

4th International Colloquium on 'Heritage and Rights of Indigenous Peoples'



Speakers Day 1

Honduras: Laura Zuniga Cáceres
Mexico: Edith Herrera Martínez
Greenland: Minninguaq Kleist
Guatemala: Carlos Chex Mux

Speakers Day 2

Suriname: Richardo Pané
Brazil: Lucia Fernanda Inácio
Zimbabwe: Simon Makuvaza

October 19th (Room E004) & 20th (Room F1.04)

Fac. Archaeology, Van Steenis Building, Einsteinweg 2, Leiden.

Press Conference: 19th October. 16:00 – 18:00. Leiden University Faculty Club, Rapenburg 73, 2311 Leiden

Coordinators: Prof. Dr. Maarten E.R.G.N. Jansen and Prof. Dr. Gerard A. Persoon



Universiteit Leiden

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ABSTRACTS

4th International Colloquium on 'Heritage and Rights of Indigenous Peoples'

Venue: Faculty of Archaeology, Leiden University (Van Steenis building, Einsteinweg 2, Leiden).

Dates: 19th & 20th October 2016.

Wednesday. 19th October. 2016. Morning (09:00-12:00 hs)



HONDURAS: Political coup and extractivism

Laura Zuniga Cáceres: [yolilau@gmail.com]

Lenca People, Honduras.

Honduras' political coup meant the installation of an extractive model through extreme and violent means. The institutional breakdown enables companies to enter and exploit the territory. These companies often practice violations of the rights of Indigenous Peoples, militarization and paramilitarization, criminalization of protests, violation of human rights and murder as a daily means to ensure the installation of their projects.

Activists, women, men and organizations are pushed into a defenseless situation due to the ruling impunity, the abandonment of the claims filed by the defenders and the criminalization of these activists. The final stages of the process are intimidation, persecution and assassination.

The financing parties in projects such as the Agua Zarca Project have great responsibilities regarding the acts of the companies that carry out these projects. The persecution and harassment of those who oppose to the projects is financed with their funds. The fact that the Dutch Bank FMO, continues to participate in a project, from which other financiers have withdrawn after the protests and after the assassination of Tomás García, worsens the situation. This is in striking contrast with the rising international awareness about the matter.

One of the problems of the funding is that it follows colonial logic, according to which the non-industrialized countries and territories have to sustain the system of consumption of the industrialized countries. The form of sustaining this consumption is by handing over all its common goods, although this implies disposessions and the assassination of many people. These developmental models do not include, nor listen to, the Peoples whose territories and lives are put at stake.

Greenland Today

Mininnguaq Kleist: [MIKL@nanoq.gl]

Head of Greenland Representation, Brussels /Minister Counsellor, Greenland

The presentation will focus on the present political situation of Greenland, particularly the pull towards increased self-determination and autonomy, economic development and securing the participation of the people in that development.

Afternoon (13:00-15:00)



Challenges for the international legal instruments regarding the implementation of the rights of Indigenous Peoples

Carlos Bernabé Chex Mux: [carlos.chex@gmail.com]

Maya Kakchiquel People, Guatemala.

Today, the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) and the American Declaration on the Rights of Indigenous Peoples (DADIN), face multiple challenges regarding their implementation particularly because states are not interested in the implementation of these instruments. Therefore, there is no substantial progress on the issue of new laws or national public policies that incorporate these international declarations. We can mention several law cases that have not passed in the parliament of Guatemala for years. For example, the Law on Sacred Sites and Sacred Places receives strong opposition from the oligarchic sectors in the country, including the academia. However, one should not

rule out the important role of several national justice courts, which have already argued with two statements that the most basic rights of Indigenous Peoples are violated. This fact suggests that there is at least an evolution in the judgments of national courts in the jurisprudence of the cases of Indigenous Peoples. Besides, it obliges States to enforce the rights of Indigenous Peoples. Perhaps most important is the level reached through the Inter-American system with the jurisprudence obtained in resolutions or decisions of the Inter-American Court of Human Rights, because even without the approval of the two statements, the paradigmatic cases of AWAS TINGNI (2001) y YATAMA (2005), as well as SAWHOYAMAXA (2006) y SARAMACA (2007), are legal judgments mandatory for the States of Nicaragua, Paraguay y Suriname.

So, what to do with the few advances made after the judgments obtained in both national and international courts? From my point of view, Indigenous Peoples should urge the States to enforce the judgements. If they still do not progress, the case should be raised to the Inter-American Commission. Once the case is 'acceptable' for the IACHR, the State has to respond to the call for granting new precautionary measures. Another step forward of exercising their right, the Indigenous Peoples should declare their autonomy and self-determination. There is now a *sui generis* case raised by the Mapuche people of Chile at the UN to hold a "Constituent Mapuche Assembly" in its territory. Through this case it aims to fulfil and shape the right to self-determination of Indigenous Peoples, based on Articles 3 of DADIN and the UNDRIP. This activity will take place at the end of 2016.

Thursday, 20th October. 2016. Morning (10:00-12:00 hs)



Indigenous Peoples traditional knowledge and genetic resources: perspective and challenges for their protection.

Lucia Fernanda Inácio Kaingang:

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Kaingang People, Brazil

Brazil is a rich country in natural resources and cultural diversity. Fifteen percent of the national territory consists of indigenous lands, which are the most important areas of biodiversity in Brazil. In 2015 a new law on traditional knowledge and genetic resources was approved by the

Brazilian government, but without consultation with Indigenous Peoples and Traditional Communities in Brazil. The law 13.123 of 2015 does not recognize the right of Indigenous Peoples and local communities to decide on the use of their traditional knowledge and of genetic resources associated with them. Furthermore, it exempts small businesses and individual entrepreneurs the obligation to share benefits with the Indigenous communities. This is contrary to the principle of self-determination, which the international human rights system recognizes to Indigenous Peoples.

Indigenous Peoples of Brazil and around the world have manifested that any legal or administrative measures that affect them should respect the principle of free, prior and informed consent. These measures and projects must comply with the principle of fair and equitable sharing of the benefits derived from these actions. The Brazilian context represents a dangerous precedent of misuse of traditional knowledge and genetic resources by the State for the benefit of industries and research institutions, violating rights already established by the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Indigenous Peoples expressed their concerns about the on-going negotiations at the United Nations, such as those of the Intergovernmental Committees on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. The concern is the creation of an international instrument on intellectual property, traditional knowledge, genetic resources and folklore without the full and effective participation of Indigenous Peoples and traditional communities and with the clear intention of protecting the public domain and legalizing the misuse of traditional knowledge and traditional cultural expressions.



Topic: Saví kaku yo tan kuñu'ún kuu ñuu yo. “De la lluvia nacimos y la montaña es nuestro pueblo”. Reflections on the territory among the Ñuu Savi people of the Guerrero Mountains, México.

Edith Herrera Martínez: [edith.nasavi@gmail.com]
Ñuu Savi People, Mexico.

In this talk, we share some reflections about bonds and identity constructions among the Ñuu Savi (People of the Rain) and its territory. Currently, in full modernity, our territories are under threat by big projects and bad policy making by the government. There is a lack of

recognition of and respect for the historical rights regarding the land of Indigenous Peoples, which we protect since thousands of years.

Yuku Kími (Cerro de la Estrella) is a native community settled in the town of Metlatónoc, in the mountain region of the state of Guerrero, Mexico. The territory is essential for the construction of our daily lives, both as individuals and as communities. The prayers and offerings to deities and spirits are part of the daily lives of the members of the community.

There is a deep respect and a particular relationship to sacred places. The land has life and is recreating and reproducing just as our work in the field is. Today, however, our homes are seriously threatened. The land we occupy for years are being sold to national and multinational companies with eyes of greed, without consulting the people and without taking into account the special relationship between people and their territory.

It is urgent that we think about our future path and define it based on our own vision. In other words, exercise our self-determination in our territories; define how we want to live, what type of education we want, our food security, how we want to be and remain as Indigenous Peoples. In that sense, we need to construct and re-construct from our own vision. Finally, we must remember that the spirits of our ancestors always lead our way, so we need to begin to make the steps on this path.

Afternoon (13:00-17:15)



Bottom-up struggle for the recognition of the rights of Indigenous Peoples in Suriname.

Chief Richardo Pané: [infovids@vids.sr]

Kali'na People. Suriname.

Chief Richardo Pané will present the real-life story of the long and continuing struggle for the legal recognition of the rights of Indigenous Peoples in Suriname, which are, even today, not even mentioned as such in Suriname's legislation.

Suriname inherited the legal system of the Netherlands at its independence in 1975. Rather than rectifying the non-

recognition and even non-existence of Indigenous Peoples in its legislation, subsequent Surinamese governments reinforced this top-down, state-centred legislation and formally introduced the “domain principle” in the revised Constitution of 1987 to claim all land as State land if no title on the land could be proven. This principle, along with the constitutional assertion that all natural resources are property of the nation, have led to many injustices against Indigenous Peoples, with large pieces of land being given in property, land lease or exploitation concession to individuals and companies, literally underneath existing villages.

The Indigenous Peoples did not accept this and stood up through marches and protests but also armed during the so-called Interior War (1986 – 1992). After the war, the Association of Indigenous Village Leaders in Suriname (VIDS – Vereniging van Inheemse Dorpschoofden in Suriname) was established, on the one hand to restore the traditional authority system in the villages, as well as to continue the demand for incorporating the internationally recognized rights of Indigenous Peoples into the legislation of Suriname, including the fundamental right to self-determination. The strategy of VIDS is one of bottom-up empowerment and mobilization, accompanied by organizational strengthening of the traditional authority structures at the same time.

Chief Pane’s presentation will illustrate these unabated bottom-up efforts, leading to a victory in the Inter-American Court of Human Rights, last November 2015. The State of Suriname was ordered to, among others, legally recognize the rights of Indigenous and also of Tribal Peoples, known as the Maroons in Suriname. But the struggle does not end there, since the government is well known for not adhering to such judgments, its delaying tactics and political intrigues. Increasing national and international pressure will be crucial for implementation of this judgment.



Topic: Land, Shrines, Archaeological and Historical Sites in the Matobo Hills of Zimbabwe: Heritage and the Rights of Indigenous People at Crossroads

Simon Makuvaza: [\[makuvazas@yahoo.com\]](mailto:makuvazas@yahoo.com)

Zimbabwe

Although there have been mounted campaigns to recognise the rights of the Indigenous Peoples when

managing heritage sites, much of this crusade has in some cases turned out to be just paying of lip service as there is very little that has been shown on the actual field of play. The campaign includes the development of both state and international laws that are never enforced and are on the contrary violated in many instances. In cases where governments would like to proclaim heritage sites as World Heritage properties, the rights of Indigenous Peoples are at times used as one of the reasons to proclaim heritage sites on the World Heritage List (WHL). It is often argued that heritage sites are owned by Indigenous Peoples and that their proclamation as World Heritage properties would economically benefit them. In this situation, heritage agents and other players are normally portrayed as having no interests in the management of the sites and that they are only there to help Indigenous Peoples to have their rights recognised and respected.

The aim of this paper is to explore the rights of the Indigenous Peoples when managing heritage sites and to examine whether they are respected or not. Using the Matobo Hills in Zimbabwe as a case study, the paper shows that, contrary to the notion that heritage agents and other players are only there to help Indigenous Peoples realise their rights when managing sites, they also have interests in the management of the sites.

The paper also argues that the use of the Indigenous Peoples' rights to justify the proclamation of sites on the WHL is only a gimmick calculated to benefit the interests of the heritage agents. This paper will further show that the rights of the Indigenous Peoples in the Matobo Hills are only partially respected as they fail to benefit from the sites they believe they own. The discussion will end by strongly arguing for a paradigm shift to ensure that the rights of the Indigenous Peoples are fully respected when managing heritage sites.