

HUMAN RIGHTS COUNCIL

33rd Session of the Working Group on the
UNIVERSAL PERIODIC REVIEW

May 2019

Human Rights of Indigenous Peoples of Costa Rica: Empty Promises and Call for Action

A Joint Stakeholder Submission by:

Mesa Nacional Indígena de Costa Rica (MNICR)
Red Internacional de Derechos Humanos (RIDH)



Geneva, 4 October 2018

Introduction

This report is a joint submission from the Mesa Nacional Indígena de Costa Rica (MNICR) and the Red Internacional de Derechos Humanos (RIDH) on the situation of the rights of Costa Rica's indigenous peoples.

The Mesa Nacional Indígena de Costa Rica (MNICR) is national indigenous entity with almost 40 years of experience in developing political advocacy and bringing support and technical facilitation for Costa Rica's indigenous communities and organisations across the country.

The Red Internacional de Derechos Humanos (RIDH) is a Geneva-based NGO with ECOSOC Consultative Status since 2014. The organisation specialises in the promotion and protection of human rights in Latin America and facilitates the link between Latin-American civil society actors and the UN Human Rights System.

Context and background

Costa Rica's indigenous population is composed of 8 ethnic groups: the Cabécar, the Bribri, the Ngäbe, the Térraba, the Boruca, the Huetar, the Maleku and the Chorotegas. According to the 2011 National Census more than 104,143 citizens self-identify as indigenous, accounting for 2,4% of the total population. This is one of the lowest rates of indigenous population in the Latin-American region.

Costa Rica recognises 24 indigenous territories inhabited by communities belonging aforementioned 8 indigenous peoples. These territories make up to 6,7% of the national territory and according to the CEPAL's latest publication on *Indigenous peoples in Latin America*, 46,6% of Costa Rica's indigenous peoples live in the 24 indigenous territories, 16,8% live on the outskirts of these territories, and the other 37,6% reside in other parts of the country.

Officially, Costa Rica has ratified various national and international legal frameworks that protect the rights and livelihoods of indigenous peoples such as their rights to land, the recognition of their cultural rights such as the promotion of bilingual education for indigenous children, or the right to free, prior and informed consultation. Despite these legal tools, the reality for Costa Rica's indigenous communities is quite different and these concerns have been repeatedly echoed by the communities as well as various UN Human Rights bodies as it will be recalled throughout this report.

Our aim is to shed light on the key issues of concern regarding the full enjoyment of Costa Rica's indigenous peoples' rights that we believe should be brought to attention during the State-party's evaluation for its 3rd Universal Periodic Review.

Preoccupations of the Indigenous Peoples in Costa Rica

Indigenous Peoples' Land Rights and Territorial Safety

The recognition and protection of indigenous land is enshrined in:

- i) the General Law on Barren Lands (Law No. 13 of 1939), which established that lands inhabited by indigenous people are inalienable;*
- ii) Law no. 2825 of 1961, through which the Land and Colonisation Institute (ITCO) was created, now called the Institute of Rural Development (INDER), and it was established that the indigenous territories and those inhabited by indigenous people are property of the State;*
- iii) Decree no. 34 of 1956, by virtue of which the first indigenous territories were established in the region of Buenos Aires, province of Puntarenas: Boruca, Térraba, Ujarrás, Salitre, Cabagra and China Kichá;*
- iv) Law no. 2330 of 1959, which recognises the ILO's Convention No. 107;*
- v) Law no. 5251 of 1973, which established the National Commission for Indigenous Affairs (CONAI) as a mechanism for institutional coordination in support of indigenous peoples;*
- vi) Law no. 6172 (Indigenous Law) of 1977, in which the indigenous reserves established in the previous decrees were recognized and determined to be "inalienable and imprescriptible, non-transferable and exclusive for the indigenous communities that inhabit them,"*
- vii) Law no. 7316 of 1972, thus recognising indigenous peoples' right to free, prior and informed consultation as per the ILO's convention No. 169.*

However, the State has shown little interest to truly implement these laws. There is no public policy, strategic planning or adequate budget allocated to provide the protection for its indigenous peoples to fully own and use the lands that were recognised as belonging to them via the aforementioned executive decrees and laws.

Currently between 38% and 97% of the 24 national indigenous territories is occupied by non-indigenous people, in the case of the Térraba people, 88% of their land is in non-indigenous custody, and the China Kichá community, of the Bribri people, have lost 97% of their territory to the profit of non-indigenous actors. These lands have been subject to continuous land-grabbing by agroindustrial companies (bananas and pineapples), hunters and settlers which has led to forced displacement and conflict as well as serious environmental damages.

The State has not demonstrated any political will to monitor the proper implementation of the *Indigenous Law* (Law 6172 of 1977), nor the application of the aforementioned General Law on Barren Lands (Law 13 of 1939); Law 2825 of 1961 nor the Decree 34 of 1956 establishing the first indigenous territories. It has not accompanied indigenous peoples in

their process of land recuperation on the basis of Indigenous Law. Worse, when indigenous communities have tried to regain their stolen land, as in the case of the China Kichá, the State did not provide any protection measures despite suffering psychological and physical harassment and attacks by the non-indigenous landowners.

Another point of contention is with regards to the practice of indigenous ancestral rites. Despite the recognition of indigenous peoples' cultural rights, many of the country's conservation zones were created without previous consultation on sacred lands.

Recommendations from the Special Rapporteur on Indigenous Peoples' Rights in his country visit in 2011, the concerns and recommendations by the CERD in 2007 and 2015, the observations by the CESCR in 2016 and the CEDAW in 2017 all point out the seriousness of this issue and have repeated their call for the State to respect its own laws regarding the restitution and guarantee to indigenous land by their rightful owners.

The lack of action from the State has led to forced displacement and the continuing occupation and exploitation of indigenous land in almost total impunity.

Right to Self-Governance and Autonomy

Indigenous peoples' rights to self-governance and administration are endorsed through Article 4 of the the Indigenous Law (n°6172) however these entities are not properly recognised.

Instead, the State privileges mediation through the National Commission for Indigenous Affairs (CONAI) and Comprehensive Development Associations (ADIs), institutions that are completely foreign to indigenous communities' traditional power structures and were imposed without their consent. These entities depend on State bodies from the capital and do not provide a culturally sensitive approach to the specific needs of Costa Rica's diverse indigenous population.

As addressed by the CERD in its latest evaluation of Costa Rica, it is particularly preoccupying that the CONAI and ADIs have supplanted the indigenous peoples' own institutions when relating with the State and have extensive power in the award of land titles which also is in contradiction with the Indigenous Law.

Despite repeated calls and proposals from indigenous communities to find alternatives to the ADIs that are more consistent and representative of their needs including to update the current legal framework in order to better harmonise it with indigenous cultures as well as to respect the international standards it has ratified to at the UN and OAS levels, the State has remained silent and continues to use ADIs as the de-facto administrators and legal representatives of indigenous territories. This has led to situations of ungovernability in various territories.

Public Policies, National Development Plans and Territorial Management Plans

Historically and systematically, indigenous peoples have been marginalised from public policies. Because these programmes are developed without any indigenous participation, they do not include any elements or fundamental aspects that demonstrate indigenous

peoples' world vision. The lack of cultural sensitivity constitutes an obstacle to the accomplishment of indigenous peoples' rights, including their rights to autonomous development.

This issue is particularly present in the forming and implementation of National Development Plans or Territorial Management policies. These plans are imposed on indigenous communities without previous consultation or little inclusion in the elaboration of these plans which often leads to policies that have negative impacts on indigenous culture and lifestyle. A current case in hand is the Plan Nacional de Desarrollo y de Inversión Pública (PNDIP) 2019-2022 currently open for citizen consultation but that does not include any indigenous-specific aspects or needs.

Climate Change

Indigenous communities are particularly vulnerable to climate change and its negative impact. However, the State does not accompany its indigenous peoples in their struggle against climate change, it does not offer any means to maintain or increase their resilience against these negative effects. The indigenous communities' plans or projects to adapt and mitigate climate change have not been taken into account and the State has offered no technical or financial support to develop them.

Indigenous Right to Free, Prior and Informed Consultation

Despite having ratified the ILO Convention 169 assuring indigenous peoples' right to free, prior and informed consultation, the State does not fully comply with its responsibility as it has been repeatedly pointed out in the CESCR (2016), CERD (2007, 2015), the CEDAW (2017) as well as subject to recommendation during the State-party's last UPR. Decree N°40932-MP-MJP of 6 March 2018 has established a General Consultation Mechanism for Indigenous Peoples of Costa Rica yet no steps have been taken to implement or regulate it in indigenous territories.

The Ministry of National Planning and Economic Policy (MIDEPLAN) continues to elaborate its National Development Plans without indigenous peoples' participation or consultation, as mentioned above.

The Legislative Assembly approves laws that impact indigenous peoples' rights without applying an Indigenous Consultation, they replace this with the notion of Institutional Consultations that do not comply with the definition of ILO Con. 169. Indeed, these Institutional Consultations are held during 8 days in the ADIs, whose authority and agenda, as previously explained, have historically not recognised by indigenous communities.

The draft bill 14.352 "Draft Bill for the Autonomous Development of Indigenous Peoples" the only initiative that was proposed by indigenous communities themselves, was left unattended by the Legislative Assembly for 24 years. After two separate consultations that took place in 1995-1997 and then in 2005-2007, the proposal has been paralysed since 6 September 2011 due to a lack of political will from the executive as well as the legislative powers.

Some State actors have been discussing the possibility to update the bill to harmonise it with international standards (such as the UN Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples) and submit to a new consultation but this has not taken form yet.

However, the indigenous approach is that, the Legislative Assembly votes on Bill 14.532, in a positive way so that it becomes law, or negatively, to close this long chapter.

The Right and Access to Health

When an indigenous person has to be attended to in a hospital, the staff does not take into account the cultural specificities or indigenous customs or tradition which often result in mistreatments. This is true for indigenous women who are particularly vulnerable to obstetric violence when attended to during childbirth as they have to follow protocols incompatible with their cultural backgrounds (CEDAW 2017). Additionally there are no accommodation services available for families of indigenous patients that are hospitalised, thus making it difficult for them to visit or stay to support their relative.

The State does not recognise indigenous traditional medicine nor does it take into account the traditional knowledge and practices of indigenous doctors.

The Right to Education

The State has been advised to accelerate implementation and broaden the access to bilingual education for indigenous children as it is key for the good development and full enjoyment of the child's rights.

The Intercultural Education Department of the Ministry of Public Education (MEP) that is in charge of indigenous children's education is constantly modified and weakened from being understaffed and with insufficient budget to fully function, which gravely impacts the stability and quality of the educational cursus. The State Scholarship system for indigenous students does not provide any grants for higher education studies such as for universities which impedes access to many indigenous students that do not have the financial means to pursue their academic cursus.

It is also regrettable that the National Education Programmes do not hold any modules on Costa Rica's indigenous cultures which would improve the awareness of the country's indigenous heritage as well as contribute to reduce systemic discrimination towards indigenous populations.

Other Social and Cultural Aspects

The State does not have any concrete or specialised programmes for awareness-raising campaigns and preventions on drug use among youths in indigenous territories.

While there are eradication programmes to stop the cultivation of marijuana in some indigenous territories, these plans do not offer any alternative crop production nor does it

present any other from of income source development of the indigenous communities that grow the plant.

Similarly, the State does not promote or encourage the recovery and implementation of Indigenous Cultural Systems of Resource Conservation and Food Production and Sovereignty.

The current legislation impedes the indigenous rights to the access and use of indigenous ecosystems despite the fact that many of these areas have been maintained and kept for milenias by these very peoples.

Recommendations

In light of the situation we have exposed and the preoccupations indigenous communities have reported to the Mesa Nacional Indígena de Costa Rica, we suggest the following recommendations to the State of Costa Rica:

1. We recommend the **prompt and full implementation of the Indigenous Law (L. 6172)** as well as to take the necessary measures to support and guarantee the indigenous peoples **right to the restitution of their lands** as stipulated in Law 6172 and reiterated by the Special Rapporteur on Indigenous Peoples' rights in his country report in 2011, the recommendations of the CERD in 2007 and 2015, the observations and recommendations of the CESCR 2016 and the CEDAW in 2017.

1.1. We especially call on the **reinforcement of the indigenous peoples' right to self-governance and administration** as well as its own institutions as per Article 4 of the Indigenous Law (n°6172) and, as already expressed by the CERD, it is preoccupying that the CONAI and ADIs have supplanted the indigenous peoples' own institutions when relating with the State and have extensive power in the award of land titles.

1.2. **Update the indigenous legislation, with emphasis on the regulation of the indigenous law and the law of the National Directorate for Community Development (DINADECO)**, so that the regulation includes the fact that indigenous territorial governance is through its traditional community structures duly elected and recognized through the village; and in the DINADECO law, a specific chapter for Indigenous Peoples is included.

1.3. **Establish a permanent mechanism of citizen security for the indigenous population**, in the indigenous territories of the country, with emphasis on the territories that suffer the greatest repression; as well as external aspects controls that influence the production of drugs and drug trafficking in the territories.

2. Take the **necessary legislative and administrative steps to ensure that indigenous peoples' are properly consulted** in the elaboration and implementation of National Development Plans or territorial management and to guarantee that their rights are fully included in these processes, including their right to autonomous development.

3. **Develop, in collaboration with indigenous communities,** programmes of action and special measures to combat the negative effects of climate change. This includes providing technical and financial support for these communities' proposals to mitigate and resist to the impacts of climate change to which indigenous peoples are particularly vulnerable.
4. **Develop and implement the General Consultation Mechanism for Indigenous Peoples of Costa Rica** as recommended by the CDESCR (2016), CERD (2007, 2015), CEDAW (2017) and the Costa Rica's last UPR. This mechanism has yet to be implemented.
5. **Accelerate the voting of the “Bill Proposal for the Autonomous Development of Indigenous Peoples”**, which has been stalled by the Legislative Assembly for over 24 years.
6. **Establish and correctly apply medical attention protocols that are compatible with indigenous customs,** especially with regards to obstetric care whereby indigenous women are disproportionately affected by obstetric violence, as pointed out by the CEDAW. There should also be greater effort in providing accommodation closer to the hospital facilities so that families of indigenous patients can support their relative.
7. **Guarantee and expedite the implementation of concrete measures for the access to bilingual education** for indigenous children as this is key to their good development and full enjoyment of their rights. Strengthen the Department of Intercultural Education of the Ministry of Public Education, by assigning the necessary budget and human resources that have been subject to constant cuts. **Establish a national programme of University Grants to help facilitate access to higher education for indigenous peoples.**
8. **Create and implement adequate** crop substitution programmes to replace the cultivation of marijuana and help develop alternative sources of income for the communities that cultivate this plant. **We recommend to support food sovereignty programmes in indigenous communities. We call for the elaboration and application of** drug prevention programmes for young people in indigenous territories.