

THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Respect for indigenous peoples' rights is of particular importance for the Inter-American Human Rights System (IHRS) and it has therefore developed relevant jurisprudence that has - through decisions to Member States of the Organisation of American States (OAS) - enabled individual and collective rights to be recognised, victims to be compensated and guidelines to be produced with the aim of preventing or resolving matters of domestic jurisdiction.¹ The Inter-American Commission on Human Rights (IACHR) has, in particular, used its different mechanisms to protect indigenous peoples' rights, and this area of its work is being developed primarily through its Rapporteurship on the Rights of Indigenous Peoples, created in 1990.

Thematic and country reports

On 30 December 2013, the Commission approved the report entitled "**Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the full respect of their human rights**".² The Commission publicly presented this report on 29 July 2014, in which it noted that the American continent is home to the greatest number of indigenous peoples in voluntary isolation and initial contact in the world. More specifically, the Commission indicated that their presence was known in Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru and Venezuela. It added that there were signs of their presence in Guyana and Suriname.³

In the report, the Commission expanded on the scope of the principle of no contact in relation to self-determination and summarised the sources of international law that establish the rights of indigenous peoples in voluntary isolation and initial contact. In terms of their situation, the Commission noted that there were different levels of recognition of the rights of indigenous peoples in voluntary iso-

lation and initial contact in the Americas, notwithstanding the fact that, in practice, these peoples are “highly vulnerable and many of them are in danger of disappearing completely”.⁴ The Commission identified the main threats facing them as being those resulting from contact, pressure on their lands and territories, natural resource extraction, contagious diseases and illnesses, direct aggression, tourist projects and drugs trafficking.⁵

The report concluded with a series of specific recommendations aimed at encouraging states to fulfil their obligations to respect and guarantee the rights of indigenous peoples in voluntary isolation and initial contact. These were divided into the following sections: i) recognition and self-determination; ii) protection of territory; iii) natural resources; iv) free, prior and informed consultation; v) health; vi) inter-ethnic conflicts; vii) no contact; and viii) collaboration and coordination with other actors.⁶

On 21 December 2014, the Commission approved the report entitled: “**Missing and Murdered Indigenous Women in British Columbia, Canada**”,⁷ following a visit made to Canada between 6 and 9 August 2013 with regard to this problem.

The Commission found the figures of missing and murdered indigenous women particularly concerning given that indigenous peoples represent a very small proportion of Canada’s overall population.⁸ In the report, the Commission described the nature of these events and found that these disappearances and murders formed part of a broader pattern of violence and discrimination in which indigenous women and girls are one of the most disadvantaged groups in Canada.⁹ According to the Commission, this situation is exacerbated by “poverty, inadequate housing and economic and social relegation”, along with discriminatory and stereotypical attitudes related to their gender and race.¹⁰

The Commission also analysed the Canadian government’s response, indicating that it had not adequately prevented these deaths and disappearances nor thoroughly investigated them. The Commission highlighted the experience of families in the investigation procedures.¹¹

While recognising the Canadian state’s openness and willingness to resolve the issues, the Commission made a series of recommendations.¹²

On 31 December 2013, the Commission approved the report “**Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia**”.¹³ This report, which was publicly presented on 28 August 2014, addressed the human rights situation from the fundamental aspect of how these rights have

been affected by the armed conflict and the current context of the possible signing of a peace accord.

Section C. of Chapter 6, entitled: “Differential Impact of the Armed Conflict and Process of Disappearance of the Indigenous Peoples in Colombia” considered the following issues: i) land and territory as affected by the armed conflict; ii) continuing murders, disappearances, threats and accusations against indigenous peoples and the special impact on their traditional authorities and leaders; iii) the militarisation of and armed clashes on indigenous peoples’ ancestral territories; iv) how indigenous peoples and their ancestral territories are affected by anti-personnel mines and unexploded munitions; v) fumigations that affect indigenous territories; vi) forced displacement; vii) multiple discrimination and violence against women exacerbated by the armed conflict; viii) armed conflict, megaprojects and prior consultation; ix) impact on indigenous peoples’ health and food; x) impunity and lack of access to justice on the part of indigenous peoples and their members; and xi) reparation and restitution of rights of victims from indigenous peoples and communities.¹⁴

On the basis of this assessment of the situation of indigenous peoples in the armed conflict, the Commission made specific recommendations to the Colombian state.¹⁵

IACHR country visit to Chile

From 24 to 26 November 2014, the Rapporteur for Indigenous Peoples, Commissioner Rose-Marie Belle Antoine, visited Chile with, among other things, the aim of “closely examining the human rights situation of indigenous peoples in Chile, in particular in the context of development and investment projects, and concessions for the extraction of natural resources”.¹⁶

In her press release at the end of the visit, the Rapporteur stressed her concern at the information received on the lack of constitutional recognition of Chile’s indigenous peoples, on barriers in the process for granting titles over their ancestral territories, on the lack of free, prior and informed consultation with regard to the implementation of a number of development projects and extractive industries, on the inadequate control indigenous peoples have over the education of their children in order to ensure the preservation of their cultural heritage, and on violence and intimidation against indigenous communities, among other things.¹⁷

The Commission called on the state to establish an institutionalised mechanism for consultations with indigenous peoples, to include a multicultural perspective in the design of legislation and public policies, to accelerate the process of restitution of their ancestral lands, to prevent any excessive use of force by law enforcement authorities aimed at countering the expression of their social demands, and to ensure access to a culturally-pertinent education.¹⁸

Thematic hearings before the IACHR ¹⁹

The following thematic hearings took place during the IACHR's 150th Ordinary Period of Sessions, held from 20 March to 4 April 2014:

- Human rights situation of the indigenous community of Apetina in Suriname.
- Right to prior consultation on the part of Chile's indigenous peoples.
- Human rights situation of Nicaragua's indigenous peoples.
- Human rights situation of the indigenous peoples of the Kugapakori, Nahua, Nanti and others Territorial Reserve (RTNKN) in Peru.

The following thematic hearings took place during the IACHR's 153rd Ordinary Period of Sessions, held from 23 October to 7 November:

- Reports of human rights violations against indigenous peoples in Costa Rica.
- Right of indigenous peoples to legal status and property in Peru.
- Reports of destruction of the biocultural heritage of Mexico due to the construction of megadevelopment projects.
- Impact of the activities of Canadian mining companies on human rights in Latin America.
- Human rights situation of indigenous peoples in Ecuador.

Reports on petitions and individual cases

In 2014, the Commission approved admissibility reports on the rights of indigenous peoples:

- Report on Admissibility No. 96/14. Petition 422-06, Tagaeri and Taromene Indigenous Peoples in Isolation (Ecuador).²⁰
- Report on Admissibility No. 20/14. Petition 1566-07, Communities of the Sipakepense and Mam Mayan People of the Municipalities of Sipacapa and San Miguel Ixtahuacán (Guatemala).²¹
- Report on Admissibility No. 62/14. Petition 1216-03, People of Quishque-Tapayrihua (Peru).²²

Submission of cases to the Court

During 2014, the Commission took two cases to the Inter-American Court in relation to indigenous peoples' rights.

On 26 January 2014, the Commission took the case of *Kaliña and Lokono Peoples v. Suriname* to the Inter-American Court.²³ As described in the press release issued by the Commission at the time, this involves:

a series of violations of the rights of the members of eight communities of the Kaliña and Lokono indigenous peoples of Suriname's Lower Marowijne River. Specifically, the violations have to do with an existing legal framework that prevents recognition of the indigenous peoples' juridical personality, a situation that to this day continues to keep the Kaliña and Lokono peoples from being able to protect their right to collective property. In addition, the State has failed to establish the regulatory foundations that would allow for recognition of the right to collective ownership of the lands, territories, and natural resources of the Kaliña and Lokono indigenous peoples. This lack of recognition has been accompanied by the issuance of individual land titles to non-indigenous persons; the granting of concessions and licenses to carry out mining operations in part of their ancestral territories; and the establishment and operation of three nature reserves in part of their ancestral territories.²⁴

This case is pending judgment by the Inter-American Court.

On 5 August 2014, the Commission took the case of *Members of the Village of Chichupac and Neighbouring Communities, Municipality of Rabinal vs. Guatemala*, to the Inter-American Court. This involves massacres, extrajudicial execu-

tions, torture, forced disappearances and rape of members of the village of Chichupac and neighbouring communities, municipality of Rabinal, perpetrated as part of the operations carried out by the National Army and its collaborators during the internal armed conflict in Guatemala.²⁵ The Commission determined that the events in this case were part of the genocide perpetrated against the Mayan indigenous people in Guatemala.²⁶ The Commission also emphasised that “more than three decades have passed since the events of this case; more than two decades have passed since the first complaint was filed, and yet no one has been made to answer for these crimes”.²⁷

This case is with the Inter-American Court, pending public hearing.

Hearings held by the Inter-American Court

During the 103rd Ordinary Period of Sessions of the Inter-American Court, held from 12 to 30 May 2014, a public hearing took place for the case of the *Garífuna Community of Triunfo de la Cruz and its members v. Honduras*. The Commission took this case to the Court arguing a violation of various components of this community’s right to collective property. The Commission thus explained to the Court that: i) the community has no suitable and culturally appropriate property title to its ancestral territory; ii) recognition of part of the ancestral territory has been slow and they continue to be denied a single title to the whole territory based on the community’s historic occupation and customary use; iii) the community has not been able to peacefully occupy and hold their ancestral lands because of a lack of appropriate determination and demarcation of the titled lands, the lack of legal certainty over the titles granted, restrictions on access to areas of the ancestral territory due to the creation of protected areas and a failure to effectively protect their territory from occupation and dispossession by third parties or to guarantee that it is exclusively indigenous; iv) the expansion of the urban conurbation by the state authorities and the sale of community lands have also affected the right to collective property; v) the state has failed to conduct free, prior and informed consultation of the community with regard to decisions relating, for example, to tourism projects, the creation of a protected area on part of the ancestral territory and the sale of community lands; and vi) the community has had no recourse that would take account of their specific features, their economic and social character-

istics, their customary law, values, habits and customs in the context of the processes related to collective ownership.²⁸

This case is pending judgment by the Inter-American Court.

During the 51st Extraordinary Period of Sessions of the Inter-American Court, held in Asunción, Paraguay from 1 to 4 September 2014, the public hearing took place for the case of the *Garífuna Community of Punta Piedra and its members v. Honduras*. The Commission submitted this case explaining that it involved a violation of the right to collective property as a result of a failure to fulfil the duty of guarantee in the face of encroachment by non-indigenous persons onto lands and territories belonging to the community and which were subsequently recognised by the state through the granting of full ownership titles. According to the Commission, this titling was conducted without an adequate process of regularisation, despite knowing that a group of settlers had occupied various parts of the community's lands and territories, especially Río Miel and the forest area. The Commission emphasised that this situation has meant that the Garífuna Community of Punta Piedra has been able to exercise effective possession of only half of the territory to which the state granted legal title, with a resulting negative impact on their way of life, means of subsistence, and traditional culture, uses and customs.²⁹

This case is pending judgment by the Inter-American Court.

Judgments issued by the Inter-American Court

On 29 May 2014, the Inter-American Court issued a judgment in the case of *Norín Catrimán et al (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*. The case was submitted on behalf of eight victims convicted of “terrorist” crimes in application of Law No. 18,314, known as the “Antiterrorist Law” for actions that took place in 2001 and 2002 in Regions VIII (Biobío) and IX (Araucanía) of Chile. Of the victims, three were traditional authorities of the Mapuche indigenous people, four were members of that people and one was an activist demanding the rights of that people. In addition, accessory penalties of disqualification were imposed which restricted their exercise of the right to freedom of expression and political rights.

The Court concluded that the state had violated the rule of law and the presumption of innocence to the detriment of the eight victims in this case by main-

taining and implementing “Article 1 of Law No. 18,314, which contained a legal presumption of the subjective element of terrorist activity, a basic element of Chilean law with which to distinguish terrorist behaviour from non-terrorist behaviour”. The Court also concluded “that the substantiation on which the convictions were based used a rationale of a stereotypical and prejudiced nature, in violation of the principle of equality and non-discrimination and of the right to equal protection under the law”. The Court found that the accessory penalties resulted in further violations of the rights to personal freedom, to judicial guarantees, to freedom of expression and political rights, which had an aggravated impact on those who were traditional authorities, and to the right to protection of the family.³⁰

As a consequence, the Court ordered the state to implement the following measures of reparation:

- (i) adopt all necessary judicial, administrative or other measures to revoke, in every aspect, the convictions of Messrs. Segundo Aniceto Norín Catrimán, Pascual Huentequeo Pichún Paillalao, Víctor Manuel Ancalaf Llaupe, Florencio Jaime Marileo Saravia, Juan Patricio Marileo Saravia, José Huenchunao Mariñán, Juan Ciriaco Millacheo Licán and Ms Patricia Troncoso Robles; (ii) provide free and immediate medical and psychological or psychiatric treatment to all victims of the case that request it; (iii) disseminate the publications and radio broadcasts as noted in the Judgment; provide study grants in Chilean public institutions for the children of the eight victims of this case if requested; (iv) clearly and safely regulate the procedural measures for protecting witnesses in terms of confidentiality of their identity, ensuring that this is an exceptional measure, subject to judicial control and based on need and proportionality, and that this means of evidence is not used decisively as the basis for a conviction, and regulate the corresponding counterbalance measures; (v) pay each of the eight victims the sum stated in the Judgment by way of reparation for pecuniary and non-pecuniary damage; (vi) pay the sums stated in the Judgment by way of reimbursement of costs and expenses.³¹

This case is currently at the stage of monitoring fulfilment of the judgment.

On 14 October 2014, the Inter-American Court issued its judgment in the case of the *Kuna Indigenous Peoples of Madungandí and Emberá Indigenous People of Bayano and their members v. Panama*. The background to the case invol-

ves the construction of a hydroelectric dam in the Alto Bayano zone, Panama province, in 1972. This construction involved flooding part of the indigenous reserve in the area and the displacement of the indigenous communities living there to other alternative lands.

The Court ruled a violation of the right to collective property due to: i) a failure to delimit and title the territories of the Kuna people of Madungandí for approximately six years; ii) a failure to demarcate the territories of the Kuna people of Madungandí for approximately 10 years; iii) a failure to delimit the territories of the Emberá of Ipetí and Piriati communities for 23 years; iv) a failure to title the territories of the Piriati Emberá community for approximately 24 years; v) a failure to demarcate the territories of the Piriati Emberá community for approximately 24 years; vi) a failure to demarcate and title the territories of the Ipetí Emberá community for approximately 24 years; and vii) a failure to guarantee the effective enjoyment of the collective property title of the Piriati Emberá community, given that the private property title conferred on an individual has still not been revoked. The Court also found that the state had failed in its duty to adapt its domestic law as it had not provided rules enabling the delimitation, demarcation and titling of collective lands prior to 2008. The Court also established violations of the rights to judicial guarantees and judicial protection.³²

As a consequence of these violations, the Court ordered the state to implement the following measures of reparation:

- a) publish the Judgment of the Inter-American Court and its summary and conduct radio broadcasts in this regard;
- b) hold a public act recognising international responsibility with regard to the events in this case;
- c) demarcate the lands corresponding to the Ipetí and Piriati Emberá communities and title the Ipetí lands as the collective property of this community;
- d) adopt the necessary measures to revoke the private property title granted to Sr Melgar within the territory of the Emberá of Piriati community;
- e) pay the amounts set in the Judgment by way of reparation for pecuniary and non-pecuniary damage and as reimbursement of costs and expenses.³³

This case is currently at the stage of monitoring fulfilment of the judgment. ○

Notes and references

- 1 See *inter alia* the report: **IACHR. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources.** OEA/Ser.L/V/II. Doc. 56/09. 30 December 2009.. This report compiles and analyses the norms and jurisprudence of the Inter-American Human Rights System regarding the rights of indigenous and tribal peoples on their territories, lands and natural resources. Available at: <https://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>
- 2 **IACHR.2013. Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the full respect of their human rights.** Available at: <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>
- 3 Id. para. 15.
- 4 Id. para. 17.
- 5 Id. Pgs. 43 - 76.
- 6 Id. Pgs. 77 - 81.
- 7 IACHR. Missing and Murdered Indigenous Women in British Columbia, Canada. 2014. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf>
- 8 IACHR. Press release dated 12 January 2015. *IACHR Presents Report on Murdered and Missing Indigenous Women in British Columbia, Canada.* Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/003.asp
- 9 Id.
- 10 Id.
- 11 Id.
- 12 **IACHR. 2014.** Missing and Murdered Indigenous Women in British Columbia, Canada. Available at: <https://www.oas.org/en/iachr/reports/pdfs/Indigenous-Women-BC-Canada-en.pdf> paras 304 and ss.
- 13 **IACHR. 2013. Truth, Justice and Reparation: Fourth Report on the Human Rights Situation in Colombia.** Available at: <http://www.oas.org/es/cidh/docs/pdfs/Justicia-Verdad-Reparacion-es.pdf>.
- 14 Id. Pgs. 297 – 344.
- 15 Id. Pg. 346.
- 16 IACHR. Press release dated 11 December 2014. *IACHR concludes visit to Chile.* Available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/150.asp
- 17 Id.
- 18 Id.
- 19 Recordings of these nine thematic hearings held during 2014 can be found at the following link: <http://www.oas.org/es/cidh/audiencias/topicslist.aspx?lang=en&topic=17>
- 20 Available at: <http://www.oas.org/en/iachr/decisions/2014/ECAD422-06EN.pdf>
- 21 Available at: <http://www.oas.org/en/iachr/decisions/2014/GTAD1566-07EN.pdf>
- 22 Available at: <http://www.oas.org/en/iachr/decisions/2014/PEAD1216-03EN.pdf>
- 23 IACHR. Press release dated 4 February 2014. *IACHR Takes Case involving Kaliña and Lokono Peoples v. Suriname to the Inter-American Court.* Available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/009.asp.
- 24 Id.

- 25 IACHR. Press release dated 17 September 2014. *IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights*. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2014/100.asp.
- 26 *Id.*
- 27 *Id.*
- 28 See http://www.corteidh.or.cr/docs/comunicados/cp_07_14.pdf. For information regarding the Commission's submission of the case see: <http://www.oas.org/es/cidh/decisiones/corte/12.548NdeResp.pdf>.
- 29 See http://www.corteidh.or.cr/docs/comunicados/cp_18_14.pdf. For information on the Commission's submission of the case see: http://www.oas.org/en/iachr/media_center/PReleases/2013/076.asp.
- 30 I/A Court HR. *Case of Norín Catrimán et al (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of 29 May 2014. Series C No. 279. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_279_esp.pdf.
- 31 Extract taken from the Official Abstract of the Judgment, available at: http://www.corteidh.or.cr/docs/casos/articulos/resumen_279_esp.pdf.
- 32 I/A Court HR. *Case of the Kuna Indigenous Peoples of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 14 October 2014. Serie C No. 284. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_284_esp.pdf.
- 33 Extract taken from the Official Abstract of the Judgment, available at: http://www.corteidh.or.cr/docs/casos/articulos/resumen_284_esp.pdf.

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