

Abstract

Indigenous Peoples' Land Rights in Latin America

Indigenous peoples' cultures are known for their collective, spiritual, intergenerational relationship to their ancestral lands. Indigenous peoples not only depend on their territories with their subsistence but also with the preservation of their distinct cultures. Lands are, however, a significant factor in the vast human rights violations to which they subject. They are often faced with the dispossession of their traditional lands and the disruption of the ecological integrity of their territories. This also affects their traditional way of life and leads to the loss of their cultures. From the 1980s, indigenous peoples have started reclaiming their rights, which has also been reflected in their position under international law. In 1989, the International Labour Organisation Convention No. 169, the Indigenous and Tribal Peoples Convention was adopted. This Convention anchored significantly higher standards of protection of indigenous peoples' rights to their lands. Above all, it abandoned the patriarchal approach of the International Labour Organisation's Convention No. 107, the Indigenous and Tribal Populations Convention. Convention No. 169, moreover, addresses indigenous peoples as 'peoples' rather than 'populations', as was the case in its predecessor. This Convention laid firm foundations for instruments to follow, which advanced indigenous peoples' rights under international law even more. Namely, it was the United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007 and the American Declaration on the Rights of Indigenous Peoples from 2016. These instruments recognise – albeit not in its full extent – indigenous peoples' right to self-determination. Under international law, this right pertains to all peoples. Nevertheless, until recently, indigenous peoples were not recognised as its subject. The adoption of the American Declaration on the Rights of Indigenous Peoples signals the commitment of Latin America to increase the level of protection of indigenous peoples' rights to their lands in the region. This trend can also be observed in the case-law of the Inter-American Court of Human Rights. In 2001, the Inter-American Court for Human Rights delivered its first judgement concerning indigenous peoples' land rights. It was in the case of *Mayagna (Sumo) Awas Tingni v. Nicaragua*. In its judgement, the Court ruled that Article 21 of the American Convention on Human Rights (enshrining the right to private property) also covers indigenous peoples' communal property rights. Since then, the Court has elaborated a complex body of rights of indigenous peoples which stem from the right to property. States

are obliged to recognise indigenous peoples' traditional possession of lands as a real title. It follows from the *Saramaka v. Suriname* that indigenous peoples not only have the right to lands but also to their traditionally used resources. In *Yakye Axa v. Paraguay*, the Court addressed the conflict between indigenous peoples' claim to their traditional lands and private property rights. In its most recent judgement in the case of *Asociación Lhaka Honhat v. Argentina*, the Court linked the violation of state's obligations concerning indigenous peoples' land rights under the right to property to the violation of the right to water, adequate food, healthy environment and to take part in cultural life.