

Report on the 158th Special Session of the IACHR

158

**PERIOD OF
SESSIONS**

EXTRAORDINARY

IACHR

Santiago de Chile

June 6 to 10

PUBLIC HEARINGS

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Santiago, Chile—The Inter-American Commission on Human Rights (IACHR) held its 158th special session in Santiago, Chile, June 6-10, 2016, at the invitation of the Chilean State. During this session, the IACHR met with high-level Chilean authorities and with civil society organizations in the country. It also held 10 public hearings and various events to promote human rights.

More than 50 civil society organizations and delegations from the States of Argentina, Bolivia, Brazil, Colombia, Peru, and Venezuela participated in the hearings, which took place in the Former National Congress Building. The hearings were well attended by the public and were followed by thousands of people throughout the region via live webcast. The Inter-American Commission thanks the States and civil society for their active participation in all the hearings.

Below is a summary of each of the hearings, in the chronological order in which they took place:

In the hearing ***States, Corporations, and Human Rights in South America***, the civil society organizations that requested the hearing presented information regarding the lack of access to justice and reparation for victims of human rights violations caused by the actions of corporations in South America. Specifically, they referred to the case of the peasant community of Mala, in Peru, and the situation involving the Mariana Dam in Brazil, among other cases. The organizations concluded that the State's responsibility in the human rights violations caused by corporations is clear, whether through the alleged criminalization of human rights defenders or by ensuring that companies can operate without meeting the most basic environmental regulations, or for other reasons. They stated that business interests are given higher priority than the rights of the victims of human rights violations. The organizations said that, in general, victims have had their rights violated by being treated not as parties but rather as objects of negotiations. In that regard, the petitioners noted the importance of National Action Plans on Business and Human Rights as a way of applying the United Nations guiding principles on the subject. They pointed out that this should be a truly participatory and legitimate process that includes the victims, and should be the result of assessments of national circumstances. They stated that it is essential to establish general standards on business and human rights, including State obligations regarding access to justice and a definition of how States become part of the violations when they do not regulate the companies. Commissioner Vannuchi, who is in charge of the Unit on Economic, Social, and Cultural Rights, stressed that the protection of human rights is the first step, and emphasized the importance of empowering civil society to participate in the region's action plans.

In the hearing ***Sexual and Reproductive Rights of Women in South America***, the organizations laid out the main conclusions of a regional study on patterns of violence that women and girls suffer at the hands of States when they seek reproductive health services. The organizations emphasized that women and girls face gender-based discrimination and prejudice in every aspect of their lives, and this is exacerbated in the area of sexual and reproductive rights through laws, policies, and practices that are based on discriminatory stereotypes and that serve in turn to reproduce violence against them. They stressed that certain denials of service or mistreatment in sexual and reproductive health care are also a form of violence against women which in some cases can amount to torture. The organizations also said that States facilitate violence against those who defend sexual and reproductive rights by failing to recognize the legitimacy and importance of their role. The IACHR expressed its concern over the situation faced by women and girls in this area, as well as the regression in human rights shown by some governments that seem to ignore women's reproductive health, particularly the institutional violence inflicted against them. The hearing also addressed the risks faced by human rights defenders who advocate for these causes.

In the hearing ***Indigenous Peoples' Right to Free, Prior, and Informed Consultation in Bolivia***, the organizations reported on a number of projects affecting the rights of indigenous peoples in which there has allegedly been no prior, free, and informed consultation in accordance with Bolivia's own Constitution and relevant international instruments. The organizations pointed to State actions taken in the Isiboro Sécure Indigenous Territory and National Park (TIPNIS) and noted that a number of national and international organizations and the Human Rights Ombudsman had spoken out about irregularities in the consultation in this case. They also reported on the suppression of protests held to demand a consultation process with regard to projects in the Takovo Mora region. For its part, the Bolivian State explained the constitutional and legal norms in place regarding the rights of indigenous peoples and reported on some of the details of consultation processes held in recent years, including the one related to TIPNIS. The State indicated that this consultation had been carried out in accordance with Bolivia's international obligations. With regard to certain aspects of the project in the Takovo Mora region, it indicated that a consultation did not have to be carried out as the project does not affect indigenous territory. The State added that the indigenous peoples who are allegedly affected could safeguard their rights by bringing charges themselves. The Commission took note of the divergent positions; summed up elements of analysis related to prior, free, and informed consultation and consent; and asked the parties for some clarifications.

In the hearing ***Right to Health and Access to Medicine in Venezuela***, the representatives of the organizations that requested the hearing emphasized the impacts on vulnerable groups such as newborns and their mothers, senior citizens, and people living with HIV. The organizations related dramatic accounts of parents who had desperately tried to find medications for their sick children, who in many cases ended up dying due to the lack of access to medicine and timely care, and requested urgent measures to address the situation. For its part, the Venezuelan State was represented by its Minister of Health, who recounted the measures adopted in the last 17 years to improve living conditions for the population in general, and specifically with regard to health care. She stated that health conditions and quality of life had improved over that period, and also indicated that Venezuelans had the highest rate of medicine consumption in Latin America. The Commission noted that the parties were in agreement over the seriousness of the situation, and indicated that it would keep abreast of the measures the State adopts to solve the problem.

In the hearing ***Territory, Human Rights, and Peace-Building in the Departments of Cauca and Córdoba, Colombia***, the participating organizations talked about the importance of a human rights perspective in the formulation of peace-building plans in both regions of the country. This was particularly the case, they said, in view of a series of structural problems that have affected both departments, due to the persistence of poverty, violence, the presence of armed groups, and the need for access to land, among other factors that have had a disproportionate impact on vulnerable groups. The civil society organizations stressed the need for academia, through the universities in the region, to be guaranteed participation in the creation of plans designed to bring about and consolidate peace in Cauca and Córdoba. For its part, the State noted that both departments have in fact suffered direct consequences from the armed conflict and that specific actions would be carried out in both regions to achieve peace. The State also referred to a series of programs to protect vulnerable groups, prevention measures, and actions to mend the social fabric in Cauca and Córdoba. The IACHR said that it will continue to accompany Colombia in the actions it is taking to bring about peace.

In the hearing ***Impacts on Human Rights of Mining Activity in Brazil***, the organizations that requested the hearing denounced the environmental and socioeconomic impact of the mining industry in Brazil and the lack of State measures to protect the human rights of the people affected.

One such person offered testimony about the effects of the rupture of a mining company's tailings dam containing toxic waste. The incident, which took place November 5, 2015, in Minas Gerais, led to the deaths of 17 individuals and affected more than 3 million people. The organizations also reported that draft legislation regulating the mining industry does not contemplate the participation of communities. The State, for its part, reported that it has instituted an action against the companies responsible for the dam's rupture and that a foundation has been created, with oversight from an "inter-federal" committee, to grant reparations to the affected populations. That foundation was criticized by the organizations due to its private nature and the fact that the same companies that are responsible for the disaster are taking the lead in distributing compensation.

In the hearing ***Right to Freedom of Expression and Criminal Defamation Laws in South America***, the participating organizations presented a study on existing legislation in the region that allows for criminal sanctions to be applied for the exercise of free expression, and made recommendations that could guide State efforts to bring these laws into line with international standards in this area. In the hearing, the participating organizations talked about what they called an alarming resurgence, in South American countries such as Peru and Ecuador, of the use of criminal provisions of defamation and slander to punish journalists who had been critical and to create a chilling effect on the press. They indicated that politicians and public officials are the ones who most often turn to these laws and that the courts fail to apply international standards indicating that in these types of cases the protection of reputation should be guaranteed only through civil sanctions. The participants also talked about an emerging trend toward punishing speech in the public interest by means of other criminal charges, such as terrorism and sabotage, and the negative consequences this practice can have on journalism, social protest, and the defense of human rights in the region.

In the hearing ***Situation of Judicial Independence in South America***, the participating organizations expressed concern regarding issues related to judicial independence in Colombia, Ecuador, Argentina, and Bolivia. With regard to Colombia, they indicated that: (i) the Administrative Chamber of the Superior Council of the Judiciary does not hold timely competitions to fill vacancies for judges or judicial employees, which leads to temporary appointments and broad discretion to fill posts; (ii) there is no gender balance in the higher courts, and vacancies in these courts are not filled in a timely manner; and (iii) there is a conception of judicial governance that fails to respect pluralism. With regard to Ecuador, the organizations: (i) emphasized the general influence of politics on the judicial branch; (ii) said that the disciplinary body exercises its authority in a discretionary manner and applies the charge of "inexcusable judicial error" without providing proper grounds and parameters; and (iii) claimed that the Constitutional Court does not exercise constitutional oversight appropriately and independently. With regard to Argentina, the organizations indicated that despite the reforms that have taken place, suspicions of political intervention have not been overcome, particularly with regard to processes to select and remove judges. They said that there are also high degrees of discretion in these processes as well as delays, which in turn leads to a lack of stability. They added that there is no transparency with citizens and that there is no objective, transparent oversight of judges' performance. Finally, with regard to Bolivia, the organizations reported that structural problems persist, including the lack of adequate funding and the implications of that situation on the lack of coverage, infrastructure, and specialization of the judiciary, including the Public Defender's Office. They also mentioned delays in the process of constitutional transition to the new judicial bodies, which means that the majority of positions are provisional. The Commission thanked the organizations for the information they provided and expressed its concern over some of what it had heard. In particular, the Commission noted that it would be important to have supplementary information on the challenges for the judicial bodies, as well as information on best practices in selection and appointment processes.

In the hearing ***Human Rights Situation of Persons Deprived of Liberty in the Province of Mendoza, Argentina***, the participants said that despite the various measures adopted by the bodies of the inter-American human rights system and the commitments made by the State in this area, the situation continues to be dire. They also indicated that the situation cannot be resolved through procedural rules that constitute an abuse of pretrial detention; that there should be transparency in information, and participation by civil society; and that the Ombudsman for Persons Deprived of Liberty should be granted the human and financial resources necessary to work independently and impartially. For its part, the State expressed its willingness to comply with the goals that have been established in order to have a prison system in line with international standards. Among other measures, it announced the consolidation of a consensus-building process on prison policy. The State also extended an invitation to the Rapporteur on the Rights of Persons Deprived of Liberty to visit detention centers in the province of Mendoza.

In the hearing ***Impacts on Human Rights of Oil Spills in Peru***, the participants presented information regarding human rights violations caused by oil spills in the Peruvian Amazon territory, as well as the lack of effective prevention and reparation measures on the part of the State. The organizations reported that there have been 40 spills in the last 20 years, 20 of them in the last four years; this has poisoned the waters and forests, leaving communities without water and food, they said. The President of the Quininico Community and the President of the Wampis Nation informed the Commission that members of their communities have suffered multiple illnesses as a result, and that there is a lack of medical care. The State indicated that measures have been taken to preserve the flora and fauna and people's health, including the suspension of the flow of oil until the emergency has been overcome and the declaration of a health emergency. The company Petro Perú has also reportedly provided drinking water in communities with limited access, as well as certain food supplies. The President of the Board of Directors of Petro Perú invited the IACHR to visit the area, and the IACHR country Rapporteur for Peru, Commissioner Enrique Gil Botero, accepted the invitation. He also noted that the State has an obligation to prevent future oil spills and to provide comprehensive reparations when these do occur.