Digest | Issue #7

Xanharu

Upholding Indigenous Peoples' Rights

Legislation and Jurisprudence:
Global, Regional and National Developments

Photo by: Superior Court of Justice (STJ)

Indigenous Peoples Rights International
Championing Indigenous Peoples Rights

Xanharu is from the indigenous Purepecha of Mexico, meaning “path.”

Xanharu best describes what this digest aims to accomplish – serve as a way by which Indigenous Peoples are able to use decisions on laws and jursiprudence to assert, protect and claim their individual and collective rights.

Cover photo:
Public Hearing in the Case of the Tagaeri and Taromenane Indigenous Peoples v. Ecuador
Inter-American Court of Human Rights
150th Regular Session, Brasília, Brazil.
August 23, 2022.

Cover photo by:
Superior Court of Justice (STJ)

About the Digest

The centuries of struggle by Indigenous Peoples around the world against colonization, forced assimilation, and systemic discrimination have resulted in the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly in September 2007. The UNDRIP sets the minimum international standards for the respect, recognition, and protection of the rights of Indigenous Peoples (art. 43). The General Assembly of the United Nations has repeatedly reaffirmed UNDRIP, most recently explaining that it "addresses the individual and collective rights of Indigenous Peoples and has positively influenced the drafting of several constitutions and statutes at the national and local levels and contributed to the progressive development of international and national legal frameworks and policies."[1]

Despite this milestone achievement of Indigenous Peoples, their rights continue to be violated in law and practice in many parts of the world. However, more and more legislation and jurisprudence affirming the rights of Indigenous Peoples, especially to their lands, territories, and resources, to self-determination and to their cultural heritage, are being issued by different authoritative bodies in line with the UNDRIP and with universal and regional human rights treaties. The latter are also increasingly interpreted in a way that is consistent with the "minimum standards" in UNDRIP.

IPRI is therefore issuing this Digest as a compilation of legislation and jurisprudence on Indigenous Peoples' rights at the international level (the UN system and perhaps others), the regional level (regional human rights bodies), and the national level (national courts and laws). Among other things, the cases in the Digest illustrate EMRIP's conclusion that "many of the rights contained in the Declaration are already guaranteed by major international human rights instruments and have been given significant normative strength, including through the work of the treaty bodies, regional and national courts."[2] The same is true with regard to its conclusion that UNDRIP is "a contextualised elaboration of general human rights principles" and the standards affirmed therein "connect to existing State obligations under international human rights law…."[3]

IPRI believes that sharing this information with Indigenous Peoples, their allies, and others will increase awareness and understanding of Indigenous Peoples' rights as an integral part of human rights law, where states have the duty to recognize, respect, protect, and fulfill those rights in domestic law and practice. We hope it will also inspire policymakers, judges, prosecutors, lawyers, and others to give increased attention to Indigenous Peoples' rights to eliminate systemic discrimination and social injustice committed against Indigenous Peoples. Finally, we hope it will also encourage and strengthen Indigenous Peoples' commitment and actions in advancing the realization of their rights in law and practice.

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[1] A/RES/77/203 (15 December 2022).

[2] *Ten years of the implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned – 2007-2017, A/HRC/36/56, para. 10. See also M. Barelli, The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples,* 58 INT'L COMP L.Q. 957, 966 (2009) (… "the strong relationship between the content of the Declaration and existing law should be recognized. The fact that the Declaration contains provisions that refer to rights and principles already recognized, or emerging, in the realm of international human rights, and, more specifically, within the indigenous rights regime, represents a first important indication of the legal significance of the instrument").

[3] A/HRC/EMRIP/2023/3, para. 8.

This Digest is a regular publication of IPRI.

This issue includes three international cases, including an important decision by the Human Rights Committee. The latter acknowledges that UNDRIP "provides an authoritative framework for interpreting States parties' obligations under the Covenant" (13.11), echoing, directly and indirectly, decisions and general comments/recommendations adopted by CEDAW (2022), CESCR (2022, 2024), CRC (2024), and CERD (2022, 2024). The Committee cites its past jurisprudence, dating back to 2018, to support this point, confirming that it has long considered UNDRIP to be an authoritative framework for interpreting States' obligations under the ICCPR. This issue also includes six regional decisions of the Inter-American Court of Human Rights, all of which contain important jurisprudence on the rights of Indigenous Peoples. Finally, it includes domestic judicial decisions in 3 countries and legislation adopted in one jurisdiction.

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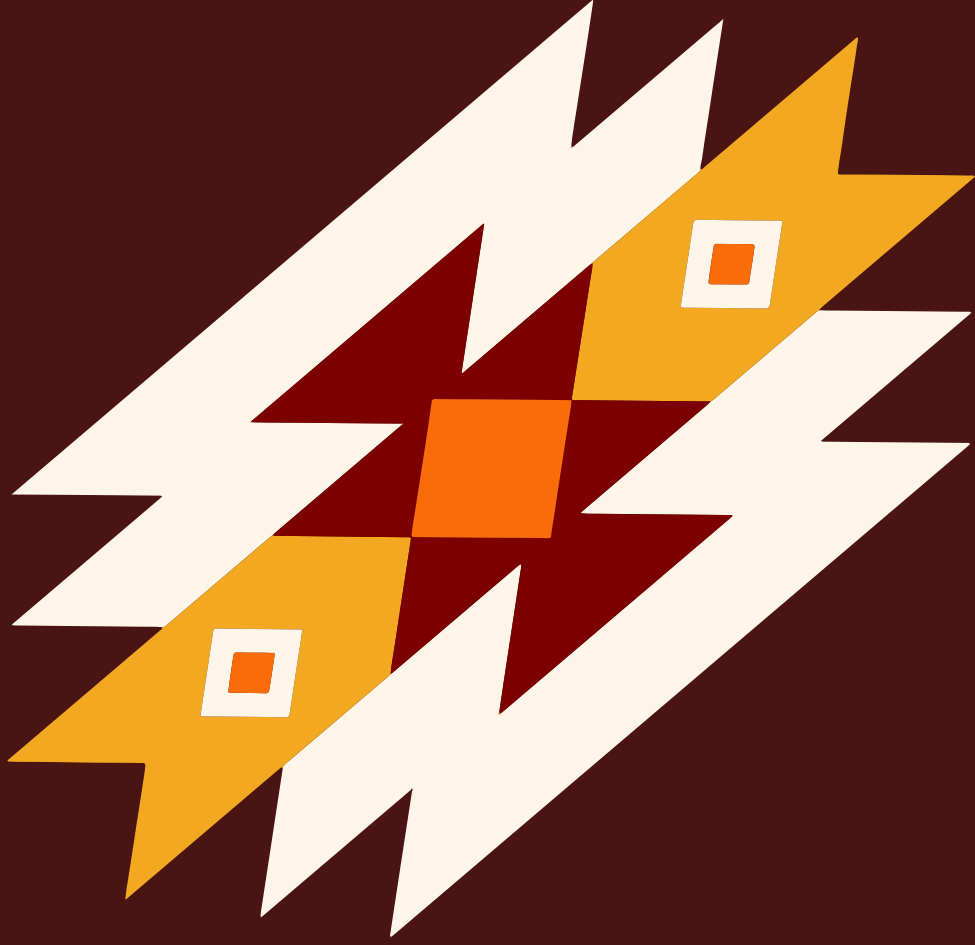

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1. 269 members of the K'iche', Ixil and Kaqchiquel Maya Indigenous Peoplesv v. Guatemala, CCPR/C/143/D/4023/2021-4032/2021 (unoff. transl.)

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=xHI-fyG8LSD/1AgdfTJioj4hlMkjwKH/vSY5kuua97LUCR5RdhkLBYiUx/gzqwf/o (ESP)

Country: Guatemala | **Body:** Human Rights Committee |
Date: 7 May 2025 (adv. uned.)

- **Issues:** Relationship between UNDRIP and ICCPR, forced displacement, intergenerational harm, non-implementation of reparations/agreement.
- **UNDRIP** arts. 7, 8, 10, 21-2, 27-8, 37, 40

Summary: Declared admissible in 2022, this important decision by the Human Rights Committee ("the Committee") focuses on various complaints filed by 269 members of the K'iche', Ixil and Kaqchikel Maya Indigenous Peoples ("the Authors"). It has its origins in the genocidal 'scorched earth policy' pursued by the Guatemalan military regime (1978-1996) which included numerous massacres. It also concerns the ongoing effects of that policy and associated massacres and more contemporary violations associated with the failure to provide meaningful redress.

The Authors are those directly displaced by various miliary operations and massacres and the relatives of the executed or disappeared. After first hiding in the mountains, the displaced people moved to the capital city. They have lived in extreme poverty and have been forced to abandon their traditional dress, cultural practices and languages to avoid further persecution (para. 2.1). They cannot return to their communities because former soldiers were given their lands as 'a reward' for their actions (*id.*). The Authors also assert violations of the rights of second and third generation children, who were born after their parents or grandparents had been displaced, including associated violations caused by suffering and intergenerational trauma, due to being uprooted from their family, cultural and social environment and living in extreme poverty (*id.*).

Between 2005 and 2009, the Authors filed claims for redress, including financial compensation, with Guatemala's National Reparations Programme (2.2). In 2011, in a 'Collective Opinion on Material Reparations' (13.3), the State recognized that they were victims of the 'crime against humanity of forced displacement' and that they had been forced to live in conditions that 'violate human dignity' (*id.*). For some of the Authors, reparations were granted and memorialized in resolutions adopted by the State. This involves issuing titles to plots of land and a promise to build houses. While titles were issued, the houses have not been built. Moreover, the Authors all remain displaced in appalling conditions; the Reparations Programme has been closed and is no longer functional; and attempts to obtain justice through the court system, including enforcement of the reparations agreements, have been unsuccessful (2.3-2.4).

[4] *See also Rosa Ramírez Barrios and Pedro Ramírez Barrios, CED/C/28/D/5/2021 (May 5, 2025), concerning the disappearance of Indigenous persons, but not analyzing associated issues concerning Indigenous Peoples' rights.*

The authors cite various violations of the International Covenant on Civil and Political Rights ("ICCPR") (3). Most were declared admissible by the Committee in 2022 (4).[5] To assess the violations, the merits, the Committee requested assistance – known as third party interventions – from the Expert Mechanism on the Rights of Indigenous Peoples, from a Magistrate of the Special Jurisdiction for Peace of Colombia, and from Indigenous Peoples Rights International (5, 8-10). These interventions are referenced in various sections of the decision (e.g., 13.18).

First, the Committee explained that **UNDRIP "provides an authoritative framework for interpreting States parties" obligations under the Covenant,"** noting in a footnote that it has endorsed this view in a line of cases dating back to 2018 (13.11).[6]

Second, the Committee found a violation of ICCPR, art. 12 (the right to liberty of movement and freedom of residence) because, and coupled with Guatemala's unfulfilled promise to provide reparations (land title and houses), **"forced displacement constitutes a continuous violation as long as the reality of the displacement of the victims does not cease"** (13.4). It noted that Guatemala could not object to this violation because it had previously acknowledged that the Authors were victims of the crime against humanity of forced displacement and it had agreed, yet failed, to provide reparations (13.3).

Third, the Committee assessed violations of ICCPR, art. 12 read together with ICCPR, art. 7 (the prohibition of torture or cruel, inhuman or degrading treatment or punishment) and found that Guatemala had violated those rights (13.9). It observed that Guatemala previously admitted that the Authors live in a state of extreme poverty and in conditions that violate human dignity (13.6). Referring to "the way diseases are understood in the Mayan cosmogony," the Committee concluded that the Authors experienced various mental and physical health problems and their inability to bury their dead has been especially painful (13.7). Noting that the Inter-American Court of Human Rights found severe and long-lasting violations where Indigenous Peoples have been unable to perform culturally appropriate burial rituals, the Committee concluded that the same applied in this case (*id*.). It also concurred with the view that displaced Indigenous Peoples generally suffer from diseases that are bodily manifestations of trauma (*id*.).

Fourth, the Committee assessed violations of ICCPR, art. 12 in conjunction with art. 9 (the right to liberty and security of person). This partly focused on the right of displaced persons to return to their lands in security (13.10). **Observing that UNDRIP is "an authoritative framework for interpreting States parties' obligations under the ICCPR," the Committee referenced UNDRIP, Article 28**, which "establishes that, in cases of forced displacement, Indigenous Peoples have the right to the restitution of their lands" or other forms of redress where this is not possible (13.11). Nonetheless, because the Authors had not focused their complaints on the right to return to their lands – instead, on the failure of the State to implement remedial measures – it decided that it was unable to find that a violation of ICCPR, art. 12 together with art. 9 had occurred (*id*.).

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[5] *See CCPR/C/136/D/4023/2021-4032/2021 (containing the admissibility decision), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F136%2FD%2F4023%2F2021-4032%2F2021&Lang=en.*

[6] *Footnote 32 lists the following decisions: Wunna Nyiyaparli indigenous people v. Australia, CCPR/C/137/D/3585/2019, §8.7 (2023); Campo Agua'ẽ indigenous community v. Paraguay, CCPR/C/132/D/2552/2015, §8.6 (2021); Daniel Billy and others v. Australia, CCPR/C/135/D/3624/2019, 8.13 (2022); Tiina Sanila-Aikio v. Finland, CCPR/C/124/D/2668/2015, §6.8 (2018); and Käkkäläjärvi et al. v. Finland, CCPR/C/124/D/2950/2017, §8.6 (2018); as well as General Recommendation No. 39 on Rights of Indigenous Women and Girls, CEDAW/C/GC/39, §13 (2022) and M.E.V., S.E.V. and B.I.V, CRC/C/97/D/172/2022, §9.12 (2024). The latter indicates that this view is also consistent with the recommendations and decisions of CEDAW and CRC (CERD and the CESCR can be added to this list, albeit in less comprehensive terms).*

Fifth, the Committee found a violation of ICCPR, art. 12 read together with art. 17 (the prohibition of arbitrary or unlawful interference with privacy, family, home) "due to the destruction of their homes and crops, noting that this uprooting especially affected them because they are indigenous" (13.12). Rejecting Guatemala's view that the ICCPR does not protect private property, the Committee recalled that it has previously decided that ICCPR, art. 17 **protects rights to important sites in "the history, culture and life" of Indigenous Peoples and various elements of traditional territory** (e.g., "crops, breeding animals, fruit trees, hunting, gathering, fishing and water resources) (13.13). Therefore, it concluded that the Authors displacement "from their communities of origin, in which they had their property, land, crops and breeding animals, similarly constitutes a violation of ICCPR, art. 12 read in conjunction with art. 17" (*id.*).

Sixth, the Committee summarily found a violation of ICCPR art. 12 read together with art. 23 (the right to family), endorsing "the view that forced displacement, insofar as it entails the fragmentation of the nuclear family, constitutes a violation of the right to the family…" (13.14-13.15).

Seventh, the Committee assessed intergenerational harm in relation to second and third generation children born into the situation forced displacement and extreme poverty, finding violations of ICCPR, art. 12 read together with art. 24 (the rights of the child). Supporting this, the Authors observed that Guatemala had included reparations to the children and grandchildren of the directly displaced persons in the 2011 reparation agreements (13.16).

The Committee began by referring to the third-party interventions, which stated, among other things, that forced displacement **"entails intergenerational harm until return or reparation is provided,"** it has especially negative impacts on Indigenous children and their rights, and **"the rights of Indigenous Peoples are, by definition, intergenerational rights**, by allowing the continuity of the existence of the Peoples themselves" (13.18). It also referred to recommendations and jurisprudence adopted by the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women ("CEDAW"). The former found in 2024 that mining can cause intergenerational harm, observing that the intergenerational element of indigenous rights "is fundamental to the cultural identity and the very survival of Indigenous Peoples" (13.19).[7] In 2022, CEDAW stressed that **"forced displacement is a major form of violence affecting Indigenous women"** and intergenerational harm also may be caused by discrimination against Indigenous Peoples' ancestors (id).[8] The Committee also recited the extensive jurisprudence of the Inter-American Court on ongoing trauma as it affects displaced Indigenous children (13.20). Endorsing these findings, it ruled that Guatemala violated ICCPR, art. 12 read together with art. 24 "to the detriment of children who have been displaced and to the detriment of children born in a situation of displacement" (13.21; see also annexed concurring opinions, which make clear that this encompasses the children of children of displaced persons, or to the third generation).

Eighth, the Committee found violations of ICCPR, art. 12 read in conjunction with art. 27 (the right of persons belonging to minorities in relation to culture, language and religion), using UNDRIP, arts. 8 and 10 to interpret these rights (13.24-13.26). The Committee again referred to the third-party interventions and judgments of the Inter-American Court, all concluding that forced displacement, particularly to urban areas, has severe, negative impacts on cultural integrity and survival. It recalled that the Inter-American Court had ruled that forced displacement has "'destructive consequences on the ethnic and cultural fabric,' generating 'a clear

[7] *M.E.V., S.E.V. and B.I.V, CRC/C/97/D/172/2022.*

[8] *CEDAW, General Recommendation No. 39 and Matson v. Canada, CEDAW/C/81/D/68/2014.*

risk of extinction, cultural or physical, of Indigenous Peoples'" (13.24). It highlighted that UNDRIP, art. 10 **"prohibits forced evictions precisely because fundamental relationships with traditional territory underlie and sustain the survival of Indigenous Peoples,"** (13.24) and that UNDRIP, art. 8 "recognizes the right not to be subjected to the destruction of culture" (13.25). It observed that the Authors, for their own safety, felt compelled to abandon their traditional dress, languages and other elements of their identities, and this also affected their children. In sum, the Committee decided that ICCPR, art. 12 read together with art. 27 was violated due to Authors' **inability to maintain their relations to traditional territory for more than 45 years and because they were forced to abandon their traditional dress and languages** (13.26)

Ninth, the Committee examined whether Guatemala had violated ICCPR, arts. 2.3.c (the obligation to enforce remedies when granted) and 14.1 (right to a fair trial and effective remedies) because of the failure to implement the 2011 reparations agreement, dissolution of the National Reparations Programme/Commission and the ineffectiveness of related judicial orders (13.27). It noted the Authors' view that these violations were even worse because they affect Indigenous Peoples "who suffer from greater discrimination and exclusion" (13.28). It also recalled that **"access to justice is a mere illusion in the event that a final and binding decision is not enforced;**" where "required reparation is not provided, the obligation to provide an effective remedy … is not fulfilled" (13.30). It concurred with the Inter-American Court that "there must be effective mechanisms for enforcing decisions or judgments, so that the rights declared are effectively protected. The enforcement of such decisions and judgments must be considered an integral part of the right of access to justice…" (13.31). The Committee, therefore, found violations of ICCPR, arts. 2.3 and 14(1) in relation to the Authors who obtained the unimplemented judicial orders. It found the same violations in relation to the Authors who are parties to the 2011 Reparation Agreement (requiring title to land and construction of houses). Non-implementation of that Agreement is a violation of their rights, it said, "under Article 2.3.c, **read in the light of Article 37 of UNDRIP and read in conjunction with Article 14.1"** (13.32).[9]

Tenth, recognizing that Guatemala must prevent similar violations in the future (15.2),[10] the Committee decided that the State has an obligation to (15.1):

- adequately compensate the Authors for the damage suffered;
- build the houses agreed to in the Reparation Agreement and provide necessary medical, psychological and/or psychiatric treatment;
- locate and return the remains of disappeared relatives to allow the Authors to perform culturally appropriate ceremonies "to partially repair the violation of their right to humane treatment;
- grant scholarships for the Authors and their children, where requested; and
- hold a public act of recognition of responsibility and apology for the violations under conditions agreed to by the Authors.[11]

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[9] *UNDRIP, art. 37(1) provides that: "Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements."*

[10] *Guatemala should "to ensure that the [National Reparations Programme] has all the necessary means to fulfil its function of providing full compensation to the victims of the internal armed conflict."*

[11] *See also Annex II, Joint opinion of Committee members Yvonne Donders and Laurence R. Helfer (concurring) citing UNDRIP, art. 40 and explaining that "all of these remedies should take into account the customs, traditions, rules and legal systems of the Indigenous peoples concerned and be implemented with their meaningful participation."*

Last, five members of the Committee annexed concurring opinions that explain or elaborate on the decision. Most consider the decision to be a landmark case – **"a milestone in the annals of the Committee's jurisprudence"** or "an important milestone for Indigenous peoples" – and most focused on the inter-generational aspects of the decision, either in terms of its perceived innovative nature or its scope of three generations. Two pointed out that the underlying situation in Guatemala has been characterized as genocide – rather than, as the State claimed, a crime against humanity – and should be treated as such. Another considered that the failure to address the right to return (13.11), on the basis that the Authors had not specifically raised it, was an error, explaining (rightly) that the central element of the case was that, "under the slogan of 'scorched earth' the traditional peoples of which the authors are part were forcibly displaced from their ancestral territories," and this fact is amply demonstrated by the historical record and in the filings before the Committee (annex I). Based in part on this, two of the separate opinions considered that collective reparations were warranted, i.e., reparations to the Indigenous Peoples to whom the Authors belong, not just to the Authors and their children.

2. María Elena Carbajal Cepeda et al v. Peru, CEDAW/C/89/D/170/2021

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=-CEDAW%2FC%2F89%2FD%2F170%2F2021&Lang=en (all languages)

Country: Peru | **Body:** CEDAW | **Date:** 30 October 2024

- **Issues:** Forced sterilization, denial of access to remedies, intersectional discrimination.
- **UNDRIP** arts. 7, 21, 22, 24, 44

Summary: This communication was submitted by four mostly Indigenous women ("the Authors"), citing violations of the Convention on the Elimination of Discrimination Against Women ("ICEDAW") (arts. 2, 3, 12, 14 and 24). It concerns systematic forced sterilization that was promoted under a national birth control policy in effect in Peru from 1995-2001. Peru ratified the Optional Protocol to ICEDAW ("OP") in 2001. Pursuant to this national policy, over "300,000 women … mostly Indigenous, were sterilized without their consent…. [M]en, mostly Indigenous, were also subjected to vasectomies" (para. 2.2). While Peru had initiated some form of investigation into some of these acts, they were inconclusive, including in relation to the Authors.

The Authors sought redress in multiple domestic judicial and other fora without success, even though Peru recognized in various ways that forced sterilization constituted a gross violation of human rights (3.5-3.6, 7.1-7.8). They alleged that these violations impaired not only their individual right to consent in a manner adapted to their language and customs but also caused various forms of physical and emotional harm and severely disrupted their personal and family lives (3.4). The violations also affected their status in their communities because their cultural context deems sterility to be a "punishment" (3.3).

CEDAW first reviewed whether the communication satisfied the admissibility criteria in OP, art. 4. It decided that, even though the events mostly occurred prior to the entry into force of the OP for Peru, the consequences continued thereafter, including as evident in the lack of investigation and reparation (7.2). It rejected the State's assertions that there were available remedies that had not been invoked by the authors (7.3). Noting that the authors has invoked various remedies, CEDAW explained that "no victim is obliged to

resort to multiple remedies to have exhausted domestic remedies," and the authors had not even known for several years that they had been sterilized or that it was a crime for which a remedy could be sought (7.4).

It then referred to its 2022 General Recommendation No. 39 on the Rights of Indigenous Women and Girls ("GR39") (para. 26 and 30), explaining that the "justiciability, availability, accessibility and the provision of remedies for victims are among the components necessary to ensure access to justice with an intersectional and intercultural gender perspective" (id). Also, for Indigenous women, "the remoteness of their areas of residence, illiteracy and lack of knowledge of existing laws and judicial avenues constitute obstacles to their access to justice" (id). Delays in the criminal proceedings filed by the Authors were also deemed unreasonable and, therefore, CEDAW applied the exception to the exhaustion requirement in OP, Article 4(1) (7.5-7.6). CEDAW then dismissed Peru's claim that the communication was inadmissible for lack of substantiation because the birth control policy, Peru asserted, "was aimed at the general public," observing that 93 per cent of those affected were women, the vast majority Indigenous women (7.7).

First, turning to the merits, CEDAW reviewed the arguments, noting various factors such as the disproportionate impact on Indigenous women; that forced sterilization is discriminatory against women and a severe form of gender-based violence; the intersectional nature of the discrimination; the increased medical risks to women of sterilization compared to men; and the context in which the authors were sterilized, "namely, by non-specialized medical personnel in inadequate sanitary conditions, which constitutes a form of sexual discrimination" (8.2-8.3).

Second, highlighting that forced sterilization is a serious human rights violation that amount to a crime against humanity (8.3, 8.9), coupled with the ineffective nature of the national remedies (8.4), including disregard for judicial orders concerning reparations (8.6), CEDAW concluded that the authors had been denied effective remedies and reparations (8.5). It explained that the reparations ordered by the national Court had not yet been implemented and that Peru failed to provide information on "how the measures implemented have improved the authors' life plans [and] … to what extent the authors have received full reparations, **including with respect to the collective impact of forced sterilization on rural and Indigenous women"** (8.6).

Third, CEDAW again highlighted the inadequate and unreasonably delays in the national criminal proceedings and alluded to differentiated impacts on Indigenous women and girls. Referencing GR39 (para. 4), it explained that to facilitate access to justice, States are obligated to change or repeal laws and regulations as well as customs and practices that discriminate against Indigenous women and "measures to prevent and combat discrimination against Indigenous women and girls must also integrate an intersectional gender perspective that takes into account the many factors that combine to exacerbate unequal treatment" (8.7).

Finally, CEDAW recommended that Peru provides compensation and psychological support to the Authors and their families and expedite the national investigations (9(a)). However, while the cultural harm suffered by the Authors could be implicit in the general compensation requirement, it would have been much better to specify this as a distinct form of compensable harm, including in its collective aspect. More generally, CEDAW recommended that Peru should complete investigations of the forced sterilizations, develop and implement a comprehensive reparation program and amend its legal framework to ensure that it provides for diligent investigations and prompt reparations (9(b)). Again, while it could be implicit, it would be much better to specify and elaborate on what is entailed in the need for full reparations "with respect to the collective impact" on Indigenous women (as identified in paragraph 8.6). It is disappointing that this was

not done, even more considering the history and motivations behind forced sterilization of Indigenous women and girls, CEDAW's classification of this a severe form for gender-based violence,[12] and the manifestly disproportionate impact on Indigenous women in Peru that could be seen as targeted and intentional.[13]

3. Opinion 30/2024, Ignacio Celso Lino et al (Nicaragua), A/HRC/WGAD/2024/30[14]

https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session100/a-hrc-wgad-2024-30-nicaragua-advance-edited.pdf (ESP)
https://documents.un.org/symbol-explorer?s=A/HRC/WGAD/2024/30&i=A/HRC/WGAD/2024/30_1734452468123 (ENG)
https://docs.un.org/fr/A/HRC/WGAD/2024/30 (French)

Country: Nicaragua | **Body:** UN Working Group on Arbitrary Detention[15] | **Date:** 2 October 2024

- **Issues:** Arbitrary detention, fair trial standards, discrimination, rights defenders, relationship to UNDRIP.
- **UNDRIP** arts. 1, 2, 4, 7[16] 33-4 and 43

Summary: This decision ("the Opinion") was adopted by the Working Group on Arbitrary Detention ("WGAD"), a Special Procedure of the Human Rights Council, pursuant to its mandate to receive individual complaints under its regular communications procedure.[17] It concerns serious violations of the rights of four members of the Mayangna Indigenous People of Suniwás, all defenders of the land and other rights of their community and one of them a judge in the Indigenous legal system (para. 4-7). They were involved in defending the rights of their people from non-indigenous settlers, who the State had permitted to encroach on Indigenous lands with impunity due to their connection to the ruling political party (including criminal

[12] *CEDAW General Recommendation No. 39, para. 51.*

[13] *See e.g., Ñ. Carranza Ko, Making the Case for Genocide, the Forced Sterilization of Indigenous Peoples of Peru, 14 GENOCIDE STUDIES & PREVENTION: AN INT'L J. 90 (2020), https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1740&context=gsp.*

[14] *See also Opinion No. 70/2024, Nancy Elizabeth Henríquez James (Nicaragua), A/HRC/WGAD/2024/70, 6 March 2025, https://documents.un.org/symbol-explorer?s=A/HRC/WGAD/2024/70&i=A/HRC/WGAD/2024/70_1748938387591; and Opinion No. 41/2024, Higinio Bustos Navarro (México), A/HRC/WGAD/2024/41, 1 October 2024, https://documents.un.org/symbol-explorer?s=A/HRC/WGAD/2024/41&i=A/HRC/WGAD/2024/41_1741767421964; and WGAD, Visit to Canada, A/HRC/60/26/Add.1, 4 August 2025, esp. para. 43 et seq., https://www.ohchr.org/fr/documents/country-reports/ahrc6026add1-visit-canada-report-working-group-arbitrary-detention.*

[15] *https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention (the Working Group is "mandate[d] to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned").*

[16] *See also Opinion No. 21/2025, Manuel Santiz Cruz et al (México), A/HRC/WGAD/2025/21, 15 May 2025, para. 84 ("The Working Group recalls that, according to [UNDRIP], Indigenous persons have the right to life, integrity, liberty, and security, and should not be victims of violence (Article 7). The Declaration also applies existing human rights to the specific context of human rights defenders. The Group recognizes the detainees as human rights defenders and emphasizes that their work is essential to democracy"), https://documents.un.org/symbol-explorer?s=A/HRC/WGAD/2025/21&i=A/HRC/WGAD/2025/21_1753379163503.*

[17] *https://www.ohchr.org/en/special-procedures/wg-arbitrary-detention/complaints-and-urgent-appeals.*

gangs made up of demobilized military personnel (8)). Some of these invaders also tried to take over small-scale gold mining operations. In the context of this pattern of invasions of the Indigenous territory and looting of its natural resources (8, 12), a massacre of at least 11 Indigenous persons occurred in August 2021, during which several Indigenous women and girls were also sexually assaulted (10, 68).[18]

Ignoring complaints filed by the Indigenous authorities, which stated that non-Indigenous men were responsible, the National Police charged 14 Indigenous persons with crimes. Those charged were mostly volunteer forest rangers and other defenders of Indigenous lands, including the four persons named in the Opinion (11). These men "hold positions of authority and respect in the community as judges, trustees and protectors and defenders of their ancestral territory" (70). They were arrested without warrants and excessive force was used, including against their family members; they were held in pretrial detention (78-80) and incommunicado for several months, without access to trusted lawyers and family members; denied a fair trial, including translation services; and convicted solely on the basis of police testimony that was contradicted by all defense witnesses (13-26, 30). They were each sentenced to life imprisonment for the crime of aggravated murder of nine persons and an additional four years' imprisonment for the crime of kidnapping an Indigenous woman and girl (27). They were then imprisoned, far from their families and their communities, in appalling conditions that include evidence of torture, and denied medical attention (41-8, 85, 106). Appeals against their convictions were rejected by national courts (28-9). This situation is ongoing and prompted the Inter-American Court of Human Rights to adopt urgent provisional measures in favour of the four men in 2023 and 2025.[19]

The WGAD considers five categories of "arbitrariness" in relation to detention: (I) where it is "impossible to invoke any legal basis justifying the deprivation of liberty;" (II) when deprivation of liberty results from the exercise of the rights or freedoms guaranteed by various articles of the Universal Declaration of Human Rights and, where applicable, "by articles 12, 18-19, 21-22 and 25-27 of the ICCPR;" (III) where violations international norms relating to the right to a fair trial are of "such gravity as to give the deprivation of liberty an arbitrary character;" (IV) when "asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy;" and (V) when the deprivation of liberty violates the prohibition of discrimination.[20] In the Opinion, the WGAD found that four of these categories were applicable (66 et seq), deciding also that Nicaragua had failed to respond to the complaint submitted to the WGAD and that "the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations" (65).

[18] *See also referring to the same persons and situation, Res. No. 20/2023 PM 738-22, IACHR, D.R.Z., D.A.B.A., A.C.L. and I.C.L. (Nicaragua), 13 April 2023; and Four Mayangna Indigenous Peoples Deprived of their Liberty (Nicaragua), Provisional Measures, Order of the IA Ct. Human Rights, 27 June 2023 (e.g., para. 48, "… with regard to indigenous persons deprived of liberty, the Court has considered that, given their special relationship with the territory and their community, they constitute a group disproportionately affected by the custodial sentence. Thus, this measure represents an obstacle to the full exercise of the right to cultural identity of indigenous persons, the effects of which extend to the entire community. Consequently, the Court has understood that the separation of the indigenous person from his or her community and territory, constituent elements of his or her cultural identity, can lead to profound suffering that goes beyond that inherent to the stay in prison and has a negative impact on the members of the indigenous community").*

[19] *Four Mayangna Indigenous Peoples Deprived of their Liberty (Nicaragua), Provisional Measures, Order of the IA Ct. Human Rights, 27 March 2025, para. 27 (further observing, at para. 29, that "indigenous persons deprived of liberty constitute a disproportionately affected group, given their special relationship with the territory and their community, so that such a measure represents an obstacle to the full exercise of the right to cultural identity of these persons, and may generate profound suffering that exceeds that inherent to the stay in prison" (unoff. transl.), citing Differentiated approaches with respect to certain groups of persons deprived of liberty, Ser A No. 29 (2022), paras. 277, 282 and 292).*

[20] *Methods of work of the Working Group on Arbitrary Detention, A/HRC/36/38, 13 July 2017, https://docs.un.org/en/A/HRC/36/38, para. 8.*

First, with regard to Category I, the WGAD concluded that the "**four human rights defenders were detained without any legal basis**" (82) in violation of Article 9 of the ICCPR (72).[21] Among other reasons cited were the lack of an arrest warrant, including in relation to searches of their houses, the failure to give reasons for their arrest, lack of timely access to a lawyer and an intepreter (74-77), and that they were not promptly brought before a judicial authority (81).

Second, on Category II (detention resulting from the exercise of guaranteed rights), the WGAD recalled that the four men are members of an Indigenous People; they have dedicated their lives to defending their territory, playing "a leading role in confronting settlers who invade the land and usurp its communal natural resources;" and they live in a situation where they are denied equal protection of the law, and where their rights to defend their lands, "to self-determination or to define development on their terms on the basis of their world view as Mayangna Indigenous People" are not respected (84-7). The WGAD explained that it was "convinced" that the four men were detained to suppress the exercise of their rights. Specifically, "**Indigenous Peoples defending their territory are being persecuted and intimidated," including in their capacity "as a communal trustee and a communal judge, in defence of the collective rights to land and Indigenous territories titled by the State for the benefit of their communities**" (88-9).[22] It noted that no valid restriction on these rights was evident and that a "heightened standard of protection and detention review applies in cases where freedom of expression and opinion appear to have been restricted, particularly when such detentions involve human rights defenders" (90).

Moreover, the WGAD explained that, **according to UNDRIP, Indigenous Peoples, "in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.** This view is strengthened by the opinion of the Human Rights Council that environmental defenders have the right to be protected in their work" (94). Therefore, confirming that their detention was arbitrary under Category II, the WGAD concluded (96-7) that the four Indigenous rights defenders "were detained for exercising their rights enshrined in the Declaration on Human Rights Defenders, and for promoting democratic participation and combating violations of the environmental rights of their community" (95). It added that "**the detention of persons for their activities as human rights defenders is a violation of their rights to equality before the law and equal protection of the law**, their rights to freedom of opinion, expression and association, and their right to participate in political affairs" (96).

Third, turning to Category III (grave violation of fair trial guarantees), the WGAD stated that it had already found that the four men were detained due to the exercise of protected rights. Thus, there was no basis to prosecute them, making their detention arbitrary under Category III (98). Nonetheless, it decided to examine whether "fundamental components of a fair, independent and impartial trial were respected" (id). It recited numerous reasons to conclude that these rights were egregiously violated, which again makes their detention arbitrary under Category III (100-22). These included their arrest and incommunicado detention, amounting to "enforced disappearance" (101-05), that the conditions of their detention and abuse suffered at the hands of police, prison guards and other inmates rose to the level of torture (101-07), and the denial of

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[21] *ICCPR, Art. 9(1), provides in part that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention."*

[22] *It explains further, at para. 89, that "[t]he Indigenous persons have repelled the settlers by exercising community resistance, which they did by voicing their complaints and objections, mobilizing in defence of the territory in question and sharing information about the situation through various media outlets. These activities were carried out peacefully and were therefore protected under international human rights law. These rights – to freedom of expression, peaceful assembly and association – were restricted for the detained persons, resulting in their arrest and prosecution."*

necessary medical care.[23] It explained that the WGAD "has consistently concluded that torture or other forms of ill-treatment or punishment that make it impossible for a person to prepare a proper defence for a trial constitute a violation of his or her right to a fair trial" (108). It also listed violations of their right to translation as they primarily spoke their Indigenous language and the proceedings were only in Spanish, denial of their right to legal assistance, and due to their removal far from their territory and to a court that did not have jurisdiction over the alleged crimes (114-18, 121).

Fourth, on Category V (detention made arbitrary due to discrimination), **the WGAD endorsed statements by UN treaty bodies upholding Indigenous Peoples' territorial rights and the corresponding obligations of the State**, including, in this case, Nicaragua's discriminatory failure to protect those rights (127). It also recalled that "the four defenders were treated with evident contempt and with particular harshness because they are Indigenous persons. They were even denied access to an interpreter" (128). It concluded that they had been detained arbitrarily under Category V due to discrimination against them as **they were "detained because they formed part of the political opposition, because of their roles within their community and to teach a lesson to the other residents of the place**" (129).

Last, taking into account the circumstance of the case, the WGAD, among other things, decided that "… **the appropriate remedy would be to release the four individuals immediately and accord them an enforceable right to compensation and other reparations**, in accordance with international law" (133). This is consistent with the 2023 order of the Inter-American Court, which stated that "given the special condition of vulnerability in which indigenous persons deprived of liberty are located, it is necessary to order their immediate release. At the same time, it is essential to require that the State, pending their release, immediately adopt the necessary measures to effectively protect the life, integrity, health, adequate food, and liberty of the beneficiaries."[24]

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[23] *It accepted, at para. 103, that the aim of the abuse was "…to break their resistance and to make an example of them for other members of their communities so that they do not continue to defend their lands. This situation is also directly linked to the context of violence caused by the internal colonization of the lands of the Indigenous Peoples of the Caribbean Coast." See also B. Rivera Bryan and N. Elizabeth Henríquez James and their Families, Provisional Measures, Order of the IA Ct. Human Rights, 1 February 2024, para. 54 (recalling that "… the proposed beneficiaries of the provisional measures are indigenous leaders and leaders of the YATAMA organization…. [T]he … Supreme Electoral Council canceled the legal status of YATAMA, accusing it of undermining national sovereignty…").*

[24] *Four Mayangna Indigenous Peoples Deprived of their Liberty (Nicaragua), Provisional Measures, Order of the IA Ct. Human Rights, 27 June 2023, para. 49 (unoff. transl.).*

4. WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, GRATK/DC/7[25]

https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf

Country: Global | **Body:** World Intellectual Property Organization | **Date:** 24 May 2024

- **Issues:** Genetic resources, Indigenous knowledge, intellectual property rights.
- **UNDRIP** arts. 11, 18, 31, 41

Preamble

. . .

Acknowledging the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and commitment to achievintg the ends set forth therein, and

Affirming that best efforts should be made to include Indigenous Peoples and local communities, as applicable, in implementing this Treaty,

ARTICLE 2 LIST OF TERMS

. . .

For the purposes of this Treaty: … "Source of genetic resources" refers to any source from which the applicant has obtained the genetic resources, such as a research center, gene bank, Indigenous Peoples and local communities, the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), or any other ex situ collection or depository of genetic resources.

ARTICLE 3 DISCLOSURE REQUIREMENT

. . .

3.2 Where the claimed invention in a patent application is based on traditional knowledge associated with genetic resources, each Contracting Party shall require applicants to disclose:

(a) the Indigenous Peoples or local community, as applicable, who provided the traditional knowledge associated with genetic resources, or,

(b) in cases where the information in Article 3.2(a) is not known to the applicant, or where Article 3.2(a) does not apply, the source of the traditional knowledge associated with genetic resources [note 3 explains that "Agreed Statement: It is understood that the term "as applicable" in Article 3.2(a) shall not be interpreted as providing flexibility to the Contracting Parties to not require applicants to disclose the information required in Article 3.2(a). For greater certainty, Article 3.2(a) will be implemented without having any effect on the scope of the disclosure requirement in Article 3].

[25] *This treaty requires ratification by 15 States before it enters into force, and only two states have ratified to date. See also W. Wendland, Beyond Adoption: Why it Matters and What's Next for the WIPO Treaty on IP, Genetic Resources and Associated Traditional Knowledge?, 25 September 2025, p. 4 (opining that "… for the first time in [Intellectual Property] standard setting, Indigenous Peoples had a seat at the table. As a result, it is the first IP treaty to refer explicitly to Indigenous Peoples and to acknowledge their critical roles as stewards of biodiversity and custodians of precious bio-knowledge. Language proposed by Indigenous Peoples's representatives resonates throughout the text. They will play a role in the Treaty's implementation, creating opportunities for a new partnership between States and Indigenous Peoples"), https://wendwendland.com/wp-content/uploads/2025/10/ww-jaszi-lecture-25-september-auwcl-publication-final.pdf.*

ARTICLE 6 INFORMATION SYSTEMS

6.1 Contracting Parties may establish information systems (such as databases) of genetic resources and traditional knowledge associated with genetic resources, in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, taking into account their national circumstances.

6.2 Contracting Parties should, with appropriate safeguards developed in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, make such information systems accessible to Offices for the purposes of search and examination of patent applications. Such access to the information systems may be subject to authorization, where applicable, by the Contracting Parties establishing the information systems.

6.3 In regard to such information systems, the Assembly of the Contracting Parties may establish one or more technical working groups to address any matters relating to the information systems, such as accessibility to Offices with appropriate safeguards.

ARTICLE 10 ASSEMBLY

10.1 The Contracting Parties shall have an Assembly: …

(c) The Assembly shall encourage the effective participation of representatives from Indigenous Peoples and local communities as accredited observers. The Assembly will invite Contracting Parties to consider financial arrangements for participation of Indigenous Peoples and local communities.

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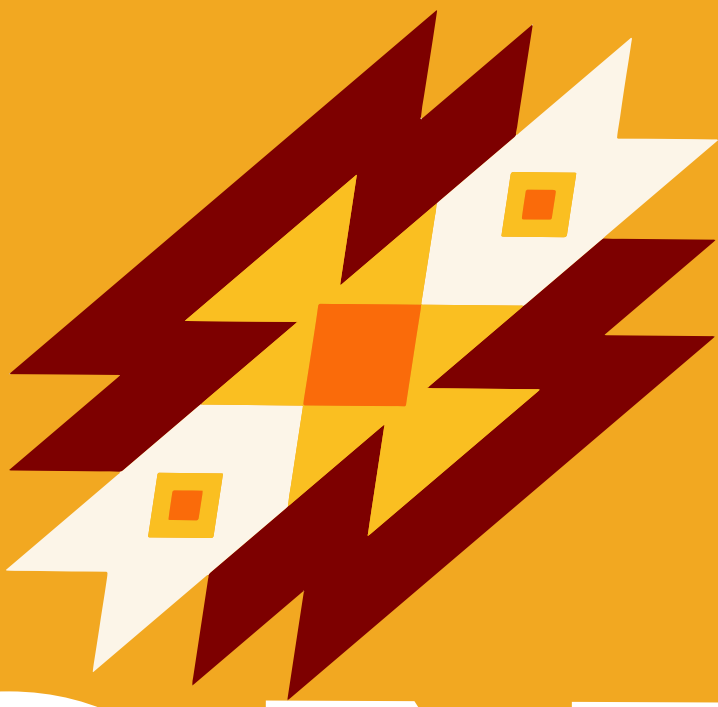

GIONAL

Regional[26]

1. The Climate Emergency and Human Rights, Advisory Opinion, Ser A No. 32[27]

https://corteidh.or.cr/docs/opiniones/seriea_32_en.pdf (ENG)
https://corteidh.or.cr/docs/opiniones/seriea_32_es.pdf (ESP)

Body: Inter American Court of Human Rights | **Date:** 29 May 2025

- **Issues:** Climate change and human rights, both effects of climate change on human rights and obligations of States to respect rights in mitigation and adaptation measures.
- **UNDRIP** arts. e.g., 1, 2, 4, 5, 10-14, 18, 29, 31, 32

Summary: This important Advisory Opinion is a lengthy decision that, although relevant in total, is summarized below mostly insofar as it directly mentions Indigenous and Tribal Peoples ("ITP"). It was based on a request made by Chile and Colombia about the human rights law obligations of States regarding "the climate emergency".[28] According to the Inter-American Court of Human Rights ("the Court" or "the IA Court"), the 'climate emergency'[29] is part of the 'triple planetary crisis', which involves intensifying and interrelated phenomena of climate change, pollution, and biodiversity loss (para. 42).[30] That there is a crisis, however, does not, in the Court's view, justify disregarding human rights, sustainable development standards and the democratic rule of law (214, 460-64).[31] It does require, among other things, "constant dialogue with scientific … and indigenous knowledge (215, 471-87) and respect for ITPs' rights (e.g., 223, 367). The International

[26] *Except for No.1, the judgments of the IA Court in this section were published many months after the official date of the judgment and are only available in Spanish at present. See also González Méndez v. Mexico, IACtHR, Ser C No. 532 (2024) (concerning the disappearance of an Indigenous human rights defender, where the Court declined to consider "allegations regarding historical discrimination against indigenous peoples" because the arguments were the same as those regarding the right to freedom of association (185)); and ASEAN Declaration on the Right to a Safe, Clean, Healthy and Sustainable Environment, 28 October 2025 (e.g., "Recognising that … the consequences [of environmental damage] are felt most acutely by … those segments of the population already in vulnerable situations, including … indigenous and local communities as applicable to relevant ASEAN Member States"), https://asean.org/asean-declaration-on-the-right-to-a-safe-clean-healthy-and-sustainable-environment/.*

[27] *See also Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], no. 53600/20, 9 April 2024; and Greenpeace Nordic and Ors v. Norway, no(s). 34068/21, 28 October 2025 (judgments of the European Court of Human Rights concerning human rights obligations in relation to climate change).*

[28] *Because it is a human rights court, it has no jurisdiction to directly address various international environmental law treaties beyond how they may relate to human rights. Para. 216 summarizes some of the principles it considers relevant in this regard. These environmental treaties are discussed extensively in the International Court of Justice's decision on The Obligations of States in respect of Climate Change, Advisory Opinion, ICJ Reports 2025, 23 July 2025 ("ICJ Opinion"), https://icj-web.leman.un-icc.cloud/case/187.*

[29] *Paras. 44-216, discussing in detail the Court's views on the causes of climate change and its current and foreseeable effects; various international and national responses, legislative, judicial and otherwise; and "the reasons why the present circumstances should be addressed in the terms of a climate emergency" (43).*

[30] *See also U'wa Indigenous People v. Colombia, No. 3 below, para. 304.*

[31] *The Court explains that "development must be sustainable; in other words, based on a balance between economic development, social development, and environmental protection. Social development necessarily incorporates human rights, not as a mere hypothesis, but as a central objective that requires, inescapably, the protection of the environment; while economic development should be conceived as a means of achieving the full enjoyment of human rights within the limits imposed by the said environmental protection" (211). See also A human rights-based approach to the energy transition, A/80/188, 17 August 2025, (referring to the need to respect Indigenous Peoples' rights and, at para. 5, 58 and 61, referring the Court's advisory opinion).*

Court of Justice ("ICJ") concurred on both points in July 2025 advisory opinion on States' obligations regarding climate change in international law.[32]

First, the IA Court ruled that it would respond to three questions posed by Chile and Colombia, one of which concerns "obligations to respect and to guarantee rights and to adopt the necessary measures to ensure their exercise without discrimination" in relation to environmental defenders, women, Indigenous Peoples and others (28(3)). In connection with this, the Court recalled its 2017 Advisory Opinion on Human Rights and the Environment where it determined that ITP are disproportionately affected by environmental degradation[33] and "the effects on [their] rights might be felt with greater intensity" (26).[34] More generally, it concluded in the present opinion that "the right to a healthy climate" is a substantive element of the right to a healthy environment" (302), having individual, collective and intergenerational implications (302-13). The ICJ reached a similar conclusion,[35] stating that "under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights."[36] The IA Court highlighted intergenerational considerations in the case of ITP (as have mechanisms in the UN system), recalling that its prior decisions have, for instance, "supported the transmission of collective cultural heritage, and this encompasses both the land and the resources traditionally used" by ITP (308).

Second, and prior to examining specific effects on various rights, the Court extensively discussed the general obligations to respect and guarantee (protect) human rights (218-594). On the obligation to respect, the Court explained that this requires that States:

(a) may not impair, limit or delay measures required to protect human rights from the impacts of climate change, including access to "reliable, truthful, and complete information" on human rights impacts caused by climate change (221);

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[32] *E.g., the various citations herein to ICJ Opinion (see also paras. 403-04: States must "take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations" (404)).*

[33] *E.g., para. 407 (climate-related "impacts on property and housing can be particularly pronounced in relation to communal ownership of ancestral lands linked to the cultural identity of Indigenous Peoples, which cannot be restored after climate-related disasters"); and para. 450 ("… damage and destruction of culture and cultural heritage caused by climate change can especially affect Indigenous Peoples …").*

[34] *Citing The Environment and Human Rights, OC-23/17, Ser A No. 23, para. 64. See also ICJ Opinion, para. 382, 384 (reaching the same conclusion and citing various UN treaty bodies who asserted the same before the ICJ and highlighting that this includes "when taking action to address climate change, [States should] respect, promote and consider the rights of indigenous peoples…").*

[35] *ICJ Opinion, para. 369-393 (observing that "States have obligations under international human rights law to respect, protect and ensure the enjoyment of human rights of individuals and peoples" (371), the ICJ ruled that "[t]he environment is the foundation for human life, upon which the health and well-being of both present and future generations depend…. The Court thus considers that the protection of the environment is a precondition for the enjoyment of human rights…" (373).*

[36] *Id. para. 393 (adding that "right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right").*

(b) not adopt retrogressive measures, e.g., weakening existing protections, without complying with the relevant requirements (222);[37]

(c) that discrimination is prohibited, both direct and indirect, in "the design, implementation or assessment" of climate mitigation and adaptation policies and programs, and

(d) States "**must adopt differentiated and reasonable measures to ensure" that ITP "can exercise their rights in equal conditions in the face of the effects of climate change and state responses**…" (223).

The **obligation to guarantee/protect** includes the duty to prevent third parties, corporations included, from violating protected rights (226); the obligation of prevention, "supplemented by the application of the precautionary principle" (228, 230); and enhanced due diligence obligations (231-37).[38] The latter includes the obligation to ensure that environmental impact assessments explicitly include an evaluation of climate and its impact on human rights (358-60, 389).[39] The Court also explains its understanding of the obligations inherent in economic, social and cultural rights – non-discrimination, progressive development, immediate core obligations and non-retrogression – (238-43), and the obligation to adopt legislative and other measures at the national level (244-46).[40]

Third, the Court discusses the "rights of nature" in some detail, stating that it believes (by four votes to three)[41] that recognition of nature as a subject of rights allows for moving past legal concepts that see nature only "as an object of ownership or an exploitable resource," instead of its "structural role in the vital balance of the conditions that make this planet inhabitable" (280). This, the Court says, "reinforces a paradigm focused on the protection of the ecological conditions that are essential for life and empowers … [ITP], who have historically been the guardians of the ecosystems and possess deep-rooted traditional knowledge of their functioning" (id).[42] The associated footnote states that this view is fully consistent with inter-American case law, which protects "the special relationship that unites [ITP] with their territories. **Respect and guarantee of their rights not only protects the individual members of these communities today, but also the collective entity they represent, their future generations, and the natural surroundings with which they have a spiritual, cultural and subsistence relationship**" *(id).*

In this light, the Court concludes that States must not only avoid significant environmental damage, but they also have a "positive obligation to adopt measures to guarantee the protection, restoration and regeneration

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[37] *The IA Court explains that "any setback in climate and environmental policies that harm human rights must be exceptional, duly justified based on objective criteria, and comply with the standards of necessity and proportionality" (222). In this respect, restrictions on or violations of Indigenous Peoples' rights in various purported climate adaptation and mitigation measures projects would seem to be very hard to justify, e.g., REDD+, conservation and many, if not all, carbon related projects, at least without securing FPIC.*

[38] *Para. 235, the "way in which enhanced due diligence is put in practice in each case will depend on the specific risk faced, the measures required to protect the threatened rights, and the possible situation of vulnerability of the victims."*

[39] *Para. 362, "… assessments must be carried out by independent entities with the relevant technical capacity, under the State's supervision; they must cover the cumulative impact, include the participation of interested parties, respect the traditions and culture of Indigenous Peoples…."*

[40] *Para. 245, "This obligation entails the adoption of two types of measures: … the elimination of laws and practices of any nature that entail violations of the guarantees established in the Convention and, on the other, the enactment of laws and the implementation of practices leading to the effective observance of such guarantees."*

[41] *Opinion, para. 7.*

[42] *Cf. C. Bustos, Rethinking Nature's Rights, Harvard Environmental L.R. (forthcoming, 2026) ("… the implementation of nature's rights remedies has at times had negative implications on indigenous land tenure, consultation, and public participation"), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5433634.*

of ecosystems," measures that must be "compatible with the best available science and recognize the value of … indigenous knowledge" (283). Additionally, protection of ecosystems "should take into account all their components, including human beings **[and] … ensure adequate protection for the rights of [ITP] and communities that have a close relationship with those ecosystems**" (367). The Court (by four votes to three) also concludes that there is a peremptory norm of international law – a rule which must be always complied with, and which supersedes treaty obligations –that prohibits irreversible harm to the common or planetary ecosystem (287-94).

Fourth, the Court observes that international environmental law requires that States adopt a "mitigation target or [Nationally Determined Contribution]," the purpose of which is to limit global heating to 1.5 degrees Celsius over pre-industrial levels (323). It seeks to clarify what this means in terms of human rights obligations (324-44), including as related to the private sector (345-51). It notes that ITPs' knowledge and participation is "essential" and, thus, "States should listen to them and facilitate their continuing participation in decision-making. The **results, consensuses and proposals arising from such participative processes should occupy a central place in the reasoning behind the decisions adopted by domestic authorities**" (339-40).[43]

Fifth, the Court considers specific obligations arising from the following rights in connection with climate mitigation/adaptation measures:[44] rights to life; health; family life and privacy;[45] property and housing; freedom of movement or residence; water and food; work and social security; culture; education; rule of law and democratic norms, such as access to information (obligations to produce information, disseminate and facilitate access to information, adoption of measures against disinformation (501-29));[46] to science[47] and recognition of Indigenous knowledge;[48] **participation and,[49] in the case of ITP, FPIC** (607-11);

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[43] *Para. 339, "… Indigenous Peoples play an essential role in the preservation and sustainable management of these ecosystems because their ancestral knowledge and their close relationship with Nature proven essential for the conservation of biodiversity and the mitigation of climate change."*

[44] *See also ICJ Opinion, para. 376 et seq (doing the same in relation to a more limited set of rights).*

[45] *Id. para. 381 (referring the Human Rights Committee's decision in Daniel Billy v. Australia, CCPR/C/135/D/3624/2019, the ICJ considers that "a State's failure to implement timely and adequate adaptation measures to address the adverse impacts of climate change may violate the right to privacy, family and home").*

[46] *Para. 490, "a principle of maximum disclosure applies, with a presumption that all information is accessible, subject to a limited system of exceptions. Therefore, the burden of proof to justify any refusal to grant access to information must fall on the body from which the information was requested. … Failure by the State to provide a response constitutes an arbitrary decision."*

[47] *Para. 487, "… the Court reiterates, in line with the findings of other international courts, that currently the best science available on climate change is compiled in the IPCC reports."*

[48] *Para. 476, "… indigenous knowledge encompasses all the knowledge that these peoples possess about their relationships and practices with their environment; this forms part of their collective intellectual heritage and is an integral part of their cultural systems, constituting the basis for decision-making on fundamental aspects of life, from everyday activities to long-term actions;" and 479, "according to FAO, Indigenous Peoples and Afro-descendant communities are two of the rural groups with the greatest potential to contribute to climate change mitigation in Latin America, due to their ancestral knowledge and their collective land practices;" and para. 482, highlighting the knowledge of Indigenous women and elders.*

[49] *Para. 536, "States must ensure public participation without discrimination, giving priority to persons, communities, and indigenous peoples who are particularly affected by climate harm, as well as by the measures taken by the State to prevent and respond to such harm;" and para. 539, "… beyond prior consultation, the State must promote the participation of indigenous and tribal peoples … considering their particular vulnerability to the climate emergency and the importance of incorporating … indigenous knowledge into the decision-making processes necessary to address that emergency."*

access to justice; and protection of human rights defenders, particularly in the context of increasing criminalization and violence[50] (392-587).

- On property and housing rights, it observes that where relocation of ITP is unavoidable and necessary[51] "due to climate disasters, environmental degradation, and/or slow-onset phenomena climate effects … they must have access to land that is similar in quality and legal status to the land they previously occupied, and which allows them to meet their needs and ensure their future development" (427).[52]
- With respect to cultural rights, damage and destruction of culture and cultural heritage caused by climate change can "… impair the right of [ITP] to participate in cultural life, including, among other things, the ability to maintain and strengthen their cultural relationship with their land and territory…" (450).
- The Court also recognizes that the protection of the right to science extends to ITPs' knowledge, which must be comprehensively protected (483), and States have specific obligations, including to "**take all measures to respect and protect the rights of [ITP], particularly their land, their identity, and the moral and material interests resulting from the knowledge of which they are authors**, individually or collectively" (484).[53]
  - It also details specific obligations with respect to human rights/environmental defenders (561-86) and **the obligation to combat and eradicate criminalization of their activities by "the undue use of the law to restrict these activities, other forms of judicial harassment, arbitrary detention, and convictions with disproportionate sentences**" (587).[54]
  - On access to information, the Court upheld its prior jurisprudence that "activities and projects that could have an environmental impact, including the exploration and exploitation of natural resources in the territories of [ITP] communities, are matters of clear public interest," and, as such, there is a presumption that related information must be disclosed upon request and within a reasonable time (490-1, 500).[55] They also must:

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[50] *Para. 571, "… defenders include groups that, for intersectional reasons, are particularly vulnerable to heightened forms of violence. This is the case of Indigenous Peoples…," who, numerous studies show, are disproportionately affected; and para. 577-76, 585, States "have the obligation to adopt the necessary measures to establish or, if applicable, reinforce national protection programs that include an intersectional approach. Such programs must … be designed and adopted with the effective participation of all relevant social actors including … defenders. In addition, they must include specific strategies to guarantee the life, safety and reputation of environmental defenders, considering the situation of additional risk experienced by … Indigenous Peoples."*

[51] *Citing UNDRIP, art. 10. See also para. 429, explaining that "Relocations should only occur in exceptional circumstances, when they are unavoidable and necessary owing to the impossibility of maintaining human settlements in areas prone to danger and in order to preserve the life, integrity, and health of the populations concerned."*

[52] *Para. 427, adding that "Where the populations concerned prefer to receive compensation in cash or in kind, such compensation must be granted to them, with appropriate guarantees."*

[53] *Also stating that "States must: (i) adopt measures to protect local, traditional and indigenous knowledge through appropriate mechanisms … and (iii) support the compilation of local, traditional and indigenous knowledge related to climate change, the environment and human rights."*

[54] *See also Garifuna Community of Cayos Cochinos v. Honduras. Extension of Provisional Measures. Resolution of the IA Ct. Human Rights, 15 October 2025 (concerning persecution of rights defenders and litigants in a case pending before the Court and observing, at para. 31, that "the Court has highlighted the special situation of vulnerability in which these communities find themselves, as well as the State's obligation to adopt comprehensive measures to guarantee their life, integrity, and free exercise of their collective rights over ancestral land and territory").*

[55] *Para. 500, "… the effective guarantee of access to climate-related information constitutes an essential condition for the protection, inter alia, of the rights to life, personal integrity, health, a healthy environment, and a healthy climate."*

- ensure that businesses "publicly, accurately, and accessibly disclose information on the climate impacts of their activities, including sufficient information to assess the adequacy of measures adopted to prevent human rights violations" (506);
- produce information on adaptation plans and strategies, on the current and projected impacts of climate change and its effect on human rights, identifying those groups especially at risk, and "conduct periodic risk assessments concerning communities and groups that are disproportionately vulnerable to human rights violations as a result of climate change, including the threats and violence faced by human rights defenders within the context of the climate emergency" (511); and
- analyze impacts of climate change on ITPs' territories and means of subsistence, "associated deterioration of family and community ties and cultural practices, and current and future impacts on cultural heritage **and develop intervention methods to address such impacts**" (512).[56]

Sixth, the Court turned to obligations associated with equality and non-discrimination[57] as contained in the above-referenced question on "obligations to respect and to guarantee rights and to adopt the necessary measures to ensure their exercise without discrimination" in relation to ITP and others (28(3)).[58] The Court explains that equality and non-discrimination do not require that all persons and groups are treated exactly the same and that, because of their specific characteristics and needs, States are required to treat some persons and groups differently to achieve equality e.g., the disproportionate and differentiated impact of climate change on ITP (and on Indigenous women and children, etc.) (595-96, 605).[59] It refers to the latter as "differentiated measures of protection." After reviewing the nature of such measures in the case of children (597-604), the Court turns to ITP, unhelpfully lumping them in with "Afro-descendant Communities, Peasant Farmers, and Fishermen."

The Court begins by setting out four general and "progressive measures" that States should adopt to comply with non-discrimination and equality guarantees (repeated verbatim immediately below):

i. **reinforce the recognition and functioning of institutions that represent ITP in aspects related to their self-government, autonomy, administration and management of their territory and natural resources**, as well as to guarantee that they have the necessary financial resources to allow their participation in decision-making in the context of the climate emergency;

ii. design and implement, with the participation of the corresponding peoples and communities, studies, and statistical records and reports that provide disaggregated data on the impact of climate change on

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[56] *Para. 514, States must produce information that enables "the prior, free, and informed consultation of indigenous and tribal peoples, in the assessment of the environmental and climate impact of projects or activities that may contribute to affecting the climate system."*

[57] *Para. 590-92, explaining that the principles of equality and non-discrimination are inviolable norms of international law, so fundamental that the "legal structure of national and international public order rests on it and it permeates the whole legal system," and that they entail two primary ideas: the prohibition of arbitrary differences in treatment, and positive measures to reverse or modify any discriminatory situations in their societies that affect a specific group of individuals, which includes a special duty of protection towards those particularly at risk.*

[58] *Para. 588, "… the Court will address determination of the differentiated obligations to guarantee the principle of equality and non-discrimination in relation to individuals and groups who are particularly vulnerable in the context of the climate emergency."*

[59] *Para. 605, "This situation is exacerbated by the negative consequences of the activities of extractive industries, forestry, and land-grabbing in indigenous territories. To this is added the fact that Indigenous Peoples … often live in 'marginal lands and fragile ecosystems which are particularly sensitive to alterations in the physical environment.'"*

access to their territories and to the means necessary for their survival. States must endeavor to include intersectional factors related to ethnic and cultural self-identification, gender, age, and disabilities in this information;

iii. design and implement public policies and strategies, with the participation of these peoples and communities, to respond to the impacts of climate change on their territories, way of life, cultural heritage, subsistence, and food and water security;[60] and

iv. adopt the necessary administrative, legislative and public policy measures to guarantee the protection of the territory, and strategies to reinforce the short- and long-term climate resilience and adaptability of the territories and dwellings of these communities and peoples (606).

It articulates the measures that are required to secure "effective participation" in decision-making (e.g., as in (iii) in the paragraph immediately above). First, all relevant information that is possessed by the State on the effects of climate change and any related State strategies shall be distributed in the various Indigenous languages and in a culturally appropriate manner (607). Second, the Court recalled its jurisprudence[61] holding that where large-scale development or investment plans may have a significant impact on the territories of ITP, "**States not only have the obligation to consult, but also the duty to obtain the free, prior and informed consent of the communities concerned**, in keeping with their customs and traditions" (608). Elaborating further, it explained that **FPIC "is necessary, at least, in relation to actions that will have a crucial impact on the communities concerned in relation to aspects such as their well-being, their cultural heritage, and their traditional way of life, and even including the exercise of their rights over their lands and natural resources**" (609).

FPIC also requires disclosure of all relevant information about any activity or initiative that "could affect [ITPs'] **territorial rights or other rights essential for their survival as a people, including those related to implementation of natural resource exploration and exploitation projects, which constitute matters of general interest**" (610).[62] These processes must align with ITPs' representative institutions and procedures and commence at "the first stages of the planning or drafting of any project or measure that could affect their territorial rights or other rights that are essential for their survival as a people, such as natural resource exploration and extraction activities" (611-12).[63]

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[60] *See also ILO CEACR, Direct Request, 113rd ILC session (2025), Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – Indonesia (on the obligation to adopt measures to secure Indigenous Peoples' land rights to provide security for traditional occupations and the obligation to amend or enact national law), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID%2CP13100_COUNTRY_ID:4416270%2C102938.*

[61] *Saramaka People v. Suriname, Ser C No. 172 (2007), para. 134 (the Court used different formulations of the "significant impact" language in Saramaka as well as in the associated interpretation judgment (Ser C No. 185 (2008)), e.g., impacts that would affect 'the integrity of the territory.'*

[62] *See Saramaka People v. Suriname, Ser C No. 185 (2008), para. 37. (where the Court defined the term "survival" to mean Indigenous and Tribal peoples' "ability to 'preserve, protect and guarantee the special relationship that they have with their territory', so that 'they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected'"). Similarly, to avoid endangering Indigenous Peoples' "very survival," the Human Rights Committee and others require that "measures that compromise indigenous peoples' culturally significant territories are taken after a process of effective participation and [FPIC]." E.g., Wunna Nyiyaparli indigenous people v. Australia, CCPR/C/137/D/3585/2019, para. 8.5.*

[63] *Para. 612, "… States should ensure that the rights of indigenous and tribal peoples are not overlooked in any activity or agreement with third parties, between third parties, or in the context of decisions made by public authorities that have an impact on their rights and interests…."*

Last, the Court lists various measures that States should "progressively implement" in relation to the right of access to justice (613).

2. Quilombola Communities of Alcântara v. Brazil. Series C No. 548 (unoff. transl.)

https://www.corteidh.or.cr/docs/casos/articulos/seriec_548_esp.pdf (ESP)

Country: Brazil | **Body:** Inter American Court of Human Rights | **Date:** 21 November 2024

- **Issues:** Rights to lands, territories and resources, individual v. collective titles, forced relocation, denial of subsistence rights, impairment of religious freedom, lack of effective remedies.
- **UNDRIP** arts. 3, 7, 8, 10, 11-12, 14, 18-19, 20, 23, 25-29, 32

Summary: This case concerns the rights of a Tribal People[64] (Quilombola of Alcântara) due to Brazil's failure to fully regularize their lands,[65] takings of their lands and forced relocation to benefit the Brazilian Aerospace Program and its satellite launch facilities ("CLA"), and various other harms caused by the long-standing denial of rights and effective legal remedies. In particular, its origins lie in the forced displacement of 31 communities in the 1980s during Brazil's de facto miliary regime and dictatorship (para. 154), threats of further expulsion due to expansion of the CLA, and the ongoing failure to secure various rights, despite promises to do so, including grants of individual titles instead of the recognition of collective property, and a lack of reparations for serious and continuing harm such as restrictions on access to resources and sacred sites. Because the forced relocation occurred prior to Brazil's acceptance of the Court's jurisdiction, the Court was not permitted to examine the relocation itself, only its ongoing consequences.

First, the Court recited its jurisprudence on ITPs' rights to lands, territories and resources (140 et seq), among other things, recalling that **effective protection of these rights also "entails the observance and respect of the autonomy and self-determination of [ITPs] over their lands"[66] and the recognition of collective legal personality**, "so that they can exercise the relevant rights, including land ownership, in accordance with their traditions and modes of organization" (147).[67] It concludes that the factual evidence proves the "traditional occupation by the Quilombola Communities of Alcântara of the territory they claim as their own,"

[64] *See also IACHR, Report No. 359/22 (Admissibility and Merits), Case No. 14.487, Chilean Afro-descendant Tribal People and their members (Chile), date of submission to the Court: 26 September 2025, https://www.oas.org/es/cidh/decisiones/Corte/2025/CL_14.487_NdeREs.docx.*

[65] *Para. 148, the Court recalls that "the 1988 Constitution, currently in force, states in Article 68 of the Act of Transitory Constitutional Provisions that 'the remnants of the Quilombo communities that are occupying their lands are recognized as having definitive ownership, the State must issue them the respective titles,'" establishing that the obligation is both international and domestic.*

[66] *Para. 315, "Any disputes that may arise within the communities at the time of the [demarcation] … and any overlaps between the individual titles and the collective title must be resolved by the communities themselves, in the exercise of their rights to self-determination and autonomy."*

[67] *Citing: Lhaka Honhat v. Argentina, Ser C No. 400 (2020), para. 153; U'wa Indigenous People v. Colombia, No. 3 below, para. 129; and Saramaka People v. Suriname, Ser C No. 172 (2007), para. 172.*

a conclusion not disputed by the State (153). On the contrary, State agencies concluded an Agreement on 19 September 2024 which commits to the collective titling of 78,105 hectares as traditional Quilombola territory (155). However, this was after a prolonged failure to regularize collectively held lands and, in 2021, "instead of moving forward with collective titling," the State granted 129 individual property titles to only some members of the forcibly relocated Quilombola communities (158). The Court concluded that these individual titles "did not provide legal certainty" to the Quilombola Communities of Alcântara and, worse, would lead to the progressive disintegration of communal property in violation of their collective rights, more broadly (158-59, 165).[68]

Second, the Court considered that the Quilombola have not received any compensation for the impacts on their traditional territory caused by CLA satellite launches, and the ongoing lack of consultation with them about the most appropriate forms of compensation based on their needs and culture (161-65).[69] The Court determined that **they were denied access to "natural and cultural resources" that are of "fundamental value for the physical and cultural survival of these communities"** (163). It concluded Brazil had violated rights to property and to freedom of movement because, among other things, it had that failed to comply with the duty to guarantee the full use and enjoyment of the collective territory, including by failing to provide compensation for the impact of systematic restrictions on the use of the territory and on their right of movement for religious and economic activity and for their subsistence needs (165).

Third, the Court examined the proven lack of participation in decision-making (178 et seq), concluding that Brazil failed to comply with its obligations (186). It recalled that participation rights are "**closely related to the right to self-determination of peoples**," **considering also the necessity of respecting rights to lands, territory and resources and cultural identity** (168). States, therefore, must guarantee ITPs' "participation in decisions regarding measures that may affect their rights, and in particular their right to communal property, in accordance with their values, customs, and forms of organization" (*id.*).[70] Effective participation in decision-making is also necessary so that ITP "**can exercise their right to decide on their own priorities with regard to the development process … which is exercised within the framework of the right to self-determination**" (172). These participation rights extend also to the conclusion and implementation of a bilateral treaty between Brazil and the USA concerning the CLA (179-85), even more because it concerns substances potentially harmful to health and the environment (183).[71]

Fourth, the Court addressed rights to personal integrity and the "collective life project/plan" of the Quilombola of Alcântara (188 et seq). The Court recalled that relocation had forced the affected communities to live in places to which they were not accustomed and that they were prohibited from expanding their homes or building new homes for their children, which led to youths leaving and the "breakdown of

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[68] *E.g., para. 263, "The system of common use of natural resources was also transformed because individual plots were allocated. This causes the lands to be used without respecting the rest times that were previously customary, impacting the quality and fertility of the land."*

[69] *Para. 162 et seq, relating to "a series of restrictions on the right of movement through the Quilombola Territory, which prevents them from visiting their cemeteries and places of worship, accessing agricultural crops, and access to rivers and seacoasts essential for fishing."*

[70] *Para. 171, "States must guarantee the right to consultation and participation in any project or measure that may affect the territory of an indigenous or tribal people, or other rights essential to their survival as a people, in order to safeguard the right to collective property."*

[71] *Para. 182, "the Court recalls that "the application of bilateral trade agreements 'must always be compatible with the American Convention, a multilateral human rights treaty with its own specificity, which generates rights in favor of individuals and does not depend entirely on the reciprocity of States").*

family coexistence" (190).[72] They were prohibited from accessing cemeteries and places of worship and from being buried next to their ancestors, which caused them severe psychological, cultural and spiritual harm, and access to key subsistence resources was systematically restricted (191-93). The Court concluded that **this greatly harmed their "life project" – their ability to live and develop with dignity and in accordance with self-determination – and that this was aggravated by the prolonged denial of their territorial rights and access to related remedies**, all within "a context of structural and systemic racial discrimination" (194-95).[73] In short, Brazil "failed to guarantee and protect the core of rights indispensable for the development of a collective project of a dignified life" (195). Moreover, due to the pain and suffering experienced,[74] it violated the "rights to a dignified life, to humane treatment, to personal liberty, to a fair trial, to protection of honor and dignity, to equality before the law, and to access to justice" (196). This is an important affirmation of the various forms and intensity of suffering caused by prolonged denials of ITPs' rights to territory as well as the severe collective and individual consequences, rising to the level of violations of the right to humane treatment (guaranteed also by Article 16 of the Convention Against Torture)[75] and life with dignity.[76]

Fifth, related to the preceding, the Court conducts a lengthy examination of various economic, social and cultural rights (206-85).[77] It concluded that Brazil had violated obligations of immediate effect as well as obligations of progressive realization concerning the right to the protection of the family, to adequate food, to adequate housing, to participation in cultural life, and to education (284-85).

Sixth, the Court turned to the prohibition of discrimination (289-302), noting that ITP have the right to "special protection" and special measures to safeguard their rights (300). It found that Brazil's **failure to title the lands and guarantee the various economic, social and cultural rights "constituted acts of discrimination since they are framed within a context of disproportionate inequalities that has historical origins**" (*id*). This is aggravated by a lack of measures aimed at mitigating and correcting this discrimination, which is

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[72] *Para. 267, "the Court finds that the restrictions that the state authorities impose on the members of the resettled communities to modify the houses assigned to them and to build new houses … constitute a violation of both the cultural adequacy of the right to adequate housing and the right to protection of the family."*

[73] *Para. 195, "The length of the land titling process, recognized by the State itself as unreasonable, and the absence of an adequate judicial response led to the perpetuation of the abandonment and the ramification of its consequences [and] … the lack of judicial protection adversely and harmfully affected the expectations of collective social development."*

[74] *Id. "feelings of uncertainty, fear and anguish caused by the potential expansion of the CLA and the feeling of humiliation experienced by some members of the communities led to an infringement of the right to moral integrity."*

[75] *See e.g., CAT/C/BRA/CO/2, para. 20(c) (Brazil should "… Immediately cease forced evictions of indigenous communities from their lands, and guarantee their right to [FPIC] and consultation…"); Moiwana Village v. Suriname, Ser C No. 145 (2005), para. 101 et seq (where the IA Court ruled that a prolonged "separation of community members from their traditional lands" was one of three bases for finding a violation of the right to humane treatment); and Saramaka People v. Suriname, Ser C No. 172 (2007), para. 200 (awarding compensation for moral damages in relation to "the suffering and distress … endured as a result of the long and ongoing struggle for the legal recognition of their right to the territory they have traditionally used and occupied for centuries … as well as their frustration with a domestic legal system that does not protect them against violations of said right").*

[76] *See e.g., Article 6: right to life, CCPR/C/GC/36 (2019), para. 26. ("The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include … degradation of the environment, deprivation of land, territories and resources of indigenous peoples…").*

[77] *Para. 198, "Rights to adequate food, adequate housing, water, participation in cultural life, a healthy environment, freedom of association, protection of the family and a dignified life, in relation to the obligation to respect rights and the right to education."*

"especially serious, considering that it was the actions of the State itself that negatively impacted the traditional forms of self-sufficiency and relationships of these communities" (*id.,* 302).

Last, the Court ordered various measures of reparation (313 et seq), observing that because the Quilombola of Alcântara belong to a group in a particularly vulnerable situation, this "accentuates the State's duty to provide adequate reparation to them" (307). These measures include delimitation, demarcation and collective titling (317); establishment of a mechanism by which the CLA and affected communities can reach agreements on various issues, including compensation, and monitoring of those agreements (319-21); the establishment of formal participation processes related to future events (322); and material and immaterial damages (338 et seq). With respect to the latter, the Court considered the significance of territorial rights in the case of ITP,[78] the living conditions that the Quilombola of Alcântara were forced to endure after relocation, the pain and suffering they experienced because of the restrictions imposed on them and "**the struggle for legal recognition of their right to territory, as well as frustration with the domestic legal system that fails to protect them against violations of that right**" (340).

3. Tagaeri and Taromenane Indigenous Peoples v. Ecuador, Series C No. 537 (unoff. transl.)

https://corteidh.or.cr/docs/casos/articulos/seriec_537_esp.pdf (ESP)

Country: Ecuador | **Body:** Inter American Court of Human Rights | **Date:** 4 September 2024

- **Issues:** Uncontacted peoples or peoples in voluntary isolation,[79] self-determination, rights of Indigenous girls, lands, territories and resources, assimilation and cultural rights.
- **UNDRIP** arts. 1, 2, 3, 7, 8, 11-14, 20-24, 29, 32

Summary: The petition that began this case was submitted to the Inter-American Commission on Human Rights ("IACHR") in 2006, declared admissible in 2014 and, after Ecuador failed to comply with the recommendations adopted by the IACHR in 2019, filed with the IA Court in 2020 (para. 2). It is a lengthy judgment, the first on the rights of uncontacted Indigenous Peoples or peoples in voluntary isolation and initial contact ("PIAV" in Spanish and below).[80]

[78] *Para. 340, "… the Court observes that the special significance that land has … implies that any denial of the enjoyment or exercise of territorial rights entails the impairment of very representative values for the members of these communities, who are in danger of losing or suffering irreparable damage to their identity and cultural heritage by transmitting it to future generations."*

[79] *See also IACHR files application before Inter-American Court of Human Rights in case concerning the rights of indigenous peoples in voluntary isolation in Peru, 24 December 2024, https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2024/305.asp&utm_content=country-per&utm_term=class-corteidh; and IACHR, Report No. 397/22 (Admissibility and Merits), Case 13.572, Mashco Piro Yora, and Amahuaca Indigenous Peoples in Voluntary isolation and Initial Contact (Peru), 31 December 2022, https://www.oas.org/es/cidh/decisiones/Corte/2024/PE_13.572_ES.docx (ESP only).*

[80] *Para. 184, "… this is the first case in which the Court must examine the rights of indigenous peoples living in isolation, so it is necessary to take into account their special situation of non-contact when applying the general standards already developed for other indigenous peoples."*

The Court first considered preliminary issues, including how to identify the victims (55 et seq),[81] considering that PIAV cannot be contacted directly and that "there is no certainty about their composition, number," or even what they call themselves (57, 218, as it relates to holding title to land).[82] It determined that the Tagaeri and Taromenane peoples and other PIAV living in the Ecuadorian Amazon are the victims. This also raised issues with respect to who could represent the PIAV before the Court (64-70) because their views could not be determined nor could they authorize others "… without violating the principle of non-contact" (68).[83] The Court accepted that CONAIE, a national Indigenous Peoples' organization, could represent the PIAV (*id*.). For reasons discussed below, two minor girls, designated C. and D., were judged to be individual victims (60). They were represented separately before the Court.

Reciting the proven facts, the Court began by describing the PIAV, understanding them to be sub-groups of the Waorani Indigenous People; what is known of their kinship and social relations and their territory and relations with other Waorani, who are not PIAV; and how they were affected by extractive operations (98-105). About one half of their territory is within the Yasuni National Park, created in 1979, which is legally declared to be off-limits to extractive industries (108). The status of this area was modified in 1999, it was delimited and demarcated in 2007 and 2019, respectively, and the regulations were amended later to allow for oil exploration and extraction in its buffer zone (109-14).[84] Title had been issued in the name of the 'Waorani Ethnic Group' to an area of 612,560 hectares, expanded later by about 1,000 hectares (id).

Various oil operations were allowed around this area pursuant to Presidential orders and public interest declarations adopted by the legislature (224-25). Permits were issued to both publicly owned and private companies (281): these permits were revoked, reissued, revoked and reissued again, sometimes on the basis that PIAV were affected (116-31, 220-21). Notably, a public referendum was held on whether to keep the oil under the Yasuni area in the ground (123). As of 2022, Ecuador maintained that there were no oil operations in the reserved area, but operations were taking place in the buffer zone (131, 226). However, the Special Rapporteur on the Rights of Indigenous Peoples concluded in 2019 that "'a fence of oil activities is being created around the territory recognized for indigenous peoples in isolation that prevents their free mobility, and pushes them into areas of other Waorani groups, which will increase conflicts'," facts that were verified by various other international authorities (285-86).

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[81] *See also Briefing Document on Indigenous Peoples in Voluntary Isolation and Initial Contact, OHCHR, September 2025, https://www.ohchr.org/sites/default/files/documents/form/documento-informativo-sobre-pueblos-indigenas-contacto-inicial-briefing-document-indigenous-peoples-voluntary-isolation-initial-contact-aislamiento-voluntario-piaci-ipviic-1-en.pdf; and Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for the full respect of their human rights, IACHR OEA/Ser.L/V/II. Doc.47/13, 30 December 2013, https://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf.*

[82] *Para. 57, 187 "… one of the fundamental premises for the preservation of the rights of these peoples is respect for non-contact and their choice to remain in isolation, as a manifestation of their right to self-determination."*

[83] *Para. 68, "… this Court has already emphasized that, within the framework of their right to self-determination, indigenous peoples and communities have the power to make determinations in relation to the defense of their rights, through their own forms of organization and decision-making, in accordance with their cultural patterns."*

[84] *This was declared unconstitutional by Ecuador's Constitutional Court due to the lack of consultation with the contacted peoples (114), and the IACHR issued precautionary measures in 2006 (2(b), 134). In response to the latter, Ecuador adopted a National Policy for Peoples in Voluntary Isolation, a 'Plan of Precautionary Measures in favor of the Tagaeri-Taromenane indigenous peoples in isolation' and an 'Agreement for the implementation of this Plan'. The Secretariat of Human Rights is responsible for implementation of the 2022 Action Plan, 'Strengthening inter-institutional cooperation mechanisms to execute the follow-up, monitoring and control of the Tagaeri Taromenane Intangible Zone and its area of influence' (115, 134).*

In May 2003, up to 26 members of the Taromenane people, including women, and children, were killed by nine Waorani from a different area, either as vengeance killings or at the instigation of illegal loggers (132). In August 2005 and April 2006, illegal loggers were attacked by members of the Taromenane people, killing one of the loggers (133). An unknown number of Taromenane were then murdered, presumably in retaliation (*id.*). State investigations into these events were ineffective and inconclusive and violence continued (134-36), culminating in a massacre of 30-50 Taromenane by other Waorani in 2013 (137). More investigations were launched, resulting in the prosecution of six Waorani for the "crime of genocide," later changed to the crime of homicide, and ten persons were ultimately convicted in 2019 (138-44).

During the 2013 attack, two Tagaeri girls, maternal sisters, were captured and given to Waorani families in two different villages, both in initial contact: C., around six years of age, and D., around two years of age (137, 145). A few days after the attack, the State began to monitor the health of the girls and enrolled C. in a criminal witness protection program, requiring that she stay enrolled until she was 21 (147). Various complaints were made about the status of the girls, including that they had been kidnapped by those who murdered their parents and that they were living with the families of the attackers (148-49). Shortly after the massacre, State agents forcibly relocated C. and took her in a helicopter to the city of Francisco de Orellana, allegedly to provide her with greater security (150-51). A few days later, she was placed in the custody of a passing-by Waorani man from the community of Bameno, where she settled and continues to live today "as part of the Baihuaeri, a Waorani people of recent contact" (153-54). She became a mother in 2022 and allegedly was subjected to forced medical testing by State agents (156, 426). D., separated from her older sister, eventually came to live with her extended family (159).

To resolve the merits of the case, the Court decided that it should examine the following: (1) collective property rights, self-determination, equality and non-discrimination; 2) rights to health, food, housing, environment, identity and dignified life; 3) the right to life; (4) humane treatment, personal liberty, honour and dignity, protection of the family, children, identity, movement and residence, cultural identity and health; and (5) fair trial and judicial protection rights (168).

First, the Court began by analyzing the situation of PIAV by considering their special situation of non- or initial contact and as related to its jurisprudence on Indigenous Peoples' rights (184). Regarding the right to self-determination, it found that for PIAV "there is no possible forum for the expression of their will or consent," so that the general principles applicable to Indigenous Peoples need to be modified 185). It recalled also that Article XXVI of the American Declaration on the Rights of Indigenous Peoples is specifically directed towards PIAV (186). The Court decided that States must respect and guarantee the choice of PIAV to "remain in isolation" and this decision "can be understood as **one of the ways of expressing the exercise of the right to self-determination**" (187). This principle also features in standards on PIAV adopted by the United Nations, which the Court quotes. These standards also observe that "[r]espect for their decision to remain in isolation entails taking effective measures to prevent outsiders or their actions from affecting or influencing, either accidentally or intentionally, persons belonging to indigenous groups in isolation" (id., 188, 194).

However, respect for the principle of non-contact is not understood to mean that the State has no obligations towards PIAV (189). Instead, **there is a "need for greater protection … given their condition of vulnerability" and the need for "preventive and precautionary public policies to guarantee the**

survival of these peoples at all times" (192-94, 224-25, 280).[85] This need is especially apparent for rights to lands, territories and resources because they are essential for PIAV's "survival due to their total dependence on their traditional ecosystems" (202, 203-05). States are obligated to delimit their territories, declare them to be inviolable and establish special protective measures (e.g., a buffer zone) "to avoid accidental contacts" (206). Any possible restrictions on PIAVs' territorial rights must be limited to providing "greater protection for the rights of the PIAVs or to address exceptional emergency situations" (207). They also must be proportionate, fully considering their vulnerability and potential impacts on their ways of life, "to avoid affecting the right to non-contact," and adhere to the precautionary principle (207-08, 220 et seq).[86]

The Court found that Ecuador had complied with some of these requirements (209-10, 236). However, due to various delays in the recognition and protection of their territory and other defects, the State "did not act with due diligence to implement the main form of safeguarding the right to property of PIAVs" (212 et seq, 237)). Even today, the exact extent of their territory "has not been clearly determined" and the measures adopted have failed to respect cultural and other characteristics (215).[87] After concluding that title had not been registered in the name of the PIAV, the Court discussed the appropriate form of title (216-19). It concluded that "the characteristics of these peoples and **respect for the principle of non-contact as a manifestation of their right to self-determination must also be taken into account**," (217) and, therefore, "there is no single model for the protection of the right to collective property" beyond that it must be "a mechanism in accordance with the characteristics of the PIAVs that guarantees, prima facie, the protection of their rights" (219).

Additionally, the Court determined that **the precautionary principle was not respected in the public interest declarations underlying oil extraction. Therefore, the State "violated the right to collective property of the PIAVs and, consequently, their right to self-determination**" (227).[88] These obligations also apply to the protecting PIAV from third parties, such as illegal logging activities that used oil-related infrastructure to penetrate the PIAV's territory (232). Despite being aware of the risks, Ecuador failed to provide effective protection (234).

The Court also addressed the public referendum on keeping the oil in the ground, a proposition favoured by more than half of the voters, noting also that it only applies to one of the oil blocks surrounding the PIAV's

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[85] *See also Rural Land Regularization and Titling Program (Bolivia), Consultation Phase, IADB, Independent Consultation and Investigation Mechanism, MICI-BID-BO-2023-0225, 4 April 2025, para. 2.14 (referring to the need "to seek all possible protection and precautionary measures … for the possible Uncontacted People, without altering the territorial integrity" of another Indigenous Peoples' territory in the process of issuing territorial title), https://www.iadb.org/document.cfm?id=EZIDB0000559-385019247-301; and 'Historic Land Titling Victory in Bolivia, Tacana II Indigenous People secure the title to protect their land', BIC, 6 November 2025, https://bankinformationcenter.org/en-us/update/historic-land-titling-victory-in-bolivia-tacana-ii/.*

[86] *Para. 206, the Court noted that this was consistent with Article 57 of the Constitution of Ecuador, providing that "[t]he territories of the peoples in voluntary isolation are of irreducible and intangible ancestral possession, and all types of extractive activity will be prohibited in them," and that Ecuador had established "the Tagaeri Taromenane Intangible Zone, accompanied by a buffer zone that aims to 'establish an additional area … protecting groups in voluntary isolation and in a condition of initial contact.'"*

[87] *Para. 215, "… the measures for the protection of the territories of the PIAVs must be dynamic and contemplate the possibility of extension, with respect for the cultural and mobility characteristics of the peoples and in order to avoid further conflict."*

[88] *Para. 227, the precautionary principles was not "adequately guaranteed in the process of declaring national interest and in its subsequent implementation, since information on sightings of PIAV in the territories where oil activities were intended to be carried out was not taken into account and no evidence was provided that measures were taken to ensure that the activities to be carried out safeguarded the principle of non-contact."*

territory (314). It concluded: (a) that it would not now rule on whether such an approach was valid in relation to measures that could affect Indigenous Peoples' rights;[89] and (b) halting extraction is an effective way of protecting "the ownership and right to self-determination of the PIAVs" (228). Thus, the State "must ensure the effective implementation of this decision," certifying that it is executed in a way that is consistent with above-listed guarantees, and ensures that contacted Indigenous Peoples who may be affected participate in related decision-making (*id*.).

Second, the Court assessed violations of rights to health, food, housing, environment, identity and dignified life (248-316). It explained that these rights are closely linked and interdependent (249-55), **highlighting also UNDRIP arts. 20(1), 29(1) and 32(1)** (252) and special considerations applicable to PIAV (e.g., the precautionary principle and contextualized, positive obligations to guarantee their economic, social, cultural and environmental rights) (254-55, 280, 288). For PIAV, the Court stressed that **"territorial protection is elevated to a fundamental condition to protect their rights to a dignified life, housing, health and food, among others"** (254).[90] It also sets out the obligations of the State regarding publicly owned and private companies (281-84). It then reviewed the evidence of negative impacts on these rights as well as the measures adopted by the State (285-314), including as interconnected with the right to a dignified life (315-16). The Court concluded that State's acts and omissions not only impaired collective property rights but also caused a severe risk to the PIAV's "physical subsistence and their economic, social, cultural and environmental rights, **the enjoyment of which is intimately linked to the effective enjoyment of the territory and its resources, which ultimately also affects their right to a dignified life**" (315, 316).

Third, the Court considered violations of the right to life related to killings of PIAV in 2003, 2006, and 2013, which were not directly perpetrated by State agents (327-50). The Court determined that risks to life came from two main sources: "… the increased possibility of contact with third parties due to the proximity of oil activities and the incursion of illegal loggers; and … the increase in conflict with the other Waorani groups due to the displacement of the PIAVs to their own lands" (339). It found that the State was aware of these threats, at least in the events of 2013, and its response was insufficient and ineffective. This was true despite the adoption of precautionary measures by the IACHR in 2006 and the corresponding domestic actions, and despite the 2019 warning from the Special Rapporteur on the Rights of Indigenous Peoples that measures would "only be effective if they are aimed at resolving the structural threats to the rights of peoples in isolation and recent contact, including Waorani communities" (339-49). Ecuador was thus held responsible for the violent deaths in 2013, which violated the right to life of the PIAV who lost their lives in these attacks (350).

Fourth, the Court assessed the separation of C. and D. from their community in the light of rights to humane treatment, personal liberty, honour and dignity, protection of the family, children, identity, movement and residence, cultural identity and health (362-41). Citing CEDAW's General Recommendation No. 39 on the

[89] *See e.g., Gelman v. Uruguay, Ser C No. 221, para. 239 ("the protection of human rights constitutes an impassable limit to the rule of the majority…").*

[90] *E.g., "… the health effects derived from contact have historically been devastating for these peoples" (258); "… the right to food is closely linked to the preservation of their territory and ecosystems, since by virtue of the principle of non-contact, they must be food sovereign. In this way, access to territories that allow them to comply with seasonal and cyclical hunting and cultivation patterns must be guaranteed" (261); "protection of their right to housing then involves a broader protection, a protection of their territory, of the jungle that provides them with protection and security" (264); "the PIAVs have such an integral and complete relationship with the environment that the impact of [pollution and other environmental problems] … seriously endangers their very existence" (271-72); and "within the framework of the right to cultural identity, the right to self-determination protects PIAVs from external interference that disturbs these distinctive features of their culture and that results in the manifestation of the principle of non-contact that governs their lives" (278).*

rights of Indigenous women and girls (see also 379), it explained that it is necessary to consider that C. and D. are "girls, indigenous people in voluntary isolation and later in forced contact, so it is necessary to analyze the alleged violations in light of the intersectionality between gender, childhood and the special condition of vulnerability because they are indigenous in forced contact" (362).

The Court reaffirmed that States are obligated to promote and protect indigenous children's "right to live in accordance with their own culture, religion and language, an additional and complementary obligation defined in Article 30 of the Convention on the Rights of the Child, … and that this right constitutes an important recognition of the collective traditions and values of indigenous cultures" (367). Additionally, Indigenous children, "in accordance with their worldview, preferably need to be educated and grow within their natural and cultural environment, since they possess a distinctive identity that links them to their land, culture, religion and language" (368). In the case of PIAV, this "requires taking measures to avoid forced contact, as this is the only way to maintain the link with their community of origin; … once they have been contacted, return to their community of origin becomes impossible, due to the health risks of communities in isolation, and the cultural difficulty of being accepted" (370, 387). Indigenous children in recent contact also have a right to be heard and to participate in decisions – to FPIC, per a 2024 decision of the Committee on the Rights of the Child[91] – "even more so when that contact was forced" (378). The Court also discusses elements of the rights of Indigenous women and girls, tying these to self-determination (380-82) and concluding that State action relative to the rights of Indigenous girls and women "must take into account **their needs as women and as members of indigenous peoples and the way in which these two parts of their identity have combined** throughout history, making them specifically susceptible to various violations" of their rights (384).

Applying the preceding, the Court explains that the girls were abducted by Waorani, not agents of the State, and the State could not have anticipated this or taken measures to prevent it (385). Consequently, the Court decides that the State may be responsible "from the moment it became aware of the abduction of C. and D." (*id.*). It cites **UNDRIP, art. 8 (on the right of Indigenous Peoples and individuals "not to be subjected to forced assimilation or to the destruction of their culture")**, observing that this right is especially important for PIAV and that the UN Guidelines on PIAV also provide that any uninvited contact could violate UNDRIP, art. 8 (386). The Court decided that the forced contact of C. and D. amounted to a loss of their condition of isolation, their return being impossible due to the risks, **which amounts to a situation of forced displacement and assimilation and a "clear risk of cultural or physical extinction of indigenous peoples**" (387).

When it became aware, Ecuador was obligated to "guarantee the physical and mental integrity of C. and D. from an intersectional perspective, taking into account their condition as indigenous girls in recent contact" (387-88). It also had "a reinforced duty to protect them and prevent any revictimization" given their extreme vulnerability (392). However, it did the opposite, putting C. and D.'s "physical and mental integrity at risk"

[91] *M. E. V., S. E. V. and B. I. V. v. Finland, CRC/C/97/D/172/2022, 7 October 2024 (reading FPIC into art. 12 of the Convention on the Right of the Child).*

(389-97).[92] Even though the forced contact was not the result of State action, this constituted violations of rights to personal integrity and liberty, rights of movement and residence, and Ecuador's failure to fulfill "its **enhanced duty to protect two girls who were in a particularly vulnerable situation where their status as girls, indigenous, and in forced contact converged intersectionally**" (399, 468).

The Court then evaluated violations of rights related to the protection of the family and cultural identity due to the forced contact of C. and D. and their placement in different communities (400-41). On the former, the Court notes that article XVII of American Declaration on the Rights of Indigenous Peoples directly addresses rights related to Indigenous families (403). It also notes that the State has failed to comply with its obligation "to preserve the cultural identity of the girls" because the State documents routinely designate C. and D. as 'Taromenane girls,' whereas C. has explained that they "identify themselves as Tagaeri" (405). It also highlights the "special duty" to respect the relationship between the sisters as "contact between C. and D. was the only vestige that remained for the girls of what had been their family, their people and their cultural identity" (408, 409-14). It recalls that the Committee on the Rights of the Child, referring to Indigenous children, has explained "that if an indigenous child or adolescent is placed outside his or her community … the State must adopt special measures to ensure that the child or adolescent can maintain his or her cultural identity" (413). As Ecuador had not reunited the sisters, nor provided any justification for why this may not be in their best interests, the Court concluded that it violated the right to family life (414).

Turning to cultural identity, Ecuador was obligated, but failed, to "ensure that indigenous children are able to have the indigenous names of their parents in accordance with their cultural traditions, as well as ensure the right to preserve their identity" (420, 422). This is followed by an extended discussion of the right to health in relation to tests performed on C., including as related to her pregnancy (426-39), which cites UNDRIP, art, 24 and other standards (427). The Court concluded that Ecuador violated a series of rights in relation to both elements (440-41).

Last, the Court examined rights to fair trial and judicial protection (453-73). It concluded that Ecuador has failed to provide effective remedies in relation to protection of the PIAV's territory (460) and when determining the status of C. and D. as victims of forced separation and the reinforced duty to hear them (470, 471-73).

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[92] *E.g., "the girls remained in families linked to their captors after their abduction" (389); it failed to provide protection measures and, instead, "the girls were placed in the care of their own captors" (390-01, 398); C. was forcibly removed from the school where she was taught by police personnel and without explanation and this was a traumatic experience in addition to the trauma caused by the murder of her family members and forced contact (393-94); she was then sent to the community of Bameno and there was no evidence that her opinion was sought (395, 406); and nor was there any evidence that D. was "consulted or that they took into account the best interests of the child, considering also that she is an indigenous girl in a situation of forced contact" (396-97).*

4. U'wa Indigenous People v. Colombia. Series C No. 530 (unoff. Transl.)

https://www.corteidh.or.cr/docs/casos/articulos/seriec_530_esp.pdf (ESP)

Country: Colombia | **Body:** Inter American Court of Human Right | **Date:** 4 July 2024

- **Issues:** Land rights, extractives, effective participation, cultural and spiritual rights, freedom of thought and expression, assembly and the right to self-determination related to social protest.
- **UNDRIP**, arts. 7, 8, 11-3, 18, 19, 25-28, 29-30, 32

Summary: The petition that began this case was submitted to the Inter-American Commission on Human Rights in 1998, declared admissible in 2015, and transmitted to the IA Court in 2020. It concerns Colombia's responsibility for the extended lack of effective protection for the traditional lands, territory and resources of the U'wa Indigenous People ("the U'wa People"). This includes encroachment by settlers and the failure to promptly remove them from titled lands (37-44), the impact of oil, mining, tourism, infrastructure, conservation projects and military activities (45-99). The right to effective participation was not respected, nor were cultural and spiritual rights (*id.*).[93]

First, the Court concluded that Colombia had violated the U'wa People's rights to lands, territory and resources because, despite various agreements made with the U'wa People, it had failed to finalize the regularization of their territory (136), including, and despite some progress, by removing all third parties (141-42).[94]

With respect to the tourism and conservation activities, both centered on Cocuy National Park – which significantly overlaps the U'wa People's territory (143-44) – the Court recalled its jurisprudence on "**the need to reconcile protected areas with the proper use and enjoyment of the traditional territories of indigenous peoples**" (145).[95] The Court reaffirmed that "respect for the rights of indigenous peoples can have a positive impact on the conservation of the environment" and that these rights "and international environmental standards must be understood as complementary and not exclusive rights" (*id.*).[96] It explained that the "fundamental elements to achieve such compatibility are a) effective participation, b) access to

[93] *E.g., para. 50, in 1995, a meeting was held between representatives of the Government, oil companies and the U'wa People. The Government and the oil companies request the identification of the sacred sites; "it was clarified that 'the entire area of the reservation is sacred'."*

[94] *Para. 141, "… there are elements that allow us to conclude that the State has not finished identifying all the properties that would have to be acquired for the total sanitation of the territory, has not finished making the purchases of the lands, and has not titled them in favor of the U'wa People." The delay in this process "… has had the effect of making it impossible for the alleged victims to effectively enjoy the territory to which they are entitled…." See also Xucuru Indigenous People v. Brazil, Ser C No. 346 (217).*

[95] *Para. 145, "this Court has considered that a protected area consists not only of the biological dimension, but also of the sociocultural dimension and, therefore, incorporates an interdisciplinary and participatory approach. Indigenous peoples can play an important role in nature conservation, given that certain traditional uses entail sustainability practices and are considered fundamental to the effectiveness of conservation strategies."*

[96] *Para. 146, "the Court has pointed out that, in principle, there is a compatibility between protected natural areas and the right of indigenous and tribal peoples to protect the natural resources on their territories, and has stressed that indigenous and tribal peoples, due to their interrelationship with nature and ways of life, can contribute significantly to such conservation."*

and use of their traditional territories, and c) receiving conservation benefits…" (146). States must establish "adequate mechanisms for the implementation of such criteria **as part of the guarantee of indigenous and tribal peoples to their dignified life and cultural identity, in relation to the protection of the natural resources found in their traditional territories**" (*id*.). This is in addition to a right to restitution where Indigenous Peoples' lands have been incorporated into protected areas, public or private, without FPIC.[97]

Applying this to the case, the Court concluded that, while Colombian law was adequate in general (147-50), the State, nonetheless, violated the U'wa People's rights because their participation was lacking or had not been constant and permanent in the administration of the protected area; they did not adequately benefit from the protected area; and because there is no "evidence that the U'wa worldview was included in the management and administration of the park" (151-56).

Second, the Court observed that "Indigenous and tribal peoples have the right to participate in decisions that affect their rights," a right that "is closely related to the right to self-determination of indigenous peoples," and the importance of which is amplified considering the profound connection between territorial rights and cultural identity (168). The right to **self-determination "must be guaranteed" and it includes "the obligation of States to guarantee the participation of indigenous and tribal peoples in decisions regarding measures that may affect their rights**, and in particular their right to collective property, in accordance with their values, customs, and forms of organization" (*id*., 169-78).

The Court then applied the preceding to oil, mining and other projects that affected the rights of the U'wa People (181-224), **including ones in which the U'wa People had refused to engage in any form of consultation** (191, 198).[98] It found violations with respect to the oil operations (181-94), including because the State failed to conform the consultations to "the customs, traditions, and representation of the U'wa People, despite the fact that the State knew [who were] the authorities that should be consulted"(193). It found no violation for one of the mining projects, noting that this was, in large part, because the project was "suspended and it has not resulted in any mining activity" (199). These violations were also evident in projects adjacent to or otherwise outside of the U'wa People's territory (200-23) because, the Court explained, the rights of the U'wa People could be directly affected (e.g., 218) or "could be affected by the proximity of extractive activities" (208).[99]

Third, the Court turned to rights to freedom of expression, assembly, children's rights and self-determination in the context of social protest. This mostly concerned peaceful demonstrations by the U'wa People against oil exploitation during which the State (Army and Police) used force to evict and disperse peaceful demonstrators (241-2). After reviewing its jurisprudence on the interrelationship between various rights and social protest (227-30), possible restrictions on those rights (234-36) and the use of State security forces (237-40), the Court highlighted that "**the right to self-determination of indigenous and tribal peoples is a right protected**

[97] *Kaliña and Lokono Peoples v. Suriname, Ser C No. 309 (2015), para. 168.*

[98] *Para. 191, "… having promoted the consultation in good faith and in accordance with the standards previously indicated … – the indigenous people refuse to participate, the indigenous people must be considered to be in disagreement with the activity that is the subject of the consultation, and therefore the obligation to consult will be considered exhausted. … In the event that* ***the people have refused to participate in the consultation, the judicial authority must verify whether the State took specific and good faith measures to carry out the prior, free, and informed consultation, and whether in this context the activity disproportionately limits the rights of the indigenous or tribal people."***

[99] *Para. 201, the impact an "… indigenous people or community may suffer as a result of extractive projects may include projects that take place exclusively outside their territory, when their implementation may have a direct impact on the rights of indigenous communities."*

by the American Convention and that it is based on the right to cultural identity … as a component of the right to participate in cultural life." It has internal and external aspects. (231). The external dimension "**extends, inter alia, to the right of peoples to elect their own authorities or representatives, as well as to participate in decision-making processes that may affect them**" (232-33).

The Court recalled that the U'wa were blocking a highway to protest oil operations and the State had used tear gas to violently evict them. It considered that this was a restriction of their right to protest, "since the actions of the Police and the Army did not allow the U'wa to remain together in the act of protest" (246). Therefore, the Court analyzed whether this restriction met the applicable requirements, i.e., whether it "complied with the requirements of legality, legitimate purpose, necessity and proportionality"(*id.*) The Court observed that the State had not demonstrated why "the use of force through the use of tear gas to disperse the U'wa demonstration was necessary and proportionate, even more so considering the presence of children" (247) and its obligation to provide special protection to children under human rights law (248-49). It concluded that the use of tear gas to disperse the protests was a violation of the rights of the children at the time that the Army carried out actions to end the U'wa People's protests (250). This also constituted, among other things, a violation of the right to self-determination (251).

Fourth, the Court assessed rights to participate in cultural life and to a healthy environment, commencing with an overview of the general standards concerning cultural rights (259-66). It explained that for Indigenous and Tribal Peoples, "the realization of cultural rights is projected in a differentiated way and … establishes a set of specific duties for the States…" (267). This differentiation is partly due to the recognition of the profound connection between cultural rights and territories, being "not merely a matter of possession and production, but a material and spiritual element that they must fully enjoy in order to preserve their cultural heritage and transmit it to future generations" (*id.*). It quotes several standards in this regard (268, 270), i**ncluding UNDRIP, art. 25**, which states that "Indigenous peoples have the right to maintain and strengthen their own spiritual relationship with the lands, territories, waters, coastal seas and other resources that they have traditionally possessed or occupied and used" (269). The Court concludes **that lack of secure land rights and recognition of the U'wa Peoples's cultural and spiritual relations "negatively affects their right to enjoy, access and promote their cultural heritage**" (270). It continues that the right to participate in cultural life includes:

- "the right to maintain and strengthen their **cultural relationship with their lands and territory** when this has a spiritual or religious significance that is an integral part of their cultural identity;" and
- requires States **not to interfere with the enjoyment of the cultural heritage of an indigenous people, and to prevent third parties from hindering or nullifying such enjoyment** (271).[100]

Applying this to case, the Court decided that the evidence proved that the U'wa People's "worldview places their lands and territory, and the natural elements that compose it, at the center of their system of cultural values," and their relationship with their territory is "the defining feature of the identity of the people and their members" (278). This is a "clear cultural and spiritual value … protected by the right to participate in cultural life," and Colombia was "directly aware" of this and its elements (*id.*). The various oil and mining projects authorized by the State "**entailed a risk to the culture of the U'wa People, as they could affect the environment and sacred places, as well as be disruptive to the[ir] customs**" (279). The State

[100] *Para. 271, adding that the "… value of the relationship of an indigenous people must be established in the specific case, but, once demonstrated, States must respect and guarantee the enjoyment of the spiritual or cultural relationship between the indigenous people and the territory, as part of the protection of their right to participate in cultural life."*

authorized these projects without giving "due consideration to its obligations to protect the culture of the U'wa People" (280). Colombia failed to adopt "special measures to mitigate the impact" of these operations and failed to adopt "measures aimed at reducing, halting, and redeeming the impact on the culture of the U'wa People" (*id.*), all of which constituted a violation of their right to participate in cultural life (281). It reached similar conclusions about ecotourism activities in the protected area, in and around areas that the U'wa believed were "of intense symbolic, cultural and spiritual value for the U'wa cosmology" (282-85), and because there was no evidence that the State tried to protect these values (285).

The Court then addressed the right to a healthy environment. It did so in terms broadly consistent with judgments no. 1-3 summarized above (288-328), highlighting the responsibilities of business entities (299-300) and the special measures required in relation to Indigenous and Tribal Peoples (302-03). It also stressed that States "must take into account the 'triple planetary crisis' in the fulfillment of their obligations to respect and guarantee the right to a healthy environment" (304). It found that Colombia had violated the right to a healthy environment "by failing to comply with its obligations of due diligence in approving environmental impact studies for extractive projects, nor by demonstrating the adoption of adequate measures to mitigate the damage" (328). It highlighted that impact assessments **failed to respect the U'wa People's right to participate in the assessments** and had not respected their traditions and customs (e.g., 314-15). It explained further that "**it is essential that the preparation and development of environmental impact studies include the participation of indigenous peoples and their contribution based on ancestral knowledge of their natural environment**" (314).[101]

Fifth, the Court concluded its consideration of the violations with an assessment of the alleged violations of rights to life, humane treatment and equality before the law (332 et seq). It reaffirmed that non-discrimination and equality guarantees apply to Indigenous Peoples "with respect to whom the Court has recognized that they have their own characteristics that make up their cultural identity, such as their customary law, their economic and social characteristics, their values, uses and customs" (333-4). It then discussed the right to life, including the right to a life with dignity. Its jurisprudence has established that the conditions necessary for a dignified life, include "access to and quality of water, food, and health, indicating that these conditions have an acute impact on the right to a dignified existence and the basic conditions for the exercise of other human rights [as well as] the protection of the environment" (336). The right to humane treatment, inclusive of the right to physical and mental integrity, may also be violated in certain circumstances. Further, the right to life and the right to humane treatment are closed connected and "there are occasions in which the lack of access to the conditions that guarantee a dignified life also constitutes a violation of the right to personal integrity" (338).

In the case at hand, the Court recalled that Colombia had violated various rights, including territorial, self-determination and crucial cultural and spiritual rights (341), and that the State had used excessive and inappropriate force against the U'wa People, who were seeking no more than respect for their rights (339-41). This deprived the U'wa People of the enjoyment of their rights "in harmony with their traditions and … even led to feelings of fear and uncertainty;" generated psychological harm and deep sadness; harmed their worldview, preventing them from maintaining their spiritual relationship with their territory, a core aspect of their identity; and caused cultural, political and territorial disintegration, placing them "in a situation of risk

[101] *Para. 314, "… States must facilitate the participation of potentially affected or interested persons or groups in the environmental impact assessment process, prior to approval, during execution, and during the project closure process. This participation is especially relevant in the case of indigenous peoples due to their knowledge of the territory and the environment that surrounds them, since they are part of their worldview."*

of physical and cultural extermination" (342-44). Taken together, **this caused a significant impact on their quality of life, caused suffering and fear, especially because the "actions of the State will continue to affect the territory and its cultural values," and amounts to a violation of the right to a dignified life and to humane treatment** …" (344). It also concluded that the State had not violated the right to equality before the law because it had adopted some measures "aimed at achieving the protection of the rights of indigenous peoples in general, and of the U'wa people in particular" (346-47).

5. Huilcamán Paillama et al. v. Chile. Series C No. 527 (unoff. transl.)

https://corteidh.or.cr/docs/casos/articulos/seriec_527_esp.pdf (ESP)

Country: Chile | **Body:** Inter-American Court of Human Rights | **Date:** 18 June 2024

- **Issues:** Criminalization, freedom of expression and association, rights defenders,[102] rights to lands, territories and resources, self-determination, fair trial and rights to effective remedies, discrimination and negative stereotypes.
- **UNDRIP** arts. 1, 2, 3, 4, 4, 7, 15, 25-28, 33-34, 40

Summary: This case concerns protests organized by some Mapuche Indigenous People, via the Mapuche organization, Consejo de Todas las Tierras ("CTT"). These protests coincided with the 500-year anniversary in 1992 of Columbus arriving in the Americas (para. 51-6). Protests involved the occupation of buildings and the peaceful recuperation of traditional lands titled to non-indigenous persons.[103] This resulted in a large-scale police response, arrests and the filing of a series of criminal complaints against Mapuche protesters by local government officials. These complaints contained various derogatory statements about the Mapuche and failed to consider that the CTT protests had any social value or that CTT may have had a right to engage in those activities.[104] Indeed, both the initial complaints and those discussed below decided that the activities of CTT were simply objectionable, forbidden and unlawful (125-30, 200).

Following a request from the national government, the Supreme Court appointed an ad hoc Visiting Judge, who was charged with resolving the complaints filed against the CTT (66-73). One of the CTT's members, Aucan Huilcamán Paillama, appeared to testify about the CTT and its operations in June 1992. On the same day, the Visiting Judge ordered his "incommunicado detention" for "the crime of unlawful association"

[102] *See also Family Members of Julia Chuñil, Rapid Response Mechanism, Committee to Support Implementation and Compliance of the Escazú Agreement, A-CHL-20250729, 29 September 2025 (urging Chile to take immediate precautionary measures to ensure the safety of disappeared Indigenous rights defender, Julia Chuñil's relatives). See also https://ishr.ch/latest-updates/esazu-agreement-rapid-response-mechanism-triggered-for-first-time-to-protect-relatives-of-julia-chunil/; and Resolution No. 48/25, PM 19-25, Julia Chuñil Catricura (Chile), IACHR, 14 July 2025, https://www.oas.org/en/iachr/decisions/mc/2025/res_48-25_mc_19-25%20_cl_en.pdf.*

[103] *For a similar situation in Costa Rica see IACHR, Resolution No. 16/15, PM 321-12, Teribe and Bribri of Salitre Indigenous People (Costa Rica), 30 April 2015, https://www.oas.org/es/cidh/decisiones/pdf/2015/mc321-12-es.pdf (ESP).*

[104] *Para. 229, in their submission to the Court, the Mapuche stated that the temporary and "symbolic occupations of land are nothing more than demonstrations against public power, carried out by entire indigenous communities, women and men, old and young, most of them related to each other, who without violence claim what are their legitimate and unquestionable historical rights." Chile agreed with this view (231-02)*

(68). The Visiting Judge then ordered the prosecution of Mr. Huilcamán Paillama and others for the "crimes of unlawful association" and trespassing and ordered that the former remain in detention for 'the security of society' (72-3). In total, 135 people were indicted, using the same derogatory language noted above (123-27),[105] and charged with the following offences: unlawful association; trespassing; theft; contempt; concealment; and causing injuries (74, 94). A few months later, all were convicted of various crimes, convictions that were upheld on appeal and despite various challenges to their constitutionality (77-89).

Chile accepted international responsibility before the Inter-American Court and did not dispute the facts. Nevertheless, it requested that the Court specify the nature and extent of violations as well as any reparations. The Court determined that this required an examination of (a) rights to a fair trial and judicial protection and (b) the right to equality and non-discrimination, freedom of thought and expression, the right of assembly, freedom of association and the right to self-determination of Indigenous and Tribal Peoples (95).

First, with respect to the rights to a fair trial and judicial protection (108-223), the Court found that Chile had violated a series of guarantees (217-221, 223). These included violation of the right to an impartial judge – even Chile accepted that the Visiting Judge had employed discriminatory reasoning and negative stereotypes, and, therefore, lacked objectivity and impartiality (128-32).[106] The prosecutions for "unlawful association" were found to have violated the principle of legality insofar as the crime was defined in vague terms that, as evident in the case at hand, "favors arbitrary criminal prosecution motivated by discriminatory purposes" (178).[107]

Second, the Court turned to the discrimination and related issues. It reviewed its jurisprudence, which establishes that equality has two essential components: in the law and, where required, affirmative measures when there is evidence of historical and persistent discrimination against certain groups, including Indigenous Peoples (233-36). It recalled that the criminal proceedings and convictions against the 135 people were based on a **"discriminatory and arbitrary exercise of the State's [punitive] powers"** (237). This bias and the use of negative stereotypes was evident in the complaints, indictments and prosecutions because the latter were based on the view that "**it was illegitimate, and even illegal, for members of an indigenous people, because of their status as such**, to organize themselves in order to (i) proclaim an identity different from the rest of the population that inhabits the territory of the State, and (ii) to claim the rights that they considered to be inherent to them, including the lands they claimed as dispossessed" (238-39).[108]

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[105] *Para. 123, observing that this needs to be assessed from the perspective of the right to an impartial judge and; para. 125, the indictments classify the CTT, "from the outset, as an association 'of an illegal nature' [and] … the judicial authority completely failed to consider the vindicatory nature of the actions undertaken by the defendants, that is, their nature as social demands (as the accused persons declared at the time), directing their accusation, as a preconceived decision, to denote the criminal reproach that they deserved, cataloguing them as the crime of usurpation."*

[106] *Para. 134, "… in the circumstances of the specific case, the actions of the same judicial authority in the different stages of the process, guided in all of them by 'discriminatory bias', prejudice and the preconceived idea about the illegitimate and illegal nature of the organization [CTT], determined the violation of the right to be tried by an impartial tribunal."*

[107] *Para. 174, "… the principle of legality is framed as a human right that guarantees the person that he or she will not be subject to persecution or punishment except for those conducts, actions or omissions that the Legislative Branch previously classified as criminal, through a clear, express, precise and complete classification, far from any ambiguity or vagueness."*

[108] *Para. 240, "… the authorities implicitly considered, as indications of an illegal procedure … [that] it was not possible for indigenous persons to exercise or carry out validly or legitimately, such as: (i) disagreeing with the opinion of State officials or even making value judgments about their opinions or actions; (ii) creating an emblem and flag to express their identity; (iii) having their own newspaper and radio; (iv) maintaining relations and communications with national and international organizations and obtaining funding from them; (v) traveling abroad, and (vi) refusing to celebrate [the anniversary of Columbus's arrival]."*

This is not only discriminatory but also, as discussed further below, **the criminalization[109] of conduct that "did not merit the application of the criminal law"** (241) **because the conduct "constituted the exercise of certain rights"** (242), e.g., the right to freedom of association and freedom of expression to assert their identity and rights as Mapuche people (243-46). These rights were **arbitrarily limited, and this was made worse by the biased and discriminatory rationale** used by the judicial authority (247), and which, taken together, was sufficient to declare violations of various rights (248).

Third, the Court decided that further attention was required because "the legitimate exercise of social protest" was restricted (248, 250-1) in relation to "**violation of the right of assembly or the right to self-determination of indigenous and tribal peoples**" (249). The Court explained, citing various provisions of UNDRIP, that "**self-determination of indigenous and tribal peoples is a right protected by the American Convention and … is based on the right to cultural identity, as a component of the right to participate in cultural life"** (252) (see also No. 6 below). The right to self-determination, the Court explained, has internal and external aspects.[110] The external dimension includes Indigenous and Tribal Peoples' right "to elect their own authorities or representatives, as well as to participate in decision-making processes that may affect them" and "**'the right freely to determine their political status and their place in the international community on the basis of the principle of equal rights** and taking as an example the liberation of peoples from colonialism and the prohibition of subjecting peoples to any subjection, domination and exploitation of the foreigner'" (254). The right to **self-determination "ensures that indigenous and tribal peoples may freely express their views and positions as a prerequisite for their participation in decision-making processes on matters affecting them**" (255).

Applying this to the case at hand, the Court determined that the actions of the CTT, including the peaceful reoccupation of lands (258-59), were aimed at highlighting persistent violations of the rights of the Mapuche and, as such, these actions fell within the exercise of various guaranteed rights, constituting also "**an external position guaranteed by their right to self-determination"** (256).[111] The Court further determined that none of these points were analyzed, let alone given any weight, in the criminal proceedings, nor was any attempt made to establish a mechanism that could otherwise address the Mapuche's concerns (259-60).[112] Instead, the State's response was "criminalization of social protest, understood … as **the inadequate and excessive, and even biased and discriminatory, application of criminal law to actions to claim and express [legitimate demands] … so that the legitimate exercise of rights … was limited and criminally punished**" (260).[113]

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[109] *Para. 244, "… the judicial decision entailed the imposition of a criminal sanction for the legitimate exercise of the right…"*

[110] *The Court notes, at footnote 168, that it has previously has recognized, without linking it to cultural rights specifically, "that indigenous and tribal peoples are entitled to the right to self-determination embodied in common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, by which 'they freely determine their political status and also provide for their economic social and cultural development,' being able, '[i]n order to achieve their ends, to freely dispose of their natural wealth and resources,'" Saramaka People v. Suriname, Ser C No. 172, para. 93.*

[111] *Para. 256, concluding that "[t]The foregoing highlights the interaction of the right of assembly and freedom of thought and expression and freedom of association, as well as the right to self-determination of indigenous and tribal peoples, rights that were violated in the specific case;" and para. 258, "… these were acts of social protest, carried out in the exercise, precisely, of the rights of assembly, freedom of thought and expression, freedom of association and self-determination of indigenous and tribal peoples."*

[112] *Para. 265, the Court proposes that States have an obligation, "not to disproportionately restrict the exercise of the rights of those who protested peacefully, as happened in the specific case through the use of criminal law, but to address and manage … the conflict that had arisen." This includes addressing the factors or problems that would have motivated the acts of protest and that would be, precisely, the object of the claims and demands made."*

[113] *Para. 261, "… the State's action implied a restriction not authorized by the Convention on the rights of assembly, freedom of thought and expression, and freedom of association, as well as the non-observance of the right to self-determination of the Mapuche indigenous people."*

6. Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua. Series C No. 522

https://www.corteidh.or.cr/docs/casos/articulos/seriec_522_esp.pdf (ESP)

Country: Nicaragua[114] | **Body:** Inter American Court of Human Rights | **Date:** 18 June 2024

- **Issues:** Rights to lands, territories and resources, encroachment and legal certainty, participation rights, right to choose membership of and define institutions, right to a healthy environment, denial of effective remedies.
- **UNDRIP** arts. 1-5, 10, 18-19, 25-29, 32, 33-35

Summary: This case concerns the incomplete demarcation and titling of territories and other issues related to the recognition and enjoyment of the collective property and autonomy rights of various Indigenous and Tribal communities ("ITP"). It also involves participation rights in connection with the large-scale project to construct a 286 kilometer-long 'interoceanic canal' ("the Canal"), environmental harms, and interference in the election of ITP authorities and representatives (38, 109). Around 52 per cent of the Canal affects the ITPs' traditional territories. The ITP are comprised of six communities of the Rama Indigenous People and three Kriol Afro-descendant communities. Under Nicaraguan law, ILO Convention No. 169 applies to both (38, 41-4, 108, 114), considering the latter to be 'Tribal Peoples'.

Non-ITP settlers have invaded the ITPs' traditional lands, e.g., 80 percent of some of the ITP lands are in the hands of people from outside their communities (48), causing displacement, degradation, and serious and often violent conflicts, none which have been addressed by the State (47-53). Additionally, commencing in 2012, the State passed various laws to facilitate the construction of the Canal and associated infrastructure (61 et seq). This included establishment of a Commission empowered to issue permits and to expropriate ITPs' communal property (64). Construction has yet to commence on the Canal to date (84).

ITP adopted 'Guidelines' to govern their participation in decision-making related to the Canal and a 'Consultation Plan' was also developed in conjunction with a Government Commission (71-3). Several short consultation meetings were held in 2015[115] and an environmental impact assessment was completed (74-7). In early 2016, an agreement was discussed and signed that purported to provide the ITPs' FPIC for the Canal and for leasing an area of land (78-80, 264). However, the ITPs denounced that they were denied access to a lawyer to help explain this agreement and that they were coerced to sign the Agreement and associated meeting minutes (80-3). There were also numerous instances in which the State interfered in the elections

[114] *See also IACHR files application before Inter-American Court of Human Rights in case concerning Muy Muy indigenous people in Nicaragua, 27 January 2025 ("In Admissibility and Merits Report 89/24, the IACHR found that the PIMM had been prevented from electing its own traditional authorities because municipal authorities had been imposed and because parallel councils had been set up. The IACHR found that this had caused territorial disputes. Further, the State failed to ensure an appropriate consultation process before handing out to third parties deeds for indigenous land. This entailed violations of the rights to self-determination, property, and prior consultation…"), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/024.asp&utm_content=country-nic&utm_term=class-corteidh.*

[115] *Para. 74, these lasted between one and two days. The Minutes indicate that the ITP authorized the continuation of consultation process and proposed that a 'consent agreement' should be drafted and approved by the ITP. They also requested access to the full results of the impact assessment and asked for reaffirmation of a commitment by the State that no expropriations would take place.*

of ITP authorities (86-96), allegedly in violation of provisions of national law (e.g., 104-08). Dozens of legal challenges to the laws authorizing the Canal and the way the consultation process occurred were all rejected (85-6).

First, the IA Court assessed what it called political rights and the right to participate in cultural life (116 et seq), stating that it "must determine whether the State carried out acts that adversely affected the self-determination" of the ITP (121). It observed that "the content of political rights, in relation to [ITP] … **must be understood … as having regard to the right of such peoples to self-determination," including the right to freely choose authorities or representatives** (123). The Court stated that **the right to self-determination is vested in ITP, as peoples and subjects of international law and as set out in common article 1 of the Covenants** (124). It includes "**the right to elect their authorities or representatives, as well as to participate in decision-making processes that may affect them," which, in turn, "is necessary for the protection of their cultures and territories**" (*id*). The Court explains that the right to participate in cultural life, which includes the right to cultural identity, is also relevant (125). The latter protects not only distinctive lifeways and cultural traits, but it also protects **"the exercise of cultural practices, including those related to specific institutions, which may include … ways of organizing and electing authorities or representatives**" (125).

To guarantee the rights of ITP, States "**must adopt the special measures necessary to designate their own authorities and representatives, in accordance with their cultures and organizational structures, as an expression of their self-determination**, as well as to enable them to participate in decision-making processes…" (127). These **rights are inherent and are not "subject to prior recognition, authorization, or state regulation**" (*id.*).[116] Recalling also that autonomy rights have been recognized in Nicaragua's domestic law since the 1980s – and in the laws of other American States (132) as well as in inter-American human rights law – the Court explained that ITP institutions should – presumably, unless ITP decide otherwise – "conform to communal traditions and the election of collective and territorial authorities must be carried out in accordance with the traditional customs and procedures…" (131). The Court then concludes that "**the American Convention protects the right to self-determination of [ITP] with regard to the election of their own authorities and representatives, both individually and collectively**" (133).[117]

Applying this to the case at hand, the Court explains that the ITP have (a) **the right "to organize and manage their own affairs, in accordance with their cultures and forms of organization**, as well as to participate in decisions that may affect them;" (b) "the power to designate their authorities and representatives, in accordance with their traditional customs and procedures;" and (c) the State must respect and guarantee these rights, which includes "refraining from acts that could constitute interference or undue interference in their free exercise" (134).[118] More specifically, it ruled that various acts of interference by the State violated political and cultural rights (147), including:

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[116] *In para. 129-30 and footnotes 178-9, the Court references UNDRIP, arts. 4, 5, 18, 19, 20, 23, 32 and 33 and Klemetti Käkkäläjärvi et al. v. Finland, CCPR/C/124/D/2950/2017, para. 9.9.*

[117] *Para. 133 this recognition is "based on the content of the political rights and the right to participate in cultural life, recognized in Articles 23 and 26 of the American Convention," autonomously and read in conjunction with UNDRIP and other consistent standards.*

[118] *Para. 136, noting allegations of "a generalized situation, which would have arisen since 2013, of state interference in communal or territorial authorities and the imposition of "parallel governments", through acts such as the co-optation of leaders, the lack of certification of authorities or the extension of their mandates and the promotion of territorial and community elections in an extemporaneous manner."*

- because they had an impact on the right to be heard in the administrative procedure relating to the recognition of collective property (141); and
- the refusal to certify elected authorities, as required by statute, constituted an undue interference in community autonomy. This "undermines the autonomy of the territorial authority … **since it implies that its determinations on its own areas, as is the case with the designation of its authorities, are subject to external validation**," which is an infringement also of "**the right to appoint their own authorities and representatives of the communities"** (143).

Related to the above, in a 2025 thematic report on ITPs' rights in Nicaragua, the IACHR "emphasizes that self-determination is a precondition for the full realization of other individual and collective rights" and is "a prerequisite for building a new relationship between [ITP] … and States, so that specific **arrangements can be reached to enable these peoples to decide on their economic, social, and cultural development, their political organization, and other aspects of self-determination**."[119]

Second, the Court reviewed its jurisprudence on rights to lands, territories and resources (161-72),[120] recalling also that this requires respect for the autonomy and self-determination of ITP in relation to their lands and resources, including their collective legal personality (173). It concluded that Nicaragua's domestic law, in principle at least, provides adequate remedies in relation to the recognition of ITP lands (174-80). Therefore, the question was whether those guarantees were effectively applied (181). It concluded that they were not (206) and that various guarantees had been violated, including because Nicaragua had failed over an extended period to control and remove the large number of illegal settlers (203-04), and had delayed the final demarcation and titling of some areas due to the Canal project (186-205).[121]

Third, the Court analyzed the right to participate (229-65), explaining that **this "right is closely related to the right of self-determination of peoples, which has specific manifestations with respect to [ITP], considering their special link with their territory** and the transcendental importance of respecting their rights to collective property and cultural identity" (230). States must guarantee ITPs' "participation in decisions regarding measures that may affect their rights, and in particular their right to communal property, in accordance with their values, customs and forms of organization" (231, 233, 236).[122] The Court recalled also that FPIC is required in the case of "large-scale development or investment plans that would have a significant impact" on ITPs' territories. The **obligation to obtain FPIC applies to significant impacts on ITPs' "well-**

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[119] *IACHR, Nicaragua: Violence against indigenous peoples and Afro-descendants on the Caribbean coast, OEA/Ser.L/V/II Doc. 149, 25 August 2025, paras. 54-5 (adding, at para. 55, that, in exercising this right, ITP "are guaranteed autonomy or self-government in matters relating to their internal affairs, as well as the means to finance their autonomous functions;" and, at para. 56, that "an essential element of the right to self-determination is the relationship with their lands, territories, and natural resources…").*

[120] *Para. 168, "… the Court has indicated that the State must not only recognize the right to community property, but must also make it 'effective in reality and in practice'. In this sense, the lack of continuity of the titled land, or its division and fragmentation … can have a negative impact on the use and enjoyment of the land whose full ownership has been recognized."*

[121] *See also IACHR, Nicaragua: Violence against indigenous peoples and Afro-descendants on the Caribbean coast, as above, para. 21 ("… the settlers allegedly acted with the acquiescence and tolerance of state authorities in carrying out armed attacks, assaults, kidnappings, murders, sexual assaults, threats, arson, robberies, ambushes, and armed attacks"), https://www.oas.org/en/iachr/reports/pdfs/2025/informe_afro_%20ind%C3%ADgenas_nicaragua_eng.pdf.*

[122] *Para. 244, "… States must guarantee the rights of consultation and participation of indigenous or tribal peoples or communities from the "planning phases" of a project that may affect them. This includes, where appropriate, carrying out adequate consultation procedures before the adoption of laws [citing UNDRIP, art. 19]. In addition, the Court has explained that Article 2 of the Convention contains the obligation of States to bring their domestic law into conformity with the treaty and that one of the aspects of this is the duty to refrain from adopting any measure incompatible with the Convention."*

being, their cultural heritage or their traditional way of life, including in relation to the exercise of their rights over their lands or natural resources. This includes situations where communities need to be resettled or may be displaced from the territory, or where their livelihoods are at risk" (240). The Court concluded that Nicaragua had not complied with its obligations, that coercion is incompatible with good faith consultation (255), that these obligations also pertain to impact assessment processes, from design to evaluation, and the State had again failed to comply with its obligations (266-74).[123]

The Court turned to the 'Consent Agreement of 2016' (275-83), explaining first that "the acts that entail consent for the execution of projects that affect territories or natural resources of [ITPs'] collective property must be the result of an adequate prior consultation process. Previously, the Court has heard circumstances in which it found that **the right to consultation had been violated, even though state and indigenous authorities reached agreements**" (276).[124] In the case at hand, it observed that the consultation process was incompatible with international standards and, with respect to the Agreement, its "signing was carried out under acts of pressure and without legal advice being allowed. These **circumstances contravene the principle of good faith that must govern consultation processes**" (279, 281).

While the affirmation that FPIC is required for relocation, displacement or where ITPs' livelihoods are at risk is welcome and important, it is disappointing that the Court did not clarify, among other things, that the Canal is a large-scale project with significant, irreparable and cumulative impacts and, therefore, that FPIC was required in relation to the impacts it would have on the affected ITP, their rights and their territories.[125] Indeed, this situation also would seem to fall into the category of threatening ITPs' survival and, thus, be impermissible on that basis alone.

Fourth, there is a lengthy section examining numerous actions submitted to the Nicaraguan judiciary by ITP in relation to fair trial and judicial protection guarantees (289-394). The Court concludes that the State violated various rights in this respect (395).

Fifth, the Court ends its consideration of violations with an assessment of the right to a healthy environment. It is subdivided into discussions of its jurisprudence, including special considerations about ITP and obligations related to impact assessment (404-31), the environmental damage caused by settlers (435-43), and environmental duties concerning the Canal (444-59). Special considerations[126] include **recognition of the "close relationship between a healthy environment and the protection of the rights of indigenous peoples** due to their special spiritual and cultural relationship with their ancestral territories, as well as due to their economic dependence on land and environmental resources" (427, 429).[127] The Court also paraphrases UNDRIP, art. 29, to highlight that ITP have "**the right to the conservation and**

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[123] *The Court highlights the Akwé:Kon Guidelines of the Convention on Biological Diversity as a "collaborative framework for the conduct of impact assessments of development projects that may affect indigenous communities…" (270-71).*

[124] *Citing Q'eqchi' Mayan Indigenous Community v. Guatemala, Ser C No. 488 (2023), paras. 270-85.*

[125] *Even more so considering the conclusion in the impact assessment that the impacts would not only be significant, but also "irreversible or unprecedented" (444, 454), and the extant and cumulative impacts and damages that were proven in relation to the invasion of settlers (438).*

[126] *Para. 430, ITP are in a "situation of special vulnerability … given that, due to their close relationship between their ways of life and their ways of life, the environment in which they develop, they are exposed 'with greater intensity' to the environmental problems." This is also part of the need for "… special measures to guarantee 'the full exercise of their rights' in order to 'guarantee their physical and cultural survival'."*

[127] *Citing ILO Convention No. 169, art. 13, a provision broadly similar to UNDRIP, art. 25.*

protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from States for such conservation and protection" (428). Therefore, the Court concludes that:

- **States have "intensified obligations" with respect to ITP "in favor of the full enjoyment of their right to a healthy environment …** in accordance with their customs and traditions; and
- States must adopt "positive measures" to address "the differentiated negative impacts that environmental problems generate on [ITP] … including in the face of actions and practices of private third parties" (431).

The Court found that Nicaragua had violated the right to a healthy environment because it had failed to comply with its obligations related to impact assessment, including in connection with the Canal (443-59),[128] and because of the gross and unmitigated harm caused to the environment and productive capacity of ITPs' land and resources by invading settlers (435-43). On the latter, it observed that "States have **the duty to protect the rights of indigenous peoples, the conservation of their territories and the possibility of developing based on their own traditions and cultural patterns**. Allowing the presence of settlers in indigenous territory or near their territory has a direct impact on the way of life, culture and traditions of the peoples" (441).[129]

Last, on reparations, the Court reaffirmed that any reparations it orders "must recognize the strengthening of the cultural identity of indigenous and tribal peoples, **guaranteeing control over their own institutions, cultures, traditions and territories**…" (465). Reparations must also "… provide effective mechanisms, focused from [ITPs'] own ethnic perspective, that allow them to define their priorities with regard to their process of development and evolution as a people" (*id*.). The Court then ordered that Nicaragua finalize the process of regularizing traditional lands, including by removing illegal settlers and reversing the dispossession and displacement of ITP (470-80). Regarding the Canal, the Court ordered that any further legislative or administrative acts, proposed activities or works must be preceded by ITP participation, presumably including FPIC, "**through their authorities or legitimate representatives, appointed autonomously, without undue interference**" (484-85).

Guarantees of non-repetition include various training programs on ITP rights, including development and implementation of protocols to enhance access to justice for ITP defending their territorial rights (496). This also requires **special protection measures to address "threats to human rights defenders and/or community leaders … who act in defense of [ITP] rights**, as well as in relation to acts of alleged imposition of illegitimate governments or leadership" (497). The latter must guarantee effective access to justice and the free and autonomous exercise of the political rights of the communities involved, their leaders or representatives, and the persons who act in defense of their rights and without "excessive or delayed processes that could lead to frustrating the due guarantee of such rights" (*id*.) It declined to order other measures requested by the ITP (500-03), recalling, nevertheless, that "interpretation and application

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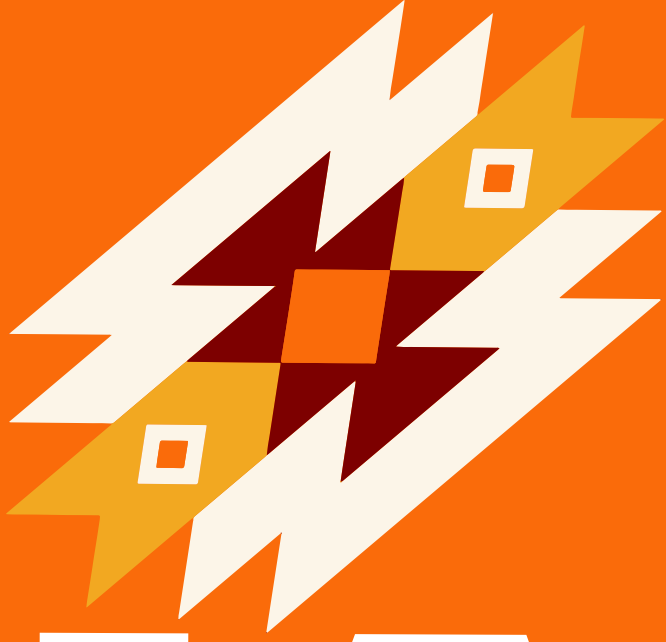
[128] *Para. 455, "granting of a concession in favor of a private company for the development and operation of the GCIN without the requirement of a feasibility study and pertinent studies to determine in advance and in a timely manner the impact of the project, so as to also guarantee the timely, adequate and early participation of the communities concerned, is contrary to the obligation to prevent significant environmental damage."*

[129] *Para. 443, "the State did not take the positive actions necessary to ensure that [ITP] could continue to make use and enjoy the environment in which they live. On the contrary, [there is] … sufficient evidence to prove that the activities of the settlers were carrying out plausible damage that was not controlled or supervised by any State authority."*

of the regulations in force in Nicaragua must be consistent with the rights of [ITP], their communities and their members, to elect their authorities or representatives without undue interference, [and, among other things], to collective property…" (504). Also, it stressed that the international human rights law in question is binding on all organs of the State, "including its judges …," which obliges them to ensure that this law is not diminished by the application of domestic law, including constitutional provisions" (the Court refers to this as the "control of conventionality," which refers to the superior status of the American Convention of Human Rights over national law) (*id.*).



NATIONAL

National[130]

1. Statewide Treaty (Victoria) Act 2025[131]

https://www.legislation.vic.gov.au/bills/statewide-treaty-bill-2025 (ENG only)

Country: Australia | **Body:** Victoria State Legislature | **Date:** 31 October 2025

- **Issues:** Participation in government, self-determination.
- **UNDRIP** arts. 3, 4, 5, 8-9, 11-5, 18-9, 23, 31-2, 34, 37, 40

Summary: After over a decade of discussion, Victoria's State legislature approved the 2025 Statewide Treaty Act. This law's goals are to implement the first Statewide Treaty; to provide the basis for ongoing treaty-making between the State and Indigenous Peoples; "to advance the inherent rights and self-determination of First Peoples; and to address the unacceptable disadvantage inflicted on First Peoples by the historic wrongs and ongoing injustices of colonisation and ensure the equal enjoyment of human rights and fundamental freedoms by First Peoples" (section. 2). This is framed by the preamble, which begins by acknowledging "the unique status of First Peoples and their unceded connection to Country, history, cultures and enduring strength" (Preambular Paragraph 1).[132] It also recognizes that historical and ongoing wrongs caused by colonization "have resulted in unacceptable levels of discrimination, disadvantage and intergenerational trauma for First Peoples" (PP5), that "existing laws have not been able to fully recognise the inherent rights of First Peoples or address disadvantage and trauma" (PP7), and that the new law commits to seeking a different path with different outcomes.[133] It additionally recognizes "the importance of this Statewide Treaty and future Treaties **proceeding in a manner that is consistent with the principles articulated in the United Nations Declaration on the Rights of Indigenous Peoples, including free prior and informed consent**" (PP15). A significant number of other laws were also amended to bring them in line with the Statewide Treaty Act (s. 222 *et seq*).

[130] *See also USA, 'Tohono O'odham Nation signs co-stewardship with BLM over sacred lands', https://www.tucsonsentinel.com/local/report/012225_tohono_stewardship/tohono-oodham-nation-signs-co-stewardship-with-blm-over-sacred-lands/; Colombia, Decree 488 of 2025 on Operation of Indigenous Territories, Colombia Ministry of the Interior, 5 May 2025 (operationalizing Colombia Const., Arts. 7 and 246 and recognizing the right of Indigenous Peoples' rights to establish autonomous territorial entities with their own governments, legal systems and control over land and resources, inclusive of FPIC (based on cultural objections, art. 10), https://acmineria.com.co/wp-content/uploads/2025/05/DECRETO-0488-DEL-5-DE-MAYO-DE-2025.pdf (ESP); and Brazil, Decree No. 12,373, of January 31, 2025, Regulating the exercise of police power by the National Foundation for Indigenous Peoples, https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2025/decreto/d12373.htm*

[131] *See e.g., 'Victoria makes history as Treaty legislation passes Parliament', NITV, 31 October 2025, https://www.sbs.com.au/nitv/article/victoria-makes-history-as-treaty-legislation-passes-parliament/umdwbj1is.*

[132] *A preamble contains introductory statements to a law that explain its purpose, intent, and goals.*

[133] *These acts of injustice must not continue or be repeated. The State of Victoria commits to not repeating past injustices (pp. 5-6); "[t]o rectify the consequences of past injustices, this Act gives effect to the first Statewide Treaty to enact special measures for securing advancement and protection of First Peoples. It recognises and restores the inherent rights of First Peoples in Victoria, including the right to self-determination, and acknowledges First Peoples' unique status and connection to Victoria's land and waters" (PP10); and "[f]uture Treaties will continue to advance and restore the inherent rights of First Peoples and honour First Peoples' Ancestors and Elders. (PP15).*

This new treaty-based relationship will be implemented (1) via an elected representative body, known as the First Peoples Assembly ("FPA") (s.16 et seq),[134] which will provide advice to the executive and legislature and have decision-making power on issues affecting First Peoples (s. 1);[135] (2) by building on and expanding truth-telling mechanisms, including by inclusion of results in school curricula (117 et seq); (3) by enhancing accountability mechanisms (ss. 91, 159); and (4) through financial support (via the "Self-determination Fund") for negotiations and related processes.[136]

The FPA, which is one of three related mechanisms to achieve the purposes of the Act,[137] may make substantive and internal rules (s. 30-48), and shall "**work collaboratively with Traditional Owner groups in Victoria to meet cultural obligations and responsibilities and realise self-determination for First Peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples**" (s. 18(2)).[138] The FPA may make representations to Cabinet, ministers, and both houses of Parliament (e.g., s. 76-80), including on draft laws (e.g., ss. 66, 69),[139] and various other officials, such as the Chief Commissioner of Police (s. 86) as well as address Parliament annually and report on issues affecting Indigenous Peoples (e.g., s. 74).

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[134] *Sec. 16(1), "The object of this Part is to establish the First Peoples' Assembly of Victoria … to be a self-determined, democratically elected, enduring institution for the political representation of First Peoples."*

[135] *E.g., sec. 1(a)(iv) and (v), "The main purposes of this Act are … (iv) to advise the Parliament and the State government in relation to matters that affect First Peoples; and (v) to hold the State government to account in relation to its commitments to, and the impact of its actions on, First Peoples." This will not supersede the power of Parliament or the rights of the Traditional Owners (secs. 7 and 5, respectively; and PP4, "The Traditional Owners of Country in Victoria have a unique role in their ongoing custodianship of, and connection to, Country and have authority to speak for Country").*

[136] *See s. 35, Advancing the Treaty Process with Aboriginal Victorians Act 2018 (on the self-determination fund).*

[137] *See also ss. 9 et seq (establishing 'Gellung Warl', comprised of the FPA, Nginma Ngainga Wara and Nyerna Yoorrook Telkuna), ss. 91 et seq (establishing Nginma Ngainga Wara, a body to evaluate and monitor the actions and performance of State government on "outcomes directed to First Peoples, [and] … implementing the recommendations of the Yoorrook Justice Commission; and to recommend to the First Peoples' Assembly practical and feasible measures to improve outcomes for First Peoples (s. 93)) and ss. 117 et seq (establishing Nyerna Yoorrook Telkuna to provide for "non-judicial and self-determined truth-telling, … the sharing and recording of experiences of historical events and the impact of colonization … and enabling healing for First Peoples and healing between First Peoples and the broader community" (s. 119)). See also s. 143 "(1) The State and Gellung Warl, by agreement, must establish and implement funding arrangements that operate according to the following principles— (a) self-determination and autonomy— Gellung Warl has the autonomy to set its own priorities and allocate its resources…."*

[138] *Rule-making authority is limited to the extent that any rules made "must not be inconsistent with this Act or any other Act or statutory rule, including any Commonwealth Act, or a legislative instrument to which section 8(4) of the Legislation Act 2003 of the Commonwealth applies made under a Commonwealth Act" (s. 34(1)) and the rules will be invalid to the extent of inconsistency (s. 43).*

[139] *Also, a member of the legislature must ensure that a statement of "Treaty compatibility" is prepared when introducing a Bill and before the second reading speech. This must address "(a) whether the First Peoples' Assembly was given an opportunity to advise on the Bill…; and … (c) in the member's opinion, the extent to which the Bill is consistent with any advice given or representations made; and (d) whether, in the member's opinion, the Bill is compatible with— (i) advancing the inherent rights and self-determination of First Peoples; and (ii) addressing the unacceptable disadvantage inflicted on First Peoples by the historic wrongs and ongoing injustices of colonisation; and (iii) ensuring the equal enjoyment of human rights and fundamental freedoms by First Peoples" (s. 66).*

2. Kebaowek First Nation v. Canadian Nuclear Laboratories, 2025 FC 319

https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/527544/index.do (ENG, FR)

Country: Canada[140] | **Body:** Federal Court | **Date:** 19 February 2025

- **Issues:** Effective participation in decision making, obligation to consider rights and impacts in administrative decisions, implementation of UNDRIP at the domestic level.
- **UNDRIP** arts. 18, 19, 25, 29 32, 38, 40, 42

Summary: This case concerns a judicial challenge against a 2024 decision of Canada's Nuclear Safety Commission ("the Commission") to permit an amendment to a license issued to Canadian Nuclear Laboratories Ltd., that allows for the construction of a nuclear waste 'near surface disposal facility' (para. 1) The Kebaowek First Nation ("KFN") argued that the Commission had failed to consider UNDRIP, as incorporated into national law in the UN Declaration on the Rights of Indigenous Peoples Act 2021 ("UNDA"), when allowing the license to be amended. Specifically, the KFN asserted that the Commission did not consider its rights and it had an obligation to secure the KFN's consent, pursuant to UNDRIP, as part of its obligations to 'consult and accommodate' in section 35 of Canada's Constitution Act (3). The Commission maintained that it had no authority to determine how to implement UNDRIP (54, 56, 161-64),[141] that it had based its decisions Canadian Supreme Court jurisprudence, and it had found no impact on protected rights (6-8). It also argued that UNDRIP was not incorporated into national law, despite the UNDA (56), stating that the UNDA only requires that Canada works with Indigenous Peoples "to develop an action plan" to achieve the objectives of UNDRIP (100).[142]

Finding for the KFN, the Federal Court noted that while the Commission indeed consulted with the KFN (31 et seq), nevertheless, this case "requires a consideration of the doctrine of reconciliation, which seeks to reconcile the pre-existence of Indigenous societies with the imposition of Crown sovereignty … and tests Canada's commitments to implement the principles set out in the UNDRIP, in particular the standard of 'free, prior and informed consent' ("FPIC")" (10-1).

First, the Court reviewed jurisprudence on the duty to consult and accommodate, which it explained is "rooted in the honour of the Crown and is derived from section 35 of the Constitution Act" (58-63). This duty

[140] *See also Saskatchewan (Environment) v. Métis Nation – Saskatchewan, 2025 SCC 4, 28 February 2025, https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/20869/index.do (explaining this https://www.cbc.ca/news/canada/saskatchewan/m%C3%A9tis-nation-saskatchewan-supreme-court-decision-1.7470696); and Cowichan Tribes v. Canada (Attorney General), 2025 BCSC 1490 (affirming that the Cowichan hold Aboriginal title to their traditional village lands, including lands held under private title by third parties. Also citing UNDRIP, including, at para. 624, to reject the doctrines of discovery and terra nullius and to observe, at 626, that "modern statutes and jurisprudence seem to condemn or consider inapplicable the doctrinal basis upon which many [prior] cases … stands. Relying on the Marshall Trilogy in the modern day seems apt to lead into legal error"), https://www.bccourts.ca/jdb-txt/sc/25/14/2025BCSC1490cor1.htm (on appeal).*

[141] *The Court ruled that the decision regarding the Commission's interpretation of its lack of powers to consider the UNDRIP and the associated national legislation was "unreasonable" and, therefore, incorrect, and its "failure to address the applicability of the UNDRIP and the UNDA in its analysis of the fulfillment of the [duty to consult and accommodate] was an error of law" (51, 57).*

[142] *See* para. 78, 102 refuting this point.

"must be satisfied before the Commission can make its decisions" on the impact assessments or the granting or amendment of licenses (63). It decided that the Commission has authority to interpret the duty to consult and accommodate, and that this must include "a consideration of the UNDRIP and the UNDA" (70).

Second, the Court then turned to the status and role of UNDRIP in international and national law, noting that "attempts to pass federal legislation to implement the UNDRIP" occurred between 2016 and 2021, culminating with the passage of the UNDA. The UNDA "was officially passed and became a part of Canadian law on June 21, 2021" (75). According to Canada's Supreme Court, UNDRIP "may be relied on to interpret Canadian law"[143] and "the rights set out within the UNDRIP exist, suggesting that the UNDA has codified pre-existing rights" (id., 82).[144]

UNDA requires that Canada must cooperate with Indigenous Peoples to take various steps, including "measures to ensure that Canada's laws are consistent" with UNDRIP and to implement an action plan, but it is unambiguous that these measures are not "intended to delay the implementation of the UNDRIP into Canadian law" (79, 99).[145] This includes interpreting Indigenous Peoples' rights under Section 35 of Canada's Constitution "in a manner consistent with the UNDRIP." It also highlights its "importance as a framework for reconciliation …. [inclusive of the principle] that all relationships with Indigenous peoples must be based on recognition and implementation of the inherent right of self-government…" (81). All decision makers **must "actively consider how the UNDRIP may impact the interpretation of Canadian laws, including the fulfillment of section 35 constitutional obligations**" (*id.*). Moreover, "it is **presumed that the interpretation of section 35 … will be done in a manner that conforms to international agreements that Canada is a part of, including the UNDRIP**" (85).[146]

Third, the Court assessed whether the Commission had properly understood its obligation to consult KFN, whether it considered KFN's rights and associated impacts, and the level of participation in decision-making that was required prior to its decision to amend the license (87 et seq). The KFN asserted that this required consideration of UNDRIP "to assess the scope and content of the consultation required" (88), referring especially to UNDRIP, arts. 11-3, 25, 29 and 32 because "these Articles underscore the distinctive relationship that they have with their land and water, the importance of the deep spiritual and cultural connections they

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[143] Para. 76, "The UNDRIP does not create new law or statutory obligations; rather, it is an interpretive lens to be applied to determine if the Crown has fulfilled its obligations prescribed at law."

[144] Para. 77, "the Supreme Court was clear that like the UNDRIP, the UNDA is not a source of rights, 'but rather proceeds on the premise that these rights exist'."

[145] Para. 80, "To summarize, the UNDRIP was incorporated into Canada's positive legal framework on June 21, 2021, through the UNDA. Accordingly, the UNDRIP may be used to interpret Canadian law and legal obligations."

[146] *See also Peru, Communidad Native de Puerto Franco et al v. Jefe del Servicio Nacional de Áreas Protegidas et al, Juzgado Mixto de Bellavista, Corte Superior de Justicia de San Martin, No. 00038-2021-0-2202-JM-CI-01, 13 December 2024, para. 5.14.13. (art. 15(1) of ILO Convention 169 "must be interpreted in accordance with" UNDRIP, art. 32(1)); para. 5.14.17-5.14.18 (finding violations of collective property rights, including as provided for by UNDRIP, arts. 26 and 27) and para. 5.14.19* ***(requiring that interpretation of Peru's Constitution (art. 66, which establishes the State's eminent domain over natural resources), is done in accordance with the State's international obligations, including UNDRIP****, arts. 26 and 27: "applying the principle of unity, which guides us to interpret the Constitution as a harmonious and systematic whole from which the entire legal system is organized. Therefore, the State's eminent domain over natural resources is conditioned by respect for Indigenous Peoples' collective property rights, "on which their subsistence depends, and represents a limit on the possible restriction of indigenous peoples' ownership of their resources"). See also https://www.idl.org.pe/seis-claves-juridicas-para-entender-la-sentencia-que-ordena-la-titulacion-integral-del-territorio-de-la-comunidad-kichwa-puerto-franco/#_ftnref8.*

have with the land and water, and the need to maintain those connections" (91).[147] Article 32(2) refers to the obligation of States to "consult and cooperate in good faith [with] the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources." As noted below, so does UNDRIP, art. 29(2) - and it does so in more direct language: "**States shall take effective measures** to ensure that no storage or disposal of hazardous materials **shall take place** in the lands or territories of indigenous peoples **without their free, prior and informed consent.**"

The Court began by reviewing various reports, particularly related to reconciliation and UNDRIP (93-5). It concluded that they "stress the importance of looking to the UNDRIP as a 'framework for reconciliation' … and underscore the importance of [FPIC] … to all decision-making processes" (95). **FPIC is "tied to Indigenous peoples' right of self-determination and international human rights jurisprudence on property, cultural, and non-discriminatory rights"** (96). The Court also referred judgments of the Inter-American Court, observing that it had recognized "the importance of FPIC in Case of the Saramaka People v Suriname (2007)" (107).[148] In the case of significant impacts, "'the State has a duty, not only to consult with the Saramakas, but also to obtain their [FPIC] … according to their customs and traditions'" (108). It also referred to another IA Court judgment, especially as it cited UNDRIP, arts. 18, 25 and 29 (110-11).

Applying this, the Court observed that "the international jurisprudence and commentary indicate that FPIC is 'a single universal 'standard'," whereas the duty to consult and accommodate in Canadian law depends on the weight of the right asserted and nature of proposed infringement, an important distinction in terms of possible restrictions on the rights in question (112-13).[149] She notes that in Canadian jurisprudence "the threshold for justified infringement is very high," (114) however, "**justification for the limitation of UNDRIP rights appears to be more stringent**"[150] (118). Therefore, the "adoption of the UNDRIP into Canadian law now requires more" (124, 128).[151] Quoting UNDRIP, art. 29(2), requiring FPIC for the disposal or storage of hazardous waste, she concludes that the proposed disposal site **"is a project that clearly falls within the scope of Article 29(2), thus triggering the UNDRIP FPIC standard"** (130). However, the Commission's decision failed to consider UNDRIP and that its "concept of FPIC requires an enhanced and more robust process," and this was an error of law (133-34).

Fourth, the Court then addressed the adequacy of the participatory process in the light of the preceding (135 et seq). The Commission should have considered the process "from the Indigenous rights holders' point of view," and it "**must consider the customs, traditions, and laws of the Indigenous rights holders**.

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[147] *The judge noted that there is no Canadian jurisprudence on how to understand these articles and acknowledged the importance of her decision "as one of the first decisions that set out how the UNDRIP, as incorporated into federal law through the UNDA, may be utilized as an interpretive aid. I have no doubt there will be further opportunities for all levels of court to consider these issues, and the jurisprudence will develop and evolve over time" (92).*

[148] *See also IA Court jurisprudence referenced above and the jurisprudence of various UN treaty bodies affirming that FPIC is required.*

[149] *With respect to Canadian jurisprudence see para. 114-117, explaining, at 114, that "the threshold for justified infringement is very high," and at 116, that "the scope of the Crown's obligations is directly proportional to the nature and seriousness of the infringement of the section 35 right."*

[150] *See also CEMIRIDE (Kenya) and MRG Int'l on behalf of Endorois Welfare Council v Kenya, 276/2003, 4 February 2010 223 (where the African Commission on Human and Peoples' Rights concludes that "[i]n terms of consultation, the threshold is especially stringent in favour of indigenous peoples, as it also requires that consent be accorded").*

[151] *Para. 129, "… UNDRIP is an added contextual layer that informs the scope and content of the duty to consult and accommodate."*

This ensures that consultation processes are **robust and align with the spirit of reconciliation and the continuing evolution of the Canadian legal framework, which now includes the UNDRIP**" (138-39, 177). It failed to do so (177-78, 183), even rejecting suggestions to improve the process from the KFN (140).[152] It also explained that the affected rights are collective rights and it is "essential to identify the collective that holds the rights," concluding that the Commission had not properly addressed this issue (142-59).[153]

Fifth, the Court reviewed whether the Commission had properly determined whether the new facilities for storage of nuclear waste would cause significant adverse environmental impacts (184 et seq). It noted that the existing site had affected Indigenous Peoples' rights and the environment since the 1940s (191, 200) and that it would continue to do so for centuries in the future considering the characteristics of nuclear waste (209). The KFN asserted that it had not been effectively consulted about any of the prior impacts, nor, as the Court had already determined, the new proposals for additional storage (e.g., 215, 218), and that their participatory rights include considering cumulative impacts on their rights (201). The Court, however, accepted that that participation is a "forward facing tool that is not designed to address historic grievances," (208)[154] that the Commission had "reasonably considered" the various factors and submissions, it had disagreed with the KFN, and that it had validly discharged its legal duty (212). (So much for "the doctrine of reconciliation" and Canada's commitment to implement the principles set out in the UNDRIP, which also has a core remedial (backwards looking) character (e.g., arts. 8(2)(b), 11(2), 20(2), 28, 29(3) and 32(3)[155]).

Last, the Court decided on the appropriate remedies (213 et seq). It concluded that it is "not practical at this stage to require the proponent to re-apply and commence the consultation processes a new. Rather, there is an opportunity to correct the process and in my view, a limited remedy is in the public interest" (219). Specifically, the relevant agencies are required **"to continue to consult with [the KFN] in a manner that promotes reconciliation and aligns with the principles articulated in the UNDRIP, including the FPIC standard,"** emphasizing that UNDRIP, art. 29(2) requires FPIC for the disposal of hazardous materials (221).

This decision has been appealed to the Federal Court of Appeal.[156]

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[152] *Para. 180, "The Commission did not consider the discharge of the duty to consult and accommodate using the interpretive lens of the Articles and the FPIC standard. This error skewed their analysis of the fulfillment of the duty to consult and accommodate."*

[153] *Para. 153, "… it would have been useful to have consultation protocol agreements that clarified which entities spoke for and on behalf of rights holders (i.e., Indian Act band councils, tribal associations and/or councils, traditional or customary government representatives, or modern governance representatives)."*

[154] *Para. 209, noting that "I do not dismiss the significant fact that the Algonquin have been deprived of a region within their traditional territory for many decades and will continue to be for centuries going forward."*

[155] *See also UNDRIP, preamble stating that "… indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests."*

[156] *See also 'UNDRIP at the Federal Court: Case Comment on Kebaowek First Nation v. Canadian Nuclear Laboratories', 20 March 2025, https://www.firstpeopleslaw.com/public-education/blog/undrip-at-the-federal-court-case-comment-on-kebaowek-first-nation-v-canadian-nuclear-laboratories.*

3. Osman v. Northern Rangelands Trust, E006/2021 [2025] KEELC 99 (KLR)

https://new.kenyalaw.org/akn/ke/judgment/keelc/2024/6554/eng@2024-10-08

Country: Kenya | **Body:** Isiolo Environment and Land Court | **Date:** 24 January 2025

- **Issues:** Rights to lands, territory and resources, establishment and operation of conservation and carbon related operations, participation and FPIC, cessation of intimidation and violence[157]
- **UNDRIP** arts. 7, 8, 11-13, 18-19, 25-32

Summary: This case was filed by an "indigenous pastoralist community" whose traditional lands are in the Chari and Cherab wards, Kenya (para. 2). They represent the larger Borana pastoralist community ("the Petitioners") and seek "to enforce indigenous, pastoralist, and community rights as people living and conducting their daily activities" on lands that they traditionally and collectively own (2, 94). Thousands were affected by the operations at issue and in an area that is over 300,000 hectares (352). These lands have been taken over by conservation operations set up by various State and non-State entities (the Respondents"), ostensibly to support wildlife conservation and carbon offsets ("the Conservancies").[158] These lands have yet to be registered as collectively owned lands under Kenya's Community Land Rights Act, even though the affected people had submitted numerous requests and applications for registration.

Additionally, the Respondents – who have established or seek to establish the Conservancies – failed to secure the Petitioners' effective participation and consent, propose to forcibly relocate an undetermined number of people, and have engaged in violence, intimidation and even enforced disappearances to achieve their objectives. These abuses have been carried out by armed rangers, "acting like a private army," who are seeking to suppress opposition by the communities (334). The Petitioners assert that, taken together, these various actions contravene Kenya's Constitution and laws, and international human rights guarantees, such as UNDRIP, art. 26(1) (97).[159] Kenya's National Human Rights Commission agreed with this view in an advisory opinion submitted to Kenyan authorities.[160]

First, after an extended presentation of the various submissions and arguments and the disposal of some procedural issues (e.g., standing to sue and requirements for filing a constitutional motion) (2-212), the

[157] *See also 'Kenyan court orders two community wildlife conservancies shut down', Mongabay, 31 January 2025, https://news.mongabay.com/short-article/2025/01/kenyan-court-orders-two-community-wildlife-conservancies-shut-down/.*

[158] *Para. 95, "… the community land in question is central to their survival and livelihood because it is their cultural ancestral and grazing land held under an intergenerational trust for future generations and that where the … Respondents have established conservancies, the community land is used as dry season and wet season grazing areas and hold critical cultural sites."*

[159] *Para. 99, "It was submitted that the land also has the Petitioners worship sites and shrines for cultural practices as well as burial sites for their kin and ancestors; … and that the Petition is not just about a fight to get back the land, but rather to reclaim their social and economic way of life and protect their cultural practice."*

[160] *Para. 23 the National Commission "presented an advisory opinion over the Isiolo County Community Conservancies Bill, 2021 to the County Assembly of Isiolo on the 21st April 2021 and that the opinion highlighted the aforesaid Bill noting that it would fundamentally violate the Constitution as it sought to legalize the illegally existing conservancies while also creating a pathway for the 1st Respondent to create more conservancies on community land without following due processes of the law."*

Court considered whether the Petitioners had proven that their rights had been violated. It recalled that conservation in Kenya has colonial origins, beginning, at least in its current form, "with the arrival of the British colonialists around 1895, who came up with the management plans and perceived the indigenous resources and methods as incompatible" (215). This persisted in the independence era, where the conservation and management of wildlife occurred in a system of national parks that excluded Indigenous Peoples, based on "Western guidelines and philosophies of nature conservation" (218-19).[161] However, Kenya's 2010 Constitution and the 2016 Community Land Act protect traditional land tenure rights and require that these rights are regularized through registration and titling (224-29).[162] The Court concluded that **the Petitioners' customary land rights "are constitutionally guaranteed whether or not the land is registered as community land**" (230). The State is obligated to respect these rights as well as complete the delimitation, titling and registration of the corresponding lands (290-1).[163]

Second, the Court assessed the right to effective participation in decision making, observing that the Community Land Rights Act, s.36(3), provides that "no agreement between an investor and the community shall be valid unless it is approved by two-thirds of adult members at a community assembly meeting called to consider the offer and at which a quorum of two thirds of the adult members of that community is represented" (242, 311).[164] This provision was elaborated on via regulations adopted in 2017 (as amended in 2024) (248). The right to effective participation also applies to the Conservancies, the Court decided, and is a required condition before the Conservancies can be registered (300-09, 315).[165] No evidence exists of the Respondents complying with these conditions "**prior to the establishment of the conservancy despite the fact that the same is bound to interfere with the community's ability to continue with their social and economic life as pastoralists**" (317-19). This constituted a violation of their right to participate in decisions (320).

Third, the Court rejected the Respondents' claims that the Petitioners do not have a right to consent to decisions that may affect them (323-29). It ruled that their consent is required as a matter of national law and, consequently, three of the Respondents "are acting or undertaking their activities relating to community conservancies outside the constitutional and legal framework set out above and hence have infringed, threatened, or violated [the Petitioners'] rights to property" (331, 333).

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[161] *Para. 222, "public land, which is composed of game reserves and national parks under Article 62 (3) thereof, is to vest and be held by the national government in trust for the people of Kenya and is to be administered on their behalf by the National Land Commission", the latter being one of the respondents in the case.*

[162] *Para. 227, "Community land tenure rights and interests are defined as unwritten ownership practices in specific communities where land is owned or controlled by a family, clan or designated community leader, possession or enjoyment of common rights, privileges, or interests in land and or rights conferred by or derived from African customary law, customary or practices…."*

[163] *Para. 291, "This means therefore that the Petitioners rights to enjoy the accrued benefits to community land are anchored on both the Constitution and the statute and can therefore not be wished away…;" and para. 299, "[i]n view of the foregoing, and in particular the provisions of the Community Land Act and its Regulations, it is our finding that the 2nd and 8th Respondents have not complied with the law in relation to registration of the suit land."*

[164] *Para. 321, "The Petitioners have further complained that the [Respondents] … established and is running community wildlife conservancies in unregistered community land within Isiolo County without express consent, approval, authority, or mandate from them and the community at large."*

[165] *Para. 300, "Pursuant to Section 4 of the Wildlife Conservation and Management Act, public participation is a foundational principle of wildlife conservation. Similarly, the Community Land Act contains provisions emphasizing the importance of public participation in matters involving investor relationships with community land. It also mandates that dealings with unregistered community land must adhere to these participatory principles.*

Fourth, the Court ruled that other human rights abuses, threats of eviction and additional violence by armed rangers, operating as wildlife scouts and holding "the status of police reservists," were not only a source of increased tension and violence as community members sought to defend themselves (334), but that it also contravened the Constitution and various laws upholding respect for human rights (336-47).

Last, relief was ordered by the Court, including various declarations upholding the Petitioners' rights and requiring corresponding action by the State as well as various injunctions against further implementation of the Conservancies or any evictions and prohibiting the operations of rangers or guards (1, 360).

4. Judgment T-248

https://www.corteconstitucional.gov.co/relatoria/2024/T-248-24.htm (ESP and ENG)

Country: Colombia | **Body:** Constitutional Court[166] | **Date:** 25 June 2024

- **Issues:** Self-determination, lands, territories and resources, participation and FPIC, climate, REDD+, UN Guiding Principles on Business and Human Rights.
- **UNDRIP** arts. 3,4,5, 18, 19, 25-29, 32, 34-5, 40

Summary: This action for urgent protection of fundamental rights was filed by the Indigenous Council of Pirá Paraná Territory ("the ICPP"), against a private company and the State.[167] It alleged that purported climate mitigation projects ("the REDD+ Projects") contravened Colombia's obligations to protect Indigenous Peoples' rights to self-determination, autonomy, self-government, territory, identity, physical and cultural integrity, as well as the right to free, prior, and informed consultation and/or consent (para. 2, 162). The ICPP is comprised of traditional authorities, operating also under the Association of Captains and Traditional Indigenous Authorities of the Pirá Paraná River ("ACAIPI").[168] ACAIPI, however, does not have the power to make agreements that bind the ICPP or the Pirá Paraná, this is reserved to the ICPP, "its highest governing authority (16-7). The State was made aware of this (17).

The REDD+ Projects were not discussed with or agreed to by the Indigenous Peoples and communities of Pira Paraná or the ICPP, i.e., not "through their own system of governance and with respect for their physical and cultural integrity" (12). An agreement permitting the REDD+ Projects was signed by a former representative of ACAIPI and after they had been replaced by the appointment of another representative, meaning that they had no authority to do so on behalf of ACAIPI, let alone the ICPP (18). The ICPP did not

[166] *See also Judgment T-530/24, Constitutional Court of Colombia, 16 December 2024 (on the right to autonomy, jurisdictional co-existence, and Indigenous Peoples' right to "ethno-education," referencing or quoting UNDRIP, arts. 4 and 5 (para. 125, "the self-determination of indigenous communities includes the right to 'determine their own institutions and governing authorities; to give or preserve their norms, customs, worldview and development option or life project; and to adopt the internal or local decisions that they consider most appropriate for the preservation or protection of those ends';") and art. 14 (para. 127-28), https://www.corteconstitucional.gov.co/relatoria/2024/t-530-24.htm.*

[167] *Para. 4, "The plaintiffs are part of the Great Indigenous Reserve of Vaupés, created in 1982 [2] and expanded in 2013 [3] to an area of 3,896,190 hectares. This reserve includes 230 multi-ethnic indigenous communities with dispersed populations…."*

[168] *Para. 130, "This Court emphasizes the status of the communities of the Pira Paraná River not only as subjects of special constitutional protection, but also their importance to humanity, given that the traditional knowledge of the Yuruparí jaguar shamans of numerous ethnic groups settled along the banks of the Pira Paraná River was declared by UNESCO as intangible cultural heritage of humanity…."*

even become aware of the REDD+ Projects for over a year after the agreement was signed and the ICPP immediately objected, stating that various rights had been violated (19-20). This view was rejected by the companies involved, who argued that they had a valid agreement (21-4).

The National Government failed to address these defects (25-8), and this was upheld by lower courts prior to the case being admitted by the Constitutional Court of Colombia ("CCC") (30-7). Various interventions by third parties before the CCC highlighted serious problems with REDD+ policy and the voluntary carbon market in Colombia in general, especially with respect to Indigenous Peoples' rights, (69-89), and the CCC agreed (172-74).[169] Violations were also related to non-compliance with the social and environmental safeguards established under the UN Framework Convention on Climate Change (161). Many of these problems were verified in a technical session ordered by the Court (90-109). The CCC also requested additional evidence on some issues (110) and this further verified the veracity of the complaints (111-15).[170]

First, the CCC recalled that it has recognized Indigenous Peoples' ability to present claims to the judiciary "as collective subjects entitled to fundamental rights," and that this authority may be exercised by "(i) the ancestral or traditional authorities of the respective community; (ii) the members of the community; (iii) the organizations created for the defense of the rights of indigenous peoples; and (iv) the Ombudsman's Office" (132, 133-37). It also explained that protection actions may, in exceptional circumstances, be submitted against private persons and companies in addition to public entities (140-46) because they concern "the conduct of persons who affect or have a direct relationship with the damages that the indigenous communities claim occur in their territories…" (139, 147).

Second, the CCC explained that the case partly concerns different perspectives about preventing environmental deterioration, "as a purpose of the State and social co-responsibility and international commitment," and the protection of Indigenous Peoples' rights and ways of life in their territories, "as well as the physical and cultural preservation of their uses, customs and traditions" (165, 166-70, 182). It determined that two legal issues required resolution:

1) Did the public and private defendants violate Indigenous Peoples' rights, to self-determination, autonomy and self-government, to lands, territory and their resources, to cultural identity and integrity and to self-development, and to consultation and FPIC as related to the REDD+ Projects (175-76)?
2) Does the Colombian State via is various ministries and agencies violate these rights in REDD+ projects in general (181).

It began by reviewing international law, starting with environment and climate-focused instruments. It noted especially that the "Cancun Agreement safeguards" applicable to forestry-related mitigation measures require "respect for the knowledge and rights of Indigenous peoples … bearing in mind that the United Nations General Assembly has adopted [UNDRIP]," ensuring also the full and effective participation of Indigenous Peoples (186).[171] On Indigenous Peoples' rights, the CCC noted that various instruments,

[169] *Para. 174, "… this is not merely an isolated situation in a particular case, but rather a set of factors that contribute to a presumed unconstitutional practice that renders the indigenous population invisible in the implementation of REDD+ projects."*

[170] *Para. 111, e.g., "REDD+ projects implemented in the Amazon are characterized by high levels of conflict, internal divisions, and disputes over resources."*

[171] *Para. 196, concluding that "regarding the implementation of this REDD+ framework in the territories of Indigenous and local communities, environmental and social safeguards were established that States must ensure are met. One of these safeguards, important for this case, is ensuring the full and effective participation of Indigenous Peoples. Its content must be determined in accordance with national and international law, including the [UNDRIP]."*

including UNDRIP,[172] guarantee rights, such as FPIC, and establish obligations to implement these rights (197-98). This includes adopting "policies and mechanisms that ensure the effective and equitable participation of indigenous peoples in development processes and in the management of natural resources in their territories, respecting their autonomy and traditional forms of organization" (*id*.).[173] Similar norms are reflected in Colombian law, including in the Constitution (199).

Noting that the rights above are implicated in the REDD+ Projects (202-03), the CCC explained its understanding of their content, beginning with the right to self-determination (203-04). Self-determination:

- Is a "a collective and fundamental prerogative" that has both internal and external aspects. It enables Indigenous Peoples to use "their own social, political, economic, legal, cultural or spiritual organization, in accordance with their traditional practices, their worldview and their collective life project…" (205).
- Its external dimension requires that Indigenous Peoples, where they so choose, may participate in decisions that may affect them, "through their knowledge and in the search for respect for their worldview…" (206).
- In its internal aspect "autonomy is related to the recognition of self-government in terms of its social, political, legal, and economic organization,"[174] and implies (i) the right of communities to decide their form of government, (ii) the right to exercise jurisdictional functions within their territorial scope, and (iii) the full exercise of the right of ownership of their reserves and territories…" (207).
- It includes the right to resolve internal conflicts without interference (208-09).[175]

These rights must be respected in the context of REDD+ in general[176] and the REDD+ Projects, specifically (210-11) as must rights to lands, territories and resources and connected cultural rights (212-18, 222).[177] The right to cultural identity is as an "autonomous right" guaranteeing that Indigenous Peoples may maintain

[172] *See also Chile, Recurso de protección (Apelación), "Urrutia/Acuícola e Inversiones Nalcahue Ltda., Supreme Court, Rol N°15.831-2024 (CAA of Temuco, Rol N°8261-2023), 15 January 2025 (suspending a fish farm due to its impacts on the environment and cultural and other rights of Indigenous Peoples, citing UNDRIP and others).*

[173] *Para. 201, the CCC "has insisted that the basis for respect for indigenous peoples and communities lies in the guarantee of self-determination, autonomy, and self-government. Likewise, it has established (in numerous cases) that projects intended to be carried out in collective territories must adequately analyze their impacts and, consequently, the right to consultation and/or free, prior, and informed consent."*

[174] *Para. 207, "This implies the right to decide for themselves, without unnecessary intervention from the State, on their forms of government, on the way in which they exercise their rights in their territories and indigenous reserves, including self-management or self-recognition of collective cultural expressions."*

[175] *Footnote 253, "Maximizing the autonomy of indigenous communities implies that, prima facie, the judge overseeing the protection of fundamental rights cannot intervene in matters that fall under the jurisdiction of indigenous authorities. This is in accordance with the constitutional principle of the autonomy of indigenous peoples. The intervention of the judge overseeing the protection of fundamental rights is exceptional and is only appropriate when necessary to safeguard an interest of higher order than the principle of autonomy itself."*

[176] *See also Green finance, a just transition to protect the rights of Indigenous Peoples. Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, A/HRC/54/31.*

[177] *Para. 213, "the State recognizes and legally protects defining characteristics of the fundamental right to collective property, including its imprescriptible, inalienable, and unseizable nature, and the ancestral nature of possession as a "title" to ownership. Under this differential perspective, the establishment of Indigenous reserves, Indigenous Territorial Authorities (AATIS), and the configuration of Indigenous territorial entities has been respected and guaranteed as forms of organization specific to Indigenous peoples and communities."*

and strengthen "the set of distinctive spiritual and material characteristics that define them and, at the same time, represent their ways of life and self-development, their worldviews, value systems, traditions, and beliefs learned over centuries" (219). This includes their "right to self-development and, consequently, their food practices and sovereignty" (221). The CCC concluded that these rights and the obligation to obtain FPIC had been violated (420-24)

Consultation and FPIC in Colombian law are part of the same right. There is "a continuum" where consultation with the aim of reaching agreement applies to any impacts on Indigenous Peoples' rights and, additionally, FPIC is required for "direct and intense impacts" (224, 225-32). FPIC is required where there are threats to "physical and cultural subsistence … as occurs with actions that "(i) involve the relocation or displacement of communities due to the work or project; (ii) are related to the storage or dumping of toxic waste on ethnic lands; and/or (iii) represent a high social, cultural, and environmental impact on an ethnic community, which puts its existence at risk." If "**an agreement is not reached, the Court has ruled that the decision of the indigenous communities prevails**" (230). When FPIC is required, Indigenous Peoples' decision "is in principle **binding, since, without it, the implementation of the measure entails a violation of the rights of these groups"** (232).

The preceding is followed by a lengthy discussion of the State's obligation to ensure "the interdependent protection between the environment and the rights of indigenous peoples" (233-53, 396) and the due diligence obligations of companies related to REDD+ (253-68), referencing especially the UN Guiding principles (257-61).[178]

Applying the above to the case, the CCC first observed that the "high interest in carrying out REDD+ projects in the Colombian Amazon, especially in indigenous reserves, **imposes the need to respect … the fundamental rights of the indigenous communities involved**" (271, 404, 417-19). However, with respect to the REDD+ Projects, the companies failed to act with due diligence to identify, prevent, mitigate and respond to negative impacts on Indigenous Peoples (274, 278-373).[179] They did not comply with applicable human rights and safeguard standards (e.g., 372), nor did they obtain genuine FPIC, and there was "no effective monitoring and evaluation … that examined the real and potential impacts of the project on the communities' way of life as a collective group" (274). The Court decided that the agreement for the REDD+ Projects **is incompatible with "rights to self-determination, autonomy, and self-government"** (304, 402) because it was concluded **without respect for the Indigenous decision-making institutions** (313, 361).[180] It also established "restrictions on the use and tenure of lands held by indigenous communities" (298). Additionally, the REDD+ Projects consisted of significant and intense impacts (315-16), including on "territorial autonomy," cultural heritage and food security (317-18), all threatening their survival (334).[181] This required that FPIC must be obtained (318-38,). The CCC then concluded that "the subsequent signing of

[178] *Para. 267, "This includes the duty to assess the actual and potential impact of their activities on the human rights of indigenous communities, to propose and manage the necessary actions for the protection of those rights, and to ensure that prior consultation or free, prior, and informed consent is obtained…."*

[179] *Para. 280, companies "did not design or execute actions that guaranteed the safeguards in favor of indigenous peoples, designed internationally and accepted by the national government."*

[180] *Para. 372, they "… fail to consider respect for the governance structures or the collective rights of indigenous communities over their lands and territories, as well as their forms of organization."*

[181] *Para. 334, "The Court finds it difficult to accept that this population … should now be the one to sacrifice its customs and relationship with the territory to achieve a reduction in GHG emissions, especially since, according to the plaintiffs, this decision was not made by the population itself."*

conservation agreements highlights a belated strategy that cannot remedy the failure to **obtain the consent required and protected under national and international standards on the rights of Indigenous peoples**" (345-47, 352, 356).

Likewise, the CCC found that the Colombian State has not adopted an approach that "comprehensively addresses the respect, protection, and guarantee of the rights of indigenous peoples in REDD+ projects" (275-416), and this is a national problem, beyond the REDD+ Projects in this case (276, 374). It also amounts to an "unconstitutional practice", making Indigenous Peoples invisible in REDD+ projects nationwide (274, 378),[182] leading to, among other things, "demonstrated deficiencies in determining who holds ownership of REDD+ projects and their economic benefits" (381, 392) and a lack of guarantees for the full exercise of Indigenous Peoples' collective, fundamental rights (384, 394).[183]

[182] *Para. 276, this unconstitutional practice, making Indigenous Peoples invisible is "manifested in: (i) difficulties in determining who holds title to REDD+ projects operated in indigenous territories; [and] (ii) regulatory gaps concerning the social and environmental safeguards agreed upon in the UNFCCC…."*

[183] *Para. 386, "… if these communities are key actors in the carbon market, it is imperative to guarantee their autonomy through the application of qualified standards, access to accurate information, effective participation in decision-making, and free, prior, and informed consent."*

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