Category: **Obligations Relating to Those in Vulnerable Positions**

Sub-Category: **Indigenous Peoples**

Name of Good Practice: Decision of the Mexican Supreme Court of Justice: Amparo No. 631/2012 (Independencia Aqueduct)

Key Words: Access to Justice, Accountability, Constitutional Court, Constitutional Right to Environment, Free Prior and Informed Consent, Indigenous, Jurisprudence, Remedy

Implementing Actors: Court: Supreme Court of Justice of Mexico

Location: Mexico

Description: The Yacqui Tribe from Sonora, Mexico, filed an *amparo* action against the Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT/Mexican Ministry of Environment and Natural Resources) concerning the construction of the *Independencia* aqueduct, which is designed to remove 60 million cubic metres of water from the Yaqui River to supply water to the city of Hermosillo. The Yaqui Tribe alleged that the project violated a 1940 presidential resolution that provided them with 50 per cent of the volume of the flow from the Yaqui river waters, and that the project was carried out without the government informing or consulting with the Yaqui Tribe.

The Supreme Court of Justice issued two consecutive judgments finding that the Yaqui’s rights had been violated. The first judgment, on 8 May 2013, relied on Article 2 of the Constitution (indigenous consultation), ILO Convention 169 on Indigenous and Tribal Peoples and the *Saramaka People vs. Suriname* and *Kichwa Indigenous People of Sarayaku vs. Ecuador* decisions from the Inter-American Court of Human Rights. It found that the government had not consulted with the Yacqui Tribe prior to the environmental impact authorization of the project and that, accordingly, the government must undertake prior consultation, based on good faith, with the objective to reach an agreement, and in a culturally appropriate manner, and that the government must fully inform the Yaqui Tribe of the nature and consequences of the project before and during the consultation. Upon request from SEMARNAT, the Supreme Court clarified its decision on 8 August 2013, explicitly stating that the environmental impact authorization which cleared the construction of the aqueduct must be declared without effect until SEMARNAT has consulted with the Yaqui tribe pursuant to the terms set out in its May 2013 judgment. Despite the rulings from the Supreme Court of Justice, various civil society organisations have reported that SEMARNAT has not complied with the judgment and that the government is harassing the Yaqui Tribe. For example, Article 19 and Frontline Defenders recently expressed concern at the arrest of the Yacqui Tribe spokesperson on what they called “unsubstantiated” charges.

Further Information: The full decision can be found at: <http://www.escr-net.org/sites/default/files/Sentencia%20SCJN%20%28Acueducto%20Independencia%29.pdf>; an English translation is available at: <http://indigenouspeoplesdevelopment.com/wp-content/uploads/2013/10/Judgment-631-2012_EN.pdf>; information from Frontline Defenders can be found at: <http://www.frontlinedefenders.org/node/27373>.