

RIGHTS OF INDIGENOUS PEOPLES INTEREST GROUP NEWSLETTER

Interest Group Highlights

On Wednesday 30 June the RIPIG held a seminar on Indigeneity in Settler Legal Systems. We thank our four speakers:

- Associate Professor Karen Drake (Osgoode Hall Law School)
- Professor Kirsty Gover (University of Melbourne and former Co-Chair of the RIPIG)
- Tim Goodwin (Victorian Bar); and
- Professor Kent McNeil (Osgoode Hall Law School)

for their insightful comments and engaging presentations. We also pass on our thanks to those who attended.

The Interest Group moderated a panel at the ASIL Annual Meeting (March 24 – March 26, 2021). The Panel explored Indigenous Peoples participation in International Organizations, in particular considering calls to reform the United Nations and other International Organizations to allow for enhanced participation and self-determination rights of Indigenous peoples. The panel was a great success, thanks in no small part to our excellent speakers:

- Rani Yan Yan (Chakma Circle Chief adviser; Indigenous Peoples Human Rights Defenders Network)
- Diego A. Tituaña, Ministry of Foreign Affairs, Ecuador
- Ambassador Keith Harper (Jenner & Block)
- Claire Charters (Auckland Law School)
- Dalee Sambo Dorough (Inuit Circumpolar Council; Special Advisor on Arctic Indigenous Peoples, University of Alaska Anchorage)

Recordings of the seminar and panel are available through the ASIL website. We encourage you to take a look when you can.

We remind everyone that members are invited to organize webinars to be hosted by ASIL and this interest group on topics relating to Indigenous peoples' rights. For information on what is involved, please contact the Co-Chairs.

The Newsletter

The Newsletter is a place to share information concerning recent developments, scholarship, and other matters of interest to the Group relating to the rights of Indigenous peoples. Your contributions are essential to the quality and success of this publication. To contribute to an upcoming issue, please contact Harry Hobbs at Hobbs.Harry@uts.edu.au, Ayla do Vale Alves at a.alves@unsw.edu.au, or Bruno Pegorari at b.pegorari@unsw.edu.au.

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Rights of Indigenous Peoples Interest Group

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



Indigenous Rights Developments

- Brazilian Supreme Court (STF) to decide whether to impose a timeframe on Indigenous peoples' land rights (June 30, 2021). On June 30, the Brazilian Supreme Court resumes its judgment of the *Xokleng people v. the state of Santa Catarina case* (RE-1.017.365). The case will re-assess the so-called timeframe thesis (*marco temporal*) according to which the demarcation of Indigenous traditional lands must only occur in cases where an Indigenous community or people was physically occupying their land at the exact date of October 5, 1988 (the enactment date of the Brazilian Constitution). However, many communities were unwillingly removed from their lands. As a result, they could not occupy their lands on that date. This thesis has been widely applied by the federal government over the past seven years and has been highly detrimental to Indigenous peoples whose lands and territories have not so far been demarcated and titled. More information about the case is available here (in Portuguese): <https://cimi.org.br/2021/06/apos-mobilizacao-povos-indigenas-stf-retoma-julgamento-futuro-demarcacoes-pais/> Information about the case (in English) is available here: <https://latindispatch.com/2020/06/02/indigenous-land-rights-at-stake-in-brazil-supreme-court-case/>
- United States Secretary of the Interior Deb Haaland announces a comprehensive review into American Indian boarding school practices (June 22, 2021). The move follows the discovery of 215 First Nations children in a mass grave at Kamloops in Canada (see below). Like in Canada, residential schools were established in the United States to assimilate American Indian children into Euro-American culture. In addition to harms arising from forcible separation from family and community, many children were exposed to sexual and physical abuse. Secretary Haaland has directed her Department to prepare a report detailing available historical records, with an emphasis on cemeteries or potential burial sites. Memorandum available here: <https://www.indianz.com/News/2021/06/22/i-know-that-this-process-will-be-painful-secretary-haaland-announces-indian-boarding-school-review/> More information available here: <https://www.washingtonpost.com/opinions/2021/06/11/deb-haaland-indigenous-boarding-schools/>
- Brazilian National Congress's Constitution and Justice Commission to vote on Bill that undermines Indigenous peoples' rights enshrined in the Brazilian constitution and international law (June 22, 2021). The Brazilian National Congress's Constitution and Justice Commission is set to vote on Legislative Bill 490/2007 (LB 490). If approved, the Bill will move to the Chamber of Deputies' plenary and then to the Senate. LB 490 proposes to set the time frame thesis (*marco temporal*) at the federal law level as the official standard to be followed in Indigenous lands' demarcation procedures. The Bill allows for the implementation of mining, hydroelectric dams, roads, and other large scale development projects in Indigenous lands without prior, free and informed consultation and consent. LB 490 also submits Indigenous peoples' exclusive right of enjoyment of their traditional lands to 'the public interests of the Union', which opens up a venue for legalizing small-scale (so-far) illegal mining operations in Indigenous lands. The Bill also opens up a venue for reducing the size of supposedly "unproductive" Indigenous reservations (a particular type of Indigenous land). Finally, among other things, LB 490 openly allows for the government, through public or private enterprises, to reach uncontacted and isolated tribes upon 'public or private enterprises' based on reasons of 'public interest'. The Bill undermines Indigenous rights protected by article 231 of the Brazilian Constitution and the right to consultation provided for by the UN Declaration on the Rights of Indigenous Peoples and the ILO Convention 169 ratified by Brazil. The text of the Bill is available here: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=345311> More information about the Bill is available here (in Portuguese): <https://cimi.org.br/2021/05/projeto-em-pauta-na-camara-na-pratica-acaba-com-demarcacoes-de-terras-indigenas/> More information on this Bill and other developments that threaten Indigenous peoples' rights in Brazil are available here (in English): <https://amazonwatch.org/news/2021/0617-rise-for-the-earth>
- Two Indigenous men from Arnhem Land in the Northern Territory of Australia have lodged a complaint alleging voter suppression (June 21, 2021). The



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men allege that policy requiring people have a street and postal address to be placed on the electoral roll indirectly discriminate against them and their community. The complaint comes against a background of low enrolment among Indigenous peoples in the Northern Territory and the country as a whole. The Indigenous electoral enrolment rate in the Northern Territory is the lowest in the nation at 68.7 per cent – well behind the national average of 78 per cent. The enrolment rate for all Australians is 96.3 per cent. More information available here: <https://www.theguardian.com/australia-news/2021/jun/21/arnhem-land-leaders-lodge-voter-suppression-complaint-against-australian-electoral-commission>

- Indigenous peoples from all over Brazil have gathered in Brasilia to promote a 'Rise for the Earth' against unprecedented threats to their rights since re-democratization in 1988 (June 17, 2021). Here is a passage of the manifest:

We, indigenous peoples, live in a state of constant threat, which requires us to be in constant vigilance and mobilization. Right now, June 2021, still under the restrictions of a devastating pandemic that is approaching the victimization of 500,000 Brazilians, of which 1,110 indigenous people are part of, we are forced to intensify our struggles and amplify our voice of protest to defend our most basic rights: our lives and our territories.

The fight for life called, and we came to Brasilia to set up our Rise for the Earth camp in defense of our rights, most importantly, territorial. We returned to occupy the grounds of the federal capital after two years without in-person mobilizations, especially the Acampamento Terra Livre (largest assembly of indigenous peoples in Brazil, which, due to the Covid-19 pandemic, was held virtually in 2020 and 2021).

Our leaders, who are already fully immunized with the vaccine against the new coronavirus, gather at this moment to echo our maracas and reaffirm that, in the midst of the greatest health and humanitarian emergency in recent years, Indigenous Lives Matter.

In this manifesto, we reaffirm our banners of struggle and decree our PERMANENT STATE OF MOBILIZATION.

FOR THE IMMEDIATE INTERRUPTION OF ANY ANTI-INDIGENOUS MEASURES AT THE NATIONAL CONGRESS!

Read the full Rise for the Earth Manifest here (English): <https://apiboficial.org/2021/06/17/rise-for-the-earth/?lang=en>

More about the movement here: <https://www.reuters.com/world/americas/firing-arrows-indigenous-people-brazil-protest-bill-curtailling-land-rights-2021-06-16/>

- Bill to align Canada's laws with the United Nations Declaration on the Rights of Indigenous Peoples set to become law (June 16, 2021). On June 16, Bill C-15, received its third reading in the Canadian Senate. The Bill does not make the UN Declaration enforceable in the country but will provide a framework of action. It will oblige the government to take all measures necessary to ensure that the laws of Canada are consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and to prepare and implement an action plan to achieve the objectives of the Declaration. This is the third attempt to enact such a law. The text of the Bill is available here: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=en&Mode=1&billId=11007812>
- Indigenous workers in the Northern Territory of Australia launch class action seeking redress for stolen wages (June 10, 2021). Under various Australian laws, Aboriginal stock workers, farmhands and domestic laborers had their wages withheld or not paid between the late 1800s and the 1970s. In recent years, some State governments have initiated redress schemes: Western Australia has offered payments of AUD 2000, Queensland of up to AUD 9,200 and New South Wales between AUD 1,000 and AUD 24,000. The manifest inadequacy of these redress schemes has prompted the initiation of class actions against the Western Australian and Queensland governments. In 2019, the Queensland government settled their case, agreeing to pay AUD 190 million to more than 10,000 claimants for wages earned but not paid between 1939 and 1972 – and average of about AUD 19,000 per claimant (see RIPIG Newsletter Volume 6, Issue 2 for more details). The Western Australian case is ongoing.



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ing. This is the third major class action and the first against the Commonwealth government, who administered the Northern Territory during this period.

Information on the class action is available here:

<https://www.shine.com.au/service/class-actions/northern-territory-stolen-wages-class-action>

More information is also available here: <https://www.sbs.com.au/news/northern-territory-indigenous-workers-launch-legal-action-over-decades-of-lost-income>

- The mother of an Indigenous man who died in police custody in Australia has made a complaint to the United Nations (June 10, 2021). 26-year-old Dunghutti man David Dungay Jr was sitting in his cell eating a biscuit when he was forcibly removed to an observation cell, restrained and sedated. Before passing away he told the guards 'I can't breathe' twelve times. No person has ever been charged with his death. Leetona Dungay has filed a complaint with the United Nations Human Rights Committee alleging that the Australian and New South Wales governments failed to protect her son's right to life. More information available here: <https://www.abc.net.au/news/2021-06-10/david-dungay-family-take-fight-to-united-nations/100200828>

- TC Energy cancels Keystone XL pipeline (June 10, 2021). The proposed Keystone XL pipeline would have carried oil from Canada's western tar sands to US refineries. It was opposed by First Nations peoples and communities, concerned over the prospect of significant environmental damage. After years of protests, incoming US President Joe Biden revoked the permit granted for the construction of the Keystone XL pipeline on his first day in office. The owner of the pipeline has now finally cancelled the project. More information available here: <https://www.theguardian.com/environment/2021/jun/09/keystone-xl-pipeline-canceled>

- First Nation in Canadian province of British Columbia discovers mass grave containing the remains of 215 children on the grounds of a former residential school (May 28, 2021). Between 1883 and 1996, an estimated 150,000 Indigenous children were forcibly sent to state or church run boarding schools as part of the Indian residential schools' system. The system harmed

children by removing them from their family and community, depriving them of their language, and in many cases exposing them to sexual or physical abuse. In 2015, a National Truth and Reconciliation Commission concluded that at least 4,100 students died while attending the schools, many from mistreatment or neglect, others from disease or accident. It also found that many families never learned the fate of their children. Rumours of mass graves have been heard before, but this is the first time that a mass burial site has been confirmed. The school at Kamloops was operated by the Catholic Church until 1969. It was once the largest residential school in the country, holding around 500 children.

More information available here: <https://www.nytimes.com/2021/05/28/world/canada/kamloops-mass-grave-residential-schools.html> and here <https://www.nytimes.com/2021/06/07/world/canada/mass-graves-residential-schools.html>

- Taiwan Constitutional Court upholds laws restricting hunting (May 7, 2021). In 2013, Talum Suqluman, a member of the Bunun people was convicted of using an illegal shotgun to kill protected species and sentenced to 3 and a half years in prison. He appealed the decision, arguing that he was following tribal customs to hunt animals for his ill mother. A court suspended his sentence in 2017, but the case was eventually heard by the Constitutional Court. The Court struck out several provisions of the laws, including the requirement that hunters must apply for permits, but upheld most of the regulations, holding that the rights of Indigenous peoples to their hunting culture must be balanced against the protection of the environment. Mr Suqluman has vowed to continue hunting. More information available here: <https://www.nytimes.com/2021/05/07/world/asia/taiwan-hunting.html>
- Indigenous protesters topple Spanish conquistador statue in Colombia (April 28, 2021). Amidst protests against president Iván Duque's now abandoned tax reform and policies on health, education and inequality, Indigenous peoples brought down a statue of Sebastián De Belalcázar, making it the second time in less than a year that a monument to a Spanish conquistador has been toppled in Colombia. Protesters

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claim Balalcázar represents a history of genocide, slavery and land grabbing against Indigenous peoples in the South American country, and associated the action with the need to mobilize against the current government. The action was met with criticism by the mayor of Popayán, where the statue used to stand. The mayor regretted the damage to the public monument and has declared that the statue will be restored.

More information available here: <https://www.foxnews.com/world/indigenous-protesters-colombia-spanish-conquistador-statue>

More information in Spanish available here: <https://www.eltiempo.com/colombia/cali/abandono-y-crimenes-razones-de-indigenas-para-derribar-estatua-de-conquistador-en-popayan-538298>

- [Stolen Generations survivors set to sue the Australian government for compensation](#) (April 28, 2021). Between 1910 and 1970 between one in ten and one in three Indigenous children in Australia were forcibly taken from their families and communities. The 1997 Bringing Them Home Report found that this policy caused significant adverse effects on those removed and their families. The Report concluded that 'The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law'. The Australian government apologised in 2008 but ruled out paying compensation. Several States have set up statutory redress schemes, though these have been criticised as inadequate. More information available here: <https://www.abc.net.au/news/2021-04-28/class-action-stolen-generation-survivors-descendants/100098608>
- [Brazilian Parliamentary Agricultural Front \(FPA\) commences the legislative phase of the denunciation process of ILO 169](#) (April 27, 2021). 'On 27 Apr 2021, almost 32 years after the International Labour Organisation (ILO) adopted the 1989 Indigenous and Tribal Peoples Convention 169 (ILO 169) and almost 19 years since Brazil ratified the Convention, Deputy Alceu Moreira, (...) introduced the Legislative Decree Bill 177/21 (LDB 177) to the Brazilian National Congress. If passed, LDB 177 will provide President Jair Bolsonaro with prior congressional approval to withdraw from ILO 169.'

Our editor, Bruno Pegorari, offers a nuanced view on the attempt of Bolsonaro's government to withdraw from ILO 169. According to Pegorari:

[t]he times when Indigenous and Quilombola peoples were subjugated by (international) law are over. Stronger and more organized than ever, Indigenous and Quilombola organizations are equipped to protect and demand their rights in and outside political forums and courts, at domestic and international levels. Attempts to dismantle hard-earned rights that allow Indigenous and tribal peoples to restore, cultivate, and develop their autonomy (both in relation to and despite the state) should be repealed and revealed for what they truly are: authoritarianism, racial/cultural discrimination, and political-economic oppression – despite the cloak of legality they might wear. In such times, a revitalized debate on treaty denunciation will come in handy for those on which the consequences of the authoritative turn in international law weigh more heavily.

See our editor's analysis of this case in full here: <https://ilabrazilblog.wixsite.com/blog/post/why-brazil-cannot-denounce-ilo-169-without-adequate-consultation>

- [Canadian Supreme Court holds that the Sinixt Nation, whose reservation is in the United States, has constitutionally protected Indigenous rights to hunt in their ancestral territory in Canada](#) (April 23, 2021). Richard DeSautel is a United States citizen, a member of the Lakes Tribe of the Colville Confederated Tribes in Washington state and a descendent of the Sinixt Tribe, whose traditional territory is now claimed by Canada and the United States. In 2010, DeSautel was charged with hunting without a license and hunting big game contrary to the British Columbia *Wildlife Act*. DeSautel maintained that he was exercising his constitutionally protected aboriginal right to hunt in the traditional territory of his Sinixt ancestors. DeSautel was successful at first instance and in the British Columbia Court of Appeals. The Supreme Court has now upheld that decision.

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The Court ruled that the term “aboriginal peoples of Canada” in s 35 of the Constitution must be interpreted purposively to mean the modern-day successors of Aboriginal societies that occupied what is now Canadian territory at the time of European contact, which may include Aboriginal groups that are now located outside Canada. As such, persons who are not Canadian citizens and who do not reside in Canada can exercise an Aboriginal right that is protected by the Canadian Constitution.

The decision is available here: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18836/index.do>

- Peru to establish 2.7-million-acre rainforest reserve for isolated Indigenous peoples (April 19, 2021). Following more than seventeen years of discussion, the Peruvian government has moved to establish the Yavarí Tapiche Indigenous Reserve in the department of Loreto along Peru’s border with Brazil. The new reserve will be the largest created in Peru. It will be established under Peru’s law designed to protect Indigenous peoples living in voluntary isolation and initial contact (PIACI). The Yavarí Tapiche Reserve will cover the territory of at least three Indigenous groups in voluntary isolation, and others yet to be identified. The creation of the reserve is a victory for the protection of isolated Indigenous peoples in the Peruvian Amazon. However, the protection plan must still be approved by the Ministry of Culture and management measures still need to be implemented.

More information available here: <https://www.andesamazonfund.org/news-blog/new-2-7-million-acre-yavari-tapiche-indigenous-reserve-established-in-peru-to-protect-indigenous-people-living-in-voluntary-isolation/> and here: <https://news.mongabay.com/2021/04/peru-to-establish-rainforest-reserve-for-isolated-indigenous-peoples/>

- Indonesian land mapping project at risk of ignoring Indigenous peoples’ title (March 31, 2021). Over a decade ago the Indonesian government launched the One Map policy, which was designed to merge 85 maps of the country’s provinces into a single land area map. The Indigenous Peoples Alliance of the Archipelago have not been consulted and are concerned that the One Map portal does not include

maps created by Indigenous groups. Failing to include details of Indigenous land title will likely cause significant conflict.

More information available here: <https://www.reuters.com/article/us-indonesia-landrights-map-trfn-idUSKBN2BN10I>

- Amazon Indigenous peoples sue retailer Casino in French court over deforestation (March 3, 2021). Indigenous peoples from Brazil and Colombia have launched proceedings against Casino, accusing the French supermarket chain of selling beef sourced from suppliers involved in land grabbing, illegal mining, and deforestation in the Amazon. The case is predicated on a 2017 French law that requires companies to avoid human rights and environmental violations in their supply chains. The French brand has argued that it employs a strict policy to control the origin of beef delivered by its suppliers and that it fights against deforestation by cattle ranchers in Brazil and Colombia. Indigenous groups claim compensation for the loss of and damage to their lands and for the impact on their livelihoods caused by cattle deforestation. The suit was filed with the Saint-Etienne court in southeast France, where Casino is headquartered. More information available here: <https://www.reuters.com/article/us-casino-amazon-lawsuit-idUSKBN2AV1UY> More information in Portuguese available here: <https://www.ecodebate.com.br/2021/03/03/indigenas-da-amazonia-processam-grupo-casino-na-justica-francesa/>
- New Zealand Parliament enacts law to facilitate creation of dedicated Indigenous seats at local government level (February 25, 2021). At elections for the national level, Māori people can choose to vote for general seats or seats reserved for Māori people. In 2002, the Local Government Act was amended to allow similar reserved seats to be established at the Council level. However, the law included a provision that allowed five per cent of voters in a council catchment to force a referendum to veto the creation of a Māori ward. Since 2002, 24 councils had voted to establish Māori wards, but referendums had overturned many of those decisions. The new law has removed the provision, which did not apply to the creation of general wards, making the creation of Māori wards more likely.

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The law is available here: <https://legislation.govt.nz/bill/government/2021/0006/latest/LMS442033.html>

More information available here: <https://www.rnz.co.nz/news/political/437105/maori-wards-amendment-bill-passes-final-reading-in-parliament>

See also <https://theconversation.com/guaranteed-maori-representation-in-local-government-is-about-self-determination-and-its-good-for-democracy-154538>

- Supreme Court of Justice of Panama recognizes Indigenous community's land rights (February 17, 2021). After a decades-long struggle to secure their land rights, the Naso Tjër Di people in northern Panama won a *comarca*, or protected territory, of their own. Panama's Supreme Court of Justice ruled in favour of the establishment of a 620-square-mile *comarca* for the Naso Tjër Di, after Panama's former president vetoed a law creating a protected territory in 2018. The court based its decision partly on evidence of the Indigenous groups' role in environmental preservation in the places where they have settled. Demarcation between the *comarca* and adjacent areas has not yet been finished, leaving the community in a legally vulnerable position. More information available here: <https://news.mongabay.com/2021/02/indigenous-community-wins-recognition-of-its-land-rights-in-panama/>
- Australia changes one word of its national anthem to better reflect Indigenous peoples' long history on the continent (January 1, 2021). Advance Australia Fair was first performed in 1878 and became the country's national anthem in 1984. The second line of the anthem initially read: 'For we are young and free'. On New Years Day, the Prime Minister announced that 'young' would be replaced by the word 'one', to honor Aboriginal and Torres Strait Islander peoples 60,000 years of history. The change was greeted with derision among many. The decision was made with no consultation and ignores Aboriginal and Torres Strait Islander peoples' calls for legal and institutional reform to better recognise and protect their interests. More information available here: <https://www.theguardian.com/australia-news/2020/dec/31/we-are-one-and-free-australian-anthem-to-change-in-attempt-to-recognise-indigenous-history>
- Chile reserves seats for Indigenous representatives ahead of Constitutional Convention (December 15, 2020). In 2019, mass protests over inequality led to a national referendum on constitutional change. In October 2020, a majority of voters supported rewriting the Chilean Constitution, which dates from the Pinochet dictatorship. In December, Chilean parliamentarians approved a bill to reserve 17 out of 155 seats for Indigenous representatives in the upcoming constitutional convention. The legislation awards a certain number of seats for each of Chile's ten principal Indigenous groups. The Mapuche people, Chile's largest Indigenous community, were awarded seven seats, followed by the Aimaras, with 2 seats. The convention has a period of up to one year to prepare a draft text, which will be voted on in a new referendum. If rejected, the current 1980 Constitution will remain in force. The participation of Indigenous representatives will give voice to Indigenous peoples of Chile in issues affecting their communities such as land, water, education, health and collective rights. More information available here: <https://www.reuters.com/article/chile-constitution-indigenous-idUSKBN28Q05I>
More information in Portuguese available here: <https://odia.ig.com.br/mundo-e-ciencia/2021/05/6145891-constituente-do-chile-sera-50-feminina-e-10-povos-indigenas-serao-representados.html>
- Indigenous people and women achieve majority in Bolivia's Senate (October 26, 2020). In October 2020, general elections were held in Bolivia bringing an end to a prolonged political crisis. Indigenous peoples and women have secured significant representation in the new Senate: 20 seats out of 36 are held by women, and 18 of the 36 representatives are from Indigenous communities. The newly elected representatives took their seats on November 8, 2020. More information in Portuguese available here: <https://revistaforum.com.br/global/mulheres-e-indigenas-serao-maioria-no-senado-da-bolivia/> ■

Recommendations from UN and Treaty Bodies

Human Rights Committee (HRC)

During its 131st (virtual) session (March 1-26, 2021), the Human Rights Committee adopted Concluding Observations on the seventh periodic report of Finland (CCPR/C/FIN/7) and the fourth periodic report of Kenya (CCPR/C/KEN/4).

Despite acknowledging the steps taken by Finland 'to promote the rights of the Sami people, including the ongoing establishment of a truth and reconciliation commission', the HRC expressed its concern that 'the Sami Parliament Act – in particular section 3, on the definition of a Sami, and section 9, on the obligation of the authorities to negotiate with the Sami Parliament in all far-reaching and important measures that may affect the status of the Sami as an indigenous people – has not yet been amended in a way that guarantees the Sami people's right of self-determination'. The HRC pointed out that 'the decisions of the Supreme Administrative Court of 5 Jul 2019, and the Government's decision not to cancel or postpone the Sami Parliament elections of September 2019 appear to run counter to the Views adopted by the Committee regarding the Sami'. Furthermore, the HRC expressed its concern 'about reports that vague criteria used to assess the impact of measures, including development projects, on Sami culture and traditional livelihoods have resulted in the authorities' failure to engage in meaningful consultations to obtain their free, prior and informed consent. The Committee also notes the State party's delay in ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (arts. 1, 25 and 27)' (CCPR/C/FIN/7 para 42).

The HRC recommends that Finland '(a) Speed up the process of revising the Sami Parliament Act, in particular its sections 3, on the definition of Sami, and 9, on the principle of free, prior and informed consent, with a view to respecting the Sami people's right of self-determination' (...); '(b) Review existing legislation, policies and practices regulating activities that may have an impact on the rights and interests of the Sami people, including development projects and extractive industries operations' (...); '(c) Consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization'; among others (CCPR/C/FIN/7 para 43).

Concerning Kenya, the HRC expressed its concern with 'continued reports of forced, and sometimes violent, evictions, including among indigenous populations in forest areas, (...) without full regard for due process requirements, such as adequate notice and prior and meaningful consultation with those affected' (CCPR/C/KEN/4 para 40). The HRC manifested its concern with the lack of specific protection to Indigenous peoples rights in domestic legislation, on the one hand, and the slow and inadequate implementation of general legislation on land rights, on the other (CCPR/C/KEN/4 para 50). The HRC recommends that Kenya: '(a) Develop and enact dedicated legislation to expand specific protection for indigenous peoples; (b) Step up safeguards against forced evictions of indigenous peoples and ensure the consistent and effective application of the principle of free, informed and prior consent before any developmental or other activities take place on lands traditionally used, occupied or owned by indigenous communities'. It also recommends that the state '(d) Publish without delay the recommendations of the task force to advise the Government on the implementation of the decision of the African Court on Human and Peoples' Rights in respect of the rights of the Ogiek community of Mau (...), and comply with the decision of the Court', among others (CCPR/C/KEN/4 para 51).

Committee on the Elimination of Discrimination against Women (CEDAW)

On June 24, 2021, during its 79th session, the UN Committee on the Elimination of Discrimination against Women (CEDAW) held a Day of General Discussion Online to examine the rights of Indigenous women and girls. Among many topics, the Committee discussed the multiple forms of discrimination Indigenous women and girls experience, including lack of access to education, health care and ancestral lands. They also face disproportionately high poverty rates and are likely to be victims of gender-based violence and sexual abuse. During the Day of Discussion, accommodated in two sessions (Session 1 – Equality and non-discrimination with a focus on Indigenous women and girls and intersecting forms of discrimination; Session 2 – Effective participation, consultation and consent of Indigenous women and girls in political and public life), Committee members engaged with

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State parties, other UN entities, international and regional intergovernmental organizations, national human rights institutions, non-governmental organizations and other stakeholders, as part of CEDAW's efforts to assist States parties to protect the rights of Indigenous women and girls.

More information available here:

<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/DGDRightsIndigenousWomenAndGirls.aspx>

Committee on the Elimination of Racial Discrimination (CERD)

In its 103rd session (April 19-30, 2021), CERD did not issue any documents concerning Indigenous peoples' rights.

Committee on Economic, Social and Cultural Rights (CESCR)

In its 69th session (February 15 – March 5, 2021), the Committee on Economic, Social and Cultural Rights (CESCR) adopted its concluding observations on the seventh periodic report of Finland (E/C.12/FIN/7).

CESCR expressed its concern that 'teaching of and education in Sami languages remains insufficient, especially outside the Sami homeland' (E/C.12/FIN/7 para 48). CESCR recommended that Finland 'recognize teaching of and education in Sami languages as a right' (...) and recommends that the state 'improve the availability, accessibility and quality of Sami languages education' (E/C.12/FIN/7 para 49). CESCR also expresses its concern 'that legislative changes, infrastructure projects and incursions into their lands have eroded the rights of the Sami to maintain their way of life and traditional livelihoods, including reindeer husbandry and fishing' (E/C.12/FIN/7 para 50).

As a result, CESCR urges the state 'to act upon instances of infringement on the rights of the Sami in order to maintain their culture, way of life and traditional livelihoods. In this regard, it recommends that the State party assess the impact of existing laws on these rights and enact the necessary amendments, including in the context of the revision of the Reindeer Husbandry

Act. Moreover, the Committee urges the State party to strengthen the legal recognition of the Sami as indigenous peoples and the legal and procedural guarantees for obtaining the free, prior and informed consent of the Sami in line with international standards. It also encourages the State party to expedite the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)' (E/C.12/FIN/7 para 51).

Committee on Migrant Workers (CMW)

In its 32nd session (April 6 – 16, 2021), the Committee on Migrant Workers (CMW) has adopted concluding observations on the second periodic report of Chile (CMW/C/CHL/2) (available in Spanish only).

CMW expressed its concern over the lack of information on the situation of Indigenous migrant women deprived of liberty under the custody of Chilean police. According to information reported to CMW, many Indigenous women deprived of their liberty were subjected to cruel, inhuman, or degrading treatment or punishment under state custody. (CMW/C/CHL/2 para 35). The CMW recommends that Chile respects the rights of Indigenous migrant women deprived of their liberty and under state custody and a) provide information about the number and the situation of these women, and b) the number of complaints received and investigated in cases of cruel, inhuman, or degrading treatment or punishment against these women (CMW/C/CHL/2 para 36).

Committee on the Rights of the Child (CRC)

In its 86th session, the Committee on the Rights of the Child (CRC) did not issue any documents concerning Indigenous peoples' rights.

Committee on the Rights of Persons with Disabilities (CRPD)

In its 24th session, the Committee on the Rights of Persons with Disabilities (CRPD) did not issue any documents concerning Indigenous peoples' rights. ■



Statements and Reports

- United Nations and Organization of American States experts call on Mexican authorities for peace after a violent election campaign and express concern at persistent discriminatory practices by political stakeholders against traditionally marginalised groups such as Indigenous peoples (June 8, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27153&LangID=E>
- United Nations human rights experts issue a joint statement on the recognition of the right to a healthy environment as key to address the environmental crisis and protect human rights, acknowledging the adverse effects of the environmental crisis to Indigenous peoples (June 5, 2021)
Statement available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27130&LangID=E>
- United Nations experts urge Canadian authorities and the Catholic Church to conduct investigations into the discovery of a mass grave with the remains of over 200 children at a 'residential school' for Indigenous children forcibly removed from their homes between the late 1800s and the late 1960s (June 4, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27141&LangID=E>
- United Nations experts expressed concerns about attacks, fatal to at least two children, by illegal miners in the Mundurucu and Yanomami Indigenous lands in Brazil, calling on the government to investigate and prosecute those responsible (June 2, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27134&LangID=E>
- United Nations and Organization of American States experts condemn the repression of peaceful protests in Colombia, and violent attacks against Indigenous Minga in Cali, calling on the authorities to act to prevent the increasing stigmatization of protestors (May 14, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27093&LangID=E>
- United Nations Expert Mechanism on Indigenous Peoples issued an advisory note on Brazil, urging the government to protect Indigenous peoples' rights during the COVID-19 pandemic (May 10, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27074&LangID=E>
Advice available here: https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session12/COIAB_BrazilAdvisoryNote.docx
- United Nations experts express concerns over a US\$3 billion tourism project on an island in Indonesia involving forced evictions of Sasak Indigenous peoples (March 31, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26962&LangID=E>
- United Nations experts call on Bangladesh to suspend construction of large-scale tourist resort that threatens to dispossess Indigenous Mro peoples of their lands and cause environmental damage (February 9, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26733&LangID=E>
- United Nations experts urge Philippine authorities to drop allegedly false murder charge against Indigenous rights defender (January 28, 2021)
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26696&LangID=E>

This newsletter relies on your contributions. Please get in touch with one of the editors if you are interested in writing a case note, reviewing a book or updating the RIPIG on new developments.



Book Reviews

- Angela Cameron, Sari Graben and Val Napoleon (eds), *Creating Indigenous Property: Power, Rights and Relationships* (University of Toronto Press, 2020), review by Ayla do Vale Alves.

The (lack of) compatibility between Indigenous traditional worldviews and legal institutions, and Western perspectives and legal mechanisms has been widely explored in relation to several areas of study. The debate ranges from issues of intangible cultural heritage protection and the difficulties to accommodate traditional knowledge into existing categories of intellectual property law, to conflicting understandings of sovereignty and a need to fit those into the Western standards of self-determination. Among such issues, different forms of ownership of land is a particularly important and contentious matter. That is because land often means a lot more to Indigenous peoples than Western understandings that conceive of it simply as real property. In traditional Indigenous worldviews land is connected to ancestry, spirituality, nature, stories, culture, a way of life, and ultimately, survival. Against this background, debates over the privatization of Indigenous lands touches upon fundamental values of Indigenous traditional perspectives, and also on an essential institution of Western laws: property.

Creating Indigenous Property explores these debates in ten chapters, each examining specific issues concerning privatization of Indigenous lands and the difficulties in considering Indigenous property through Western lenses and legal concepts. A number of issues are discussed, including gendered property matters in reserves, matrimonial real property division, and Indigenous perceptions of tax-paying through property-sharing. The core theme throughout the collection explores conflicting views on privatization and how it affects and can be affected by Indigenous peoples and laws. Thus, the collection questions whether privatization perpetuates neoliberalism and colonialist practices or whether it could be used to give Indigenous peoples control over their own social and economic agendas. Considering the value of privatization in the latter option, this collection further enquires: at what cost?

In addressing these questions, authors call for the adequate consideration not only of Indigenous traditional laws and ethics – in all their heterogeneity – when Indigenous lands are targeted before Western legal sys-

Selected Publications & Reports

Books

- Ranjan Datta (ed), *Indigenous Reconciliation and Decolonization: Narratives of Social Justice and Community Engagement* (Routledge, 2021)
- Harry Hobbs, Alison Whittaker and Lindon Coombes (eds), *Treaty-Making Two Hundred and Fifty Years Later* (Federation Press, 2021)
- Dominic O’Sullivan, *Sharing the Sovereign: Indigenous Peoples, Recognition, Treaties and the State* (Springer, 2021)
- Timo Koivurova et al (eds), *Routledge Handbook of Indigenous Peoples in the Arctic* (Routledge, 2021)
- Roger Merino, *Socio-Legal Struggles for Indigenous Self-Determination in Latin America: Reimagining the Nation, Reinventing the State* (Routledge, 2021)
- Sergio Puig, *At the Margins of Globalization: Indigenous Peoples and International Economic Law* (Cambridge University Press, 2021)
- Tayson Ribeiro Teles (ed), *Língua(gens), Literaturas, Culturas, Identidades e Direitos Indígenas no Brasil* (Bagai, 2021)
- Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, Revised and Expanded Edition, 2021)
- Nicole Watson and Heather Douglas (eds), *Indigenous Legal Judgments: Bringing Indigenous Voices into Judicial Decision Making* (Routledge, 2021)
- Sujith Xavier et al (eds), *Decolonizing Law: Indigenous, Third World and Settler Perspectives* (Routledge, 2021)

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tems, but also the incorporation of Indigenous institutions and mechanisms behind their traditional laws. Ultimately, with thorough examinations of Canadian legal instruments affecting Indigenous land and property rights, and lessons from the transnational context, *Creating Indigenous Property* examines ways to facilitate the debate on Indigenous land rights, promoting respect for Indigenous peoples diverse views and laws and exploring their compatibilization with Western legal mechanisms and systems. It is a very valuable collection for advocates of Indigenous land rights, policymakers, and scholars, in Canada and elsewhere. ■



Selected Publications & Reports —continued from page 11

Articles and chapters

- Troy H.J. Andrade, 'Hawai'i '78: Collective Memory and the Untold Legal History of the Reparative Action for Kānaka Maoli' 24 *University of Pennsylvania Journal of Law and Social Change* 85 (2021)
- Troy H.J. Andrade, 'E OLA KA 'ŌLELO HAWAI'I: Protecting the Hawaiian Language and Providing Equality for Kānaka Maoli' 6(1) *Indigenous People's Journal of Law, Culture & Resistance* 3-52 (2020)
- Sascha Dov Bachmann and Ikechukwu Ugwu, 'Hardin's "Tragedy of the Commons": Indigenous Peoples' Rights and Environmental Protection: Moving Towards and Emerging Norm of Indigenous Rights Protection?' 6 *Oil and Gas, Natural Resources and Energy Journal* 547 (2021)
- Betsy Baker, 'Smart as SILK: An innovative advisory body for implementing the knowledge-based requirements of the Central Arctic Ocean Fisheries Agreement' Wilson Center, Polar Institute, Polar Perspectives No. 4 (2021)
- Sylvanus Gbendazhi Barnabas, 'Protecting Land Rights of Indigenous Peoples in Africa: The Land Rights of Abuja Peoples of Nigeria and Ogiek Peoples of Kenya in Comparative Perspective' *African Journal of Legal Studies* (forthcoming)
- Amar Bhatia, 'Statehood, Canadian Sovereignty, and the Attempted Domestication of Indigenous Legal Relations' in Sujith Xavier et al (eds), *Decolonizing Law: Indigenous, Third World and Settler Perspectives* (Routledge, 2021)
- Maggie Blackhawk, 'On Power and the Law: McGirt v. Oklahoma' *Supreme Court Review* _____ (2021)
- Paula López Caballero, "El Indigenismo en Construcción. Cabildeo Interamericano e Investigación de Campo en los Inicios del Instituto Indigenista Interamericano (1940-1946) 70:4 *Historia Mexicana* 1715–1764 (2021)
- Kristen Carpenter and Alexey Tsykarev, 'The Impact of Indigenous Peoples on International Law' 115 *AJIL Unbound* 118-122 (2021)
- Claire Charters, 'The Sweet Spot Between Formalism and Fairness: Indigenous Peoples' Contribution to International Law' 115 *AJIL Unbound* 123-128 (2021)
- Angelique EagleWoman, 'Permanent Homelands Through Treaties with the United States: Restoring Faith in the Tribal Nation-U.S. Relationship in Light of the McGirt Decision' 47 *Mitchell Hamline Law Review* 640 (2021)
- Tulia G. Falleti, 'Invisible to Political Science: Indigenous Politics in a World in Flux' 83(1) *The Journal of Politics* e5 (2021)
- George K. Foster, 'The Participation Principle and the Dialectic of Sovereignty-Sharing' 44 *Seattle University Law Review* (2021)
- Kirsty Gover, 'The Potential Impact of Indigenous Rights on the International Law of Nationality' 115 *AJIL Unbound* 135-139 (2021)
- Roger Hamilton and Howard Kislowicz, 'The Standard of Review and the Duty to Consult and Accommodate Indigenous Peoples: What is the Impact of Vavilov?' 59(1) *Alberta Law Review* _____ (2021)
- Carolina Acevedo de la Harpe, 'Inclusión de Derechos Indígenas en Chile: Arquetipo Constituyente desde América Latina' 20:58 *Polis* 22-42 (2021)
- Paul Stanton Kibel, 'A Human Face to Instream Flow: Indigenous Rights to Water for Salmon and Fisheries' 35(3) *Emory International Law Review* 377-412 (2021)
- Rauna Kuokkanen, 'Indigenous Self-Government in the Arctic. Assessing the Scope and Legitimacy in Nunavut, Greenland and Sápmi' in Timo Koivurova et al (eds), *Routledge Handbook of Indigenous Peoples in the Arctic* 253-266 (Routledge, 2021)
- Malcolm Lavoie and Moira (Wolstenholme) Lavoie, 'Indigenous Institutions and the Rule of Indigenous Law' 101 *Supreme Court Law Review* 325 (2021)
- Beatriz de Almeida Matos, Bruno Pereira, Carolina Ribeiro Santana, Fabrício Amorim, Leonardo Lenin, Lucas Cravo de Oliveira, 'Violações dos Direitos à Saúde dos Povos Indígenas Isolados e de Recente Contato no Contexto da Pandemia de Covid-19 no Brasil' 12:1 *Mundo Amazônico* 106-138 (2021)



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- Macarena Del Pilar Manzanelli, 'La Propiedad Comunitaria Indígena como Issue Social. Análisis de Anteproyectos de Ley en Argentina (2015 a la Actualidad)' 26:1 *Postdata* 71-106 (2021)
- Stéphanie de Moerloose, 'Indigenous Peoples' Free, Prior and Informed Consent (FPIC) and the World Bank Safeguards: Between Norm Emergence and Concept Appropriation' 53 *Verfassung und Recht in Übersee* 223-244 (2020)
- David Meren, 'Safeguarding Settler Colonialism in Geneva: Canada, Indigenous Rights, and ILO Convention No. 107 on the Protection and Integration of Indigenous Peoples (1957)' 102(2) *Canadian Historical Review* 205-231 (2021)
- Roger Merino, 'The Land of Nations: Indigenous Struggles for Property and Territory in International Law' 115 *AJIL Unbound* 129-134 (2021)
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- Leo Mukosi, 'Dakota Access Pipeline a Case of Cultural Genocide? Through an Indigenous Data Sovereignty Lens' in Regina Paulose (ed), *Green Crimes and International Criminal Law* 183 (Vernon, 2021)
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- Sarah Ochs, 'A National Truth Commission for Native Americans' *Wisconsin Journal of Law, Gender & Society* _____ (2021)
- Ricardo Pereira, 'Public Participation, Indigenous Peoples' Land Rights and Major Infrastructure Projects in the Amazon: The Case for a Human Rights Assessment Framework' *Review of European, Comparative and International Environmental Law* (forthcoming)
- Melina Risso, Julia Sekula, Lycia Brasil, Peter Schmidt, Maria Eduarda, and Pessoa De Assis, *Illegal Gold that Undermines Forests and Lives in the Amazon: An Overview of Irregular Mining and Its Impacts on Indigenous Populations* (Igarape Institute, April 2021)
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- Magdalena Ugarte, 'Regulating the Duty to Consult: Exploring the Textually Mediated Nature of Indigenous Dispossession in Chile' in Paul C. Luken and Suzanne Vaughan (eds), *The Palgrave Handbook of Institutional Ethnography* 213-235 (Palgrave, 2021)
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