Category: Obligations Relating to Those in Vulnerable Situations

Sub-Category: Indigenous Peoples

Name of Good Practice: Indigenous Peoples’ Property Rights - Jurisprudence of the **Inter-American Court of Human Rights**

Key Words: Access to Justice, Free Prior and Informed Consent, Indigenous, Jurisprudence, Regional, Tribunal

Implementing Actors: Court: Inter-American Court of Human Rights

Location: 20 countries in Latin America and the Caribbean subject to the Court’s jurisdiction

Description: The Inter-American Court of Human Rights applies and interprets the American Convention on Human Rights in respect to the 20 State Parties who have agreed to the Court’s contentious jurisdiction. Only a State Party or the Inter-American Commission on Human Rights has the capacity to bring cases before the Court.

The Court has developed a strong jurisprudence on indigenous and tribal property rights issues through its interpretation of the American Convention. For example, in the *Case of the Mayagna (Sumo) Awas Tingni Community* (2001), the Court established that States are required effectively to delimit and demarcate the ancestral property of indigenous and tribal peoples and to “abstain from carrying out, until that delimitation, demarcation, and titling have been done, actions that might … affect the existence, value, use or enjoyment of the property located in the geographical area where the members of the Community live and carry out their activities.”

Moreover, the Court has articulated safeguards to ensure that any potential restrictions on indigenous and tribal peoples’ property rights (e.g., through the granting of concessions on their territories) preserve, protect and guarantee the special relationship that they have with their ancestral lands and do not endanger their survival. For example, in *Saramaka People v. Suriname* (2007), the Court held that a State must consult with a community regarding any proposed concessions or other activities that may affect its lands and natural resources, ensure that no concession will be issued without a prior assessment of its environmental and social impacts, and guarantee that the community receives a “reasonable benefit” from any such plan if approved. Moreover, the Court stated that with respect to “large-scale development or investment projects that would have a major impact within Saramaka territory,” the State must do more than consult with the Saramaka; it must “obtain their free, prior, and informed consent, according to their customs and traditions.”

Further Information: See the Court’s website: <http://www.corteidh.or.cr/index.php/en>; the Independent Expert’s Individual Report on the Inter-American human rights system: <http://ieenvironment.org/mapping-report-2014-2/>.