

2021

## Going Off the Rails on the Mayan Train: How AMLO's Development Project is on a Fast Track to Multiple Violations of Indigenous Rights

Jared Green

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/auilr>



Part of the [International Humanitarian Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

Green, Jared (2021) "Going Off the Rails on the Mayan Train: How AMLO's Development Project is on a Fast Track to Multiple Violations of Indigenous Rights," *American University International Law Review*. Vol. 36 : Iss. 4 , Article 3.

Available at: <https://digitalcommons.wcl.american.edu/auilr/vol36/iss4/3>

This Comment or Note is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact [kclay@wcl.american.edu](mailto:kclay@wcl.american.edu).

# GOING OFF THE RAILS ON THE MAYAN TRAIN: HOW AMLO’S DEVELOPMENT PROJECT IS ON A FAST TRACK TO MULTIPLE VIOLATIONS OF INDIGENOUS RIGHTS

JARED GREEN\*

I. INTRODUCTION .....	847
II. BACKGROUND .....	848
A. THE MAYAN TRAIN .....	848
B. PRINCIPAL ORGANS OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM .....	853
C. THE INTER-AMERICAN SYSTEM’S RELEVANT LEGAL OBLIGATIONS REGARDING INDIGENOUS RIGHTS .....	855
i. The Right to Property under Article 21 of the ACHR .....	855
ii. The Right to Equal Protection of the Law and to Judicial Protection under Articles 24 & 25 of the ACHR and the Obligation to Ensure the Enjoyment of Rights under Article 1 of the ACHR .....	860
III. ANALYSIS .....	863
A. MEXICO FAILED TO COMPLY WITH PROCEDURAL SAFEGUARDS PROTECTING THE RIGHT TO PROPERTY BEFORE PROCEEDING WITH THE MAYAN TRAIN	

---

\* Jared Green is a J.D. Candidate at the American University in Washington, D.C. with an anticipated graduation date of May 2022. His motivation for this article was rooted in his advocacy for marginalized groups, including indigenous communities. His other areas of professional interest are migrant rights, transitional justice, strengthening the rule of law, and advocating for victims of human rights abuses. The author would like to give a special thanks to Professor and Dean Emeritus Claudio Grossman for serving as his advisor during the process of writing this Comment.

DEVELOPMENT PROJECT.....	864
i. Duty to Actively Consult According to Traditions and Customs of Indigenous Peoples .....	864
ii. Duty to Disseminate Information .....	865
iii. Duty to Communicate Constantly .....	867
iv. Duty to Act in Good Faith .....	868
v. Duty to Consult at Early Stages.....	870
vi. Duty to Disclose All Potential Risks .....	871
vii. Duty to Allow Traditional Decision-Making Processes.....	872
viii. Summary of Saramaka Procedural Safeguards for Effective Participation of Indigenous Peoples in Consultations with the Mexican Government .....	873
B. THE MEXICAN STATE DID NOT OBTAIN THE FREE, PRIOR, INFORMED CONSENT OF INDIGENOUS COMMUNITIES IN SOUTHERN MEXICO BEFORE IT UNDERTOOK THE MAYAN TRAIN PROJECT .....	873
C. MEXICO IS IN VIOLATION OF THE RIGHT TO EQUAL PROTECTION UNDER ARTICLE 24 OF THE ACHR .....	876
D. MEXICO IS IN VIOLATION OF THE RIGHT TO JUDICIAL PROTECTION UNDER ARTICLE 25 OF THE ACHR AND THE OBLIGATION TO ENSURE THE ENJOYMENT OF RIGHTS UNDER ARTICLE 1 OF THE ACHR .....	877
IV. RECOMMENDATIONS.....	880
A. APPROPRIATE MEASURES THE MEXICAN GOVERNMENT SHOULD TAKE TO COMPLY WITH ITS INTERNATIONAL LEGAL OBLIGATIONS.....	880
i. The Social and Legal Importance that Civil Society has Regarding the Mayan Train Project .....	883
ii. Role of the Commission and the Court in Granting Precautionary Measures and Developing Indigenous Rights Law.....	884
V. CONCLUSION .....	885

## I. INTRODUCTION

The Mayan Train is a major development project in the Yucatán Peninsula. It is a tourist train that will traverse the jungles and coastline of the region, going from the city of Palenque in the state of Chiapas to the popular tourist location of Cancún in the state of Quintana Roo.<sup>1</sup> The project promises to bring development to the region,<sup>2</sup> but many are criticizing the proposed plan for overlooking detrimental impacts on the environment and local indigenous communities.<sup>3</sup>

This Comment will discuss the Mayan Train, pertinent international agreements and the obligations they create for Mexico, and relevant international caselaw interpreting these agreements. Specifically, this Comment argues that the Mexican government failed to adequately conduct meaningful consultations with indigenous communities concerning the Mayan Train, and it failed to obtain the free, prior, and informed consent of these communities to undergo this project.<sup>4</sup> It also argues that certain actions and omissions of the Mexican State in respect to orders for emergency judicial relief have resulted in violations of international human rights law protecting the right to equal protection of the law and the right to judicial protection.<sup>5</sup> Furthermore, this Comment argues that because of its failure to obtain the free, prior, and informed consent of indigenous communities, Mexico is in violation of its obligations under the American

---

1. Martha Pskowski, *Mexico's 'Mayan Train' is Bound for Controversy*, BLOOMBERG CITYLAB (Feb. 22, 2019), <https://www.bloomberg.com/news/articles/2019-02-22/mexico-s-yucatan-train-brings-promise-of-a-tourism-boom>.

2. *Id.*

3. See Letter from Coordinación “Unir Fuerzas para la Defensa del Territorio” et al., to Andrés Manuel López Obrador, President Elect of Mexico (Nov. 16, 2018) (available at: [https://issuu.com/pajaropolitico/docs/manifiesto\\_sobre\\_el\\_tren\\_maya](https://issuu.com/pajaropolitico/docs/manifiesto_sobre_el_tren_maya)) [hereinafter Letter to AMLO] (arguing that the Mayan Train project will offer no benefits to indigenous communities and requesting that the government obtain the free, prior, informed consent of indigenous communities before beginning the project).

4. See Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 172 ¶ 134 (Nov. 28, 2007) [hereinafter *Saramaka*] (noting the duty on States to obtain the free, prior, informed consent of indigenous peoples for large-scale development projects that will affect their communities).

5. See discussion *infra* Section III.C and III.D.

Convention on Human Rights to protect human rights and to take steps to prevent the abuse of these rights.<sup>6</sup>

Section II.A discusses the Mayan Train project in more detail.<sup>7</sup> Section II.B gives a brief overview of the structure of the Inter-American Human Rights system.<sup>8</sup> Section II.C looks at Mexico's obligations under international law, namely under the American Convention on Human Rights (hereinafter, "the Convention") and the American Declaration on the Rights and Duties of Man (hereinafter, "the Declaration").<sup>9</sup> Section III discusses the legal framework of Section II and applies it to the Mayan Train project to explain how Mexico's actions violate international law.<sup>10</sup> Section IV proposes recommendations for the Mexican State, as well as for other actors,<sup>11</sup> and finally, Section V offers a brief conclusion.<sup>12</sup>

## II. BACKGROUND

### A. THE MAYAN TRAIN

In 2018, the inauguration of Andrés Manuel López Obrador (AMLO, as he is commonly known) as President set a new precedent, as his leftist party, the National Regeneration Movement, has never before held the office of the presidency.<sup>13</sup> AMLO began his presidency

---

6. See Organization of American States, American Convention on Human Rights, art. 1, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, [hereinafter ACHR] ("The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."); Case of Yatama v. Nicaragua, Preliminary Objections, Merits, Costs, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 189 (June 23, 2005) (noting that there is a duty on Member States to suppress norms and practices that violate the rights guaranteed by the ACHR).

7. *Infra* Section II.A.

8. *Infra* Section II.B.

9. *Infra* Section II.C.

10. *Infra* Section III.

11. *Infra* Section IV.

12. *Infra* Section V.

13. See Kurt Hackbarth, *The Mexican Presidential Inauguration*, JACOBIN, (Dec. 1, 2018), <https://www.jacobinmag.com/2018/12/mexico-amlo-presidential-inauguration-morena> (describing the inauguration of AMLO and further noting that

by denouncing neoliberalism,<sup>14</sup> which seemingly contradicted one of his largest campaign promises: the Mayan Train.<sup>15</sup>

Plans for the Mayan Train are long in the making.<sup>16</sup> The initial stages of the Mayan Train came into fruition in the first half of 2020 when AMLO and other members of his administration broke ground on the project.<sup>17</sup> Once completed, the so-called Mayan Train will consist of multiple trains that will travel daily over 1,460 kilometers of rail.<sup>18</sup> Apart from the railway itself, the massive development project, valued at \$6.5 billion USD,<sup>19</sup> contemplates the development of urban centers and local tourism, among other objectives.<sup>20</sup>

In November 2018, the government held a national referendum asking voters if they approved of the Mayan Train project.<sup>21</sup> However, only 850,527 Mexicans, representing less than one percent of the nation's electorate, voted in favor of the project.<sup>22</sup> Notwithstanding the low voter turnout and lack of public support for the train,<sup>23</sup> the government moved forward and in November and December 2019 consulted with indigenous communities, which is one of the legal

---

apart from the twelve years of Presidents Fox and Calderón, all other Presidents in Mexico since the Mexican Revolution have been members of the Revolutionary Institutional Party, or PRI).

14. Fernanda Hernández Orozco, *AMLO Inicia su Gobierno con Una Crítica al "Neoliberalismo"*, EXPANSIÓN (Dec. 1, 2018), <https://expansion.mx/nacional/2018/12/01/amlo-inicia-su-gobierno-con-una-critica-al-neoliberalismo>.

15. Pskowski, *supra* note 1.

16. *See id.* (explaining that AMLO has expressed his plans for the Mayan Train beginning in 2006 when he first ran for president, and that even his predecessor, Enrique Peña Nieto, made an unsuccessful attempt at a railroad development project in the Yucatán peninsula).

17. Dulce Olvera, *El estudio de impacto ambiental del Tren Maya llega muy tarde y es engañoso, acusan indígenas*, SINEMBARGO (June 21, 2020), <https://www.sinembargo.mx/21-06-2020/3806684>.

18. CÁMARA DE DIPUTADOS-COMISIÓN ASUNTOS FRONTERA SUR, FICHA TÉCNICA DEL TREN MAYA: ASPECTOS LEGISLATIVOS, ECONÓMICOS Y SOCIO-CULTURALES 4 (2019) (Mex.) [hereinafter MAYAN TRAIN FACT SHEET].

19. Pskowski, *supra* note 1.

20. Olvera, *supra* note 17.

21. Victor Lichtinger & Homero Aridjis, Opinion, *The Mayan Trainwreck*, WASH. POST (Dec. 4, 2018), <https://www.washingtonpost.com/news/theworldpost/wp/2018/12/04/amlo/>.

22. *Id.*

23. *Id.*

requirements for a project of this magnitude.<sup>24</sup> However, shortly after these consultations concluded, the Mexican Office of the U.N. High Commissioner on Human Rights (“U.N.H.C.H.R.”) issued a press release critiquing the government for not complying with international standards regarding indigenous consultations.<sup>25</sup> Civil society organizations have echoed this sentiment.<sup>26</sup> To date, no further formal consultations have been undertaken with the affected indigenous communities, although the government did establish follow up mechanisms and additionally held more informational meetings that took place in March 2020.<sup>27</sup>

---

24. See CONVOCATORIA al Proceso de Consulta Indígena y Jornada de Ejercicio Participativo Ciudadano sobre el Proyecto de Desarrollo Tren Maya, Diario Oficial de la Federación [DOF] 15-11-2019 (Mex.) (available at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5579050&fecha=15/11/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5579050&fecha=15/11/2019)) (informing the public of the consultation process in different locations throughout the country and noting relevant legal instruments requiring indigenous consultations, including, inter alia, ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and various domestic laws).

25. See U.N. Press Release, The Mexican Office of the United Nations High Commissioner on Human Rights, El proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia (Dec. 19, 2019) [hereinafter U.N. Press Release] (noting the failure of the State to discuss the possible negative impacts of the project, the failure of the State to answer questions regarding negative impacts, the perceived obligation on behalf of the indigenous community to assent to the project in order to receive much needed governmental assistance, the failure of the State to use culturally appropriate means, the underrepresentation of non-authoritative members of indigenous communities, and the underrepresentation of indigenous women during the consultations).

26. See, e.g., Ejército Zapatista de Liberación Nacional, *Pronunciamiento de la 4<sup>a</sup> Asamblea Nacional del CNI-CIG* (Dec. 2019), <http://enlacezapatista.ezln.org.mx/2019/12/20/pronunciamiento-de-la-4-asamblea-nacional-del-cni-cig/> [hereinafter *Zapatista 4<sup>th</sup> National Assembly*] (claiming the consultations were a façade); *Postura del Centro de Derecho Ambiental respecto al Proyecto Tren Maya*, CENTRO MEXICANO DE DERECHO AMBIENTAL (June 8, 2020), <https://www.cemda.org.mx/postura-del-centro-mexicano-de-derecho-ambiental-respecto-al-proyecto-tren-maya/> (claiming consultations were not undertaken with the goal of obtaining consent); Adriana Varillas, *Rechazan organizaciones indígenas consulta sobre Tren Maya*, EL UNIVERSAL (July 12, 2019), <https://www.eluniversal.com.mx/estados/rechazan-organizaciones-indigenas-consulta-sobre-tren-maya> (claiming that the consultations didn't meet the requirements to be considered a true indigenous consultation).

27. See GOBIERNO DE MEX., SEGUNDO INFORME DE GOBIERNO 2019-2020 423 (2020) (noting the follow up mechanisms and March 2020 meetings). *But see*

Continuing with the required legal processes, an environmental impact assessment (EIA) was published in June 2020 by the National Fund for Touristic Development (FONATUR), which oversees the project, although information on the entity that actually conducted the assessment was not made available to the public.<sup>28</sup> The EIA was immediately criticized because it neglected to contemplate long term impacts caused by the project.<sup>29</sup> Furthermore, some scholars criticized the EIA for its failure to adequately assess all potential risks that the project poses.<sup>30</sup> Despite these concerns, the State continued construction on the project.<sup>31</sup>

Obvious concerns over the project have led some members of civil society to take legal action. In the late spring of 2020, a federal judge for the District Court of Chiapas issued an *amparo* against all new construction on the project.<sup>32</sup> The *amparo* does not apply to works

---

Ernesto Méndez, *Semarnat obliga a aprobar impacto ambiental del Tren Maya*, EXCELSIOR (July 31, 2020), <https://www.excelsior.com.mx/nacional/semarnat-obligada-a-aprobar-impacto-ambiental-del-tren-maya/1397176> (quoting Victor Manuel Toledo, Secretary of the Secretariat of the Environment and Natural Resources, in a July 2020 press conference where he said that a separate process of indigenous consultations was necessary to be in compliance with international law).

28. FONATUR, MANIFESTACIÓN DEL IMPACTO AMBIENTAL cap. 1 pp. 33 (2020).

29. See Ricardo Hernández Ruiz, *Tren Maya: Manifestación de Impacto Ambiental no contempla polos de desarrollo*, PIE DE PÁGINA (June 19, 2020), <https://piedepagina.mx/tren-maya-manifestacion-de-impacto-ambiental-no-contempla-polos-de-desarrollo/> (explaining that the EIA does not assess the long-term impacts of the project on urban centers surrounding the newly planned stations and arguing that these development poles will have a major environmental impact in the long run). But see Ernesto Méndez, *supra* note 27 (quoting Victor Manuel Toledo who argues that it is theoretically impossible to fully assess the regional risks of the project given its sheer size).

30. See *infra* Section III.A.2.

31. Jesús Vázquez, *Inicia construcción del Tren Maya en sus cuatro primeros tramos*, EL ECONOMISTA (May 28, 2020), <https://www.eleconomista.com.mx/empresas/Inicia-construccion-del-Tren-Maya-en-sus-cuatro-primeros-tramos-20200528-0113.html> (“Construction of the Mayan Train has now begun in its first four stretches. The work consists of the improvement of existing tracks and the modernization of existing stations in the Palenque-Izamal stretch, as well as the extension of the Izamal-Cancún route. . .”).

32. *Amparo frena obras nuevas en Tramo 1 de Tren Maya por epidemia de Covid-19*, FORBES (June 23, 2020), <https://www.forbes.com.mx/noticias-amparo-obras-nuevas-tramo-1-tren-maya/>. See generally Bruce Zagaris, *The Amparo Process in Mexico*, 6 U.S.-MEX. L.J. 61, 62 (1998) (defining the *amparo* as a unique



focused on the maintenance of current rails, however, and is only applicable in three municipalities in Chiapas (Chiapas is only one of the five states where the project is being undertaken).<sup>33</sup> Furthermore, the *amparo* was primarily issued in light of public health concerns over the COVID-19 pandemic and, according to FONATUR, is limited in time to the duration of the public health emergency.<sup>34</sup> FONATUR has further doubted the significance of the *amparo* and indicated that it may not be legally bound to comply with it.<sup>35</sup> Additionally, more *amparos* have been issued against the project and the government has maintained its position that these *amparos* do not constrict its plans.<sup>36</sup>

Although there seems to be much uncertainty around the Mayan Train project, high-ranking governmental actors intend to move forward with it.<sup>37</sup> This is evidenced, *inter alia*, by the awarding of contracts<sup>38</sup> and continued objections against legal actions intended to

---

action in the Mexican legal system which allows an individual to seek injunctive relief against any act that threatens, *inter alia*, life or personal liberty); Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos [LARACPEUM], Diario Oficial de la Federación [DOF] 02-04-2013, últimas reformas DOF 15-06-2018 (legislative statute that governs the *amparo* action).

33. *Amparo frena obras nuevas en Tramo 1 de Tren Maya por epidemia de Covid-19*, *supra* note 32.

34. *Id.*

35. See Press Release, Fondo Nacional de Fomento al Turismo (June 23, 2020) (on file with Mexican government) (available at: <https://www.gob.mx/fonatur/prensa/fonatur-avanza-con-obras-del-tren-maya-al-amparo-de-la-ley>) [hereinafter FONATUR Press Release] (stating that “The Mayan Train has been classified by the Superior District Court (which ordered the injunction) as a public work that ‘in itself is of public order and social interest’, and therefore will proceed according to its corresponding analysis and, if necessary, in challenge of the injunction”).

36. See SEGUNDO INFORME DE GOBIERNO 2019-2020, *supra* note 27, at 423–24 (explaining that of the six total *amparos* against the Mayan Train project, none have a final judgment and some are only provisional suspensions that do not impede the project).

37. See *id.* (explaining intentions to move forward with the project despite the *amparos*).

38. See *Fonatur anuncia empresa ganadora de licitación del Tramo 1 del Tren Maya (Palenque Escárcega)*, GOV'T MEXICO (Apr. 23, 2020), <https://www.gob.mx/fonatur/prensa/fonatur-anuncia-empresa-ganadora-de-licitacion-del-tramo-1-del-tren-maya-palenque-escarcega-240854> (awarding contracts for the first leg of the project).

stop the project.<sup>39</sup>

## B. PRINCIPAL ORGANS OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American Human Rights system is comprised of two principal organs: the Inter-American Commission on Human Rights (“the Commission”) and the Inter-American Court on Human Rights (“the Court”).<sup>40</sup> The Commission was established in 1959<sup>41</sup> and has the primary purpose of “the effective promotion and defense of human rights.”<sup>42</sup> Among other functions, the Commission has the authority to hear complaints brought by individuals and by third parties against States Parties for violations of the Convention<sup>43</sup> or the Declaration.<sup>44</sup> Additionally, the Commission has authority to request a State Party to take precautionary measures when there are “serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the Inter-American system.”<sup>45</sup>

---

39. See FONATUR Press Release, *supra* note 35 (stating that the government will proceed with the project in challenge of an *amparo*); SEGUNDO INFORME DE GOBIERNO 2019-2020, *supra* note 27, at 423–24 (claiming that current *amparos* do not constrain the project).

40. See ACHR, *supra* note 6, at art. 33 (establishing the Commission and the Court as competent organs to ensure the rights guaranteed in the Convention).

41. *Inter-American Commission on Human Rights*, OAS, [http://www.oas.org/en/about/commission\\_human\\_rights.asp](http://www.oas.org/en/about/commission_human_rights.asp) (last visited Nov. 13, 2020).

42. Fernando Volio, *The Inter-American Commission on Human Rights*, 30 AM. U.L.R. 65, 68 (1980).

43. ACHR, *supra* note 6, at art. 44.

44. See Christina Cerna, *Reflections on the Normative Status of the American Declaration of the Rights and Duties of Man*, 30 U. PA. J. INT’L L. 1211, 1212–13 (2009) (noting the Commission’s position that the Declaration has legally binding force and further noting the presence of this position in the Commission’s decisions).

45. Inter-Am. Comm’n H.R., *Rules of Procedure of the Inter-American Commission on Human Rights*, art. 25 (effective Aug. 1, 2013). See generally *id.* at art. 25(2)(a)–(c) (defining a serious situation as “a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending decision in a case or petition before the organs of the inter-American [sic] system[,]” defining an urgent situation as a “risk or threat that is imminent and can materialize, thus requiring immediate preventive or protective action[,]” and defining irreparable harm as “injury to rights which, due to their nature, would not be susceptible to reparation or adequate compensation.”).

The Court, while having the authority to interpret the Convention and determine if there has been a violation of a right protected by the Convention,<sup>46</sup> can only accept a contentious case presented to it by the Commission or by the concerned State Party.<sup>47</sup> The Court also has the jurisdiction to issue advisory opinions when a State Party requests the advice of the Court on a particular issue involving the interpretation of a human rights treaty into its domestic laws.<sup>48</sup> Before the Court can exercise jurisdiction over a country in a contentious case, that country must first have accepted the jurisdiction of the Court upon its ratification of the Convention or through a special agreement.<sup>49</sup> As a note, Mexico has accepted the jurisdiction of the Court.<sup>50</sup>

After the Court determines that there is a violation of an individual's rights under the Convention, it has the authority to order a State Party to ensure the enjoyment of that individual's rights as well as to order that reparations be paid to the claimant.<sup>51</sup> Under Article 63(2) of the Convention, the Court may adopt provisional measures it deems necessary in order to avoid irreparable harm to persons.<sup>52</sup> The facts of the situation must show "gravity, urgency, and [a] likelihood of irreparable damage to persons to justify the extraordinary remedy of

---

46. ACHR, *supra* note 6, at arts. 62(3) & 63(1).

47. Thomas Buergenthal, *The Inter-American Court of Human Rights*, 76 AM. J. INT'L L. 231, 238 (1982); ACHR, *supra* note 6, at art. 51(1).

48. ACHR, *supra* note 6, at arts. 64(1)–(2).

49. *See id.* at art. 62(3) ("The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.").

50. *See Multilateral Treaties: American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32)*, ORG. OF AME. STATES, [http://www.oas.org/dil/treaties\\_b-32\\_american\\_convention\\_on\\_human\\_rights\\_sign.htm](http://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm) (last visited Oct. 4, 2020) [hereinafter *Multilateral Treaties*] (accepting the jurisdiction of the Court as binding ipso facto on Mexico with regard to the interpretation and application of the Convention).

51. ACHR, *supra* note 6, at art. 63(1) ("If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.").

52. ACHR, *supra* note 6, at art. 63(2).

provisional measures.”<sup>53</sup>

As a State Party to the Convention, and having accepted the jurisdiction of the Court, Mexico is bound to the decisions of the Court.<sup>54</sup> Furthermore, Mexico’s Supreme Court affirmed that it does not have the competence to review a decision by the Inter-American Court and that it has the obligation to comply with any judgment against the Mexican State.<sup>55</sup> Additionally, the Mexican Supreme Court believes that the interpretative criteria of the Inter-American Court in contentious cases in which the Mexican State is not a party serve as guidance for all Mexican judges and should be followed to the extent they provide greater protection for human rights than that provided for in Article 1<sup>56</sup> of the Mexican Constitution.<sup>57</sup>

### C. THE INTER-AMERICAN SYSTEM’S RELEVANT LEGAL OBLIGATIONS REGARDING INDIGENOUS RIGHTS

#### i. *The Right to Property under Article 21 of the ACHR*

The jurisprudence of the Inter-American system has greatly expanded conceptions of indigenous property rights over the past two decades.<sup>58</sup> This is due in part to the Court’s use of other treaties and

---

53. Jo M. Pasqualucci, *Provisional Measures in the Inter-American Human Rights System: An Innovative Development in International Law*, 26 VAND. J. TRANSNAT’L L. 803, 833 (1993) (citing ACHR, *supra* note 6, at art. 63(2)).

54. *Multilateral Treaties*, *supra* note 50.

55. SERGIO GARCÍA RAMÍREZ, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, VOTOS PARTICULARES EN LA CORTE INTERAMERICANA DE DERECHOS HUMANOS Y REFLEXIONES SOBRE CONTROL DE CONVENCIONALIDAD 59 (Comisión Nacional de los Derechos Humanos, 2d ed. 2015).

56. See Constitución Política de los Estados Unidos Mexicanos, CP, art. 1, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 08-05-2020 (Mex.) (“In the United Mexican States all persons shall enjoy the human rights recognized by this Constitution and by international treaties to which the Mexican State is a party, as well as the guarantees for their protection, whose exercise shall not be restricted or suspended, save for in certain cases and under certain conditions that this Constitution establishes.”).

57. RAMÍREZ, *supra* note 55, at 59.

58. See generally *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*, INTER-AM. COMM’N H.R. (2010) [hereinafter Report on Ancestral Land Rights] (explaining the developments in the Inter-American Human Rights System with regard to the right to indigenous property).

developments in international law to interpret the provisions of the Convention.<sup>59</sup>

The first landmark indigenous property rights case to reach the Court was *Awas Tingni v. Nicaragua*.<sup>60</sup> This case arose out of a dispute between the Awas Tingni community and the Nicaraguan government when the latter granted permission to private timber companies to log the lands that traditionally belonged to the Awas Tingni community.<sup>61</sup> In this case, the Court analyzed, *inter alia*, Nicaragua's compliance with Article 21 of the Convention.<sup>62</sup> The Court recognized the deep spiritual connection that indigenous communities have with the land, and the importance of maintaining their cultural legacies in future generations.<sup>63</sup> Importantly, the Court also noted the differences in indigenous land tenures and held that indigenous customary practices of land ownership, evidenced by possession rather than formal title to the land, are sufficient in establishing ownership.<sup>64</sup> The recognition of

---

59. See *Maya Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm'n H.R. Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶ 87 (2004) (explaining how the Inter-American Human Right System looks to developments in international law to interpret the ACHR, giving particular importance to ILO C.169 with regard to interpreting the rights of indigenous peoples); *see also* United Nations Declaration on the Rights of Indigenous Peoples [UNRIP], G.A. Res. 61/295, (Oct. 2, 2007) (multilateral agreement that came into effect in 2007 and is used by the Court to interpret States obligations under the Convention).

60. *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001) [hereinafter *Awas Tingni*]. See generally S. James Anaya & Claudio Grossman, *The Case of Awas Tingni v. Nicaragua: A Step in the International Law of Indigenous Peoples*, 19 ARIZ. J. INT'L & COMP. L. 1, 3 (2002) (offering an overview of this seminal case and its importance with regard to the Court's indigenous rights jurisprudence).

61. Anaya & Grossman, *supra* note 60, at 3–4.

62. *Awas Tigni*, Inter-Am. Ct. H.R. (ser. C) No. 79 ¶ 142; *see* ACHR, *supra* note 6, at art. 21 (“1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.”).

63. *Awas Tigni*, Inter-Am. Ct. H.R. (ser. C) No. 79 ¶ 149.

64. *Id.* ¶ 151; *see also id.* ¶ 140 (argument made by the Commission stating that there is a customary norm that “affirms the rights of indigenous peoples to their traditional lands”).

communal property rights would become a seminal holding of the Court.<sup>65</sup> Notably, when issuing reparations, the Court ordered Nicaragua to provide the same rights under its national legislation that were recognized under the Convention, particularly with regard to titling land to indigenous communities pursuant to the customs of these communities.<sup>66</sup>

After laying the groundwork for indigenous land rights in *Awastwini*, the Inter-American system has since fleshed out the definition of the right to property in the indigenous context. In *Mary & Carrie Dann v. United States*, the Commission examined the concept of consent in the context of the relinquishment of communal land rights.<sup>67</sup> In *Dann*, the Commission interpreted the obligations of the United States under the Declaration, which the Commission considers binding upon Member States of the Organization of American States,<sup>68</sup> but which the United States does not recognize as binding on itself.<sup>69</sup> The claimants alleged that their land use rights had not been extinguished, while the government argued those rights had been extinguished due to encroachment by non-indigenous peoples and by an administrative award for the land in question.<sup>70</sup> Here, the Commission determined that the concept of fully informed mutual consent hinges upon full disclosure of information and obtaining mutual consent of the entire indigenous community.<sup>71</sup> Furthermore,

---

65. *Accord Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm'n H.R. Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶ 114 (2004) ("[I]ndigenous peoples enjoy a particular relationship with the lands and resources traditionally occupied and used by them, by which those lands and resources are considered to be owned and enjoyed by the indigenous community as a whole and according to which the use and enjoyment of the land and its resources are integral components of the physical and cultural survival of the indigenous communities and the effective realization of their human rights more broadly.").

66. *Awastwini*, Inter-Am. Ct. H.R. (ser. C) No. 79 ¶ 138.

67. *See Dann v. United States of America*, Case 11.140, Inter-Am. Comm'n H.R. Report No. 75/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 ¶¶ 114–117 (2002) [hereinafter *Dann*] (describing dispute between the parties which arose in part when one band of the Western Shoshone Nation consented to litigate a land claim with the federal government but the Danns and others, who also belonged to the Western Shoshone Nation, did not consent).

68. Cerna, *supra* note 44, at 2.

69. *Dann*, Case 11.140, Inter-Am. Comm'n H.R. Report No. 75/02 ¶ 94.

70. *Id.* ¶¶ 43, 114–23.

71. *Id.* ¶ 140.

this case reiterated important holdings from the *Awes Tingni* case; notably that, among other rights, indigenous property rights must be interpreted “with due regard to the particular principles of human rights law governing the individual and collective interests of indigenous peoples.”<sup>72</sup>

As noted in the *Dann* case, consent of the indigenous community is a key principle of this body of law, especially with regard to development projects and natural resource exploitation that affect the land interests of indigenous peoples.<sup>73</sup> The Court further expounded on this concept of consent in *Saramaka v. Suriname*.<sup>74</sup> That case arose from a dispute over land concessions from the government of Suriname to private industries for the use of natural resources which both the government and the Saramaka people claimed ownership over.<sup>75</sup> The Court held that Suriname had the duty to ensure the participation of indigenous communities in culturally appropriate ways in projects<sup>76</sup>, such as natural resource exploitation, that affect their communities.<sup>77</sup> The Court further held that indigenous communities were entitled to benefit sharing from such projects and that independent entities must conduct environmental and social impact assessments prior to these projects.<sup>78</sup> In analyzing this case, the Court noted seven criteria<sup>79</sup> that must be met in the consultation process, a process which is required under international legal

---

72. *Id.* ¶ 131.

73. See International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169) art. 6, June 27, 1989, 1650 U.N.T.S. 383 [hereinafter C.169] (laying out various obligations including the requirement that governments must obtain the consent of indigenous communities with regard to “legislative or administrative measures which may affect them directly.”); Case of the Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 172 ¶ 134 (Nov. 28, 2007) (explaining that there is a duty to obtain the consent of indigenous communities for projects that have a “major impact” on their communities).

74. See generally *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 134.

75. *Id.* ¶ 118.

76. See generally *id.* at 38, n.127 (noting that the Court defines “projects” to include “any proposed activity that may affect the integrity of the lands and natural resources” of the indigenous community).

77. *Id.* ¶ 129.

78. *Id.*

79. See *id.* ¶ 133.

frameworks.<sup>80</sup> These criteria impose on the State a duty to: actively consult with communities “according to their customs and traditions”; accept and disseminate information among indigenous communities; communicate constantly with indigenous communities; act in good faith during the consultation process, using culturally appropriate means, and with the end goal of reaching an agreement; consult with indigenous communities at early stages of the project and in accordance with the traditions of the community; fully inform the indigenous community of all potential risks, to the environment, health, and otherwise; and allow indigenous communities to use traditional decision-making practices during the consultation process.<sup>81</sup>

Perhaps the most important holding in *Saramaka* is that large-scale development projects require the state not only to consult with indigenous communities, but to obtain the free, prior, and informed consent of these communities.<sup>82</sup> The Court further noted how other international bodies have declared this obligation to obtain consent for large-scale development projects to be indispensable to protecting indigenous rights.<sup>83</sup> The Court has also looked to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in determining a State’s obligations to its indigenous communities.<sup>84</sup> The UNDRIP provision regarding the obligation to obtain the free, prior, and informed consent of indigenous communities affected by a development project is virtually synonymous with the Court’s interpretation of this obligation in *Saramaka*.<sup>85</sup> The requirements the

---

80. See Report on Ancestral Land Rights, *supra* note 58, at 103 n.646 (referring to the obligation of consultation expressed in ILO C.169 and UNDRIP).

81. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

82. *Id.* ¶ 134.

83. See *id.* ¶¶ 135–36 (citing the U.N. Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people [“consent is essential for the protection of human rights of indigenous peoples in relation to major development projects”] and the U.N. Committee on the Elimination of all forms of Racial Discrimination [noting that in some cases, consultation alone falls short of protecting indigenous rights to land]).

84. See Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, at 62 n.288 (June 27, 2012) [hereinafter *Sarayaku*] (applying UNDRIP’s provisions to that case and holding that the right to cultural identity is a fundamental right).

85. Compare UNDRIP, *supra* note 59, art. 32(2) (“States shall consult and



Court has imposed on States to comply with the right to effective consultation are also sine qua non requirements for the obligation to obtain the free, prior, informed consent of indigenous communities.<sup>86</sup> Furthermore, free, prior, informed consent requires that consultations “be designed to secure the free and informed consent” of indigenous peoples, provide for the participation of indigenous communities during all stages of the project, and that indigenous communities receive compensation for environmental harm as well as a share of the benefits of such projects “in a manner consistent with their own development priorities.”<sup>87</sup>

ii. *The Right to Equal Protection of the Law and to Judicial Protection under Articles 24 & 25 of the ACHR and the Obligation to Ensure the Enjoyment of Rights under Article 1 of the ACHR*

Under the Inter-American system’s jurisprudence, States have the affirmative duty to adopt special measures to guarantee the full and equal rights of indigenous peoples to their traditionally held lands and to give special consideration to “the weakness or helplessness of

---

cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”), *with Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 134 (requiring the State of Suriname to obtain the “free, prior, informed consent” of the Saramaka people “according to their customs and traditions” with regard to “large-scale development or investment projects that would have a major impact in Saramaka territory”).

86. See HRC, Free, Prior and Informed Consent: A Human Rights-Based Approach, ¶ 20–22, A/HRC/39/62 (Aug. 10, 2018) [hereinafter Free, Prior and Informed Consent: A Human Rights-Based Approach] (stating that the constituent elements of free, prior, informed consent include the absence of “intimidation, coercion, manipulation, and harassment”; freedom on the part of the indigenous communities to follow their traditions and customs in the institutions representing them in consultations; that they have influence in decision-making throughout the consultation process; that they be consulted as early as possible; that they be allowed to use their own decision-making processes; and that there be quantitatively and qualitatively sufficient information provided to them).

87. INTER-AM. COMM’N ON H.R., ACCESS TO JUSTICE AND SOCIAL INCLUSION: THE ROAD TOWARDS STRENGTHENING DEMOCRACY IN BOLIVIA, ¶ 248 (2007).

certain social groups or sectors.”<sup>88</sup> This is further expressed in the duty to suppress norms and practices that violate the rights established in the Convention, including the right to property.<sup>89</sup> Furthermore, the Court has interpreted principles of law under Article 24, namely the principles of non-discrimination and equality, to be norms of jus cogens.<sup>90</sup>

Mexican courts have applied these standards to some extent in prior cases when interpreting the Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization (hereinafter “C.169”).<sup>91</sup> In one of these cases, the Mexican Electoral Court of the Judiciary of the Federation struck down a state legislative order when local election officials did not take into account the traditions and customs of the members of the local indigenous community in election proceedings.<sup>92</sup> That court found that the obligations of C.169 were consistent with the Federal Law on the Prevention and Elimination of Discrimination which requires the Mexican State to promote equality and freedom of persons in “real and effective” ways.<sup>93</sup> The Mexican court specifically noted that this requires the State to “take into account the customs” of indigenous groups in any legal matter or procedure and to “guarantee throughout any legal process” the right to linguistic assistance.<sup>94</sup> This demonstrates that there is precedent in

---

88. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 91; *Yatama*, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 201; *see also* ACHR, *supra* note 6, at art. 1 (requiring States Parties to respect and ensure the enjoyment of the rights in the Convention).

89. *Yatama*, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 189.

90. *See id.* ¶ 184 (noting the prevalence of the principles of non-discrimination and equality in numerous legal instruments and further noting its importance in domestic and international legal frameworks).

91. *See generally* C.169, *supra* note 73.

92. Press Release, Dirección General de Jurisprudencia, Seguimiento y Consulta, *Joel Cruz Chávez y otros vs. Quincuagésima Novena Legislatura del Estado de Oaxaca y otras*, TRIBUNAL ELECTORAL DEL PODER JUDICIAL DE LA FEDERACIÓN [TEPJF], <https://www.te.gob.mx/IUSEapp/tesisjur.aspx?idtesis=13/2008&tpoBusqueda=S&sWord=joel,cruz,chavez> (last visited Oct. 10, 2020) (Mex.) [hereinafter *Cruz v. 59th Legislature of Oaxaca*].

93. *Id.*; Ley Federal para Prevenir y Eliminar la Discriminación [LFPED] art. 2, Diario Oficial de la Federación [DOF] 11-06-2003, últimas reformas 21-06-2018 (Mex.) (“It is the State’s duty to promote conditions of freedom and equality of persons so that these rights are real and effective.”).

94. *Cruz v. 59th Legislature of Oaxaca*, *supra* note 92.

Mexico that applies the duty to provide appropriate legal measures to the indigenous community in order to respect the right to equal protection of the law.<sup>95</sup>

In addition to establishing special measures to guarantee equal protection of the law, Article 25 of the Convention requires Member States to provide access to judicial remedies when there is a violation of fundamental rights.<sup>96</sup> Because this obligation is a positive right, it requires states to ensure this right by taking all necessary actions to ensure effective protection of this right.<sup>97</sup> This means that judicial remedies must not only exist, but they must also be effective.<sup>98</sup> Furthermore, States must take affirmative steps to ensure that judicial protection effectively establishes whether or not there has been a violation of rights and that redress is not only effective, but also that the infringed right is restored so as to be fully enjoyed.<sup>99</sup> The jurisprudence of the Inter-American system provides that these protections must be provided whenever there is a threat to the

---

95. *See id.* (“[T]he Mexican State, through its organs, must provide the necessary measures of correction or compensation at their disposal to those subjects situated in inequality in fact and allow access to the free and effective exercise of their fundamental rights, being that in any other manner these rights become mere rhetorical declarations lacking any virtuality in the sense that their function as instruments for the full development of the person is altered and the dignity of the person is undermined with the support of the state’s framework.”).

96. ACHR, *supra* note 6, at art. 25; *see also id.* at art. 1 (requiring States Parties to ensure the enjoyment of the rights of the Convention).

97. *See* Laurens Lavrysen, *Positive Obligations in the Jurisprudence of the Inter-American Court of Human Rights*, 7 INTER-AM. & EUR. HUM. RTS. J. 94, 96 (2014) (noting that the obligation to ensure rights “requires states to undertake all actions which are necessary to enable individuals under their jurisdiction to exercise and enjoy their human rights.”).

98. *See, e.g.,* *Awas Tingni*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 114 (Aug. 31, 2001); *see also* Report on Ancestral Land Rights, *supra* note 58, ¶ 353 (citing various cases supporting assertion).

99. *See* Report on Ancestral Land Rights, *supra* note 58, ¶ 354; *Maya Indigenous Communities of the Toledo District v. Belize*, Case 12.053, Inter-Am. Comm’n H.R. Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶ 184 (2004); *see also* Velázquez Rodríguez v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 ¶ 166 (July 29, 1988) (“As a consequence of [the duty to ensure the free and full exercise of rights], the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.”).

territorial rights of indigenous peoples.<sup>100</sup>

Furthermore, the Court and the Commission have reiterated that Member States have a duty to respect and ensure rights.<sup>101</sup> As seen in *Awas Tingni*, the Court requires states to create provisions within their domestic legal framework that are in line with the protections of the Convention.<sup>102</sup> However, even with a sufficient legal framework in place that is consistent with the Convention, implementation of such a framework always poses an issue.<sup>103</sup> In recognizing this, the Court has held that States have the duty to guarantee the “free and full exercise of human rights,” meaning that “[i]ndigenous and tribal peoples have a right to see the law implemented and applied in practice, specifically in relation to their territorial rights.”<sup>104</sup>

### III. ANALYSIS

This section will explain how omissions made by the Mexican State during the indigenous consultations as well as its noncompliance with judicial orders result in violations of various indigenous rights under the Convention. It will first look at the duty to consult and analyze each of the *Saramaka* factors to determine if these procedures were followed for the Mayan Train project.<sup>105</sup> Then it will discuss whether the Mexican State obtained the free, prior, and informed consent of indigenous communities with respect to the Mayan Train project. It

---

100. Report on Ancestral Land Rights, *supra* note 58, ¶ 357; Case of Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 125 ¶ 74(c) (June 15, 2005).

101. See Report on Ancestral Land Rights, *supra* note 58, ¶ 42 (explaining that the charter of the Organization of American States places this burden upon member states and furthermore that this is reflected in Articles 1.1 and 2 of the Convention).

102. *Awas Tingni*, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 138.

103. Report on Ancestral Land Rights, *supra* note 58, ¶ 44 (“A favorable legal framework is ‘insufficient for due protection of [indigenous peoples’] rights if it does not go hand in hand with policies and actions by the State to ensure application of effective compliance with the provisions which the sovereign State has undertaken to apply.’”).

104. *Id.*; see also *Yakye Axa*, Inter-Am. Ct. H.R. (ser. C) No. 125 ¶ 141 (June 15, 2005) (“legislation alone is not enough to guarantee the full effectiveness of the rights protected by the Convention, but rather, such guarantee implies certain governmental conducts to ensure the actual existence of an efficient guarantee of the free and full exercise of human rights.”).

105. See *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

will then analyze the rights to equal protection of the law and the right to judicial protection and assess if the Mexican State is infringing these rights.<sup>106</sup>

A. MEXICO FAILED TO COMPLY WITH PROCEDURAL SAFEGUARDS  
PROTECTING THE RIGHT TO PROPERTY BEFORE PROCEEDING WITH  
THE MAYAN TRAIN DEVELOPMENT PROJECT

In *Saramaka*, the Court held, inter alia, that a State has the duty of ensuring the effective participation of indigenous communities with regard to development projects in their territory.<sup>107</sup> The foremost issue regarding the Mayan Train project is the lack of an adequate process of indigenous consultation and participation in the decision-making process. The next subsection will analyze Mexico's compliance with the standards the Inter-American System requires for effective participation.<sup>108</sup>

i. *Duty to Actively Consult According to Traditions and Customs of  
Indigenous Peoples*

The first duty States Parties have is to actively consult with indigenous communities according to their traditions and customs.<sup>109</sup> With regard to the requirement to consult according to the traditions and customs of indigenous peoples, the Court has emphasized the need for interpretation or equivalent means to ensure that indigenous peoples understand legal proceedings.<sup>110</sup> The Court has further noted that there is no clear model for how to undertake consultations, but that they should take into account the "different forms of indigenous organization" that "respond to the internal processes of these people."<sup>111</sup> Consultations should also include an appropriate temporal dimension, which accounts for indigenous forms of decision-

---

106. See ACHR, *supra* note 6, at arts. 24–25 (describing the rights to equal protection and judicial protection, respectively).

107. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 129.

108. See *id.* ¶ 133 (listing factors that are necessary for the effective participation of indigenous peoples in consultations regarding development projects).

109. *Id.*

110. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 201 (June 27, 2012).

111. *Id.* ¶ 202.

making.<sup>112</sup>

In this case, there was an underrepresentation of certain segments of the indigenous population during the consultations.<sup>113</sup> The Mexican Office of the U.N.H.C.H.R. further asserted that the consultations did not respect the customs and traditions of indigenous communities, noting in particular that the sessions were short, translations were scarce and often inadequate, and that access to the meeting sites was difficult for many.<sup>114</sup> This evidence shows that the Mexican State, while making efforts to actively consult with concerned indigenous peoples, has not fully consulted with indigenous communities with due regard for their traditions and customs.<sup>115</sup>

*ii. Duty to Disseminate Information*

Second, the State has the duty to accept and disseminate information among indigenous communities.<sup>116</sup> The Court has held that this translates into a duty upon states to receive and provide information to indigenous communities.<sup>117</sup> The Court has further interpreted this standard by looking at the domestic law of States, noting that indigenous communities must have “full knowledge” of the potential harm to their “social, cultural, economic, and political cohesion.”<sup>118</sup>

---

112. *Id.*

113. See U.N. Press Release, *supra* note 25 (stating that most of the members that participated in the indigenous consultations were municipal and *ejidal* leaders, that many other members of these communities did not participate, and that indigenous women were greatly underrepresented).

114. *Id.*; see also Comm. on the Elimination of Racial Discrimination, Concluding Observation on the Combined Eighteenth to Twenty-First Periodic Reports of Mexico, ¶ 20, CERD/C/MEX/CO/18-21 (Sept. 19, 2019) (noting that this is a recurring problem as the Mexican State has failed to take into account indigenous views and has failed to comply with all of the requirements of ILO C.169 in other indigenous consultation proceedings.).

115. Cf. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172 ¶¶ 144–46, 154 (finding that the Saramaka people put great importance in preserving the environment for its future generations, that the Saramaka have traditionally used the timber products as a means of sustenance, and that the government of Suriname did not account for these customs and traditions in granting land concessions, resulting in a failure on the part of the State to comply with this requirement).

116. *Id.* ¶ 133.

117. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 208.

118. See *id.* at 59–60, n.276 (interpreting this standard by citing judgments of the

Here, Mexico failed to hear from and accept information from some members of civil society regarding ecological risks.<sup>119</sup> Furthermore, the State failed to disseminate the environmental impact statement before the consultation began, as FONATUR only submitted it to the government on June 16, 2020.<sup>120</sup> This is problematic, as it means that all of the relevant information, especially the potential risks to the environment and the community, was not made known to members of indigenous communities during the consultations.<sup>121</sup> Furthermore, the environmental impact assessment was criticized by scholars for omitting important considerations.<sup>122</sup> Additionally, there are allegations that the government attempted to hide a report compiled by experts that addressed some of the negative consequences of the project.<sup>123</sup>

---

Colombian Constitutional Court).

119. See Laura Castellanos, Opinion, *La Guerra de los Pueblos Indígenas contra el Tren Maya ya Comenzó en México*, WASH. POST (Dec. 16, 2019), <https://www.washingtonpost.com/es/post-opinion/2019/12/16/la-guerra-de-los-pueblos-indigenas-contra-el-tren-maya-ya-comenzo-en-mexico/> (explaining that information was not heard from groups of scientists, including GeoComunes and the Mexican Civil Council of Forestry).

120. See *Tren Maya presenta ante Semarnat, Estudios Ambientales para los Tramos 1, 2 y 3*, FONATUR (June 16, 2020), <https://www.gob.mx/fonatur/prensa/tren-maya-presenta-estudios-ambientales-para-los-tramos-1-2-y-3-ante-semarnat>.

121. See U.N. Press Release, *supra* note 25 (explaining that in the informational meetings government officials only spoke of the benefits and that when questioned, they did not give clear responses as to what risks the project may entail).

122. See ANA ESTHER CECEÑA ET AL., OBSERVATORIO LATINOAMERICANO DE GEOPOLÍTICA, OBSERVACIONES A LA MANIFESTACIÓN DE IMPACTO AMBIENTAL-TREN MAYA 22–23 (2020) (arguing, inter alia, that the environmental impact assessment overlooks the necessity of an appropriate number of adequate crossings for fauna, that it does not properly account for the habitat needs of small-sized species, that it does not fully contemplate the logistics of the number of daily trains (there would be an initial need for 60 trains daily, but by 2053, there would be a need for 491 trains daily according to the estimated number of passengers the EIA proposes), that it does not fully account for the amount of noise and light pollution, and that it does not fully contemplate the amount of fauna that would be killed by the train due to the lack of proper fencing around the tracks); see also *Postura del Centro de Derecho Ambiental Respecto al Proyecto Tren Maya*, *supra* note 26 (noting that among some of the greatest risks to the environment are the fragmentation of the earth, depletion and contamination of the water table, extinction of flora and fauna, increased generation of solid waste, and noise pollution).

123. See Carlos Carabaña, *Conacyt Ocultó Informe Crítico con el Tren Maya*, EL UNIVERSAL (Mar. 9, 2020), <https://www.eluniversal.com.mx/nacion/conacyt->

Because the government failed to accept information from at least some members of civil society and because it did not inform members of indigenous communities of all of the risks of the project (including those outlined in the environmental impact assessment), it is not in compliance with this standard.<sup>124</sup>

*iii. Duty to Communicate Constantly*

Third, there is a duty to communicate constantly with indigenous communities.<sup>125</sup> The Commission has described this as being a “process of dialogue and negotiation.”<sup>126</sup> The U.N. Special Rapporteur on Indigenous Rights has further explained this as requiring communication during “all phases of planning and implementation of the measure or activity in question.”<sup>127</sup>

As discussed in Section II, the primary communication between the government and the indigenous communities occurred in the indigenous consultations in November and December of 2019.<sup>128</sup> Separate from these consultations, the government has also created fifteen follow-up and verification commissions to oversee compliance with agreements made during the consultative phase.<sup>129</sup> Furthermore, the government held regional meetings with indigenous community members on March 7, 2020 in order to allow a forum for discussion of

---

oculto-informe-critico-con-el-tren-maya-ven-riesgo (noting that an investigation into the effects of the Mayan Train project, which was initially planned to be released during the consultative phase, was later decided not to be released during that phase so that it would “not influence” the consultations); *see also* BARBA MACÍAS EVERARDO ET AL., TERRITORIOS MAYAS EN EL PASO DEL TREN: SITUACIÓN ACTUAL Y RIESGOS PREVISIBLES (Conacyt ed. 2019) (detailing various negative impacts of the Mayan Train).

124. *Cf. Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 154 (finding Suriname to be in violation of Article 21 of the Convention when it failed to carry out environmental and social impact assessments which would have apprised the Saramaka of potential risks to their territories).

125. *Id.* ¶ 133.

126. Report on Ancestral Land Rights, *supra* note 58, ¶ 285.

127. Victoria Taulo-Corpuz (Special Rapporteur on the Rights of Indigenous Peoples), Mandato de la Relatora Especial Sobre los Eerechos de los Pueblos Indígenas, at 6, OL MEX 2/2019 (Mar. 5, 2019).

128. Segundo Informe de Gobierno, *supra* note 27, at 423.

129. *Id.*



the Mayan Train project.<sup>130</sup> These events have occurred before the awarding of contracts and before construction began on the project.<sup>131</sup> All of these factors tend to show an effort to maintain constant communication.<sup>132</sup>

*iv. Duty to Act in Good Faith*

The fourth duty is for the state to act in good faith during the consultation process, using culturally appropriate means with the end goal of reaching an agreement.<sup>133</sup> The standard of good faith in undertaking consultations requires that consultations be “a true instrument for participation,” that there be a “climate of mutual trust,” and that there is an absence of any form of coercion.<sup>134</sup>

The government’s efforts to maintain regular communications with indigenous communities is a factor that tends to show good faith in encouraging participation from the indigenous community.<sup>135</sup> Furthermore, the fact that the government undertook the process of indigenous consultation early on during the development project similarly shows good faith.<sup>136</sup> However, the Mexican Office of the

---

130. *Diálogo Permanente con Pueblos Indígenas sobre Tren Maya; Se Realiza Seguimiento de Acuerdos con Gobierno Federal*, INPI (Mar. 7, 2020), <https://www.gob.mx/inpi/es/articulos/dialogo-permanente-con-pueblos-indigenas-sobre-tren-maya-se-realiza-seguimiento-de-acuerdos-con-gobierno-federal-236996?idiom=es>.

131. *See Fonatur Anuncia Empresa Ganadora de Licitación del Tramo 1 del Tren Maya (Palenque Escárcega)*, *supra* note 38 (awarding contract for the first leg of the Project); Vázquez, *supra* note 31 (indicating that construction began in May 2020).

132. *Cf. Chippewas of the Thames First Nation v. Enbridge Pipelines, Inc.*, [2017] 1 S.C.R. 1099, para. 57 (Can.) (finding Crown consultation procedures to be adequate when there was a requirement for the private oil company to continue consulting with indigenous groups throughout the project, file ongoing engagement reports with the government, and to continue engaging with indigenous communities during operation of new oil pipeline project); *see also* Report on Ancestral Land Rights, *supra* note 58, ¶ 285 (“Consultation is not as [sic] a single act, but a process of dialogue and negotiation that implies both parties’ good faith and the objective of achieving a mutual agreement.”).

133. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

134. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 186.

135. *See id.* (requiring states to use consultations as a true instrument of participation).

136. *See* U.N. Press Release, *supra* note 25 (commending government for its early action).

U.N.H.C.H.R. noted that during the informational meetings in the consultative phase, although coercive practices were not used outright, indigenous participants felt obligated to approve the project in order to receive the government's attention for the basic needs of the community.<sup>137</sup> Other activists have criticized the consultation process, claiming that it only served to "legitimize" the project.<sup>138</sup>

Although the early attempts to consult with indigenous peoples and the government's attempts to maintain open streams of communication are factors that show good faith, there are serious concerns that the consultations were tainted with coercion.<sup>139</sup> Furthermore, the Mexican State has not undertaken the proper indigenous consultations in regard to other development projects, which raises suspicion about whether the current procedures were undertaken in good faith.<sup>140</sup> However, the existence of coercive practices is sufficient to show that there was a lack of good faith.<sup>141</sup> Additionally, because the government said more consultations are required<sup>142</sup> yet continued to move forward with the project in absence

---

137. *See id.* ("During the informative sessions in the consultation stage, some authorities claimed that the guarantee of various economic, social, and cultural rights was not conditioned upon acceptance of the project. Nevertheless, the Mexican Office of the U.N. High Commissioner of Human Rights observed that as a consequence of the manner in which the project was presented and the sessions progressed, indigenous persons expressed their approval of the project as a method of receiving attention for basic needs like water, health, education, work, housing, healthy environment, and culture, reasoning that affects the free character of the consultations."). *But see Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 186 ("Thus, it is an inherent part of every consultation with indigenous communities that 'a climate of mutual trust be established,' and good faith requires the absence of any form of coercion by the State or by agents or third parties acting with its authority or acquiescence.").

138. Olvera, *supra* note 17.

139. *See* U.N. Press Release, *supra* note 25.

140. *See* Hum. Rts. Comm., Concluding Observations on the Sixth Periodic Report of Mexico, ¶ 44, U.N. Doc. CCPR/C/MEX/CO/6 (2019) (noting with concern a high number of reports of licenses granted for exploitation and development without proper indigenous consultations being undertaken first).

141. *See Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 186 (requiring "the absence of any form of coercion by the State" for a showing of good faith).

142. *See* Méndez, *supra* note 27 (referring to a statement made by the Secretary of the Mexican Secretariat of the Environment and Natural Resources that a separate process of indigenous consultations was necessary to comply with international law).

of these new consultations, there is further evidence of a lack of good faith.<sup>143</sup>

*v. Duty to Consult at Early Stages*

The fifth requirement is to consult with indigenous communities at early stages of the project, and in accordance with the traditions of the community.<sup>144</sup> The Court has looked to ILO C.169 to interpret this standard as meaning the consultation must take place before the implementation of the project that will affect indigenous communities.<sup>145</sup>

Here, the Mexican government consulted with indigenous groups early on during the process.<sup>146</sup> Consultations with the indigenous community began a little over a year after the public referendum.<sup>147</sup> They also occurred before major contracts<sup>148</sup> were awarded and before construction began.<sup>149</sup> However, as previously noted, the government did not adequately consider the traditions and customs of the community.<sup>150</sup>

Moreover, the government moved forward with contract bidding and awarding as well as construction, despite the concerns noted by the Mexican Office of the U.N.H.C.H.R. and others.<sup>151</sup> The purpose of

---

143. See *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, at 52, n.241 (explaining this criteria by citing to the Peruvian Constitutional Court's reasoning that "transferring . . . consultation to a moment after the publication of the measure eliminates the expectation of the intervention underlying the consultation [which] would also mean that the consultation takes place on acts that have been executed, which could be construed as a lack of good faith").

144. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

145. *Id.* ¶ 181.

146. U.N. Press Release, *supra* note 25.

147. See *Lichtinger & Aridjis*, *supra* note 21 (noting that the national referendum occurred in November 2018); CONVOCATORIA al Proceso de Consulta Indígena y Jornada de Ejercicio Participativo Ciudadano sobre el Proyecto de Desarrollo Tren Maya, *supra* note 24 (giving notice that the indigenous consultations would take place in November and December 2019).

148. See *Fonatur Anuncia Empresa Ganadora de Licitación del Tramo 1 del Tren Maya (Palenque Escárcega)*, *supra* note 38 (awarding contracts for the first leg of the project).

149. See *Vázquez*, *supra* note 31 (noting the commencement of construction in May 2020).

150. See U.N. Press Release, *supra* note 25.

151. See *id.*; Letter to AMLO, *supra* note 3.

communicating early is so that indigenous communities have sufficient time for internal consideration of a project and are able to deliver feedback to the State; it is not merely an item to tick off on the government's procedural to-do list.<sup>152</sup> Unfortunately, the government moved forward on the project without properly addressing concerns from the indigenous community, which seems to defeat the purpose of this requirement.<sup>153</sup>

*vi. Duty to Disclose All Potential Risks*

The sixth duty is to fully inform the indigenous community of all potential risks, to the environment, health, and otherwise.<sup>154</sup> The Court has further described this duty as requiring an environmental and social impact assessment to be performed by a competent and independent entity.<sup>155</sup> The purpose of these assessments is to “preserve, protect, and guarantee” indigenous peoples’ relationship with their land and to “guarantee[] their subsistence as peoples.”<sup>156</sup> Furthermore, these assessments should be completed before approval of development project plans.<sup>157</sup>

As previously discussed, there is a major issue in regard to this factor.<sup>158</sup> The environmental impact assessment for the project was not released until months following the indigenous consultation process.<sup>159</sup> Furthermore, the environmental impact assessment fails to

---

152. See *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

153. See *id.*

154. *Id.* (“The State must also ensure that members of the Saramaka people are aware of possible risks, including environmental and health risks, in order that the proposed development or investment plan is accepted knowingly and voluntarily.”).

155. See *id.* ¶ 129 (requiring, inter alia, that Suriname undertake an environmental and social impact assessment before issuing concessions within Saramaka territory).

156. Report on Ancestral Land Rights, *supra* note 58, ¶ 234; *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 138.

157. See Report on Ancestral Land Rights, *supra* note 58, ¶ 246 (“States must guarantee that the sustainability of investment or development plans or projects and natural resource exploration and exploitation projects in indigenous and tribal peoples’ territories is ‘measured in advance, using effective mechanisms of participation for the persons and groups affected, regardless of whether the State has recognized their ownership.’”).

158. See *supra* note 123.

159. See *Olvera*, *supra* note 17; *cf.* Case of the Kaliña and Lokono Peoples v. Suriname, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C)

account for serious risks to the environment and long-term impacts<sup>160</sup> including the possible pollution of underground water supplies.<sup>161</sup>

The fact that the environmental impact assessment was not available during the 2019 indigenous consultations means that the government did not fully apprise the indigenous communities of all of the risks of the project.<sup>162</sup> This concern was echoed by the Mexican Office of the U.N.H.C.H.R., which stated that only the benefits of the project were disclosed during the consultative phase.<sup>163</sup> Lastly, through the scholarship of environmental experts, it is evident that the environmental impact assessment has obvious flaws.<sup>164</sup>

### *vii. Duty to Allow Traditional Decision-Making Processes*

The seventh requirement is for the State Party to allow indigenous communities to use traditional decision-making practices during the consultation process.<sup>165</sup> As previously stated, consultations should take account of indigenous processes and indigenous forms of organization.<sup>166</sup>

The U.N. noted that during the consultations, the procedure of how to conduct the informative sessions was decided unilaterally by the

No. 309, ¶¶ 214, 226 (Nov. 25, 2015) (finding Suriname failed to comply with this standard when it made concessions to mining companies before an environmental impact assessment was conducted).

160. See Ricardo Hernández Ruiz, *Tren Maya: Manifestación de Impacto Ambiental no Contempla polos de Desarrollo*, PIE DE PÁGINA (June 19, 2020), <https://piedepagina.mx/tren-maya-manifestacion-de-impacto-ambiental-no-contempla-polos-de-desarrollo/> (explaining that the EIA does not assess the long-term impacts of the project on urban centers surrounding the newly planned stations and arguing that these development poles will have a major environmental impact in the long run).

161. *Postura del Centro de Derecho Ambiental Respecto al Proyecto Tren Maya*, *supra* note 26.

162. Cf. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 148 (finding that the level of consultation undertaken by the government of Suriname with the Saramaka was insufficient to ensure their effective participation, that there were no environmental impact assessments completed and disseminated before land concessions, and that environmental harm did in fact occur as a result of the concessions).

163. U.N. Press Release, *supra* note 25.

164. See CECENA ET AL., *supra* note 122, at 22–23.

165. *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

166. See *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 202.

government.<sup>167</sup> As a consequence, there were concerns over sufficient participation of members of indigenous communities representative of the group as a whole, as well as over the length of the sessions and the adequacy of translations.<sup>168</sup> The fact that indigenous traditions were not considered in determining the procedures of the informational sessions shows that the consultations did not completely account for traditional decision making procedures of the concerned indigenous communities.<sup>169</sup>

viii. *Summary of Saramaka Procedural Safeguards for Effective Participation of Indigenous Peoples in Consultations with the Mexican Government*

An analysis of the *Saramaka* procedural safeguards shows that there are serious areas of concern regarding the Mexican State's duty to consult with indigenous communities.<sup>170</sup> Most notably, the consultations lacked full disclosure of all of the risks to indigenous communities,<sup>171</sup> failed to fully disclose this information during the consultative phase,<sup>172</sup> and lacked the appearance of good faith on the part of the government.<sup>173</sup> Therefore, the Mexican government failed to effectively allow indigenous communities to participate in consultations regarding the development of their territories.<sup>174</sup>

B. THE MEXICAN STATE DID NOT OBTAIN THE FREE, PRIOR,

---

167. U.N. Press Release, *supra* note 25.

168. *Id.*

169. See *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 202 (noting that although there is no formal model for the appropriate procedures in indigenous consultations, such consultations must “take into account the national circumstances and those of the indigenous peoples, as well as, contextually, the nature of the measures under consultation.”).

170. See *supra* Section III.A.1–7.

171. See discussion *supra* Section III.A.6.

172. See discussion *supra* Section III.A.2.

173. See discussion *supra* Section III.A.4.

174. See *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133 (establishing requirements for indigenous consultations); see also C.169, *supra* note 73, at art. 6(1)(a) (requiring states party to the agreement, of which Mexico is one, to “consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly[.]”).

# INFORMED CONSENT OF INDIGENOUS COMMUNITIES IN SOUTHERN MEXICO BEFORE IT UNDERTOOK THE MAYAN TRAIN PROJECT

The lack of compliance with the procedural safeguards for indigenous consultations shows that the free, prior, and informed consent (FPIC) was not obtained in the case of the Maya Train.<sup>175</sup> As explained above, the underrepresentation of certain segments of the indigenous community demonstrates that participation of the entire affected indigenous community has not been accounted for in all stages of the proceedings.<sup>176</sup> The facts further indicate that coercive practices were present during the consultations<sup>177</sup> and these consultations were perceived by some as more of an informative process of what the government's plans were.<sup>178</sup> An opportunity to influence the outcome of decisions is inherently included in the obligation to obtain FPIC, and the fact that the indigenous communities were unable to change the outcome shows that they did not give their FPIC to the project.<sup>179</sup>

Additionally, the FPIC of the *entire* community has not been obtained in this case. As expressed by the Commission in the *Dann* case, consent must be obtained from the entire affected indigenous community before a decision is made that affects the land rights of the community.<sup>180</sup> In that case, the United States government prevented

175. See Free, Prior and Informed Consent: A Human Rights-Based Approach, *supra* note 86, ¶¶ 20–22 (defining free, prior, and informed consent to include essentially all of the *Saramaka* factors for procedural safeguards in indigenous consultations); see also Section 3.A (explaining how some of these safeguards were not complied with in the present situation).

176. See U.N. Press Release, *supra* note 25 (noting the underrepresentation of indigenous women and further noting that most of the participants in the meetings were community leaders).

177. *Id.*

178. See Castellanos, *supra* note 119 (describing the consultation as a way of legitimizing the project and noting a statement made by AMLO prior to consultation that the project “va porque va,” meaning it would happen for the sake of happening).

179. See Free, Prior and Informed Consent: A Human Rights-Based Approach, *supra* note 86, ¶ 15 (explaining the “right of indigenous peoples to influence the outcome of decision-making processes affecting them, [which is] not a mere right to be involved in such processes. . .”).

180. See *Dann*, Case 11.140, Inter-Am. Comm’n H.R. Report No. 75/02, OEA/Ser L./V./II.117, doc. 1 rev. 1 ¶ 140 (2002) [hereinafter Report No. 75/02] (defining fully informed consent to require “that all of the members of the community are fully and accurately informed of the nature and consequences of the

the Dann sisters and others from intervening in a claim brought by some members of the same tribal nation that would relinquish the nation's land rights.<sup>181</sup> The Commission concluded that the FPIC of the indigenous community was not obtained for those proceedings because only one band of the tribal nation litigated claims with the government, and did so with no express permission from the rest of the nation.<sup>182</sup> In the present situation, there are many members of the indigenous community who have voiced their objections to the Mayan Train project.<sup>183</sup> Furthermore, although there were 93,142 indigenous persons that voted in favor of the project,<sup>184</sup> this number is greatly outweighed by the population of the indigenous community of the affected region which, by some estimates, totals roughly 2.29 million indigenous persons.<sup>185</sup> Furthermore, the government reports that during the consultative meetings, only 5,436 persons attended, representing 985 indigenous communities out of a total of 1,440 indigenous communities that were asked to participate in the proceedings.<sup>186</sup> This means that roughly one-third of the indigenous communities that will be affected by the project did not have representation at the consultative meetings.<sup>187</sup> Even if these statistics were indicative that a majority of the indigenous communities gave their FPIC to the project, these numbers show that Mexico does not comply with the standard in *Dann* that "all of the members of the community are . . . provided with an effective opportunity to

---

process and provided with an effective opportunity to participate individually or as collectives.").

181. See *id.* ¶¶ 114–17.

182. See *id.* ¶¶ 140–41.

183. See, e.g., Letter to AMLO, *supra* note 3; *Zapatista 4<sup>th</sup> National Assembly*, *supra* note 26; Castellanos, *supra* note 119.

184. SEGUNDO INFORME DE GOBIERNO 2019-2020, *supra* note 27, at 84.

185. *Localidades indígenas*, INPI, <http://www.cdi.gob.mx/localidades2010-gobmx/> (follow "LOCALIDADES INDIGENAS 2010 – FORMATO XLSX" link) (last visited Oct. 23, 2020) (detailing the total and indigenous populations of all of the states and federal entities of Mexico, including the states of Campeche, Chiapas, Quintana Roo, Tabasco, and Yucatán where the Mayan Train project is underway).

186. *Convocatoria y Protocolo para el Proceso de Consulta Indígena sobre el Proyecto de Desarrollo Tren Maya*, GOBIERNO DE MÉXICO (Nov. 15, 2019) <https://www.gob.mx/inpi/documentos/convocatoria-al-proceso-de-consulta-indigena-sobre-el-proyecto-de-desarrollo-tren-maya>.

187. See *id.*



participate individually or as collectives.”<sup>188</sup> One may argue that the concept of obtaining consent through consultations should not place such an excessive burden on States.<sup>189</sup> Nevertheless, the underlying purpose of these consultations is to “allow the full expression of the viewpoints of the peoples concerned,” and as such, States must actively seek out the representative opinions of all affected indigenous community members.<sup>190</sup>

Because of the failure to follow the required procedural safeguards and the failure to obtain the free, prior, and informed consent of indigenous communities before proceeding with the project, Mexico is in violation of Article 21 of the Convention as the Inter-American system has interpreted it.<sup>191</sup>

### C. MEXICO IS IN VIOLATION OF THE RIGHT TO EQUAL PROTECTION UNDER ARTICLE 24 OF THE ACHR

The actions by some of Mexico’s executive branch officials of ignoring orders of the judiciary and failing to meaningfully consult with indigenous peoples is discriminatory against indigenous peoples and contrary to Article 24 of the Convention. As explained above, the Mexican Electoral Court of the Judiciary of the Federation has previously interpreted the State’s obligations under C.169 in two prior cases.<sup>192</sup>

---

188. Report No. 75/02, *supra* note 180, ¶ 140.

189. S. J. Rombouts, *The Evolution of Indigenous Peoples’ Consultation Rights Under the ILO and U.N. Regimes*, 53 STAN. J. INT’L L. 169, 194 (noting States’ concerns that a strict consent requirement in ILO C.169 would give indigenous communities a “veto power” and explaining that the solution was to compromise and require only that States consult with indigenous communities “with the objective of achieving agreement or consent. . .”).

190. *Id.* at 195.

191. See ACHR, *supra* note 6, at art. 21; *cf. Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 154 (finding, inter alia, that the failure to carry out social and environmental impact assessments, failure to put in place adequate safeguards to prevent environmental harm, and the failure to allow the Saramaka to participate effectively in the decision-making process resulted in a violation of Article 21 of the ACHR).

192. See INT’L LABOR ORG., APPLICATION OF CONVENTION NO. 169 BY DOMESTIC AND INTERNATIONAL COURTS IN LATIN AMERICA 161-68 (2009) (explaining two cases heard by the Mexican Electoral Court of the Judiciary of the Federation brought by indigenous claimants); see also *Cruz v. 59th Legislature of*

In the present case there have been procedural elements that have not taken account of indigenous customs, traditions, or linguistics during the consultative period.<sup>193</sup> Notably, the two necessary elements noted in *Cruz v. 59<sup>th</sup> Legislature of Oaxaca* were not complied with:<sup>194</sup> (1) the right to have adequate linguistic services available,<sup>195</sup> and (2) the obligation on the State to take into account the traditions and customs of the indigenous communities.<sup>196</sup> The right to consultation guaranteed under C.169<sup>197</sup> and under caselaw of the Inter-American Human Rights system<sup>198</sup> was not complied with as consultations lacked certain elements of good faith and disclosure required by these laws.<sup>199</sup> These actions by the Mexican government further contradict its own judicial precedent.<sup>200</sup>

The failure to comply with its own judicial precedent, domestic law, and with the jurisprudence of the Court indicates that the Mexican State is violating indigenous peoples' right to equal protection under Article 24 of the Convention.<sup>201</sup>

D. MEXICO IS IN VIOLATION OF THE RIGHT TO JUDICIAL  
PROTECTION UNDER ARTICLE 25 OF THE ACHR AND THE  
OBLIGATION TO ENSURE THE ENJOYMENT OF RIGHTS UNDER

---

*Oaxaca*, *supra* note 92 (noting that the principles of C.169 are part of the “supreme law of the union,” and that special measures are necessary to ensure the full judicial protection of indigenous people).

193. See U.N. Press Release, *supra* note 25.

194. See *Cruz v. 59<sup>th</sup> Legislature of Oaxaca*, *supra* note 92.

195. See U.N. Press Release, *supra* note 25 (noting the inadequacy of translations during informational meetings during the consultative phase).

196. See *id.* (noting the methodology of the informational meetings was not planned in accordance with indigenous culture and norms).

197. C.169 *supra* note 75, at art. 6(1)(a).

198. See discussion *supra* Section II.C.

199. See discussion *supra* Section III.A.

200. See *Cruz v. 59<sup>th</sup> Legislature of Oaxaca*, *supra* note 92 (requiring special measures to be taken with respect to the traditions and customs of indigenous persons by virtue of C.169).

201. See *Yatama*, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 186 (holding that Article 24 “entails obligations for the State to respect and ensure the principle of equality and non-discrimination in the safeguard of other rights and in all domestic laws that it adopts.”).

## ARTICLE 1 OF THE ACHR

Under Article 25, the right to judicial protection requires remedies to be available that are effective and that are, in practicality, enforceable.<sup>202</sup> The Court held in *Sarayaku* that the remedy of *amparo* is effective in protecting fundamental rights.<sup>203</sup> Yet, the executive branch of the Mexican government is challenging the legal effect of *amparos* issued by Mexican courts against the Mayan Train project.<sup>204</sup> There is precedent in Mexican courts requiring compliance with the obligation to adopt special measures to secure the rights of indigenous communities.<sup>205</sup> However, the State has moved ahead with construction, and has not taken full substantive measures to address the insufficiencies of the indigenous consultation proceedings or to obtain the FPIC of affected communities to undergo the project.<sup>206</sup> Furthermore, the ignoring of provisional measures intended to protect indigenous communities is in blatant disregard for the protection of their fundamental rights, including the right to judicial protection.<sup>207</sup> Although the government has responded that the *amparos* issued in lower courts of the country were temporary and not conclusively resolved,<sup>208</sup> the Court places an obligation on States Parties to comply with provisional measures issued by national judiciary authorities for the period in which a risk of harm to human rights remains.<sup>209</sup>

In the present case, the indigenous community's right to property is still at risk due to the lack of adequate consultations and the failure to obtain consent for the project.<sup>210</sup> Because potential harm to these

---

202. Report on Ancestral Land Rights, *supra* note 58, ¶ 354; Maya Indigenous Communities of the Toledo District v. Belize, Case 12.053, Inter-Am. Comm'n H.R. Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 ¶ 184 (2004).

203. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 272.

204. See FONATUR Press Release, *supra* note 37 (stating that the project would move forward in opposition to the court's injunction).

205. See *Cruz v. 59<sup>th</sup> Legislature of Oaxaca*, *supra* note 92.

206. See discussion *supra* Sections III.A & III.B.

207. Cf. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245 ¶¶ 275–78 (explaining how the government's failure to comply with the issuance of an *amparo* violated the right to judicial protection under Article 25 of the Convention because the government was under the obligation to protect and respect the rights of the Sarayaku people, even when the precautionary measure was temporary).

208. SEGUNDO INFORME DE GOBIERNO 2019-2020, *supra* note 27, at 423–24.

209. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 276.

210. See discussion *supra* Sections III.A & III.B.

communities' rights remains, the Mexican State is violating their right to judicial protection by failing to comply with *amparos* issued by the judiciary branch.<sup>211</sup> Mexico's *Amparo* Law was designed to apply to international human rights treaties<sup>212</sup> and when an *amparo* is issued it requires punctual compliance and specifies that noncompliance by government officials includes penalties up to removal from office and prosecution.<sup>213</sup> The fact that the government proceeded with the project in disregard of indigenous rights, conduct which is currently under investigation by national authorities,<sup>214</sup> demonstrates a deprivation of due process for the indigenous individuals who are purportedly protected by these *amparos*.

The failure of the Mexican state to protect the rights of the indigenous communities in the ways just discussed furthermore constitutes a violation of the duties of abstention and the duty to guarantee rights, as interpreted by the Court and the Commission.<sup>215</sup> In Mexico's case, it has adopted laws that are designed to protect the human rights of indigenous peoples.<sup>216</sup> However, as previously noted,

---

211. See SEGUNDO INFORME DE GOBIERNO 2019-2020, *supra* note 29, at 423–24 (claiming that the provisional suspension of the project by several of the *amparos* does not impede the project's progress); see also FONATUR Press Release, *supra* note 35 (explaining that FONATUR did not feel it was bound by an injunction issued by a federal court in Chiapas in the Spring of 2020 and that the project would continue in challenge of the *amparo* if necessary).

212. Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos [LARACPEUM], art. 1 frac. I, Diario Oficial de la Federación [DOF] 02-04-2013, últimas reformas DOF 15-06-2018.

213. *Id.* at art. 192.

214. See *Investigará CNDH Posibles Violaciones a Derechos Humanos en Amparo contra Tren Maya*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS (Aug. 20, 2020), [https://www.cndh.org.mx/sites/default/files/documentos/2020-08/COM\\_2020\\_254.pdf](https://www.cndh.org.mx/sites/default/files/documentos/2020-08/COM_2020_254.pdf) (announcing investigation into possible violations of rights associated with the granting of an *amparo* to indigenous communities in Calakmul, Campeche against the Mayan Train).

215. See ACHR, *supra* note 6, at art. 1 (requiring States Parties to respect and ensure the enjoyment of rights); Lavrysen, *supra* note 97, at 96 (noting that the obligation to ensure rights “requires states to undertake all actions which are necessary to enable individuals under their jurisdiction to exercise and enjoy their human rights.”).

216. See, e.g., Constitución Política de los Estados Unidos Mexicanos, CP, art. 2, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 08-05-2020 (Mex.) (recognizing the unique identity of indigenous peoples in Mexico and establishing, inter alia, that indigenous communities shall have the autonomy to

such legislation is not sufficient *per se* in protecting indigenous rights due to the fact that legislation does not, *ipso facto*, beget enforcement.<sup>217</sup> The Mexican government has the duty to “take such measures as may be necessary to actually comply with the provisions of the Convention.”<sup>218</sup> With regard to the *amparos*, these measures would include actually complying with these orders and refraining from progressing construction on the project.<sup>219</sup>

In conclusion, because the executive branch of Mexico has failed to comply with judicial orders issued by its own courts and refused to take effective measures to ensure rights are protected under both domestic and international laws, the government is in violation of the right to judicial protection.<sup>220</sup>

#### IV. RECOMMENDATIONS

The following are conclusions as to the course of action the Mexican government and other actors should take to avoid infringements of indigenous rights and violations of international law as well as to safeguard indigenous rights.

##### A. APPROPRIATE MEASURES THE MEXICAN GOVERNMENT

---

“decide internal forms of living as well as social, economic, political, and cultural organization” as well as autonomy to “conserve and improve their habitat”); Ley del Instituto Nacional de los Pueblos Indígenas [LINPI] art. 4, frac. III, Diario Oficial de la Federación [DOF] 04-12-2018 (Mex.) (containing various provisions that establish the National Institute of Indigenous Peoples which has the goal of, inter alia, “promoting, fortifying, and assisting the exercise of self-determination and autonomy of indigenous and Afro Mexican communities . . . .”); Ley Federal para Prevenir y Eliminar la Discriminación [LFPED] arts. 1, 15 Quáter, Diario Oficial de la Federación [DOF] 11-06-2003, últimas reformas 21-06-2018 (Mex.) (stating the objective of the statute as “preventing and eliminating all forms of discrimination against any person in terms established by Article 1 of the [Mexican Constitution]” and providing special safeguards for indigenous peoples in order to prevent discrimination against them).

217. See *Yakye Axa*, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 141.

218. Report on Ancestral Land Rights, *supra* note 58, at 14, n.95.

219. Cf. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 277 (finding that the State of Ecuador had been obligated to comply with *amparos* issued by its national courts).

220. Cf. *id.* ¶¶ 272–78 (finding the Ecuadorian State in violation of, inter alia, Article 25 of the Convention for its failure to guarantee effective legal remedies and for violating *amparos* issued by national courts).

### SHOULD TAKE TO COMPLY WITH ITS INTERNATIONAL LEGAL OBLIGATIONS

First, Mexican courts should issue preliminary injunctions to halt all construction on the project until further measures are taken to ensure that indigenous land rights are protected. Furthermore, the executive branch of government must legitimize these injunctions and comply with them, unlike the *amparos* it has all but denounced.<sup>221</sup> This is imperative as the continuation of construction only serves to continue violations of indigenous land rights.<sup>222</sup> Injunctions should be in place until such time that the government has properly consulted with the indigenous community.<sup>223</sup>

Second, the government must organize new consultation procedures with the indigenous community. Special consideration must be given to these procedures, as the government has previously undervalued their significance.<sup>224</sup> Notably, the government must ensure that it gives special emphasis to the aspects of the proceedings that were found to be insufficient in the previous consultations.<sup>225</sup> The government should focus on involving the entire affected indigenous community in these proceedings.<sup>226</sup> Special emphasis must be given to include all members and not only indigenous leaders, and further

---

221. See FONATUR Press Release, *supra* note 35 (explaining that FONATUR did not feel it was bound by an injunction issued by a federal court in Chiapas in the Spring of 2020).

222. Cf. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, at 52, n.241 (citing to various national authorities asserting the importance of undertaking consultations before the development or legislative measure in question is undertaken so that indigenous rights are afforded proper safeguards).

223. See Ley de Amparo, Reglamentaria de los Artículos 103 y 107 de la Constitución Política de los Estados Unidos Mexicanos [LARACPEUM] art. 77(ii), Diario Oficial de la Federación [DOF] 02-04-2013, últimas reformas DOF 15-06-2018 (stating that “the effects of the concession of the *amparo* shall be, when the act complained of . . . implies an omission, to oblige the responsible authority to respect the right implicated and comply with the demands of that right.”).

224. See discussion *supra* Section III.A (explaining how the government has continued work on the Mayan Train despite low turnout during the consultative phase and outcries by various actors condemning the procedures).

225. See discussion *supra* Section III.A.

226. Cf. Report No. 75/02, *supra* note 180, ¶ 140 (holding that for determination of property interests maintained by indigenous communities, a process of “fully informed and mutual consent on part of the indigenous community as a whole[]” is required).

emphasis should be given on including indigenous women in the proceedings. The government should also ensure that these consultations are conducted in a way that respects the traditional methods of decision making of the indigenous communities and also that they are conducted through culturally appropriate means.<sup>227</sup> This includes, but is not limited to, making the information of the proceedings (as well as the proceedings themselves) available in a language that is understood by indigenous community members.<sup>228</sup> Furthermore, the government must approach these new consultations with a good faith intention of actually obtaining the consent of indigenous communities and, where applicable, should empower these communities to contribute their plans for their own development into the Mayan Train project.

Third, the government should remember that the consultation *process* does not mean that a singular meeting is all that is required.<sup>229</sup> The government should ensure that it constantly communicates with the indigenous community, apprising indigenous peoples of all developments in the project and especially those that may have an impact on their communities.<sup>230</sup>

Lastly, the government should authorize a competent independent party to undertake a new environmental impact assessment. As previously explained, the current environmental impact assessment overlooked key areas that may affect indigenous communities, including the long-term effects of the project on the ecosystem and its potential negative effects on the ecosystem, including to flora and fauna.<sup>231</sup> This independent body should also be made known to the public in order to assure both its competency and impartiality.<sup>232</sup> As

---

227. See *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 133.

228. See *Cruz v. 59<sup>th</sup> Legislature of Oaxaca*, *supra* note 92 (ordering the government to “guarantee throughout any legal process, the right [for indigenous persons] to be assisted, if requested, by interpreters and defenders with knowledge of their language.”).

229. See Report on Ancestral Land Rights, *supra* note 58, ¶ 285 (“Consultation is not as [sic] a single act, but a process of dialogue and negotiation that implies both parties’ good faith and the objective of achieving a mutual agreement.”).

230. See *id.*

231. CECEÑA ET AL., *supra* note 122, at 22–23.

232. See, e.g., *Saramaka*, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 194(e) (ordering Suriname to ensure that an environmental impact assessment is conducted “by

this information is critical to the consultation process, this new assessment should be undertaken before consultation meetings are conducted anew, and its results should be widely disseminated among the indigenous communities (in culturally appropriate methods) and among the general public as well.<sup>233</sup>

*i. The Social and Legal Importance that Civil Society has  
Regarding the Mayan Train Project*

Members of civil society should continue to apply pressure on the government to comply with its domestic and international legal obligations by advocating for the interests of indigenous communities over the interests of commercial development. Furthermore, the private sector companies that are undertaking construction should also insist that the government take measures to stall construction contracts temporarily to ensure that indigenous rights are protected. This is important to note as companies have an influential role to play in respecting human rights.<sup>234</sup>

Additionally, since the ability to bring a case before the Commission is vested in private citizens, civil society has an important legal role in safeguarding indigenous rights.<sup>235</sup> If normal civil efforts

---

independent and technically competent entities” prior to granting land concessions to private businesses).

233. Cf. *Sarayaku*, Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 207 (finding the environmental impact assessment undertaken in that case did not comply with the Court’s criteria because the Sarayaku did not participate in its preparation, it was undertaken by an entity contracted by a private oil company without the State’s oversight, and did not account for the “social, spiritual and cultural impact that the planned development activities might have on the Sarayaku People.”).

234. See Ivonne Cruz et al., *Baker Inst. Pub. Policy, Social Conflicts and Infrastructure Projects in Mexico: Baker Institute Report No. 06.21.19 7*, BAKER INST. (2019) (noting, in the context of the Mayan Train and other development projects in Mexico, the need for social license, or social permission, as well as regulatory permission in order for companies to undertake large-scale projects); see also *Case of the Kaliña and Lokono Peoples v. Suriname*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 309, ¶ 225 (Nov. 25, 2015) (“[B]usinesses must respect the human rights of members of specific groups or populations, including indigenous and tribal peoples, and pay special attention when such rights are violated.”).

235. See ACHR, *supra* note 6, at art. 44 (“Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or



of soliciting the government do not prompt any change in the government's course, members of civil society should petition the Commission for its intervention.

*ii. Role of the Commission and the Court in Granting Precautionary Measures and Developing Indigenous Rights Law*

The Commission has the role of monitoring the current situation in Mexico and, if the Mexican government does not change its course in any of the ways described above, it would be appropriate for the Commission to ask Mexico to take precautionary measures in the form of ceasing construction until the matter is settled by the Commission.<sup>236</sup> Additionally, the Commission might consider requesting that the Court take provisional measures against the Mexican government.

As discussed above, the situation must be both serious and urgent with a risk of irreparable harm in order for the Commission to request that a state take precautionary measures.<sup>237</sup> In the current situation, such a massive development project will alter the socio-economic landscape of the region to such a degree that it will not be possible to undo the effects of the project once it is completed, thereby making the harm irreparable.<sup>238</sup> Furthermore, there is an urgency to halt the work of this project since the ongoing construction is contributing to effects on the indigenous community that will prove to be irreversible.<sup>239</sup> Reasonable provisional measures might include ordering the cessation of construction, new consultations with the

---

complaints of violation of a human right set forth in this Convention.”).

236. Cf. Report No. 75/02, *supra* note 180, ¶¶ 14–25 (requesting that the government of the United States stall trespass and impoundment actions as well as administrative fines against the Danns and others for the presence of their cattle on federal lands due to the irreparable harm that the livestock impoundment and the fines would cause to the Danns).

237. *Rules of Procedure of the Inter-American Commission on Human Rights*, at art. 25, INTER-AM. COMM’N H.R. (Aug. 1, 2013).

238. See MACÍAS EVERARDO ET AL., *supra* note 123 (noting the potential damage, inter alia, to: natural water supplies; the ability of trees to capture CO<sup>2</sup> emissions; the loss of cultural knowledge and value; the inability for *ejidal* landowners to control the development of their land; and short-term construction jobs associated with the project leading to problems associated with temporary migration, employment instability, and poverty).

239. See *id.*

indigenous communities (once conditions of the global Covid-19 pandemic subside and these consultations can be safely carried out), and the establishing of regular follow-up procedures for the Mexican government to report to the Commission and/or the Court regarding its progress in protecting indigenous rights.<sup>240</sup>

As an aside, this case also presents the opportunity for the Commission and the Court to clarify certain areas of indigenous law that remain ambiguous, should this case be presented before one or both organs. Because the Convention and the Declaration only set a general guideline of human rights obligations, it is important for the supervisory organs to settle areas of ambiguity through the adjudication of cases, like the one at hand, in accordance with their mandates.<sup>241</sup>

## V. CONCLUSION

In conclusion, it is imperative that the Mexican government cease all new construction on the Mayan Train project immediately in order to prevent further abuses of indigenous rights. The Mexican State has already failed to adequately consult with the indigenous communities of the Yucatán Peninsula, and it must undergo a new consultation process focused on achieving the free, prior, and informed consent of the indigenous community with regard to the Mayan Train project. If Mexico fails to do so, it will be in breach of various legal obligations under the Convention, including the right to property, the right to equal

---

240. *Cf.* Matter of Members Choréachi Indigenous Community regarding Mexico, Provisional Measures, Order of the Court, “Resuelve:” ¶¶ 1–9, Inter-Am. Ct. H.R., June 10, 2020, [available at: [https://www.corteidh.or.cr/docs/medidas/choreachi\\_se\\_02.pdf](https://www.corteidh.or.cr/docs/medidas/choreachi_se_02.pdf)] (ordering the Mexican State, *inter alia*, to adopt measures to protect the right to life of the Choréachi community, requiring the State to collaborate with the indigenous community on various matters, and requiring the State to update the Court of its status in complying with the provisional measures).

241. *See* Organization of American States, Charter of the Organization of American States, art. 106, Apr. 30, 1948, O.A.S.T.S. Nos. 1-C & 61, 1609 U.N.T.S. 119 (stating the principal function of the Commission as “the observance and protection of human rights. . . .”); Organization of American States, Statute of the Inter-American Court of Human Rights, art. 1, Resolution No. 448 (Oct. 1979), [available at: <https://www.corteidh.or.cr/estatuto.cfm?lang=en>] (stating that the purpose of the Court is “the application and interpretation of the American Convention on Human Rights.”).

protection and judicial protection, and the obligation to protect and ensure rights, as interpreted by the Inter-American human rights system.