the RHE, and the individual and collective connotations. In addition, the Court expressed the importance of a healthy environment as "fundamental for the existence of humankind" (IACtHR 2017, para. 59).

It also addressed the State obligations to respect and ensure human rights to life and personal integrity in the context of environmental protection, and divided it into four, as follows: 1) obligation of prevention, which expresses the duty to regulate, supervise and monitor, require assessment, and to prepare contingency and mitigation plans; 2) exercise of the precautionary principle; 3) obligation of cooperation, which comprises the duty to notify, to consult and negotiate, and to exchange information; and 4) the procedural obligation, comprising the access to information, public participation, and access to justice (IACtHR 2017, paras. 51–90).

To that extent, after the *Advisory Opinion on Environment and Human Rights*, the IACtHR recognised the right to a healthy environment by

applying provisions from Article 11 of the Protocol of San Salvador stating that "everyone shall have the right to live in a healthy environment and to have access to basic public services". The Protocol also reiterates that "States Parties shall promote the protection, preservation, and improvement of the environment" (OAS 1988).

In addition, it declared that the RHE is enshrined under Article 26 of the ACHR related to progressive development of economic, social, and cultural rights, as well as the obligation of the States to achieve the "integral development" of their citizens emerging from Articles 30, 31, 33, and 34 of the OAS Charter (IACtHR 2017).

Nevertheless, the direct justiciability of the RHE in this decision was criticised by the concurring opinion of Judge Humberto Sierra Porto, as he classified the "consideration on the direct justiciability of the right to a healthy environment . . . exceed the purpose of the Advisory Opinion", who explained that "exceeds the Court's competence in the specific case" (IACtHR 2017, paras. 6–9). Luckily, in the *Lhaka Honhat* case, the Court finally declared a violation of Article 26 of the ACHR concerning the RHE, thus paving the way to developing environmental jurisprudence.

## 4. From *Lhaka Honhat* to *La Oroya*: Landmark environmental rulings of the Inter-American Court of Human Rights

The case of *Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina* (IACtHR 2020) concerns the international responsibility of Argentina for the violation of the rights to communal property, food, water, a healthy environment, culture, and access to justice of 132 Indigenous communities settled in two plots of land in the province of SALTA, in breach of Articles 8, 21, 25, and 26 in relation to Articles 1 and 2 of the ACHR.

The *Lhaka Honhat* case is considered a landmark decision since, for the first time, the Court autonomously examined the rights to a healthy environment, adequate food, water, and cultural identity under Article 26 of the ACHR in relation to Article 1(1) on the obligation to respect rights (IACtHR 2020). The Court considered that illegal logging and various activities carried out by the *Criollo* population were affecting environmental rights, in particular the traditional means of obtaining food and access to water, and thus their cultural identity.

The Court established the direct justiciability of economic, social, cultural, and environmental rights in the Inter-American system of human rights and referred to the content and scope of the RHE based on the *Advisory Opinion OC-23/17*. Moreover, it addressed the protection of the right enshrined in the Constitution of Argentina under Article 40 stating that "every inhabitant enjoys the right to a healthy balanced environment"

and the interdependence between the environment and human rights, particularly to the rights to a healthy environment, to adequate food, water, and cultural identity and specifically concerning Indigenous people (IACtHR 2020, paras. 203–204).

Furthermore, the Inter-American Tribunal pointed out the obligation to prevent, respect, and to guarantee the enjoyment of the RHE extending it into the "private sphere" to prevent further violations from third parties (IACtHR 2020, para. 207).

Regarding the obligation to prevent environmental damage, the Court recognised it as part of customary international law entailing the State obligation to adopt necessary measures *ex ante*, prior to the environmental damage. To that extent, the Court listed several measures that States should consider, as follows: 1) regulation; 2) supervise and monitor; 3) environmental assessments; 4) creation of contingency plans; and 5) mitigation when damage occurs (IACtHR 2020, para. 208).

With regard to the reparation measures relating to the RHE, food, water, and cultural identity, the IACtHR ordered to the State of Argentina to conserve the surface and groundwater in the Indigenous lands, to avoid its contamination or to rectify it, to guarantee permanent access to drinking water, to avoid the continuation of the loss in forestry resources, and to provide permanent access to adequate food, as well as the creation of a community development fund to ensure its execution (IACtHR 2020, paras. 333–34).

In the case of *La Oroya Population v. Peru* (2023), the Court declared the international responsibility of the Peruvian State for the multiple abuses of the human rights of 80 inhabitants of the community of La Oroya, as a result of the mining and metallurgical activities of a metallurgy complex company, which caused the contamination of the air, water, and soil, in violation of the victims' rights to a healthy environment, health, life, and personal integrity. The Court concluded that the State was responsible for the breach of Articles 26, 5, 4.1, 8.1, 13, 19, 23, and 25 of the ACHR in relation to Articles 1 and 2 of the ACHR.

For the first time the Inter-American Tribunal established standards for the RHE in a contentious case that does not involve Indigenous or tribal communities and even went as far as to refer to environmental protection as a *jus cogens* norm and the principle of intergenerational equity. Additionally, it delved deeper into the Inter-Americanisation of the Escazu Agreement on Access to Information, Public Participation and Justice in Environmental Matters (López 2024), (UN 2018), as well as the differentiation of the protection of the rights of children, women, and the elderly regarding contamination related to the substantive elements of the RHE. Regarding the procedural elements the Court also analysed the importance of the access to information and political participation.

It is important to highlight that the Court offered some measures that States should consider in order to hold companies accountable and to adopt a good corporate governance concerning human rights based on the Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework (UN 2011), Principles 15 to 24 and the case of *Miskito Divers (Lemoth Morris et al.) v. Honduras*, such as: 1) suitable policies for the protection of human rights; 2) due diligence procedures for the identification, prevention, and remedy of human rights abuses; and 3) procedures for addressing human rights abuses in the context of business operations, particularly with respect to vulnerable groups (IACtHR 2023, para. 111).

As for the reparation measures related to the guarantees of non-repetition, the IACtHR ordered the harmonisation of regulations setting air quality standards based on those of the World Health Organization in order to prevent further damage, including adequate access to information through a monitoring system of air, soil, and water quality; access to specialised medical care for those affected by pollution; the adoption and implementation of measures to ensure that the activities of the metallurgical complex are carried out on the basis of environmental human rights standards; and the design and implementation of permanent environmental training for judicial and administrative officials, covering international and national standards on environmental protection, health, access to information, and political participation, to ensure due diligence obligations (IACtHR 2023, 335–55).

## 5. New approaches: *Advisory Opinion on Climate Emergency and Human Rights*

The IACtHR is developing an Advisory Opinion that will change the perspective on climate emergency and human rights, as requested by Member States Colombia and Chile on January 9, 2023. Both countries are facing the consequences of climate change, including the increase in droughts, floods, landslides, and fires, among many others. In this respect, the phenomenon highlights the need for a human rights-based response guided by the principles of equity, justice, cooperation, and sustainability and the need to develop Inter-American standards on the matter (IACtHR 2023).

During the hearings held in Barbados and several cities in Brazil in April and May 2024, the Court received 265 written submissions and more than 150 oral interventions from States, international organisations, academics and scientists, members of civil society, Indigenous peoples, Afro-descendants, Indigenous communities, children and youth, and many others. (IACmHR 2024).

Notably, a new precedent has been set for the participation of all members of civil society, Indigenous communities, the public and private

sectors, and academia from all OAS Member States working together to face climate change in massive historical hearings held in two different countries.

The key points of the request are related to State obligations in response to the climate emergency with a human rights approach, as follows: 1) the State obligations deriving from the duty of prevention; 2) to uphold the right to life and survival; 3) a differentiated approach concerning the rights of children, new generations, Indigenous peoples, Afro-descendants, and environmental land defenders; and 4) the obligations deriving from consultation, judicial procedures, and access to justice (IACtHR 2023).

The opinion will be a strong asset to the evolutionary approach of the Court to interpret the ACHR, and it will contribute to the development of international environmental law and international law. Furthermore, it shall provide guidance on the human rights violations related to climate emergency that can be brought before the Court, setting a legal framework for future contentious cases, and it will provide a legal pathway for the people and communities to bring climate-related cases before the Inter-American Tribunal (Open Society 2024).

Furthermore, the decision shall have important implications for the development of public policies and plans for mitigation, adaptation, and prevention in relation to climate change, as well as the protection of the right to a healthy environment, the right to food security, the right to adequate housing, and the protection of the self-determination of Indigenous people. Therefore, the opinion is expected to be clear, innovative, and well-argued, setting high standards for other regional and domestic courts to cite legal complaints (Open Society 2024).

## 6. Final remarks

The IACtHR has demonstrated an innovative approach to the right to a healthy environment through a progressive interpretation of the ACHR and the landmark judgments, *Lhaka Honhat v. Argentina* and *La Oroya v. Peru*, expanding the substantive and procedural elements of the RHE developed in *Advisory Opinion OC-23/17*, as well as to establish it as an autonomous right within the expansion of judicial environmentalism beyond civil and political rights.

The ongoing *Advisory Opinion on Climate Emergency and Human Rights* requested by Colombia and Chile represents a significant turning point in Inter-American jurisprudence, by integrating principles of equity, justice, and sustainability and by receiving an extensive participation of civil society and State institutions. The Inter-American Tribunal has the opportunity to set out a transformative precedent to address climate change with a human rights approach and to raise awareness of this phenomena.

Ultimately, the IACtHR plays a crucial role in leading environmental progress through its distinctive approach, considering the current living times, the use of external sources, the *pro persona* principle, and the evolutionary interpretation of the ACHR. The *Advisory Opinion on Climate Change and Human Rights* will contribute to the development of international environmental law and international law, as it is expected to be an innovative, clear, and well-argued decision, setting high standards for seeking justice.

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