

Information Note #5a

How to submit a petition to the Inter-American Commission on Human Rights

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



2009 – Introductory Workshop on Mayan Epigraphy. Poqomam Linguistic Community of the ALMG. Guatemala. Photo: ALMG

This Information Note provides an overview of the mechanism for submitting petitions to the Inter-American Commission on Human Rights ('Inter-American Commission', 'Commission' or IACHR). In order to submit a petition to the Commission it is not necessary to have a lawyer. However, this is a procedure which does require a certain knowledge of the system. In order to facilitate the process, it is advisable to seek alliances with organisations and/or advisors who know the system and that have previously submitted petitions. Processing a petition takes time, and it is important to set clear goals to be achieved over time. It is also important to regard the process of filing a petition as an opportunity to achieve progress internally: obtaining a favourable outcome does not necessarily imply that there will be an automatic change in a situation or issue. The process can be used as a catalyst for internal processes taking place in parallel with the petition's progress at the international level.

1 How to submit a petition

A petition may be submitted in any of the OAS's four official languages (Spanish, English, French and Portuguese). The Commission has a simple brochure that answers the most frequently asked questions about submitting complaints. This *Petition and Case System: Informational brochure* can be found at: www.oas.org/en/iachr/docs/pdf/HowTo.pdf. There is no pre-defined way to submit a petition, but a form is provided towards the end of the brochure which is useful for preparing a petition. A petition can also be submitted via the IACHR website.

2 What can a petition be about?

Petitions must concern alleged violations of one or more human right(s) recognised in:

- The American Declaration of the Rights and Duties of Man ('American Declaration');
- The American Convention on Human Rights ('Pact of San José' or 'American Convention');
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador');

- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty;
- The Inter-American Convention to Prevent and Punish Torture;
- The Inter-American Convention on Forced Disappearance of Persons;
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará').

3 Who can submit a petition?

Any individual or group of individuals or non-governmental entity legally recognised in one or more of the Member States of the OAS may submit petitions to the Inter-American Commission, on their own behalf or on behalf of a third party (Article 44 of the American Convention and Article 23 of the Rules of Procedure). Although the Convention talks about a legally recognised organisation, a group of people can submit a petition. Therefore, in practice, it is not necessary for an organisation or collective of people, such as an indigenous community, to be formally recognised as an organisation within a State Party.



First Training Course for Wayuu Women and other peoples on the Rights of Indigenous Peoples and the Implementation of ILO 169 and the UNDRIP, an activity undertaken by the Campaign for the Elimination of All Forms of Violence against Wounmainkat – Our Land. Photo: Miguel Iván Ramírez Boscán

It is not necessary to have the authorisation of the victim to file a petition. However, the Commission generally requires that the victim be aware that a petition is being submitted on his or her behalf, unless this is impossible (for example, because it is alleged that the person has disappeared or is detained incommunicado).

The petitioner can request that his or her identity not be disclosed, but the identity of the victim/s must be disclosed.

Legal representation by a lawyer is not necessary.

4 Who can be considered a victim of a human rights violation in a petition?

A petition must refer to a violation against a person, as opposed to a corporation. A petition can also be filed for a violation committed against a group of people or a community.

With regard to petitions which concern alleged violations of a community's or group of people's right(s), individuals forming part of the group or community must be identified, or it must be possible to identify them. This is especially relevant for cases involving indigenous peoples.

5 Against whom can a petition be filed?

Petitions alleging violations of rights protected by the human rights instruments mentioned above may only be initiated against a State that has ratified the instrument guaranteeing the right(s) in question. Petitions can also be lodged against any State that is part of the OAS for violations of the American Declaration. The Inter-American Commission receives complaints against Member States even if they have been suspended from the OAS, which has happened with Cuba and Honduras.

6 What information must a petition contain?

The general requirements for submitting a petition to

the Commission are established under Article 28 of the Commission's Rules of Procedure.

Petitions addressed to the Commission shall contain the following information:

1. the name of the person or persons making the denunciation; or in cases where the petitioner is a non-governmental entity, its legal representative(s) and the Member State in which it is legally recognized;
2. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons;
3. the e-mail address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and postal address;
4. an account of the act or situation that is denounced, specifying the place and date of the alleged violations;
5. if possible, the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged;
6. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;
7. compliance with the time period provided for in Article 32 of these Rules of Procedure;
8. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of these Rules of Procedure; and
9. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of these Rules of Procedure.

7 What are the requirements for filing a petition?

Article 46 of the Convention requires that for a petition to be processed it is necessary:

- a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
- c. that the subject of the petition or communication is not pending in another international proceeding for settlement.

What are domestic remedies?

Domestic remedies are legal procedures available in a country which have been brought before the domestic courts in order to seek protection of one's rights or to obtain redress for a human rights violation.

What does exhaustion of domestic remedies mean?

Before submitting a petition to the Inter-American Commission and, in general, to any international human rights body, the author must have first initiated appropriate judicial proceedings in their domestic courts seeking to rectify the violation.

Exhaustion of domestic remedies

Article 46 of the American Convention (Article 31 of the Rules of Procedure) states that to lodge a petition it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognised principles of international law.

In general, the Commission requires that ordinary remedies have been exhausted, but not extraordinary remedies. There is a technical distinction between judicial proceedings that have been submitted to lower courts (ordinary) and the Appellate or Supreme Court (extraordinary). Extraordinary remedies are those that cannot be filed in all cases, and are usually more limited than ordinary ones. It is not necessary to exhaust extraordinary remedies. However, if an action has been started (even if it is an extraordinary remedy) it has to have been exhausted (the Court has to have issued a final decision) before a petition may be filed.

Exhausting each and every existing legal remedy is not required: it is only necessary to exhaust remedies that are conducive to redressing the alleged violations. For example, if a person has exhausted criminal remedies, there is no obligation to exhaust civil remedies as well. The remedies that must be exhausted are judicial ones (cases before a domestic court) as opposed to merely utilising administrative remedies (decisions by administrative authorities) such as a Ministry or a Special Commission, e.g., a Truth Commission. It is helpful, nonetheless, to explain to the Inter-American Commission all non-judicial remedies the petitioner has also pursued (administrative recourses, letters to officials, and other efforts made with the State).

In certain circumstances, it is not necessary to exhaust domestic remedies (Article 46.2 of the American Convention). This is the case when:

- The domestic legislation of the State concerned does not afford due process of law for protection of the right(s) that have allegedly been violated;
- The party alleging violation of his or her rights has been denied access to remedies under domestic law or has been prevented from exhausting them;
- There has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

For cases involving indigenous peoples, the exceptions given in Article 46.2 are frequently invoked. For example, when they have petitioned the local authorities for demarcation of their lands but after many years no decision has been taken (undue/unwarranted delay).

A further situation when it is not necessary to exhaust a remedy is when it is available but not adequate or effective. If the remedy is adequate, the judicial remedy itself is able to protect the right that has allegedly been violated. If the remedy is effective, the intended outcome can be achieved – either because there is proper enforcement of the decision, or there have been no undue delays in securing the decision or its



Peru. Photo by Johan Wildenhagen.

implementation. For a remedy not to be considered effective or adequate, it would have to be shown, for example, that similar cases had been brought to the courts, but had been consistently dismissed. It is not possible, however, to make a general allegation that the justice system is not diligent or that judges are corrupt. These allegations would not be sufficient for the Commission to waive the rule of exhaustion of domestic remedies. What is required is to demonstrate, using concrete examples, that the legal mechanisms will not produce an effective outcome.

Delay in submitting a petition

Petitions should be lodged within a period of six months following the date of notification of the decision that exhausted the domestic remedies. If the petition is submitted after the six-month period, the Commission may dismiss the complaint. However, if the internal process to exhaust local remedies has taken too long, the petition may be submitted, on the basis that there was undue delay in completing the internal process.

In circumstances where the rule of exhaustion of local remedies is not applicable, for any of the reasons discussed above, the petition should be submitted within a reasonable period of time.

Duplication of procedures and cosa juzgada

Article 47 of the American Convention and Article 33 of the Commission's Rules of Procedure establish

that a petition should not be substantially the same as any other which has previously been submitted to an international organisation, whether it is pending or has been decided. This rule only applies if the other body has the power to adjudicate a dispute, namely, if it has the power to decide a case against a State for a human rights violation. For example, if a petitioner brings a case before the Commission, they may not at the same time bring a complaint before the UN Human Rights Committee. However, it is possible to bring a petition before the Commission while also raising concerns under the Human Rights Committee's periodic reporting process or the Committee on the Elimination of Racial Discrimination's Urgent Action Procedures, or while also requesting the assistance of one of the UN Special Rapporteurs. This would not be duplication because the functions exercised by these human rights mechanisms (State report examination, urgent action procedures or Special Rapporteur statements) do not result in adjudication/decision of a case against a State.

In fact, for effective advocacy, it is often advisable to bring more than one international action at the same time – i.e. a contentious case in one forum ('petitioner v. State'), and a request for assistance and attention to a periodic reporting process or UN Special Rapporteur. The duplication prohibition does not mean that help may only be sought from one international entity. All that is required is to coordinate the use of different kinds of mechanism at the same time.

For further details on the rules applicable to petitions and cases before the Inter-American Commission, a careful reading of the Rules of Procedure of the Inter-American Commission is recommended (available at: www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp).

Notes



1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh, GL56 9NQ, UK
T. +44 (0)1608 652893 F. +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

The Forest Peoples Programme is a company limited by guarantee (England & Wales).
Reg. No. 3868836, registered office as above. UK-registered Charity No. 1082158.
It is also registered as a non-profit Stichting in the Netherlands.

Information Note #5b

Petition/case procedure in the Inter-American system: handling of a petition/case before the Commission and its referral to the IA Court

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



2008 – General Assembly of Registered Members of the Poqomam Linguistic Community of the ALMG, Guatemala. Photo: ALMG

Preliminary Evaluation (IACHR Secretariat)



Admissibility or Inadmissibility Reports (IACHR)



Process of Friendly Settlement (Parties)



Friendly Settlement Report (IACHR)



Merit Report (IACHR)



Follow-up (IACHR)



Referring the case to the Inter American Court of Human Rights (IACHR/State)

Once the petition has been submitted, the Commission's Executive Secretariat sends a letter acknowledging receipt of the petition and indicating the reference number assigned to it. This can take

several months or more. The petition will then be evaluated. Given the large number of petitions received by the Commission, the preliminary evaluation of a petition may take some time. On

conducting the preliminary evaluation the Commission may decide:

- A. not to process the petition;
- B. to request additional information or documentation; or
- C. to open the petition for processing. At that point, the petition will enter the admissibility stage. This means that the necessary requirements have been met for the Commission to send the petition to the State, but the petition has not yet been declared admissible.

Admissibility

After the Commission has received a petition and has established that, in principle, the complaint meets the requirements reviewed above, it sends the petition to the State in question. The State has two months to respond to the petition. At this stage, the Commission will not yet have determined whether the petition is admissible. Prior to deciding upon the admissibility of the petition, the Commission may ask the parties to submit additional observations, either in writing or in a hearing (Article 30, Rules of Procedure).

Once it has considered the positions of the parties, the Commission makes a decision on admissibility. A **report on admissibility or inadmissibility** is adopted and made public. The decision on admissibility usually comes months or even years after filing the petition. After a

petition has been declared admissible, it becomes a **case** and a new number is assigned to it. Proceedings on the merits are then initiated (Article 36, Rules of Procedure).

Exceptionally, the Commission may decide to review both the admissibility and the merits of a case together. In such circumstances, it will notify the parties of its decision. This is normally done in urgent situations and for cases that have been under review at the Commission for a long time (Article 30, Rules of Procedure).

Friendly settlement

Upon declaring a petition admissible, the Commission offers both parties the option of initiating a friendly settlement procedure. This option remains available at any stage of the examination of a petition or case and either of the parties may withdraw from it at any point. If both parties agree to a friendly settlement, the case process is suspended until they reach agreement. It is important to note that this procedure can be entered into and suspended at any time by either of the parties. The Commission generally acts as a facilitator, although it does not intervene directly: the agreement is between both parties and has to be reached by them. After an agreement is reached, the Commission adopts a **report on friendly settlement**, which includes the agreement reached, and publishes it (Article 40).

It is important to understand that once the Commission has issued a friendly settlement report, the case is closed and therefore precluded from being decided according to its merits or referred to the Inter-American Court. This is the situation even if the State in question does not comply with the agreement.

It is advisable for the petitioner to request that the agreement be complied with before concluding the process, i.e. before the Commission issues a friendly settlement report. The State does not always accept this, arguing, for example, that legally it needs the report in order to comply with the agreement. However, the petitioner has the right to end negotiations and request the Commission to continue with the process of deciding the merits of the case.

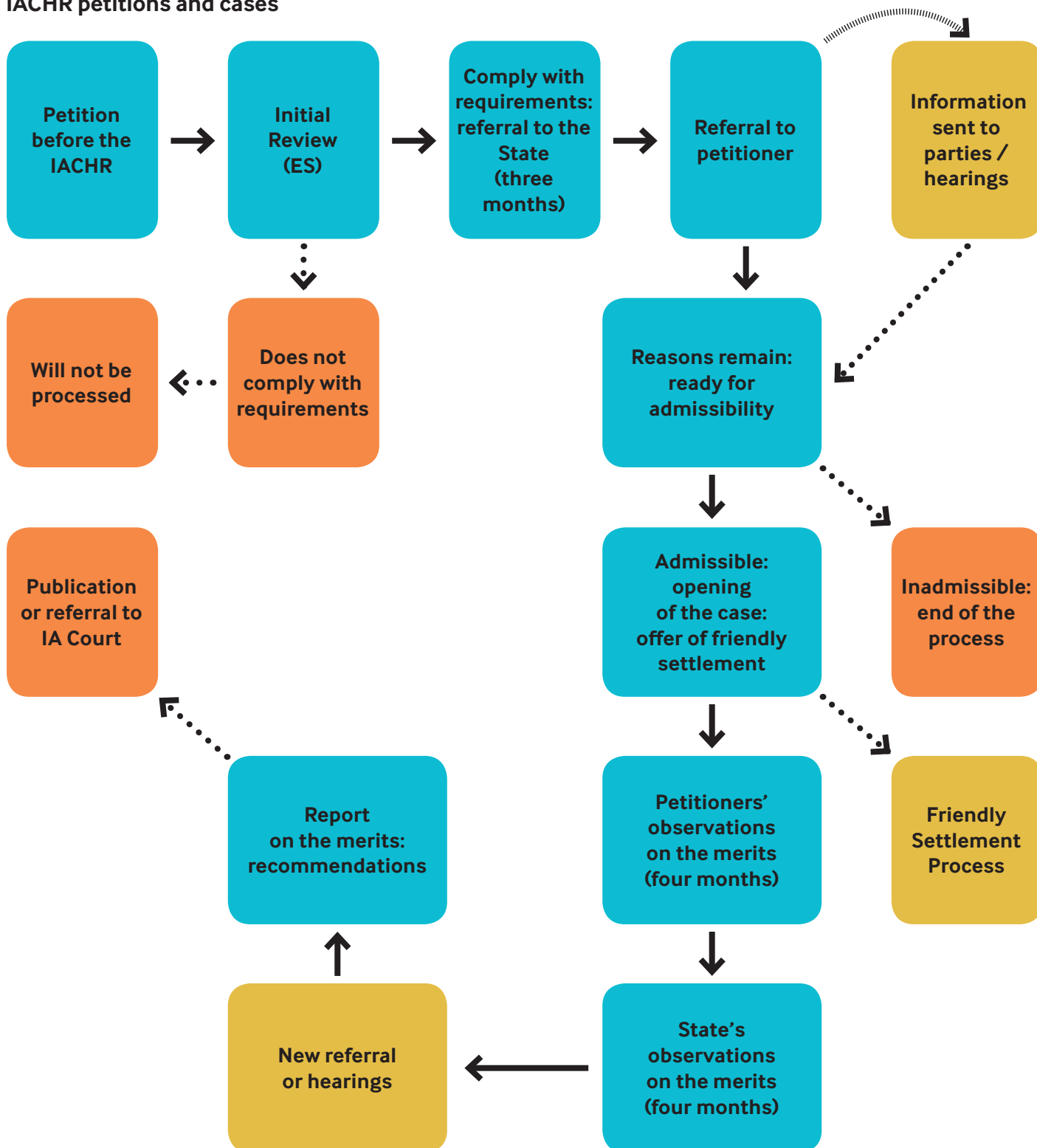
Procedure on the merits

As indicated, once a petition is declared admissible, the Commission sends its admissibility report to each party. The petitioner has four months to submit additional observations on the merits, which are then transmitted to the State; in turn, the State has four months to submit its observations. Extensions can be granted if required (Article 37, Rules of Procedure). It is typical for extensions to be requested by either party and granted by the Commission, and for the time period for the exchange of documents

between petitioner and State (during any phase of the petition period) to be extended.

At any stage of the process, the Commission may conduct on-site visits, carry out its own investigations, request additional information from the parties, or hold a hearing (see below and Information Note #3 for more detail on the hearing process). It should be noted, however, that these measures are rarely used. On-site visits undertaken in the past concerned cases which dealt with mass human rights

IACHR petitions and cases



violations, or indigenous communities, or were undertaken in the context of another planned visit. In highly publicised cases, the Commission has appointed an expert to investigate the case and follow the internal investigation. For example, in the case of *Digna Ochoa et al vs. Mexico*, which involved the death of a human rights defender, precautionary and provisional measures were requested (see: www.cidh.org/Comunicados/English/2003/1.03.htm). Similarly, the Commission appointed an observer to oversee the internal judgement in the case of the Asociación

Mutual Israelita (AMIA) against Argentina, investigating a terrorist attack that killed almost a hundred people (see: www.cidh.org/Comunicados/English/2001/Press19-01.htm). With respect to hearings, the practice of the Commission in the past few years has been to reserve hearings for the merits of the case. Not all cases have a hearing before the Commission.

Once the Commission has come to a decision, it issues a report on the merits, including its conclusions regarding

the violation alleged by the petitioners. If no violation is found, the report is sent to the parties and published.

If the Commission finds that a violation of human rights has taken place, it issues a preliminary report containing recommendations for the State. This report is sent to the State only, with a deadline, usually of two months, for the State to respond on the measures it has adopted in order to comply with the recommendations. This preliminary report cannot be made public by the State.

In the case of a violation being found, the Commission also notifies the petitioner of the adoption of the report and its transmission to the State. It asks the petitioner to present a submission on whether it believes the case should be submitted to the Inter-American Court. This, however, is only possible if the case concerns a State Party to the American Convention that has accepted the jurisdiction of the Inter-American Court (Article 44, Rules of Procedure).

The recommendations that the Commission makes to a State in the case of violation of one or more right(s) may include: cessation of acts that violate rights; awards of damages; and requests: to enact or repeal legislation, to adopt special or protective measures, to release persons under detention, to build schools, to implement relevant public measures, to formulate specific public policies; and, in most cases, requests for the investigation of the violation(s), including investigation and punishment of the parties responsible.

Referral to the Inter-American Court

Once the report on the merits has been sent to the State, and the deadline for the State's compliance with the recommendations has expired, if the State has not complied with them the Commission refers the case to the Court, provided that certain requirements have been met.

The State too may refer the case to the Court, although this has only happened once. Until 2001, it was the Commission who decided whether or not to send a case to the Court. In 2001 the Commission's Rules of Procedure changed and now the Commission 'shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary' (Article 45, Rules of Procedure). As a result of this change, most cases are now referred to the Court provided that the following requirements are satisfied:

- The State in question must have accepted the competence of the Court to process individual cases (Article 45, Rules of Procedure; Article 62, American Convention);

- The facts of the case must have occurred after the acceptance of the competence of the Court by the State. If prior, the effects of the violation have to have continued after such acceptance.

Additionally, Article 45 provides that the Commission shall take into consideration the following criteria in deciding whether to refer the case to the Court:

- the position of the petitioner;
- the nature and seriousness of the violation;
- the need to develop or clarify the case-law of the system; and
- the future effect of the decision within the legal systems of the member States.

If, within three months of the transmittal of the report on the merits to the State in question, the case has not been referred to the Court by the State or by the Commission, the Commission will then publish the report (Article 51, American Convention).

Follow-up

Article 48 of the Commission's Rules of Procedure provides that the Commission may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and the Commission's recommendations. However, these follow-up measures are rarely adopted unless requested by the parties, typically the petitioner.

A number of years ago, in its annual reports, the Commission began publishing a table recording the level of compliance with its decisions (see, for example: www.oas.org/en/iachr/docs/annual/2011/chap3D.doc). While this is a step towards ensuring a certain degree of follow-up with Member States, much remains to be done to achieve systematic review. In practice, Member States demonstrate limited compliance with the Commission's decisions and the lack of proper follow-up is a recurring claim by civil society organisations.

How long does the petition process take?

After a petition has been submitted, it is difficult to estimate how long it will take for the Commission to produce its report on the merits or refer the case to the Court. The usual time period is several years. The length of the process depends not only on the parties, but also on the capacity of the Commission to deal with the petitions and cases. The reality is that the Commission has a large number of cases pending and limited

resources to resolve them. According to its 2013 report, the Commission had 1,753 petitions and cases pending (see Annual Report 2013 at: www.oas.org/en/iachr/docs/annual/2013/TOC.asp). In addition, approximately 2,000 new petitions are received each year. This number grows significantly every year. It is important to be aware that the delay in dealing with the cases is considerable, and that it could take several years to obtain a decision from the Commission.

While a petition is being processed by the Commission, however, there are many opportunities for advocacy which often help to shape national-level discussions. These include: the initial submission of the petition, the Commission's transmittal of the petition to the State, the decision on admissibility, hearings, and progress on precautionary measures if requested. Indigenous peoples interested in submitting a full petition (not simply a request for precautionary measures) should regard this as an advocacy process and opportunity, and not merely a quick solution.

Precautionary Measures

Article 25 of its Rules of Procedure allows the Commission, on its own initiative or at the request of a party, to request that a State adopt precautionary measures in serious and urgent situations to prevent irreparable harm to persons or when necessary to protect the subject matter of a petition or case.

Precautionary measures do not require a petition or case to be pending before the Commission, although, in practice, there should be a potential petition or case. Nor is it required that the party requesting such measures first exhaust domestic remedies. However, the Commission requests that authorities be alerted to the situation before requesting measures, unless the situation renders this inadvisable. The Commission may decide to ask for precautionary measures without receiving a request, although this is not regular practice.

There is a specific group at the Commission's Secretariat in charge of processing all requests for precautionary measures. It is important to convey the urgency and gravity of the situation in a request. The Commission reviews every request for precautionary measures very carefully, ensuring that this procedure is not used instead of the process for submitting a petition.

Precautionary measures are often requested when there is an imminent threat to a person's life or to his or her personal integrity (or the personal integrity of the members of a group), or when there is an imminent threat to the environment (i.e. imminent excavation of a new dam or drilling of a new well). These measures have been used in environmental and health risk cases. Precautionary measures have also been granted to protect freedom of expression and to prevent implementation of a court's decision in death penalty cases. In addition, they have been granted to protect indigenous peoples' rights to enjoy their cultural right to their ancestral territories.

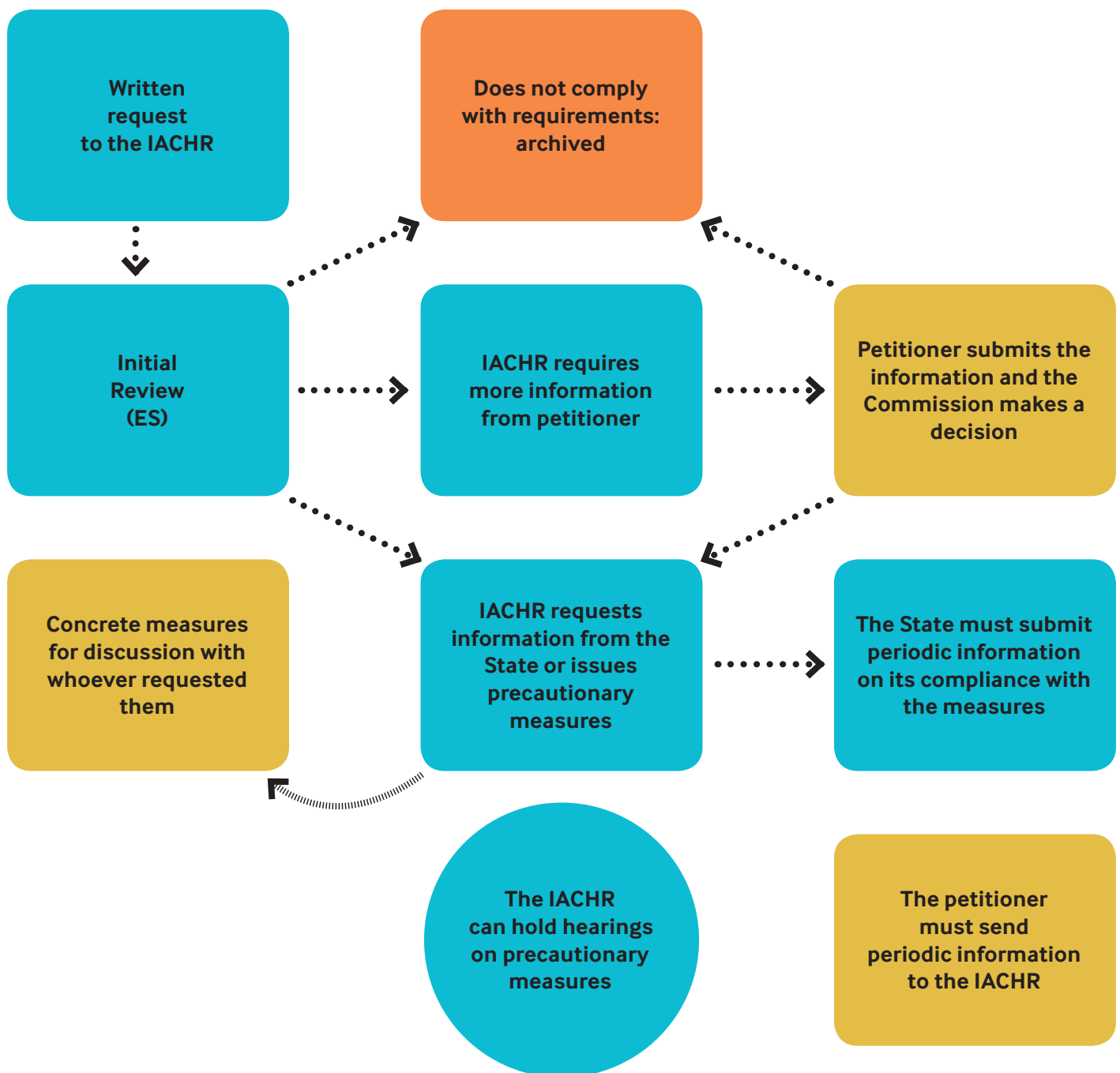
Precautionary measures may protect persons or groups of persons, as long as the beneficiary or beneficiaries may be determined or determinable through their geographic location or membership of or association with a group, people, community or organisation.

According to the Rules of Procedure, prior to adopting precautionary measures, 'the Commission shall request relevant information to the State concerned, except where the immediacy of the threatened harm admits of no delay'.

The Commission monitors the precautionary measures and periodically asks both parties to provide updates as to the steps being taken to comply with measures previously adopted or to explain why the precautionary measures are no longer needed (and should be 'lifted'). If the indigenous peoples in question believe the State is not taking steps to comply with the previously adopted measures, they should write to the Commission to inform it of this.



Photo: TEKOA Con Los Pueblos Indígenas.



Precautionary measures used to protect the rights of indigenous communities

- Measures to protect the life and integrity of indigenous leaders, when their rights are threatened because of their work in trying to protect the rights of their community.
In 2003, the Commission adopted precautionary measures to protect the rights to life, personal integrity, due process, and private property of the Sarayaku indigenous community in Ecuador, and the life and personal integrity of certain community leaders. (See: www.cidh.org/annualrep/2004eng/ecuador.167.03eng.htm)
- Measures to protect the way of life and survival of indigenous peoples affected by armed conflicts.
The Commission has issued several measures to protect indigenous communities in Colombia, such as the: Leaders of the Indigenous Regional Council of Cauca (2009), Wiwa (2005), women leaders of the Wayúu indigenous people (2004), Kankuamo (2003), Pijao (2003), Embera Chamí (2002), among others. (See, for example, www.oas.org/en/iachr/indigenous/protection/precautionary.asp.)

- Measures to suspend the execution of judicial or administrative actions that can affect the ancestral property of an indigenous community, until the inter-American organs have rendered a decision. In 2001, the Commission requested Paraguay to suspend the enforcement of any court or administrative order involving the eviction and/or removal of the Yakye Axa indigenous community from their homes until the organs of the Inter-American human rights system had had a chance to examine the petition and adopt a final decision on the merits of the case. The measures also called for Paraguay to refrain from all other actions and undertakings which affected the right to property, free transit, and residence of the Yakye Axa indigenous community, and to take all necessary steps to ensure the life and physical, mental, and moral integrity of the members of the community. (See: www.oas.org/en/iachr/indigenous/protection/precautionary.asp#YaxyeAxa.)
- Measures to suspend the construction of or activities related to concessions, when they affect, among others, the right to health of the members of an indigenous community, until such time as the organs of the System adopt a final decision. In 2000, the Commission requested Belize to take appropriate measures to suspend all permits, licences, and concessions for logging, oil exploration and other natural resource development activities on lands used and occupied by the Maya communities. (See: www.oas.org/en/iachr/indigenous/protection/precautionary.asp#Mayas.) Similarly, in 1997, the Commission requested Nicaragua to adopt precautionary measures for the purpose of suspending the concession granted by the government to a company to carry out forestry work on the lands of the Awas Tingni Indigenous Community. (See: www.oas.org/en/iachr/indigenous/protection/precautionary.asp#AwasTingni.)
- Measures to protect indigenous communities that are in voluntary isolation, emphasising the need to protect their territory for the purpose of effectively safeguarding the rights to life and integrity of their members. In 2006 the Commission granted precautionary measures in favour of the Tagaeri and Taromenami indigenous peoples who inhabit the Ecuadorian Amazon jungle in the area bordering Peru and who are currently voluntarily isolated or 'hidden'. The Commission requested that the Ecuadorian State adopt the measures necessary to protect their territory. (See: www.oas.org/en/iachr/indigenous/protection/precautionary.asp#Tagaeri.)

Hearings

The Commission may hold hearings in which it receives presentations by the parties to a petition or case. Approximately 50 hearings are held each year during the sessions of the Commission, of which there are two a year. Articles 61 to 70 of the Inter-American Commission Rules of Procedure regulate hearings. (See: www.cidh.org/Basicos/English/Basic18.RulesOfProcedureIA-CHR.htm.)

Hearings relating to petitions, cases, follow-up on recommendations, friendly settlements or precautionary measures are normally held at the request of either of the parties. The Commission may convene a hearing without a request from the parties, although it is unusual to do so. According to Article 64 of the Commission's Rules of Procedure, hearings may address any of the following issues: admissibility; the initiation or development of the

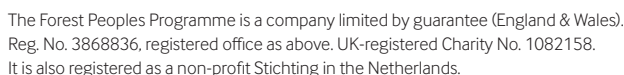
friendly settlement procedure; the verification of the facts; the merits of the matter; follow-up on recommendations; or any other matter pertinent to the processing of the petition or case. However, in practice, due to the large number of requests, the Commission holds hearings only on the merits of a case. Not all cases before the Commission have a hearing.

The request for a hearing must be sent in writing to the Executive Secretariat at least 50 days prior to the beginning of the targeted session of the Commission. The request must provide information on the purpose of the party's appearance, a summary of the information to be provided, the identity of the participants, and the approximate time required for the hearing. If the Commission accedes to a request for a hearing on the human rights situation in a State, it normally convenes the State concerned, or other interested parties, unless it decides to

During the hearing, the parties may present any document, testimony, expert report or other evidence. At the request of a party or on its own initiative, the Commission may receive the testimony of witnesses or experts. If documentary evidence is submitted during the hear-

When a hearing relates to a case, the objectives may be easy to narrow down. Nevertheless, it is important that organisations prepare themselves properly before the hearing. Also, it is important to have the right balance between presentations from international organisations, who are often more familiar with proceedings before the Commission, and local organisations, who are usually more familiar with the case at hand.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Information Note #6

A Case before the Inter-American Court of Human Rights

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



"Caravan for Wounmainkat" organised by the "Campaign for the Elimination of All Forms of Violence against Wounmainkat", Colombia.

Photo: Karmen Ramírez Boscán.

This Information Note provides an overview of the procedure for cases before the Inter-American Court of Human Rights ('Inter-American Court' or 'Court').

Articles 52 to 60 of the American Convention on Human Rights ('American Convention') deal with the organisation, jurisdiction and functions of the Court. The detailed procedure before the Court is addressed by the Rules of Procedure of the Inter-American Court ('Rules of Procedure') (available at: www.cidh.oas.org/Basicos/English/Basic20.Rules%20of%20Procedure%20of%20the%20Court.htm). While the main points of the process for bringing cases before the Court will be reviewed here, it is advisable to read the Court's Rules of Procedure for more detail.

According to Article 61 of the American Convention, only States Parties and the Inter-American Commission on Human Rights ('Commission') have the right to submit a case to the Court. The State in question must have accepted the competence of the Court to process individual cases and the facts of the case must have occurred after the acceptance of the competence of the Court by the State. If the alleged violation occurred prior to the date of acceptance, the effects must have continued after such acceptance for the case to be viable.

In practice, all cases are referred by the Commission. Only once has a case been brought before the Court by a State, but it was dismissed on procedural grounds as it had not been presented to the Commission beforehand (see: Inter-American Court of Human Rights, In the matter of Viviana Gallardo et al. Series A No. 101).

Before bringing a case to the Court, the case must have been brought to and decided by the Commission.

Jurisdiction

The Court has jurisdiction over any case which concerns the interpretation and application of the provisions

of the American Convention (Article 62(3), American Convention). As the Court was created under the American Convention, it only has the power to consider cases dealing with violations of rights protected under this instrument. Cases relating to violations of other legal instruments may not, therefore, be referred to the Court, except when another treaty so provides. This is the case, for example, with the Protocol of San Salvador.

Moreover, the Court will only rule on the violations found in the Commission's reports on the merits of a case. This means that allegations regarding facts that have not been submitted to the Commission or which do not concern a violation found by the Commission cannot be submitted to the Court.

Participation of the victim

In recent years, the Court's Rules of Procedure have been modified to allow the victim (or his or her representative/s) to take part in the proceedings before the Court. While the victim cannot refer a case to the Court, once his or her case has been referred by the Commission, the victim can play a role in the proceedings and can submit pleadings, motions, and evidence (Article 25, Rules of Procedure).

Legal representation

Unlike the proceedings before the Commission, victims require legal representation in order to stand before the Court. In cases where a victim is acting without legal representation, the Court may appoint an 'Inter-American defender' to represent him or her during the case (Article 37, Rules of Procedure). This means that while a victim is allowed to participate in the Court's proceedings, he or she can only do so through a legal representative. Although the Commission's and the victim's representatives are two separate parties in the process, and each may present their own arguments, it is advisable that they both coordinate their arguments to complement each other's positions before the Court.

Court process

When the Court was originally established, cases used to undergo a three-phase process: preliminary objections, merits, and reparations and costs. The Court now tries to combine all three phases in one. In general, it holds a hearing, following which it decides on the case.

The Court's process is public but its deliberations are private. (See articles 15 and 67 of the Rules of Procedure)

Court's decisions

In a decision against a State, the Court will order the State to take specific actions to redress the violation. In contrast to the Commission's decisions, the Court's judgments will determine precisely the type of compensation that is required. The Court seeks to re-establish the status of the victim prior to the violation (*restitutio in integrum*). In general, the Court will award material and moral damages, loss of earnings and costs of litigation. It may also order measures such as avoiding repetition of the violation and investigating the violation. The Court also requires that its decision be published at the local level.

The Court has been very creative in ordering measures to redress human rights violations, including in the case of indigenous communities.

For example, in 2001, for the first time the Court judged a case relating to the property rights of indigenous communities. In the case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, it was alleged that there had been a lack of demarcation of communal lands; a lack of recognition of the community's right to property, to their ancestral land and natural resources; and the granting of a concession on community lands without the consent of the community. The Court

ordered the State to create a system to demarcate ancestral land in compliance with international law and the community's customary law. It also ordered the delimitation, demarcation and titling of the community's lands. Moreover, the Court ordered that the State abstain from carrying out or allowing actions that affect the land and its resources, including granting concessions for exploration or exploitation. It also awarded reparations for immaterial damages to be provided, over a period of 12 months, in works or services of collective interest for the benefit of the Awas Tingni Community (see: IA Court H.R., Case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001.

www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf

In 2004, the Court ruled on a massacre that occurred against a Mayan community in Guatemala (Plan de Sánchez). The Court established that in addition to individual compensation, compensation should be awarded to the community as a whole. The Court reached this decision after considering the following: the Community was unable to bury its victims appropriately in accordance with its traditions; the victims could not freely celebrate ceremonies, rites and other traditional manifestations for a period of time; and the traditional community structure had been replaced for a while by a vertical militaristic control system under which community leaders could not perform their role. In addition to monetary compensation, the Court ordered the investigation of the massacre; public recognition of the State's responsibility; adequate housing; medical and psychological treatment for the survivors; and the development of programmes on health, education, production, and infrastructure. (See: Inter-American Court of Human Rights, Case of *Plan de Sánchez Massacre v. Guatemala*. Par. 93-111 ;

www.corteidh.or.cr/docs/casos/articulos/seriec_116_ing.pdf)

The 2010 case of the Xákmok Kásek Community from Paraguay dealt with the community's lack of title to ancestral land and lack of access to certain basic rights such as water, sanitation and health care. The Court ordered the demarcation of the community's ancestral land in accordance with its customary law to avoid any interference with the community's rights by third parties. The Court further ordered that the community's land be returned to them and required the State to take administrative, judicial or other necessary measures to this end. With regard to non-pecuniary measures, the Court ordered the State to publicly recognise the community's rights over the land, and also to recog-



2008 – Mayan Thanksgiving Ceremony, prior to the General Assembly of Registered Members of the Poqomam Linguistic Community of the ALMG, Guatemala.

Photo: ALMG.

nise its international responsibility for the violations perpetrated against the community. Finally, the Court ordered the State to ensure access to water, sanitation, medical and psychological care, and education in the language of the community. (See: Inter-American Court of Human Rights, *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214. www.corteidh.or.cr/docs/casos/articulos/seriec_214_ing.pdf)

The Court's judgments are final and not subject to appeal. However, it is possible for parties to the case to request an interpretation of the judgment in the event of disagreement regarding the meaning or scope of the decision. Such request must be made within 90 days from notification of the judgement (Article 67 of the Convention).

Follow-up

As with the Commission, the Court has a follow-up system to monitor compliance with its decisions. It reviews follow-up reports presented periodically by States and comments on reports from victims and the Commission. Since 2007, the Court has held hearings to determine the level of compliance with its judgments (Article 69, Rules of Procedure). As is the case with compliance with the Commission's decisions, States often fail to comply with the Court's judgments. In general, States tend to comply more with the monetary aspect of judgments than with the other measures of reparation. There are however some important exceptions to this that are explained in the Information Note #7 pertaining to case law on indigenous women's rights.

Provisional measures

The Court may, at any stage of the proceedings, at the request of a party or on its own motion, order provisional measures in cases of extreme gravity or urgency and when necessary to avoid irreparable harm to people. Such measures can be ordered while the case is being processed by the Court or, upon request by the Inter-American Commission, before the case has been referred to the Court (Article 63(2), American Convention and Article 27, Rules of Procedure).

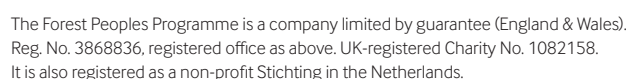
The Court has considered that provisional measures have two characters:

- **Precautionary:** are related to the cases before the Court, and are intended to preserve the rights that are potentially at risk, until such a case is resolved. In this sense these measures are granted in order to ensure that if a violation is found, the decision can be complied with, and if applicable, the reparations eventually ordered by the Court can be realised.
- **Protective:** they seek to avoid irreparable harm to persons. As such, the Court considers this a true jurisdictional preventive measure with the objective of protecting human rights.

In the Awas Tingni Community case, referred to in the previous section, the Court ordered the State to adopt, without delay, measures necessary to protect the use and enjoyment of lands and natural resources belonging to the indigenous community of Awas Tingni in Nicaragua. The Court ordered that such measures should be under-

In a 2004 case concerning the indigenous Sarayaku community in Ecuador, measures were requested to protect the lives, personal integrity and freedom of movement of members of the community, and their special relationship with their ancestral land. While the Sarayaku community's right to its ancestral land was recognised by the State, concessions for oil exploration and drilling within the community's land were granted without the partici-

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



Information Note #7

Decisions and judgments of the Inter-American Commission and Court relevant to indigenous women's rights

Author: Ellen-Rose Kambel / Editors: Valerie Couillard and Andrea Galindo



2009-A closing session at the Languages Learning Centre. Poqomam Linguistic Community of the ALMG. Palín Escuintla. Photo: ALMG

This Information Note provides an overview of the way the two main organs of the Inter-American system – the Inter-American Commission on Human Rights (the 'IACHR' or the 'Commission') and the Inter-American Court of Human Rights (the 'Court' or the 'Inter-American Court') – have applied the system's legal standards in relation to the rights of indigenous women. Indigenous women have always insisted that their rights should be viewed in the context of – and not separate from – the rights of indigenous peoples. This Information Note focuses on three areas: indigenous peoples' rights to lands, violence against women, and reproductive rights.

Introduction

Under human rights law, all women belonging to indigenous and tribal peoples enjoy the same rights as non-indigenous women. They also have the same rights as indigenous men and as members of indigenous or tribal peoples. This is enshrined in the principle of equality and non-discrimination provided in Article 1 (1) and Article 24 of the American Convention on Human Rights (the 'American Convention'):

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. (Article 1.1)

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law. (Article 24)

Together with Article II of the American Declaration on the Rights and Duties of Man (the 'American Declaration'), Article 3 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador') and different provisions of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belém do Pará'), the Inter-American system offers women protection from discrimination in relation to all rights recognised by the Inter-American human rights system. It also prohibits the enactment of discriminatory laws, or discriminatory implementation of laws (IACHR, *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (2011), para. 140, available at: <http://bit.ly/1E86vUF>).

This Note is based on a review of: (i) decisions and judgments of the Commission and the Court; (ii) thematic reports of the Commission; and (iii) country reports prepared by the Commission between 1993 and 2013.

(i) Decisions and judgments of the Commission and the Court

Cases that were brought by or on behalf of indigenous women and where the specific status of indigenous women was raised, either by the petitioners, the Commission or the Court are:

- Inter-American Commission, Report on the Merits No. 80/11, Case 12.626, *Jessica Lenahan (Gonzales) et al. (United States)*, July 21, 2011 ('Jessica Lenahan'), available at <http://bit.ly/1wMswUs>;
- Inter-American Court, *Case of Valentina Rosendo Cantú et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 31, 2010, Series C No. 216 ('Rosendo Cantú Case'), available at <http://bit.ly/10EH4vO>;
- Inter-American Court, *Case of Inez Fernández Ortega et al. v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 30, 2010. Series C No. 215 ('Fernández Ortega Case'), available at <http://bit.ly/1vnRabZ>;
- Inter-American Court, *Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 26, 2008. Series C No. 190, available at <http://bit.ly/1tZDmsE>;
- Inter-American Commission, Report on the Merits No. 53/01, Case 11.565, *Ana, Beatriz, and Cecilia González Pérez (Mexico)*, April 4, 2001 ('González sisters'), available at <http://bit.ly/1pazXpH>;

Two indigenous women from the USA, Western Shoshone sisters Mary and Carrie Dann, also filed a petition. They did not raise any gender issues but made an important contribution to the development of Inter-American jurisprudence regarding indigenous land rights (IACHR, Report on the Merits No. 75/02, Petition 11.140 – *Mary and Carrie Dann, (United States)*, December 27, 2002, available at <http://bit.ly/1nVLeJl>).

(ii) Thematic reports

From the total of 50 thematic reports published online on the IACHR website at the time of writing, 39 were considered relevant for this document. For a list of the Commission's thematic and country reports and the extent to which indigenous women's issues are included, see the table at the end of this Information Note.

Three thematic reports were considered particularly relevant and are recommended for further research and analysis:

- *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. Norms and*

Jurisprudence of the Inter-American Human Rights System (2009) available at <http://bit.ly/1paAliE>;

- *Access to Maternal Health Services from a Human Rights Perspective* (2010) available at <http://bit.ly/1tHxPFI>;
- *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (2011) available at <http://bit.ly/1E86vUF>.

(iii) Country reports of the Commission

The Commission also paid considerable attention to indigenous women's issues in the country reports of Colombia, Bolivia and Guatemala.

Colombia:

- *Violence and Discrimination Against Women in the Armed Conflict in Colombia, 2006*, 'Colombia Report' available at <http://bit.ly/1q7U6Yq>; and
- *Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia, 2009*, available at <http://bit.ly/109uCD3>.

Bolivia:

- *Access to Justice and Social Inclusion: The road towards strengthening democracy in Bolivia, 2007*, available at <http://bit.ly/1tZGIBm>;
- *Follow-up Report – Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia, 2009*, available at <http://bit.ly/1wMvgkM>.

Guatemala

- *Justice and Social Inclusion: Challenges of Democracy in Guatemala, 2003*, available at <http://bit.ly/1zQPfEt>.

For a list of the Commission's country reports and the extent to which indigenous women's issues are included, see the table at the end of this Information Note.

The 'visibility' of indigenous women in the Inter-American system

Since 2006, the IACHR has started to pay more attention to the human rights concerns of indigenous women. In its report on norms and jurisprudence with regard to the rights of indigenous peoples to their ancestral lands and natural resources, the Commission made the important statement that indigenous women are a 'vulnerable group' for whom the exercise of human rights must be 'prioritized, favored and improved' through positive measures that must be adopted by States (*Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 49).

Unfortunately, the Commission has not, so far, paid sufficient attention to indigenous women's human rights. Of the 39 thematic reports considered for this review, almost half make no mention of indigenous women at all. For example, the Commission's report on *The Human Rights Situation of Indigenous Peoples in the Americas* (2000, available at: <http://bit.ly/1sQ7Al6>) and its most recent report on *Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights* (2013, available at <http://bit.ly/1wMtoIO>) barely mention indigenous women. In other reports, there is mention of indigenous women, but this is often limited to reminding States to take into account the 'special needs' of indigenous women, without elaborating on what these needs are. For example, the Commission recommends that States '[i]ncrease the public budget for education and make certain that the policies and programs implemented address the particular needs of diverse groups of girls and women, indigenous women, Afrodescendants, and those who live in rural areas.' (IACHR, *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights*, 2011, para. 336, available at <http://bit.ly/1wPYd2S>). This type of recommendation is considered too general to constitute useful guidance for States, policy makers, civil society and other actors of change.

Indigenous women acting for change

While it certainly is positive that the Inter-American Commission – and also to some extent the Court – is sensitive to the human rights concerns of indigenous women, it is important to remember that indigenous women are not just victims. They are actively engaged in the fight for justice, taking action where they can, including petitioning the Commission and arranging hearings, often at great personal risk. For example, between 2006 and 2014, indigenous women participated in seven hearings before the Inter-American Commission (see <http://bit.ly/10EHrXe> for a list of hearings or events pertaining to indigenous peoples including those relevant to indigenous women).

Indigenous women's actions have contributed to the adoption of important legal standards, benefiting both women and indigenous peoples in the Americas. The Commission recognised the risks they face, stating that '... the champions of the rights of indigenous and afro-descendent women, in addition to the other forms of discrimination already indicated, are habitual victims of acts of racism, stultification and stigmatization on the part of the majority communities and, in some cases, of public

authorities and people from within their own communities' (*Report on the Situation of Human Rights Defenders in the Americas* (2006), para. 231, available at <http://bit.ly/1yLSV6d>).

Discrimination against indigenous women: multiple discrimination and enhanced State obligations

With regard to indigenous peoples, the IACHR has reiterated that each of the OAS Member States has the duty under the Inter-American human rights system to ensure that members of indigenous peoples effectively enjoy all human rights in equality with other persons (*Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 48). Because of the 'greater vulnerability of [indigenous and tribal peoples], their historical conditions of marginalization and discrimination, and the deeper impact on them of human rights violations', States also have an additional obligation to adopt 'special and specific measures aimed at protecting, favoring and improving the exercise of human rights by indigenous and tribal peoples and their members' (*Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 49, emphasis added). See also: Inter-American Court, *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2007. Series C No. 172, para. 85.

With regard to indigenous women, the IACHR has considered that:



Photo: Johan Wildenhagen, Peru.

*This positive State duty of adopting special measures [aimed at protecting, favoring and improving the exercise of human rights by indigenous and tribal peoples and their members] is **enhanced when it comes to indigenous children and women**, given that their level of vulnerability is even greater. (IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 49, emphasis added)*

In other words, States have an extra obligation towards indigenous peoples to adopt special measures, but they have an even greater obligation to do this vis-à-vis indigenous women in order to protect, favour and improve their human rights.

Indigenous rights to lands and natural resources

Indigenous territorial rights as such are not included in any of the Inter-American instruments. Over the past 20 years, however, the Commission and the Court have developed a detailed and comprehensive set of standards and obligations that States must meet in order to protect the rights to lands and resources of indigenous peoples in the Americas. This is on the basis of the principle of non-discrimination on grounds of race in the American Convention (taken jointly with other rights such as the right to property), and drawing also upon the obligations adopted by many States in the Americas under ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1991, available at <http://bit.ly/1wMshsO>).

Unique relationship with ancestral lands

It is recognised that indigenous peoples have a 'unique relationship' with their ancestral lands (*Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 50). The Inter-American Court has described this relationship as 'not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations' (*Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, separate opinion by Judge A A Cancado Trindade, para. 3 ('Sawhoyamaya Case')) and that 'the culture of the members of the indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their [religiousness], and therefore, of their cultural identity' (*Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of June 17, 2005. Series C No. 125, para. 135 ('Yakye Axa Case')).

On this important point, see also:

- *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Judgment of August 31, 2001. Series C No. 79, para. 149;
- *Yakye Axa Case*, paras. 124 and 131
- *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations and Costs*. Judgment of November 19, 2004. Series C No. 116, para. 85 ('Plan de Sánchez Case').

The right to property and the obligations of the State

The relationship between indigenous peoples and their lands is brought under the protection of the right to property provided in Article 21 of the American Convention and Article XXIII of the American Declaration and is considered 'of fundamental importance for the enjoyment of other human rights of indigenous and tribal peoples' (IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 55). The Commission stated that:

*The right to territory and to the use and enjoyment of its natural resources, is directly related to the rights to an existence under conditions of dignity, to food, water, health and life, because its effective enjoyment is a precondition for access to nutritional and water sources, as well as the traditional healthcare systems (IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, footnote 136, referring to IACHR, *Democracy and Human Rights in Venezuela*, 2009, paras. 1076–1080, available at <http://bit.ly/1wPXoHc>).*

In order to protect the relationship between indigenous peoples and their territories, States are required to adopt 'special, effective measures' to ensure indigenous communities' permanent and secure property rights over the territories they have traditionally used and occupied. In its report *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, the IACHR has provided a detailed explanation, based on the Court's and its own jurisprudence, of what this entails. Among others:

- Indigenous peoples must be recognised as the legal owners of their (collective) territories;
- Indigenous peoples have the right to obtain formal legal title of property over their lands and to due registration thereof;
- Indigenous peoples have the right to the delimitation and demarcation of their territory by the State;
- the procedures for the delimitation, demarcation and granting of title must be 'special, adequate and effective' (para. 96) and they must be carried out with the full participation of the directly affected peoples.

The Commission also clarified that the duty of the State to protect indigenous peoples' territorial rights does not end with the process of delineation, demarcation and titling, but it continues with the provision of basic services: '[w]hile the territory is fundamental for development of the indigenous populations in community, it must be accompanied by health, education, and sanitary services, and the protection of their labor and social security rights, and, especially, the protection of their habitat.' (*Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 149).

Indigenous women and land rights

In its review of Inter-American legal standards on indigenous territorial rights, the Commission did not establish a direct link with indigenous women's rights. Indigenous women were mentioned only in relation to their reproductive capacity: the Commission reiterated the duty of the State to protect the health of pregnant women who have lost access to their ancestral territories (IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, para. 171; *Yakye Axa and Sawhoyamaya* cases. It should be pointed out that the Court arrived at its conclusion via an argument based on the rights of the child, rather than recognising the independent rights of (pregnant) women.) In its *Colombia Report*, the Commission has recognised the importance of communal lands for the protection of indigenous

women's lives, in particular in the context of armed groups occupying indigenous lands:

[...] the pressure exercised by the armed groups over indigenous lands, whether for military strategy or economic reasons, impacts the lives of indigenous women especially seriously since they perceive their ancestral lands as essential places for their existence, culture, and family. The main demand of indigenous women is that their lands should be respected. To the extent indigenous lands are still subject to military or economic interests, the lives of indigenous women will remain threatened, as well as the cultural integrity and the very existence of the peoples they belong to. (para. 148).

In the *Plan de Sánchez Case*, the Court also recognised the role of women in the transmission of the culture and knowledge necessary to maintain the spiritual relationship that indigenous peoples have with their land:

The Court observes that, in the instant case, the victims belonging to the Mayan indigenous people, of the Achí linguistic community, possess their own traditional authorities and forms of community organization, centered on consensus and respect. They have their own social, economic and cultural structures. For the members of these communities, harmony with the environment is expressed by their spiritual relationship with the land, the way they manage their resources and a profound respect for nature. Traditions, rites and customs have an essential place in their community life. Their spirituality is reflected in the close relationship between the living and the dead, and is expressed, based on burial rites, as a form of permanent contact and solidarity with their ancestors. The transmission of culture and knowledge is one of the roles assigned to the elders and the women. (para. 85)

Violence against indigenous women and their access to justice

Since 1994, when the Convention of Belém do Pará was adopted, the Inter-American system has developed a considerable body of jurisprudence related to violence against women. In the case of *Castro-Castro Prison v. Peru*, the Court held for the first time that violence against women is a specific form of discrimination against women (Inter-American Court, *Case of Miguel Castro-Castro Prison v. Peru. Merits, Reparations, and Costs*. Judgment of November 25, 2006, Series C No. 160, para. 303; *Legal Standards related to Gender Equal-*

ity and Women's Rights in the Inter-American Human Rights System: Development and Application, para. 34). Furthermore, the Commission and the Court have recognised that sexual violence committed by State agents constitutes torture (*Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, paras. 25–27; and the *Fernández Ortega Case*, among others).

In the case of indigenous women, violence (including sexual violence) will often have additional discriminatory dimensions beyond those suffered by non-indigenous women, for example when sexual violence is committed by outsiders (such as military officers or other criminal actors) and is aimed at threatening, subduing or undermining the cohesiveness of the indigenous community. As discussed below, indigenous women may also have greater exposure to violence because of their more precarious living conditions and poverty, or simply because of racism.

As reiterated by the Commission in its *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application*, States have several obligations with regard to violence against women. Among others, they must 'act with due diligence to prevent, investigate, and punish swiftly and without delay all acts of violence against women, committed by state and non-state actors' and to 'ensure the availability of effective, adequate, and impartial judicial mechanisms for victims of sexual violence' (para. 18).

Importantly, 'in the policies they adopt to promote gender equality', States must consider 'the particular risk of human rights violations that women may face due to factors combined with their sex, such as age, race, ethnicity, and economic position, among others.' (*idem*).

In the case of *Jessica Lenahan*, a woman of Native American and Latin American descent had filed a petition with the Inter-American Commission because the police had failed to take action after her ex-partner kidnapped and killed her three young daughters even though she held a restraining order against him. The Commission recognised that 'certain groups of women face discrimination on the basis of more than one factor during their lifetime, based on their young age, race and ethnic origin, among others, which increases their exposure to acts of violence' (*Jessica Lenahan*, para. 113). In support of this finding, the Commission referred among others to IACHR Report No. 28/07, Cases 12.496–12.498, *Claudia Ivette González and Others (Mexico)*, March 9, 2007, paras. 251–252; IACHR,

Access to Justice for Women Victims of Violence in the Americas, 2007 ('*Women Victims of Violence Report*'), paras. 195–197, available at <http://bit.ly/107vOXO>; and IACHR, *Colombia Report*, paras. 102–106 (*Jessica Lenahan*, at footnote 186). The Commission also considered that '[s]ome sectors of the United States female population are at a particular risk to domestic violence acts, such as Native American women [. . .]', referring to data that one in every three Native American women is raped (*Jessica Lenahan*, para. 94). Yet, in its recommendations to the State, which was found to have violated the rights to life, to equality, to special protection of the girl-child and to judicial protection of Ms Lenahan, the Commission failed to take into account the indigenous background of the petitioner as a factor requiring additional protection measures.

In the case of the González sisters, who belonged to the Tzeltal community in Mexico, and who had been physically and sexually abused by military personnel in the state of Chiapas, the Commission highlighted that being a member of an indigenous group aggravated the pain and humiliation suffered by the women: '[f]irst of all, because of their lack of knowledge of the language of their aggressors and of the other authorities; and also because they were repudiated by their own community as a consequence of the violations established herein' (*González sisters*, para. 95).

Rape as State practice to destroy women's dignity

In the *Plan de Sánchez Case*, which concerned the rape and murder of hundreds of indigenous Maya women by the military in Guatemala, the Commission requested that the Court, as part of the reparations, order the recovery, rehabilitation and full reincorporation of the surviving women who had been raped. However, although the Court considered it a proven fact that rape was a 'State practice [. . .] designed to destroy the dignity of women at the cultural, social, family and individual levels' (para. 49.19), the tribunal refrained from granting reparations to the women. In fact, the Court did not acknowledge any special form of reparation for the women victims of rape, and awarded the same amount of damages to all the victims of the massacre.

Access to justice

As the Commission has frequently stated, the first line of defence for women victims of violence is access to justice (*Women Victims of Violence Report*, para. 6 and IACHR, *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, 2011,) para. 21, available at

<http://bit.ly/1vnSpld>). States are obligated to act with due diligence to prevent, prosecute, punish and redress acts of sexual violence. With regard to indigenous women, the Commission considered that:

Violence, discrimination and the obstacles to adequately access justice are even more challenging for indigenous and Afro-descendant women, who are particularly exposed to human rights violations based on racism. The Commission has found that the obstacles such women must overcome to be able to avail themselves of adequate and effective remedies to redress the violations they suffer are even more daunting because such women must contend with a combination of various forms of discrimination: discrimination by virtue of their sex, discrimination based on their ethnic or racial origin and/or discrimination by virtue of their socio-economic condition. (Women Victims of Violence Report, para. 195)

In three cases, all of them brought against Mexico by indigenous women who had been sexually abused by the military (*Fernández Ortega*; *Rosenda Cantú*; and *González sisters*), both the Court and the Commission recognised the particular obstacles that indigenous women face in their access to justice, which were related to their 'social exclusion, ethnic discrimination, and poverty' (*Women Victims of Violence in Mesoamerica Report*, para. 302).



"Caravan for Wounmainkat" under the "Campaign for the Elimination of All Forms of Violence against Wounmainkat". Colombia. Photo: Miguel Iván Ramírez Boscán

In the *Fernández Ortega Case*, for instance, where the petitioner did not have a translator available to present her claims and also did not receive information in her own language about the actions which had been taken regarding her claim, the Court found that the State had violated her right to seek justice (*Fernández Ortega Case*, para. 201). The inability of Mrs Fernández Ortega 'to file a claim in her language implied, in the present case, unequal treatment towards Mrs Fernández Ortega given her language and ethnicity, thus implying an unjustified infringement to her right to seek justice.' (*idem*, para. 201).

In discussing the various obstacles faced by indigenous women who are victims of sexual violence, the Commission mentioned the number of hours that an indigenous woman must travel in order to report her case to the relevant authority, often located far from her community. It also referred to:

- *the ethnic and cultural insensitivity of the justice officials;*
- *the monolingualism of the State system [including a] lack of interpreters that accompany the process;*
- *the lack of knowledge of the international legal instruments of human rights of a collective and individual scope applicable to indigenous peoples; [and that]*
- *[i]n cases of sexual violence there is the aggravated factor that the psychological and medical expert opinions do not guarantee harmony with indigenous cultures. (Women Victims of Violence in Mesoamerica Report, para. 305)*

The Commission emphasised that States have a duty 'to act with the due diligence required to prevent, sanction, and offer reparations for acts of sexual violence against indigenous women, creating the necessary conditions for their reports and cases to be processed in an exhaustive and prompt fashion, considering their view, idiosyncrasy, cultural, and community perspective.' (*idem*, para. 306).

The Commission pointed out the importance of raising awareness among women victims of violence of their rights and also that States need to provide indigenous women with information that is accessible to them, among others in a language they understand (*idem*, para. 167). It was recommended that indigenous women participate in the identification of challenges and priorities and 'in the design of public interventions in matters of justice [. . .] These measures should be joined by legislative, policy, and programmatic interventions with the goal of eradicating discrimination, racism and the

poverty that tends to affect indigenous women; problems that reproduce the sexual violence that they suffer in Mesoamerica.' (*idem*, para. 306).

In the *Case of López Alvarez v. Honduras*, which concerned the prohibition of Garífuna inmates to speak their own language by a prison warden, the Court held that the prohibition to use their own language is a violation of the personal dignity of members of indigenous groups who belong to a cultural minority and is also discriminatory. The Court considered that:

the mother tongue represents an element of identity of Mr Alfredo López Álvarez as a Garífuna. In this way, the prohibition affected his personal dignity as a member of that community. [...] States must take into consideration the characteristics that differentiate the members of the Indian populations from that of the population in general and that make up their cultural identity. Language [is] one of the most important elements of identity of any people, precisely because it guarantees the expression, diffusion, and transmission of their culture. (Case of López Alvarez v. Honduras. Merits, Reparations and Costs. Judgment of February 1, 2006. Series C No. 141. See also: IACHR, The Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009, paras. 53–55, available at <http://bit.ly/107foih>.)

As we shall see below, as an element in guaranteeing indigenous women's access to justice and respecting their reproductive health rights, States are also obliged to provide information to indigenous women in the appropriate indigenous language.

Reproductive Health

According to the Inter-American Commission, indigenous women belong to those groups whose rights to access maternal health services are most often violated (*Access to Maternal Health Services from a Human Rights Perspective*, para. 54). The Commission called upon States to prioritise their efforts in order to address 'the particular needs of the groups of women identified in this report who are most at risk of suffering injury to their integrity in terms of access to maternal health services, i.e., poor women, women in rural areas, including indigenous and/or afro-descendant women, due to the multiple forms of discrimination they face.' (*idem*, para. 87).

Furthermore, specifically with regard to indigenous women, the Court has ruled that 'States must pay particular attention and care to the protection of this group and must adopt special measures to ensure that mothers

have access to adequate health care services, particularly during pregnancy, childbirth, and lactation.' (IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, para. 88, referring to the *Sawhoyamaya Case*, para. 177). According to the IACHR, these measures include eliminating 'obstacles limiting the access that women, particularly [indigenous women], have to maternal health services, such as fees, distance from health centers, and the lack of adequate and accessible public transportation. One way to reduce the effects of distance from health services may be to establish homes for pregnant women.' (*Access to Maternal Health Services from a Human Rights Perspective*, para. 89).

In their delivery of maternal health services for indigenous women, States must also respect indigenous women's cultures. The IACHR recommended that States 'adapt preventive and care and treatment services, providing for [indigenous women] and respecting their expectations, traditions and beliefs.' (*idem*, para. 105.9).

Forced sterilisations

The Commission has recognised that indigenous and rural women are more frequently victims of the practice of forced sterilisations, which it held may constitute violations of women's rights to personal integrity, privacy and family life and the right to be free from violence and discrimination:

*[...] women who are poor, indigenous, and/or of African descent, women who live in rural areas and migrant women, are the ones who face greater obstacles in their access to information on sexual and reproductive health. In some cases, the barriers are of such a magnitude that they may constitute violations of women's rights to personal integrity, privacy, and family life, and the right to be free from violence and discrimination in contravention of the obligations the States of the Americas have assumed in the area of human rights. One example of this situation is the sterilization of women without their consent. (IACHR, Access to Information on Reproductive Health from a Human Rights Perspective (2011), para. 7, available at <http://bit.ly/1yLSCIC>. http://www.cidh.oas.org/pdf_files/womenaccessinformationreproductivehealth.pdf. See also: *Access to Maternal Health Services from a Human Rights Perspective*, para. 44, where the Commission 'underscored the problem of discrimination against women and the various ways in which it is manifested, for example, in the area of reproductive health. In effect, the IACHR voiced its concern over cases of forced sterilization in Peru'.*

Other human rights pertaining to indigenous peoples and indigenous women

The Inter-American system recognises that (extreme) poverty among indigenous families and communities is directly related to the loss of access to their land and natural resources and that situations of poverty trigger other violations of human rights:

The lack of granting of title, delimitation, demarcation and possession of ancestral territory, hampering or preventing access to land and natural resources by indigenous and tribal peoples, is directly and causally linked to situations of poverty and extreme poverty among families, communities and peoples. In turn, the typical circumstances of poverty trigger cross-cutting violations of human rights, including violations of their rights to life, to personal integrity, to a dignified existence, to food, to water, to health, to education and the rights of children. (Indigenous And Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, para. 153).

In its thematic report, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, the IACHR enumerated the different human rights which may be violated when indigenous peoples lose access to their territories. These are briefly described here and include the specific cases that the Commission referred to:

- *The Right to Life* – this may occur when States fail to adopt the necessary positive measures to prevent risking the right to life of members of indigenous peoples whose survival depends on the use of traditional collective lands (paras. 154–156, *Yakye Axa Case*, *Sawhoyamaxa Case*);
- *The Right to Health* – indigenous peoples have the right to access their territory and natural resources in order to practice their traditional medicine (paras. 157–158, *Yakye Axa Case*; and IACHR, *Democracy and Human Rights in Venezuela*, 2009);
- *Economic and Social Rights* – closely connected to territorial rights are the right to obtain food and clean water, the right to a decent existence and basic conditions to exercise other human rights, such as the right to education or the right to cultural identity (para. 159, *Yakye Axa Case*);
- *The Right to Cultural Identity and Religious Freedom* – States must secure indigenous peoples' freedom 'to preserve their own forms of religiousness or spirituality, including the public expression of this right and access to sacred sites' (paras. 160–161; Inter-American Court, *Case of Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment

- of August 24, 2010. Series C No. 214, 'Xákmok Case'); • *Labour Rights* – lack of access to indigenous peoples' traditional subsistence activities may 'expose their members to situations of work exploitation [. .] and even to [. .] forced labor or servitude for debts, analogous to slavery' (paras. 163–164; IACHR, *Captive Communities: The Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*, 2009, available at <http://bit.ly/1tZgl9a>); • *Right to Self-Determination* – lack of access to land and resources prevents indigenous peoples' exercise of the right to self-determination (paras. 165–166, *Saramaka Case*); • *Right to Psychological and Moral Integrity* – the suffering of members of indigenous communities due to dispossession constitutes a violation of their right to psychological and moral integrity (para. 167, *Xákmok Case*).

Final Remarks

As mentioned in this toolkit, States often fail to comply with the Court's judgments, or if they do follow the orders of the Court, they tend to comply with the monetary aspects of the judgments but ignore other measures of reparation. However, in January 2014, 12 years after the two indigenous women, Ines Fernández-Ortega and Rosendo Cantú, had been tortured and raped by soldiers, the Mexican government arrested and detained four people in relation to these crimes (see: <http://bit.ly/107vHwv>). Furthermore, in June 2014, as a result of the judgment in the *Sawhoyamaxa Case*, the government of Paraguay returned land to the indigenous community who had lived in destitute circumstances for over two decades (see: <http://bit.ly/1lrcgVr>).



Wayuu Community of Malaki, Colombia.

Photo: Jakeline Romero Epiayu

Annex to Information Note #7

List of Thematic and Country Reports by the IACHR and extent to which human rights situation of indigenous women is addressed

Updated: 18 August 2014

Thematic Reports by the Inter-American Commission www.oas.org/en/iachr/reports/thematic.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
1. Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for the Full Respect of their Human Rights (2013) http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf		•	
2. Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas (2013) http://www.oas.org/es/cidh/defensores/docs/pdf/Justice-Operators-2013.pdf	x		
3. Report on the Use of Pretrial Detention in the Americas (2013) http://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf	x		
4. Report of the Inter American Commission on Human Rights on the situation of Persons Deprived of Liberty in Honduras (2013) http://www.oas.org/en/iachr/pdl/docs/pdf/HONDURAS-PPL-2013ENG.pdf	x		
5. Report on the Human Rights of Persons Deprived of Liberty in the Americas (2011) http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf		•	
6. Second Report on the Situation of Human Rights Defenders in the Americas (2011) http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf		•	
7. The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition (2011) http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf	x		
8. Access to Justice for Women Victims of Sexual Violence: Education and Health (2011) http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf			v
9. Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application (2011) http://www.oas.org/en/iachr/women/docs/pdf/REGIONALst.pdf			v
10. Access to Justice for Women Victims of Sexual Violence in Mesoamerica (2011) http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf			v

Thematic Reports by the Inter-American Commission www.oas.org/en/iachr/reports/thematic.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
11. Access to Information on Reproductive Health from a Human Rights Perspective (2011) http://www.oas.org/en/iachr/women/docs/pdf/womenaccessinformationreproductivehealth.pdf http://www.cidh.oas.org/pdf%20files/womenaccessinformationreproductivehealth.pdf			v
12. The Road to Substantive Democracy: Women's Political Participation in the Americas (2011) http://www.oas.org/en/iachr/women/docs/pdf/POLITICALpart.pdf		•	
13. The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights (2011) http://www.oas.org/en/iachr/women/docs/pdf/WomenDESC2011.pdf		•	
14. Report on Immigration in the United States: Detention and Due Process (2010) http://www.oas.org/en/iachr/migrants/docs/pdf/Migrants2011.pdf	x		
15. Access to Maternal Health Services from a Human Rights Perspective (2010) http://www.oas.org/en/iachr/women/docs/pdf/MaternalHealth2010.pdf			v
16. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System (2009) http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf		•	
17. Report on Citizen Security and Human Rights (2009) http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf		•	
18. Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco (2009) http://bit.ly/1tZgl9a		•	
19. Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres (2009) http://www.cidh.org/countryrep/Chilemujer2009eng/Chilewomen2009toc.eng.htm	x		
20. A Hemispheric Agenda for the Defense of Freedom of Expression (2009) http://www.oas.org/en/iachr/expression/docs/publications/Hemispheric%20%20Agenda%20Eng%20FINAL%20portada.pdf	x		
21. The Inter-American Legal Framework Regarding the Right to Freedom of Expression (2009) http://bit.ly/107foih		•	

Thematic Reports by the Inter-American Commission www.oas.org/en/iachr/reports/thematic.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
22. The Inter-American Legal Framework regarding the Right to Access to Information (2009) http://www.oas.org/en/iachr/expression/docs/publications/ACCESS%20TO%20INFORMATION%20FINAL%20CON%20PORTADA.pdf	x		
23. Freedom of Expression Standards for Free and Inclusive Broadcasting (2009) http://www.oas.org/en/iachr/expression/docs/publications/Broadcasting%20and%20freedom%20of%20expresion%20FINAL%20PORTADA.pdf	x		
24. Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights (2008) http://cidh.org/pdf%20files/Guidelines%20final.pdf	x		
25. Principal Guidelines for a Comprehensive Reparations Policy (2008) http://www.cidh.org/pdf%20files/Lineamientos%20Reparacion%20Administrativa%2014%20mar%202008%20ENG%20final.pdf	x		
26. Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights (2007) http://www.cidh.org/pdf%20files/ACCESS%20TO%20JUSTICE%20DESC.pdf			v
27. Access to Justice for Women Victims of Violence in the Americas (2007) http://www.cidh.org/women/Access07/tocaccess.htm			v
28. Special Study on the Right of Access to Information (2007) (Estudio especial sobre el derecho de acceso a la información) Spanish only http://cidh.oas.org/relatoria/section/Estudio%20Especial%20sobre%20el%20derecho%20de%20Acceso%20a%20la%20Informacion.pdf		•	
29. Report on the Situation of Human Rights Defenders in the Americas (2006) http://www.cidh.org/countryrep/Defenders/defenderstoc.htm			v
30. Violence and Discrimination Against Women in the Armed Conflict in Colombia (2006) http://www.cidh.org/countryrep/ColombiaMujeres06eng/TOC.htm			v
31. 7th progress report of the Special Rapporteur on Migrant Workers and their families (2005) (Séptimo Informe de Progreso de la Relatoría Especial sobre Trabajadores Migratorios y Miembros de sus Familias) Spanish only http://cidh.oas.org/annualrep/2005sp/cap.5.htm	x		

Thematic Reports by the Inter-American Commission www.oas.org/en/iachr/reports/thematic.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
32. Special Study on the Status of Investigations into the Murder of Journalists during the 1995–2005 Period for Reasons that may be Related to their Work in Journalism (2008) http://www.cidh.org/relatoria/section/Asesinato%20de%20Periodistas%20INGLES.pdf	x		
33. The Situation of the Rights of Women in Ciudad Juárez, Mexico: The Right to be Free from Violence and Discrimination (2003) http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm	x		
34. Report on Terrorism and Human Rights (2002) http://www.cidh.org/Terrorism/Eng/toc.htm	x		
35. Proposed American Declaration on the Rights of Indigenous People Authorities and Precedents in International and Domestic Law (2001) http://www.cidh.org/Indigenas/Indigenas.en.01/index.htm	x		
36. The Human Rights Situation of the Indigenous Peoples in the Americas (2000) http://www.cidh.org/Indigenas/TOC.htm	x		
37. Recommendation of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill (2001) http://www.cidh.org/annualrep/2000eng/chap.6e.htm	x		
38. Progress Report on the Situation of Migrant Workers and their Families in the Hemisphere (1999) http://www.cidh.org/Migrantes/migrantes98eng.htm	x		
39. Report of the IACHR on the Status of Women in the Americas (1998) http://www.cidh.org/countryrep/Mujeres98-en/TableofContents.htm		•	

Country Reports of the Inter-American Commission (1993–2013) http://www.oas.org/en/iachr/reports/country.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
1. Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010 (2010) http://www.cidh.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm	x		
2. Honduras: Human Rights and the Coup d'Etat (2009) http://www.cidh.org/countryrep/Honduras09eng/Toc.htm	x		
3. Democracy and Human Rights in Venezuela (2009) http://www.cidh.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm	x		
4. Follow-up Report – Violence and Discrimination against Women in the Armed Conflict in Colombia (2009) http://www.cidh.oas.org/annualrep/2009eng/Chap.V.4.htm			v
5. Follow-up Report – Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia (2009) http://www.cidh.org/annualrep/2009eng/Chap.V.Toc.htm			v
6. Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia (2007) http://cidh.org/countryrep/Bolivia2007eng/Bolivia07indice.eng.htm			v
7. Violence and Discrimination Against Women in the Armed Conflict in Colombia (2006) https://www.cidh.oas.org/pdf%20files/InformeColombiaMujeres2006eng.pdf			v
8. Justice and Social Inclusion: The Challenges of Democracy in Guatemala (2003) http://www.cidh.org/countryrep/Guatemala2003eng/TOC.htm			v
9. Report on the Situation of Human Rights in Venezuela (2003) http://www.cidh.org/countryrep/Venezuela2003eng/toc.htm	x		
10. Fifth Report on the Situation of Human Rights in Guatemala (2001) http://www.cidh.org/countryrep/Guate01eng/TOC.htm	x		
11. Third Report on the Situation of Human Rights in Paraguay (2001) http://www.cidh.org/countryrep/Paraguay01eng/TOC.htm		•	
12. Second Report on the Situation of Human Rights in Peru (2000) http://www.cidh.org/countryrep/Peru2000en/TOC.htm		•	
13. Third Report on the Human Rights Situation in Colombia (1999) http://www.cidh.org/countryrep/Colom99en/table%20of%20contents.htm	x		

Country Reports of the Inter-American Commission (1993–2013) http://www.oas.org/en/iachr/reports/country.asp	Reference to Indigenous Women		
	Silent	Some reference	Substantive discussion
14. Report on the Situation of Human Rights in Mexico (1998) http://www.cidh.org/countryrep/Mexico98en/table-of-contents.htm		•	
15. Report on the Situation of Human Rights in Ecuador (1997) http://www.cidh.org/countryrep/ecuador-eng/index%20-%20ecuador.htm	x		
16. Report on the Situation of Human Rights in Brazil (1997) http://www.cidh.org/countryrep/brazil-eng/index%20-%20brazil.htm	x		
17. Report on the Situation of Human Rights in Amayapampa, Llallagua and Capasirca, Northern Potosi, Bolivia (1997) http://www.cidh.org/countryrep/bolivia-eng/Index-%20Bolivia.htm	x		
18. Report on the Situation of Human Rights in El Salvador (1994) http://www.cidh.org/countryrep/ElSalvador94eng/toc.htm	x		
19. Special Report on the Human Rights Situation in the so-called 'Communities of Peoples in Resistance' in Guatemala (1994) http://www.cidh.org/countryrep/CPR.94eng/Table.of.Contents.htm	x		
20. Fourth Report on the Situation of Human Rights in Guatemala (1993) http://www.cidh.org/countryrep/Guatemala93eng/toc.htm	x		
21. Report on the Situation of Human Rights in Peru (1993) http://www.cidh.org/countryrep/Peru93eng/toc.htm	x		

Notes

[illegible]

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh, GL56 9NQ, UK
T. +44 (0)1608 652893 F. +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

The Forest Peoples Programme is a company limited by guarantee (England & Wales).
Reg. No. 3868836, registered office as above. UK-registered Charity No. 1082158.
It is also registered as a non-profit Stichting in the Netherlands.

Information Note #8

Other useful forums for asserting the rights of indigenous women

Author: Andrea Galindo / Editors: Valerie Couillard and Ellen-Rose Kambel



2009 – A closing session at the Languages Learning Centre. Poqomam Linguistic Community of the ALMG. Palín, Escuintla. Photo: ALMG

In addition to the Inter-American Commission on Human Rights ('Inter-American Commission'), the Inter-American Court on Human Rights ('Inter-American Court'), the Rapporteurships on the Rights of Women and on the Rights of Indigenous Peoples, other forums are available to promote and protect the rights of indigenous women in the Americas. The purpose of this Information Note is to provide information on two other forums within the Inter-American System: the mechanisms of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador' or 'Additional Protocol') and the Inter-American Commission on Women (IACW). A brief overview of the United Nations mechanisms is also included.

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ('Protocol of San Salvador', 'Additional Protocol' or 'Protocol')

As indicated in Information Note #2, the Protocol of San Salvador (available at: www.oas.org/juridico/english/treaties/a-52.html) was adopted in 1988 and entered into force in 1999. This instrument guarantees economic, social and cultural rights in areas such as work, health, food, education, and environment.

The Protocol provides for two mechanisms to monitor compliance with its provisions (Article 19):

1. The mechanism of individual petitions before the Inter-American Commission and the Inter-American Court. This applies only to violation of trade union rights (Article 8) and the right to education (Article 13); and
2. The mechanism of State periodic reports detailing measures that States have taken to ensure due respect for the rights set forth in the Protocol.

Individual petitions mechanism

Any person or group, including indigenous peoples, may lodge a petition with the Inter-American Commission against a State that has ratified the Additional Protocol (16 States had done so as of June 2014. See: www.oas.org/juridico/english/signs/a-52.html). Such a petition follows the same procedures and rules as explained in Information Note #5. Although a petition can only be submitted for a direct violation of trade union rights or the right to education, the other rights protected under the Protocol can still be evoked in petitions to the Commission for violations to Article 26 of the American Convention, which gives general protection to economic, social and cultural rights (see Information Note #2).

The Commission has received and processed several petitions under the Protocol. For example, in 2009 the Commission declared admissible a case against Colombia, which argued a violation of the right to freedom of association in trade unions, protected under Article 8 of the Protocol. Similarly, in 2009, the Commission declared admissible a petition arguing a violation of the right to education, protected under Article 13 of the Protocol.

State periodic reports mechanism

Article 19 of the Additional Protocol establishes a State reporting mechanism:

1. Pursuant to the provisions of this article and the corresponding rules to be formulated for this purpose by the General Assembly of the Organization of American States, the States Parties to this Protocol undertake to submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth in this Protocol.
2. All reports shall be submitted to the Secretary General of the OAS, who shall transmit them to the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture so that they may examine them in accordance with the provisions of this article. The Secretary General shall send a copy of such reports to the Inter-American Commission on Human Rights.
- ...
7. Without prejudice to the provisions of the preceding paragraph, the Inter-American Commission on Human Rights may formulate such observations and recommendations as it deems pertinent concerning the status of the economic, social and cultural rights established in the present Protocol in all or some of the States Parties, which it may include in its Annual Report to the General Assembly or in a special report, whichever it considers more appropriate.

Although the Additional Protocol came into force in 1999, the process of setting up the State reporting mechanism created under the Protocol has been very slow. Below is a brief description of the steps that have been taken thus far to implement Article 19 of the Additional Protocol and to devise a reporting mechanism for States under this instrument.

In 2005, the Organization of American States General Assembly approved Resolution 2074 entitled Standards for the Preparation of Periodic Reports pursuant to the Protocol of San Salvador ('the Standards') (available at: [www.civil-society.oas.org/General Assembly Resolutions/Fort Lauderdale/Eng/G-RES. 2074-XXXV-O-05 ENG.doc](http://www.civil-society.oas.org/General%20Assembly%20Resolutions/Fort%20Lauderdale/Eng/G-RES._2074-XXXV-O-05_ENG.doc)), which stipulates that:

2. *States that are parties to the Protocol on the date it enters into force shall submit the first report within one year after that date; states that ratify or accede to the Protocol thereafter shall submit the first report*

within one year after the Protocol enters into force for them. Thereafter, reports shall be submitted every three years.

Standard 5.3 provides that State reports must address the different rights protected under the Additional Protocol:

- Right to work (Article 6);
- Right to just, equitable, and satisfactory conditions of work (Article 7);
- Trade union rights (Article 8);
- Right to social security (Article 9);
- Right to health (Article 10);
- Right to a healthy environment (Article 11);
- Right to food (Article 12);
- Right to education (Article 13);
- Right to the benefit of culture (Article 14).

In addition, information on gender equity, special needs, ethnic and cultural diversity – in particular with respect to indigenous peoples – and involvement of civil society organisations in legislative and public policy reform should be provided for each of the rights mentioned above (Standard 6).

The Standards provide that State reports are to be examined by a Working Group that will operate under the Inter-American Council for Integral Development (a body directly answerable to the OAS General Assembly to promote cooperation among the member States for the furtherance of their integral development). The Working Group should start evaluating a report within 60 days of its submission by a State, with the participation of all the inter-American system organs and agencies mentioned in Article 19 of the Additional Protocol (Standard 10). Once the State report has been duly examined by the Working Group, taking into account input from the other Inter-American organs and agencies, the Working Group presents its preliminary conclusions to the State concerned which then has 60 days to make additional comments for analysis by the Working Group (Standard 12). The Working Group then adopts, by consensus, its final conclusions, which will be communicated to the State in question (Standard 13).

The Standards provide that the examination of State reports will be governed by the principle of progressiveness, i.e. a State's gradual advancement (or progression) in creating the conditions necessary to ensure the exercise of an economic, social or cultural right. In order to evaluate the principle of progressiveness (or how much a State has progressed



First Training Course for Wayuu Women and other peoples on the Rights of Indigenous Peoples and the Implementation of ILO 169 and the UNDRIP, an activity undertaken by the Campaign for the Elimination of All Forms of Violence against Wounmainkat – Our Land. Photo: Miguel Iván Ramírez Boscán

with regard to a specific right) with a reasonable degree of objectivity, progress indicators will be defined to assess 'distances between the actual situation and the standard or desired goal' for each group of protected rights (Standard 5.2).

The Standards provide that progress indicators should be proposed by the Inter-American Commission, for possible adoption by the Permanent Council. In light of this, the Inter-American Commission adopted, in 2008, a series of progress indicators in its 'Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights' (see: [OEA/Ser.L/V/II.132 Doc. 14 19 July 2008 at www.cidh.org/pdf files/Guidelines final.pdf](http://www.oas.org/en/slc/docs/AG05796E04.pdf)).

On June 8 2010, the OAS General Assembly confirmed the composition and functioning of the Working Group and that it was, therefore, operational. As of June 2014, the Working Group comprises government experts from Brazil (Flávia Piovesan), Colombia (Paola Buendía García) and Ecuador (Ramiro Ávila Santamaría), an independent expert from Argentina (Laura Pautassi) and two representatives of the Inter-American Commission on Human Rights (Rose Marie Belle Antoine, and Rosa María Ortiz as alternate). (www.oas.org/en/sedi/ddse/pages/index-7_protocoloworkinggroup.asp)

Based on the Progress Indicators developed by the Commission, the Working Group has developed its proposed 'Progress Indicators in Respect to the Rights Contemplated in the Protocol of San Salvador' to be used in the analysis of the Reports to be presented

by the States under Article 19 (see: scm.oas.org/pdfs/2011/CP26772E-2.pdf). In 2012, the OAS General Assembly in Cochabamba, Bolivia, also approved the Indicators (see: www.oas.org/en/slc/docs/AG05796E04.pdf, p56). A second group of indicators was developed by the Working Group, and is now under consultation with States and civil society organisations (see CP/CAJP/INF.171/12). Query

As mentioned in Information Note #4a the Commission has created a Unit on Economic, Social and Cultural Rights, with responsibility among other tasks for coordinating the Commission's participation in the review of States' reports under the Protocol of San Salvador.

The Inter-American Commission on Women

The Inter-American Commission on Women (IACW or CIM) is a specialised organisation of the OAS and was established in 1928 (see: www.oas.org/en/cim/about.asp). It is the world's first intergovernmental agency created to ensure the recognition of women's rights, and is the principal forum for generating policy to advance women's rights and gender equality in the Americas. Its mission includes promoting and protecting women's rights, and supporting Member States in their efforts to promote women's full and equal access to their rights and to participation in all aspects of society. It is composed of 34 delegates, one for each OAS Member State, who meet every two years to decide on the organisation's policies and plan of action.

The IACW is responsible for monitoring State compliance

with the Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belém do Pará' or 'Convention') through two mechanisms:

1. The States' periodic reporting mechanism, detailing measures that States have taken to ensure due respect for the rights set forth in the Convention; and
2. The follow-up mechanism to the Convention.

States' periodic reporting mechanism

Article 10 of the Convention of Belém do Pará provides that States Parties must present reports to the IACW on measures adopted to prevent and prohibit violence against women and to assist women affected by violence. The report should discuss difficulties that States have observed in applying these measures and the factors that contribute to violence against women.

Since this mechanism was put in place, a small number of States have submitted their reports. However, IACW's lack of resources, combined with a lack of debate and verification during consideration of the reports, have limited the impact of this mechanism to monitor compliance with the Convention.

Follow-up mechanism

In 2004, the IACW was asked by the OAS General Assembly to create a mechanism to follow up on the implementation of the Convention of Belém do Pará. Later that same year, following a conference of States Parties, the Statute of the Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (available at: www.oas.org/cim/Documentos/MESECVI/MESECVI-II-Statute.ing.doc) was adopted.

Article 1 of the Statute stipulates the purposes of the mechanism:

The purposes of the mechanism shall be:

- a. *To follow up on the commitments undertaken by the states parties to the Convention and review how they are being implemented;*
- b. *To promote the implementation of the Convention and contribute to achievement of the objectives established therein;*

- c. *To establish a system of technical cooperation among the states parties, which shall be open to other member states and permanent observer states, for the exchange of information, experiences, and best practices as a means to update and harmonize their domestic legislation, as appropriate, and attain other common objectives associated with the Convention.*

The follow-up mechanism consists of two organs: the Conference of States Parties ('the Conference'), composed of a representative of each State Party, and the Committee of Experts ('the Committee'), composed of experts appointed by States Parties but acting in their personal capacity. The Conference is the political organ of the mechanism and its responsibilities include:

- Establishing overall guidelines for the work of the Committee and serving as its advisory body;
- Receiving, analysing, and evaluating the reports of the Committee; and
- Settling any matter relating to the operations of the mechanism.

The Committee's functions include:

- Receiving and evaluating the reports of the States Parties and issuing its recommendations; and
- Presenting its reports to the Conference.

The Committee had its first meeting in 2005 during which it was decided that the first multilateral evaluation would focus on Articles 7 and 8 of the Convention, which deal with violence against women. An evaluation process was then undertaken which reviewed the responses submitted by 28 States to a questionnaire elaborated by the Committee. The Committee also considered five shadow reports and complementary documentation presented by civil society organisations and other international entities. The process concluded in 2008 with the publication of a first 'Hemispheric Report' (available at: [portal.oas.org/Portals/7/CIM/documentos/MESECVI-II-doc.16.rev.1.ing.Informe Hemisferico.doc](http://portal.oas.org/Portals/7/CIM/documentos/MESECVI-II-doc.16.rev.1.ing.Informe%20Hemisferico.doc)) which evaluates States' compliance with their obligations under Articles 7 and 8 of the Convention of Belém do Pará and presents recommendations to States Parties for the effective implementation of these provisions.

Among the numerous recommendations formulated,

States Parties were called upon to:

28. *Develop protocols for attending to women victims of violence for use by police, district attorneys, and other legal and health-related dependencies, in the official language of the country, as well as in indigenous languages.*

Another initiative by the Committee was the adoption in 2008 of the Declaration on Femicide (available at: portal.oas.org/Portals/7/CIM/documentos/MESECVI-CE-DEC.1.ing.Femicidio.doc) which 'is the most serious

manifestation of discrimination and violence against women' (Article 1). The Declaration formulates recommendations to States Parties with regard to femicide as well as to the media.

United Nations Mechanisms

The following section presents a list of the mechanisms which can be of use to organisations dedicated to defending the rights of indigenous women. Further information is available on the respective mechanisms' websites.

Mechanisms	Comments	Relevant links
General mechanisms		
Universal Periodic Review	Mechanism of the Human Rights Council through which each State undergoes a review of its human rights situation every four years.	www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx
Human Rights Committee	Oversees the implementation of the Covenant on Civil and Political Rights and its Optional Protocols. Examines States' periodic reports. Examines complaints from States and individuals.	www2.ohchr.org/english/bodies/hrc/index.htm
Committee on Economic, Social and Cultural Rights	Oversees the implementation of the Covenant on Economic, Social and Cultural Rights. Examines States' periodic reports. An individual complaints procedure was included in a Protocol to the Covenant in 2008. However, the Protocol is not yet in force.	www2.ohchr.org/english/bodies/cescr/index.htm
Committee on the Elimination of Racial Discrimination	Monitors the application of the Convention on the Elimination of All Forms of Racial Discrimination. Examines States' periodic reports. Has an early-warning procedure and a follow-up procedure. Examines complaints submitted by States and individuals.	www2.ohchr.org/english/bodies/cerd/index.htm

Mechanisms	Comments	Relevant links
Committee on the Elimination of Discrimination Against Women	<p>Oversees the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, and its optional protocol.</p> <p>Examines States' periodic reports.</p> <p>Examines complaints from States and individuals.</p>	www2.ohchr.org/english/bodies/cedaw/index.htm
Committee Against Torture	<p>Oversees the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p>Examines States' periodic reports.</p> <p>Undertakes enquiries.</p>	www2.ohchr.org/english/bodies/cat/index.htm
Committee on the Rights of the Child	<p>Oversees the implementation of the Convention on the Rights of the Child and its optional protocols.</p> <p>Examines States' periodic reports.</p> <p>Individual complaints procedure not yet adopted.</p>	www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx
Committee on Migrant Workers	<p>Oversees the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and their Families.</p> <p>Examines States' periodic reports.</p> <p>Individual complaints procedure not yet adopted.</p>	www.ohchr.org/EN/HRBodies/CMW/Pages/CMWIntro.aspx
Mechanisms specific to indigenous peoples		
Expert Mechanism on the Rights of Indigenous Peoples	<p>Replaced the Working Group on Indigenous Populations in 2007.</p> <p>Undertakes studies and research for the Human Rights Council on questions relating to indigenous peoples.</p> <p>Holds one session per year at which organisations may participate. Regularly requests information from organisations and individuals about various issues.</p>	www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx

Mechanisms	Comments	Relevant links
United Nations Permanent Forum on Indigenous Issues (UNPFII)	<p>Founded in 2000 by the Economic and Social Council (ECOSOC).</p> <p>Its mandate is to contribute to an understanding of the situation of indigenous peoples, to integrate and coordinate activities relating to indigenous matters, and to disseminate information on indigenous matters.</p>	<p>www.un.org/esa/socdev/unpfii/index.html</p> <p>Page on indigenous women: social.un.org/index/IndigenousPeoples/CrossThematicIssues/Indigenous-Women.aspx</p>
United Nations Special Rapporteur on the Rights on Indigenous Peoples	Undertakes thematic research, country visits, issues urgent appeals and allegation letters.	www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/SRIPeoplesIndex.aspx
International Labour Organization	<p>Has an office responsible for indigenous matters.</p> <p>Individual Complaint Mechanism (Art. 24 Representations) (brought by trade unions on behalf of indigenous peoples).</p> <p>Periodic reporting to the ILO Committee of Experts on the Application of Conventions and Recommendations.</p>	www.ilo.org/indigenous/lang--en/index.htm



Assembly of the Force of Wayuu Women. Photo: Miguel Iván Ramírez Boscán.

Notes

[illegible]

1c Fosseyway Business Centre, Stratford Road, Moreton-in-Marsh, GL56 9NQ, UK
T. +44 (0)1608 652893 F. +44 (0)1608 652878 info@forestpeoples.org www.forestpeoples.org

The Forest Peoples Programme is a company limited by guarantee (England & Wales).
Reg. No. 3868836, registered office as above. UK-registered Charity No. 1082158.
It is also registered as a non-profit Stichting in the Netherlands.