Indigenous vs. Peasant's Rights? Lhaka Honhat v. Argentina and the Role of the Inter-American Human Rights System in Communal Inter-Ethnic Conflicts

Lhaka Honhat v. Argentina: Exploring the Role of the Inter-American Human Rights System in Communal Inter-Ethnic Conflicts[1]

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Abstract

This article presents a socio-legal analysis of the Lhaka Honhat case, a decades-long territorial dispute between indigenous communities and peasant settlers (criollos) in the Northern Argentinian Province of Salta. This is the first case in which the Inter-American Court of Human Rights confronted the normative implications of inter-ethnic communal conflicts. The Court was called to apply human rights standards to resolve conflicting land claims between two similarly impoverished rural groups. The judgment compelled Argentina to protect the right to land of indigenous communities and ordered to relocate hundreds of criollo settlers, while incorporating some exceptional provisions that indirectly recognized the vulnerable situation of the criollo population. We argue that this decision opens a third wave in the jurisprudential evolution of indigenous rights cases before the Inter-American System. Initially, the Court focused on protecting indigenous land rights vis-à-vis powerful interests. The second wave registered cases where indigenous land claims were brought against the encroachment of other non-indigenous groups. In this third wave, the Court is confronting the challenge of protecting indigenous land while also recognizing other ethnic-based modes of property and livelihoods. The article describes this evolution and discusses the implications both for international jurisprudence and local communities.

I. Introduction

It was 1984, Argentina was slowing making its way out of the dark times of the dictatorship. In a remote region not far from the Paraguayan and Bolivian borders, on September 16, a group of *caciques*[2] belonging to the Wichí (Mataco), Iyjwaja (Chorote), Komlek (Toba), Niwackle (Chulupí) and Tapy'y (Tapiete) peoples peacefully blocked a border-crossing bridge over the Pilcomayo River. These indigenous leaders were requesting the governor of Salta to issue a collective title over their ancestral territory (Carrasco & Briones, 1996). The occupation lasted 23 days. This was a landmark moment in a decades-long dispute between indigenous communities belonging to the organization Lhaka Honhat (Our Land) and *criollo* dwellers (European-descendent and *mestizo* ranchers who had been

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[2] The term *cacique* refers to indigenous authorities.

settling in the region since the early XX century): two groups that have since been wresting control of the arid corner of Argentinian territory know as public lots 55 and 14.

Over the past three decades, the Lhaka Honhat conflict has gone through different phases. During the early 1990s, attempts were made to solve the conflict within Argentina, albeit with not much success. In 1998, the case was brought before the Inter-American Commission on Human Rights (IACHR or the Commission), which opened a 'friendly settlement procedure' to negotiate a solution with the help of international oversight. However, this attempt was equally unsuccessful. In 2009, the government of Argentina abandoned negotiations and for the next decade the case was litigated under the IACHR's petition mechanism until, eventually, it was brought before the Inter-American Court of Human Rights (IACtHR or the Court).

In 2020, the IACtHR declared that Argentina had failed to protect not only the right of these communities to land, but also to a healthy environment, cultural identity, food and water. The expansive application of human rights standards earned this judgement swift recognition as a paradigmatic precedent on indigenous rights (Ferrer Mac-Gregor, 2020) and environmental rights (Mejia-Lemos, 2022). The *Lhaka Honhat Aboriginal Association v. Argentina case* (hereinafter the Lhaka Honhat case) was the first successful claim brought by indigenous peoples against Argentina and is also the leading precedent defining the scope of economic and social rights in the context of indigenous collective claims (Tigre, 2021).

Despite all the attention garnered by this judgement, a central aspect remains underappreciated. The Lhaka Honhat case has an exceptional inter-ethnic dimension. In the judgement, the Court ordered the relocation of hundreds of criollo settlers in order to give indigenous communities a formal collective deed to their lands. This measure flows from the established legal duty of states to safeguard indigenous lands from encroachments by non-indigenous settlers (Tigre 2020). Yet, in the Lhaka Honhat case, its implications are

unprecedently complex. The ruling pertains to a vast expanse of public land, measuring 630,000 hectares—an area roughly equivalent to the U.S. state of Delaware. Under the ruling, 400,000 hectares must be allocated, collectively, to 71 indigenous communities while the remaining may be assigned to individual criollo households. This complex allocation process necessitates the relocation of over 400 criollo families who, while not ethnically indigenous, are also impoverished and heavily reliant on their land and cattle for their livelihoods.

The Lhaka Honhat case thus illustrates a type of communal and inter-ethnic dispute that has been unexplored by international courts. Indeed, most of the indigenous rights cases that reach international fora involve conflicts between an indigenous community, the state and/or powerful private actors—generally a company seeking to extract natural resources. In contrast, the Lhaka Honhat case involves the presence of peasant households, many of whom are rural tenants in a situation of socio-economic vulnerability not unlike indigenous communities themselves (Cabrera et al. 2020).

However, communal inter-ethnic conflicts are not rare in Latin America—albeit with different features and actors. Fontana (2023) calls these disputes 'recognition conflicts' and defines them as a pattern of behaviour in which the recognition of specific ethnic rights causes different social groups to contend with each other over goods, services, power, social boundaries and/or leadership. Parties in competition self-identify as members of distinct and bounded communities, usually divided along ethnic and/or class lines. Recognition conflicts range from inter-group competition to open violence, and they are characterised by a horizontal dimension whereby the main dispute occurs between two (or more) social groups[3].

[3] In the Andean region, recognition conflicts take place between indigenous and peasant communities, as well as between indigenous groups and ethnically distinct internal migrants. Similar conflicts linked to rural migration are widespread in Honduras, Mexico, and Nicaragua. Regions with a significant presence of afro-descendant populations, such as Brazil and Colombia, have recorded recognition disputes between indigenous, black and peasant communities (Fontana 2014 and 2019, Fay and James 2009, Lehmann 2016, Mollet 2011, León 2016; Boyer 2016; Robles 2016).

Recognition conflicts became more prevalent following the codification of indigenous rights a few decades ago, while the recent codification of peasants' rights in international human rights law[4] is likely to escalate the number, and legal complexities of this type of land disputes.

The conflict between indigenous and criollo communities in the Lhaka Honhat case displays all the features of a 'recognition conflict' and its judicialization sheds lights on the legal complications of balancing the ethnic-based rights of two groups. This case was the first of its kind to reach the IACt-HR since the adoption of the Declaration on Peasants Rights, but it will certainly not be the last. The Lhaka Honhat case has therefore the potential to become the guiding judgment for Courts dealing with similar disputes.

The purpose of this article is to highlight the inter-ethnic dimension of the Lhaka Honhat case and explore its implications. We adopt a mix-method approach including both legal and qualitative sociological analysis. The legal analysis dissects the rationale used by the IACt-HR to manage the normative tension between indigenous and peasants' rights. The main source for our legal analysis is the Lhaka Honhat judgment, but we also draw from the 13 judgments that constitute the IACtHR's line of precedents on indigenous rights until 2020 and from domestic cases promoted by Lhaka Honhat before the Argentinian Supreme Court and the Supreme Court of Salta. For the sociological analysis, we conducted 18 semi-structured interviews to different actors with knowledge of the conflict, namely: representatives and members of indigenous and criollo communities, legal advisors and academics, public officers and workers of organizations involved in conflict mitigation and mediation activities. Most interviews took place in person (with two done remotely) between

[4] In 2018, the United Nations adopted the Declaration on the Rights of Peasants and Other People Working in Rural Areas (Declaration on Peasants Rights), which recognizes special ethnic-based rights to peasant communities—including a collective right to land.

August 2021 and December 2022 in Salta and in different localities of the Rivadavia department[5].

We argue that the Court's decision is opening a third wave in the jurisprudential evolution of indigenous rights cases. The first wave concerned cases where the Court recognized indigenous land rights vis-à-vis powerful private parties. The second wave registered situations where indigenous land claims were brought against the encroachment of non-indigenous groups. In the third wave the Court is tackling the inter-ethnic aspect of communal land conflicts. The direction that this third wave will take is yet to be determined.

In the Lhaka Honhat case the Argentinian state invoked the rights of criollos as part of its defence. The decision, however, refrained from explicitly determining the scope of two competing territorial claims. For lawyers, this can be interpreted as a missed opportunity to set clearer standards for such disputes. However, the ruling's rationale marks a crucial precedent of how judicial intervention can intervene in inter-ethnic conflicts. The Court's decision, while formally preferencing indigenous land rights, acknowledged criollos' vulnerable situation, compelled the state to consider criollos' livelihoods and relation to land, and, most importantly, incorporated previously negotiated local settlements. Because of these considerations, the Court's judgment was overall welcomed by both ethnic groups. It indicated an operational pathway and gave legitimacy to different interlocutors, including criollo organizations not directly involved in the litigation. However, substantial delays in compliance are starting to jeopardise the goodwill of local populations, as new and old tensions are rekindling once again.

II. The Judicialization of Communal Ethnic Conflicts in the Inter-American Human Rights System

[5] All interviews were conducted in Spanish, audio-recorded and transcribed with the consent of interviewees.

Indigenous peoples have a long history of involvement with international law (Deskaheh, 1923). Indigenous rights were internationally codified in 1957 (ILO Convention 107), almost a decade before the adoption of the International Covenant on Civil and Political Rights. Today, the right of indigenous peoples to their lands and territories has been incontestably woven into the broader regime of international human rights law (Engle, 2010). A consequence of this codification is that, at least across Latin America, indigenous land claims are frequently judicialized as violations of international legal entitlements (Sieder, 2011).

In this context, litigation has become an increasingly popular strategy for indigenous peoples to protect their territories (Andia, 2011) (Gomez, 2010), mainly domestically but increasingly also at the international level, particularly within the Inter-American Human Rights System. During the 1970-80s, the IACHR received a handful of petitions concerning indigenous people's rights (Informe 29/91, 1991) (Caso 1802, 1977), none of which concerned land rights. In the early 1990s, the IACt-HR began ruling on indigenous rights cases but, again, they were not related to land claims (Aloeboetoe et al v. Surinam, 1991) (Cayara v. Peru, 1993). It was in 1995 that the Inter-American Human Rights System was first called to intervene in a conflict over indigenous land. The IACt-HR's judgement in Mayagna Community of Awas Tingni v. Nicaragua (2001) became the jurisprudential basis recognizing the right of indigenous peoples to their ancestral territories.

Ever since, the IACt-HR rapidly accrued its docket of indigenous land cases. However, the inter-communal and inter-ethnic aspects of land disputes took longer to be addressed. To map these changes, we propose a conceptualization of the jurisprudential evolution of indigenous rights cases as proceeding in three waves.

The first wave (2000-2013) inaugurated the normative development of indigenous rights within the IACtHR's docket (Antkowiak, 2007). The indigenous land cases brought

before the Inter-American System reproduced the archetypal scenario experienced by the community of Awas Tingni: they concerned indigenous communities whose lands were threatened by powerful and wealthy non-indigenous actors, like the military (Moiwana Community v. Surinam, 2005) or private companies (Community of Yakye Axa v. Paraguay, 2005) (Community of Sawhoyamaxa v. Paraguay, 2006) (Saramaka People v. Surinam, 2008) (Xakmok Kasek Indigenous Community v. Paraguay, 2010) (Kichwa Indigenous People of Sarayaku v. Ecuador, 2012).

The second wave (2014-2018) incorporated communal land disputes. The first of these cases was a dispute between indigenous communities and "*colonos*" (settlers) triggered by the displacement following the construction of a dam (Indigenous Communities Kuna of Madungandi and Embera v. Panama, 2014). This was followed by similar conflicts between indigenous peoples with a "*ladino*" (mixed-race or mestizo) village (Punta de Piedra Garifuna Community v. Honduras, 2015), and other non-indigenous third parties (Xucuru Indigenous People v. Brazil, 2018) who settled on indigenous land. In this second wave of cases, the IACt-HR ruled that states have a duty to provide a collective title, to realize the effective possession, and to take actions necessary to reclaim indigenous land from third parties. The Court also began delineating the scope of indigenous rights in relation to private property rights: when private property was involved, states also had a duty to include proper compensation for individuals in good faith in possession of indigenous lands. However, the Court did not distinguish between different modes of non-indigenous land regimes. In other words, neither the Court nor the parties in conflict explicitly evoked the nuances that emerge between two ethnic-based land claims.

A third wave is bringing the inter-ethnic aspect of communal conflicts to the fore. This wave, we argue, was inaugurated in 2018 when the Lhaka Honhat case pushed the Court towards grappling more explicitly with the tension between peasant and indigenous land

rights. Lhaka Honhat was the first case in which a state invoked internationally recognized peasant land rights as part of its defence before the IACtHR (Lhaka Honhat Association v. Argentina, 2020, p. 136). The Inter-American System already has another forthcoming case with similar inter-ethnic dimensions (Informe 11/20, 2020). This third wave of cases, while still incipient, will have important implications. The Court will be challenged to pay close attention, not only to the legal complexities, but also to the social and political tensions that are at play in inter-ethnic recognition conflicts. Failure to do so might not only exacerbate real-life inequalities but also fuel communal disputes. The Lhaka Honhat case offers the first window to analyse how international courts, especially the IACt-HR, as well as domestic courts could approach inter-ethnic tensions in the future.

III. Lhaka Honhat: The History of an Inter-Ethnic Conflict

The land dispute of Lhaka Honhat concerns the area officially known as 'public lots 55 and 14', located in the northern Argentinian territory of the Chaco. Historically, this vast semiarid region was inhabited by semi-nomadic indigenous groups. In 1884, however, the Argentinian government led a military campaign for territorial expansion towards indigenous territories (Carrasco & Briones, 1996), followed by the creation of the ex-colony of Buenaventura and a railway connection. These developments enabled the arrival of criollo populations during the early decades of the 20th Century (Boffa, 2017) (Carrasco & Briones, 1996).

The first criollo ranchers that settled in the lands reclaimed by Lhaka Honhat arrived in 1902 in search of new pastures (Carrasco & Briones, 1996) . Since their arrival, criollos sought to title their lands; yet an inter-provincial dispute between Salta and Formosa prevented the effective adjudication of these territories (Carrasco & Briones, 1996). Ever

since, the Argentinian government has been unsuccessful on its attempts to issue land deeds and regularize tenure for both indigenous and criollos.

For over a century, both groups have inhabited the same territory without clear demarcation. Most criollo and indigenous households in the region share services like schools, health centres and, in certain cases, they live side by side in villages and small settlements. Both groups also endure similarly harsh living conditions, suffering from deficient access to basic services, the impact of severe draughts and poverty levels above the national and regional average[6].

Despite decades of coexistence, indigenous and criollos have maintained different cultures, traditions and, most importantly, different modes of livelihoods. Criollo economy relies almost exclusively on cattle ranching while indigenous dwellers combine a range of activities including small-scale agriculture, hunting, fishing, and gathering. These two modes of rural production are at the root of the inter-ethnic land dispute. Indigenous peoples do not oppose the presence of criollo dwellers, but they consider cattle ranching to be damaging for the environment and incompatible with their own modes of subsistence (interview with indigenous members, 2022). With few exceptions, criollo economy is dominated by small production units, typically a household, running on very little surplus (interview with member of NGO Fundapaz, 2022). Criollo families require large extensions of land for their cattle as they rely on open field ranching. For indigenous communities, this form of farming is very problematic. The cattle consume food sources that they have traditionally foraged (especially carob tree) and reduces the fertility of already arid soils. Most importantly, criollo farmers set up wire fences that not only hinder indigenous foraging and hunting activities, but also interrupt the traditional routes taken by nomadic indigenous communities.

[6] Between 60-80% of households have unsatisfied basic needs according to the 2010 national census.

The fencing needed for raising cattle is perhaps the core issue in the land dispute between criollos and indigenous communities. In a 1991 petition to the Salta government, the *caciques* from 27 communities poignantly described the impact of this problem as:

> "The theft of land by the criollos who are enclosing our territory […] with barbed wire […] They want to throw us out so that the mountains and the river are for their cows. The fences of the criollos are not used to lock up their cows but to lock us up." (letter as cited in Carrasco and Briones 1996, p. 225).

This petition was filed in response to one of the Provincial Government's attempts to parcel the land in small economic units (Law 6469, Salta), which was proposed as a strategy to lift indigenous populations from poverty (Carrasco & Briones, 1996). Besides challenging the government's development plan, in their 1991 petition, indigenous *caciques* also demanded the recognition of their right to collective property. By then, indigenous groups had recruited some international allies, like Survival International and the Inter-Church Organization for Cooperation and Development, who provided technical and economic support. Thanks to these alliances, the *caciques* were able to comply with the requirements laid out in Provincial Law 6.469 to submit a formal request for a collective land title (Carrasco & Briones, 1996). Surprisingly, the Provincial Government of Salta accepted the request. The Lhaka Honhat association was formally born shortly after, in 1992, to follow up with the titling procedure. (Carrasco, 2005). Criollos, while also involved in the process, lacked any formal umbrella organization (Carrasco, 2005, p. 8) and did not secure land tenure.

The years that followed (1993-1996) were full of hopes. The administration's will to adjudicate land according to the indigenous claim translated into an official decree outlining an implementation plan (Salta Decree 18/93). An Advisory Commission formed by criollo and indigenous representatives, their advisors, public officers and academics (Carrasco &

Zimmerman, 2006) was tasked with elaborating a demarcation plan for the 640,000 hectares of lots 55 and 14. In 1995, the Commission issued a report proposing to allocate 530,000 to indigenous communities and the remaining 110,000 to criollos.

The Commission's report was welcomed by the parties. In April 1996, the Lhaka Honhat Association signed an agreement with the provincial authorities to create a 'Coordinating Unit' (*Unidad Coordinadora)* that would oversee progress with land regularization. However, the hopes that the plan would proceed accordingly were quickly disappointed. The implementation process halted almost immediately, as the government decided to build an international bridge within indigenous territory (Humberto-Soriano, 2022). Authorities failed to take concrete actions within the agreed deadlines, and the frustration of indigenous leaders grew stronger. In 1996, the indigenous association organized a peaceful occupation of the international bridge under construction to hold authorities to their word (Carrasco & Zimmerman, 2006). Again, with no effect. Instead of implementing the demarcation plan, the government kept advancing their project to urbanize the areas surrounding the national highway.

The strategy of indigenous communities then took a gestalt shift. With the help of human rights lawyers from the Centre for Legal and Social Studies (Centro de Estudios Legales y Sociales CELS), Lhaka Honhat judicialized their claims. First, a series of *amparo* actions were introduced domestically against the construction of the bridge (Asociacion de Comunidades Aborigenes Lhaka Honhat vs. Poder Ejecutivo de la Provincia de Salta, 2000). As these legal actions proved unsuccessful, the case was brought to the international level.

3.1) The Turn to International Human Rights Law

On August 4th, 1998, Lhaka Honhat filed a petition before the IACHR, with the support of CELS and the Centre for Justice and International Law (CEJIL). The Commission

immediately opened a friendly settlement procedure to negotiate a solution. Therefore, criollo families decided to organize themselves in formal associations that could represent them in these procedures, the most important of which is the Organization of Criollo Families (Organización de Familias Criollas or OFC). The OFC was formed between 2001-2003 as a result of the initiative of the NGO Fundapaz and consists of small and medium-sized livestock farmers (Carrasco, 2005).

The friendly settlement negotiations extended for over five years until they concluded, unsuccessfully, in 2005. Attempts at finding an amicable solution failed largely because authorities within the Argentinian government held a contradictory discourse. At the international level, Argentina claimed to be interested in finding a solution that could respect the right to indigenous property. But locally, in Salta, government authorities insisted in their attempts to divide the indigenous organization by issuing separate titles for each community.[7]

Consequently, the petition continued its course. In 2006, the Inter-American Commission adopted its admissibility report (CIDH, Report 78/06). Shortly thereafter, in 2007, indigenous and criollo organizations (represented by Lhaka Honhat and OFC), alongside governmental authorities, entered an agreement to solve the dispute through the voluntary relocation of criollos: Lhaka Honhat accepted to cede 130,000 hectares—out of their 530,000 hectares claim—to criollo households; in turn, criollo organizations accepted to engage in further discussions to relocate the families that remained within indigenous territory. The government committed to incentivize the relocation by providing the necessary conditions for criollos to move without compromising their livelihoods. While this agreement

[7] This double discourse became most evident in 2004, when the provincial government went as far as ignoring a Supreme Court decision that nullified the inappropriate land allocations in 1999 (Resolution 423/99 and Decree 461/99).

was not reached within the Inter-American procedure, it was notified to the Commission as a promising solution.

This agreement was formally adopted into law (Provincial Decree 2786/07). Then the government created a Provincial Executive Unit (*Unidad Ejecutora Provincial)* tasked with its implementation (Provincial Decree 4705/08). However, the process did not go smoothly. From the get-go, the Lhaka Honhat organization and their legal representatives criticized the way in which the Provincial government was conducting the allocation procedures. Several years passed without much progress until a breaking point came in 2011, when the President of the IACHR visited Buenos Aires to hold a meeting about the case. The purpose was to discuss the situation with both the state and the petitioners, but Lhaka Honhat refused to participate as a form of protest for how the relocation plan had been handled.

In its Merits reports issued on January 2012, the IACHR found that Argentina had violated the right of indigenous peoples to communal property and that Lhaka Honhat was entitled to receive a single collective title over the 400,000 hectares claim. The report also recommended to conclude the titling process and ensure effective land control through the removal of the wire fences (Merits Report 2/12, 2012). Interestingly, the situation of the criollo population was not discussed by the Commission.

From that moment onwards (2012-2014), the Provincial government of Salta issued a series of resolutions and decrees related to the adjudication of lands. Firstly, the government adopted a work plan to legalize the collective property through participatory workshops (Decree 2001/13), followed by another decree establishing a Provincial Executive Unit (Decree 1498/14). Finally, the Province allowed both Lhaka Honhat and OFC to appoint five persons to serve as ‘field technicians’ during the adjudication procedure (Resolution 654).

Despite all these seemingly positive actions, between 2015-2017, the titling process made minimal progress. The relocation of criollo families stalled because budgetary resources were insufficient and because the National and Provincial administrations were not coordinating properly. By late 2017, the lack of progress became so noticeable that the Commission issued an ultimatum to comply with its recommendations. In response, the government presented an eight-year "comprehensive work plan". The IACHR considered that such a long-term proposal, compounded by the previous five years of stagnation, were enough to determine that Argentina had incurred in non-compliance (IACHR, 2018).

The monitoring procedures concluded, and, in February 2018, the Commission brought the case before the IACt-HR (Id). The public hearing before the judges was held on March 14, 2019. A couple months later, in May 2019, the Court performed a field visit to the region where the judges could meet with the parties in conflict. Finally, the Court's judgement was delivered on February 6, 2020, twenty-two years after the petition was filed.

IV. Judicial Innovations in the Third Wave: Inter-Ethnic Conflict and the Incipient Recognition of Peasant Rights

Decades of dispossession meant that the land dispute had accumulated numerous legal grievances. The construction of wire fences by criollos affected indigenous communities' cultural practices; the raising of cattle affected the fertility of the ground and also reduced availability of culturally appropriate food; the absence of clear titles fostered illegal logging activities that destroyed the forests; and the construction of government projects, including the international bridge, severely impacted the natural ecosystems. The petitioners raised all these grievances within the legal proceedings before the IACtHR. The Court accepted most of them and thus structured its judgement around three overarching legal arguments: a) the

right to communal property; b) economic and social rights (ESRs), and; c) the right to judicial protection. As we mentioned the inclusion and novel interpretation of ESRs earned the judgment praise among legal circles (Mejia-Lemos, 2022) (Ronconi & Barraco, 2021) (Ferrer Mac-Gregor, 2020).

Here, we focus on how the IACtHR applied its precedents in the context of the communal inter-ethnic conflict and the interpretative moves that were necessary to justify the outcome. In its operative part, the judgement issued the following commands:

> THE COURT (…) ESTABLISHES THAT (…):
>
> 7. The State, within six years of notification of this judgment, shall adopt and conclude the necessary actions to delimit, demarcate and grant a title that recognizes the ownership of the 132 indigenous communities identified as victims in this case, and indicated in Annex V of this judgment, of their territory (…).
>
> 9. The State, within six years of notification of this judgment, shall arrange the removal of the criollo population from the indigenous territory (…)

These two dispositions are not novel and are rooted in well-established standards of indigenous communal property. As we discussed, requirements to delimit, demarcate and title indigenous territories are in fact a staple measure in most indigenous rights cases (Moiwana Community v. Surinam, 2005) (Community of Yakye Axa v. Paraguay, 2005) (Community of Sawhoyamaxa v. Paraguay, 2006)(*Moiwana v. Surinam*, 2005); while measures to relocate non-indigenous third parties were also present in previous cases. For example, in Punta de Piedra Garifuna Community v. Honduras (2015) the IACt-HR required the state "to ensure the use and enjoyment of the traditional lands…by freeing them of encumbrances" (Id. p.100), which meant that the state had to pay third parties for the improvements made in indigenous land and ensure their relocation (Id. p. 91).

The *Lhaka Honhat* decision reaffirmed that indigenous land rights include the right to a collective title, effective ownership and control over natural resources (Lhaka Honhat Association v. Argentina, 2020, pp. 36-37). In light of this determination, it was only natural for the Court to order the demarcation of land and the relocation of criollos as reparation.

Despite the seeming unoriginality of these dispositions, it is crucial to note two particularities. First, that the operative portion of the judgement explicitly acknowledged the inter-ethnic dimension of the conflict by referencing 'criollos' instead of a catch-all category such as 'third parties' or 'private parties'. Second, that this recognition of ethnic identity referenced a specific set of rules about how the relocation had to be conducted.

4.1) The Judicial Recognition of the Inter-Ethnic Conflict

As explained above, the Lhaka Honhat case was not the first to judicialize an inter-communal ethnic conflict. However, it was the first case in which the Court was explicitly called to recognize the legal implications of a collision between the human rights of two ethnic groups deserving special protection.

Throughout its case law, the Court had refrained from acknowledging the potential conflict between contesting land claims based on ethnic identities. The closest that the Court had gotten to do so was by timidly admitting that the recognition of indigenous rights "does not mean that every time there is a conflict between private or State territorial interests and the territorial interests of members of indigenous communities the latter should prevail over the former" (Xucuru Indigenous People v. Brazil, 2018, p. para 125). However, even in that case—which concerned a conflict between indigenous and other rural populations—the Court did not distinguish between non-indigenous land claims. Instead, it treated the property of rural settlements as falling within the general concept of private property.

The Lhaka Honhat case encouraged the Court to foreground this tension. Following the state's invocation of the Declaration on Peasants Rights, the Court recognized that criollos were also vulnerable populations with special legal entitlements and that Argentina had special duties towards them (Lhaka Honhat Association v. Argentina, 2020, p. para 137).

However, just as the inter-ethnic conflict was brought under the spotlight, the judges quickly stepped aside from addressing its most challenging legal implications. Instead of interpreting the scope of indigenous land rights vis-à-vis the scope of criollo land rights, the Court simply explained that it was "not assessing State responsibility based on the Declaration on the Rights of Peasants" (Id. para 136). According to the judges, the case required them only to determine the scope of indigenous communal property.

In sum, even if the Court acknowledged the abstract tension between the rights of indigenous and criollo communities, it considered that, in practice, the tension was resolved through the existing agreement signed between Lhaka Honhat and OFC (Provincial Decree 2786/07). Otherwise put, the judges considered that their role was not to solve an inter-ethnic dispute over land but rather to assess the state's duties towards the effective realization of an already existing domestic solution.

This argumentative move was a clever way to solve this particular case without grappling with the most challenging legal question—namely, determining the scope of two competing territorial claims. However, the recognition of this inter-ethnic dimension still had important consequences in the way that the Court dealt with other aspects of the judgement, especially regarding the relocation of criollo families.

4.2) The Implications of Recognizing Peasants' Rights

Arguably, one of the most controversial aspects of the Court's decision is that it ordered to relocate all criollo families within six years. However, the Court recognized the

vulnerable situation of criollos in their judicial reasoning by providing special measures to protect their rights:

> 329. To ensure the full exercise of the right to property of the indigenous communities (…) the Court requires the State to implement the relocation of the criollo population, based on the following guidelines:
>
> a) *The State must facilitate procedures aimed at the voluntary relocation of the criollo population*, endeavouring to avoid compulsory evictions.
>
> b) To guarantee this, *during the first three years* following notification of this judgment, the State (…) may *not execute compulsory or enforced evictions* of criollo settlers. (…)
>
> d) In any case, the competent administrative, judicial or other *authorities must ensure that the relocation of the criollo population is implemented, safeguarding their rights*. Accordingly, provision should be made for resettlement and access to productive land with adequate property infrastructure (including implanting pasture and access to sufficient water for production and consumption, as well as the installation of the necessary fencing) and, if necessary, technical assistance and training for productive activities. (Emphasis added)

These paragraphs reveal the Court's hesitancy to fully engage with the inter-ethnic tensions embedded in the conflict. On the one hand, the Court acknowledges the tension by awarding some protections to criollos that would have been absent in other situations. By establishing that the state should not resort to evictions, and that criollos should be guaranteed access to productive lands, the Court is indirectly protecting the right of criollos to certain standard of land rights. On the other hand, however, the Court refrains from explicitly exploring the precise scope of peasants' rights. This timid approach points to the criollos' vulnerability as the primary rationale to grant certain accommodations. In this sense, it is not dissimilar from the way in which domestic Courts have handled disputes between indigenous groups and criollo households. For example, when a Civil Court in Salta was called to solve a dispute over access to a water well, the judge avoided the question of land

ownership and instead held that, given their vulnerability, both groups had the right to access the well (Comunidad La Llana El Cardonal s/ amparo", Expediente 49416/19).

Even if the IACt-HR failed to fully grapple with the inter-ethnic collision of property rights, the Lhaka Honhat case still constitutes an interesting innovation with respect to the Court's precedents. In the past, the Court had understood peasant property as a form of private property (Peasant Community of Santa Barbara v. Peru, 2015, para. 200-205). In contrast, the recognition of criollos' vulnerability points towards a form of differentiated property rights for peasants. In its decision, the Court orders the state not only to relocate criollos but to ensure that they were allocated land with certain properties, listing specific requirements such as the installation of fences. In this way, the Court partly hints to the possibility of criollos being entitled to a form of property that incorporates aspects tied to their specific mode of livelihoods and their relation to land.

In terms of jurisprudential evolution, therefore, the *Lhaka Honhat v. Argentina* decision can be interpreted as the first step towards the development of progressive standards on peasants' rights that can more effectively contribute to solve communal land disputes. Even at this incipient stage, the way in which the Court incorporated inter-ethnic considerations is having important consequences in how judgment is being implemented.

V. The Ruling from the Ground

Besides the juridical relevance of the Lhaka Honhat ruling, the process generated a lot of trepidation for local communities. The constellation of actors with some stake in the conflict has become more complex over the years. For starters, criollo organizations have multiplied and more local and national NGOs got involved in different capacities (Fundapaz, Asociana, Fundacion Acercar, CELS, CEJIL). Additionally, important coordinating bodies

have been created. In 2016, a 'Management Table' (*Mesa de Gestion*) was set up as a regular space for dialogue and coordination between representatives from indigenous and criollo organizations, local NGOs and the government. At present, this body meets every month in the regional capital, Santa Victoria Este (Gobierno de Salta, 2022). Also, as a result of the IACt-HR ruling, the central government created a National Implementation Unit (*Unidad Ejecutora Nacional*) under the leadership of the Ministry of Justice and Human Rights (Ministerio de Justicia y Derechos Humanos, 2021).

On the ground, the judicial process was closely followed by all these actors, and overall, the final judgement helped reduce inter-communal tensions. Our interviews show that, after the decision was delivered, a generalised sense of inevitability, if not relief, was shared by both indigenous and criollos.

Naturally, indigenous leaders and community members understood the ruling as a victory. For them, the judgement was a historical moment that marked the ultimate recognition of their right to land. In legal terms, Lhaka Honhat won the litigation against the Argentinian state, but in people's narratives the conflict was framed as opposing indigenous communities to criollo settlers. The outcome implies that indigenous peoples now speak from the side of the winners: the land is unquestionably theirs, and criollos will, sooner or later, have to relocate.

However, the aftermath of this judicial outcome was not as contentious as we could expect. In fact, indigenous discourse has taken a much more conciliatory tone towards criollos than in the past. Just a few years ago, before the Inter-American judgement was issued, Lhaka Honhat leaders assumed an openly conflictive stance towards their criollo counterparts:

> We are the legitimate owners of the land but we see that the criollos want to take it from us. The criollo have pushed us too far and we demand justice. (p. 213)' (…) 'It turns out that the criollos are

> not peaceful as we are. Criollos do not approach us to talk. They threaten us (as cited in in Carrasco and Briones 1996, p. 240).

In contrast, after the Court delivered its decision, criollos are not addressed as enemies anymore, but as part of the solution. Indigenous leaders now refer to criollos as '*hermanos*' (brothers) and acknowledge that their claims to land and other human rights are also legitimate. Even if the judgement simply commands to relocate criollos, a distinction is often made between the relocation of cattle and the relocation of criollo households. As long as the livestock is moved out of their territory, indigenous leaders are not necessarily against some criollos keeping their habitational units.

> Respecting the rights of each one and finally reaching an agreement is something historic for us: a relocation agreement where the animals must leave indigenous territory, where the criollo has its title and the communities too. And that we live in peace (interview to Lhaka Honhat president, 2021).

This important change in rhetoric reveals the socio-political impact of the Court's decision. By setting a timeframe and a series of procedural expectations, the direction forward is now clear. The ruling granted indigenous leaders leverage to unclog the implementation of the project to resettle criollos. As one indigenous *cacique* expressed, "There are many brothers who do not want to relocate but the time will come when they will have to accept, because we have [to follow] what the sentence says" (interview to indigenous *cacique*, 2022).

This sense of inevitability is shared also by some of the criollos we interviewed. This does not imply that they agree with the Court's decision or that they feel the relocation is just. Many criollo families do not want to relocate. They too feel attachment to the land they have occupied for decades. However, for them, relocating is now seen as 'the lesser evil'.

> The sentence has already been issued, and there was no other alternative than vacating the place (…). Many did not want to leave, they were convinced little by little, not completely. (...) It was not out of a desire to leave but [we had] to choose the lesser evil (…). Because imagine you spent your whole life here, you worked, you raised animals (…) to be able to maintain the little you have got and suddenly move where you have nothing (interview to member of organization Raiz del Chaco, 2022).

In general, criollos display mixed feelings towards the aftermath of the ruling, ranging from relatively positive assessment to distrust, deception and upright resistance. A minority among the criollos we interviewed talk about the ruling with a sense of relief and even, in some cases, as an opportunity for a change that might ultimately be positive for them. Most criollos, however, remain distrustful of the ruling's implementation process. Their concerns do not necessarily have to do with the fact that the Court ordered their relocation. Overall, in our interviews, criollos rarely challenged the judgement or took confrontational positions towards the Court. In fact, many criollo leaders reported a willingness to relocate if the government complies with the provisions to mitigate the impact of their relocation. Yet, they are sceptical of the government's intentions and of the Court's capacity to monitor compliance.

> The sentence has not contributed to the possible solution of the territorial conflict. It does not help because (…) there is no reaction from the government, except the creation of the Provincial Implementation Unit (...). We need the benefits for people to relocate (...). We go from a place where we have safe water to a place where we don't have water. It's difficult to tell people to move. It would be easier if we could show that it's calmer there, easier, there are no problems with [indigenous] communities (interview to member of the OFC, 2022).

Local advisors, civil servants and NGOs representatives report that some criollo families are still resisting relocation, claiming that the process was unfair to them and ultimately jeopardized their livelihoods. However, this is most common among groups that remained at the margin of the judicial process.

> There is another group of families that have never participated in the process. They simply submitted their land claim, met the requirements but were not part of the participatory exercise (…). These are the families that feel, I don't know if threatened is the word, but a lot of risk related to the execution of the sentence (interview to a manager of Secretariat of indigenous matters of Salta Province, 2022).

In general, NGOs representatives offer a positive assessment of the IACt-HR intervention. They perceive the judgement as an opportunity for a sustainable settlement which can hopefully accelerate what has been a very neglected conflict. Some consider that the judicial process was key in enabling a more peaceful dialogue. For instance, when the IACt-HR carried out its 2019 field visit, the judges held meetings with criollo leaders and communities. According to one of the local legal experts, this was very important as it signalled the legitimacy of criollos as interlocutors and the importance to consider their rights and vulnerabilities—even if they were not officially parties in the judicial dispute.

Overall, these reactions reveal that the judicial process before the Inter-American System contributed to the mutual acknowledgment and recognition of each group's claim. On the one hand, criollos had to accept that the indigenous communities had a legitimate claim to their territories, but, on the other, indigenous leaders had to realise that criollos had to be part of the solution too. This mutual recognition was very important, especially since the core issue after the ruling has been the relocation of criollo population.

Ultimately, the ruling had both a juridical and a political value. The judgement condemned Argentina for violating indigenous rights and, in doing so, it fostered the political will to implement a solution. Implementation is indeed a critical phase, as an NGO representative pointed out: "In Argentina there is no precedent for a sentence of this type, but there is also no history of how a sentence of this type ought to be implemented" (interview to Asociana representative, 2022).

The Court-established timeframes, deadlines and expectations were very important on this regard—perhaps more so than the order to relocate criollos. After all, relocation projects had long been a crucial part of local negotiations and after the IACHR issued its Merits Report, in 2012, around 20 criollo families received support to relocate. However, the process stagnated, mainly because the government failed to allocate the resources necessary to compensate criollos and to make the resettlement areas habitable. In this context, the Court's decision created a window of opportunity, for both indigenous and criollos' legal advisors to demand that the government makes the necessary budgetary allocations within the deadlines provided by the judgement.

In sum, the IACt-HR ruling generated huge expectations to push forward a relocation process that had stalled for years. However, the 3-year term set by the Court for the voluntary relocation of criollos has expired without much progress on the ground. Criollos still consider it too risky to abandon the land they occupy while the government is unable to ensure minimal living conditions in the new localities.

To some extent, the fact that the judicial process concluded just before the COVID-19 pandemic complicated the implementation phase. Strict quarantine measures imposed practical difficulties to visit the area and organize meetings. People report that the compliance process halted for over two years, until sanitary control measures allowed meetings to restart, and the Executive Unit was able to resume its field visits.

Whatever the cause for the delay, the lack of concrete progress over such a long period of time is problematic. The deadlines established by the IACt-HR expired without major changes or consequences. In February 2023, the Court issued a resolution that simply validated a partial agreement between the parties on an 'action' and 'work' plans to comply with the judgment. While the Court welcomed this agreement, their resolution also confirmed

that all substantive dispositions remained effectively unimplemented (Supervision de Cumplimiento de Sentencia, 2023).

The lack of concrete progress is adding to the uncertainty and scepticism that already existed, primarily among criollos, and could ultimately rekindle tensions. When the judgement was delivered, there seemed to be an implicit consensus that the roadmap indicated by the Court was a legitimate solution. However, the lack of practical impact is making local leaders worry that the goodwill to abide by the judgement will fade at the grassroots. People feel that they are stuck ('neither here nor there'), and old tensions are resurfacing.

> Until 2019 (…) the process was advancing, the relationship between criollos and indigenous was fine and now it is becoming tense. Why? Because 3 years have passed, and everything has stopped (…). Indigenous peoples began to cut the forest, the animals have nowhere to graze. There is unhappiness and a lot of uncertainty. I'm honestly disappointed (…). I no longer want to relocate. We cannot do anything where we are and we are not sure where they will take us and in what conditions they will leave us there (interview with criollo person, 2022).

Most worryingly, the delays in the implementation are exacerbating tensions around other contentious issues besides cattle ranching, such as disputes over the exploitation of lumber and other natural resources. These tensions not only complicate the land dispute but may also jeopardize the capacity of indigenous and criollo communities to face mutual challenges. Environmental concerns are especially important. Both groups are suffering the consequences of climate change: the region experiences extreme weather conditions, with both indigenous and criollos enduring severe draughts during part of the year and flooding during the raining season. The Management Table has addressed these issues during its recent meetings. Given that these spaces for inter-ethnic coordination were opened under the shadow of the Inter-American procedure, the growing mistrust in that process could also reverberate in the capacity of both groups to address their shared vulnerabilities.

V. Conclusions

The Lhaka Honhat land dispute is undergoing a crucial phase that will determine whether the intervention of the IACt-HR will contribute to resolving inter-communal tensions. The case represents a key precedent in international human rights jurisprudence as it is the first time that the IACt-HR was called to apply human rights standards to resolve conflicting claims on land and livelihood of two groups of impoverished rural communities. Even if the Court did not frontally grapple with the legal balancing between indigenous and peasants' rights, its mode of adjudication offer evidence of the potential role that judicial bodies could play in this type of recognition conflicts.

These conflicts are often rooted in recognition policies that introduce introduce differentiated sets of ethnic-based rights, particularly land rights. Indeed, in situations of widespread social and economic vulnerability, the recognition of rights and allocation of resources to indigenous groups can trigger resentment of non-ethnic groups. As in the Lhaka Honhat case, these tensions frequently emerge from incompatible livelihood and land management practices and can be exacerbated by the consolidation of strong identity boundaries.

The practical implications of such disputes open important moral dilemmas. On what bases should the rights of one ethnic group be prioritised over another? And to what extent should non-ethnic vulnerable populations also be entitled to targeted rights? When these disputes are judicialized, these moral dilemmas also become difficult legal questions. How should a Court perform a balancing exercise when two similarly vulnerable groups rise conflicting and potentially incompatible claims? Or how should the rights of one ethnic group be considered, when the contenders also have a claim over their right to occupy a given territory or use local resources?

The Lhaka Honhat dispute highlights these legal questions and illustrate its empirical implications. In this sense, it marks the beginning of what we identify as the third wave of the Inter-American jurisprudence on indigenous rights. With the recent adoption of the Declaration on Peasants' Rights, this type of recognition conflicts are likely to become more frequent. As these disputes judicialize, they will challenge the Court to grapple with the legal complexity of handling the inter-ethnic aspects of communal disputes.

For better or for worse, in the Lhaka Honhat case, the Court refrained from setting any clear standard regarding the scope of indigenous and peasants rights. However, their judicial rationale already gives a glimpse into two plausible normative developments. First, the measures to protect indigenous land rights must be modified to guarantee peasants' rights, or at least to mitigate negative impacts. Second, even if the Court needs to make the difficult determination of allocating land to one ethnic group, it can still generate conditions that allow both groups to reach a mutually acceptable solution considering their needs and vulnerabilities. It is on this latter aspect that the Lhaka Honhat judgement is most relevant. Besides being a landmark decision, this case offers interesting insights on how carefully crafted Court's interventions can help resolve longstanding communal land disputes.

Our empirically grounded analysis indicates that the legal developments at the international level trickled down and caused a series of reactions. The Court's legal proceedings and the operative part of the judgement facilitated the recognition between both groups and created expectations for a mutually agreeable solution. After the judgement, indigenous leaders displayed a generally optimistic vision of the future and willingness to adopt a more conciliatory attitude towards criollos. Meanwhile, criollos' reactions, while mixed in terms of their outlook, generally saw the Court's judgement as a 'lesser evil' that they were willing to accept with pragmatic purpose. Only sporadically would criollos reject the Court's decision upfront, and when they did their reservations emanated from the fact that

they had not been properly included in the process. Overall, these developments offer some lessons that the IACt-HR may consider as it confronts similar cases.

First, the power of the ruling to resolve an inter-ethnic dispute came from the legitimacy it provided to a locally negotiated agreement, which also contributed to the welcoming of the judgment by the members of both ethnic groups—or at least by most of them. This points to the value of taking into consideration local settlements and expectations when determining the operative part of a judicial decision, rather than trying to make a determination exclusively based on legal principles. It also underlines the importance of recognizing the claims of both ethnic groups, even if the formalities of judicial proceedings mean that only one group acts as petitioners or potential victims.

Second, the pragmatic value of the judgement for conflict resolution can decrease rapidly during the compliance procedure. Initially, the Court decision ignited positive expectations because it mandated a clear pathway of action. However, the non-fulfilment of the timeframe and the absence of concrete actions has dangerously eroded the legitimacy of the Court and the goodwill of the parties. We recorded early signs of agitation following missed deadlines and broken promises. This situation is worrying not only because it jeopardizes a solution, but also because it can potentially exacerbate other stressors, such as environmental changes and endemic vulnerabilities (Plaza & Wayer, 2008).

Third, the configuration of actors at the national and local levels has important judicial implications. In this case, the organization of Lhaka Honhat and its alliance with human rights NGOs was crucial. In contrast, criollos organized much later, maintained high levels of fragmentation and counted with less support from professional advocacy networks. The role of external actors is important to understand the pathway towards judicialization and internationalization of this dispute. As in other cases (Grugel, Singh, Fontana, & Uhlin, 2016), NGOs act as gatekeepers for local communities as well as enablers of political

alliances, which ought to be negotiated at local, national and international levels. The powerful combination of local organization and professional legal support enjoyed by the indigenous sector explains why the conflict was framed mainly through the lenses of indigenous rights. This asymmetry certainly limited the capacity of criollos to legalize their own claims. We can only speculate, but we are left wondering if the judicial outcome would have been different if criollos had articulated a stronger legal claim under international standards. Would the Declaration on Peasants Rights have acquired more relevance? And would the protections for criollo settlers have been different?

Decades ago, the codification of indigenous rights opened the door to the judicialization of indigenous disputes, which translated into a first and second waves of cases before the Inter-American System. The recent codification of peasants' rights could replicate this effect and call attention to the inter-ethnic aspects of communal land disputes. This third wave will likely affect the way in which existing disputes are judicialized and will also change the way in which Courts handle these cases. As the earliest case in this wave, Lhaka Honhat offers some important lessons on how Courts could intervene in the negotiation, legalization and resolution of inter-ethnic conflicts.

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