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Rights of Indigenous Peoples Interest Group Newsletter

Interest Group Highlights

RIPIG held a business meeting and works-in-progress session on April 13, 2017 during the ASIL Annual Meeting. George K. Foster of Lewis & Clark Law School presented a paper entitled 'Community Participation in Development', which explores a global trend toward indigenous and other local communities securing more influence over development activities and associated benefits, and offers a model for explaining the advent of new sources of community leverage and their limitations. Sabrina Tremblay-Huet of the Université de Sherbrooke presented a paper on the rights of indigenous peoples in the Americas affected by mass tourism, examining this issue through the lens of the Inter-American Court of Human Rights case *Comunidad Garífuna Triunfo de la Cruz* v. *Honduras*. In addition, Carla-Davis Castro of the U.S. Library of Congress provided an update about ongoing work on the Library's Indigenous Law Portal. Other attendees included Dwight G. Newman of the University of Saskatchewan; Erin Brady, General Counsel, Human Rights Law Section of the Canadian Department of Justice; Nicholas Kittrie of the American University Washington College of Law; David R. Downes, Assistant Director for Policy, International Affairs, at the U.S. Department of the Interior; William Hui-Yen Hsu of Taiwan's National Dong Hwa University; Paolo Farah of West Virginia University; and Jolande Goldberg of the Library of Congress, among many others.

Members are invited to organize webinars to be hosted by ASIL and this interest group on topics relating to indigenous rights. For information on what is involved, please contact the Co-Chairs at foster@lclark.edu and kgover@unimelb.edu.au

The Newsletter

The Newsletter is a place to share information concerning recent developments, scholarship, and other matters of interest to the Group relating to the rights of indigenous peoples. Your contributions are essential to the quality and success of this publication. If you would like to contribute to an upcoming issue, please contact the editor, Kirsty Gover, at kgover@unimelb.edu.au. Many thanks to Veronica Bruey, George Foster, Angus Frith, Stefan Kirchner, Ragnhild Nilsson, Ginger Ridgeway, Carlos Arturo Villagran Sandoval and Sebastian Rioseco Sullivan for their contributions to the current issue. Unless otherwise indicated, all updates and summaries are by Kirsty Gover.

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CO-CHAIRS

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Indigenous Rights Developments

- African Court on Human and Peoples' Rights (ACHPR) issues first decision on indigenous peoples, finding the Kenyan government in violation of the rights of the indigenous Ogiek people. On 26 May 2017, the ACHPR issued its judgment in *African Commission on Human and Peoples' Rights v. The Republic Of Kenya* (Application 006/2012). The Ogiek peoples number around 20 000, many of whom reside in the Mau forest in Kenya's Rift Valley. In 2009 the Ogiek were issued an eviction notice requiring them to move out of the forest. The Kenyan government contended, inter alia, that the forest is a water catchment and protected conservation area, that the Ogiek peoples' shift from hunter-gathering to subsistence agriculture has contributed to deforestation of the areas they inhabit, and that the forest is in any case on government land. The Ogiek sought orders that would prevent their eviction and requested the Court to call on the government to 'refrain from harassing, intimidating, or interfering with the community's traditional livelihoods' and to 'recognize the Ogiek's historic land, . . . issue it with legal title and . . . revise its laws to accommodate communal ownership of property'. The Ogiek also sought compensation for 'the loss they have suffered through the loss of their property, development, natural resources and also freedom to practice their religion and culture.' The government admitted that the Ogiek are an indigenous population but argued that they have 'transformed their way of life through time and adapted themselves to modern life and are currently like all other Kenyans' (para 104). In its reasoning the Court referred to international law and policy defining 'indigenous peoples' and concluded that 'the relevant factors to consider are the presence of priority in time with respect to the occupation and use of a specific territory; a voluntary perpetuation of cultural distinctiveness, which may include aspects of language, social organization, religion and spiritual values, modes of production, laws and institutions; self-identification as well as recognition by other groups, or by State authorities that they are a distinct collectivity; and an experience of subjugation, marginalization, dispossession, exclusion or discrimination, whether or not these conditions persist' (Para 107). Applying these factors to the Ogiek, the Court confirmed that it 'recognizes the Ogieks as an indigenous population' (para 112). Addressing the claim that the government had violated the Charter's Art 14 (the right to property), the Court held that the provision should be read in light of Art 26 of the UN Declaration on the Rights of Indigenous People, and that on this basis, the Ogiek 'have the right to occupy their ancestral lands as well as use and enjoy the said lands' (para 128). While the Court noted that the right to property may be restricted in the public interest by necessary and proportional means, it was 'of the view that the continued denial of access to and eviction from the Mau Forest of the Ogiek population cannot be necessary or proportionate to achieve the purported justification of preserving the natural ecosystem of the Mau Forest' and found that the government was consequently in breach of Charter Article 14 (para 130). The Court further noted that the Ogiek had historically been denied recognition as a tribe and were not allocated reserved lands, and found that since 'other groups which are in the same category of communities, which lead a traditional way of life . . . were granted recognition of their status and the resultant rights, the refusal of the Respondent to recognise and grant the same rights to the Ogieks, due to their way of life as a hunter-gatherer community amounts to a "distinction" based on ethnicity and/or "other status"' and so is in breach of the equality guarantees in the Charter's Article 2 (paras 142 and 146). The Court found that while the evictions did not violate Article 4 (the right to life), they did violate the Ogiek's freedom of religion protected by Article 8 of the Charter; their right to culture, protected by Article 17; their Article 21 right as peoples to 'freely dispose of their wealth and natural resources' and their right to development under Article 22. The text of the decision is available here. For a useful summary of the case see Ricarda Roesch, The Ogiek Case of the African Court on Human and Peoples' Rights: Not So Much News After All? (on EJIL: *Talk*!)

- Landmark case on state-indigenous fiduciary duties decided by New Zealand Supreme Court. On 28 February 2017, the Supreme Court of New Zealand released its decision in *Proprietors of Wakatu & Rore Stafford v Attorney- General* [2017] NZSC 17. The central question at issue was whether the Crown owed fiduciary duties to the descendants of Maori customary landholders in the Wellington and Nelson regions. The original landholders had been guaranteed that one-tenth of land purchases made by the New Zealand Company in the early days of settlement would be reserved for them in trust. The claimants argued that the Crown had failed to reserve the promised lands and that some of the reserved lands

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were subsequently improperly alienated or acquired by the Crown. The Court found that the Crown owe fiduciary duties to the claimants, that the claims to lands still held by the Crown were not barred by the applicable limitation statute, and that the claims were not included within the ambit of those settled by in 2013 by Treaty of Waitangi Claims Settlements, because the claims in question were excluded from the scope of the settlement's implementing legislation. The case is the first in New Zealand to hold that the Crown owes fiduciary duties to Maori customary land holders. The High Court has been tasked with assessing the scale of the breach of fiduciary duty and deciding on the appropriate remedy. The text of the case can be found here: Proprietors of Wakatu & Rore Stafford v Attorney-General [2017] NZSC 17.

- 'Uluru Statement from the Heart' on constitutional reform issued by Australia indigenous peoples at historic First Nations National Constitutional Convention, 26 May 2017. The statement follows 6 months of regional dialogues with indigenous peoples around Australia, debating proposals to include reference to indigenous peoples in the Australian Constitution, culminating in a Constitutional Convention attended by 250 indigenous delegates at Uluru in Central Australia. The statement calls for a 'First Nations Voice enshrined in the Constitution' and the establishment of a 'Makarrata Commission to supervise a process of agreement-making between governments and First Nations'. The government-appointed Referendum Council hosted the regional dialogues and the Constitutional Convention, and will prepare a report for government (due by June 30 2017) on the outcome of those deliberations and options for a referendum proposal. Members of the Council have reported that in calling for an indigenous parliamentary body and a Makarrata (Treaty) Commission, indigenous Australians have rejected other proposals for 'symbolic recognition' or acknowledgement in the constitution. A news report on the statement and next steps can be found here. The Uluru statement and the Referendum Council media release can be found here: Uluru Statement from the Heart.

- Ground-breaking decision on 'free prior and informed consent' issued by Guatemalan Constitutional Court, 22 May 2017. By Carlos Arturo Villagran Sandoval (Graduate Researcher, Melbourne Law School). The Guatemalan Constitutional Court delivered a ground-breaking judgment on the right of indigenous groups to prior and informed consultations with respect to mining projects in Guatemala (Joint Files 90-2017, 91-2017 and 92-2017). The judgment is structured as follows: First, the court reiterated its 'conventionality control' doctrine, which in this case refers to the direct application of international human rights treaties, such as the ILO's Convention 169, the American Convention of Human Rights and the UN Declaration on the Rights of Indigenous Peoples, as well many other human rights treaties. It reaffirmed its obligation to interpret each of these instruments in accordance with the interpretation given to them by specialist and jurisdictional bodies, such as the Inter-American Court of Human Rights and the ILO's Commission of Experts on the Application of ILO's instruments, as well as other UN bodies (pp. 42-46). Second, the court affirmed that the interpretations given to these international instruments acquire constitutional status, since they become part of the Guatemalan 'constitutional block', by virtue of article 46 of the Guatemalan Constitution (p. 46). Third, as a result of this obligation, the Constitutional Court recognized the Guatemalan state's obligation to undertake prior and informed consultation as a justiciable and fundamental right of indigenous groups (p. 46). Fourth, in the most ground-breaking part of the judgment, the court held that since Guatemalan legislation does not specify the 'correct' manner in which the Guatemalan state should undertake prior and informed consultation, the Court made use of a comparative study, referring to constitutional scholarship and to the experiences of the Costa Rican Constitutional Chamber and Colombian Constitutional Court (pp. 76-80). Accordingly, the Guatemalan Constitutional Court appears to adopt a legislative function and delivers guidelines and principles for the development and accountability of the state's obligation to undertake prior and informed consultation (p. 81). Then, referring to the jurisprudence of the Inter-American Court of Human Rights and other specialized bodies, the Constitutional Court defined the principles by which prior consultation should take place, including: priority (pp. 85-86); that the peoples concerned should be informed under adequate cultural standards (pp. 86-89); and good faith (pp. 89-90). Lastly, and for the first time in the Guatemalan context, the Constitutional Court imposed a series of positive obligations on the Guatemalan state, including: to take measures to enact legislation to regulate prior and informed consultations

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under the court's standards; repeating prior and informed consultations in some of mining projects, as well as other measures, within one year of the judgment, and with an obligation to inform the Supreme Court of their activities in this regard.

- Australian court decision requiring consensus voting on Indigenous Land Use Agreements reversed by Commonwealth legislation. In *McGlade v Native Title Registrar* [2017] FCAFC 10, decided on February 2, 2017, the Full Court of the Australian Federal Court determined that four Indigenous Land Use Agreements (ILUAs) settling native title claims were invalid and could not be registered because not all members of the relevant native title claimant group had signed the agreements (some refused to sign; some were deceased). Some of the opposed native title holders challenged the ILUAs on the basis that the Native Title Act requires 'all persons in the native title group' to be parties to an ILUA. The four invalidated ILUAs were among six making up the landmark 'Noongar Settlement' concluded between the Western Australian Government and the Noongar people, whose traditional territory covers all of south west Western Australia. The settlement is the largest and most comprehensive settlement of native title claims concluded in Australia to date. It provides for legislative recognition of the Noongar peoples as traditional owners; an acknowledgment of their laws and customs; land and cash based transfers valued at AUD$ 1 billion; support for the establishment of representative corporations and natural resource joint management co-governance arrangements, in return for the surrender of some of the group's native title rights. The *McGlade* decision called into question the validity of between 120 and 150 existing registered ILUAs that were not signed by all members of the relevant native title claimant group. Within two weeks of the decision, the Commonwealth government introduced amending legislation preserving the status of registered ILUAs and permitting the registration of ILUAs that have been signed by a majority of members of the native title claimant group, even if some members refuse to sign. At the time of writing the *Native Title Amendment (Indigenous Land Use Agreements) Bill* 2017 had passed both houses of Parliament but had not yet entered into force: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5821. Both the *McGlade* decision and the amending legislation have been heavily criticised in political and public debate, fuelled by concerns that the amending legislation is designed to enable large-scale resource extraction projects on indigenous lands, including the controversial proposed Adani coal mine project, fiercely opposed by environmentalists and by some traditional owners. A news article describing the controversy can be found here. For a summary of the decision and its impact, see Angus Frith, Case note: McGlade v Native Title Register, Indigenous Law Bulletin, 8 Indigenous L. Bull. 24 (2012-2017). The full text of the *McGlade* decision can be found here: http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2017/2017fcafc0010.

- Inter-American Commission on Human Rights Condemns Murders of Human Rights Defenders in the Region February 7, 2017: "So far in 2017, the IACHR has learned of 14 murders of human rights defenders: seven in Colombia, two in Guatemala, two in Mexico, and three in Nicaragua. The IACHR expresses its consternation over the devastating increase in violence against those who oppose extractive or development projects or who defend the right to land and natural resources of indigenous peoples in the region; they now account for 41 percent of all murdered human rights defenders in the region, according to information from civil society organizations."

- Second draft of proposed Nordic Sámi Convention finalised (by Ragnhild Nilsson, Stockholm University). A second draft text of the Nordic Sámi Convention (NSC) was presented in January 2017 by the negotiating delegation (comprised of delegates from Norway, Sweden and Finland and from the three national Sámi Parliaments). The proposal was met with some scepticism from Sámi scholars and lawyers. During the last decade, since the expert committee's first draft in 2006 and after the introduction of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), understandings of indigenous rights have developed immensely. The proposed Nordic Sámi Convention is perhaps not a paragon in that sense. While the text contains important recognition of the Sámi as indigenous people within the three countries, and of their collective and individual rights including protections for Sámi culture, languages, education and children's rights, when compared to the first draft, the obligations of states to protect Sámi self-determination and natural recourses are less strongly framed. Article 4 of the NSC provides that 'the Sami people have a right

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to self-determination. Under this right, they freely determine their political status and their economic, social and cultural development. Self-determination is exercised through self-government in internal affairs, as well as through consultation on matters which may have particular relevance for Sami.' The proposed text also provides that 'States shall take measures to ensure the Sámi right to, access to, and opportunities to use the natural resources that have traditionally been used by the Sámi in the Sámi areas.'(Art 28). However, when States authorize intervention in or use of natural resources in Sámi areas, the Convention makes no reference to free, prior and informed consent, and specifies only that States should ensure that interventions or changes of use do not cause significant harm to the Sámi culture, language or social life (Art 30). Further, while states agree to consider Sámi self-determination in fulfilling their obligations under the NSC, the Convention does not provide a universal definition of who is Sámi, but only specifies who is entitled to enrol to vote for the three Sámi Parliaments. This means that there is still some ambiguity as to who are the peoples protected by the Convention. Significantly, the Convention does not stop states from controlling Sami Parliament voting rolls, for example by including people who claim to be Sámi and have a close contact to Sámi culture, even though in the suggested definition of who is entitled to enrol, close contact to Sámi culture is not a criteria (Preamble, Art 2, 4, 13). The suggested Convention is now under consideration in the Sámi Parliaments and it is still unclear whether it will be accepted in the three countries or not. The proposed text is published at https://www.sametinget.se/111445 (in Swedish). At the time of writing the NSC had not been published in English.

- Inter-American Court of Human Rights to hear claims brought against Brazil by the indigenous Xucuru People. The dispute over the Xucuru people's traditional lands in the Brazil's north-eastern state of Pernambuco has been on foot for nearly 30 years. The Xucuru claim that the Brazilian government has failed to comply with constitutional guarantees by refusing to demarcate their lands, and by permitting incursions by non-indigenous subsistence farmers. Final submissions were heard by the Court in April 2017. Information on the case (in Spanish) can be found here: http://www.corteidh.or.cr/docs/tramite/pueblo_indigena_xucuru_y_sus_miembros.pdf.

Recommendations of UN and Treaty bodies. (Compiled by Ginger Ridgeway, Graduate Researcher, Melbourne Law School).

- At its 34th session (27 February – 24 March 2017), the Human Rights Council's Working Group on the Universal Periodic Review adopted reports containing recommendations on indigenous peoples' rights, including with respect to the Bolivarian Republic of Venezuela (A/HRC/34/6, paras 54, 61, 75, 76, 96, 100, 127, 133.247, 133.267, 133.268, 133.269, 133.270, 133.271 and 133.272) and Uganda (para 117.22).

- The Human Rights Committee made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 119th session (6 March – 29 March 2017) with respect to Bangladesh (CCPR/C/BGD/CO/1, paras 11 - 12, 17 - 18) and Thailand (CCPR/C/THA/CO/2, paras 11 - 12, 23, 41 and 43 - 44).

- The Committee on the Elimination of Racial Discrimination made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 92nd session (24 April – 12 May 2017) including with respect to Finland (CERD/C/FIN/CO/23, paras 5, 6, 14 - 15, 16 - 17, 18 - 19, and 26) and Kenya (CERD/C/KEN/CO/5-7, paras 7 - 8, 15 - 16, 19 - 20, 21 and 39). At its 93rd session (31 July – 25 August 2017) the Committee will consider the periodic reports of Canada, Djibouti, Ecuador, Kuwait, New Zealand, Russian Federation, Tajikistan, United Arab Emirates, and will consider the List of Issues Prior to Reporting of Bahrain.

- The Committee on the Rights of the Child made recommendations relating to indigenous peoples' rights in its Concluding Observations on state periodic reports at its 74th session (16 January – 3 February 2017), including in respect to the Central African Republic (CRC/C/CAF/CO/2, paras 68 - 69) and the Democratic Republic of Congo (CRC/C/COD/CO/3-5, paras 14, 15 and 42); and at its 75th session (15 May – 2 June 2017) with respect to Cameroon (CRC/C/CMR/CO/3-5, paras 12, 14 - 15, 18, 38 and 42) and Mongolia (CRC/C/MNG/CO/5, para 15).

Selected Publications & Reports

Books

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- Heather Devere, Kelli Te Maihãroa, and John P. Synott (eds.), Peacebuilding and the Rights of Indigenous Peoples: Experiences and Strategies for the 21st Century (Springer, 2017).
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- Leena, Heinämäki, Thora Martina Herrmann, (eds.), Experiencing and Protecting Sacred Natural Sites of Sámi and other Indigenous Peoples: The Sacred Arctic (Springer, 2017).
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- Rini Astuti and Andrew McGregor, Indigenous Land Claims or Green Grabs? Inclusions and Exclusions within Forest Carbon Politics in Indonesia, 44(2) The Journal of Peasant Studies (2017).
- Luciano Baracco, Globalization, Governance, and the Emergence of Indigenous Autonomy Movements in Latin America: The Case of the Caribbean Coast of Nicaragua, Latin American Perspectives (2017).
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- John Borrows, Challenging Historical Frameworks: Aboriginal Rights, The Trickster, and Originalism, 98(1) The Canadian Historical Review (2017).
- Sasha Boutilier, Free, Prior, and Informed Consent and Reconciliation in Canada: Proposals to Implement Articles 19 and 32 of the UN Declaration on the Rights of Indigenous Peoples, 7(1) UWO J Leg Stud 4 (2017).
- Ameyari Ramos-Castillo, Edward J Castellanos, & Kirsty Galloway McLean, Indigenous Peoples, Local Communities and Climate Change Mitigation, 140(1) Climatic Change (2017).
- Megan Davis, Indigenous Women and Constitutional Recognition, in Helen Irving (ed.) Constitutions and Gender (Edward Elgar, 2017).
- Ellen Desmet, Inspiration for Children's Rights from Indigenous Peoples' Rights, in Eva Brems, Ellen Desmet, Wouter Vandenhole (eds.), Children's Rights Law in the Global Human Rights Landscape Isolation, Inspiration, Integration? (Routledge, 2017).
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- Benjamen Franklen Gussen, A Comparative Analysis of Constitutional Recognition of Aboriginal Peoples, 40 Melbourne U. L.R. 867 (2017).
- Irene I. Hadiprayitno, The Limit of Narratives: Ethnicity and Indigenous Rights in Papua, Indonesia, 24 Int'l J. on Minority & Group Rts. 1 (2017).
- Lauer Helen, Global Justice as Process: Applying Normative Ideals of Indigenous African Governance, 46(1) Philosophical Papers (2017).
- Juan Pablo Hidalgo, Rutgerd Boelens & Jeroen Vos, De-colonizing water: Dispossession, Water Insecurity, and Indigenous Claims for Resources, Authority, and Territory, 9(1) Water History (2017).
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- Felipe Gómez Isa, Indigenous Peoples: From Objects of Protection to Subjects of Rights, in Alison Brysk and Michael Stohl (eds.), Expanding Human Rights (Edward Elgar, 2017).

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- Phanuel Kaapama, The Enduring Colonial Legacies of Land Dispossessions and the Evolving Property Rights Legal Discourse: Whither Transitional Justice, 11 Hum. Rts. & Int'l Legal Discourse 108 (2017).
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- Julija Sardelic, Minority Accommodation through Territorial and Non-Territorial Autonomy, 24 Int'l J. on Minority & Group Rts. 119 (2017).
- Natsu Taylor Saito, All Peoples Have a Right to Self-Determination: Henry J. Richardson III's Liberatory

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- Jessica Shadian, Reimagining Political Space: The Limits of Arctic Indigenous Self-Determination in International Governance? in Kathrin Keil and Sebastian Knecht (eds.) Governing Arctic Change: Global Perspectives (Palgrave MacMillan, 2017).
- Audra Simpson, The Ruse of Consent and the Anatomy of 'Refusal': Cases from Indigenous North America and Australia, Postcolonial Studies (2017).
- Joseph William Singer, Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest, 10(1) Alb. Gov't L. Rev. (2017).
- Caitlin C. M. Smith, The Jay Treaty Free Passage Right in Theory and Practice, 1(1) American Indian Law Journal (2017).
- Paulina Starski and Jorn Axel Kammerer, Imperial Colonialism in the Genesis of International Law - Anomaly or Time of Transition, 19 J. Hist. Int'l L. 50 (2017).
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- Mark D. Walters, Thomas Poole, Reason of State: Law, Prerogative and Empire, 80 Mod. L. Rev. 164 (2017).
- Chris Wold, Integrating Indigenous Rights into Multilateral Environmental Agreements: The International Whaling Commission and Aboriginal Subsistence Whaling 40 B. C. Int'l & Comp. L. Rev. 63 (2017).

Statements & Reports

- On June 6, 2017 the President of the General Assembly circulated the second revised text of a draft resolution on *Enabling the Participation of Indigenous Peoples' Representative Institutions in Meetings of Relevant United Nations Bodies on Issues Affecting Them*. The draft was used in upcoming negotiations, scheduled for 9 June 2017. The text is available at: http://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/Indigenous-peoples-6-June-2017.pdf.
- The European Council adopted its *Conclusions on Indigenous Peoples* at its 3535th meeting held on 15 May 2017. The text of the conclusions can be accessed here.
- UN *Platform for indigenous peoples established under auspices of the* UNFCC. A platform enabled by the Paris Agreement 2015 and endorsed at COP 22 in Marrakech is intended to give indigenous peoples and local communities an active role in shaping climate action. The first open multi-stakeholder dialogue was held in Bonn at the UNFCCC mid-year meeting in May 2017. A press release on the platform can be accessed here.
- Report of 16th Session of the Permanent Forum on Indigenous Issues published. The PFII met April 24-May 5, 2017 at UN Headquarters in New York. The meeting's Special Theme was: 'Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration'. A report on the meeting can be found here.
- UN Special Rapporteur on the Rights of Indigenous Peoples': country reports on Brazil, Honduras and the Sápmi Regions of Norway, Sweden and Finland. The Special Rapporteur has published the *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil* A/HRC/33/42/Add.1, available here; *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras* A/HRC/33/42/Add.2 and Report of the Special Rapporteur on the rights of indigenous peoples on the human rights situation of the *Sami people in the Sápmi region of Norway, Sweden and Finland* A/HRC/33/42/Add.3 available here.
- UN Special Rapporteur on the Rights of Indigenous Peoples': end of mission statements, visit to Australia and the United States. The Special Rapporteur has published the following statement: *End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz of her visit to Australia*, 3 April 2017, available here; and *End of mission statement on United States by the Special Rapporteur on the rights of indigenous peoples*, 3 March 2017, available here.
- The international expert group meeting on the theme 'Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)' was held

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in New York from January 25-27 2017. The report of the meeting (E/C.19/2017/10) can be accessed here.

- International Work Group for Indigenous Affairs published *The Indigenous World* 2017: UNDRIP 10 *Years Special Edition*. This comprehensive Annual Report canvasses country-by-country developments affecting indigenous peoples in all parts of the world. The 2017 Report can be found here.
- *World Bank Inspection Panel, Emerging Lesson Series: Indigenous Peoples* (Word Bank Group, October 2016.) This report is the second in a series of papers to be published by the World's Bank Inspection Panel, drawing on its caseload over 22 years. The report considers the 19 cases that have involved Indigenous Peoples' issues, and includes conclusions intended to build the Panel's institutional knowledge base and enhance accountability within the World Bank Group. A third report on 'consultation, participation and disclosure of information' is scheduled to be released in the fall of 2017.The full report can be accessed here: World Bank Inspection Panel, Emerging Lesson Series: Indigenous Peoples.

Upcoming Conferences & Events

- World Indigenous Peoples Conference on Education 2017 'A Celebration of Resilience' July 24th - July 28th, 2017, Toronto, Canada. http://www.wipce2017.com/about2.html.
- ERIP 2017: 5th Conference on Ethnicity, Race, and Indigenous Peoples in Latin America and the Caribbean Conference, October 4-6, 2017, Universidad Michoacana San Nicolás de Hidalgo, Morelia, Michoacán, México: http://www.ethnicityrace.org/conference.php.
- The Indigenous Bar Association 29th Annual Fall Conference 'Ankukamkewey: Joining Together in Peace and Friendship' October 19-21, Halifax, Nova Scotia. http://www.indigenousbar.ca/conferences/index.html.
- World Indigenous Business Forum, October 24-26, 207, Santiago De Chile, Chile: http://wibf.ca.

Book Reviews

- Book Review of: Sebastiaan Johannes Rombouts, *Having a Say - Indigenous Peoples, International Law and Free, Prior and Informed Consent* (1st ed., Wolf Legal Publishers, 2014), by Stefan Kirchner, University of Lapland. The issue of free, prior and informed consent (FPIC) remains of fundamental interest for indigenous peoples around the world. This is particularly so in the global north as climate change leads to greater interest in investing the Arctic and sub-Arctic regions. While the Sámi people in Norway, Sweden and Finland have a (albeit very limited) role in public decision making, they do not enjoy veto power over projects which might threaten indigenous livelihoods, such as reindeer herding. The shortcomings of domestic legal avenues has long led to indigenous peoples turning to international law in the hope to find some protection of their rights against the dominant society. In international law, though, the status of FPIC ranges from the obligation to take indigenous views into account, which is included in ILO Convention No. 169 of 1989, to a duty to obtain prior consent, which is arguably expressed in the UN Declaration on the Rights of Indigenous Peoples of 2007. The book is structured in a way which is not only logical but which also makes the issue easily accessible. Rombouts first provides the reader with an introduction to the question of self-determination (pp. 66 et seq.) FPIC is primarily seen through the lens of participation of indigenous peoples in existing legal frameworks. (pp. 75 et seq. and pp. 112 et seq.) By choosing a participation-based approach rather than an approach based on indigenous sovereignty, the author's fundamental presumption becomes evident: the continued dominance of nation states and the international legal framework. Rather than challenging the essentially state-dependent system of indigenous rights in international law as a whole, Rombouts provides the reader with information on different potential practical approaches to realizing FPIC. (pp. 195 et seq.)

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The author also provides an overview for readers new to indigenous issues when it comes to indigenous rights and procedural possibilities outside classical international human rights law frameworks. In addition, the author looks further and takes other fields into account, for example by searching for parallels between the bioethical concept (and biolegal rule) of informed consent of patients and FPIC (pp. 164 et seq.). From this analysis the author notes that 'there is a need for a flexible interpretation of self-rule standards like FPIC and that especially the procedure itself should be open to re-negotiation' (p. 166). He concludes that '[s]earching for a fixed, uniform standard for FPIC processes is neither realistic nor desirable Its scope is determined - in a practical dialogue - on a case-by-case basis. There can be no single standard for the content and way in which information is transferred and disclosed.' (p. 166) Part V of the book (entitled 'Practices', pp. 219 et seq.) 'discuss[es] the most important legal and semi-legal cases on indigenous peoples' rights to land, resources and FPIC.' (p. 219). This includes the seminal cases which can be expected, such as the Awas Tigni, Saramaka and Sarayaku cases. What is noticeable is the absence of cases related to indigenous peoples from the global North. This can be explained by the relatively low number of cases on FPIC on the international level in the North, which in turn is caused by the low level of ratification of ILO Convention 169 in the North when compared e.g. to Latin America, the absence of the United States and Canada from the Inter-American Court system and the limits of the European human rights system in this regard. But for readers from these states customary international law is of particular import. An investigation of customary international law would not be complete without a look at decisions on a national level. In sum, the author provides a text, while it does not answer all questions on FPIC (and never was intended to do so) is an indispensable and an important contribution to the debate on FPIC. Readers who deal with indigenous rights - in theory or in practice - will be well advised to take note of this publication.

- Book Review of: Heather Douglas and Mark Finnane *Indigenous Crime and Settler Law: White Sovereignty after Empire* (Palgrave Macmillan 2012), by Veronica Fynn Bruey, Australian National University; Visiting Scholar, School of Law, University of Washington.

  Does the imposition of white settler law on Aboriginal cultures invalidate Aboriginal customary law? Although not the first to raise the question, Douglas and Finnane offer a provocative outlook on how *inter se* offenses amongst Aboriginal people in the settler colony of Australia induce contention, discomfort and uncertainties as to whether 'white law' prevails over Indigenous crimes. The authors lament criminology's failure to properly address Indigenous violence, highlighting criminology's construction as, for the most part, a white/Western project, and underscore Indigenous 'victimization at the hands of white colonials and settler states' (p. 12). In essence, the book unveils the emergence of criminal law's response to and increasing encounters with Aboriginal sovereignty, a dissonance that remains a site for fundamental tension today.

  The book traverses the historical backdrop of settler law in Aboriginal Australia, opening with the inception of the colony's first Supreme Court in Sydney, New South Wales. In the first chapter the authors consider settler prosecutions of Aboriginal persons in the early stages of colonial rule. These left no doubt as to which was the superior power, whether by virtue of force in killing Indigenous leaders (e.g., Midgegooroo or Yagan) or by way of a military venture (e.g., Battle of Pinjarra). Chapter two argues that the invaders of Aboriginal land were unprepared legally to assimilate the peoples they were displacing, arguing that the complexity of Indigenous customary law, placed at the core of criminal law in Australia, is an 'inescapable remnant of the [invidious] encounter between two very different legal cultures, one bounded, narrow, 'legalistic', and the other expansive, comprehensive, imperative' (p. 35). In chapter three the authors dis-

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cuss several challenges faced by the colonisers in their efforts to establish a legal 'Empire of Uniformity' by making the Queen's Aboriginal subjects amenable to settler law (p. 65). In Chapter four the authors posit that, 'criminal law in this context was colonial in its rationale and its effect' (p. 120), thereby destabilizing Indigenous sovereignty at the time. Chapter five examines Australia's adoption of a new policy between the 1930s and 1960s. A critical shift came in the 1967 referendum, when 'over 90 per cent of the population voted 'yes' to the referendum changes' (p. 147). Despite the fact that the referendum failed to subvert white hegemony in any material sense, a modicum of space was nevertheless made in the dominant imagination for a revisioning of Indigenous rights, including the right to customary law. The last two chapters contend with continuing white settler sovereignty in Australia. A case in point is the enactment of the *Racial Discrimination Act* (Cth) 1975 (RDA), which came about as a result of (inter)national pressures on Australia to 'remove racial discrimination from its state and federal statutes and grant equal legal status to Aboriginal people…' (p. 148). But these pressures now seem unconvincing in the wake of the Northern Territory National Emergency Response, which relied on suspension of the RDA, effectively enabling the Government to violate Aboriginal peoples' civil liberties and human rights. The book thus concludes that the legacy of empire and colonization in Australian criminal law is an unfinished business characterized by tensions with the reality of alternative forms of Aboriginal law. The timely arrival of this book will attract the likes of judges, lawyers, legal aid service providers, Aboriginal advocates, policy-makers, students, researchers and scholars of criminology and criminal law.

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