

RECONCEPTUALISING CULTURAL RIGHTS: TOWARD A DECOLONIAL AND INCLUSIVE FRAMEWORK IN INTERNATIONAL HUMAN RIGHTS LAW

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Abstract: *Cultural rights remain underdeveloped and marginalised within international human rights law, often defined by vague or state-centric frameworks that reflect Eurocentric values. This article critically re-examines the normative foundations of cultural rights as articulated in core instruments such as the ICCPR, ICESCR, UNESCO declarations, and ILO Convention 169 which conceive culture as place-based, collective, and evolving. It argues that dominant interpretations of cultural rights are shaped by Western liberal assumptions, privileging individual expression and minority recognition while neglecting the collective, historically situated, and self-determined character of culture in non-Western societies. Drawing on decolonial theory, the article exposes how existing legal regimes systematically exclude Indigenous, African, and other Global South epistemologies. It highlights the persistence of “epistemic injustice” through institutional biases, colonial legacies, and the suppression of customary norms. Through case studies from Latin America and Africa including Bolivia’s and Ecuador’s plurinational constitutions, the Atrato River case, and the African Charter’s communitarian ethos, the article illustrates how Indigenous peoples have advanced alternative models rooted in legal pluralism and cultural autonomy. It proposes a practicable, inclusive framework that entails recognising communities as rights-holders, making FPIC and cultural impact assessment binding, entrenching legal pluralism with equality safeguards, and securing remedies and resources are realised. The article concludes with concrete statutory and judicial design tools to make cultural rights justiciable and enforceable.*

Key words: *Cultural Rights; Legal Pluralism; Decolonial Theory; Indigenous Peoples; Human Rights Law*

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1. INTRODUCTION

Cultural rights have long occupied a marginal place in international law, treated as an afterthought and often undefined in the founding instruments. As Donders¹ observes, the core treaties do not define ‘culture’ or ‘cultural rights’ in their text. The

¹ Yvonne Donders, ‘Cultural Human Rights and the UNESCO Convention: More than Meets the Eye?’ in Christiaan De Beukelaer, Miikka Pyykkönen and JP Singh (eds), *Globalization, Culture, and Development: The UNESCO Convention on Cultural Diversity* (Palgrave Macmillan UK 2015) 117 https://doi.org/10.1057/9781137397638_9 accessed 30 May 2026.

authoritative interpretation for these concepts has instead been established by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 21 (2009)² and the Human Rights Committee (HRC) in its General Comment No. 23 (1994).³ In practice, cultural claims are framed either as minority rights⁴ or as parts of broader social rights.⁵ The dominant discourse remains Eurocentric, reflecting Western notions of individualism and secular culture. In this paradigm, practices and worldviews of colonised and non-Western peoples were frequently delegitimised or ignored. For example, Canadian colonial law once outlawed Indigenous ceremonies (the Potlatch, Sundance, etc.) that were core to Indigenous legal and cultural identity.⁶ These colonial legacies survive: international cultural rights regimes often subordinate group and community interests to majority norms. Critics from postcolonial and decolonial theory note that the “universal” human rights system enshrines Western values and silences non-Western epistemologies.⁷

In this article, “culture” is defined as a living, dynamic ensemble of meanings and practices, ways of life, language, arts, belief, rituals, environments, and traditions through which people express identity and give life meaning.⁸ “Cultural rights” refer to everyone’s rights to participate in, access, and contribute to cultural life on equal terms, with State duties to respect, protect, and fulfil these rights and ensure availability, accessibility, acceptability, adaptability, and appropriateness; for minorities, this includes enjoying their own culture, religion, and language, sometimes tied to land/resources, with positive measures for survival and development.⁹ In plain terms, culture is the evolving way people live and find meaning, and cultural rights are everyone’s equal ability to live, access, and shape that cultural life.

The urgency of addressing cultural rights is heightened in the current global climate. In the age of globalisation, migration, Indigenous resurgence, and identity-based conflict, cultural identity has become central to political struggles and legal reform. Movements for restitution, land rights, language revival, and epistemic justice all point to a growing demand for the recognition of culture not just as heritage but as a living, self-determined framework of meaning and governance. Cultural rights are not merely symbolic; they are entangled with economic survival, community cohesion, and the ability to flourish on one’s own terms.

Yet despite these global shifts, scholarly and legal frameworks remain insufficiently developed, particularly when it comes to integrating decolonial theory into treaty interpretation and international jurisprudence. While international instruments such as the UNESCO Convention on the Diversity of Cultural Expressions (2005), ILO

² Committee on Economic, Social and Cultural Rights, ‘General Comment No 21: Right of Everyone to Take Part in Cultural Life (Art 15, para 1(a), of the Covenant)’ (21 December 2009) UN Doc E/C.12/GC/21, paras 11–13.

³ Human Rights Committee, ‘General Comment No 23: Article 27 (Rights of Minorities)’ (8 April 1994) UN Doc CCPR/C/21/Rev.1/Add.5, para 7.

⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 27.

⁵ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 15.

⁶ Vanessa Tümsmeyer, ‘Indigenous Sacred Heritage on the National Level: Federal Canadian Law and Canadian Museums’ in Vanessa Tümsmeyer (ed), *Repatriation of Sacred Indigenous Cultural Heritage and the Law: Lessons from the United States and Canada* (Springer International Publishing 2022) 305–366 https://doi.org/10.1007/978-3-030-89047-6_6 accessed 30 May 2026.

⁷ Bonny Ibhawoh, ‘Inalienable Dignity: Writing Counterhegemonic Universal Human Rights Histories’ (2023) 70 *Ethnohistory* 187 <https://doi.org/10.1215/00141801-10266858> accessed 30 May 2026.

⁸ CESCR, ‘General Comment No 21’ (n 2) paras 10–13.

⁹ CESCR, ‘General Comment No 21’ (n 2) paras 15–16; HRC ‘General Comment No 23’ (n 3) paras. 6.2–7, 9.

Convention 169 (1989), and the UN Declaration on the Rights of Indigenous Peoples (2007) gesture toward pluralism, they often remain tethered to state-centric models. These models tend to incorporate Indigenous or customary cultures only to the extent that they are legible or manageable within dominant legal frameworks. What is lacking is a coherent approach that centres community agency, historical redress, and plural legal recognition as core to cultural rights. Historically, participation in international standard-setting has been state-centric because delegations are appointed and financed by states, accreditation rules privilege states and large International Non-Governmental Organizations (INGOs) and working languages and travel costs create linguistic and resource barriers. Colonial legacies also de-legitimised oral, place-based knowledge, while evidentiary and IP frameworks have tended to favour written, Western epistemologies over customary law and community protocols.¹⁰ Although Indigenous participation has improved in some fora, access remains uneven across institutions and regions, and consultation is often ad hoc or tokenistic rather than structurally guaranteed.

The article adopts a purposive comparative focus on Latin America and Africa because these regions provide the densest, most coherent doctrinal pathways for the article's thesis that cultural rights are collective, territorially grounded, and compatible with legal pluralism. In Latin America, plurinational constitutions and sustained Inter-American jurisprudence (e.g., communal property, FPIC, and territorially anchored culture) develop a systemic line of authority linking culture to land, governance, and remedies. In Africa, the African Charter's communitarian architecture, together with landmark African Commission/Court decisions, articulates a regional vocabulary of culture as collective identity tied to territory and participation. By contrast, a full treatment of Europe/ECtHR and Australia is bracketed for reasons of analytic fit and scope. ECtHR case law, while sophisticated, centres individual/minority frames and the margin of appreciation, with limited engagement with collective territorial title or formal legal pluralism.¹¹ Australia's Native Title/heritage regimes constitute a jurisdiction-specific doctrinal field whose depth would require separate analysis. Given space constraints, the article develops its argument where constitutional text, regional jurisprudence, and the decolonial lens converge most strongly while acknowledging Europe and Australia.

Thus, there is a pressing need to reconceptualise cultural rights through a decolonial, pluralistic lens. This means recognising cultural rights not only as individual entitlements but as inherently collective, contextual, and historically situated. It also demands addressing embedded power structures that have marginalised indigenous, African, and other non-Western traditions. This article begins by tracing the normative foundations of cultural rights in international law, including treaty provisions, declarations, and relevant interpretive commentaries. It then applies a decolonial critique to reveal how Eurocentric assumptions continue to structure these frameworks. Special attention is paid to the Latin American and African contexts, where constitutional innovations and customary legal traditions challenge Western legal orthodoxy. The article engages leading case law authorities, including the *Awes Tingni*, *Saramaka*, *Sarayaku*, *Endorois*, *Ogiek*, and *Atrato* cases to demonstrate how culture is legally tied to territory, participation, and effective remedies. Finally, the article proposes an inclusive framework

¹⁰ Kenneth Uyi Abudu, 'Colonial Legacy and Knowledge Production in Africa: Re-Echoing the Need for Epistemic Decolonisation' in Dennis Masaka (ed), *Knowledge Production and the Search for Epistemic Liberation in Africa* (Springer International Publishing 2022) 49 https://doi.org/10.1007/978-3-031-07965-8_5 accessed 21 October 2025.

¹¹ Jan Mikael Lundmark, *The European Court of Human Rights for the Protection of Arctic Indigenous Peoples' Land Rights* (LLM thesis, University of Akureyri 2017) 106.

that integrates legal pluralism, cultural self-determination, and community-defined justice into the theory and practice of cultural rights.

2. THE NORMATIVE FOUNDATIONS OF CULTURAL RIGHTS IN INTERNATIONAL LAW

The principal international instruments touching on “cultural rights” include the Universal Declaration of Human Rights (UDHR), the two 1966 Covenants, and various UNESCO instruments. UDHR Article 27(1) famously provides that “*everyone has the right freely to participate in the cultural life of the community,*” albeit the UDHR does not elaborate this further. The ICCPR does not explicitly state a right to culture, except indirectly by recognising minority group rights in Article 27. Article 27 states that in countries with ethnic, religious or linguistic minorities, persons “*shall not be denied the right, in community with the other members of [their] group, to enjoy their own culture.*” This is an individual right exercisable in community with others as it is consistent with the Human Rights Committee’s General Comment No. 23, and its protection does not depend on formal state recognition of minority status, although the provision remains framed as an individual/minority guarantee rather than a collective peoples’ right.¹² The ICESCR is broader: Article 15(1)(a) recognises “*the right of everyone to take part in cultural life*” and (1)(c) guarantees “*benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production*”. These clauses establish a right to cultural participation and to the fruits of creative work. In practice, these have been interpreted to mean States must create enabling conditions (education, freedom of expression, protection of traditional knowledge, etc.). For example, UNESCO’s 2001 Declaration on Cultural Diversity explicitly links these provisions: the flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the UDHR and in Articles 13 and 15 of ICESCR, and affirms that “*All persons have the right to express themselves and to create and disseminate their work in the language of their choice, and particularly in their mother tongue.*”¹³ This Declaration typifies the view that cultural rights are an integral part of human rights, which are universal, indivisible and interdependent.

Aside from these Covenantal provisions, UNESCO has pioneered normative statements on culture. The Universal Declaration on Cultural Diversity of 2001 declares that cultural rights form an enabling environment for human rights: “*the defence of cultural diversity implies a commitment to human rights*”, and cautions that “*no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.*”¹⁴ This stance implies that cultural practices may be limited to protect individual rights, reflecting a universalist-human-rights framework. UNESCO’s Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005 likewise situates culture in the context of human rights and state sovereignty.¹⁵ Donders¹⁶ notes that the 2005 Convention “*contains guiding principles*” including “*respect for human rights and fundamental freedoms*” and its Preamble affirms that cultural diversity is important for the full realisation of human rights. However, the Convention is

¹² HRC ‘General Comment No 23’ (n 3) paras. 5.1, 7.

¹³ UNESCO Universal Declaration on Cultural Diversity, adopted by the General Conference of UNESCO at its 31st session, 31 C/Resolution 25 (2 November 2001) art 4-5.

¹⁴ Ibid., art 4.

¹⁵ Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted 20 October 2005, entered into force 18 March 2007) 2440 UNTS 311, arts 2(1), 2(2), 5.

¹⁶ Donders (n 1).

primarily an inter-state trade/cultural-policy instrument: it does not contain substantive human rights for individuals and indeed gives rights to States to determine cultural policies rather than enumerating rights of persons. In sum, existing instruments endorse the notion that culture is protected, but often within a Westphalian/legalistic framework: culture is something communities enjoy or participate in but always mediated by the state (as guarantor or regulator). As noted in the introduction, these core treaties are silent on definitions of “culture” or “cultural rights,” but authoritative interpretations supply the content in CESCR General Comment No. 21 of 2009 and HRC General Comment No. 23 of 1994. This vagueness has allowed cultural claims to be flexibly interpreted, but also to be overlooked. Again, Donders¹⁷ observes that international law leaves open which specific cultural interests are protected.

Other parts of the international system further colour the norm. The International Labour Organization’s Convention 169 (1989) on Indigenous and Tribal Peoples is specific to Indigenous contexts: it recognises *“the aspirations of [Indigenous peoples] to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions”* in its (preamble).¹⁸ Convention 169 and the later UN Declaration on the Rights of Indigenous Peoples (2007) extend cultural rights into the realm of self-determination: e.g. UNDRIP Article 31 affirms that *“Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions...”*¹⁹ Similarly, regional systems have provisions: the American Convention on Human Rights²⁰ does not explicitly mention culture, but the African Charter on Human and Peoples’ Rights explicitly embeds communal culture.²¹ Article 17(2) of the African Charter provides that *“Every individual may freely take part in the cultural life of his community”*, and Article 17(3) adds a state duty: *“The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.”* Moreover, Article 29(7) of the African Charter imposes a positive duty on individuals *“to preserve and strengthen positive African cultural values”*. These provisions are unusual in human rights law for explicitly linking state and individual duties to the protection of community-recognised culture. In this way, the African Charter treats culture as inherently social and intergenerational.

In sum, the normative foundations of cultural rights are fragmented. They range from (i) individual rights to participate in cultural life to (ii) collective safeguards for group identity to (iii) state obligations to respect and promote traditional values. But these rules remain rooted in Western legalism: culture is conceptualised as an aspect of life that can be claimed under existing categories. UNESCO declarations encourage broad interpretations yet stop short of a robust right. Donders²² reiterates that UNESCO’s texts *“reaffirm the connection with human rights”* but do not create *“substantive human rights for individuals/communities”* in their own right. The machinery of UNESCO, the OHCHR

¹⁷ Yvonne Donders, ‘Foundations of Collective Cultural Rights in International Human Rights Law’ (Amsterdam Center for International Law 2015) 2015–12, 5 <https://doi.org/10.2139/ssrn.2622424> accessed 15 March 2026.

¹⁸ Indigenous and Tribal Peoples Convention 1989 (No 169) (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383, preamble; art 7(1).

¹⁹ United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UNGAOR, 61st sess, Supp No 49, UN Doc A/RES/61/295 (13 September 2007), art 31(1).

²⁰ American Convention on Human Rights, ‘Pact of San Jose, Costa Rica’ (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

²¹ African Charter on Human and Peoples’ Rights (‘Banjul Charter’) (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), arts 17(2), 17(3), 22, 29(6).

²² Donders (n 1).

and others shows growing interest, but international cultural rights remain subsumed under other headings.

3. A DECOLONIAL CRITIQUE OF CULTURAL RIGHTS

The eurocentrism of the current framework becomes evident under critical scrutiny. From a decolonial perspective, the universalist language of human rights and culture often masks a dominant Western normativity.²³ Postcolonial critics note that cultural rights in international law were formulated in a milieu that valorised certain conceptions of culture while dismissing or pathologising others. For example, early human rights discourse often labelled non-European traditions as “superstitious” or backward.²⁴ Guenther²⁵ posited that European colonial powers used law to suppress and redefine indigenous culture: Canada’s Indian Act famously outlawed Potlatch and Sundance ceremonies, central rituals through which Indigenous peoples expressed law and values by labelling them criminal sorcery. Many indigenous peoples were forced to practice key ceremonies underground or face punishment.²⁶ Residential schools further attempted to “destroy Aboriginal cultures and languages” through forced assimilation.²⁷ These experiences emphasise that the right to culture was long denied to colonised peoples by the same legal system that later proclaimed universal rights.

Notably, CESCR General Comment 21 of 2009 and HRC General Comment 23 of 1994 already recognise culture as place-based, collective, and evolving; however, implementation remains largely state-mediated, which is the core concern of the critique that follows.²⁸ Postcolonial theory also critiques the very categories of the rights discourse. The emphasis on individual participation as provided for in Article 27 of the UDHR or on “minority” culture provided in Article 27 of the ICCPR can decontextualise culture as a mere preference detached from power. It imposes a liberal template on collectivities. Decolonial scholars like Santos²⁹ and Mignolo³⁰ argue that what counts as “culture” or “tradition” in international law is filtered through an imperial lens: practices of the Global South are often suspected of violating “human rights” (as in debates over female genital cutting, tribal punishments, etc.), whereas Western cultural norms face less scrutiny. This reproduces a subtle form of cultural hierarchy. As Mignolo³¹ puts it, international human rights law has silences of knowledge that ignore non-Western epistemologies.

²³ Matthew Lower, ‘Can and Should Human Rights Be Universal?’ (*E-International Relations*, 1 December 2013) <https://www.e-ir.info/2013/12/01/can-and-should-human-rights-be-universal/> accessed 15 June 2025.

²⁴ Makau Mutua, ‘Savages, Victims, and Saviors: The Metaphor of Human Rights’ (2001) 42 *Harvard International Law Journal* 201.

²⁵ Lisa Guenther and DePaul University, ‘Property, Dispossession, and State Violence: The Criminalization of Indigenous Resistance in Canada’ (2023) 67 *Philosophy Today* 81 <https://doi.org/10.5840/philtoday202321469> accessed 30 May 2026.

²⁶ Christine Diindiisi McCleave and others, ‘Traditional and Indigenous Perspectives on Healing Trauma With Psychedelic Plant Medicines’ (2024) 22 *International Journal of Mental Health and Addiction* 938 <https://doi.org/10.1007/s11469-024-01252-w> accessed 30 May 2026.

²⁷ Gloria Park, ‘Colonialism and the Failure of Retribution in the Canadian Justice System: How to Support Indigenous Offenders’ [2021] *Revue YOUR Review* (York Online Undergraduate Research) <https://yourreview.journals.yorku.ca/index.php/yourreview/article/view/40526> accessed 15 June 2025.

²⁸ CESCR, ‘General Comment No 21’ (n 2) paras 11–13; HRC, ‘General Comment No 23’ (n 3) paras 3.2, 7.

²⁹ Santos Boaventura de Sousa, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (2nd edn, Northwestern University Press 2002).

³⁰ Walter D Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (Duke University Press 2011).

³¹ *Ibid.*

A decolonial lens also highlights epistemic inequality: whose knowledge shapes cultural rights? Global negotiations (e.g. UNESCO meetings, UN forums) are dominated by states and experts from industrialised countries. As noted earlier, under-representation of Indigenous and local knowledge-holders persists because participation in international norm-setting remains state-centric, so community knowledge seldom shapes agendas. Consequently, treaties often protect culture only in narrow ways, for example, under the heading of "intellectual property" for folklore or "education" for language rights rather than enabling living cultural systems on their own terms. The result is what Santos³² calls "abyssal thinking," which is a binary between a (modern, universal) legal order and a (traditional, backward) cultural spheres. Decolonial theorists demand that legal regimes recover the plurality of cultural orders, valuing them equally. In practical terms, this means rethinking cultural rights to allow cultures to define their own practices, blending tradition with modernity, and not treating culture as a static relic. Crucially, it means acknowledging that cultural survival often depends on land and resources: colonialism severed peoples from their territories, which are the wellsprings of culture.

This land–culture nexus is jurisprudentially affirmed in leading decisions such as *Mayagna (Sumo) Awas Tingni Community v Nicaragua*,³³ *Saramaka People v Suriname*,³⁴ *Kichwa Indigenous People of Sarayaku v Ecuador*,³⁵ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*,³⁶ *African Commission on Human and Peoples' Rights v Kenya (Ogiek)*,³⁷ and *Atrato*³⁸ and each linking culture to territory, participation/FPIC, and effective remedies. Within the African regional system, the African Commission's Working Group on Indigenous Populations/Communities applies contextual criteria of self-identification, historical continuity, cultural distinctiveness, marginalisation, and special attachment to ancestral lands/resources to guide identification and analysis.

The shortcomings of the existing discourse are increasingly evident in debates. Critics argue, for instance, that human rights language of preservation can freeze cultures or, worse, become an excuse to regulate them. The UNESCO 2001 Declaration's insistence that cultural diversity be protected in accordance with human rights sounds neutral, but in practice it often empowers judges or bureaucrats to limit culture if deemed illiberal. Thus, many see cultural rights as a double-edged sword enabling recognition of difference in theory, but often subordinated to a singular human rights frame in practice.

Decolonial theory further questions the focus on states as guarantors. Colonial states-imposed borders and identities, suppressing legal pluralism. By "Westphalian" I refer to the state-mediated governance of cultural life (including language policy, school curricula, heritage/museum regulation, and family law) through which the state asserts

³² 'Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges', in Boaventura De Sousa Santos, *Epistemologies of the South* (0 edn, Routledge 2015) <https://doi.org/10.4324/9781315634876-14> accessed 15 June 2025.

³³ *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 79 (31 August 2001).

³⁴ *Saramaka People v Suriname* (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 172 (28 November 2007).

³⁵ *Kichwa Indigenous People of Sarayaku v Ecuador* (Merits and Reparations) Inter-American Court of Human Rights Series C No 245 (27 June 2012).

³⁶ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication No 276/2003 (African Commission on Human and Peoples' Rights, 4 February 2010).

³⁷ *African Commission on Human and Peoples' Rights v Kenya* (Merits) Application No 006/2012 (African Court on Human and Peoples' Rights, 26 May 2017) ('Ogiek').

³⁸ Corte Constitucional de Colombia, Sentencia T-622/16 (10 November 2016) ('Atrato').

a regulatory prerogative over culture; this structural positioning can misalign with community self-determination, particularly where culture is inseparable from land, spirituality, and customary authority. From this view, cultural rights are incomplete without political empowerment. The UNDRIP and ILO 169 attempt to bridge this by linking culture to self-government and free, prior and informed consent. Yet even UNDRIP required a fierce struggle to be adopted, and many states still resist recognising collective governance. A truly decolonial approach would treat cultural rights as inseparable from communal political rights, including cultural self-determination on their own terms, while retaining non-derogable safeguards of dignity and equality. Scholars increasingly argue that cultural communities must shape their own destinies, not merely seek tolerance within dominant state systems. This principle aligns with Article 1 of the ICCPR and ICESCR, which affirms all peoples' right to self-determination. Kymlicka³⁹ contends that cultural groups need not just equal treatment, but the institutional autonomy to preserve and reproduce their cultural identity. Macklem⁴⁰ similarly views cultural self-determination as a response to historical injustice, requiring international law to recognise Indigenous peoples' distinct legal systems. Anaya⁴¹ further emphasises that Indigenous communities are entitled to control their political, economic, and cultural development, as reflected in UNDRIP Articles 3–5.

4. INDIGENOUS PEOPLES IN LATIN AMERICA: CULTURE, LAW AND AUTONOMY

Latin America provides a rich case study of cultural rights in action, given its large Indigenous populations and recent "plurinational" constitutional experiments. In the 1990s–2000s, countries like Colombia, Ecuador, Bolivia, Mexico and others rewrote their constitutions under pressure from Indigenous movements.⁴² These reforms did not merely acknowledge minority languages; they declared legal pluralism and indigenous autonomy. For example, according to Van Cott,⁴³ Bolivia's and Colombia's reforms institutionalised spheres of cultural and territorial autonomy for Indigenous peoples, embedding recognition of ethnic diversity and political participation into supreme law. The resulting constitutions explicitly guarantee collective cultural rights. Article 30 of Bolivia's 2009 Constitution explicitly recognises Indigenous cultural identity, languages, spiritual practices, customary institutions, and consultation through their own institutions on measures affecting them. It grants Indigenous nations the right to their cultural identity, spiritual practices, languages, customs, and worldviews; to use and promote their traditional knowledge, languages, rituals, symbols, and dress; and, crucially, to be consulted through their own institutions on any laws or policies affecting them, including development and resource governance. Ecuador's 2008 constitution similarly recognises the indigenous peoples' inherent right to preserve their distinct cultural identity and

³⁹ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (1st edn, Oxford University Press/Oxford 1996) 76–77, 113, 182–83 <https://doi.org/10.1093/0198290918.001.0001> accessed 19 March 2026.

⁴⁰ Patrick Macklem, 'Indigenous Recognition in International Law: Theoretical Observations' (2008) 30 *Michigan Journal of International Law* 177, 179, 202, 209.

⁴¹ S James Anaya, *Indigenous Peoples In International Law: Second Edition* (Oxford University Press/New York, NY 2004) p. 7–9, 100 <https://doi.org/10.1093/oso/9780195173499.001.0001> accessed 19 March 2026.

⁴² Donna Lee Van Cott, 'Constitutional Reform in the Andes: Redefining Indigenous-State Relations' in Rachel Sieder (ed), *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy* (Palgrave Macmillan UK 2002) https://doi.org/10.1057/9781403937827_3 accessed 30 May 2026.

⁴³ Donna Lee Van Cott, *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America* (University of Pittsburgh Press 2012).

traditional forms of governance, including the autonomy to practice their customary laws. Article 2 of Mexico's Constitution reformed in 2001 and reinforced by the 2011 human-rights reform recognises Indigenous peoples' self-determination and the right to apply their own normative systems (*usos y costumbres*), including jurisdiction over internal affairs, subject to constitutional rights.⁴⁴

These norms reflect Indigenous conceptions of culture as inseparable from territory, community and governance. For many Latin American groups, culture includes not only language and art but also 'cosmovision,' land-use practices, communal justice and self-government. International law has gradually caught up: Articles 6 and 7 of the ILO Convention 169, widely ratified in the region, require states to respect the unique indigenous understandings of land and heritage, and, crucially, to consult with indigenous communities before implementing any legislative changes that might affect them. While ILO 169 entrenches consultation, the Inter-American Court has held that FPIC is triggered for large-scale projects or profound impacts, adding duties of impact assessment and benefit-sharing alongside consent.⁴⁵ These treaty commitments have been operationalised in practice through landmark Inter-American jurisprudence, notably the following cases.

*Awas Tingni v. Nicaragua*⁴⁶ recognised communal property based on traditional occupation and ordered delimitation, demarcation, and titling, expressly tying collective tenure to the community's cultural survival. Building on that foundation, *Saramaka People v. Suriname*⁴⁷ held that large-scale extractive or infrastructure projects on tribal territory trigger heightened state duties: independent impact assessment, benefit-sharing, and free, prior and informed consent (FPIC) where impacts are substantial because territorial control is indispensable to cultural continuity and self-determination. In *Pueblo Indígena Kichwa de Sarayaku v. Ecuador*,⁴⁸ the Court condemned authorising oil activities without prior consultation/FPIC, affirming participation as a procedural guarantee of cultural survival and recognising the community's spiritual and cultural relationship to its territory. Related Paraguay decisions like *Yakye Axa Indigenous Community v Paraguay*⁴⁹ and *Sawhoyamaya Indigenous Community v Paraguay*⁵⁰ ordered restitution/titling of ancestral lands to remedy violations affecting life, identity, and culture, reinforcing that land is the material basis of culture. At the national level, Judgment T-622/16⁵¹ declared the river a subject of rights and fashioned biocultural remedies grounded in Indigenous and Afro-Colombian peoples' relationships to territory. Taken together, these authorities show that Latin American doctrine treats culture as territorial, collective, and participatory, aligning with this article's decolonial and legal-pluralist reframing.

⁴⁴ Constitución Política de los Estados Unidos Mexicanos, art 2(A); Decreto por el que se reforman y adicionan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, Diario Oficial de la Federación, 14 August 2001; Decreto por el que se modifica la denominación del Capítulo I del Título Primero y reforma diversos artículos de la Constitución Política de los Estados Unidos Mexicanos, Diario Oficial de la Federación, 10 June 2011.

⁴⁵ Indigenous and Tribal Peoples Convention 1989 (n 18) arts. 6-7; *Saramaka* (n 34) 129, 133–137; *Sarayaku* (n 35) paras 201–211, 217–220.

⁴⁶ *Awas Tingni* (n 33) paras 149, 151, 153, 164.

⁴⁷ *Saramaka* (n 34) paras 129, 133–137, 194(d)–(e).

⁴⁸ *Sarayaku* (n 35) paras 159–160, 183, 205, 217, 322.

⁴⁹ (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 125 (17 June 2005) paras 135–137, 146, 211–217.

⁵⁰ (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 146 (29 March 2006) paras 121, 124, 144, 210–215

⁵¹ *Atrato* (n 38), Corte Constitucional de Colombia, Sala Sexta de Revisión, Sentencia T-622/16, 10 November 2016, 140, 154.

Colombia's Constitution recognises indigenous jurisdiction under article 246, allowing Indigenous authorities to administer justice within their territories according to their norms, subject to constitutional and fundamental-rights limits. The Constitutional Court has clarified both scope and safeguards, affirming autonomy while requiring due process in T-349/96 and SU-510/98; it has also enforced consultation/FPIC duties in resource contexts.⁵² In T-622/16,⁵³ the Court declared the river a subject of rights and ordered - community co-guardianship and other biocultural remedies, grounding protection in Indigenous and Afro-Colombian peoples' relationships to territory.

Legal scholarship highlights how the Latin American experience is an example of post-colonial legal pluralism. Inksater⁵⁴ describes a model where state law recognises indigenous customary law on issues like land, family, or justice. Under this model, colonised communities regain some measure of self-rule within the state, enshrining their own legal traditions alongside national law. As Inksater⁵⁵ explains, postcolonial legal pluralism refers to the coexistence of different laws for different groups, subsumed within the state legal order. In practice, this means, for example, that an indigenous community may hold ceremonies, enforce customs, or adjudicate internal disputes according to its own norms (subject to the constitution), and claim that as a matter of right. Some constitutional courts have embraced this pluralism. Colombia's Constitutional Court has, in some cases, recognised indigenous communities' authority to manage traditional natural resources according to their customs.⁵⁶

However, tensions persist. There is debate over whether these constitutional promises are effectively implemented. Development projects (mining, dams, highways) continue to threaten indigenous lands and cultures. Indigenous leaders often demand "cultural self-determination," which is the ability to decide on development and cultural programs but many states have treated cultural rights as secondary to national economic policy.⁵⁷ Nonetheless, the normative shift is significant: Latin American states now publicly acknowledge that Indigenous culture is part of the nation's fabric, and Indigenous communities are at least formally rights-holders (not merely minorities). These developments demonstrate an alternative model: one that treats culture not as private preference but as collective heritage requiring substantive self-governance and consultation.⁵⁸

In legal theory, scholars of Latin America emphasise this as a move from assimilationist policies toward "cultural citizenship." Boaventura de Sousa Santos⁵⁹ advocates for "intercultural constitutionalism," a legal framework that embraces and integrates diverse legal systems and cultures within a single political entity, moving

⁵² Corte Constitucional de Colombia, Sentencia T-349/96, 8 August 1996; Corte Constitucional de Colombia, Sentencia SU-510/98, 18 September 1998.

⁵³ *Atrato* (n 38) 140, 154, paras 9.27–9.31.

⁵⁴ Kimberly Inksater, 'Transformative Juricultural Pluralism: Indigenous Justice Systems in Latin America and International Human Rights' (2010) 42 *The Journal of Legal Pluralism and Unofficial Law* 105 <https://doi.org/10.1080/07329113.2010.10756638> accessed 30 May 2026.

⁵⁵ *Ibid.*

⁵⁶ Juan C Herrera, 'Judicial Dialogue and Transformative Constitutionalism in Latin America: The Case of Indigenous Peoples and Afro-descendants' (2019) *Revista Derecho del Estado* 191 <https://doi.org/10.18601/01229893.n43.08> accessed 30 May 2026.

⁵⁷ Siegfried Wiessner, 'The Cultural Rights of Indigenous Peoples: Achievements and Continuing Challenges' (2011) 22 *European Journal of International Law* 121 <https://doi.org/10.1093/ejil/chr007> accessed 30 May 2026.

⁵⁸ Thornhill Chris and others, 'Legal Pluralism? Indigenous Rights as Legal Constructs' (2018) 68 *University of Toronto Law Journal* 440 <https://doi.org/10.3138/utlj.2017-0062> accessed 30 May 2026.

⁵⁹ Santos (n 32).

beyond a monolithic, Eurocentric view of law.⁶⁰ Yet they also warn against an overly static idea of culture: culture should not be reified as a fixed ethnicity.⁶¹ Indeed, many indigenous constitutions acknowledge change and mixture (e.g. Bolivia's "plurinational" concept implies ongoing negotiation). The Colombian Constitutional Court in the *Atrato River case*⁶² has even articulated an indigenous right to cultural diversity, holding that the state must protect not just specific traditions but the very process of cultural identity formation. In short, Latin American indigenous peoples have leveraged international and regional norms to assert cultural rights in a communal and autonomous sense. They illustrate how integrating indigenous legal traditions into human rights law can move beyond Eurocentric individualism.

5. AFRICAN CUSTOMARY LAW AND COLLECTIVE CULTURAL RIGHTS

Africa too has its own history of communal culture and legal pluralism. Although the post-colonial state system initially privileged Western-style law, many African countries continued to officially recognise customary law for personal and land matters. Today, African human rights instruments explicitly emphasise community and traditional values. Notably, the African Charter on Human and Peoples' Rights of 1981 intertwines individual and collective dimensions. Article 17(2) affirms that "Every individual may freely take part in the cultural life of his community." More unusually, Article 17(3) declares it a duty of the state "to promote and protect the morals and traditional values recognized by the community." And Article 29(7) goes further by placing a duty on each person "to preserve and strengthen positive African cultural values". Strohwald⁶³ emphasises that this duty-based language reflects a communitarian ethos: the African Charter treats culture as a public good that states and citizens alike must nurture. In other words, culture in the African human rights context is not just an individual right, but a shared heritage requiring collective stewardship.

Within the African system, the African Commission's Working Group on Indigenous Populations/Communities applies contextual criteria to guide identification and analysis.⁶⁴ In the *Endorois case*,⁶⁵ the Commission held that the eviction of the Endorois from their ancestral lands violated culture, religion, property, natural resources, and development rights under articles 17, 8, 14, 21, and 22 of the African Charter and ordered the restitution of ancestral land, compensation/benefit-sharing, and effective participation in decision-making. In *Ogiek case*,⁶⁶ long-standing restrictions in Kenya's Mau Forest infringed cultural life and property, among other Africa Charter guarantees including articles 1, 2, 8, 14, 17(2)–(3), 21 and 22, emphasising that land is integral to

⁶⁰ Salvatore Bonfiglio, *Intercultural Constitutionalism: From Human Rights Colonialism to a New Constitutional Theory of Fundamental Rights* (Routledge 2018) <https://doi.org/10.4324/9780429401466> accessed 30 May 2026.

⁶¹ Susmita Bhattacharya, 'Cultural Identity and Beyond: Hybridization of Culture in Global Context: A Critical Analysis' (2022) 10 *Journal of Research in Humanities and Social Science* 73.

⁶² *Atrato* (n 38).

⁶³ Annemarie Strohwald, 'An Analysis of the Role of African Values, Traditions and Morals in the Interpretation of Children's Rights' (2023) 26 *Potchefstroom Electronic Law Journal* (Published on 12 October 2023) 1 <https://doi.org/10.17159/1727-3781/2023/v26i0a14472> accessed 30 May 2026.

⁶⁴ African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (ACHPR and IWGIA 2005) 88–90.

⁶⁵ *Endorois* (n 36) paras 173, 238, 241, 249–251, 277, 291, 298.

⁶⁶ *Ogiek* (n 37) paras 112, 128, 190, 210–217; *African Commission on Human and Peoples' Rights v Kenya* (Reparations) Application No 006/2012 (African Court on Human and Peoples' Rights, 23 June 2022) paras 115–116, operative part iv–v.

cultural identity and requiring recognition of collective tenure together with remedial measures and meaningful consultation. Read with Articles 21 (natural resources), 22 (development), and 24 (environment), these decisions protect culture indirectly through territory, livelihoods, and a healthy environment.⁶⁷ Although the Charter does not use the term FPIC, African bodies require prior, informed and effective participation; where measures have significant or potentially irreversible impacts on lands and culture, consent-like safeguards, impact assessment, and benefit-sharing apply.⁶⁸

Saul,⁶⁹ points out that the Charter thus offers strong protection to cultural rights by embedding them in community and peoples' rights. For example, many African constitutions now enshrine the role of tradition. The South African Constitution of 1996 recognises customary law and institutions as part of the legal system, as long as they are consistent with rights.⁷⁰ Several countries mandate education about cultural heritage or establish councils of elders. Moreover, the African Commission on Human and Peoples' Rights has begun to interpret culture through an African lens: its (non-binding) conclusions on cultural rights emphasise indigenous modes of dispute resolution, community land tenure, and the need to protect intangible heritage. The Commission in its 2017 Report of the Working Group on Indigenous Populations/Communities, Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights emphasises that core "African cultural values" such as communal landholding systems, traditional authority structures, and orally transmitted customary law are integral to Indigenous identity and therefore must be safeguarded even as States pursue modernisation and large-scale development.⁷¹ The Commission links cultural survival to secure collective tenure and the continued operation of customary institutions, warning that rapid industrial development risks eroding these foundations unless Indigenous peoples are properly consulted and their intangible heritage respected.

Across many jurisdictions, customary law forms part of the national legal order, particularly for family, succession, land and community governance, subject to constitutional rights. In practice, communities may adjudicate internal matters, manage communal resources, and maintain cultural life according to their norms; courts simultaneously enforce due process and equality guarantees, ensuring that pluralism does not permit violations of human dignity or gender equality.⁷² This model aligns cultural rights with collective governance while keeping non-derogable safeguards in place.

African customary law itself tends to be inherently communal. Lineage, clan and tribal systems treat land, language, and ritual as group property. In many areas, religious and customary courts hear cases in local communities. While some observers raise concerns about discrimination (e.g. women's rights under patriarchy), the key point is that legal pluralism is widespread. This worldview shapes the approach to cultural rights: rather than focusing on individual autonomy, African discourse often links culture to

⁶⁷ African Charter on Human and Peoples' Rights (n 21) arts 21, 22, 24; African Commission on Human and Peoples' Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment* (adopted 2018) 18.

⁶⁸ African Commission on Human and Peoples' Rights, Report of the African Commission's Working Group on Indigenous Populations/Communities: Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights (2017) 50, 132–134; *Endorois* (n 36) para 291; *Ogiek* (Reparations) (n 37) paras 115–116.

⁶⁹ Ben Saul, *Indigenous Peoples and Human Rights: International and Regional Jurisprudence* (Hart Publishing 2016) 204.

⁷⁰ Constitution of the Republic of South Africa, 1996 ss 30, 31, 211, 212.

⁷¹ ACHPR Extractive Industries Report (n 68) 15–18, 66–71.

⁷² For example, Constitution of the Republic of South Africa, 1996 ss 39(2), 211–212.

development and identity. For instance, the African Charter under its article 22 recognises the collective right of peoples to development, which scholars interpret as including the protection of cultural identity, integrity, and self-determined socio-economic development.⁷³ The ACHPR's 2017 Working Group report on extractives, land, and Indigenous rights similarly links cultural survival to secure collective tenure and the continued operation of customary institutions, warning that rapid industrial development risks eroding these foundations absent proper consultation and respect for intangible heritage.⁷⁴

It bears noting that many African states have historically expressed caution toward the use of formal "indigenous rights" language, largely due to the continent's complex demographic composition and the concern that such terminology could foster ethnic division or claims to separatism. Unlike Latin America, where indigenous populations are often distinguishable from the dominant settler society, most African countries are composed of diverse ethnic groups, many of which consider themselves equally "native" to the land. As a result, the notion of "indigeneity" in Africa does not easily map onto international legal categories.

A 1997 draft declaration on the rights of Indigenous populations by the Organisation of African Unity (OAU) was met with significant resistance from member states and was ultimately shelved due to political and conceptual disagreements over the applicability of the term "Indigenous" in the African context.

Instead, the African human rights discourse has largely adopted a universalist approach with an African perspective, focusing on collective rights and cultural values without always invoking the formal label of "indigenous rights." This is reflected in the African Charter on Human and Peoples' Rights, which grants broad collective rights to "peoples" (e.g., rights to culture, self-determination, and development), allowing space for Indigenous and minority communities without explicitly naming them as such.⁷⁵ In practice, this means collective cultural rights are often claimed as general human rights claims rather than as privileges for certain groups. A prime example is land rights: the African Commission's *Endorois*⁷⁶ decision recognised that the pastoralist Endorois people had a human right to their ancestral land, vital for their way of life (culture, religion, livelihood). Although the Charter itself does not explicitly grant groups management of land, the Commission relied on its Article 21 (right to natural resources) to vindicate the *Endorois*' claim. This reflects an African approach: cultural rights are upheld insofar as they are necessary to community existence, rather than as a stand-alone catalogue of entitlements.

6. TOWARD AN INCLUSIVE FRAMEWORK

Building on the foregoing analysis, an inclusive framework treats cultural rights as collective, place-based, and evolving, as reflected in CESCR General Comment 21 of 2009 and HRC General Comment 23 of 1994. The aim is not to invent a new right *ex nihilo*, but to operationalise existing norms through procedures, institutions and remedies that give communities real agency subject to non-derogable guarantees of human dignity and equality. The framework rests on four interlocking pillars.

⁷³ Saul (n 69) 133–135.

⁷⁴ ACHPR Extractive Industries Report (n 68) 132–134.

⁷⁵ *Ibid* 133–135.

⁷⁶ *Endorois* (n 36).

6.1 Pillar 1: Communities as Rights-Holders, with Voice and Standing

First, communities/peoples must be recognised alongside individuals as bearers of cultural rights with standing before domestic courts and regional bodies. This recognises that many cultural interests are inherently collective (language transmission, ritual practice, sacred sites, customary governance) and are not adequately vindicated through atomised claims. Consistent with regional practice, standing should be assessed using contextual indicators (identity, historical continuity, cultural distinctiveness, marginalisation, and attachment to ancestral lands/resources) rather than rigid labels, ensuring access to justice without re-essentialising identity.⁷⁷ Institutional design matters: states should establish representative cultural councils or analogous bodies mandated to interface with government and industry, with gender-inclusive and youth participation rules to guard against intra-community exclusion. Finally, where domestic remedies are ineffective, communities should have direct access (or facilitated access) to regional mechanisms.

6.2 Pillar 2: FPIC and Cultural Impact Assessment (CIA) as Hard-Law Procedure

Second, procedures must be robust enough to equalise power. ILO Convention 169 requires prior, good-faith consultation with the aim of agreement.⁷⁸ Under Inter-American jurisprudence, where measures have significant or potentially irreversible impacts on territories and cultural life, states must obtain free, prior and informed consent (FPIC) and ensure the procedural bundle of independent impact assessment, benefit-sharing, and meaningful participation.⁷⁹ To avoid box-ticking, the framework should specify CIA (Cultural Impact Assessment) minimum content: (i) cultural baseline (languages, sacred/ritual sites, transmission practices, customary institutions); (ii) effects on place-based relations (including seasonal use, mobility, and spiritual dimensions); (iii) alternatives and no-go thresholds; (iv) mitigation and benefit-sharing measures designed with the community; and (v) a monitoring plan with indicators and triggers for adaptive management. Decisions that authorise projects should contain public reasons addressing each element, with independent review available to communities. Where consent is withheld and impacts are grave, authorisation should not proceed because this is the core of FPIC as a rights-protective standard.⁸⁰

6.3 Pillar 3: Legal Pluralism with Constitutional Safeguards

Third, the framework expressly recognises legal pluralism, not as tolerance at the margins but as a structural feature of cultural rights protection. Postcolonial legal pluralism where different laws apply to different groups within the state order has long been described in the literature.⁸¹ In practice this means recognition of customary forums, norms, and procedures for matters such as land stewardship, community governance, ceremonial life, and family relations, subject to constitutional rights. To manage overlap and conflict, states should codify choice-of-law rules (when state vs. customary norms govern), provide judicial review for fundamental-rights compliance, and require reason-giving when state authorities override community decisions. Anti-capture

⁷⁷ ACHPR Working Group Report (n 64) 88-92.

⁷⁸ Indigenous and Tribal Peoples Convention 1989 (n 18), arts 6(1)(a), 6(2), 7(1), 7(3).

⁷⁹ Saramaka (n 34) paras 129, 133–137, 194(d)–(e); Sarayaku (n 35) paras 205, 211, 217.

⁸⁰ Ibid.

⁸¹ Morad Elsansa, 'Legal Pluralism and Indigenous Peoples Rights: Challenges in Litigation and Recognition of Indigenous Peoples Rights' (2019) 87 University of Cincinnati Law Review; Inksater (n 54).

measures are essential: community institutions should have transparent selection, gender-inclusive participation, and accessible appeal routes for members alleging exclusion or abuse. Properly designed, pluralism does not dilute universality; it realises universal dignity and equality through local lenses.

6.4 Pillar 4: Effective Remedies, Monitoring and Resourcing

Fourth, rights must be matched with remedies and resources. Where cultural survival is territorially grounded, states should provide recognition and security of communal tenure through delimitation, demarcation and titling, just like the remedy crafted in *Awas Tingni* case⁸² to secure collective existence. For large projects, *Saramaka* and *Sarayaku* require impact assessment, benefit-sharing, and FPIC, linking territory, participation and self-determination.⁸³ Nationally, the *Atrato* case⁸⁴ demonstrates biocultural remedies: the court declared the river a subject of rights and ordered community co-guardianship and structural measures grounded in Indigenous and Afro-Colombian relations to territory.⁸⁵ African jurisprudence points the same way: *Endorois* decision ordered restitution, benefit-sharing, and effective participation, while the *Ogiek* decision required recognition of collective tenure and meaningful consultation, reading culture together with rights to natural resources, development and a healthy environment.⁸⁶

Implementation should include community-led monitoring with periodic review against agreed indicators (e.g., intergenerational language use; integrity of sacred/heritage sites; participation rates; fulfilment of FPIC and benefit-sharing commitments; completion of delimitation/titling). Remedies may be structural (orders to adopt/implement a CIA protocol; to create a co-management body; to fund community cultural institutions) and material (compensation and benefit-sharing), with courts retaining supervisory jurisdiction until compliance. Because ICESCR article 15 entails duties to respect, protect, and fulfil the right to take part in cultural life, states should budget for language immersion, cultural education, archives/museums, and artisanship support as part of progressive realisation.

Two cross-cutting clarifications respond to recurrent objections. First, community autonomy here is not absolutist. Pluralism and FPIC operate within a constitutional order that enforces equality and non-discrimination, with particular attention to gender and to minorities within communities; decision-making rules should ensure inclusive participation and provide appeal/ombudsman channels for members who contest outcomes. Second, the model builds on and harmonises existing law rather than creating fragmentation. Consultation under ILO 169 remains the baseline (International Labour Organization, 1989, arts. 6–7). FPIC for major impacts (with CIA and benefit-sharing) follows *Saramaka*⁸⁷ and *Sarayaku*;⁸⁸ communal tenure remedies follow *Awas Tingni*;⁸⁹ and biocultural structural measures follow *Atrato*.⁹⁰ In Africa,

⁸² *Awas Tingni* (n 33) paras 149, 151, 153, 164.

⁸³ *Saramaka* (n 34) paras 129, 133–137, 194(d)–(e); *Sarayaku* (n 35) paras 205, 211, 217.

⁸⁴ *Atrato* (n 38) paras 9.27–9.31.

⁸⁵ Corte Constitucional de Colombia, Sentencia T-622/16, 10 November 2016, paras 9.27–9.31.

⁸⁶ *Endorois* (n 36) para 291; *Ogiek* (Merits) (n 37) paras 210–217.

⁸⁷ *Saramaka* (n 34) paras 129, 133–137, 194(d)–(e).

⁸⁸ *Sarayaku* (n 35) paras 205, 211, 217.

⁸⁹ *Awas Tingni* (n 33) paras 149, 151, 153, 164.

⁹⁰ *Atrato* (n 38) paras 9.27–9.31.

*Endorois*⁹¹ and *Ogiek*⁹² show how culture is protected through territory, resources, participation and development rights. Read alongside GC 21/GC 23, these authorities confirm that culture is situated and dynamic, evolving through community agency.

Finally, the interpretive method matters. Treaty bodies and courts should adopt intercultural reasoning that begins from community accounts of what is culturally salient an approach already visible in the *Yakye Axa case*⁹³ and deepened in the *Sarayaku case*⁹⁴ and then translates those accounts into legal standards (participation, FPIC, tenure security, and tailored remedies). Legislatures can codify this by (i) recognising cultural councils with consultative and co-management roles; (ii) enacting CIA statutes with enforceable minimum content and public-reasons duties; (iii) establishing choice-of-law and review rules for plural fora; (iv) providing standing for communities; and (v) funding community-led monitoring. Taken together, these measures weave the existing strands of international and regional law into a coherent, justiciable architecture in which cultural rights function as living guarantees rather than aspirational rhetoric.

7. CONCLUSION

The reconceptualisation of cultural rights in international law requires both theoretical and practical reorientation. Theoretically, it means moving beyond the narrow, Eurocentric definitions of culture as an individual liberty or aesthetic preserve. Instead, we must recognise cultures as dynamic communities of meaning, intimately tied to land, tradition, and collective self-definition. Empirically, this requires legal pluralism: valuing the coexistence of multiple legal orders and affirming community agency. Practically, it calls for structural change: constitutional recognition of cultural autonomy, participatory law-making, and enforcement of existing norms (like consultation and FPIC).

My survey has shown that important foundations for this shift already exist in practice. International treaties provide some threads, and regional orders in Latin America and Africa supply rich norms and cases. Indigenous peoples in the Americas have forged new rights paths through constitutions and international advocacy. African law underscores communal duties and cultural preservation as rights. Decolonial scholarship reminds us why these models are needed; a dominant Western narrative has historically muted many voices. The next step is to mainstream these diverse perspectives. Future theory and policy should therefore seek to bridge legal orders and empower communities, seeing cultural rights as rooted in plural democracy. This will not only legitimise cultural diversity but also strengthen human rights as a whole by making it truly universal and respectful of all ways of life.

⁹¹ *Endorois* (n 36) para 291.

⁹² *Ogiek (Merits)* (n 37) paras 210–217.

⁹³ *Yakye Axa* (n 49) paras. 135–137, 143–144.

⁹⁴ *Sarayaku* (n 35) paras 159–160, 183, 205, 217, 322.