

RIGHTS OF INDIGENOUS PEOPLES INTEREST GROUP NEWSLETTER

Interest Group Highlights

RIPIG has been busy over the fall and winter. On Wednesday November 3, we held a seminar on Indigenous Peoples and Constitutional Reform. The RIPIG Co-Chairs, would like to thank the three speakers:

- Dr Dani Larkin (University of New South Wales),
- Assistant Professor Darcy Lindberg (University of Victoria); and
- Professor Valmaine Toki (Waikato University).

You can view the event here: <https://www.youtube.com/watch?v=A2MekASUkCQ>.

RIPIG is also busy planning a panel on indigenous languages for the 2022 ASIL AGM. Look out for further details coming soon.

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.

Indigenous Rights Developments

- Mapuche Woman elected to preside over Chile's Constitutional Convention (July 5, 2021). Elisa Loncón, a University professor in Santiago, linguist and activist for Mapuche rights was elected by an absolute majority (96 votes out of 155) to lead Chile's Constitutional body to replace the constitution in force since the dictatorship of Augusto Pinochet. The body will have nine months, with the possibility of extension for another three, to draft a new constitutional text that will then be put to a referendum. The election of Loncón to preside over the Constitutional body is symbolic in light of Chile's Indigenous peoples' hope for new cultural, political and social rights in the new Constitution.

—continued on page 2

INSIDE THIS ISSUE

Interest Group Highlights
1

Indigenous Rights Developments
1

Recommendations from UN
and Treaty Bodies
5

Statements and Reports
10

Book Reviews
11

Rights of Indigenous Peoples Interest Group

CO-CHAIRS

Brenda Gunn
Harry Hobbs

EDITORS

Ayla do Vale Alves
Bruno Pegorari
Harry Hobbs

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 —continued from page 1

More information available here:

https://www.reuters.com/world/americas/protests-delay-inauguration-chiles-new-constitutional-assembly-2021-07-04/?taid=60e21dd1b9a1150001df4b0e&utm_campaign=trueAnthem:+Trending+Content&utm_medium=trueAnthem&utm_source=twitter

More information available in Spanish here: <https://www.bbc.com/mundo/noticias-america-latina-57716044>

- Ukraine law recognising the rights of Indigenous peoples comes into force (July 23, 2021). Passed on 1 July 2021, the law recognizes Crimean Tatars, Karaites and Krymchaks as 'indigenous peoples of Ukraine'. The law recognises the rights of Indigenous peoples against assimilation, deprivation of cultural values, eviction or forced relocation. It also guarantees their cultural, educational, linguistic and information rights. Indigenous peoples of Ukraine will be able to establish their own educational institutions or cooperate with other educational institutions to teach their language, history and culture. They will also have the right to establish their own media outlets through their representative bodies.

More information available here: <https://www.aa.com.tr/en/europe/ukraine-s-parliament-adopts-law-on-indigenous-peoples/2291885>

- After almost 30 years, Peru demarcates land of isolated Indigenous Kakataibo people (July 23, 2021). In early 2021, the Peruvian government established the Yavarí Tapiche Indigenous reserve covering 2.7-million acre of rainforest. In July, the government demarcated the land of the Kakataibo isolated Indigenous peoples, covering almost 370,000 acres. The formal request for demarcation was filed in 1993, and since then has been supported by several Indigenous organizations and allies all around the world, which had been putting pressure on the Peruvian government to take action. The declaration of the reserve by the government is believed to contribute to the protection of the Kakataibo Indigenous peoples in voluntary isolation from threats related to trafficking of their lands, increasing deforestation, and other illegal activities. More information in Spanish available here: <https://ibcperu.org/nueva-reserva-indigena-protege-a-poblaciones-kakataibo-en-aislamiento-en-la-selva-central-del-peru/>

More information in Portuguese available here:

<https://www.survivalbrasil.org/ultimas-noticias/12621>

More information in English available here:

<https://www.andesamazonfund.org/news-blog/new-kakataibo-indigenous-reserve-in-peru-protects-indigenous-people-living-in-voluntary-isolation/>

- Indigenous tribes accuse Brazilian President Jair Bolsonaro of genocide at The Hague (August 12, 2021). Brazilian President Jair Bolsonaro has been accused of genocide at the International Criminal Court (ICC) in The Hague, following claims by Indigenous tribes that the far-right leader was responsible for more than 1,160 Indigenous deaths in 163 communities due to his negligence over the Covid-19 virus. Brazil's Indigenous People Articulation (APIB), a coalition of Indigenous associations across the country, filed a statement before the ICC prosecutor's office, accusing Bolsonaro's government of genocide and crimes against humanity due to its role in alleged crimes perpetrated against their community during the pandemic. The statement is composed of several complaints from community leaders, official documents, academic research, and technical notes. More information available here: <https://www.euronews.com/2021/08/12/indigenous-tribes-accuse-president-bolsonaro-of-genocide-at-the-hague>
- Native population in the United States increased by 86.5 per cent (August 13, 2021). According to 2020 Census data, the population of American Indian and Alaska Native people increased from 5.2 million in 2010 to 9.7 million in 2020, an increase of 86.5 per cent. American Indian and Alaska Native people represent 2.9 percent of the U.S. population (3.7 million people self-identified as American Indian and Alaska Native alone; 5.9 million in combination one race or more; 9.7 million alone or in combination). More information available here: <https://indiancountrytoday.com/news/2020-census-native-population-increased-by-86-5-percent>
- Indigenous Land in the Brazilian Amazon is a brake on deforestation and may start generating carbon credits (September 21-23, 2021). Study says that Brazil's Puyanawa Indigenous people will prevent around 6,400 tons of carbon dioxide emissions per



Indigenous Rights Developments —continued from page 2

year by 2025, equivalent to about USD 38,000 annually. Practices such as putting agricultural activities in previously degraded areas, forest restoration and agroforestry have prevented deforestation in their western Amazon reserve, which has dropped by half in recent years. The latest survey from Brazilian mapping project Mapbiomas shows that the country's forests and native vegetation are best preserved in Indigenous territories.

More information available here: https://news.mongabay.com/2021/09/indigenous-land-in-the-brazilian-amazon-is-a-brake-on-deforestation-and-may-start-generating-carbon-credits/?amp/?_twitter_impression=true

- [Guarani Kaiowá prayer house is burned down in Mato Grosso do Sul](#) (October 5, 2021). On 2 October 2021, Brazil's Indigenous People Articulation (APIB) denounced the burning of a prayer house of the Guarani Kaiowá people at the Tekoha Guapo'y village in Amambai. Mato Grosso do Sul state Indigenous leaders said that the attack was criminal and motivated by religious intolerance. This is the second arson attack against religious houses of the Guarani Kaiowá in the state in less than one month. On August 19, the house of prayer of the village Rancho Jacaré, in Laguna Carapã, of the 92-year-old Guarani Kaiowá healer Cassiano Romero, was also attacked. More information available here: <https://www.sinaldefumaca.com/en/2021/10/05/guarani-kaiowa-prayer-house-is-burned-down-in-mato-grosso-do-sul/>
 - [Ayoreo-Totobiegosode peoples of Paraguay's Chaco forest appeal to the Inter-American Commission to have their lands protected from deforestation and destruction](#) (October 5, 2021). Although most Ayoreo-Totobiegosode communities were involuntarily contacted by evangelical missionaries from the United States years ago, some of the tribes remain uncontacted, making them the last uncontacted groups in South America outside the Amazon. The region of Ayoreo lands suffers one of the highest rates of deforestation in the world. The Ayoreo-Totobiegosode submitted formal land claims to the government of Paraguay in 1993, but the state showed no political will to recognize their territorial rights. The community requested the Inter-American Commission on Human Rights' intervention in 2013. In 2016 the government agreed to begin formal negotiations regard-
- ing the group's land titles. With the continuing destruction of their lands after 42 meetings over five years, and far from an agreement, the Ayoreo decided to cease the negotiations with the state.
- Open letter (in Spanish) sent by organizations of Indigenous peoples and the environment (Organizaciones de Pueblos Indígenas y del medio ambiente) to the member states of the Alliance to Preserve Tropical Forests (Alianza para la Preservación de los Bosques Tropicales), the Inter-American Commission on Human Rights and other domestic and international organs concerning the illegal invasions and deforestation of Ayoreo-Totobiegosode lands: <https://fapi.org.py/carta-abierta-paraguay-debe-detener-invasiones-y-deforestacion-de-tierras-indigenas-ayoreo-totobiegosode/>
More information available here: <https://www.survivalinternational.org/news/12664>
More information available in Spanish here: <https://www.survival.es/noticias/12666>
- [Brazil court upholds ban on missionaries trying to contact isolated Indigenous](#) (October 6, 2021). Brazil's highest court has upheld a ban on missionaries entering reserves that are home to isolated and recently contacted Indigenous people during the pandemic. The decision comes in response to a lawsuit filed by Indigenous organizations against a law passed in July 2020 that allowed missionaries to remain inside these reserves despite the pandemic, in violation of Brazil's official policy in place since 1987. Besides the risk of disease spread, the presence of missionaries in these reserves undermines traditional cultures and social cohesion, and compels these nomadic communities to settle down, making the land more vulnerable to invasions by illegal ranchers and loggers, activists say. More information available here: <https://news.mongabay.com/2021/10/brazil-court-emphasizes-ban-on-missionaries-trying-to-contact-isolated-indigenous/>
 - [The Supreme Court of Norway stripped two wind farms of their operating licenses for breaching the rights of Sami reindeer herders](#) (October 11, 2021). The case centered on whether the construction of the turbines at Storheia and Roan in the Fosen region of central Norway had interfered with Sami herders' cul-

—continued on page 4



Indigenous Rights Developments —continued from page 3

tural rights under international conventions. A grand chamber of the supreme court unanimously found an interference with this right, and ruled the wind power licence and the expropriation decision invalid.

Reindeer herders had argued that the sight and sound of the wind turbines frighten animals grazing nearby and thus jeopardise age-old traditions, and that land should not be expropriated for such projects.

More information available here: <https://www.reuters.com/world/europe/two-norway-wind-farms-lose-licence-landmark-ruling-over-indigenous-rights-2021-10-11/>

- Mexico City to replace Christopher Columbus statue with one of precolonial Indigenous woman (October 14, 2021). The city's mayor said the removal of the statue of the Italian explorer Christopher Columbus, erected in 1877, is part of an effort to decolonize Mexico City's most well-known boulevard, Paseo de la Reforma. Columbus' statue will be moved to another location in the city, giving place to a recently found archaeological Indigenous figure known as 'The Young Woman of Amajac'. The decision to swap the statues follows protesters' threats to topple Columbus' statue. It also comes at a time when several monuments to explorers and *conquistadores* from the colonial era are being protested against and toppled across the Americas. The pedestal is currently still empty, but the new statue is set to stand around 20-feet tall, three times higher than the monument to Columbus. More information available here: <https://www.nytimes.com/2021/10/14/world/americas/mexico-columbus-statue-indigenous.html>

More information available in Spanish here: <https://www.dw.com/es/la-joven-de-amajac-sustituir%C3%A1-finalmente-a-la-estatua-de-col%C3%B3n-en-la-ciudad-de-m%C3%A9xico/a-59492392>

- First Nations leaders in Australia filed a landmark class action against the Australian government to protect communities in the Torres Strait from climate change (October 22, 2021). The claimants assert that Australia's failure to cut emissions will force their communities to migrate to new areas. The applicants allege that the Commonwealth owes a duty of care to Torres Strait Islanders to take reasonable steps to protect them, their culture and traditional way of life, and their environment from harms caused by climate

change, and that the government has breached this duty as the targets are not consistent with the best available science.

Petition available here: <http://climatecasechart.com/climate-change-litigation/non-us-case/pabai-pabai-and-guy-paul-kabai-v-commonwealth-of-australia/>
More information available here: <https://theconversation.com/why-the-australian-government-must-listen-to-torres-strait-leaders-on-climate-change-171384>

- Finland establishes a Truth and Reconciliation Commission to probe injustices and discrimination against its indigenous population (October 29, 2021). The commission will collect Sami people's experiences of the actions of the Finnish state and its various authorities and make this information visible to the public. It will report back on its work by the end of November 2023. A similar process began in Norway in 2018, and Sweden has been exploring setting up a commission since 2015. The Nordic countries are drawing upon Canada's experiences of reconciling its past with its own native populations in a process that ran from 2008 to 2015. More information available here: <https://www.bloomberg.com/news/articles/2021-10-28/injustices-against-nordic-indigenous-people-probed-by-finland>
- 'A continuation of colonialism': Indigenous activists say their voices are missing at Cop26 (November 3, 2021). At least 1,005 environmental and land rights defenders have been murdered since the Paris accords were signed six years ago, according to the international non-profit Global Witness. One in three of those killed were Indigenous. In the 26 years since the first UN Climate Change Conference of the Parties was held in Berlin in 1995, international climate policies have mostly ignored or violated the cultural and territorial rights of Indigenous peoples. This is despite the fact that Indigenous peoples were recognized in 2001 as a formal constituency, one of nine broad thematic clusters (that also include business groups, environmental NGOs, women and youth groups and trade unions) permitted to observe and lobby negotiators. More information available here: <https://www.theguardian.com/environment/2021/nov/02/cop26-indigenous-activists-climate-crisis>



Indigenous Rights Developments

—continued from page 4

- Ecuador's Constitutional Court held the country's first hearing in Indigenous territory, addressing Indigenous land rights and the right to free, prior, and informed consultation (November 15, 2021). The hearing held by the country's highest Court took place on November 15, in the Indigenous A'i Kofán territory of Sinangoe, in the north of the Ecuadorian Amazon. The hearing is part of a process of review of Ecuador's implementation of Indigenous peoples' right to free, prior and informed consultation and whether the country's consultation process respect Indigenous peoples' constitutional rights. Five out of nine Constitutional Court judges, and over 300 Indigenous representatives from all over the country were present in the hearing that lasted almost four hours.
More information available here: <https://news.mongabay.com/2021/11/court-convenes-historic-hearing-in-indigenous-territory-on-land-consent-issue/>
More information from the A'i Kofán Community, in Spanish, available here: <https://www.amazonfrontlines.org/chronicles/audiencia-corte-constitucional-ecuador-en-sinangoe/>
- Indonesian Court delivers landmark victory for Indigenous West Papuans (December 7, 2021). The Jayapura Administrative Court in West Papua Province ruled in favour of a district head who had revoked permits allowing more than a dozen palm oil companies to operate in Indigenous forest areas and turn them into plantations.
More information available here: <https://www.aljazeera.com/economy/2021/12/7/indonesian-court-delivers-victory-for-indigenous-rights-in-papua>
- Canadian government endorses the Indigenous Peoples Economic and Trade Agreement (December 10, 2021). The Indigenous Peoples Economic and Trade Agreement establishes a framework for facilitating cooperation between participating economies in order to identify and remove barriers to Indigenous peoples' economic empowerment and participation in trade. It comprises provisions on responsible business conduct, traditional knowledge, and traditional cultural expressions.
More information available here: <https://www.canada.ca/en/global-affairs/news/2021/12/canada-endorses-indigenous-peoples-economic-and-trade-cooperation-arrangement.html>

Recommendations from UN and Treaty Bodies

Human Rights Committee (HRC)

In its 133rd session (October 11 – November 5, 2021), the Human Rights Committee adopted its concluding observations on the second periodic report of Botswana (CCPR/C/BWA/2).

The HRC expressed its concern 'about the difficulties faced by minorities and indigenous communities in accessing public services, including healthcare and education, in enjoying their rights to their traditional lands and natural resources and in exercising their linguistic rights' (CCPR/C/BWA/CO/2 para 37). In response, the Committee recommends that the State Party '[e]nsure that the rights of minorities and indigenous communities, particularly in relation to their traditional lands, natural resources and linguistic rights, are promoted, protected and recognized in law and in practice' (CCPR/C/BWA/CO/2 para 38(a)); '[e]nsure the consistent and effective application of the principle of free, prior and informed consent before any developmental or other activities take

—continued on page 6

- Australian government releases report detailing how an Indigenous Voice to Parliament could be designed (December 17, 2021). The report follows on from the 2017 Uluru Statement from the Heart which called for a Voice to Parliament to be put in the Constitution. The model set out in the 2021 report will comprise two levels of institutions, 35 'Local and Regional Voices' and an overarching 'National Voice'. It proposes giving Aboriginal and Torres Strait Islander peoples a direct say on any national laws, policies and programs affecting them, though many question remain. It is not clear how the trigger for consultation will operate in practice, and the report's authors were not permitted to consider whether the Voice should be placed in the constitution. The next election in Australia is due by May 2022. It is unlikely that legislation to establish the Voice will be passed before then.
More information available here: <https://www.theguardian.com/australia-news/2021/dec/17/indigenous-voice-model-revealed-but-no-national-representation-until-after-2022-election> ■

Recommendations from UN and Treaty Bodies —continued from page 5

place on lands traditionally used, occupied or owned by minorities and indigenous communities;’ (CCPR/C/BWA/CO/2 para 38(b)); and, among other measures, ‘[e]nsure that indigenous communities are able to express themselves in their own languages and promote their cultures’ (CCPR/C/BWA/CO/2 para 38(e)).

More information available here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/352/66/PDF/G2135266.pdf?OpenElement>

Committee on the Elimination of Discrimination against Women (CEDAW)

In its 80th session (October 18–November 12, 2021), the Committee on the Elimination of Discrimination against Women adopted its concluding observations on the tenth periodic report of Ecuador (CEDAW/C/ECU/10).

The CEDAW showed concerns about ‘[l]imited access to education for indigenous girls and women’ (CEDAW/C/ECU/CO/10 para 29(a)), and ‘[l]imited access for indigenous girls and women to their own educational institutions and to the regular education system due to long distances between schools and indigenous communities and limited State funding for indigenous educational institutions’ (CEDAW/C/ECU/CO/10 para 29(b)). The Committee recommended that the State party ‘[s]trengthen the educational infrastructure in indigenous communities and rural areas, provide free and reliable school transport for indigenous girls and women in rural and remote areas and promote access by indigenous and rural girls and women to education by facilitating their enrolment in secondary schools and tertiary educational institutions’ (CEDAW/C/ECU/CO/10 para 30(a)), and ‘[e]nsure adequate opportunities for indigenous girls and women to receive instruction in their own languages in indigenous educational institutions by providing sufficient funding for such institutions and by ensuring that girls who have received their education in an indigenous educational institution have access to non-indigenous institutions at all levels of education’ (CEDAW/C/ECU/CO/10 para 30(b)).

More information available here:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fECU%2fCO%2f10&Lang=en

In its 80th session, CEDAW also adopted its concluding observations on the eighth periodic report of Indonesia (CEDAW/C/IDN/8).

The Committee noted with concern, among other issues, ‘that rural and indigenous women are disproportionately affected by development projects, including the exploitation of natural resources, deforestation and agricultural expansion, and land conflicts caused thereby’ (CEDAW/C/IDN/CO/8 para 45(a)); threats to Indigenous women’s access to land (CEDAW/C/IDN/CO/8 para 45(b)); and ‘Indigenous women’s limited access to land ownership, safe water and adequate sanitation’ (CEDAW/C/IDN/CO/8 para 45(d)). CERD recommended that Indonesia ‘[e]xpeditiously its efforts to protect indigenous women’s right to use natural resources and lands’ (CEDAW/C/IDN/CO/8 para 46(a)); ‘[c]onduct a gender assessment in the context of all environmental impact assessments and ensure that rural and indigenous women can fully contribute to the development of the country, require their free, prior, and informed consent to any development project on indigenous lands as well as adequate benefit-sharing agreements, and provide indigenous women affected by such projects with adequate alternative livelihoods, in line with the Indigenous and Tribal Peoples Convention’ (CEDAW/C/IDN/CO/8 para 46(b)); and ‘[e]liminate customary practices that discriminate against indigenous women in relation to land ownership and ensure indigenous women’s access to basic services, safe water and adequate sanitation’ (CEDAW/C/IDN/CO/8 para 46(c)).

More information available here:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/IDN/CEDAW_C_IDN_CO_8_47189_E.docx

In its 80th session, CEDAW also adopted its concluding observations on the ninth periodic report of the Russian Federation (CEDAW/C/RUS/9). The Committee expressed its concerns specially with regard to disadvantaged

—continued on page 7

Recommendations from UN and Treaty Bodies —continued from page 6

groups of Indigenous women in the State (CEDAW/C/RUS/CO/9 paras 44-45).

More information available here:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/RUS/CEDAW_C_RUS_CO_9_47186_E.docx

In its 80th session, CEDAW also adopted its concluding observations on the tenth periodic report of Sweden (CEDAW/C/SWE/10). The Committee showed its concerns specially with regard to '[t]he lack of legislation to protect the rights of Sami indigenous women and girls to their traditional lands' (CEDAW/C/SWE/CO/10 para 43(a)); and urged the State to '[a]dopt legislation requiring the free, prior and informed consent of and consultations and benefit-sharing with indigenous women and girls in relation to development projects affecting their traditional lands, in accordance with international standards' (CEDAW/C/SWE/CO/10 para 44(b)).

More information available here:

https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SWE/CEDAW_C_SWE_CO_10_47184_E.docx

Committee on the Elimination of Racial Discrimination (CERD)

In its 104th session (August 9-25, 2021), the Committee on the Elimination of Racial Discrimination did not issue any documents concerning Indigenous peoples' rights.

In its 105th session (November 15 – December 3, 2021), the Committee on the Elimination of Racial Discrimination adopted its concluding observations on the combined fourth to eighth reports of Thailand (CERD/C/THA/4-8).

The CERD expressed its concerns about 'the lack of disaggregated statistical information on the demographic composition of the population that would allow it to evaluate the enjoyment of the rights enshrined in the Convention by groups that face racial discrimination, in particular indigenous peoples' and other minority groups (CERD/C/THA/CO/4-8 para 5). CERD recommended that Thailand 'collect and provide updated statistics on the demographic composition of its population based on self-identification, disaggregated by ethnic groups, indigenous peoples, national origin

and languages spoken' among other indicators (CERD/C/THA/CO/4-8 para 6). CERD further recommended that the State 'conduct systematic review of its law and policies to guarantee their full conformity with the Convention and have no discriminatory impact on the rights of ethnic and ethno-religious groups, indigenous peoples, migrants, refugees, asylum seekers and stateless persons.' (CERD/C/THA/CO/4-8 para 10).

The Committee also showed concerns about 'the reports of intersecting and multiple forms of discrimination faced by ... indigenous peoples' and reports of 'various specific barriers faced by these groups in the exercise of their civil, political, economic, social and cultural rights, in particular access to education, health care and employment (arts. 1, 2 and 5)'. (CERD/C/THA/CO/4-8 para 13). CERD thus urged Thailand to 'take all measures necessary to combat the intersecting and multiple forms of discrimination faced by ... indigenous peoples' (CERD/C/THA/CO/4-8 para 14).

CERD also noted with concern shortcomings in the State's legislation as regards hate speech and hate crimes which have been reported to target Indigenous peoples (CERD/C/THA/CO/4-8 para 17); the targeting of human rights defenders advocating for Indigenous peoples rights (CERD/C/THA/CO/4-8 para 21); the lack of state recognition of 'the status and the rights of indigenous peoples, neither in its legislation, nor in any other form' (CERD/C/THA/CO/4-8 para 25(d)); the limited access of Indigenous peoples 'to public services, including healthcare, education and social protection, owing to administrative and language barriers and limited availability of such services where these groups live' (CERD/C/THA/CO/4-8 para 25(b)); the 'high levels of economic inequality and social exclusion' faced by Indigenous groups (CERD/C/THA/CO/4-8 para 25(c)); and the insufficient efforts to preserve and develop Indigenous culture, increasing the risk of disappearance of Indigenous languages (CERD/C/THA/CO/4-8 para 25(d)); among other causes for concerns affecting Indigenous peoples in Thailand.

More information available here: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/CERD_C_THA_CO_4-8_47281_E.pdf

Recommendations from UN and Treaty Bodies —continued from page 7

In its 105th session, CERD also adopted its concluding observations on the combined twenty-second and twenty-third reports of Chile (CERD/C/CHL/22-23).

CERD noted the reservation of a number of seats for Indigenous communities in Chile's ongoing Constitutional Convention and the fact that the President of the Convention is a Mapuche woman, calling this process a 'a promising opportunity to enshrine the recognition of the Indigenous Peoples and their rights in the Constitution and to develop a constitutional framework suitable to address the claims of the Indigenous Peoples of Chile' (CERD/C/CHL/CO/22-23 para 8).

Among other concerns, the Committee noted 'the multiple forms of discrimination that Indigenous Peoples ... face in the State party, which is reflected in their limited access to employment, education, health and migration regulations' (CERD/C/CHL/CO/22-23 para 12). In response, CERD 'urge[d] the State party to apply a gender perspective in all policies and strategies for combating racial discrimination in order to put an end to the multiple, intersectional discrimination faced by Indigenous Peoples ...' (CERD/C/CHL/CO/22-23 para 13).

More information available here: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CHL/CERD_C_CHL_CO_22-23_47282_E.pdf

Committee on Economic, Social and Cultural Rights (CESCR)

In its 70th session (September 27 – October 15, 2021) the Committee on Economic, Social and Cultural Rights (CESCR) adopted its concluding observations on the third report of the Plurinational State of Bolivia (E/C.12/BOL/3).

The CESCR expressed its concerns about the allegations of obstacles to enable access to Indigenous original peasant autonomy ('autonomía indígena originaria campesina') and the lack of guarantee of protection to Indigenous original peasant jurisdiction (E/C.12/BOL/CO/3 para 12). The Committee recommended that the State ensures Indigenous peoples legal security regard-

ing their lands, territories and natural resources traditionally occupied and used, and facilitates Indigenous autonomy (E/C.12/BOL/CO/3 para 13).

More information available in Spanish here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/317/11/PDF/G2131711.pdf?OpenElement>

In its 70th session, CESCR also adopted its concluding observations on the fifth report of Nicaragua (E/C.12/NIC/5).

CESCR welcomed the measures adopted by the State to consolidate the promotion and protection of the economic, social and cultural rights of Indigenous peoples in the country (E/C.12/NIC/CO/5 para 4). Yet, the Committee expressed concern over reports on the lack of adequate mechanisms to guarantee the right of Indigenous peoples to prior consultation in decision-making processes capable of affecting their rights, including rights over their traditionally occupied territories (E/C.12/NIC/CO/5 para 11). CESCR also demonstrated concern over social conflicts and violence around the possession and use of lands and territories between Indigenous peoples and occupying third parties or those interest in the exploitation of natural resources in those lands (E/C.12/NIC/CO/5 para 11).

The Committee recommended that Nicaragua design, adopt and implement, in consultation with Indigenous peoples, an adequate procedure to guarantee their rights to be consulted in order to obtain their free, prior and informed consent regarding any legislative or administrative measure capable of affecting their land rights, and that such procedure takes their traditions and cultural features into account (E/C.12/NIC/CO/5 para 12(a)). CESCR further recommended that the State establish an effective mechanism capable to guarantee the protection of Indigenous peoples' right to own, use, develop and control, safely, their lands, territories and resources (E/C.12/NIC/CO/5 para 12(c)). Moreover, the Committee urged the State to impartially and exhaustively investigate the cases of land theft and violence by third parties occupying Indigenous land against Indigenous communities (E/C.12/NIC/CO/5 para 12(d)).

—continued on page 9

Recommendations from UN and Treaty Bodies —continued from page 8

More information available in Spanish here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/322/46/PDF/G2132246.pdf?OpenElement>

In its 70th session, CESCR also adopted its concluding observations (E/C.12/CMR/CO/4) on the fourth periodic report of Cameroon (E/C.12/CMR/4), expressing its concern regarding discrimination and exclusion faced by Indigenous peoples and ‘lack of recognition of their rights with regard to access to land, their ancestral territories and natural resources’ (E/C.12/CMR/CO/4 para 12). The Committee recommended that Cameroon recognize the rights of Indigenous peoples and take effective measures to combat discrimination (E/C.12/CMR/CO/4 para 13(a)), guarantee Indigenous peoples’ right ‘to freely dispose of their lands, territories and natural resources’ (E/C.12/CMR/CO/4 para 13(b)), that there are ‘consulted with a view to obtaining their free, prior and informed consent to any measures that may affect them, including the implementation of projects on their lands and territories’ (E/C.12/CMR/CO/4 para 13(c)), and ‘[c]onsider ratifying the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169)’ (E/C.12/CMR/CO/4 para 13(d)).

More information available here: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QS-mlBEDzFEovLCuW6UZeww1QFihQBrUmR7Q0x%2b7sQ3AZSm%2ba7QNvS6tVnTh9k59MkRMQNGRUXQ4pLgokni08NG2SuYYEhZyG%2bBU%2foxSlz6SX6TVFRb4CoPNYWEU>

In its 70th session, CESCR also adopted its concluding observations (E/C.12/ZAF/CO/1) on the initial report of South Africa (E/C.12/ZAF/1).

More information on the Committee’s concerns and recommendations regarding Indigenous peoples available here: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW4b1%2f0yvDxdY793DPZphWleOyWAQHUGxGUSewW5PpFu5gemJWNSQSD8fGzepU%2bbhFg3jQA%2bt0mhFvzlmZTnRcslb3bg%2bPK%2bMo0nuRvnX0EES>

Committee Against Torture (CAT)

In its 72nd session, the Committee against Torture adopted its concluding observations on the third periodic report of The Plurinational State of Bolivia (CAT/C/BOL/3). The Committee expressed concern over violent acts of a racist nature including attacks, maltreatment and threats to Indigenous women by organized groups (CAT/C/BOL/CO/3 para 20), urging the State to investigate systematically all forms of hate crime in the country (CAT/C/BOL/CO/3 para 21(a)).

More information available here: https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BOL/CAT_C_BOL_CO_3_47275_S.pdf

Committee on Migrant Workers (CMW)

In its 33rd session (September 27 – October 8, 2021), the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) did not issue any documents concerning Indigenous peoples’ rights.

Committee on the Rights of the Child (CRC)

In its 88th session (September 6 – 24, 2021) 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 25th (virtual) session (August 16 – September 14, 2021), the Committee on the Rights of Persons with Disabilities (CRPD) did not issue any documents concerning Indigenous peoples’ rights. ■

Statements and Reports

- United Nations experts call on Honduras to stop arbitrarily detaining and criminalising human rights defenders of the Garifuna indigenous communities (9 July 2021).
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27290&LangID=E>
- United Nations Special Rapporteur on the rights of Indigenous peoples issues report on the enjoyment of human rights by Indigenous peoples living in urban areas. It discusses the challenges and opportunities of urbanization with regard to its impact on human rights and provides recommendations on measures necessary to guarantee the full enjoyment of human rights by Indigenous peoples living in urban areas, with a view to ensuring the effective and universal implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Doc A/76/202, 21 July 2021).
Report available here: <https://undocs.org/A/76/202>
- United Nations human rights experts urge the UNESCO World Heritage Committee to defer Thailand's bid to get a prized heritage listing for the *Kaeng Krachan* Forest Complex, saying the indigenous *Karen* are being subjected to rights violations in the park. (23 July 2021).
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27333&LangID=E>
- United Nations experts express concerns over the criminalisation, violations of due process and health rights of an Indigenous human rights defender in Guatemala (27 July 2021).
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27343&LangID=E>
- United Nations Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Cali Tzay, issues statement to mark International Day of the World's Indigenous Peoples and warns that Indigenous Peoples still face severe challenges due to COVID-19 (6 August 2021).
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27365&LangID=E>
- Pursuant to Human Rights Council resolution 42/20, the Special Rapporteur on the rights of Indigenous peoples issues report that focuses on the coronavirus disease (COVID-19) recovery phase and related plans, and the impact that the pandemic has had on the individual and collective rights of indigenous peoples. The report concludes with recommending greater inclusion and participation of indigenous peoples in the recovery process, in order to address their rights and unique needs, and calls for increased support for indigenous-led initiatives to sustain their cultures and economies in the COVID-19 recovery period. (UN Doc A/HRC/48/54, 6 August 2021).
Report available here: <https://undocs.org/en/A/HRC/48/54>
- United Nations Special Rapporteur on the rights of Indigenous peoples calls on the Brazilian Supreme Court to secure the rights of Indigenous peoples to their lands and to reject a legal argument being promoted by some businesses that want to exploit natural resources on traditional indigenous lands (23 August 2021).
Media release available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27400&LangID=E>
- United Nations Special Rapporteur on the rights of Indigenous peoples concludes visit to Costa Rica and highlights 'the absence of an organic legal framework and a coherent policy to ensure the effective protection of the collective rights of indigenous peoples, in particular the right to self-government, land, territory and resources' (6-17 December 2021).
End of mission statement available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27997&LangID=E>



Book Reviews

- *Indigenous Aspirations and Structural Reform in Australia*, by Harry Hobbs (Hart, 2020), review by Stephen Young.

In this beautiful and well-written book, Dr Harry Hobbs (University of Technology Sydney) tackles an issue that has implications far beyond his stated subject. Hobbs seeks to intervene at the Australian Commonwealth level of government, which has no Treaty or Constitutional protections for Aboriginal and Torres Strait Islander peoples as *Indigenous* peoples. Instead, the Commonwealth is structured to provide guarantees of formal equality so that Aboriginal and Torres Strait Islander peoples are treated the same as all non-Indigenous Australians. The central problem, therefore, is that the Australian government's commitment to formal equality enables the dominance of majoritarian parliamentary governance, which can work against the interests of Indigenous peoples within Australia. How can government that is dedicated to equality hear the voices of Indigenous peoples? Hobbs shows that this is not a new problem in Australia, nor is it a uniquely Australian problem even if the Australian legal system is unique.

After establishing this issue, he evaluates the existing governmental framework in Australia, including the judicial, legislative and executive branches to conclude that they fail to empower Aboriginal and Torres Strait Islander peoples to have their distinct voices heard within Australian government. He then draws from an internationally or transnationally informed approach to understanding the multiplicity of Indigenous aspirations to consider how Australia's governmental institutions might be redesigned. Although Hobbs notes that Indigenous peoples hold many diverse aspirations and some aspirations might not be identifiable or cognizable to a public law audience or decision-makers (a true problem), he argues that there are four essential criteria that government must achieve: *voice, power, ownership, and integrity*. These four criteria can become the basis for structural reform of government so that diverse Indigenous aspirations can be heard and empowered within government for the purposes of changing government without having to commit to a pre-established institution design. After articulating these four criteria, Hobbs uses them to evaluate two Indigenous representative bodies within state governments. The first Indigenous

representative body evaluated is the Aboriginal and Torres Strait Islander Commission, which existed from 1989 to 2004/05. The second is the Swedish Sámediggi, a representative body of and for Sámi, which was created in 1993 and still exists. These two case studies reveal that Indigenous representative bodies can empower Indigenous peoples to have their voices heard within government. These bodies also face tensions and challenges from within and, more problematically, from unreceptive state government actors. As a result, institutions must be designed to meet Indigenous aspirations for *voice, power, ownership, and integrity*, but, crucially, must sit within a broader institutional framework of the nation-state that complements Indigenous aspirations and forms of self-government. Drawing upon the Uluru Statement from the Heart as an example, Hobbs calls this complementary framework a 'Voice Plus' model. It should facilitate Indigenous autonomy at local levels and provides clear structural links to between local communities and national representative bodies.

Hobbs is clear that structural reforms must be Indigenous led, respond to Indigenous aspirations and reflect Indigenous self-determination. However, Hobbs is also clear that there are limits to structural reform, especially when oriented within the state's institutional frameworks. Institutional design and structural reform can empower Indigenous peoples, but ensuring that institutional frameworks are complementary requires non-Indigenous peoples to learn, hear, and support Indigenous-led efforts of reform.

- *International Heritage Law for Communities: Exclusion and Re-imagination*, by Lucas Lixinski (Oxford University Press, 2019), review by Bruno Pegorari

In *International Heritage Law for Communities: Exclusion and Re-imagination*, Professor Lucas Lixinski (UNSW, Sydney) provides the reader with a much-needed critical examination of whether, how, and where UNESCO accommodates local communities in the international cultural heritage system. More specifically, Lixinski investigates how the main five UNESCO heritage treaties account for local communities' participation in managing their own heritage.

—continued on page 12

Book Reviews —continued from page 11

The book's core argument throughout is that "[t]he system of international heritage law does not work to favour communities; rather, it ostensibly focuses on heritage as an end in itself, and, in so doing, privileges expert rule, or the co-option of heritage processes by basic state values such as sovereignty and territoriality" (p. 252). As a result, Lixinski claims, the UNESCO system promotes a double exclusion of local communities both from international decision-making processes and heritages themselves. This situation has considerably impacted the people living within and interacting with heritage on an everyday basis – affecting the 'human' aspect of heritage -- in favor of a rather 'object-centric' approach to heritage that relies upon and promotes heritage's physical aspect. The latter underpins the traditional state-centric, expert-based, and conservation-driven cultural heritage paradigm that Lixinski's heterodox take seeks to debunk.

The book is structured in eight chapters. By relying on the compromises reached during UNESCO treaties' draft processes, chapter two addresses how cultural heritage has become a proxy for state sovereignty and worked, even if unintentionally, to alienate communities from them. Chapter three focuses on how states and experts took over heritage management whereas communities, and their elusive definition, were gradually excluded from it. Chapter four is about time and how it (miss)captures the relationship between communities and the law regarding their heritage.

Chapter five delves into communities' engagement with heritage from an economic perspective and explores the potentials and disadvantages of 'heritage as development' from the standpoint of communities. Building on that, chapter six focuses on the relationship between sustainable development, the environment, and (natural) heritage, highlighting its effects on communities. Chapter seven digs into international treaties' heritage tools such as listing, funding, and cooperation and queries what work they can do for communities. Finally, chapter eight lays out and compare the bright and dark sides of international heritage law for communities.

Although not exclusively, *International Heritage Law for Communities* is also about Indigenous peoples. In acknowledging the difficulty to define community away from its objectified 'informant' role (necessarily reliant on expert translation), Lixinski draws upon the Indigenous context (p. 96-101) to rethink expertise itself. Instead of a 'documentary' expertise that reinforces the stereotyped image of the native residing in an 'unknowable past form' (p. 100), a 'participative' expertise where local communities are re-defined as multi-interested agents should be promoted. In this way, experts could be 'downgraded' to one (epistemic) community among others, whereas, alternatively, communities could be 'upgraded' to a particular form of expertise. Historically, the book argues that the 'Indigenous rights' movement offers a number of lessons' towards a less colonized and more 'community-based heritage management' (p. 103).

Among others, the book explores the case of East Rennell, 'the only item on the World Heritage List protected and managed solely under [Indigenous] customary law' (p. 185). From a critical legal perspective, this case (and the book in general) demonstrates that, despite its dark sides, the international heritage system can be instrumental for community empowerment. From a heritage perspective, it reveals that local communities are more than fit to engage in heritage governance and promote its decolonization.

- Our co-editor Bruno Pegorari has also reviewed Sergio Puig's new book, 'At the Margins of Globalisation: Indigenous Peoples and International Economic Law' (Cambridge University Press, 2021).

Read 'Towards an International Indigenous Economic Law (IIEL) genuinely oriented towards Indigenous peoples' rights and interests' at International Law Agendas (ILA Brazil)'s website here: <http://ila-brasil.org.br/blog/towards-an-international-indigenous-economic-law-iiel-genuinely-oriented-towards-indigenous-peoples-rights-and-interests/>

—continued on page 13



Book Reviews —continued from page 12

- *Traditional, National, and International Law and Indigenous Communities*, by Marianne O. Nielsen and Karen Jarratt-Snider (University of Arizona Press, 2020), review by Ayla do Vale Alves.

The relationship between Indigenous peoples and the law, since the beginning of colonization, has been complex, seldom harmonic, and mostly not beneficial to the former. Instead, Western law has been used to facilitate and/or legitimize colonial practices that have worked to dispossess, disenfranchise, marginalize, and oppress Indigenous communities. Still, Indigenous peoples have also strategically used the law to their own benefit and in response to some of the devastating consequences of colonialism. Moreover, Indigenous communities are also developing and reshaping their own laws and justice systems to enhance their advocacy, although continuously marginalized in Western judicial systems. Against this background, this book provides a careful, historically and culturally situated account of Indigenous peoples' relationship with and responses to the law and the effects of colonialism in this relationship, examining aspects and effects of national, international and traditional law in Indigenous resilience and capacity-building.

The book is divided into three parts and seven chapters. Part I addresses traditional law, highlighting its lack of recognition, understanding and consideration by mainstream lawmakers and political leaders, but promoting its use and reinforcing the need for new arrangements that accommodate dynamic Indigenous laws and justice systems in face of growing Indigenous efforts to revive themselves and their law. Part II examines national law focusing on the United States, but also addressing Canada, and the colonial subjugation of Indigenous laws as inferior or non-existent, then exploring Indigenous peoples' innovative strate-

gies to respond to current complex legal systems embedded in that colonial mentality. Such strategies include, for instance, supporting tribal elders as expert witnesses, women-led community advocacy safeguarding women's rights, or alternative strategies, such as negotiation and political action, where claims to protect land based on its sacredness prove fruitless. Part III explores international law as an important tool to pressure states into recognizing Indigenous rights and to support the recognition of Indigenous customary laws and justice systems; and promotes Indigenous justice programs as effective mechanisms to operationalize international Indigenous rights and overcome marginalization. It also addresses domestic jurisdictions that have been incorporating international norms related to Indigenous traditional law to assess their strengths and shortcomings. A common negative feature, for instance, is the limitation of Indigenous jurisdictional reach by domestic law, that renders traditional justice systems very restricted in scope. Nevertheless, possible solutions to these shortcomings exist. Consider the example of Colombia and its approach of not strictly defining the jurisdiction of Indigenous courts.

Overall, this book supports the ongoing relevance and resurgence of Indigenous traditional law, and Indigenous rights to make and use such laws and their institutions as an exercise of their sovereignty, against the ineffectiveness, lack of cultural awareness, and unfairness of "European-based" legal systems. It is an excellent and necessary resource for law students, legal professionals, Indigenous advocates and allies that want to break the colonialist chain of Western legal exercise that disrespects Indigenous sovereignty by ignoring their laws and justice systems. ■