



**CASES CONCERNING INDIGENOUS PEOPLES' RIGHTS
AND FISHERIES**

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Author: Birgitte Feiring (Charapa Consulting), Sofie Gry Fridal Hansen (DIHR), Kloe Ojaghi (DIHR)

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Denmark's National Human Rights Institution
Wilders Plads 8K, DK-1403 Copenhagen K
Phone +45 3269 8888
www.humanrights.dk

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IMPACT OF INDUSTRIAL FISHERIES

RUSSIA – ITELMEN

Key words: Inland; River; Smelt fish

Year: 2008

The Itelmen are a small indigenous group in Kovran, living to the West of the Kamchatka peninsula in the Far East region of Russia.¹

From 2008, the Itelmen have opposed the industrial fishery located in the Kovran river, as the massive fishing threatens the stock of smelt fish. The Kamchatka Ministry of Fisheries (Fishery Ministry) considered that it was possible to establish limits on industrial fishing on the Kovran river. However, a month later, the Russian Fishery Committee made a competition for distribution of fishing sites. The Itelmen claim that their right to fish has been undermined by commercial fishing companies, and unfavourable legislation that allows for fishing quotas that undermine their right to fish.²

HONDURAS – MISKITOS

Key words: Ocean; Diving; Hazardous Working Conditions; Business and human rights; NHRI; Special Rapporteur on the rights of indigenous peoples; Committee on the Elimination of all forms of Racial Discrimination; Inter-American Commission on Human Rights; Inter-American Court of human rights;

Year: 2002 – 2022

The situation of the indigenous Miskito divers in the Gracias a Dios region of Honduras, illustrates the grave human and labour rights violations that can occur in the fisheries sector. The region is characterised by high poverty levels, illiteracy, unemployment, chronic malnutrition, and poor access to health services, among others. Generally, the state presence and control in the region are weak. Artisanal lobster fishing was traditionally part of the Miskito livelihood, and the freediving capacity of the indigenous fishers was exploited in the rapid commercialisation of the industry. Lobster diving is now the main source of employment in the region, especially for boys above 14 years, and lobster is one of the main export products of Honduras.³

In 2002, the Honduran National Human Rights Commission (CONADEH) presented a report, referring to the situation of indigenous Miskito divers involved in fishing for lobster. CONADEH reported that over two decades, young Miskitos had been exposed to decompression accidents, causing paralysis and other neurological injuries, due to a lack of proper diving equipment. To address the situation of the Miskito divers, CONADEH issued a series of recommendations to different state institutions, such as the Ministries of Work and Social Security, the Honduran Social Investment Fund, the National Congress, the marine and the police.

In 2004, the Pan-American Health Organisation estimated that 97 % of the 9,000 divers that were engaged in the industry had some degree of decompression syndrome, and at least 4200 were totally or partially paralysed. The Association of Crippled Miskito Divers of Honduras reported that at least 400 divers had died of diseases related to their work. The reasons for these devastating effects are: lack of supervision of the diving teams; abuse by the boat captains, forcing the divers to go deeper than 40 metres down; accidents caused by the abuse of drugs, which are permitted and provided by the captains; lack of training; lack of first aid in the case of accidents. of decompression facilities⁴.

In 2004, the Association of Crippled Miskito Divers, the Association of Miskito Women and the Almuk Nani Asla Takanka Council of Elders, filed a petition to the Inter-American Commission on Human Rights, alleging that Honduras had violated the rights of 53 Miskito indigenous persons. In 2018, the Commission concluded that Honduras was responsible for violations of the right to life, to integrity of the person; to a fair trial; to family life; the rights of the child; the right to access to justice; and the rights to health and to work. Moreover, taking into account the multiple vulnerability factors of the victims who belong to an historically excluded indigenous people living in extreme poverty, the Commission also noted that the state was responsible for violating the principles of equality and non-discrimination.⁵

In 2014, the Committee on the Elimination of Racial Discrimination published its concluding observations on Honduras. The Committee expressed concern over the deplorable situation of Miskito divers that had suffered work injuries due to a lack of safe working conditions. The committee noted the establishment of an inter-agency commission to address and prevent the problem of underwater fishing but expressed regret over the lack of information about measures taken to assist divers who have developed a disability and to prevent further accidents.⁶

The Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz visited Honduras in 2015 and urged the government of Honduras to adopt the necessary measures to regulate and monitor underwater fishing, as well as to address the demands of Miskito divers and their families for health services, social services, and compensation.⁷

Given the failure of the state to protect the Miskito divers and provide remedy to the victims, the Inter-American Commission on Human Rights relayed the case to the Inter-American Court of Human Rights in 2019.⁸

In August 2021, the Inter-American Court delivered its judgment on the case. It found that Honduras was responsible for violations of the rights to life, personal integrity, judicial guarantees, equal protection of the law, judicial protection, health, work and just and favourable conditions, social security, and equality and non-discrimination as well as the rights of the child. Accordingly, it ordered the State to, among other things:

- Provide medical and psychological assistance to the victims and their family members and strengthen the health system in La Moskitia;
- Grant scholarships to the victims, their children and their grandchildren;
- Establish a programme of productive projects in favour of the victims and their

family members, in consultation with them, to ensure them a dignified life; Provide housing to the victims and their family members;

- Develop and broadcast a documentary about Miskito divers and their fight with a view to overcoming prejudices against them and design and implement a sensitization campaign about the situation of the Miskito people for the general public;
- Provide reparation for the material and immaterial harm caused, according to the terms established by the Court;
- Include Miskito divers and their family members in the social programmes targeting persons living in situation of extreme social exclusion;
- Adopt measures to ensure adequate regulation, inspection and supervision of the activities undertaken by industrial fishing companies.
- With regards to this last measure, the Court also indicated that companies must adopt safeguards to ensure the protection of their workers' rights and to avoid adverse impacts stemming from their activities on local communities and the environment.⁹

In 2022, Miskito divers who developed medical conditions after diving without adequate equipment said that the Honduran government has not yet fully complied with the 2021 court ruling mandated compensation. Today, only 10 of the original plaintiffs are still alive.¹⁰

A study undertaken by DIHR and CONADEH in 2021-22 (to be published in 2023), confirms the continued human rights violations associated with the diving practices, and highlighted the following factors:

- The lack of a regulatory framework and control mechanisms;
- 90 % of those who suffer accidents in the high sea are not offered adequate first aid;
- Only 10% of the divers who suffer accidents make a claim for reparation, due to the costs of transport in the region; failure of the boat owners and captains to assume responsibility; weak presence of responsible institutions, and; lack of communication between institutions.
- Incomplete information about the situation of the divers;
- Lack of job and economic alternatives in the region;
- The majority of involved companies are not aware of their human rights responsibilities, as reflected in the UN Guiding Principles on Business and Human Rights;
- The seasonal prohibitions for lobster fishing are selective and impact the cultural use of other species as well as the livelihoods of the indigenous peoples and afrodescendants in the region.¹¹

CANADA - KWAKWAKA'WAKW PEOPLE

Key words: Marine; Business and human rights; Salmon fish farm; Piscine orthoreovirus; Sea lice; Waste dumping; Free, Prior, and Informed consent (FPIC); Environmental pollution

Year: 2017

The Kwakwaka'wakw people are considered the traditional gatekeepers of the Northeast Coast of Vancouver Island, living in the island since time immemorial.¹²

Foreign companies such as Marine Harvest, the largest salmon farm corporation in the world, have been operating in the Kwakwaka'wakw territory of First Nations Mamalilikala, Musgamagw and 'Namgis for the last 30 years without their consent.¹³

Amongst the companies present in the island is the Swanson Island fish farm, located in Kwakwaka'wakw territory. The Swanson Island fish farm has become a breeding ground for Piscine orthoreovirus (PRV) and sea lice. Because of the PRV, the salmon are developing diseases that act as vectors and infect native wild species, threatening their populations. Additionally, some salmon packing plants are dumping raw salmon waste into water systems, which is also infecting the local wild salmon.¹⁴

The Kwakwaka'wakw people depend on salmon for their livelihood. As a way of protesting what private companies are doing in their territories, some members of the Kwakwaka'wakw people occupied the Swanson Island fish farm for over 284 days in 2017, being the longest occupation of any fish farm located in British Columbia. Besides from the occupation, members of the Kwakwaka'wakw First Nation have also protested the expedition of licenses to British Columbia fish farms.¹⁵

CHILE - MAPUCHES (MAPUCHES-HUILICHE AND MAPUCHES-LAFKENCHE), THE KAWÉSQAR AND THE YAGÁN PEOPLE.

Key words: Marine; Salmon fish farm; Environmental pollution; Right to food; Free, Prior, and Informed Consent (FPIC); Regional court; NHRI; Business and Human Rights

Year: 2016-ongoing

In May 2016, the death of thousands of tons of salmon, and the consequent dumping of some of these into the ocean, generated a so-called "red tide". The proliferation of red tide led to a preventive closure of the coastline from southern Chiloé to Los Ríos region and the declaration of a health alert over the consumption of shellfish. This ignited a mobilization amongst the Mapuche Huilliche who inhabit Chiloé island, and who were not able to carry out their traditional subsistence activities because of the crisis. The Huilliche attribute a healing and purification power to the sea; therefore, the pollution of the sea also affected their spiritual beliefs and customs.¹⁶

In the context of the crisis, Chile's National Human Rights Institute (INDH) undertook a fact-finding followed by the issuing of recommendations to the Chilean government. Amongst the recommendations, INDH highlighted that the government of Chile

must act diligently to guarantee the local community's right to food, having a special consideration for local indigenous people's historical diets.¹⁷

In 2021, INDH and the Danish Institute for Human Rights conducting a Sector-Wide Human Rights Impact Assessment of the salmon industry in Chile. The assessment revealed that salmon aquaculture in Chile contributes to industrial waste on beaches, waters and the seabed; use of chemicals and antibiotics that are not safe for humans nor for marine species; alterations of the seabed; frequent salmon escapes; massive dumping of dead salmon into the sea; damage to marine mammals; pollution of freshwater areas and other types of perceived pollution. All of these affect the well-being and hinders the cultural practices of Mapuches-Huilliche, Mapuches-Lafkenche, the Kawésqar and the Yagán indigenous peoples.¹⁸

By the end of 2021, representatives of Mapuches Huilliche, Kawésqar and Yagán indigenous peoples, summoned the Chilean State to the Inter-American Court of Human Rights. In the request for a hearing, these peoples argued that the expansion of the salmon farming industry has exerted pressure over the ecosystems and indigenous territories.¹⁹

GOVERNANCE OF TENURE RIGHTS

The examples included in this category refer to all instances of disputes over indigenous peoples' rights to tenure and failure to promote, protect and fulfil rights of indigenous peoples to land, territories and natural resources, including marine resources.

INDONESIA – SASAK FROM THE WEST NUSA TENGGARA PROVINCE

Key words: Marine; Urban development; Tourism project; Alleged forced evictions; Land expropriation; Asia Infrastructure Investment Bank (AIIB); NGOs; NHRI; Special Procedures,

Year: 2020-2022

The Mandalika urban development and tourism project carried out in Indonesia's Lombok Island has led to the alleged forced evictions of the coastal Indigenous Sasak communities and expropriation of their land. Hundreds of families have been forced to leave their homes by government and armed security forces.²⁰

After receiving information about the alleged forced evictions, Komnas HAM (the National Human Rights Institution) conducted monitoring missions during 2020. Following the missions, Komnas HAM recommended that Indonesia's Tourism Development Corporation (ITDC) the agency in charge of implementing the project, pay compensation to the evicted residents for the loss of buildings and crops located on their land and to provide them with psychosocial recovery and rehabilitation. Komnas HAM also recommended that the parties identify, locate, verify, and clarify the disputed land plots, and urged the government to identify solutions to protect the residents from forced evictions.²¹

In March 2021, a joint communication was sent from 8 Special Procedures²² to the Government of Indonesia. The Special Procedures expressed their serious concerns that the ITDC appears to have prima facie failed to respect human rights in the implementation of the Mandalika project.²³

A few days later, Olivier de Shutter, Special Rapporteur on extreme poverty and human rights sent a communication to the President of Asia Infrastructure Investment Bank (AIIB) where he shared observations on the conditions under which the alleged forced evictions took place, including the consent of the affected households and communities; the compensation for the loss of land, properties and livelihoods; and the conditions of resettlement. He stated that these elements constitute a prerequisite for the success of the Mandalika project.²⁴

Despite several actors condemning the project for its alleged human rights violations, the AIIB has argued that the project meets AIIB's standards and has refused to address the human rights violations associated with the project.²⁵

COLOMBIA – RAIZAL

Key words: Ocean – Maritime border – ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) – International Court of Justice

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) has addressed a case concerning the traditional fishing activities by the Raizal people of Colombia.²⁶

The case concerned the traditional fishing rights of the Raizal beyond the jurisdiction of the coastal State, which had allegedly been adversely affected by the decision of the International Court of Justice (ICJ) on the delimitation of the maritime border between Colombia and Nicaragua of 2012. It was complained that the delimitation of the maritime borders was made without the consultation and the participation of the people concerned and resulted in severe losses of livelihoods because some Raizal people's traditional fishing territories were considered to be part of the Nicaraguan sea as a result of the ICJ's decision. As a result, Colombia has filed an objection with the ICJ asking for the recognition of Raizal people's customary fishing rights.²⁷

NORWAY – SÁMI

Key words: Ocean – Marine – Fishing – Cultural fishing right – Legislation

Year: 2011-2020

In 2011, the Special Rapporteur on the rights of indigenous peoples, James Anaya, examined the human rights situation of the Sámi people of Norway, Sweden, and Finland. In this report, the Special Rapporteur highlighted Norway's Finnmark Act of 2005 as it protects the advancement of Sámi rights to self-determination and control over natural resources. The Special Rapporteur acknowledged that while the Finnmark Act is an important step towards advancing Sámi rights, some Sámi representatives characterized the law as not being fully protective and noted that the extent to which it genuinely advances Sámi self-determination and resource rights will be determined by its implementation over time.²⁸

In 2011, the Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations noted that measures taken may not be sufficient to preserve and promote the culture of the Sámi people, including the fishing rights of the Sea Sámi.²⁹ In its 2015 concluding observations, CERD expressed concern that while the Finnmark Act recognizes that Sámi have acquired collective and individual rights in Finnmark through long-term usage of land and resources, there remain significant gaps in translating the legal recognition into practice, thus resulting in limited recognition and protection of Sámi rights over their lands. The Committee finally recommended Norway to take concrete steps to ensure full practical effect of the legal recognition of the Sámi rights to their lands and resources as provided for in the Finnmark Act to enable them to maintain and sustain their livelihoods.³⁰

In 2013, the UN Committee on Economic, Social and Cultural Rights (CESCR), referring to the right to take part in cultural life, recommended that Norway take steps

to preserve and promote the traditional means of livelihood of the Sámi people, such as reindeer-grazing and fishing.³¹

In 2014, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) examined the impact of Norway's Marine Resources Act on Sámi fishing rights. The Committee emphasized that indigenous peoples' fishing rights must be specifically safeguarded, in conformity with article 15 of Convention No. 169, which recognizes indigenous peoples' right to the natural resources pertaining to their territories. The Committee also invited the State to provide information on the measures taken, with the participation of the Sámi, to ensure that traditional fishing activities are strengthened and promoted, in line with article 23 of ILO Convention No. 169, which addresses indigenous peoples' traditional activities, including fishing.³²

In 2016, the National Human Rights Institution (NHRI) of Norway conducted a study on Sámi rights to fisheries in coastal sea areas based on customary use, with reference to ICCPR article 27 and ILO Convention no. 169 on the rights of indigenous peoples.³³ The study concluded that: (i) the Sámi rights to fisheries as a part of their culture and based on their customary fisheries should be secured by law; (ii) the right to participate in the management of the natural resources should be better secured; and (iii) processes are needed to secure that the Sámi rights to fisheries are not violated by industrial - or other new - use of coastal sea areas. These conclusions are in line with the Governmental Commission Report on fishing rights in the sea surrounding Finnmark³⁴, and the recommendations of CERD in 2015.

In 2018, the NHRI included a section on Sámi rights to fisheries in its independent report to the Human Rights Committee (HRC), described the key issues and the view held by the Government that the rights of the Sea Sámi, are sufficiently implemented through the amendments of the provisions and administrative fishery system. The NHRI suggested that the HRC recommended Norway to: "consider recognizing in statutory law the fishing rights of Sea-Sámi along the coast of Finnmark".³⁵ HRC addressed the lack of legislation ensuring fishing rights of indigenous peoples through the lenses of the rights to self-determination, to equality and non-discrimination and to enjoy one's culture. It recommended that Norway should enhance the legal framework on indigenous land, fishing and reindeer rights, ensuring in particular that fishing rights are recognized by law.³⁶

In 2020, the NHRI included a section on Sámi fishing rights in its independent report to CESCR. The NHRI suggested that the CESCR recommends Norway to: "consider recognizing in statutory law the Sami rights to fisheries as a part of their culture and based on their customary fishing"; and "strengthen the rights of the Sami to participate in the management of maritime natural resources, and secure that the Sami rights to fisheries are not violated by industrial- or other new - use of coastal sea areas".³⁷ The CESCR did not address these issues in its concluding observations in 2020.³⁸

NEW ZEALAND – MĀORI

Key words: Marine; Restrictions; Fishing rights; HRC; International Covenant on Civil and Political Rights

Year: 2000

The *Apirana Mahuika v New Zealand* case was taken to the Human Rights Committee (HRC) by a group of Māori people representing seven different tribes (tiwis). The claimants attested that New Zealand had violated their rights to self-determination, to equality and non-discrimination, to enjoy one's culture, to equality before the law, and to freedom of thought, conscience, and religion, because of the restrictions imposed on their ability to fish.³⁹

The HRC examined the example with reference to article 27 of the International Covenant on Civil and Political Rights, which recognizes the right to enjoy one's culture.⁴⁰

The Committee stated that the use and control of fisheries is an essential element of the culture of the Māori and therefore it is protected under the right to enjoy one's culture. The court further claimed that such right does not only protect traditional means of livelihood but also allows for adaptation of those means to the modern way of life. The HRC emphasized that the enjoyment of the right to one's own culture may require positive legal measures of protection by the State as well as measures to ensure the effective participation of members of concerned communities in decisions which affect them.⁴¹

The HRC highlighted that to comply with article 27 of the International Covenant on Civil and Political Rights, measures affecting the economic activities of the Māori must be carried out in a way that the authors continue to enjoy their culture and profess and practice their religion in community with other members of their group.⁴²

SWEDEN – SÁMI

Key words: Fishing; Permits; Self-determination; Provincial Court; Supreme Court.

Year: 2020

In 2019, Umeå Provincial court ruled in favour of the Girjas Sámi village/association and the Swedish Sámi National Union (SSR). The claimants had taken the Swedish state to court to fight for their right to manage hunting and fishing in areas traditionally occupied by the Girjas Sámi village.⁴³

A District Court had granted Girjas Sámi village the right to control hunting and fishing permits on their land. Later, the Office of the Chancellor of Justice, on behalf of the Swedish state argued against the decision, stating that it is the state who owns the land and must have a decision on hunting and fishing.⁴⁴

After the Provincial court ruling, the Swedish state appealed, and the case was taken to the Swedish Supreme Court.⁴⁵

In 2020, the Supreme Court delivered its decision on the case. The court found that the Girjas community retained the sole right to manage hunting and fishing rights in the disputed area, based on a possession since time immemorial, including the right to lease these rights to others.⁴⁶ The verdict therefore establishes that:

- Girjas Sami District may grant small-game and fishing rights in the area without the consent of the State; and
- the State is not permitted to grant such rights.⁴⁷

UNITED STATES – METLAKATLA TRIBAL COMMUNITY

Key words: Marine; Fishing; Fishing rights; District Court; Federal appeals court,

Year: 2020

The Metlakatla Indian Community of Alaska sued the Alaska Governor Mike Dunleavy and state agencies, for legal recognition of their fishing rights. The indigenous community said that the commercial fishing permit system is detrimental for the local fishermen that harvest on traditional fishing grounds, as they are required to seek a permit.⁴⁸

In 2021, a District Court judge sided with the State of Alaska and dismissed the case. However, in 2022, a federal appeals court ruled that Metlakatla tribal members should not require state permits to fish in waters that they have traditionally relied on.⁴⁹

SOUTH AFRICA – THE KHOISAN PEOPLE

Key words: Marine; Deep Sea mining; Cultural identity; Business and Human Rights

Year: 2020

The Kassiesbaai village, is the only remaining historic Khoisan fishing village in South Africa. More than 90 percent of the households are 100 percent dependent on marine living resources. The Khoisan have an intricate relationship with the sea. They perceive sea water as the essence of spiritual and physical life and use sea water to conduct rituals to aid communication with the spiritual world.⁵⁰

Kassiesbaai village falls within the prospecting rights for marine phosphate, which were allocated to three companies in 2012 and 2014.⁵¹ Indigenous tribes in south Africa have opposed mining, as they believe that it will destroy the sea, and threaten their cultural identity. A leader of the Khoisan noted that deep sea mining is a threat to the cultural identity of the Khoisan and, if it occurs, it will be despite opposition from the scientific world, cultural activists, and non-governmental organisations.⁵²

BRAZIL – MURA

Key words: Inland; River: Amazonia; Potassium Mining; Business and Human Rights

Year: 2010- 2022

Amid the invasion of Ukraine and given the rise of price of potassium worldwide, the existing reserves of this mineral in the Brazilian Amazonia have ignited mining interests. This mineral already began to be exploited by the Canadian company Brazil Potash in 2010, around the lands in which the Indigenous Mura live.⁵³

The Canadian company plans to build Latin America's biggest potassium mine and infrastructure to transport the fertiliser, but the project stalled in 2016, given the lack of adequate consultation with the Mura.⁵⁴

In 2022, Oxycer Holding Company, based in Brazil, made several requests to the Brazilian Mining Agency to research for potassium on Mura indigenous land. The Mura, other indigenous groups, and environmentalists fear that potassium exploitation in their lands will destroy natural resources and pollute their river, affecting their ability to fish.⁵⁵

NEW ZEALAND – MĀORI

Key words: Marine; Seabed mining; Iron Sands; Supreme Court

Year: 2017

New Zealand's Environmental Protection Authority granted Trans-Tasman Resources Ltd a permit for seabed mining of iron sands under the Exclusive Economic zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act).⁵⁶

In September 2021, following a seven-year-long legal fight by Māori tribes, fisheries and environmental groups, the High Court ruled against the government, a decision that was upheld by the Court of Appeal and then heard by the Supreme Court. The ruling acknowledged that the Environmental Protection Authority should consider the effects of the proposed seabed mining on Māori "existing interests" (under the Treaty of Waitangi) and that Maori customary values and practices constitute such existing interests. Hence, the Environmental Protection Authority must consider the kaitiakitanga of iwi [tribes] of their relevant rohe [territory], which can be translated into issues pertaining to self-determination, sovereignty, autonomy, self-government, and control in the context of the marine environment.⁵⁷

KENYA – BAJUN, ORMA, SANYE AND AWEER

Key words: Marine – Port – High Court –Compensations

Year: 2019

In 2018, the Malindi High Court of Kenya decided upon a case concerning the impact of the ongoing Lamu port planning and construction process on the local Bajun, Orma, Sanye and Aweer indigenous communities, who have for generations depended upon and sustainably managed their land and marine natural resources. The High Court affirmed the communities' grievances regarding the Lamu Port project's lack of public participation, lack of environmental assessment and management plans, and failure to recognize and consider the communities' traditional fishing rights. It also affirmed the citizens' rights to protection of their cultural identity and to a clean and healthy environment and ordered the payment of compensations for the fishers affected.⁵⁸

Despite Kenya's High Court judgement, the construction of Lamu port continues its planning and construction.⁵⁹

CANADA - LAX KWALAAMS TSIMSHIAN FIRST NATION

Key words: Ocean – River – Salmon – Fossil fuel company – Export facility

Year: 2015 – 2017

Petronas, a Malaysian fossil fuel company has proposed the establishment of a natural gas export facility on Lax U'u'la island in British Columbia. The island is traditional territory of the Gitwilgyoots clan, one of the Tsimshian nations of Lax Kw'alaams.⁶⁰

Members of the Gitwilgyoots clan have opposed the project, as the infrastructure would be located in an eel grass habitat, which is key for the salmon to transition from freshwater to saltwater. As the project constitutes a threat for the local salmon fish stocks, members of the clan began protesting the project by occupying the island, boycotting survey work for the project and evicting employed personnel of Petronas, who conduct the survey work. In 2017, Petronas announced that it would no longer be pursuing the project.⁶¹

UNITED STATES – YUOK TRIBE

Key words: Inland – River – Salmon – Dam – Removal

Year: 2022

The Yurok tribe holds a close relationship with salmon, as a source of food as well as a source of spiritual connection. The tribe has for years argued that a dam installed in the Klamath River basin between California and Oregon has affected the salmon fish stock. A representative from the tribe told ABC News that if the salmon disappear from the river, so do they as a people.⁶²

In 2022, after a decades-long push from river basin tribes whose livelihood and culture are intertwined with the river, the federal government of the United States approved the removal, which will be the largest dam removal in U.S. history, paving the way for the restoration of the Klamath River basin.⁶³

The Federal Energy Regulatory Commission (FERC) gave the final stamp of approval for four dams along the lower Klamath River to be removed, reinstating access to more than 300 miles of habitat for salmon and improving water quality.

COLOMBIA – PIAROA, CURRIPACO, AMORUA, SIKUANI, AND PUINAVE

Key words: Inland; River; Mass migration; Fish stocks; Sport fishing; Fishing gears; Sustainable fisheries

Year: 2002

The Orinoquia region in Colombia is inhabited by the Piaroa, Curripaco, Amorua, Sikuanui and Puinave and other indigenous peoples. Over the years, through the establishment of fixed territorial ownership, these groups have had to settle in specific areas and form communities. The sedentary lifestyle required the identification of stable extraction zones and a recognition of the temporality of fishing resources due to the high hydroclimatic variability of the region.⁶⁴

Fishing has become one of the main forms of subsistence, whether as a source of protein or as a source of income. These communities claim that over the years, the freshwater fish stocks have diminished, affecting their livelihoods. They identify three factors that impact freshwater fish stocks. First, the number of communities and inhabitants in the area has increased because of the mass migration following Venezuela's economic crisis. Therefore, more actors rely on fishing resources for their survival and wellbeing. Secondly, sport fishing has become popular. Given that most of the tourists are foreigners, this recreational activity is considered an important source of income for local and national tour operators in the region. Local fishers worry that sport fishing is keeping the fish away and reducing its availability, because it is a practice commonly conducted in their prime fishing areas. Thirdly, fishing gears such as the chinchorro seine net is now a widespread technique, which leads to a larger-scale extraction of fishery resources, since species are being caught irrespective of their sizes. This disadvantages local fishers who are still implementing traditional arts of fishing (Boya, Tarraya), which allow for a more sustainable fishing practice in the region.⁶⁵

Fishing communities located on the banks of the Orinoco River explain that the availability of fish has decreased, or they must spend extra hours navigating greater distances in their boats to obtain the minimum amount for their consumption and commercialization. To address this ongoing issue, they request that the government guarantees greater control and surveillance of the use of natural resources. However, many of the fishing areas are in zones that are distant from the municipal centres, where the presence of patrolling entities is already reduced due to a lack of budget.⁶⁶

PHILIPPINES – TAGBANUA FROM CORON ISLAND

Key words: Marine – Tourist resort developers – Real estate agents – Illegal fishing – Certificate of Ancestral Domains.

Year: 2002

The Tagbanua people from the Coron Island holds ancient traditions related to the sea and conservation practices, such as fish sanctuaries, and the regulation of fishing activities. Since the 1970s, the Tagbanua have had to defend their territory in the face of pressures and encroachments from tourist resort developers, real estate agents and migrants from neighbouring provinces practising illegal fishing.⁶⁷

In the 1990s, the Tagbanua were able to apply for a Certificate of Ancestral Domain Claims (CADC), recognizing them preferential rights to exploit, manage and protect their ancestral territory. The CADC was granted to them in 1998 and comprised 22,284 hectares, including the entire island and a portion of the seas surrounding it. The adoption of the Indigenous Peoples' Rights Act (IPRA) of 1997 further recognized Tagbanua's rights. Thus, in 2002, the CADC of the Tagbanua people was converted into a Certificate of Ancestral Domain Title (CADT), a title that formally recognizes the rights of possession of the Tagbanua people over their ancestral domains, in accordance with IPRA.⁶⁸

The recognition of the CADT has allowed the Tagbanua people to confront the local government and propose their own plans for the management of their territory, including controlling the number of tourists who enter the various lakes and beaches and protecting the fragile habitat of the area, the marine sanctuaries, and other areas that the Tagbanuas consider as sacred sites.⁶⁹

IMPACT OF ENVIRONMENTAL DEGRADATION AND CLIMATE CHANGE

SOUTH AFRICA – THE NIBELA

Key words: Inland; Wetland Park; Dispossession; Access to land; Access to natural resources; Supreme Court; Favourable ruling; Indigenous fishing rights

Year: 1895- 2021

The Nibela community has lived on the Nibela peninsula for hundreds of years, depending on fish from the lake for their food security.

From about 1895, they were systematically removed to create the Isomangaliso Wetland Park (UNESCO world heritage site). Thus, there has been a systematic dispossession of access to land and natural resources related to their traditional livelihoods (fishing and forestry). In 2018, following 8 years of litigation, a case on customary fishing rights was brought to the Supreme Court of South Africa. The Court recognized the customary fishing rights of the community and also recognised fishing rights as an expression of the right to culture.⁷⁰ However, this legal recognition has done very little for fishers on the ground, including the Nibela. The case is complex as the Nibela ancestral fishing grounds are now marine protected areas, and the law is enforced in this area with rangers that work for local conservation agencies (a very militarized sector in Africa). The Nibela have often been mistaken for poachers and on 16 September 2020, one person was shot and killed on site.⁷¹ One year later, the investigation pertaining to the death, commissioned by the Minister of Forestry, Fisheries and the Environment had not been made available to the family or the community.⁷²

CANADA – FIRST NATION WILD SALMON ALLIANCE

Key words: Marine; open salmon farming; salmon stocks on the verge of collapse; phaseout of salmon farming; lawsuit by companies; consultations; precautionary approach.

Year: 2009-2022

For over a decade, Bob Chamberlin, Chairperson of the First Nation Wild Salmon Alliance, had appealed to Norwegian salmon farming companies to leave the Indigenous territory, including visits to Norway to engage with the companies. In 2009 he delivered an appeal to the general assembly of the Norwegian company Mowi.⁷³

In December 2020, the Canadian government decided to phase out open salmon farming around Discovery Islands in British Columbia. The end of open coastal farming was one of the campaign promises of Prime Minister Justin Trudeau, before he was re-elected in 2019. Officially, 102 of the 203 indigenous tribes in the province have actively supported the phase-out, along with several nature and interest organisations.⁷⁴

In 2021, three Norwegian aquaculture companies (Mowi, Grieg Seafood and Cermaq) launched a lawsuit against the Canadian government, to stop the phasing out of salmon farming.⁷⁵ The companies wanted a legal assessment of the legality of the decision, as they had not been involved in the process before the decision was made. The court upheld the Norwegian companies' claim that the government's decision to phase out the open facilities was unreasonable.⁷⁶ On 17 February 2023, the Minister of Fisheries, Oceans and the Canadian Coast Guard announced a decision not to renew licences of 15 Atlantic salmon aquaculture sites in the Discovery Islands. The Government recognised that the Pacific salmon have significant cultural, social, and ecological importance to First Nations and British Columbians, are in serious, long-time decline, with many stocks on the verge of collapse. Hence, the government decision is an action to protect wild Pacific salmon migrating through the Discovery Islands. Prior to this announcement, in 2022, the Minister convened consultations on salmon farm licences in the Discovery Islands.⁷⁷ These consultations included bilateral and aggregate meetings with industry and First Nations, as well as exchanges of e-mails, letters and information.⁷⁸ Bob Chamberlin supported the decision not to renew the licences of 15 aquaculture sites and expressed his appreciation of the Minister's precautionary approach, recognition of the state of the Pacific salmon and the focus on the cumulative effects. Bob Chamberlin called for attention to the transition plan to respond to risks further up the straights and the west coast.⁷⁹

AUSTRALIA – TORRES STRAIT ISLANDERS FROM BOIGU, PORUMA, WARRABER AND MASIG

Key words: Marine; Fishing; International Covenant on Civil and Political Rights (ICCPR); Human Rights Committee; Joint complaint.

Year: 2019-2022

In 2019, eight representatives from the indigenous Torres Strait Islanders resorted to the Human Rights Committee (HRC) under the claim that Australia had violated their rights under the articles 2, 6, 17 and 27 International Covenant on Civil and Political Rights (ICCPR). They also claimed violations of the rights of the six children under article 24 (1), by failing to take mitigation and adaptation measures to combat the effects of climate change.⁸⁰ The islanders argued that changes in climate with heavy rainfalls and storms had degraded the land and had also reduced the amount of available food from traditional fishing.⁸¹

In 2022, the HRC found that Australia's failure to adequately protect indigenous Torres Strait Islanders against adverse impacts of climate change constituted a violation of their rights to enjoy their culture and be free from arbitrary interferences with their private life, family, and home. As remedies, the Committee asked Australia to compensate the indigenous Islanders for the harm suffered, engage in meaningful consultations with their communities to assess their needs, and take measures to continue to secure the communities' safe existence on their respective islands.⁸²

NORWAY – SÁMI

Key words: European Network of National Human Rights Institutions (ENNHRI); European Court of Human Rights (ECHR); Climate change

Year: 2019-ongoing

In 2022, the European Network of National Human Rights Institutions (ENNHRI) intervened in a climate case on Arctic oil exploration before the European Court of Human Rights. It is considered a potential “impact case” as it raises “**important question[s] of general interest capable of having major implications for domestic legal systems and for the European system**”.⁸³ In its written observation, ENNHRI argues that Arctic indigenous peoples, including the Sámi people, are disproportionately impacted by the effects of climate change due to their high level of dependence on climate-sensitive ecosystems for their health and wellbeing, food security, transmission of cultural knowledge and traditional livelihoods, which for the Sámi people include fishing and reindeer herding. ENNHRI concluded that a failure to assess the long-term disproportionate effects on vulnerable groups such as children and indigenous peoples of a decision which may ultimately lead to extraction of fossil fuels, could amount to indirect discrimination”.⁸⁴ Lasse Eriksen Bjoern, an activist from the indigenous Sámi people of northern Norway, said that “the Sámi culture is closely related to the use of nature, and fisheries are essential ... A threat to our oceans is a threat to our people”.⁸⁵

ECUADOR – KICHWA AND SHUAR

Key words: Inland; River; Amazonia; Private Company; Petrol pollution

Year: 2020

In April 2020, a landslide destroyed three pipelines, leading to the leakage of 15,000 barrels of petroleum and other fuels in the border area between Ecuador and Peru. According to official figures, the spill occurred in different rivers, one of them the Napo, which is one of the main tributaries of the Amazonas.⁸⁶

According to the NGO Amazon Frontlines, around 27,000 indigenous Kichwa and Shuar living near the rivers Coca and Napo have been affected by the spill.⁸⁷

The communities had remained in voluntary isolation given the covid-19 pandemic. One Kichwa person informed that members of the community had decided to not go to the nearby town for food, and therefore relied on fishing from the river. After seeing the black oil stains in the river, community members began finding dead fishes and warned that the oil pollution is affecting the river fauna, thus threatening the communities that rely on the river as a source of food.⁸⁸

NIGERIA – OGONI

Key words: Inland; River; Niger Delta; Oil Spill; African Commission on Human and Peoples' rights; United Nations Environment Programme; Special Procedures; Special Rapporteur on Minority Issues

Year: 1996 – 2011

The Government of Nigeria, through its state-owned oil corporation, Nigeria National Petroleum Corporation (NNPC) and the multinational company, Shell Petroleum Development Corporation, allegedly caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. The land and water sources were poisoned because of oil exploitation, thereby making farming and fishing (the two principal means of livelihood of the Ogoni) impossible.⁸⁹

In 1996, the Social and Economic Rights Centre filed a complaint to the African Commission on Human and Peoples' Rights, alleging violation of Articles 2, 4,14,16,18(1), 21 and 24 of the African Charter, pertaining to the rights to life, property, best attainable state of health, family life, free disposal of wealth and natural resources and a satisfactory environment. In 2001, the Commission found that Nigeria had violated these Articles. The Commission made an appeal to the government of Nigeria to ensure the protection of the environment, health, and livelihood of the people of Ogoniland.⁹⁰

In 2011, the UN Environment Programme (UNEP) released a report, stating that pollution from over 50 years of oil operations in the region has penetrated further and deeper than many may have supposed. Hence, the environmental restoration of Ogoniland could prove to be the world's most wide-ranging and long-term oil clean-up exercise ever undertaken, if contaminated drinking water, land, creeks and important ecosystems such as mangroves should be brought back to full, productive health. The report also set out urgent recommendations for clean-up. However, a 2020 investigation published by human rights and environmental NGOs concludes that the efforts have been too little - too weak, and have not resulted in effective clean up, and recommends that the government of Nigeria must drastically step up its ambition to implement in full the recommendations of the 2011 UNEP environmental assessment report for Ogoniland.⁹¹

In 2015, the Special Rapporteur on Minority Issues, Rita Izsák, undertook a mission to Nigeria. She reported to have witnessed the devastating effects of the oil spills in affected Ogoni and Ikwerre communities, including the destruction of traditional farming and fishing livelihoods owing to widespread soil and water pollution. The pollution caused severe health problems among community members and population migration to other areas. The Special Rapporteur urged the Nigerian government to take effective measures in order to assist the affected community, providing health care and education facilities and foster means for the creation of alternative livelihood options.⁹²

In 2018, UN Environment began a new project aimed at strengthening the Hydrocarbon Pollution Remediation Project (HYPREP) and its Governing Council, so that they can discharge their responsibilities better and clean up oil contamination in Ogoniland.⁹³

UNITED STATES – MAKAH TRIBE

Key words: Ocean; Whaling; Endangered Species; Marine Mammal Protection Act; Court example

Year: 1999-ongoing

The Makah Reservation is located in Washington State. For thousands of years, the Makah have based their cultural identity on the grey whale, which they have used as the basis of their diet as well as spiritual practices, reflected in their ceremonies, songs, dances, and baskets. Thus, whaling has been essential to the cultural tradition of the Makah. Given the cruciality of whaling for the Makah tribe, this tribe is the only group of Native Americans that have a treaty with the United States government that allows them to do whaling.⁹⁴

In the 1920s, the grey whale became an endangered species, so the Makah tribe voluntarily paused their whaling practices so that the population could recover. In the 1970s, the grey whale became an endangered species under the Marine Mammal Protection Act of 1972.⁹⁵

In 1994, the grey whale was delisted from the endangered species registry, and the Makah intended to resume their lost tradition. However, they were faced with a “protracted administrative and legal battle waged by conservationists and animal rights activists, who call the practice ‘barbaric’ and have generated a wave of negative attitude against the tribe.”⁹⁶

In 1999, the Makah tribe reasserted their right to whaling after animal rights activists lost the legal battle, but in 2007, a tribe member was arrested and jailed given a federally unauthorized whaling.⁹⁷

In 2019, the National Marine Fisheries Service published a proposed rule and hearing notice to issue a waiver under Marine Mammal Protection Act to develop regulations for the Makah tribe to hunt grey whales in a limited manner over a 10-year period. However, the proposal remains undecided in court.⁹⁸

COSTA RICA - BRIBRI AND CABECAR PEOPLES FROM THE MALEKU TERRITORY

Key words: Marine Protected Areas; UN Special Procedures; Special Rapporteur on the rights of indigenous peoples; Free Prior and Informed Consent (FPIC); Access to Natural Resources; Ancestral activities

Year: 2022

In 2022, the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, conducted a country visit to Costa Rica. The Special Rapporteur received allegations about indigenous peoples not being consulted about the delineation and management of protected areas, when these are in indigenous territories and lands, as is the example of the Bribri and Cabecar peoples in the Talamanca area and in the territories of Maleku and Boruca.⁹⁹

The indigenous leaders informed the Special Rapporteur about the obstacles that they were facing in gaining access to their sacred places and medicinal plants and in engaging in ancestral activities. In relation to the Maleku territory, the Special Rapporteur was informed of obstacles impeding ancestral fishing practices and the prohibition of some types of ancestral hunting, even though these activities take place in accordance with their scientific knowledge, in a way that ensures the conservation of the species in question and of the environment.¹⁰⁰

CANADA – HAIDA NATION

Key words: Ocean; Marine Conservation Area Reserve; Co-management

Year: 1985 -

Gwaii Haanas National Marine Conservation Area Reserve in Canada is a Heritage Site of the Haida Nation (established in 1985) and a protected marine area under the National Marine Conservation Areas Act (established 1988). Based on the Gwaii Haanas Agreement of 1993, it is managed by joint management boards that comprise equal numbers of representatives from both the Haida Nation and the Canadian federal government. Under the law, the Government has ultimate decision-making power, but in practice co-management of the area has prevailed. Discussions about co-management arrangements and power-sharing between indigenous peoples and the Government are also emerging in the current process of establishing a network of marine protected areas in the Northern Shelf Bioregion. The process, which is still ongoing, is co-led by the Federal Government, the Province of British Columbia and 17 First Nations. Indigenous peoples are providing their principles, ethics and values into the network design and governance.

CHILE – RAPA NUI

Key words: Ocean; Marine Park; Co-management

Year: 2017

In Chile, the Rapa Nui Marine Park, Latin America's biggest Marine Protected Area, was established after a consultation process with the Rapa Nui. In 2017, the government announced that the park would be managed by a Council comprising six representatives of the Rapa Nui people and five representatives of the State.¹⁰¹

PANAMA – NGÖBE

Key words: Ocean; Marine Park; Tourism; Free, Prior, and informed Consent (FPIC)

Year: 1988

The Bastimentos Island National Marine Park in Panama, was established in 1988 without prior consultation with local communities, including the Ngöbe indigenous peoples.¹⁰²

With the establishment of the park, the Ngöbe have faced restrictions on their traditional activities. Additionally, the park has had a negative effect in the marine resources of the area, as it has increased tourism, which implies increase of demand in seafood for restaurants and hotels, and the development of touristic activities.¹⁰³

CRIMINALISATION

CANADA – MI'KMAQ

Key words: Ocean; Fishery offences; Provincial court; NHRI

Year: 2020 – 2022

The 1993 Marshall decision is named after Donal Marshall Jr., a Mi'kmaq fisherman who was arrested for catching and selling eel captured with an illegal net and without license. The case set of a six-year legal battle that escalated to the Supreme Court of Canada. Finally, Marshall Jr.'s court victory affirmed the right of First Nations to earn a moderate livelihood from fishing and hunting.¹⁰⁴

In 2020, a group of Mi'kmaq fishermen from the Sipekne'katik First Nation initiated lobster fishery in St. Mary's Ba, based based on the Marshall Decision. Shortly after, non-indigenous fishermen began intimidating these communities by hauling their gear, taking traps and cutting ropes and buoys.¹⁰⁵

Canada's Human Rights Commission condemned the violence against Mi'kmaq groups and stated that the State must uphold the rule of law through the implementation of Indigenous and Treaty rights, and in guaranteeing the safety of the Mi'kmaq. The Commission recognized and supported Mi'kmaq right to fish and earn a moderate livelihood as stated in the Peace and Friendship Treaties and upheld in the Marshall Decision. The Commission affirmed that the United Nations Declaration on the Rights of Indigenous Peoples further affirms the right of the Mi'kmaq to maintain, develop, and govern their own fisheries.¹⁰⁶

In 2022, a Mi'kmaq fisherman from Nova Scotia was fishing for eel when officers with the Department of Fisheries and Oceans seized his catch. The fisherman is seeking permission from a provincial court judge to challenge the fishery offences against him, based on his treaty rights to fish for food, social and ceremonial purposes and moderate livelihood fisheries.¹⁰⁷

AUSTRALIA – NEW SOUTH WALES ABORIGINAL PEOPLE

Key words: Ocean – Marine – Fishing – Abalone – Quotas – Criminalization – Court – Aboriginal land council – Cultural fishing right – Fisheries act

Year: 2021

The New South Wales Aboriginal Land Council (NSWALC) of Australia called on the New South Wales Government to support Aboriginal cultural fishing practices by ending the prosecutions of Aboriginal people exercising their cultural fishing rights. This request followed the apprehension of 74-year-old Kevin Mason by New South Wales Fisheries officers, who chased him into the sea because of a small bag of abalone, which he had fished to feed his family. Another man from the Walbunja indigenous group faces a jail sentence or a five-year fishing ban after fishing abalone.¹⁰⁸

The NSWALC councillor expressed concern over Aboriginal people being prosecuted for fishing, while the local government increased the quota of the abalone fishing industry. Fishing constitutes a cultural practice that is vital for the aboriginal people of New South Wales.¹⁰⁹

In 2008, the New South Wales Parliament passed a new act to the Fisheries Management Act of 1994, which would allow an Aboriginal person practising cultural fishing to take fish despite bag limits. However, the approved section has not yet become operational.¹¹⁰

The NSWALC called on the government to support aboriginal people's cultural fishing practices; place an immediate moratorium on the prosecution of Aboriginal cultural fishers and develop reforms to protect Aboriginal cultural fishers from prosecution; remove restrictions on Aboriginal cultural fishers and cultural fishing activity, commence section 21AA of the Fisheries Management Act of 1994, without any restrictions; and work in partnership with Aboriginal community-controlled organizations.¹¹¹

FINLAND – SÁMI

Key words: Marine; Fishing licenses; Touristic fishing; Supreme Court; CESCR.

Year: 2002-2022

After the Finnish state implemented fishing licenses to protect vulnerable fish stocks of salmon and trout, without distinguishing between indigenous and non-indigenous peoples, Sámi people had to compete with tourists for these permits.¹¹²

Several examples of criminal prosecution against Sámi persons were taken to the Courts, with some Sámi persons even turning themselves in to the authorities. The Sámi persons were prosecuted for fishing out of season and with banned stationary nets, and for fishing without permits in state-owned lands/water.¹¹³

In these cases, the court acknowledged fishing as a cultural practice of the Sámi, which is enshrined in the Finnish constitution as well as international human rights laws.¹¹⁴

In 2021, the Committee on Economic, Social and Cultural Rights (CESCR) concluding observations on Finland, expressing concern over the legislative changes, infrastructure projects and incursions into territories that have eroded the rights of the Sámi to maintain their way of life and traditional livelihoods, including reindeer husbandry and fishing. The Committee also expressed concern over the lack of a legal obligation to conduct consultations with a view to obtaining the free, prior and informed consent of the Sámi on matters that affect their lands and resources. The Committee urged Finland to act upon infringement on the rights of the Sámi in order to maintain their culture, way of life and traditional livelihoods. In this regard, it recommended that Finland assess the impact of existing laws on these rights and enact the necessary amendments. Moreover, the Committee urged Finland to strengthen the legal recognition of the Sámi as an indigenous people, and the legal and procedural guarantees for obtaining the free, prior and informed consent of the Sámi in line with

international standards. It also encouraged the State party to expedite the ratification of ILO Convention No. 169.¹¹⁵

In 2022, the Supreme Court of Finland ruled in two cases that members of the Sámi indigenous people were not legally responsible for having violated joint Finnish-Norwegian rules on fishing, dismissing the cases on the basis of provisions in the Finnish Constitution and the International Covenant on Civil and Political Rights (ICCPR). One of the cases involved the violation of fishing outside the seasonally accepted period, while the other concerned fishing without a legally required permit.¹¹⁶

In the case of fishing outside the seasonally accepted period the relevant Decree regulating fishing rights, did not specify exemptions for the Sámi people. In contrast, fishing is generally recognised as a constitutional Sámi right. In the other case, the Court had to determine whether fishing without a permit constituted an offense when the perpetrator was Sámi and had a right to fish protected under the Constitution of Finland and international human rights treaties. In both cases, the Supreme Court determined that the pursuit of traditional fishing is a form of Sámi cultural heritage. However, the court found that the right to fishing was not absolute and could be restricted, provided that the “restrictions were proportionate to the benefit sought”.¹¹⁷ Because sustaining the salmon stock levels is beneficial also to the Sámi – as a complete depletion of the species would prevent fishing in the future – restrictions on the Sámi rights were acceptable, in principle, when proportionate. However, the court found that the “extension of the fishing restriction to Sámi fishing with stationary nets in a season especially important to them was not proportionate in view of the state of the salmon stock at that time”.¹¹⁸ The Supreme Court also referred to previous communication from the Finnish Constitutional Law Committee, which found that the fishing restrictions placed on persons who do not have fishing rights that are protected under the Constitution and article 27 of the ICCPR should be increased before limiting the rights of the Sámi. Hence, the court dismissed the case as incompatible with the Constitution.

In the case concerning fishing without a permit, the court found that the provisions infringed the Sámi rights because the number of fishing permits available was limited, and the local Sámi people, despite their constitutionally protected right to fish, were not given preference when the permits were awarded. The claims of unauthorized fishing against the Sámi individuals were therefore dismissed as incompatible with the Constitution.¹¹⁹

JAPAN – AINU

Key words: Inland; River; Salmon; Self-determination; Free prior and informed consent (FPIC); Court; NGO; Human Rights Committee; The Centre for Environmental and Minority Policy Studies (CEMIPoS)

Year: 2018

In 2018, criminal charges were brought against Hatakeyama Satoshi, an indigenous Ainu fisherman for harvesting salmon without prior permission. The criminal charges were ultimately suspended by the District Court in July 2020. The reason for suspending the charges is not known but it can be assumed that their filing in court would have led to considerable negative publicity for Hokkaido Prefecture and the Japanese state. That the indictment has been suspended rather than dropped, however, continues to cast a threat over further Ainu protests overfishing as they remain potentially “illegal” actions.¹²⁰

Rahoro Ainu Nation of Urahoro Town, an Ainu organization, filed litigation against the Japanese state and the Prefecture of Hokkaido to confirm that their riverine harvesting rights have historically never been extinguished by Japanese law.¹²¹

In 2020, the Centre for Environmental and Minority Policy Studies (CEMIPoS) of Japan, submitted a report to the Human Rights Committee for the periodic review of Japan. The report refers to the case of Hatakeyama Satoshi and notes that the authorities claimed that fishing salmon in the river without prior permission is illegal under the antiquated yet still-intact Hokkaido Regulation restricting the Ainu to use their freshwater resources. According to the Hokkaido Regulation, an exception for Ainu salmon fishing can be granted for ritual purposes only, and with prior permission granted by the governor of Hokkaido. Mr. Hatakeyama maintains that the Ainu fished salmon as a part of their traditional livelihood in Hokkaido before they were colonised and that his act of fishing was for a ceremonial event that has been observed by the Ainu for centuries. Hence, his actions only corresponded to preserving and maintaining the right to Ainu culture and cultural identity as part of the acknowledged rights belonging to indigenous peoples.¹²²

The report further states that despite Japan enacting the Ainu Policy Promotion Act, which acknowledges the importance of Ainu culture, including rituals and practices in connection to fishing salmon in rivers, a revision of local legislation that currently obstructs Ainu rights has not taken place. Thus, in practice, Japan is failing to recognise and enable indigenous peoples to exercise control over natural resources.¹²³

HONDURAS – LENCA, MAYA, TOLUPÁN, GARIFUNA, NAHUA, PECH TAWAHKA AND MISKITO PEOPLES

Key words: Inland; River; Hydroelectric Dam; Energy; Free, Prior, and informed consent (FPIC); Human Rights Defenders; Business and Human Rights; Special Procedures; Special Rapporteur on Human Rights Defenders

Year: 2021

After a country visit to Honduras in 2018, the Special Rapporteur on Human Rights Defenders, Michel Forst, stated concern over the situation of Indigenous activists of the Lenca, Maya, Tolupán, Garifuna, Nahua, Pech Tawahka and Miskito peoples.¹²⁴

The Special Rapporteur specifically referred to El Tornillito, the second biggest hydropower project in Honduras, carried out by the construction company Hidrovolcan S.A. The company obtained an environmental permit to carry out the project in the Ulúa river and signed an agreement with the Government for the provision of energy, without prior consultation with the indigenous communities concerned, of which five could be flooded out of their settlements. Additionally, the communities opposed the dam as it would have an adverse impact on their livelihoods (farming, livestock and fisheries).

The Special Rapporteur recommended that Honduras implement an “inclusive and appropriate dialogue and consultation process with the broadest possible range of organizations of indigenous peoples in order to adopt, with their consent, a regulatory framework on the right to free, prior and informed consultation of indigenous peoples in the country in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the United Nations Declaration on the Rights of Indigenous Peoples”.¹²⁵

In 2021, Juan Carlos Cerros Escalante, a Lenca indigenous person was shot dead. Cerros Escalantes led a local group called “Communities United” that was active in the opposition against the Tornillto hydropower project.¹²⁶

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