

INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American Commission on Human Rights (IACHR), created in 1959, is a principal and autonomous organ of the Organization of American States (OAS). Its mission is to promote and protect human rights in the American hemisphere. It is composed of seven independent members who serve in their personal capacity and it has its headquarters in Washington, D.C., together with the Inter-American Court of Human Rights, installed in 1979.

Since 1972, the IACHR has stressed that the special protection of indigenous peoples is a fundamental obligation of states.¹ In 1990, the IACHR created the Office of the Special Rapporteur on the Rights of Indigenous Peoples to devote attention to the indigenous peoples of the Americas, who are particularly vulnerable to human rights violations, and to strengthen, promote, and systematize the Commission's own work in this area.²

The IACHR protects and promotes indigenous peoples' rights through its different instruments and means of action, including: developing standards for inter-American jurisprudence; granting precautionary measures in urgent and serious cases of threat to the life or integrity of persons; producing specialized in-depth studies and reports on particular themes and topics dealing with indigenous peoples' rights; monitoring and assessing the situation of indigenous peoples in specific countries; acting as a specialized consulting body for states and OAS organs; participating in the elaboration of international legal instruments; organizing training seminars and exchange workshops with indigenous leaders and organizations, representatives of the Member States, international agencies, lawyers, activists and public officials throughout the Americas.

Two or three times a year, the IACHR offers the opportunity of holding public hearings between governments and petitioners or working meetings on specific cases. Governments generally tend to send high-level delegations, but both parties are treated equally and given the same speaking time.

Ensuring respect for the rights of indigenous peoples is a particularly important issue for the inter-American system for the protection of human rights (IAHRS). The Inter-American Commission on Human Rights is currently dealing with hundreds of petitions and requests for precautionary measures³ from all of the OAS Member States with indigenous peoples. Petitions can deal with a wealth of individual and collective rights protected by international human rights law but a substantial proportion of the petitions focus on the protection of territories and natural resources, and states' duties in this regard.

IAHRS jurisprudence on indigenous peoples' right to land and territories

The IAHRS's jurisprudence has attached special importance to indigenous peoples' relationship with their ancestral territories. In this regard, under the individual system of petitions and supervision of the human rights situation on the continent, the IACHR has established that OAS Member States have a duty to respect indigenous collective rights to ownership and possession of their ancestral lands and territories and that any failure to comply with this engages their international responsibility.

In this regard, the IAHRS has made an evolutionary interpretation of international instruments for the protection of human rights with regard to situations relating to indigenous rights. In fact, in the case of the *Mayagna Awas Tingni Community* in Nicaragua, the Inter-American Court stated that Article 21 of the American Convention protects the right to property in a sense that includes, among other things, the rights of members of the indigenous communities within the framework of communal property.⁴

In this case, the judgment stated that, given the characteristics of the case, some clarifications were required as to the concept of property in indigenous communities and, in relation to collective property of the land, it stated that there was a communitarian tradition amongst indigenous peoples with regard to a communal form of collective property of the land, in the sense that ownership of the land was not centred on an individual but rather on the group and its community.

Moreover, the Court established that the close relationship that indigenous peoples hold with their land had to be recognised and understood, adding that: "Indigenous groups, by the fact of their very existence, have the right to live free-

ly in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.⁵

In addition, the Court established that indigenous peoples needed to fully enjoy their lands in order to preserve their cultural and spiritual legacy and transmit it to future generations because the relationship they maintained with their lands was not merely a matter of possession and production.⁶

In relation to official recognition of the ownership of lands and territories possessed by indigenous peoples, the Inter-American Court established that possession of the land should suffice for the purposes of recognition, taking into consideration indigenous peoples' customary law.⁷

In turn, in the case of *Mary and Carrie Dann* (of the Western Shoshone people from the United States), the IACHR stated that the American Declaration of the Rights and Duties of Man had to be interpreted by taking into consideration the particular principles of international human rights law that govern the individual and collective rights of indigenous peoples.⁸

On the basis of this analysis, the IACHR was of the opinion that the provisions of the American Declaration had to be interpreted and applied, in the context of the indigenous petitioners, with due consideration for the specific principles of international human rights law that govern the individual and collective rights of indigenous peoples. The provisions of the Declaration that are particularly relevant in this regard are Article II (right to equality before the law), Article 18 (right to a fair trial) and Article 23 (right to property). As indicated, this criterion includes adopting special measures to guarantee recognition of the particular and collective interest that indigenous peoples have in the occupation and use of their traditional lands and resources, and their right not to be deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation.

The Commission wanted to emphasise that, by interpreting the American Declaration in the sense of safeguarding the integrity, survival and culture of indigenous peoples through the effective protection of their individual and collective rights, the Commission was respecting the very aims for which the Declaration was established.⁹

In its subsequent decisions, the Inter-American system has continued to develop its jurisprudence on the rights of indigenous peoples. In recent years, it has delved deeper into the content of the indigenous right to communal ownership of

their lands, territories and natural resources, on the basis of the provisions of the American Convention and American Declaration, interpreted in the light of ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples, the draft American Declaration on the Rights of Indigenous Peoples and other relevant sources, establishing a coherent *corpus iuris* that establishes the duties of OAS Member States in relation to protecting indigenous property rights.

On 17 February 2011, the IACHR published a report entitled “Rights of Indigenous and Tribal Peoples over their ancestral lands and natural resources”. This compiles and analyzes the scope of the rights of indigenous and tribal peoples to their territories, lands and natural resources. It is based on legal instruments of the IAHR - as interpreted by the jurisprudence of the IACHR and the Inter-American Court in the light of developments in general international human rights law. It also discusses the obligation of states to consult indigenous peoples and ensure their participation in decisions relating to any measure affecting their territories.

IACHR sessions in 2011

During its 141st regular session in March, the IACHR expressed concern over the consequences of exploiting natural resources and undertaking massive infrastructure projects on indigenous and Afro-descendant territories as this, in many cases, puts the very survival of these peoples in jeopardy. The IACHR urged the states to take steps to overcome the obstacles that keep indigenous and Afro-descendant populations from fully exercising their right to prior, free and informed consultation regarding decisions that affect their territories.¹⁰

Also during this session, the IACHR decided to create a Rapporteur on the situation of human rights defenders, in consideration of the complaints received and with a view to giving greater visibility to the important role of human rights defenders, as well as court officials, in building a democratic society governed by the rule of law

In August, the IACHR referred Case No. 12576 on human rights violations against members of the indigenous Mapuche people of Chile to the Inter-American Court of Human Rights. This relates to the selective use of anti-terrorism legislation on the basis of ethnic discrimination (*see the article on Chile in this edition*). The IACHR considers that this case will allow the Court to define new

standards on equality and non-discrimination, setting a new course for inter-American jurisprudence. Moreover, the Court will be able to develop its jurisprudence on reparations, including measures of non-repetition that are necessary to address the use of prejudices and stereotypes in the context of the discriminatory application of a legal framework to the detriment of a clearly identified group.

Hearings

The hearings of the 141st session considered, among other issues, the situation of Mapuche children in Chile and the situation of indigenous peoples in voluntary isolation in the Amazon and Gran Chaco, along with the right to free, prior and informed consultation on the part of the indigenous and black peoples of the Andean region.

In the October hearings, corresponding to the 143rd session, a case related to the Nam Qom indigenous community of the Toba people of Argentina was presented. Meanwhile, the Indian Law Resource Center presented a case on violence against indigenous women in the United States, and the Indigenous Peoples Law and Policy Program of the University of Arizona presented the case of the Hul'qumi'num Treaty Group of Canada.

The Latin America and Caribbean Committee for the Defense of the Rights of Women (CLADEM) presented a case on access to education for indigenous, peasant and Afro-descendant women while the National Indigenous and Peasant Coordinating Body of Guatemala (CONIC) presented a case on the human rights situation of indigenous peoples in that country. ○

Notes and references

- 1 At: <http://www.oas.org/en/iachr/mandate/what.asp>
- 2 At: <http://www.oas.org/en/iachr/indigenous/mandate/functions.asp>
- 3 Precautionary measures may include a request to the state involved to suspend its activities, take preventive action or provide other remedial measures to protect a person or persons in urgent and serious cases of threat to the life or integrity of persons.
- 4 Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention -which precludes a restrictive interpretation of rights -, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among

- others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua. **Inter-American Court of Human Rights (I/A Court H.R.), 2001: *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of 31 August 2001***. Series C No. 79, para 148.
- 5 **I/A Court H.R. 2001**: Op. cit, para 149.
 - 6 To the indigenous communities the relationship with the land is not merely a question of possession and production but rather a material and spiritual element that they ought to enjoy fully, so as to preserve their cultural legacy and transmit it to future generations. (**Inter-American Court, 2001**: Ibid.)
 - 7 Indigenous peoples' customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration. (**I/A Court H.R. 2001**: Op. cit. para 151).
 - 8 Report N° 75/02, 27 December 2002, para 124
 - 9 **IACHR 2002**: op. cit. para 131.
 - 10 This concern was reiterated in a press release on 4 November. See Annex to Press Release 117/11 on the 143rd Regular Session of the IACHR.