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**The need for an expansive interpretation of Protocol 1: A
Comparative Analysis of the latest Indigenous Land Disputes
before the European Court of Human Rights and
the Inter-American Court**

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I. INTRODUCTION

This report examines how two regional human rights courts, the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR), have addressed Indigenous land rights through distinct legal frameworks and interpretive methods. By analyzing *Handölsdalen Sami Village and Others v. Sweden* (2010) (no. [39013/04](#)) and *The Indigenous Communities of the Lhaka Honhat Association v. Argentina* (2020), the report explores how each court approached key legal questions surrounding property, collective identity, and state responsibility.

Although both cases involve Indigenous communities seeking recognition and protection of their ancestral lands, the legal strategies, doctrinal tools, and interpretive reasoning employed by the two courts diverge significantly. The report focuses not only on the outcomes, but on how each court defines property, assesses evidence, conceptualizes Indigenous legal subjectivity, and articulates state obligations under their respective human rights instruments.

Through this comparison, this report aims to evaluate how legal culture, institutional mandates, and regional human rights norms shape judicial engagement with Indigenous claims. In so doing, it considers whether one legal model offers a more responsive or inclusive approach to the complex realities of Indigenous land tenure and cultural survival.

II. EUROPEAN COURT OF HUMAN RIGHTS' RULING ON INDIGENOUS LAND RIGHTS

A. Handölsdalen Sami Village v. Sweden (2010, ECtHR)

The *Handölsdalen Sami Village and Others v. Sweden* case, decided by the European Court of Human Rights (ECtHR) in 2010, concerned a claim brought by members of the Handölsdalen Sami village in northern Sweden. The applicants argued that they held traditional rights to graze reindeer on privately owned lands in the region, based on ancestral practices and immemorial usage. Swedish courts, however, required the Sami to prove these rights using written legal evidence and did not recognize their customary land use under national property law.

Unlike the *Lhaka Honhat* case, the legal issues in *Handölsdalen Sami* focused narrowly on procedural fairness and property protection. The applicants alleged violations of the right for a fair trial, stated in Article 6.1 ECHR, arguing that the evidentiary burden placed on them was unfair, and Article 1 of Protocol No. 1 ECHR, concerning the protection of property, claiming that their traditional land use amounted to protected property. They maintained that the legal system failed to account for the collective and cultural nature of their land rights.

The ECtHR found no violation of either provision. It held that the Swedish legal process met the requirements of a fair trial and that the state had not interfered with protected property rights. The Court took a procedural view of the dispute and did not address the Indigenous identity of the applicants or the cultural context of reindeer herding. It also gave significant deference to the domestic courts' application of national law.

As a result, the ruling affirmed the legality of the Swedish proceedings but offered no recognition of Indigenous-specific rights. The decision reflected a formal and individualistic approach to property that did not accommodate the communal, unwritten nature of Sami land claims, limiting the legal avenues available to Indigenous communities seeking protection under the European human rights system.

III. INTER-AMERICAN COURT'S RULING ON INDIGENOUS LAND RIGHTS

A. Lhaka Honhat v. Argentina (2020, IACtHR)

The Lhaka Honhat case, decided by the Inter-American Court of Human Rights (IACtHR) in 2020, represents one of the most progressive and comprehensive judgments on Indigenous rights to date. The case was brought by eighteen Indigenous communities from the Chaco region of Argentina, including the Wichí, Iyjawaja (Chorote), Komlek (Toba), Nivaclé, and Qom peoples. These communities alleged that their ancestral lands had been harmed by the state's support of non-Indigenous settlers, fencing projects, and cattle grazing, all of which contributed to deforestation, soil erosion, and water contamination.

Unlike in the Sami case, the harm in Lhaka Honhat was not limited to property rights. The Indigenous communities suffered wide-ranging impacts: severe food insecurity, malnutrition, lack of access to clean water, and cultural erosion due to the degradation of sacred lands and disruption of traditional practices. The legal claims before the IACtHR were extensive, encompassing violations of the right to communal property, cultural identity, and a cluster of economic, social, and environmental rights, including the rights to a healthy environment, food, water, and health.

The IACtHR found Argentina internationally responsible for failing to protect the land and basic human rights of the Indigenous communities. It ruled that the state had not taken adequate steps to recognize or demarcate Indigenous territory, nor had it safeguarded the communities' subsistence and cultural survival. In a landmark move, the Court explicitly recognized the rights to a healthy environment, food, and water as autonomous human rights, a first in international human rights jurisprudence.

As a result, the Court imposed positive obligations on the State to take remedial action. Specifically, it ordered Argentina to demarcate, delimit, and grant legal title to the ancestral lands in favor of the Indigenous communities, recognizing their communal ownership in accordance with their customs and traditions.

IV. COMPARATIVE ANALYSIS

The *Handölsdalen Sami Village v. Sweden* and *Lhaka Honhat v. Argentina* cases reflect fundamentally different legal approaches to Indigenous land rights by the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR). While both involve disputes over Indigenous land, the courts diverge in how they define property, treat collective identity, apply evidentiary standards, and interpret state obligations.

A. Conceptions of property

The ECtHR interpreted rights relating to property protection under Article 1 of Protocol No. 1 ECHR in a formal and individualistic manner, treating land rights as those recognized under domestic law. In *Handölsdalen Sami*, the Court declined to recognize customary land use as a protected "possession" without formal legal title or evidence, leaving Indigenous land tenure outside the scope of protection. By contrast, the IACtHR took a substantive and autonomous approach under Article 21 of the American Convention vis-à-vis property rights, affirming that Indigenous land rights derive from ancestral occupation, not state-issued title. This broader

understanding enabled the Court in Lhaka Honhat to protect collective property grounded in Indigenous tradition.

B. Legal Subjectivity: Individual vs. Collective

The ECtHR treated the Sami community as a procedural rights-holder, focusing narrowly on the right to a fair trial (Art 6.1 ECHR). It did not recognize Indigenous peoples as collective legal subjects with distinct cultural and legal claims. In contrast, the IACtHR explicitly affirmed the collective legal standing of the Lhaka Honhat communities, recognizing that land, identity, and survival are inextricably linked in Indigenous worldviews.

C. Interpretation Methods

The ECtHR relied on a conservative textual and deferential approach, invoking the margin of appreciation doctrine and prioritizing national legal standards. It avoided broader normative claims or legal innovation. The IACtHR, however, employed a teleological and evolutive interpretation, drawing on international soft law (e.g., UNDRIP, Indigenous and Tribal Peoples Convention No. 169) and the *pro homine* principle to expand protections in favor of rights-holders.

D. Evidentiary Flexibility

In Handölsdalen Sami, the ECtHR imposed strict evidentiary requirements, favoring written documentation over oral tradition. This disadvantaged the Sami, whose land claims were rooted in customary use. The IACtHR, on the other hand, accepted oral history and traditional knowledge as valid evidence in Lhaka Honhat, aligning with Indigenous legal epistemologies and ensuring procedural fairness adapted to context.

E. Scope of state obligations

The ECtHR limited its review to negative obligations, assessing whether Sweden had violated procedural rights, but did not impose affirmative duties to protect or recognize Indigenous land. In contrast, the IACtHR imposed positive structural obligations on Argentina, ordering land demarcation, environmental protections, and service guarantees. This reflects the IACtHR's commitment to transformative remedies in cases of historical injustice.

V. LESSONS TO IMPROVE THE ECtHR'S INTERPRETATIVE APPROACH

The Handölsdalen Sami decision highlights the limitations of the ECtHR's current doctrinal approach when faced with collective, culturally embedded Indigenous land claims. While the Court prioritizes legal certainty and subsidiarity, a more responsive jurisprudence is possible within its existing framework. Drawing lessons from the IACtHR, the following areas present opportunities for legal development:

Broaden the Interpretation of Property under Article 1 of Protocol No. 1 (ECHR)

The Court could interpret "possessions" to encompass communal and customary land use, especially where those rights are integral to Indigenous identity and survival. This approach would be consistent with the ECtHR's evolving recognition of non-traditional property interests (e.g., *Kopecký v. Slovakia*), and would align with the principle that the ECHR is a living instrument to be interpreted in light of present-day circumstances. It would moreover bring the Court's jurisprudence closer to international standards set out in instruments, such as the ILO Convention No. 169 (Indigenous and Tribal Peoples Convention) and the United Nations

Declaration on the Rights of Indigenous Peoples (UNDRIP), both of which affirm ancestral land rights irrespective of formal title.

Recognize Cultural Identity under Article 8 (ECHR) and in Proportionality Analysis

Traditional land use practices may fall within the scope of “private and family life” under Article 8 of the ECHR when they form part of an Indigenous group’s cultural identity. Incorporating cultural context into proportionality assessments would enable the Court to balance state interests with the distinct social and spiritual value of land for Indigenous communities, much like in *Chapman v. The United Kingdom* (no. [27238/95](#)), regarding Roma life.

Adapt Evidentiary Standards to Customary Claims

Requiring formal legal documentation to prove immemorial land use imposes barriers incompatible with Indigenous knowledge systems. The Court could accept oral testimony and ethnographic evidence as valid, in line with its commitment to effective protection (*Airey v. Ireland*, no. [6289/73](#)) and its margin for adapting procedure in vulnerable group cases.

Apply Article 14 (ECHR), on the Prohibition of Discrimination

The Court rarely applies Article 14 substantively in Indigenous cases. A stronger anti-discrimination analysis, particularly when combined with Article 6 or Article 1 of Protocol No. 1, would allow the Court to address the cumulative disadvantage Indigenous groups face due to legal, evidentiary, and institutional barriers. This would mirror its approach in ‘*D.H. v. Czech Republic*’ (no. [57325/00](#)), on indirect discrimination.

Expand Remedies to Address Systemic Harm

Although the ECtHR traditionally avoids structural remedies, it has made exceptions where systemic reform is needed (e.g., *M.S.S. v. Belgium and Greece*, no. [30696/09](#)). In Indigenous land rights cases involving long-term exclusion, the Court could issue general measures or recommendations under Article 46 of the ECHR, on the binding force and execution of judgments, encouraging states to adopt legislation or administrative frameworks that recognize and protect customary tenure.

VI. CONCLUSION

The *Lhaka Honhat v. Argentina* and *Handölsdalen Sami Village v. Sweden* cases highlight two distinct approaches to Indigenous land rights within regional human rights systems. The IACtHR adopted a broad and intersectional interpretation of rights, integrating cultural, environmental, and collective dimensions into its reasoning and remedies. In contrast, the ECtHR applied a more restrained, procedural approach focused on individual rights and evidentiary standards grounded in national legal frameworks.

While both courts addressed similar underlying issues, namely, Indigenous claims to ancestral land and cultural survival, their methodologies and legal tools produced notably different outcomes. The IACtHR’s recognition of collective property, culturally informed evidence, and positive state obligations marked a significant development in regional human rights jurisprudence. The ECtHR’s decision, although consistent with its established principles, did not engage with Indigenous-specific rights frameworks or adapt its reasoning to the collective nature of the claims.

These cases suggest that broader interpretive flexibility and engagement with international Indigenous rights standards may be necessary to more fully address the complexities of Indigenous land claims. Comparative analysis can thus serve as a basis for legal evolution within human rights systems, encouraging courts to consider alternative models of recognition, adjudication, and remedy.