

# THE **INDIGENOUS** WORLD

2020



# The Indigenous World 2020

**34th Edition** .....

**General Editor:** Dwayne Mamo

**Regional editors:**

David Nathaniel Berger, Nikita Bulanin, Lola García-Alix, Marianne Wiben Jensen, Signe Leth, Ena Alvarado Madsen, Dwayne Mamo, Alejandro Parellada, Lærke Marie Lund Petersen, Geneviève Rose, Stefan Thorsell, Kathrin Wessendorf.

**Maps:** David Nathaniel Berger and Dwayne Mamo

**Cover photograph:** Pablo Lasansky

**English translation:** Elaine Bolton and Madeline Newman Ríos

**Proofreading:** Miriam Bette, Elaine Bolton, Rebecca Knight and Dwayne Mamo

**Design and layout:** [www.NickPurserDesign.com](http://www.NickPurserDesign.com)

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**Executive Director:** Kathrin Wessendorf

**Head of Finance and Administration:** Søren Juul Aarslev

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# Editorial

Constituting just 5% of the world's population, Indigenous Peoples protect 80% of the planet's biodiversity.<sup>1</sup> Globally, many of the remaining standing forests are on Indigenous lands and territory. At least 24% of global carbon stored above ground in the world's tropical forests, or 54,546 million metric tons of carbon, are managed by Indigenous Peoples and local communities.<sup>2</sup> This is a result of the historical stewardship of Indigenous Peoples in the sustainable management of forests.

Indigenous Peoples are guardians not only of forests, but also of rivers, seas, oceans, ice, peatlands, deserts, prairies, savannas, hills and mountains. They have cultivated Indigenous knowledge systems that are nature-based and honour the complex interdependence of all life forms which is the root of success for the sustainable management of their resources and ecosystems in which they live. Consequently, for countless generations, they have observed climatic changes for a long time and have developed effective solutions and practices for biodiversity conservation and climate change adaptation and mitigation.

At the UN Climate Summit in New York in September 2019, Indigenous Peoples from around the world made a firm commitment to contributing to the reduction of greenhouse gas emissions with their knowledge and actions.

Indigenous Peoples have also clearly stated that in order to be able to adhere to this commitment, they need the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to be fully implemented, global commitments to keep global warming below 1.5 degrees Celsius to be honoured, and financial support<sup>3</sup> in place.

In a statement at the Climate Summit, Inuit and former Prime Minister of Greenland, Kuupik Kleist, stated: "The Inuit have been bringing forth warnings about global warming to the international community since the first Earth summit in Rio de Janeiro in 1992".

It took the world a long time to start listening.

Finally, the tide began to turn in recent years and the importance of Indigenous Peoples' knowledge and contributions to climate action

were recognised by the international community.

The Intergovernmental Panel on Climate Change (IPCC) Special Report on Land<sup>4</sup> released in August 2019 underlines the crucial role of Indigenous Peoples and how their knowledge systems contribute to the implementation of the Paris Agreement objectives. Indigenous Peoples and local communities customarily manage over 50% of the global land mass, but legally own just 10%.<sup>5</sup> Securing their land rights is a key component to increasing carbon storage, reducing emissions, improving food security, diminishing the likelihood of climate-related conflicts and enhancing ecosystem resilience.<sup>6</sup>

In some countries, international recognition of Indigenous Peoples' contribution to climate change actions has translated into national steps.

Peru, as part of its national commitment under the Paris Agreement, held a participatory consultation in 2019 for the implementation plan of its national Framework Law on Climate Change. Adopted in 2018, the law itself had been criticised for not having been based on proper consultation from civil society, including Indigenous Peoples. The government compensated for this by conducting a broad consultation for the implementation plan leading to the adoption of measures proposed by Indigenous Peoples, including the creation of the Indigenous Climate Platform. This platform was set up to recognise the work of Indigenous Peoples and their ancestral knowledge in biodiversity conservation. In November, the platform was tasked with developing its functions as well as a plan for the participation of Indigenous Peoples in climate action activities.

In June 2019, Inuit Tapiriit Kanatami – the national representative organisation for Inuit in Canada – released the National Inuit Climate Change Strategy, the only comprehensive Arctic-focused climate change strategy in Canada. Inuit developed the four-year strategy to respond to the rapid changes in the Arctic climate and to set out co-ordinated policies and actions with Inuit in mind, rather than unilateral federal policies that would have side-lined the Inuit. Upon the release, the federal government announced CAD\$1 million to support its implementation.

Despite some key positive developments in 2019, there were also setbacks. The COP25 in Madrid has been considered disappointing at the least, by many civil society actors, as well as Indigenous Peoples.

Language related to human rights and Indigenous Peoples' rights was rejected and negotiations failed on key elements for the implementation of the Paris Agreement, including increasing ambition to curb emissions. There will be a lot of hope and pressure placed in Glasgow for COP26 (postponed to 2021 due to COVID-19) to ensure Indigenous Peoples voices are heard and rights-based language is employed.

While the important role of Indigenous Peoples in the protection and conservation of the environment is becoming increasingly recognised internationally, Indigenous Peoples themselves continue to be marginalised and discriminated against in many countries, resulting in discriminatory policies and legislation. Part of this legislation, which has had dire consequences for the livelihood and socio-cultural practices of Indigenous Peoples, is directly related to environmental protection, biodiversity conservation and climate action.

In the case of REDD+, for example, Indigenous Peoples' traditional livelihood practices are still seen as one of the drivers of deforestation, despite increasing scientific evidence to the contrary. Many countries in Asia have declared shifting cultivation an illegal practice, thereby criminalising Indigenous Peoples' traditional practices with serious consequences for Indigenous communities.

In Laos, as reported in this edition, the government is formulating a new Forest Strategy 2030 which categorises shifting cultivation fields as fallow lands, considered degraded forest, and would allow private companies to plant industrial tree species on the lands, which could lead to food insecurity for Indigenous Peoples. Further, the Decree on Ethnic Affairs being revised by the government has an article that directly condemns shifting cultivation and other traditional, sustainable practices and aims to replace them with modern practices that focus on increased productivity for profit-making production. These measures will not only affect Indigenous Peoples' livelihoods but will also detrimentally impact their identity and disrupt their spiritual and cultural calendar that is deeply rooted in their relationship to the land and farming cycles.

Another environmental protection measure taken by many governments is the declaration of conservation areas on Indigenous Peoples' lands and territories, including the establishment of national parks and protected areas. Such 'green grabbing' has led to a reduction of available resources for Indigenous communities and increased pressure on

livelihoods, and in the worst cases to their eviction from these areas, as has happened in India and Kenya in 2019 and are covered in this edition. Access to these lands and restricted movement are then exacerbated by the effects of climate change which deplete pasture lands and water sources, leaving Indigenous Peoples limited opportunities to maintain their livelihoods without running into conflict with authorities as they have to venture farther for food and water for their livestock, as has happened in the Central African Republic, Kenya and Tanzania in 2019, among other countries.

Policy instruments and other initiatives seeking to mitigate climate change tend to be developed in a hurry, with no or only very limited participation of Indigenous Peoples and concern for their rights. It is already well documented how top-down mitigation actions, such as renewable energy projects or REDD+ can cause displacement and violations of Indigenous Peoples' rights when not complying with international rights standards such as the UNDRIP and ILO Convention 169.

In some cases, however, such as in the Republic of the Congo, the government has signed a letter of intent in 2019 for funding a REDD+ strategy that would implement projects encouraging sustainable forest management and recognising traditional land rights. However, there are also plans to develop agroforestry and renewable energy projects, which is precisely where the rights of Indigenous Peoples often and historically become compromised.

## **Indigenous Peoples worldwide experience climate change impacts**

The global climate crisis poses an existential threat for the world today. Despite having contributed the least to climate change, Indigenous Peoples are among the first to face its direct effects. Many live in particularly sensitive ecosystems, such as the Arctic, arid and semi-arid regions, and tropical forests, and are heavily reliant on their natural resources.

Indigenous Peoples in the Amazon rainforest were on the front line of defending themselves and their land from the rapidly spreading fires throughout 2019, which are covered in several chapters in this edition. A majority of the tens of thousands of fires happened in Brazil, though

fires also raged in Bolivia where 10,000 km<sup>2</sup> of forests burned, as well as large areas in Paraguay and Peru.

In 2019, there were almost 90,000 fires recorded in the Amazon, 30% more fires than in 2018 and in comparison with the last 10 years, 2019 was the fourth highest year for number of fires.

Brazilian President Jair Bolsonaro's first year in office proved to be a steep and quick decline for Indigenous Peoples' rights. He and his government turned a blind eye to these rights to pursue logging, mining, hydroelectric and other economic interests, which led to the deforestation of an area the size of Jamaica in the Brazilian part of the Amazon in 2019 alone.

Former Bolivian President Evo Morales, himself an Indigenous person, has, like Bolsonaro, also come under fire for his policies that have undermined Indigenous Peoples' rights. His 2016-2020 economic plan for Bolivia aimed to expand the country's available agricultural land by 12,000 km<sup>2</sup>, equating to the clearing and burning of 2,500 km<sup>2</sup> of land per year, including Indigenous forest lands.

The Amazon fires burned 4.5-5.1 million hectares of Bolivian forest, 35% of which was on Indigenous land. The fires, coupled with Morales' handling of the crisis and the economic, extractivist development plan expanding the agricultural frontier were all key factors, among others, that fuelled protests in late 2019 that led to Morales' resignation, after which he fled the country.

The Amazon fires affected other countries as well. In one week in September, over 4,500 wildfires were reported in the eastern region of Paraguay on the shared border with Bolivia and Brazil, and the fires also affected the Amazonian biomass in Peru, which re-ignited national debates on illegal mining and logging, and deforestation.

The Amazon wasn't the only place where forest fires directly impacted Indigenous Peoples. Beginning in January 2019 and throughout the year, more than 130,000 km<sup>2</sup> of land and forest burned in Siberia, which has had detrimental effects on the lives and livelihood of the Indigenous Peoples who depend on the forest and have traditionally protected it.

The fires have come on top of the damage caused by logging, driven especially by Chinese demand, which leaves ancestral land damaged. Further environmentally concerning is that these biomes cover 33% of the planet's land surface and store 50% of the world's soil car-

bon. This massive amount of carbon is stored in permafrost and thus decomposes at a slower rate, however as the Siberian Taiga burns, the permafrost melts and more carbon is being released into the atmosphere. Additionally, soot from the fires falls back down to the ground and embeds into ice and snow, turning it dark, which diminishes its ability to reflect heat and accelerates melting.<sup>7</sup>

Fires were not the only dangerous climate change impact Indigenous Peoples had to contend with in 2019. Many Indigenous Peoples across Africa, as evidenced in several chapters in this edition, were challenged by unpredictable rainfall, droughts and floods forcing them to be resilient in the face of natural disasters, but also led to food and personal insecurity.

Pastoralists in East Africa in Kenya, Tanzania and Uganda, had to travel farther to seek out grazing pastures and water sources as droughts led to plant loss and ecosystem degradation. In some cases, particularly in Tanzania, they ended up in conflict with authorities as they moved across conservation park lands and other areas with their livestock. Additionally, as rain resumed in the form of heavy rainfall, apart from the ensuing flooding, it also brought on the spread of livestock diseases, thus impacting their livelihoods.

Droughts also negatively impacted Indigenous Peoples in Botswana, the Central African Republic, Eritrea (which experienced its lowest rainfalls since 1981), Namibia and Zimbabwe (which was also severely affected by Cyclone Idai that left half of the population food insecure).

High temperatures have intensified desertification in Algeria, Morocco and Niger, increasing land conflicts as more people compete for less viable land for crops and grazing, or are forced to emigrate.

## **Mining, logging, agribusiness and other large-scale projects continue unabated, putting Indigenous Peoples Human Rights Defenders (IPHRDs) at risk**

Indigenous Peoples in all regions of the world have paid and are still paying a high price for recent decades of unsustainable development. The insatiable global rush for economic growth has led to an increased demand for land and natural resources with Indigenous Peoples' land being a primary target for illicit acquisitions. As a result, Indigenous

Peoples are at a risk of losing their remaining lands and territories.

Initial data from the global campaign against Indigenous Peoples' rights defenders<sup>8</sup> presents a very grave and disturbing situation for Indigenous Peoples with nearly 500 Indigenous people killed since 2017 in just 19 countries, over 400 arbitrarily detained, over 200 illegally arrested and over 1,600 threatened and intimidated. Simply put, defending one's land and human rights is dangerous.

*The Indigenous World 2020* reports that in 2019, in Mexico, at least 14 IPHRDs were killed across seven states, all in the process of defending lands from large infrastructure, extractive and energy projects, some of whom had already alerted authorities they were receiving threats. According to the 2019 Guatemalan Human Rights Ombudsman report, in the first six months of 2019 alone there were 327 attacks on human rights defenders, including 12 murders, 18 attempted murders and 61 cases of criminalisation in the country.

In a 2019 Global Witness report, the watchdog organisation called the Philippines the deadliest country for land and environmental defenders with 30 killed in 2018.<sup>9</sup> Much of the violence against Indigenous Peoples and defenders is related to their work in investigating and protesting mining, logging and agribusiness projects that pollute and encroach on protected land, or land that should be protected. In 2019, IWGIA actively engaged in the Zero Tolerance Initiative<sup>10</sup> to engage companies in pledging zero tolerance toward the killing and criminalisation of IPHRDs in their business practices and supply chains.

Under President Rodrigo Duterte, two large dam projects and the development of the Philippines first green, smart city – all projects backed by China – will displace and have already displaced tens of thousands of Indigenous people and have led to various protests and actions in 2019. Indigenous Peoples continue to organise themselves against the myriad unrestricted mining projects that continue and will continue to cover tens of thousands of hectares of ancestral lands.

The attack on rights activists and stigmatisation of Indigenous Peoples, criminalisation and outlawing of their activities – with responses such as illegal surveillance, arbitrary arrests, forced disappearance by state security and paramilitary forces, travel bans, threats, dispossession and killings – reflects a shrinking democratic and civil space.

The example from Bangladesh in this edition shows that hundreds of activists and IPHRDs have been targeted, especially those affiliat-



ed with Indigenous political parties in the Chittagong Hill Tracts, and many are forced to remain on the run out of fear of being prosecuted on trumped-up charges or killed. Local authorities continue to use propaganda to label rights defenders as “armed terrorists” and a permanent, special force called a Rapid Action Battalion has been deployed in the region.

However, the intimidation is not limited to just within a country. The Expert Mechanism on the Rights of Indigenous Peoples has also noted in 2019 that many Indigenous people have received reprisals for their human rights work and appearances at UN events.

## **Defending their lands**

Indigenous communities are often located in remote areas far from protection networks and support systems. Consequently, violations are less prone to be discovered. Additionally, Indigenous communities typically have inadequate access to the justice system. One of the reasons for this is that many communities do not have formal titles to their lands or land tenure security. Political marginalisation of Indigenous Peoples, racism and disrespect for their traditional use of natural resources, and the criminalisation of their traditional livelihoods in some countries adds to their vulnerability.

Where legal frameworks exist, the implementation is incredibly weak or non-existent. Indigenous Peoples’ collective lands are often perceived as ‘empty’, ‘unused’ or ‘fallow’ by state and government authorities – as we see in Laos, Malaysia and Myanmar, for example – which paves the way for easy (often violent) and widespread land grabbing by government authorities, political elites, dominant groups, and national and international business enterprises.

Safeguarding the land tenure security of Indigenous Peoples is a key foundation for the future of Indigenous Peoples and is one of the key rights and demands of the global Indigenous movement, including in the current climate change context.

Formal legal community land titles can go a long way in making the land tenure situation of Indigenous Peoples more secure. However, they do not always provide sufficient land tenure security, as evidenced by numerous cases in Latin America, North America, the Arctic and Pa-

cific. In Latin America and Russia, despite substantial achievements in the legal frameworks recognising Indigenous Peoples' rights to land, as well as advancements in land titling, extractive industries are continuing their relentless advance onto the Indigenous territories in search of resources. Almost all countries in Latin America have ratified ILO Convention 169 but real consultation (not to speak of Free, Prior and Informed Consent) rarely occurs.

*The Indigenous World 2020* includes several examples of dispossession and evictions of Indigenous Peoples from their land.

Beginning in July 2019, Ogiek hunter-gatherers in Kenya were caught up in the government-sanctioned forceful eviction of 60,000 people from the Mau Forest. No proper vetting was implemented to identify illegal land settlers from the Ogiek, who have been the traditional custodians of the Mau Forest Complex in Kenya's Rift Valley and have guaranteed rights to be there as per a 2017 African Court on Human and Peoples' Rights ruling.

In neighbouring Tanzania, conservation and wildlife protection continue to be the key rationale for the eviction and human rights violations against Indigenous Peoples. In July 2019, the Babati District Commissioner ordered the evictions of Barabaig and Maasai pastoralists and fishers from several villages, which led to the burning of over 300 houses. The story is much the same in neighbouring Uganda where the Uganda Wildlife Authority (UWA) continues to claim territory for conservation, thus continuing to restrict pastoralists from pastures and water. These expansions are often done without consultation and lead to conflict between pastoralists and the UWA.

In February 2019, India's Supreme Court issued an order to 21 state governments to evict more than a million tribals and forest dwellers whose forest land claims were rejected under the current Forest Rights Act. Additionally, the potential adoption of a new National Forest Policy would have created a new legal framework that would allow private entities and corporations to set up and run commercial projects in forest lands and would remove language that carefully addresses Indigenous Peoples' rights. Further, revisions to the India Forest Act were being done without the inclusion or consultation of Indigenous people and would dramatically expand the powers of the central government and forest officials, including their policing powers. And finally, the Citizenship Amendment Act passed in December 2019, passed to provide cit-

izenship to religiously persecuted people from neighbouring countries, proves problematic for millions of Indigenous people in India who fear that in the process of implementing the act they will be rendered stateless, evicted and forced to live in detention centres as they will not be able to prove their Indian citizenship.

In Myanmar, the Vacant, Fallow and Virgin (VfV) Land Management Law, a controversial law that was criticised by seven UN Special Rapporteurs and was met with widespread protest, nevertheless went into effect in March 2019. The law requires anyone who uses or lives on VfV land to apply for a 30-year permit or face eviction, a fine and up to two years in prison. This law disproportionately affects Indigenous Peoples as approximately 75% of such land is in the seven ethnic states where Indigenous customary land systems prevail. Forty-seven million hectares have been officially designated as VfV land, which if left unclaimed will be handed over to business interests.

A land bill was also drafted in Indonesia in 2019 that does not recognise the rights of Indigenous Peoples to their customary lands by stipulating that such land must be registered within two years of when the bill is passed. Additionally, that land must also be occupied, a clear threat to Indigenous Peoples who don't occupy large swathes of customary land and rather leave it untouched to be conserved under customary law or unused as part of rotating farmland practices. The draft bill has also drawn criticism for not being carried out with open consultation.

## **Social unrest sparked in many countries around the world**

Popular demonstrations around the world are forcing us to realise that global solutions to the climate crisis require us to also address growing inequality and people's – including Indigenous Peoples' – lack of access to education, health, food and water. Climate initiatives are part of the solution, but these initiatives must have a rights-based approach.

In Chile, Ecuador, Puerto Rico, Lebanon, Hong Kong and Nepal – which experienced its largest popular protest since 2006 for attempting to abolish an Indigenous customary self-government system – popular demonstrations have garnered concessions from the elite in power. The

reasons for the protests are many, but they all stem from a requirement to address inequality-creating structures. The world's richest have become richer in recent decades, while the poorest have become poorer. And the growing inequality is happening despite the fact that in 2015 the world agreed on a plan to improve the lives of the world's population, leaving no one behind.

These Sustainable Development Goals (SDGs) identified 17 areas of action that together will create sustainable development for both people and the planet, including eliminating poverty, reducing inequality and better stewardship of the environment.

However, after five years, little progress has been made on the 17 areas and a large proportion of the world's 476 million Indigenous Peoples<sup>11,12</sup> are often discriminated against or even criminalised and, in the worst cases, killed when defending their land rights – contrary to the objective of SDG goal 16: to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

Nevertheless, July 2019's SDGs evaluation meeting was marked by congratulatory speeches and government presentations focused on progress and launched initiatives. Chile was presented as an SDG example and their reporting was met with roaring applause. Fast forward three months where millions of Chileans took to the streets protesting growing inequality and a lack of basic necessities in the country.

How can there be such disparity between the narrative presented internationally and what people experience nationally? Part of the answer is that by focusing on one of the SDGs, governments can avoid being held accountable for the other 16.

Although Chile has managed to reduce the number of people living in poverty over the past decade, it remains one of the countries with the most inequality. Additionally, many people struggle to access basic necessities. The Mapuche people are some of those affected by such changes, and when they have opposed this development by defending their rights, they have been criminalised and arrested.

In Chile, the popular protests forced the president to move COP25 to Spain so that he could "put the problems and interests of Chileans, their needs, their desires and their hopes first", implying that Chile's government cannot focus on solving the climate crisis when other priorities are more acute.

However, it is important to understand that “social inequality and the climate crisis arise from the same root cause” as the Climate Action Network wrote in a press release after the relocation of the COP.<sup>13</sup> We cannot therefore solve one problem by turning a blind eye to the other.

## **Indigenous women persevere despite odds**

Indigenous women all over the world suffer from triple discrimination as they are not only discriminated simply for being women or for being Indigenous, but also for being Indigenous women. Indigenous women are often not only left out of local and national political processes but are also excluded from decision-making processes and structures within Indigenous communities.

The UN Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, reported in March 2019, that there is a backlash against human rights defenders in the current political climate, and women defenders are often the first to come under attack. The Special Rapporteur called on the international community to recognise the specific issues, challenges and risks that women human rights defenders face and to ensure that such defenders are recognised, supported and enabled to participate equally, meaningfully and powerfully in the promotion and protection of human rights.<sup>14</sup>

Throughout 2019, Indigenous women, against great odds, made their voices heard. In December, Indigenous women from 15 countries across Africa and Latin America met in Cameroon in preparation for the Commission on the Status of Women Beijing+25 meeting in 2020 (since postponed due to COVID-19). They noted that since 1995 Indigenous women have made significant progress in advocating for their rights and increasing their political participation, however the change is slow and limited and many dangerous hurdles remain.

Despite the achievements, the group also noted that Indigenous women and girls are still being discriminated against and marginalised, lack access to education, lack access to land ownership, and most dangerously, suffer gender-based violence – including sexual violence, gender-based killing, traditional harmful practices, domestic violence, violence in the context of conflict and human trafficking.

In one disturbing report in this edition from Bangladesh, dozens

of cases of violence against Indigenous women were reported in 2019, which included the killing of five women, the sexual and physical assault of nearly 100 women, the rape of seven women and girls, gang rape of three women and girls and attempted rape of seven others.

In another disturbing report in the India chapter, the National Crime Records Bureau indicated that 1,008 tribal women, including 399 children, were raped in 2018.

Indigenous women and girls, however, should not only be seen as victims. In reality, they are active change agents in society and champions of sustainability, standing at the forefront of promoting Indigenous Peoples' rights and women's rights, as well as playing an essential role in safeguarding and passing along Indigenous knowledge, tradition, culture and language.

In Chile, Indigenous women were present and part of the protests in the country and emphasised that the government's extractivist policy was a daily form of violence not just damaging their lands, but also their way of life, which they, as women, are responsible to pass on to new generations, including not only culture and traditions, but also environmental protection, the protection of medicinal plants and maintaining food sovereignty.

The chapter on Chile also notes that Mapuche women have been mobilising Indigenous organisations to fight land dispossession, protect water sources, revive languages and protect the environment. They are also building broad alliances across sectors through the country to amplify their voices that the current system of governing must change.

The Central African Republic chapter describes how the government and NGOs organised workshops throughout 2019 with Indigenous women to identify the causes of deforestation and ecosystem degradation, as well as to build capacity among communities on techniques to restore degraded areas and protected and sacred areas.

The chapter on the Expert Mechanism on the Rights of Indigenous Peoples begins by highlighting an important panel at their 2019 annual meeting that featured seven Indigenous women from around the world who had overcome great odds to become part of their national political conversation by holding elected public positions in parliaments, ministries and other offices.

## **Indigenous Peoples defend themselves and win cases**

While huge threats and land dispossession is one side of the coin, the other side is that Indigenous Peoples have proven to be very strong, resilient and able to defend themselves and their biodiversity. This agency is demonstrated by the fact that Indigenous Peoples are still surviving, which is impressive given the many attempts of assimilation and extinction. They still occupy many of their ancestral territories, maintain to a large extent their unique cultures and traditions, and are the guardians of much of the world's cultural and biological diversity. They are no longer struggling in isolation but have organised themselves in local, national and global movements, they have secured their rights in international law, they play active roles in major international processes affecting their rights and livelihoods, they have managed to get favourable concluding observations from several international human rights mechanisms and they have won important legal cases nationally and internationally. This is a unique and important window of opportunity – and the point of departure for the fight against land dispossession.

At the national level, *The Indigenous World 2020* can also report some victories, albeit some of them bittersweet.

The Truku people in Taiwan won a court battle against the Asia Cement Corporation, thus revoking their 20-year mining extension on Truku lands, as the company did not conduct proper consultation. The company, however, has appealed the decision and is continuing to carry out mining activities.

Throughout 2019 the Majhis, Baram, Newa, Magar, Kiratis and Santhals in Nepal have been raising the issue of establishing Special, Protected and Autonomous Areas to reclaim ownership and control over their lands, territories and resources. Their actions were inspired by a Directive Order issued by the Supreme Court of Nepal on 31 December 2018 that stated that laws should be passed to establish the Baram Special, Protected and Autonomous Area as stated in the constitution. Baram are one of the 59 Indigenous Peoples formally recognised by the government and are a highly marginalised group.

After years of fighting, the Montagne d'Or gold mining project planned in French Guiana was officially halted. The Organisation of Guianese Indigenous Nations in its communications to various UN bodies

stated that the mine would be operating on ancestral lands, create a risk of pollution and that a proper consultation process was never conducted. After widely consistent and strong opposition from Indigenous Peoples in the territory, environmentalists and the general public, the French Environmental Minister announced the project would not go ahead, which echoed statements made by French President Emmanuel Macron. The decision was further confirmed at the UN Climate Summit in September 2019.

In November, the world's first industry-wide benefit-sharing agreement was launched between the Khoikhoi and San, and the South African Rooibos industry, after nine years of negotiations. The agreement finally gave the Khoikhoi and San people recognition as the traditional knowledge holders to the uses of Rooibos, the leaves of which are commonly used for tea. The agreement delineates the fair and equitable sharing of the benefits resulting from the use of Indigenous biological resources and traditional knowledge, and includes the free, prior and informed consent when accessing and using traditional knowledge.

While some court cases regarding Indigenous Peoples continue to go unheard in Argentina, one historic decision was made concerning the Pilagá people in Formosa Province and a massacre that happened in 1947. The judge in this case held the Argentine state responsible and in the legal framing declared the action a crime against humanity in violation of the Rome Treaty, making this the first time the state's extermination policies were classified as such and that the justice system verified these tragic historical events.

In 2019, Australia's High Court ruled that the Government of the Northern Territory pay AUD\$2.53 million in compensation to the Ngaliwurru and Nungali peoples for the loss of Native Title in Timber Creek, a case that began in 2011 when the peoples sued the government. The significant judgment may set a precedent for other Aboriginal and Torres Strait Islander peoples for future compensation claims and has legally recognised the peoples' spiritual and cultural connection to the land.

## **International Year of Indigenous Languages**

2019 was the International Year of Indigenous Languages, putting a sharp focus on the fragility of the thousands of languages spoken in the



world today. At least 40% of the approximately 7,000 languages spoken in the world today are endangered. Many of these languages belong to Indigenous Peoples, and if something does not change soon, UNESCO predicts that humanity will lose up to 3,000 of them by the end of the century.

For example, fewer than one in five Indigenous people in Canada are fluent in their traditional languages and many languages are on the verge of dying out. In June 2019 the federal government passed an act respecting Indigenous languages that would ensure that the government provides long-term, sustainable funding of Indigenous languages, establishes an Office of the Commissioner of Indigenous Languages and facilitates collaboration between federal, provincial, territorial and Indigenous governments to support Indigenous languages.

In Morocco, the government passed a law, after several years of discussions, making Tamazight an official language of Morocco, which goes a long way in establishing the Amazigh identity in the country officially and sets a legal framework for their linguistic and cultural rights.

The African Commission for Human and Peoples' Rights adopted a resolution in 2019 urging African countries and the African Union to promote and preserve Indigenous languages, including allocating funds to do so.

Looking forward, the UN in January 2020 announced 2022-2032 as the International Decade of Indigenous Languages to continue to put a global spotlight on Indigenous languages to support and promote them.

## **Promote, protect, defend**

Indigenous Peoples are one of the most vulnerable and marginalised groups in the world, fighting adverse socio-political and business interests, as well as being some of the first to face the consequences of climate change. And yet, despite these challenges, Indigenous Peoples have proven to be strong, resilient and able to organise and defend themselves.

They still occupy many of their ancestral territories, celebrate and struggle to maintain their unique cultures, and act as the prime guardians of much of the world's cultural and biological diversity. Indigenous

Peoples are an integral part of sustainability and sound natural resource management; their knowledge and understanding of our world are a key part of the solutions we need to achieve a more just, equal and sustainable future for all of humanity.

We all have an obligation to listen to the experience and knowledge of Indigenous Peoples and do our best to stop the injustices happening every day against them. With this edition of *The Indigenous World*, we are honouring their lives, struggles, history and expertise by giving space for their stories to be told.

### **Dwayne Mamo**

General Editor

### **Kathrin Wessendorf**

Executive Director

Copenhagen, April 2020

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## About the Indigenous World

**T**he compilation you have in your hands is the unique result of a collaborative effort between Indigenous and non-Indigenous activists and scholars who voluntarily document and report on the situation of Indigenous Peoples' rights. We thank them and celebrate the bonds and sense of community that result from the close cooperation needed to make this one-of-a kind documentation tool available.

For 34 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. This yearly overview serves to document and report on the developments Indigenous Peoples have experienced throughout 2019. *The Indigenous World 2020* adds not only documentation, but also includes a special focus on climate change.

IWGIA publishes this volume with the intent that it is used as a documentation tool and an inspiration to promote, protect and defend the rights of Indigenous Peoples, their struggles, worldviews and resilience.

It is our hope that Indigenous Peoples themselves, along with their organisations, find it useful in their advocacy work and in improving the human rights situation of Indigenous Peoples. It is also our wish that *The Indigenous World* is used as a main reference by a wider audience interested in Indigenous issues who, through these pages, can dive into local realities and further familiarise themselves with the current situation of Indigenous Peoples' rights worldwide.

We would like to stress that any omission of a specific country report should not be interpreted as no news is good news. In fact, sometimes, it is precisely the precarious human rights situation that makes it difficult to obtain contributions from specific countries. In other cases, we have simply not been able to get an author to cover a particular country. If you would like to contribute to *The Indigenous World*, please contact IWGIA.

The articles in this book are the views and visions of the authors, and IWGIA cannot be held responsible for the opinions stated herein. The respective country maps are, however, compiled by IWGIA and the content therein is the responsibility of IWGIA and not the authors. We wish to stress that some of the articles presented take their point of departure in ethnographic regions rather than strict state boundaries. This is in accordance with Indigenous Peoples' worldview and cultural identification which, in many cases, cuts across state borders.





# PART 1

Region and country reports



Africa

# Algeria





The Amazigh are the Indigenous people of Algeria and other countries of North Africa who have been present in these territories since ancient times. The Algerian government, however, does not recognise the Indigenous status of the Amazigh and refuses to publish statistics on their population. Because of this, there is no official data on the number of Amazigh in Algeria. On the basis of demographic data drawn from the territories in which Tamazight-speaking populations live, associations defending and promoting the Amazigh people estimate the Tamazight-speaking population to be around 12 million people, or 1/3 of Algeria's total population. The Amazigh of Algeria are concentrated in five broad regions of the country: Kabylie in the north-east (the Kabyl represent around 50% of Algeria's Amazigh population), Aurès in the east, Chenoua, a mountainous region on the Mediterranean coast to the west of Algiers, M'zab in the south (Taghardayt), and Tuareg territory in the Sahara (Tamanrasset, Adrar, Djanet). Many small Amazigh communities also exist in the south-west (Tlemcen, Bechar, etc.) and in other places scattered throughout the country. It is also important to note that large cities such as Algiers, Oran, Constantine, etc., are home to several hundred thousand people who are historically and culturally Amazigh but who have been partly Arabised over the years, succumbing to a gradual process of acculturation.

The Indigenous populations can primarily be distinguished from other inhabitants by their language (Tamazight) but also by their way of life and their culture (clothes, food, songs and dances, beliefs, etc.). After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national and official language" in Algeria's Constitution in 2016. The Constitution does, however, specify that the official nature of this language will need to be set out in an act of parliament. Meanwhile, the Amazigh identity continues to be marginalised and folklorised by state institutions. Officially, Algeria is still presented as an "Arab country" and anti-Amazigh laws are still in force (such as the 1992 Law of Arabisation).

Internationally, Algeria has ratified the main international standards, and it voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. These texts remain unknown to the vast majority of citizens, however, and thus not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria urging it to meet its international commitments.

## 2019, a year marked by popular resistance

**A**lgeria experienced significant political instability throughout 2019 due primarily to a power struggle at the highest level.

When the President of the Algerian Republic, Abdelaziz Bouteflika, 82 years of age and in a very poor state of health, announced on 10 February that he intended to run for a fifth consecutive term of office, popular protests first broke out six days later in Kherrata, in the east of Kabylie. In the days that followed, further demonstrations were organised in different towns around Algeria. Since then, every Tuesday and Friday, people from across Algeria, including the Amazigh regions, have been publicly protesting to demand an end to the “corrupt and violent” political/military system that has governed Algeria for more than 60 years. Mr. Bouteflika was forced to step down as President on 2 April 2019, to be immediately replaced by an interim President. New presidential elections were planned for 4 July 2019 but rejected by the people, who called for “an end to the system”. The date of the election was finally set as 12 December 2019, despite the protesting crowds who continued to pour out onto the streets every week. In the end, four candidates participated in the election, all a product of the system in place. This understandably resulted in a particularly low turnout (an average 39% across Algeria) and 0% in the Amazigh region of Kabylie, which has over eight million inhabitants. The Kabyl were the only people to refuse to take part in the vote so massively and unanimously. Following the election on 12 December, a new President was elected although the person in question suffers from a clear lack of legitimacy.

## **Serious human rights violations against members of the At-Mزاب community**

Kamel-Eddine Fekhar, doctor and defender of human rights and of the Amazigh community of At-Mزاب, was arrested and thrown into jail on 31 March 2019 in Ghardaya (Taghardayt) following the publication of an interview in which he denounced the segregationist treatment being suffered by the At-Mزاب community. In protest at what he considered his arbitrary detention, he refused to eat. After 53 days on hunger strike, on 28 May 2019 he died in prison. The following 18 July, his grave was desecrated. His lawyer, Salah Dabouz, has been subjected to intensive police harassment and judicial supervision since 9 April 2019. On 9 September, he suffered an attempted assassination by hooded knife-wielding men in the streets of Ghardaya. There has been no investigation that might shed any light on either the circumstances of Kamel-Eddine Fekhar's death or the attempted murder of Salah Dabouz.

On 18 June 2019, UN experts stated that they were alarmed at the death in detention of a human rights defender following a 53-day hunger strike in Algeria. "We are particularly concerned that the necessary care was not provided to Mr. Fekhar while under the responsibility of the prison authorities, in violation of principle 24<sup>1</sup> and of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," stated the experts.<sup>2</sup>

In November 2019, the Ghardaya Court sentenced a number of defenders from At-Mزاب community to between 18 months and 10 years in prison. They were accused primarily, on the basis of Articles 79, 144 and 147 of the Algerian Criminal Code, of "threatening the integrity of the national territory, jeopardising the honour of Algerian institutions and attempting to discredit judicial decisions". These defenders were Salah Dabouz, Mohamed Dabouz, Hadj Brahim Aouf, Khodir Babaz, Khodir Sekouti, Dadou Nounou Nouredine, Chikh Belhadj Nacereddine, Khat Idris and Tichabet Nouredine. To escape the threats and arbitrary detention, Hamou Chekebke (At-Mزاب community rights defender and Amazigh World Congress member) was forced to flee Algeria in July 2019 and seek political asylum in France.

## Ban on carrying the Amazigh flag

The Amazigh often fly their flag alongside that of Algeria during public demonstrations. Algerian Chief of Army Staff, General Gaid Salah (who passed away on 23 December 2019) decreed on 19 June 2019 that “only the Algerian flag would henceforward be authorised” during popular marches. From Friday 21 June onwards, the police began to arrest and imprison anyone waving - or even simply carrying in their pocket or bag - an Amazigh flag. Only Kabylie was unaffected by this ban on the Amazigh emblem. Consequently, between June and October 2019, some 50 people were arrested and imprisoned for possessing an Amazigh flag. Officially, they were prosecuted for “threatening the integrity of the national territory” as set out in Article 79 of the Criminal Code, punishable with a sentence of up to 10 years in prison or a fine of between 3,000 and 70,000 Algerian dinar (20 to 500 euro).

And yet Algerian law does not explicitly prohibit carrying an Amazigh flag. Quite the contrary, the recitals to the Algerian Constitution recognise that the Algerian identity is based on “Arabism, Islamism and Amazighness” and the Amazigh language (Tamazight) has, since 2016, had the status of “national and official” language (Article 4). Consequently, according to the lawyers of those “arrested for the Amazigh flag”, the material facts of which the detainees were accused “under no circumstances constitute a threat to the unity of the country, nor any offence under the law. It is therefore unacceptable that people are thrown into prison for waving an Amazigh flag”.

On 5 July 2019, Amnesty International stated that: “Arresting, harassing and intimidating a person or prosecuting them simply because they are carrying a flag constitutes a flagrant violation of the rights to freedom of expression and peaceful association and of the cultural rights of the Amazigh community, these rights being guaranteed by the Algerian Constitution and by the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights to which Algeria is a party.”<sup>3</sup>

Ten of the Amazigh prosecuted for carrying their flag were quickly released, particularly in Tamanrasset, Constantine, Chlef and Annaba, but some 40-odd more were sentenced to prison terms of between six months and two years. This resulted in the European Parliament adopt-

ing a resolution on Algeria on 28 November 2019 in which it called particularly for “the immediate and unconditional release of 42 protesters arrested for carrying the Amazigh flag.”<sup>4</sup>

## **Attacks on freedom of religion**

The Algerian authorities have closed down around a dozen Christian churches in Kabylie since July 2019. Worshipers inside the religious buildings were violently removed by the police. Christian Amazigh are therefore being stigmatised and banned from practising their religion, in violation of the Algerian Constitution, Article 42 of which states that “freedom of conscience and freedom of opinion are inviolable. Freedom of religion is guaranteed.”

## **Attacks on individual and collective rights and freedoms**

For three years now, an unknown number of Kabyl citizens have been deprived of their passports by the Algerian authorities, without a judicial order and for no reason. To defend their right to a passport, they formed the “Collective of Kabyl Citizens Deprived of their Passports” in 2019. They have organised a number of protests and have written to UN bodies, particularly the Human Rights Committee, the Special Rapporteur on the Rights of Indigenous Peoples and the Special Rapporteur on Racism and Racial Discrimination.<sup>5</sup>

Defenders of the cultural and linguistic rights of the Amazigh, along with members of the movements for Kabylie’s right to self-determination and Mزاب’s right to autonomy, have been particularly targeted, among other things, by police surveillance, physical attacks, arbitrary arrests and detention, threats and barriers to employment.

## **Challenges of global warming and sustainable development**

As a country on the south coast of the Mediterranean, Algeria is facing numerous ecological and climate challenges, including increasing

temperatures, desertification, a decline in agricultural production, falling water levels, decreasing biodiversity and recurrent forest fires, with serious consequences for the health and life of its citizens.

Amazigh populations living in the mountains or in the arid or semi-arid zones in particular are the first to suffer the negative impacts of climate change.

Algeria ratified the Kyoto Protocol in 2004, the UN Biodiversity Convention in 1995, the UN Convention on Desertification in 1996 and the Paris Climate Change Agreement (COP21) in 2015. Nationally, Law No. 03-10 of 19 July 2003 on environmental protection in the context of sustainable development sets out the legislative framework in this regard. Article 2 of this law specifies in particular that the aim of the law is “to promote the environmentally rational use of available natural resources, as well as the use of cleaner technologies”.<sup>6</sup> However, a new law governing hydrocarbon activity (Law No. 19-13 of 11/12/2019) and authorising the exploitation of shale gas has been adopted despite its negative environmental consequences and despite mass popular protest.<sup>7</sup>

The government has had a national climate plan in place since 2010 but its implementation has thus far been limited to communication and awareness raising activities. In addition to this, Indigenous communities’ knowledge and know-how on environmental protection and sustainable development has been totally ignored.

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**Belkacem Lounes** holds a PhD in Economics, is a university lecturer (Grenoble University), expert member of the Working Group on the Rights of Indigenous Peoples of the African Commission on Human and Peoples' Rights, and author of numerous reports and articles on Amazigh rights.



# Botswana





Botswana is a country of 2,250,000 inhabitants that celebrated its 50th year of independence in 2016. Its government does not recognise any specific ethnic groups as Indigenous, maintaining instead that all citizens of the country are Indigenous. However, 3.14% of the population identifies as belonging to Indigenous groups. These include the San (known in Botswana as the Basarwa) who number around 66,000; the Balala (2,150); and the Nama (2,600), a Khoekhoe-speaking people. The San were in the past traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle post workers, or people with mixed economies. They belong to a large number of sub-groups, most with their own languages, including the Ju/'hoansi, Bugakhwe, Khwe-!Ani, Ts'ixa, !X'ao-!l'ae-n, !Xóǀ, !Hoan, !Khomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Cuaa, Kua, Danisi and /Xaise. The San, Balala and Nama are among the most underprivileged people in Botswana, with a high percentage living below the poverty line. Of the San, only an estimated 300 people are full-time hunter-gatherers (0.5 % of the total number of San in Botswana).

Botswana is a signatory to the Conventions on the Elimination of all Forms of Discrimination against Women (CEDAW), on the Rights of the Child (CRC) and on the Elimination of all Forms of Racial Discrimination (CERD), and it voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, it has not signed the Indigenous and Tribal Peoples Convention No. 169 (ILO 169). There are no specific laws on Indigenous Peoples' rights in the country and nor is the concept of Indigenous Peoples included in the Botswana Constitution. Botswana took part in the UN Permanent Forum on Indigenous Issues' (UNPFII) 18th annual meetings in New York (22 April-3 May 2019).

**T**he Republic of Botswana, Africa's oldest multiparty democracy, held its 13th election on 23 October 2019. Mokgweetsi E.K. Masi-si of the Botswana Democratic Party (BDP) won the presidential

election, thus retaining his position. Two San, Jumanda Gakelebhone of New Xade and Xukuri Xukuri of D'Kar, were elected to the Ghanzi District Council, running under the Umbrella for Democratic Change (UDC) political party.

## Climate change

As a largely semi-arid country, Botswana is suffering the impacts of climate change. Some of these impacts include warming temperatures, changes in rainfall patterns, shifts in the distribution of species, and disease problems affecting crops and livestock, which account for much of the livelihood of many Batswana. A drought was declared by President Mokgweetsi Masisi on 21 May 2019 for the period 1 July 2019 -30 June 2020.<sup>1</sup> Over US\$90 million was committed to dealing with the drought.

San organizations noted that San communities were especially vulnerable to the drought because of their geographic locations in the country and the fact that many of them were already in water-scarce areas.<sup>2</sup> San community members were active in contributing to Botswana's efforts to combat climate change. Representatives from San organizations worked with members of other NGOs to support the Botswana delegation to the 25th Conference of the Parties on the UN Framework Convention on Climate Change (UNFCCC) held in Madrid from 2-15 December. Although no San attended the convention, they worked with others to support the Botswana delegation in calling for tougher standards for carbon emissions and support for poor countries affected most severely by climate change. It was reported that San were also involved in assisting researchers by sharing their traditional knowledge of climate science.<sup>3</sup>

## San activism

Many San were engaged in working toward solutions for their communities' problems in 2019. The Botswana Khwedom Council (BKC), a group representing the interests of Botswana San, has been working to secure land rights for San living on Chief's Island in the Okavango Delta,

a prime destination for high-end international tourists. The chief of the BaTawana tribe recently claimed sole ownership of the island but BKC intervened with the Tawana Land Board to block the claim. The land in question “...belonged to the San communities of Gudigwa, Khwai and others who used it for hunting expeditions before the arrival of the BaTawana Tribe,” BKC said in a letter to the Land Board.<sup>4</sup>

Meetings between San from various parts of the country and the Minister of Local Government and Rural Development were held on 12 July in Gaborone and 18 August in Maun. The San recommended improvements in services to San communities and the need for mother-tongue education for San children.<sup>5</sup> In spite of these and other efforts by the San community, however, there were no changes in government policy toward the San in 2019. The Ministry of Local Government has not yet responded to recommendations from San who attended the meetings and there have been no changes in its policies and procedures regarding the San living in the Central Kalahari Game Reserve (CKGR).<sup>6</sup> The Botswana government’s representative to the UN Permanent Forum on Indigenous Issues, Slumber Tsogwane, reiterated the government’s position that all Batswana are Indigenous, undercutting the San’s claim to indigeneity.

## Central Kalahari Game Reserve

Representatives of the NGO Natural Justice (NJ) visited Ghanzi and Gaborone in February 2019 in an effort to gain permission to work in the Central Kalahari Game Reserve (CKGR) to carry out consultations with the San residents regarding their needs, a request which was denied by the Department of Wildlife and National Parks.

A National Geographic Society research team visited the CKGR in March and April. The team visited four of the five San communities in the CKGR and spoke with a total of 140 people. Four of the issues highlighted by community members in the Central Kalahari during the visit were: (1) the need for additional water supplies in the Central Kalahari; (2) the hope for the restoration of Special Game Licenses (SGLs) for CKGR community members; (3) the desire for CKGR communities to be able to establish their own community trusts and to have a greater say over tourism in the Central Kalahari; and (4) the communities’ wish for

the government to allow British lawyer, Gordon Bennett, to obtain a visa in order to work with the CKGR people on the preparation of legal documents. Subsequently, in December, a petition was sent to the Ministry of Local Government and Rural Development formally requesting that Mr. Bennett be allowed to return to Botswana to help the people of the Central Kalahari.<sup>7</sup>

Particular concerns were expressed by the people of the CKGR regarding unevenness in the coverage of the Remote Area Development Program and the country's Destitute Policy and other social safety net programs. Communities living below the poverty line and vulnerable groups such as pregnant and lactating mothers, orphans and people with disabilities are provided with food and other support. In some areas, such as the CKGR, the San and Bakgalagadi are reporting that insufficient food supplies are being provided.

## **The Botswana hunting ban**

In 2019, President Masisi moved to end the hunting ban that had been imposed by his predecessor, President Lt. Gen. Seretse Khama Ian Khama, in 2014. The decision to revoke the ban was taken in May 2019 and, by the end of 2019, hunting licenses for elephants and other species were once more being issued, albeit with a certain amount of confusion as to who qualified for such licenses.<sup>8</sup> It is important to note that no subsistence hunting licenses were issued, which has had serious implications for remote area communities. In the past, these communities received such licenses to hunt "for the pot". Since their hunting rights were terminated, it has been difficult for residents of these communities, consisting mostly of Indigenous people, to obtain sufficient protein in their diets.

Botswana was one of the leading southern African countries calling for the opening up of elephant ivory sales at the 18th meeting of the Conference of the Parties (COP) of the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) meetings held in Geneva, Switzerland. Such sales would have provided much-needed funds for wildlife conservation in the country. This meeting, held from 17-29 August 2019, was attended by two San from Botswana. However, CITES members voted not to approve the legal sale of elephant ivory.

It was reported that elephant poaching in Botswana had increased significantly in 2019, although the causes of the increase were disputed.<sup>9</sup> Villagers complained of elephants invading their crops and destroying their water points, and they were dissatisfied with the compensation policies for wildlife damage offered by the Department of Wildlife and National Parks. Indigenous Peoples were often blamed for participating in the poaching, although no hard evidence was ever presented to support this argument.

An unfortunate incident occurred in the Dobe area of western Ngamiland, which contains majority-Ju/'hoan San communities. On 24 November 2019, a hunting party, led by two Botswana-licensed professional hunters, killed five elephants, one of which was wearing a radio collar. There were complaints about this hunt from the Ju/'hoansi of Dobe, including a Ju/'hoan Village Development Committee representative, Dahem Xixae, who said that the community had not been consulted about the hunt by the Department of Wildlife and National Parks, and nor had the professional hunters informed the community that the hunt was to take place. The Ju/'hoansi maintained that they did not benefit from safari hunters operating in their area, and that they had not received any compensation despite the fact that this area was a community-controlled hunting area (CCHA).<sup>10</sup> On 15 December, the two professional hunters involved in the illegal elephant killing had their licenses suspended by the Department of Wildlife and National Parks.<sup>11</sup>

## Indigenous land rights

No San communities or individuals were granted land tenure rights under Botswana's Land Policy in 2019, and at least one San community was deprived of these rights. Qarin//axo, a large area in western Ngamiland north of Dobe, inhabited mostly by San, was illegally allocated to a non-San individual by the Nokaneng Sub Land Board in North West District. Appeals to the Tawana Land Board, the North West District Administration, the Ministry of Lands and Housing, and the Office of the President (OP) had gone unanswered as of the end of 2019.<sup>12</sup>

On a positive note, a Khwe San community near Kareng in North West District was granted the right to move to Xhorotshaa, which the 300 Khwe saw as being on their ancestral land. The government provid-

ed housing and a borehole in anticipation of the resettlement, of which the community was largely in favor.<sup>13</sup> This was a positive development for the San in question. It increased their tenure rights and was a return to the ancestral lands from which they were removed some decades ago.

In Ngamiland, another Khwe community said they were told by the North West District Authorities that they were going to have to relinquish their rights to use firewood, grazing, fish and other wild resources inside the Okavango, which is a UN-designated World Heritage Site. The World Heritage Site committee, however, guaranteed that people should be allowed to retain their rights inside World Heritage Sites, something that is also true for the other Botswana World Heritage Site, the Tsodilo Hills.

## **Mining issues in Botswana**

Mining is an important issue that concerns San in Botswana. The Gope (Ghagoo) mine, occupying an area of 760 km<sup>2</sup> in the Central Kalahari Game Reserve, had been inactive since 2017. It was sold by Gem Diamonds to the Botswana-based mineral company Pro Civil for US\$5.4 million in 2019.<sup>14</sup> Production had not started by the end of 2019 but at least five San were employed at the Ghagoo diamond mine while it stood idle in “care and maintenance” status, and their current employment status is uncertain. San from across the country expressed concern at the mining industry, arguing that the techniques they were using, such as fracking (hydraulic fracturing), were causing earthquakes and other environmental damage.<sup>15</sup> They were also concerned about the granting of prospecting licenses to Botswana-based and international companies without consulting the San and other people living in areas where the leases were being allocated.

In June 2019, the mining company Sandfire Resources of Australia bought Khoemacau, the copper-silver area stretching from the northern part of the Ghanzi Farms in Ghanzi District to the Toteng area of North West District (Ngamiland). San in the area complained of not being informed of the status of the copper-silver mine nor of the corporate social responsibility (CSR) programs of Sandfire Resources.<sup>16</sup> San make up the majority of the population of the copper-silver block in northern

Ghanzi and southern North West District, many of them extremely poor and seriously affected by climate change and mining activities.

## The future

San, Nama and Balala are seeking greater access to land and natural resources, and they are hopeful that the new Masisi government will honor its commitments to Botswana policies relating to remote area communities, marginalised people, minorities, women and children. The negotiations that took place in 2019 with government officials, and the statements that the government has made at various international conferences, conventions and meetings give them some hope that there are prospects for future improvements in human rights and social equity for Indigenous and marginalised communities.

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**Robert K. Hitchcock** is a member of the board of the Kalahari Peoples' Fund (KPF), a non-profit organization devoted to assisting people in southern Africa.

**Judith Frost** is an editor and researcher based in New York who has been involved with Indigenous Peoples' issues for many years.





# Burkina Faso



According to the World Bank, Burkina Faso's population stood at 19.19 million in 2017, with a fertility rate of 5.35 children per woman and a population growth rate of 2.9% per year.

Burkina Faso comprises 66 different ethnic groups. The M'bororo Fulani and the Tuareg are two of the peoples considered Indigenous. They live spread throughout the country but are particularly concentrated in the north, Seno, Soum, Yagha and Oudalan regions; they are often geographically isolated, living in dry areas, economically marginalised and the victims of human rights violations.

According to the 2006 official census, Burkina Faso's population is 60.5% Muslim, 19% Catholic, 15.3% animist and 4.2% Protestant.

Burkina Faso's Constitution does not recognise the existence of Indigenous Peoples, but it does guarantee education and health care for all. A lack of resources and appropriate infrastructure, however, means that, in practice, nomadic peoples enjoy only limited access to these rights.

Burkina Faso voted for the UN Declaration on the Rights of Indigenous Peoples.<sup>1</sup>

## Political situation in 2018

In the war on jihadi terrorism in the Sahel, being conducted by Mali, Niger, Chad and Burkina Faso, Burkina Faso now seems to be the weakest link because of its inability to repel the terrorist attacks. There has been a surge in terrorist attacks since January 2018, with more than 240 deaths since 2015, according to an official tally issued in mid-October.

In recent months, Burkina Faso – which borders both Mali and Niger – has seen a new “front” emerge in the east although responsibility has not always been claimed for attacks on the local security forces. The north of the country continues to suffer: Prefects have been murdered, expatriates kidnapped, teachers threatened and judges have fled, all signs of a retreating state that is unable to provide security in

the north of the country.

There is a growing feeling of insecurity among the population as well as a sense of impatience. The country was listed 183rd out of 187 on the Human Development Index published by the United Nations in September 2018.<sup>2</sup>

## Universal Periodic Review at the Human Rights Council

On 12 May 2018, the situation of Burkina Faso's minority and Indigenous Peoples was considered by the Human Rights Council in Geneva during the Universal Periodic Review (UPR). The compilation of the Burkina Faso report<sup>3</sup> from the UN Office of the High Commissioner for Human Rights states:

*74. The Committee [on the Elimination of Racial Discrimination] is concerned that certain groups, including nomads, migrants and people living in rural areas, may not be sufficiently taken into account in the development programmes and policies drawn up by the State party. The Committee recommends that the State party take the necessary measures to avoid [their] marginalization.<sup>4</sup>*

*75. The Committee is concerned by the communitarian and sometimes ethnic dimension of these conflicts, especially those involving the Fulani people.<sup>5</sup> [The Human Rights Council called on Burkina Faso] to reduce tensions between pastoralists and farmers, including by taking into consideration the root causes of the conflicts, such as the increased competition for land and land-tenure insecurity.<sup>6</sup> [It noted] with concern reports that the Fulani community [had] been regularly targeted by vigilante groups. [The Committee welcomed the] establishment in 2015 of the National Observatory for the Prevention and Management of Community Conflicts.<sup>7</sup>*

## Future for pastoralism

The Platform of Action for Pastoral Household Security (*Plateforme d'action pour la sécurisation des ménages pastoraux/PASMEP*) published a report on 20 August 2018. The coordinator of civil society organisations for the promotion and defence of pastoralism, René Millogo, presented the report entitled: "Pastoralism in Burkina: a truly problematic future for this sector". In an interview broadcast by *Faso.net*, he stated:

*We have seen that national policies do not take sufficient (and I mean sufficient) account of these target groups and the underlying issues even though it is a highly viable economic activity for our country's development. We therefore think that more work needs to be done at all levels to take better account of the pastoral communities and their contributions to social and economic development.*<sup>8</sup>

A UNOWAS (UN Office for West Africa and the Sahel) report was published on 16 October 2018 under the title of: *Pastoralism and Security in West Africa and the Sahel: Towards Peaceful Coexistence*.<sup>9</sup> The introduction summarises the situation of nomadic herders. In recent years, conflicts involving herders have increased:

*West Africa and the Sahel is [sic] experiencing a surge in violent conflicts between pastoralists and farmers. These conflicts are primarily driven by competition for lands, water and forage, but there are also political and socio-economic factors involved, as the main issue is about how these essential natural resources are managed and allocated. [...] Pastoralists are both victims and actors, which can be between pastoralist groups themselves or between pastoralists and farmers. [...] [The causes and drivers of pastoral-related conflicts are:] 1) growing demographic and ecological pressures [which] are regional phenomena; 2) the area of land under cultivation has dramatically increased over time, while available grazing land has decreased. This is partly because pastoralists rarely own land on an individual or collective basis but instead rely on*

*access to pasture and water as common resources, in agreement with local communities.<sup>10</sup>*

## Terrorism and self-defence groups

In the north of Burkina Faso, since 2017, jihadists have been attacking schools, particularly in the border area with Mali and Niger. They have killed a head teacher, teachers, pupils and burned down several schools. These attacks have thus far led to the closure of 216 educational establishments affecting 24,000 pupils and 895 teachers.<sup>11</sup>

The *Koglweogo*, or “guardians of the forest” in the Mooré language, were set up in 2014 in the context of the social and political crisis, out of a desire to fight “institutionalised insecurity”. A self-defence movement, they are the result of a popular initiative that has now spread throughout virtually the whole country, with the exception of the Grand Ouest and Cascades regions.

The violent and ritualised practices of the *Koglweogo* groups are now common in many areas. In rural zones, where there were previous problems of insecurity, different testimonies seem to suggest that the presence of *Koglweogo* has improved the situation, increasing security. However, because of the “vigilante-style hunts” they carry out, and the inclusion of former criminals in their ranks, the *Koglweogo* movement has received a mixed welcome from society. The proliferation of these self-defence groups also feeds more latent conflicts. With presidential elections on the horizon in 2020 the issue of the integration of these armed groups back into the democratic process remains critical to ensure stability and peaceful governance.<sup>12</sup>

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**Issa Diallo** is senior research fellow at the National Center for Scientific and Technological Research in Ouagadougou. He is also president of the Association for the Protection of Rights and Promotion of Cultural Diversities of Minority Groups (ADCPM), officially recognised by the Government of Burkina Faso since 2005. ADCPM’s objective is to promote human and cultural rights, especially for people from minority groups.



# Burundi



The term “Twa” is used to describe minority populations historically marginalised both politically and socially in the Democratic Republic of Congo (DRC), Uganda, Rwanda and Burundi. It has replaced the name “Pygmy”, which was coined by the colonial missionaries and which is offensive to these groups.

In Burundi, the Twa are considered one of three components of the population (Hutu, Tutsi and Twa). They are estimated at between 100,000 and 200,000 individuals although it is difficult to establish a precise figure. There has, in fact, been no official ethnic census since the 1930s and, in any case, particularly in the case of Burundi, such figures are inaccurate (mixed race marriages, porous borders between the different population groups...). Moreover, most Twa do not have a national identity card and are thus not included when drawing up the census.

Former hunter/gatherers, the Twa were gradually expelled from their forests following different waves of deforestation and forestry protection over the centuries. This phenomenon has redefined this people's way of life: “As the forest was turned into pasture and fields, so many Batwa came to depend on pottery that this replaced the forest and hunting as a symbol of Batwa identity.”

During the first part of the 20th century, emerging industrialisation in Burundi, the gradual opening up of the country to international trade and greater access to clay products resulted in a considerable weakening of their pottery trade. The main economic activity of the Twa was thus again undermined, turning them into some of the most vulnerable people in Burundi.

The term indigeneity takes on a particular dimension in the Burundian context given that identity-based claims among the different population components have resulted in numerous conflicts and massacres over the last decades. These conflicts, all too often analysed as ethnic divisions, in fact arise more from a reconstruction of identities and political tensions. In this context, recognition of Twa indigeneity has been the subject of discussion, even controversy, particularly in the early



2000s. Burundi abstained, for example, from adopting the UN Declaration on the Rights of Indigenous Peoples in September 2007.

The end of the Burundian civil war (2005) and the gradual emergence of an international Indigenous Peoples' movement have both, however, contributed to placing the issue of the Twa on the agenda. Since 2005, following the establishment of ethnic statistics, the Twa now enjoy representation in the country's main decision-making bodies.

The events that have affected this community over the past year demonstrate, however, that despite the dynamic nature of local and international associations aimed at defending the Twa, and a relative desire for their political integration, they remain highly vulnerable in both economic and political terms.

## **2019, towards greater mobilisation of the Twa in Burundi**

**2**019 was marked in particular by the appointment of the former Twa Senator, Vital Bambanze, to membership of the UN Permanent Forum on Indigenous Issues, nominated by the African governments.<sup>1</sup> The appointment of an Indigenous Burundian representative by the UN's African governments confirms the progress that has been made in recognising Indigenous Peoples' rights on the African continent and shows the dynamic interactions taking place between the Twa movements in Burundi and the international Indigenous movement.

This convergence of local Twa mobilisations and international Indigenous Peoples' events is well illustrated by the holding of celebrations for Indigenous Peoples' Day, an event which is now organised each year in Burundi by local associations. In 2019, it took place on 9 August in Zege, Gitega province, and was focused on the preservation of Indigenous languages, echoing the United Nations' proclamation of 2019 as "International Year of Indigenous Languages".<sup>2</sup> In Burundi, all nationals share the same language, Kirundi, but the associations organising the event nonetheless decided to focus on this issue despite the lack of an

Indigenous language in Burundi. This was both to coincide with the focus of the international movement and to highlight the particular accent<sup>3</sup> the Twa have when they speak Kirundi.

The cultural features that make up the Twa's collective identity have also formed the object of a UNESCO-funded project on Twa intangible heritage, in partnership between the association UNIPROBA<sup>4</sup> (Uniting for Batwa Promotion in Burundi) and the University of Burundi. Surveys were fed back into the process<sup>5</sup> in Bujumbura in September 2019 with the aim of producing an inventory of the particular features of the Twa's intangible heritage.

Finally, the prospect of elections in May 2020, particularly for the presidency, encouraged a discussion to be held in August 2019 in Bujumbura between the different Twa associations and government members.<sup>6</sup> The aim was to inform the Twa representatives of how to vote and also how they could stand in the coming elections.

## Mixed balance for the year overall

The desire to better integrate the Twa into the 2020 electoral processes does, however, need to go hand in hand with improved access to their civil rights. As Emmanuel Nengo<sup>7</sup> – UNIPROBA's current legal representative – explains, many Twa households around the country still do not have the necessary documents to be able to vote, such as identity cards and electoral registration cards.

While the events that took place during the year helped raise awareness of the Twa situation both nationally and internationally, most Twa households still suffer from serious economic insecurity. This has an effect on the school attendance of Twa children as they are particularly susceptible to dropping out of school.<sup>8</sup> In fact, a 2018 study<sup>9</sup> coordinated by UNIPROBA shows that 82% of Twa have never been to school. The low school enrolment rate among the Twa is primarily due to the marginalisation they have long faced in the country. This does, however, need to be seen in the context of changes in Burundian society generally with regard to education. While the Twa are clearly disproportionately excluded from the education system, they are not the only group affected by low school enrolment rates due to household economic insecurity.

Along similar lines, the impact that climate change is having on (primarily rural) Twa households cannot be seen independently from the environmental disruption being suffered by Burundian society as a whole (increased annual rainfall, changes in temperature, changes in agricultural seasons, etc.). In Burundi, the population is not geographically distributed according to ethnic belonging and so there are no areas inhabited solely by Twa, something that could make them more vulnerable than their neighbours to climate change. Their economic insecurity is, however, a factor likely to exacerbate the effect climate change has on them.

## Conclusion

2019 was marked by different events held both to improve Twa integration into Burundian society and to preserve their cultural features (specific accent in Kirundi, songs and dances, etc.). Despite this, however, most Twa households still face social stigma and economic insecurity and are only partially represented in the political arena.

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**Zoé Quétu** is a doctoral student in political science at Bordeaux University, in Les Afriques dans le Monde (LAM) laboratory. Her research focuses on Indigenous mobilisation in sub-Saharan Africa and building of collective identities in Burundi. [zoe.quetu@gmail.com](mailto:zoe.quetu@gmail.com)



# Cameroon



Among Cameroon's more than 20 million inhabitants, some communities self-identify as Indigenous. These include the hunter/gatherers (Pygmies), the Mbororo pastoralists and the Kirdi.

The Constitution of the Republic of Cameroon uses the terms Indigenous and minorities in its preamble; however, it is not clear to whom this refers. Nevertheless, with the developments in international law, civil society and the government are increasingly using the term Indigenous to refer to the above-mentioned groups.

Together, the Pygmies represent around 0.4% of the total population of Cameroon. They can be further divided into three sub-groups, namely the Bagyéli or Bakola, who are estimated to number around 4,000 people, the Baka – estimated at around 40,000 – and the Bedzan, estimated at around 300 people. The Baka live above all in the eastern and southern regions of Cameroon. The Bakola and Bagyéli live in an area of around 12,000 km<sup>2</sup> in the south of Cameroon, particularly in the districts of Akom II, Bipindi, Kribi and Lolodorf. Finally, the Bedzang live in the central region, to the north-west of Mbam in the Ngambè Tikar region.

The Mbororo people living in Cameroon are estimated to number over one million people and they make up approx. 12% of the population. The Mbororo live primarily along the borders with Nigeria, Chad and the Central African Republic. Three groups of Mbororo are found in Cameroon: the Wodaabe in the Northern Region; the Jafun, who live primarily in the North-West, West, Adamawa and Eastern Regions; and the Galegi, popularly known as the Aku, who live in the East, Adamawa, West and North-West Regions.

The Kirdi communities live high up in the Mandara Mountain range, in the north of Cameroon. Their precise number is not known.

Cameroon voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 but has not ratified ILO Convention 169.

In 2019, the human rights situation of Indigenous Peoples in Cameroon continued to be characterised by their entrapment in the conflicts in the South West and North West Regions, the recrudescence of the attacks from the Boko Haram terrorist group in the Far North Region, and the insecurity caused by armed groups with hostage taking in exchange for heavy ransoms in the Adamawa Region.

The year also saw the mobilisation of Indigenous Peoples and women through different events such as general assemblies of the Indigenous Peoples' networks, workshops and conferences as well as the celebration of the International Day of World's Indigenous Peoples.

## **Legislative changes**

Two important bills were adopted in late 2019: a bill on decentralisation for the regions and local councils to have more autonomy, and a second bill on the special status for the two English-speaking regions of Cameroon. The adoption of these laws was among some of the strong recommendations that came up during a Major National Dialogue held from the 30 September to 4 October 2019 intended to bring back peace to these regions and to Cameroon at-large.

Other laws, which have been undergoing revision (like the laws on the forest and fauna of 2004 and the law on land tenure of 1974) and to which Indigenous Peoples and civil society have made important contributions, are still pending.

## **Major National Dialogue**

On 10 September 2019, the Head of State of Cameroon, Mr. Paul Biya, announced the holding of the Major National Dialogue (MND) with the objective to find a lasting solution to the crisis in the English-speaking North-West and South-West Regions of Cameroon. He gave the responsibility to the Prime Minister and Head of Government, Dr. Joseph Dion Ngute, to organise and preside over the MND.

The Prime Minister began by carrying out large consultations with major stakeholders in the conflict including Indigenous representatives. Mbororo pastoralist representatives regrouped under the Indig-

enous organisations “Mbororo Social and Cultural Development Association” (MBOSCUDA) and “African Indigenous Women Organization – Central African Network” (AIWO-CAN). The Mbororo people expressed their concerns to the Prime Minister in a statement that also included a number of recommendations for how they should be an important part of the national dialogue and how they can contribute to the process of restoring peace.<sup>1</sup>

In his response, the Prime Minister acknowledged the Mbororo community as follows:

*“While I am pursuing the white talks on Cameroon Dialogue, I would like to thank the Mbororo community for their willingness to forgive and reconcile. I know how much you have suffered from the crisis. Together, we will restore peace and prosperity.”<sup>2</sup>*

He asked that a list of names, which should include youth, women and victims, be submitted for participation in the Major National Dialogue to be held from 30 September to 4 October 2019. The dialogue brought together major stakeholders in the conflict, like armed secessionist groups, government institutions, religious bodies, civil society, political parties, Indigenous Peoples and people from the diaspora. A handful of Mbororo people and a representative of the hunter-gatherers took part in the dialogue, especially in the working groups for reconstruction, re-settlement and the employment of youths.

## **Civil strife and its effects on the Mbororo pastoralists**

The civil strife in the two English-speaking regions of Cameroon, the North-West and the South-West, remained a cause of great concern in 2019 for the Mbororo pastoralists. Killings, abductions, ransom taking and the ban on schools and businesses continued in 2019. Since 2017, going to schools has been forbidden by the secessionists in these two regions. Operating businesses and public transportation have also been banned on Mondays or on certain official days of the week.

All this has had severe consequences for the Mbororo people with



about 272 people killed, 187 women raped, 6,000 children dropping out of school and about 187,430,000 CFA francs paid out by the Mbororo people as ransoms to separatist armed groups.<sup>3</sup> Some Mbororo communities in some divisions resisted these armed groups and organised themselves into self-defence groups. This strategy helped these communities to stay in their homes and keep their properties. The death tolls continue to rise by sporadic killings of Mbororo people despite efforts to end the violence and return to peace through the organisation of the MND.

More families and individuals continued fleeing to other regions during the year – some with the rest of their cattle – especially to the West and Centre Regions where there are good pastures. However, there is fear of overstocking and fear that farmer/pastoralist conflicts can erupt. The general situation is precarious, poverty has set in and recrudescence of juvenile delinquency in the community is feared.

Nevertheless, there are hopes that the recommendations of the MND will be fully implemented so that peace will be restored in the North-West and South-West Regions in order to permit the return of displaced people to their homes – among whom thousands are pastoralists.

## **Indigenous Peoples, REDD+ and climate change**

The REDD+ process in Cameroon is inclusive, with Indigenous Peoples, civil society organisations, government, research institutions, private sector and local communities as major stakeholders. It has a pilot committee, which is the highest body of the REDD+ process. This pilot committee includes an Indigenous representative. The platform “REDD+ et les Peuples Autochtones du Cameroun” (PREPAC) was created in 2018 to enable Indigenous Peoples to participate effectively and efficiently in the REDD+ process.

Cameroon finalised its REDD+ National Strategy in 2018 and the evaluation of the Readiness package was satisfactory. This made Cameroon eligible for an additional grant from the World Bank through the Forest Carbon Partnership Facility (FCPF) of USD\$5 million to finalise some important studies. These studies include one on benefit sharing mechanisms and conflict resolutions and another one on social and environmental safeguards. Part of the additional grant was allocated to the Indigenous Peoples Platform (PREPAC) and the Civil Society Platform.

In 2019, PREPAC held several meetings in partnership with GIZ (German development agency Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH) to prepare its action plan for the additional grant, which is to be executed within the next two years. The action plan of PREPAC provides for important activities such as the development of important tools that Indigenous Peoples can use to follow up and evaluate REDD+ pilot projects taking place in their lands or where Indigenous Peoples live. It also provides for the development of a tool to carry on the follow up and evaluation of REDD+ projects in accordance with the Environmental and Social Safeguards Policies (SESA).

Unfortunately, the World Bank announced in late 2019 that the funds have been cancelled due to delays blamed on the government. The Indigenous Peoples Platform and the Civil Society Platform convened a one-day meeting on 12 November to denounce the unilateral move by the World Bank to cancel the additional grant without the consent of the Government of Cameroon. A position note was written and sent to the General Assembly of the Forest Carbon Partnership Facility (FCPF) requesting for the cancellation of the grant to be annulled. Following from this, the World Bank convened all stakeholders in a series of meetings by early January 2020. The Indigenous Peoples and civil society organisations platforms made it clear to the Bank that they disapprove of the move of cancelling the grant and that they will take part in writing yet another petition to the General Assembly of the FCPF, which will take place in April 2020.

Despite all this, Indigenous Peoples participated in workshops in relation to the Forest Investment Program, which is one of the REDD+ implementation programmes. The programme, which would be financed by the Central Africa Forest Initiative (CAFI), will have components that are of interest to Indigenous Peoples within the tourism sector and within the area of sustainable forest management.

## **Celebration of the International Day of the World's Indigenous Peoples**

On 9 August 2019, the Hilton hotel in Yaoundé served as the setting for the commemorative ceremony for the 25th edition of the International Day of the World's Indigenous Peoples. This was marked by the hold-

ing of a national symposium on the development of Indigenous populations. The general objective of this symposium was to define the broad guidelines of the strategic framework for the development of Indigenous populations in Cameroon. The event started with an official ceremony where three speeches were delivered by the representative of the Government Delegate to the Yaoundé City Council, the representative of a leader of Indigenous populations (the national president of MBOSCUDA) and the Minister of Social Affairs, Mrs. NGUENE Pauline Irene. The participants in the event were representatives of public administrations, development partners, promoters of programmes and projects, civil society organisations and Indigenous populations.

Some of the recommendations from the discussions included:

- Finalisation and publication of the results of the study on the identification of Indigenous populations in Cameroon;
- Identification of mechanisms for improving access to good information for Indigenous Peoples;
- Sensitisation of Indigenous communities in their local languages so that information is more accessible to them; and
- Implementation of a national development plan for Indigenous Peoples around the eight axes identified, in particular: health, education, training and socio-professional integration, economic development, political participation and citizenship, access to land and natural resources, promotion of culture and promotion of access to information.

The celebrations of the International Day of the World's Indigenous Peoples continued at a regional level hosted by the Regional Services of the Ministry of Social Affairs. They were carried out by Indigenous Peoples in collaboration with government agencies and CSOs, and took place in Abong-Mbang and Bertoua districts in the East Region, and in the Adamawa, West and Centre Regions.

## **6th session of the CISPAV**

The International Day of the World's Indigenous Peoples was also marked by the holding of the 6th session of CISPAV<sup>4</sup> (Comité intersector-

riel de suivi des programmes et projets impliquant les populations autochtones vulnérables), which is the committee for the follow-up of programmes and projects implicating Indigenous Peoples. Taking part in this event were the statutory members who are public administrations, international and national development partners, civil society organisations, Indigenous Peoples' organisations and the technical secretariat of CISPAV. The session took stock of what has been done towards the promotion of Indigenous Peoples in Cameroon in terms of programmes and projects in 2019.

## **The General Assembly of the hunter-gatherer network “Gbabandi”**

The Indigenous forest peoples of Cameroon are organised within a platform that brings together Indigenous forest organisations and leaders to debate issues specific to Indigenous forest communities. This platform brings together the Baka, the Bagyéli, the Bakola and the Bedzang Indigenous communities. The main objective of the network is to harmonise and coordinate the work and gains of the organisations and Indigenous leaders to avoid duplication and conflicts of interest which can arise simply from lack of communication – as well as to speak with one voice so as to effectively represent the forest Indigenous communities at the national and international levels.

In 2019, the platform organised its second general assembly in the community of Nomedjoh, Lomie locality of the East Region of Cameroon. Some of the recommendations that came from the general assembly were:

- Indigenous Peoples' organisations should manage projects involving their communities in a transparent manner;
- The platform should work more rigorously to raise issues specific to the Indigenous communities of the forests of Cameroon;
- Women and young people should be more involved in all stages of implementation of development activities for Indigenous communities;
- Effective representation of Indigenous Peoples in parliament should be effective; and
- The state should increase transparency and justice in the imple-

mentation of government initiatives in favour of Indigenous communities.

## **The General Assembly of MBOSCUDA**

The Mbororo pastoralists, under their umbrella organisation Mbororo Social and Cultural Development Association (MBOSCUDA), held their general assembly from 28-29 June 2019 in the economic capital Douala, following the principle of rotation of this important gathering. It is an event highly awaited by Mbororos all over the country as all Mbororos believe they are members of this organisation even if they have never registered or paid a contribution as members.

The general assembly is held every four years. It is a time to take stock of the organisation's activities and achievements and to plan for the future. It also gives rise to changes in the executive bureau through elections or appointment through consensus. In 2019, five candidates went in for the highly contested election. It was the first time that a woman stood for the post of the National Executive President. However, she was not elected because of cultural and religious barriers. After two days of work and festivities, a new executive bureau headed by a young man was ushered in for the next four years.

## **Preparatory meeting for Beijing +25**

From 3-6 December 2019, Indigenous women from 15 countries across Africa and Latin America met in Yaoundé, Cameroon for a regional conference in preparation for Beijing +25. They came together to discuss progress made on the Beijing +25 process and prepare for the second Indigenous Women's world conference that will be held in 2020. The conclusions of the conference were that since 1995 to date, Indigenous women have made significant progress in advocating for their rights through capacity building and by participating in different national, regional and international meetings and processes, which have all enhanced the leadership and political participation of Indigenous women of Africa. Despite these achievements women and girls are still facing numerous challenges like discrimination and marginalisation, environ-

mental injustice, gender-based violence, lack of access to education, lack of access to land ownership and rights, tribal killings, low political representation, lack of effective participation in decision making positions, insufficient and inaccessible social services and armed conflict. Strong recommendations were made to governments, the United Nations, the international community and Indigenous women and their organisations.

## Notes and references

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**Hawe Hamman Bouba** is an expert in Human Rights and Humanitarian Law. She is a member of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights, Member of the Cameroon National Commission for Human Rights and Freedoms and President of the African Indigenous Women Organization Central African Network (AIWO-CAN). Hawe Hamman Bouba has written this article with contribution from Oumarou Habane Deputy Secretary General of MBOSCUA.



# Central African Republic



The Central African Republic (CAR) lies at the heart of the African continent, far from any coastline. It straddles the equator and thus enjoys a tropical climate. Its ecosystem comprises savanna woodland and steppe in the north, gallery forest in the centre and dense tropical rainforest in the south.

There are three Indigenous groups living in the CAR: the M'bororo Fulani, the Aka and the Litho.

The M'bororo Fulani are generally nomadic herders. They live in the prefectures of Ouaka in the centre-east, M'bomou in the south-east and Lobaye in the south-west. The 2003 census estimated their population at 39,299 individuals, or around 1% of the total population. They have a strong presence in rural areas, accounting for 14% of the global population, as opposed to 0.2% in urban areas.

The exact number of Aka Pygmies is unknown but they are estimated to number in the tens of thousands. Around 90% of them live in the forests, which they consider to be their heritage and where they live by their traditional activities of hunting, gathering and fishing. The Aka live in the prefectures of Lobaye, Ombella Mpoko and Sangha-Mbaéré in the south-west, and Mambéré Kadéï in the west.

The Litho are a minority group located in the north of the country. They are semi-nomadic and practise farming, hunting, gathering and fishing.

CAR voted in favour of the UN Declaration on the Rights of Indigenous Peoples in September 2007 and ratified ILO Convention 169 in August 2010. It was the first and only African State to ratify this Convention. On 11 August 2011, under the terms of the ILO Constitution, the Convention entered into force.

## CAR's climate

**T**here are two seasons in the CAR: the rainy season and the dry season. In the south, the rains last a good part of the year. Flooding is a major risk at times of high rainfall (storms and tornadoes)



and, in October 2019, the capital Bangui experienced this on an unprecedented scale. The Oubangui River burst its banks and then took some time to subside. Several water courses in the north and centre of the country suffered the same fate. In December, the hot *Harmattan* wind blew across the north of the country, accompanied by abnormally hot temperatures reaching 45° C.

## Impact of climate change on Indigenous Peoples

Climate change varies according to the region and has differing effects on the Indigenous Peoples depending on whether they live in the savanna woodland, gallery forest or dense rainforest.

### The M'bororo Fulani

Grass is becoming harder to find during the dry season. The M'bororo are having to travel to find pasture. These journeys often bring them into conflict with sedentary farmers because of the damage caused to the crops by their herds. This conflict often ends in bloodshed despite regulations established by the communal and administrative authorities setting out the rights of herders and farmers:

*In 2019, the M'bororo emigrated south for the same reasons. There, they lost a large proportion of their cattle to a disease known as "Gnagnaré" in Fula. Other M'bororo from the centre-north moved north-west. There, the children suffered variations in temperature that resulted in a disorder that caused a yellowing of the skin. In addition to this, violent winds became commonplace in this region, with reported cases of children being swept away by whirlwinds.<sup>1</sup>*

In addition to the above, those Fulani who remained along the border with Chad suffered serious flooding. A number of Fulani children and many of their livestock perished in the "Vassaco", the region's main water course.

The dry season this year was particularly harsh for the M'boro-

ro, who were faced with a drought that negatively affected their milk production. The volume of milk produced by the cattle was greatly diminished and the quantity insufficient for their own consumption. Malnutrition has now become a common sight among the children. This scarcity has also resulted in a lack of income as they have been unable to sell any of their milk as they usually do.

## **The Litho**

The Litho live in the savanna woodland of northern CAR. Climate change here is resulting in harsher dry seasons, causing changes in vegetation that mean the produce these people gather is becoming harder to find. In addition to this, their harvests are no longer what they used to be. These factors have resulted in malnutrition among the population, and this is particularly severe among the children. Young girls and boys have become highly vulnerable and exposed to diseases of the skin, eyes and bloating. The violent hot winds in December caused havoc to their homes.

## **The Pygmies**

The Pygmies live in a dense forest environment and have therefore not experienced the same negative impacts of climate change as the M'bororo or the Litho. The forest is a more temperate environment, for example, so they have been spared the heat that their peers have suffered in the savanna. However, the forests are under continual threat of destruction due to large-scale industrial works: the opening of roads, for example, and unregulated logging by multinational companies. This is disfiguring the forest landscape and leaving cleared areas that these companies make no attempt to reforest, despite the conditions imposed on them in this regard. Other not insignificant factors have exerted "direct pressure on the forest ecosystems (...): the production of wood for energy, slash-and-burn agriculture, artisanal and industrial mining (gold, diamonds, etc.), bush fires..."<sup>2</sup>

The consequences for the ecosystem are clearly visible. Some wild animals have left for neighbouring countries, elephants in particular

because the swampy areas they used to use to cool off and play have dried up. This is something that has been seen in the Dzanga-Sangha Reserve at Nola. Plant and insect species have also disappeared. “In the Central African Republic, there is a giant butterfly that still eludes scientists. The largest African butterfly has thus far eluded scientists who are still looking for its caterpillar and its chrysalis.”<sup>3</sup> In short, forest destruction is negatively affecting the ecosystem and threatening the Pygmies’ quality of life.

## **Awareness raising actions**

Together with NGOs (the Central African Organisation for the Defence of Nature / OCDN in particular), the government has organised awareness raising workshops focused primarily on women. The goal is to get them to identify the causes of deforestation and degradation of the ecosystem, the cause of global warming. The “strong involvement of local and Indigenous (Pygmy) communities in the production of the strategic plan to reduce forest greenhouse gas emissions and forest degradation in the CAR (REDD+)” should be noted.<sup>4</sup> The aim is to raise awareness among the female population, including Pygmy women, of the consequences of global warming and the challenges raised by the Paris Agreement in relation to the national climate programme. It is thus a question of building capacity among village and Pygmy women around techniques for restoring degraded areas, protected and sacred forest areas. This awareness raising targeted women from Baleloko and Moboma in Lobaye, in the equatorial rainforest, between 8 and 18 April 2019 and again on 6 July 2019, and women from Bagandou on 28 and 29 May 2019.

The different training and awareness raising workshops have endeavoured to demonstrate that “biodiversity conservation, sustainable resource management and carbon stock enhancement are all necessary solutions for mitigating the impact of climate change”.<sup>5</sup>

An evaluation of these workshops has thrown up some weaknesses in terms of local people’s ownership of the challenges of climate change because their daily behaviour has not actually changed: bush fires can still be seen, and the excessive exploitation of forests for domestic purposes is still ongoing. This resistance to change stems partly

from the fact that they have not been offered any income-generating alternatives in exchange. Under such circumstances, even if the people are aware “of the need to preserve the environment”, it is hardly surprising that they continue to implement the same practices for their survival.<sup>6</sup>

## Notes and references

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**Abel Koulaning** is a Doctor of Educational Science at the René Descartes - Paris V Sorbonne University. He was previously a Senior Lecturer at Bangui University, as well as Director of Teaching and, in addition, held the position of General Secretary of the National Central African Commission for UNESCO. He is the author of several publications, including *L'Éducation chez les pygmées de Centrafrique* [Education among the Central African Pygmies], 2009, L'Harmattan. He was involved in getting the Aka Pygmies' oral tradition proclaimed and recorded as world heritage. He is an Africa Region Expert for the Groupe International de Travail pour les peuples autochtones, in cooperation with the International Work Group for Indigenous Affairs.



# Eritrea



Eritrea borders the southern Red Sea in the Horn of Africa. It emerged as an Italian colonial construct in the 19th century, superimposed on Indigenous populations. Eritrea's current population stands at between 4.4 and 5.9 million inhabitants.<sup>1</sup> There are at least four Indigenous Peoples: the Afar (between 4 and 12% of total population), Kunama (2%), Saho (4%) and Nara (>1%).<sup>2</sup> These groups have inhabited their traditional territories for approximately 2,000 years. They are distinct from the two dominant ethnic groups by language (four different languages), religion (Islam), economy (agro and nomadic pastoral), law (customary), culture and way of life. All four Indigenous groups are marginalised and persecuted.<sup>3</sup>

Following a United Nations Resolution in 1950 calling for the federation of Ethiopia with the Eritrean colony that Britain had captured from the Italians, a federation was established in 1952. Tensions immediately arose when Ethiopia interfered in the Eritrean courts and executive branch. An armed national liberation struggle broke out in the 1960s when Ethiopia abolished Eritrea's official languages, imposed Ethiopia's national language, Amharic, dissolved the federation and annexed Eritrea. The ensuing 30-year struggle succeeded in 1991 when the current regime marched into the capital and took power. Following a referendum in 1993, Eritrea seceded from Ethiopia to form a new state.

Eritrean nationalism emanates from the two large ethnic groups (80% of total population combined) that control power and resources. This nationalism is based on suppressing sub-state identities, which the elites see as threatening to the nation-building process. In particular, the Indigenous Peoples have been pressured by the government's policy of eradicating identification along regional and religious lines. The regime expropriates Indigenous lands without compensation and has partially cleansed Indigenous Peoples from their traditional territories by violence.

The existence of Indigenous Peoples as intact communities is under threat from government policies aimed at destroying Indigenous cultures, economies, landholdings and, for some, their nomadic and pastoral lifestyles. Eritrea is a party to the CERD, CEDAW and CRC but not to ILO Convention 169

or the UNDRIP. It is the subject of complaints to the UNHRC, the United Nations Commission of Inquiry on Human Rights in Eritrea, the United Nations Special Rapporteur on the situation of human rights in Eritrea (all of which sustained the allegations) and the Special Rapporteur on the Rights of Indigenous Peoples. The complaints allege mass murder, ethnic cleansing, displacement of Indigenous Peoples from their traditional territories and intentional destruction of the Indigenous economy.

## A country over the brink

**O**n 8 June 2016, the UN Commission of Inquiry on Human Rights in Eritrea (COI) reported that there were reasonable grounds to believe that Eritrean officials had committed crimes against humanity in a widespread and systematic manner over the past 27 years. The COI provided detailed evidence relating to specific crimes of enslavement, imprisonment, enforced disappearance, torture, reprisals and other inhumane acts, persecution, rape and murder.<sup>4</sup>

Notably, the COI found that these crimes had been perpetrated against two of Eritrea's four Indigenous Peoples, the Afar and the Kunama. Eritrea had persecuted these groups, the COI concluded<sup>5</sup> and, accordingly, the COI recommended that the UN and other entities initiate protective actions to safeguard the two Indigenous groups.<sup>6</sup> The recommended measures include bringing Eritrea's crimes and human rights violations to the attention of the relevant special procedures,<sup>7</sup> getting the UN Security Council to determine that the Eritrean situation poses a threat to international peace and security,<sup>8</sup> and, accordingly, ensuring that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court.<sup>9</sup>

## The situation continues

On 23 June 2017, pursuant to a request from the Human Rights Council (HRC), the Special Rapporteur on the situation of human rights in

Eritrea (SR-Eritrea) investigated and reported on Eritrea's progress in addressing the concerns noted by the COI.<sup>10</sup> The SR-Eritrea's general conclusions were stark: "The situation of human rights in Eritrea has not significantly improved."<sup>11</sup> These findings were confirmed in a press release from the SR-Eritrea, Sheila Keetharuth, on 24 October 2018 and confirmed again in a press release on 21 June 2019 from the newly appointed SR-Eritrea, Daniela Kravetz, who reported that "the human rights situation in Eritrea remains unchanged".<sup>12</sup>

## Crimes against Indigenous Peoples

Eritrea's crimes against Indigenous Peoples are especially concerning. In 2013, the SR-Eritrea reported that Eritrea had engaged in a campaign to force the Afar Indigenous People from their traditional territory and to destroy their traditional means of subsistence and livelihood. The methods used were killings, disappearances, torture and rape.<sup>13</sup> The SR-Eritrea reported that Eritrea had also displaced the Kunama from their traditional territory and colonised their land with other peoples from elsewhere in Eritrea, again using "killings, death in custody, arbitrary arrests and detention".<sup>14</sup> Eritrea had turned all land into state property, thereby undermining "the clan-based traditional land tenure system of the Kunama people".<sup>15</sup> The First Report of the COI in 2015 confirmed these findings.<sup>16</sup> The COI concluded that the government's acts "may be construed as an intentional act to dispossess them [the Kunama and Afar] of their ancestral lands, their livelihoods and their cultures".<sup>17</sup>

In June 2018, the SR-Eritrea reported that Eritrea's crimes were ongoing: "The problem is live today as the crimes are still being committed."<sup>18</sup> To clarify the ethnic cleansing situation the SR-Eritrea reported on 23 October 2018 that: "The Afar people have been evicted without any compensation from the port area of Assab."<sup>19</sup>

## Bisha mine

One aspect of Eritrea's land confiscations concerns Bisha, a large mining project that produces gold, copper and zinc. The mine is located 150 km west of the capital, Asmara, in the heart of Kunama traditional



territory. It is “owned” jointly by a Canadian company, Nevsun, Eritrean government entities and the military. Profits from the mine comprise a significant proportion of government revenues in the small, heavily-indebted Eritrean economy. In 2019, Nevsun sold its interest in the mine to Zijin, a Chinese company, for US\$1.41 Billion.

In November 2014, Eritrean refugees and 1,000 others filed a Notice of Civil Claim in the British Columbia Supreme Court alleging that Nevsun had engaged the Eritrean military and Eritrean government entities to build the mine using forced (slave) labour (four of the plaintiffs were former slaves at the mine). The claim alleges that those compelled to work at the mine were subjected to constant threats of physical punishment, imprisonment, slavery, torture, inhuman or degrading treatment and crimes against humanity. Nevsun brought preliminary motions to dismiss the case on the grounds of state immunity and non-recognition of liability for damages caused by breaches of customary international law. These motions failed in the British Columbia courts; the Supreme Court of Canada heard an appeal against the B.C. Court of Appeal’s decision on 23 January 2019.<sup>20</sup> The Supreme Court decision is awaited at the time of writing.

Should the Supreme Court clear the way for the case to proceed to trial, a very significant path will have opened up by which to hold corporations accountable for unpalatable activities in foreign jurisdictions. Indigenous populations around the world have raised complaints about corporate extractive activities in their traditional territories, particularly when mining, oil and gas and forestry corporations partner with government entities. The Supreme Court decision will bear significantly on these disputes.

## **Climate change / prolonged drought**

The human rights crisis is not the only cause of the Eritrean migration: climate change and its associated phenomena are also contributing agents. In 2007, the International Panel on Climate Change observed that the Horn of Africa was projected to be one of the regions of the world most negatively affected by climate change.<sup>21</sup> This projection is now a reality. The region was beset by prolonged droughts, desertification, flash floods and land degradation in 2010-11, and again in 2016-17.

In 2019, UNICEF reported that parts of Eritrea had experienced the lowest cumulative rainfall totals since 1981, with the result that food insecurity had reached emergency proportions.<sup>22</sup> Populations that rely on agricultural and pastoral activities, including Eritrea's Indigenous Peoples, found their livelihoods and food security severely compromised.<sup>23</sup> Global warming is likely to intensify these pressures on Indigenous populations throughout the Horn of Africa.

North-Eastern Africa is also home to significant inter-ethnic and inter-Indigenous disputes. The most protracted of these is the centuries-old violent conflict between the Afar and the Issa, a northern Somali Indigenous people also prominently represented among the population of Djibouti and present in northern Ethiopia.<sup>24</sup> This conflict is deeply embedded and ongoing, supercharged by decades of raids and atrocities on both sides, which have claimed many thousands of Indigenous lives. A principal cause of the clashes is competition over resources and land, as pastoral communities move north and south.<sup>25</sup> This, and other similar inter-Indigenous and inter-ethnic conflicts in the region, is likely to be exacerbated by the effects of global warming and drought. These phenomena make resources scarcer, competition for them fiercer and efforts at peace-making much more difficult.

## Eritrea-Ethiopia rapprochement

On 9 July 2018, Ethiopia and Eritrea signed a *Joint Declaration of Peace and Friendship*, providing for the two countries "to forge intimate political, economic, social, cultural and security cooperation."<sup>26</sup> This event ended a tense, mobilised-for-war standoff that had characterised their relations for a generation. The thaw between Eritrea and Ethiopia has produced "peace-but-no-change" as far as the human rights situation inside Eritrea and its impact on Indigenous populations trapped inside Eritrea is concerned.<sup>27</sup> The border opened briefly, with a consequent rise in the number of Eritreans seeking asylum in Ethiopia. The United Nations High Commission on Refugees reported that, between 12 September and 12 October 2018, a total of 9,905 Eritrean refugees were recorded in Ethiopia.<sup>28</sup> Since April 2019, the border has closed once more – indefinitely.

In 2019 and early 2020 there was road-building activity going on

through Afar and Kunama lands, financed by China and the European Trust. Some of this is designed to enable connections between Ethiopia and Eritrea. The Netherlands-based foundation Human Rights for Eritreans complained that the European-financed project was using national service (i.e. slave) labour; the *New York Times* reported the same.<sup>29</sup>

## For the future

The situation of Indigenous Peoples inside Eritrea is grim. The country has never held free national elections; it lacks a functioning legislature; it is controlled by a small group of men connected to the President; only government media operate; there is no freedom of speech or political space; there are no guarantees of, and no institutional structures to protect, Indigenous rights and Indigenous Peoples. "Information collected on people's activities, their supposed intentions and even conjectured thoughts are used to rule through fear ... individuals are routinely arbitrarily arrested and detained, tortured, disappeared or extra judicially executed."<sup>30</sup> The Indigenous People are viewed with suspicion by the regime and persecuted to such an extent that important United Nations agencies have now called for the perpetrators to answer for crimes against humanity.

International agencies and institutions need to keep working at justice, security and peace for Eritrea's Indigenous Peoples as the Human Rights Council and some of its mandate holders have done so far. They might also consider reminding Ethiopia that it cannot simply take the plunder from Eritrea's crimes against humanity, including the lands and waters around the port of Assab, which are the traditional territory of the Afar Indigenous People, without its officials becoming parties or accessories to those crimes themselves.<sup>31</sup> International institutions might also want to suggest to Ethiopia that it would be better for that country to use its new-found access, power and leverage in Eritrea to try to put a stop to the ongoing crimes against humanity now being committed there. Ethiopia is well placed to impress on the Eritrean regime the wisdom and justice of the two countries beginning discussions with Indigenous Peoples about how to involve them in planning for the re-development of the port of Assab and other projects that foresee use of Indigenous lands and resources. At the very least, both countries

have an obligation to consult. Eritrea, moreover, has legal obligations to make reparations for past human rights violations and crimes against Indigenous Peoples. Ethiopia should be persuaded to insist on beginning this process before any deal to use Indigenous lands is sealed.

The new Chinese ownership of the Bisha mine on Indigenous territories and involvement of Chinese construction entities in road-building activities on Indigenous traditional lands is unlikely to improve the human rights situation for Indigenous Peoples inside Eritrea. European institutions, particularly the European Trust, would be expected to hold themselves to a higher standard, and ensure that they are visible in doing so. It is disappointing, to say the least, that the Trust has opened itself up to charges of participating in slave labour projects.

The better course is for the democracies and international institutions to showcase their human rights commitments by their actions. By so doing, they will have a better standing to be firm with both Eritrea and Ethiopia. This will prepare the community of civilized nations to act when Eritrea's day of reckoning arrives. This is likely not far off. Hopefully, it will bring relief to the persecuted Indigenous Peoples of Eritrea.

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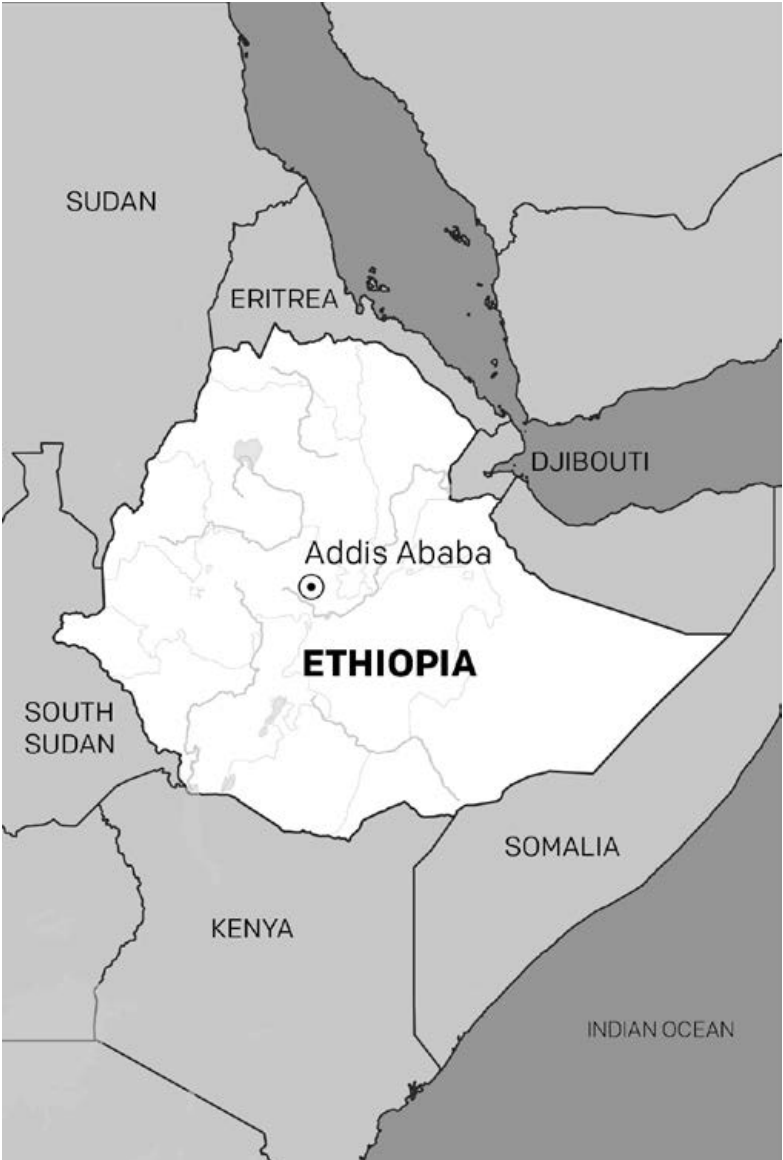
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**Joseph Eliot Magnet**, F.R.S.C., B.A., LL.B., LL.M., Ph.D. is Professor of Law at the University of Ottawa. He has been Distinguished Visiting Professor, Boalt Hall Law School, University of California, Berkeley; Distinguished Visiting Professor, Tel Aviv University; Visiting Professor, Université de Paris, France; Visiting Professor, University of Haifa, Israel; and Visiting Professor, Central European University, Budapest. He is legal counsel for Governments, First Nations and National Indigenous Associations in Canada and for the Afar Nation in the Horn of Africa.



# Ethiopia



The Indigenous Peoples of Ethiopia make up a significant proportion of the country's estimated population of 105 million. Around 15% are pastoralists and sedentary farmers who live across the country but particularly in the Ethiopian lowlands, which constitute some 61% of the country's total landmass. There are also several hunter-gatherer communities, including the forest-dwelling Majang (Majengir) and Anuak peoples, who live in the Gambela region. Ethiopia is believed to have the largest livestock population in Africa, a significant number of which are in the hands of pastoralist communities living on land that, in recent years, has been under high demand from foreign investors. Such "land grabbing" has only emphasised the already tenuous political and economic situation of Indigenous Peoples in Ethiopia. The Ethiopian government's policy of villagisation has seen many pastoralist communities and small-scale farmers moved off their traditional farming and grazing lands, and Indigenous Peoples' access to healthcare provision and to primary and secondary education remains highly inadequate. There is no national legislation protecting them, and Ethiopia has neither ratified ILO Convention 169 nor was it present during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Political uncertainty in Ethiopia in recent years has compounded the problems that Indigenous Peoples face there.

## **Negative impact of development policies and projects**

**I**n recent years, the Indigenous Peoples of Ethiopia have come under intense pressure from the government's large-scale commercial agricultural investment policy, the construction of irrigation dams, and the ongoing villagisation programme. All of these have led to widespread land dispossession and land grabbing. Another Ethiopian government policy that targets Indigenous Peoples in the Lower Omo Valley is the government's disarmament policy, which has substantial



adverse effects on the culture, identity and autonomy of Indigenous Peoples in this area.

The negative impact of these policies and “development” projects is now well-established and, for the last few decades, rights groups, academics, researchers and the media have been documenting<sup>1</sup> the scale of these policies’ impact on pastoralist and agro-pastoralist communities - their livelihoods, food security and sovereignty, the environment and human security - in the remote regions of Gambela, Omo Valley and Benishangul-Gumuz. The affected Indigenous groups who inhabit these regions, situated near Ethiopia’s international borders with South Sudan, Kenya and Sudan, are largely dependent on forests, land and water for their survival and, as Claudia J. Carr puts it, the encroachment onto their territories amounts to a death knell.<sup>2</sup> For instance, in the Lower Omo Valley, the government “development” projects involving irrigation dams have resulted in a diverted water flow and reduced water volume due to the irrigation-based cultivation of crops that consume large amounts of water. This has affected Indigenous Peoples’ livelihoods and resulted in a reduction in fish stocks and grazing land.

## Political developments

The sudden resignation of Hailemariam Desalegn, the former Ethiopian Prime Minister, in 2018, cleared the way for political and legal reforms<sup>3</sup> led by Abiy Ahmed, a former Oromia regional state deputy governor, member of the Ethiopian National Intelligent Agency (ENSA) and elected member of parliament and EPRDF (Ethiopian People’s Revolutionary Democratic Front) coalition member. The new Prime Minister pledged to build trust amongst Ethiopia’s diverse communities, transform what was seen as Ethiopia’s broken political spirit and end widespread human rights abuses, some of which have been said to amount to genocide and ethnic cleansing.<sup>4</sup> This transformation was seen to be an important step in building the institutions necessary to create a political culture based upon tolerance, democracy and rule of law – and it was hoped to minimise the suffering of marginalised and deprived Indigenous Peoples. In reality, however, this vaunted political reform, which started in 2018 and continues to date, has suffered some setbacks and challenges. Ethnic tensions continued in 2019 and there have been violent ethnic conflicts plus an attempted coup in Amhara regional state

that killed the chief of staff and at least three senior officials, dominating national and international news headlines.

## **Human rights violations**

Ethnic tensions and violent conflicts have taken place nationwide, involving major or minor groups across the country, and this has also had a significant impact on Indigenous Peoples. In April 2019, Amhara national extremists were involved in the rape and torture of members of the Gumuz Indigenous community,<sup>5</sup> resulting in at least 250 fatalities. Homes were burnt to the ground, and many people were displaced. In addition, around the border areas between Benishangul-Gumuz and Oromia regional states, deadly conflicts erupted involving the Oromo and Gumuz communities that resulted in loss of life, displacement and the re-awakening of the racial divide between highlander and lowlanders.<sup>6</sup>

Similarly, the Bodi, Mursi and Suri<sup>7</sup> Indigenous communities in the Lower Omo Valley were victims of a campaign of murder, torture, rape and displacement, orchestrated by Ethiopian state security agents including the army, federal and local police.<sup>8</sup> The Bodi, for instance, claim that in October 2019, at least 40 community members lost their lives due to the government disarmament policy.<sup>9</sup>

There has not been an independent body set up to investigate the atrocities committed in relation to the violent ethnic conflicts involving Indigenous Peoples in Ethiopia. Neither the Ethiopian national media nor international news outlets have reported in any consistent manner on the unprecedented targeting of Indigenous communities by national extremists and state security agents, in particular in the Lower Omo Valley and Benishangul-Gumuz regions. And neither the government nor international donors have paid attention to the pleas of Ethiopia's Indigenous Peoples.

## **Disarmament and human rights abuses in the Lower Omo Valley**

In 2019, Ethiopian security agents - the army, federal police and militias - embarked on a policy of disarmament targeting the Bodi, Mursi and

Suri Indigenous pastoralist and agro-pastoralist communities. Their homelands in the Lower Omo Valley have been targeted by Ethiopia's numerous projects, including sugarcane plantation projects over hundreds of thousands of hectares of land and irrigation dam projects, and it is claimed that land has been grabbed from Indigenous communities without appropriate legal redress, including without their Free, Prior and Informed Consent.<sup>10</sup>

According to the state authorities, the disarmament policy and actions were initiated for reasons of state security and in order to protect "development" institutions such as the sugarcane plantations and irrigation dams in these remote areas.<sup>11</sup>

However, the use of security agents to force pastoralist and agro-pastoralist communities into handing over light machine guns by way of indiscriminate arrests and detentions, harassment, murder and torture marks a vivid return to the culture of impunity that existed in the past, despite the political reform that many have hailed as the correct path to democratic governance.

In November 2019, Concerned Scholars for Ethiopia (CSE) published a memo calling on the government to investigate the atrocities committed by state security agents.<sup>12</sup> Similarly, the Oakland Institute issued a statement on the human rights abuses committed by state security agents against Bodi, Mursi and Suri Indigenous communities in the Lower Omo Valley.<sup>13</sup> The latest Oakland Institute statement echoes the conclusions of that report.<sup>14</sup> Despite these calls and damning evidence of human rights violations committed during the disarmament process, however, the government has continued to pursue the violent disarmament policy that authorities argue serves Ethiopian security interests.<sup>15</sup> The Ethiopian Prime Minister seems to be ignoring his duty to protect those pastoralist and agro-pastoralist Indigenous communities, who are often left to their own devices as the pace of insecurity increases.

## Land grabs

The political reforms that started in 2018, which ended 27 years of state brutality and tyranny, provided much needed political space for those Indigenous communities that were the victims of land grabbing caused

by the Ethiopian state's various development policies, including the villagisation programme, land investment policies, the above-described irrigation policies, etc. These policies were responsible for displacement and the denial of communities' access to land and water resources, as well as for threatening local communities' livelihoods and the natural environment. Yet the new regime remains silent and lacks policy direction on rural land administration and land investment policy.

The only sitting woman president on the African continent, President Shale Work Zewde of Ethiopia alluded to the government's land investment policy direction in her statement in October 2019 to the Ethiopian parliament. According to President Sahle-Work Zewde, the Ethiopian lowland is endowed with vast tracts of land vital for irrigation purposes that would improve the food security needs of a country that is chronically food insecure and the victim of drought and famine. Such political remarks by powerful and senior political leaders indicate the uncertainties awaiting Indigenous Peoples in the lowland regions. These areas have in the past paid a high prize in terms of social and economic cost due to failed government land investment policies and the associated villagisation programmes. For these territories, genuine political reform is crucial in order to reverse the negative impacts of such social engineering projects.

## **Proclamation on integration of refugees – a durable solution?**

Ethiopia has a long history of hosting/accommodating refugees, mainly from South Sudan, Somalia, Sudan and Eritrea. The refugee population in Ethiopia currently stands at the staggering figure of around 1,000,000, of which 53% are South Sudanese and located in the remote Gambela region.<sup>16</sup> In February 2019, the Ethiopian parliament adopted a controversial Refugee Integration Proclamation<sup>17</sup> aimed at solving the refugee crisis in a country with a high youth unemployment rate, international financial and food aid dependency<sup>18</sup> and ethnic tensions. This Proclamation was objected to by a Gambela member of parliament who argued that the host communities had not been consulted and that it thus contravened the international principle of obtaining the Free, Prior and Informed Consent (FPIC) of those affected.

With a long history of violent conflicts involving the Anuak Indigenous people and Nuer refugees, the Gambela region is far from an ideal location to implement the Ethiopian refugee Proclamation. This region, which has for more than six decades seen the impact of a large-scale influx of refugees (impacts in terms of threats to human security, displacement and environmental degradation), provides little in the way of “durable” solutions. However, the Ethiopian authorities are pushing very hard to implement the Proclamation despite insufficient support from Indigenous communities either in Ethiopia or abroad. In December 2019, the UN Refugee Agency, UNHCR, hosted a high-level global conference on refugees<sup>19</sup> attended by 20 Ethiopian delegates and led by Deputy Prime Minister, Demeke Mekonnen Hassen and Minister of Peace, Muferihat Kamil Ahmed. At this conference, the Ethiopian “progressive” refugee policy was presented.

The above reality and context led to the Anuak organisation, Anywaa Survival,<sup>20</sup> expressing concerns about the Ethiopian Refugee Integration Proclamation’s implementation in the Gambela region at the 65th Ordinary Session of the African Commission on Human and Peoples’ Rights held in Banjul, The Gambia. This session, which had the theme of the “Year of Refugees, Returnees and Internally Displaced Persons: Towards Durable Solutions to Forced Displacement in Africa”, marked the 50th anniversary of the OAU Convention on Refugees and the 10th anniversary of the African Union’s Convention for the Protection and Assistance to Internally Displaced Persons (Kampala Convention on IDPs).<sup>21</sup>

## Outlook for 2020

Although the Ethiopian government continues to remain silent in terms of substantive legal, policy and political issues pertinent to Indigenous societies, the recent political reform offers room for political dialogue and for the participation of Indigenous people in decision-making. Of particular importance is the new legal system governing civil society, which opens up space for civil society organisations to be established and operate freely. Since the opening up of this space, there have been initiatives from civil society organisations, including Anywaa Survival Organisation, to establish a strong Indigenous Peoples’ movement

through which to continue engaging with the authorities and urging them to develop the necessary legal mechanisms to protect the fundamental rights of Indigenous Peoples in Ethiopia and to ratify and implement regional and international human rights instruments. More specifically, the Ethiopian authorities must engage in ratifying and adopting key international legal documents, including ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. It is also important to work towards a national legal instrument on Indigenous Peoples' rights, in collaboration with key stakeholders: Indigenous community leaders, organisations and relevant government authorities. Such partnerships are not only important for promoting and protecting the rights of Indigenous Peoples but are also a building block for sustainable and inclusive development in Ethiopia.

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**Nyikaw Ochalla** is the Director of the Anywaa Survival Organisation – working on Indigenous Peoples' land rights and protection of their fundamental human rights and dignity.



# Gabon





There seem to be particular difficulties in conducting a census of Gabon's population and figures therefore vary depending on the source. The latest figures from the 2010 census give a total of 1,480,000 inhabitants, more than 600,000 of whom live in the capital and its surrounding area.

The average population density is 4.6 inhabitants/km<sup>2</sup> for a land area of 257,667 km<sup>2</sup>. If we take into account the population density in the capital (1,800 inhabitants/km<sup>2</sup>), however, the rest of the country remains inhabited at only a density of around 1 inhabitant/km<sup>2</sup>.

The population comprises some 50 ethnic groups of different cultures and languages, the main ones being the Fang (32%), Mpongwè (15%), Mbédé (14%), Punu (12%), Baréké or Batéké, Bakota and Obamba.

Throughout Gabon, there are also hunter/gatherer communities (often called Pygmies) comprising numerous ethnic groups (Baka, Babongo, Bakoya, Baghame, Barimba, Akoula, Akwoa, etc.) with different languages, cultures and geographical locations. The Pygmy communities live both in the towns and in the forest. Their livelihoods and their cultures are inextricably linked to the forest, which covers 85% of Gabon. According to official data stated during a conference in Libreville on 27 April 2017, there are now some 16,162 Pygmies living across the national territory.<sup>1</sup> The Baka live in Woleu-Ntem, particularly in the seven villages of Minvoul, and they number between 373 and 683 individuals. Other Baka have also been noted in Makokou, and upstream of Ivindo. They number some 866 individuals.

There are also Bakoya living in Ivindo, in Djouah (north) and Loué (east) districts of Zadié department (Mékambo). They number some 1,618 individuals across Ogooué-Ivindo. The greatest concentration of Pygmies is found among the Babongo of Lopé (Ogooué-Lolo), estimated at 708 individuals, but also the Bakouyi (Mulundu) and Babongo of Koulamoutou, Pana and lboundji, numbering some 2,325. To these statistics must be added the Babongo or Akoula of Haut-Ogooué (4,075 indi-

viduals) and those in Ngounié and Nyanga, 4,442 individuals. To complete this geographical tour of Gabon's ethnolinguistic Pygmy communities, there are the Bavarama and Barimba in Nyanga (2,263 persons) and the Akowa (Port-Gentil, Omboue and Gamba) who account for around 327 individuals.<sup>2</sup>

In 2005, Gabon agreed that its Indigenous Peoples Development Plan (PDPA) should form part of the World Bank loan agreement for the Forest and Environment Sector Project. This was the Gabonese government's first official recognition of the existence of Indigenous Peoples and of its responsibilities towards them. In 2007, Gabon voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

## Draft Water and Forests Code

The NGO Brainforest organised a national workshop on 19 January 2019 with the support of WWF Gabon and the *"Gabon, Ma Terre, Mon Droit"* (Gabon, My Land, My Right) Platform. This platform is an initiative of 20 Gabonese NGOs and resource people focusing on different issues such as land tenure, land grabbing and community rights promotion. The objective of the workshop was to examine an advocacy document aimed at ensuring that local communities' and Indigenous Peoples' rights were considered in the draft Water and Forests Code. This workshop enabled civil society organisations involved in the forestry law review process to strengthen the analytical document that will be used to support their advocacy. The draft bill of law was adopted by the Council of Ministers on 26 February 2019.

## Development of agrofuel plantations

DAs in many African countries, oil palm and rubber plantations are springing up at an alarming rate in Gabon. In 2012, the government announced its ambition to make Gabon the number one palm oil producer in Africa. The President of the Republic's *"Emerging Gabon Strategic*

*Plan*” anticipates an increased number of oil palm and rubber plantations aimed at developing the export agriculture sector.

The government also wants to encourage both company and “community” plantations, established by the people. The Plan notes two companies that will be involved in developing these oil palm and rubber plantations: OLAM and SIAT Gabon.<sup>3</sup>

The government has allocated 300,000 hectares (3,000 km<sup>2</sup>) to the Singaporean company OLAM for the purpose of establishing monocrop plantations. OLAM International has a presence in 64 countries, and first became established in Gabon in 1999. Its activity in the country initially focused on logging but, in 2009, it began to move into the production of both palm oil, through OLAM Palm Gabon, and rubber, through OLAM Rubber Gabon, in association with the Gabonese state. This latter holds a 30% share in the palm oil production company and a 20% share in the rubber production company. These plantations are to be established in three regions: Mouila, Kango and, particularly, Bitam/Minvoul where OLAM states that it has signed an agreement to establish the largest rubber plantation in the country, covering 28,000 hectares, and to build a processing plant at Bitam and Minvoul.<sup>4</sup>

In November 2018, the World Rainforest Movement (WRM) issued a warning regarding the consequences of such vast industrial oil palm plantations in terms of their effect on the availability and quality of water for the communities living in the vicinity of the plantations. WRM and *Sauvons les forêts* (Save the Forests) have embarked on a campaign to denounce the OLAM group’s land grabs, which have taken place without the free, prior and informed consent of the communities affected.<sup>5</sup>

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**Patrick Kulesza** is the Executive Director of GITPA (Groupe International de Travail pour les Peuples Autochtones - [www.gitpa.org](http://www.gitpa.org)). He conducted an information mission to Gabon which resulted in the following webpage: <http://gitpa.org/Peuple%20GITPA%20500/GITPA%20500-9WEBDOCGABONENTREE.htm>



# Kenya



In Kenya, the peoples who identify with the Indigenous movement are mainly pastoralists and hunter-gatherers, as well as some fisher peoples and small farming communities. Pastoralists are estimated to comprise 25% of the national population, while the largest individual community of hunter-gatherers numbers approximately 79,000. Pastoralists mostly occupy the arid and semi-arid lands of northern Kenya and towards the border between Kenya and Tanzania in the south. Hunter-gatherers include the Ogiek, Sengwer, Yiaku, Waata, Awer (Boni). While pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. They all face land and resource tenure insecurity, poor service delivery, poor political representation, discrimination and exclusion. Their situation seems to get worse each year, with increasing competition for resources in their areas.

Kenya's Indigenous women are confronted by multifaceted social, cultural, economic and political constraints and challenges. Firstly, by belonging to minority and marginalised peoples nationally; and secondly, through internal social cultural prejudices. These prejudices have continued to deny Indigenous women equal opportunities to rise from the morass of high illiteracy and poverty levels. It has also prevented them from having a voice to inform and influence cultural and political governance and development policies and processes, due to unequal power relations at both local and national levels.

Kenya has no specific legislation on Indigenous Peoples and has yet to adopt the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ratify International Labour Organization (ILO) Convention 169. However, Kenya has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC).

Chapter Four of the Kenyan Constitution contains a pro-

gressive Bill of Rights that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalised groups. Under Articles 33, 34, 35 and 36, freedom of expression, the media, and access to information and association are guaranteed. However, the principle of Free, Prior and Informed Consent (FPIC) remains a challenge for Indigenous Peoples in Kenya although the Constitution guarantees participation of the people.

### ***“Huduma Namba”*: a blessing or additional curse on Kenya’s Indigenous Peoples?**

In early 2019, the government of Kenya introduced the 6 billion Kenyan Shilling (approx. US\$59 million) *“National Integrated Identity Management System”* (NIIMS) programme commonly called *“Huduma namba”* or *“Service Number”*. The NIIMS is hyped as a unique number that will bear consolidated information about every individual resident in Kenya into a single digital identification card. According to the Kenya Government, the NIIMS digital identification card shall form a useful tool for planning, provision of social services and resource allocation for development projects. The *Huduma namba* initiative received an unprecedented level of publicity and government impetus only comparable to general election campaigns.

Indigenous Peoples in Kenya, such as pastoralists, live in a reality where youth and other individuals seeking identification documents such as the national identity card, passport, driver’s license, national social security card, national hospital insurance card, Kenya revenue authority tax personal identification number, etc., are subjected to arduous and often demeaning vetting processes, where they are required to prove their Kenyan citizenship beyond reasonable doubt. This process is often wrought with numerous hurdles that include the local administration such as chiefs, institutions such as hospitals and schools, security agencies such as police and intelligence service and local elders, and as a result, individuals from Indigenous communities often end up not getting these cards and documents. The question is whether the *Huduma namba* will do away with these long and time-consuming

vetting processes – also when it comes to Indigenous Peoples.

Many Indigenous people in Kenya who live in remote and marginalised areas have for many years not been included in critical processes such as formal education, national census, civic education, elections and health campaigns. And for them even the process of acquiring critical identification documents, a basic right for all Kenyans, is still a tormenting experience. Therefore, it is feared that the process of obtaining the *Huduma namba* digital identification card will be a very challenging and problematic process for Indigenous people.

The *Huduma namba* initiative seems to enjoy unparalleled impetus and hype from the Presidency, which raises justifiable concerns among Indigenous Peoples. There is concern among Indigenous Peoples that the whole NIIMS process may prove to be counterproductive as it makes it mandatory to present the *NIIMS card* before one can participate in what has been described in the media as ordinary life and civic democracy, including getting issued a passport, registering or renewing a driving license, transacting in the financial markets, registering a mobile phone, paying taxes, legally marrying, voting, opening a bank account, getting an electricity connection, going to a public school or being served at a public hospital.

The Huduma Bill of 2019 imposes hefty penalties with fines between USD\$10,000 to USD\$50,000 or imprisonment of between one to five years for transacting without the *Huduma Namba* card, tampering with the *Huduma card*, or failing to register births and deaths within a prescribed time frame (30-90 days). These punitive measures have been described by the human rights watchdog Amnesty International as, “grossly unnecessary and disproportionate with the offences”.

Indigenous Peoples globally have been victims of decisions made without consultations and its impacts continue to cast long shadows today. This reality has prompted the emergence of the concept of Indigenous Data Sovereignty (IDS)<sup>1</sup> as a legitimate issue that raises fundamental questions about assumptions of ownership, representation and control in open data communities. Kenya’s Indigenous Peoples can invoke<sup>2</sup> the right to control data from and about their communities and lands, articulating both individual and collective rights to data privacy.

According to the State of Open Data website:<sup>3</sup>

*... ideas from Indigenous Data Sovereignty (IDS) provide a challenge to dominant discourses in open data, questioning*



*current approaches to data ownership, licensing, and use in ways that resonate beyond Indigenous contexts, drawing attention to the power and post-colonial dynamics within many data agendas.*

Kenya's Indigenous Peoples can build linkages with the growing IDS networks that are working to shape open data principles to better respect the rights of Indigenous Peoples. Without a human rights approach, careful design, application and oversight, Big Data and technology information can reinforce existing inequalities and greatly harm such vulnerable sectors of the Kenyan society as Indigenous Peoples. Kenya's Indigenous Peoples are in urgent need of data protection and currently it is urgent for Kenya's Indigenous Peoples to be facilitated to make informed decisions on the *Huduma namba* process.

## **Ogiek Indigenous Peoples caught up in government-sanctioned forceful evictions from the Mau Forest Complex**

The precedent setting 26 May 2017 ruling by the African Court on Human and People's Rights in Arusha, Tanzania directs Kenyan authorities to resettle the Ogiek Indigenous hunter-gatherers in the Mau Forest. In 2019 even before the implementation of the ruling, sectors of the Ogiek community were part of the thousands of residents driven out for alleged encroachment, illegal settlement and destruction of the important water tower.

Indigenous Peoples have for centuries depended on their local biodiversity and key ecosystems. Ogiek hunter-gatherers of Kenya depend on the sustainable management and use of the Mau Forest Complex in Kenya's Rift Valley for their survival. However, starting in July 2019, Ogiek hunter-gatherers were part of the 60,000 families who fell victim to government-sanctioned forceful evictions from the Mau Forest, despite the fact that Ogiek are the main custodians of this forest. No thorough vetting was done to identify illegal settlers and encroachers and to guarantee the rights of the Ogiek forest dwellers to comply with the African Court ruling.

The justification for the evictions made by the Kenyan government through the Ministry of Environment and Forestry was to save the Mau

Forest ecosystem by ejecting people accused of illegally settling on Mau Forest land and undermining the integrity of the forest complex through encroachment, unwarranted settlement and intensive deforestation. However, while the Kenyan authorities indicated that the targets of evictions were encroachers and illegal settlers and not Indigenous Peoples such as Ogiek hunter-gathers, the fact is that some Ogiek people were also evicted in the process. As reported by Peter Ng'asike an Ogiek victim of the recent evictions:

*...while it is important to secure and conserve the Mau Forest as a critical water catchment area and a source of many other forest resources necessary for the country and local communities such as hunter gatherers and pastoralists, the mode of vetting illegal settlers, encroachers and forest destroyers was not efficient as it victimized some innocent Ogiek Indigenous Peoples.*

Thus, there is an urgent need for the Kenyan government to ensure the return to the Mau Forest of the Ogiek people who were evicted from it. They are neither encroachers nor settlers and they should be compensated for the rights violations they suffered during the eviction process.

As a response to the ruling of the African Court on Human and Peoples Rights, the Cabinet Secretary for Environment and Forestry appointed a taskforce to advise the Government of Kenya on the implementation of the decision concerning the Ogiek Indigenous Peoples of Mau Forest.

On 6 June 2019, the taskforce met with representatives of the community under the auspices of the Ogiek Peoples Development Programme (OPDP) where the community raised concerns about the commitment of the taskforce to the implementation of the decision by the African Court as evidenced by delays and fruitless consultations, among other hurdles.

It is imperative that the Kenyan authorities in consultations with the Ogiek Indigenous people implement the ruling of the African Court as part of meeting the country's obligations towards international human rights standards and towards its own domestic constitution.

According to the Human Rights Watch Kenya Chapter, Kenyan authorities should adopt collaborative forest management approaches such as those being applied in Mt. Kenya Forest where local com-

munities are increasingly getting involved in biodiversity conservation through community forest associations (CFAs). In this setting, communities have taken charge in the restoration of degraded forest areas and monitoring of biodiversity.

## **No reprieve in sight for the Sengwer Indigenous people**

The Sengwer Indigenous people are a forest people alongside the Ogiek of Kenya who have for many years been engaged in a protracted dispute with Kenyan authorities over ancestral rights to the Cherangany hills in Kenya's North West.

As part of their continued struggle for their communal land rights, in October 2019, their representatives presented a petition to the Kenya Government seeking legal recognition as a Kenyan community. Also, they are pursuing restitution and protection of their ancestral lands in the Embobut Forest in the Rift Valley.

The Sengwer have on various occasions been evicted from their forest lands, and in 2019 they were facing imminent threats of evictions, ostensibly to pave the way for the government to take charge of conservation of the country's forests and water sources. The Sengwer sought audience with Kenya's President, Uhuru Kenyatta, in an attempt to take their grievances to the highest office in the land. They were not successful; however, they nevertheless petitioned the government to be allowed to return to the lands from where they had been evicted and to be recognised as the rightful owners and inhabitants of the Embobut Forest lands.

## **Slow implementation of the LAPSET mega project: a blessing in disguise for Indigenous Peoples?**

The 2.5 trillion Kenyan shilling (approx. USD\$24,797,450,000) flagship project *Lamu Port South Sudan, Ethiopia Transport* (LAPSET) is according to Kenyan Authorities supposed to spur development and improve the wellbeing of the largely Indigenous communities along the more than 1,000-kilometer-long project corridor.

Indigenous Peoples along the project corridor have often expressed concern that the implementation of the project has by and large not been consultative and inclusive despite the fact that the Indigenous communities were to lose large chunks of their communal lands and strategic resources via the operationalisation of the LAPSSET project. The main cause of concern of the Indigenous Peoples has been that the conceptualisation, design and partial implementation has not involved the Free Prior and Informed Consent (FPIC) of the affected communities, and that it has therefore been in violation of Kenya's Constitution Article 10 (2) (a) on participation of the people.

County governments along the corridor have often raised concerns about the LAPSSET project, and this was also the case in 2019. Key among them have been the Isiolo County Government, since Isiolo County lies at the centre of the LAPSSET project where the road, railway and oil pipeline branch out towards South Sudan and Ethiopia. The leadership of Isiolo, pastoralist NGOs and other civil society organisations such as Save Lamu have been advocating for adherence to rights-based approaches in the implementation of the LAPSSET as well as adherence to international human rights standards relating to the rights of Indigenous Peoples.

During a visit in September 2019 to Lamu and the Lamu Port by Kenya's President Uhuru Kenyatta, he raised concerns that the various components of the LAPPSET project were taking too long to construct thereby putting the viability of the whole project at risk. These delays in the implementation of the hinter land infrastructural projects may come as a blessing in disguise for the affected Indigenous communities since a delayed implementation might coincide with the long-awaited operationalisation of the 2016 Community Land Act that provides robust protection of community lands.

## **Climate change, conservation and Kenya's Indigenous Peoples**

Kenya's Indigenous people have for centuries used various strategies to optimise the use of natural resources including animals and plants without jeopardising their long-term sustainability. This maintenance of an optimal balance between plants, land, animals and people to meet both their immediate and future livelihood needs is a critical objective of Indigenous Peoples' coping mechanisms.

However, these strategies are now challenged by climate change. Lengthy and unpredictable droughts, extended rainy seasons, floods, disappearance of important plant species, degradation of the ecosystems, interference in migratory and shifting strategies and emergence of new human and livestock diseases pose major challenges for Indigenous Peoples' land and natural resource management strategies and practices.

Climate-induced disorientation affects Indigenous Peoples in the arid and semi-arid lands due to intense and frequent drought cycles. This results in loss of livelihood sources such as livestock, forests, water masses and land leading to decreased production and impoverishment.

It is essential that national climate change mitigation strategies incorporate Indigenous technical knowledge. A special blend of science and Indigenous knowledge will be essential in dealing with the impacts of climate change in Kenya which requires practical and responsive strategies to vulnerability and building resilience. It also entails developing a holistic set of interventions that will secure ecological and socio-economic foundations of Indigenous Peoples and ensure the continued thriving of fauna and flora. Such issues surfaced in dialogues held in Kenya in 2019 under the auspices of the Global Soil Week in June 2019, the fourth biennial United Nations Environment Assembly (UNEA) held in March 2019 and the annual Kenya Pastoralist Week held in December 2019.

## **Indigenous women: the last bastion of social accountability?**

In 2019, Indigenous women continued to be under-represented in governance structures and processes at national and local levels, and suffered delineation from major decisions that affect them. This continues to subject Indigenous women to poverty, despondency and human rights abuses.

Whereas Indigenous Peoples form the largest section of Kenya's communities, marginalised from socio-economic services and infrastructure, Indigenous women are faced with further internal marginalisation despite these women being the custodians of the environment and ensuring sustainable exploitation, use, management and conservation of the environment and natural resources.

However, the level of equitable sharing of benefits accruing from these resources to women remained negligible in 2019. In some instances, men have hived off parts of the family land or part of the family livestock herd and sold them off without involving, consulting or informing women, thus depriving women and children of their primary sources of livelihood and wellbeing. In other instances, men are the key decision makers and representatives of the community, and they have negotiated with private companies and other entities on the exploitation of resources, and misused the compensations paid to them without sharing with women as bona fide stakeholders.

Indigenous women in Kenya possess unique strengths that contribute to the general wellbeing of the Indigenous communities in various ways such as managing family property, providing food and water and taking care of families, teaching the children their cultures and traditions and language, etc. However, even with a Community Land Law that advocates for inclusion of women in all land-related matters, these women's roles in decision-making and ownership of land and other property remained elusive throughout 2019. Their workloads and responsibilities are rarely matched by increased rights and decision-making control. As a result, Indigenous women and their children occupied increasingly vulnerable and dependent positions in their households, homesteads and communities. Whereas the constitution of Kenya guarantees them certain rights and fundamental entitlements, in 2019 Indigenous women still held only limited 'tokenist' rights to land and property, lacked inheritance rights and significant decision-making power, and had very few ways to earn an income.

## Notes

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**Michael Tiampati** has worked as a journalist in Kenya and East Africa for Reuters Television and Africa Journal. He has been working with Indigenous Peoples in Kenya for more than 19 years, including the Centre for Minority Rights Development (CEMIRIDE), Maa Civil Society Forum (MCSF) and Mainyoto Pastoralist Integrated Development Organization (MPIDO). He is currently the National Coordinator for the Pastoralist Development Network of Kenya (PDNK) and the chair of the newly formed Eastern and Southern African Pastoralist Network





# Libya



The Amazigh form the Indigenous population of Libya. They are estimated to number some one million people, or more than 16% of the country's total population.

They live in various areas of Libya in the north, east and south of the country albeit without any geographical continuity. To the west of Tripoli, on the Mediterranean coast, they live in the town of At-Wilul (Zwara) and in the Adrar Infussen (Ne-foussa) mountains, on the border with Tunisia; in the south-east, on the border with Egypt, they live in the oases of Awjla, Jalu and Jakhra; in the south, the Fezzan region is traditionally Kel-Tamasheq (Tuareg) territory, including the areas of Murzuq, Sebha, Ubari, Ghat and Ghadamès. Libya's Kel-Tamasheq are naturally linked to other Kel-Tamasheq communities living across the borders with Niger and Algeria. Tripoli is also home to a significant Amazigh community.

In addition to Arab and Amazigh communities, there is an ethnic minority in Libya known as the "Toubou", comprising some 50,000 individuals. They are originally from the Tibesti plateau in Chad and they live along the Libya/Chad border. They live a nomadic way of life and practise pastoralism across an area that extends from northern Niger to the Sudan.

During the time of Gaddafi (1969-2011), Libya was declared an exclusively "Arab and Muslim" country. The 1969 Constitutional Proclamation states in its first article that "Libya is an Arab republic (...), the Libyan people are a part of the Arab nation and its aim is total Arab unity. The country's name is the Arab Republic of Libya". Article Two adds that "Islam is the state religion and Arabic its official language". Government policy since then has always relentlessly persecuted anyone who does not recognise Libya's "Arab-Islamic identity".

Following the 2011 "revolution", a "Provisional Constitutional Council" submitted a draft new Constitution in 2017 that in no way changed the country's identity foundations. Article Two still provides that "Libya forms part of the Arab nation" and that "Arabic is the state language". Article Six notes that "Islam is the state religion and Sharia the source of its law". Other dis-

criminary articles then follow prohibiting a non-Muslim Libyan from standing for election to the Chamber of Representatives (Article 69) or as President of the Republic (Article 101) and stating that justice shall be passed down “in the name of Allah” (Article 189). These articles are clearly aimed at imposing an Islamic republic, to the detriment of the diversity of cultures and beliefs in Libya. Due to Amazigh and Toubou opposition, however, and also because of the war, this draft constitution has not yet been adopted.

Libya voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

## Civil war sows disaster and confusion

Since 2011, Libya has been unable to elect legitimate governing bodies recognised by the Libyans themselves. Since 2014, two parliaments and two governments - one in Benghazi in the east of the country and the other in Tripoli - have been at war with each other, with disastrous consequences for the population. To these two major players must be added dozens of armed militia controlling different areas of the country and centres of interest.

Despite the UN embargo on arms sales to Libya, renewed in June 2019,<sup>1</sup> military equipment and munitions are continuing to arrive in the country, primarily by sea. On 3 July 2019, Amnesty International stated: “The UN embargo on arms is intended to protect civilians in Libya. And yet Jordan, the United Arab Emirates and Turkey, among others, are clearly flouting it by providing armoured vehicles, guided missiles and other weapons.”<sup>2</sup>

Libya has consequently been plunged into a civil war that has resulted in thousands of dead, wounded and displaced together with the destruction of homes and infrastructure. The Amazigh regions to the west of Tripoli have been affected by this war, particularly the town of At-Willul (Zwara), which was bombed on 15 August 2019 by the Benghazi-controlled Libyan Air Force.

The armed conflict and the lack of a legitimate government recog-

nised by all has meant that climate change as an issue has been totally neglected in the country. The different political/military groups are far too consumed in a power struggle and the people far too concerned by the insecurity and water/food shortages caused by the civil war to consider the issue of global warming.

## **Libya's Amazigh endeavour to meet their own needs**

Against this backdrop of a lack of state presence and of legitimate authorities, each community – including the Amazigh – is living in relative autonomy on its land. In the Amazigh territories, the municipal authorities thus represent the legitimate public authority recognised by the people.

All municipal authorities in the Amazigh territories have, for example, decided to take responsibility not only for public security but also for education and culture by teaching Tamazight in the schools and supporting cultural programmes that promote Amazigh culture and heritage. They have also decided to revive the use of Tamazight within the administration and, in 2019, began to officially celebrate Yennayer, Amazigh New Year, and to implement a programme of reviving Amazigh place names, etc.

The government in Tripoli has also supported the creation of a “Libyan Centre for Amazigh Studies” based in the Libyan capital. Nonetheless, on 10 July 2019, the Tripoli government’s Ministry of the Interior sent a letter to the local authorities demanding that they use only the Arabic language and that they ban Amazigh first names.<sup>3</sup> Unanimous protestations from the Amazigh people, however, led the Ministry of the Interior to send a further letter on 9 December 2019 authorising the Amazigh and other Libyan communities to “give their children first names in accordance with their culture and ancestral traditions”.

On a socio-economic level, the natural resources found in the Amazigh territories (oil and gas in the Fezzan region to the south and in the Mediterranean Sea off At-Wilul) have completely escaped Amazigh control. The Kel-Tamasheq populations in the south of Libya are, along with the Toubou, among the poorest people in the country.

It is also important to note that the Gaddafi regime refused to

grant Libyan nationality to non-Arabs and that nothing has changed in this regard since the 2011 revolution. Consequently, more than 10,000 Kel-Tamasheq families in Libya are undocumented, depriving them of access to public services such as health care and education. One Kel-Tamasheq stated: “Officially, we do not exist and this is clearly a huge barrier to receiving medical care or sending our children to school.”<sup>4</sup> This is serious and ongoing discrimination and the continuing chaos in Libya means that nothing is likely to be done to resolve this problem in the near future.

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**Belkacem Lounes** holds a PhD in Economics, is a university lecturer (Grenoble University), expert member of the Working Group on the Rights of Indigenous Peoples of the African Commission on Human and Peoples’ Rights, and author of numerous reports and articles on Amazigh rights.



# Mali



By the end of 2019, Mali's population stood at more than 20 million inhabitants<sup>1</sup> (four times more than 59 years previously). The Tuareg (Tamazight speakers), the Moors (Arabic speakers) and, in riverine areas, the Songhay and Peuls (Fulani) are the main communities that inhabit the vast northern space that accounts for two-thirds of Mali. Their political alliances and their conflicts have shaped the history of a region in which there has been an interdependence between nomadic and settled populations, who have participated in vast economic, cultural and social exchange networks across the Sahara.

The Tuareg live in the five administrative regions of northern Mali (Kidal, Timbuktu, Gao, Taoudénit and Menaka), known as Azawad by the autonomy movements. They also have a presence in the border areas of other states (Niger, Algeria, Libya, Burkina Faso).

In 1960, when Mali was created, official figures put the Tuareg at more than 10% of the country's population. Today, despite no reliable data, official discourse around the conflicts that have pitted the Tuareg against the Malian state puts them at a mere 3% of the global population, a figure that is scarcely credible.

Mali's official language is French but cultural diversity is recognised in its constitution. For its part, the National Agreement, a peace accord signed with the armed Tuareg fronts in 1992, recognised the specific nature of the regions inhabited by the Tuareg although these provisions were never concretely implemented. Mali voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. The Malian state does not, however, recognise the existence of "Indigenous Peoples", as defined by the UNDRIP and ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries, on its territory.

## Climate and environment

**T**he year 2019 again saw periods of drought followed by severe floods that destroyed everything in their path. According to the UN Office for the Coordination of Humanitarian Affairs,<sup>2</sup> these floods affected more than 68,670 people, 20 of whom lost their lives, between May and August 2019, with Timbuktu recording the greatest number of victims (35%).

Nomadic herders, whose territorial rights are being ignored by the state, have had to leave their land not only because of these disasters but also because of agricultural expansion, mining and armed violence. They are no longer able to manage or protect the fragile resources of the Saharo-Sahelian zone. This is exacerbating the harsh climatic conditions and will soon result in a region that is unable to support any life where once there were local populations. Highly polluting extractive industries such as gold mining (Mali is the fourth largest producer in Africa) are in the hands of multinationals: their profits provide no benefit to the local population and indeed very little to the state, which has not redistributed the dividends<sup>3</sup> to compensate for the annexation of land and the destruction of local plant and water resources.

## Bloodshed and a blocked peace accord

Throughout 2019, Mali continued to be mired in the political, socio-economic and security crisis that has ravaged the country for seven years now. Armed attacks continued in the north and spread to the centre of a country that is now under the influence of jihadist movements that recruit particularly from among disenfranchised Peul communities. Since the pro-independence MNLA (National Movement for the Liberation of Azawad) uprising in January 2012 – demanding a plural, democratic and secular political project –, the Malian government has sought to internally divide the country, pushing it to the brink of civil war. Counter-insurgency militia groups have proliferated, and some of them have now escaped the control of their backers, who thought they would be able to limit them to the north.

The decentralisation process set out in the 2015 Algiers Peace Agreement has been blocked at different levels.<sup>4</sup> In constitutional



terms, the provisions needed to implement the agreement were removed during the constitutional review, to the benefit of greater presidential powers. Popular protest resulted in the 2017 referendum on the constitutional review being postponed and finally abandoned. A new process commenced in April 2019<sup>5</sup> and anticipates an inclusive national dialogue.<sup>6</sup>

On a social and political level, the proliferation of armed groups aimed at countering the pro-independence Tuareg has created a chaotic situation of allegedly “inter-ethnic” struggles, with civilians being the main victims. The political dialogue was, moreover, rapidly compromised by the imbalance created between the parties to the conflict. In opposition to the pro-Azawad movements brought together within the CMA (Coordination of Azawad Movements),<sup>7</sup> several Bamako-funded pro-government groups, joining in 2014 to form the ambiguously named Platform<sup>8</sup> (a term that equates to Al-Qaida in Arabic), have been included in the peace negotiations. Despite Algerian pressure in favour of the “local” jihadist group *Ansar Dine*, this anti-independence Tuareg movement (born two months after the emergence of the MNLA) was not admitted to the negotiating table, and nor was the MUJAO (Movement for Unity and Jihad in West Africa). These Salafist-inspired armed groups, affiliated to AQMI (Al-Qaida in the Islamic Maghreb), were redeployed to the centre of Mali where they merged in March 2017 with other jihadist movements under the name of *Nusrat al-Islam wal-Muslimin* (Islam and Muslim Support Group). Their murderous attacks and suicide bombings have spread to neighbouring countries such as Burkina Faso and Niger.

By focusing on the deteriorating situation, the Malian government has neglected to implement the Algiers Peace Agreement.<sup>9</sup> It has only been thanks to international pressure that some measures have finally been achieved. The installation of interim authorities in the five regions of the north only revived the conflict between the different protagonists: signatories to the agreement, more recent movements demanding inclusion after the event and, finally, so-called “terrorist” groups excluded from the negotiations.

Anticipated in the 2015 Agreement but operational only since October 2018, the International Commission of Inquiry into human rights violations perpetrated by different actors in the conflict since 2012-2013 stated its satisfaction with its second visit to Mali in February-March 2019.<sup>10</sup> No report has yet been published.

## Elections

The legislative elections that should have taken place in December 2019 were postponed to June 2020 due to the security situation.<sup>11</sup> The planned consultation on the constitutional review again drew questions from the competing political parties regarding the merits of the 2015 Agreement (signed by the current President), raising the spectre of the partition of Mali. The instrumentalisation of the northern issue for political purposes continues to hinder implementation of the timid decentralisation measures set out in the Agreement.

It was in this tense climate and against a disastrous security backdrop that the President appointed a new Prime Minister and a new government was formed in April 2019<sup>12</sup> with, among other things, the aim of completing the implementation of the Peace Agreement and bringing security to a country in turmoil.

## Insecurity, humanitarian situation and human rights violations

The state of emergency that has been in place since 2015 was extended in 2019. The country's security situation has reached a critical point, following much the same trajectory as in 2018 despite the massive presence of international forces.

Jihadist groups intensified their attacks throughout 2019, killing 150 civilians,<sup>13</sup> terrorising rural populations and causing them to be displaced. They summarily executed several local politicians and members of the Azawad armed fronts, accusing them of aiding and abetting the authorities or foreign forces. Attacks on the army increased, with more than 100 Malian soldiers killed in October and November 2019 alone.<sup>14</sup>

Under cover of the war on terror, a growing number of extra-judicial executions have been carried out at the hands both of the Malian Army, the French forces and the counter-insurgency militia, although there are no accurate figures in this regard. According to the *Human Rights Watch 2020 (Mali Events of 2019)* report, Malian soldiers apprehended numerous "suspects", at least five of whom were murdered and buried in mass graves. Dozens of others have "disappeared".<sup>15</sup> Despite the internal inquiries announced with regard to the military violence occurring in the centre of Mali, none of the perpetrators have yet been brought

to justice. Numerous individuals (men and boys) suspected of “terrorism” have been arrested by the intelligence services, in total violation of national and international law.<sup>16</sup> The judicial authorities have failed to conduct any investigations into abuses committed against civilians by the security forces.

The local population, particularly in the centre of the country, find themselves caught in the middle between the jihadist groups, the Malian Army and the so-called self-defence militia, encouraged by the army and recruiting along ethnic lines (Dogon, Bambara). Provided with assault weapons, these militia – such as the Dogon group Dan Na Ambassagou – have unleashed veritable pogroms with impunity, killing hundreds of Peul men, women and children, particularly in Koulogon<sup>17</sup> (Jan. 2019, 37 dead), Ogassagou and Welingara (March 2019, 160 dead). These bloody acts were followed two months later by reprisals in the form of an attack on the Dogon village of Sobane Da (35 dead). The government has proved incapable of preventing this cycle of extreme violence or of bringing a halt to the genocidal propaganda that continues to circulate on social media.

By the end of 2019, the number of refugees in the three main Sahelian countries of exile (Mauritania, Niger, Burkina Faso) was estimated at 138,659;<sup>18</sup> as of November 2019, internally displaced rural people seeking refuge in urban areas accounted for 199,385 individuals, an increase of nearly 250% on the previous year; and, finally, 74,397 people (figures from the Malian government), returned to their country of origin<sup>19</sup> in 2019, seven times fewer than in 2018. Many of these refugees are Tuarég, Arab and Peul families who have lost their herds, their lands and/or their businesses in the reprisals and looting.

In 2019, the Truth, Justice and Reconciliation Commission (CVJR), established by a 2014 presidential decree and supported by Minusma (the United Nations Multidimensional Integrated Stabilisation Mission in Mali) gathered 15,612 testimonies from victims of atrocities committed, in particular, during the 2012-2013 armed conflict but more generally since 1960.<sup>20</sup> The credibility of this commission was nonetheless called into question following the inclusion of nine members of armed groups and, in contrast, the exclusion of victims’ representatives.<sup>21</sup>

One result of the chaos in the north and centre, where the only power comes from the barrel of a gun, is that basic social services (schools, hospitals, justice security) – already poorly provided before the 2012 uprising due to widespread corruption – have declined or dis-

appeared. Many schools remained closed (1,051 according to figures from the end of the year)<sup>22</sup> throughout 2019 in the north and centre of Mali due to insecurity and threats against school staff and pupils from Islamist groups.

The relentless nature of the armed violence, whether deemed “legitimate” or not,<sup>23</sup> and of the proliferating banditry, has created a climate of terror for civilians who have no means of protecting themselves. Many have been killed in armed clashes or by land mines buried along the roads. The population is suffering from poverty, deprivation and degrading treatment. People fear going about their daily activities and are afraid they have been completely abandoned. All the usual travel necessary for their survival (to access grasslands for their cattle, to go gathering, to go to the well or to market) is now perilous. They cannot count on the Malian armed forces, who very often equate being Tuarég or Peul with being a “terrorist”. This racial profiling continues to be a concern in the north and centre of Mali.

Pressure from jihadists remains strong in urban areas, too, forcing residents to adapt their social practices (behaviour between men and women particularly), abandon school, give up their musical and cultural activities, change their appearance, and adopt new facets of being “Muslim”.

## Role of international forces

In order to resolve the political issue of democratic rights, raised since 2011 by the pro-independence Azawad movement, the national and international authorities (Algeria, USA and France, in particular) have chosen a path of repression rather than one of political dialogue and more social justice.

Since the commencement of France’s military intervention in Mali at the start of 2013 to “destroy the terrorists”, the Malian authorities have delegated defence of the state and its territory to international powers. These have established military bases on the Indigenous lands of Gao, Timbuktu, Kidal and Tessalit for the French Barkhane forces (4,500 men); Minusma (whose mandate has been extended until 30 June 2020)<sup>24</sup> (nearly 15,000 men<sup>25</sup>); and the EUTM Mali (European Union Training Mission).

The G5 Sahel Force,<sup>26</sup> hindered by a lack of training, commitment,

resources and also by corruption, has proved incapable of stemming the insecurity, which only worsened in 2019, in particular in the centre of the country. Jihadist groups carried out suicide attacks against the international forces (French Army, Franco-Malian patrols, Minusma),<sup>27</sup> resulting in dozens dead and injured, including civilians (Maliens and foreigners).<sup>28</sup> Finally, six foreign hostages are still being held by Islamist groups.

## Conclusion

Neither the 2013 French military intervention nor the contested re-election of the outgoing President in 2018, nor the presence of increasing numbers of foreign troops, nor even the reinforcement of logistical resources and training programmes for the Malian Army has managed to drive out the “terrorists” and re-establish peace. The violence is presented as “inter-ethnic” and “inter-tribal” and therefore forms part of a policy that is supported and funded by different interest groups, including the Malian government itself. The jihadists linked to drug trafficking have not ceased their cross-border activities, some in collusion with highly placed representatives in the Malian regime or other states in the region. The faltering Malian state (whose government was overthrown by a coup in April 2012) has been saved from disintegration purely by the deployment of international military forces and it seems, thus far, incapable of remaining in power without their support.

## Notes and references

1. 20,252,586 inhabitants (Populationdata.net)
2. Situation report 12/09/2019
3. See the January 2019 report from the international organisation *Publiez Ce Que vous Payez* (Publish What You Pay) and the article <https://mondafrique.com/main-basse-lor-mali/>
4. Despite some symbolic measures such as the installation of interim authorities, particularly in Kidal in August 2017 and the start of training for mixed patrols.
5. <https://www.jeuneafrique.com/757183/politique/mali-presentation-dun-nouveau-projet-de-revision-de-la-constitution/>
6. Report 1/10/10 (S/2019/782) from the UN Security Council
7. Coalition formed of the MNLA (Azawad National Liberation Movement), HCUA (High Council for Azawad Unity), and part of the MAA (Arab Movement for Azawad).
8. The Platform groups together the following movements: Tuareg Imghad and

- Allies Self-Defence Group (GATIA); Coordination of Movements and Patriotic Fronts for Resistance – formed of Ganda Koy, a majority Songha militia created following the 1992 National Pact, known for its violence against the “reds”, denoting the fair-skinned Tuareg and Moors; Ganda Izo and the Liberation Forces for regions of the north of Mali; the Arab Movement for Azawad (in part); Popular Movement for the Salvation of Azawad; Popular Azawad Front.
9. Hence the threat of sanctions for obstruction, used in January 2018 by the UN Security Council AFP 25/01/18
  10. “La Commission d’enquête internationale pour le Mali conclut sa deuxième visite dans le pays”. United Nations Peacekeeping, 10 March 2019: <https://peacekeeping.un.org/fr/la-commission-denquete-internationale-pour-le-mali-conclut-sa-deuxieme-visite-dans-le-pays>
  11. “Mali: le mandat des députés prolongé jusqu’en mai 2020”. Radio France Internationale, 28 June 2019: <http://www.rfi.fr/afrique/20190628-mali-le-mandat-deputes-prolonge-jusqu-mai-2020>
  12. “Mali: Boubou Cissé nommé Premier ministre”. Radio France Internationale, 23 April 2019: <http://www.rfi.fr/afrique/20190422-mali-boubou-cisse-nomme-nouveau-premier-ministre>
  13. *Human Rights Watch* 2020 Report
  14. The movement led by Iyad ag Ghali claims, in particular, the attack on military camps in Dioura on 17/03/2019 (30 dead), Boulíkessi from 30/09 to 1/10/2019 (more than 25 dead), and Indelimane on 1/11/ 2019 (53 dead)
  15. “Mali : plusieurs enquêtes ouvertes après la disparition de civils interpellés par l’armée”. L’Express, 31 December 2019: [https://www.lexpress.fr/actualite/monde/afrique/mali-plusieurs-enquetes-ouvertes-apres-la-disparition-de-civils-interpelles-par-l-armee\\_2113064.html](https://www.lexpress.fr/actualite/monde/afrique/mali-plusieurs-enquetes-ouvertes-apres-la-disparition-de-civils-interpelles-par-l-armee_2113064.html)
  16. *Human Rights Watch* 2020 Report
  17. “Mali: après la tuerie de Koulogon l’émotion est forte dans le pays”. Radio France Internationale, 3 January 2019: <http://www.rfi.fr/afrique/20190103-mali-insecurite-koulogon-peul-bankass-dozos-dogons>
  18. UNHCR Operational Update Oct. 2019
  19. UNHCR, Operational Update Mali Nov. 2019.
  20. “Vérité et Justice: Parcours Vers La Réconciliation”. Un Missions - United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), 11 December 2019: <https://minusma.unmissions.org/verite-et-justice-parcours-vers-la-reconciliation>
  21. *Human Rights Watch* Report 2019, p. 382
  22. UNICEF Mali Humanitarian Situation Report, 31 October 2019: <https://reliefweb.int/report/mali/unicef-mali-humanitarian-situation-report-31-october-2019>
  23. Whether struggles between armed groups, army raids, Barkhane air and land interventions, targeted assassinations of “terrorists” by the international secret services, jihadist attacks or suicide bombings.
  24. Resolution 2480 of the UN Security Council ([https://undocs.org/fr/S/RES/2480\(2019\)](https://undocs.org/fr/S/RES/2480(2019)))
  25. “Effectifs de la MINUSMA”. Un Missions - United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Décembre 2019: <https://minusma.unmissions.org/effectifs>
  26. Comprising five Member States of the G5 Sahel (Mauritania, Niger, Mali, Chad and Burkina Faso)
  27. Particularly against Minusma by Aqmi in January 2019 at Aguelhok in the north-east of Mali (10 dead and 25 injured among the Chadian contingent) and

against the Malian military camps: see note 9.

**28.** *Human Rights Watch* 2020 Report

**Hélène Claudot-Hawad** is a French anthropologist and linguist, honorary research director at the National Centre for Scientific Research. She is the author of numerous articles and works on the Tuareg world and has made a large part of her scientific production open access (<https://cv.archives-ouvertes.fr/helene-claudot-hawad>).



# Morocco



*The author is not responsible for the content of this map*



The Amazigh (Berber) peoples are the Indigenous Peoples of North Africa. The last census in Morocco (2016) estimated the number of Tamazight speakers at 28% of the population. However, Amazigh associations strongly contest this and instead claim a rate of 65 to 70%. This means that the Tamazight-speaking population could well number around 20 million in Morocco and around 30 million throughout North Africa and the Sahel as a whole.

The Amazigh people have founded an organisation called the “Amazigh Cultural Movement” (MCA) to defend their rights. It is a civil society movement based on the universal values of human rights. Today, there are more than 800 Amazigh associations throughout Morocco within the MCA.

The administrative and legal system of Morocco has been strongly Arabised, and the Amazigh culture and way of life are under constant pressure to assimilate. Morocco has, for many years, been a unitary state with a centralised authority, single religion, single language and systematic marginalisation of all aspects of the Amazigh identity. The 2011 Constitution, however, officially recognises the Amazigh identity and language. This could be a very positive and encouraging step for the Amazigh people of Morocco. After several years of waiting, Parliament finally adopted the Organic Law for the Implementation of Article 5 of the Constitution in 2019. Work to harmonise the legal arsenal with the new Constitution should now begin.

Morocco has not ratified ILO Convention 169 nor adopted the United Nations Declaration on the Rights of Indigenous Peoples.

## Organic law implementing Tamazight adopted

**A**fter several years of blockage and discussion in Parliament, the Organic Law implementing Tamazight as an official language of Morocco was finally passed on 25 July 2019. This law is an important step towards gaining official status of the Amazigh identity in

Morocco. This law now provides a legal framework for the Amazighs' linguistic and cultural rights. The next step is for these legal texts to be enforced and this will represent a great challenge both for the Moroccan government and for the Amazigh Cultural Movement.

## The land problem and climate change

With the growing mobility of Morocco's nomadic Saharan tribes due to desertification and climate change, land-related conflicts have become more acute in recent years. These tribes are now competing with the Amazigh populations of the south of Morocco for use of their lands, water and argan trees for their herds. This very often results in the destruction of, or at least damage to, these resources by the herds. This is not a new phenomenon but 20 years of drought has exacerbated the problem.

The government has taken no action to remedy this situation, protect the local Amazigh population or provide compensation for the damage done by the herds. Meetings held in 2018 with the Head of Government and Minister of Agriculture came to nothing.

Faced with this situation, the Amazigh population in question decided to join the Amazigh Cultural Movement (MCA) and, during 2019, organised large demonstrations in Rabat, Agadir and Casablanca to protest at the plundering of their assets and the government's inaction. On 17 February 2019, the AKAL (Land) Collective for Defence of the Rights to Land and Wealth organised a national march to Rabat, Taroudant, Casablanca and Souss.

The group issued a press statement<sup>1</sup> listing four grievances that would require legal action from the government:

- "The dispossession of lands in the context of agricultural projects";
- Overgrazing, which is affecting large parts of the Souss region. This is due particularly to the "mass" displacements of camel herds belonging to influential families from the Sahara. In this regard, the AKAL Collective has rejected the law on pasturing, which was not "produced in a participatory manner taking into account the region's customs";
- The Coordination denounced "the enclosure of lands by the High Commission for Water and Forests". According to protestors, this

will likely result in an uncontrolled proliferation of wild boar and venomous reptiles “aimed at promoting the forested nature of the region through the spread of these animals”; and

- Finally “to ensure the people of the region benefit from its wealth, in accordance with a plan that will provide viable infrastructure and create jobs, at a time when the failure of the development model has been noted by the highest authority in the country”.

In addition to these four demands, the AKAL Collective is also calling for action to protect the biodiversity from climate change, and for the preservation of the ancestral systems of the Indigenous populations.

As no action was forthcoming following the February march, a second march was organised for 25 November 2019 through the streets of Casablanca to denounce the state’s handling of pastoralism and its planning of pastoral and woodland grazing areas. The march was organised by the AKAL Collective with the involvement, in addition to activists from the Amazigh movement, of dozens of human rights and civil society organisations from the Souss region.

## **Immigration, rights and climate change**

“(...) Morocco, like other countries, is suffering the effects of climate change, with specific consequences due to its geographic position and the diversity of its ecosystems.”<sup>2</sup> The effects of climate change are more visible in the south of Morocco and in the mountains where the traditional Amazigh population lives. The population density in these areas has fallen considerably since the 1980s. Climate change has pushed people to emigrate to the cities or overseas. This migration has had a rapid and negative impact on the linguistic and cultural rights of the immigrants. By settling in other regions, the Amazigh have been forced to communicate in other languages and, over time, lose their own Amazigh language and culture.

## **Protecting traditional knowledge and climate change**

The Amazigh hold an enormous wealth of traditional knowledge that may be useful for combatting the effects of climate change. Several

ancestral systems can be distinguished by which to adapt to climate change, including:

- **Agadir:** a collective granary built and managed by the Amazigh to adapt to scarcity due to climate change, with crops being stored in abundant years and distributed in years of scarcity. The agadir is managed by the *Jmaâ*<sup>3</sup> on the basis of a very strict customary law supervised by a trusted person known as the “*Andaf*”. The *agadir* system enables tribes to store their harvests during good years and distribute the surplus during years of famine or difficulty.
- **Agdal** is a system for preserving communal natural resource spaces. It is a collective woodland grazing area managed by customary institutions active at different levels of the territory.<sup>4</sup> The *agdal* was a space for protecting the balance of biodiversity in which a religious aspect was sometimes used to impose respect for nature (argan trees considered holy).
- **Tanast** is a system of water management that enables the timing of irrigation. With the help of this tool, the Amazigh community were able to adapt to water scarcity. Each family would have the right to a quota. All disputes between people using the system were resolved by “*amghar n uwaman*” or a “water manager” who would refer to current customary law.
- **Pastoralism** is also clearly aimed at adapting to drought and the impacts of climate change. In vast arid and semi-arid areas, traditional knowledge of where there is vegetation is vital for climate adaptation. Climate change and advancing desertification, however, has meant that the rules of this system are no longer respected. Tribes from the south of Morocco now plunder at will.

## Notes and references

1. The “AKAL” Collective is an unstructured movement that coordinates local, regional and national bodies, supported by the Amazigh Cultural Movement, which itself comprises more than 800 organisations.
2. Royal speech on climate change policy in Morocco. Ministry delegated to the Minister of Energy, Mines, Water and the Environment, responsible for the Environment. 2014 p.4.
3. *Jmaâ*: Arabic word meaning the village committee elected each year by the tribal chiefs of the confederation of tribes in the region.
4. Auclair and Alifriqui, (2008), (village, tribal group)

**Dr. Mohamed Handaine** is the President of the Confederation of Amazigh Associations of South Morocco (Tamunt n Iffus), Agadir, Morocco. He is a university graduate, historian and writer, and board member of the Coordination Autochtone Francophone (CAF). He is a founder member of the Amazigh World Congress and has published a number of works on Amazigh history and culture. He is the President of the Indigenous Peoples of Africa Coordination Committee (IPACC), the IPACC North African Regional Representative and a member of the steering committee of the ICCA Consortium in Geneva. He is Director of the Centre for Historical and Environmental Amazigh Studies.



# Namibia



The Indigenous Peoples of Namibia include the San, the Ovatie and Ovatjimba, and potentially a number of other peoples including the Damara and Nama. Taken together, the Indigenous Peoples of Namibia represent some 8% of the total population of the country which was 2,533,244 in 2019. The San (Bushmen) number between 27,000 and 34,000, and represent between 1.06% and 1.3% of the national population. They include the Khwe, the Hai||om, the Ju|'hoansi, the !Kung, the !Xun, the Kao||Aesi, the Naro, and the !Xóǀ. Each of the San groups speaks its own language and has distinct customs, traditions and histories. The San were mainly hunter-gatherers in the past but, today, many have diversified livelihoods. Over 80% of the San have been dispossessed of their ancestral lands and resources, and they are now some of the poorest and most marginalised peoples in the country. The Ovatjimba and Ovatue (Ovatwa) are largely pastoral people, formerly also relying on hunting and gathering, residing in the semi-arid and mountainous north-west (Kunene Region) and across the border in southern Angola. Together, they number some 26,000 in total.

The Namibian government prefers to use the term “marginalised communities” when referring to the San, Otavue and Ovatjimba, support for whom falls under the Office of the President in the Division Marginalised Communities (DMC). The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of Indigenous Peoples. There is a final draft white paper on the rights of Indigenous and marginalised communities that is to be brought before the Cabinet soon. Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) when it was adopted in 2007 but has not ratified ILO Convention No. 169. Namibia is a signatory to several other binding international agreements that affirm the norms represented in UNDRIP, such as the African Charter on Human and Peoples' Rights (ACHPR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR).

Namibia, one of the most arid countries in the world, experienced significant climate change impacts in 2019. Not only did the country experience its worst drought in 90 years, it was also affected by high temperatures, erratic and low rainfall, occasional floods and outbreaks of livestock and wildlife disease.<sup>1</sup> In addition, Namibia was coping with its third year in a row of economic downturn, exacerbated by the drought. Severe socio-economic inequalities persisted albeit with a slight improvement in poverty rates.<sup>2</sup>

Freedom House ranked Namibia as one of the freest countries in Africa politically in 2019.<sup>3</sup> The Corruption Perceptions Index (CPI) of Transparency International placed Namibia 56th out of 180 countries.<sup>4</sup> The Mo Ibrahim Foundation's (MIF) Ibrahim Index of African Governance (IIAG) ranked Namibia number 4th out of 54 African countries in terms of overall governance in 2018<sup>5</sup> although their 2019 report, *"African Governance Report 2019: Agendas 2063 & 2030: Is Africa on Track?"*<sup>6</sup> noted deteriorating indicators for quality of education, property rights and transparency and accountability. Documents and investigations related to corruption in Namibia's fishing industry led by an Icelandic firm were released in November 2019, leading to the arrest of the Minister for Justice and Minister for Fisheries.<sup>7</sup>

In a national election held on 27 November 2019, Dr. Hage Geingob of the South-West African Peoples' Organization (SWAPO) was re-elected albeit with a lower majority than was the case in 2014.<sup>8</sup> The result was challenged by an independent presidential candidate, largely on the basis of the lack of an audit paper trail accompanying electronic voting machines.<sup>9</sup>

The Division of Minorities Communities (DMC) of the Office of the Vice President continued to provide support to the San, Ovaherero and Ovambo communities in the country. The DMC oversaw distribution of food and other goods as part of its responsibilities. At the local level, some families complained that they did not receive the full range of benefits through the government's Social Safety Net (SSN) programmes.<sup>10</sup> There were cutbacks in the support for marginalised students through the DMC's bursary programme because of budget shortfalls.<sup>11</sup>



## Policy issues related to Indigenous Peoples

Namibia is one of the few countries in Africa which has worked on policy with regard to Indigenous Peoples, a draft White Paper on the Rights of Indigenous Peoples in Namibia having been developed over the last seven years. The final draft was considered by government and community stakeholders at a meeting in Swakopmund in December 2019, supported by the DMC and the United Nations Department of Social and Economic Affairs. The draft was approved by the Office of the Attorney General and is now awaiting presentation to Cabinet and approval by Parliament.

Namibia took part in the United Nations Permanent Forum on Indigenous Issues' 18th annual meeting held in New York from 22 April – 3 May 2019. The Hon Kxao Royal |Ui|o|oo of the DMC, the only San person in the Namibian Parliament, attended the meeting along with Gerson Kamatuka of the DMC. A Khwe San employee of the DMC, Mr Bornface Mate, was nominated by government and accepted as a member of the Permanent Forum on Indigenous Issues from 2020 to 2022.

As a follow-up to Namibia's Second National Land Conference in 2018, the Presidential Commission into Claims on Ancestral Land Rights and Restitution<sup>12</sup> and related consultation processes on land issues saw visits to communities around the country, including San communities. The Commission's report on ancestral land is expected in 2020.

Media coverage highlighted strong participation by some San communities, especially San in Omaheke complaining of being labelled as "marginalised" and with poor access to land,<sup>13</sup> and Khwe and!Kung San within Bwabwata National Park objecting to their lack of rights and tenure.<sup>14</sup> The Khwe continued to press for a Khwe Traditional Authority to be recognised in Kavango East Region and Bwabwata National Park. There were also questions raised about the need for additional Ovahimba and Ovaturue Traditional Authorities in Kunene Region.

## Legal cases

There were three active legal cases involving San in Namibia in 2019. One of them, the Hai//om San class action legal case, involving Etos-

ha National Park and the Mangetti area of north-central Namibia, was dismissed by a panel of High Court judges on 29 August 2019 as they did not recognise the applicants as representatives of their community.<sup>15</sup> Shortly thereafter, an appeal of the decision was filed by the applicants in the case and the Legal Assistance Centre, which will be heard in 2020.

In the case of the illegal settlement and illegal fencing in the NꞤa Jaqna Conservancy, there was no implementation of the court decision passed in 2016. Sizable and increasing numbers of livestock illegally grazing and illegal fences remained in the area, and the NꞤa Jaqna Conservancy continued to document evidence. The case brought by the Ju/'hoan Traditional Authority and the Nyae Nyae Conservancy and Community Forest against six people accused of illegal grazing in Nyae Nyae was heard for a second time in the High Court, on 28 October 2019, revisiting eviction orders passed down by the High Court in November 2018. No final decision had been reached by the court as of the end of 2019.

The Herero-Nama legal case against Germany regarding the genocide in 1904-1907 was dismissed by the US federal court in New York. The case was appealed but no decision had been made by the end of 2019.

## Climate change adaptations

Namibia was involved in implementing climate change adaptive strategies in 2019. Non-governmental organizations such as the Nyae Nyae Development Foundation of Namibia, the Desert Research Foundation of Namibia, the Namibia Nature Foundation, and Integrated Rural Development and Nature Conservation were all involved in promoting climate-smart agriculture and conservation-oriented development programmes in various parts of the country. One aspect of these climate change strategies was the promotion of rainfed and irrigation gardens, careful soil and vegetation management, and the implementation of fire management strategies.<sup>16</sup> Human-elephant conflict (HEC) was a major challenge to communities in many parts of northern and north-eastern Namibia and elephant predation on gardens and water points expanded considerably in 2019. Water protection facilities were constructed in

N̄a Jaqna Conservancy, Nyae Nyae Conservancy, and Kunene Region to keep elephants separate from community water supplies.

## Tragic losses of San leaders and elders

There were some tragic losses of Ju/'hoan and Khwe San leaders and elders in traffic accidents in 2019.

In Nyae Nyae on 1 October 2019, two Ju/'hoan elders, one the wife of the Ju/'hoan Traditional Authority, Tsamkxao ̄Oma, //Uce /Ui, and another singer and musician, Nhakxa N!a'an, along with a University of Cape Town ethnomusicologist, Sonja Cato, died in a road traffic accident between Tsumkwe and Grootfontein.

Two Khwe community leaders from Bwabwata National Park in Kavango West Region, Joseph Muyanbango and Boyke Munsu, were killed in a road traffic accident on 2 October 2019.

## Women and youth

San, Ovahimba and Ovatie women made some small gains in 2019. Gender-based violence (GBV) was a topic addressed at several meetings in Kunene, Kavango West and Nyae Nyae. Women's involvement in national and local level women's rights organizations increased in Namibia in 2019.<sup>17</sup>

Youth were active in Namibia San Council meetings held in Namibia in 2019,<sup>18</sup> which continued to strengthen its governance and hold workshops, and which also launched a new brochure and website.<sup>19</sup> The San Youth Network (SYNet) was active in 2019, and meetings were held on San issues in communities including from Bwabwata, N̄a Jaqna Conservancy and Windhoek. A representative from SYNet took part in the DMC-UNDESA meeting held in Swakopmund in December 2019.

San youth organised a meeting to talk to the management team at the DMC with regard to the delayed monthly stipends of the marginalised community students. There was also an event on "Dialogue with political parties" organised by the Women's Leadership Centre (WLC) with San Young Women and the San Council in November 2019. The San Council and Museums Association is currently working on a San exhibi-

tion and a booklet with San youth and elders that will be launched on 20 February 2020 in Tsumeb.

The general outlook for minorities and Indigenous Peoples in Namibia can be termed guardedly optimistic, depending in part on the country's implementation of legal cases, the state of the Namibian economy, the actions of the government and NGOs regarding Indigenous and minority communities, and the severity of climate change in Namibia in 2020.

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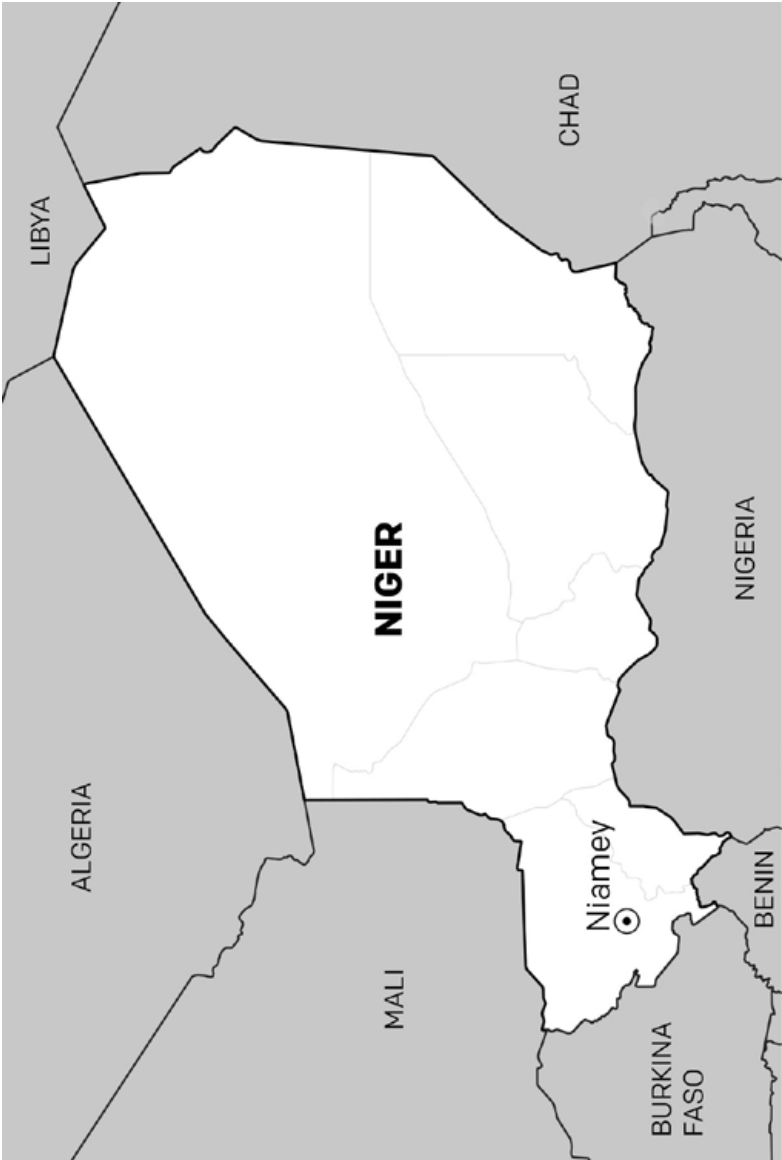
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**Robert K. Hitchcock** is a member of the board of the Kalahari Peoples Fund (KPF), a non-profit organization devoted to assisting people in southern Africa, [rkhitchcock@gmail.com](mailto:rkhitchcock@gmail.com)

**Ben Begbie-Clench** is a consultant working on San issues in Namibia and Zimbabwe [benbegbie@gmail.com](mailto:benbegbie@gmail.com)



# Niger



Niger's Indigenous Peoples are the Tuareg, Fulani and Toubou, all of them transhumant pastoralists. Niger's total population was estimated at 14,693,110 in 2009. Of the population, 8.5%, or 1,248,914, were Fulani, 8.3%, or 1,219,528, were Tuareg, and 1.5%, or 220,397, were Toubou.

The Fulani can be further subdivided into the Tolèbé, Gorgabé, Djelgobé and Bororo. They are mostly cattle and sheep herders although some of them have converted to agriculture since losing their livestock during the droughts. The Tuareg raise camels and goats and live in the north (Agadez and Tahoua) and west (Tillabéry) of the country. The Toubou are camel herders who live in the east of the country around Tesker (Zinder), N'guigmi (Diffa) and along the border with Libya (Bilma).

The June 2010 Constitution does not explicitly note the existence of Indigenous Peoples in Niger. The Tuareg, Fulani and Toubou are not considered a minority or marginalised communities but, in contrast, are treated like any other community in the country despite the problems associated with their nomadic way of life.<sup>1</sup>

Pastoralists' rights are set out in the Pastoral Code, adopted in 2010. Most importantly, this code includes an explicit recognition of mobility as a fundamental right, along with a ban on the privatisation of pastureland, which poses a threat to this mobility. A further important element in the Pastoral Code is the recognition of priority use rights in their pastoral homelands (*terroirs d'attache*). Niger has not signed ILO Convention 169 but did vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples.

## Climate change

In January 2019, Mr Peter Maurer, President of the International Committee of the Red Cross (ICRC), conducted an eight-day visit to the Sahel (Mali and Niger). On his return to Geneva, he noted:

*The effects of climate change are exacerbating inter-community conflicts in both Mali and Niger, resulting in a worsening of poverty, a decline in public services and the disruption of traditional ways of life. Tensions that have long pitted herders against farmers are intensifying due to climate change, with a decline in available productive land and water sources becoming ever more unreliable. Climate change is further complicating the situation in this region where under-development, endemic poverty, and widespread crime and violence are already exposing the population to immense risk.<sup>2</sup>*

Temperatures are increasing 1.5 times faster in the Sahel than in the rest of the world. Rainfall is irregular and the rainy season becoming ever shorter. According to UN estimates, around 80% of the Sahel's agricultural land is now degraded while some 50 million livestock-dependent people compete for the territory.

## **Land and natural resource management**

A workshop to launch the rural land policy drafting process was held on 21 March 2019. The workshop, organised by the Permanent Secretariat for the Rural Code with the technical and financial support of the UN Food and Agriculture Organisation (FAO), was aimed generally at launching the process for producing a rural land policy.<sup>3</sup>

The workshop was the result of a commitment made by the Niger government in June 2018 with regard to producing a rural land policy and it has been supported by the FAO. Implementation is envisaged to begin in 2020. Its aims are as follows:

- to maintain the status and vocation of the pastoral zone;
- to establish an interministerial committee to review and harmonise all texts governing rural land;
- to increase the state's budgetary allocation so that rural land issues are taken into better consideration;
- to operationalise the rural land courts;
- to create a national multi-actor watchdog on rural land issues; and
- to ensure technical and financial support for the process of producing and implementing the rural land policy.<sup>4</sup>



On 3 August 2019, the Billital Maroobe Network ran a capacity building workshop in Dosso for magistrates from the regions of Dosso and Tillabéry on issues of pastoral land law in Niger.

From 12-14 November 2019, an international conference was held in Niamey on “Preventing and managing conflict around natural resource governance in West Africa: challenges and opportunities”. This conference was organised by the Civil Service for Peace and the Frexus Project, both supported by GIZ (*Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH*). It was aimed at informing and creating synergies among the different actors in West Africa through a sharing of their conflict prevention, reduction and transformation capacities with regard to natural resource management.<sup>5</sup>

In November 2019, the Billital Maroobe Network published its newsletter on the pastoral situation in the Sahel. For Niger it highlighted:

- A fodder deficit in the pastoral zone of northern Niger;
- A persistence, and even aggravation, of insecurity and difficulties in accessing natural resources in the tri-border area (Sahel and east of Burkina Faso, Gao in Mali, Tillabéry in Niger), and the Mali-Niger cross-border region;
- Herds have not yet generally begun cross-border transhumance and are still in their pastoral homelands (*terroirs d'attache*); and
- Market prices are largely satisfactory, stable or increasing for livestock and falling for grain, hence favourable terms of trade for pastoralists.<sup>6</sup>

## Refugees

On 12 September 2019, the World Bank approved support of US\$80 million to Niger for refugees and host communities. Niger currently has more than 280,000 displaced people on its territory, including almost 158,000 refugees, 109,000 internally displaced persons and 16,000 Niger citizens who fled Nigeria to escape Boko Haram. The Refugee and Host Community Support Project (PARCE) aims to help Niger improve refugees' and host communities' access to basic services and economic opportunities in 15 communes of the Diffa, Tahoua and Tillabéry regions, and to provide institutional support to the local, regional and central authorities in these three regions and Agadez.<sup>7</sup>

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**Saidou Garba Bachir** is a journalist and photographer specialising in development, gender, youth and food security. He is communications and mobilisation coordinator for the Association for the Revival of Pastoralism in Niger (Association pour la Redynamisation de l’Elevage au Niger / AREN).

**Patrick Kulesza** is Executive Director of GITPA, the Groupe international de travail pour les peuples autochtones. Since June 2019 he has been coordinating a publication, as part of GITPA’s Indigenous Issues Collection, on “The Future of Fulani Nomadic and Transhumant Pastoralists in the Sahel and Central Africa”.



# Republic of the Congo



Situated in Central Africa, at the heart of the second largest forest in the world and straddling the equator, the Republic of Congo covers 341,821 km<sup>2</sup>.

The Congolese population numbered 5,279,517 million in 2018 with an annual growth rate of 3.68%. It comprises two distinct groups: the Pygmies and the Bantu. The Pygmies are generally nomadic or semi-nomadic hunter/gatherers although some have now settled on the land and are working on agricultural or livestock farms, in commercial hunting or as trackers, prospectors or workers for the logging companies.<sup>1</sup>

The last national census, conducted in 2007, estimated that the Pygmy population accounted for 1.2% of the population, or 43,378 individuals. A UN study dating from 2013 has a figure of 2 per cent, or approximately 100,000 individuals. The government itself gives a much wider possible range, between 1.4 and 10% of the population.

In actual fact, we do not know precisely how many Pygmies there are in the Congo. The government has never made any effort to find out. It justifies this lack of action by warning of the possible consequences that an ethnic census could have.

These people's name varies according to the department in which they live: Bakola, Tswa or Batwa, Babongo, Baaka, Mbendjele, Mikaya, Bagombe, Babis, etc. Although they are found throughout the Congolese territory, the Pygmies are more concentrated in the departments of Lékoumou, Likouala, Niari, Sangha and Plateaux.

The Congo is a highly forested country (23.5 million hectares of forest, or 69% of the national territory) with a low rate of deforestation and forest degradation, only 0.05% or around 12,000 hectares being felled per year (CNIAT 2015). Forest cover is not uniform across the whole country but varies according to population density, transport infrastructure, forest wealth, historic exploitation and the existence of urban areas.<sup>2</sup>

While not an exhaustive list the following are some of the texts that form the legal framework applicable to Indigenous populations:

- the Law on Wildlife and Protected Areas (28 November 2008)
- the Law governing the Forest Code (20 November 2000)
- the Law on Environmental Protection (23 April 1991)
- the Law setting out the general principles applicable to private and state-owned land regimes (26 March 2004)
- the Law establishing the agricultural land regime (22 September 2008)
- the Decree establishing forest management and use conditions (31 December 2002)

On 25 February 2011, the Republic of Congo became the first country in Africa to enact a specific law on Indigenous Peoples: the Law promoting and protecting Indigenous Peoples' rights in the Republic of Congo.

## Support for the Indigenous population

On 7 February 2019, the World Bank approved additional funding for the Lisungi project, a project that provides cash payments to households, particularly Indigenous families, to help them access health and education services. This project extension will enable direct cash payments to be made to refugees and local households on the condition that they send any children under the age of 14 to school and have their health monitored.<sup>3</sup>

On 22 February 2019, the Minister of Justice, Human Rights and the Promotion of Indigenous Peoples, Aimé Bininga, signed a Memorandum of Understanding with NGOs working in the area of human rights. The aim of this agreement is, among other things, to improve dialogue, exchange and consultation between the Ministry and the NGOs and to encourage joint actions to promote and protect human rights. The coordinator of the Congolese National Network of Indigenous Populations (RENAPAC), Jean Nganga, considers "this framework for exchange to be highly beneficial for all. Signing this partnership does not mean that

we are siding with the state, as this document was drawn up in cooperation with the Ministry of Justice to ensure there is no bias”.<sup>4</sup>

On 3 September 2019, the government signed a letter of intent for the funding of an investment plan for the REDD+ strategy in the Republic of Congo. This funding provides, in particular, for the implementation of projects and programmes that will encourage the sustainable management of forest ecosystems; a land tenure system that favours recognition of traditional rights to land; the protection and sustainable management of the country’s peatlands, banning all drainage and drying out; carbon stock enhancement through reforestation and agroforestry together with the development of renewable energies.<sup>5</sup>

On 19 September 2019, the French Association of the Order of Malta decided to extend its medical and social assistance projects for Indigenous and Bantu peoples in Likouala department, northern Congo, to cover the 2020-2023 period. This second phase of the project is also aimed at improving the Aka people’s living conditions by offering agricultural income-generating activities through the inclusion of a Congolese association for the promotion and enhancement of forest and related products. It will be responsible for communicating with and training the people in peasant strengthening and organisation.<sup>6</sup>

## **Exemplary legal framework but little progress**

On 24 October 2019, concluding a visit made at the invitation of the Government of Congo, the UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, presented her report in Brazzaville on the current situation of the country’s Pygmy population. The aim of the mission was to assess progress made in promoting and protecting Indigenous Peoples’ rights, particularly the efforts made nationally to implement the recommendations of the report of her predecessor, James Anaya, at the end of his visit to the Congo in 2010.

The UN Special Rapporteur noted that there had been no major changes in the Pygmies’ situation since this 2010 report, despite the “exemplary” legal framework adopted in 2011. “Law No. 5-2011 on the Promotion of Indigenous Peoples establishes a solid legal basis for enabling Indigenous Peoples to enforce their rights, protect their culture

and their livelihoods, access basic social services and protect their civil and political rights,” she emphasised.

In 2015, the promotion and protection of Indigenous Peoples was recognised in Article 16 of the Constitution. In July 2019, six draft decrees out of nine were adopted to implement the 2011 law on Indigenous Peoples, anticipating special measures to facilitate their civil registration and their access to basic social services and education. A Department for the Promotion of Indigenous Peoples was created with offices in 11 of the country’s departments. “These developments have established an impressive legal and administrative architecture since my predecessor’s visit in 2010. Most of my concerns thus focus on the speed, scope and effectiveness of the measures aimed at implementing these legal provisions to respect, protect and achieve Indigenous Peoples’ rights in practice,” the Special Rapporteur noted.

Throughout her visit to the departments of Sangha, Lékoumou, Pool and Plateaux, access to land and resources, primary health care and education as well as employment were recurring topics of conversation. Victoria Tauli-Corpuz also noted her concern at the limited involvement of Indigenous Peoples in public decision-making as well as the sexual exploitation of young Indigenous women.

With regard to the widespread discrimination, exclusion and marginalisation of Indigenous Peoples from Congolese social, economic and political life more generally, Ms Tauli-Corpuz noted:

*My predecessor’s observation that Indigenous Peoples occupy non-dominant positions in Congolese society and have suffered and continue to suffer threats to their distinct identity and their fundamental rights clearly remains valid, to an extent not experienced by the Bantu majority.*

Most government officials rejected this comment, stating that there was no discrimination towards Indigenous Peoples and that the challenges facing them were not exclusive to them.

“I cannot agree that there is no discrimination or exclusion of Indigenous Peoples in the Congo,” continued the Special Rapporteur. She quoted the National Action Plan for Improving the Quality of Life of Indigenous Peoples (2019-2022), which indicates that Indigenous Peoples

*... still suffer marginalisation and discrimination in all areas of social life; their access to basic social services is a bottleneck, particularly in the most remote areas, including education, health, culture, sport, water and energy, but also lands and resources and civil and political rights.*

Illiteracy is widespread. According to the statistics of the Ministry for Primary and Secondary Education and Literacy, Indigenous teenagers represent only 0.05% of pupils in lower secondary and 0.008% of pupils in higher secondary school. Girls are particularly excluded from education. Ms Tauli-Corpuz revealed that:

*Eight years on from the adoption of Law No. 5-2011, illiteracy remains widespread in the Indigenous communities, including in Sangha. The UNFPA indicates that 65 per cent of Indigenous children aged 12 to 16 do not go to school, as opposed to the national average of 39 per cent. Better school registration levels are needed to ensure they are included in decision-making spheres.*

“Mockery and discrimination of Indigenous children at school, a lack of motivation due to a school programme that is not representative of their culture plus wider and systematic discrimination that offers children few opportunities to succeed in society, are all contributing to school drop-out rates,” noted Ms Tauli-Corpuz’s report.

A lack of financial resources remains the primary reason for poor school attendance and progress among Indigenous children, hence the need to establish culturally appropriate educational programmes that will encourage Indigenous Peoples to continue their studies, particularly giving them the means to disseminate their rights and their own traditional knowledge.

The report concluded that:

*Indigenous Peoples must not be considered a burden or obstacle to development or as backward and primitive people. They should be considered as human beings with the dignity and the same rights as any other person. Moreover, they play an extremely important role in safeguarding and protecting the biodiversity and forests. They are a reference point given*



*their traditional knowledge with regard to natural resource management, climate change mitigation and natural and traditional medicine, and they improve the cultural and linguistic diversity of our countries.*

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**Emmanuel Bayeni** is an expert in protecting Indigenous Peoples' rights working with international organisations (UN agencies, European Union, etc.) and non-governmental organisations. He is a graduate in international and European law on fundamental rights (Nantes University), political science and international relations (Jean Moulin University, Lyon III) and human rights and humanitarian action (Catholic University of Central Africa in Yaoundé). He has also qualified in History and Journalism (Marien Ngouabi University in Brazzaville). He runs the Centre for Human Rights and Development (CDHD). He coordinated the drafting of Congo's Law No. 5-1022 of 25 February 2011 on the promotion and protection of Indigenous Peoples' rights, and facilitated the different tasks of drafting successive plans to improve the quality of life of Indigenous populations (2009-2013; 2014-2017), and the plans to create the Congolese National Network of Indigenous Populations (RENAPAC).

**Patrick Kulesza** is Executive Director of GITPA (Groupe International de Travail pour les Peuples Autochtones - [www.gitpa.org](http://www.gitpa.org))



# Rwanda



The population of the Batwa in Rwanda is estimated at between 25,000 and 30,000,<sup>1</sup> which is less than 1% of the approximately 12.4 million people in Rwanda as of 2019 (National Institute of Statistics of Rwanda). Post-genocide law prevents the collection and dissemination of disaggregated data by ethnicity and therefore exact numbers of the Batwa cannot be calculated. Although the Rwandan government has attempted to target extreme poverty, the Batwa remain the most marginalised and socio-economically disadvantaged group in the country. In Rwanda, the Batwa are also known as: “Potters”, an occupation historically associated with them; the “Historically Marginalised People,” a non-ethnic reference to their second-class status throughout Rwandan history; and *abasigajwe inyuma n’amateka* (the ones who have been left behind by history). Outside of Rwanda, the Batwa are known as Twa, “Pygmies” (a pejorative term), forest people and (former) hunter-gatherers.

The Batwa lack robust representation in governance structures and currently have only one Senator officially representing them in the National Senate. This position is one of eight appointed by the President to represent “historically marginalised” groups. Transitional justice efforts implemented by the Government of Rwanda after the 1994 genocide have eliminated ethnic designations, rejected the recognition of special categories of the population and criminalised any speech or action deemed “divisionist” given the history of divisive policies and rhetoric that led up to the genocide. The Batwa are therefore not officially recognised as an Indigenous group nor given rights and protections as such. Rwanda is a State Party to the following charters: ACHPR, ACRWC, ICESCR, ICCPR, CERD, CEDAW, CRC, and others; however, the country has not ratified UNDRIP or ILO Convention 169.<sup>2</sup>

**T**he Batwa are widely recognised as the Indigenous or autochthonous people of the Great Lakes Region of Africa and their ancestral territories are in the forests surrounding Lake Kivu in Rwanda,

Uganda, Burundi and the Democratic Republic of Congo (DRC). They were evicted from the forests of western Rwanda in waves of transnationally influenced or mandated fortress conservation and development efforts throughout the 20th century aimed, in part, at protecting the region's endemic and endangered species - especially the famed mountain gorillas. Before full eviction from the forests in the 1970s – 1990s, the Batwa relied on the resource-rich forests for their sustenance, livelihoods, spiritual activities and identity. Much of their traditional territory has now been turned into three of the country's national parks – Volcanoes, Gishwati-Mukura and Nyungwe – depositaries of a majority of Rwanda's biodiversity and which generate significant tourism revenue.

## **Lack of recognition, exclusion and marginalisation**

The Rwandan government has banned the use of ethnic references and identities in an attempt to prevent a return to ethnic violence and in order to promote national citizenship as the only necessary identity in Rwanda today. The government also refuses to recognise special categories of the population, including Indigenous people, as a part of unity and reconciliation efforts. Speech or action deemed "divisionist" is criminalised and potentially carries heavy fines and/or lengthy prison sentences if convicted. Various constitutional laws dating back to 2001 support these policies and continue to be enforced in many spheres of public life.

The implications of Rwandan identity laws have been widely debated;<sup>3</sup> however, for the Batwa these laws preclude any opportunities to claim Indigenous status and associated rights, resources and representation. Lack of official Indigenous recognition has made it difficult to counter discrimination and dispossession or to protect their land, livelihoods and distinct culture. The Batwa have very little political representation, especially at lower levels of government, which means they are largely excluded from the decision-making processes that affect their lives.

Problems of inequality for the Batwa in Rwanda persist despite attempts by the government and civil society to eliminate them. In 2019, many Batwa continued to face marginalisation, poor health and living conditions, a loss of land and livelihood, and a lack of education. There

are noticeable differences in the lives and conditions of urban and rural Batwa, although both face challenges in terms of meeting basic needs. Many Batwa in rural areas face inadequate housing, outright discrimination, a lack of food security, lack of access to potable water, difficulty attending school, under/un-employment and landlessness. Their urban counterparts face many similar challenges but gain from having greater access to modern conveniences and resources, increased employment opportunities, increased access to education and educational support, and greater integration into society.

## **Documentation of the situation of the Batwa**

In 2019, a large-scale assessment was carried out by Batwa-supporting organizations African Initiative for Mankind Progress (AIMPO), Women's Organization for Promoting Unity (WOPU), and Minority Rights Group International (MRG), with funding from the European Union,<sup>4</sup> in order to understand the inclusion and involvement of Batwa in various socio-economic and political programs and to gauge their understanding of human rights. Some of the key findings of this report indicate that the Batwa's knowledge of human rights is very basic and violations of these rights are rarely reported. This is due to their belief that no proper action will be taken. The assessment demonstrates that the Batwa are less integrated into the government's social and political programs and benefit less from them than their non-Batwa counterparts. Another finding demonstrates that Batwa women face double marginalisation and have little recourse to justice, education or economic opportunities. Finally, lack of land and poverty continue to be key and ongoing issues facing the Batwa.

On 5 April 2019, the Washington Post published an article detailing the exclusion of Batwa survivors from genocide commemoration events.<sup>5</sup> Twenty-five years after a devastating genocide, the Batwa's experiences are never mentioned in commemoration events even though roughly one-third of the Batwa people in Rwanda were killed. Further, they cannot access any funds or opportunities meant for survivors. This is yet another example of the erasure Batwa people face in Rwanda.

## Livelihoods

Un- and under-employment continued to be a significant problem in Rwanda in 2019 but Batwa people suffer disproportionately due to discrimination and a lack of education and land. One common income-generating activity that is historically associated with the Batwa is pottery making. Handmade clay pots are often used for cookware and décor; however, now that plastics and metal are ubiquitous, clay pots are purchased far less frequently. Further, obtaining the clay needed to make pots has become increasingly difficult as many of the valleys where clay is found are now being used to cultivate rice or for other development projects. On top of this, cooking pots then only sell for around 50-150 FRW, equivalent to USD\$0.10 or USD\$0.15. Despite these obstacles and low prices, many Batwa communities throughout the country continue to make pottery.

One potential benefit to maintaining this traditional activity is the ability to form cooperatives or associations to make and sell pottery collectively in a known and accessible location. Pottery making experiences with Batwa communities are also beginning to form part of cultural tourism enterprises whereby foreigners can come and make a pot with Batwa potters, who often also showcase their unique singing and dancing. This has been done in the capital city of Kigali successfully for several years now at a large pottery cooperative. This cooperative has been successful largely because of tourism, local and foreign customers, a nearby source of clay, and a grazing area for livestock, which generates additional income. Unfortunately, as high-end tourism becomes more popular in Rwanda, new attractions threaten to displace the Batwa potters. In Kigali, this cooperative is currently vulnerable to the large-scale expansion of the Kigali Golf Club, which will likely require the removal of this cooperative to make way for a brand new 18-hole golf course.<sup>6</sup> At the time of writing, it remains uncertain when the cooperative will be removed and if it will be relocated.

## Conservation and tourism

Beginning in 2018, the Rwanda Development Board's (RDB) tourism revenue sharing (TRS) program increased its investment back into

surrounding communities from 5 to 10% of tourism revenue. The basic premise of TRS is that access to quantifiable benefits from tourism will encourage local communities to support conservation and that this will help alleviate poverty as well as promote and sustain biodiversity conservation. While this is an important and generous gesture, many Batwa living around the parks fail to benefit from TRS because TRS money is designated for cooperatives and associations, which have costly - and often prohibitive - start-up and membership fees.

The cultural tourism industry is also growing in Rwanda alongside high-end tourism venues. Singing, dancing and craft-making are becoming more popular stops on the tourism circuit but, again, these are often operated at the cooperative level leaving Batwa artisans without access to funding. TRS at the cooperative rather than household level disadvantages Batwa communities living around the park and prevents them from accessing TRS funds. Given that the forests, which have now become national parks visited by thousands of tourists each year, are the Batwa's ancestral territories, these exclusions are especially grievous.

## **Housing and landlessness exacerbated by climate change actions**

Eviction from the resource-rich forests and subsequent forced relocation into cash-poor village settings has had detrimental effects on the social and physical health of the Batwa people. Further, the 2009-2011 *Bye Bye Nyakatsi* initiative destroyed all thatched-roof homes of Batwa families. The government's intention was to replace all thatched-roof huts with mud-brick, tin-roofed homes but irresponsible action on the part of some local authorities led to periods of homelessness, inadequate construction and/or no roofing materials for many Batwa communities. This change left affected families more vulnerable to cold weather and rain damage or destruction of their new homes.

2019 saw few signs of progress or benefits in terms of housing and landlessness for the Batwa in Rwanda. In addition to their long-standing discrimination and marginalisation, recent climate change mitigation strategies implemented by the government have evicted Batwa and many other poor people from their homes in valleys and other areas prone to flooding or landslides. Heavy rains have made some of these



areas dangerous, so relocation is necessary; however, the relocations were extremely poorly executed. Many families were only given a very short amount of time - from a few minutes to a few hours - to remove their belongings from their homes before they began to be destroyed and were provided with no compensation or alternative accommodation as required by law, forcing many to sleep outside in bad weather. While these climate-related policies were not directly targeted at the Batwa, they suffer disproportionately from them as they are an already very poor and vulnerable group.

## **Education**

As a part of the rigorous development goals of Rwanda's Vision 2020 program, primary education has been free to all families for several years. While this is a generous investment in Rwanda's future, this goal remained difficult to realise for many Batwa families in 2019. Uniforms, books and school supplies have to be purchased for each child by his or her family and school children must be adequately fed to be able to perform in school. Chronic poverty in many Batwa communities continued to prevent children from remaining in school in 2019. Dropout rates among Batwa in primary and secondary school remained high due to financial insecurity, lack of adequate food and supplies, and discrimination.

## **Civil society organizations**

Several grassroots organizations led by Batwa people have continued to support the Batwa in 2019 in terms of education, agriculture and integration into broader society, although there is still much to be done to improve their conditions. These organizations have benefitted from relationships with larger international and non-governmental organizations, some of which offer the Batwa links to transnational Indigenous and minority advocacy networks. However, because of the constraints on political speech and action surrounding ethnic and Indigenous labels, these organizations must be extremely cautious in their activities. On several occasions in the past, the Rwandan government has pre-

vented organizations from explicitly targeting Batwa with workshops or training on the grounds that it is divisive and exclusionary and not in line with the promotion of *ndumunyurwanda* – pan-Rwandan identity.

## Batwa and the “Historically Marginalised” label

Constitutional laws that prevent the use of certain identity labels have prevented the Batwa and those who aim to help them from claiming Batwa ethnic and Indigenous identity. “Historically Marginalised People” (HMP) has been used widely for several years to identify the Batwa, although this label is often contested by some Batwa. In Nyaruguru district, Batwa villagers conveyed their wish to stop being called HMP because it still identifies them as different and highlights the discrimination they have faced for generations.<sup>7</sup> In 2019, Batwa communities were surveyed about the “Historically Marginalised People” label and it was found that the meaning and usefulness of this label was unclear to many Batwa communities.<sup>8</sup> Some have argued that this label singles them out as different from others while others say that they are still marginalised, and not just historically. Many would just like to be called “Batwa” but understand that doing so does not conform to the government’s wishes for a non-ethnic Rwanda.

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**Anna Kamanzi** is a PhD candidate in the Department of Anthropology at the University of California, Irvine. She can be reached at mail to: [akamanzi@uci.edu](mailto:akamanzi@uci.edu)



# South Africa



South Africa's total population is estimated at around 50 million people, and Indigenous groups make up approximately 1% of this figure. Collectively, the various African Indigenous communities in South Africa are known as the Khoe-San/Khoisan, comprised of the San and the Khoekhoe/Khoi-Khoi. The main San groups include the Khomani San who mainly reside in the Kalahari region, and the Khwe and Xun mainly in Platfontein, Kimberley. The main Khoi-Khoi groups consist of the following: the Nama who live primarily in the Northern Cape Province; the Koranna who live mainly in the Kimberley Free State province and some parts of Western Cape; the Griqua in the Western Cape, Eastern Cape, Northern Cape, Free State and Kwa-Zulu-Natal provinces; and the Cape Khoekhoe in the Western Cape and Eastern Cape, with growing pockets in the Gauteng and Free State provinces. In contemporary South Africa, Khoikhoi and San communities are engaged in a range of unique socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have begun deconstructing the racial categories of the Apartheid system. Previously, many members of the Khoikhoi and San communities were classified as "Coloured", a misnomer that grouped together multiracial ethnic groups. Many "Coloured" people are now exercising their right to self-identification by identifying themselves as San and Khoi-Khoi or Khoe-San. Self-identification amongst Indigenous groups is a right entrenched in Article 33 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which South Africa is in favour of adopting. However, the country has yet to ratify the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169), which is the major binding international convention concerning Indigenous and tribal peoples and was a precursor to the UNDRIP.

## Climate change

Indigenous and vulnerable communities are and will continue to be most affected by the climatic and ecological crises that await South Africa and the world. South Africa's Second National Climate Change Report of 2016 reported that the country is especially vulnerable to the impacts of climate change. Water is the primary medium through which the impacts of climate change are felt in South Africa according to the National Water Resource Strategy (Department of Water Affairs, 2013). Increases in climate variability and climatic extremes are impacting both water quality and water availability through changes in rainfall patterns, with more intense storms, floods and droughts; changes in soil moisture and runoff; and the effects of increasing evaporation and changing temperatures on aquatic systems. South Africa has been experiencing a serious drought since 2015, with associated crop losses, water restrictions and impacts on food and water security. Curbing climate change while simultaneously responding to the unavoidable impacts of greenhouse gas emissions, requires substantial and sustained reductions in emissions which, together with climate adaptation, is the only way to limit climate change risks.<sup>1</sup>

## The Kalahari Desert: Crying for water

*One South African Indigenous community feeling the effects of climate change, is the San from the Southern Kalahari in the Northern Cape. It is currently the home of members of the Khomani Communal Property Association, a group of Saa (or San) people that received back a small portion of land during 1999. It was land that their ancestors were dispossessed of during colonial times. Only three years after the land was awarded back to the people, however, it was placed under government administration. This process involved them registering their communal land under the Communal Land Association with very complicated and technical governance systems. These administrative systems were out of sync with how these communities' priorities were. This process result-*

*ed in their communal land being under court administrative status and in the San community not being able to exercise true self-governance of their ancestral land. Rather, the court appointed an administrator to make those self-governance decisions, and these foreign governance processes imposed on the people did not work. Today they live on a small portion of land due to land demarcation disputes not being resolved and they continue to face daily exploitation and harassment by police forces.*

*Not only do they face issues like police brutality, but they are also subject to huge environmental changes. Their livestock is their only form of income and their main source of food, and this is being depleted by droughts and desertification. While there is an outcry to support commercial farmers in South Africa, who are struggling because of the droughts, the small-scale subsistence farmers are forgotten. Water is a constitutional right for all in South Africa but is a resource that is withheld from the community. A water pipe providing fresh water all the way from the Orange River runs right through the land of the Khomani Communal Property Association but does not provide water to the people who are in desperate need of the resource. – Reflection from San Youth from Kalahari, Ivan Vaalbooi.<sup>2</sup>*

## **Khoikhoi and San conclude historic benefit-sharing agreement with the South African rooibos industry**

On 1 November 2019, following nine years of negotiations and advocacy, the world's first industry-wide benefit-sharing agreement was launched in South Africa between the Khoikhoi and San, and the South African Rooibos industry.

This agreement legally originates from the Nagoya Protocol, an international supplementary agreement to the UN Convention on Biological Diversity (CBD). Article 1 sets out that one of the fundamental objectives of ABS is the fair and equitable sharing of the benefits arising out of the use of Indigenous biological resources as well as the use of communities' traditional knowledge. A central feature of this agree-

ment incorporates free, prior, and informed consent for access to their traditional knowledge.

Throughout 2014, in the course of negotiations, the South African government commissioned an independent study that concluded there was no evidence to dispute the claim by these communities since the Khoikhoi and the San are the traditional knowledge holders to the uses of Rooibos. As a result, the Khoikhoi and San people were able to get recognition as traditional knowledge holders to the uses of Rooibos. The report based its conclusion on the fact that the areas where Rooibos is found are the areas in which the Khoikhoi and San historically lived.<sup>3</sup>

The National Khoi & San Council represented the interests of some 30 Indigenous communities, inclusive of the Rooibos Indigenous farming communities. The South African San Council represented the four San communities from South Africa.

The agreement recognises the Khoikhoi and San peoples as the traditional knowledge holders to the uses of Rooibos, an Indigenous plant species found only in the Cederberg region of South Africa. The agreement is the basis from which the Khoikhoi and San communities of South Africa will have access to benefits as a percentage contribution from the commercialisation of Rooibos by the South African Rooibos industry.

After an extensive process of negotiations, the agreement was finally concluded on 25 May 2019 and launched in November 2019.<sup>4</sup>

*Our dignity is being restored in the land of our forefathers by recognising our Khoikhoi ancient traditional knowledge on rooibos. Our people are happy and our land healed. – Stanley Peterson, National Khoi & San Council, negotiator in the Rooibos case.*<sup>5</sup>

## Traditional and Khoi-San Leadership Act 3 of 2019

On 28 November 2019, President Cyril Ramaphosa signed into law the Traditional and Khoi-San Leadership Act 3 of 2019 (TKLA). This legislation recognises both traditional and Khoi-San communities; their leadership positions and any withdrawal of such recognition; regulatory powers of the Minister and Premiers; provisions for transitional arrange-



ments; powers to amend certain acts; provisions for the repeal of legislation; and any other matters connected therewith.<sup>6</sup>

The TKLA is a key beginning for most of the Khoikhoi and San communities, offering a first form of legislative recognition and inclusion by the state. This law is a long-awaited piece of legislation for the majority of Khoikhoi and San communities as it is a first form of recognition bringing them on par with other cultural communities in South Africa. The Khoikhoi and San communities view it as an opportunity for their communities to also be formally recorded and recognised as existing in South Africa. Practically, it means they now also enjoy some form of access to justice by being able to participate formally in different spheres of government. They also see it as a key entry point for starting the discussion around their land and language struggles. It has been a long-awaited piece of legislation for the Khoikhoi and San who have been in negotiations with the South African government for the last 20-plus years for constitutional recognition as Indigenous communities living in South Africa with historical connections to language, culture and environment.<sup>7</sup>

Whilst the Khoikhoi and San Indigenous communities hold these ideals through the proclamation of the TKLA, there is a movement of activists within the non-governmental community opposing the commencement of this law because of its potential impact on previously recognised communal land communities.

## Conclusion

The Khoikhoi and San communities have important challenges to contend with as they are not formally included as an Indigenous cultural community in South Africa, and their Indigenous languages are not recognised as official languages in South Africa. A moratorium was placed on all land claims post-1998 until the first land claims (pre-1998) are resolved, a process that will take over three generations to finalise before the Khoikhoi and San can claim land back. There is now an organised civil society movement planning to challenge the TKLA before the court, even though this law was potentially the Khoikhoi's and San's key opportunity for some form of inclusion as part of the state apparatus and them having access to justice. It was accepted by the National Khoisan

Council that the law was not perfect, but it was a start for the only communities left outside of South Africa's constitutional system. What complicates matters even more is that the world is facing its biggest climate and ecological crises unfolding soon. How are they and other marginalised communities in South Africa going to adapt and enforce their rights under these circumstances?

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**Lesle Jansen (LLM, LLM)** is an African Indigenous lawyer from South Africa. She is an Indigenous expert member of the Working Group on Indigenous Populations/Communities in Africa of the African Commission on Human and Peoples' Rights and is currently working with a team of environmental lawyers called Natural Justice. Lesle is based in Cape Town. Email: [lesle@naturaljustice.org.za](mailto:lesle@naturaljustice.org.za)



# Tanzania



Tanzania is estimated to have a total of 125-130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as Indigenous Peoples, four groups have been organising themselves and their struggles around the concept and movement of Indigenous Peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to determine, since ethnic groups are not included in the population census, population estimates<sup>1</sup> put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000<sup>2</sup> and the Akie at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalisation. They also experience similar problems in relation to land tenure insecurity, poverty and inadequate political representation.

Tanzania voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 but does not recognise the existence of any Indigenous Peoples in the country and there is no specific national policy or legislation on Indigenous Peoples *per se*. On the contrary, a number of policies, strategies and programmes that do not reflect the interests of the Indigenous Peoples in terms of access to land and natural resources, basic social services and justice are continuously being developed, resulting in a deteriorating and increasingly hostile political environment for both pastoralists and hunter-gatherers.

## Shrinking space for civil society

**I**n 2019 the situation of Indigenous Peoples continued to be challenging given the general situation in Tanzania with decreased freedom of expression and a shrinking space for civil society. Two major human rights institutions: Amnesty International<sup>3</sup> and Human Rights Watch<sup>4</sup>

jointly released their reports on Tanzania which documented a serious closure of civic space and freedom of expression as well as violations of human rights including disappearances and prosecution of journalists and different activists. The situation has resulted into reduced reporting on and exposure of human rights violations and reduced intervention by civil society on issues of human rights.

## **Climate change and land conflicts**

2019 saw continued challenges of climate change, land grabbing, land conflicts, violations of human rights, gender-based violence as well as food insecurity observed in different parts of the Indigenous Peoples' territories. The year 2019 was a year with reported drought in many areas in northern Tanzania resulting in conflicts between Indigenous Peoples and the conservation authorities in Serengeti National Park, Tarangire National Park and Ngorongoro Conservation Area. From the end of October to the end of the year, heavy rain was reported in almost the whole country saving the livestock, which were exhausted by the drought. However, livestock diseases have been reported following these rains.

In 2019, Indigenous Peoples' civil society organisations organised themselves around the issue of climate change by empowering the communities and engaging the policy makers in different dialogues on laws and policies with a view to securing grazing rights for Indigenous Peoples.

## **The Simiyu climate resilience project**

On 12 December 2018, the Green Climate Fund (GCF) signed a funding agreement with Kreditanstalt für Wiederaufbau (KfW) (Germany's development bank, a GCF Accredited Entity) for a climate resilience project aimed at making communities in northern Tanzania more resilient to water pressures caused by climate change. It is a five-year project with a total budget of €143.4 million.

The GCF grant amounts to €102.7 million. It is the largest single grant ever awarded by the GCF. The KfW will co-finance the project to the tune of over €26 million while the Government of Tanzania covers

the balance. The project is designed in such a way that water will be extracted from Lake Victoria, pumped to Ngasamo Hill and then flow by gravity until Bariadi and Itilima districts. There will be a main pipeline, and along it, smaller outlets for 12 km on either side of the pipeline. Also, there will be a water distribution system in three towns including Bariadi and Lagangabilili. The water supply is only meant for drinking, it was not foreseen for irrigation purposes, cattle or anything else. According to the KfW project document, the project has the potential to substantially increase the climate resilience of rural and urban households, particularly small-scale farmers.

The project has two phases. In phase I, water will be made available in three districts namely Busega, Bariadi and Itilima in Simiyu Region. In phase II, the beneficiaries will be Maswa District and Meatu District in Simiyu Region. There are Indigenous Peoples living in Meatu District. These are the Datoga pastoralists and the Hadzabe hunter-gatherers who live in remote areas outside Mwanhuzi, the Meatu District headquarters. However, the pastoralists feel they will not benefit from the project and that they have been discriminated against because the project will not provide water for livestock, which is essential for the pastoralists. Although the marginalised Hadzabe hunter gatherers live just two kilometres from the project site, they will not benefit from it. So, the Indigenous Peoples' rights-related issue in this project is not one of eviction from their ancestral land, but rather one of being denied much needed benefits of the project. According to PINGOs Forum, this goes against the GCF policy on Indigenous Peoples.

## **The Great Ruaha River issue as an emerging challenge to Indigenous Peoples**

In December 1993 the Great Ruaha River running through the Usangu and Mbarali district stopped flowing for the first time in living memory. In 1995, this became a matter of national concern when electricity shortages in Dar es Salaam were blamed on the continuing drying up of the river, which again was partly blamed on pastoralists. In 2006-2007 the Government of Tanzania, expelled pastoralists and their cattle from Usangu and Mbarali Districts, large parts of which were to be incorporated in an expanded Ruaha National Park.

In 2019 the Vice President of the United Republic of Tanzania, Samia Suluhu Hassan, launched a special taskforce to rescue the Great Ruaha River ecology from rampant environmental degradation and drying up. A few months later the Vice President launched a report with the findings of the taskforce. However, the launching was ceremonial as the report was never made available to the public. During a fact-finding mission undertaken by the Indigenous Peoples' umbrella organization "PINGOs Forum" in mid-2019, the report was, however, leaked. The document, among other things, perpetuates the propaganda against Indigenous Peoples and pastoralists claiming they are a threat to the conservation of the Great Ruaha River.<sup>5</sup> Given the growing challenges that the Great Ruaha River is facing, the government has announced it will preserve the Ruaha River catchment at any cost including by further evicting Indigenous Peoples from the area.

## **Tanzania cancels SAGCOT loan from the World Bank**

In December 2018, the Tanzanian Government cancelled a project that was to avail over 100 billion Tanzania Shillings in funding to smallholder farmers under the *Southern Agricultural Growth Corridor of Tanzania* (SAGCOT). This is a huge agribusiness corridor project that was to be supported by the World Bank, and the cancellation follows the failure to agree with the World Bank on the modalities for doling out USD\$47million in Matching Grant Funds.<sup>6</sup> Furthermore, the Tanzania Government had come to an uneasy conclusion that the development objective of the project would not be achieved as intended.

In January 2019 the Deputy Minister for Agriculture stated that SAGCOT has reached out to many peasants in the corridor. It is still believed it will bring about an agricultural revolution in the country and the government is looking for serious partners for the SAGCOT investment project. It seems that the cancellation does not mean the government has ultimately shelved the project, and many of the well-placed officers in the SAGCOT establishment hope other development partners might fill the gap created by the departure of the World Bank. So even if the SAGCOT project remained shelved in 2019, it could very well be re-activated in the future – and all the many associated risks of land grabbing

of Indigenous Peoples' lands in the areas covered by SAGCOT could re-emerge.

## **Suffering of Indigenous residents in the Ngorongoro Conservation Area worsens**

Conservation and wildlife protection continued to be a major driver of land dispossession, forced evictions and human rights violations towards Indigenous Peoples in Tanzania in 2019. The year was a very hard one for the Maasai, Barabaig and Hadza hunter-gatherers living in the world famous Ngorongoro Conservation Area (NCA) in Northern Tanzania. The Ngorongoro Conservation Area Authority (NCAA), the state corporation responsible for the management of the area, has been expressing concerns of the deterioration of the NCA. The NCA is a UNESCO World Heritage Site with a multiple land use area designated to promote the conservation of natural resources, safeguard the interests of the Indigenous residents and promote tourism. NCA is to be a unique protected area in the whole of Africa where conservation of natural resources is closely integrated with human development and the protection of the welfare of the Indigenous residents. However, over the years the NCAA has tried, time and again, to limit the rights of the Indigenous residents and to arrange for the departure of residents from NCA.<sup>7</sup>

From February 2019, the livestock of the Indigenous residents/pastoralists were banned from entering the Ngorongoro Crater, Ol-moti Valley, Embakaai Valley, Lake Ndutu, Masek Forest and Northern Forest Reserve. The livestock can now only enter 25% of the areas in the NCA and they are left with a very small portion of the total grazing area. The same small and poor area is also used by the wildlife. More than 200,000 livestock depend on this small area for grazing where also more than 2,000,000 wild animals live. This overdependence on a small area leads to shortage of pastures and water. Only the wild animals can move on to the Serengeti National Park when pastures and water become scarce – the pastoralists have to stay.<sup>8</sup>

Making grazing illegal and banning farming activities have caused many Indigenous people to remain very poor within the NCA. The reports of the National Bureau of Statistics of 2017 and that of the Ngorongoro Multiple Land Use Commission of 2019 have admitted that there is



persistent and acute famine in the NCA. This is a paradox in a top-end tourist area that generates billions of Tanzania Shillings annually for the government of Tanzania. Moreover, there is a serious shortage of clean and safe water for human beings and animals in the NCA, while big hotels and tourist camps continued in 2019 to tap water from the water catchment areas in Ngorongoro.

In 2019, two important commissions were established by the Ministry of Natural Resources and Tourism namely The Multiple Land Use Commission<sup>9</sup> and the Law Reform Commission which both suggested eviction of the Maasai from nine villages within the NCA.<sup>10</sup> The proposed eviction will force the Maasai and their livestock into very small and extremely marginal areas. This will seriously reduce the grazing areas and constrain the mobility of the pastoralists in the area and it will seriously impact the livelihood of Indigenous Peoples in Ngorongoro.

Civil society and the residents have tried to engage with the commissions but there has been limited willingness of the part of the commissions to accept these attempts of engagement and to share their recommendations. There have been initiatives by the civil society to support the residents in meeting the President of Tanzania and coordinate the communities, however, this has not yet brought any meaningful results.

## **Impacts of expansion of Tarangire National Park**

In 2004 the Tarangire National Park, situated in northern Tanzania, started a process of defining its boundaries. As a result, the park was expanded from 2,600 km<sup>2</sup> to 2,850 km<sup>2</sup>.<sup>11</sup> This expansion of the park was a severe blow to various neighbouring villages inhabited by many pastoralists. Still today, villagers are very uncertain about the fate of their village land as they are crowded into a small area making it difficult to maintain their livelihood and adopt mechanisms for climate change resilience.

In 2019 a committee of seven ministers chaired by the Minister for Lands Affairs using a helicopter hopped into Kimotorok Village (one of the neighbouring villages to the park) following the directives of the President, where it hastily listened to opinions of local authorities of Kimotorok village and some leaders of neighbouring villages like

Irkiushiooibor. Throughout the year both Tarangire National Park and Mkungunero Game Reserve continued to attack Indigenous Peoples in Kimotorok village.

## **Land grabbing in the name of wildlife preservation**

Throughout Tanzania, Indigenous Peoples have for many years suffered from land grabbing, forced evictions and associated human rights violations in the name of wildlife preservation. One example is the Vilima Vitatu Village, which is situated about 40 km north of the Babati District Headquarters in Manyara Region. The village is inhabited predominantly by Mbugwe agro-pastoralists and the minority Barabaig pastoralists. Vilima Vitatu Village is situated between the Tarangire and Lake Manyara National Parks. In 1999 a huge part of the village (64%) was annexed in order to create a wildlife management area called Burunge Wildlife Management Area.

The Barabaig pastoralists took the case to court, and on 15 March 2013 the Court of Appeal ruled in favour of the Barabaig pastoralists declaring that the Wildlife Management Area had been established without the free, prior and informed consent of the pastoralists in the village and the land should be returned promptly. However, the government evicted the Barabaig pastoralists from the village, burning down 44 of their houses and ordering them to leave the area. In September 2018 the Babati District Commissioner ordered eviction of the remaining families from the area and burned 23 homesteads. The Member of Parliament for Babati Rural and the Councillor of Ngaiti Ward provided tents for the homeless Barabaig pastoralists. However, game scouts moved in and burned the temporary shelters that were erected. In 2019, there have been unsuccessful attempts to inform the Vice President about the sufferings of the Barabaig pastoralists. Repeatedly, the wildlife preservation agencies from the Burunge Wildlife Management Area have impounded livestock and extorted fines from the pastoralists.

From 7-9 July 2019 the Babati District Commissioner ordered the eviction of Barabaig and Maasai pastoralists and fisher folks from Maramboi, Villima Vitatu and Minjingu Villages as well as from Jangwani area along the eastern shores of Lake Manyara. In total, over 300 houses of pastoralists and fisher folks were burnt to ashes. The attack ren-

dered even more people, including women and children, homeless.

On 15 January 2019 the President of Tanzania, John Pombe Magufuli, issued a statement against land grabbing in the name of wildlife preservation in the country. He intimated that eviction of pastoralists should stop countrywide until there is a participatory resolution of boundaries between protected areas and pastoralist villages. This gave hope for Indigenous Peoples, however, up until the end of 2019 most of these conflicts remained unresolved.

## Notes and references

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**Edward Porokwa** is a lawyer and an Advocate of the High Court of Tanzania. He is currently the Executive Director of Pastoralists Indigenous NGOs Forum (PINGOs Forum), an umbrella organisation for pastoralists and hunter-gatherers in Tanzania. He holds a bachelor's degree in Law (LLB Hon) from the University of Dar es Salaam and a master's degree in Business Administration (MBA) from ESAMI/Maastricht School of Management. He has 15 years' experience of working with Indigenous Peoples' organisations in the areas of human rights advocacy, policy analysis, constitutional issues and climate change



# Tunisia



As elsewhere in North Africa, the Indigenous population of Tunisia is formed of the Amazigh. There are no official statistics on their number in the country but Amazigh associations estimate there to be around 1 million Tamazight (the Amazigh language) speakers, accounting for some 10% of the total population. Tunisia is the country in which the Amazigh have suffered the greatest forced Arabisation. This explains the low proportion of Tamazight speakers in the country. There are, however, increasing numbers of Tunisians who, despite no longer being able to speak Tamazight, still consider themselves Amazigh rather than Arab.

The Amazigh of Tunisia are spread throughout all of the country's regions, from Azemour and Sejnane in the north to Tittawin (Tataouine) in the south, passing through El-Kef, Thala, Siliana, Gafsa, Gabès, Djerba and Tozeur. As elsewhere in North Africa, many of Tunisia's Amazigh have left their mountains and deserts to seek work in the cities and abroad. There are thus a large number of Amazigh in Tunis, where they live in the city's different neighbourhoods, particularly the old town (Medina), working primarily in skilled crafts and petty trade. The Indigenous Amazigh population can be distinguished not only by their language but also by their culture (traditional dress, music, cooking and Ibadite religion practised by the Amazigh of Djerba).

Since the 2011 "revolution", numerous Amazigh cultural associations have emerged with the aim of achieving recognition and use of the Amazigh language and culture. The Tunisian state does not, however, recognise the existence of the country's Amazigh population. Parliament adopted a new Constitution in 2014 that totally obscures the country's Amazigh (historical, cultural and linguistic) dimensions. In its recitals, the text refers to the Tunisians' sources of "Arab and Muslim identity" and expressly affirms Tunisia's membership of the "culture and civilisation of the Arab and Muslim nation". It commits the state to working to strengthen "the Maghreb union as a stage towards achieving Arab unity [...]". Article 1 goes on to reaffirm

that “Tunisia is a free state, [...], Islam is its religion, Arabic its language” while Article 5 confirms that “the Tunisian Republic forms part of the Arab Maghreb”. For the Tunisian state, therefore, the Amazigh do not exist in this country.

On an international level, Tunisia has ratified the main international standards and voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. These international texts remain unknown to the vast majority of citizens and legal professionals, however, and are not applied in domestic courts.

## Early presidential elections

Tunisia’s president, Beji Caid Essebsi, died on 25 July 2019 aged 92. In a snap presidential election, Kais Saied was elected President of the Republic on 13 October that year. His first speech to the Tunisian Parliament, on 23 October, contained not one word about “minorities” and stated the Tunisian’ state’s commitment to “respect the different international agreements but also to review them in accordance with the interests and will of the people”.

The possibility that the new Tunisian Head of State may review international agreements previously adopted by this country is a source of concern for human rights defenders as it could represent a challenge to the indivisible and universal nature of human rights.

## Implementation of the law on racial discrimination

Tunisia has adopted Law No. 50/2018 of 23 October 2018 on “eliminating all forms of racial discrimination”.<sup>1</sup> Its aim is to “eliminate all forms of racial discrimination and its manifestations and to protect human dignity, ensure equality in individuals’ enjoyment of their rights and comply with the duties set out in the constitution and international treaties ratified by the Tunisian Republic”. The law also provides that the state shall “undertake to disseminate a culture of human rights, equality, tol-

erance and acceptance of the other among the different components of society". This law was originally enthusiastically received by human rights organisations; however, more than a year has now passed since its enactment and it is facing barriers to its implementation. The implementing committee for this law has not yet been established and there have been virtually no complaints submitted by victims of racism and racial discrimination due to difficulties in the legal process.

For the Amazigh, in particular, this law is proving virtually unusable because the constitution totally denies their existence. It recognises only one category of citizen: Tunisian, Arab and Muslim. Moreover, people are afraid of denouncing abuse as this could expose the victims to reprisals from both the police/judicial authorities and the Arab population. Some ministers and others invited onto the television for interviews often openly describe the Amazigh as "dividing the Arab Tunisian nation" and "allies of the Jews". Organisations working to protect and promote Amazigh rights are therefore calling for constitutional reform in order to include recognition of the Amazigh community and its rights.

## **Follow-up to UN recommendations**

Amazigh associations met with the Ministry for Relations with Constitutional Institutions on 15 July 2019. They raised questions regarding the government's implementation of the recommendations made to the Tunisian state by the UN Committee on Economic, Social and Cultural Rights in November 2016. The Minister undertook to place this issue on the agenda of forthcoming government meetings although no progress has been noted in this regard since then.

Quite the contrary, discrimination is ongoing with, for example, the refusal to register Amazigh first names in the municipal registry offices. Such was the case this year of the names Sfax and Bizerte. The authorities are simply implementing Law No. 03/57 of 1/08/1957 and Ministry of the Interior Memo No. 205600 of 5/08/2013,<sup>2</sup> which demand that municipalities register only Arab first names. This position is putting parents off giving their children Amazigh first names for fear of being stigmatised by the authorities and forced to resort to long and costly legal proceedings with an uncertain outcome.



## **Acts of intolerance in relation to Amazigh cultural identity**

Any public expression or statement of Amazigh identity faces censure and intolerance in Tunisia.

With the aim of defending and promoting the specific rights of Tunisia's Indigenous population, Amazigh citizens of the country therefore decided to establish a political party known as "*Tynast*" (The Key). On 5 November 2018, they submitted an application for party registration with the Ministry of the Interior, in accordance with the law. On 14 February 2019, the government's general secretariat informed party members that their application had been rejected, without explanation or possibility of appeal.

On 5 May 2019, Tunisia's Amazigh citizens once again submitted an application for the creation of a political party to the Ministry of the Interior, this time under the name of "*Akal*" (The Earth), in accordance with all legal requirements. In June 2019, this application was also declared inadmissible.

There are nearly 200 different political parties in Tunisia, none of which focus in any way on protecting or promoting Amazigh rights. It would therefore seem that this discrimination is aimed at preventing the political expression of the country's Amazigh population.

## **Tunisia one of the countries most vulnerable to climate change**

Tunisia was placed 35th most vulnerable to climate change out of 183 countries on the NGO Germanwatch's Global Climate Risk Index 2020.<sup>3</sup> Advancing desertification is threatening the oases in the south of the country, rainfall is declining,<sup>4</sup> and temperatures are increasing. The actions taken by the Tunisian government to fight global warming demonstrate a complete lack of consideration for the traditional knowledge and know-how of Indigenous communities. The government's programme managers have applied a top-down method that does not involve the relevant people in the design of projects concerning them. There is therefore a serious risk of a lack of project ownership among

these groups and, consequently, a lack of impact when tackling climate change.

## Notes and references

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**Belkacem Lounes** holds a PhD in Economics, is a university lecturer (Grenoble University), expert member of the Working Group on the Rights of Indigenous Peoples of the African Commission on Human and Peoples’ Rights, and author of numerous reports and articles on Amazigh rights.



# Uganda



Indigenous Peoples in Uganda include former hunter-gatherer communities, such as the Benet and the Batwa. They also include minority groups such as the Ik and the Karamojong and Basongora pastoralists who are not recognised specifically as Indigenous Peoples by the government.

The Benet, who number slightly over 8,500 live in the north-eastern part of Uganda. The 6,700 or so Batwa, live primarily in the south-western region and were dispossessed of their ancestral land when Bwindi and Mgahinga forests were gazetted as national parks in 1991.<sup>1</sup> The Ik number about 13,939 and live on the edge of the Karamoja/Turkana region along the Uganda/Kenya border. The Karamojong people live in the north-east of the country and numbered 1,025,800<sup>2</sup> at the time of the 2014 national census. The Basongora numbering 15,897 are a cattle-herding community living in the lowlands adjacent to Mt. Rwenzori in Western Uganda.

All these communities have a common experience of state-induced landlessness and historical injustices caused by the creation of conservation areas in Uganda. They have experienced various human rights violations, including continued forced evictions and/or exclusions from ancestral lands without community consultation, consent or adequate (or any) compensation. Other violations include violence and destruction of homes and property, including livestock; denial of their means of subsistence and of their cultural and religious life through their exclusion from ancestral lands and natural resources. All these violations have resulted in their continued impoverishment, social and political exploitation and marginalization.

The 1995 Constitution offers no express protection for Indigenous Peoples, but Article 32 places a mandatory duty on the state to take affirmative action in favour of groups that have been historically disadvantaged and discriminated against. This provision, which was initially designed and envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of Indigenous Peoples in Uganda.<sup>3</sup> The *Land Act* of 1998

and the *National Environment Statute* of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorise the government to exclude human activities in any forest area by declaring it a protected area thus nullifying the customary land rights of Indigenous Peoples.<sup>4</sup>

Uganda has never ratified ILO Convention No. 169, which guarantees the rights of Indigenous and tribal peoples in independent states and it was absent in the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

## Expansion of national parks in Karamoja

**M**obility is part of Karamojong pastoral strategic means of accessing seasonally available water, pasture, markets and managing climate variability in drylands. Karamoja subregion hosts the Kidepo Valley National Game Park, which is the second largest park in Uganda. The park occupies what traditionally were dry season grazing areas of the Karamojong pastoralists in the villages of Usake, Kamion, Morungole, Kawalakol, Lotukei and Lokori and it has a rich diversity of flora and fauna species. The declaration of the area as a game park without taking into account the interests of the community has inevitably fueled continuous conflict between the community and the Uganda Wildlife Authority (UWA).

Unfortunately, UWA continues to claim additional territory for conservation areas thus further restricting pastoralists' access to grazing lands and water points. This is happening in the Koteen Hills, Matheniko Bokora Wildlife Reserve Corridor, Pian Upe Wildlife Reserve Corridor and the Kidepo Valley National Game Park Corridors.

In October 2019, UWA expanded the boundaries of the Matheniko Bokora and the Koteen Loyoro Reserves and planted beacons in the dry season grazing lands of the Kalosaris community – grazing lands, which were previously shared by Matheniko, Bokora and Jie pastoralists (clans of the Karamojong pastoralists). The expansion of the national parks was done without prior consultations with the communities and it led to additional conflicts.

## **Amendment of the Wildlife Act**

The 2018 amended Wildlife Act allows for compensation of families and communities whose property has been destroyed by wild animals while outside of the conservation areas. However, in spite of this, the pastoralist communities living in the sub-counties of Sidok, Loyoro, Lolelia, Lobanya and Lokomebu within Kaabong and Kotido districts whose livestock and crop fields were destroyed in 2019 by elephants and buffaloes, have not been compensated. The Wildlife Act does not provide for compensation where a human being is killed by a wild animal, yet it provides for compensation of crops. Instead it provides for life imprisonment for anyone caught in the act of killing a wild animal or being in possession of wildlife parts.<sup>5</sup>

## **Insecurity and cross-border MoU between Uganda and Kenya**

Good news from the Karamoja region came in September 2019 when the governments of Kenya and Uganda formally recognised the importance of cross-border pastoralist mobility through the signing of a Memorandum of Understanding (MoU). Cross-border mobility is an important coping mechanism against effects of climate change, which manifest themselves through increased conflicts between pastoralist communities caused by increased competition over natural resources (pasture and water) and associated livestock theft.

Moroto municipality in Karamoja Region hosted Presidents Museveni of Uganda and Uhuru Kenyatta of Kenya for the signing of the MoU. They were accompanied by the Uganda Minister for Karamoja Affairs and area Members of Parliament of Karamoja, Pokot and Turkana to witness the signing of the MoU. The objective of the MoU is to promote sustainable peace and development between the Karamoja area in Uganda and the West Pokot and Turkana areas in Kenya. The MoU laid strong emphasis on resource sharing, creating space for opportunities, collaboration and coordination for peaceful co-existence of communities. The MoU aims to reduce cross-border conflicts by engaging local and county governments to respond rapidly to incipient conflict, by eliminating

the illegal flow of small arms and weapons, strengthening community resilience, increasing surveillance of livestock theft, disease management and improving infrastructure, livelihoods and food security.

Despite the MoU, a number of conflicts have taken place after the signing. Partly these are attributed to weaknesses in the MoU such as lack of financial support and commitment on the part of the two governments. The USD\$950,847<sup>6</sup> joint work plan (2019–2023) is solely financed by the United Nations Development Programme (UNDP). According to some observers,<sup>7</sup> Uganda needs to augment the benefits of the MoU interventions with the adoption of the long overdue Rangelands Management and Pastoralism Policy. This policy will facilitate efficient and sustainable use and management of rangeland resources including water, forests, pastures, and livestock resources. In addition, it will allow for better wildlife conservation and protection of the biodiversity found in the greater cattle corridor of Uganda within which Karamoja falls.

## **Conflicts and outbreak of Foot and Mouth Disease**

In the dry season beginning September 2019 till the end of the year, 10 cattle thefts and eight fights between the Local Defense Unit/ Uganda Peoples Defense Force (UPDF) and Turkana pastoralists from Kenya were reported to peacebuilding organisations (DADO, KDF and KAPDA).<sup>8</sup> The insufficient water and pasture in the Turkana areas forced them to move into the areas commonly used by the Jie and Matheniko pastoralists resulting in increased pressure on the already scarce water and grazing resources and hence fueling inter-community conflicts.

As a result of the high concentration of livestock in fewer areas where pasture and water can be accessed, livestock diseases have increased. A Foot and Mouth Disease (FMD) outbreak in November 2019 led to the closure of all livestock markets in Karenga, Kaabong, Kotido, Abim, Napak and Lira Districts, and it is believed that this closure will continue until August 2020. By the end of 2019, vaccination of livestock had not yet started. This resulted in food and income insecurity for many pastoralist households that are dependent on livestock for their income and food.

## Mining

The continued gold mining activities coupled with leasing of land by the miners/mining companies in Lopedo and Rupa sub-counties in Kaabong and Moroto districts have denied pastoralists access to pasture and water. To make matters worse, the existing water points are contaminated by the poisonous mercury used by miners. The gold miners burn the pastures and dig deep holes that are causing accidents and blocking pastoralist access to routes during grazing. The burning, deforestation and use of mercury in the area are destroying the rangelands and are causing environmental degradation and desertification.

## Climate change threatening Basongora existence

Climate change is said to have effect on human settlement as it forces people to migrate continually in search of water and pasture. In the process of mobility, both humans and livestock are exposed to dangers. For example, in 2019, a lion (perhaps in search of prey) attacked one Musongora man at his home and killed him. This is one case among many cases of lions, hyenas and other wild animals killing people, cows and goats. The killing of livestock renders the Basongora cattle keepers more vulnerable as it impacts directly on their source of livelihoods.

As a result of climate change, domestic animals have tended to move further away from homes in search for pasture. In September 2019, a Musongora man had his cows stray into Queen Elizabeth National Park. This led to a confrontation with the Uganda Wildlife Authority (UWA) officers who impounded his 150 cows. The case ended up in court where the UWA officers claimed that they had impounded only 136 cows. UWA was able to get court authority to auction and sell about 30 heads of cattle on the grounds that it had to defray the costs of the suit. Therefore, the pastoralist lost 44 head of cattle, yet the National Park occupies what was legitimately the ancestral land of the Basongora people, but which was taken away forcefully by the government.

The Basongora people therefore find themselves in the middle of a paradox where they have to live and pay allegiance to a government that has created a space in which they have been dispossessed of their



ancestral land and where wild animals attack the community members and their livestock. It is therefore widely viewed by the Basongora people that the laws of Uganda are much more in favour of wildlife than the people.

## **Conservation activities violate human rights of the Benet people**

Land rights of the Benet people were not improved in 2019. The Government continued to deny the Benet community their rights and the Benet people continued pressing for their rights. The creation of the Mount Elgon National Park in 1992 led to dispossession of the Indigenous Benet people from their ancestral land. Despite a positive court ruling in 2005 stating the Benet people are the historical and Indigenous inhabitants of the area and they are entitled to stay in the area and carry out their economic and agricultural activities undisturbed, the harassment and human rights violations continue. In 2019, the Uganda Wildlife Authority (UWA) continued to harass the Benet people when they were found in the forest carrying out cultural activities like the livelihood practice of grazing their animals.

The amended 2018 Wildlife Act gives UWA more powers than before to harass the Benet community when found in the forest. For example, any person found in the forest is fined the equivalent of USD\$139 or faces imprisonment for a period not known by the Indigenous Benet people. For stray animals, the fine per animal is the equivalent of USD\$14 for cattle, USD\$8 for a goat, USD\$56 for a dog, USD\$6 for a cat and USD\$14 for a chicken. A person found urinating in the park is fined USD\$28. These punitive restrictions deny the Benet their rights to fully enjoy their right to their Indigenous land that include access to pasture, medicinal herbs and cultural sites.

In late September 2019, UWA found some Benet people grazing around the boundary of the Mount Elgon National Park. Kiprotich Simon, one of the young boys grazing, was almost beaten to death by the UWA rangers. His mother, who was nearby milking cows raised alarm, which attracted the neighbourhood. The community retaliated by pursuing the UWA staff who escaped without any injury. However, the UWA station was demolished and razed, which led to more conflict.

On 23 February 2019, one boy named Alfred Cheratta was beaten to death by UWA rangers when he was found collecting rafters to put up his grass thatched house. This happened in the Kapkwata government softwood plantation in Kween district. No compensation is envisaged.

On 3 July 2019, a Benet man Cherop Sam was shot dead by UWA staff while riding on a motorcycle at Chekwasta sub-county in Kapsekek. The reason given was that they were scaring away wildlife that had come to invade the community. Out of anger, the community retaliated by killing one UWA staff. Since then, many members of the Benet community have been arrested for taking the law into their own hands including Mr. Malinga Acasha, a district councillor from Suam sub-county of Bukwo district. It is alleged that he mobilised the community for revenge. The whereabouts of Mr Malinga, up to the end of 2019, were still unknown.

On 6 September 2019, the Benet community, with assistance from a non-government organisation Solidarity Uganda, organised a peaceful demonstration against the UWA land grabbing by marching from Benet sub-county up to Kwosir sub-county. That notwithstanding, UWA has not changed its practices.

## **Impact of climate change on the Benet people**

The effects of climate change on the Benet people in 2019 arose out of rainfall unpredictability. The first rains that would normally start late February delayed and only started in May when they would normally be coming to an end. They persisted and overlapped with the second rains that normally last from August to October and on until the end of December. The long and heavy rains led to floods and mudslides, which negatively impacted food production. This will inevitably lead to food scarcity in 2020.

## **Impact of climate change on the Batwa people**

The effects of climate change on the Indigenous Batwa people are worsening day by day. Being landless, they cannot settle in one place for a long period and have to periodically move long distances in search of

water, food and firewood. This often leads to their women being raped, beaten or shot at by game rangers who do not want them to enter the national parks to access the natural resources like firewood, medicinal plants or water.

Because of prolonged rains in 2019 due to climate change, the mainly mountainous area of Kisoro district and some parts of the neighbouring districts experienced mudslides. These led to the death of one woman from Rushayu in the Murubindi Batwa community in Rubanda district. The landslides also led to destruction of four Batwa houses in Gitebe community in Kanaba sub-county. Crops were destroyed by excess rain and landslides meaning that overall yields for 2020 will be poor and hence further increase food insecurity.

Finally, as a result of landslides in early 2019, some homes were swept away leaving the affected families without shelter. This was exacerbated by the fact that the landless Batwa mostly live on other people's lands. In almost all cases, the landowners prohibit the Batwa from both constructing permanent houses and burying their dead on the land.

As a coping mechanism to these climate changes, the few Batwa who own land have planted some trees to avert landslides. In addition, those who have iron-roofed houses have tried to build water tanks to harvest and store rainwater. Others have constructed energy saving stoves that use less firewood than the traditional open-air cooking stoves. It is hoped that the Batwa community will continue to advance and be able to build adaptation and mitigation structures for enhancing resilience to climate change.

## **Education among the Batwa people**

Notwithstanding the challenges the Batwa are facing from the effects of climate change, some positive developments are taking place in the community. For example, during 2019, three Batwa (one female and two males) graduated with bachelor's degrees. Two of them with a bachelor of social work and social administration while another with a bachelor of education. This is good progress in the Batwa community, which is gradually trying to embrace education. In addition, other Batwa children sat for national examinations at primary, ordinary and advanced levels. They are awaiting the results and will be joining secondary schools and

universities respectively. Education is expected to open their opportunities for other livelihood options including paid employment and entry into business.

## Positive developments

On a positive note, there is a growing favourable political will towards the Indigenous Peoples in Uganda. For example, the Uganda government through the Ministry of Gender Labour and Social Development (MGLSD) with support from UN Department of Economic and Social Affairs (UN-DESA) is in the process of drafting the National Affirmative Action Programme for Indigenous People in Uganda (NAAP) on policy matters.

Furthermore, the Indigenous Peoples and communities in Uganda have formed, under the on-going programmes in the MGLSD, a committee of 23 members. The Chairperson of the committee is the Permanent Secretary of the MGLSD. Each of the five Indigenous communities in Uganda is represented by two members, one male and one female.

With support from the International Work Group for Indigenous Affairs (IWGIA), Indigenous people were able to send one person from the Indigenous Benet community to the session of the African Commission on Human and Peoples' Rights (ACHPR) in Banjul, the Gambia in October 2019.

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**Benjamin Mutambukah** is formerly the Coordinator of the Coalition of Pastoralist Civil Society Organisations in Uganda and Chairman of the Eastern and Southern African Pastoralists Network (ESAPN). He is currently ESAPN representative on the Global Steering Committee of the World Alliance of Mobile Indigenous Peoples (WAMIP). He is passionate on matters of human rights for marginalised communities.

**Chebet Mungech** is the Coordinator of Mt. Elgon Benet Indigenous Ogiek Ndorobos (MEBIO).

**Yeshe Alex** is the Chairperson of MEBIO.

**Loupa Pius** is a Project Officer at the Dynamic Agro-pastoralist Development Organisation.

**Penninah Zaninka** is the Coordinator of the United Organization for Batwa Development in Uganda (OUBDU).

**Edith Kamakune** is a human rights and conflict resolution practitioner in Uganda.



# Zimbabwe



While the Government of Zimbabwe does not recognise any specific groups as Indigenous to the country, two peoples self-identify as such: the Tshwa (Tjwa, Tsoa, Tshwao, Cuaa) San found in western Zimbabwe, and the Doma (Vadema, Tembomvura) of Mbire District in north-central Zimbabwe. Population estimates indicate that there are 2,850 Tshwa and 1,400 Doma in Zimbabwe, approximately 0.03% of the country's population of 14,030,368 in 2019. The government uses the term “marginalised communities” when referring to such groups.

Many of the Tshwa and Doma live below the poverty line in Zimbabwe and together they comprise some of the poorest people in the country. Socio-economic data is limited for both groups. Both the Tshwa and Doma have histories of hunting and gathering and their households now have diversified economies, including informal agricultural work for other groups, pastoralism, tourism and small-scale business enterprises. Remittances from relatives and friends both inside and outside the country make up a small proportion of the total incomes of Tshwa and Doma. As is the case with other Zimbabweans, some Tshwa and Doma have emigrated to other countries in search of income-generating opportunities, employment and greater security.

The realisation of core human rights in Zimbabwe continues to be challenging. Zimbabwe is party to the CERD, CRC, CEDAW, ICCPR and ICESCR. Reporting on these conventions is largely overdue but there were efforts in 2019 to meet requirements. Zimbabwe also voted for the adoption of the UN-DRIP in 2007. Zimbabwe has not signed the only international human rights convention addressing Indigenous Peoples: ILO Convention 169 on Indigenous and Tribal Peoples of 1989. The government has indicated its wish to expand its programmes and service delivery to marginalised communities. There are no specific laws on Indigenous Peoples' rights in Zimbabwe. However, the “Koisian” language is included in Zimbabwe's 2013 revised Constitution as one of the 16 languages recognised in the country, and there is some awareness within government of the

need for more information and improved approaches to poverty alleviation and improvement of well-being among minorities.

The economic situation in Zimbabwe deteriorated in 2019 with a 12.8% reduction in GDP<sup>1</sup> due to poor performance in mining, tourism and agriculture, the latter further impacted by drought and Cyclone Idai in March 2019, which killed over 250 people and led to heavy flooding in eastern Zimbabwe.<sup>2</sup> The unpegging of the exchange rate to the US Dollar in February 2019 and subsequent re-introduction of the Zimbabwean Dollar led to currency shortfalls and an inflation rate rising to over 200% by the end of the year.

Zimbabwe was also dealing with a severe drought, declared by the President on 17 September 2019, which was estimated by the World Food Program to be the worst in a decade.<sup>3</sup> Up to half of the population, 7.7 million of 14 million people, in Zimbabwe were considered food insecure at the end of 2019. Some members of the public considered the potential starvation and famine as a man-made disaster, while others saw it as the result of global and local climate change.<sup>4</sup>

The security situation in Zimbabwe continued to be problematic as security forces dealt harshly with political and economic demonstrations, including the use of violence and arrests.<sup>5, 6</sup>

## San in Tsholotsho and Bulilima Mangwe districts

Tsoro-o-tso San Development Trust (TSDT) continued working with language, education, culture and livelihoods issues with the Tshwa community of Tsholotsho district, north west of Bulawayo, throughout 2019. TSDT was threatened with the cancellation of its Memorandum of Understanding with the Tsholotsho Rural District Council in March 2019 due to apparent misunderstandings over the organisation's work and financing. Nevertheless, TSDT continued its work throughout the year, collaborating with national and international research institutions such as the Ministry of Education, Living Tongues Institute for Endangered Languages, Open Society Initiative for Southern Africa and Plan International.



Plan International Zimbabwe, with the Tsholotsho Rural District Council and the Ministry of Primary and Secondary Education, finished construction of the Mtshina Primary School in November 2019. The school was built to serve San and Kalanga children in the area who lived far from other school facilities.<sup>7</sup>

Efforts were made by TSDT to ensure children were able to get funds to attend school in collaboration with local non-government organisations in Tsholotsho in 2019. TSDT continued its recording and promoting of Tshwao (Tjwao), including holding a community “language party” in April, bringing together Tshwao, Ndebele and Kalanga speakers to share languages and stories.

Plan International assisted the Tshwa in obtaining identity documents in 2019 as a sizable proportion of Tshwa still did not have documents. The Zimbabwe Human Rights Commission held a consultation with San community members in Bulilima Mangwe District in December where the San complained of the continued lack of national identity documents, poor labour conditions and exploitation by neighbouring communities.<sup>8</sup>

The Tshwa in Tsholotsho and Bulilima Districts do not have their own chief and instead serve under chiefs from other ethnic groups. In 2019, the Tshwa were pushing for greater recognition of their traditional leaders who do exist in some Tshwa communities. The government is examining measures to implement this.

Cross-border interactions between Tshwa in western Zimbabwe and north eastern Botswana continued to occur. There was some out-migration from Tsholotsho to other areas, including to Bulawayo, with a small number of Tshwa seeking employment in Botswana.

There was a case of an alleged hate crime against a San youth in Tsholotsho in October 2019. The young Tshwa died as a result of blood loss or a heart attack after a beating by non-San youths, according to different sources.<sup>9</sup>

There were complaints of discrimination against Tshwa women by members of other groups. The women stated they were subjected to rude comments and exploitative economic situations. Dozens of San children were forced into working as goat herders and agricultural field hands by local non-San farmers, usually without any compensation for their labor.

The Ministry of Rural Development, Promotion and Preservation of Natural Culture and Heritage met with Tshwa in Tsholotsho in November

2019 to discuss issues involving cultural heritage promotion and protection of cultural resources. The Tshwa in the meetings said that poverty alleviation and protection and promotion of the Tshwao language were among their major concerns.

Zimbabwe's First Lady, Amai Mnangagwa, continued funding community level interventions through her Angel of Hope Foundation, focusing on education and livelihoods, which brought additional national media attention to the San in Zimbabwe.<sup>10</sup> The First Lady has carried out similar projects with the Doma to promote education and health.<sup>11</sup>

## **Doma in Mbire District**

There is no formal organisation representing the Doma (Vadema) in Mbire District, however they did receive assistance from Zimbabwe-based NGOs, including the Red Cross when Cyclone Idai hit the Zambezi valley in mid-March 2019. Assistance was also provided by the District Civil Protection Unit.

Food for work programmes provided income to approximately a third of the Tshwa and Doma in 2019, while the elderly and infirm received food commodities through the government's and NGOs' food aid programmes.

Educational support for the Doma continued in 2019 through the NGO Centre for Community Development in Zimbabwe (CCDZ). CCDZ and other sources state that out-of-school children and child marriages continued to be a serious problem for the Doma and neighbouring communities in 2019.<sup>12</sup>

Medical facilities for the Doma continued to be limited in 2019 with reports of home births and community members seeking cross-border maternal and medical care in Zambia.<sup>13</sup>

## **Continued hardships for the San and Doma**

The benefits received from the Communal Areas Management Program for Indigenous Resources (CAMPFIRE) continue to be limited for the Doma and San, partly due to their limited representation in local leadership structures. However, the Zimbabwe Parks and Wildlife Authority

recruited and trained 10 Doma community members as rangers in their area to conduct anti-poaching patrols, monitoring of hunts and problems of animal control.<sup>14</sup>

Livestock losses to predators and drought were severe in both Tsholotsho and Mbire districts. There were complaints especially in Tsholotsho that the Department of National Parks and Wildlife Management (DNPWLM) personnel were slow in dealing with animal problems and payment of compensation for livestock losses was said to be inadequate in 2019.

The percentage of Tshwa and Doma planting new crops in the 2019-2020 agricultural season was lower than it was in the past three years.<sup>15</sup> Government agricultural initiatives such as Command Agriculture have not benefitted rural small-scale producers, instead they have mainly focused on well-to-do farmers who receive seeds, subsidies and irrigation support.

Overall, the Indigenous people in Zimbabwe – the Tshwa and Doma – hope that improvements to access to basic services, representation and reduction in cultural and social discrimination will be realised in 2020.

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**Ben Begbie-Clench** is a consultant working on San issues in Zimbabwe, [benbegbie@gmail.com](mailto:benbegbie@gmail.com)

**Davy Ndlovu** is the head of the Tsoro-o-tso San Development Trust (TSDT), Tsholotsho and Bulawayo, Zimbabwe, [mdavadavy@gmail.com](mailto:mdavadavy@gmail.com)

**Robert K. Hitchcock** is a member of the board of the Kalahari Peoples Fund (KPF), a non-profit organisation devoted to assisting people in southern Africa, [rkhitchcock@gmail.com](mailto:rkhitchcock@gmail.com)



# Asia



# Bangladesh



Bangladesh is a country of cultural and ethnic diversity, with over 54 Indigenous Peoples speaking at least 35 languages, along with the majority Bengali population. According to the 2011 census, the country's Indigenous population numbers approximately 1,586,141<sup>1</sup> which represents 1.8% of the total population. Indigenous Peoples in the country, however, claim that their population stands at some 5 million.<sup>2</sup> The majority of the Indigenous population live in the plains districts of the country,<sup>3</sup> and the rest in the Chittagong Hill Tracts (CHT). The state does not recognise Indigenous Peoples as "Indigenous". Nevertheless, since the 15th amendment of the constitution, adopted in 2011, people with distinct ethnic identities beyond the Bengali population are now mentioned.<sup>4</sup> Yet only cultural aspects are mentioned, whereas major issues related to Indigenous Peoples' economic and political rights, not least their land rights, remain ignored. The CHT Accord of 1997 was a constructive agreement between Indigenous Peoples and the Government of Bangladesh intended to resolve key issues and points of contention. It set up a special administrative system in the region. Twenty-three years on, the major issues of the accord, including making the CHT Land Commission functional, orchestrating a devolution of power and function to the CHT's institutions, preserving "tribal" area characteristics of the CHT region, demilitarisation and the rehabilitation of internally displaced people, remain unsettled.

## NGO Affairs Bureau bans use of "adivasi"

A directive [Ref. No. 03.07.2666.660.66.49219.888] issued by the NGO Affairs Bureau, regulatory body of Bangladeshi NGOs, on 18 December 2019 asked all the registered organisations with the words "adivasi/Indigenous" in their titles to rename that portion of the name within one month. The directive from the NGO Affairs Bureau, signed by Shilu Ray, assistant director, claims that "no group in the country has been identified according to the Article 23A of the Consti-

tution as 'Adivasi'". The letter also mentions that a "vested local/foreign corner" is attempting to establish the rights and privileges enshrined in the ILO Convention No. 169 as part of the global politics, which is not only a threat to the "non-communal Bangladesh", but the term "Adivasi" is a threat to "national security" in the context of the CHT. It is noteworthy that the government has been denying the demands of Indigenous Peoples for constitutional recognition of their identities as "Indigenous Peoples" or "adivasi" in the constitution for past several decades.

The directive of the NGO authority has resulted in agitation among Indigenous leaders and noted historians, politicians and rights advocates of the country.<sup>5</sup> Human Rights Forum Bangladesh, an alliance of 20 rights organisations, expressed their concern over the matter through a press release.<sup>6</sup> Defying the directive, lawyer Jyotirmoy Barua mentioned that the directive is a "total violation of constitutional provisions."<sup>7</sup> An Indigenous organisation that received this letter identified the move as an insult to Indigenous Peoples.<sup>8</sup> Notably, this move is not new of its kind. State authorities have remained active against the use of the term Indigenous Peoples since the 15th amendment of the Constitution in 2011.

## **CHT Accord implementation: yet another year of despair**

Indigenous Peoples in the CHT completed yet another year with no considerable headway towards the implementation of the CHT Accord. Even after 22 years since its signing on 2 December 1997, the major provisions of the accord remain unimplemented. In recent years, in particular, CHT Accord implementation remained limited to the reconstitution of some concerned bodies<sup>9</sup> and their meetings.<sup>10</sup> The stagnation in implementation of the Accord remained a source of despair and resentment among Indigenous Peoples. Santu Larma, Parbatya Chattagram Jana Samhati Samity (PCJSS) leader, mentioned in a press conference in Dhaka marking the 22nd anniversary of the CHT Accord that the existing situation in the hills compelling Jumma people to think about strengthening the movement.<sup>11</sup> On the other hand, Bengali settlers have remained active in opposing the CHT Accord and its implementation process. Among different anti-accord moves, on 23 December 2019,



they formed a barricade along Rangamati-Chittagong road while the chairman and the members of the CHT Land Commission were on their way to a pre-scheduled meeting.

## **Indigenous Peoples' Human Rights Defenders in fear and violence**

The year 2019 was a year marred by fear and violence for Indigenous Peoples' Human Rights Defenders (IPHRDs), especially those affiliated with Indigenous political parties of the CHT. IPHRDs from this region were subjected to numerous trumped-up charges throughout the year. Literally, hundreds of activists were forced to remain on the run due to the fear of being arrested and killed at gunpoint. Local state authorities continued with various propaganda of blaming rights activists as "extortionists" and "armed terrorists". The visit of Asaduzzaman Khan Kamal, Home Minister, on 16-17 October 2019 in the CHT, and his meeting entitled "Special Meeting Relating to Law and Order in Three Hill Districts", further augmented the fear of state persecution among IPHRDs. United Peoples Democratic Front (UPDF) claimed in a statement that, in 2019, 74 people were arrested, 14 persons were arbitrarily killed and 42 people abducted, including its members.<sup>12</sup> PCJSS made similar claims concerning vilification of Indigenous activists and ordinary Indigenous people by the state as "armed terrorist groups".<sup>13</sup> Meanwhile, a permanent Rapid Action Battalion (RAB), a special force that once was identified as a "death squad" by Human Rights Watch for being responsible for hundreds of arbitrary killings, has been deployed in the region.<sup>14</sup>

## **Appointment of new NHRC**

On 22 September the government has appointed the chairperson of the National Human Rights Commission (NHRC) and its five members following the expiration of the previous commission. Former senior secretary Nasima Begum is the new chairman, the first female to occupy the position. Two other members of the Commission are also retired secretaries. An Indigenous person, vice president of Rangamati district Awami League (ruling political party), has also been declared new member

of the Commission.

Different rights bodies, including Human Rights Forum Bangladesh (HRFB), expressed deep concern and frustration over the appointment of the new commission without any discussion with other stakeholders.<sup>15</sup> Moreover, the members have no record of working in the human rights field. On the other hand, one of the members is actively involved with one leading political party.

The role and neutrality of the NHRC remains questionable for various reasons, and civil society fears that transforming the institution into a workplace for retired government officials will raise further questions about its effectiveness. Therefore, HRFB, through a press statement, called on the electoral committee to pursue an open and participatory process in line with the Paris Policy on National Human Rights Institutions before the appointment process begins.

## **Illegal brick kiln and stone extraction in the CHT**

The illegal brick kiln and unabated cutting of reserve forest and hills has rendered the homelands of local Indigenous Peoples at Lama and Thanchi upazilas, in Bandarban District of Chittagong Hill Tracts, uninhabitable. Their life has turned into hell from the moment the construction of the brick kiln started. The cutting of hills to set up the illegal brick kiln started in November 2019 defying the request of the Indigenous Peoples not to do this. If the kiln continues it will detrimentally affect the environment in nearby Prata Bawm Para and Baklai Para areas in Lama Upazila. There are around 60 families living in these two areas. The brick kiln owner threatened the Indigenous Peoples to evict them whenever they protest against it. The brick kiln is also polluting natural water bodies by dumping its chemicals into the water. Local people are facing a severe water crisis as the kiln owners have destroyed the water streams.

Local Indigenous people, students and civil society organisations planned a protest rally, a human chain and submitted a memorandum through which they demanded removal of all brick kilns established on the arable land owned by Indigenous Peoples. But the authority did not take it seriously. As a result, the kiln business is running freely. A huge amount of firewood is being collected by cutting down trees for

making the bricks. The burning of firewood is very unhealthy and is a threat to human health and the environment. The most affected Indigenous villages are Shivatoli Puraton Para, Shivatoli Naya Para, Mong Ba Ching Para, U Mra Mong Headman Para and Meaung Para of the remote Faitong area under Lama Upazila in Bandarban.

Similarly, illegal stone extraction from hilly streams in the Chittagong Hill Tracts, mainly in the Bandarban region, are also destroying the environment and biodiversity. Moreover, as a consequence of illegal stone lifting from the water bodies in Bandarban, hilly streams are drying up. Most of these streams are the only water source for at least four Indigenous communities – Marma, Khumi, Mro and Tanchangya. Therefore, these communities suffer from a shortage of drinking water in the summer. Indigenous communities are fighting against this illegal action. Last year, the affected communities and some mainstream rights organisations filed a writ petition to the High Court against this stone extraction. Finally, in February 2019, the High Court directed the concerned authorities to stop stone extraction from the Sangu and Matamuhuri Rivers and their adjacent reserved forest areas in Bandarban district.<sup>16</sup> However, even after the High Court ban, stone extraction continues in some places in the Bandarban region, and the administration is not taking strong action against this syndicate following the directives of the High Court.

## **Cases of violence against Indigenous women and girls**

Violence against Indigenous women has been a burning issue not only in the hills but also in the plain lands of the country. According to the Human Rights Report<sup>17</sup> of Kapaeeng Foundation, at least 26 cases of violence against Indigenous women were reported in 2019. Out of these cases, 14 were reported in the plains and the rest (12) in the Chittagong Hill Tracts. At least 33 Indigenous women were sexually or physically assaulted in the aforementioned 26 incidents. Out of the 33 victims, 12 were identified from CHT and the other 21 were from the plains. Among the reported incidents, at least seven women and girls were raped, five were killed or killed after rape, and seven women suffered attempted rape. Among other incidents recorded in 2019 in connection with vio-

lence against women and girls, three were gang raped, 61 were physically attacked and nine were sexually assaulted.

## **Bangladesh reviewed under Convention against Torture (CAT)**

Bangladesh has been a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since 1998. The CAT's monitoring body, the Committee against Torture, had reviewed Bangladesh for the first time in July 2019. Accordingly, on 9 August, the special Committee made 77 recommendations to the Government of Bangladesh in the Concluding Observations. Bangladesh submitted its report before CAT on 23 July for the first time since its ratification of the UN Convention against Torture in 1998.

The Law Minister Anisul Huq led a 28-member Bangladesh delegation.

Regarding the rights of minorities, he said the government was diligent in curbing any violence or torture targeting minorities in order to maintain a secular and inclusive society. He further mentioned, it also maintained a strict policy to address any form of violence against religious minorities under any pretext.<sup>18</sup>

During the review process, committee experts welcomed the constitutional prohibition of torture and the enactment of the *Anti-Torture Act*. However, the Committee against Torture expressed concern at consistent reports alleging widespread and routine torture and ill-treatment by law enforcement officials for the purpose of obtaining confessions or to solicit the payment of bribes, the lack of publicly available information on these cases, and failure to ensure accountability for law enforcement agencies, particularly the Rapid Action Battalion (RAB). The committee is seriously concerned at numerous, consistent reports of arbitrary arrests, unacknowledged detention and enforced disappearances, as well as reports of excessive use of force, including in the context of recent elections and public demonstrations.

The committee provided its concluding observations on Bangladesh on 9 August 2019 and recommended that the government publicly acknowledge that torture will not be tolerated under any circumstances, and ensure that its authorities, preferably independent bodies, carry

out prompt, impartial, effective criminal investigations into all complaints of torture, ill-treatment, unacknowledged detention, disappearances and death in custody. It recommended an independent inquiry into such allegations raised against RAB members.<sup>19</sup>

In its observation on violence against Indigenous, ethnic and religious minorities and other vulnerable groups – the committee mentioned that

*The Committee is concerned at reports of intimidation, harassment and physical violence, including sexual violence, committed against members of Indigenous, ethnic and religious minority communities, including by or with the cooperation of State officials. This includes the 6 November 2016 attack in Gobindaganj, Gaibandha District in which 3 members of the Santal Indigenous community were killed and more than 50 injured; in relation to which the Police Bureau of Investigation submitted a report on 28 July 2019 stating that no police were involved in the burning of their homes and schools and looting of other property, despite television footage showing the contrary. ... The Committee also noted the reported rape and sexual assault of two teenage women in the Chittagong Hill Tracts by members of the Army in January 2018 and the disappearance of Chittagong Hill Tracts-based Indigenous rights activist Michael Chakma on 9 April 2019, which the delegation indicated was under investigation.<sup>20</sup>*

Finally, the Government of Bangladesh received recommendations from the Committee. Among others, the recommendations that are related to the rights of Indigenous and ethnic minorities are:

- State party should ensure that independent investigations are carried out into reports of attacks and violence directed against Indigenous, ethnic, religious and other vulnerable minorities, including those detailed above;
- Protect the safety and security of persons belonging to minority Indigenous, ethnic and religious groups; ensure that they have access to an independent complaint's mechanism;
- Provide redress, including compensation and rehabilitation, to the

Santal community and members of other minorities and vulnerable groups who suffered physical violence, damage to and looting of their property;

- Collect and publish statistical information about attacks on violence against Indigenous, ethnic and religious minorities and other vulnerable groups including members of the LGBTI community;
- Prosecute and punish the perpetrators of all acts of violence committed by police and non-state actors against members of vulnerable groups.

However, for implementation of these recommendations the government needs political will and a comprehensive plan. Civil society organisations urged the government to make a time-bound and specific plan of action for effective implementation of the committee's recommendations and to make the public aware of the recommendations. The government has indicated it has intentions to make such a plan.

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**Pallab Chakma** is an Indigenous Peoples' rights activist and Executive Director of Kapaeeng Foundation, a human rights organisation of Indigenous Peoples of Bangladesh. Email: [pallab.juu@gmail.com](mailto:pallab.juu@gmail.com)

**Bablu Chakma** is a human rights defender and a life-long student of Indigenous life struggles. Email: [bablu\\_du2004@yahoo.com](mailto:bablu_du2004@yahoo.com)



# Cambodia





Cambodia is home to 24 different Indigenous Peoples, who speak mostly Mon-Khmer or Austronesian languages and constitute 1.4% of the national population, or around 400,000 individuals.<sup>1,2</sup> The Indigenous territories include the forested plateaus and highlands of North-eastern Cambodia, approximately 25% of the national territory. While not disaggregated in the national census, other data confirms that Cambodian Indigenous Peoples continue to face discrimination and forced displacement from their lands, which is extinguishing them as distinct groups.<sup>3</sup> These patterns are driven by ongoing state and transnational corporate ventures for resource extraction (mainly timber, minerals, hydro and agribusiness), coupled with growing in-migration from other parts of the country. Cambodia voted in 2007 to adopt the UN Declaration on the Rights of Indigenous Peoples without reservation, and has ratified the CERD, CEDAW and CRC but has still not ratified ILO Convention 169.<sup>4</sup>

During its last Universal Periodic Review (UPR) in 2014, Cambodia accepted a recommendation to “increase measures to tackle illegal land evictions [of] Indigenous people and consider fortifying the legislative framework consistently with international standards”.<sup>5</sup> However, this has not led to any actual remedy to the discrimination and land insecurity Indigenous Peoples continued to face in 2019. Indigenous Peoples’ rights movements continued to fight for their human rights; however, with deteriorating democratic freedoms and serious human rights violations, the ground on which the Indigenous rights movement exists has become more precarious. The Cambodian government has persisted on its path of corruption, human rights abuses and non-democratic rule. In general, an increased number of people were arrested and given long sentences for exercising their civil and political rights. The government crackdowns on political parties, NGOs, the media and others perceived to be in “opposition” to the reigning Cambodian Peoples Party (CPP) continued to mark 2019.<sup>6</sup>

## Threats to Indigenous communal land

**T**he Land Law of 2001 and the Forest Law of 2002 were enacted to secure Indigenous communities' land titles (CLTs), which formally acknowledge and protect the right of Indigenous Peoples to their ancestral lands through communal land titling. However, shortcomings in the implementation of the laws continued to negatively affect Indigenous Peoples in 2019. Instead, this has spurred indiscriminate land grabbing by powerful tycoons and large companies authorised – and sometimes directly supported – by the Cambodian government. Economic Land Concessions (ELCs) have continuously been granted to agro-industrial and mining companies, without due process or fair compensation for communities living on the land.<sup>7</sup> The lack of legal mechanisms to counteract land encroachments by ELCs has had devastating consequences for local Indigenous communities.<sup>8</sup> Complaints and protests from Indigenous communities often take years to be considered and rarely result in adequate compensation or return of the land. Moreover, protesting remains a dangerous activity, with a high risk of arbitrary arrest or harassment from ELC beneficiaries.<sup>9</sup>

To ensure and protect the legitimate interests of Indigenous people, the Government of Cambodia imposed the following measures and directions: "To stop providing more economic land concessions but speed up the registration process to at least 10 Indigenous communities a year from 2013".<sup>10</sup> As of 2019, a total of 24 communities held CLTs. Yet only a fragment of communal land is legally recognised and more than 500 Indigenous communities remain without CLTs.<sup>11</sup> ELCs have driven economic growth in Cambodia, but not without damaging natural resources. The loss of common resources, especially forests, has had a severe impact on livelihoods, and the spiritual and cultural traditions of Indigenous communities. Deforestation and long-term degradation of ecosystems will adversely affect many who rely directly on natural resources for their subsistence, income and safety net, and this will leave Indigenous Peoples generally more vulnerable to disasters.<sup>12</sup>

## Climate change and development goals

Cambodia is highly exposed to the impacts of global warming and ex-

treme weather, such as floods, drought, rising temperatures and strong winds. The frequency of climate-related disasters has increased in the past three decades,<sup>13</sup> with deforestation considered a major cause of flooding in Southeast Asia.<sup>14</sup> Across Cambodia, 2019 was marked by reports of unpredictable weather, shifts in the annual rainfall cycle, intensified wildfires, crop failure, drought and extreme heat.<sup>15,16</sup> As forests play a crucial role in mitigating climate crisis, increased deforestation and environmental damage is expected to further exacerbate extreme weather,<sup>17</sup> biodiversity loss, intensified wildfires, changes in rainfall cycles and Cambodia's capacity to absorb CO<sub>2</sub>.<sup>18</sup>

The Cambodian government has committed to a national framework for the Sustainable Development Goals – the Cambodian SDGs (CSDGs). With Goals 12 – 15 they aim to take urgent action to combat climate change and its impacts; to conserve and sustainably use the oceans and marine resources for sustainable development; and to protect, restore and promote a sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification and deforestation, reverse land degradation and halt biodiversity loss.<sup>19</sup>

From a human rights perspective, the CSDGs are missing important targets, including those related to reducing all forms of violence; reducing corruption and developing accountable institutions; ensuring public access to information; protecting fundamental freedoms; strengthening national institutions to prevent violence and combat crime; and promoting and enforcing non-discriminatory laws and policies for sustainable development. Consequently, an important aspect of the SDGs, - leaving no one behind - has been lost.

## **Land grabs in Preah Vihear province**

Indigenous lands in Preah Vihear province were seriously affected by ELCs in 2019. Only a fragment of the current land dispute cases will be mentioned in this chapter.

Independent media reports reveal how the Cambodian military guarded the workers and bulldozers of agro-industrial company Metreay Pheap Kakse Usahakam Co. Ltd., while they appropriated the land of Indigenous communities. This act was in violation of Defence Ministry orders issued in February 2019 banning military involvement in land

encroachments.<sup>20</sup> On 20 January 2019, a communal leader and his son were arrested by the Cambodian armed forces over a land dispute with Metreay Pheap. Two months later, the family had still not heard from this leader and he had not been taken before a court.<sup>21</sup>

The protected area of Prey Lang Wildlife Sanctuary stretches over the four provinces of Preah Vihear, Kratie, Stung Treng and Kampong Thom. Roughly 250,000 people, many of them Indigenous Kouy, live in the vicinity of the wildlife sanctuary and rely directly on the forest for their livelihoods, with resin extraction from dipterocarp trees being the main source of cash income.<sup>22</sup> Prey Lang is also a source of medicines, food, building materials and firewood.<sup>23</sup> The Prey Lang Community Network (PLCN), a loosely structured network of Indigenous Kouy and Khmer villagers, has conducted peaceful forest patrols to protect the forest and confiscate logging equipment and illegal timber for decades. The forest patrols and related advocacy work comes with a great risk of threats and violent retaliation from loggers and authorities. Since 2015, the PLCN has used smartphones and a specially designed app to document illegal logging. In 2018, a new security component was added to the app. PLCN members can now systematically report threats, intimidation and violence related to their forest protection activities. The data will be used to assess the scale of threats and intimidation against PLCN members. Preliminary results show that the app is preventing some of the worst abuses as perpetrators can be recorded and documented.<sup>24</sup>

Despite the forest protection efforts of the PLCN, the Cambodian Youth Network (CYN) documented continuous illegal logging, forest clearance and land encroachment inside the Prey Lang Wildlife Sanctuary in 2019. CYN has delivered its report to the Ministry of Environment and hopes to see immediate action.<sup>25</sup>

## **Economic Land Concessions and organised forest crime**

According to an investigative report, the agro-industrial company Think Biotech and Angkor Plywood are deeply involved in illegal logging and land grabbing of Indigenous territories. According to the report, many local resin tree owners from Indigenous communities have been threat-

ened and forced to sell their trees to the logging companies, thereby losing their income. Since the villagers have not been able to protect their trees against bulldozers and loggers, many have opted to sell at a low price, as the loggers had threatened to cut the resin trees anyway. The Dy Duk's sawmill processing the timber publicly announced that they would purchase timber from local people. According to the report, this engaged many poor people to cut trees inside the protected areas. The workers explained that the companies had guaranteed and protected them from arrest and supplied them with chainsaws. Convoys of trucks with valuable timber have been documented leaving the protected areas of Prey Lang Wildlife Sanctuary on numerous occasions. Protected by the Cambodian armed forces, the convoys travel at night and subsequently transport logs illegally across the border to Vietnam.<sup>26</sup> Although the evidence has been presented to the government, the smuggling of illegal timber across the border continues.<sup>27</sup>

In 2019, USAID and the EU delegation in Cambodia informed the Government of Cambodia that illegal logging operations were taking place in relation to the Think Biotech concession. The Minister of Environment, Say Sam Al, asked the Ministry of Agriculture, Fisheries and Forest for a joint investigation into the suspected illegal logging in Prey Lang Wildlife Sanctuary by Think Biotech and Angkor Plywood. Forest activists and residents living near Prey Lang, many of whom are Indigenous Kouy, have filed several complaints and asked the government to take action against the companies.<sup>28</sup> However, the report shows how both companies have close ties to the family of Prime Minister Hun Sen and how the Cambodian armed forces, forest rangers and government officials have been complicit in the forest crimes.

## **Return of ancestral land in Ratanakiri Province but compensation for damages still lacking**

In January 2019, after five years of mediation between the Indigenous communities of Ratanakiri and agro-industrial giant Hoang Anh Gia Lai (HAGL), which was granted an ELC to develop large-scale rubber plantations on ancestral Indigenous land, HAGL unilaterally withdrew from the dispute resolution process. Mediated by the Compliance Advisor Ombudsman (CAO) (the independent watchdog of the World Bank's In-

ternational Finance Corporation),<sup>29</sup> HAGL left before they had reached a final agreement on the subject of land and water restoration and compensation for damages.<sup>30</sup> Consequently, the Government of Ratanakiri province requested CAO's support to complete the results of the land demarcation process, the concluding phases of the return of 742 hectares of ancestral land from within the HAGL concessions including forests, spirit mountains, wetlands, burial grounds and traditional hunting areas that belonged to 11 Indigenous communities.<sup>31</sup>

Although the government's decision to return community land was applauded by the Indigenous communities, they also submitted a second complaint to the CAO repeating their appeal to HAGL to return to the resolution process in order to resolve the pending damages caused by the company. The new complaint provides extensive evidence of the environmental and human rights violations resulting from HAGL's comprehensive destruction of forests, burial sites and other sacred areas belonging to the Indigenous communities of Ratanakiri. The CAO will remain involved in monitoring the implementation of the land return agreement.

Highlanders Association calls it "an unprecedented recognition of Indigenous land rights over business interests in Cambodia". While this is a positive development, Indigenous communities still need compensation and help to restore their land and waterways. The loss of forests has severely eroded the communities' sovereignty over their land, livelihood and traditional agricultural systems, which are profoundly linked to their identity and culture. Foreign investors must be held accountable for violations of human rights and environmental disasters, particularly when they circumvent consultation with the communities affected and fail to gain their consent before starting work.<sup>32</sup>

## **The Everything But Arms agreement and violations of the ILO convention**

Cambodia is among nearly 50 countries that benefit from duty-free access to EU markets under the Everything But Arms (EBA) scheme. The EBA is conditional on compliance with the principles of 15 international conventions on fundamental human and labour rights and can be revoked if "serious and systematic violations" are taking place.

In February 2019, the European Parliamentary Research Service identified serious problems relating to human rights in Cambodia. Land grabbing was one of these problems. An estimated 10,000 people have lost their land to EBA-driven agro-industrial land expropriations. This has led to concerns that the EBA scheme is exacerbating human rights violations rather than addressing them.<sup>33</sup>

The High Representative of the EU has called on Prime Minister Hun Sen and the Cambodian People's Party (CPP), in power since 1985, to take immediate action to reinstate democratic freedoms. In response, the Cambodian government stressed that the loss of EBA status would devastate Cambodia's working class, especially female workers and, in addition, stated that the EU should respect the principles of sovereignty and non-interference in Cambodia's internal affairs.<sup>34</sup> The EU is currently considering whether to withdraw the EBA due to the deteriorating state of human rights in Cambodia. The decision to suspend Cambodia's EBA trade privilege will be taken in February 2020.

## Human rights

The report of the Committee on the Elimination of Racial Discrimination (CERD) has raised concerns about alleged intimidation and attacks against Indigenous Peoples as they seek to exercise their rights related to communal land. The CERD report also stresses what Indigenous Peoples have been emphasising for years; that the land titling process continues to be too lengthy and bureaucratic, thus preventing Indigenous groups from being able to efficiently register their communal land. Moreover, the report points out how insufficient free, prior and informed consent is affecting Indigenous communities, with natural resource extraction, industrial and development projects continuing apace. Prolonged land disputes have reportedly left affected Indigenous individuals homeless during settlement and made Indigenous lands susceptible to land grabbing for commercial purposes. CERD recommends that the government simplify the land titling procedure, allowing Indigenous Peoples to gain recognition and claim their land and, furthermore, to expedite the settling of land disputes and take measures to prevent the displacement of Indigenous Peoples.

The annual report of the Convention on the Elimination of All

Forms of Discrimination against Women (CEDAW) expresses concern at reports of intimidation, harassment and arbitrary detentions of women human right defenders, members of the CNRP, environmental and land activists, all of which has resulted in an atmosphere of fear and self-censorship. Indigenous women are particularly subject to significant barriers when seeking justice and effective remedies for violations of their rights.<sup>35</sup>

According to the report of the Special Rapporteur on human rights, the human rights situation in Cambodia continues to be one of a repression of political rights. The opposition party, the Cambodian National Rescue Party (CNRP), is still banned and its former President remains in detention. The report recognises that the Ministry of the Interior has revoked the law requiring civil society organisations to provide three days' notice of any activities; however, the Special Rapporteur had received many reports stating that subnational local-level authorities were turning up uninvited to events and meetings, taking photographs, enquiring about organisers and the agenda, or demanding information on participants. Gatherings in public areas to mark International Women's Day and International Human Rights Day have consistently been denied in at least four provinces. The Special Rapporteur urged application of the Law on Peaceful Demonstration, the normalization of peaceful gatherings and thus the strengthening of civil society participation, enabling marginalised or vulnerable groups to be heard.<sup>36</sup>

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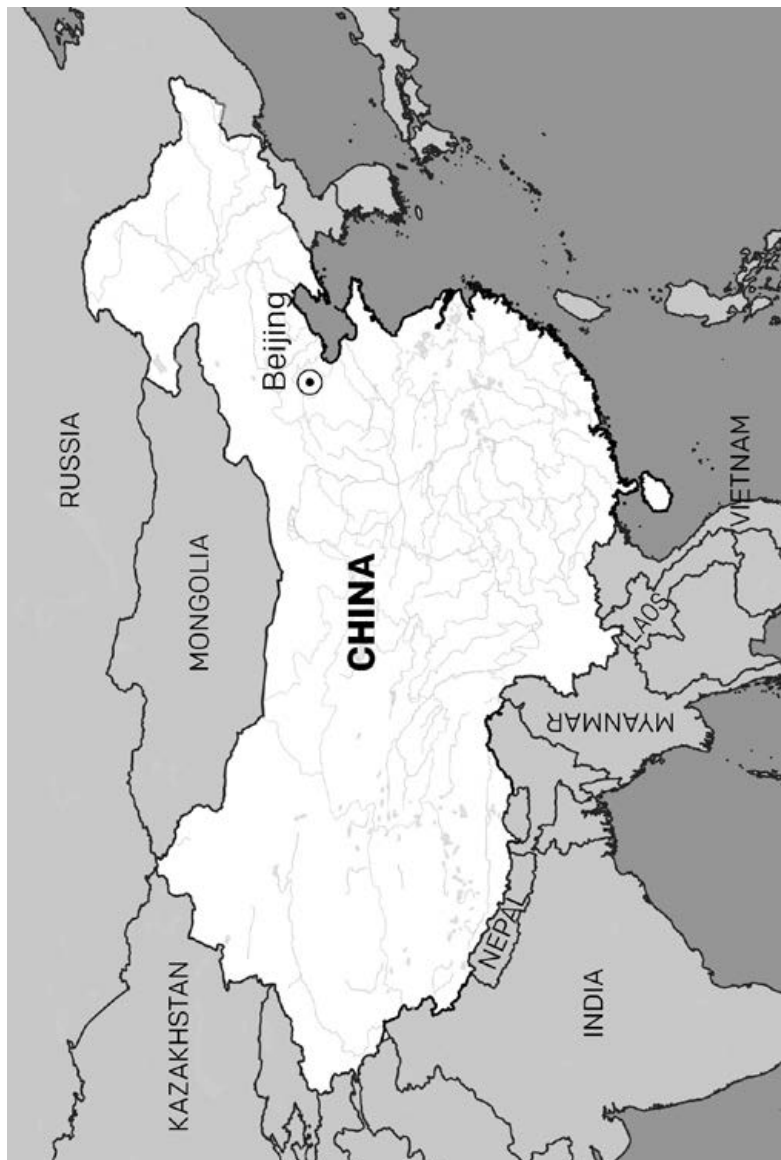
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**Katrine Gro Friborg** is a researcher, working on Indigenous knowledge, deforestation, food security and ethnobotanical relations.



# China



Officially, the People's Republic of China (PRC or China) proclaims itself a unified country with a diverse ethnic make-up, and all nationalities are considered equal in the Constitution. Besides the Han Chinese majority, the government recognises 55 *minority nationalities* within its borders. According to the latest national census in 2010, the minority nationalities' population stands at 111,964,901, or 8.49% of the country's total population. There are also "unrecognised ethnic groups" in China, numbering a total of 640,101 persons. Minority nationalities are socially marginalised in the Chinese context.

*The Law of the People's Republic of China on Regional National Autonomy* is a basic law for the governance of minority nationalities in China. It includes establishing autonomous areas of nationalities, setting up their own local governance and the right to practice their own language and culture. These regional national autonomous areas make up approximately 64% of China's total territory.

The Chinese government does not recognise the existence of Indigenous Peoples in the PRC despite voting in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

## Unbalanced reactions towards the global governance of climate change, biodiversity and Indigenous Peoples

China – the world largest carbon dioxide emitter<sup>1</sup> – has expressed its political ambition as a global leader on climate action through multilateralism, especially after the US decided to withdraw from the Paris Agreement. Together with New Zealand, China developed the *Nature-Based Climate Solutions Manifesto* and a compendium of nature-based solution (NBS) contributions for the UN Climate Action Summit in September 2019.<sup>2</sup> Of the 196 initiatives and best practices presented on the NBS contributions platform of the UN Environment Programme (UNEP) webpage by over 70 governments, private sector,

civil society and international organisations, about 36% initiatives are from China.<sup>3</sup>

In 2019, climate change has continuously been among the priority issues addressed in the Head of States' communications between China and other countries. There were also significant activities in building the momentum for enhancing the authority and effectiveness of the multilateral mechanisms on climate change in 2019. In April, the 8th China-EU Energy Dialogue resulted in a Joint Statement on the China-EU Energy Cooperation for the implementation of the Paris Agreement. During the G20 summit in Osaka in June, a press communique was jointly issued by the China-France-UN Tripartite Conference on Climate Change to reaffirm commitment to full and effective implementation of the Paris Agreement. In October, China discussed issues of climate change challenges and future cooperation during the third China-Pacific Island Countries Economic Development and Cooperation Forum. The same month, China chaired the BASIC (Brazil, South Africa, India and China) Ministerial Meeting on the global climate governance situation. In December, at the 25th Conference of Parties (COP 25) in Madrid, China expressed its commitment to completion of negotiations on the remaining issues of the implementation rules of the Paris Agreement.

In contrast to the active involvement and leadership in global climate governance, the Chinese government's contribution to the recognition of Indigenous Peoples' rights globally and domestically was less imposing. The stand on non-recognition of Indigenous Peoples in China prevents their meaningful participation and contributions to climate change and biodiversity conservation actions in China and does not allow them to voice their concerns over the threats to their lands, sacred sites and access to natural resources. While actions on climate change or conservation of biological diversity in China are mainly undertaken on lands and waters traditionally occupied and used by Indigenous Peoples, little to no consideration has been made regarding the impact of these actions on Indigenous Peoples populating these areas.

In June 2019, China submitted the *Second Biennial Update Report on Climate Change*<sup>4</sup> and the *Third National Communication on Climate Change*<sup>5</sup> under the *UN Framework Convention on Climate Change* (UNFCCC). Neither of the two documents mentions concerns and impacts

of climate change on Indigenous people or minority nationalities. Meanwhile, a “Conserving Biodiversity for a Beautiful China” project presented by China to the UN NBS contributions platform as a good practice does not recognise the dependency of Indigenous and local communities on biological diversity and the unique role of Indigenous and local communities in conserving life on Earth.<sup>6</sup>

## **Domestic institutional framework, climate change action and Indigenous Peoples**

China has developed a massive normative framework on climate change. A policy study completed in 2019 revealed that in a decade China has implemented more than 100 policies related to lowering its energy use and greenhouse gas emissions.<sup>7</sup>

The *Outline of the 13th Five Year Plan*<sup>8</sup> for National Economic and Social Development (FYP), among others, includes chapters on renewable energy, greenhouse gas emission control, minority nationalities, etc. These are the frameworks for governmental agencies to take relevant actions. Unfortunately, the wording on targets and measures in the *Promoting Development of Minority Nationalities and their Regions* section of the FYP are vague and lacking clear operational plans on climate change.<sup>9</sup> Moreover, fragmented institutional and normative frameworks affects climate change governance and Indigenous Peoples’ rights. Institutionally, the State Ethnic Affairs Commission of China (SEAC) is responsible for supervising the implementation of regional national autonomy systems and protecting rights and interests of minority nationalities.<sup>10</sup> However, despite the fact that many climate change-related initiatives are implemented in ethnic minority areas, SEAC is not part of the National Leading Group on Climate Change, Energy Conservation and Emission Reduction, an authoritative body composed of 24 ministries and offices under the State Council responsible for comprehensive coordination of climate change policies and measures in China.

Shifting the energy structure towards prioritisation of renewable energy and increasing forest carbon sinks are the main actions that affect Indigenous Peoples in China. The FYP on renewable energy reiterated an earlier announced goal of a 15% share of non-fossil energy in

total primary energy consumption by 2020, and 20% by 2030. Hydropower development plays the key role in reaching the goal. Mega dam projects on all the major rivers in Tibet, such as Brahmaputra, Salween, Jinsha and Yellow River, were either already under construction in 2019 or in stages of preparation. The implementation of these projects may lead to the relocation of local Indigenous communities as well as some likely irreversible damage to biodiversity hotspots. Two main projects – Baihetan and Longpan hydropower stations – for example, each may result in the relocation of about 100,000 people, including Indigenous communities of Tibetans, Naxi and Yi peoples in Sichuan and Yunnan provinces.<sup>11</sup>

Moreover, expanding the long-distance hydropower transmission capacity for the “west-to-east electricity transfer” project and “transfer Tibet electricity out” project in 2019 also affects local Indigenous communities.<sup>12</sup> The world’s highest altitude high-voltage power grid was established in 2019 which links to the ongoing construction of a new Sichuan-Tibet railway line from Chengdu to Lhasa.<sup>13</sup> These large-scale infrastructure projects have been undertaken without appropriate cultural and social impact assessment of local Indigenous communities.

In 2019, the Ministry of Water Resources in China proposed “water conservation”,<sup>14</sup> “maintaining healthiness in river and lakes”,<sup>15</sup> and “constructing green small hydropower” initiatives to the UN NBS contributions platform.<sup>16</sup> The impacts of these policy initiatives to Indigenous communities remains to be assessed.

In 2019, China continued to implement a number of major forestry ecology protection and restoration projects, including “protecting natural forest resources”, “restoring arable land to nature”, “building forest shelter belt systems”, “wetland protection and restoration”, “comprehensive treatment of stony desertification and sandstorm source control” and “accelerating afforestation”.<sup>17</sup> While the state report concluded that “forestry carbon sinks functionality [were] steadily strengthened” by these measures, the involvement of Indigenous Peoples in planning and executing these projects has not been considered and the impact on their livelihood has not been assessed. For example, Oroqin hunters in northeast China were not invited to participate in developing forest resources and afforestation projects, while their access to the material basis of their life as hunting and gathering people in their own auto-



mous territory has been obstructed.<sup>18</sup> A similar situation is observed in Inner Mongolia, where the Ar Horqin grassland nomadic system listed as one of the Globally Important Agricultural Heritage Systems in 2019<sup>19</sup> has been restricted.

## **Special focus on climate change governance in Tibet Plateau – the Third Pole of the Earth**

Recognising the special vulnerability of the Tibet plateau to climate change, the Chinese government has undertaken a number of initiatives targeting this region. Unfortunately, many of these are undertaken with little consideration of the rights of Indigenous Peoples living in Tibet.

In 2019, authorities continued working on establishing the Sanjiangyuan (source of three rivers) National Park (SNP) set to open in 2020. The park will cover an area of 123,100 km<sup>2</sup> of the Tibetan plateau in Qinghai Province.<sup>20</sup> The establishment of the SNP is a more advanced measure than previous ‘converting pastures to grasslands’ programmes and preceded by the Sanjiangyuan National Nature Reserve (SNNR), where Indigenous communities were resettled and nomadic herding practices were banned or restricted. Tibetan nomads contend the notion that they are responsible for the grassland degradation of the Tibetan Plateau as suggested by the government, suggesting that Indigenous stewardship and herd mobility are essential to both the health of rangelands and the mitigation of climate change.<sup>21</sup> While establishment of the new National Park may effectively prohibit potential mining activities in the area, Indigenous communities are likely to be excluded from the management of the park and development initiatives, such as eco-tourism, and their traditional way of life will be constrained.<sup>22</sup>

In June 2019, the Ministry of Science and Technology of China submitted the “Initiative of the International Big Science Research Plan: Three Poles Environment and Climate Change” to the UN NBS platform with the idea of promoting scientific and technological innovation and cooperation across various sectors, as well as internationally. Among its objectives, the initiative suggests to “encourage and support Indigenous Peoples to participate in the assessment and definition of three

poles research priorities, and enhance the ability of Indigenous communities to adapt to three poles changes”.<sup>23</sup> Such research, if it finally takes place, could be helpful in bringing Indigenous Peoples’ rights into the Chinese government’s initiatives around climate change in accordance with best practices globally.

## New tendencies in 2020

In October 2020, China will host the 15th meeting of the Conference of the Parties (COP 15) to the Convention on Biological Diversity (CBD). The expected result is to adopt the “Post-2020 Global Biodiversity Framework” as a stepping stone towards the 2050 vision of “living in harmony with nature”. Various stakeholders including Indigenous Peoples from different parts of the world are expected to participate in the event.

It is highly significant to observe any kind of participation of Indigenous Peoples from China in this conference. Among various challenges of implementing CBD in China is ensuring the full involvement of Indigenous communities in the assessment of cultural, environmental and social concerns, and interests of Indigenous communities of proposed developments in the benefit-sharing from the use of biological resources by the Art. 8 (j) of CBD.

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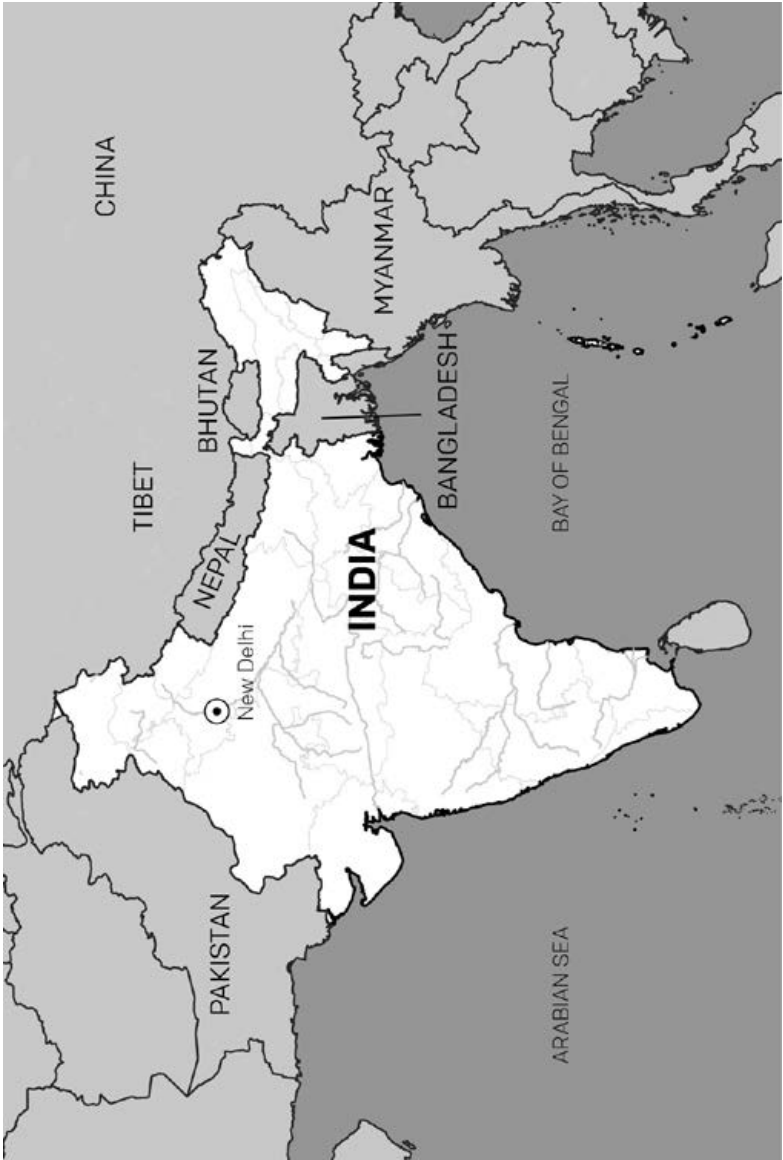
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*Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.*



# India



In India, 705 ethnic groups are recognised as Scheduled Tribes. In central India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means Indigenous Peoples.<sup>1</sup> With an estimated population of 104 million, they comprise 8.6% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but which are not officially recognised; as a result estimates of the total number of tribal groups are higher than the official figure. The largest concentrations of Indigenous Peoples are found in the seven states of north-east India, and the so-called “central tribal belt” stretching from Rajasthan to West Bengal. India has several laws and constitutional provisions, such as the *Fifth Schedule* for central India and the *Sixth Schedule* for certain areas of north-east India, which recognise Indigenous Peoples’ rights to land and self-governance. The laws aimed at protecting Indigenous Peoples have numerous shortcomings and their implementation is far from satisfactory. The Indian government voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) with a condition that, since independence, all Indians are considered Indigenous. At the same time, the Government of India has increasingly been using the term “Indigenous populations”. For example, through a notification dated 27 September 2018, the Government of India created a High-Level Committee to look into the “social, economic, cultural and linguistic issues of the Indigenous population in the State of Tripura”.<sup>2</sup>

In a major development, the Government of India used the terms “Indigenous populations of North-Eastern States” when introducing the Citizenship Amendment Bill in the Lok Sabha (lower house of Parliament). Section 10 of the Statement of Objects and Reasons of the Bill states the following: “10. *The Bill further seeks to protect the constitutional guarantee given to indigenous populations of North-Eastern States covered under the Sixth Schedule to the Constitution and the statutory protection given to areas covered under the ‘Inner Line’ system of the Bengal Eastern Frontier Regulation, 1873*”. This is a major development in terms of the official recognition of Indigenous populations.

## Legal rights and policy developments

**O**n 28 February 2019, India's Supreme Court put on hold its 13 February order directing 21 state governments to evict more than a million tribals and forest dwellers and their families whose claims over the forest land had been rejected by the authorities under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006. The 13 February order came in response to petitions filed by wildlife conservation groups, who claimed that everyone whose FRA claim had been rejected was an "encroacher" and should be evicted. The stay order was passed after the central government filed a plea seeking modification of the 13 February order stating that FRA was "beneficial" legislation and that it should be construed liberally to help the tribals and forest dwellers who "are extremely poor and illiterate people and not well informed of their rights and procedure under the Act. They live in remote and inaccessible areas of the forest. It is difficult for them to substantiate their claims before the competent authorities."<sup>3</sup> The case is pending along with the stay. Nonetheless, a total of 1,753,497 tribals and forest dwellers whose claims were rejected as of 31 July 2019, as per data from the Union Ministry of Tribal Affairs,<sup>4</sup> remained at risk of eviction.

India has been drafting a National Forest Policy since 2018 amid protests from Indigenous Peoples. On 19 July, the Union Minister of State in the Ministry of Environment, Forest and Climate Change (MoEFCC), Babul Supriyo, informed the parliament that "no time has been set to the adoption of new National Forest Policy" and as of now "the existing National Forest Policy, 1988 is in operation". The Minister had stated that the MoEFCC had prepared the draft National Forest Policy 2018 as a revision to the 1988 version with the basic aim of conserving, protecting and managing the forests as well as safeguarding the interests of tribals and forest-dependent people.<sup>5</sup> However, experts disagree with the government's assertion that the thrust of the draft of the new National Forest Policy is towards safeguarding the interests of forest dwellers and tribal people,<sup>6</sup> and an early warning was submitted to the UN Committee on the Elimination of all Racial Discrimination by IWGIA.

In Assam, the state government published the final National Register of Citizens (NRC) in the state on 31 August. Out of the total 33,027,661

applicants, the names of 31,121,004 people were included and 1,906,657 people were left out. According to estimates, more than 100,000 tribals who are the original inhabitants of Assam have been excluded from the controversial NRC.<sup>7</sup>

On 21 October, the Assam government approved the “Assam Land Policy-2019” to address various issues confronted by the Indigenous people of the state, especially with reference to land. The new policy was based on recommendations from the “Committee for Protection of Land Rights of Indigenous People” constituted by the state government in 2017. In its report, however, the committee left the definition of Indigenous Peoples open to interpretation.<sup>8</sup> Earlier in July, the Union Home Ministry had set up a High Level Committee to devise a mechanism to implement Clause 6 of the Assam Accord 1985, which provides for “constitutional, legislative and administrative safeguards” for the Asamese people.<sup>9</sup> The High Level Committee is yet to submit its report.

On 15 November, the central government withdrew the controversial draft Indian Forest (Amendment) Act 2019. In a press briefing, the Union Minister of Environment, Forest and Climate Change, Prakash Javadekar stated: “We are completely withdrawing the draft amendment to the Indian Forests Act to remove any misgivings, the tribal rights will be protected fully and they will continue to be the important stakeholder in forest development”.<sup>10</sup> The amendment bill brought in in March by the Government of India was criticised by forest rights activists and tribal organisations for authorising violations of the rights of Indigenous Peoples. In an important ruling, on 9 December the Guwahati High Court ordered the eviction of non-tribals and other persons “not eligible to hold possession of land” in the tribal belts and blocks protected under Chapter X of Assam and Revenue Regulation Act 1886 in response to a public interest litigation filed on the issue. The authorities are required to evict 101,723 non-tribals from 389,705 *bighas* of land in the tribal belt and blocks.<sup>11</sup>

In another positive development, towards the year’s end, on 29 December, the Jharkhand government decided to withdraw all sedition cases registered against tribals during the *Pathalgadi* movement and protests against the amendments to the Chotanagpur Tenancy Act (CNT) and Santhal Paragana Tenancy Act (SPT). The move came just hours after Hemant Soren, an Adivasi, was sworn in as the new



Chief Minister of Jharkhand. The Pathalgadi movement began in 2017 when stone plaques and signboards were placed in over 200 villages of Jharkhand, rejecting the authority of the central or state governments in those villages. The tribals accused the then state government of snatching the rights of the tribal people through amendments to the CNT and SPT laws. The then state government recorded a total of 19 cases of sedition against 150 tribal people.<sup>12</sup>

## **Violations of the rights of Indigenous Peoples by the security forces**

The security forces continued to be responsible for human rights violations throughout 2019, including custodial death and torture of tribals. Some of the illustrative cases of deaths of tribals in police custody included Ramkishore Gond (26) at Vijayraghograh police station in Katni district, Madhya Pradesh on 13 January;<sup>13</sup> Swamidin Baiga (32) at Tala police station in Umaria district, Madhya Pradesh on 7 April;<sup>14</sup> Leela Adivasi (50) at Maharajpur police station in Sagar district, Madhya Pradesh on 15 April;<sup>15</sup> and Pankaj Kumar Bek (30) at Ambikapur police station in Sarguja district, Chhattisgarh on 21 July.<sup>16</sup> Meanwhile, some of those who were allegedly tortured in police custody included Peram Antony (25) at Tadepalli police station in Guntur district, Andhra Pradesh on 26–30 May;<sup>17</sup> Anup Rabha (26) at Tangla police station in Udalguri district, Assam on 5 August;<sup>18</sup> R Babu (22), M Velu (29), S Ramu (30), V Velu (29), R Vijayakumar (30), V Shankar (30) and K Manikandan (35) at Ulundurpet police station in Kallakurichi district, Tamil Nadu;<sup>19</sup> and Aaditya Chouhan (18), Vikas (19), Yashwant Chouhan (20), Rahul Chouhan (18) and a minor at Nanpur police station in Alirajpur district, Madhya Pradesh.<sup>20</sup>

## **Violations of the rights of Indigenous Peoples by armed opposition groups**

Armed opposition groups continued to be responsible for gross violations of international humanitarian law during 2019, including killings.

The Maoists continued to kill innocent tribals on charges of being

“police informers”, or simply for not obeying their diktats. The majority of the victims were killed in *Jan Adalats*, ‘People’s Courts’ held by the Maoists. Some of the alleged killings by the Maoists in 2019 took place at Kasansur village in Gadchiroli, Maharashtra on 22 January;<sup>21</sup> at Venas village in Nabarangpur district, Odisha on 11 February;<sup>22</sup> at Lanji village in Balaghat district of Madhya Pradesh on 19 June;<sup>23</sup> at Kukerkunda village in Malkangiri district, Odisha on 27 June;<sup>24</sup> at Puttapadu village in Sukma district, Chhattisgarh on 10 July;<sup>25</sup> at Veeravaram village in Visakhapatnam district, Andhra Pradesh on 17 July;<sup>26</sup> at Kumkumpudi village in Vishakapatnam district, Andhra Pradesh;<sup>27</sup> at Baskund and Gobardaha villages in Lakhisarai district, Bihar;<sup>28</sup> among others.

## Non-restoration of alienated tribal land

There are a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and restoring alienated lands to the tribal landowners. These laws, however, remain ineffective, not invoked or with attempts being made to weaken them.

There are many cases of alienated tribal lands acquired through fraudulent means or by force that still remain to be restored to original landowners. Ironically, the government, which brought in the laws to restore such land to its original tribal landowners, failed to defend them in courts. For example, the Orissa High Court on 12 April ruled that the amendment to the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation 1956, passed by the state assembly in 2000 would not operate retrospectively.<sup>29</sup>

On 17 July, 11 tribals belonging to Gond tribe were killed and 23 others injured when an influential village head and his men opened fire indiscriminately on Umbha village in Sonbhadra district, Uttar Pradesh. The tribals resisted an attempt by the village head, identified as Yagya Dutt, and his men to take possession of their land, where they had been living for generations. Following the killings, the police arrested 65 of the perpetrators. A Special Investigation Team (SIT) constituted by the state government found evidence showing the land had belonged to the tribals since pre-Independence. The SIT also found that the land was illegally registered in the name of a society in 1955 and later transferred

to individuals. It was revealed that the tribals had filed complaints when the society was formed but officials paid no heed to their pleas. In 2017, the tribal families approached the then district magistrate but their claims were rejected on 6 July, 12 days prior to the killings.<sup>30</sup> The state government paid compensation of Rs 18,50,000 to the family of each of the deceased and Rs 6,00,000 to each of the injured victims.<sup>31</sup>

In November 2019, during a visit to villages in Dantewada, Jagdalpur and Kanker in Chhattisgarh, the National Commission for Scheduled Tribes found that a significant number of tribal people were continuing to be affected by land acquisitions and land grabbing in the state.<sup>32</sup>

In Mizoram, tribals belonging to the minority Chakma community continued to be targeted. In December, over 100 Chakma families were forcibly evicted from Kamalabagan village near Demagiri (Tlabung) in Lunglei district by officials of the state machinery at the behest of non-state entities. The villagers were forced to flee despite the village having been recorded in the 1951 census.<sup>33</sup> The families were living in a temporary relief camp set up by Chakma NGOs in a nearby village at the year's end.

## **Conditions of the internally displaced tribal peoples**

The government has failed to rehabilitate tribals displaced due to both conflicts and development projects over the years.

Thousands of Bru (Reang) tribals have continued to live in deplorable conditions in relief camps in Tripura since their displacement from Mizoram in 1997. The much-hyped repatriation process of the Brus to Mizoram remained a failure due to non-fulfilment of the demands of the displaced people. In order to enforce the repatriation, the central government stopped the supply of rations and cash to the displaced people in the camps in October 2019. The Mizoram Bru Displaced People's Forum claimed that six people, including babies, had died in the camps due to starvation following the central government's decision.<sup>34</sup> At the time of writing this article, an agreement had been signed to resettle the displaced Brus in Tripura.<sup>35</sup>

Tribals displaced due to the Maoist conflict in Chhattisgarh are

still waiting to be rehabilitated. In July, the Union Ministry of Tribal Affairs and the National Commission for Scheduled Tribes (NCST) asked Chhattisgarh, Telangana and Andhra Pradesh to conduct a survey to ascertain the number of tribals displaced from Chhattisgarh for their rehabilitation within three months. There are around 30,000 tribals who fled Chhattisgarh due to the Maoist conflict and who are currently living in deplorable conditions in 248 settlements in forests of Odisha, Andhra Pradesh, Telangana and Maharashtra. However, the survey had not been completed by the year's end.<sup>36</sup>

## **Repression under forest laws**

A large number of forest-dwelling tribals continued to be denied their rights in 2019. According to information available from the Ministry of Tribal Affairs, as of 31 July, a total of 4,237,853 claims had been filed under the Forest Rights Act, of which 41% had been rejected.<sup>37</sup> According to the FRA, no member of a forest-dwelling tribe shall be evicted from land under their occupation until the recognition and verification procedure for settlement of forest rights is complete. However, they remain at risk of eviction despite having forest rights titles or pending claims. For example, the tribals of Pathrai village in Sarguja district, Chhattisgarh had to approach the Chhattisgarh High Court after the Chhattisgarh Mineral Development Corporation (CMDC), a public sector undertaking, started mining for bauxite in the area where some 50 individual forest rights titles have been granted and another 50 claims are pending under the FRA. Pertinently, the PSU had fraudulently obtained a "No Objection Certificate" from the Gram Sabha, whose consent is mandatory for any development activity under Panchayats (Extension to Scheduled Areas) Act 1996. On 3 December, the High Court ordered the CMDC to stop mining activity in the village.<sup>38</sup>

## **Situation of tribal women**

Tribal women and girls in India are deprived of many of their rights. Both collective and individual rights are violated in private and public spaces.

Sexual violence, trafficking, killing/branding as a witch, militarisation or state violence and the impact of development-induced displacement, etc. remained major issues. In its latest report “Crime in India 2018”, the National Crime Records Bureau stated that 1,008 tribal women, including 399 children, were raped during 2018.<sup>39</sup>

Justice remained elusive or delayed for victims of sexual violence. On 5 February, the trial in the gang rape case of tribal women, allegedly by Greyhound Commandos during anti-Maoist operations at Vakapalli village in Visakhapatnam district, Andhra Pradesh in 2007, commenced at a special court after a delay of over 12 years. The trial finally began after a tireless struggle by the rape survivors. In August 2007, 11 tribal women were allegedly gang raped by 21 Greyhound Commandos, an elite anti-Naxal force of Andhra Pradesh.<sup>40</sup> In Assam, two poor Chakma tribal girls who were victims of trafficking and sexual violence are yet to obtain compensation from the state government despite the intervention of the National Human Rights Commission (NHRC), acting on a complaint by the Asian Centre for Human Rights. The state government informed the NHRC that the statutory financial sanction under the SC/ST Act had been processed but the amount could not be released to the victims due to a lack of funds under the scheme.<sup>41</sup>

## NAGALIM

The Naga inhabit a territory known as Nagalim, which is situated between China, India and Myanmar. They occupy an area of approximately 120,000 km<sup>2</sup>. The Nagas form several tribes, primarily in the north-eastern region of India and north-western Myanmar.

### Indo-Naga peace talks

Ever since the Framework Agreement (FA) between the Government of India (GoI) and the National Socialist Council of Nagaland (NSCN-IM) was signed and declared on 3 August 2015, a sense of hope and optimism for a final peaceful solution has prevailed, particularly among the Naga people, amid tension and suspension largely due to failure of both parties to declare the content of the FA to the general public.

Naga Independence Day was celebrated across Nagalim (celebrated every year since 1947) on 14 August 2019, with continued hopes for a final peaceful solution. However, the tension and suspension turned to fear and chaos when the Interlocutor and Governor of Nagaland R.N. Ravi made it absolutely clear that the GoI would sign the final agreement with agreeable Naga National Political Groups (NNPGs) and take the necessary course of action against those in disagreement,<sup>42</sup> thereby inking in 31 October 2019<sup>43</sup> as the deadline to end the seven-decade long issue, against the will and desire of the Naga people. Ravi's statement was of some significance as, on 5 August, the central government announced abrogation of the special status given to Jammu and Kashmir under Article 370 and divided the state forcibly into Union territories.<sup>44</sup> The general public was left in disarray (with zero knowledge of the FA) and, for once, expected the worst with the Armed Forces being strengthened in the state, tanks being seen on the streets and fighter jets hovering overhead.<sup>45</sup>

The Interlocutor and Governor of Nagaland called for a Consultative Meeting (CM) of all the 14 Apex Tribal Hohos of Nagaland along with other civil society organisations on 18 October at 2.30 pm at the Conference Hall of Japfü Hotel, Kohima. However, organisations like the United Naga Council (UNC) of Manipur, the Naga Students Federation (NSF), Naga the Mothers Association (NMA),<sup>46</sup> the Naga Peoples Movement for Human Rights (NPMHR) and others were not invited for reasons best known only to Ravi. In the words of Khekiye K. Sema, the CM:

*...could be logged as a 'Historic Day' or a 'Day of Infamy' for the confused Nagas being tantalized in fluent English language to swim in blood all over again by India. What could happen next... if India chooses to take its future action based on the so-called 'mandate' of this un-mandated meeting...is going to determine the fate of the common man of Nagaland...<sup>47</sup>*

Naga people living in Delhi, led by NSF in collaboration with the Naga Students' Union Delhi (NSUD), took to the streets marching from Mandi House to Parliament Street, New Delhi on 24 September 2019 seeking an early solution to the Naga political issue. NSF president Ninoto Awomi stressed the importance of "Implement[ing] the Principles of

the Framework Agreement” recognising “India and Nagalim as two separate political entities”.<sup>48</sup>

With the continued tussle for “a separate flag and constitution” between the Gol and NSCN-IM, the talks came to an end on 31 October 2019, declaring that they had arrived at a consensus over the demand for a separate Naga national flag and constitution. However, the NSCN (I-M) leader added, “We still have to give competencies the final touch for final solution”.<sup>49</sup>

When the final Naga solution will take place is still under wraps but it is a sad reality that, even after 22 years of peace talks between the Gol and the Nagas, a solution acceptable to both parties could not be discussed and agreed between the two entities.

## The Citizenship Amendment Act

Even before the dust of the Indo-Naga talks had settled, the controversial Citizenship (Amendment) Bill (CAB) 2019 vis-à-vis the Citizenship Amendment Act (CAA) 2019 was passed by the Indian parliament, leading to uproar, chaos and protest all across India. According to the CAA, Hindu, Christian, Buddhist, Jain, Sikh and Parsi migrants who have entered India illegally - that is, without a visa - on or before 31 December 2014 from the Muslim-majority countries of Pakistan, Afghanistan and Bangladesh and have stayed in the country for five years, are eligible to apply for Indian citizenship.<sup>50</sup>

Even before the bill was passed, petitions and protests had been made in various forms by different bodies in and around the country. Nagas blatantly rejected the proposed bill and showed their resentment by organising an 18-hour *bandh* (strike) under the banner of the Joint Committee for Prevention of Illegal Immigrants (JCPI) on 20 November 2019.<sup>51</sup> This was followed by a 6-hour *bandh* on 14 December after the bill was passed, organised by NSF.<sup>52</sup> The numbers are only expected to rise in the coming days. Yet the reasons for the protest vary by geography. The various Naga and civil society organisations continue to oppose the CAA, seeing it as a threat to the identity, culture, land and resources of the Indigenous people of Nagalim.

In the backdrop to all this resentment and protest, the lone Lok Sabha Member of Parliament (MP) from Nagaland, Tokheho Yepthomi, voted in support of the bill citing that it was amended to give protection

to the states under the Sixth Schedule and Bengal Eastern Frontier Act 1873.<sup>53</sup> Further, Rajya Sabha MP, KG Kenye of Nagaland and Lok Sabha MP Lorho S Pfoze from outer Manipur, both belonging to the regional Naga People's Front (NPF) party voted in favour of the bill.<sup>54</sup>

On being called for a show-cause notice by the NPF Disciplinary Action Committee (DAC) for voting in favour of the bill, Kenye tendered his resignation from the party's post as NPF secretary general and clarified that he voted in favour of CAB because it granted exemption to Nagaland under the provisions of the Inner Line Permit (ILP) under Bengal Eastern Frontier Regulation (BEFR) 1873.<sup>55</sup>

## **The draft Indian Forest (Amendment) Bill of 2019**

The draft Indian Forest (Amendment) Bill of 2019, circulated in the month of March, aims to re-establish state power over forests at the cost of rights granted to the forest-dwelling tribals and other forest dwellers under the Forest Rights Act of 2006 (FRA).<sup>56</sup> "The amendment was drafted by a core committee consisting of mainly forest bureaucrats without taking the rights-holders and stakeholders, particularly the indigenous peoples and Ministry of Tribal Affairs (MoTA), into confidence."<sup>57</sup> "The proposed amendment is more colonial and frightening than before. It is discriminatory and draconian," stated a joint statement from the Boro Peoples' Human Rights Organisation (BPHRO), Indigenous Women Forum of North-East India (IWFNEI), Karbi Human Rights Watch (KHRW), Naga Peoples' Movement for Human Rights (NP-MHR) and Zo Indigenous Forum (ZIF). The statement noted that, if the amendment passes, approximately 8 million hectares of forest land traditionally controlled by the community would be taken over by the state's forest bureaucracy<sup>58</sup> thereby threatening the very existence of the Indigenous people of the country who are directly or indirectly dependent on the forest for their livelihood and survival.

This amendment is a "conspiracy to deny the powers of the state over ownership and transfer of lands and its resources specifically protected under Article 371 A for Nagaland and Article 371 G for Mizoram, and the power and control over forests other than reserved forests in VI Schedule areas of Assam, Meghalaya, Tripura and Mizoram, and of the autonomous councils constituted by state laws in Assam and Manipur".<sup>59</sup>



## Disturbed area status

The year 2019 ended with the Government of India announcing its 2020 “New Year gift” to the Nagas by once again declaring the entire Naga-inhabited area a disturbed area for another six months with effect from 30 December, in exercise of the powers conferred by section 3 of the Armed Forces (special powers) Act, 1958 (No. 28 of 1958),<sup>60</sup> which gives the Armed Forces the right to fire upon or use other kinds of force, even if it causes death, against persons who are acting against law and order in the disturbed area for the maintenance of public order, to arrest anyone without a warrant and to enter and search any premises. Army officers furthermore enjoy legal immunity for their actions.

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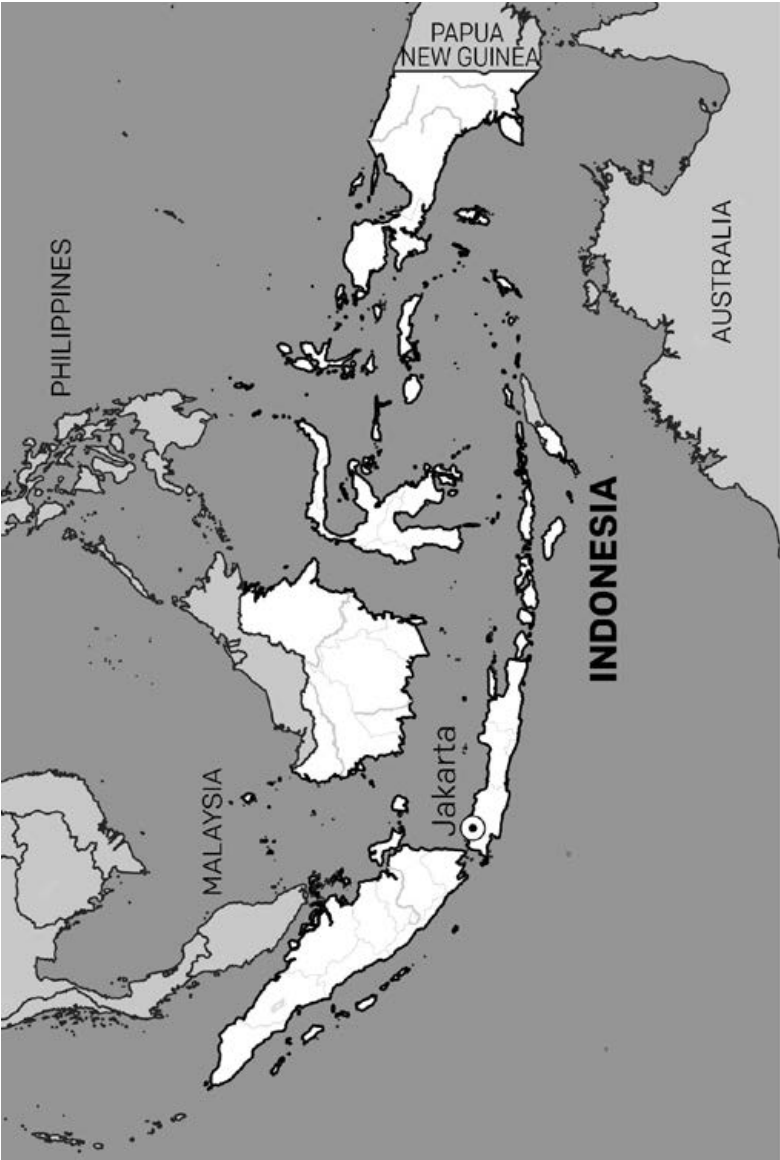
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**Tejang Chakma** is Head of Research at the Asian Indigenous and Tribal Peoples Network (AITPN).

**Dr. Martemjen** belongs to the Indigenous Ao Naga community of Nagaland, Member of the Naga People's Movement for Human Rights (NPMHR) and author of the book "Biodiversity conservation, Indigenous knowledge and practices: a Naga perspective".



# Indonesia



Indonesia has a population of approximately 250 million. The government recognises 1,128 ethnic groups. The Ministry of Social Affairs identifies some Indigenous communities as: *komunitas adat terpencil* (geographically-isolated Indigenous communities). However, many more peoples self-identify or are considered by others as Indigenous. Recent government acts and decrees use the term: *masyarakat adat*, to refer to Indigenous Peoples. The national Indigenous Peoples' organisation, *Aliansi Masyarakat Adat Nusantara* (AMAN), estimates that the number of Indigenous Peoples in Indonesia is between 50 and 70 million. The third amendment to the Indonesian Constitution recognises Indigenous Peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some rights of peoples referred to as: *masyarakat adat* or *masyarakat hukum adat*, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No. X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term: *masyarakat adat* and use the working definition of AMAN. The Constitutional Court affirmed the Constitutional Rights of Indigenous Peoples to their land and territories in May 2013, including their collective rights to customary forests. While Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of Indigenous Peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are Indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs from groups identifying themselves as Indigenous.

West Papua covers the western part of the island of New Guinea and comprises the two Indonesian provinces of Papua and West Papua (*Papua Barat*). It has a population of 4.378 million people split into two provinces, with 3.5 million in the Papua province and 878,000 in the West Papua province. More than 50% of the population in both provinces are trans-migrants who

came through the transmigration program between the 1970s and early 2000s. West Papua has the most diverse cultures and languages in Indonesia. While Bahasa Indonesia is the official language spoken now, there are more than 250 tribal languages spoken by Indigenous Papuans today. The Indigenous people have seven distinct customary territories, which includes Mamberamo Tabi (Mamta), Saireri, Domberai and Bomberai along the north coast. Both Domberai and Bomberai territories are administered within the provincial government of West Papua. The Mee Pago and La Pago territory are located in the highlands of Papua and Ha Anim territory is located on the south coast of Papua. Since Indonesia annexed the region from the Netherlands in 1969, West Papuans have continued to seek independence from Indonesia. The conflict and violence continued until, in 2001, the Indonesian government issued a Special Autonomy Law for the province, which was formerly called Irian Jaya to Papua, after which the government forcibly divided Papua and West Papua in two separate provinces.

## General Elections

**2**019 was a political year with simultaneous general elections. Joko Widodo won his second term as president of Indonesia, yet Indigenous Peoples under the leadership of the *Aliansi Masyarakat Adat Nusantara* (or the Indigenous Peoples' Alliance of the Archipelago [AMAN]) did not officially support his candidacy this time due to their disappointment in the lack of delivering results as promised during the previous election campaign. AMAN supported 164 Indigenous community cadres to run in the 2019 legislative elections.

Thirty-four Indigenous candidates were elected comprising one candidate for the House of Representatives (*Dewan Perwakilan Rakyat Republik Indonesia*/DPR RI), three candidates for the Regional Representatives Council (*Dewan Perwakilan Daerah*/DPD), nine candidates for the Provincial House of Representatives (*Dewan Perwakilan Rakyat Daerah*/DPRD) and 21 candidates for the District/City House of Representatives.



Indigenous Peoples faced a multitude of challenges in the 2019 general elections such as conflicts related to tenure and the design of the 2019 election registration.<sup>1</sup> Tenure conflicts that are still ongoing in Indigenous territories are a barrier for Indigenous Peoples obtaining their basic services, for example with electronic identity cards (KTP elektronik). Indigenous Peoples without identity cards are not recorded in the population and civil registration, and as a result, during elections, they are not able to participate. In this context, one million Indigenous Peoples in forest areas were unable to vote because they do not have electronic identity cards. This situation shows that conflict in customary lands is linked to loss of Indigenous Peoples' constitutional rights in the 2019 general elections.

Secondly, in terms of the design of the election registration, three of the five election ballots were not provided photographs, but instead only the DPR and DPRD candidates' names were listed. This hinders illiterate Indigenous Peoples to practice their right to vote. In addition, Election Law No. 7 of 2017 does not stipulate assistants to accompany illiterate voters. For example, 1,400 Dayak Meratus community members in South Kalimantan lost their voting rights due to their limited literacy.<sup>2</sup>

Moreover, Indigenous Peoples also faced non-structural challenges in the 2019 elections. AMAN's electoral evaluation carried out in eight provinces – South Sulawesi, Banten, North Sumatra, Riau, West Kalimantan, Maluku, North Maluku and East Nusa Tenggara – found external pressure from corporate organisations, government and local elites attempting to obstruct Indigenous Peoples' political participation in the 2019 elections.<sup>3</sup>

On the other hand, AMAN was trusted to become a partner of the Elections Supervisory Agency (*Badan Pengawas Pemilu/Bawaslu*) for the simultaneous elections as one of the election oversight organisations.

## **Follow up on the Constitutional Court Decision to return Indigenous customary forest land**

2019 was a disappointing year in terms of the government's lack of commitment in following up with Constitutional Court Decision No. 35/2012.<sup>4</sup> The government's follow-up to the decision has been to pass inadequate regulations created for sectoral and partial interests only.

The customary forest regulation faces a similar fate. Only around 32,000 hectares of customary forests have been handed back to Indigenous Peoples after nearly seven years since Constitutional Court Decision No. 35/2012. This is an underachievement, especially compared to the public commitment and campaign at the time.

On the ground, Indigenous Peoples are often seduced into accepting social forestry schemes instead of fighting for the customary forest regulation as established in Court Decision No. 35/2012.

For Indigenous Peoples, social forestry is useless for recognising their constitutional rights. Social forestry is outside of the Constitutional Court Decision's implementation framework. Social forestry is a 35-year state license where customary forest includes the restoration of Indigenous Peoples' rights to their customary land. AMAN has refused social forestry schemes in customary lands since 2013 through the Rongkong Declaration.<sup>5</sup>

## Conflict and criminalisation

Rampant criminalisation is increasingly targeting farmers. During President Joko Widodo's second term (2019), the number of criminalisation cases has increased along with the government's investment-first agenda.<sup>6</sup>

Acts of violence and criminalisation against Indigenous Peoples and Indigenous human rights defenders continued to occur. In 2019, more than 15 cases of customary land grabbing, arrests, violence and evictions took place targeting Indigenous Peoples' communities. For instance, with the criminalisation of traditional farmers in Central Kalimantan and West Kalimantan.

Two traditional farmers, Gusti Maulidin and Sarwani, who practice the cut and burn system when opening fields<sup>7</sup> were both charged with burning land and forests to grow rice on an area less than one hectare. They were charged with multiple articles: first, with Article 108 of the 2009 *Law Concerning Protection and Management of the Environment*;<sup>8</sup> second, with Article 78 of the 2013 *Law on The Prevention and Eradication of Forest Destruction*;<sup>9</sup> third, Article 187 Part 1 of the Indonesian Penal Code;<sup>10</sup> and fourth, Article 188 of the Criminal Law (KUHPi-dana).<sup>11</sup>

The criminalisation of traditional farmers is massive in Kalimantan, some of whom went through the legal process and up to trial;<sup>12</sup> while others finished at the police investigation level.

The criminalisation of Indigenous Peoples who practice their Indigenous knowledge is clearly a violation of the law, specifically Law No. 32 of the 2009 *Law Concerning Protection and Management of the Environment*.<sup>13</sup> In the act there is indeed a prohibition on burning, but the same law exempts Indigenous Peoples who carry out limited land burning activities based on Indigenous knowledge that has been carried out for generations.

## The Indigenous Peoples Bill and Land Bill

Throughout 2019, as it has been for many years, AMAN has been struggling to pass the Indigenous Peoples Bill into national law. House of Representatives members who were committed from the start have again included the Indigenous Peoples Bill in the National Legislative Program.

Meanwhile, at the local level in the same year, 30 local regulations on Indigenous Peoples have been passed throughout Indonesia. Other local regulations were passed as a result of stronger community organisations, especially at local chapters.<sup>14</sup>

While the Indigenous Peoples Bill has yet to be passed into law, the Land Bill was drafted in 2019. A hidden agenda to steal customary lands lies within this bill.<sup>15</sup> The bill contains several critical issues for Indigenous Peoples. It does not recognise the rights of Indigenous Peoples and their rights to their customary lands. The bill attempts to remove Indigenous Peoples' rights to land by stipulating that customary land must be registered within two years after the Land Bill is passed into law. Customary lands must be registered as well as physically occupied. This stipulation is clearly a threat since Indigenous communities do not physically occupy their entire customary lands. Large portions of customary lands are left untouched to be conserved under customary law. Other areas may be allocated for other uses or for future rotating farmland.

For that reason, AMAN has taken a stand that the bill must be rejected. The drafting of the bill lacked transparency and it was not dis-

cussed with the public, including AMAN. An open consultation was carried out, but again AMAN was not involved.

## **Investment Omnibus Law and the potential threat against the security of customary lands and Indigenous Peoples' future<sup>16</sup>**

The Investment Omnibus Law can lead to revoking or making amendments to a number of laws. At least 74 laws are planned to fall under the Investment Omnibus Law.<sup>17</sup>

As described above, cases of customary land grabbing, violence and criminalisation have taken place repeatedly in 2019 without the Omnibus Law, and investments are already uncontrollably pouring into customary lands. The government has revised regulations prohibiting open mining in protected forests to facilitate mining companies' investments.

The Indigenous Peoples' movement must anticipate the development of the Omnibus Law. Experiences from the past 30 years have shown that investment and state authority implementation in allocating forest areas have been detrimental to the state itself, investments and environment, and has brought lasting suffering to Indigenous Peoples.

## **Rights violation over land and natural resources**

Research by Human Rights Watch<sup>18</sup> found that land and natural resources conflicts caused by oil palm plantation concessions contribute to increased poverty due to loss and conversion of Indigenous and local communities' land into large-scale oil palm plantations. AMAN's field observations also indicate other forms of degradation from oil palm plantations, such as decreasing Indigenous Peoples' living space to ecological degradation, and loss of Indigenous Peoples' cultural identity.

Thus, the idea for developing an Investment Omnibus Law must be accompanied by passing the Indigenous Peoples Law. Moreover, Indigenous Peoples' organisations advocate that the Indigenous Peoples Law should be positioned or designed as an Omnibus Law. In such a position the Indigenous Peoples Law can invalidate a number of other laws that have contributed to the sluggishness of processes in recog-

nising Indigenous Peoples and customary law.

Without these significant steps, assurance of Indigenous Peoples' rights to their customary land will not be easily achieved. This will influence the unbreakable cycle of violations and violence.

## **WEST PAPUA**

The hopes that were raised with the enactment of the Law on Special Autonomy for West Papua and the adoption of the UNDRIP by Indonesia in 2017 have, however, thus far been frustrated. For almost two decades the status of this Special Autonomy has not answered the grievances and aspirations of the people of Papua. Armed conflict and violence still occur today.

The forests of West Papua cover 42 million hectares, or 24% of Indonesia's forested area, and are home to 54% of Indonesia's biodiversity. Together with Papua New Guinea, West Papua makes up the third largest tropical forest in the world after the Amazon and Congo Basin forests. The region is also rich in mineral resources and is home to the largest gold mine and the third largest copper mine in the world. However, the mines have caused more damage than benefit for the local Indigenous Peoples.

The Human Development Index in Indonesia placed both Papua and West Papua provinces as the lowest in 2018 – with Papua at 60.06 and West Papua at 63.74. The social parameters such as birth rates, illiteracy rates and HIV/AIDS sufferers greatly affect this index.

### **The armed conflict in Nduga**

The armed conflict in Nduga regency and the wave of displacement of thousands of civilians who avoided the conflict took place throughout 2019. The conflict began with the killing of 16 PT Istaka Karya<sup>19</sup> workers by an armed group led by Egianus Kogoya on 2 December 2018.

Indonesian security forces (TNI and Polri) carried out military operations in pursuit for Egianus Kogoya. The news of death, shootings and displacement has continued to flood various media throughout Papua. During 2019, tens of thousands of Nduga people had to flee their vil-

lages.<sup>20</sup> About 200 people have reportedly died in refugee camps and thousands of children could not go to school.<sup>21</sup>

Indonesian security forces have been accused of using phosphorus bombs in military operations to pursue the perpetrators of the murder of workers of Istaka Karya Ltd. Although Indonesian security forces deny the allegations, an article in the Australian media<sup>22</sup> provided images of the use of phosphorus that appeared on the bodies of the wounded victims.

This military operation in Nduga regency has been condemned by the Papua provincial government. The Governor of Papua, Papuan Parliament and Papuan People's Assembly have asked the Indonesian government to withdraw security forces in Nduga so that local residents can return safely to their villages and carry out their usual activities. Up until now, this request has not been responded to.

## The Cycloop nature reserve

On 16 March 2019, flash floods hit Sentani, Jayapura regency, Papua. Several hundreds of people died and tens of thousands lost their homes.<sup>23</sup> According to the data from the Meteorology, Climatology and Geophysics Agency, rainfall during the flood measured 114 millilitres.

The flood confirmed that the infrastructural development of the Jayapura regency area, which is located under the Cycloop nature reserve, has contributed to the destruction of the natural environment in the reserve. For the Indigenous Tabi community, the damage to the Cycloop nature reserve means damage to their ancestral land.<sup>24</sup>

The Cycloop was listed as a nature reserve by ministerial decrees in 1978 and 1987<sup>25</sup> and is around 31,000 hectares, of which more than 1,000 hectares (about 7%)<sup>26</sup> was damaged in 2019.

The flash floods and damage to the Cycloop nature reserve brought new problems, mainly between the Indigenous Tabi community and Indigenous highlanders of Papua,<sup>27</sup> who have lived in Jayapura regency since the 2000s. The highlanders have been accused of destroying parts of the Cycloop nature reserve. This accusation has impacted the socio-political dynamics of the community, as the highlanders are being accused of fraudulent political practices to control positions in the provincial government and the parliament.

For this reason, the Jayapura regency, Jayapura city, Mamberamo Raya regency and Keerom regency, collectively have called for a new autonomous region or a new province.<sup>28</sup>

## **Papua's commitment for the world's lungs**

During 1-3 May 2019, Governor Lukas Enembe of Papua province attended the annual Governor's Climate and Forest (GCF) Task Force conference in Caqueta, Colombia.<sup>29</sup> In the conference, Governor Enembe mentioned that as home to tropical forests, Papua is ready to contribute in sustaining the world's lungs.

"Papua is ready to protect 90% of its tropical forests. But we need help, because protecting the forest is not easy, because of the enormous challenges we face, such as massive logging and large-scale plantations in Papua," said Governor Enembe.

According to Mr. Enembe, around 85% of the forests in Papua are still intact and around 90% of Indigenous Papuans live in or near the forest. "Therefore, we are committed to green growth that recognises the existence of Indigenous Peoples," Governor Enembe said.

Governor Enembe proposed that Papua should host the next conference, which was approved by the GCF forum.

## **Racial discrimination and violence**

The most important event in 2019 was the anti-racist demonstrations that took place throughout Papua and West Papua.<sup>30</sup> The first demonstration happened on 19 August 2019, after which successive demonstrations were carried out in various cities across West Papua. The demonstrations are believed to have been ignited by racist comments made by security forces towards Papuan students in Surabaya. Security forces allegedly called the students "monkeys" and "dogs".<sup>31</sup> Thousands of people in West Papua have gone to the streets in main towns such as Fakfak, Sorong, Manokwari, Nabire, Jayapura, Merauke, Wamena, Deiyai and Timika, protesting against Indonesia's government and the racism they encounter in Indonesian society.<sup>32</sup>

The demonstrations turned violent and government and private buildings were burned down. On 23 September, the student anti-racism peace rally turned bloody in Jayapura and Wamena.<sup>33</sup> Four students and one TNI member died after a clash between students and police in Jayapura. In Wamena, dozens of civilians were burnt to death in their homes and dozens of Indigenous Papuans were shot by security forces when the anti-racism demonstrations turned violent.<sup>34</sup>

The Indonesian government responded by shutting down the internet access in both Papua and West Papua as it referred to the incidents as a hoax that should not spread.

### **Arrests of pro-independent activists**

The arrests of Indigenous Papuans for peacefully expressing their aspirations for independence and self-determination happened in 2019. Mass arrests took place from the end of November through to early December. Around 112 people were arrested in Fakfak, Sorong, Manokwari, Jayapura and Sentani under treason charges.<sup>35</sup> Police charged them for planning to raise the Morning Star flag on 1 December, which is banned by the Indonesian Government.

Prior arrests were made from the end of August to early September 2019, with six activists arrested for carrying out anti-racist demonstrations in front of the Indonesian Presidential palace.<sup>36</sup> These six were later named as suspects in a treason case. In addition, seven Papuan youth leaders were arrested by the police in Jayapura for mobilising the masses during a peaceful demonstration against racism on 23 August.<sup>37</sup>

### **The exodus of Papuan students from campuses in various cities**

Since September 2019, thousands of Papuan students have returned to Papua due to the lack of security<sup>38</sup> after the anti-racist demonstrations in Papua. Papuan students who studied in several cities in Indonesia felt threatened and spied upon by Indonesian security forces.

A member of the Papua Students Association Education Division (IMASEPA), Weak Kosay, noted that some Papuan students in Bandung and surrounding areas had returned to Papua and claimed they could not stand the treatment from Indonesian security forces, especially after the incident in Surabaya.<sup>39</sup>



Governor Enembe noted that the increasing number of Papuan students returning begs for an immediate solution from the Papua provincial government.

## **The PIF Communique and West Papua case**

At the Pacific Islands Forum (PIF) Leaders' summit in Tuvalu, August 2019, the Vanuatu government successfully received a strong statement for West Papua on the PIF Communiqué. West Papua activists and lobbyists in the Pacific boosted their efforts to gain support from the Pacific nation to pass a PIF resolution urging the visit of the United Nations High Commissioner for Human Rights to West Papua to carry out an investigation on the alleged human rights violations.<sup>40</sup>

Vanuatu's Special Envoy to West Papua, Lora Lini, stressed that Vanuatu had won the draft resolution during the PIF senior officials and ministries meeting in Fiji, weeks prior to the leaders' summit. The meeting of PIF senior officials and ministries set the agenda for the PIF leaders in Tuvalu.

"We sincerely hope that the outcome of the communique of the PIF and the Prime Minister of Vanuatu will bring the resolution to the UN General Assembly," Lini said.

## **Judicial review of the 'act of free choice'**

2019 marks the 50-year anniversary of the Act of Free Choice<sup>41</sup> or the determination of people's opinion (*Pepera*). The Presidium Papua Council (PDP) and the Papua Customary Council (DAP) have given power of attorney to 15 lawyers who are members of the Freedom of Justice and Justice Advocacy Coalition for the People of Papua, to submit a Judicial Review of Law No. 12 of 1969 concerning the establishment of the West Irian, an autonomous province to the Supreme Court of the Republic of Indonesia.<sup>42</sup>

"What we are concerned about is that there are phrases in this law that the 'act of free choice' were correctly implemented. But the reality is not like that. That's why we did a trial at the Constitutional Court, "

Yan Warinussy, the head of the Coordinator of the coalition advocating freedom and justice for Papuan people, said.<sup>43</sup>

## **First International Conference on Papuan Students**

The first Papua International Students Conference was held in Los Angeles on 20 December 2019. The conference was organised by the Forum of Papuan Youth and Scholars and the Papuan Student Association in the United States (IMAPA), and fully supported by the provincial government of Papua and West Papua. The conference was attended by around 200 Indonesian students who are studying in the United States, Indonesia, Philippines, the United Kingdom and Canada. The conference discussed the ideas and role of Papuan youth in education, health and economy under the Acceleration of Papua Development programme.

A joint outcome was declared as the Los Angeles Papua Golden Generation Declaration.<sup>44</sup>

## **Violence and armed conflict will continue**

The Indonesian Government's attitude toward Papua has never changed. Violence and armed conflict in Papua have continued to increase over the last five years. Thousands of Indigenous Papuans were arrested and hundreds were imprisoned, while dozens were killed due to different opinions and perspectives. On the other hand, dozens of Indonesian soldiers, security forces and police officers have also been killed over the last five years.

The increase of violence and conflict does not only confirm the differences between Papuan and Indonesian government perceptions about the history of West Papua's integration with Indonesia, but has caused a detrimental loss for the people in Papua and Papua Barat provinces. As a result, both provinces have faced difficulties in terms of development, including education and health services, which affect Indigenous population. In general, the armed conflict and violence are highly influential for the level of trust of Indigenous Papuans towards the Indonesian government.

For that reason, the government of Indonesia needs to change its development approach in West Papua. Infrastructure development over the past five years has not answered any problems of Indigenous Papuans. Papuans demand historical correction upon the transfer of West Papua's sovereignty from the Dutch to Indonesia, as well as remedy for human rights violations that have occurred since the annexation by Indonesian authorities.

## Notes and references

1. Law No. 41/1999 concerning Forestry which regulates zoning consisting of protected forest areas, production forests, conservation, etc. The implication of this law is the determination of zoning which tends to be political. 70% of the area in Indonesia is forested and there are at least 25,863 villages within the forest area (the Ministry of Environment and Forestry/KLHK, 2017). By the population and registry office, people who live in forest areas are not given a residence identity, either a Family Card (KK) or an electronic ID Card (KTP elektronik), unless there is a permit to release the forest area from KLHK, or must first be moved to the village around forest areas that have legality of domicile. This condition resulted in the obstruction of the fulfillment of identity ownership such as electronic ID Card because they were reluctant to recognise the existence of Indigenous communities within the forest area. See also: Law No 26 of 2007 concerning Spatial Planning which regulates spatial planning and spatial planning based on the main function of the area consisting of protected areas and cultivation areas. This law then prohibits development activities in forest areas; Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency (Permen ATR/BPN) No. 11 of 2016 concerning Settlement of Land Cases. This Ministerial Regulation refers to Law No. 30 of 2011 concerning Government Administration and explains that in the case of administrative activities not carried out on land that is in conflict or dispute; and Presidential Regulation No. 88 of 2017 concerning Settlement of Land Tenure in Forest Areas. This regulation is related to the resolution of conflicts in forest areas, with resettlement as one of the settlement patterns.
2. "Masyarakat adat Dayak Meratus: Dilema hak suara para tuna aksara". BBC 28 March 2019: <https://www.bbc.com/indonesia/media-47731783>; "Jutaan warga adat terancam gagal mencoblos, kisah Dayak Meratus hadapi pemilu tanpa mengenal aksara". BBC 28 March 2019: <https://www.bbc.com/indonesia/indonesia-47703634>. Read also: Barahamin, Andre "An Election Which (Still) Not For Indigenous Peoples". Monday, April 22, 2019: <https://rallu.xyz/2019/04/22/an-election-which-still-not-for-Indigenous-peoples/>
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5. Rongkong declaration is a strong statement from AMAN as result of AMAN's national meeting in Rinding Allo community, Limbong district, Luwu Utara regent, South Sulawesi province, 22 September 2011. See <http://pergerakan.org/deklarasi-rongkong/>
6. Listing those cases are from five different region in the country: Traditional farmers in Kalimantan, Sihaporas in Sumatra, Matteko in Sulawesi, Lambo dam in East Nusa Tenggara and Akejira in Maluku. Furthermore see: Catatan Akhir Tahun AMAN 2019 (<https://www.aman.or.id/2020/01/mengarungi-badai-investasi-catatan-akhir-tahun-2019-aliansi-masyarakat-adat-nusantara-aman/>)
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13. Op Cit. (8)
14. See Aliansi Masyarakat Adat Nusantara: [www.aman.or.id](http://www.aman.or.id)
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17. The laws are grouped into six clusters: 15 laws on investment requirements; risk-based businesses comprising 9 laws on basic permits and 45 laws on

- the permit sector; 2 laws on authority and mandates; 20 laws on development and oversight; 26 laws on sanctions; and 8 laws on supporting ecosystem (facilitation and investment).
18. Human Rights Watch do research to see the big problem facing especially by Indigenous women on their customary land as impact of oil palm plantation companies in two different study cases: PT Ledo Lestari in Bengkayang, West Kalimantan and PT Sari Aditya Loka in Jambi, Sumatra. More information on: <https://www.hrw.org/report/2019/09/22/when-we-lost-forest-we-lost-everything/oil-palm-plantations-and-rights-violations>
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  25. See the Agriculture Ministerial Decree Number: 56/Kpts/Um/1/1978, dated January 26, 1978, and the Forestry Ministerial Decree Number: 365/Kpts-II/1987, dated November 18, 1987
  26. "BBKSDA: 1.000 hektare cagar alam Siklop rusak". TabloidJubi, 24 August 2018: <https://www.jubi.co.id/bbksda-1000-hektare-cagar-alam-siklop-rusak/>
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**Jakob Siringoringo** is a Batak from Sumatra and Chairman of the Indigenous Youth Front of the Archipelago/BPAN.

**Victor Mambor** is a senior journalist from Papua and founder of the main online media, *tabloidjubi.com*. As a journalist his work covers more than 20 countries, mainly in the Pacific region. His articles on Papua can be found in the *Jakarta Post*, *Benarnews.org*, *The Internationalist*, *The Guardian*, *Radio New Zealand*, *ABC* and *Al-Jazeera*.



# Japan



The two Indigenous Peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The Ainu territory stretches from Sakhalin and the Kuril Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20th century, tens of thousands migrated to Japan's urban centres for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognised as Indigenous people of Japan. The most recent government surveys put the Ainu population in Hokkaido at 13,118 (2017) and in the rest of Japan at 210 (2011), though experts estimate the actual population to be much higher.<sup>1</sup>

Okinawans, or Ryūkyūans, live in the Ryūkyū Islands, which make up Japan's present-day Okinawa prefecture. They comprise several Indigenous language groups with distinct cultural traits. Japan colonised the Ryūkyūs in 1879 but later relinquished the islands to the United States in exchange for independence after World War II. In 1972, the islands were re-incorporated into the Japanese state and Okinawans became Japanese. The island of Okinawa is home to 1.1 million of the 1.4 million Okinawans living throughout the Ryūkyūs. The Japanese government does not recognise Okinawans as Indigenous people.

Japan has adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) – although it does not recognise the unconditional right to self-determination. It has not ratified ILO Convention 169.



## A “New Ainu Law” and after

Followed by an intensive discussion of propositions for a New Ainu Law<sup>2</sup> in 2018,<sup>3</sup> the *Act Promoting Measures to Achieve a Society in which the Pride of Ainu People is Respected*, as it is known officially,<sup>4</sup> was finally enacted in April 2019.<sup>5</sup> This marked a historic moment within Ainu politics in Japan by including the Ainu as Indigenous people of Japan for the first time in Japanese national legislation, as opposed to the previous recognition, which had remained only at the level of a Diet (Japan's legislature) Resolution and comments by the Chief Cabinet Minister.

Ainu themselves were divided in their view of the enacted law. While Article 4 of the new law explicitly bans discrimination against Ainu on the basis of ethnicity, it falls short of recognising the rights of Indigenous people as enshrined in the UNDRIP.

Criticisms in regard to the law in the first half of the year revolved around what Ainu activist groups perceived as a lack of broad consultation with a wide constituency of Ainu individuals in regard to Ainu policy overall,<sup>6</sup> in other words, an absence of Ainu self-determination as well as an understanding of the new law as constraining and founded in government-driven tourist incentives.<sup>7</sup> The new law neither makes any mention of collective rights, nor of community development grounded in Ainu Indigenous self-determination;<sup>8</sup> rights of the Ainu people to land, natural resources and economic and political self-determination have not been included. In principle, local municipalities that receive financial subsidies made possible through the law for promotion of Ainu culture are to consult with local Ainu about the implementation of these initiatives, but whether the minority Ainu opinion will be included remains to be seen.

What has been touted as the central features of the law, creation of a new National Museum and Park in Shiraoi, Hokkaido, loosening of restrictions on plant and timber harvesting, and on salmon fishing,<sup>9</sup> are seen by Ainu activists as merely easements designed to assist in the arena of cultural promotion, rather than to further Ainu collective rights to economic and political self-determination.<sup>10</sup>

In fact, granting of limited rights to salmon harvesting for ceremonial purposes has already been possible through local Hokkaido Ordi-

nances since 2005, a governmental control of which Ainu are resentful.<sup>11</sup> The fact that new initiatives are limited to cultural activities and the responsibility for their implementation and administration is given to municipalities once again underlines the lack of recognition of Ainu's collective rights and specifically of their right to self-determination.<sup>12</sup> In other words, one side of the law aims at preservation and further development of the Ainu culture, however the access to natural resources needed to preserve and develop Ainu culture remains limited and controlled by the government. Therefore, rights to enjoy and maintain Ainu culture as Indigenous Peoples of Japan remain unrecognised.<sup>13</sup> In protest to the lack of progress towards full recognition of the rights of Ainu people, the chairman of the Monbetsu Ainu Association and vocal Ainu activist, Satoshi Hatakeyama, organised salmon fishing in the Monbetsu River in Hokkaido without seeking the required licence from the authorities, referring to the rights of Indigenous Peoples to do so.<sup>14</sup>

Meanwhile, developments associated with the new Law have prompted deeper divisions among Ainu activists. Criticism of the Ainu Association of Hokkaido, which acted as a representative of Ainu people in negotiations with the government over the bill and which supported the new law, as well as related government decisions concerning what some Ainu see as the immoral transfer of Ainu ancestral remains to the memorial facility in Shiraoi, was strong enough to cause half of the Shizunai Ainu Community to form a new Ainu Association.<sup>15</sup> The Ainu Association of Hokkaido has also given its approval for the controversial set of ethical standards proposed by Japanese scholastic societies.<sup>16</sup> These standards have been criticised by some Ainu groups for allowing scientific research on Ainu ancestral remains buried before 1868, as well as for not offering an apology for the moral wrongdoings committed by scientists during the process of Japan's colonisation of the Ainu people. How the new Shizunai Ainu Association and other Ainu groups critical of the Ainu Association of Hokkaido will be treated by local municipalities under the funding structures of the new law is a major focal point for future attention.

2019 witnessed both advances and stalemates in terms of Ainu ancestral remains repatriation. On the positive side, yet another Ainu ancestor was repatriated to the Ainu community of Urahoro. The Urahoro Ainu community also embarked on a litigation against Tokyo University for the repatriation of its ancestors' remains,<sup>17</sup> making Tokyo University

the third university to be litigated against by the Ainu people, after Hokkaido University and Sapporo Medical University. Hokkaido University, which transferred the bulk of Ainu remains on its campus to the memorial facility in Shiraoi in early November, did so without making a formal apology to the Ainu people,<sup>18</sup> thus clinching fears that the transfer might create exemption for the university's past wrongdoings.

## **Slow food movement in Ainu Mosir (Hokkaido)**

In October 2019, an international slow food conference initiated by Indigenous Terra Madre in collaboration with Slow Food Nippon and hosted by the Ainu Women's Association Menoko Mosmos was held over four days at the Ainu Cultural Promotion Center just outside Sapporo.<sup>19</sup> The event welcomed 200 Indigenous delegates from 27 countries, all of whom shared and experienced dances, songs and a foraging excursion in the woods adjacent to the Sapporo City Ainu Cultural Promotion Center in the mountains surrounding the city.<sup>20</sup>

The event highlighted an increasing general interest in organic and sustainable food in Japan, and emphasised an important connection between traditional Ainu food and Indigenous rights, such as the right to cultural transmission through ceremonies and other events revolving around dishes prepared from traditional natural foodstuffs. The conference confirmed that protecting and retaining Ainu food culture is also about the human right to have access to natural resources and food, which are crucial to the Ainu people's livelihood.

The event raised the critical question of the very survival of Indigenous culture and of peoples who urge for further attention to basic Indigenous rights to resources, including food, so that the Ainu may maintain their traditional knowledge. At the heart of the event were the prospective benefits to humanity of learning from Indigenous wisdom. Such an innovative approach to Ainu food culture may provide a useful tool to reconfirm the value of Ainu traditional knowledge, and how such knowledge can be used in the most sustainable way.

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**Dr. Kanako Uzawa** is an Ainu researcher, Ainu rights advocate, and member of the Association of Rera in Tokyo. She recently completed her PhD at the Arctic University of Norway on urban Ainu experiences with a framework of diasporic Indigeneity, raising the question of what it means to be Indigenous in a city. Kanako is also an editorial board of *AlterNative: An International Journal of Indigenous Peoples in Aotearoa New Zealand*.

**Jeff Gayman** is full Professor in the School of Education and Research Faculty of Media and Communication at Hokkaido University, where his research focuses on issues of empowerment of the Ainu in educational arenas. He has been engaged in support of Ainu rights advocacy for over a decade.



# Laos



With a population of just over 7 million,<sup>1,2</sup> Laos – Lao People's Democratic Republic (PDR) – is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around half of the population, dominate the country economically and culturally. There are, however, some provinces and districts where the number of Indigenous people exceeds that of the Lao and where their culture is prominent. There are four ethnolinguistic families in Laos. Lao-Tai language-speaking groups represent two-thirds of the population. The other third speaks languages belonging to the Mon-Khmer, Sino-Tibetan and Hmong-Ew-Hmien families and are considered to be the Indigenous Peoples of Laos. Officially, all ethnic groups have equal status in Laos, and the concept of Indigenous Peoples is not recognised by the government, despite the fact that Laos voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The Lao government uses the term ethnic group to refer to Indigenous people.<sup>3</sup>

The Lao government currently recognises 160 ethnic sub-groups within 50 ethnic groups. Indigenous Peoples, especially those who speak Hmong-Ew-Hmien languages, are unequivocally the most vulnerable groups in Laos. They face territorial, economic, cultural and political pressures and are experiencing various threats to their livelihoods. Their land and resources are increasingly under pressure from pro-investment government development policies and commercial natural resource exploitation. Indigenous people lagged behind the majority Lao-Tai at all economic levels. They have more limited access to healthcare, lower rates of education and less access to clean water and sanitation. Indigenous people relying on unimproved or surface water ranged from between 20 to 32.5%, compared to just 8.5% of Lao-Tai, and while only 13.9% of Lao-Tai practice open defecation, that rises to between 30.3 to 46.3% among Indigenous people.<sup>3</sup>

Laos has ratified ICERD (1974) and ICCPR (2009). The Lao government, however, severely restricts fundamental rights, including freedom of speech (media), association, assembly and

religion, and civil society is closely controlled. Thus, organisations openly focusing on Indigenous Peoples or using related terms in the Lao language are not allowed, while open discussions about Indigenous Peoples with the government can be sensitive, especially since the issue is seen as pertaining to special (human) rights.

During the 2015-2019 period, the Lao PDR has submitted four national reports including the ICCPR.

## Indigenous people left aside national development

**A**lthough Laos is still counted among the least developed countries (LDCs), the country's economy is one of the fastest growing in Southeast Asia, with an average annual growth rate of 8% over the last decade.<sup>4</sup> Unfortunately, the country's economic model isn't helping poverty and inequality. As pointed out by Philip Alston, the UN Special Rapporteur on extreme poverty and human rights, the Lao government's focus on resource extraction, large-scale infrastructure projects, land acquisition, and programmes to attract foreign investment does not necessarily result in the improvement of the situation of the country's poor as "those living in poverty, ethnic minorities, and people in rural areas have seen very few of the benefits of the economic boom".<sup>5</sup> Alston stated that Laos focuses on large infrastructure and development projects, but resettlement, produced by these projects, may worsen poverty in the country: "Some resettlement outcomes are better than others, but there is not a single resettlement site in Laos that has restored livelihoods of affected people to a status equal to that of before people were moved".<sup>6</sup> The Lao government has rejected the findings of a UN report that claims the country's economic model isn't helping poverty and inequality.

## Climate change

Due to the tropical setting, Laos is exposed to a range of natural haz-



ards, including droughts, floods and storms, the costliest of which have taken place after 2009.

Between July and September 2019, Lao PDR suffered its worst floods in a decade, which affected more than 600,000 people in all 17 provinces and Vientiane.<sup>7</sup> As their traditional agricultural systems are susceptible to flooding, drought and the late onset of the rainy seasons, Indigenous Peoples in Laos are especially vulnerable to natural disasters which over the past few years have been increasing in frequency and intensity.

To tackle the emerging threats, the government has incorporated disaster and climate risk management into policies, institutions and national development plans to enhance resilience of various sectors, including in agriculture and environment, housing and transport, and has strived to mainstream elements of disaster risk reduction and climate change adaptation activities across national development. The impacts of disasters are often most severe on the most vulnerable. Alongside economic impacts, the ripple effects of disasters on Indigenous Peoples include forced resettlement, stopping education, worsened food security, loss of employment opportunities and prostitution, among others, and Indigenous women are disproportionately affected.<sup>8</sup>

In 2019 the Lao government allocated 500 billion Lao Kip (around USD\$56 million) towards disaster recovery. The Ministry of Agriculture and Forestry (MAF) has taken important steps to better address and mainstream disaster risk reduction and management into agricultural planning, while recovery actions were addressed through ministry recovery plans and aligned with the national planning mechanisms, including the National Socio-Economic Development Plan.<sup>9</sup> Meanwhile, in November 2019, the Board of the Green Climate Fund (GCF) approved a USD\$10 million project to help build resilience towards flooding caused by climate change in Laos. The five-year project will be executed by Laos' Ministry of Natural Resources and Environment, with support from the UN Environment Programme (UNEP).<sup>10</sup> In December 2019, the Lao Ministry of Natural Resources and Environment and the Food and Agriculture Organization (FAO) have reviewed the Strengthening Agro-climatic Monitoring and Information Systems (SAMIS) project, which aims to improve adaptability to climate change and food security in Laos.<sup>11</sup>

## Land and forestry law

The Land Law currently under revision will not include communal land titling with recognition of communal land ownership, only user rights. From a tenure perspective the law is weak, but not unexpected in the Lao context where the concept of “community” is only recognised and officially used to refer to the national community, making any reference or recognition of collective rights of Indigenous communities obsolete. Meanwhile, the newly approved Forest Law remains vague when it comes to the recognition of customary rights and tenure. In the upcoming Forest Strategy 2030, the Department of Forestry (DoF) sets a goal to restore 500,000 hectares of “degraded forest” inside the Production Forests Areas (PFAs) by allowing private companies to plant industrial tree species such as eucalyptus. As the strategy categorises the swidden (shifting) cultivation fields under fallow as degraded forest, it has potential to affect the food security of Indigenous communities. Indigenous communities also face restrictions in accessing lands in National Protected Areas (NPAs) where no individual land titling is allowed.

## FPIC

In July 2019, the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC), with the Lao Biodiversity Association (LBA) and the World Wide Fund for Nature (WWF), organised a training in Vientiane on free, prior and informed consent (FPIC). Civil society organisations forming the Lao CSO FLEGT committee<sup>12</sup> took part in the training that helped identify initial design steps in implementing processes that respect local communities’ rights through FPIC, as well as develop action points for interventions that can promote good governance through applying FPIC in their own work contexts.

WWF, via its CARBI II<sup>13</sup> project also used the FPIC process to ensure community engagement based on the model developed under the SUFORD Project<sup>14</sup> and piloted in over 600 villages throughout Laos. Despite all these efforts, the Lao government has not yet made any move toward the true recognition of FPIC.

## Decree on ethnic affairs

Until today Laos doesn't have a clear regulatory framework or law regarding Indigenous Peoples. To fill the gap, the Decree on Ethnic Affairs was drafted by the Department of Ethnic Affairs (DoEA) under the Ministry of Home Affairs and is currently being revised by the government. The decree, based on a similar document promulgated by the Committee for Ethnic Minorities Affairs (CEMA) in Vietnam, aims to provide a legal basis to deal with Indigenous Peoples issues. It "prescribes the principles, regulations and measures for management, monitoring and assessment of ethnic affairs in order to support the effective implementation, to make ethnic groups have unity, equality, respect, and help each other; to ensure the participation from all ethnic groups to contribute to the national protection and development, protect their legitimate rights and benefit according to the constitution and laws of Lao PDR".<sup>15</sup>

Unfortunately, some provisions of the decree, if adopted in their current form, may worsen the already difficult economic and social situation of Indigenous communities. For example, Article 10.2 advises to "resettle ethnic groups that live in the hardship and undeveloped areas, risky livelihoods areas, development project-affected areas, and special areas to areas that can be developed and create appropriate permanent jobs and employment".<sup>16</sup> This provision not only allows authorities to forcefully evict Indigenous communities from their lands, but also is in direct conflict with Article 40 of the 2015 Constitution which guarantees Lao citizens the freedom of settlement and movement. Article 10.7 of the decree directly condemns shifting cultivators and aims at replacing the "old production process" with a new one, which uses science and technology to increase productivity and moves from subsistence and forest-based livelihoods toward agricultural expansion and market-oriented production. This, in turn, conflicts with Article 39 of the 2015 Constitution according to which "Lao citizens have the right to work and engage in occupations which are not contrary to the laws".

## Law on Resettlement and Vocation

In 2019 the government started working on the implementation of the Law on Resettlement and Vocation promulgated in 2018. The law pro-

vides a relatively clear structure and set of steps to be taken in relation to resettlement and vocational training of the resettled population. It aims at providing guidance and consistency around the country and, as the law envisions some form of supervision of the activities, it should increase transparency around the resettlement. The provisions on violations show an improvement over previous laws, with a range of sensible responses to violations listed, such as counseling, fines and civil options, rather than just a statement to the effect that violations will be punished.

The major concern for Indigenous Peoples of Laos is that this law gives a seal of approval to the powers of the government to resettle or expropriate Indigenous Peoples' land. Moreover, it goes as far as to suggest that the government knows better what people need and gives it authority to move populations to where the government thinks they will have better job prospects or where their labour is required.<sup>17</sup>

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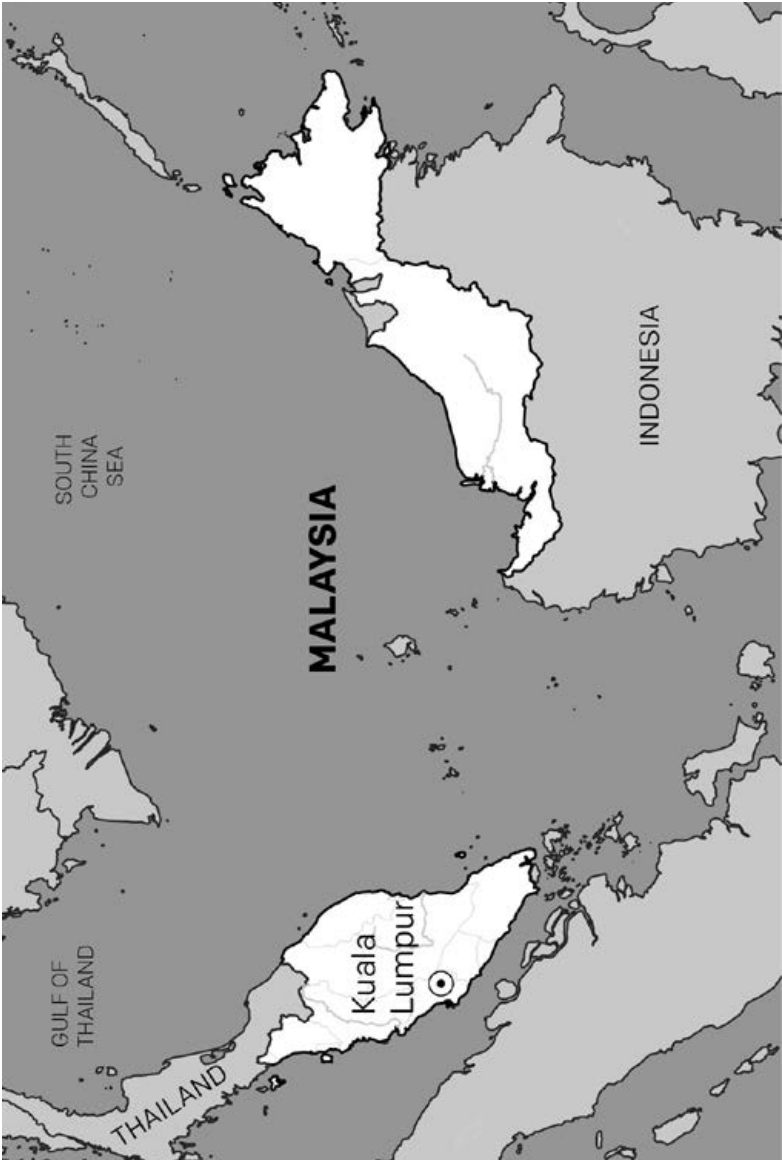
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11. “Laos, FAO review climate change adaptability project.” Xinhua, 5 December 2019: [http://www.xinhuanet.com/english/2019-12/05/c\\_138607467.htm](http://www.xinhuanet.com/english/2019-12/05/c_138607467.htm)
12. The Lao CSO FLEGT Committee is a democratically elected group of five CSOs with a network membership of 25 supporting CSOs. The EU supports the Lao People’s Democratic Republic Forest Law Enforcement Governance and Trade (FLEGT) Negotiation Meeting, provides a synopsis of Lao Civil Society Organisations’ (CSO) involvement in national forest governance via the EU’s FLEGT Action Plan and accompanying Voluntary Partnership Agreement (VPA).
13. CARBI phase 2 (Biodiversity Conservation In The Central Annamites Through Ecosystem Protection) is a transboundary project between Laos and Vietnam aimed at protection, restoration, and sustainable use of ecosystems and the conservation of biological diversity in the Annamites a mountain range between Laos and Vietnam.
14. Sustainable Forest Management for Rural Development (SUFORD) project, implemented by the Department of Forestry and supported by the World Bank, Forest Investment Program and Government of Finland works on promotion of participatory sustainable forest management in national Production Forest Areas (PFAs), related rural development activities, piloting forest landscape management and village forestry, as well as relevant work on policy and legislation, forest protection and governance.
15. Decree on Ethic Affairs, Ministry of Home Affairs, 2019.
16. Ibid.
17. Law on Resettlement and Vocation, National Assembly, No. 45/NA, Vientiane Capital, dated: 15 June 2018. Unofficial

*Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.*



# Malaysia



As of 2017, the Indigenous Peoples of Malaysia were estimated to account for around 13.8% of the 31,660,700 million national population. They are collectively known as Orang Asal. The Orang Asli are the Indigenous Peoples of Peninsular Malaysia. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 198,000 or 0.7% of the population of Peninsular Malaysia (31,005,066). In Sarawak, the Indigenous Peoples are collectively known as natives (Dayak and/or Orang Ulu). They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Lunbawang, Punan, Bisayah, Kelabit, Berawan, Kejaman, Ukit, Sekapan, Melanau and Penan. They constitute around 1,932,600 or 70.5% of Sarawak's population of 2,707,600 people. In Sabah, the 39 different Indigenous ethnic groups are known as natives or Anak Negeri and make up about 2,233,100 or 58.6% of Sabah's population of 3,813,200. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also Indigenous to Malaysia, they are not categorised as Indigenous Peoples because they constitute the majority and are politically, economically and socially dominant.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the Indigenous Peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the Indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the *National Land Code*, Orang Asli customary tenure is recognised under common law. The principal act that governs Orang Asli administration, including occupation of the land, is the *Aboriginal Peoples Act 1954*.

Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and endorsed the Outcome Document of the World Conference on Indigenous Peoples but has not ratified ILO Convention 169.

## Institutionalising poverty through non-recognition

Reporting on his visit to Malaysia in August 2019, the UN Special Rapporteur on extreme poverty and human rights, Philip Alston, reported that Malaysia was vastly under-counting its rate of poverty. He opined that the official poverty rate of 0.4 % was unrealistic and that the actual rate was in the region of 16-20%.<sup>1</sup> He added that poverty and low incomes among Indigenous Peoples are routinely obscured by official public statistics which aggregate outcomes for Indigenous Peoples and Malays in the umbrella category of Bumiputera (sons of the soil).<sup>2</sup>

Even so, statistics from a decade ago (the latest available), reveal Indigenous poverty rates that vastly exceed national averages: 22.8% in Sabah and 6.4% in Sarawak in 2009 and 31.16 % for the Orang Asli in 2010.<sup>3</sup> These dismaying aggregated figures further hide an appalling reality: almost all the Orang Asli – 99.29% to be more precise – are in the bottom 40% income (B40) group.<sup>4</sup>

Indigenous poverty in Malaysia has been linked to a number of factors, not in the least the destruction and degradation of their traditional lands and territories. This was most clearly played out in May-June 2019 when 16 Batek-Orang Asli died within a span of six weeks due to a “mysterious” disease. The Health Ministry however later deemed this tragedy to be the result of a measles outbreak. This despite only four of the victims having been confirmed to have had measles in their autopsies. It is however the general consensus of those familiar with the people and their situation, that since 2009 the community was subjected to a series of external forces that their hunting-and-foraging lifestyle was severely impeded, and this compromised their ability to live healthily and happily.<sup>5</sup>

Logging and oil palm plantation activities began in the traditional territories of the Batek in the 1980s reaching their doorstep in 2010. An iron and manganese mine was also allowed to operate just upstream of their settlement. All these severely affected their source of livelihood and subsistence as well as polluted their source of water. Water tests by two independent laboratories and one by the government lab, all acknowledged the higher-than-safe levels of iron and manganese as well as deduced that the level of *e-coli* bacteria in the water samples, made



it unsafe for drinking.<sup>6</sup> Nevertheless, despite the high number of “mysterious” deaths, the state government and the Health Ministry deemed that neither an inquest nor an inquiry was necessary to try to find out the real cause and circumstances of the deaths.<sup>7</sup>

Such an inquiry or inquest would have exposed that their deaths was the result of a cumulative effect of loss of their subsistence resource base. Before the 1950s, the Bateks in this region claimed 470,959.6 hectares of forest lands as their customary territory. However, in 2010, only 453.5 hectares of this remained as forest areas for the Kuala Koh community.<sup>8</sup> Of this, the Department of Orang Asli Affairs (JAKOA), acting as the “god-parent” of the Orang Asli,<sup>9</sup> then applied for only 243 hectares to be gazetted as an Orang Asli reserve. In the end, the state government of Kelantan only approved 5.7 hectares for them.<sup>10</sup> Without an intact resource base for their subsistence needs, without the ability to practice their traditional way of life, and without full control of their lives, they became malnourished, underweight, and depressive. Their body resistance plummeted as a result. With such body resistance levels, even preventable diseases such as measles turned fatal.

The general reluctance of state governments to recognise the customary lands and territories of the Orang Asli was again revealed in the state of Perak. In response to blockades erected by the Temiar-Orang Asli to protest against the logging in their customary territories, the *Menteri Besar* (Chief Minister) of Perak declared that the logging was legal and that the Temiars were residing illegally on state land. He added that his state government maintained the view that under the State Constitution no land is recognised as customary land either for Indigenous Peoples or any other race.<sup>11</sup> In reality, however, the courts have ruled, even in his state of Perak, that the Orang Asli do enjoy proprietary rights both under common law and statutory law.<sup>12</sup>

## Another bite at the apple

The persistent stand of the state not to recognise the customary land rights of the Orang Asal or Indigenous Peoples of Malaysia, has been taken to a more crushing legal level in the state of Sarawak. The far-reaching decision of the Federal Court in the *Tuai Rumah Sandah* case discussed in *The Indigenous World 2019*, was further reinforced when the

Federal Court dismissed an application to review its own 2016 decision over native customary land rights. That is to say, since the written laws of Sarawak did not accord the “force of law” to the broader categories of land incorporating the traditional territory (*pemakai menoa*) and communal forest (*pulau galau*), the natives could not stake a customary claim to them. Only the settled, cleared and cultivated lands could be recognised as native customary right, and not the “forest at large”.

Four of the five judges on the review panel rejected the application for a review, arguing that the Sarawak natives’ submission that the earlier panel of judges had erred in law and had made various obvious errors was not a valid and legitimate basis to seek a review of the Federal Court decision. The judges had said that it was not for the Federal Court review panel to resolve whether the earlier panel in the same case had interpreted or applied the law correctly or not, for that it was a matter of opinion.<sup>13</sup>

The fifth judge on the panel, the Chief Judge of Sabah and Sarawak, however, gave a dissenting judgment that resonated well with the Orang Asal in those states. In his 49-page dissenting judgment, he had allowed the review applications and ordered the appeals to be reheard before another panel of judges, one of which must be a judge cloaked with Borneo judicial experience. He said there was *coram*<sup>14</sup> failure as the judges who presided on the Federal Court earlier panel had never served at the High Court of Sabah and Sarawak. He also ruled that the April 2018 amendment to the *Sarawak Land Code*, legally recognises *pemakai menoa* and *pulau galau*, and so allows the panel to set aside the 2016 Federal Court judgment.

This ambiguity is set to be argued once again as the Chief Judge of Sabah and Sarawak, who chaired a Federal Court panel in September 2019, allowed an application for leave by Tuai Rumah (longhouse chief) Ramba Bungkong to appeal on several points of law. The chief judge opined that the decision in TR Sandah ought to be revisited and ventilated again in the Federal Court via this case. It is worth noting that several other cases were also granted leave to the same effect.<sup>15</sup>

In the meantime, short of the state government amending the law (again) to fully take into account the rights to *pemakai menoa* and *pulau galau* lands, the outcome of these subsequent review attempts will continue to have far reaching impact on the current cases already in court, as well as the extent of native customary rights generally. As it

is, several new native customary rights (NCR) cases were filed in the Sarawak High Court in 2019, a clear indication that the customary rights of the native peoples there are still not fully recognised.

## Over in Sabah: hesitant hopes

When the current government won the state elections in 2018, the Kadazandusun communities in Ulu Papar-Sabah, who would have been affected by the Kaiduan Dam proposed by the previous government, heaved a sigh of relief. They expected that the election promise – of cancelling the dam upon – victory would be kept. The dam, if constructed, will not only displace over 3,000 Indigenous villagers but also destroy the Crocker Range, which was declared a Crocker Range Biosphere Reserve by the UN Educational, Scientific and Cultural Organization (UNESCO) in 2014.

To an extent, the new state government did keep its promise and cancelled the Kaiduan Dam. However, while asserting that the state still needed to avert a potential water shortage in the future, it announced the construction of another dam: the Papar Dam. This announcement disappointed the Indigenous activists because, they assert, the new dam project is basically the same as the previously named Kaiduan Dam in all aspects, except perhaps only in its name!<sup>16</sup>

Nevertheless, the state of Sabah seems to be the only state that is working, albeit guardedly, towards reinstating or strengthening Indigenous values and systems into its administration. For one, there is talk of setting up a Native Court Judiciary Department under the Ministry of Law and Native Affairs that will be on par with Civil and Syariah Courts in the country.<sup>17</sup> To do this, the said ministry is looking at restructuring the Native Court and lifting the efficacy of customary law as the instrument for dispute resolution at the local or community level.<sup>18</sup> This would involve the continuing training of the customary leaders which, given the small allocation provided for it, seems to forecast a slow progress. There are also other issues to be considered. One is that many of the native leaders are Muslims who no longer practice the *adat* or traditions and customs and so may face personal contradictions in their application of native law and native rights.

Another area where the Ministry of Law and Native Affairs has been

proactive is in its stance on ending under-aged marriages in the state. As in other states in Malaysia, the legal age for marriage in Sabah is 18 for non-Muslims and 16 for Muslims. However, children younger than that can get married with the consent of the *Menteri Besar* (Chief Minister) or the Syariah Court, or where Native Laws are also applicable in Indigenous communities.<sup>19</sup> When the Sabah Mufti<sup>20</sup> proposed to reduce the minimum marriage age for Muslim girls from 16 to 14 years of age, the Chief Minister said in October 2019 that the state would maintain 18 as the minimum age for marriage. However, the Ministry of Law and Native Affairs suspects it will need about a decade to educate, inform and get the full consensus of every stakeholder to accept this fully.<sup>21</sup>

An even more encouraging development in Sabah, is the move to enact the principle of Free, Prior and Informed Consent (FPIC) into law.<sup>22</sup> When this comes into force, it will be the first time that a major principle in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) would have the force of law in Malaysia.

## Notes and references

1. “Malaysia vastly undercounting poverty, says UN rights expert” available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24915&LangID=E>
2. Bumiputera is a sankrit term meaning “sons of the soil”. It was introduced in Malaysia in 1970 to refer to the “Indigenous” communities viz the Malays, the Natives of Sabah and Sarawak and the Orang Asli with a view for preferential economic and social discrimination. The non-bumiputeras would largely constitute the Chinese and the Indians who are perceived as later immigrants.
3. Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, on his visit to Malaysia, 13-23 August 2019, available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24912&LangID=E>.
4. The B40 group represent the bottom 40% of the national population in terms of income. The figure is cited by the Director-General of JAKOA (at 4:30:00 mins) in his interview with The Star entitled “Exclusive: Jakoa DG shares plans for Orang Asli development” available at: [https://www.youtube.com/watch?v=mJ\\_Ncs4KM8g](https://www.youtube.com/watch?v=mJ_Ncs4KM8g).
5. See Center for Orang Asli Concerns “Kuala Koh Deaths: Non-recognition of Rights the Root Cause”, available at: <https://www.facebook.com/notes/center-for-orang-asli-concerns-coac/kuala-koh-deaths-non-recognition-of-rights-the-root-cause/2384927524884493/>
6. While this fact is unlikely to be the cause of the high number of “sudden” and “mysterious” deaths, it is believed that the pesticides (from the plantations) and other poisonous materials (used in the mining) could have gotten into the water supply of the Batek after a heavy thunderstorm and so cause the high mortality in such a short time.

7. See The Sun Daily “No need for inquest on deaths of Kuala Koh Orang Asli: Kelantan government”, available at: <https://www.thesundaily.my/local/no-need-for-inquest-on-deaths-of-kuala-koh-orang-asli-kelantan-govt-LX1066926>
8. Based on maps published in Karen Lampell Endicott and Kirk M. Endicott (2008), *The Headman was a Woman: The Gender Egalitarian Batek of Malaysia*, Waveland Press Inc., and community maps produced by JOAS-COAC for the Suhakam National Inquiry into the Land Rights of the Orang Asli/Asal of Malaysia, 2010-2011.
9. See Suhakam (2013), *Report of the National Inquiry into the land rights of the Indigenous Peoples* at page 135, available at: <https://nhri.ohchr.org/EN/Themes/BusinessHR/Business%20Womens%20and%20Childrens%20Rights/SUHAKAM%20BI%20FINAL.CD.pdf>
10. Personal conversation with the Director-General of the Department of Orang Asli Development (JAKOA), December 2019.
11. See Malaysiakini.com “State constitution does not recognise customary land - Perak MB”, available at: <https://www.malaysiakini.com/news/485908>.
12. See Malaysiakini.com “There is legal precedent in Perak recognising Orang Asli land, COAC tells MB”, available at: <https://www.malaysiakini.com/news/485974>.
13. See the Bar Council statement at <https://www.malaymail.com/news/what-you-think/2019/09/21/tr-sandah-federal-court-review-abdul-fareed-gafoor/1792984>; and the report by the Center for Orang Asli Concerns at: [facebook.com/notes/center-for-orang-asli-concerns-coac/implications-of-the-tr-sandah-review-rejection/2549567301753847/](https://facebook.com/notes/center-for-orang-asli-concerns-coac/implications-of-the-tr-sandah-review-rejection/2549567301753847/)
14. Coram means non judge, “in the presence of a person not a judge” and is a phrase that describes a proceeding brought before a court that lacks the jurisdiction to hear such a matter.
15. See Dayak Daily “NCR: TR Sandah decision to be revisited as Federal Court allows leave to appeal in Ramba case”, available at: <https://dayakdaily.com/ncr-tr-sandah-decision-to-be-revisited-as-federal-court-allows-leave-to-appeal-in-ramba-case/>; and Dayak Daily “NCR: TR Sandah decision to be revisited as Federal Court allows leave to appeal in Ramba case”, available at: <https://dayakdaily.com/ncr-tr-sandah-decision-to-be-revisited-as-federal-court-allows-leave-to-appeal-in-ramba-case/>
16. See The Borneo Project “Stop the Papar Dam!”, available at: <https://borneoproject.org/updates/stop-the-papar-dam>. Also The Star “PBS slams Warisan for alleged U-turn on controversial Kaiduan Dam”, available at: <https://www.thestar.com.my/news/nation/2018/08/04/pbs-slams-warisan-for-alleged-u-turn-on-controversial-kaiduan-dam/>.
17. See Daily Express “New Native Court Dept mooted”, available at: <http://www.dailyexpress.com.my/news/143718/new-native-court-dept-mooted/>
18. Information gleaned from an interview with Ms Jannie Lasimbang, the Deputy Minister for Law and Native Affairs in Sabah in February 2020.
19. See Rojak Daily “Sabah Set To Be One Of The First States To Ban Child Marriage”, available at: <https://www.msn.com/en-my/news/other/sabah-set-to-be-one-of-the-first-states-to-ban-child-marriage/ar-BBW5q2m?li=AAaD1A0>
20. A mufti is an Islamic jurist qualified to issue a non-binding opinion (fatwa) on a point of Islamic law (sharia).
21. See New Straits Times “More awareness needed on child marriages in Sabah”, available at: <https://www.nst.com.my/news/nation/2019/03/473052/more-awareness-needed-child-marriages-sabah>
22. Interview with Ms Jannie Lasimbang, the Deputy Minister for Law and Native Affairs in Sabah in February 2020.

**Colin Nicholas** is the Founder and Coordinator of the Center for Orang Asli Concerns (COAC), which is an associate member of the Jaringan Orang Asal SeMalaysia (JOAS), the Indigenous Peoples Network of Malaysia. [colin.coac@gmail.com](mailto:colin.coac@gmail.com)



# Myanmar



There is no accurate information about the number of Indigenous Peoples in Myanmar, partly due to a lack of understanding of the internationally recognised concept of Indigenous Peoples. The government claims that all citizens of Myanmar are “Indigenous” (*taing-yin-tha*), and on that basis dismisses the applicability of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to Myanmar. Indigenous Peoples’ rights activists use the Burmese language term *hta-nay-tain- yin-tha* in describing Indigenous Peoples, based on international principles; using the criteria of non-dominance in the national context, historical continuity, ancestral territories and self-identification.<sup>1</sup>

The government recognises eight ethnic groups as national races or *taung yin tha*: Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan and Shan. According to the 1982 *Citizenship Law*, ethnic groups who have been present in the current geographical area of Myanmar since before 1823 (the beginning of the first British annexation) are considered *taung yin tha*.<sup>2</sup> However, there are more ethnic groups that are considered or see themselves as Indigenous Peoples, such as the Naga, that would not identify with any of those groups.

While the democratic transition from quasi-military government to quasi-civilian took place peacefully, and early signs of progression took place via ministerial development focussed on Indigenous rights and development via the newly established Ministry of Ethnic Affairs, the overwhelming feeling held by Indigenous rights activists is that the governing National League for Democracy party (NLD) have not honoured pre-election manifesto promises to eradicate harmful policies which restrict fundamental freedoms such as the right to assembly and peaceful expression. Furthermore, the stated aims of the NLD for “national reconciliation” via the 21st Century Panglong forums are presently stalled, with conflict escalating in many ethnic states and regions.

Myanmar voted in favour of the UNDRIP, adopted by the UN General Assembly in 2007, but has not signed the Interna-



tional Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and nor has it ratified ILO Convention No. 169. It is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) but voted against a bill to ratify the International Covenant on Civil and Political Rights under the rationale that it was a threat to national sovereignty. In 2017, Myanmar became the 165th State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### **“There is no vacant land in Myanmar!”<sup>3</sup>**

In January 2019, seven United Nations Special Rapporteurs for protection of a range of human rights addressed their concerns to the Government of Myanmar over the amendment of the 2012 *Virgin Fallow and Vacant Land Law (VFV)*.<sup>4</sup> Nevertheless, despite widespread protest, condemnation and collectivised action from civil society (see *The Indigenous World 2019*), the law came into effect on 11 March 2019. The law requires anyone occupying or using “vacant, fallow, or virgin” (VFV) land to apply for a permit to use the land for 30 years or face eviction, a fine and up to two years in jail.

As approximately 75% of VFV land is in the seven ethnic states where Indigenous customary land systems prevail this will have a disproportionate impact on Indigenous communities. The report by the UNHRC-mandated Independent International Fact Finding Mission (IFFM) on Myanmar released in September 2019 was consistent with the special rapporteurs by concluding that the law and its amendments were in violation of both the International Convention on Economic Social and Cultural Rights (ICESCR) and the Child Rights Convention (CRC) due to the arbitrary and discriminatory manner that the law will deprive ethnic communities to lands.<sup>5</sup>

According to government data, 47 million acres of land have been claimed to be VFV<sup>6</sup> and are waiting to be handed over for business interests. Government officials from the governing National League for Democracy party (NLD) have stated that the amendment is designed at

obtaining unused land back from companies and to “promote the rule of law” and that civil society organisations (CSOs) are misrepresenting it and its implications.<sup>7</sup>

The situation on the ground, however, suggests that the VFV law is implemented in ways that benefit well-connected elites at the expense of local communities. This was confirmed in a field survey undertaken by the Mekong Region Land Governance (MRLG)<sup>8</sup> and separately in the one conducted by NGO Namati.<sup>9</sup> Both surveys also demonstrated that prior to the deadline of 11 March 2019, the vast majority of farmers had no knowledge about the VFV law and its implications. Furthermore, accounts from many areas indicated a lack of information, lack of government capacity, unreasonable top-down deadlines and lack of procedures for objection or to manage fraud.<sup>10</sup> As a result hundreds of farmers were criminalised.<sup>11</sup>

Civil society from Indigenous communities, well versed on aggressive, centralised government land acquisition in ethnic states, recognised this as business related and “inviting conflict”<sup>12</sup> as well as undermining “opportunities to build trust and address the root causes of nationwide grievance, in which land is central”.<sup>13</sup>

Due to the fact that the policy also disregards both internally displaced people (IDP) and refugee populations of which an approximate 1.5 million still reside in places such as Bangladesh, Thailand, India and Malaysia, who should eventually return to their homelands, IDP and refugee networks also called for a complete reversal on the policy.<sup>14</sup>

This is all taking place at the same time as the newly formed National Land Use Council (NLUC) (see *The Indigenous World 2019*) begins to develop a national land law that should give effect to the National Land Use Policy (NLUP), recognising among other things, Free, Prior and Informed Consent (FPIC) and customary land registration for Indigenous communities. In November 2019, CSOs sent an open letter to the NLUC specifying that the national land law making process should strictly respect and follow basic requirements such as transparency, participation, inclusion and timely information sharing, and use local languages.<sup>15</sup>

Despite the stalled peace process, the Federal Political Negotiation Consultative Committee (FPNCC) – a bloc of Ethnic Armed Organisations (EAO) based in the north, some of which are currently in active conflict with Tatmadaw (Myanmar military) – also developed a set

of land and resource governance policies. At the time of writing these have not been made public. It is unclear therefore whether any significant differences exist compared to other EAO policies on land and natural resources.<sup>16</sup> 2018 saw development of a revised forest law, (see *The Indigenous World 2019*) and in 2019, the Indigenous and Conserved Communities Area (ICCA) Consortium continued to pursue how to integrate local level perspectives on environmental sustainability in national law and policy.

## Conflict throughout the country

In 2019, the escalation of fighting in all corners of Myanmar took place. As the conflicts between the Tatmadaw and the EAO increase, it has been local Indigenous populations and civilians caught in the cross-fire who have been subjected to a host of human rights abuses such as killings, torture, arbitrary detention, forced labour and the ever-present risk of death or injury from landmine explosion. While, Kachin, Shan, Arakan and Chin State continued to be afflicted by armed conflict, Karen State also saw skirmishes due to a Tatmadaw road-building project into Karen National Union (KNU)-controlled territories.<sup>17</sup>

Worryingly, 2019 saw a rise in civilian communities actively targeted by some EAO factions, notably by policies of kidnapping and enforced disappearance. In March, 12 villagers from Mang Li Village in Shan State's Namtu Township disappeared after fleeing their homes amid clashes between the Restoration Council of Shan State (RCSS/SSA) and the Ta'ang National Liberation Army (TNLA) and Shan State Progressive Party/Shan State Army (SSPP/SSA).<sup>18</sup> Following negotiations with local communities RCSS/SSA released eight of those arrested after one month's detention.<sup>19</sup> Four villagers remain missing.

Also in March, 70 farmers from Man Pein Village in Kutkai Township, Shan State, were detained by the Kachin Independence Army (KIA) and released after one week.<sup>20</sup> Sixteen Lishaw people from Shan State were abducted by the Ta'ang National Liberation Army (TNLA) in March in what locals claimed was part of ongoing policy of kidnap and ransom agenda, later releasing eight people after 11 days in detention.<sup>21</sup>

In 2019, between February and July, 54 Chin civilians, making up the population of an entire village in Paletwa Township, Chin State, re-

mained detained by the Arakan Army (AA) in a camp on the Bangladesh border. The detained civilians were engaged in forced labour activities before eventually being released on 31 July.<sup>22</sup> In November, the AA also abducted a Chin Upper House MP, U Hawi Tin which resulted in large national<sup>23,24</sup> and international<sup>25</sup> condemnation and calls for his immediate release. U Hawi Tin was only released in January 2020.

The effect of ongoing instability in different parts of Myanmar has resulted in massive displacements of the population within country borders and to neighbouring countries, many of them unwilling to return under attempts at repatriation. For example, refugees from the Karen community are largely refusing to repatriate, despite government attempts to set up conditions for voluntary return.<sup>26</sup> In March 2019, the United Nations High Commissioner for Refugees (UNHCR) completely reversed a decision that conditions in Chin State were “stable and secure” for ethnic Chin to return to under an undefined repatriation programme<sup>27</sup> due to, among other things, escalating conflict in Southern Chin State.<sup>28</sup> According to the Office for Coordination of Humanitarian Affairs (OCHA), as of November there were 241,000 IDPs across Myanmar fleeing violence.<sup>29</sup>

In December, statements by Shan, Karen and Karenni CSO networks were released in support of the filing of the genocide case against Burma at the International Court of Justice (ICJ) and the decision by the International Criminal Court (ICC) to proceed with an investigation into the crime of deportation against the Rohingya.<sup>30,31</sup> A statement endorsed by 48 Karen CSOs around the world said that as the Rohingya case, Karen people suffered for decades from systematic human rights violations by the Burma Army.<sup>32</sup>

## **Continued Criminalisation of Peaceful Assembly, Protest and Freedom of Speech**

According to the Assistance Association for Political Prisoners (AAPP), as of November 2019, there are 633 individuals oppressed in Burma due to political activity, 80 serving prison sentences, 180 awaiting trial inside prison and 373 awaiting trial outside prison.<sup>33</sup> Many of those oppressed will be Indigenous people legitimately and peacefully exercising their fundamental rights, who are oppressed under arbitrary laws designed

to stifle political opposition (see *Indigenous World 2019*). The arbitrary use of such laws is reminiscent of military oppression and contradicts the National League of Democracy's (NLD) promise of democracy and human rights running contrary to pre-election commitments to "revoke legislation that harms the freedom and security that people should have by right."<sup>34</sup>

On the 72nd Union Day, symbolic for marking the promise for autonomy for ethnic states in a federal Myanmar, as per the 1947 Panglong Agreement, 21 Karreni youth were injured during a peaceful protest against the erection of a Gen. Aung San Statue in Loikaw as police fired rubber bullets and used water cannons against protestors. Subsequently, 45 protestors were charged under Section 19 of the *Peaceful Assembly and Peaceful Procession Law* (PAPPL).

In response the UN Special Rapporteur on the situation of human rights in Myanmar stated that the case represented "another example of the Government sidelining the rights of ethnic minorities and failing to truly do what is necessary to unite the country and bring about peace and democracy."<sup>35</sup> Following the agreement between the Kayah State Government and protest leaders, the charges against protestors were later dropped.<sup>36</sup> However, the perception that the spree of erecting Gen. Aung San statues forcibly in this way is "damaging to General Aung San's reputation"<sup>37</sup> was reiterated in Chin State where plans for another bronze statue were unveiled.<sup>38</sup>

Elsewhere, a Kachin protestor, Ja Hkawn was charged under Section 20 of the PAPPL and was sentenced to pay a 10,000 kyat fine for leading a protest to permanently halt the controversial, Chinese-backed, Myitsone dam project in Kachin State<sup>39</sup> in an area of cultural and historical significance to the Kachin groups and will flood 60 villages and re-locate over 15,000 people living on Indigenous land.<sup>40</sup>

Events that signify cultural or historical significance are also targeted by oppressive laws. In March, Dr. Aye Maung and author Wai Hin Aung, were both sentenced to 22 years imprisonment for high treason under section 122 and 505(b) of the Penal Code for having given speeches at an event commemorating the 233rd anniversary of the fall of the Arakan Kingdom in Arakan State.<sup>41</sup> Furthermore, three activists including the Chairwoman of the Karen Women Union, Naw Ohn Hla, were charged under Section 20 of PAPPL for organising a Karen Martyr's Day event in Rangoon on 12 August.<sup>42</sup>

Police from Myitkyina made a complaint during a September protest in Kachin State against the freedom of speech protestors from the Athan, Nhkum La Nu and Malang Hka Mai groups who held placards that read “war is not the answer” and “we hate war”.<sup>43</sup>

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*The author and publisher of this article are well aware of the existing Myanmar/Burma name dispute; however, Myanmar is used consistently in this article to avoid confusion.*

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# Nepal



According to the 2011 Census, the Indigenous nationalities (*Adivasi Janajati*) of Nepal make up 36% of the total population of 29.8 million,<sup>1</sup> although Indigenous Peoples' organisations claim a larger figure of more than 50%. The 2011 Census listed the population as belonging to 125 caste and ethnic groups, including 63 Indigenous Peoples; 59 castes, including 15 Dalit castes;<sup>2</sup> and three religious groups, including Muslim groups.

Although Indigenous Peoples constitute a significant proportion of the population, throughout Nepal's history, they have been discriminated, marginalised, excluded, subjugated, dominated, exploited and internally colonised by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities, and their collective way of life.

The new Constitution of Nepal, promulgated in 2015, denies Indigenous Peoples their collective rights and aspirations for identity-based federalism,<sup>3</sup> despite the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed both the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Council of Indigenous Peoples' (WCIP) Outcome Document. Their implementation is still lacking however. Recent amendments to laws and draft bills are not in line with the UNDRIP or ILO C169. The Nepalese government has shown no sign of implementing the recommendations, including that of amending the constitution to explicitly recognise the right to self-determination and all Indigenous women's rights in line with the UNDRIP, as outlined by the UN Committee on the Elimination of Discrimination against Women (CEDAW).

## **Largest historic protest since the 2006 people's movement**

**T**he Nepalese government introduced a bill in the federal Parliament [upper house] on 29 April 2019 scrapping Guthi, the customary self-government system of the Newa,<sup>4</sup> supposedly to reg-

ulate endowments in religious institutions, especially Hindu temples, which are also known as Guthi. 2019 will be remembered as a year when thousands of Indigenous people, especially the Newa, came out on the streets of Nepal Mandala, their ancestral lands, to collectively protest at the attempted annihilation of their customary self-government systems by the dominant “Khas Arya” (Brahmanist) rulers of Nepal.

The Kathmandu Post reported: “Despite the government’s withdrawal of the bill from the National Assembly on Tuesday, residents of the Kathmandu Valley—mostly Newars [Newa]—took to the streets in large numbers, protesting what they called a state-led attempt to wipe out centuries-old customs and traditions.”<sup>5</sup> The Newa Indigenous Peoples had demanded the bill be repealed for good and that no attempt should be made to bring it back in any way in the future. The Kathmandu Post quoted Ganapati Lal Shrestha, coordinator of the *Rastriya Paghichan Samukta Sangharsha Samiti* (Joint Struggle Committee for the Preservation of National Identity), who said: “Eleven days ago, when we protested, the government thrashed us with batons and used water cannon to disperse us. Many of us were injured. Now, the whole city has woken up to fight to preserve our culture and protest the government’s autocracy”.<sup>6</sup> The Kathmandu Post reported on June 10 that: “At least six people were injured on Sunday when police used force to disperse heritage conservationists, locals and stakeholders who were protesting the proposed Guthi Bill that the government has quietly moved to Parliament without holding proper consultation.”<sup>7</sup>

This extraordinary historic event sent a clear message to political leaders that Indigenous Peoples would go beyond their party lines to defend their customary self-government systems. If the Newa, one of the 59 formally recognised Indigenous Peoples, could stage a protest equivalent to the people’s movement of 2006, what might happen if all 59 Indigenous Peoples, and other yet to be formally recognised Indigenous Peoples, took to the streets demanding changes in the constitution in line with UNDRIP that would guarantee collective rights, including the rights to self-determination, autonomy, self-rule and customary laws?

The ancestral lands, territories and resources of the Newa people lie in the Kathmandu Valley, and they have more than 1,000 Guthi rules within their customary self-government system that maintain their everyday collective life, including clan-related, life cycle rituals, social,

cultural, religious, spiritual, judicial and economic activities that bind all the clan's families together by involving them in both mandatory and voluntary activities. It is true that there is no Newa if there is no Guthi.

## **Protest against scrapping of reservation by the Public Service Commission**

In alliance with the Dalit and Madhesi movement, the Nepal Federation of Indigenous Nationalities (NEFIN) jointly organised several street protests in 2019 claiming that the federal Public Service Commission's advertising of 9,161 vacant posts at the local level as a reserved quota of 45% of the total positions vacant to marginalised groups (Indigenous Peoples, Dalit, Madhesi, Muslims, persons living with disabilities and people living in remote areas) was not in line with the Civil Service Act. The Public Service Commission (PSC) was reported as saying that "it could not ensure inclusion because there were not enough seats in all local levels". Those who were for the quota argued that the total vacant posts needed to be distributed to each cluster by putting all vacant positions in one basket.<sup>8</sup> The government, however, responded to the protests with excessive use of the security forces. The chair of NEFIN and eight other protestors were injured.<sup>9</sup> The positive side of this movement is that all groups facing social exclusion have now joined forces to reclaim their lost quota.

## **Land, territories and resources**

2019 has been an eventful year in the Indigenous Peoples' continuing struggle to reclaim ownership and control over lands, territories and resources. For example, the Supreme Court of Nepal issued a Directive Order on 31 December 2018 that laws should be passed to establish the Baram Special, Protected or Autonomous region as stated in the constitution (*Bhuan Baram & Tek Bahadur Baram vs Prime Minister of Nepal* WN 074-WO-0239). Baram are one of the 59 Indigenous Peoples formally recognised by the government and they are a highly marginal-

ised group. The Supreme Court has clearly stated that the culture and social structure of the Baram cannot be protected without establishing the Baram Special or Protected area. Inspired by this directive order, the Majhis, Baram, Newa, Magar, Kiratis and Santhals are all raising the issue of Protected, Special and Autonomous Areas with the support of the Lawyers' Association for Human Rights of Nepal's Indigenous Peoples (LAHURNIP). A Writ Petition was filed (076-WO-0259) in this regard by Sadaar Sing Limbu et al against the Prime Minister of Nepal. The Supreme Court issued Show Cause Order and the case is ongoing. Article 56 (5) has a provision that "any Special, Protected or Autonomous Region can be established under the Federal law for social, cultural protection or economic development"<sup>10</sup> but this has never been implemented by the government.

Another example is a Writ Petition (*Amitra Shakya et al vs. Government of Nepal*) filed at the Supreme Court of Nepal against forced eviction, for the protection of cultural rights and against development aggression in the ancestral lands of the Newa Indigenous Peoples. A third example relates to a letter sent by the Director-General of the International Labour Organisation (ILO). The letter was the result of a decision of the ILO's Governing Body taken at its 333rd session (June 2018).<sup>11</sup> According to this decision, the ILO would set up a tripartite committee to examine the matter of a complaint lodged by the Nepal Telecom Employees Union (NTEU) on behalf of Indigenous Newa<sup>12</sup> on 6 November 2019. The ILO asked the NTEU if they wanted them to mediate (if both parties agreed to it) or otherwise conduct an investigation into the complaint and take the necessary action. The government did not accept the option of reconciliation and so the ILO will have to conduct an investigation. Leaders of the movement against illegal road expansion do not believe the government will settle this case of violation in line with ILO Convention No. 169.

## **"WWF continues to ignore violations of human rights"**

The rangers of the Chiwtan National Park put Shikharam Tharu, an

Indigenous Tharu, in jail in 2006 on charges of helping his son bury a rhinoceros horn in his backyard. The horn was never uncovered but the man was found dead nine days following his arrest due to torture by the rangers. This news was further exposed in an investigative news story by The Kathmandu Post, in partnership with BuzzFeed News, published on 3 March 2019, which went on to claim that the World Wide Fund for Nature (WWF) “continues to ignore violations of human rights inside Nepal’s conservations areas”.<sup>13</sup> On 4 March 2019, BuzzFeed published a further report that claimed the WWF “funds vicious paramilitary forces to fight poaching”.<sup>14</sup> “What’s worrisome is the complicity displayed by the leading conservation organisation, the World Wide Fund for Nature—formerly the World Wildlife Fund and known globally by its abbreviation—which continues to support and work with officials accused of torture, all while concealing evidence of human rights violations against some of the most vulnerable communities of people,” reported The Kathmandu Post.<sup>15</sup>

## **European Investment Bank Complaint Mechanism and FPIC**

The European Investment Bank (EIB) Complaint Mechanism (CM) visited Nepal from 14 to 20 March 2019 and met with the communities affected by 220 kV Marsyangdi Corridor transmission line project funded by the EIB and national authorities to conduct a review into a complaint lodged on 19 October 2018 by the FPIC & Rights Forum, Lamjung. The EIB-CM met with five villages in Lamjung district and visited several sites proposed for the 220 KV electricity transmission towers. They met with representatives of the complainants’ advisors, Accountability Counsel,<sup>16</sup> and the Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP).<sup>17</sup> EIB asked LAHURNIP to develop an FPIC protocol in anticipation that the Nepal Electricity Authority (NEA) would agree to mediation with the community and FPIC could be obtained from the affected Indigenous Peoples. As the NEA refused mediation, the EIB will carry out a compliance review in the future.

## Participation

The Supreme Court of Nepal issued a Show Cause Order on 11 August 2019 to a Writ Petition filed by LAHUNRIP on the issue of Indigenous Peoples' meaningful participation in decision-making, including law making processes (076-WO-0104). This case is ongoing and at the point of a final hearing.

## Indigenous Peoples in the periodic plan

The government approved the Concept Paper for the 15th periodic plan (2019/20–2023/24) on 29 April.<sup>18</sup> Nepal's National Planning Commission (NPC) included a number of plans and programmes for Indigenous Peoples following an intervention by the Lawyer's Association for Human Rights of Nepal's Indigenous Peoples (LAHURNIP) during the drafting of the Concept Paper. According to the Concept Paper, the Special, Protected and Autonomous areas will be organised and operationalised according to the constitution and the local-level operation act. It mentions conducting surveys of the rest of the non-surveyed/non-mapped lands, bringing them under land administration systems and protecting them by preparing detailed documents of governmental, public community and Guthi (Trust) lands. Further, the survey will state all the local-level biodiversity and associated/related knowledge, skills, practices, socio-cultural systems, arts and intellectual property of Indigenous and tribal peoples (*Adivasi Janajati*), and local communities will be documented and duly registered. It also commits to implementing and institutionalising a special programme for the protection of marginalised and endangered disappearing peoples (such as the Raute, Kusunda, Chepang, Rajbansi, Chamar, Musahar, Vadi, Raji, etc.). This may be positive but only if the government carries it out in line with the UNDRIP and ILO C169, obtaining FPIC and with the meaningful participation and representation of Indigenous Peoples. Otherwise, it could potentially be a threat to Indigenous Peoples as they may not agree to the categories classifying their land.



## **Raute in a “human zoo”**

Guranse rural municipality in Dailkeh district decided to confine 42 families (149 individuals) of the nomadic Raute people in their village on the banks of Garche River by erecting fences around them so that visitors could pay an entrance fee to see or meet them, effectively putting the Raute in a human zoo. LAHURNIP issued a press statement on 5 July 2019 condemning this violation of the Raute’s human right to move freely in their ancestral forests.<sup>19</sup> After three months of this confinement against their will, the Raute moved to Surkhet, first to Satakhani in Lekbesi municipality, then to Sattachaur in Guranse rural municipality. One group has now camped on the banks of Bagrne River in Surkhet municipality, and another on the banks of Sot River in Barhatal rural municipality in Surkhet. The Raute chief said that they cannot give up their customary practice of nomadic life and they enjoy living in the forest because it is their home.<sup>20</sup>

## **Indigenous women**

Indigenous women’s organisations, especially the Nepal Indigenous Women’s Forum (NIWF -Nepal), Nepal Indigenous Women’s Federation (NIWF), Indigenous Women’s Legal Awareness Group (INWOLAG) and National Indigenous Disabled Women’s Association Nepal (NIDWAN) met the minister and secretary of the Ministry of Women, Children and Senior Citizens (MWCSC) and secretary of the National Women’s Commission (NWC) in 2019 to be updated on the level of compliance with the Committee on the Elimination of Discrimination against Women’s recommendations issued to Nepal on 14 November 2018. One year has now elapsed but the Nepalese government has done nothing in this regard and remains non-compliant. Although the minister gave insufficient time for discussion, they said they would look into this matter. The NWC officials have given assurances that they will draw the government’s attention to the issue.

## Climate change

Nepal released a new Climate Change Policy in 2019, repealing the 2011 version. The 2019 policy has the objectives of

*advancing the capacity on Climate Change Adaptation (CCA), developing ecosystem resilience, promoting green economy by adopting low carbon economic development concept, mobilising national and international financial resources, making effective the information service, mainstreaming climate change into relevant policy, strategy, plan and programmes, and also mainstreaming gender and social inclusion, including in climate change mitigation and adaptation programmes.*

The policy undertakes “to formulate and implement laws, strategies, working policies, guidelines, procedures, manuals and plan at Federal, Provincial and Local levels to implement this Policy” and “to revise or formulate and implement National Framework on Local Adaptation Plan for Action (LAPA), National Adaptation Plan (NAP), REDD Strategy, Climate Finance Framework and Budget Code, Green Growth Strategy, Gender Mainstreaming in Climate Change Action Plan, and other climate change documents”.

The policy renews its commitment “to formulate national strategy on low carbon economic development, and carbon trade (as reflected in the 2011 policy) and prepare a roadmap to the Paris Agreement, Nationally Determined Contributions (NDC), National Adaptation Plan of Action and Transparency Framework” adding that “associations are required to take prior approval of the Ministry of Forests and Environment before implementation of climate change-related projects with donor’s support”.<sup>21</sup> NEFIN’s Climate Change Programme has contributed to ensuring the rights of Indigenous Peoples are included in these government initiatives. Consistent advocacy will, however, be needed to get Indigenous Peoples’ rights fully respected in climate actions.

## Indigenous LGBTI

In November 2019, the Blue Diamond Society (BDS) and the National Indigenous Women’s Forum (NIWF-Nepal) jointly organised a first-ever

conference and training session on the Universal Periodic Review and other international laws and advocacy on the rights of Indigenous women and LGBTI in Kathmandu. This was an historic conference in Nepal where issues of Nepal's Indigenous LGBTI community were discussed and an advocacy strategy was formulated. The participants highlighted the need to make the Yogyakarta Principles+10<sup>22</sup> compatible with the UNDRIP and to specify Indigenous LGBTI in UNDRIP.

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**Krishna B. Bhattachan** belongs to the Thakali Indigenous people. He is one of the founding faculty members and former head of, and recently retired from, the Department of Sociology and Anthropology at Tribhuvan University in Nepal. He is associated with the Lawyer's Association for Human Rights of Nepal's Indigenous Peoples (LAHURNIP) as an Indigenous expert. He has published several books and articles on Indigenous issues.



# Philippines



The population census conducted in the Philippines in 2010 for the first time included an ethnicity variable but no official figure for Indigenous Peoples has been released yet. The country's Indigenous population thus continues to be estimated at between 10% and 20% of the national population of 100,981,437, based on the 2015 population census.

The Indigenous groups in the northern mountains of Luzon (Cordillera) are collectively known as Igorot while the groups on the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively known as Mangyan in the island of Mindoro as well as smaller, scattered groups in the Visayas islands and Luzon, including several groups of hunter-gatherers in transition.

Indigenous Peoples in the Philippines have retained much of their traditional, pre-colonial culture, social institutions and livelihood practices. They generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities, education or political participation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can be found primarily in their areas, making them continuously vulnerable to development aggression and land grabbing.

The Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), was promulgated in 1997. The law has been lauded for its support for respect of Indigenous Peoples' cultural integrity, right to their lands and right to self-directed development of those lands. More substantial implementation of the law is still being sought, however, apart from there being fundamental criticism of the law itself. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but the government has not yet ratified ILO Convention 169.

**T**he situation of Indigenous Peoples in the Philippines is worsening under the regime of President Rodrigo Duterte. Development aggression has intensified, with various mining, energy and other

so-called ‘development’ projects encroaching on Indigenous territories. Human rights violations are likewise escalating, with Indigenous activists comprising most of the victims.<sup>1</sup> In 2019, the UK-based international watchdog Global Witness has declared the Philippines as the world’s deadliest country for environmental defenders, with 30 deaths recorded in 2018.<sup>2</sup>

## **China-funded projects violating Indigenous Peoples’ rights**

After the Philippine government signed numerous loan agreements with the government of China in 2018, various issues hounded the loan agreements for the Chico River Pump Irrigation Project (even though construction started the same year) and the Kaliwa Dam project.<sup>3</sup> Both projects are located in Indigenous territories in the Cordillera and Calabarzon regions affecting at least 3,765 Indigenous people. The loan agreements for these projects have not been disclosed to the public and have stirred criticism when leaked copies reached the public in 2019. Cordillera Peoples Alliance (CPA) denounced the onerous and lopsided loan agreement between the governments of the Philippines and China for the project, which CPA characterised as a debt trap for the Filipino people and a sell-out of the country’s sovereignty.<sup>4</sup>

Meanwhile, opposition to the China-funded Kaliwa Dam project has intensified as the project will displace over 1,400 Indigenous Dumagat families and affect more than 100,000 peoples.<sup>5</sup> Despite the threats to Indigenous communities and the massive damages to the environment and biodiversity<sup>6</sup> that the project may cause, President Duterte declared he would use ‘extraordinary powers’ to ensure that the project will push through.<sup>7</sup> Indigenous Peoples and various groups also criticised the Department of Environment and Natural Resources (DENR) for issuing an environmental compliance certificate despite stiff opposition to the project.<sup>8</sup>

On April 4 and May 9, petitions were lodged by the Makabayan Bloc, KATRIBU national alliance of Indigenous Peoples and environment advocates at the Philippine Supreme Court. The petitions were attempts to stop the implementation of the loans for the Chico River Pump Irrigation and Kaliwa Dam projects, since several provisions of the loan

agreements violate the 1987 Philippine Constitution.<sup>9</sup> These violations include the confidentiality clause, the choice of Chinese law as governing law, the selection of an arbitration tribunal in Hong Kong and the waiver of sovereign immunity over Philippine patrimonial assets of commercial value.<sup>10</sup> On the Chico River Pump Irrigation Project, the Malacanang Palace said it will comply with the Supreme Court's order<sup>11</sup> for the government to respond to the petition against the project but insisted that the loan deal is constitutional.<sup>12</sup> To date, Cordillera Indigenous Peoples do not know if the government has made any response.

Another China-backed flagship project of the Duterte administration that outrightly disregarded Indigenous Peoples' rights is the New Clark City, which is envisioned by the government to be the first smart and green city in the country. The first phase of the project, which housed a "state-of-the-art sports facility" that was used during the 2019 South East Asian Games, has already displaced over 27,500 members of the Aeta Indigenous people. Expansion of the project threatens to displace around 500 Aeta families.<sup>13</sup> The Bases Conversion and Development Authority (BCDA),<sup>14</sup> a government-owned corporation under the Office of the President that is mandated to strengthen the country's Armed Forces while building cities, maintains that the Aetas are not displaced as there are no Certificates of Ancestral Domain Titles in the area.<sup>15</sup>

The latest deal between the Chinese government's Belt and Road Initiative and the Duterte administration's Build, Build, Build infrastructure program is the proposed 250-megawatt South Pulangi Hydro-electric Power Plant (PHPP) project, which will flood 2,833 hectares of Indigenous lands in four towns near Davao City and will affect residents of 20 communities. The USD\$800 million contract agreement between PHPP CEO Josue Lapitan and China Energy Engineering Co Ltd Chairman Dong Bin was signed in April 2019 without the consent of the affected communities. For many years the Indigenous Peoples' opposition to the PHPP has been met with militarisation, harassment, indiscriminate firing and extrajudicial killing.<sup>16</sup>

## Mining and other energy projects

Large-scale mining remains a constant threat faced by Philippine Indigenous Peoples. In August 2019, Cordillera Indigenous Peoples formed



the Aywanan Mining and Environment Network in opposition to the mining applications of the Cordillera Exploration Company, Inc. (CEXCI), a subsidiary of Nickel Asia Corporation in partnership with Japan-based Sumitomo Metal Mining Co. Ltd. CEXCI's mining applications cover 72,958 hectares of land in the ancestral lands of the Indigenous Peoples in the Cordillera and parts of Ilocos Sur.<sup>17</sup> Petition-signing against the mining applications of CEXCI started in August 2019 and is continuing.

In Didipio, Nueva Vizcaya, a people's barricade which started in July 2019 led to the temporary suspension of the gold and copper mining operations of multinational company OceanaGold.<sup>18</sup> The company's mining permit (Financial and Technical Assistance Agreement) expired in June 20 after 25 years of operation. Pending the renewal of its permit to operate, the company appealed to continue its operations but this was denied in a regional trial court. Communities affected by the mining operations opposed the renewal of the company's mining permit. They have long been complaining of the environmental destruction and human rights violations committed by OceanaGold.<sup>19</sup>

In Mindanao, the Lumad Indigenous Peoples continue to oppose at least three mining tenements that were approved by the government and cover around 17,000 hectares in the Pantaron mountain range, which straddles the provinces of Davao del Norte, Davao del Sur, Bukidnon, Misamis Oriental, Agusan del Norte and Agusan del Sur. The Pantaron range is the main source of the major watersheds in the region.<sup>20</sup>

In the energy front, aside from hydropower projects that the Duterte administration continues to build, the Kalinga geothermal project of Aragorn Power and Energy Corporation and Guidance Management Corporation, in partnership with global energy company Chevron, is about to complete its exploration stage. The project covers 26,139 hectares in Kalinga province.<sup>21</sup>

## **Escalating attacks against Indigenous Peoples' organisations and human rights defenders**

Following the issuance of Executive Order 70<sup>22</sup> by President Duterte in December 2018, the Duterte regime has intensified attacks against Indigenous Peoples through the formation of the Task Forces to End the Local Communist Armed Conflict.<sup>23</sup> Executive Order 70 is part of the

government's "whole-of-nation" counter-insurgency operation plan which has an "Indigenous People-centric" approach.<sup>24</sup> The attacks are meant to quell Indigenous Peoples' resistance to development aggression and government policies that violate Indigenous Peoples' rights, and results in further marginalisation of Indigenous Peoples in the country.

In the implementation of Executive Order 70, the Department of Education ordered the closure of 55 Lumad schools, leaving 3,500 students and more than 30 teachers out of school and jobs.<sup>25</sup> The closure order was on baseless claims of the government that the Salugpongong schools are teaching students to rebel.<sup>26</sup> The Lumad Indigenous Peoples decried this injustice that only deprives Lumad children of their right to education.

Strategies of disinformation are being used by other government agencies, such as the Department of Social Welfare and Development (DSWD) and Department of Foreign Affairs (DFA), and presidential agencies like the Presidential Communications Operations Office (PCOO), Office of the Presidential Adviser for the Peace Process (OPAPP) and the National Intelligence Coordinating Agency (NICA). Political dissenters are politically vilified and tagged as communists or members of the New People's Army (NPA).<sup>27</sup>

In a series of briefing sessions on the Whole of Nation Approach to government agencies in Baguio City, NICA has been presenting Indigenous Peoples' organisations and Indigenous Peoples human rights defenders as Communist Terrorist Groups and members of the NPA. UN Special Rapporteur on the rights of Indigenous Peoples, Vicky Tauli-Corpus, and some leaders of the CPA were accused of being infiltrators to the UN on behalf of the Communist Party of the Philippines and the NPA.<sup>28</sup>

In a congressional briefing on 5 November 2019, Indigenous Peoples' organisations such as the CPA, humanitarian organizations such as the Citizens' Disaster Response Center and Oxfam Philippines, and the National Council of Churches in the Philippines were labeled by the Armed Forces of the Philippines and the Department of National Defense as communist terrorist groups.<sup>29</sup>

The dangerous labelling of Indigenous Peoples' organisations and human rights defenders as communist terrorist groups and members make them vulnerable to various forms of human rights violations. As

of August 2019, eighty-six Indigenous people have fallen victim of extrajudicial killings (at least nine victims in 2019), 66 Indigenous people were victims of frustrated extrajudicial killings (at least eight victims in 2019), 36 are political prisoners, and 31,004 were victims of forced evacuation since Duterte assumed the presidency in July 2016.<sup>30</sup> Many of the victims were opposing development aggression, human rights violations and the policies of the government that violate Indigenous Peoples' rights.

Indigenous Peoples' advocates were not spared from the tyranny of the Duterte regime. Brandon Lee, a Chinese-American volunteer of the Ifugao Peasant Movement in the Cordillera region, has been branded as an enemy of the state and was shot in front of his house in August 2019.<sup>31</sup> He is now back home in the United States for his recovery.

The criminalisation of Indigenous human rights defenders is continuing. From 2016 to August 2019, trumped-up charges caused the arrest and detention of at least 196 Indigenous people, 36 of whom remain unjustly imprisoned.<sup>32</sup> Datu Jomorito Guaynon, chairperson of Kalumbay Regional Lumad Organization remains in prison after he was arrested due to fabricated criminal charges.<sup>33</sup> Rachel Mariano, a health worker of the Community Health, Education, Services and Training in the Cordillera Region, was acquitted in September 2019 after a year of detention. However, the judge who acquitted her, Mario Bañez, was shot dead two months later.<sup>34</sup> Mariano still faces other fabricated charges and is out on bail.

After two-and-a-half years, the Martial Law in Mindanao was lifted on 31 December 2019. However, according to the Armed Forces of the Philippines, it will remain under a state of emergency<sup>35</sup> by virtue of Proclamation No. 55<sup>36</sup> which was issued in 2016. Indigenous Peoples thus fear that the situation will not change much since the proclamation allows military and police forces to impose checkpoints and curfew. They fear that the continued significant presence of the government's armed forces in Mindanao and military operations will continue to protect investments in Indigenous territories.<sup>37</sup>

## Bringing the issues to the United Nations

Indigenous Peoples in the Philippines look forward to the UN probe on the human rights situation in the country.<sup>38</sup> In preparation for the UN

probe and for other international engagements, Indigenous Peoples human rights defenders representing various Indigenous Peoples' organisations gathered in November 2019 for the national consultation workshop on the issues faced by Indigenous Peoples.

The national consultation workshop consolidated the data on the situation of human rights and economic, social and cultural rights of Indigenous Peoples, which was presented during the Asia Consultation with UN Special Rapporteur Vicky Tauli-Corpuz in November 2019. It also served as the basis for the Philippine Indigenous Peoples' submission to the UN Office of the High Commissioner on Human Rights to contribute in the UN Human Rights report on the Philippines.

## The struggle continues

Indigenous Peoples in the Philippines are further strengthening their organisations and their struggles for human rights and Indigenous Peoples' rights towards facing the challenges in the next year.

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**Sarah Bestang K. Dekdeken** is a Kankanaey Igorot from the Cordillera region in northern Philippines. She is the current Secretary General of the Cordillera Peoples Alliance, a federation of progressive people's organisations, mostly grassroots-based organisations among Indigenous communities in the Cordillera region.



# Taiwan



The officially recognised Indigenous population of Taiwan numbers 571,816 people (2019), or 2.42% of the total population. Sixteen distinct Indigenous Peoples are officially recognised. In addition, there are at least 10 Pingpu Indigenous Peoples who are denied official recognition. Most of Taiwan's Indigenous Peoples originally lived in the central mountains, on the east coast and in the south. However, nowadays nearly half of the Indigenous population lives in the urban areas of the country.

The main challenges facing Indigenous Peoples in Taiwan continue to be rapidly disappearing cultures and languages, encroachment on traditional domain, and protection of Indigenous rights. The Council of Indigenous Peoples (CIP) is the state agency responsible for Indigenous Peoples. Taiwan has adopted a number of laws designed to protect Indigenous Peoples rights including the Constitutional Amendments on Indigenous representation in the Legislative Assembly, protection of language and culture and political participation (2000); the Indigenous Peoples' Basic Act (2005); the Education Act for Indigenous Peoples (2004); the Status Act for Indigenous Peoples (2001); the Regulations regarding Recognition of Indigenous Peoples (2002); and the Name Act (2003), which allows Indigenous Peoples to register their original names in Chinese characters and to annotate them in Romanised script. Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of these laws have stymied progress towards self-governance of Indigenous Peoples of Taiwan.

Since Taiwan is not a member of the United Nations it is not party to UN human rights instruments.

## Mining law and Truku land right

In July 2019, Truku people of Hsiulin Township on Taiwan's east coast won a court battle over their land against the mining company Asia Cement Corp. of Taiwan,<sup>1</sup> but the sought-after law amendment to re-



strict mining operations was dragged through to the year's end.

For many years environmental activists have been supporting Truku people in their decades-long protest against Asia Cement, which began its operations in the area in 1973, after taking over the mining right and business license from a small local company. A number of protests were organised throughout 2019, including a protest at an Asia Cement shareholders meeting in Taipei City on 24 June.<sup>2</sup>

The High Administrative Court ruling to revoke the 20-year mining right extension issued to Asia Cement by the Bureau of Mines was a victory for the local community, mostly Truku people, that live next to the company's operation sites, including the limestone quarry and cement production factory. Given that the court ruled the company had violated Taiwan's 2005 Indigenous Peoples Basic Law, activists hailed the outcome of the court's case as symbolic. The court specifically referred to Article 21 of the law that stipulates, "When governments or private parties engage in land development, resource use, ecological conservation and academic research in Indigenous land, tribe and their adjoining land owned by governments, they shall consult and obtain consent by Indigenous Peoples or tribes, even their participation, and share benefits with Indigenous people." The court found the company did not conduct proper consultation with the local community and did not obtain its approval for extending the mining operation.

Asia Cement appealed the decision and meanwhile is continuing its quarrying and mining operations arguing that its permit for extension of mining operations was obtained in accordance with provisions of Taiwan's Mining Act.<sup>3,4</sup> Company lawyers also cited the "grandfather clause", saying that it started mining operations in Hsiulin long before adoption of the Indigenous Peoples Basic Law in 2005 and hence was exempt from its legal applications.

The battle then focused on an amendment of the provisions of the Mining Act that allowed the company to continue its operations despite the ruling of the court. Even though many legislators in the ruling and opposition parties pledged their support to the amendment, the process in the Parliament was delayed due to lengthy cross-party negotiation.

Environmental groups and Truku people appealed for public support and held talks with legislators, while Asia Cement and other business conglomerates took up lobbying efforts to stifle the amendment process. Asia Cement pointed to economic benefits and jobs its opera-

tions brought to the local community, saying that over 40% of their 700 employees are locally hired Indigenous people. Some of the company employees spoke to the media, expressing their support to the company and opposition to shutting down its operations fearing loss of jobs.<sup>5</sup> Company officials presented a petition in support of continued operations, claiming it was signed by 70% of the area's residents. However, according to Truku activists and environmental groups most local people were not aware of the petition.

The process dragged until the end of 2019, and the small opposition New Power Party tried to insert an amendment to the Mining Act into the agenda for deliberation and voting during the legislature's specially convened session on 31 December, but the move was blocked by the two main parties of Democratic Progressive Party (DPP) and Kuomintang (KMT), as they were focusing on passing another important bill.

The failure to pass the amendment has been regarded as a defeat for Truku people, since in 2020 the amendment may be further challenged by business groups and its passing through legislature might be even more difficult.

## **Pingpu's and Kavalan groups struggle for recognition**

In 2019 Indigenous Pingpu peoples' struggle for the legal recognition of their Indigenous status once again ended without progress.<sup>6</sup>

In 2019 Pingpu activists focused their activities on pushing through an amendment to the "Status Act For Indigenous Peoples". Pingpu activists in alliance with Siraya peoples, worked with legislators from the DPP to get the bill on the priority list in February and there were indications that the bill had a good prospect in Parliament. However, just like in past years, the bill's deliberations and cross-party negotiations were delayed and got bogged down. And as happened in the past, Indigenous legislators from the two main parties suggested further consultations and public hearings were needed.<sup>7</sup>

Throughout the year Pingpu groups and Siraya leaders, Uma Talavan and her father Cheng-Hiong Talavan, organised a number of protest actions denouncing delays in the legislature.<sup>8</sup> A protest on 15 October ended with protesters handing a petition letter demanding speeding

up the deliberations around the bill and recognition of the Indigenous status of Pingpu peoples to the President's Office.<sup>9</sup>

Unfortunately, protests, advocacy and lobbying work did not bear fruit and Pingpu peoples are still excluded from the CIP and consequently left out of all government programmes aimed at protecting and supporting Indigenous Peoples, while the survival of their culture, language and self-identity is looking bleak with each passing year. Analysing the reasons for the lack of progress, interviewed activists pointed to the resistance from the opposition KMT party, as well as from Indigenous legislators, CIP officials and a majority of other officially recognised Indigenous Peoples groups, which seemed to be hesitant about the prospect of sharing government-allocated resources designated for the support of officially recognised Indigenous Peoples.<sup>10</sup>

A similar situation was experienced by Kavalan people who originally come from the north-east of Taiwan. While Kavalan people in Hualien County have their Indigenous status officially recognised (registered at about 1,500 people) and thus can access all programmes and subsidies under the CIP, in Yilan County nearly all Kavalan people have no Indigenous status.

In the Kavalan assembly event on 21 December, held at Hualien's Fongbin Township, community leaders and elders once again requested the government to grant Indigenous status for all Kavalan people and to end the denial of Indigenous rights for those from Yilan county.<sup>11</sup>

Long-time Kavalan rights activist Bauki Anao has called on the government to end the discrimination of Indigenous people and repeated the demand of official recognition for Kavalan people in Yilan and for the Pingpu groups.<sup>12</sup> According to Bauki Anao, CIP officials had explained that the KMT government had invited "lowland aborigines" to register for Indigenous status several times between 1956 to 1963. Those registered at that time were granted Indigenous Peoples recognition. But according to Bauki Anao, his parents never received this information due to the isolation of their villages and lack of effort by local officials to inform the local population on government edicts.

## Compensation for Tao people

After completing its investigation report, the Ministry of Economic Affairs (MOEA) announced in November that it will allocate a compensa-

tion package at NT\$2.55 billion (about US\$85 million) for Lanyu Island residents for the storage of radioactive waste by the state utility Taipower Co., which operates Taiwan's nuclear power plants.<sup>13</sup> The offshore volcanic island is the homeland of Indigenous Tao people.

In addition to the compensation figure, MOEA officials said they will pay out NT\$220 million (about US\$7.36 million) every three years as a "compensation for land use", while a non-profit foundation supervised by a governing board will manage these funds for public projects, community services, economic development and social welfare programmes for Lanyu Island residents.<sup>14</sup>

The compensation came after the investigation report conducted by the Indigenous Justice Committee under the Presidential Office's mandate concluded that Tao people's rights were violated and they had no idea that in 1978, with secret approval of the KMT government and then premier Sun Yun-suan, Taipower Co. started building a storage facility for radioactive waste on the island. Taipower Co. had deceived the Tao people by telling them the construction was for a fish cannery factory, promising it would benefit the island's economy and create jobs for its residents. The first batch of 288 metal drums filled with nuclear waste was delivered to the site in 1982. Since that time, Taipower Co. has been using the site continuously, despite the court challenges and active protests every year. Tao activists insist that Lanyu islanders were not aware of the site's use and did not consent to it, and therefore the storage is illegal. Moreover, the high incidence of cancer and other illnesses on the island is attributed by activists to the presence of nuclear waste.

In its defense, Taipower Co. pointed out that the company has been providing funds to finance energy and water supply networks for many years, as well as improved health care, construction of schools and medical stations, telecommunication facilities, and subsidies for fishing boat repair and local public buses. It also claims to have paid NT\$1 billion (about USD\$33 million) to island residents in compensation for land use at the storage site.<sup>15</sup>

It was reported that as a result of protests held by Tao peoples anti-nuclear activists in August and November,<sup>16</sup> Taipower Co. started to look into other potential sites to store the nuclear waste. A Tao elder, Siyapen Nganaen, speaking at the protest said that his people will not

accept the compensation figure, but instead called on the government to transfer the funds into a Tao foundation fund that would be focused on terminating nuclear waste on Lanyu and for its removal to other permanent storage sites.

## **Kavalan cultural revival**

In 2019 the Kavalan people in Yilan County marked a new chapter for their cultural revival movement, when on 13-14 July, for the first time in over 100 years, they performed the rituals of the “Ocean Festival” or “Sepaw tu lazing” as it is known in Kavalan language.<sup>17</sup> Pan Ying-tsai, the 91-year-old Kavalan chief of Kirippoan Village, conducted the rituals in traditional costume, in the presence of other Kavalan elders from east coast villages and participants from the local community.<sup>18</sup> The Kavalan leader remembered the Kirippoan villagers performing the “Kisaiiz”, the ritual for healing illnesses, when he was a five-year-old child, but in those days he said only his elder family members had memories of participating in “Sepaw tu lazing”.

Since much of Kavalan culture, language and traditions had eroded due to the government’s assimilation policies and mainstream society pressures, it took some help from Kavalan clans in Hualien and work by cultural researchers for this revival of tradition to happen. Pan Ying-tsai believes the festival had a positive impact on the community’s young people who were motivated to support the restoration of Kavalan language, music and traditional culture, and to keep the festival alive in the future.

## **Taiwan hosting Indigenous Peoples conferences**

In December 2019, Taiwan hosted the “International Indigenous Economic Development Forum” for consultation on food and agriculture innovation, promoting Indigenous women and youth start-ups, entry into the global e-commerce market, sustainable financing, Indigenous social enterprises, and other issues. Besides Taiwanese officials and Indigenous representatives, the forum was attended by over 200 delegates and experts from Pacific island nations, Southeast Asia, Bang-

ladesh, Canada, Australia, New Zealand and Italy.<sup>19</sup> The three-day conference focused on the soft power and business potential of Indigenous groups, raising public awareness of Indigenous economic development and deepening commercial connections with regional neighbors in line with the government's "New Southbound Policy" focusing on expanding Taiwan's economic, cultural and tourism links with Asian countries, Australia and New Zealand.

That same month, the CIP Minister, Icyang Parod, announced that Taiwan had secured the right to host the World Indigenous Tourism Summit (WITS) in 2022, with an agreement signing ceremony in Taipei City. "We hope the summit will help lift the international profile of Taiwan and its Indigenous tribes and provide an opportunity for us to learn from other countries that have greater experience in Indigenous tourism," Parod said.<sup>20</sup> Ben Sherman, who signed the agreement on behalf of the World Indigenous Tourism Alliance (WINTA) conducted assessment tours during his participation at the "International Indigenous Economic Development Forum". Sharing his impressions from the visits, Sherman said he was reassured that awarding Taiwan as host of the WITS was the right decision.<sup>21</sup>

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**Jason Pan Adawai** is director of the Indigenous rights activist organisation, TARA-Pingpu, and former executive council member of the Asia Indigenous Peoples' Pact (AIPP). Jason is an Indigenous Pazehe (one of the lowland Pingpu groups) from Liyutan Village, Miaoli County.



# Thailand





The Indigenous Peoples of Thailand live mainly in three geographical regions of the country: indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south (Mani people); small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country (known by the derogatory term Chao-Khao). Nine so-called “hill tribes” are officially recognised: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.<sup>1</sup>

The estimated Indigenous population in Thailand is around five million people, which accounts for 7.2% of the total population.<sup>2</sup> According to the Department of Social Development and Welfare (2002), the total officially recognised “hill-tribe” population numbers 925,825 and they are distributed across 20 provinces in the north and west of the country. There are still no figures available for the indigenous groups in the south and north-east. When national boundaries in South-East Asia were drawn during the colonial era, and as a result in the wake of decolonisation, many Indigenous Peoples living in remote highlands and forests were divided. For example, you can find Lua and Karen people in both Thailand and Myanmar, and Akha people in Laos, Myanmar, south-west China and Thailand.

Thailand is a constitutional monarchy and has ratified or is a signatory to the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Universal Declaration of Human Rights. It voted in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but does not officially recognise the existence of Indigenous Peoples in the country.

In 2010, the Thai government passed two cabinet resolutions to restore the traditional livelihoods of the Chao Ley<sup>3</sup> and Karen, on 2 June and 3 August respectively.

## General election

Thailand's general election was held on 24 March 2019. The Phalang Pracharath party and their allies won a majority and formed a new government. General Prayut Chan-o-cha was elected as the 29th Prime Minister of Thailand on 5 June 2019. This time, a large number of indigenous leaders participated in the election. There were two candidates who were elected as Members of Parliament (MPs) under the Future Forward Party's (FFP) party list system. Another indigenous candidate from FFP became an MP in November to replace the FFP leader who was disqualified by the Constitutional Court on charges of holding shares in a media company.<sup>4</sup> There are now a total of three indigenous persons in parliament. FFP and a few other political parties have committed to pursuing the adoption of the existing draft *Council of Indigenous Peoples Law*, which was drafted by Indigenous Peoples and has been forwarded to the Law Reform Commission. It was tabled for consideration in parliament for the first time in 2015.<sup>5</sup>

## Establishment of a parliamentary standing committee on Indigenous Peoples and ethnic groups

With support from the FFP, the Council of Indigenous Peoples in Thailand (CIPT) has requested that MPs establish a parliamentary standing committee on Indigenous Peoples and ethnic groups. Standing committees are set up as an internal parliamentary mechanism to investigate or study a specific issue or set of issues assigned by parliament. The establishment of this committee was not feasible, however, as the number of standing committees had already been fixed. A proposal was therefore made to include Indigenous Peoples' and ethnic group issues in a standing committee on children, youth, women, people living with disabilities and LGBT. To make the issues of Indigenous Peoples and ethnic groups visible, CIPT and their allies proposed creating a sub-standing committee on Indigenous Peoples and ethnic groups to directly address indigenous-related issues.

The standing committee later decided to create only two

sub-standing committees: the first on children, youth, women and LGBT, and the second on the elderly, people living with disabilities and ethnic groups. The primary mandate of the sub-standing committees is to study problems and concerns faced by each specific group and make recommendations for necessary action. Four out of eight advisory board members to the sub-committee on the elderly, people living with disabilities and ethnic groups were from CIPT. The main priority issue for CIPT is to advocate for the draft CIPT law before the standing committee members and MPs to obtain its consideration and adoption. The next sub-standing committee meeting, at the time of writing, will be held in January 2020 to discuss and elaborate on the draft CIPT law.

## Passage of new and amended forestry laws

The Thai government passed two new and two amended forestry laws in 2019:

- *National Land Policy Committee (NLPC) Law* on 12 April 2019;
- *Community Forestry Law* on 24 May 2019;
- *Amendment to the National Park Law* on 29 May 2019; and
- *Amendment to the Wildlife Preservation and Protection Act* on 24 May 2019.

These new laws represent both positive developments as well as threats to communities. On the positive side, it shows that the government under the Ministry of Natural Resources and Environment has attempted to resolve the long-standing land conflict between communities and the state in the protected areas by documenting and demarcating community land use and traditional livelihood practices outside the forest areas.<sup>6</sup> Further, it also allows basic infrastructure development, such as road building, installation of electricity, water supply, etc., to be legally undertaken in the communities within protected areas once the registration process is complete. This will help improve the quality of life of community members. This, however, will be carried out under certain conditions.

On the negative side, the *National Park Law* in particular will impose stricter penalties and further limit the rights of farmers and Indigenous Peoples.<sup>7</sup> The process and timeframe to document and conduct

communities' land-use surveys are, moreover, very challenging. The new amended law came into effect as of 25 November 2019. Park authorities have to complete the documentation of community land-use and livelihood practice surveys under articles 64 and 65 within 240 days, or 8 months. They have to officially inform communities living in protected areas about the surveys and obtain their approval to participate. However, participation of community members in this process has yet to be clarified, although the landowner normally has to be present to identify the lands. Theoretically, once the survey is completed, a community land-use map will be produced and verified before being sent to the Department of National Parks. There will be no further survey conducted after this deadline.

The main concerns relate to the limited timeframe and process used for conducting the survey. The given timeframe may not be feasible to cover all communities (around 3,973 communities) living in forest areas. Most communities are still not aware of this new law and the full, effective participation of villagers in the process remains unclear. Further, registered communities are allowed to temporarily live and use their land only up to 20 years regardless of how long they have been in existence, although there is an option for renewal if the community is not violating the agreed rules and regulations.

## **Referral of the nomination of Kaeng Krachan Forest Complex (KKFC) as a natural world heritage site back to the Thai government**

At the 43rd session of the World Heritage Committee meeting convened in Azerbaijan from 30 June – 10 July 2019, the committee upheld a referral decision on KKFC to be inscribed as a natural world heritage site.<sup>8</sup> One of the main reasons was to ask the Thai government to demonstrate that all the concerns (of the Karen people who live there) had been resolved, in full consultation with local communities, in accordance with paragraph 123 of the Operational Guidelines.<sup>9</sup>

This was in line with the demands of the Karen Network for Culture and Environment (KNCE), Tanaosri section, which released a statement appealing to the committee to support their demands and concerns as follows:

- Authorise community-based management for 10 years of traditional rotational farming;
- Establish the Huai Krasu area as a government/community co-organised rotational farming research centre;
- Ensure self-determination for the Karen indigenous population;
- Embrace the traditional livelihoods and community and human rights of the Karen Community; and
- The KNCE Tanaosri region and Thai government shall be the co-nominators proposing the forest complex as a UNESCO World Heritage Site.

The KNCE concluded that the Karen community would not accept KKFC as a UNESCO World Heritage Site unless these requests were fulfilled and acted upon. The Government of Thailand has recently announced that Thailand will resubmit the KKFC to the World Heritage Committee for consideration in 2020.

## **Drafting a new law on the promotion and protection of ethnic groups' traditional livelihoods**

The Sirindhorn Anthropology Centre (SAC) has been tasked with drafting a new law on the promotion and protection of traditional livelihoods of ethnic groups in Thailand. This is in accordance with the current constitutional law section 70 and a 20-year national strategic plan adopted last year. The SAC has so far conducted a series of consultations with different Indigenous Peoples and ethnic groups on the concept and main substance of the law. The draft law is expected to be completed in four years and the process is ongoing with the active involvement of CIPT, which is trying to include Indigenous Peoples' issues as much as possible into this new law.

## **Billy's murder case**

On 3 September 2019, the Department of Special Investigation (DSI) announced they had found bone fragments in a 200-litre barrel under the Kaeng Krachan suspension bridge. The bone fragments were confirmed

to belong to Billy or Mr. Porajee Rakchongcharoen, who went missing on 17 April 2014 after being detained by park officers, as the DNA matches with his mother. He is now officially declared dead.

KNCE, CIPT, AIPP and other civil society organisations (CSOs) expressed concerns over this issue, demanding a continued investigation to bring the perpetrator(s) to justice, find appropriate measures to redress Billy's family and prevent further forced disappearance cases in Thailand. They also demanded faster enactment of domestic law, including implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and requested that the Thai government ratify the International Convention for the Protection of all Persons from Enforced Disappearance (CPED).

A number of public events were organised to raise awareness of this issue, including a commemorative workshop for Billy at Rangsit University on 16 September 2019 and at Chiang Mai University on 2 October 2019.

DSI recently obtained court warrants to arrest the former chief of Kaeng Krachan National Park, Mr. Chaiwat Limlikit-aksorn and his three team members on charges of alleged murder. He and his team members denied the charges and have been released on bail.<sup>10</sup> The case is ongoing.

## **Proposed coal mining operation in Omkoi district**

The Thai business 99 Thuwanon has been applying for a coal mining concession to operate in Kabeudin village (a Karen village) located at M.12, Omkoi sub-district, Omkoi district, Chiang Mai since 2000. The proposed mining area covers 284.3 rai (around 45.3 ha.). The process to obtain a legal concession was being carried out quietly until the Primary Industries and Mines Department (PIMD) announced the project and placed plans with the Omkoi district office on 26 April 2019 to solicit views and comments from villagers living in and near the proposed coal mining areas. The deadline for feedback was 24 May 2019.

This project was then shared and circulated to a wider group of Omkoi residents. After that, Omkoi residents, CSOs and concerned people, who have become aware of the project, tried to stop the proposed coal mine, under the name of the Omkoi Anti-Coal Mine Network

(OKACMN). Community leaders have faced intimidation and threats from government authorities for their protest activities.

This project will directly affect 1,541 households (6,115 people) and indirectly affect residents of Omkoi (approx. 56,582 people or 13,556 households). The project's effects include air pollution, destroyed or severely limited livelihoods of people living in and nearby the mining area, polluted water sources, forest and biodiversity loss, etc.

OKACMN demands included the:

- Stop or suspension of the proposed open coal mining project;
- Provision of clear and reliable information to community members;
- Respect for Indigenous Peoples' rights;
- Ceasing of intimidation and threat to community leaders; and
- Carrying out of a new Environmental Impact Assessment (EIA) with full and effective participation of community members.

The PIMD conducted a public hearing at Mae Ang-kang school on 28 September 2019 before granting a legal concession to the company. OKACMN strongly opposed the process. The public hearing was later called off. Some OKACMN leaders have been charged with defamation of the company. The concession has not yet been granted.

## **Indigenous Peoples' movement**

In addition to issues faced by Indigenous Peoples in Thailand, there were a number of key important activities held in 2019 to firm up Indigenous Peoples' commitments and rights, including the strengthening solidarity among Indigenous Peoples from different sub-regions. These included the:

- Observation of Indigenous Peoples Day on 8-10 August 2019 at Maejo University, which included exhibitions, panel discussions, dialogues and cultural performances that were broadcast live online; and
- Realisation of the 4th General Assembly of the Council of Indigenous Peoples in Thailand (CIPT), held on 10 August 2019. Key outcomes included: the selection of new CIPT members; review and

amendment of the CIPT constitution to reflect the actual situation and needs of its members; adoption of its strategic plan; mobilisation of resources and collaboration with the SAC for future support.

## **Thailand's commitment to addressing climate change impacts**

Thailand is facing climate risk and it has therefore taken urgent steps to address climate change. These include, but are not limited to, adopting the long-term Climate Change Master Plan in 2015 and implementing its Nationally Determined Contribution (NDC) commitments. Under the NDC, Thailand has prioritised adaptation activities in key sectors such as agriculture and water management and committed to a 20–25% greenhouse gas (GHG) emissions reduction by 2030. The primary target sector for mitigation is energy which, together with transport, is responsible for more than 70% of GHG emissions. Thailand is in the process of reviewing its NDC commitments and targets.

The government will likely include the forestry sector as one of its key mitigation targets. If this is the case, it will pose further risks and problems to indigenous communities living in forest areas given that the enforcement of laws and other measures will be stricter, thus negatively affecting the livelihoods of indigenous communities.

Thailand is also speeding up implementation of its REDD+ readiness phase because the grant agreement will end on 30 June 2020. A number of the main activities have still not been completed. These include the REDD+ strategy preparation and information system for multiple benefits and safeguards. A few indigenous leaders were invited to participate in the consultations but they are still limited in number.

## **Notes and references**

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3. Composed of Moken, Moklen and Urak-lawoy.



4. "Thanathorn disqualified as MP". Bangkok Post, 20 November 2019: <https://www.bangkokpost.com/thailand/politics/1798414/thanathorn-disqualified-as-mp>
5. See the Thailand chapter of IWGIA's Indigenous World 2015 and 2016.
6. For more detail on the laws, see: <https://www.nationthailand.com/national/30365412>
7. For example, those who are convicted of encroachment and other offences could face up to 20 years in prison and two million Baht (approx. US\$ 66,666) in fines.
8. This was the third time that the Thai government had received such a decision, the most recent being in 2016 at the 39th and 40th sessions.
9. World Heritage Committee meeting report, 43rd session. <https://whc.unesco.org/en/sessions/43com/decisions/>
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**Kittisak Rattanakrajangsri** is a Mien from the north of Thailand. He has worked with indigenous communities and organisations since 1989. He is currently Executive Director of the Indigenous Peoples' Foundation for Education and Environment (IPF) based in Chiang Mai, Thailand.





**Central and  
South America  
and the  
Caribbean**

# Argentina



Argentina comprises 23 provinces with a total population of approximately 40 million. The most recent national census (2010) gave a total of 955,032 people who self-identify as descended from or belonging to an Indigenous people. There are 35 different officially recognised Indigenous Peoples in the country. They legally hold specific constitutional rights at the federal level and in various provincial states.

In addition, ILO Convention 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic and Social and Cultural Rights (ICESCR) are of constitutional force in the country. Argentina voted in favour of the UN Declaration on the Rights of Indigenous Peoples.

## Indigenous Peoples and political change

**2**019 was an election year and resulted in the election of a new president and government of a different political persuasion to that of the last four years. This will undoubtedly have an impact on policies aimed at guaranteeing Indigenous Peoples' rights.

Unlike the previous government, under whom security policies had become entrenched and Indigenous communities were specifically being harassed and criminalised (See *The Indigenous World 2018* and *2019*), the rhetoric of this new government suggests a significant transformation of its relationship with Indigenous Peoples, demonstrating a desire to recognise their territory by granting collective property titles to their land and implementing the right to consultation, as confirmed by the new President of the National Institute for Indigenous Affairs (INAI).<sup>1</sup>

There is, however, another rhetoric present within the same political space that indicates the precise opposite: the promotion of extractive activities – many of them on territories claimed by Indigenous communities – and fracking in the Vaca Muerta unconventional oil fields, clearly disregarding the importance of natural assets such as water. The lack of water is also a result of the impact of climate change on the region, which is affecting both production capacity and quality of life.

Together with the Global Environment Facility (GEF), the United Nations Development Programme (UNDP) has been providing strategic support to territories and areas preserved by Indigenous Peoples and local communities in Argentina (*territorios y áreas conservados por pueblos indígenas y comunidades locales* or TICCAs, in the project's global terminology), in other words, "natural and/or modified ecosystems that contain important biodiversity values, ecological benefits and cultural values, voluntarily preserved by Indigenous Peoples and local communities through customary laws or other effective measures".

This global project aims to lay the foundations for a different relationship between Indigenous Peoples and their environment, based on the care the communities provide to their ecosystems, and which has notable and global-level impacts on climate change.

The country's jurisprudence continues to be ambivalent; there has been no legislation to strengthen either current laws or stated policies, and Indigenous women's movements - combining the ethic of care with their concern for Mother Earth - are the ones most emphatically raising the banner of global action, mobilising to get their voices heard.

## Progress (and setbacks) in court decisions

As in previous years, 2019 was notable for a number of highly significant court judgments with regard to protecting Indigenous rights being passed alongside others that continue to perpetuate perspectives impervious to current legislation on these rights. One positive judgment was that in the case known as "Rincón Bomba", involving the Pilagá people in Formosa Province<sup>2</sup> in relation to a massacre that occurred in 1947 and for which the judge finally held the Argentine state responsible.

Notable in this ruling was its legal framing as the judge declared that the action had constituted a crime against humanity in violation of the Rome Treaty. This legal classification is invaluable as it is the first time a court has classified the Argentine state's extermination policies as such and the first time the justice system has verified historical events in conjunction with the claims, demands and struggles of the Pilagá people.

Another example of "good case law" protecting rights is that of a court of first instance in Neuquén Province that acquitted members of

the Campo Maripe community, settled in the area of exploitation of the Vaca Muerta oil field, of encroachment.<sup>3</sup> This ruling was taken to appeal, however, and the Court of Appeal overturned the decision, ordering a re-trial, making an assessment of the evidence that was beyond its jurisdiction and ignoring both the Indigenous status of the accused and Indigenous rights in force.

The Indigenous community took the case to the Higher Provincial Court of Justice where it was also rejected. It is now pending a final decision.

While many court rulings often simply endorse political decisions or other interests, there are others that are more receptive of Indigenous rights although these often end in failure. In any case, progress for long held-back Indigenous communities in matters of case law moves very slowly.

## **The continually postponed law on Indigenous communal ownership**

If Indigenous Peoples are to overcome their evictions, the advance of neo-extractivism onto Indigenous territories, criminal proceedings for encroachment and violent actions resulting from land claims once and for all then there will need to be a debate on the law on Indigenous communal ownership, a law envisaged in the Argentine Constitution (Art. 75 para 17).

Although emergency legislation is in place (see *The Indigenous World 2017* and *2018*) that requires the implementation of a legal and technical cadastral land survey (progress in which we cannot touch on further here), structural change will need to take place by means of a substantive law that sets out in detail the procedure for accessing collective land titles.

There are currently a number of draft bills of law in the Congress of the Nation (Parliament) by which Indigenous communal ownership could be implemented. Such a bill of law would need to be put out to the communities for consultation and hence the whole process, both the parliamentary debate and the Indigenous consultation, is significantly complex. One of the draft bills is particularly interesting; it was drawn up with Indigenous input and submitted to a number of different regional

fora.<sup>4</sup> It not only includes a correct concept of Indigenous communal ownership – an autonomous constitutional right of a collective nature (important when there is so much confusion over whether it is a real right or what kind of right it is) – but also strengthens that concept on the basis of a number of articles in existing international law.

It is, however, unlikely that the necessary consensus will be achieved to obtain its parliamentary debate. There is no genuine interest from government in a law that permanently allocates territory to the Indigenous communities; economic interests continue to hold very powerful sway and it is unlikely that this “conflict of interest” will be resolved in the short- to medium-term.

## **Malnutrition, abandonment and death in northern Argentina**

The tragic deaths of Indigenous children due to malnutrition in 2019 were simply a reflection of an historical situation among some Indigenous communities in the north of the country and such cases are therefore likely to occur again in the future. The Wichí communities of Salta Province are particularly vulnerable and the various national and provincial governments have been unable to bring this situation under control or propose policies and alternatives to their hunger and abandonment.

In the Salta Chaco region such fatalities have been occurring regularly for years. The working conditions of the Indigenous communities generally – they are migrant labour, which means permanent relocation –, the general conditions in which they live, the state’s apathy and the gradually deteriorating environmental context due to deforestation, regular flooding (often caused by this deforestation), the expansion of the agricultural frontier and extractive activities are all creating a situation that is difficult to reverse.

Difficulties in accessing health care, clean water and the lack of substantive solutions are all reasons that combine not only to perpetuate the deaths but also to force people to live a reality that has no prospect of being structurally addressed. At the time of writing, deaths are again being reported among Wichí children, a reminder of the abandonment many of the country’s Indigenous communities continue to suffer.

## Indigenous women, femicides and “terricide”

The Second Parliament of Indigenous Women for Good Living took place in July 2019. Women from the 36 Indigenous nations met to discuss structural aspects of their lives. An assessment of land and body, the economy, fair trade, “femicides” in the communities, education and training in ancestral practices, were all discussed at the meeting, which forms part of a space that is gradually being consolidated by Indigenous women on the basis of their own world vision.

In October 2019, Indigenous women again protested and demanded their rights by peacefully occupying the Ministry of the Interior. Their grievances at situations of violence, Indigenous femicide, pillaging of and eviction from their lands, and the murder of those lands – together with some specific cases of violent deaths among their children – were the focus of their protests.

It is interesting to consider for a moment this new concept of “terricide”,<sup>5</sup> defined as the murder of ecosystems, the people living in them, and the forces that govern life on the land. In the view of some Indigenous women, “terricide” is simply an extension of the concept of climate change (which is a reductionist concept in their view), one that goes beyond an anthropocentric view to focus on its triple dimension: ecosystems, energy and spiritual forces, and Indigenous Peoples.

The Indigenous women’s movement is distinct from the feminist movement and its aim is that they should be recognised as women with their own voice, antipatriarchal, fighting for life and whose main demand is the right to good living, the core of their world vision.

## Final considerations

2019 ended in a deep social, political and economic crisis. This crisis affected the Indigenous communities equally, and their organisations and spokespersons – both opposition forces and government members at the end of their mandate - were unable to reach substantive agreements that would enable them to adequately protect their rights or that would strengthen them as peoples.

The year ended with a new government and, at least by all appear-



ances, a new political agenda. It will be several months before we are able to make any concrete assessment of the government's handling of Indigenous Peoples' historic demands. The enormous contradictions running through its policies, already manifested in numerous public statements, are however indicative of significant internal disagreement, primarily around the country's development model, its energy matrix and the ever increasing demands of the Indigenous communities, focused on respecting their ancestral relationship with their living environment.

If these tensions cannot be satisfactorily resolved, there will likely be further conflict. There is, however, also hope for a change in policy that will enable the Indigenous Peoples to consolidate themselves on their territories, opening the door to effective enjoyment of their rights and laying the bases for a genuine intercultural dialogue. Only time will tell how possible this may be.

## Notes and references

1. See interview with Magdalena Odarda, new president of the National Institute for Indigenous Affairs (INAI) at [www.pagina12.com.ar](http://www.pagina12.com.ar)
2. "*Federation of Indigenous Communities of Pilaga v. Pen for damages*"; No. FRE 21000173/2006.
3. "*Campo, Juan Albino et al for encroachment* (Art. 181 PC)".
4. See the report presented by Darío Rodríguez Dutch, Secretary of the Unicameral Committee for Indigenous Peoples of the Senate of the Nation on dissemination, discussion and analysis of project s-1984/19(Ex S 691/17) establishing the system for implementing Indigenous community ownership, in workshops held in Río Negro, Chaco and Salta provinces, July 2019.
5. It was Moira Millán, Mapuche leader, who first began to use this concept.

**Silvina Ramírez** ([silvina.ramirez@gmail.com](mailto:silvina.ramirez@gmail.com)) is a lawyer with a PhD in law. She lectures on postgraduate courses in the Faculty of Law at Buenos Aires University (UBA) and Palermo University. She is a member of the Association of Indigenous Law Lawyers (AADI) and Academic Advisor to the Centre for Public Policies for Socialism's (CEPPAS) Legal Group for Access to Land (GAJAT).



# Bolivia



According to the 2012 National Census, 41% of Bolivians over the age of 15 are of Indigenous origin although the 2017 projections from the National Statistics Institute (INE) indicate that this may now have increased to 48%.<sup>1</sup> Of the 36 peoples recognised in the country, most Quechua (49.5%) and Aymara (40.6%) speakers live in the Andean region where they self-identify as one of 16 nationalities. The Chiquitano (3.6%), Guaraní (2.5%) and Moxeño (14%) peoples live in the Lowlands where, together with the remaining 2.4%, they make up the other 20 recognised Indigenous Peoples. The Indigenous Peoples have thus far consolidated 23 million hectares of collectively owned land as Native Community Lands (*Tierras Comunitarias de Origen/TCO*), representing 21% of the country's total area. Following the approval of Decree No. 727/10, the TCOs changed their official name to Peasant Native Indigenous Territories (*Territorio Indígena Originario Campesino/TIOC*). Bolivia has ratified the main international human rights conventions and has been a signatory to ILO Convention 169 since 1991, with the UN Declaration on the Rights of Indigenous Peoples in full effect since the approval of Law No. 3760 of 7 November 2007. With the new 2009 Political State Constitution, Bolivia adopted the status of Plurinational State.

## Political crisis and forced departure of Evo Morales

One event leading up to the elections on 20 October 2019 and which influenced the ensuing conflict was the environmental disaster caused by forest fires, primarily in the Chiquitanía region, and Evo Morales' handling of this crisis. These fires are a cyclical event directly connected to structural factors for which environmentalists have constantly criticised Evo Morales: the consolidation of an extractivist development model that involves expanding the agricultural frontier and replacing forest with agroindustrial crops.<sup>2</sup> According to data from various sources, between August and October some 4.5 to 5.1 million hectares of forest were burned,<sup>3</sup> i.e. half the forest lost in Bo-

livia since records began. Of the areas affected, 35% were located on 22 Indigenous territories.<sup>4</sup>

The rise of environmentalism as a social actor is key to understanding the ease with which the protests arose in late October/early November following the elections. This sector is a loose grouping of many different platforms of demands ranging from feminist organisations to those fighting GM crops, transgender groups, animal welfare, biking and motorcycling organisations and other urban groups now alert to environmental issues, human rights and Indigenous Peoples' rights, groups that do not necessarily fit into the traditional organised structures. They managed, at their own initiative, to get a structural issue onto the agenda that for many years had been expressly marginalised.<sup>5</sup>

## Social mobilisation and the OAS report

To understand the outcome of the 20 October 2019 election, we actually need to go back to 21 February 2016, the date on which a Constitutional Referendum was held, a referendum that was lost by Evo Morales with 48.7% of the vote and which thus should have prevented him from changing the Constitution. This has relevance for this electoral process because Evo Morales ignored the defeat and chose to have the Plurinational Constitutional Court (TCP) declare that his further re-election – renamed re-application – was a “human right”, supposedly on the basis of Article 23 of the American Convention of Human Rights (Pact of San José).

The trigger that led to the fall of the Morales government was undoubtedly the OAS Audit Report, published by Evo Morales himself on the morning of Sunday 9 November and which advised holding new elections given the serious irregularities committed prior to, during and after the 20 October election.<sup>6</sup>

The so-called “*Analysis of Electoral Integrity, General Elections in the Plurinational State of Bolivia, Preliminary Findings*”<sup>7</sup> identified serious irregularities with regard to the four aspects reviewed, namely: technology, chain of custody, documentary integrity and statistical projections. The systems observed were the Transmission of Preliminary Electoral Data (TREP)<sup>8</sup> and the Final Declaration.

In political terms, the Morales government was unaware of the cost

of having been in power for so many years. This loss of legitimacy, which subsequently resulted in a loss of authority and a power vacuum, was also due to the way in which this power had been handled: unsparingly and in a clearly authoritarian manner, on the margins of democratic values. And Santa Cruz de la Sierra, the largest conservative enclave in the country, cost the government dear with its prolonged and sustained strike. The government's alliance with the business sector served it little, and nor did the easing of environmental standards to help agribusiness and the livestock farmers sell meat in China. A monumental amount of resources was invested in public works in Santa Cruz, publicised daily through previously unseen levels of propaganda. And yet this only hardened the people's position, who went onto social media to denounce each and every investment, turning them into factors justifying their action and pressure.

## **MAS-related social movement weakened**

The Indigenous organisations of the Highlands and Lowlands,<sup>9</sup> which once enjoyed great social and political legitimacy nationally, were notable in their absence from the popular protests and offered no political solution to the crisis. Their inaction was likely due to their extreme weakening in recent years, worn down by division, co-optation, a loss of agency and political perspective, as well as a total lack of economic and decision-making autonomy. The peasant farmers, too, were neutralised and subservient to leaders who had for years held power on the basis of projects that completely side-lined them from the main social and political discussions. This was all due to the direct actions of Evo Morales' government, who wanted to eliminate all trace of dissent from the social movement.

## **The role of the security forces in the conflict**

Internationally, the Bolivian Police and Armed Forces were generally considered responsible for the "coup", particularly following the police riots and the now famous "suggestion" of then Commander in Chief of the Armed Forces, William Kalimán. This nonetheless needs to be seen

in context if we are to avoid falling into cheap deterministic analyses.

The social/ethnic composition of the Bolivian Police and Armed Forces – more than 90% of whom are of Indigenous origin – means that their relationship with urban society is a rather special one depending on their social class or the region in which they are serving. In fact, the particular composition and formation of the country's security forces means that their involvement in the conflict was rather different to the picture painted internationally. In addition, and given the tradition of Bolivian conflict and protest, it is difficult to imagine that anything other than the social conditions, generally imposed via street protest and – more recently – social media, would be able to influence the most significant political events in Bolivia.

The suggestion of the Commander in Chief of the Armed Forces that Morales should “step aside”, framed within the Organic Law of the Armed Forces,<sup>10</sup> thus seemed little more than that to most people, a recommendation rather than a breakdown in the chain of command or a deliberate move by the military, as people outside of the country would have us believe. Up to that point, the armed forces had not been publicly involved in the crisis, at least not visibly, despite constant calls from the opposition for them to join their struggle. In contrast, the call made by the Coordinating Body of Bolivian Workers (COB) for Morales to resign carried far greater weight. Their Executive Secretary had accompanied the president to his press conference only hours earlier. One thing to bear in mind is that, in his resignation letter, Evo uses the phrase “political/civil/police coup d'état”,<sup>11</sup> at no point referring to the army. But the die was already cast, suggested or not, the public perception was now that resignation was the most logical and necessary way out of a crisis that could otherwise end in civil war.

## **Violence as a means of pacification**

Once Evo Morales was gone and the resignations began to roll in, in many cases due to the harassment unleashed against those in the most high-profile positions, cabinet members and chamber presidents, etc., it was logical that the presidency should fall to a parliamentary representative from the opposition benches. Individuals such as for-

mer presidents Carlos Mesa and Jorge Quiroga wanted to ensure the process was as legal and constitutional as possible given the context, and they used their good offices to ensure that the Constitutional Court ruled on the succession using procedures established during Quiroga's time in office.<sup>12</sup>

Against a tumultuous backdrop bordering on civil war, Jeanine Añez took up the position of president. The resignation of former President Morales did nothing to calm things and, instead, unleashed a reaction from among his most hardened supporters who launched a series of reckless actions and harassment of the capital and other cities, wreaking vengeance for their leader's resignation. The security forces were called on by the government and now did indeed play a more active role, not only in restoring calm in areas suffering constant looting, arson and attacks on public security but also as a mechanism for intimidating supporters of the deposed President.

In fact, one of the police force's first missions was to restore public order, a task it completed alongside the armed forces, now without the contested Commander W. Kalimán, who had clearly been part of the ex-President's political scheme.<sup>13</sup> These forces took control particularly of the more affluent neighbourhoods to the south of La Paz, given the radical and violent protests that were descending from El Alto and Cochabamba, with the much-publicised coca farmer protests, which used Sacaba – where the main market for coca leaf sales is located – as the base from where the marches to Cochabamba departed.

It was precisely on the road from Sacaba to Cochabamba that, on 15 November, one of the most violent clashes took place between the coca farmers and the security forces, later described by the Inter-American Commission on Human Rights (IACHR) as a "massacre".<sup>14</sup> Nine people were killed, 115 wounded and more than 140 arrested.<sup>15</sup> One of their most emblematic leaders, Leonilda Zurita, announced that there would be no elections in Chapare until the police got down on their knees and apologised.<sup>16</sup>

The most difficult place to pacify, however, was the district of El Alto in La Paz, inhabited by a largely migrant Aymara population who voted for Evo Morales for president but who entrusted the running of their local municipal council to a "neoliberal" mayor by the name of Soledad Chapetón, from the National Unity party.<sup>17</sup> With Evo now out

of power, his supporters began to surround the city of La Paz.<sup>18</sup> As happened in 2003 when President Sánchez de Lozada left office, the protestors once again closed in on the Senkata plant, the only factory producing liquid fuel and gas bottle refills, essential for the whole population to be able to cook. At this point, the die was cast and, following several days of blockade and with virtually all food products running low in the markets, the situation in La Paz was unsustainable in humanitarian terms. The government had to establish an air bridge from Santa Cruz de la Sierra to supply La Paz with food and launch a combined security forces operation.

## **Protestors in power? Yes and no**

So the question remains as to what happened to that broad and plural social movement of protest within the new government's scheme of things? President Jeanine Añez's political party, Democratic Unity, now holds all positions of public office and acts as the representatives of the Civic Committees in Santa Cruz and Beni.

Those same environmental groups, anti-GM platforms, feminists, student organisations of the left, and human rights defenders, are now challenging the current government for the serious human rights violations it committed when pacifying the conflict, particularly in Sacaba and Senkata. All these sectors now clearly lack electoral/political leadership.

Far removed from all of this are the Indigenous organisations. They were a part of the deposed government's social movement and have been vilified on a public stage they no longer control. They do, however, still enjoy a level of support that would absolutely enable them to be a viable electoral option. Evo is now in Argentina rebuilding his image and organising his forces for further elections to be held on 3 May 2020. A number of new leaders are emerging as possible candidates from within his party, although they do not seem to enjoy the blessing of Morales himself, who prefers to look to his close colleagues for a possible future president. The opposition appears to be far more divided than in the previous election, and the slogan of the "useful vote" that Carlos Mesa drew on to challenge the MAS at that time will no longer work.



## Notes and references

1. INE 2017, following a consultation for the Indigenous Navigator – Bolivia
2. Particularly oilseeds and, in recent times and under the influence of fire reparations, the previous government proposed the “reforestation” of agroforestry plantations with African palm, eucalyptus, etc. associated with cellulose industry.
3. FCBC (2019) Diagnóstico por teledirección áreas quemadas en la Chiquitanía. <https://www.fcbc.org.bo/wp-content/uploads/2019/12/DiagnosticoIncendios.pdf>
4. CEJIS-CPTA (2019) *Cicatrices de quemas en Territorios Indígenas*
5. The Forests and Lands Supervision and Social Control Authority (ABT) has the budgetary capacity to monitor less than 7% of the forest operations it authorises. (ABT, 2013)
6. Bolivian Ministry of Foreign Affairs, “OEA Y Bolivia firman acuerdo para la realización de una Auditoría Integral a elecciones generales”. 30 October 2019: <http://www.cancilleria.gob.bo/webmre/noticia/3716>
7. Organization of American States (OAS). Análisis de Integridad Electoral Elecciones Generales en el Estado Plurinacional de Bolivia 20 octubre 2019: <http://www.oas.org/documents/spa/press/Informe-Auditoria-Bolivia-2019.pdf>
8. Which was interrupted for several hours, unleashing the protests from 22–23 October, and then when counting was resumed the electoral trend was reversed, now favouring Evo Morales over Carlos Mesa, even though it was evident that given the missing reports and the percentage accumulated by previously that a second round was likely, since Evo could not beat his opponent by more than a 10% margin.
9. Represented by the Confederation of Indigenous Peoples of the East, Chaco and Amazon (CIDOB) representing the 34 Indigenous Peoples of the Lowlands, and the National Council of Ayllus and Markas of Qollasuyo (CONAMAQ) representing the 16 original nations of the Andean zone.
10. *“ARTICLE 20.- The fundamental powers and responsibilities of the Military High Command are b. To analyse internal and external situations of conflict and suggest appropriate solutions to the relevant person.” Organic Law on the Armed Forces of the Nation “Comandantes de la Independencia” No. 1405/92 of 30 December.*
11. Bolivia Tv Oficial in Twitter, 5:43 PM. 11 November 2019: [https://twitter.com/Canal\\_BoliviaTV/status/1193932163739267092/photo/1](https://twitter.com/Canal_BoliviaTV/status/1193932163739267092/photo/1)
12. Explicación jurídica sobre la sucesión constitucional en Bolivia”. Eju.tv, 15 November 2019: <https://eju.tv/2019/11/explicacion-juridica-sobre-la-sucesion-constitucional-en-bolivia/>
13. One of the president’s first actions was precisely to replace the military high command, starting with Kalimán. Domínguez, Raul “Añez renueva el Alto Mando Militar: Orellana reemplaza a Kaliman”. Energy Press, 13 November 2019: <https://www.energypress.com.bo/2019/11/13/anez-renueva-el-alto-mando-militar-orellana-reemplaza-a-kaliman/>
14. *“In the IACHR’s view, it is appropriate to describe these events as massacres, given the number of people who lost their lives in the same way and at the same time and place, and because the acts in question were committed against a specific group of people. Furthermore, the patterns of injuries that have been recorded point strongly to extrajudicial killing practices.”* Press release: The IACHR presents its preliminary observations following its visit

to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections. Organization of American States (OAS). "The IACHR presents its preliminary observations following its visit to Bolivia and requests an urgent international investigation take place into the serious human rights violations that have occurred in the country since the October 2019 elections". 10 December 2019: [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/321.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/321.asp)

15. Including, according to the Cochabamba Ombudsman, four women and a number of children. People were also arrested, although journalists from the alternative media were later released.
16. Guarachi, Ángel "Dirigente de las Bartolinas dice que permitirán ingreso de la Policía al Chapare si piden 'perdón de rodillas'". La Razón, 12 December 2019: [https://www.la-razon.com/nacional/Polemica-bartolinas-policia-chapare-elecciones-perdon-rodillas\\_O\\_3273872641.html](https://www.la-razon.com/nacional/Polemica-bartolinas-policia-chapare-elecciones-perdon-rodillas_O_3273872641.html)
17. Party of the cement magnate, Samuel Doria Medina, centrist social democrat.
18. That is, the one that involved the brothers Túpac and Tomás Katari and Bartolina Sisa in 1781, when for six months they closed all food supplies to the capital, while the highland agricultural production had to go down through El Alto, the only means of entry from that area.

**Leonardo Tamburini** is an Argentine lawyer from the Università degli Studi di Macerata (Italy) and a specialist in Indigenous rights. Executive Director of ORÉ-Legal and Social Support Organisation (Bolivia).



# Brazil



Brazil's Indigenous population numbers 896,900 people, 36.2% of whom live in urban areas and 63.8% in rural. Five hundred and five (505) Indigenous Lands (TIs) have been identified. These lands represent 12.5% (106.7 million hectares) of Brazil's territory and are inhabited by 517,400 Indigenous people (57.7% of the total). Six of these lands are home to more than 10,000 Indigenous people each; another 107 are inhabited by between 1,000 and 10,000; 291 by between 100 and 1,000; and 83 have no more than 100 people living on each of them. The land with the largest Indigenous population is the Yanomami territory, in Amazonas and Roraima states, with 25,700 inhabitants.<sup>1</sup> In Brazil, 37.4% of Indigenous people over the age of five speak one of the 274 Indigenous languages. Brazil acceded to ILO Convention 169 in 2002.

The legalisation of Indigenous Lands is a long bureaucratic process with final approval given by the President of the Republic;<sup>2</sup> the following have been ratified by each of the presidents over the last 25 years, indirectly reflecting the public policies of each government in relation to the Indigenous population:

- Fernando Henrique Cardoso (1995 - 2002) 145 approvals
- Luiz Inácio Lula da Silva (2003 - 2010) 79 approvals
- Dilma Rousseff (January 2011 - August 2016) 21 approvals
- Michel Temer (August 2016 - December 2016) 0 approvals
- Jair Bolsonaro (January 2019 -) 0 approvals

In 2019, following a conservative campaign, Jair Bolsonaro of the Social Liberal Party (PSL) was elected. He has an aggressive authoritarian attitude and is supported by evangelical and landowning groups. His government has the strong support of the army, represented by its vice-president, Retired General Hamilton. Army officers currently hold no less than 325 posts within the federal administration.<sup>3</sup>

In terms of Indigenous issues, this government has been responsible for one of the most significant setbacks in the demarcation of Indigenous Lands, promoting an integrationist vision that focuses on

“civilising” the Indigenous Peoples.

On taking office on 1 January 2019, the president made his position crystal clear with regard to the demarcation of Indigenous territories: “There will be no demarcation of Indigenous Lands under my government.”<sup>4</sup> Following this statement, the body responsible for demarcations, the National Indian Foundation (FUNAI) underwent a series of management restructurings. First, it was transferred to the Ministry of Family, under Damares Alves, a Pentecostal bishop; then, it was assigned to the Ministry of Agriculture under Tereza Cristina Corrêa da Costa Dias, former leader of the rural caucus, before finally returning to the Ministry of Justice under Sergio Mouro. FUNAI’s return to its place of origin was the result of protests by the Indigenous movement, civil society and national and international NGOs. Its return to the Ministry of Justice has not, however, prevented interference from the current government, which appointed National Police Commissioner Marcelo Augusto Xavier da Silva as its president and began to drain the organisation of its staff with the aim of paralysing all demarcation work or efforts to protect peoples living in voluntary isolation.

While previous governments may not have played a particularly outstanding role in the demarcation of Indigenous Lands or enforcement of Indigenous rights,<sup>5</sup> the current government is implementing a clearly “civilising” policy that does not respect these peoples’ autonomy, far less issues of climate change, and which represents a major setback in human and environmental rights. This can clearly be seen in extracts from some of Bolsonaro’s speeches:

“NGOs and the government only encourage the Indian to enter into conflict. When I take office as president not one inch further will be demarcated.”<sup>6</sup>

“If I were the king of Roraima, with technology, we’d have an economy like that of Japan within 20 years, because the region has everything. But 60% of this production is not viable because of the Indigenous reserves and other environmental issues.”<sup>7</sup>

“The Indian is gradually evolving; he is a human being like us.”<sup>8</sup>

“Most of our Indians are condemned to live as prehistoric men in our own country. This has to change. The Indian wants to produce, to grow, he wants the benefits and marvels of science, technology. We are all Brazilians.”<sup>9</sup>

“This government has no middlemen, no false Brazilians, no false

defenders of Indians. We will remove the Indians from slavery, the slavery to which they were subjected by terrible Brazilians and international NGOs...”<sup>10</sup>

“There is an Indigenous Land on which we need to build a hydro-electric power plant. [Building it] can be done quickly, without middlemen, you don’t need to involve anybody. The government wants it, they want it, that’s an end of it. (...) They will have resources; they will change their lives...”<sup>11</sup>

At the other end of the spectrum, lawyer Joênia Wapichana was elected federal deputy for Pará in 2019, the first Indigenous woman to achieve this. Wapichana is leading an energetic resistance to the current president’s policies.

The Free Land protest camp took place in April 2019, a huge Indigenous mobilisation held each year in Brasília and this year attended by 8,000 representatives from 150 peoples. They called for respect for the rights laid down in the 1988 Constitution and protested at the lack of coordination of Indigenous policy. According to Indigenous leader Sônia Guajajara, Bolsonaro’s government is a tragedy for Indigenous policy, which has been completely dismantled, and the president’s rhetoric of “integrating” the peoples is tantamount to the dictatorship years, during which at least 8,000 Indigenous people were killed, according to the National Truth Commission.”<sup>12</sup>

## **Consequences of the dismantling of Indigenous policies**

### **Deforestation and fires**

The deforestation recorded on Indigenous Lands in the Amazon between 1 August 2018 and 31 June 2019 was 65% higher than over the previous period, being an increase from 260 km<sup>2</sup> to 429.9 km<sup>2</sup>. This is the highest figure on record since 2009 and represents a 4% loss in total Amazonian biomass.<sup>13</sup>

According to Article 231 of the Federal Constitution, the Indigenous Lands are assets of the Union and Indigenous Peoples recognise their permanent ownership and exclusive use of the wealth of their land, rivers and lakes. Historically, they are the best preserved areas and play an important role in preventing deforestation of the Amazon.

According to data from the National Space Research Institute (INPE), the highest rate of forest loss was recorded in Ituna/Itatá, with a 650% increase in deforestation (from 15.89 km<sup>2</sup> to 119.92 km<sup>2</sup>); in Apyterewa, with a 334% increase (from 19.61 km<sup>2</sup> to 85.25 km<sup>2</sup>); and Cachoeira Seca, with a 12% increase (from 54.2 km<sup>2</sup> to 61.2 km<sup>2</sup>). The three reserves topping the list are all located in the Terra do Meio region, in the Xingu River basin in Pará, at the heart of what is known as the “Amazon deforestation arc”. Since the start of the year, the Indigenous Lands in this region have been on red alert, with invasions and violence recorded against their native populations. The Ituna/Itatá TI is less than 70 km from the main construction site of the Belo Monte hydroelectric power plant. The start of the works has resulted in a surge in the region’s rural property market and forest destruction has thus increased exponentially. One of the conditions for constructing Belo Monte was the establishment of a protection base on the Indigenous Land run by FUNAI but this has never materialised.

The worst deforestation of Indigenous Lands took place in Apyterewa and Cachoeira Seca and was primarily related to the theft of timber, according to a survey by the Socio-Environmental Institute. According to data from INPE, Cachoeira Seca suffered the greatest loss of forest (10.6% of its total area), followed by Apyterewa (8%) and Ituna/Itatá (5.53%).

Widely documented at national and international levels, the fires became as controversial an issue inside the Bolsonaro government as they were outside it. One consequence was that the President of INPE, scientist Ricardo Galvão, was sacked for disclosing data on the fires. In August 2019, INPE recorded almost 31,000 fires. Between September and October, through the efforts of the Logístico-GLO Group, the figure was brought down to 19,900 and then 7,800. In November, once the military had left, the outbreaks increased again to 10,200. In December, a month when fires traditionally die down because of the rains, there was an almost 80% increase on the previous year.

During the course of 2019, satellite imaging recorded almost 90,000 fires in the Amazon, 30% more than in 2018. Over a 10-year period, 2019 was the fourth highest year for number of fires.

According to experts, the fires in the Amazon are caused primarily by people burning to clear an area of forest that has recently been felled. This is why the supervisory bodies need to conduct effective in-

spections if further fires are to be prevented.<sup>14</sup>

Land grabbing, illegal mining and theft of timber by invaders continue to be the main issues at the heart of the problem. Others include the infrastructure works, which promote an illegal market in land and timber by encouraging immigration and boosting the local economy. This is why the reduction in inspections, President Jair Bolsonaro's rhetoric in favour of deforestation and the attempts to diminish protected areas are all encouraging the fires and simply adding to the historic problems already suffered by some of the country's most seriously affected regions.

The government's proposals to change the boundaries of the reserves only encourage the race to steal public lands: it is simply land grabbing. "Fifteen of the 20 conservation units with the largest number of deforested areas have now had proposals to change their boundaries. There is a clear relationship between land grabbing, illegal activities and deforestation within conservation units."<sup>15</sup> According to local sources, land speculation is growing in line with the dismantling of the country's environmental agencies. The prospect of impunity encourages both expectations of possession and land grabbing.

Unfortunately, the actions of Brazil's current government run counter to all global environmental concerns. Despite being one of the main environmental protection agencies, the Brazilian Institute of Municipal Administration (IBAM) has - like FUNAI - suffered staff cuts<sup>16</sup> and a reduction in its field inspection operations, all with the excuse of saving money.<sup>17</sup> The Brazilian government is interfering in the *Fundo Amazonas*, which has a total of R\$2.2 billion destined, among other things, for maintaining the Amazon Forest, and many Indigenous associations and rural producers and projects focused on traditional economic activities have been brought to a halt.

According to Jair Bolsonaro: "Brazil's bad image (Brazil) was due to its subordination to these powers (Germany and Norway). They're not interested in the Amazon Forest. They want her sovereignty and her wealth. We, the Amazon, we have things that other countries don't. I am surprised to see the (German Chancellor) Angela Merkel announce this (suspension of resources), as if her country were an example to the world in terms of environmental conservation."<sup>18</sup>

Ironically, the proposals made by Ricardo Salles, Minister for the Environment, aimed at combatting deforestation, are exactly the same



measures that the Norwegian-German Fund was financing (PrevFogo actions, inspection operations such as the Awá operation in Maranhão and the implementation of actions in the Legal Amazon Deforestation Control and Prevention Action Plan, etc.).

Despite history repeating itself, the government's firm refusal to take measures has led to an increase in fires that have always historically occurred albeit never with such vigour and such lack of control as in 2019. Brazil was singled out for not meeting its commitments under the Paris Agreement and was severely criticised for defending agribusiness: unsustainable development for which illegal activities are legitimised, ranging from the deforestation of Indigenous territories and the dismantling of conservation units through to the deaths of Indigenous leaders and environmental activists.

In 2019, 164 people died defending their homes, lands and natural resources from mining, logging and agro-industrial projects, according to the annual report of NGO Global Witness.<sup>19</sup>

### **Free, prior and informed consultation**

"Our commitment to this ministry, and every word is true, is that we are going to transform our mineral assets into mineral wealth because, if we don't, the rest of the world will."<sup>20</sup> The Minister for Mines and Energy, Alexandre Vidigal, thus reaffirmed the current government's evangelistic civilising policy. He also stated that mining activity would not go ahead if a particular Indigenous community rejected it, although this did not imply a right of veto. This activity is unconstitutional but President Jair Bolsonaro has already stated that he is in favour of legalising it. "It is my intention to regulate mining," he stated in September. "Even for the Indigenous Peoples. They must have the right to explore for gold on their land."<sup>21</sup>

According to the Socio-Environmental Institute, requests for mining concessions now cover approximately 28 million hectares, or one-third of the area of the Indigenous Lands. They include 55 kinds of mineral; 70% of them being for gold exploration. The 532 requests in the Yanomami TI represent 40% of its territory. There is also great interest in the Menkragnoti TI, in Pará and Mato Grosso (393 requests), and in the Alto Río Negro TI in Amazonas (387). Mineração Silvana has the most requests for concessions on Indigenous Lands (735), followed by Vale (216).<sup>22</sup>

According to Joênia Wapichana: “If you want to have mining in another place outside of the Indigenous Lands, with rules, controls and inspections, then we can talk. Punching the table to say that mining is the solution to everything is not a rational attitude,” she said.

**The Volta Grande do Xingu mining project**, owned by the Canadian mining company Belo Sun Mining Ltd, aims to become the largest open-pit gold mine in the country. The different problems with the project include the magnitude of its impact on a region only recently affected by the construction of the Belo Monte Hydroelectric Power Plant, a project that is in the monitoring phase until at least 2025 due to the environmental instability the plant has been causing. So while Belo Monte means that exploration of the Volta Grande Project is environmentally highly dangerous, Belo Sun also represents a new element to be considered by Belo Monte, less than 9.5 km from the Paquiçamba Indigenous Land. The Belo Sun company announced on its website that 39.767 megatons of rock would be removed over the next 11 years; however, the studies given in the environmental licence only anticipate the removal of 2.78 megatons.<sup>23</sup>

**Socio-environmental impacts:** the Volta Grande do Xingu mining project plans to use cyanide to treat the minerals – a substance that is highly toxic to both soil and water sources – and the company’s environmental studies note a high risk of the dam breaking during the operating and closure phases. Notable among the impacts are a change in the reproductive cycle of the wildlife, changes in the traditional use and occupation of the territory, contamination or intoxication by toxic substances, deforestation and/or fires, a lack of/irregularity in authorising environmental licences, a lack of/irregularity in the demarcation of the traditional territory, contamination of the water sources and contamination of the soil.

According to the Constitution and resulting legislation, mineral exploration on Indigenous Lands has never been regulated. These lands belong to the nation and are under the permanent ownership of the Indigenous people who occupy them. However, there are different property regimes. Underground deposits are subject to concession, provided the activity has been approved by Congress and the Indigenous people share in the profits. With regard to mining on Indigenous Lands, Arti-

cle 231(3) of the 1988 Constitution establishes that “use of the water resources, including for energy, exploration and extraction of the mineral wealth of Indigenous Lands may only be undertaken with the authorisation of Congress, having first heard the communities affected and ensured their participation in the benefits of the mining, in accordance with the law”. However, almost 30 years have past since the 1988 Constitution was enacted and this issue has still not been regulated by Congress; nor is there any law governing or establishing the specific conditions for undertaking mining activities on Indigenous Lands.<sup>24</sup> In 2019, the Regional Court ordered the suspension of Belo Sun activities until free, prior and informed consultation had been conducted, in line with the existing legal protocol. The same court cited the consultation protocol implemented by the Juruna (Yudjá) of Paquiçamba Indigenous Land.

**Ferrogrão.** Almost 1,000 km long, commencing in the grain-producing region of Sinop (Mato Grosso) and reaching as far as the port of (Pará), Railway Line 170 – known as Ferrogrão – aims to consolidate Brazil’s new rail export corridor through the Northern Arc. The route will pass through more than 20 protected areas in the Xingu and Tapajós basins, including the Baú and Menkragnoti TIs. Together with highway BR-163, Ferrogrão will intensify conflicts over the land and exacerbate the socio-environmental impacts that are still being felt in the region due to the highway.<sup>25</sup>

**Pesticides.** In 2019, 325 pesticides were launched in Brazil. They contain 96 active ingredients, 28 of which are not marketed or registered in the European Union. Thirty-six of them are not marketed or registered in Australia, 30 are not marketed or registered in India and 18 are not marketed or registered in Canada. The Pan-American Health Organisation (PAHO) estimates that the use of pesticides and harmful chemical products results in around 193,000 deaths a year across the world. Most are due to contamination during application of the products and their dissemination in the water and air.

Since 2005, the Indigenous population has been denouncing the contamination of their communities with pesticides. The Indigenous Ra, who live on the Tocantins National Reserve, have complained about contamination of the rivers they use to drink and wash in, caused by the

soya plantations that now extend as far as the boundaries of their community. “The situation is deteriorating because the soya reaches right down to the river banks,” says Schiavini. “Both the Indigenous people and the communities are surrounded by soya.”<sup>26</sup>

In September 2019, the Federal Attorney’s Office opened an investigation into the impact of pesticide use on Indigenous Lands in the Brasnorte region, 580 km from Cuiabá. The investigation was initiated because the Rikbaktsa people, who live on the banks of the Juruema River, were complaining of itching and of the presence of pesticides in the food and water they use on a daily basis.

The aim of the investigation is to identify the synergistic impact of the use of pesticides on the Indigenous communities and on the region’s environment over the period January to October 2019.

## Conclusion

This reactionary and authoritarian landscape, democratically legitimised by the fact that the president of Brazil was elected with 55.1 % of the vote, is endorsing attitudes that are contrary to the system that elected it. The threats to national and international NGOs, the confrontation with the Indigenous population, the clear support for sectors that are against sustainable development: these are all threats to the nascent Brazilian democracy. Our democracy, forged following long years of military dictatorship, is now at risk. The arbitrary way in which laws are being applied is a significant danger that must be borne in mind.

Official rhetoric has the power to feed and support the actions of those interested in the illegal occupation and exploitation of the Amazon, expanding the frontiers of agribusiness, mining exploration and the construction of hydroelectric plants and continuing the Growth Acceleration Plan (PAC). “A huge part of the current deforestation is taking place in the protected areas, which are bearing the brunt of this devastation. Previously, there were few expectations of owning these lands. However, by decreeing an end to, or a drastic reduction in, fines while at the same time supporting a system that recognises illegal properties, the current government is simply legitimising this kind of attitude.”<sup>27</sup>

The current president’s clear position, supported by the landowning and evangelical sectors, is becoming one of the greatest setbacks

in the history of Brazil's recent democracy. The situation is worsening by the day and only civil society, with national and international support, can reverse it.

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**Maria de Lourdes Beldi de Alcântara** is a medical anthropologist with the FMUSP. She is also the coordinator of Indigenous Youth Action (AJI/GAPK).



# Chile



Since the 2017 census,<sup>1</sup> and despite constant increases in numbers since the 1990s, the Indigenous population has not shown any great changes. When considering their demographic for public policy and regulatory purposes, they are still given as 12.8% of the total population, or approximately 2,158,792 individuals, with the Mapuche being the most numerous among them (some 1,800,000 people). A clear increase in the urban Indigenous population can be seen at the expense of the rural population, with 87.8% now living in urban areas as opposed to 12.2% in rural.<sup>2</sup>

Law 19,253 of 1993 on Indigenous Promotion, Protection and Development, or the “Indigenous Law”, has still not been amended despite requiring reform to bring it into line with current international standards on Indigenous Peoples’ rights, such as ILO Convention 169, ratified by Chile in 2008. Chile also voted in favour of the 2007 UN Declaration on the Rights of Indigenous People and the 2016 American Declaration on the Rights of Indigenous People.

A constitutional reform process commenced in 2016 and 2017<sup>3</sup> under the government of then President Bachelet, and one element of this was to be Indigenous Peoples’ consultation. This process has stalled under the current government (President Piñera 2018-2020) and so there has thus far been no constitutional reform with regard to Indigenous issues. Following the social protests that shook the country in October 2019, demanding in-depth institutional change, a new opportunity has opened up by which to include Indigenous Peoples and their rights in the country’s constitution. This will be discussed further on in this section.

## **Piñera’s attempts to relax protections over Indigenous lands**

**A**t the start of 2019, the Piñera government announced that, subject to consultation with Indigenous Peoples, it intended to introduce a series of reforms into the 1993 Indigenous Law laying



down measures with regard to issues initially contained in Exempt Resolution 241 of the Ministry of Social Development (MIDESOC) dated 3 April.

The aim of the measures, first announced by the President in 2018 in the “National Agreement for Development and Peace in La Araucanía”, was to relax protections over Indigenous lands, thus promoting their division, alienation and leasing while establishing alternative compensation mechanisms to the land purchase mechanisms set out in the law. The reforms thus meant it would be possible for communities to receive sub-divided lands with individual titles, and that those for which they already held title could be totally or partially divided. The reforms would also reduce the term of the ban on alienating Indigenous Peoples’ lands when acquired by the state from 25 to 5 years and make the leasing of both individual and community Indigenous lands possible for up to 25 years. Under the current law, such lands can only be leased for a maximum of five years in the first case, and not at all in the second. Finally, they would establish alternative compensation mechanisms to “resolve the land problems” [...] “delivering all or part of the land claimed through alternative benefits”.<sup>4</sup>

These reforms further introduced changes to the structure of Indigenous organisation, amending the rules for establishing new Indigenous communities, increasing the minimum number of adults required for their formation, and reducing the number of people required to form Indigenous associations from 25 to 2. These latter would also now be included as beneficiaries of the Indigenous Development Fund. The measures proposed were in clear contravention of international law applicable to Indigenous Peoples, recognised through international instruments ratified and/or acceded to by Chile. In fact, both ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples, as well as the case law of the Inter-American Human Rights System, recognise the collective nature of Indigenous lands, granting them protection in order to avoid the possibility of expropriation by non-indigenous third parties. They also recognise the Indigenous Peoples’ own institutions, and access to land or development programmes cannot therefore be conditional upon establishing the structures set out in state law.

Given the threat these reforms would represent to the integrity of their lands, which would end up at the mercy of the market, Indigenous Peoples were fiercely opposed to all of the above. Their opposition be-

came clear when the government tried to implement a consultation process in this regard. Different Indigenous Peoples, particularly the Mapuche, protested at the way the consultation was being implemented, and refused to participate in the process meaning that, some months later, the consultation was first suspended by the government and then later declared at an end, along with the proposed legal reforms.<sup>5</sup>

## Conflicts with extractive industries and criminalisation

In Mapuche territory to the south of the country, the state is continuing to promote investment projects on lands and territories legally owned and traditionally occupied by Indigenous people. These are mostly hydroelectric and salmon farming projects that are resulting in serious social and environmental impacts. They are being approved without first obtaining the consent of the Indigenous communities and organisations affected. To this must be added the presence of the forestry industry, 2,000,000 hectares of which lies on the Mapuche's ancestral territory, with serious environmental impacts affecting the water and biodiversity, and triggering Mapuche protests.

The state's response to the Mapuche protests has remained a disproportionate use of force and the criminalisation of those claiming their rights. One emblematic case in this regard was that of the Mapuche leader, *lonko* (chief) Alberto Curamil, a traditional leader who has maintained a constant struggle to defend his people's territory from the threat of hydroelectric projects. As a result of this struggle, he suffered disproportionate police violence in 2014 and then, in 2019, was prosecuted together with three other Mapuche leaders for allegedly participating in an attack on a financial organisation. At the end of the trial, *lonko* Curamil and *werken* (leader) Álvaro Millalén were acquitted because their involvement in the alleged crime could not be proved. The other two Mapuche defendants, however, were given harsh sentences (20 years) despite no credible proof of their participation in the crime.

In terms of the socio-environmental conflicts caused by the mining industry that is affecting Indigenous Peoples in the north of the country, a ruling from the First Environmental Court of Antofagasta at the end of 2019<sup>6</sup> partially accepted the complaints made by the Ataca-

meño communities of Peine and Camar and the Council of Atacameño Peoples with regard to a Compliance Programme (PdC) presented by the lithium company “Soquimich” (SQM Salar S.A.), and previously approved by the Environmental Superintendence (SMA) in the context of an environmental sanctions procedure.<sup>7</sup> This meant that the SMA was able to confirm a breach of the environmental resolution authorising the operations, as well as the extraction of brine above the permitted amount between 2013 and 2015, i.e. to a volume of almost 4 million cubic metres.

The Environmental Court felt that there was scientific certainty with regard to the impacts on the water resources of the Salar de Atacama salt flats and, in line with the precautionary principle of environmental law, decided to dismiss the PdC since it did not comply with the principles of efficacy and integrity required by legislation. Notwithstanding the above, however, the Court set aside the need for an Indigenous consultation on the PdC, given the nature of the procedure, despite being an administrative measure that could have a significant impact on the Licanantai people since it approved transitory measures – such as the PdC – within their territory of ancestral use and occupation, and which would also have an impact on their natural resources, in particular, water (*puri*, in the Kunza language).

Despite the water resources of the Salar de Atacama basin having been declared saturated, the judgment was appealed by the company and will be reviewed by the Supreme Court in 2020.

## Indigenous participation in COP 25-Madrid

The demonstrations that arose in Chile after 18 October 2019 led the government to cancel the COP 25 meeting in the country<sup>8</sup> just one month before it was due to take place. It was subsequently decided to transfer it to Madrid. This decision was widely criticised by civil society<sup>9</sup> because the increased costs this would involve meant that fewer Indigenous Peoples’ representatives – who had been organising for maximum impact at this meeting – would be able to participate.

Only Ximena Painequeo, representative of the Lakquenche Territorial Identity; David Alday, president of the Yagán de Bahía Mejillones community, and Sergio Cubillos, president of the Atacameño Peoples’

Council (CPA) managed to attend COP 25 in Spain, including the activities of the Indigenous Peoples International Forum (Indigenous Caucus) and the parallel spaces of the *Minga Indígena* and Social Climate Summit.<sup>10</sup> In the official COP space, the “green zone”, they ran two activities: one by the CPA on lithium extraction in the Salar de Atacama and another run jointly by the three peoples focusing on the impact of the extractive industry (mining, forestry and fish farming) on their ancestral territories.

It is noteworthy that, some weeks prior to the COP, the government convened a process known as the Chilean Indigenous Caucus. This involved providing state funding to a group of Indigenous people whose representativeness was highly questionable, as was the statement they adopted.

## **Role of Indigenous women in the Indigenous movement**

In the last census in 2017, 12.4% of women in Chile self-identified as Indigenous,<sup>11</sup> i.e. belonging to one of the nine Indigenous Peoples recognised by the Indigenous Law. This significant percentage of women has been key to the social, political and cultural development of the different Indigenous Peoples living in Chile. However, gaps remain in their status and in the implementation of their rights in relation to Indigenous men and non-indigenous women.<sup>12</sup>

In recent decades, Mapuche women have hence been organising and sharing their critical views and personal experiences of the need for an agenda that highlights the role of Indigenous women in issues ranging from health, education, access to justice, territory, environment, participation and productive development, etc. They have noted that, historically, Indigenous proposals and demands have revolved around the Indigenous identity generally without considering the nuances of gender differences within Indigenous Peoples. As part of these debates and critical positions, it has also been emphasised that “there can be no Mapuche autonomy or self-determination of the people without the well-being of all women that make up the people”.<sup>13</sup>

The Indigenous Peoples were present in the social protests that arose following 18 October 2019 and the subsequent debate on the

drafting of a new constitution by a constituent assembly, indicating that their struggle and their challenging of the state predated the protests due to the dispossession of their territories and the ongoing criminalisation and repression they face.

Indigenous women and youth were also present in the protests. The women highlighted that the government's extractivist policy was also a form of violence that they were forced to suffer on a daily basis as it affects not only their territories but also their way of life given that they are the ones who pass on their culture and traditions to new generations: protecting the environment, protecting their medicinal plants, food sovereignty and sites of cultural significance.<sup>14</sup>

Against this backdrop of social protest, the Mapuche women have been mobilising within their Indigenous organisations and institutions to fight the dispossession of their territories, defend their water, revive their languages and disseminate their knowledge of how to protect the environment. They have also established alliances with other sectors of Chilean society in order to position and raise their voices in protest at the Chilean state and its "patriarchal and neoliberal" policies. They are clear that to move towards *good living* ("*buen vivir*") the current system governing them has to change.<sup>15</sup>

## Prospects for 2020

The new context created by the social and popular outpouring that took place in October 2019, the origins of which can be found in political and social inequalities and in the exclusion of many sectors, including Indigenous Peoples, has opened up the prospect of a transformation in relations between the peoples and the state.

In fact, these protests resulted in an "Agreement for Social Peace and a New Constitution" being signed in November that undertakes to hold a referendum to determine whether to commence a new constitutional process and, if so, what kind of constituent body should be responsible for this (totally elected by the people or combined with representatives from Congress). While this agreement failed to refer to Indigenous Peoples' involvement in the constituent body that would be created should the referendum agree to a new constitution, a legislative bill referring to native peoples' involvement in this body was approved

by the Chamber of Deputies in December without, however, establishing either the number of their representatives or a specific mechanism.

Notwithstanding the uncertainty as to whether it will pass through the Senate or not, the draft bill of law on Indigenous Peoples' participation still contains some significant unknowns, in particular with regard to the constituency that would participate in the election of the Indigenous constituent members. One option consistent with international law would be to use the criterion of self-identification to determine indigeneity, as established in ILO Convention 169. As indicated in this yearbook, the Indigenous population totals 2.2 million, or 12.8% of the total population of the country (INE, 2018).<sup>16</sup> Proposals thus far, however, in particular those coming from the government political parties, have suggested that the register of Indigenous Peoples held by the National Indigenous Development Corporation (CONADI) should be taken as the electoral base, which is far more limited in number and questionable from the point of view of the C169 standard.

There are different views within the various Indigenous Peoples in regard to the constituent process. Some movements, in particular Mapuche, such as the Arauco Malleco Coordinating Body and the All Lands Council, are opposed to Mapuche participation in it at all, instead preferring to focus on land recovery and self-determination via their own paths.<sup>17</sup> Others, such as the Association of Municipalities with Mapuche Mayors and the Atacameño Peoples' Council, have actively participated in the parliamentary debate for Indigenous inclusion in the constituent body, seeing this process as a possible opportunity for advancing towards recognition of the plurinationality and collective rights of their peoples.<sup>18</sup>

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*Report from the **Citizens' Observatory of Chile** ([www.observatorio.cl](http://www.observatorio.cl)) with contributions from **Paulina Acevedo, José Aylwin, Marcel Didier, Hernando Silva and Karina Vargas.***



# Colombia





According to the national census conducted in 2018,<sup>1</sup> the Indigenous population in Colombia has grown by 36.8% and now accounts for 4.4% of the country's total population, or 1,905,617 Indigenous individuals across all peoples.

Demographic growth among Indigenous Peoples was six times higher than among the rest of the population, and can largely be explained by a birth rate double that of the national average. It is also linked to the fact that people were counted this time round who were not included in the 2005 census.

The 2018 census also revealed that there are now 115 different Indigenous Peoples in the country whereas only 93 had been identified in 2005. The additional 22 peoples correspond to new ethnic groups or Indigenous Peoples living in border areas. Peoples living in voluntary isolation (Jurumi, Passe and Yuri) were also not included in the census.

The departments with the greatest number of Indigenous individuals are La Guajira, with 394,683 inhabitants; Cauca, with 308,455; Nariño with 206,455; Córdoba, with 202,621 and Sucre with 104,890. The ethnic groups with the greatest number of members are the Wayuu (380,460), Zenú, (307,091), Nasa (243,176) and Pastos (163,873). These peoples account for 58.1% of Colombia's Indigenous population.

The 1991 Political Constitution recognised the fundamental rights of Indigenous Peoples and ratified ILO Convention 169 (now Law 21). In 2009, Colombia supported the UN Declaration on the Rights of Indigenous Peoples. Constitutional Court Ruling 004 of 2009 ordered the state to protect 34 Indigenous Peoples at risk of disappearance due to the armed conflict. Former President Juan Manuel Santos signed Decree 1953 on 7 October 2014 creating a special regime for the administration of Indigenous Peoples' own systems within their territories, while Congress has enacted the Organic Law on Territorial Organisation, which will define the relationships and coordination between the Indigenous territorial bodies and the municipal authorities and departments. In December 2016, the culmination in the negotiations between the government and the Revolutionary Armed Forces of Colombia

(FARC) put an end to more than half a century of armed conflict that had displaced many peasant, Indigenous and Afro-Colombian families from their lands.

2019 was marked by a wave of violence reaching right across the ancestral territories. Massacres of Indigenous Peoples in Colombia are a scourge that has not been eliminated, and they reveal a complex panorama of violent groups multiplying across the country with the aim of controlling the territory and its different illegal economies. The anxiety and violence that had abated due to the peace agreement have returned with a vengeance, and even worse than before. Despite accusations of an extermination plan, neither the local, departmental or national authorities have thus far come up with any policy that might guarantee Indigenous people their rights to life, territory, cultural identity or to their own government.

One of the departments most afflicted by violence has been Cauca, where 57 Indigenous leaders have been murdered. Those at the sharp end know that the conflict is only worsening. “They will kill us whether we stay silent or not. So we will not keep quiet.” These were the words Indigenous governor Cristina Bautista used just a few days before her death to describe the tragic situation being experienced by thousands of Indigenous people in Cauca, hemmed in by armed groups fighting for domination of their territory and control of the drugs trade.<sup>2</sup>

The number of Indigenous murders increased during 2019, a year that the United Nations declared the “Year of Indigenous Languages”. According to the UN, Indigenous Peoples’ languages represent their ancestral knowledge, their customs and a particular world vision linked to the land.

The serious humanitarian situation caused by the armed conflict has resulted in displacements, extreme marginalisation and the environmental degradation of Indigenous territories. Factors such as illicit crops and megaprojects implemented without adequate concern for the legitimate collective interests of the Indigenous communities are ongoing obstacles to their survival.

According to Indepaz’s early warning bulletin,<sup>3</sup> the department

with the highest murder rate among Indigenous leaders is Cauca, with 88 people killed between January 2016 and 30 October 2019 alone. This is partly because of the armed conflict over land for drug growing and for the creation of corridors for trafficking cocaine base paste and marihuana; the impact of territorial conflicts with legal and illegal private sectors (gold mining, sugar cane industry, logging, etc.) must, however, also be considered.

Of the 32 Indigenous people murdered in 2019, most were in the northern area of Cauca: nine in Toribío, seven in Caloto, six in Páez, three in Suárez, two in Santander de Quilichao, two in Corinto, one in Miranda, one in Cajibío and one in Silvia.

Policies enshrining Indigenous Peoples' constitutional recognition have proved a highly important tool for the physical and cultural survival of Colombia's native peoples but they have clearly not been sufficiently implemented since the obliteration of the peoples continues apace, affecting hundreds of native families. Although there is written recognition of the land provided to Indigenous groups, as set out in a comprehensive rural reform point in the peace agreement, it is on those territories that the armed conflict has intensified the most.

There has been partial compliance with the recommendations on Indigenous Peoples since the signing of the peace accord but also some setbacks and dangers. These have been caused by the issuing of regressive legislation on Indigenous Peoples' rights that endangers their cultural and territorial integrity and highlights the lack of legal security of their territories together with the lack of guarantees of their free, prior and informed consultation and consent. The failure to ensure implementation of the peace agreement and its Ethnic Chapter is starkly illustrated by the alarming number of murders of Indigenous leaders and authorities. It is of vital importance that the special agreement on eradicating mines and restituting the Indigenous territories is effectively fulfilled, in accordance with the Ethnic Chapter of the Peace Agreement signed between the Government of Colombia and the FARC-EP.

The declaration issued on 29 August 2019 by former FARC members Iván Márquez, Jesús Santrich and Hernán Velásquez, calling for a return to arms among so-called FARC dissidents, is an alarming and concerning development. This has caused dismay among the country's ethnic communities as it is always the most vulnerable rural popula-

tions – Indigenous, Afro-Colombian and peasant communities – that are the primary victims of this internal conflict.

The Indigenous communities are suffering an armed onslaught from guerrilla groups trying to uproot them from their lands. Agreements have been reached between the Colombian government and the Indigenous Peoples with the aim of protecting their lives and which state that neither the public security forces nor any armed actor should invade their territories. These agreements have been worth little more than the paper they are written on. The communities are suffering a serious humanitarian crisis caused by the presence of guerrilla groups, paramilitaries and drug traffickers, all of whom are destroying their culture and customs. Indigenous communities across the whole country have been denouncing this intensification in the war to different supervisory bodies since the FARC dissidents' call for a return to arms.

Conflicts between the FARC and ELN dissidents and paramilitary groups have resulted in dire situations for Indigenous communities who have lived on their territories since time immemorial and wish to continue to do so. They have responded with what is known as the Indigenous Guard, which is not a police structure but rather an ancestral form of community organisation with the aims of defending their territory, customs and culture generally.

The Indigenous Guard is composed of men, women and children who are trained in the values of Indigenous preservation from an early age. Belonging to the Guard is not a paid role. Everyone who joins does so out of a conviction and belief in their Indigenous roots, in addition to wanting to defend and preserve their culture. They do not bear arms but simply carry a baton of symbolic and moral value. This is because their peaceful values prevent them from using weapons against others; they do not believe in a system of violence. Their colours represent the red blood shed by their ancestors and the green Mother Earth from whom life comes. Life and territory are the defining concepts of the Indigenous Guard: it is this that the Guard was created to defend and this that sustains it to this day. And while the things from which they are defending life and territory may have changed, their defence has not and forms a constant in the life of the Indigenous Guard.<sup>4</sup>

There have been insufficient agreements with the national government regarding the joint production of strategies by which to safeguard

the human rights of the country's Indigenous population. Although 1,396 agreements have been reached through the Permanent Forum for Consultation with the Indigenous Peoples, 95% of these have not been fulfilled.

In light of the above, a mobilisation or *minga* was launched in March 2019, known as the “*Minga* for life and peace”, in which Indigenous people from all the country's ethnic groups participated.

The protests lasted 27 days, during which time negotiations took place with the Ministry of the Interior addressing issues related to defence of their territory and asking that the requests made of the government be fulfilled. Finally, on 6 April, an agreement was reached and the Indigenous people removed the blockade from the highway. Although agreements around a common agenda were reached, however, there has been no effective implementation to date.

The *minga* in the south-west of the country, demanding territorial rights through mobilisations and blockades of the Pan-American Highway that links the south-west to the departments of Nariño and Valle, obtained an agreement that 17.5% of the 4.6 billion pesos required by the Indigenous communities could be assigned in the context of the National Development Plan, an amount previously contained in the investment plan for the Cauca region. However, to date this has not materialised.<sup>5</sup>

All Indigenous organisations affiliated to the National Indigenous Organisation of Colombia (ONIC) participated in the *minga*, with their meeting point being in the La Delfina Reserve, where the negotiations with the national government, represented by the Minister of the Interior, took place. A second set of negotiations were held in Cauca department, involving the departments of Cauca, Huila and Caldas, and their respective organisations. The Indigenous participants in the *minga* came either on foot (dancing, singing and playing instruments along the way) or from the different departments via the typical *chiva* or *es-calera* bus. There may have been different negotiations but there was just one Indigenous *minga*.

2019 was supposed to be a year to commemorate the existence of native languages and yet events left the country's Indigenous Peoples without any institutional guarantees for their physical and cultural survival; principles of unity, culture, territory and autonomy can nonetheless still be seen within the communities.

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*This report has been written by **Beatriz Valencia Otova**, advisor and consultant to the General Secretary of ONIC, a Master's candidate in Human Rights and the International Law of Armed Conflicts, and an International Relations and Political Studies professional, and **Higinio Obispo González**. General Secretary of ONIC. Indigenous leader and ethnoeducator.*



# Costa Rica



There are eight Indigenous Peoples in Costa Rica: the Huetar, Maleku, Bribri, Cabécar, Brunka, Ngäbe, Bröran and Chorotega, and they represent 2.4% of the total population. According to the 2010 National Census, a little over 100,000 people thus self-identify as Indigenous.

Twenty-four Indigenous territories occupy around 6.7% of the national territory (3,344 km<sup>2</sup>) although this is an area that only has a legal existence. Almost all of the Indigenous territories are occupied, in different percentages, by non-indigenous settlers.

In a country where around 20% of the population live below the poverty line, the figures in relation to Indigenous Peoples are alarming: Cabécar 94.3; Ngäbe 87.0; Bröran 85.0; Bribri 70.8; Brunka 60.7; Maleku 44.3; Chorotega 35.5; and Huetar 34.2. This significant inequality clearly demonstrates the social exclusion suffered by the country's Indigenous people.

ILO Convention 169 was ratified in April 1993. The country's multicultural nature was added into the Republic's Political Constitution in August 2015.

The 1977 Indigenous Law recognised the Indigenous traditional organisations. However, subsequent implementing regulations imposed a completely foreign form over their traditional power structures: the Indigenous Integral Development Association (ADII), under the supervision of the National Directorate for Community Development, an institution that is completely unable to understand cultural diversity, Indigenous rights or an intercultural approach.

The National Commission for Indigenous Affairs has been in place since 1973. The fact that it recognises the ADII as territorial representatives, together with its welfarist approach, has eroded its legitimacy. This has resulted in limited recognition among Indigenous people and a failure to produce any institutional policies.

The Indigenous territorial organisations have a nationally representative body, the National Indigenous Board of Costa Rica, which actively participates in spaces for strategic dia-



logue on Indigenous rights: consultation, biodiversity, climate change, education and health, among other themes. The National Front for Indigenous Peoples is another movement that focuses on defending land and autonomy as a priority.

## Costa Rica's Indigenous Peoples and climate change

Costa Rica's Indigenous Peoples have long been working systematically on climate change-related issues, particularly through the National Indigenous Board of Costa Rica and the Bribri Cabécar Indigenous Network.<sup>1</sup>

In 2019, during the pre-COP 25 (preparatory meeting for the Conference of the Parties to the UN Convention on Climate Change) and together with the Central American Indigenous Council, the Coordinating Council of Indigenous Organisations of the Amazon Basin, the Meso-American Alliance of Peoples and Forests and the Global Alliance of Territorial Communities, among others, organised the “Indigenous *Maloca*”, a space for dialogue including the direct and ongoing involvement of the Indigenous Caucus. The *Maloca* was an open space for Indigenous Peoples and local communities from around the world to discuss issues related to adaptation, mitigation, REDD+, nature-based solutions, the blue economy, Nationally Determined Contributions, Indigenous women's participation, territorial governance, Indigenous and local community knowledge.<sup>2</sup>

The objectives of the *Maloca* were:

- To establish a platform for an exchange of knowledge around issues of mitigation and adaptation, with a particular focus on Indigenous and traditional knowledge.
- To establish dialogue between negotiators and other government officials and international bodies in order to improve recognition of Indigenous Peoples' and local communities' rights.

The *Maloca* also considered structural issues in relation to the different

agenda items, in particular the importance of legalising, regularising and consolidating Indigenous territories around the world and Indigenous Peoples' right to govern their lands and natural resources, including the social management of water.

The National Indigenous Board of Costa Rica and the Bribri Cabécar Indigenous Network participated actively in the national dialogue spaces on biodiversity, climate change and the formulation and implementation of mitigation and adaptation policies.

## **A quarter of a century waiting for the Law on Indigenous Peoples' Autonomous Development**

Twenty-five years have now passed since the legislative process for the draft bill of law on Indigenous Peoples' Autonomous Development was published in the Official Journal in 1994, and Parliament is still refusing to discuss it, with the government giving it no priority. This strong resistance is in part due to the continuing racist attitude that persists in the country, as well as the opposition of the private sector, which see the right to self-determination as a risk to extractive industries. The 2014-2025 National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia,<sup>3</sup> which should have come into force in 2015, is still awaiting implementation.

## **The struggle for land continues, but now more violently**

In Costa Rica, as in other countries on the continent, Indigenous lands have been titled without prior consolidation or physical demarcation. Conflicts therefore remain in relation to non-indigenous settlers and this is preventing full ownership and governance of the territories according to traditional Indigenous systems. This is an obstacle that means deforestation cannot be prevented and, consequently, climate change mitigation cannot be achieved.

The Indigenous organisations have been demanding the consolidation of their lands for decades. The government did commence the

process in 2016 but, in December 2019, the Rural Development Institute reported that only 12,000 hectares had thus far been surveyed, i.e. less than 5% of the total area of Indigenous territories and without any analysis of the conflicts aside from their topographical or legal characteristics.<sup>4</sup> Nor has any consolidation commenced. The institute stated in 2019 that this would be complete within two years. The lack of any comprehensive analysis of the conflicts and the fact that more than 90% of the Indigenous territories still remains to be measured therefore raises clear doubts as to this assertion.

The delay in studies and the lack of political will to undertake the consolidation and evict illegal settlers has resulted in a land recovery movement emerging which has, since 2011, been evicting the illegal settlers with their own means.

Sergio Rojas, an Indigenous Bribri leader from the Salitre territory and one of the founders of the National Indigenous Peoples' Front (FRENAPI), was murdered on 18 March 2019. Only hours earlier, he had been to the Public Prosecutor's Office to report the threats being made against himself and other members of his community by landowners and illegal settlers on Indigenous lands.<sup>5</sup>

The precautionary measures passed by the Inter-American Commission on Human Rights in April 2015 have still not been implemented and, in 2019, leaders and community members involved in these land recoveries continued to be threatened.<sup>6</sup>

On 23 April 2019, the Indigenous lawyer and Brunka leader, Hugo Lázaro Estrada, was arrested by officers from the Judicial Investigation Unit. An illegal settler on the Yimba Cájc territory had denounced him for threats. The Indigenous Prosecutor acted prematurely and ordered his immediate arrest. He was publicly exposed in Buenos Aires as an example of what might happen to other Indigenous individuals if they continue their demands for rights and land recovery. Although he was later released, this sent out an intimidating message.

Land recoveries intensified in 2019, particularly on the Cabécar de China Kichá territory, the Bröran Térraba territory, the Bribri Salitre territory and the Brunka Yimba Cájc territory.

As of the end of December 2019, investigations into Sergio Rojas' murder were at a standstill and the land recovery movements were continuing to receive death threats.

## Progress during 2019

Significant progress can be seen in the Indigenous Peoples' Consultation Mechanism, enacted in 2018: the Technical Consultation Unit was established in 2019 under the Ministry of Justice and Peace, albeit with limited financial and logistical resources. Twenty-two territories joined the Consultation Mechanism in 2019 and six Territorial Indigenous Consultation Bodies were formed: Boruca, Cabagra, Yimba Cájc, Zapatón, Maleku and Alto Laguna. These bodies act as contact points for the government during consultation processes. Among other things, during the year they received and processed 16 consultation requests, commenced six consultation processes on infrastructure, education and drinking water and conducted awareness raising and training activities for officials of public and local authority institutions.<sup>7</sup>

The Ministry of the Presidency initiated the process of formulating a public policy for Indigenous Peoples in 2019, convening workshops with Indigenous leaders and public institutions. The achievements by the end of the year seemed fairly minor compared with the needs, however, and did not offer a culturally relevant view of development. Quite the contrary, Western development concepts were being repeated with no intercultural approach.<sup>8</sup>

The Ministry of Justice issued guidelines on the provision of prison care for Indigenous persons deprived of their liberty.<sup>9</sup>

In August 2019, the Civil Registry of the Supreme Electoral Court officially set up a database to establish membership of the Bröran people on the basis of 12 native lineages. This database was produced at the request of the Indigenous authorities and in coordination with the Bröran Council of Elders.<sup>10</sup>

A right to use ancestral lands was agreed with the National Protected Areas System in 2017 and strengthened in 2019 when the Brunka people managed to put a halt to the construction of a tourist dock in a traditional area where *múrice* (snails used for dye) are gathered. The Maleku people also consolidated their traditional rights of use over the Caño Negro protected area.<sup>11</sup>

In 2019, the Brunka people managed to get symbols from their culture and words from their language that were being used by big brands without prior authorisation removed from the market. This was an im-

portant precedent because it was the first time that the Intellectual Property Register had recognised these rights to Indigenous Peoples.<sup>12</sup>

In 2019, the Ministry of Education authorised the use of traditional dress among Indigenous children of the Ngäbe people when attending pre-school.<sup>13</sup>

In August 2019, the *Banco Hipotecario de la Vivienda* (Home Mortgage Bank) and the Ministry of Housing and Human Settlements provided 196 new homes in a traditional Cabécar style. These are architectural solutions that respect the environment, traditions and customs of the native peoples.<sup>14</sup>

## Future outlook

There was significant progress and also setbacks in Indigenous rights in Costa Rica in 2019. Progress in terms of the application of the Consultation Mechanism, the recognition of ancestral rights of use over their territory and the production of the Bröran people's database, an international precedent that now makes it possible to determine who the rights holders in a territory are and to avoid outside intervention in internal political decision-making, something the Bröran had suffered on their territory for decades. The importance of having begun to draft a public policy for Indigenous Peoples should also be noted.

Nonetheless, the violence of the land grabbers continues in relation to those who are trying to recover their territories and the investigation into the terrible murder of Sergio Rojas, Indigenous leader of the Bribri people, has got nowhere. The state continues to see land consolidation as a topographical and legal issue and seems unable to understand or act upon the complexity of the conflicts. The resources allocated are clearly insufficient and nor has any concrete action been taken to evict and indemnify, where appropriate, the non-indigenous settlers.

There clearly needs to be increased resources allocated to the Consultation Mechanism, together with the inclusion of an ethnically and culturally relevant perspective when formulating the public policy, not forgetting that an institutional structure to implement this will be necessary.

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**Carlos Camacho-Nassar.** *Anthropologist and geographer, member of the Indigenous Rights and Climate Change Observatory. He has conducted studies into Indigenous rights, particularly territorial issues and their associated conflicts in South America, Mexico, Central America and the Caribbean. He has published a number of works on this issue.*  
*carloscnassar@gmail.com*



# Ecuador





Ecuador's Indigenous population accounts for close to 1.1 million people out of a total population of more than 17,300,000. There are 14 Indigenous nationalities living in the country, grouped into different local, regional and national organisations. Some 24.1% of the Indigenous population live in the Amazon and belong to 10 nationalities; 7.3% of the Andean Kichwa live in the southern Sierra; and 8.3% live along the coast and in the Galapagos Islands.

The remaining 60.3%, comprising Andean Kichwa, live in six provinces of the central-north Sierra; 78.5% of them still live in rural areas and 21.5% live in the towns and cities. The Shuar, a nationality of more than 100,000 people, have a strong presence in three provinces of the central south Amazon, where they represent between 8% and up to 79% of the total population. The rest are dispersed in small groups across the country.

There are a number of nationalities with very low populations and which are thus in a highly vulnerable position. In the Amazon these are the A'i Cofán (1,485 inhabitants); the Shiwar (1,198 inhabitants); the Siewopai (689 inhabitants); the Siona (611 inhabitants); and the Sapara (559 inhabitants); on the coast, there are the Épera (546 inhabitants) and the Manta (311 inhabitants).

After more than a decade of a new Constitution and 20 years after ratifying ILO Convention 169, Ecuador still lacks specific and clear public policies that could prevent or mitigate the risk of these peoples disappearing, together with effective instruments that would ensure the enforcement of collective rights that are already widely recognised in the current Constitution.

**T**he radical political turn towards neoliberalism made by Lenin Moreno's government in 2017 continued and intensified in 2019, and could be seen in at least three areas of action. First, in agreements and policies explicitly favourable to the interests of the powerful Guayaquil and Quito oligarchies (large importers, well-known banking and financial groups); second, in a renewed openness to transnational

capital in relation to the extractive industry – mining and oil exploitation on the Amazonian Indigenous territories in particular; and third, in its total alignment with President Trump's Latin American foreign policy.

The first area has resulted in laws such as that on the "Promotion of Production", which aims to move the economy from a state-run system to a neoliberal one controlled by large private enterprise. In addition, businessmen such as Pablo Arosemena, president of the Federation of Ecuadorian Chambers of Commerce, have proposed reforms to the Employment Code that would include: making it easier to sack private sector staff; changing the current contractual arrangements (which guarantee job stability and workers' rights) to hourly contracts; reducing (yet more) corporation taxes; and establishing longer probationary periods. This is a package that will, in sum, make working conditions not only more flexible but also more unstable.

Such elements are likely to have formed part of the agreement reached between the Ecuadorian government and the International Monetary Fund (IMF) which, on 11 March 2019, approved a USD\$4,200 million loan as part of the Extended Fund Facility (EFF), with an immediate disbursement of USD\$625 million, even though the fiscal deficit at this point was more than USD\$3 billion.<sup>1</sup> The agreement with the IMF replicates the policies set out in the "Washington Consensus" first implemented back in the 1990s: a rolling back of the state (firing of public officials, merger or elimination of public institutions, reduction in the state's regulatory capacity); the elimination of subsidies and increases in the cost of fuel; and the privatisation of public oil, telecoms and electricity companies.<sup>2</sup>

The government has opted for a so-called "austerity plan" focused on the firing of more than 50,000 public sector workers while at the same time cutting the budgets for health and education.

With regard to the second area of government action, the oil-producing companies have achieved their aim of changing the rules of play, previously so favourable to the state during the period of the so-called "People's Revolution" headed by Rafael Correa. Now the old system of production-sharing agreements has returned, highly favourable to the transnational companies: according to such rules, the distribution of profits obtained through the exploitation and sale of "commodities" provides a minimum share for the state of scarcely 12.5% of audited production in the concession area.<sup>3</sup> In this context, the 12th *"Ronda de*

*Intercampos*” (round of tenders) took place from September 2018 to 9 May 2019, allocating a total of 2,406 oil-producing wells to 21 companies.<sup>4</sup>

Mining projects form another extraction frontier, particularly the large-scale industrial copper and gold mining that is affecting Indigenous territories and some protected or ecologically fragile areas of the country. There are currently 275 concessions covering 14.8% of the national territory. According to Fernando Benalcázar, Vice-Minister for Mines, the government and the large mining companies are planning multi-million dollar investments and forecasting an “imminent mining boom in the coming years. In the next few months, the strategic Mirador and Fruta del Norte projects will commence operations.” These are located in Zamora Chinchipe, on Shuar territories in the south-east of the Amazon, on the border with Peru.<sup>5</sup>

In terms of the third area of action, foreign policy, Ecuador’s government has confirmed its absolute subordination to the strategies of Donald Trump’s government in the region, strategies that seek to re-establish the USA’s previous control over their so-called “back yard”. Successive visits to Moreno by Craig Faller, head of Southern Command in April,<sup>6</sup> and Mike Pompeo, North American Secretary of State in July,<sup>7</sup> were clear signs that the Ecuadorian government was simply going to implement the blueprint imposed by US geopolitical, military and economic interests in the region and which would involve conceding fully to demands regarding the transnational company Chevron-Texaco (responsible for incalculable harm to the country’s north-east Amazon);<sup>8</sup> the extradition of Julian Assange from the Ecuadorian embassy in London; cutting off of relations with the Venezuelan government of Nicolás Maduro and recognition of Juan Guaidó as interim president;<sup>9</sup> and even the return of North American military operations to Ecuadorian soil through use of Orion P3 and Awac planes, including using the Galapagos Islands – the country’s most important protected area and World Heritage Site – for military purposes under the guise of combating criminal gangs sailing the high seas.

Moreno’s support group encompasses the mainstream media, which have been responsible for defending and constantly repeating the official rhetoric as the best way out of the “country’s crisis”, including the supposed benefits of the agreement with the IMF and the advantage of a subordinate alliance with the US government.

## **Waorani court victory against the oil siege. The case of Block 22**

Against this political and economic backdrop, oil extraction companies have not ceased their offensive to gain control of concessions in the Amazon. Two zones in particular were at the centre of the dispute over this period: firstly, the far north-east of the Yasuní National Park (located within the Waorani territory) in which the so-called Ishpingo, Tambococha and Tiputini (ITT) Project is being implemented, recognised by the government as the biggest project in the sector, extracting 77,333 barrels per day; and, secondly, so-called Block 22, in the north of Pastaza province in the Central Amazon.

In the case of the ITT Project, on 21 May 2019 the government issued Executive Decree No. 751<sup>10</sup> establishing a new map for the intangible zone in the Yasuní National Park, increasing the area in which any kind of extractive activity is prohibited by 59,000 hectares. Article 3 of this decree, however, establishes that oil drilling and production can now commence in the buffer zone – the area between the Exploitation Zone and the Intangible Zone. Such activities would place the existing rich and fragile ecosystem, together with the lives of the Tagaeri and Taromenane Indigenous Peoples living in voluntary isolation, in extreme danger.<sup>11</sup>

On 27 February 2019, accompanied by other Indigenous nationalities such as the Shiwiar, Andes, Achuar, Cofán, Siona, Siekopai, Kichwa, Shuar, Sapara and the Ombudsman, the Waorani walked to the Court of Justice in Puyo, the capital of Pastaza province. There they handed in a protection writ demanding their right to Free, Prior and Informed Consultation and self-determination in order to protect their territory from a new oil tender that included that Block.<sup>12</sup> “We want to live free, healthy and happy. Our territory is not for sale” was one of the phrases most frequently repeated by Inés Nenquimo Pauchi, leader of the Coordinating Body of the Waorani Nationality of Pastaza (CONCONAWEP).<sup>13</sup>

Two months later, Pilar Araujo, judge of Pastaza Provincial Court stated that the court “...determines that the constitutional right to free, prior and informed consultation has been violated and the protection writ for communities belonging to the Waorani nationality of Pastaza is

thus considered admissible.”<sup>14</sup>

This court ruling was appealed by the Ministry of the Environment and the Attorney-General’s Office but, on 11 July 2019, the Pastaza Provincial Court of Justice ratified the ruling of the court of first instance and acknowledged the violation of the right to free, prior and informed consent, to self-determination and to rights to nature, thus managing to ensure that 200,000 hectares of Waorani territory would remain free from oil extraction.<sup>15</sup>

The judgment of the court of second instance indicated in this respect that: “...given all of the above, there can be no doubt that when conducting prior and informed consultation no consideration was given to the parameters indicated by the court, for example in its paragraph 172 (state duty); nor was the timeframe or the appropriate moment for the consultation considered (paragraph 180). The consultation was considered a mere formality, i.e.: a kind of publicity exercise that it should not have been (paragraph 186). The community were not consulted, only their ancestral authorities (paragraph 201), and nor were the prior consultation processes set out in the paragraph (202) followed”, thus invalidating once and for all the supposed 2012 consultation process and all actions resulting from it.<sup>16</sup>

“This victory shows the world the struggle and unity of the communities and that other peoples need to apply pressure (...) so that they leave us to live our lives free in the forest,” said Oswaldo Nenquimo, spokesperson for the Waorani of Pastaza.<sup>17</sup>

However, through the Attorney-General’s Office and the Ministry for the Environment, the government challenged the rulings of 26 April and 11 July 2019 issued by the Pastaza Provincial Court in the Constitutional Court. On 2 October, the Admissibility Chamber of the Constitutional Court in Quito heard the case and, on 27 November issued its decision: “...having reviewed the case, it is ruled inadmissible as it does not meet the admissibility requirements”. It argued that one of the requirements of such requests was that “there exists a clear argument with regard to the right being violated and a direct and immediate relationship, through action or omission of the judicial authority, regardless of the events that gave rise to the process”.<sup>18</sup>

## **Breakdown between Indigenous movement/ government and October insurrection**

Back in December 2018, the government removed subsidies from a number of fuels as part of the economic measures leading to a reaction from a number of opposition actors such as the unions and local-level peasant and Indigenous organisations, who began to protest in a number of cities.

One of the strongest collective actions was the two closures of the Pan-American Highway in the Panzaleo sector, in Salcedo, Cotopaxi, in the Central Sierra at the end of January 2019 by members of the Indigenous and Peasant Movement of Cotopaxi (MICC).<sup>19</sup> Leónidas Iza, the organisation's president, denounced the harsh police repression and use of tear gas against a number of protesters. At the same time he explained that during dialogue with the government (commenced in the middle of 2017) he had requested the authorisation of community transport so that vans could carry passengers and goods, and that the price of milk should be held at USD\$0.42, neither of which had been done.<sup>20</sup>

Along the same lines, a large part of the first quarter of 2019 was marked by strong anti-government protests and demonstrations, particularly in Quito, clearly denouncing the massive wave of redundancies in the public sector, increased unemployment, privatisation of state-run enterprises such as CNT (telecoms) and punitive increase in fuel prices.

Although the Confederation of Indigenous Nationalities of Ecuador (CONAIE) and its political wing, the Pachakutik Plurinational Movement, maintained its alliance with and participation in Lenin Moreno's government (including leaders such as Humberto Cholango as National Secretary for Water), its trust in the government, as well as the patience of many grassroots Indigenous organisations, was being eroded due to: the continuing failure to meet commitments such as the amnesty for prosecuted leaders; the postponement of the comprehensive plan with irrigation systems divided out by the water administration; the failure to restructure the debts of organisations in arrears with land repayments and the failure to write off 100% of fines imposed by the National Secretariat for Water (SENAGUA); not to mention the delays in re-opening single-teacher schools in rural areas.

CONAIE's Annual Assembly, held on 23 August in Archidona, Napo, in the Central Amazon, agreed to end dialogue with Moreno's government:<sup>21</sup> "...as we have had no concrete results to our demands and, given that a limited dialogue has been imposed, this decision is taken unanimously". They also decided "...to convene a national meeting of all social, workers, peasant, student, women, pensioner and other organisations to reject the national government's economic policies as they are in response to pressures from the agreement with the International Monetary Fund (IMF)" and "to declare a permanent assembly of resistance in defence of our territories and life to demand the government revoke and cancel all mining, oil, logging and hydroelectric concessions on the sacred territories of the peoples and nationalities".<sup>22</sup>

Five weeks later, on the night of 1 October, President Moreno went on TV and radio to announce six economic measures and 13 draft legislative reforms that would be included in Executive Decree No. 883: enshrining the hike in premium, *ecopaís* (fuel that includes ethanol) and diesel fuels; removing the subsidies but also ensuring – by way of compensation – the provision of an additional USD\$15 a month in vouchers to 300,000 families; removing or reducing tariffs on agricultural and industrial machinery and raw materials; removing tariffs on imports of mobile devices; providing one billion dollars in mortgage loans from November on, at a rate of 4.99%; plus redundancies in the public sector, including the immediate lay-off of 23,000 bureaucrats.<sup>23</sup>

A wide coalition of organisations, including the United Workers Front (FUT), Confederation of Indigenous Nationalities (CONAIE), National Federation of Black, Indigenous and Peasant Organisations (FENOCIN), Popular Front (FP), Federation of Public Passenger Transport Cooperatives (FENACOTIP) and groups linked to the People's Revolutionary Movement (MRC) agreed to participate in and support the protests against Lenin Moreno.

These popular reactions were not long in the making. Four major protests broke out successively between 24 September and 13 October (20 days): the provincial strike in Carchi, on the border with Colombia;<sup>24</sup> the national transport drivers' strike, involving lorry drivers, city and inter-city bus drivers and taxi drivers; the Indigenous and peasant rural and urban uprising; and the popular mobilisations, particularly in cities such as Quito.

The Indigenous mobilisation commenced on 5 October after the

organisations leading the Carchi and transport drivers' strikes had reached an agreement with the government with regard to maintaining road infrastructure, checking and carrying passengers, etc.

The action taken by the transport drivers had led to a suspension of classes, a paralysation of almost all business activity and a takeover of public spaces by numerous neighbourhood, youth and women's groups in the main cities demanding the cancelling of Decree 883 and President Moreno's resignation. All these actions, in squares, on highways and on roads, were harshly suppressed by the police and military forces, protected by the "state of emergency" that was declared from 3 October on.<sup>25</sup>

It was the grassroots Indigenous organisations, however, particularly in the Northern and Central Sierra regions, that launched the greatest protest action from the early morning of Saturday 5 October on, just when the press and government had announced – through all the media and social networks under its control – "that everything was under control and the strikes were coming to an end".<sup>26</sup> An enormous media campaign, coordinated by the government and mainstream media, attempted to ignore the unrest and actions that had only just begun in the rural areas and which were rapidly extending to the towns.<sup>27</sup>

In Ibarra, capital of Imbabura, 4,000 Indigenous people marched for four hours to present their list of demands to the Imbabura Governor, including the cancellation of the so-called "economic package". Sofia Fuentes, leader of Kichwa Otavalo People's Territories, noted that it was the social organisations themselves that had spontaneously risen up against Moreno's "package": "We wanted to show the authorities that these economic measures will hit the pockets of all Ecuadorians. We can't pay the debt that they have run up".<sup>28</sup>

Carlos Tagua, President of the Chimborazo Indigenous Movement (MICH), called on the Indigenous people to assemble on the morning of 5 October. "We will radicalise the action as from today. All our people are rising up in their communities and parishes," indicated Carlos Suszagñay, President of Ecuarunari.<sup>29</sup>

In Chimborazo but also in other nearby provinces such as Cañar, Bolívar, Tungurahua and Cotopaxi, working meetings were held and strategies analysed within the organisations, which gradually began to mobilise towards the provincial capitals, gradually closing the roads, taking squares and market places such as in Colta, Guamate, Guarán-



da, Salasacas, Saquisilí and Latacunga.

A whole range of collective actions took place in the ensuing days, three of which are particularly notable: the taking of the town centres of the provincial capitals, the main public squares and government buildings in 11 provinces (nine in the Sierra and two in the Amazon region); the closure of highways, which paralysed the country for six successive days; and the influx into Quito of more than 30,000 Indigenous people who were put up overnight on 7 October on four university campuses. They set up their operations centre in the Ágora Theatre, in the main complex of the Cultural Centre, where another 5,000 protesters were housed.<sup>30</sup>

In Panzaleo, Salcedo canton, Cotopaxi province, leaders and representatives of the organisations declared a permanent state of protest until the economic measures were revoked. In the capital, peaceful protest marches were organised every day to the National Assembly and the historic centre where the Carondelet Palace (seat of central government) is located. The Indigenous Peoples were joined by student organisations, unions, neighbourhood and women's groups.

In the centre of Quito, a circle of armoured vehicles, barbed wire and even electric fences was placed around several blocks near the Plaza de la Independencia roundabout (home to the Presidency of the Republic) and guarded by military forces. Before commencing the marches to the legislature and the Palace of Government, the Indigenous people breakfasted in the universities, which they renamed "areas of peace and humanitarian welcome" and in the "El Arbolito" Park. The protests took place every day for a whole week. The daily demonstrations mobilised an estimated 40-70,000 people.

*The strong impact of the Indigenous and popular uprising, its delinking from the acts of violence and even from 'correismo' (supporters of Rafael Correa), along with the support it gained meant the protest stretched over the whole country, and was decisive in getting the government to agree to direct political dialogue and finally revoke Decree 883, which had triggered the crisis in the first place.<sup>31</sup>*

According to different estimates, between 65-85% of the population were against removing the subsidies and acknowledged the reasons for the mobilisations.<sup>32</sup>

The peaceful nature of the Indigenous mobilisations was in contrast to the violent action of the repressive forces, however; particularly of the police. Of the 10 people who died during the protests, one was Segundo Inocencio Tucumbi, a leader from the Yanahurco de Juigua community in Pujilí canton, Cotopaxi province, who was in the vicinity of the National Assembly on the afternoon of 9 October when “...they arrived with horses, motorbikes, dogs. A tear gas grenade hit community member Inocencio [Tucumbe] on the head, splitting it open.” In the words of Leónidas Iza, an apparent “infiltrator” had thrown a stone at the soldiers, triggering widespread suppression of the Indigenous march, which had been taking place peacefully.<sup>33</sup>

According to the Ombudsman, there were 10 deaths between 3 and 10 October, with 1,070 people arrested. Eighty per cent of those people arrested were later released without formal charge, demonstrating that there had been an abuse or excess of power on the part of the National Police as the arrests were unlawful.

The Inter-American Commission on Human Rights (IACHR) considered the following to be the main human rights violations occurring during the October uprising: aggression and attacks against the press during the protests; violations of the rights to freedom of express and association; violations of personal integrity and life in the context of the social protests; arrests, criminalisation and stigmatisation of demonstrators.<sup>34</sup>

In terms of the force used by the Ecuadorian state, the IACHR noted:

*(...) its concern both at the actions of the security forces, which did not take account of the inter-American and international protocols governing action on such occasions, as demonstrated by the indiscriminate use of tear gas, even in spaces where mothers were assembling with their children, and at the different deaths recorded over the period.*

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**Pablo Ortiz-T.** is a sociologist and lecturer at the Salesian Polytechnic University (UPS) in Quito. Contact: [mushukster@gmail.com](mailto:mushukster@gmail.com)



# French Guiana



French Guiana is an overseas department and region of France in South America. It is bordered to the west by Suriname and to the south and east by Brazil. It has a population of 268,700 inhabitants (INSEE, 2017). The interior of the country is covered by dense equatorial forest that is only accessible by plane or canoe along the Maroni River to the west or the Oyapock River to the south-east. Ninety (90) per cent of the territory is owned by the French state, under the system of "*terra nullius*" that was applied during the colonial era, to the detriment of the Indigenous Peoples who were dispossessed of their lands.

The Indigenous Peoples account for between 3-4% of the population, i.e. between 10,000 and 15,000 people. The Kali'na Tileuyu, Pahikweneh and Lokono live along the coast between Saint Laurent du Maroni and Saint Georges de l'Oyapock. The Wayampi Teko live in the Upper Oyapock and the Wayana plus a few Teko and Apalaï in the Upper Maroni. Their traditional practices of fishing, hunting, gathering and slash-and-burn agriculture have become increasingly difficult due to numerous regulations and increasing mining activity.

France has ratified the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) but not ILO Convention 169. It only recognises Zones of Collective Use Rights (ZDUC), concessions and transfers. These areas cover 8% of the country's land mass and give no more than a simple right of use over the land.

During the social unrest in French Guiana between March and April 2017, the Overseas Minister signed a Memorandum of Understanding (on 2 April 2017) with the Indigenous and Bushinenge people in which the government made 20 commitments. These included the return of 400,000 hectares of land to the Amerindian peoples and an undertaking that the State Council would consider the constitutionality of ILO Convention 169. This Memorandum of Understanding was incorporated into the Guiana Accord on 21 April 2017.

## The Grand Customary Council of Amerindian and Bushinenge Populations

**T**he Grand Customary Council is a consultative body created at the initiative of France by means of Law No. 2017-256 of 28 February 2017 creating substantive equality for Overseas France (EROM). Its aim is to “ensure representation of the Amerindian and Bushinenge populations of Guiana and defend their environmental, educational, cultural, social, economic and legal rights” (Article L.7124-11 para 1 CGCT). “It shall be placed under the State Representative of the Guiana Territorial Authority” (Article L.7124-11 para 2 CGCT).<sup>1</sup>

The law requires shared governance between the Amerindian (Indigenous) and Bushinenge (black Maroon) populations. On 11 February 2018, the 18 members of the Grand Customary Council were elected for six years in the presence of Amerindian and Bushinenge chiefs and associations. On 12 June 2018, the Grand Customary Council elected its officers for a three-year term. These comprise an Indigenous president and vice-president together with a Bushinenge second vice-president and secretary. This new institution replaces the former Consultative Council of Amerindian and Bushinenge Populations (CCPAB), established by Law No. 2007-224 of 21 February 2007.<sup>2</sup> It has the power to initiate investigations into the deliberations of the Guiana Territorial Authority (CTG).

On 14 January 2020, the President of the Grand Customary Council of Amerindian and Bushinenge Populations, Sylvio Van Der Pilj, reminded the outgoing Congress of Deputies<sup>3</sup> of the following: “The Grand Customary Council is placed under the authority of the French state and the CTG. It is a tool that gives Indigenous Peoples a purely consultative voice. And yet it should be a decision-making body with regard to issues such as land management and mining permits.”<sup>4</sup>

## Planned statutory development for French Guiana

This is in line with the Guiana Accord of 21 April 2017,<sup>5</sup> which anticipates:

*That the government shall be informed by the Guiana Congress of Deputies of the planned development of a statute,*



*referring where appropriate to the draft agreement on the future of Guiana adopted on 29 June 2001 and, by extension, the Guiana Project. At the same time, the government commits to taking the necessary measures to publish a decree convening the Guianese electorate for a referendum on said planned statute according to a timetable to be negotiated between the CTG and the state.*

This could be by means of an organic law or during the next reform of the French Constitution. This latter, however, has been postponed indefinitely by the French government. Moreover, out of 33 members of the Grand Customary Council, only two form part of the *ad hoc* commission authorised by the Guiana Territorial Authority (CTG) to work on French Guiana's draft statute. Unlike the statute for New Caledonia that was agreed in the Nouméa Accords of 5 May 1998, the negotiations with France are not being conducted by the Indigenous Peoples themselves but by the elected representatives, some of them pro-separatist, mostly from the Afro-descendant (or Guianese Creole) community.

In his speech of 14 January 2020, the President of the Grand Customary Council, Sylvio Van Der Pilj, noted that “the draft statute for French Guiana must take into account all of Guiana's communities, starting with its Indigenous Peoples”. During this same speech, he challenged the use of the Guianese flag, the origins of which are union and Afro-separatist, and do not represent the Indigenous Peoples of the country.

## **Returning land to the Amerindians**

The return of land was a commitment made by France in the Memorandum of Understanding of 2 April 2017 signed by the Overseas Minister and five representatives of Guiana's Indigenous organisations: Alexandre Sommer-Schaechtele (Organisation of Guianese Indigenous Nations - ONAG), Jean-Philippe Chambrier (Federation of Guianese Indigenous Organisations - FOAG), Jocelyn Thérèse (former Consultative Council of Amerindian and Bushinenge Populations - CCPAB), Christophe Pierre (Guianese Indigenous Youth - JAG) and Claudette Labonte (Pahikweneh Federation of Guiana - FPG).

On 22 November 2018, the signatories to the agreement met with an Interministerial Land Mission established by the government and ONAG presented maps showing the boundaries of the Indigenous territories. The results of this Interministerial Mission were never fed back to the Indigenous associations, however.

Moreover, the return of this land is in opposition to another of France's commitments, that of handing over 250,000 hectares of the territorial authority's land and 20,000 hectares of other land to non-indigenous farmers. To resolve the conflict, the French government wishes to transfer 400,000 hectares of land in the Zones of Collective Use Rights (ZDUC), currently owned by the French state. The signatories to the 2 April 2017 Memorandum of Understanding have denounced this plan. The ZDUC and the concessions currently account for more than 700,000 hectares of land. Ceding 400,000 hectares in these areas would represent a huge loss for the Indigenous Peoples, who are demanding the allocation of new lands in compensation for their colonisation.

They are also denouncing the legal system of the ZDUC, which was implemented by means of Decree No. 87-267 of 14 April 1987 and which restricts Indigenous activities to hunting and fishing and no longer meets the economic expectations of the younger generation of Indigenous Peoples.

## **The “Montagne d’Or” mining project**

Gold mining in French Guiana has long been a semi-artisanal affair focused on the secondary exploitation of alluvial gold. The Russo-Canadian consortium (Nordgold-Columbus Gold) known as Montagne d’Or has, however, been seeking to develop what it terms “responsible” industrial-scale open pit mining. Situated 125 km south of Saint Laurent du Maroni, near the Lucifer Dékou Bioserve, it aims to extract some 6.7 tonnes of gold a year over 12 years, being 85 tonnes in all. The multinational's plans have come up against a widely unfavourable response from public opinion and strong opposition from environmentalists and the Indigenous Peoples themselves.<sup>6</sup>

On 19 October 2018, the Organisation of Guianese Indigenous Nations (ONAG) submitted an “Early Warning Application” for the project

to the Committee for the Elimination of Racial Discrimination (CERD). This UN body is responsible for ensuring respect for the Convention on the Elimination of All Forms of Racial Discrimination, ratified by France on 28 July 1971. In its request, ONAG emphasised the following: “Montagne d’or is mining on ancestral lands, close to sacred pre-Colombian remains and with a risk of polluting hunting and fishing zones [...] The public debate and the visit of the Interministerial Committee to the gold mining activity in October 2018 can under no circumstances be considered a consultation process” and recalled Article 32 of the UNDRIP.<sup>7</sup>

On 14 December 2018, the CERD sent a letter to the Permanent Representative of France to the United Nations calling on the French government to suspend the mining project and respect the Indigenous Peoples’ free, prior and informed consent, according to their own consultation process, by 8 April 2019.<sup>8</sup>

On 11 April 2019, the Permanent Representative of France to the United Nations officially responded to the CERD specifying that the government had not yet made a decision on the future of the project.

French Environment Minister, François de Rugy, announced during the Environmental Defence Council of 23 May 2019 that the Montagne d’Or project “would not go ahead”. This decision was in line with statements made by President Emmanuel Macron following reports from the IPBES experts on biodiversity. He had stated that the project “was not compatible” with the government’s environmental ambitions. ONAG’s appeal was thus a success for the Indigenous Peoples.<sup>9</sup>

The decision was confirmed on 23 September 2019 at the UN Climate Summit and, against all expectations, was welcomed by the President of the Guiana Territorial Authority, who had been a stated supporter of the project. The President of the Grand Customary Council, attending at the invitation of the French President, reported however that during his discussions with Emmanuel Macron, this latter indicated that France did not intend to ratify ILO Convention 169.

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2. The CCPAB was created by Law No. 2007-24 of 21 February 2007 following an amendment of the Guianese Senator, Georges Othily.

3. The Congress of Deputies was held on 27 November at the Guiana Territorial Authority (CTG). The elected representatives had to choose between two projects for Guiana proposed by the CTG and the Guianese Front or “Front for Statutory Change”. A four-point resolution was adopted: approval of the work of the Parliamentary Assembly, the creation of an ad hoc commission to draw up the Guiana project; referral to the government of a referendum on statutory development; and referral to the Prime Minister for CTG capacity building.
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**Alexandre Sommer-Schaechtele** is vice-president of the Organisation of Guianese Indigenous Nations, a lecturer and jurist specialising in Indigenous Peoples’ rights. He belongs to the Kali’na Tileuyu Indigenous nation. A jurist by training, he studied at the University of Nice Sophia Antipolis (France) and obtained a Master’s in banking law then a Master’s in Business Law in 2011. He has been a member of the Organisation of Guianese Indigenous Nations since 7 March 2014 and vice-president since 3 June 2017. In July 2018, he became a human rights expert following training at the Office of the High Commissioner for Human Rights in Geneva on the UN mechanisms and Indigenous Peoples’ rights. Since November 2018 he has been responsible for human rights and international relations courses at Guiana University. He lectures in France, abroad and at the United Nations.



# Guatemala



According to figures from the 2018 census, Guatemala has a population of 14.9 million inhabitants, 6.5 million (43.75%) of which self-identify as Indigenous, from the Maya, Garífuna and Xinca Indigenous Peoples, or Creole (Afrodescendants). The Maya can be further divided into 24 groups: the Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil and Uspanteko. Data from the census and from other specialist studies shows the deep inequalities that continue to exist between Indigenous and non-indigenous people, above all with regard to health, education, work and income, these inequalities being even greater when it comes to Indigenous women.

The socio-economic situation of Indigenous people in Guatemala continues to show deep inequalities due to structural problems such as social exclusion, racism and dispossession of their livelihoods, all of which places them in a situation of poverty or extreme poverty. Poverty affects 75% of Indigenous and 36% of non-indigenous people,<sup>1</sup> while chronic malnutrition affects 58% of Indigenous and 38% of non-indigenous people.<sup>2</sup> The Constitution of the Republic does not recognise either the existence of Indigenous Peoples or the multicultural composition of society. The country has ratified UN agreements on Indigenous Peoples such as: ILO Convention 169 (which the Constitutional Court elevated to constitutional status in 2010, forcing the country to recognise Indigenous Peoples' rights, including the right to prior consultation), the UN Declaration on the Rights of Indigenous Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination, and the FAO policy on Indigenous and tribal peoples. In practice, however, exclusion is prevalent, for example, in the national media, which prioritises Spanish as the official language while Indigenous languages have limited cover solely in the local media.

## The population census and Indigenous Peoples

In September 2019, the Guatemalan Institute of Statistics submitted its report on the XII Census of the Population and VII Census on Housing, conducted in 2018.<sup>3</sup> The results, widely challenged by different sectors of society, indicated that the country has a population of 14.9 million, 3.7 million more than at the time of the 2002 census, giving year-on-year growth of 1.8%. This is a significant demographic change to previous censuses, which had population growth nearer to 2.5% per year.

The census data offers significant findings for Indigenous Peoples in relation to the principle of self-identification. The Indigenous population, classified by the census into Maya (with their 22 ethnic groups), Garífuna, Xinca and Afrodescendants, are found across all of the country's departments and municipalities, although each people has a clear geographic focus. While the 2002 census gave the Indigenous population as 39.26% of the total, this rose to 43.75% in 2018 (6.5 million), some 4.5 percent more than the last census. Even so, the Indigenous organisations felt that insufficient publicity had been undertaken to promote self-identification and that the actual census had been hampered by events arising due to the political crisis around the war on corruption and impunity. This emerged in 2015 and was a dominant feature until 2019 and was largely expressed in people's mistrust in their current government, in some areas to such an extent that it was simply not possible to conduct the census.

Some Indigenous Peoples ran their own self-identification campaigns, and this did result in greater visibility; for example, between the 2002 and 2018 censuses, the Xinca population increased from 16,214 to 264,167 inhabitants, the Ch'orti' from 46,833 to 112,432, the Garífuna from 5,040 to 19,529 and the Poqomchi' from 114,423 to 208,008.<sup>4</sup> Other peoples showed increases close to the country's growth rate: for the first time, the category of Afrodescendant or Creole (27,647 inhabitants) was included, and also the Maya Ch'olchiteko people (33,541 inhabitants), who were officially recognised as a linguistic community in 2003.

There were also a number of controversial aspects, however. For example, the Uspanteko people declined from 7,494 to 4,909 inhabit-

ants and, on closer inspection, other cases could be seen in which Indigenous Peoples who were more numerous in previous censuses had now virtually disappeared, reflecting the policy of denial and invisibility prevalent in many parts of the country. For example, in Quezaltepeque municipality, Chiquimula department, there was a drastic and rapid decline in the Indigenous population: it fell from 81.3% in 1955 to 22.51% in 1964, to 20.2% in 1973 and, by 2018, only 11 inhabitants were self-identifying out of a total population of 28,075, surprising when you consider that the organisation known as the Indigenous Community of Quezaltepeque operates in this municipality.

In sum, despite the notable 4.5% increase in Indigenous numbers within the country's ethnic composition as a whole, far more effort is needed to ensure that censuses make better use of the principle of ethnic self-identification. This information must also be used to re-direct development policies towards a cultural perspective that embodies the collective rights of Indigenous Peoples.

## **The Corruption Pact and the end of CICIG's mandate**

The International Commission against Corruption and Impunity in Guatemala (CICIG), established in 2006 by the United Nations, faced counter-attacks from those being denounced during 2019. The high-impact complaints submitted by the CICIG seemed to be giving Guatemalan society an opportunity to bring these scourges to an end but the 150+ high-ranking people held in preventive detention in a military barracks mobilised their resources and political influence throughout the year, bringing members of parliament, judges, politicians and businesspeople together in the so-called "Corruption Pact" aimed at putting a stop to CICIG's work.

In his speech to the UN General Assembly in 2019, President Jimmy Morales (also singled out for corruption) accused CICIG of not following due process and called for an end to its operations. This was rejected by the UN Secretary General and so President Morales decided unilaterally not to renew CICIG's mandate.

Indigenous Peoples made various legal complaints and mobilised against the action of the Corruption Pact, stating that this would be a



great setback in the war on corruption and impunity; in addition, they warned that any re-establishment of the old power groups would weaken the justice system and increase Indigenous organisations' vulnerability to people who would be able to act with total impunity to loot their natural resources and establish extractive projects on their territories.<sup>5</sup>

## **Exclusion and racism in the general elections**

General elections took place in 2019 to elect the President and Vice-President, Members of the Congress of the Republic and local councillors. As in previous years, these elections highlighted once more the lack of Indigenous and women candidates standing for election.<sup>6</sup> Of the 23 presidential slates, only four had Indigenous candidates, the case of Ms Telma Cabrera, an Indigenous leader from the Maya Mam, being the most notable. She came fourth, the highest place achieved thus far by an Indigenous candidate, and would have had a good chance of reaching the second round had the negative campaign run against her - denigrating her for being a woman, Indigenous and a social activist - not affected her chances.

Yet again, no more than 10% of members elected to the Congress of the Republic are Indigenous, in contrast to the 44% of the population who self-identify as such, according to the latest census. Moreover, Indigenous congressmen and women run as part of a political party and not in accordance with Indigenous Peoples' principles, so their legislative representation is severely disadvantaged. Overcoming this problem of poor Indigenous and female representation in the Congress of the Republic was one of the proposals included in the frustrated constitutional reforms that were not approved by Congress. Indigenous participation was, by contrast, greater at local level, particularly in municipalities with a higher proportion of Indigenous population.

One concern for Indigenous Peoples was the formation of a Security Cabinet, announced by the new government and featuring former members of the military who were active during the armed conflict that blighted the country from 1960 to 1996, resulting in thousand of primarily Indigenous deaths. The social organisations believe that this situation represents a threat to the continuity of court cases for genocide that are currently being prosecuted against former soldiers involved in massacres of the Indigenous population.<sup>7</sup>

## **Migrant caravans and Safe Third Country Agreement**

The tightening of US migration policy, including the construction of a wall along its southern border, limited granting of visas and mass deportations, has been aimed at the Central American countries of the so-called “Northern Triangle”: Guatemala, Honduras and El Salvador, three countries which generate large flows of migrants seeking to escape poverty, corruption and impunity along with the violence that is prevalent in the region.

Under pressure from the United States, which was threatening the imposition of economic sanctions, Mexico and the three countries of the Northern Triangle have undertaken to reduce their migrant flows, and they have had to sign up to the Safe Third Country Agreement, meaning they must receive and house migrants from any country in the world while they process their applications for US visas. Massive migrant caravans coming from Honduras and El Salvador crossed Guatemala for the Mexican border in 2019 with the aim of continuing onwards to the United States.

This has represented a harsh blow to Indigenous Peoples’ right to migrate, especially when one considers that migration has historically formed one of their main options for family survival. In addition to this, the money sent home by these migrants has been a primary source of foreign currency for all three countries for the last 10 years.

## **Dubious hydroelectric projects**

The hydroelectric projects that are being established or planned on Indigenous territories have been strongly criticised for failing to comply with environmental laws and violating the right of the Indigenous Peoples affected to be consulted and yet the planned work continues apace due to the government’s collusion. At the end of 2019, the government approved the Rocjá Pontilá Project of the Hidro Energía S.A. company on Maya Q’eqchi territory in Alta Verapaz department<sup>8</sup> despite opposition from both governmental and non-governmental bodies who warned that this project would form a serious threat both to the ecosys-

tem of the Laguna de Lachúa National Park, considered a sanctuary of biological diversity, and to the livelihoods of the Indigenous population.

For its part, in 2019 the Spanish National Contact Point (PNC), responsible for meeting the OECD Guidelines for Multinational Enterprises,<sup>9</sup> ruled on a case that had been submitted to it by the Alliance for Solidarity (AxS). This related to the role of a Spanish company, Cobra del Grupo ACS, in the Guatemalan company Corporación Multi Inversiones S.A's construction of the RENACE hydroelectric complex. This complex consists of four projects on the Cahabón River in Alta Verapaz department, part of the Maya Q'eqchi territory. The report concluded that the Spanish company had failed to meet the OECD Guidelines, specifically Chapter V on the Environment and Chapter II General Principles A.2 and A.10.<sup>10</sup>

The Spanish PNC felt that significant changes had occurred in some reaches of the Cahabón River within the project's area of influence, with potentially negative effects on the local communities. In addition, they recommended that the Spanish company insist that its local partner, Corporación Multi Inversiones, participate actively in the process, proactively seeking ways in which to improve the quality of life of the local communities, demonstrating an interest and commitment to their well-being and working with the Guatemalan Supreme Court of Justice to implement the judgment that requires a community consultation to be held, as well as helping the Ministry of the Environment and Natural Resources to conduct a new independent environmental impact assessment.

## **Criminalisation of Indigenous rights defenders**

The report of the Guatemalan Human Rights Ombudsman, presented to the UN Committee on the Elimination of Racial Discrimination during the country review (session 98/2019),<sup>11</sup> indicates that there has been no significant progress in human rights for Indigenous Peoples. No legislation has been adopted, for example, with regard to access to, respect for, registration or security of the ancestral ownership of Indigenous lands; in contrast, evictions are continuing without Indigenous Peoples having had due process through the courts. Ten draft bills of law on Indigenous issues, including the Law on Indigenous Jurisdiction and

the General Law on Indigenous Peoples, made no progress through the Congress of the Republic in 2019, demonstrating the legislators' lack of interest in these issues, and the structural discrimination that is prevalent in Guatemalan society.

This report also indicated that the state had neither respected Indigenous Peoples' rights to their lands and territories, nor their self-determination. The government does not guarantee prior consultation; quite the contrary, it is continuing to grant licences to the extractive industries in Indigenous territories and to criminalise human rights defenders. During the year, numerous attacks, aggression and threats were reported against human rights defenders and communities, with a growing number of murders and imprisonments of Indigenous leaders. The report indicates that, in the first six months of 2019 alone, there were 327 attacks on human rights defenders, including 12 murders, 18 attempted murders and 61 cases of criminalisation.<sup>12</sup>

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**Silvel Elías** is a lecturer in the Agronomy Faculty of the San Carlos de Guatemala University.



# Guyana



Indigenous peoples – or Amerindians as they are identified both collectively and in legislation – number some 78,500 in the Co-operative Republic of Guyana, or approximately 10.5% of the total population of 746,955 (2012 census).<sup>1</sup> They are the fourth largest ethnic group, East Indians being the largest (40%), followed by African Guyanese (29%) and self-identified “Mixed” (20%). The Chinese, Portuguese and Whites constitute tiny minorities. Amerindians refer to these non-indigenous people as “coastlanders” since most of them are settled on the coast.

The Amerindians are grouped into nine Indigenous Nations, based on language. The Warao, the Arawak and the Carib (Karinya) live on the coast. The Wapichan, the Arekuna, the Makushi, the Wai Wai, the Patamona and the Akawaio live in villages scattered throughout the interior. Amerindians constitute the majority of the population of the interior, in some regions accounting for as much as 86% of the population. The forest resources/timber on government-titled Indigenous lands (Amerindian Village Lands) are fully under the managerial authority of the Amerindian title holders, while minerals under the same lands remain ultimately under national government authority. The poorly regulated exploitation of these resources by multinationals, illegal miners and loggers is one of the challenges faced by Indigenous Peoples. Their primary concern is therefore to achieve full recognition of Indigenous land rights so they can defend their ancestral territories from this exploitation.

The Independence Agreement from the United Kingdom (1965) included a land titling process. Recommendations regarding this process from the Amerindian Lands Commission (1967-1969) have never been fully taken up by successive governments. Requests made for collective district titles have been dismissed, resulting in the fragmentation of traditional territories into small areas under individual village titles. The Constitution of Guyana in its Preamble recognises “the special place in our nation of the Indigenous Peoples” and recognises “their right as citizens to land and security and to their promul-

gation of policies for their communities”.<sup>2</sup> There is a Ministry of Indigenous Peoples’ Affairs and Guyana endorsed the UNDRIP in 2007. Guyana is one of the few countries in South America that has not ratified ILO Convention 169.

## Legislative developments

**T**he main concerns of the Indigenous Peoples (Amerindians) in Guyana continue to be associated with insecurity of resource tenure.<sup>3</sup> In spite of external funding, the ministries and agencies made almost no progress in resolving claims or issuing full land titles in 2019.<sup>4</sup> The pre-election promise in 2015 to revise the defective Amerindian Act (2006) received even less attention in 2019 than in 2018.

The legal uncertainty of the legitimacy of the government in 2019 has encouraged the representative coastlander-based Guyana Gold and Diamond Miners Association (GGDMA) to become more vociferous<sup>5</sup> about maintaining cheap and easy access to mining licences over much of the hinterland of Guyana, where Amerindian titled and customary lands are located, in the run-up to national elections scheduled for March 2020. The resistance of the GGDMA to enforcement of the environmental Mining Regulations (2005) makes Amerindian communities continually vulnerable to the environmental and social degradations associated with primitive artisanal hydraulic mining for gold. A joint Amerindian Peoples Association (NGO, also known as the Association of Padawong Amuk)/Forest Peoples Programme/Rainforest Foundation USA (APA/FPP/RF-US) publication on tenure in Region 7 again showed the gulf in understanding between coastlander government and hinterland communities about the need for and procedures about land tenure.<sup>6</sup>

## Uncertain legitimacy of government in 2019

A Party of National Unity + Alliance for Change (political parties, AP-NU+AFC) coalition government was defeated in a no-confidence vote in



the National Assembly (parliament) in December 2018. The incumbent government refused to comply with the constitutional requirement to hold a national election within 90 days and was not inclined to heed the decision of the Caribbean Court of Justice that the no-confidence vote was valid. In spite of acting as if it had full authority, the legitimacy of the APNU+AFC coalition during 2019 was legally only that of a caretaker. The coalition government finally agreed to national elections in March 2020. Many legal processes and, indeed, the whole machinery of government have slowed down and become less publicly responsive in 2019.

## **Government support to Amerindian communities**

The Minister responsible for Indigenous Peoples Affairs (MoIPA, Sydney Allicock) has not been successful in directing more effort to the needs of the Amerindian peoples. The Junior Minister for the MoIPA (Valerie Garrido-Lowe) has continued to promote the Hinterland Employment and Youth Service (HEYS) with vocational education and training and the provision of small-scale business start-up grants. A small number of development projects with Guyana REDD+ Investment Fund (donor fund from NICFI)/ Amerindian Development Fund (GRIF/ADF) finance have been supported in a few villages, based on the 25 Community Development Projects (CDPs) of the pre-2015 administration and continuing through the 50+ Village Improvement Plans (VIP, successor to and more comprehensive than the Community Development Project under GRIF/ADF) under the current government. A much larger number, 148 villages and communities, had completed their CDPs (phase 1 of the ADF project) by early 2019, resulting in 194 full-time and 387 new part-time jobs.<sup>7</sup> It is difficult to differentiate ADF projects from works supported by the national budget, such as through the discretionary Presidential Grants, including water pipes, local electricity, buildings for schools and health posts. As usual, the leaked report at the end of 2019 from the Auditor General for 2018 noted accounting problems in MoIPA.<sup>8</sup> Declining water levels in wells in southern and south-central Guyana because of longer and fiercer dry seasons have begun to be alleviated by more than 15 new wells 100-200m deep, drilled by a Brazilian army team working with GWI.<sup>9</sup>

## Status of national and international development and climate projects

### Closure of Norwegian-funded GRIF projects but some extensions

The coalition government closed the previous administration's Low Carbon Development Strategy immediately after the May 2015 election. There was no public announcement about the halting of the projects for Amerindian communities funded by the Norwegian International Climate and Forests Initiative (NICFI) through the GRIF. However, some projects have continued, perhaps intermittently, using the considerable unspent funds; it is difficult to be sure because of the inconsistency of government reporting and the failure to update the GRIF project web pages. It is unclear which projects have been funded wholly or partly by Norway because the 2019 national budget statement mentions neither Norway nor REDD+.

Since 2010, there have been several attempts to start and sustain development projects in Amerindian communities. Many of these have under-performed because of intermittent financial support and a lack of managerial training. During 2019, a small number of village-specific projects made better progress with more continuous government assistance and accumulated internal capability.<sup>10</sup>

Support for the International Year of Indigenous Languages resulted in a dictionary of the Patamona language and a children's illustrated alphabet with 22 letters in Arekuna.<sup>11</sup>

The above-mentioned projects seem to have been more thoroughly planned than those of previous years but, quantitatively, government support is still tiny for an Amerindian population of 71,000.<sup>12</sup>

### National Tshaos Council (NTC)

The annual gathering of Amerindian elected village leaders (*"tshaos"*) and senior councillors of Amerindian communities not (yet) titled as villages is now organised by the NTC, a body prescribed by the Amerindian Act (2006) rather than by MoIPA. Although statutory, the NTC Secretariat relies on external donor funding through the World Bank-coordinated Forest Carbon Partnership Facility's readiness plan. This funding expired in December but covered the 2018-9 cost of rent for the NTC's secretariat building, some support staff, equipment and

consumables.<sup>13, 14</sup> Unlike in previous years, the NTC tried to consolidate requests for 2020 budgets by themes, so that invited government ministers did not sit through repeated requests from *toshaos* for the same kinds of capital and operational funds.<sup>15</sup> As usual, *toshaos* protested that government support was not adequate to deal with rising domestic violence, addiction to narcotic drugs and alcohol, poor housing, low education and poor policing.

### **Insecurity of resource tenure – the GRIF/ALT process**

The messy and legally unnecessary two-stage land titling process initiated by the pre-2015 PPP government was further complicated by an administrative instruction from MoPIA in 2019 stating that requests for extension of Amerindian Village Land Title areas would be considered only if the applicants had completed their Village Improvement Plans to the satisfaction of the Ministry.<sup>16</sup> This instruction further delayed progress, already slowed by administrative apathy in the Guyana Lands and Surveys Commission (GLSC), which is largely responsible for the technical aspects of the land titling process (boundary survey and demarcation), but also and more significantly by unexplained delays in Cabinet-level approval.<sup>17</sup>

The GRIF-financed Amerindian Land Titling (ALT) project commenced in October 2013 with a budget of US\$ 10.7 million. ALT was intended to finish the titling of all outstanding land claims, including extensions. The project funded three staff in MoIPA and was administered by a further team in the United Nations Development Programme (UNDP). The project document estimated dealing with 68 villages and communities eligible under the Amerindian Act (2006). It is unclear why titling remained incomplete over 2015-9<sup>18</sup> but it seems likely that the above-mentioned opposition of the GGDMA is one factor. At least one Minister claimed in the National Assembly that Amerindians already had too much land and were “avaricious”.<sup>19</sup> The ALT project expired in 2016 and was extended for two years. An application was made in April 2019 for a further 5-year extension, and a 3-year period (2019-2021) has been agreed.<sup>20</sup>

At least one workshop on the grievance mechanism and other components of the ALT project (developed in 2017) was held, in the Deep South of the Rupununi, the base of the current chairman of the

NTC, in November 2019.<sup>21</sup>

No action still seems to have been taken in 2019 on the report of the independent mid-term review by Carlos Camacho-Nassar (December 2016) of the Amerindian Land Titling project. This report pointed out that the narrowly technical approach adopted by UNDP failed to take into account the political and social nature of land tenure, and failed to ensure an adequate communications system such that common misconceptions among Amerindian villages and communities, miners, loggers and government agencies continued to impede and derail the tenurial confirmation process. The report noted that UNDP's administration of the project had failed to comply with UNDP's own rules for communication and consultations and Free, Prior and Informed Consent (FPIC). The report focused on UNDP and MoIPA actions and inactions.<sup>22</sup> Apart from the issues mentioned in the report, there are legal or operational deficiencies in government sub-ministerial agencies, which include:

- Environmental Protection Agency (EPA) allowing miners and loggers to operate without environmental impact assessments or environmental permits in spite of the conspicuous environmental damage caused by such activities, contrary to the Environmental Protection Act 1996, section 11 and schedule 4;
- GLSC failing to draft correct boundary descriptions and map drawings for title documents, to train Amerindian land surveyors, coordinate with Amerindian authorities before undertaking demarcations, understand how to demarcate Amerindian lands with variable toponyms, have an objective system for dealing with overlapping land claims, have a system for dealing with river-defined boundaries when rivers change their course;
- GLSC insisting on boundary demarcation when the State Lands Regulations (1974) explicitly excuses demarcations where boundaries are natural topographic features;
- Guyana Geology and Mines Commission (GGMC) issuing and renewing mining concessions over Amerindian lands even when formal land claims by Amerindians are being processed;
- GGMC ignoring the Amerindians' "quiet enjoyment" clause 111 in the Mining Act 1989 when issuing mining concessions;
- Guyana Forestry Commission (GFC) unilaterally constraining Amerindian rights in the 2009 revision of the Forests Act (Article 5 (2)

- (e), compared with the greater acknowledgement of rights in Article 37 of the Forests Act 1953); and
- GFC ignoring its own rule to avoid issuing State Forest Exploratory Permits over “any area that is occupied, claimed or used by Amerindians”; section 4 of Appendix 1 to the Manual of Procedures for State Forest Exploratory Permits, April 1999.

Some, but not all, of these problems are taken up in the several reports prepared jointly by the APA and FPP on land security and resource tenure in Guyana.<sup>23</sup>

Furthermore, in spite of the well-known problems resulting from poorly drafted or antiquated legislation, including the Amerindian Act (2006), State Lands Regulations (1974), Mining Act (1989), Environmental Protection Act (1996) and Forests Act (2009), it is not clear why the ALT project was developed or approved for Norwegian funding in advance of revision of the legislation and in spite of protests from civil society regarding the draft project document.

### **Continuation of the independent Land Tenure Assessment project**

The third study on land tenure assessment was carried out in Region 7 during 2017-2019 in more than 20 villages and communities, including the six which have been challenging in the High Court since 1998 over the government refusal to provide a titled Amerindian District which would be more ecologically sustainable and socially/culturally appropriate than titles to individual villages. The government’s own surveyor, P. Storer Peberdy, recommended such Amerindian Districts in his 1948 report after years of extensive travels in the hinterland.<sup>25</sup> The third study was carried out by the APA/FPP/RF-US with funding from the UK’s Department for International Development (UK-DFID) and also NICFI, perhaps in recognition of the failure of the NICFI-financed GRIF-ALT project. “Our land, our life: a participatory assessment of the land tenure situation of Indigenous Peoples in Guyana, Region 7” provided a short history on Amerindian use and occupation, an account of efforts to secure government-recognised tenure, and a detailed report on each village. The 2019 study of 235 pages provides much more local-level information and opinion than ever before published, including the often unsuccessful efforts to obtain documents from government agencies.

### **Launch of the Tenure Facility project**

Another tenure assessment exercise,<sup>26</sup> with a project life of two years, was launched by APA and South Rupununi Development Council (SRDC, local government council) in July 2019 with multi-stakeholder finance from the Swedish-based International Land and Forest Tenure Facility under the Rights and Resources Initiative (funds from Swedish International Development Cooperation Agency (SIDCA), Ford Foundation and Norwegian Agency for Development Cooperation (Norad)). The project will cover 27 villages and communities in the South Rupununi and provide a better basis for titling and demarcation over two million hectares. If achieved, the goals, objectives and actions specified for this project would substantially overcome the current hiatus in Amerindian land titling and tenure security.

### **Revision of the Amerindian Act (2006)**

The defects of the Amerindian Act in respect of Indigenous resource tenure have been repeatedly reported. Sadly, there was no significant progress towards reform in 2019 despite government promises.

### **Conclusion**

The stagnation in government action in 2019 was correlated with its doubtful legitimacy. External technical and financial support to civil society enabled some Amerindian hinterland areas to move forward in preparation for a new phase of Indigenous land security. However, the opposition of the politically well-connected gold miners was also entrenched. Although comprising 9% cent of the population in 2012, and probably a higher proportion in 2020, Amerindians show no sign of setting aside their inter-family and inter-village rivalries in the greater interest of forming a politically significant force or lobby, using their numbers to hold the balance of power. The creation, by an Arawak leader (Lennox Shuman), of a new political party in 2018 to challenge for the presidency seems to have stimulated little interest among Amerindians generally, as those already aligned with the People's National Congress (PNC, political party traditionally associated with African Guyanese) or

the People's Progressive Party (PPP, political party traditionally associated with East Indian Guyanese) have stayed with those parties.

Moving forward on land tenure claims in 2020 looks like a continued uphill struggle for Amerindians, against uninterested coastlanders and the main political parties, the opposition of the land administration agencies, poorly drafted legislation, and ignorant judiciary and attorneys.

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**Janette Bulkan** is an Associate Professor in the Faculty of Forestry, University of British Columbia, Canada. She was previously Coordinator of the Amerindian Research Unit, University of Guyana (1985 to 2000) and Senior Social Scientist at the Iwokrama International Centre for Rainforest Conservation and Development, Guyana (2000 to 2003). Janette conducts long-term collaborative research with Indigenous Peoples and local communities in Guyana. Her research interests are forest governance, Indigenous natural resource management systems, forest concession systems and third-party forest certification systems.

**John Palmer** is a senior associate in tropical and international forestry with the Forest Management Trust, an ENGO based in Montana, USA. His experience of Guyana dates back to 1974, including UK-funded consultancies on forest finance and Iwokrama in the 1990s, and studies from 2006 onwards on the history and many illegalities in the forest and mining sectors. Guyana also figures in his current work on certification standards for quality of forest management.



# Mexico



There are 68 different Indigenous Peoples that inhabit Mexican territory, each of which speaks a native language of their own. These languages form 11 linguistic families, comprised by 364 dialectal variants. According to the National Institute of Statistics and Geography (INEGI), 25.7 million persons, that is 21.5% of the population, self-identify as Indigenous. 12 million inhabitants (10.1% of the population) indicate that they live in Indigenous households. In addition, 6.5% of Mexico's population is registered as speakers of an Indigenous language, representing 7.4 million persons.<sup>1</sup> Indigenous communities continue to be the most vulnerable in terms of the inequality they endure. Indeed, according to the National Council for the Evaluation of Social Development Policy (CONEVAL), 69.5% of the Indigenous population, that is, 8.4 million persons, are living in poverty, and 27.9%, that is, 3.4 million persons, live in extreme poverty.<sup>2</sup> In addition, 43% of speakers of an Indigenous language have not completed primary school, and 55.2% work in manual, low-skilled labor jobs.<sup>3</sup>

Mexico signed ILO Convention 169 in 1990, and in 1992 the country recognised that it is a pluricultural nation by amending Article 2 of its Constitution.

On 1 January 2019, the Zapatista Army of National Liberation (EZLN) observed the 25th anniversary of the start of its uprising and expressed its opposition to the infrastructure projects scheduled by the federal administration, such as the Mayan Train or the Trans-isthmus Corridor.<sup>4</sup>

## **Indigenous women in migration: from the domestic setting to the labour market**

**T**he presence of Indigenous women in current migrations is increasingly notable. As occurs with the rest of the migrant population, Indigenous migrant women come from the most marginalised zones – mainly the country's southeast and central regions. They are migrating into areas of greater economic development: certain cit-

ies, areas with agrobusiness development, tourist zones in several parts of the country, the northern and southern border regions, and even international destinations, particularly in the United States and Canada. The 2010 Population and Housing Census recorded that, out of 174,770 Indigenous-language speakers migrating between Mexican states, 82,416 are women, that is, 47% of the total. In the case of those migrating internationally (37,117), women account for 6,858 persons, representing 18% of the total. These are approximate figures, considering the undercounting of the Indigenous population due to denial of ethnicity and, in some cases, loss of one's maternal language, which is the criterion used by INEGI to identify the Indigenous population. This phenomenon is accompanied by discrimination against Indigenous Peoples, as has been documented in studies on the issue: "In the places of destination there is a strong tendency to discriminate against Indigenous migrants." Women are particularly vulnerable to discrimination, due to being triply discriminated: as migrants, as women and as Indigenous persons.

According to INEGI, 20 states in Mexico recorded the greatest migratory flow of Indigenous women. This trend can also vary depending upon the ethnic group. For example, in 2006 an increase was recorded in the migration of women and complete families, displaced from their state or from the country, although migration of the male population is indicated as greater. Nonetheless, the presence of Indigenous women's migration was not suitably reflected in state-by-state data, due to undercounting. INEGI does not even quantify Indigenous women by ethnic group and thus further limits the measuring of this phenomenon. On said account, qualitative information needs to be considered, even if from prior years, in order to reconstruct migration history. According to ethnography studies conducted in the country's Indigenous zones by several different researchers, women who participate in migration are Mazahuas, Mixtecas, Pimas, Tepehuas, Pames, Otomíes, Nahuas, Amuzgas from Guerrero, Popolocas, Tojolabales, Zapotecas, Triquis, Yaquis and Coras. That phenomenon went unnoticed as a general trend for the Indigenous population, even though it was recorded in those studies.

There are multiple causes of Indigenous migration. Structural factors are nonetheless the principal causes for the continuing presence of the phenomenon. Indigenous women also have the highest illiteracy rates, highest school dropout rate, fewest job opportunities, highest rates of suffering domestic violence, health problems and risks during pregnancy, and high levels of fecundity and mortality, among other fac-

tors. Working as domestic servants or in the informal economy – restaurants, *maquila* assembly plants or even begging<sup>5</sup> – are some options through which Indigenous women obtain income in the cities. Work in agricultural zones is another option to which they resort.

## **Megaprojects, consultation, Indigenous and Afro-Mexican Peoples**

Mexico recognises itself as a pluri-diverse country, with enormous contrasts, especially in economic terms. Yet this fails to be reflected in the Federal Government's strategy for combatting corruption, initiated with a transformation of programmes for the socially disadvantaged population. As noted in the 2019-2024 National Development Plan, these programmes have included measures, such as economic supplements distributed to individuals, without considering the cultural perspective or worldview of Indigenous Peoples. Such an approach ignores the organisation and solidarity practices of Indigenous Peoples derived from their internal governance systems. Thus, it undermines the community structure of Indigenous Peoples and weakens their social fabric.

The national development vision has also been imposed in Indigenous territories through infrastructure megaprojects without considering the participation, needs and aspirations of Indigenous Peoples, thus jeopardising both the survival of Indigenous Peoples as collective entities and that of their territory, as was indicated by the UN representative.<sup>6</sup> For example, the current federal administration considers the Mayan Train to be the most important project for infrastructure, socio-economic and tourist development. The project covers a 1,525-kilometer route through the states of Chiapas, Tabasco, Campeche, Yucatán and Quintana Roo, with 15 stations, and an approximate investment of 120 to 150 billion Mexican pesos.<sup>7</sup> Certain Indigenous communities, however, consider the project to be an imposition, and have reacted to it by filing constitutional relief actions in the Federal Courts. Such is the case of Xpujil, Calakmul, in Campeche, which won a provisional suspension of the project. The grounds for their court action include failure to be informed of the technical studies and of the Environmental Impact Statement; and that the consultation was spurious, fraudulent and in violation of international human rights standards. Yet the greatest opposition to the megaprojects is represented by the EZLN, whose

members have stated they are willing to die as protectors of the earth before permitting those projects to go ahead.<sup>8</sup>

The procedures outlined by the General Act on Ecological Equilibrium and Protection of the Environment make it difficult to guard against adverse environmental impacts, because that law requires the communities to request the consultations once there is an Environmental Impact Statement and not before the project is designed.<sup>9</sup> The Indigenous Peoples' right to consultation is based on Article 2 of the Constitution and Article 6 of ILO Convention 169, and must be free, prior and informed consultation (FPIC). That right also forms a part of Indigenous Peoples' right to autonomy, self-determination and development. The Supreme Court of Justice of Mexico, however, has turned this right into a mere administrative procedure, restricting the content of case law from the Inter-American Court of Human Rights by finding that there must be a significant impact<sup>10</sup> in order for a consultation to take place; and maintaining that a consultation shall be considered prior if conducted before the project is executed.<sup>11</sup>

In this context, the Federal Constitution was reformed to include Afro-Mexican peoples and communities in Article 2(C) of the Constitution, without expressly indicating their rights. This makes their inclusion obligatory in the upcoming 2020 National Population and Housing Census, which, for the first time, contains the question: "Do you, by reason of your ancestry, traditions, customs, consider yourself to be Afro-Mexican, black or of African descent?"<sup>12</sup>

This year the Senate ratified two international instruments: the Inter-American Convention Against All Forms of Discrimination and Intolerance, and the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance. Nonetheless, Indigenous Peoples and Afro-Mexicans have been exclusively recognised as cultural subjects and not as entities with legal personality under public law within the legal system, which prevents them from exercising such legal personality to defend their collective rights and their assets.

## **Murders of Indigenous activist rights and environment defenders**

According to several international organisations, such as Global Witness and Amnesty International, Mexico remained one of the most

dangerous countries in 2019 for activists who defend the environment and human rights. These activists have faced harassment, threats, repression and attacks against their lives. In 2019, at least 14 activists and defenders of the environment belonging to several different Indigenous Peoples were murdered, some of whom had already reported to the authorities that they had been threatened. These crimes, in their majority, were committed in the states of Chiapas, Chihuahua, Morelos, Oaxaca, Puebla, Tabasco and Veracruz, in the context of territorial conflicts, opposition and resistance to megaprojects involving infrastructure, extractive industries and energy production.

One of the most representative cases of violence and impunity with which Indigenous Peoples are faced is the murder of Nahua peasant activist Samir Flores Soberanes, who was a communicator and member of the Peoples' Front in Defense of the Earth and Water of Morelos, Puebla and Tlaxcala. Flores Soberanes was opposed to the Morelos Integral Project and the two Thermoelectric Powerplants in Huexca, as well as to the Apatlaco River aqueduct and gas pipeline. In the early morning hours of 20 February 2019 he was killed while leaving his home in Amilcingo, Morelos, while heading towards the *Amiltzinko* community radio station, which he founded in 2013.<sup>13</sup> The case was especially relevant, since only two days later the public consultation was held for the thermoelectric plant to go into operation. According to official data, 59.5% of the population voted in favor of the project, with 55,715 citizens participating in the consultation.

## **25 years of the Zapatista Army of National Liberation (EZLN)**

The first of January 2019 marked the 25th anniversary of the EZLN uprising, which took place in San Cristóbal de las Casas, Chiapas. The EZLN continues to be an intense opponent to the Mexican State. Indeed, even though it has been a quarter of a century since they declared war, their demands have not been resolved. In the framework of this anniversary, Subcomandante Moisés, spokesperson of the EZLN, expressed his opposition to the current federal government's economic and infrastructure projects.

In an environment of constant conflict between the Federal Executive Branch and the EZLN, several activities took place over the course of

the year. For reasons of space, we will describe just two of them. On 21-22 December 2019, in San Cristóbal de las Casas, the EZLN, in conjunction with the National Indigenous Congress and the Indigenous Council of Government, held the Forum in Defense of Territory and Mother Earth, attended by 921 participants and representatives from 25 states of the Mexican Republic and 24 countries. The principal discussion revolved around the various megaprojects, such as hydrocarbon extraction and construction of gas pipelines; hydroelectric, thermoelectric and wind power plants; and mining, agroindustry and tourism projects; which adversely affect the Indigenous communities by plundering and polluting their territories. At the forum's conclusion, it was agreed to hold the "We are All Samir" Days of Action in Defense of Territory and Mother Earth, scheduled for February 2020. Subsequent to the forum, the EZLN, from 27-29 December, held the Second International Gathering of Women Who Struggle, with the purpose of reflecting upon, highlighting and denouncing violence against women, as well as developing strategies for putting an end to the violence. The gathering took place at the "Following the Footprints of Comandanta Ramona Center of the Caracol ("Good Government Council") of Tzots Choj ("Whilwind" in the Maya language)", in which more than 4,000 women from 49 countries participated. During the three days, activities took place that enabled the women to share their experiences and establish ties of mutual support to combat gender-based violence. One of its principal functions was to create support and discussion networks among women from different places who are defenders of territory.<sup>14</sup> We invite readers to visit the Radio Zapatista website to learn more about these activities: [radiozapatista.org](http://radiozapatista.org)

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**José del Val**, Director of the University Program for Studies of Cultural Diversity and Interculturality (PUIC-UNAM); **Juan Mario Pérez Martínez**, Technical Secretary of PUIC-UNAM; **Carolina Sánchez García**, Academic Secretariat of PUIC-UNAM; **Elia Avendaño Villafuerte**, Indigenous Peoples and Blacks Rights Area of PUIC-UNAM.



# Nicaragua



There are seven Indigenous Peoples in Nicaragua: the Chorotega (221,000), Cacaopera or Matagalpa (97,500), Ocanxiu or Sutiaba (49,000) and Nahoá or Náhuatl (20,000) who live in the centre and north of the Pacific region, and the Miskitu (150,000), Sumu or Mayangna (27,000) and Rama (2,000) who inhabit the Caribbean (or Atlantic) Coast. Afrodescendant peoples also enjoy collective rights in accordance with the Political Constitution of Nicaragua (1987). They are known as “ethnic communities” in national legislation. These include the Creole or Kriol (43,000) and Garífuna (2,500). The Sandinista National Liberation Front (FSLN) came to power in Nicaragua in 1979, and subsequently had to face up to the armed forces of the “Contras”, financed by the United States. Peasant farmers from the Pacific and Indigenous Peoples from the Caribbean Coast participated in the Contras. In 1987, following an amicable settlement of the conflict through the Inter-American Commission on Human Rights (IACHR), and with the aim of bringing the Indigenous resistance to an end, the FSLN created the Autonomous Regions of the North (RACCN) and South (RACCS) Caribbean Coast, based on a Statute of Autonomy (Law No. 28). The Inter-American Court of Human Rights (IA Court) ruling in the case of the *Mayangna (Sumo) community v. Nicaragua* in 2001, meant that Law No. 445 was passed on the System of Communal Property of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of Nicaragua’s Atlantic Coast and the Bocay, Coco, Indio and Maíz rivers, recognising the communities’ right to self-government and creating a process for the titling of their territories. The state began the titling process for 23 Indigenous and Afrodescendant territories in the RACCN and RACCS in 2005, culminating in the provision of property titles. In 2007, Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples and, in 2010, it ratified ILO Convention 169. The Alliance of Indigenous and Afrodescendant Peoples of Nicaragua (APIAN) was formed in 2015.

The year 2019 was characterised in Nicaragua by the continuing imposition of parallel governments, the use of state violence against human rights defenders and the armed invasion of Indigenous territories.

## State-created parallel governments

The Indigenous and Afrodescendant peoples of the Autonomous Regions of Nicaragua's Caribbean Coast comprise 304 communities inhabiting 23 territories all of which were titled from 2005 onwards under the system of communal property. These now cover an area of 37,841 km<sup>2</sup>, or 31.16% of the national territory. These peoples have their own mechanisms for internal governance and natural resource management, known as Indigenous and Afrodescendant communal and territorial governments. There are also a further three levels of government: the national or central government; the municipal government and the regional government (regional councils and governments), all elected and with their own autonomy. These four levels of government have been recognised by the Political Constitution of the Republic of Nicaragua and Law No. 28 since 1987, and have been implemented by Law No. 445 since 2003.

The Nicaraguan state, however, has been undermining the self-determination and autonomy of the Indigenous and Afrodescendant peoples of Nicaragua and their governments by creating communal and territorial governments "parallel" to those legitimately elected by the people according to their own customs. The state is instead imposing governments made up of public officials and/or members of the FSLN party structure.

These party political structures have changed name over time, primarily because they have fallen into disrepute. They used to be known as the "Sandinista Youth", the Citizen Power Councils or Boards,<sup>1</sup> the Sandinista Leadership Committees and Family Boards,<sup>2,3</sup> but, particularly since 18 April 2018,<sup>4</sup> they have been known popularly as "Sandinista mobs", roving gangs or parastatal bodies. The members of these structures enjoy perks, privileges and even impunity from the state.

These parallel governments are organised geographically with the aim of ensuring social control, monitoring and intimidation of community leaders or anyone opposed to the government and/or FSLN. They

also exert direct influence over the election of regional, municipal and national officials. They are furthermore suspected of having systematically participated in electoral fraud to the benefit of the FSLN, as was repeatedly denounced from 2014 onwards by the Indigenous YATAMA party (Yapti Tasba Masraka Nanih Aslatakanka/Children of Mother Earth) during the Caribbean Coast elections.<sup>5</sup>

In the case of the Indigenous and Afrodescendant peoples, the aim of creating parallel governments is to destroy the legitimately constituted traditional governments, and this in the following ways: the Regional Councils (responsible for issuing certifications) refuse to recognise the status of the traditional authorities;<sup>6</sup> the provision of state budgetary allocations is illegally made conditional upon obedience to the authority of the Regional Councils;<sup>7</sup> coercion and threats are made against the legitimately elected leaders and authorities and their families; and their activities of territorial defence are criminalised.

This imposition of parallel governments over the traditional authorities facilitates the grabbing of Indigenous and Afrodescendant peoples' lands and natural resources and promotes the national-level party political and government agenda, to the detriment of these peoples' rights to self-determination and autonomy.<sup>8</sup>

The parallel governments are also used to endorse and approve all kinds of extractive projects. For this, the state either intimidates and co-opts some traditional leaders or the parallel governments simply sign the legal documents with little or no consultation of those affected. The state is thus trying to bypass the international standards on consultation required to obtain the free, prior and informed consent (FPIC) of the Indigenous and Afrodescendant peoples.

The following are just a few examples of the imposition of these parallel governments, the limitations this places on these peoples' right to self-determination and its adverse consequences.

## **The Autonomous Regional Council of the South Caribbean Coast imposes a parallel government on Rama and Kriol peoples**

Princess Dyann Barberena Beckford, a Kriol, was elected president of the Rama and Kriol Territorial Government (GTR-K) on 9 December

2018. The Autonomous Regional Council of the South Caribbean Coast (CRACCS) refused to endorse Princess Dyann's territorial government,<sup>9</sup> however, and instead extended the mandate of the previous GTR-K president for six months, despite not having the legal power to do so given that such elections are the sole responsibility of the GTR-K Assembly.<sup>10</sup> Moreover, further exceeding its powers, the CRACCS Governing Board subsequently organised and ran an assembly to elect new authorities for the GTR-K on 30 June 2019, in which three of those "elected" were not present for the "election". Princess Dyann has lodged an appeal through the Nicaraguan courts but no decision has yet been forthcoming.<sup>11</sup>

## **The case of the Kamla defender and leader**

The Miskitu community of Kamla reported an attack by armed youths linked to the FSLN during the year. Kamla's members had been peacefully protesting the imposition of communal authorities by the Regional Council, which was preventing them from holding new elections. Five people were injured in the attack, including their leader, Marcela Foster, who suffered a broken arm and lost her sight in one eye.<sup>12</sup> The Indigenous YATAMA party has repeatedly accused the coordinator of the Regional Autonomous Government of the North Caribbean Coast of being the leader of these armed groups in the RACCN.<sup>13</sup>

## **APIAN warns the World Bank**

The Alliance of Indigenous and Afrodescendant Peoples of Nicaragua (APIAN) reported last year that the state had submitted a number of "agreements" reached between the regional governments and the different communal and territorial governments to the World Bank. Such agreements have the effect of robbing these peoples of their natural resources as they "transfer ownership of carbon emissions reductions" to the Regional Councils, thus cancelling the peoples' rights to their natural resources and handing these over entirely to the Nicaraguan government.<sup>14</sup> APIAN urged the World Bank to conduct an exhaustive investigation and consult the true representatives of the Indigenous Peo-

ples with regard to the United Nations Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation (REDD+) of the Forest Carbon Partnership Facility (FCPF). Meanwhile, other civil society organisations were calling for some US\$ 55 million of funds to be withheld from the state for fear that the money would be used to repress the popular resistance of the Nicaraguan people, ongoing since April 2018.<sup>15</sup>

## **Nicaragua's Grand Interoceanic Canal concession terminated**

Law No. 840, and its Framework Concession Agreement,<sup>16</sup> granting the concession for Nicaragua's Grand Interoceanic Canal (GCIN), includes a clause that automatically terminated the concession,<sup>17</sup> on 16 June 2019, for lack of funding<sup>18</sup> "without the need for a party to take any action, on the first date that each Concession (of the Sub Projects) has expired". However, the state subsequently created a "Minister Chair of the Board of the Grand Interoceanic Canal of Nicaragua Authority"<sup>19</sup> and continued granting funds.<sup>20</sup>

It has also been reported that threats, deceit and co-optation of some members of the GTR-K have been used to get an agreement signed with the Grand Interoceanic Canal of Nicaragua Authority for the lease in perpetuity of 263 km<sup>2</sup> of land on which communities are living. With the granting of the GCIN concession, the process for titling the traditional lands of the Indigenous, Creole and Black Community of Bluefields (CNCIB) was aborted. The state created a parallel government and issued a title for only 7% of the claim, ignoring the remaining 93%. The title was issued by the President of the Republic, Daniel Ortega, himself, to the CNCIB parallel government. These peoples have thus turned to the IACHR, where the case is currently at the merits stage (Case No. 13,615).

## **Indigenous defenders persecuted and threatened**

Threats and persecution of defenders<sup>21</sup> continues, as well as of journalists<sup>22</sup> who report on the situation of Indigenous Peoples,<sup>23</sup> and some of

them have had to go into exile.<sup>24</sup> YATAMA has thus denounced the fact that a number of its most important leaders have been murdered in recent years,<sup>25</sup> while the lawyer Mark Rivas<sup>26</sup> was chased and arrested by motor cyclists linked to the FSLN in September 2019.<sup>27</sup> On 3 January 2020 he turned up dead with a bullet to the head, and the fear is that – as in previous cases – the circumstances of his death will never be clarified.<sup>28</sup>

The IACHR has granted a new period for the Nicaraguan state to comply with the judgment requiring it to investigate the murder of Francisco García Valle, husband of the lawyer María Luisa Acosta, murdered in revenge for her work as a defender of the Indigenous and Afrodescendant peoples of the Caribbean Coast of Nicaragua.<sup>29</sup> Another part of the judgment in the case of *Acosta et al v. Nicaragua* also requires protective mechanisms and investigation protocols to be established in cases of threats or danger to human rights defenders, something which the state has refused to produce or implement.

## **“Mískitu resistance: a struggle for territory and life”**

Mayangna and Mískitu communities continue to be threatened, attacked and displaced by settlers and paramilitaries close to the FLSN.<sup>30</sup> Heavily armed non-indigenous groups attack and burn their houses,<sup>31</sup> kill their livestock and occupy farmland that is essential for these people’s survival. The government continues to do little, thus creating a climate of impunity.

Moreover, on 8 May 2019, the Justice and Human Rights Centre of the Atlantic Coast of Nicaragua (CEJUDHCAN) and the Justice and International Law Centre (CEJIL) raised the serious situation of violence being suffered by defenders of these peoples in a thematic hearing before the IACHR<sup>32</sup> and, in August 2019, submitted a report entitled: “Mískitu resistance: a struggle for territory and life” to raise awareness of the humanitarian crisis being suffered by the 12 communities of the Mískitu people, a crisis that has left dozens murdered, kidnapped, and physically or sexually assaulted.<sup>33</sup>



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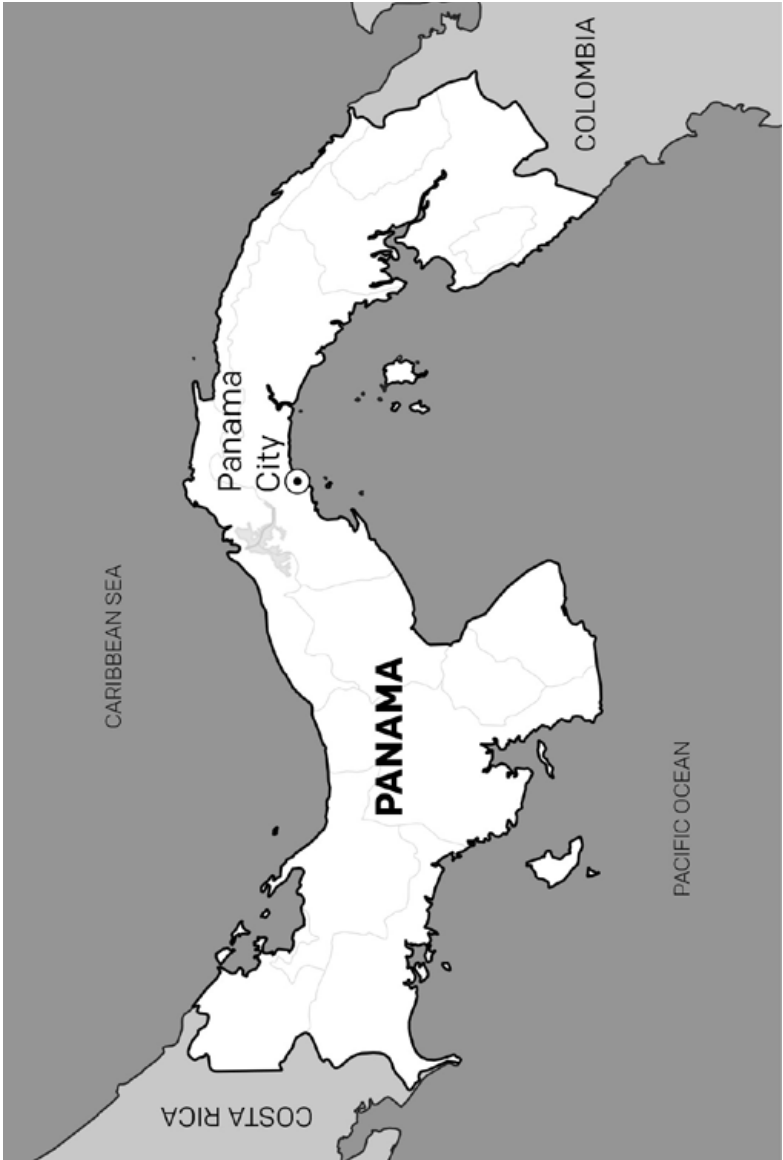
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**Dra. María Luisa Acosta** is an Associate Professor at the Faculty of Humanities and Department of Legal Sciences, Central American University (UCA), Managua, Nicaragua. She is Coordinator of the Centre for Legal Assistance to Indigenous Peoples (CALPI), [calpi2014@gmail.com](mailto:calpi2014@gmail.com) <http://calpi-nicaragua.com>



# Panama



The 2010 national census concluded that 438,559 or 12.8% of the country's 3.4 million inhabitants self-identified as Indigenous. The Gunadule, Emberá, Wounaan, Ngäbe, Buglé, Naso Tjer Di and Bri Bri peoples have all obtained recognition and had their territories demarcated, albeit according to the vagaries of the state's political administrative divisions, and are currently represented by 12<sup>1</sup> congresses and councils. This assessment becomes less positive when framed in the context of Indigenous Peoples' rights and development, however, as only three *comarcas* (regions)<sup>2</sup> have been established at the provincial level, and it is only these authorities that are able to implement public policy without reservation. Although the Kuna de War-gandi and Kuna de Madungandi peoples are recognised by law, the legislation created a category of "*corregimiento*" (sub-district) for them and so they receive virtually no government support. As for the communities that remained outside of the *comarcas*, they are organised on collective lands. The government accepted and recognised the existence of 25 Indigenous territories for titling in 2019.

Panama has not ratified ILO Convention 169 but did vote in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

## Electoral year in Panama

**T**he Democratic Revolutionary Party (PRD) won the 2019 elections with its slogan of "Joining Forces" and will be in office for a five-year term (2019-2024). Its leader was sworn in on 1 July 2019. Indigenous Peoples' participation in the elections was solely through the political parties but they hoped that the president would appoint Indigenous professionals to key posts relating to territorial rights, lands, natural resources, forests and so on. After only a few days in office, the president appointed Ausencio Palacio from the Ngäbe people<sup>3</sup> to head up the Vice-Ministry of Indigenous Affairs within the Ministry of the Interior and then, not long after, Alexis Oriel Alvarado Ávila from the Gunad-

ule people<sup>4</sup> to run the National Department for Indigenous Lands and Municipal Assets at the National Land Administration Authority (ANATI). The Director of Indigenous Lands was unanimously ratified in the National Assembly while the Vice-minister was signed in at the Presidency of the Republic.

In addition, the Panamanian government created *comarca*-level departments within the ministries that were lacking them, with 13 departments being established for the Gunayala, Ngäbe-Buglé and Emberá-Wounaan *comarcas*, including the Institute for Human Resource Training and Use (IFARHU), the Ministry of Agricultural and Livestock Development (MIDA), the Ministry of the Environment (MiAmbiente), Health and Education, the National Institute for Professional and Human Resource Training (INADEH), and the Ministry of Social Development (MIDES), all with local staff.

## Setting the legal criteria for allocating collective lands

Conversations and exchanges commenced in August 2019 between the Indigenous and national authorities with regard to the previous government's decision not to grant approval for the titling of the collective lands of Indigenous communities that remain outside the *comarcas*, above all when these lands have protected areas superimposed on them, citing Law 72 of 2008 and national and international environmental laws as justification.<sup>5</sup>

The National Coordinating Body of Panama's Indigenous Peoples (COONAPIP) and the Indigenous territories that are still not legally recognised, represented by their traditional authorities,<sup>6</sup> managed to get the newly elected officials at MiAmbiente to reconsider their position and issue Resolution No. DM-0612-2019 of 29 November 2019. This resolution establishes the legal criteria to be applied by MiAmbiente to determine the viability of granting approval for Indigenous communities' requests to allocate collective lands when submitted through their recognised traditional authorities and when their lands are partially or totally covered by protected areas or state-owned forest.<sup>7</sup>

This resolution resolved four fundamental issues in Law 72 of 2008 by which MiAmbiente was maintaining its ban on authorising the allo-

cation of collective lands to the 25 Indigenous territories whose local authorities were continuing to demand it:

- An exception may be made for Indigenous territories that partially or totally overlap with areas protected as state public property<sup>8</sup> or lands of Indigenous communities protected as state-owned forest.<sup>9</sup>
- MiAmbiente undertakes to communicate officially and in writing to the Vice-Ministry of Indigenous Affairs to ascertain, by means of a technical report, whether the occupation of these lands actually began before the creation of the protected area in question or the entry into force of the law declaring state-owned Forest inalienable.
- Once proven that the occupation of Indigenous territories is traditional, the order will be given to continue their processing. ANATI will resolve any problems through the National Directorate of Indigenous Lands and Municipal Assets.
- And, lastly, the Indigenous communities will draw up a plan for sustainable natural resource use and community development, to be approved by MiAmbiente. This plan will form the specific environmental management tool applicable to overlapping areas and will be fully incorporated into the conditions by which ANATI allocates the collective title.

## Leadership of Indigenous authorities

Traditional authorities played a clear and notable role in getting Resolution No. DM-0612-2019 issued, thus making MiAmbiente's titling of collective lands possible in protected areas and state-owned forest. This leadership can be traced back to three main epicentres: the general chief of collective lands (representing COONAPIP), the highest authority of Tagarkunyala (representing the Gunadule) and the National Congress (representing the Wounaan). Other forces also had a significant influence, however, such as the Emberá Ējuä So, Bri Bri and Naso Tjer Di communities from the hydrographic basin of the Panama Canal.



## **Relations between state authorities and Indigenous Peoples**

In addition to relations with MiAmbiente, ANATI and the Vice-Ministry of Indigenous Affairs, 2019 also saw conversations initiated with the Ministry of Education with regard to producing the implementing regulations for Law 88 of 22 November 2010,<sup>10</sup> as these are still pending. Talks were also held with the Ministry of Health on Indigenous medicine. On 20 November 2019,<sup>11</sup> a Care and Learning Centre was inaugurated: Ina Ibegungalu, promoted by the General Congress of Guna Culture and its Institute for the Cultural Heritage of the Guna People of the *Comarca* of Gunayala.

## **Youth, women's and Indigenous authorities' participation in national and international events**

### **World Youth Day**

2019 began with World Youth Day in Panama.<sup>12</sup> This was a major event involving Indigenous youth representing 40 native peoples from 12 countries around the world. This event was particularly noteworthy for the depth and clarity of its messages. The Indigenous youth reflected on issues such as:

- The living memory of Indigenous Peoples,
- The importance of living in harmony with Mother Earth, and
- Playing a leading role in the construction of another possible world.

### **10th Vulnerable Central America: United for Life Forum**

In October 2019, Dionilda Gil Carpio, an Emberá woman, participated in the 10th Meeting of the Vulnerable Central America: United for Life Forum<sup>13</sup> in Costa Rica, a group that is coordinating the efforts of civil society and 150 social and governmental organisations from Guatemala, Honduras, Nicaragua, El Salvador, Costa Rica, Panama and Chile. A Civil Society Position Paper was drawn up in the context of the Pre-COP25, calling on the international community to take heed of the human rights violations being committed against environmental defenders and those defending the territories of Central America.

### **Gunayala Youth Congress**

One of the most important aspects of the organisational rights process in 2019 was the formal establishment of a Youth Congress<sup>14</sup> in Gunayala *comarca*. Their general assembly considered issues such as territorial defence, drugs and agricultural production, ensuring that young people are involved in resolving these problems in Gunadule communities.

## **Participation in national projects**

### **Emberá Ējuā So Territory and non-carbon benefits**

The Emberá Ējuā So Territory, in the hydrographic basin of the Panama Canal, has since April been participating in the initiative to institutionalise non-carbon benefits (NCB). The aim<sup>15</sup> of this initiative is to establish NCB in climate change mitigation and adaptation strategies for forests. This has taken its starting point in the Emberá Ējuā So Indigenous Territory where the collective title to 88,225 hectares has been requested for the Emberá Puru, La Bonga, Emberá Drua, Parara Puru and Tusipono communities.

The intention is to close the communication and knowledge gap between local communities whose lives depend on the forests and decision-makers who are trying to stop deforestation and thus encourage climate change mitigation and adaptation. It is important for the Indigenous communities to be able to develop and advocate for practical adaptation measures in the local communities.

This year, together with an adviser, 13 young people from Emberá Ējuā So collected, analysed and systematised NCB-type experiences and practices, validated the issues and prioritised them into a rough list. The first task was to define the concept in order to help identify NCBs and establish an outline of the concept. This field work has been of great value in the search for better practices, both in terms of a practical evaluation of the model as a tool for identifying already existing NCB and to promote new activities.

### **Panamanian Indigenous Peoples' Comprehensive Development Plan**

The USD\$80 million loan approved by the World Bank<sup>16</sup> to support the implementation of the Panamanian Indigenous Peoples' Development Plan, an historic milestone at the time of its approval, appeared to drift

aimlessly throughout 2019. Neither the previous nor the current government has managed to agree on a date to start project implementation with the Indigenous traditional authorities, who are beginning to lose hope. The aim of this project is to improve infrastructure and service quality in health, education, water and sanitation in the 12 Indigenous territories of Panama, on the basis of priorities established by the communities themselves and their traditional authorities.

## Notes and references

1. For example, thus far the Gunadule have been living in four independent autonomous territories: the Gunayala *comarca*, the Kuna de Madungandi *comarca*, the Kuna de Wargandi *comarca* and the Ancestral Tule de Tagarkunyala Ancestral Territory; the Emberá and Wounaan suffered the same fate when the Emberá *comarca* was created in 1983 on two plots of land known as Cémaco and Sambú in Darién Province; 43 Emberá and Wounaan communities remained outside and created their own governance structures, and so we therefore have the General Congress of Emberá and Wounaan Collective Lands, the Wounaan National Congress and the Alto Bayano Embera General Congress. In the west of Panama we have the Naso Tjer Di General Congress, the Bri Bri General Congress, the Ngäbe-Buglé and Peasant General Congress and the Buglé General Congress.
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3. Ministry of the Interior Panama, Vice-Ministry of Indigenous Affairs. Accessed 6 February 2020: <http://www.mingob.gob.pa/viceministro-de-asuntos-indigenas/>
4. National Land Administration Authority. Accessed 6 February 2020: [http://www.anati.gob.pa/Transparencia/Planilla/GASTOS\\_DE\\_REPRESENTACION%20NOVIEMBRE\\_2019.pdf](http://www.anati.gob.pa/Transparencia/Planilla/GASTOS_DE_REPRESENTACION%20NOVIEMBRE_2019.pdf)
5. “Los pueblos originarios retoman su lucha por las tierras colectivas.” Panamá América. 14 December 2019: <https://www.panamaamerica.com.pa/sociedad/los-pueblos-originaarios-retoman-su-lucha-por-las-tierras-colectivas-1151843>.
6. The Panamanian Indigenous authorities who supported the advocacy work with the Ministry of the Environment were the Tule de Tagarkunyala Ancestral Territory in Darién Province, the Emberá Éjuä So Territory in the Panama Canal hydrographic basin in Panamá Norte district, the Emberá de Bijibasal and Bajo Lepe Territory on the Tuira River in Darién, the Wounaan de Majé Chimán Territory in Panama Province and the Bri Bri Territory in Bocas del Toro Province.
7. Gaceta Oficial Digital No. 28912-A, Monday 02 December 2019, signed by Milciades Concepción, Minister for the Environment. Accessed 6 January 2020: [https://www.gacetaoficial.gob.pa/pdfTemp/28912\\_A/75936.pdf](https://www.gacetaoficial.gob.pa/pdfTemp/28912_A/75936.pdf)
8. Second paragraph of Article 51 of the Single Text of Law 41 of 1 July 1998 by which protected areas are publicly owned by the state
9. Article 12 of Law 1 of 3 February 1994. Article 12. “State-owned Forest is inalienable. Those state lands of forest aptitude on which agricultural or other activities are being carried out for the well-being of the population may

- be excluded from this declaration and it will be for the National Directorate of Agrarian Reform of the Ministry of Agricultural Development in line with INRENARE (now Ministry of Environment) to establish mechanisms for achieving this". [https://www.mida.gob.pa/upload/documentos/librosdigitales/PIDCAC/ley\\_1\\_de\\_3\\_de\\_febrero\\_de\\_1994\\_anam/ley\\_1\\_forestal-anam.pdf](https://www.mida.gob.pa/upload/documentos/librosdigitales/PIDCAC/ley_1_de_3_de_febrero_de_1994_anam/ley_1_forestal-anam.pdf).
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  11. Centro de Atención y Aprendizaje: Ina Ibegungalú. Accessed 21 February 2020: <http://gubiler.blogspot.com/2019/11/centro-de-atencion-y-aprendizaje-ina.html?m=1>; <https://duleina.org/>
  12. International Press Conference. Conclusiones de la JMJ Indígena, 2019. 22 January 2019. Areópago Comunicaciones. Accessed 6 February 2020: <https://www.youtube.com/watch?v=mIEPa0rZMd4>
  13. X Foro Centroamérica Vulnerable, ¡Unida por la Vida! Accessed 21 February 2020: <http://accssgt.org/actividades/wp-content/uploads/2019/10/Foro-CAV-CR.pdf>
  14. Argar, N° 4. Year 2. Boletín Informativo de los Congresos Generales de Gunayala de Gunayala. Inanii (November 2019). P.1 Accessed 17 February 2020: [https://www.gunayala.org.pa/ARGAR%20Informativo.Argar%204.Noviembre.%202019%20\(2\).pdf](https://www.gunayala.org.pa/ARGAR%20Informativo.Argar%204.Noviembre.%202019%20(2).pdf).
  15. EuroClima+. Beneficios no relacionados con el carbono. Accessed 6 February 2020: <http://euroclimaplus.org/proyectos-bosques/beneficios-no-relacionados-con-el-carbono>.
  16. World Bank. "Banco Mundial aprueba innovador proyecto para pueblos indígenas de Panamá", 15 March 2018: <https://www.bancomundial.org/es/news/press-release/2018/03/15/banco-mundial-aprueba-innovador-proyecto-para-pueblos-indigenas-de-panama>

**Heracio López Hernández** (Surub). Adviser/consultant on Indigenous Affairs. Philosopher by profession. University expert on Indigenous Peoples, Human Rights, Governance and International Cooperation. Post-graduate qualification in Mediation. Specialist in project design and management. [heracioliopez1960@gmail.com](mailto:heracioliopez1960@gmail.com)



# Paraguay



The population that self-identifies as belonging to one of the 19 Indigenous Peoples of Paraguay can be split into five different linguistic families: Guaraní (Aché, Avá Guaraní, Mbyá, Pai Tavytera, Guaraní Ñandeva and Western Guaraní), Maskoy (Toba Maskoy, Enlhet Norte, Enxet Sur, Sanapaná, Angaité and Guaná), Mataco Mataguayo (Nivaclé, Maká and Manjui), Zamucó (Ayoreo, Yvytoso and Tomárahó) and Guaicurú (Qom). According to the 2012 National Indigenous Population and Housing Census, the total Indigenous population numbers 112,848 people.

Chapter V of the 1992 Constitution recognises Indigenous Peoples as groups with cultures that precede the formation and organisation of the Paraguayan state, recognising their rights to ethnic identity, communal property, participation and an education that takes into account their specific cultures, etc.

Paraguay has a legal framework that guarantees and recognises a fairly wide range of rights to Indigenous Peoples, having ratified the main international human rights instruments, both in the universal and inter-American systems.

## Indigenous Peoples and climate change

Indigenous Peoples are among those who have contributed the least to the problem of climate change and they are also the ones who are making the most ecosystemic contributions in the struggle to combat its effects; yet they are also the ones who are suffering its worst consequences. The environmental impacts of climate change now represent a serious threat to Indigenous Peoples' rights. Increased rainfall and droughts are seriously affecting Indigenous food and nutrition levels. Deforestation on their territories, one of the greatest sources of global carbon emissions, is linked to extractive, agro-industrial and large infrastructure projects.

Heavy rainfall caused some of Paraguay's main rivers and streams to burst their banks towards the end of 2018, flooding the surrounding

areas. This situation deteriorated during the first quarter of 2019, continuing in some places until almost the middle of the year and affecting different departments of the country, including the capital itself. Given the country's topographic and mountainous landscape, the impact was even worse in some regions, for example the Western region, both in terms of area affected and vulnerability of the people and services compromised.

Constitutionally empowered to pass emergency laws in cases of public disaster or catastrophe, Congress passed laws declaring an emergency situation in the departments of Boquerón, Presidente Hayes and Alto Paraguay, in the first case for 90 days, the second for 120 and the last without any stated time limit.<sup>1</sup>

In such extreme conditions, Indigenous Peoples are disproportionately affected by natural disasters or public emergencies. They are particularly vulnerable to these frequent and foreseeable events because of a constant and structural denial of their rights, and the state takes no measures to mitigate the damage or to help them become more resilient to such events, for example by constructing roads or providing additional resources. Against this backdrop, Congress passed Law No. 6319/19 declaring a situation of national emergency in the Indigenous communities of the 19 peoples living across the Republic's territory. To give you just some idea, in Teniente Irala Fernández municipality (Presidente Hayes department) alone there were 12,000 victims, primarily in the Indigenous communities, who lost between 70 and 100% of their crops.

The bursting of the riverbanks also had a terrible effect on the health and lives of Indigenous people, who were exposed to a number of illnesses due to the damp and insalubrious conditions in the area.

Insufficient investment in road infrastructure for the Indigenous communities, added to the isolation caused by the flooding, resulted in a lack of access to assistance centres, health supplies and services, all of which a state is duty bound to provide within geographic reach of the most vulnerable sectors. And yet the state invests enormous sums from the public purse in constructing and maintaining roads linking the powerful economic sectors. Alongside this, the Indigenous Peoples, pushed to extremes and without any notable or substantive progress in their rights, with no all-weather roads offering access to their communities, are forced to consider different legal strategies such as lodging a right of way demand or expropriation laws.

In some cases, even if they manage to obtain transport, Indigenous communities find it impossible to reach the assistance centres. The fact that road concessions are privately run means there are “road committees”, mostly made up of representatives from the cattle companies. Their workers think only about preserving the embankments and so deny anxious Indigenous parents with seriously ill children permission to travel along roads closed due to rain, with the excuse that they have to monitor them.

In the middle of August 2019, a forest fire was recorded in the Paraguayan marshes, on the shared border with Brazil and Bolivia. This largely took hold in the Bahía Negra zone, affecting part of the Paraguayan Marshlands Reserve and part of the Río Negro National Park, and also extending to the area of the Chovoreca Natural Monument. Law No. 6373/19 declared an environmental emergency due to wildfires in the departments of Alto Paraguay and Boquerón in the Western region for a 60-day period. The law was approved on 22 August 2019 by the Chamber of Senators and on 4 September 2019 by the lower chamber. The government enacted it on the 9th of that month. The very next day, the NGO Guyrá Paraguay issued a press release bearing witness to the critical levels of active fires in other departments of the country such as Canindeyú, San Pedro, Amambay and Concepción, while ongoing uncontrollable fires in the Chaco were affecting the Chovoreca sector. A total of 4,592 wildfires were reported in the Eastern region during the week of 3 September, with the same pattern of forest burning being reported that was used in 2007 to prepare land for agriculture, even in some protected areas and forested areas where agriculture is prohibited.<sup>2</sup>

The National Forestry Institute (Infona) opened investigations into 15 instances of fire in Alto Paraguay department that were suspected of having been deliberately caused.<sup>3</sup> According to some estimates, around 312,528 hectares were affected in the north-east Paraguayan Chaco alone,<sup>4</sup> where 2,000 Indigenous people whose communities were directly affected by the fires recorded a large number of respiratory problems.<sup>5</sup>

## **Approval of the prior consultation protocol**

One of the most celebrated and promoted actions of the government in 2019 was the approval of Decree No. 1039/18 on the “Protocol for a pro-



cess of free, prior and informed consultation and consent of Indigenous Peoples in Paraguay”.

## Discriminatory resolutions

The Paraguayan Indigenous Institute (Indi) has been issuing resolutions with a paternalistic and protectionist slant with regard to banning the sale and marketing of alcohol and drugs in the communities. They appear to be stuck in an historic paradigm that views Indigenous Peoples as the objects of protection rather than the subjects of rights.<sup>6</sup> The punishment for breaking these rules disproportionately affects leaders of Indigenous groups or communities because they attend public demonstrations with Indigenous children or adolescents, and the argument is that it would be exposing them to danger.<sup>7</sup> This is, however, in violation of Article 46 of the National Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The lack of a comprehensive and universal social protection system for Indigenous Peoples can be seen in the incomplete, isolated, irregular, sectoral and regionalised actions of the *Teko Porã*, Elderly and Sustainable Rural Development programmes – along with the assistance of the Department for National Emergencies (SEN) – and these poor efforts are clearly indicative of the state’s outstanding debt in this regard.

Nearly all Indigenous protests bear witness to this – and to an important process of own representation that goes far beyond any external support – and the state’s lack of desire to provide comprehensive social protection can be seen across all ministries, albeit in some more clearly than others, for example the Ministry for Public Works and Communications and the Ministry of Public Health and Social Well-being, as illustrated by the totally preventable deaths of Indigenous children due to impassable roads and a lack of primary health care.

The Abdo government and the Allen administration – as well as the current administration of Édgar Olmedo – have all been party to a gradual process of reducing and fragmenting the state’s indigenist policies, particularly in terms of the issue of territorial recovery, moving it towards a privatised model, punitive and minimal in relation to Indigenous Peoples and communities. Any possibility of progressing, con-

tinuing or opening a process for land recovery is thus being closed off, only available in final or simply procedural cases,<sup>8</sup> and this even relates to the rights of communities with titled lands who are being fiercely attacked and robbed by agribusiness using both legal and illegal means, for example, renting, invasion or eviction.

## **Territorial recovery**

### **The Tekoha Sauce case**

Despite living on their traditional territory, the Itaipú hydroelectric company considers that the Tekoha Sauce Avá Guaraní community have invaded the protected forest area of Limoy. The company therefore lodged a complaint with the courts in 2019 requesting a warrant for their eviction based on a report submitted in 2016 that states that this is a recovery and restoration area and consequently no kind of use is permitted.

However, at the same time as they are seeking to evict the Indigenous people through the courts, the Itaipú hydroelectric company has also been handing part of the reserved area over to agribusiness in the zone, where they have been operating a port for some 20 years without the necessary permits, according to the National Customs Office.<sup>9</sup> In addition, since 2000, an Environmental Management Master Plan has been used to cede plots for multiple uses within the reserved area, with a total of 24 current concessions so far and another 26 in the pipeline.

### **Better late (and little) than never? Titling takes 30 years**

Some of the state's noteworthy actions with regard to the territorial recovery of Indigenous Peoples include the cases of the Tarumanymi communities of the Mbyá Guaraní people of Luque; the Wonta Santa Rosa community of the Manjui people; and the Río Apa community of the Guaná people.

The first of these cases was an historic event. In May, 50 families from the departments of Canindeyú, Caaguazú, Guairá and Concepción received the title to eight hectares of land in Luque, purchased more than a decade ago by the then Secretariat of Social Action.<sup>10</sup> In the second case, in September, the community located in Mariscal Estigarribia

district was the beneficiary of the title to some 12,228 hectares.<sup>11</sup> Finally, after more than three decades of negotiations, the Río Apa community of the Guaná people obtained the consolidation of their traditional lands, coincidentally on International Day of the World's Indigenous Peoples.

The Guaraní community of Loma has had less luck despite having 10,079 hectares of state land recognised as a National Indigenous Colony since 1984. In more than 35 years of legal and administrative proceedings, they have been unable to obtain the title to their lands and, since 2010, have been suffering systematic threats and harassment from individuals who want to grab these lands.<sup>12</sup> Moreover, attacks on the Ysati community in Itakyry district were again reported this year, with houses and crops burned by unknown individuals,<sup>13</sup> the community already having been forcibly evicted by armed civilians.<sup>14</sup>

### **Compliance with judgments passed and friendly settlements reached through the Inter-American system**

During the first half of 2019, the Inter-American Court of Human Rights passed a resolution with regard to monitoring compliance with judgments passed in the cases of the Yakye Axa, Sawhoyamaya and Xákmok Kásek communities, which it had visited in 2017. There has been some progress in complying with the judgments passed and friendly settlements reached in these cases, for example, disbursement of the first instalment of three planned over three years for development projects with the stated communities. The establishment of committees to implement the community development funds has also been considered, included by the Paraguayan state in the same resolution, within the framework of complying with and implementing the judgments of the Inter-American Court and friendly agreements concluded through the Inter-American Commission in these cases. The commissioner from the Inter-American Commission, Joel Hernández, held working meetings in which cases progressing through this body were addressed in relation to complaints made by the Indigenous communities of the Ayoreo Totobiegosode people, Yaka Marangatu of the Mbyá people, and Kelyenmagategma of the Enxet people.<sup>15</sup>

## Observations of the Human Rights Committee regarding Indigenous issues

In July 2019, the UN Human Rights Committee approved its Concluding Observations on the state's fourth periodic report on compliance with the International Covenant on Civil and Political Rights.<sup>16</sup> It emphasised the need to implement the rulings of the Inter-American Court with regard to the Sawhoyamaxa, Yakye Axa and Xákmok Kásek cases, as well as to guarantee protection of the resources and lands of the Ayoreo Tobibegosode, in addition to strengthening the Paraguayan Indigenous Institute. It also indicated the need to guarantee effective access to conflict resolution procedures and to speed up the return and registration of land and natural resources, as well as ensure access to education and health for all Indigenous Peoples and to enforce the national consultation mechanism that guarantees free, prior and informed consent.

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**Mario J. Barrios Cáceres** is a lawyer and university lecturer. He is President of the *Directorio de Tierraviva a los Pueblos Indígena del Chaco*.



# Peru



According to the 2007 Census, there are more than four million Indigenous persons in Perú: 83.11% Quechuas, 10.92% Aymaras, 1.67% Asháninkas and 4.31% belonging to other Amazonian Indigenous Peoples. The Database of Indigenous or Native Peoples (BDPI) notes the existence of 55 Indigenous Peoples at present, who speak 47 Indigenous languages in the country.

On the other hand, 21% of the territory of Peru is covered by mining concessions, which are superimposed upon 47.8% of the territory of the peasant communities. Similarly, 75% of the Peruvian Amazonia is covered by hydrocarbon concessions. The granting of rights to outsiders over communal territories, the enormous pressure exerted by the extractive industries, the absence of territorial zoning and the failure to effectively implement prior consultation, aggravate territorial and social/environmental conflicts in Peru, a country that has signed and ratified the Indigenous and Tribal Peoples Convention No. 169 of the International Labour Organisation (ILO) and voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.

In 2019, Peru again endured a year of political convulsion, continuing the trend that has characterised the country since the 2016 elections. The most decisive point occurred on 30 September, when President Martin Vizcarra dissolved the Congress of the Republic.<sup>1</sup> The obstructionism of the Fujimori-aligned majority party and the fragmentation of the other political groups made this legislative period one of the most ineffective for the Peruvian parliament in modern history. One topic where debate was left pending in the legislature was the parliamentary ratification of the Escazú Agreement, an international treaty subscribed to by the Government of Peru, which requires Peru to implement a series of protocols for protection and conservation of the environment, with support from the United Nations (UN) and Economic Commission for Latin America and the Caribbean (ECLAC).<sup>2</sup>

Another regional phenomenon that had a national impact in Peru was the Amazon forest fire in mid 2019. Despite having its principal burn

points in Brazil, Bolivia and Paraguay, it also had a considerable impact on the Amazonian biomass in the Peruvian territory. As a result, issues related to protection and deforestation of the Amazonia resurfaced in the national debate. Illegal mining and illegal logging are two of the extractive activities that have spread most intensely in recent years in the rainforest. According to the National Forest Conservation Program of the Ministry of the Environment (MINAM), in the last two decades Peru has lost an average 123,000 hectares of forest per year, which not only has a direct influence on the propagation of forest fires, but has also impacted Indigenous territories and natural protected areas.

## Framework Climate Change Act

The goal at the start of 2019 was to approve the regulation in order to fulfill implementation of the *Framework Climate Change Act* (LMCC). Peru committed to creating such a regulation after it signed the Paris Agreement in 2015. Nonetheless, the discussion over this issue started to face problems when the “peasant rounds” stated they were being left out by MINAM from the prior consultation process for development of the regulation.<sup>3</sup> The explanation offered by MINAM at the time was that the rounds were not comprised of the group of Indigenous organisations registered by the Ministry of Culture. It was with such arbitrary exclusion of the peasant rounds that the discussions, debates and negotiations for the developing regulations under the *Framework Climate Change Act* commenced in February 2019.

MINAM was in charge of the prior decentralised consultation process with Indigenous organisations, which was not without its faults and logistic difficulties. In mid-July, agreements were reached regarding part of the Indigenous proposals, notably including the creation of the Indigenous Climate Platform (PCI).<sup>4</sup> The PCI constitutes an avenue of recognition of the work of the Indigenous Peoples and of their ancestral knowledge in the conservation of biodiversity. It is also in keeping with the United Nations Framework Convention on Climate Change (UNFCCC). The PCI was one of the Indigenous Peoples’ demands in the discussions over the regulation to the *Framework Climate Change Act*, and its creation was an important victory for the native peoples and an acknowledgement of their role in the fight against climate change.<sup>5</sup>



With respect to this point, a work group was created in November by MINAM with the aim of setting the functions of the Indigenous Peoples Platform.<sup>6</sup> The goals of this group, whose timeline is to work for six months, are to determine the functions and develop a roadmap regulating the participation of Indigenous Peoples in activities for the fight against climate change.

In the weeks thereafter, the negotiation process proceeded to a second phase within the framework of the prior consultation process between the Indigenous organisations and MINAM. After marathon sessions to reach closure, in late August a commitments document was concluded, although not all of the Indigenous demands were incorporated into that document. Among the notable progress made was recognition of Indigenous mechanisms focused on reducing greenhouse gases produced by deforestation and degradation of forests, among them Amazon Indigenous REDD+ (RIA) and Andean-Coastal Indigenous REDD+ (RIAC) as part of the National Forests and Climate Change Strategy. Other commitments were undertaken to ensure legal certainty for lands and territories and other collective rights of the Indigenous or Native Peoples as an enabling condition and the commitment to support Indigenous Peoples' access to national and international climate funds. A gender-based approach with cultural relevance was also reinforced within the national climate change strategy associated with the Indigenous Climate Platform.<sup>7</sup>

On January 1, 2020 the final text was published of the regulation to the *Framework Climate Change Act*, which is undergoing an evaluation by the Indigenous organisations. There are certain issues pending that the government has preferred to regulate once the regulation has been adopted and which will be undergoing negotiations for an agreement in 2020, for example the setting of sanctions related to forest carbon capture (REDD+).

## Situation of the Amazonia

As mentioned in the introduction to this chapter, deforestation is one of the principal problems for the Peruvian Amazonia. In addition to forest fires that affected the entire Amazonian biomass in South America, mafias have propagated in recent years that are engaged in illegal mining

and illegal logging in regions such as Madre de Dios and Ucayali. Added to that, a new problem arose in the Peruvian rainforest during 2019: The Amazon Waterway (*Hidrovía Amazónica*) project. This initiative of the Peruvian Government commenced in 2017, under the administration of Pedro Pablo Kuczynski, and has continued under the Vizcarra administration. The environmental impact of developing this series of riverway alterations is one of the main concerns for the Indigenous population and civil society in general. According to the concession document that dates back to 2017, dredging activities would be taking place at more than 13 shallow points, which would directly impact the Marañón, Hualaga and Ucayali Rivers. This work, as has been pointed out by the Wildlife Conservation Society, would entail the removal, suction, transportation and unloading of earth and river bottom materials, jeopardising the Amazonian ecosystems.<sup>8</sup> Controversy around the project further deepened when irregularities were found in the Environmental Impact Study, such as failure to take the legal framework into account that protects Indigenous communities, as well as a series of inconsistencies regarding cultural and environmental impact, in violation of the commitment signed by the Peruvian State when it subscribed to ILO Convention 169.<sup>9</sup> Even the Ministry of Transportation and Communications itself issued observations matching those of the report of the National Service for Natural Areas Protected by the State (SERNANP). In fact, the ministry admitted that the dredging work would negatively impact the Amazonian ecosystem and Indigenous Peoples.<sup>10</sup>

The controversial Amazon Waterway is a project that the Government of Peru and Parliament sought to impose, with support from certain legislators of the Fujimori aligned party, such as Carlos Tubino, the former representative of Ucayali, who always promoted this project. But the project started to take a favourable turn for Indigenous demands in mid-December, when the consortium in charge of the project's construction, Cohidro, notified the Ministry of Transportation and Communications that it would not go ahead with the project.<sup>11</sup> According to the official version issued by the consortium, it decided to halt the work due to negligence on the part of the Peruvian State, although in reality and in parallel, Indigenous organisations at all times criticised the negative impact of constructing such a waterway system in the Amazonia. Even so, the Vizcarra government announced that it would persist with the project in 2020.

This was not the only problem that plagued the Peruvian rainforest in 2019. In February 2019, a Supreme Decree was issued with the objective of conducting an urgent intervention in the fight against illegal mining and human trafficking in the Madre de Dios region, near the border with Brazil, given that these crimes have propagated in the southern rainforest of Peru ever since the Interoceanic highway was built.<sup>12</sup> Based on that decree, a series of police and military operations were conducted that broke up human trafficking bands, most of which involved encampments of illegal miners. The largest of these operations, Operation Mercurio 2019, targeted the illegal mining corridor known as La Pampa, which affected the buffer zone of the Tambopata National Reserve. Subsequent to these actions and the intervention by the military forces in the zone, it was reported in August 2019 that deforestation in La Pampa went down by 92% in comparison to 2018 rates.<sup>13</sup> Nonetheless, the problems in Madre de Dios associated with illegal mining continue. In late 2019 many miner encampments dislodged under Operation Mercurio moved to Indigenous territories on the outskirts of the Amarakaeri Communal Reserve,<sup>14</sup> an ancestral territory of the Harakbut people that was considered to be threatened by the arrival of the mining and human trafficking mafias as 2020 approached.

Finally, one of the greatest concerns for Indigenous communities of the Amazonia in Peru and throughout Latin America is the murder of community leaders and defenders, which, in recent years, is on the rise. In 2019 one of the most emblematic cases in Peru was the murder of 22-year old Cristian Java, who was killed in the area of the La Petrolera native community in Loreto. The crime, which has yet to be solved, occurred in April in the midst of a series of confrontations between the Indigenous communities of Loreto and a number of invader groups engaged in illegal logging. Specifically, Java, who belonged to the Kukama and Urarina ethnic groups, was murdered while conducting his environmental monitoring work in the zone.<sup>15</sup> A few days after this crime occurred, the Ministry of Justice adopted a protection protocol for human rights defenders, which includes protection for Indigenous leaders and environmental defenders.<sup>16</sup> Yet the protection of activists continues to be one of the great pending issues in the Amazonia.

## The Mountains, mining and protests

The Peruvian mountains became the scene of a mining conflict in 2019 that resulted in several levels of talks. The controversy revolved around the Las Bambas mining project, located in the peasant community of Fuerabamba, in the Apurímac region. Following the regional *paro* (extended protest mobilisation) and the trial against the community leaders of Fuerabamba in 2018, talks tensely resumed in March 2019, although the impasse remained the same: prior consultation. Since Fuerabamba was not included in the database of Indigenous Peoples of the Vice Ministry of Interculturality, the consortium led by the MMG Group, the administrators of the Las Bambas project, claimed there was no need for a prior consultation process in order to expand the project and use the roads that, in multiple spans, run through the communal territory.<sup>17</sup> This conflict once again unveiled the fragility of the Prior Consultation Act and its implementation.

Another of the demands that refuelled this conflict throughout 2019 was the demand by community members that the MMG Group accepts responsibility for the environmental liabilities generated by the extractive activities of the Las Bambas project, whose operations commenced in 2015. Discrepancies noted by the Fuerabamba community in the environmental report of the Environmental Evaluation and Oversight Entity (OEFA) created the possibility of a new regional *paro* in October 2019.<sup>18</sup> Two other problems evidenced in the course of the conflict in Fuerabamba were the criminalisation of protest and privatisation of the police service.

The first confrontation over the Las Bambas project occurred in 2015, when the MMG Group unilaterally modified the concession's Environmental Impact Study. Police intervened harshly in the protest and confrontation and arrested 21 community members. Nineteen of the arrested community members were prosecuted in the Cotabambas provincial court, which was interpreted as a clear act of criminalising protest given that the community members were protesting in defence of the use of their territory. After four years of administrative proceedings, the oral trial against the 19 community members commenced in May 2019 in a court case whose irregularities have been criticised within Peru and abroad.<sup>19</sup> The criminalisation of protest continues to be a

pending issue at a national level and will be one more challenge for the new Congress in 2020. In reaction to the trial against the community members, the Nuevo Peru delegation of the dissolved legislature introduced two bills in May.<sup>20</sup> The first sought to create a legal framework of protection in favour of rights defenders and to prevent the criminalisation of protest. The second had the specific objective of granting amnesty to the Fuerabamba community members who are being prosecuted in Apurímac and of counteracting MMG Group personnel who are calling for restitution to be ordered under civil law.

Another major problem involving this case involves the agreements signed between the mining company and the National Police of Peru. In the past 25 years, more than 150 agreements have been signed between extractive companies and the police, which has created a growing scenario of privatisation and police repression. The case of the Las Bambas project, where there was also such an agreement, is another clear example. Due to that, the Legal Defence Institute, alongside other human rights defence organisations, have filed a series of lawsuits against this type of agreement.<sup>21</sup> In mid-2019 at least three of these lawsuits had already reached the Constitutional Court, where the constitutionality of this type of agreement has to be decided. These cases, however, have yet to be processed. After the Congress was dissolved, and in the midst of a controversy over the reinstatement of the members of the Constitutional Court, that court's caseload has focused, among other things, on determining the constitutionality of President Vizcarra's shutdown of Congress.

Another mining project over which conflicts have dragged on for several years is Tia María, located in the southern mountainous zone of Peru. Subsequent to a series of confrontations between the farmers of Valle del Tambo in Arequipa, who are the principal stakeholders adversely affected by this mining project, the Mining Council of the Ministry of Energy and Mines granted a license in October for construction of the mining project's installations.<sup>22</sup> Opposition to the project was immediate and led to conflict. In the midst of this conflict, soon after it became acute, President Vizcarra had to intervene to halt the project once more in November 2019. He announced that the project would not be executed unless it received the social approval license from local residents.<sup>23</sup> For now the project license has been suspended. Yet in 2020 uncertainty will continue, since the Southern Copper Corporation is insisting upon the project's viability.

## Coast and sea

For the Peruvian coastal region, the El Niño climate pattern is a recurring threat, though it did not manifest itself as drastically in 2019 as it had in 2017. However, a suitable territorial governance response and the handling of farmer debt due to weather continue to be the main pending issues. In February 2019 the National Meteorology and Hydrography Service (SENAMHI) announced that a “mild” El Niño had occurred.<sup>24</sup> During the South Pacific Ocean summer only a few areas of the Peruvian coast were affected by rain, particularly, Chiclayo, the capital of the Lambayeque region, which was affected the harshest by flooding, though without loss of life. Nonetheless, the then Prime Minister Cesar Villanueva recognised that Peru was not prepared to handle a more severe El Niño,<sup>25</sup> thus evidencing the lack of preventive work.

In relation to the 2017 El Niño, reconstruction works continue in the cities of the Peruvian north. The city most affected at the time was Piura, which still has many projects pending. In late-2019, President Vizcarra visited this zone and offered to continue this work,<sup>26</sup> but in late December there were floods in parts of the Piura province, which foretells complications for the region’s summer.<sup>27</sup> Such news throughout 2019 serves as a reminder that much remains to be done for the adoption of a National Territorial Zoning Act. This is a historical debt of the Congress of the Republic undertaken to fulfill the goals of the multi-sectoral commission in charge of the National Study of the “El Niño” Phenomenon,<sup>28</sup> which was in charge of producing the scientific documents in support of territorial zoning and preventing natural disasters associated with El Niño.

Finally, one zone that has received the least attention when it comes to developing environmental legislation, but that has been the most affected by extractive activities, is the national waters of the Peruvian coast. The most significant announcement made in 2019 regarding this issue was that of Minister of the Environment Fabiola Muñoz who called for the creation of the “Grau Tropical Sea” National Reserve.<sup>29</sup> Although this designation has yet to become official, if it does, then the marine areas of Tumbes and Piura would be protected, not only against illegal fishing, but also against hydrocarbon extractive activities that harm marine ecosystems in the Pacific Ocean. The creation of another

protected area – El Dorsal de Nazca, on the coast of the Ica region – has likewise been announced, with a planned implementation somewhere between 2020 and 2021.<sup>30</sup> The creation of these protected areas would turn these zones into areas protected against extractive activities and earmarked for the conservation of biodiversity and research.

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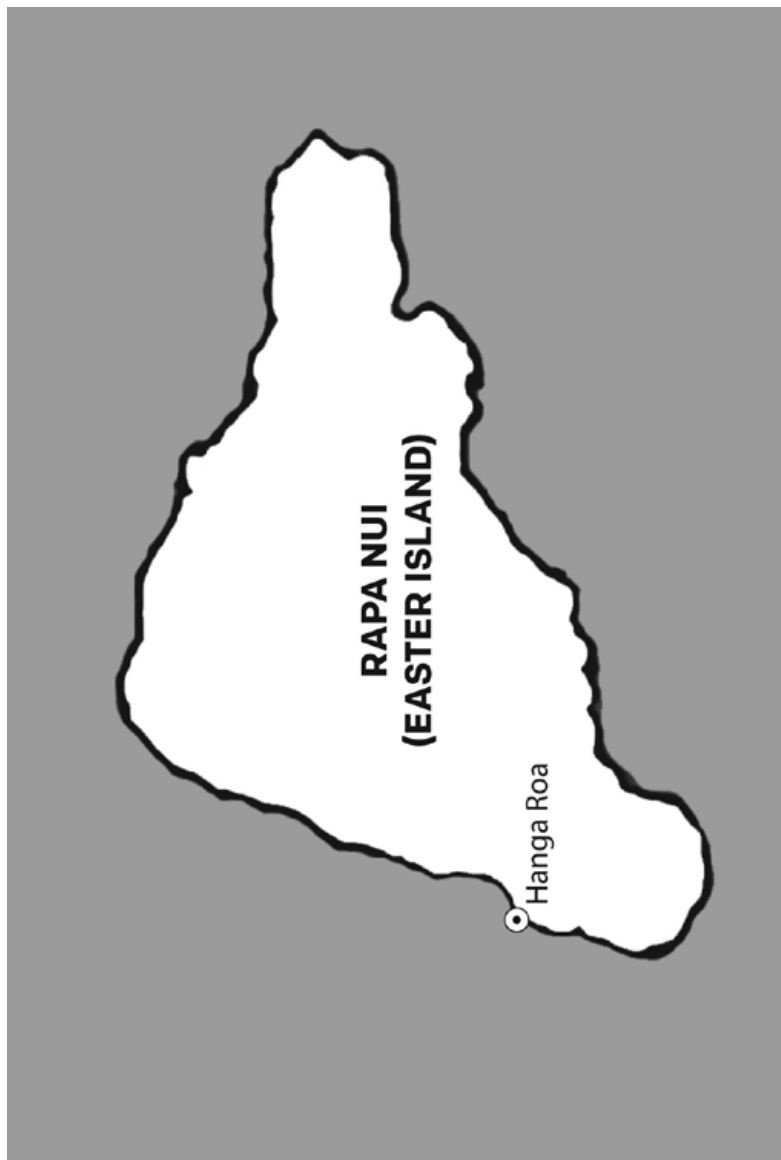


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**José Carlos Díaz Zanelli** is a journalist, a Servindi collaborator and a PhD Student of Cultural Studies at Rutgers University (New Jersey).



# Rapa Nui



The Rapa Nui people of Easter Island continued to demand recognition of their rights throughout 2019. This related largely to demanding that the Chilean state recognise and implement the International Annexation Treaty known as the “Agreement of Wills”, signed on 9 September 1888 and which forms the basis of the relationship between Rapa Nui and Chile, given that the Rapa Nui were never a conquered people.

In fact, the 1888 Agreement of Wills has the legal status of an international treaty signed between two autonomous peoples, the Rapa Nui and the state of Chile. This treaty was signed by King Atamu Tekena, accompanied by his Council of Chiefs, on the one hand, and the captain of the corvette Policarpo Toro, representing the Chilean government, on the other. The agreement, drafted in both Spanish and ancient Tahitian, contains four fundamental elements:

1. Rapa Nui cedes sovereignty of the island to the Chilean state.
2. Chile undertakes to respect the investitures enjoyed by the ancestral chiefs of the Rapa Nui people, as reflected in respect for their self-government and autonomy over the island.
3. The right to collective ownership of the land remains in the hands of the Rapa Nui people.
4. Chile undertakes to protect and provide well-being and development to the inhabitants of Rapa Nui, acting as a “friend of the place” (*Repahoa*).

Once this agreement (similar to the Waitangi Treaty signed between the Maori and New Zealand) was signed, however, the Chilean state systematically failed to implement it, leasing Rapa Nui island to French and British extractive companies during the first half of the 20th century, and thus submitting its people to constant human rights violations and slavery.

The Rapa Nui people suffered brutal subjection and abandonment by the Chilean state for 80 years, being treated as an inferior species. Only in 1966, just 54 years ago, were its people recognised as citizens and rights-holders by means of Law No. 16,441, known as “Easter Law”, bringing civilisation to Rapa Nui.

The Rapa Nui people faced a number of challenges during 2019, including:

## Administration of the Rapa Nui National Park

In November 2017, the Chilean state finally handed management of the Rapa Nui National Park over to the Ma'u Henua Indigenous community, established under Law No. 19,253 laying down rules for the protection, promotion and development of Indigenous Peoples and creating the National Indigenous Development Corporation, albeit as a concession, thus still ignoring the Rapa Nui's right to collective ownership of their territory (see *The Indigenous World* 2018).

The Rapa Nui people took over the running of their physical heritage during 2019, the main challenge being to continue the struggle to defend their territorial rights, rights that should be reflected in the state's full and effective recognition of the collective ownership of the Rapa Nui territory.

This resulted in practical terms in a continuation of the process initiated in 2015 through the Inter-American Commission on Human Rights (IACHR) aimed at seeking recognition of their rights to their territory, namely the whole area currently occupied by the people and including their sea. In January 2020, on the occasion of an *in loco* visit of the IACHR to Chile, the Rapa Nui people managed to obtain a special audience aimed at pursuing their demands through the international headquarters.

## Environmental crisis

In the context of implementing Law No. 21,070, which governs the right to reside, remain and move to and from the Special Territory of Easter Island, in May 2019 the Chilean state declared Rapa Nui territory to be in a state of "latency", a legal term meaning on the edge of environmental collapse and demographic saturation.

This crisis has arisen primarily due to the gradual overpopulation of the island over the last decade, resulting in exhaustion of the natural resources and increasing difficulties in processing their waste. These problems are due to the island's extreme isolation: some 3,700 km from the continent, it is geographically the most isolated inhabited place on the planet. This geographical position has also resulted in serious con-

sequences in terms of climate change. Rising sea levels and marine currents bringing plastics from the Pacific have resulted in a crisis that the Rapa Nui people are having to face alone without any support from the state.

Despite the numerous environmental clean-up projects implemented by the Indigenous Municipality of Rapa Nui, the Chilean state has arbitrarily refused to provide any support, denying them resources and abandoning Rapa Nui to its fate, implementing no concrete mitigation measures that would help the island overcome this crisis.

## **Social outcry in Chile and the new constitutional process**

In October 2019, Chile faced its greatest social crisis since the country's return to democracy in 1990. Abandonment by the state, inequality and constant abuse resulted in social unrest among the Chilean people, and this situation has continued unabated. One of the main consequences has been the state's opening the door to a new Constitution for the country, drafted by an egalitarian, diverse and inclusive constituent assembly. The will of the Chilean people will be made clear in a national referendum to be held on 26 April 2020.

Rapa Nui has made sure that its voice has been included in this process, raising its historic demands.

The island has suffered constant militarisation since the start of 2019, involving the transfer of dozens of members of the Special Police Force to the island, illegally removing people from their community spaces and causing provocation by sending heavily armed officers to any social or cultural meeting with the aim of repressing it.

Members of the Rapa Nui people living on the mainland also came out to protest in the streets, waving their flag and demanding recognition of the rights of their people throughout the whole country.

This social outcry resulted, in November 2019, in a constitutional discussion being held for the first time in the island's history. This lasted three days and enabled the whole Rapa Nui people to participate, expressly recognising their most representative institutions, through their Indigenous Municipality structure. This included the following: the Rapa Nui Council of Elders (most important traditional political/administra-

tive body of the people, descendants of the group of counsellors who accompanied the King to the signing of the 1888 Agreement of Wills), HONUI (assembly of political/supervisory clans composed of the leader or spokesperson of each of the 36 families that make up the Rapa Nui people), and the Rapa Nui Parliament (important body demanding and defending the autonomous and territorial rights of its people, composed of different Rapa Nui leaders).

These reflections of the Rapa Nui people and its leaders concluded that there was a profound need for the Chilean state to recognise and immediately fulfil the commitments made through the Agreement of Wills, that the state should act in good faith and satisfy the historic demands of the Rapa Nui people.

A popular consultation took place on 15 December 2019, in which more people than ever before participated in Rapa Nui. The final vote was 89% in favour of the Chilean State complying with the 1888 Agreement of Wills. The second question on recognising Indigenous Peoples in the new Constitution gained 96% approval, showing the clear will of the people.

Along the same line of thought, a discussion has now commenced with the Chilean National Congress (Chamber of Deputies and Senate) regarding the state's duty to recognise its Indigenous Peoples via their inclusion in the new Constitution, and to ensure their effective political participation via reserved seats in the country's new constitutional body.

The Rapa Nui thus presented their proposals to the Chilean Parliament, namely proportional Indigenous representation according to their demographic size as noted in the last Chilean census (2017). In this census, 12.8% of the population self-identified as a member of an Indigenous people, and so the state has been called on to ensure at least one reserved seat for each of Chile's Indigenous Peoples.

This position, which has been broadly supported by all the country's Indigenous Peoples, is currently under discussion within Parliament.

It should be noted that, in terms of political representation, the Rapa Nui people have historically been marginalised by different governments on the justification that, in terms of state formation, the Constitution establishes that Chile is a unitary state. Together with the state's abandonment of and lack of interest in the Rapa Nui, this means that all national legislation is created purely in line with a mainland vi-

sion, without any consideration for the reality, traditions, customs, culture or world vision of the Rapa Nui people, who are caught in a constant conflict between implementation of international human rights treaties signed and ratified by Chile and implementation of national legislation.

This conflict has become so stark that, for more than a decade now, the Rapa Nui people have been waiting for the state to demonstrate the political will to create a Special Statute of Autonomy for their island, something that was promised through a 2007 constitutional amendment in 2007 and which established the territory of Rapa Nui as a special territory within Chile.

**Benjamin Ilabaca De La Puente** is a Rapa Nui lawyer. He is Legal Director of the Municipality of Easter Island and legal advisor both to the Ma'u Henua Indigenous Community (Indigenous body running the Rapa Nui National Park) and to the Rapa Nui Council of Elders (main political and social body comprising clan chiefs of the Rapa Nui people). He is the Representative of Easter Island's Mayor on the Easter Island Development Commission (CODEIPA) and on the Demographic Load Management Committee. He is a member of the committee responsible for drafting Law No. 21,070. He is a representative of the Rapa Nui people at the United Nations, in the Indigenous Rights Programme of the Office of the High Commissioner for Human Rights.



# Suriname





The Indigenous Peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638<sup>1</sup> (census 2012). The four most numerous Indigenous Peoples are the Kaliña (Carib), Lokono (Arawak), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian Indigenous Peoples in the south of Suriname, including the Akoerio, Warao, Apalai, Wai-Wai, Okomoyana, Mawayana, Katuena, Tunayana, Pireuyana, Sikiiyana, Alamayana, Maraso, Awayakule, Sirewu, Upuruy, Sarayana, Kasjoeyana, Murumuruyo, Kukuyana, Piyanakoto and Sakëta. The Kaliña and Lokono live mainly in the northern part of the country and are sometimes referred to as “lowland” Indigenous Peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as “highland” peoples.

The legislative system of Suriname, based on colonial legislation, does not recognise Indigenous or Tribal Peoples, and Suriname has no legislation governing Indigenous and Tribal Peoples’ land or other rights. This forms a major threat to the survival and well-being of Indigenous and Tribal Peoples, particularly given the strong focus that is being placed on Suriname’s many natural resources (including oil, bauxite, gold, water, forests and biodiversity). Suriname is one of the few countries in South America that has not ratified ILO Convention 169. It did vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007.

## Legislative developments

**2**019 saw, for the first time ever, a formal, participatory albeit still government-led process for developing legislation on the rights of Indigenous and Tribal Peoples, something that is still absent from Surinamese law. In response to increasing pressure from Indigenous Peoples in 2016, working groups consisting of government and Indigenous and Tribal Peoples’ representatives developed a “Roadmap towards the Legal Recognition of Indigenous and Tribal Peoples’

Rights” over the course of 2017. The government’s formal approval of the Roadmap took almost a year and it was not until December 2018 that a Management Team was finally established to oversee the Roadmap’s implementation, headed up by the director of the Ministry of Regional Development. Three technical commissions were also simultaneously established: one to develop draft legislation, one on demarcation and one on awareness raising, respectively, all in accordance with the Roadmap. The Management Team and the three commissions consist primarily of representatives of relevant government departments, Indigenous and Tribal Peoples’ traditional authorities, and other relevant stakeholders such as notaries and land surveyors.

The Commission for Legislation delivered a draft Law on the Collective Rights of Indigenous and Tribal Peoples in Suriname as well as a proposal for revision of the Constitution of Suriname in order to recognise Indigenous and Tribal Peoples on 1 October 2019.<sup>2</sup> Apart from a presentation of the drafts to the Council of Ministers, no formal steps have since been taken to table the drafts in the National Assembly (Parliament) for discussion and eventual approval.

The Commission for Demarcation focused on collecting existing demarcation maps. Many Indigenous and tribal territories have already been demarcated by the Indigenous and Tribal Peoples themselves, and it was decided to use these maps instead of undertaking new demarcation processes. Those that are demarcated will be included for immediate legal recognition in the newly developed draft law but those that are not will need to be recognised through a yet-to-be defined process. Another issue that the Demarcation commission is still dealing with relates to cases where there are overlaps between territories that have been traditionally used by different communities. In most cases, the boundaries between territories (mostly natural boundaries such as creeks) are well-known to the respective peoples or communities. Over the latter part of 2019, a number of meetings between these “parties” were therefore held, organised by the Roadmap’s Management Team, to formalise the traditional boundaries via a written and signed agreement. A number of such cases still need to be finalised.

Public awareness of the rights of Indigenous and Tribal Peoples, the third component under the Roadmap, has been slow to get up to speed. Although there were various news items released on the process, little was done to popularise the actual concepts and an understanding of

the nature of Indigenous and Tribal Peoples' collective rights. Many misconceptions such as "they want a State in a State", "how can they get so much land" and "then Suriname cannot access its natural resources anymore" are common and need clarifying. A professional communications agency was contracted only late in 2019 and is to launch an awareness campaign in early 2020.

Although the drafting of new legislation for recognition of Indigenous and Tribal Peoples' rights could fulfil part of the Kaliña and Lokono judgment of the Inter-American Court of Human Rights against the state of Suriname (2015),<sup>3</sup> no other progress has been made in this regard. The Court ordered Suriname, among other things, to legally recognise the Kaliña and Lokono peoples' collective ownership of their traditional lands and resources, as well as their legal status before the law in Suriname. In addition, the judgment also affirmed the rights of the Kaliña and Lokono over the protected areas that were established on their territories and ordered a process for restitution of or compensation for those lands. The Court decided in similar terms on third-party titles over Indigenous lands that have been given out without their consent. The state of Suriname is also required to rehabilitate the area affected by bauxite mining in Wane Kreek Nature Reserve. Because of the repeated nature of Suriname's violations of Indigenous and Tribal Peoples' rights (see also the Saramaka case<sup>4</sup> and relevant parts of the Moiwana<sup>5</sup> case), the Court ordered similar measures for all Indigenous and Tribal Peoples of Suriname in this judgment.

Two villages in Para district, Matta and Cabendadorp, were shocked to discover that hundreds of hectares of their communal land had been sold to individuals, one a rich businessman and the other a Chinese investor. In the case of Matta, it turned out that the land title had already been handed over by the government in 2015, shortly before the elections of that year, and sold on further by a bank when a mortgage on that land could not be repaid. Since there is no legislation on Indigenous and Tribal Peoples' rights to land, all land in which there is no title yet vested is considered state-owned land, and the state has the power to sell it or allocate it via long-term lease to individuals or companies. Many communities are confronted with situations whereby strangers or companies have received titles to land within their ancestral territories. Both villages protested but do not have access to legal recourse since Indigenous and Tribal Peoples' rights are not legally recognised and the

land titles were issued in accordance with existing mainstream legislation. A third village in Para, Powakka, was similarly confronted with the imminent renewal of a sand mining concession which they had long protested.<sup>6</sup> Although the Minister of Natural Resources promised to withdraw the mining concession, he did not show up in the village after making the promise and no proof of the withdrawal was given.

In spite of repeated protests by VIDS, the Association of Indigenous Village Leaders in Suriname, against government intervention in the succession processes of traditional village leaders, the Ministry of Regional Development intervened at least twice last year to have new village leaders (chiefs) elected, namely in the villages of Bigi Poika<sup>7</sup> and Redi Doti. VIDS sees this as part of the government's efforts to gain political influence, especially given the upcoming general elections in May 2020, and thus a violation of the right to self-determination.

## Other developments

Tribal Maroon villages along the Marowijne border river between Suriname and French Guyana were repeatedly confronted by the aggressive actions of the French gendarmerie operating from French Guyana in 2019. The gendarmerie stormed the islands and set fire to heavy equipment used for gold mining, which is practised extensively, both legally and illegally, along the tributaries of the Marowijne River. The French police argue that half of the border river, including the islands, belongs to France (French Guyana) and that they have the right to move against illegal gold mining and the resulting mercury pollution and erosion. The border dispute itself and the police actions were diplomatically challenged by the Surinamese government but no solution has yet been forthcoming, despite various border negotiations.

Notwithstanding the protests of the villages of Hollandse Kamp and Witsanti against a land title given to the international airport of Suriname for an extension of the Johan Adolf Pengel International Airport, an environmental and social impact assessment (ESIA) was undertaken and approved by the government's environment agency, NIMOS. This approval means that construction, which will cross the ancestral territories of these two villages, can now go ahead. As with the abovementioned cases, no domestic legal action can be taken against

such developments given the absence of legislation.

VIDS has intensified its work on capacity building of Indigenous village leaders, among other things in relation to undertaking village research into human rights' indicators from an Indigenous perspective, and project writing. This work has been done as part of the global "Indigenous Navigator" project, which aims to systematically monitor the level of recognition and implementation of IPs' rights and their participation in the implementation of the Sustainable Development Goals (SDGs).<sup>8</sup> Various IPs' rights awareness sessions were also held, including talks on healthy lifestyles and Indigenous food, and alliances made with, among others, the National Bureau of Statistics, the Gender Bureau and the University of Suriname. Another project, Strengthening the Capacity of Indigenous Organizations in the Amazon (SCIOA),<sup>9</sup> aims to strengthen the institutional and financial management capacities of Indigenous organizations. This commenced in late 2019 and will be further implemented in 2020.

## Notes and references

1. The population is highly ethnically and religiously diverse, consisting of Hindustani (27.4%), Maroons ("Bush negroes", 21.7%), Creoles (16%), Javanese (14%), mixed (13%), Indigenous Peoples ("Amerindians", 3.8%) and Chinese (1.5%) (census 2012). At least 15 different languages are spoken on a daily basis in Suriname but the only official language is Dutch, while the *lingua franca* used in less formal conversations is *Sranan Tongo* (Surinamese).
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9. Learn more about the Pact's SCIOA project at: <https://www.pactworld.org/library/strengthening-capacity-indigenous-organizations-amazon>

**Max Ooft** is Policy Officer at the Bureau of the Association of Indigenous Village Leaders in Suriname (Vereniging van Inheemse Dorpshoofden in Suriname, VIDS). He holds a doctorandus (Dr) in medical sciences and a Master's in Business Administration (MBA) plus a Bachelor of Law (LL.B.).



# Venezuela



The recitals to Venezuela's Constitution recognise the country as a multi-ethnic and pluricultural nation while Article 9 establishes that Indigenous languages also have official status. According to official estimates, Venezuela's Indigenous population currently accounts for approximately 2.8% of the total population of 32 million. The 2011 Indigenous Census lists more than 51 different peoples and both the 2001 and 2011 censuses note a resurgence of Indigenous Peoples once considered extinct, together with the presence of Indigenous Peoples from other countries. Preparations are currently underway for the 15th Population and Housing Census (2020), which will again include questions on self-recognition and the use of Indigenous languages and Spanish. The questionnaire will be implemented in traditional communities and will also aim to register population centres of non-traditional use.

The Venezuelan government ratified ILO Convention 169 in 2001. It has also approved a set of laws that directly develop constitutionally-recognised Indigenous Peoples' rights, including the Law on Demarcation and Guarantee of the Living Environments and Lands of Indigenous Peoples (2000), the Organic Law on Indigenous Peoples and Communities (2005), the Law on Indigenous Languages (2007), the Law on Cultural Heritage of Indigenous Peoples and Communities (2009) and the Law on Indigenous Handicrafts (2009).

## Indigenous health<sup>1</sup>

**T**he humanitarian crisis of 2019 has had a severe impact on the running of the public health system in Amazonas and Bolívar states, and this has resulted not only in increases in endemic and epidemic diseases but also in the re-emergence of previously controlled illnesses in the region. Malaria, for example, was on the rise in 2019, resulting in high levels of illness and death. Hepatitis continues to take a toll among the Yanomami people of the Upper Orinoco and, during 2018 and 2019, a measles epidemic was reported among



the Yanomami communities of the Upper Ocamo. This epidemic was hushed up, and no effective measures taken to control the situation. Around 101 people consequently died according to the Pan-American Health Organisation, and control measures and vaccination campaigns were only taken following pressure from human rights institutions and the Indigenous people's own organisations. Mortality rates due to endemic diseases in 2019 continue to indicate that approximately 50% of Yanomami children die before the age of three due to different causes.

In terms of healthcare in inaccessible Indigenous communities, the positive efforts of the Malaria Control Programmes and the Onco-cercosis Control Programme of the Amazonian Centre for the Research and Control of Tropical Diseases (CAICET) should be noted. In 2019, in the Yanomami area, they not only managed to treat all those affected by onco-cercosis but also reduce transmission to a minimum. The direct relationship between increased illegal mining and increases in diseases such as malaria should also be noted: there is a clear increase in malaria in those municipalities where there is more mining activity. There are even reported cases of acute mercury and other toxic poisoning in the waters of the Upper Ventuari and Upper Ocamo, which have resulted in the deaths of a number of Indigenous Yanomami and Sanema.

## **Food security**

Another situation that emerged due to the 2019 crisis was a change in the food security of the Indigenous Peoples and communities, many of whom had previously changed their traditional patterns of production and eating to comply with the new models of food supply implemented by the state. The implementation of public policies alien to the communities had resulted in changes in the traditional foods consumed in the communities. A 2019 study highlighted that the serious economic and humanitarian crisis meant that members of Indigenous communities who had previously migrated to the city of Puerto Ayacucho due to a lack of food in their communities were now returning to their places of origin to take up their traditional subsistence activities once more, something many call "natural production" or a return to their original food system. This is quite important in terms of self-management and

guaranteeing the right to food and is directly linked to a way of using their territorial space and protecting it.

## **Free movement**

Rights such as freedom of movement and personal safety have also been affected by a number of land and river transport problems in Amazonas state. During the period covered by this report (2019), the serious fuel crisis in the region was exacerbated by a diversion of fuel towards mining activity and also because of the presence of various different unlawful armed groups (dissidents from the Colombian guerrilla, paramilitaries, mining mafia, drugs traffickers and so on) on Indigenous territories, limiting the communities' freedom of movement. These groups control Indigenous movements and protect the different illegal mining sites.

## **Physical integrity**

There were reports in 2019 not only of threats but also of concrete cases of aggression, damage to physical assets and the disappearance of some Indigenous individuals from mining camps. More specifically, this relates to representatives of the Indigenous Yabarana, Ye'kwana, Uwottüja and Arawak peoples, who have been threatened and put under pressure to permit illegal activities on Indigenous territories. Institutions such as the Ombudsman have received complaints over this period with regard to a number of unlawful activities and individual human rights violations.

## **Increased mining on Indigenous territories**

Faced with growing mining and the serious threats this represents to the environment and to protection of Indigenous territories, the Indigenous organisations indicated in a press release in January 2019 entitled "Indigenous Organisations of the Amazon on the Impacts of Mining in the Amazon Region" that:

*We are seriously concerned at the increased mining activity in Amazonas state, in the regions and areas of the basins of the Cuao, Sipapo, Guayapo, Parucito, Ventuari, Parú, Atacavi, Asita, Atabapo, Ocamo, Cunucunuma, Guainía, Negro, Casiquiare and Padamo rivers, among others, and the great impacts due to this activity, particularly environmental, sociocultural and health-related ... Mining throughout Amazonas state has resulted in the deforestation of large areas of forest, the diversion of river courses such as that of the Atabapo, the contamination of water with mercury and other toxic substances, a loss of biodiversity, changes in the natural ecosystemic cycles, soil degradation, increased in diseases such as malaria and measles, sexually-transmitted infections, alcoholism, drug use, prostitution, crime, decreased school attendance, the displacement of communities from their lands and their abandonment, the presence of illegal armed groups, inter-ethnic conflicts, all of which directly affects these communities and results in changes in the Indigenous Peoples' way of life and own economy based on traditional subsistence activities...*

It is also important to note that an invasion of the Yanomami territory by thousands of *garimpeiros* (illegal Brazilian miners) was reported during 2019. Wataniba Association received information in August from the Yanomami Hutukara organisation in Brazil that the Yanomami Indigenous Land in Roraima and Amazonas states was being invaded by some 20,000 *garimpeiros*, who were likely mining for gold on the Brazilian Indigenous Land. This situation was documented by various national and international media channels, highlighting not only the occupation of the Yanomami territory but also the different threats being made to Yanomami leaders. The *garimpeiros* are highly mobile in the area and do not respect the border between Brazil and Venezuela, so the risk that they may enter Venezuelan territory and cause harm to Yanomami communities in Venezuela is a serious one.

## **Territorial rights. Demarcation of living environments and lands**

2019 saw the 20-year anniversary of the approval of the Constitution

of the Bolivarian Republic of Venezuela, Article 119 of which establishes the right to demarcation of Indigenous living environments and lands. After 20 years, not only is this process at a standstill generally but the progress made in terms of demarcations actually completed is relatively small. More than 80% of Indigenous lands have yet to be demarcated and those titles provided have been primarily to individual communities and not Indigenous Peoples as permitted by the special law.

The Demarcation Commission reduced its activity considerably from 2010 onwards when it was transferred from the Ministry of the Environment to the Ministry of Popular Power for Indigenous Peoples, thus centralising requests to trigger the collective titling process in the institutional archives. This includes the cases of the Ye'kwana peoples of Bolívar (Upper Caura) and Amazonas (Upper Orinoco) states, and the Pemón from the Paragua, Kuyuní, Kamarata, Kavanayen, Wonken, Uriman, Santa Elena and Yukpa (Chakyapa) sectors, among others. Between 2007 and 2016, however, some community titles were issued for members of the Kumanagoto (Anzoátegui state), Barí (Zulia state) Mapoyo (Bolívar state) and Yukpa (Zulia state) peoples, missing out the 10 communities from the native Chaktapa area, however. In 2016, the lands of the Pemón people in Ikabarú sector were recognised via collective title, in the context of tensions between the army and this sector's Pemón authorities over mining. It is clear, however, that there has been no significant action or progress in the demarcation process in the last three years, and that in 2019 the process was at a complete standstill.

## Crossborder migrations

Despite a complicated situation in the country, marked by crisis, there are still various reasons why Indigenous families migrated outside of the country during 2019: sometimes directly due to problems in accessing health care and food, other times due to forced displacement caused by violent actions endangering their physical integrity. Members of the Indigenous Warao from Delta Amacuro and Monagas states, Eñepá from Amazonas and Bolívar states, Pemón from Bolívar and Wayuu and Yukpa from Zulia state are all now crossborder migrants.

The first displacements occurred in 2016 among the Warao of Delta Amacuro state who left for Brazil. Members of this people used to

wander from town to town in search of money but, since 2016, this itinerant practice has no longer been a viable alternative, with their hopes of obtaining health care and money declining considerably. One of the fundamental reasons for moving to the neighbouring country was, from the very start, a need for urgent health care due to the deteriorating system in Venezuela, as evidenced in a lack of service in the communities, the collapse of hospitals, a lack of supplies and a lack of medical staff. This situation gradually worsened and, in 2017, whole families of Warao could be seen in the streets of Boa Vista seeking health care and resources, either through the sale of handicrafts or by begging, a situation that has only worsened with the 2019 crisis. To these Warao families who reached Brazil must be added those of the E'ñepá people who, for similar reasons to the Warao, chose to leave their communities and cross the border.

In both 2018 and 2019, the number of Warao and E'ñepá migrants increased, housed in shelters or refuges or simply living in squares and public spaces. A gradual displacement, primarily of Warao families, can now be seen towards the south of Brazil. The increase in numbers of Indigenous, above all Warao, families in the second half of 2019 suggests that changes arising due to this situation are likely to affect the culture and demographic composition of these peoples, whether they decide to remain in the host country or return home. Initial figures and their distribution in the neighbouring country for the first quarter of 2019 give us some indication of this.

## **Violence on Pemón territory in Gran Sabana, Bolívar state**

The clashes with the state's security forces in the Pemón community of Kumarakapai (San Francisco de Yuruani) over what was known as "humanitarian aid" on 24-25 February 2019 were serious, resulting in seven deaths and more than 550 Pemón men, women and children displaced to Indigenous Makushi and Taurepan communities in Roraima state, Brazil. This marked the start of an unprecedented situation in Kumarakapai, one that also affected others nearby in the sector, including the municipal capital of Santa Elena de Uairen, where the days following these clashes gave rise to documented acts of repression on the part of

the state security forces. Given the fear of further violence during 2019, a further 966 Indigenous Pemón from 14 communities left Gran Sabana for Brazil, the number of displaced people thus reaching 1,200. The origin of these events lies in the growing climate of tension caused in recent years by the impact of mining on the communities of Gran Sabana, together with the upper and lower reaches of river basins located in other sectors: Kuyuní, La Paragua, Ikabarú and Kavanayen (Canaima) inhabited by the Pemón people in Bolívar state. This has above all been caused by a decree establishing the “Orinoco Mining Arc” National Strategic Development Zone. Apart from the social and environmental consequences this has for Indigenous territories, the approval and expansion of the Orinoco Mining Arc has created political problems within the sectors and their communities, with growing tensions between the Pemón authorities in the sectors (general captaincies) and the community captains of each sector, in the context of the implementation of a highly polarised national and regional policy.

## Notes and references

1. Given the political, social, economic and humanitarian crisis being suffered in Venezuela in recent years, Wataniba Association and the main Indigenous organisations in Amazonas state have been monitoring the main impacts on and violations of the rights to free movement, physical integrity, food security and health.

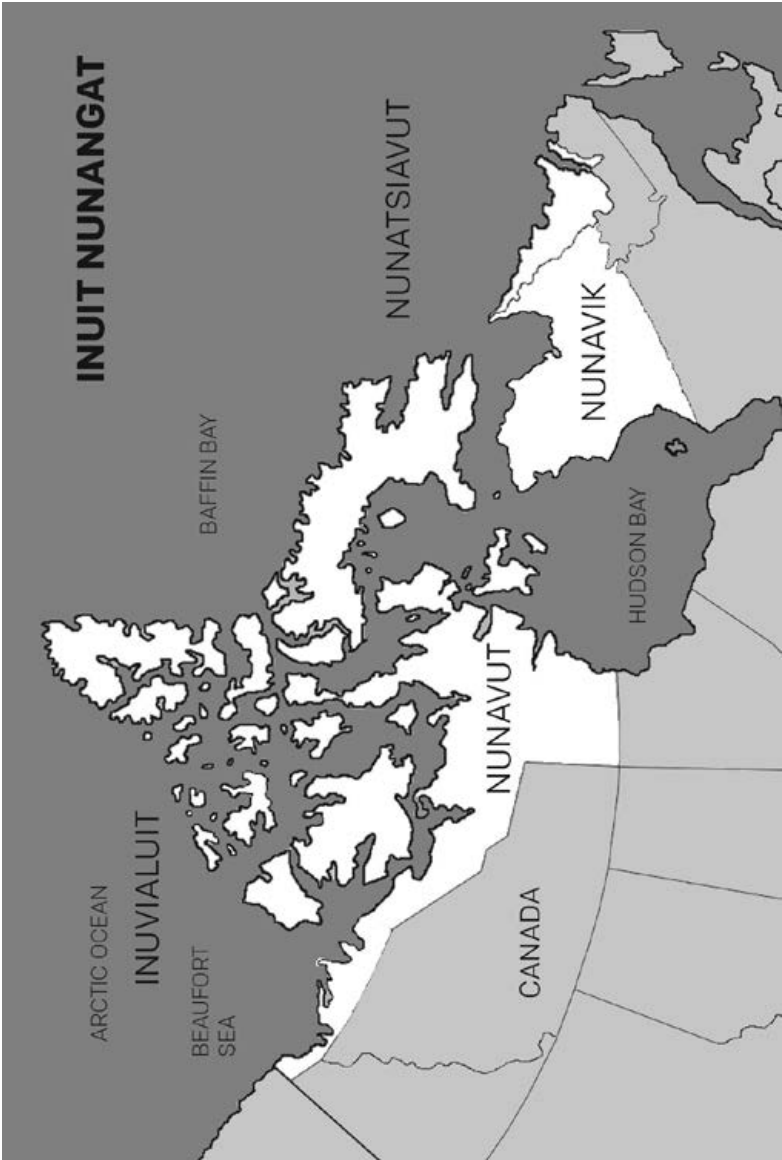
*This report has been written by the **Socio-environmental Working Group for the Amazon (Wataniba)** / Luis Jesús Bello, Gabriela Croes and **Maria Teresa Quispe**.*





# The Arctic

# Inuit Nunangat





The majority of the 65,030 Inuit in Canada live in 51 communities in Inuit Nunangat, the Inuit homeland encompassing the Inuvialuit Settlement Region in the Northwest Territories, Nunavut, Nunavik in northern Quebec and Nunatsiavut in northern Labrador.

Comprehensive Inuit-Crown land claims agreements shape the political contours of each of the four Inuit regions. Through these constitutionally protected agreements, Inuit representative organisations and governments co-manage, with the federal government, nearly one-third of Canada's landmass and 50% of its coastline. Inuit are represented at the national level by Inuit Tapiriit Kanatami (ITK) and at the international level by the Inuit Circumpolar Council-Canada. ITK's board of directors is made up of the leaders of the four regional Inuit representational organizations and governments: Inuvialuit Regional Corp., Nunavut Tunngavik Inc., Makivik Corp. and the Nunatsiavut Government. In addition to voting members, the presidents of the following non-voting permanent participant representatives also sit on the board: Inuit Circumpolar Council-Canada; Pauktuutit Inuit Women of Canada; and the National Inuit Youth Council.

**2**019 began with uncertainty for Inuit in Canada. The federal Liberal government led by Prime Minister Justin Trudeau was approaching the end of its first mandate with uncertainty about its future as the government. Canadians watched as Indigenous priorities, which had featured prominently in Liberal campaigning leading up to the 2015 federal election, were overtaken by other priorities in the 2019 campaign. Inuit worked with the federal government throughout the year to advance shared Inuit-Crown priorities and were successful in some areas. For example, Inuit secured federal government investments supporting implementation of the National Inuit Climate Change Strategy and the National Inuit Health Survey, and announced the creation of Tallurutiup Imanga National Marine Conservation Area. However, Inuit struggled to influence the federal government's Arctic and Northern Policy Framework and *Indigenous Languages Act*.

## Outcomes of the federal election

In October 2019, the Liberals won enough seats to form a minority government. Now that opposition parties hold the majority of seats in the House of Commons, there is some uncertainty about the duration of the current Liberal mandate. With the official Conservative opposition in the midst of a leadership race, however, an imminent election seems unlikely.

Since the election, the Liberal government has committed to taking action on Indigenous priorities, including through continued engagement in the Inuit-Crown Partnership Committee (ICPC) that was brokered by Inuit leaders in 2017. The ICPC advances policy action on Inuit-Crown priorities through working groups that report to Inuit leaders and federal Cabinet ministers. It is co-chaired by the Prime Minister and the Inuit Tapiriit Kanatami (ITK) president at one meeting a year, while the other two meetings are co-chaired with the ITK president, and the Minister of Crown-Indigenous Relations.

The federal government has committed to co-developing federal legislation in partnership with Indigenous Peoples that would implement the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). ITK has called for such legislation to include an independent Indigenous Human Rights Commission, consistent with the UN Paris Principles, to provide redress for Indigenous Peoples whose rights have been violated and to prevent the federal government from monitoring and reporting on its own conduct.<sup>1</sup>

The federal government has also committed to advancing Inuit-specific policy priorities, including the development of an Inuit Nunangat Policy. ITK has lobbied the federal government to develop an Inuit Nunangat Policy in partnership with Inuit that would close policy and programme gaps throughout the federal system, ending inconsistencies in programme eligibility that contribute to some Inuit regions being ineligible for programmes and services that are intended to benefit all Inuit. Such a policy is also needed to ensure that federal budget allocations that are intended to benefit Inuit are consistently allocated directly to Inuit through their respective land claims organisations, rather than to the provincial and territorial governments that share jurisdiction with Inuit over our territory. This funding flow allows for Inuit self-determination and creates space for Inuit to work directly with their federal and territorial counterparts.

## **An Arctic and Northern Policy Framework**

First announced as an initiative in 2016, the long-awaited Arctic and Northern Policy Framework was billed by the Minister of Crown-Indigenous Relations and Northern Affairs in 2019 as a “profound change” in the Government of Canada’s direction for the region.<sup>2</sup> It outlines a vision for Arctic and northern regions where people are thriving, strong and safe, and presents a number of priorities and actions intended to achieve that vision. Sections of the policy were co-developed with Inuit, yet the federal government ultimately refused to fully integrate a distinct Inuit Nunangat chapter into the policy or provide a definition of the geographic region where the policy is intended to be implemented. It remains unclear how or when the Arctic and Northern Policy Framework will be implemented.

## **The Indigenous Languages Act**

In June 2019, the federal government passed the *Indigenous Languages Act*. The act creates the office of the Indigenous Languages Commissioner, an independent office tasked with reporting on language revitalisation, maintenance and promotion activities, and carrying out research. However, the legislation neither affirms Indigenous language rights, nor is the Commissioner empowered to provide redress for Indigenous Peoples whose language rights have been violated. Inuktitut, the Inuit language, is the most resilient Indigenous language spoken in Canada. Inuktitut is spoken by the majority of Inuit living in Inuit Nunangat, where it is recognised as an official language in the Northwest Territories, Nunavut and Nunatsiavut. ITK voiced disappointment with the Indigenous Languages Act because, although it is characterised as having been co-developed with Indigenous Peoples, all appeals for Inuit-specific provisions in the act were rejected.<sup>3</sup> Federal legislation is required to bridge the legislative and policy gaps that currently prevent Inuit from accessing federal services in our language or securing the resources required to sustain Inuktitut as the primary language spoken at every sector of society.

## Release of the National Inuit Climate Strategy

ITK released the National Inuit Climate Change Strategy<sup>4</sup> (NICCS) in June 2019.<sup>5</sup> It is the only comprehensive Arctic-focused climate change strategy in Canada. The strategy was developed by Inuit in response to the complex changes underway in Inuit society resulting from rapid changes in the Arctic climate and the evolving climate policy environment.<sup>6</sup> It envisions coordinated policies and actions that enhance quality of life for Inuit without reproducing the socio-economic disparities Inuit have experienced from the unilateral development and implementation of federal policies. The strategy identifies five interconnected priority areas where action is required to meet the pressing need for adaptation, mitigation, and resilience-building:

- To advance Inuit capacity and knowledge use in climate decision-making;
- To improve linked Inuit and environmental health and wellness outcomes through integrated Inuit health, education, and climate policies and initiatives;
- To reduce the climate vulnerability of Inuit and market food systems;
- To close the infrastructure gap with climate resilient new builds, retrofits to existing builds and Inuit adaptations to changing natural infrastructure; and
- To support regional and community-driven energy solutions leading to Inuit energy independence.

The strategy is based on and promotes a rights-based approach to partnerships. This approach respects the Inuit system of democratic governance and recognises the right of Inuit self-determination, including the rights set out in constitutionally protected land claims agreements and the UNDRIP. The strategy, to be implemented over four years, was published with a framework setting out Inuit expectations for partnerships. On 7 June 2019, the federal government announced CAD\$1 million to support the implementation of the strategy.<sup>7</sup>

## **Inuit Launch Qanuippitaa? National Inuit Health Survey**

Universal access to publicly funded health care is a hallmark of Canadian health policy. Yet high quality health services and equitable health policy for Inuit are not universally accessible, contributing to gaps in health outcomes between Inuit and other Canadians. Qanuippitaa? National Inuit Health Survey will help change this by collecting longitudinal data on Inuit health status that will be used to inform research and policymaking. ITK launched Qanuippitaa? in September 2019 to ensure this information is collected and controlled by Inuit. The goal of Qanuippitaa? is “to provide high quality, Inuit-determined and Inuit-owned data to monitor change, identify gaps, and inform decision-making, leading to improved health and wellness among Inuit in Canada.”<sup>8</sup> It also meets the objectives of the data and information priority area of the National Inuit Strategy on Research implementation plan.<sup>9</sup> In addition, the training and resources provided by Qanuippitaa? will support Inuit self-determination in research and provide long-term research-related expertise and employment opportunities in Inuit communities. Survey design and implementation will be carried out in partnership with the Inuvialuit Regional Corporation, Nunavut Tunngavik Incorporated, Maki-vik Corporation and the Nunatsiavut Government, as well as Pauktuutit Inuit Women of Canada, the Inuit Circumpolar Council Canada and the National Inuit Youth Council. Regional Inuit Health Survey Steering Committees will lead the development and implementation of all region-specific survey components. Survey design is underway, and it is expected that questions will focus on a broad range of health and wellness priorities. The first round of data collection is scheduled to begin in 2021. The survey itself is expected to run every five years. Funding for the survey is provided by the 2018 federal budget, which allocated CAD\$82 million over 10 years with CAD\$6 million per year ongoing.<sup>10</sup>

## **Inuktitut Qaliujaaqpait – A New Inuktitut Writing System<sup>11</sup>**

Ever since non-Inuit missionaries introduced written forms of Inuktitut, Inuit have contended with nine different writing systems across Inuit

Nunangat. Without a common writing system, or orthography, we have lacked important resources to promote Inuit unity and culture. For instance, without a common orthography it has been difficult to develop Inuit-centred education systems in which Inuit children can learn in their own language. This changed in September of this year when ITK announced the introduction of Inuktut Qaliujaaqpait, a unified orthography for Inuktut.<sup>12</sup> Inuktut Qaliujaaqpait will be implemented as an auxiliary writing system that can be used alongside the existing nine regional orthographies. Inuktut language experts developed and tested Inuktut Qaliujaaqpait over the last decade in consultation with Inuit Elders, teachers and other Inuktut users. Tests showed that the new orthography made it easier to read material produced in other regions. It is also easier to type on keyboards. Implementation of the new orthography will occur through a subcommittee of the National Inuit Committee on Education, which will be responsible for developing plans together with the regions.

## **Creation of Tallurutiup Imanga National Marine Conservation Area**

In August 2019, the Qikiqtani Inuit Association and the federal government announced the creation of Tallurutiup Imanga National Marine Conservation Area.<sup>13</sup> Tallurutiup Imanga covers approximately 108,000 km<sup>2</sup> of Lancaster Sound on the eastern end of the Northwest Passage in the north eastern Qikiqtani region of Nunavut. The area is rich in marine wildlife on which Inuit continue to depend for our physical and spiritual sustenance, and it is recognised as a globally significant ecosystem. Under the terms of an Inuit Impact and Benefits Agreement (IIBA) negotiated between the QIA and the federal government, the establishment of Tallurutiup Imanga enables Inuit and the federal government to jointly manage fisheries and marine transportation in an ecologically sustainable manner with appropriate marine monitoring systems in place.<sup>14</sup> The IIBA also establishes an Inuit Stewardship Program to be managed by QIA aimed at promoting Inuit wellbeing and delivering a range of benefits including the training and education of Inuit stewards. The establishment of Tallurutiup Imanga includes significant federal

investment in infrastructure, local employment and economic development for the benefit of the five communities located nearby.

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***Inuit Tapiriit Kanatami*** is the national representational organisation for Inuit in Canada.



# Kalaallit Nunaat (Greenland)



Kalaallit Nunaat (Greenland) has been a self-governing country within the Danish Realm since 1979. The population is 88% Greenlandic Inuit out of a total of 56,225 inhabitants (July 2019).<sup>1</sup> The majority of Greenlandic Inuit refer to themselves as Kalaallit.

Ethnographically, they consist of three major groups: the Kalaallit of West Greenland, who speak Kalaallisut; the Tunumiit of Tunu (East Greenland), who speak Tunumiit oraasiat (East Greenlandic) and the Inughuit/Avanersuarmit of the north. The majority of the people of Greenland speak the Inuit language, Kalaallisut, which is the official language, while the second language of the country is Danish.

Greenland's diverse culture includes subsistence hunting, commercial fisheries, tourism and emerging efforts to develop the oil and mining industries. Approximately 50% of the national budget is financed by Denmark through a block grant. In 2009, Greenland entered into a new era with the inauguration of its Act on Self-Government, which gave the country further self-determination within the Kingdom of Denmark. Together with the Danish Constitution, the Self-Government Act articulates Greenland's constitutional position in the Kingdom of Denmark. The Self-Government Act recognises the Greenlandic people as a people under international law with the right to self-determination. Greenland has a public government and it aims to establish a sustainable economy in order to achieve greater independence.

Greenland's self-government consists of the Inatsisartut (Parliament), which is the elected legislature, and the Naalakkersuisut (Government), which is responsible for overall public administration, thereby forming the executive branch. The Inatsisartut has 31 elected members. The Government of Greenland adopted the UNDRIP upon its ratification in 2007 and subsequent governments have committed to its implementation. Greenland and Denmark jointly prepare reports regarding good practice on implementation of Indigenous Peoples' rights, as described in the UNDRIP and other international

human rights instruments. The Government of Greenland had a decisive influence over the Kingdom of Denmark's ratification of ILO Convention 169 in 1996, as Greenland has prioritised actions to establish the Indigenous Peoples' collective rights to land and resources in their territories.

## The Government of Greenland

**A**fter the elections in 2018, Naalakkersuisut (the Government of Greenland) was formed by a coalition of Siumut, Atassut, Partii Naleraq and Nunatta Qitornai. Partii Naleraq left the coalition in September 2018 while the other parties remained in it. Greenland's Premier, Kim Kielsen (Siumut), formed a minority government with the support of the Democrats.<sup>2</sup> Despite three ministerial restructurings in 2019, Kielsen had no intention of holding a new general election. Naalakkersuisoq (Minister) of Fisheries, Hunting and Agriculture Nikkulaat Jeremiassen (Siumut) thus stepped down following serious criticism, having given contradictory explanations with regard to over-fishing of halibut.<sup>3</sup> Naalakkersuisoq of Industry and Energy, Aqqaq Jerimiassen (Atassut), experienced strong criticism when he told the online newspaper *Sermitsiaq.ag*<sup>4</sup> that he did not believe climate change was man-made. This caused several government parties to demand his departure,<sup>5</sup> and resulted in the Naalakkersuisoq stepping down in April to be replaced by Jess Svane (Siumut). Naalakkersuisoq of Nature and Environment Siverth K. Heilmann also stepped down, with his remit taken over by the Premier's Office. Atassut thereby withdrew from the coalition, which is now formed of Siumut, which has 10 seats in the Inatsisartut (Parliament of Greenland), Nunatta Qitornai with one seat and the supporting party, the Democrats, with six seats. The coalition and the supporting party thus have 17 seats out of 31 in parliament.<sup>6</sup>

The year 2019 counted several spectacular political events and speeches. What most people will probably recall from the last year in international politics with regard to the Arctic Region is how Greenlandic and Danish foreign policy made the headlines when United States President Donald Trump asked the newly-elected Danish Prime Minis-

ter Mette Frederiksen if he could purchase Greenland from Denmark! Frederiksen's answer was, unsurprisingly, that Denmark does not own Greenland, that Greenland owns Greenland and that Greenland was not for sale. "It's an absurd discussion, and Kim Kielsen has, of course, made it clear that Greenland is not for sale. That's where the conversation ends," Frederiksen told the Danish broadcaster DR. Greenland handles its own domestic affairs while the Danish government deals with defence and foreign policy. Greenland's Naalakkersuisoq of Foreign Affairs, Ane Lone Bagger, similarly told Reuters: "We are open for business but we're not for sale."<sup>7</sup>

## Climate action

Greenland's climate policy is affected by Greenland's territorial reservation, which means it has no international reduction commitments and Naalakkersuisut has not signed the Paris Agreement. Naalakkersuisut substantiates the decision by noting that the Greenlandic people are acknowledged as being Indigenous by the United Nations and, by committing to the agreement, would be constrained in their right to development according to Article 23 of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>8</sup> Greenland is, however, subject to the UN Climate Convention through Denmark and supplies data for greenhouse gas inventories. Naalakkersuisut also underlined that Greenland fully complies with the Convention's objectives and noted with satisfaction that a binding global agreement had been achieved which sought to keep temperature increases below 2°C from the pre-industrial level.<sup>9</sup> The Danish government does not influence Greenland's climate policy but Denmark establishes international agreements on behalf of The Unity of the Realm,<sup>10</sup> and is thus obliged to include Naalakkersuisut first.

In an open letter to Premier Kielsen, the NGO Inuit Circumpolar Council (ICC) Greenland's president, Hjalmar Dahl, expressed his concerns at Trump's climate policy both for Inuit and the five other Indigenous Peoples' organizations in the Arctic Council. With reference to the 2030 Sustainable Development Goals (SDGs) and the Paris Agreement, Dahl stated his concern at the United States refusing to use the word "climate change". The Inuit are known as a peace-loving people according to the Utqiagvik Declaration from July 2018.<sup>11</sup> ICC strongly urged the

five Arctic coastal nations to maintain the Arctic as a safe area. ICC stated that the inclusion of Arctic Indigenous Peoples at all levels was pivotal to ensure that their rights as Indigenous Peoples were acknowledged and respected.<sup>12</sup>

Former Premier of Greenland and advisor to ICC, Kuupik Kleist, participated in the 2019 UN Climate Action Summit and advocated putting the Arctic back onto the climate change agenda. At the summit, Kleist noted that the Arctic had disappeared from this agenda and criticised the fact that the Indigenous Peoples' representative was given only two minutes to deliver his speech.<sup>13</sup> At COP25 in Madrid in December, ICC stated that we have less than 10 years to keep our planet under a 1.5°C temperature increase, that every year is critical and that ICC will continue to advocate and push the governments of Arctic nations to increase their efforts to reduce greenhouse gas emissions while at the same time tackling the urgent need for adaptation.<sup>14</sup>

## Mining

Mining continues to be an area of dispute in the Greenlandic national discourse, given that the economy is in need of diversification to supplement the fishing industry. The Greenlandic economy fundamentally depends on fisheries: this industry is responsible for more than 85% of the country's exports.<sup>15</sup> The interest in mineral exploitation in Greenland was growing in 2019, according to Naalakkersuisut.<sup>16</sup> There are currently two active mines in Greenland but the AEX Gold company is planning to reopen a gold mine in Nalunaq.

Naalakkersuisut and the Greenland Minerals Authority prioritise the early inclusion of the voice and knowledge of local communities in Greenland. The local citizen-based approach to inclusion is written into the Greenland Mineral Resources Act.<sup>17</sup> Public hearings are required by law when mining companies are planning mineral resource projects and it is made clear that the local communities in Greenland are thought of as an integral part of intervention in the mineral industry in Greenland.<sup>18</sup> In 2019, the Greenland Minerals Authority facilitated dialogue meetings on the mineral industry for local citizens in Nanortalik and Qaqortoq in South Greenland. The authorities received enthusiastic reviews from 61 out of 68 participants, who described the meetings as inclusive and in-

formative.<sup>19</sup> Naalakkersuisut is thereby fulfilling its obligation to ensure the inclusion of local citizens in mineral resource projects, as an ongoing part of the recommendations from Greenland's NGOs, including ICC, to work for better inclusion of citizens in decision-making processes.

## Children's rights

In a speech given on Greenland's National Day and the 10-year anniversary of self-rule, 21 June, Premier Kielsen stressed that many public authority areas, including that of the children's area, needed to be devolved from Denmark. There was an increased focus and debate on children's rights in Greenland throughout 2019, especially after a Danish Broadcasting Company documentary exposed massive problems of abuse and violence towards children and youth in Tasiilaq, East Greenland. Former Naalakkersuisoq of Social Affairs and now Director of the Children's and Family Department of Sermersooq municipality, Martha Lund Olsen (Siumut), was confronted in the documentary with the authorities' lack of action and neglect. A fierce debate ensued among local citizens in the national and social media, which was also reflected in the public debate in Denmark.

The Danish government and Naalakkersuisut established cross-cutting Greenlandic-Danish cooperation focused on how work with children and youth in Greenland experiencing neglect and abuse could be strengthened in the longer term. Furthermore, initiatives aimed at adults committing abuse as well as recommendations for pre-emptive work are to be launched.<sup>20</sup> In November 2019 it was decided that the Danish government would provide 80 million Danish Kroner to help victims of abuse in Greenland over a four-year time frame.<sup>21</sup>

On the occasion of the 30-year anniversary of the UN Children's Convention, a UNICEF Children's Conference took place in Nuuk in November. Earlier in 2019, a report on children's and youth rights, published by the Danish Institute for Human Rights (DIHR) and the Human Rights Council of Greenland, described developments in the area and highlighted the children's struggle with neglect, abuse, violence etc. The report takes its point of departure in the 1989 UN Children's Convention, the SDGs and Killiliisa, Naalakkersuisut's 2018-2022 strategy to combat sexual abuse. The central recommendations from the report encourage

the relevant authorities to collect and publish more statistics and work to systematically gather knowledge as a basis for lasting change.<sup>22</sup>

There is also a new Inatsisartut law on support for persons with disabilities. A comprehensive review of the area has included establishing a position for a disability spokesperson and Tilioq, an institution for disabilities. Interest in the area has grown in recent years, with e.g. the first conference on autism in Greenland and a follow-up on the disability convention. Among the recommendations are teachers' capacities to include pupils with disabilities in elementary schools, the availability of mobility aids in buildings etc.<sup>23</sup>

In general, DIHR recommends that Naalakkersuisut, in dialogue with the Danish government, should repeal Greenland's territorial reservation. The protocols for the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child with regard to individual access for complaints would thus enter into force in Greenland. DIHR furthermore recommends that Greenland include a general ban on discrimination, including discrimination caused by a disability, as it is a basic principle of human rights.<sup>24</sup>

## **The United Nations Permanent Forum on Indigenous Issues**

The special theme of the UN Permanent Forum on Indigenous Issues' (UNPFII) 18th session was "Indigenous Peoples' Traditional Knowledge, Generation, Transmission and Protection" and 2019 was also the International year of Indigenous languages. Inuit Circumpolar Council (ICC) Greenland arranged a workshop and a podcast about the Greenlandic language, in line with the UN's declaration of 2019 as the year of Indigenous languages.<sup>25</sup> Tove Søvndahl Gant, National Expert at the European External Action Service, has been elected as an expert member of the Permanent Forum (UNPFII) from 2020-2022. Naalakkersuisoq of Education, Culture, Church and Foreign Affairs, Ane Lone Bagger, notes that Søvndahl Gant is highly qualified to handle Indigenous Peoples' interests in the Arctic Region and Naalakkersuisut emphasises that the election of a Greenlandic representative is extremely positive.<sup>26</sup>

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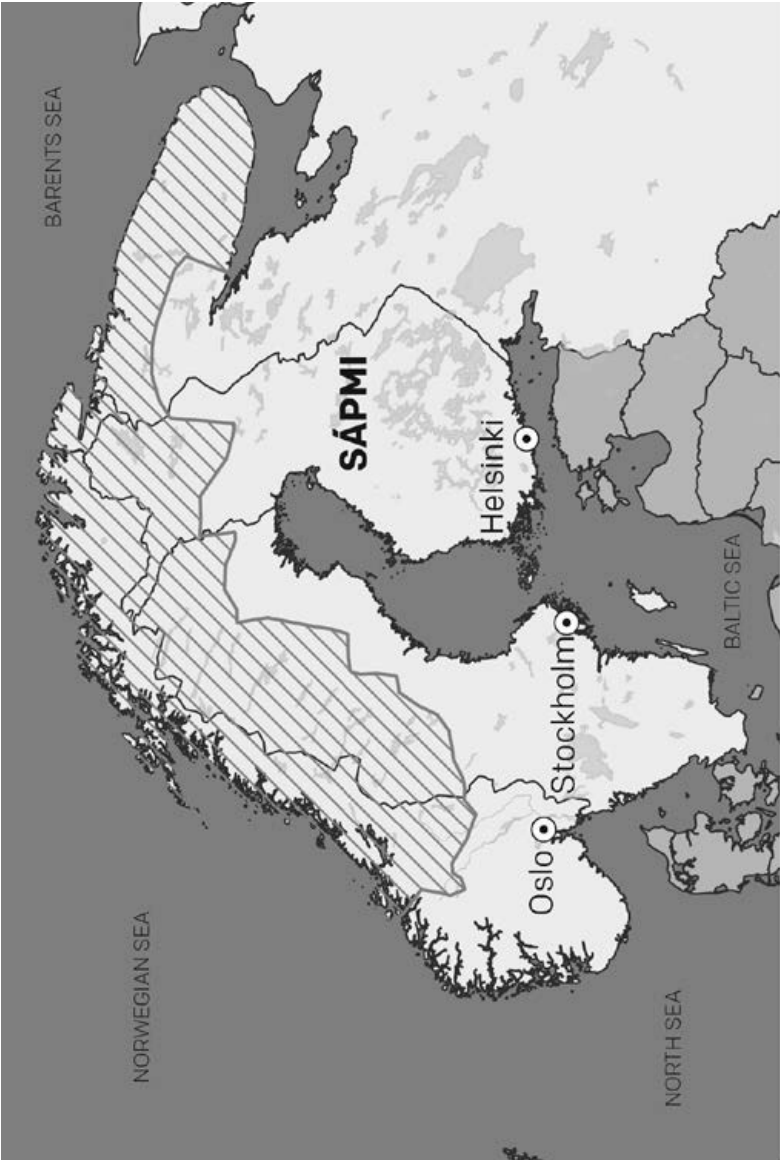


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**Joanna Absalonsen** holds a Master's in Cross-Cultural Studies from the University of Copenhagen and works as an employment counsellor and mentor for the Municipality of Copenhagen. She is currently managing a qualitative research project on Inuit youth and education as part of the National Science Foundation program "Young Arctic Leaders in Research and Policy" led by the Arctic Center of the University of Northern Iowa and mentored by Dr. Andrey Petrov and Dr. Dalee Sambo Dorough. To get in touch: [joannaliva@gmail.com](mailto:joannaliva@gmail.com)



# Sápmi



Sápmi is the Sámi people's own name for their traditional territory. The Sámi people are the Indigenous people of the northern part of the Scandinavian Peninsula and large parts of the Kola Peninsula and live in Sweden, Norway, Finland and Russia. There is no reliable information on the population of Sámi people; it is, however estimated that they number between 50,000-100,000.

Around 20,000 live in Sweden, which is approximately 0.22% of Sweden's total population of around nine million. The north-western part of the Swedish territory is the Sámi people's traditional territory. The Sámi reindeer herders, small farmers, hunters, gatherers, and fishers traditionally use these lands. Around 50-65,000 live in Norway, between 1.06% and 1.38% of the total Norwegian population of approximately 4.7 million. Around 8,000 live in Finland, which is approximately 0.16% of the total Finnish population of around five million. Around 2,000 live in Russia, which is a very small proportion of the total population of Russia.

Politically, the Sámi people are represented by three Sámi parliaments, one in Sweden, one in Norway and one in Finland, whereas on the Russian side they are organised into NGOs. In 2000, the three Sámi parliaments established a joint council of representatives called the Sámi Parliamentary Council. The Sámi Parliamentary Council is not to be confused with the Sámi Council, which is a central Sámi NGO representing large national Sámi associations (NGOs) in all four countries. There are also other important Sámi institutions, both regional and local, *inter alia*, the Sámi University of Applied Sciences, which is a research and higher education institution dedicated to the Sámi society's needs and where the Sámi language is mainly used throughout the academic system. Sweden, Norway and Finland voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007, while Russia abstained.

## Impacts of climate change on Sámi culture

Impacts of climate change on the livelihoods and cultures of the Sámi Indigenous people are at the core of the daily challenges of the Sámi people. Research results indicate that climate change deeply affects the environment, livelihoods and culture of Sámi people.<sup>1</sup> As the Arctic region warms twice as fast as the global average, many changes are already visible, particularly for those Sámi families that keep the traditional livelihoods of the Sámi people alive. The Sámi, like all other Arctic Indigenous Peoples, experience environmental, health, social, cultural and economic impacts and consequences of climate change. This includes state policy developments to mitigate climate change that challenge Sámi self-determination, traditional governance structures, local autonomous communities, and affects Sámi livelihoods, language and culture. The Arctic Climate Impact Assessment (ACIA) and the work of the Intergovernmental Panel on Climate Change (IPCC) include multi-disciplinary findings of the impact of climate change in the Arctic that are also relevant in a Sámi context.<sup>2</sup> The Saami Council has developed their own Arctic Strategy and, unlike national Arctic strategies largely targeted at the protection of the national sovereign interests, the Sámi Arctic Strategy is people-centered.<sup>3</sup>

Nordic states want to be in the frontline of developing renewable energy sources in order to address global climate change and to fulfil their commitments under the Paris Agreement. But unfortunately for the Sámi people, this includes the state adopting measures that give concessions or permits for the establishment of a large number of wind power industrial sites in Sámi traditional areas, adding pressure to already pressured Sámi livelihoods that rely on the same lands and resources for their subsistence.

In September 2019, the UN Special Rapporteur on human rights and the environment, David Boyd, conducted an official visit to Norway and identified several pressing challenges with regard to Norway's obligation to respect, protect and fulfil the human rights of its Indigenous Sámi people.<sup>4</sup> The Special Rapporteur met representatives of the Sámi Parliament and concerned members of the Sámi communities in Kárášjohka and Guovdageaidnu. In Finnmark County he found that the cumulative development of mines, wind farms, hydroelectric power

plants, roads and power lines have resulted in loss and fragmentation of pasture lands and constituted serious threats to the sustainability of Sámi reindeer husbandry. Mr. Boyd endorsed Sámi concerns regarding the proposed Davvi wind farm, the NUSSIR copper mine approved in a National Salmon Fjord and the re-opening of the gold mine at Biedjovággi in Guovdageaidnu Sámi municipality. The Special Rapporteur will present a comprehensive report on the findings of his visit to Norway to the UN Human Rights Council in March 2020.

## Renewable energy projects on Sámi lands

The implementation of the new Sustainable Development Goals (SDGs) and the Paris Agreement could have provided a good opportunity for Nordic states to highlight and support traditional Sámi livelihoods like Sámi reindeer herding and Sea Sámi traditional fishing as examples of sustainable Indigenous industry. Instead, the “green energy” policies provide for the massive establishment of mega wind energy industrial sites on reindeer grazing lands, without the free, prior and informed consent (FPIC) of the affected Sámi rights holders. One of the biggest wind turbine sites is established in the middle of the lands used and occupied by the South Sámi reindeer herders in Fovsen Njaarke sijte (reindeer herding community).<sup>5</sup> Fosen Vind and Statkraft, the owners of this project, have been strongly criticised by both the local Sámi reindeer herding families and a national campaign opposing the destruction of vulnerable ecosystems and nature by the construction of mega wind industry sites (Fosen for folket). The request from the Committee on the Elimination of Racial Discrimination (CERD) for interim measures from 2018 (see *The Indigenous World 2019*) was not implemented. Instead, Norway’s Petroleum and Energy Ministry stated that it would proceed with the wind park, which is being developed by the Fosen Vind consortium – owned by Statkraft (the Norwegian State Energy Company) and Nordic Wind Power, a consortium of European investors including Credit Suisse and BKW Energy. The South Sámi families and the Society for Threatened Peoples called on Statkraft, Credit Suisse and BKW Energy to stop the project, withdraw the investment and to commit to the principle of FPIC in all future investments.<sup>6</sup> The South Sámi families affected by the project have taken the case to courts, arguing that this

project is not in compliance with international human rights standards. The case is still pending in the courts, but all the necessary concessions have already been granted and the construction of the wind turbines was concluded in 2019, before the courts finished their decision assessing the rights of the Sámi. This project comes on top of a large number of other projects that have a negative cumulative effect for the reindeer herding communities, Sámi culture and the traditional use of important grazing lands for the reindeer owned by South Sámi who have rights according to both the Constitutional amendment paragraph 108, customary law and the 2007 Reindeer Herding Act.

Another example of an establishment of a major industrial wind turbine site, without the FPIC of the Sámi people, can be found in Troms and Finnmark county, on the island of Kvaløya near the Tromsø city centre.<sup>7</sup> Both the local inhabitants and Sámi families who are affected by this multi-national mega wind turbine industry, owned by the German company Prime Capital, strongly oppose the establishment of this industrial site in the middle of the lands they rely on for the survival of their reindeer and their culture.<sup>8</sup> Siemens Financial Services have also invested in this project. However, protests have so far not led to authorities stopping or downscaling the construction of this mega wind industry site.

## **Sámi rights to manage hunting and fishing**

In September 2019 the Supreme Court of Sweden started assessing the Girjas Case after the state appealed the decision from the Regional Court of Umeå where Girjas Sámi village/association and the Swedish Sámi National Union (SSR) won their case against the Swedish state on the rights to manage hunting and fishing within the areas traditionally used and occupied by the Girjas Sámi village (see also *The Indigenous World* 2018). The Girjas Case is important as it challenges the right of the Swedish state to manage the fishing and hunting rights within the Sámi villages in Sweden.<sup>9</sup> In 2018, the Gällivare District Court awarded the Girjas Sámi village in Norrbotten County the right to control hunting and fishing permits on their reindeer herding land, lands which are owned by the Swedish state.<sup>10</sup> The Office of the Chancellor of Justice, on behalf of the Swedish state, appealed to the Supreme Court, arguing that the

state owns the land and therefore must have a decisive influence on hunting and fishing.<sup>11</sup> During court proceedings in the Girjas Case in the Supreme Court, the Chancellor of Justice stated, among other things, that “the fact that the Sámi enjoy legal status as an Indigenous People has no relevance to this case”. Furthermore, the Chancellor of Justice stated that “Sweden has no international obligations to recognise any special rights for the Sámi as an Indigenous People”. These statements caused reactions not only from Sámi representatives, but also national organisations like Civil Rights Defenders.<sup>12</sup> The Sámi are constitutionally recognised as a people in Sweden, and the authorities in Sweden have also recognised Sámi as an Indigenous People, supporting the UNDRIP and stating that it is applicable for the Indigenous Sámi.

## **Repatriation of Sámi human remains**

In August 2019, 25 Sámi human remains were returned and reburied in a graveyard in Northern Sweden.<sup>13</sup> The repatriation ceremony happened on International Indigenous Peoples Day on 9 August. The human skulls were excavated at an old burial site in Lycksele in the 1950s and taken to the National History Museum in Stockholm at a time when racial biology was still practised in Sweden.<sup>14</sup> This ceremony was a result of the decision made by the Sámi Parliament of Sweden regarding repatriation of all Sámi remains held in museums. According to the Sámi Parliament’s Ethical Council there are still Sámi human remains in 11 state-owned museums in Sweden. The issue of removal of Sámi human remains has caused trauma for many Sámi families and Sámi communities because it echoes centuries of wrong doings of the past, including colonisation, discrimination, repression and human rights violations, and forced conversion to Christianity. Sweden’s national heritage office is due to present a report on the issue in 2020, with recommendations for museums working with human remains.

## **Sámi self-determination, Truth and Reconciliation**

In February 2019, the UN Human Rights Committee found in two landmark cases<sup>15</sup> that Finland violated the Sámi peoples’ right to internal

self-determination and their political rights in two complaints submitted against Finland by the President of the Sámi Parliament of Finland, and by 25 members of the Sámi people.<sup>16</sup> The complainers claimed their right to effectively participate in public affairs was violated by the electoral roll call being extended to 97 new non-Sámi electors. The committee noted that the Sámi Parliament ensures an internal self-determination process that is necessary for the continued viability and welfare of the Indigenous community as a whole. As such, the electoral process to elect members of the Sámi Parliament must ensure the effective participation of those concerned in the internal self-determination process, in this case, the Sámi Indigenous People, the committee said in its decision. The Human Rights Committee found that Finland has improperly intervened in the complainers' rights to political participation regarding their specific rights as an Indigenous People. It has requested Finland to review the Sámi Parliament Act so that the criteria for eligibility to vote in Sámi Parliament elections are defined and applied in a manner that respects the right of the Sámi people to exercise their right to internal self-determination in accordance with articles 25 (the right to participate in public life) and 27 (minority rights) of the International Covenant on Civil and Political Rights (ICCPR), which Finland ratified in 1975. The Sámi Parliament Act review process is still not determined by the Finnish government and will be one of the most pressing issues to push for the new elected members of the Sámi Parliament in Finland after their elections in 2019.

The Draft Nordic Sámi Convention is still not ready to be ratified by Finland, Norway and Sweden, as the governments of these three Nordic countries are still considering proposals tabled by the Sámi Parliaments for some additional amendments of the Draft Sámi Convention.<sup>17</sup> In April 2019, the proposal for adopting a separate chapter on consultations in the Sámi act was discussed in the Standing Committee of Local Government and Public Administration of the Norwegian Parliament.<sup>18</sup> Instead of passing the proposal for adoption in the Parliament, the proposal was returned to the government for further public hearings. This proposal aims at strengthening national, regional and local authorities' duty to consult the Sámi Parliament and other Sámi representatives in matters that will affect Sámi directly, incorporating ILO Convention 169 into national legislation.<sup>19</sup> Public hearings are planned for early 2020.

Some progress has been made in matters relating to reconciliation



and public investigations of discrimination and oppression of the Sámi people in Finland. After four years of negotiations and consultations with the Sámi Parliament in Finland, hearings, and a number of meetings with Sámi representatives and experts, the Finnish government agreed to establish a Truth and Reconciliation Commission (TRC) for the Sámi people in Finland.<sup>20</sup> The Finnish government has prepared the commission's mandate throughout 2019 together with the Sámi Parliament and the Skolt Sámi village meetings. The Finnish government held a total of 29 TRC hearings across the Sámi region and in various Finnish cities in 2018. A total of 300 Sámi people took part in these talks in person or via email, representing some 2.5% of Finland's Sámi minority.

In Norway there is an ongoing TRC process that includes the Indigenous Sámi people, the Kven minority of Norway and the Norwegian Finns.<sup>21</sup> The government of Sweden and the Sámi Parliament in Sweden have also consulted on the establishment of a TRC in Sweden, and in June 2019 the Sámi Parliament in Sweden handed over their political request for the establishment of an independent TRC.<sup>22</sup> Some have raised the question about why there is a need for three separate truth commissions dealing with the Sámi people's colonial past when the Sámi are in fact one people living in four states.<sup>23</sup>

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**Laila Susanne Vars** is an Indigenous Sámi lawyer who holds a PhD in international law from the Arctic University of Tromsø. She is from Guovdageaidnu, North Sámi territory in Sápmi/Norway. She is member of the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) representing the Arctic region and she is also the Rector (President) of the Sámi University of Applied Sciences ([www.samas.no](http://www.samas.no))





A grayscale map of the region covering Central and Eastern Europe, the Russian Federation, Central Asia, and Transcaucasia. The map shows the outlines of various countries and major bodies of water. The text is overlaid on the map, centered in the upper right portion of the landmass.

**Central and  
Eastern Europe,  
Russian  
Federation,  
Central Asia and  
Transcaucasia**

# Israel



Israel's Arab Bedouin citizens are indigenous to the Negev (Naqab, in Arabic) desert, where they have lived for centuries as a semi-nomadic people, long before the establishment of the State of Israel in 1948. Members of the Bedouin community are an integral part of the Arab Palestinian minority, as well as citizens of the State of Israel. Combining herding with agriculture, they are settled in villages linked by kinship (tribes) systems, and this has largely determined land ownership. Prior to 1948, about 65-100 thousand Bedouin lived in the Naqab. After 1948, most were expelled or fled to Gaza, Egypt, West Bank and Jordan, with only about 11,000 remaining in the area.

During the early 1950s and until 1966, Israel concentrated the Bedouin in a restricted area, known by the name "al-Siyāj", under military administration, representing only about 10% of their original ancestral land. During this period, entire villages were displaced from their locations in the western and northern Naqab and their people were transferred to the Siyāj area.<sup>1</sup>

Today, about 258,500 Bedouin citizens of Israel live in the Naqab in three types of localities: government-planned townships, recognised villages, and villages that Israel refuses to recognise (unrecognised villages).<sup>2</sup> There are 35 unrecognised Bedouin villages in the Naqab that Israel refers to either as the "dispersion" or as "illegal villages", calling their inhabitants "trespassers" on state land and "criminals".<sup>3</sup> Most of the Bedouin population lost their land when Israel declared it as *Mawat* ("dead", uncultivated agricultural lands) and reclaimed them as state lands.<sup>4</sup> In addition, the *Land Purchasing Law* of 1953 determined that any land not found in its owners' right in April 1952 in certain areas would become state land, resulting in more Bedouin losing all rights to their lands outside their living area.<sup>5</sup> There was no exception made for the Naqab Bedouin who were forcefully evicted from their ancestral lands by the very same Israeli government that went on to become the "rightful" guardian of those homesteads. The *Planning and Building Law* enacted in 1965 led to the classification of most of the Siyāj area as agricultural land. From the moment the law

came into effect, every house built in this area was defined as illegal and all the houses and structures already standing in the area were retroactively declared as illegal.<sup>6</sup>

Since the beginning of the 1970s, Israel has been conducting an ongoing non-consensual and non-participatory process of urbanisation. As a result, today according to the CBS – Central Bureau of Statistics – more than 72% of the Bedouin population in the Naqab reside in recognised townships and villages that are characterised by poverty, deprivation, high unemployment, crime and social tension, as well as inadequate provision of state services.<sup>7</sup> In addition to the seven townships, the state recognised 11 Bedouin villages from 1999 onwards,<sup>8</sup> hailing their recognition as a fundamental shift in governmental policy, which had previously focused exclusively on forced urbanisation. However, almost two decades later, there is no significant difference between these villages and the unrecognised villages. The residents of most recognised villages continue to be denied access of basic services and are under constant threat of house demolitions.<sup>9</sup> The remaining 28% of the Bedouin population (around 90,000 people) live in unrecognised villages<sup>10</sup> that do not appear on any official map and most of which contain no health and educational facilities or basic infrastructure. Their residents have no formal local governmental bodies and are represented only in The Regional Council for the Unrecognised Villages (RCUV), an informal community body.

## Mechanisms of forced displacement

In 2019, Israel continued to promote its policy of dispossession through its national “development” projects. These include:

- the expansion of Ramat Beka Special Industrial Zone, resulting in severe construction restrictions that may lead to the forcible transfer of part of the Bedouin population and result in health risks to the remaining Bedouin residents;<sup>11</sup>

- the extension of Road 6, expected to result in the demolition of around 600 Bedouin structures across at least nine unrecognised villages, possibly including 350 homes;<sup>12</sup>
- the establishment of a phosphate mine in Sdeh-Barir that is expected to result in the demolition of more than 1,995 buildings and endanger the health of approximately 11,000 Bedouin residents living in the area;<sup>13</sup>
- and the creation of two new railway lines, planned to cut through several Bedouin villages –including the two Bedouin townships of Ksīfih and ‘Ar‘arah an-Nagab, as well as several unrecognised villages that include az-Za‘arūrah, al-Fur‘ah, al-Bḥīrah, al-Gaṭāmā, al-Ġazzah and Rakhmah, which will be cut in half – causing significant upheaval and land seizures.<sup>14</sup>

Part of the contentious nature of these plans is the perception that authorities crafted the proposals to cause maximum possible upheaval for Bedouin communities, for example extending Route 6 through Bedouin communities despite the excess of open, unpopulated land available for the project.<sup>15</sup>

On 6 October 2019 the Authority for the Development and Settlement of the Bedouin in the Negev (hereinafter: Bedouin Authority) made public their plan for ‘Temporary Housing Solutions and Public Buildings for the Bedouin Population in the Negev’. This plan is said to allow for the rehousing of Bedouin people living in unrecognised villages to facilitate the construction of the national projects. However, these plans are more accurately seen as feeding into the centralisation, forced urbanisation and forced transfer of Bedouin people, moving them to temporary accommodation on the outskirts of the recognised townships and councils. Given the inadequate provision of basic services even within recognised villages and townships,<sup>16</sup> the habitability of the proposed temporary houses is doubtful. This unsuitability, as well as the indefinite period for which people would have to live there, means that it is likely that these plans would result in the internal displacement of 100,000 people<sup>17</sup> across the Naqab region, where civil society, and the heads of all Bedouin cities, local and regional councils have objected to the plans.<sup>18</sup>



## **International intervention: unresolved land claims, exclusion from decision making and home demolitions**

On 1 May 2019, six UN Special Rapporteurs wrote to the State of Israel with concerns about the treatment of Bedouin communities.<sup>19</sup> Their statement expressed concern particularly with the incarceration of Sheikh Sayah Abu Madhi'm al-Turi and subjecting him to both civil and criminal sentences.<sup>20</sup> He was released from prison on 23 July 2019 and re-arrested two days later for trespassing, but was released again that same day. They also expressed doubt that the state took all necessary steps to avoid evicting Bedouin people and concerns at the high number of demolitions. As a result, they requested information to show how they collaborated with and consulted the affected communities before proceeding with the programmes.<sup>21</sup>

The conclusions of the UN Committee on Economic, Social and Cultural Rights, published in November 2019, expressed concern about the number of unresolved Bedouin land claims and the absence of consultation of Bedouin people in the formation of the Socioeconomic Development Plan for Negev Bedouin, 2017-2021 (2017). They also expressed concern at reports of the eviction and relocation of Bedouin people in the Naqab and the substandard living condition in both recognised and unrecognised villages, "characterised by very limited access to adequate housing, water and sanitation facilities, electricity and public transportation".<sup>22</sup> As a result of their concerns, the Committee called for the State to improve their efforts to resolve pending land claims, consult the affected Bedouin communities on the implementation of the Socioeconomic Development Plan, stop the evictions of Bedouin people from their ancestral land, recognise the unrecognised villages, and improve the living conditions and infrastructure across all Bedouin communities in the Naqab.<sup>23</sup> The state has yet to engage with these concerns and recommendations.

The concluding observations of the Committee on the Elimination of Racial Discrimination raise similar points. Their conclusions published in December 2019 refer to the high number of demolitions of Bedouin property, as well as the exclusion of Bedouin people from the consultation process in formulating the Socioeconomic Develop-

ment Plan and the substandard living conditions in both recognised and unrecognised villages.<sup>24</sup> The Committee calls for the unrecognised villages to be recognised, the resolution of pending land claims and an end to the evictions of Bedouin people from their ancestral land.<sup>25</sup> The committee have requested the state provide a report one year after its adoption of these conclusions to provide information on its work to implement these recommendations.<sup>26</sup>

## The rising trend of demolitions

Though data has not yet been released for demolitions inflicted against Bedouin communities in 2019, the damaging, rising trend has continued since 2018. There was a 5% increase in the overall number of demolitions in 2018, rising to 2,326 buildings, 604 of which were homes. The scale of this problem is particularly evident when seen as a trend, which represents a staggering 334% increase in the number of demolitions since 2013, according to figures released by the Southern Administration for the Coordination of the Enforcement of Land Laws.<sup>27</sup> Of these demolitions, 89% were self-inflicted; conducted due to constant enforcement and police presence, as well as fear of severe economic and civil sanctions.<sup>28</sup>

This rising trend must also be seen in the context of recent legislative measures aimed to increase enforcement and sentencing for planning offences. One of these is the 2017 *Kaminitz Law*, designed to increase the enforcement and penalisation of offences under Israeli planning law.<sup>29</sup> This was also accompanied in June 2018 by the adoption of new regulations which increased the fine for violations of the *Planning and Building Law*, as well as removing judicial oversight from the process.<sup>30</sup> These have increased the likelihood of unrecognised Bedouin buildings being identified and demolished, as well as the punishment of their owners. In 2018, a quarter of demolitions done by the owner of a building were classed as ‘demolitions performed in process’<sup>31</sup> – those carried out by the owner prior to receiving an official order but often while an official order is being processed. In some of these cases, the demolition was probable and so by demolishing the building before being ordered to, the owner can avoid the humiliation, fear and cost

incurred in an initiated (state-conducted) demolition.<sup>32</sup> These demolitions are forcing Bedouins into increasingly concentrated, urban areas, removing them from their ancestral lands, replaced with land that is culturally incompatible and consists of unsuitable living conditions. Increased demolitions mark the rising pressure on the Bedouin community and the deterioration of relations between the state and Bedouin communities.

## Denial of indigeneity

The State of Israel has continued to refute the notion of Bedouins as an indigenous group. This is in the face of overwhelming academic and international opinion, including that expressed by the UN Permanent Forum on Indigenous Issues and the UN Human Rights Council. Moreover, two previous UN Special Rapporteurs for indigenous peoples have supported Bedouin indigenous claims.<sup>33</sup> Refusing to recognise their indigenous status harms the Bedouin community in a range of ways. This denial is used to defend the policy of claiming Bedouin ancestral land as state land, as well as justifying the eviction and transfer of Bedouin people and concentrating them in urban areas around recognised villages. Additionally, excluding Bedouin people from the category of ‘indigenous people’ means they are not afforded the protection offered to other indigenous groups by the UN Declaration of the Rights of Indigenous Peoples (2007), which details indigenous rights over land, settlement, resources, culture and identity.<sup>34</sup>

The state’s continued failure to recognise Bedouin indigeneity is then deeply significant, not just by undermining their land claims, but also by “manifest[ing] in the denial of basic services, home demolitions, recurring waves of State violence, and the omission of such villages from official documents and maps.”<sup>35</sup> Improvements in relations between the state and Bedouin communities, as well as the future improvement of life for Bedouin communities, hinges on the state’s eventual concession to the weight of academic evidence and strength of international opinion in support of recognising the Bedouin people as an indigenous group.

## General outlook for 2020

The national 'development' projects are set to progress despite attempts to prevent them, so there are expectations of significant displacement, demolitions and evictions in the coming years. Although the proposed Sde Barir phosphate mine near Arad is currently on hold until a survey into its health effects can be conducted, once this survey is completed and its findings are published, there will be a further opportunity to engage with authorities with an aim to prevent its construction.

There were last minute negotiations before new national elections were called in which support for a government was requested on the back of a pledge to repeal the *Kaminitz Law*.<sup>36</sup> Although no agreement was reached, the question of freezing this law has been established as something for the next Knesset to consider, following the elections in March 2020. This could well provide an opportunity to improve the status quo and strengthen the relationship between the state and Bedouin communities. The temporary housing project proposal is still in early days, and so more information about its scale and its impact should become clear over the coming year. Currently, these plans are not going through but we are worried that they will be promoted through different outline plans in the local, regional and national planning committees.

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***The Negev Coexistence Forum for Civil Equality (NCF)*** was established in 1997 to provide a space for Arab-Jewish shared society in the struggle for civil equality and the advancement of mutual tolerance and coexistence in the Negev/Naqab. NCF is unique in being the only Arab-Jewish organization that remains focused solely on the problems confronting the Negev/Naqab area. NCF considers that the State of Israel is failing to respect, protect and fulfill its human rights obligations, without discrimination, towards the Arab Bedouin indigenous communities in the Negev/Naqab. As a result, NCF has set one of its goals as the achievement of full civil rights and equality for all people who make the Negev/Naqab their home.



# Palestine



Following Israel's declaration of independence in 1948, the Jahlalin Bedouin, together with four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin and al-Rshaida), took refuge in the West Bank, then under Jordanian rule. These tribes are semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley.

These areas are today part of so-called "Area C" of the Occupied Palestinian Territory (OPT). Area C represents 60% of the West Bank; it was provisionally granted to Israel in 1995 by the Oslo Accords and was due to be gradually transferred to Palestinian jurisdiction by 1999. This never happened and, today, 25 years after the Oslo Accords were signed, Israel retains near-exclusive control of Area C, including over law enforcement, planning and construction. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only by-pass roads, all under Israeli military control. Over the years, Israel has dispossessed Palestinians of roughly 200,000 hectares of land, including farmland and pastureland, which it then generously allocated to settlements. Over 600,000 Israeli settlers currently live throughout the West Bank (including East Jerusalem) in over 200 settlements, enjoying nearly all the rights and privileges accorded to Israeli citizens living in Israel proper, inside the Green Line.<sup>1</sup> The recently launched Trump "Deal of the Century" recognises Israeli permanent possession of those settlements, with *de jure* annexation predicted and a committee set up – on which US Ambassador David Friedman but no Palestinian sits – to map those regions.

The situation of the Indigenous Palestinian Bedouin refugees of 1948, some 27,000 pastoral herders living under full Israeli military control in Area C, is currently a major humanitarian issue. Most at risk are 7,000 Bedouin (60% of whom are children) living in 46 small communities in the Jerusalem periphery. Donor-funded humanitarian structures (shelters, goat pens, water tanks, schools, etc.) continue to be deliberately targeted by the Israeli military and forcible resettlement by the Israeli authorities remains a constant threat.



**T**he desert landscape of the Indigenous Palestinian Bedouin, as elsewhere in the “developed world”, has increasingly become valued as real estate ripe for development, with Israeli settler colonialism claiming every mountain hilltop.

In this situation, refugee Bedouin living in the Occupied Palestinian Territory (OPT) – alongside all the other 300,000 Palestinians existing under occupation in Area C – live with neither civil rights nor services in a coercive environment under harsh Israeli military restrictions, the aim of which seems to be to force them to leave “of their own accord”. Yet, increasingly, there is nowhere left for Bedouin to go who wish to continue life as tranquil, traditional, pastoral herders in the Judean Desert, South Hebron Hills or Jordan Valley.

## **Threats against al-Khan al-Ahmar**

During this past year, the situation was less stressed at al-Khan al-Ahmar Bedouin hamlet than in 2018 when it was declared a closed military zone. Prior to the demolition of the village and its iconic “car tyres” school,<sup>2</sup> bulldozers worked inside the village for a week to establish military control roads with a massive military presence. Threats of International Criminal Court (ICC) involvement may have postponed that demolition, including a statement by Prosecutor Fatou Bensouda: “I have been following with concern the planned eviction of the Bedouin community of Khan al-Ahmar, in the West Bank. Evacuation by force now appears imminent, and with it the prospects for further escalation and violence. It bears recalling, as a general matter, that extensive destruction of property without military necessity and population transfers in an occupied territory constitute war crimes under the Rome Statute.”<sup>3</sup>

Nevertheless, the village is still targeted by right-wing politicians who, during the three election campaigns from 2019 to 2020, regularly visited the hilltop next to it for press conferences, using these photo opportunities to attack Israel’s Prime Minister Benjamin Netanyahu for not demolishing the village.

## **Demolitions, displacement and settlements**

Demolitions have continued to take place in nearby Bedouin communi-

ties such as Al Muntar, Wadi abu Hindi, Abu Nuwar and Jabal al Baba. These hamlets are all due east of Jerusalem so forcible displacement would facilitate the “Judaisation” of the entire corridor, thereby denying Palestinians open access to East Jerusalem, which – despite Trump’s “Deal of the Century”, the economic section of which was launched in Bahrain in June 2019 – is still viewed under international law as the future capital of Palestine. In fact, many Bedouin communities in the territories were at the mercy of bulldozers throughout 2019. The UN Office for the Co-ordination of Humanitarian Affairs (UN OCHA) reports that 68 Bedouin families were displaced.<sup>4</sup> Their statistics reveal 349 Bedouin displaced but 17,959 herders affected throughout 2019 by demolitions, confiscations, the uprooting of agricultural trees or the destruction of 49 agricultural and 15 livelihood structures. Home demolitions generally peaked in 2019.<sup>5</sup>

Israeli settler colonialists, such as those in the far-right, pro-settler Israeli NGO Regavim,<sup>6</sup> whose High Court petition demanding demolition of the school and village at al-Khan al-Ahmar was postponed, due to Israel’s elections, from December 2019 to May 2020, state their role as “upholding the law” while intrinsically flouting international law by land-grabbing even privately owned Palestinian lands so as to further the settlement enterprise.<sup>7, 8, 9</sup>

Israel continues to fail to recognise Bedouin as Indigenous, or to recognise any Indigenous Peoples for that matter, along with their prior claims or even equal connection to their lands. As settlement continues at an accelerated pace, the undermining of a rich, invaluable Bedouin culture continues. Bedouin traditionally practise a semi-nomadic, non-consumerist lifestyle that is closely in tune with nature. Their central spiritual value is freedom and, traditionally, they have lived for centuries with grace, wisdom, patience and sustainability in harsh desert extremes. However, under Israeli occupation, that lifestyle is no longer possible. Demolitions, settlement building, blocked access to their market in Jerusalem and Israeli decrees of “closed military zones” covering most of the desert and thereby depriving access to grazing, continue to strip Bedouin of their livelihoods and culture. This spells an end to their ability to remain where they are, as they are thus being forced to live in semi-urban areas, often under poor living conditions.<sup>10</sup>

With minimal education, especially among the older generations, but no shortage of intelligence gained from living freely close to nature, the only legal work generally available for most – especially those who

have not had access to education in Area C – is work in the settlements as builders, gardeners, factory workers or cleaners; work antithetical to traditional Bedouin culture and practices.

Area C Palestinians lack most basic services – 51 schools bear demolition or stop work orders<sup>11,12</sup> while Israeli authorities no longer see it as their duty under international humanitarian law to provide basic services for those living under occupation, such as access to education, health services and water, as they had in previous years. However, increasing numbers of forcibly displaced Bedouin students now attend universities in the OPT although even they prefer to maintain a significant presence in the desert – away from cities, slums, settlements and even villages.<sup>13</sup> Elders speak with nostalgia of their previous freedom to take their flocks out into nature but acknowledge that remaining sedentary, even in slums, allows for easier access for their children to receive a formal education.<sup>14</sup>

## **The displacement of the Jahalin**

Some 1,000 refugees of the Jahalin tribe living in the Jerusalem periphery were re-displaced in the 1990s. Those who had lived in the Ma'ale Adumim settlement area were forced onto a site next to Jerusalem's main garbage dump (graphically shown in Jahalin Solidarity's short documentary HIGH HOPES).<sup>15</sup> That site is still Israel's preferred displacement site for Bedouin currently living on lands Israel covets for settlement expansion and their removal would mean the foreclosure of open access to Jerusalem from the east.

Thirty-four families are to be uprooted from al-Khan al-Ahmar,<sup>16</sup> according to the current plan,<sup>17</sup> and moved to Abu Dis,<sup>18</sup> dangerously next to a main highway, with no pasture for animals, a key element of Bedouin life and culture. When the High Court suggested in 2018 that an alternative site be considered,<sup>19</sup> the state came up with a piece of desert belonging to private Palestinian landowners, next to a sewage waste-water treatment plant.

An even more radical plan is being developed by the Israel Defence Forces to displace up to 12,500 Bedouin to Nuweimeh,<sup>20, 21</sup> a site north of Jericho in the Judaeen Desert – again with no cultural awareness, meaning no access to desert grazing as most of the desert has been

decreed as closed military zones or firing ranges off limits for pastoral herding. There are also no available work opportunities nearby. Netanyahu is on record as stating: “All the Bedouin will go to either Abu Dis (a sprawling urban area) or Jericho.”<sup>22</sup>

## Climate change

Israel is now experiencing the ramifications of climate change, including coastal flooding,<sup>23</sup> longer summers and forest fires, which are becoming an annual event. There were devastating forest fires in May, August and November 2019, during an extended summer when temperatures were higher than previous averages.<sup>24, 25, 26</sup> Authorities are now learning, finally, that if Bedouin are allowed to graze their goats in forests – previously forbidden – there is less combustible undergrowth to ignite.<sup>27</sup>

Israel is listed as the second most water-stressed nation on the planet in the World Resources Institute’s Aqueduct Water Risk Atlas,<sup>28</sup> which “showed the lion’s share of the most thirsty countries is located in the largely arid Middle East and North Africa region. Qatar is the most water-stressed country, followed by Israel and Lebanon”. Indeed, Israel “weaponises” water to move Palestinians<sup>29</sup> out of the Jordan Valley,<sup>30</sup> where they are not allowed to dig new wells, while settlers have deep wells that command all the freshwater, leaving brackish water for Palestinian farmers and herders, and increasing desertification in the breadbasket of Palestine.<sup>31</sup> It is no coincidence that the major settlement blocs – Gush Etzion, Ariel and Jordan Valley – are strategically situated over all the mountain aquifers or Jordan River water sources. As Dr. Mustafa Barghouthi notes: “As of 2016, Israel appropriates over 85% of Palestinian water and Palestinians in the West Bank have access to only 73 litres of water a day, while illegal settlers swim in pools and have access to over 300 litres.”<sup>32</sup> Yet those desert dwellers, Bedouin refugees who know how to live with minimal amounts of water and how to conserve it, are denied access to almost all the deserts of the OPT.

## Outlook for 2020

Settler colonialism, encouraged by the Trump Administration’s transfer of its embassy from Tel Aviv to Jerusalem and its “Peace Vision”, is now

focussed on the development of Greater Jerusalem. This expansion would stretch to the Jordanian border, so Israeli *de jure* annexation<sup>33</sup> of the water-rich, riparian breadbasket of the Jordan Valley is a very real danger, while the *de facto* creeping annexation of Area C is relentless as the settlements expand.<sup>34</sup>

The issue at the time of writing is under review by the ICC. The prosecutor finished her preliminary examination in December 2019, after a five-year process, requesting the court to rule on jurisdiction for complaints about potential Israeli or Palestinian war crimes in Gaza, East Jerusalem or the remaining occupied West Bank.

The prosecutor's 2018 statement, together with mounting international pressure from various governments and the European Union, was seen as a "brake" delaying the forcible displacement of al-Khan al-Ahmar in 2018, and up to 3,000 more Bedouin in that region once the dominoes start to fall. Yet the US, Australia, Brazil, Uganda, Germany, Austria, Czech Republic and Hungary<sup>35</sup> (stymying EU consensus) deny ICC jurisdiction over Palestinian issues, despite Palestinian accession in 2015 to the Rome Statute, as Palestine is not a full UN member state. US political interference in the ICC's neutrality has already taken place via threats in March 2019<sup>36</sup> to withhold visas to ICC judges<sup>37</sup> if they hold deliberations about potential US war crimes in Afghanistan or Israeli actions in Palestine (and Hamas actions in Gaza) – despite settlement expansion being explicitly banned by international humanitarian law, including the Geneva Conventions to which Israel is a signatory.

"Parties to the Geneva Conventions" reminds Human Rights Watch in its reporting on demolition of Bedouin schools, "are obliged to 'ensure respect' for the law of occupation, and to prosecute 'grave breaches' – including the war crimes of wanton destruction and forcible transfer – regardless of the country in which the crimes took place".<sup>38</sup>

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**Angela Godfrey-Goldstein** is Director of Jahalin Solidarity, a Palestinian organisation she set up to support Jahalin Bedouin with capacity raising and advocacy, especially with regard to their forcible displacement, and to advocate against the Israeli Occupation. She was for many years Action Advocacy Officer with ICAHD – the Israeli Committee Against House Demolitions, and Advocacy Officer for Grassroots Jerusalem, having previously been an environmental activist in Sinai, Egypt, where she lived for four years with Bedouin. Together with Eid abu Khamis Jahalin, she was a Rebuilding Alliance "Peacemaker" awardee in 2018. A chapter she wrote about her work for the past 20 years with Bedouin was published in 2018 by Veritas in the best-selling book "Defending Hope - Dispatches From The Front Lines In Palestine And Israel".





# Russian Federation



Indigenous Peoples are not recognised by Russian legislation as such; however, Article 69 of the current Constitution guarantees the rights of 'Indigenous minority peoples'. The 1999 Federal Act "*On Guarantees of the Rights of the Indigenous Minority Peoples of the Russian Federation*" specifies that Indigenous minority peoples are groups of less than 50,000 members, perpetuating some aspects of their traditional ways of life and inhabiting the Northern and Asian parts of the country. According to this, other framework laws, which were enacted during the late Yeltsin era, guaranteed that Indigenous minority peoples have rights to consultation and participation in specific cases. There is, however, no such concept as 'Free, Prior and Informed Consent' enshrined in legislation. The last two decades have seen a steady erosion of this legal framework and a heavy re-centralisation of Russia, including the dismantling of several Indigenous autonomous territories.

Of the more than 160 peoples inhabiting the territory of contemporary Russia, 40 are officially recognised as 'Indigenous minority peoples of the North, Siberia and the Far East'. One more group, the Izhma Komi or Izvatas, is actively pursuing recognition, which is continually denied, and at least one other, the Kerek, is already extinct. Together, the Indigenous Peoples number about 260,000, less than 0.2% of the total population of Russia, of which ethnic Russians account for 80%. Other peoples, for example the five million Volga Tatars and many groups populating the North Caucasus are not officially considered Indigenous Peoples, and their self-identification varies. Since the Russian annexation of Crimea, several ethnic groups self-identifying as Indigenous have come under Russia's control: the Crimean Tatars, the Krymchaks and the Karaim. Russia hasn't recognised them as Indigenous.

Two-thirds of Indigenous Peoples are rural and depend on traditional subsistence strategies such as fishing, hunting and reindeer herding.

Civil society is affected by a continually shrinking space. Since 2012, non-governmental organisations (NGOs) that re-

ceive foreign funding can be officially classified as “foreign agents”, which led many of them to close down in order to minimise exposure to legal risks. Many foreign NGOs have been banned as “undesirable organisations”.

Russia’s export revenues are largely generated from the sale of fossil fuels and other minerals, often extracted from territories traditionally inhabited by Indigenous Peoples. The country’s development strategy is largely geared towards further increasing the exploitation of the Arctic’s natural resources. As many resource-rich countries, Russia is heavily affected by the ‘resource curse’, fuelling authoritarianism, corruption and bad governance, all of which impacts negatively on the state of Indigenous Peoples’ human rights and limits opportunities for their effective protection.

Russia has neither ratified ILO Convention 169, nor has it endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The country has inherited its membership of the major UN Covenants and Conventions from the Soviet Union: the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also has ratified the Framework Convention on the Protection of National Minorities (FCNM) of the Council of Europe.

## Siberian wildfires 2019

2019 was a year where the impacts of a rapidly warming Arctic became more tangible than in any prior year. The wildfires especially affected two regions inhabited by Indigenous Peoples: Yakutia and Krasnoyarsk. The former is Russia’s largest constituent territory, followed by the latter, which includes the formerly autonomous regions of Evenkia and Taimyr. By the end of July, 2.6 million hectares of forest were burning, equalling approximately the size of Belgium. It was esti-

mated that between the start of the year and end of August, fires had destroyed between 8.5 and 14.5 million hectares of Siberian forests.<sup>1</sup> Citizens have denounced the government's inaction and demanded that an emergency be declared and acted upon.<sup>2</sup>

The wildfires were especially damaging for the Indigenous Peoples of Siberia, given that some of the most affected areas are remote territories mostly inhabited by them, and they have a high dependence on the forest and its resources. The problem is exacerbated by the fact that forest fires have come on top of the damage caused to their ancestral land by rampant logging, mostly driven by demand from China.

## **Evenks denounce forest policy, leading to ecocide of their ancestral land**

In connection with the forest fires, the Evenk association Arun (Evenk for 'revival') appealed to the leadership of the Krasnoyarsk Region, President Putin and the UN,<sup>3</sup> as well as submitted proposals to the Parliamentary hearings on the forest policy, which took place on 5 November 2019 in the State Duma, Russia's Parliament. The appeal gives a critical appraisal of the forest exploitation in Krasnoyarsk Region, which has led to the destruction of the ancestral land of Indigenous Peoples and local communities.

According to Arun, currently 19 Indigenous *obshchinas* (kinship-based Indigenous cooperatives) in Evenkia have use rights to forest lands through lease agreements for roughly 13% of the district's area. In accordance with the Forest Code, Indigenous *obshchinas* that have entered such agreements covering a forest area of more than 200 hectares, must, as Arun writes "fulfil far-reaching obligations, pay a lease fee which, amounts to more than 25 million roubles (USD\$400,000) for a period of 49 years", as well as to ensure, among others, that fire-fighting facilities are deployed over huge areas that have no roads and consist of many mountain ranges, marshes and rivers. These communities are also obliged to pay taxes and fees for hunting and fishing on their own ancestral land and make mandatory payments to the pension fund, among other fees. Failure to fulfil these obligations is severely punished and the legal status of the community can be revoked, thus depriving the *obshchina* of use rights to their land or waters.

What makes matter worse is that article 25 of the Forest Code allows for the forest plots already leased to Indigenous *obshchinas* to be given to logging companies without consultation with the affected communities. In this case, even though a commercial logging company cuts down the forest, the *obshchina*'s responsibility for fire protection along with all the other obligations remains unchanged. It is still expected to pay the same amount under the lease agreement, even though it no longer has effective control of the land, and its value is greatly diminished by the logging activity. According to Arun, outdated data – obtained over 20 years ago – when the forests were still teeming with animals is being used; while today, the animals are mostly gone due to logging and forest fires.

In Evenkia, large-scale logging projects are being implemented without tenders and without reforestation obligations for the logging companies. At the same time, neither the local population nor the Indigenous Peoples are being informed by the authorities about the large-scale investment projects that affect their traditional livelihoods: hunting, fishing, reindeer herding and gathering.

When forest land is transferred to logging companies no forest management is carried out. Companies such as JSC 'Krasles Invest' are not certified by the Programme for the Endorsement of Forest Certification (PEFC) or the Forest Stewardship Council (FSC), and yet, according to media reports, their timber is exported abroad. It is estimated that between 2019-2020 the total forest area leased to logging companies in Evenkia is more than five million hectares. Arun is concerned that if this goes unabated in the coming years, huge swaths of forest, containing important pastureland, waters, and hunting and fishing grounds in Evenkia will be destroyed by logging companies. As a result, a large part of the Indigenous Peoples and local population will be deprived of the opportunity to carry out their traditional economic activities and crafts that form the basis of their livelihood.

The clear-cutting carried out by logging companies in the permafrost regions causes the permafrost to thaw, which leads to landslides and erosion;<sup>4</sup> former forests are turned into swamplands and the removal of plant cover means that the surface is fully exposed to solar irradiance during the summer months. Later, the swamps dry out and that increases the risks of wildfires, further exacerbating the harm caused by global warming as gases are released into the atmosphere. Apart

from the disastrous effect forest fires and clear-cutting have on the traditional lifestyle of Indigenous Peoples of Siberia, they also make it difficult for Indigenous *obshchinas* to fulfil their obligations of the Russian State and thus increase the risk of them losing their tenure and status.

To remedy the situation Arun proposes the following:

- Urgently introduce amendments to the current legislation,<sup>5</sup> ensuring actual respect for and protection of the rights and interests of Indigenous Peoples during planning and implementation of industrial logging;
- To study the impact of logging in the permafrost zone; and
- To ensure that the federal law regulating the establishment of Territories of Traditional Nature Resource Use (TTNU), the only existing mechanisms aimed to protect the rights and interests of Indigenous Peoples, is put into practice.

Responding to the damage caused by the Siberia forest fires in 2019 the VII Congress of Indigenous Peoples of Krasnoyarsk Region issued a collective appeal to the UN and to the head of state of China in September, calling for a moratorium on the purchase of timber harvested on Indigenous territories in Russia by Chinese companies, as well as to create a register of Russian companies engaged in supplying timber to China without indicating the location of origin and the legal grounds of the origin of the wood. The petition posted on change.org gathered over 10,000 signatures.<sup>6</sup> At the time of writing there was no known reaction from Chinese leadership.

## **Proposed “register of Indigenous Peoples” in stalemate**

In 2018, the government had published a draft amendment to the federal law “*On Guarantees of the rights of Indigenous minority peoples*”, and in August 2019 the amendment was submitted to the State Duma for deliberations. The bill, according to which the government aims to “minimize the overuse of social and economic benefits provided to Indigenous Peoples of the Russian Federation”<sup>7</sup> introduces a register of Indigenous persons in addition to the already existing register of Indigenous Peoples. Only persons registered as belonging to one of the

groups on the list will be recognised as Indigenous. Registration is reserved to those who lead a traditional way of life, which has to be based on the activities listed in the register of traditional economic activities of Indigenous Peoples, and also to those who are residents in one of the areas listed in the official register of territories inhabited by Indigenous Peoples.<sup>8</sup> This runs counter to the right to “determine and indicate ones national identity”<sup>9</sup> set out in Article 26 of the Russian Constitution.

The draft bill has been widely discussed by Indigenous Peoples throughout 2019. Indigenous activists have concluded that the bill will leave out those of them who will not be able to provide documentary evidence that they lead a traditional lifestyle and live in places of traditional Indigenous residence and economic activities.<sup>10</sup> The very narrow list of traditional activities and locations was approved by the Government in 2009.

While the state-controlled national umbrella organisation Russian Association of Indigenous Peoples of the North (RAIPON) officially endorsed the amendment proposed by the government, independent Indigenous activists overwhelmingly rejected it, pointing out that once the amendment is adopted all social and economic benefits will be granted only to persons listed in the register. This includes the right to protection of their ancestral land, preservation of their traditional lifestyles and the use of the necessary natural resources, the right to an alternative civil service instead of mandatory draft, the right to conservation and development of Indigenous culture, and the right to implementation of territorial civic self-government based on national, historical and other traditions. The proposed bill negates the Indigenous Peoples’ right of self-determination at a fundamental level by denying them the right to decide who is a member of a given people and who is not, and by atomising peoples who are collective subjects of international law into individuals and converting what should be collective rights into individual benefits.

## Land rights in limbo

In 2019 no progress was made on the implementation of the 2001 Federal Law *“On Territories of Traditional Nature Resource Use of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federa-*

tion”,<sup>11</sup> whose realisation is one of the core demands of every international human rights mechanism reviewing the situation of Indigenous rights in Russia. Neither has progress been made on the issue of compensation for damage caused to their ancestral land, even though back in 2009, the now defunct Ministry of Regional Development adopted a ‘Methodology for the calculation of damages’.<sup>12</sup> The same is true for the long-standing demand to legislate the mandatory conduct of ‘ethnological impact assessments’ for commercial projects affecting Indigenous Peoples and their territories.

## Civil and political rights

After restricting Western activists from working in Russia, including banning the International Work Group for Indigenous Affairs’ (IWGIA) former Russia Coordinator from entering the country for 50 years in late 2018, Russia in 2019 moved to revoke the registration of one of the leading independent Indigenous organisations in Russia, the Centre for the Support of the Indigenous Peoples of the North (CSIPN).<sup>13</sup> The federal Ministry of Justice is seeking the organisation’s closure on formal grounds related to its statutes. Not unexpectedly, in November, Moscow’s city court confirmed the Ministry of Justice’s move. This prompted the EU External Action service to voice its concern vis-a-vis the Russian government.<sup>14</sup> By the end of the year, the court battle was still ongoing, with a decision pending by the Court of Appeal.

This decision affects one of the best established and last remaining internationally known Indigenous organisations in Russia. CSIPN has UN Economic and Social Council (ECOSOC) consultative status and its director, Rodion Sulyandziga, is a member of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), as well as a key contributor to many international processes such as the Indigenous Peoples’ advocacy efforts around the implementation of the Sustainable Development Goals and the UN climate negotiations. Forfeiting ECOSOC consultative status as a consequence of the organisation’s closure would greatly inhibit participation of independent Indigenous activists from Russia in these processes. It is conceivable that this is the goal behind the ministry’s decision, as Russia is investing considerable resources into brushing up its image within the UN, which includes



facilitating the participation of government-obedient Indigenous organisations while preventing the representation of critical independent voices.

## International human rights mechanisms

In 2019, no international human rights mechanisms have considered the situation of Indigenous Peoples in Russia. The UN Working Group on the issue of Human Rights and Transnational Corporations and Other Business Enterprises has received a formal invitation to Russia for 2020.

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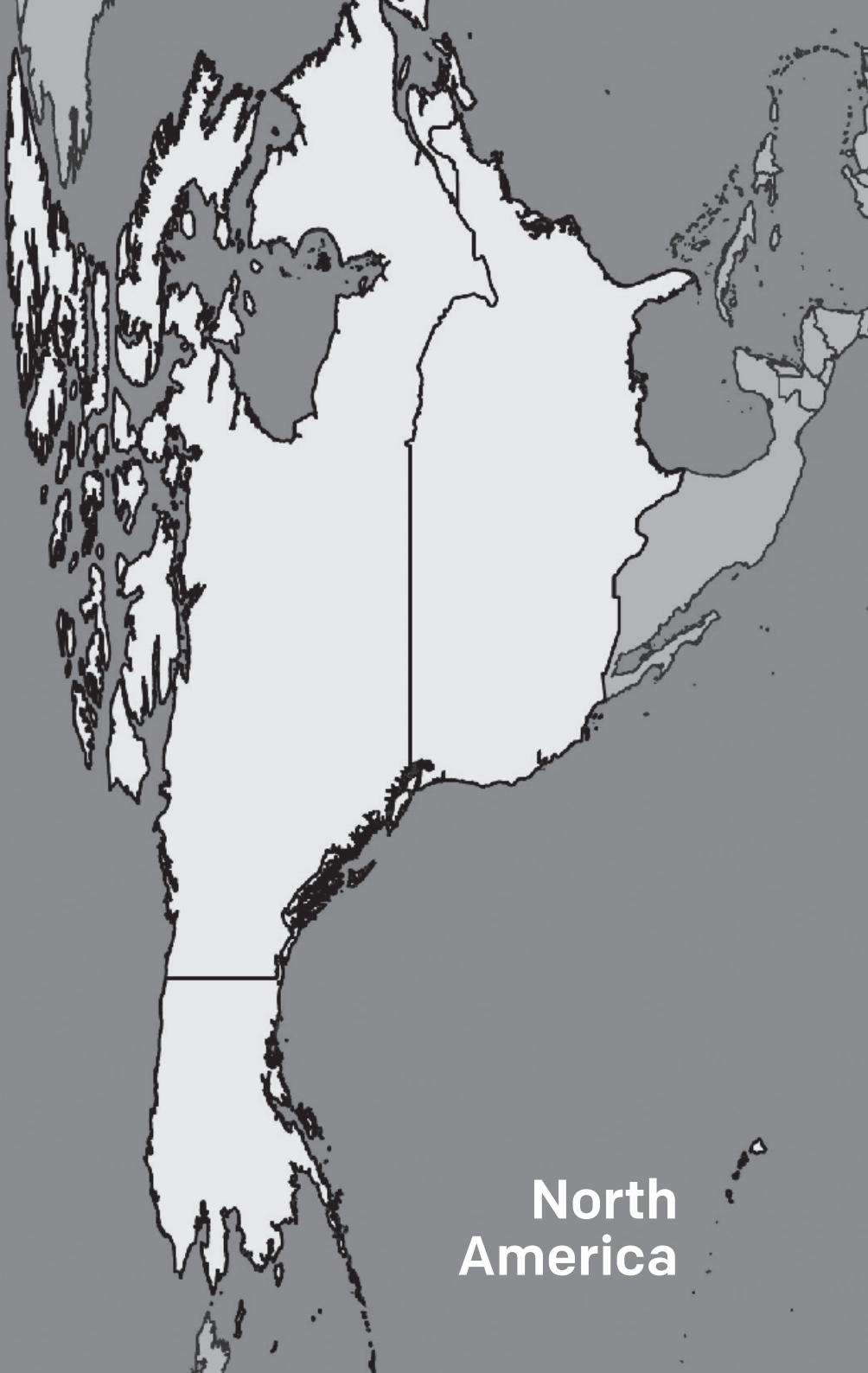
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**Olga Murashko** is a Russian anthropologist and one of the co-founders of the former IWGIA Moscow office. She has been working to support Indigenous Peoples' rights in Russia since the early perestroika years. She works as a consultant for the Centre for the Support of Indigenous Peoples of the North (CSIPN).

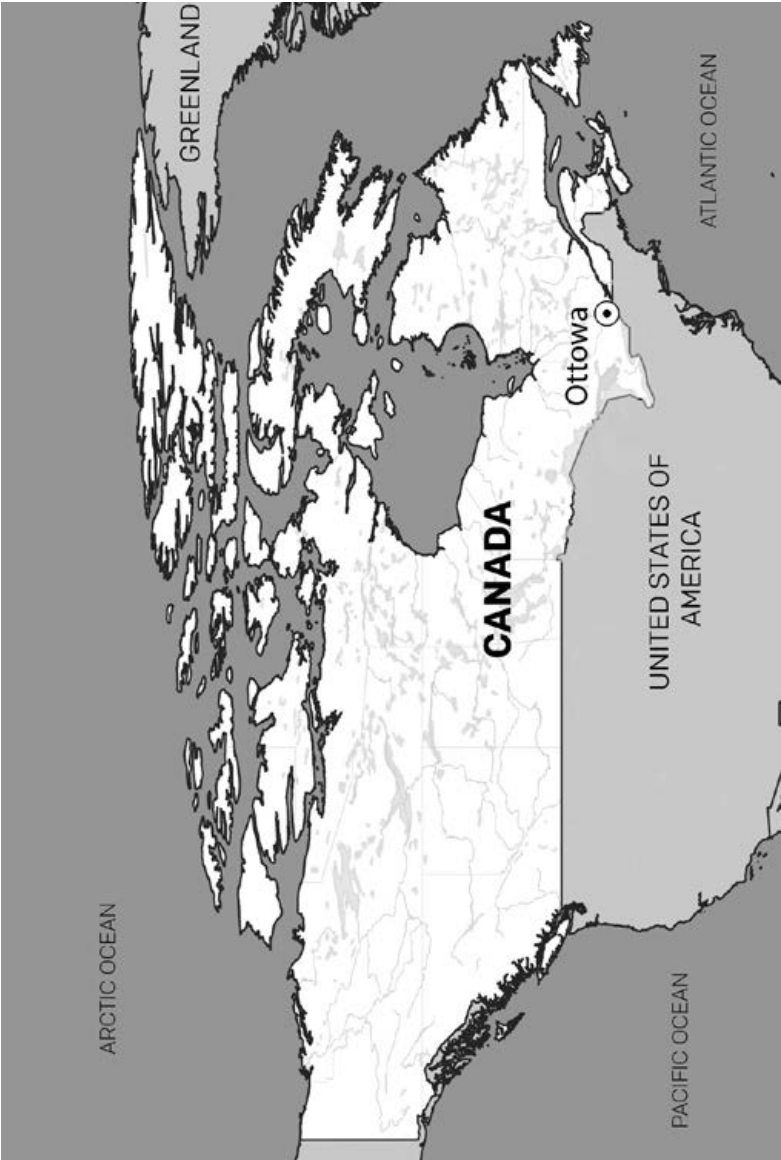
**Johannes Rohr** is a German historian who has been working with Indigenous Peoples' organisations in Russia since 1995, focusing on their economic, social and cultural rights. He is currently working as a consultant for IWGIA and INFOE. In 2018, the Russian intelligence service FSB banned him from the country for 50 years.





**North  
America**

# Canada



Indigenous Peoples in Canada are collectively referred to as “Aboriginal Peoples”. The Constitution Act of 1982 recognises three groups of Aboriginal Peoples: Indians, Inuit and Métis. According to the 2016 Canadian Census, there were 1,673,785 Aboriginal Peoples in Canada, accounting for 4.9% of the total population. 977,230 people identified as a First Nations person. First Nations (defined as “Indians” in the Indian Act (R.S.C., 1985, 1985, c. I-5) and the Constitution Act (1982), are diverse Nations and peoples, representing more than 600 distinct First Nations and encompassing more than 60 languages. The Métis constitute a distinct Aboriginal nation, number 587,545 in 2016, many of whom live in urban centres. The Inuit represent an Indigenous people who have occupied Inuit Nunangat in Canada’s north, and numbered 65,025 in 2016. Indigenous Peoples in Canada are represented by a number of representative organisations regionally, provincially and nationally. National Indigenous representative organisations include, but are not limited to, the Assembly of First Nations, the Congress of Aboriginal Peoples, the Inuit Tapiriit Kanatami, the Métis National Council and the Native Women’s Association of Canada. Canada’s Constitution Act recognises and affirms the existing aboriginal and treaty rights of Aboriginal Peoples. The Supreme Court has called the protection of these rights “an important underlying constitutional value” and “a national commitment”. In 2007, Canada was one of four states that voted against the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2010, the Canadian government announced its endorsement of the UNDRIP, and in 2016 Canada re-affirmed its support “without qualification”. Canada has not ratified ILO Convention 169. The Aboriginal Peoples Television Network serves Canada’s Indigenous Peoples as an independent television network and news broadcaster, broadcasting programs made by, for and about Indigenous Peoples, with government support.

## **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**

In November 2019, British Columbia (BC) became the first province in Canada to enshrine the human rights of Indigenous Peoples into law by unanimously passing Bill 41, the Declaration on the Rights of Indigenous Peoples Act<sup>1</sup> (DRIPA). The Act aims to implement the UNDRIP by setting out a process to align BC's laws with the UNDRIP. The BC DRIPA was developed in partnership with provincial Indigenous representative organizations (the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs). The legislation requires the co-development of an action plan to achieve provincial alignment with the UNDRIP over time, with appropriate transparency and accountability mechanisms. In addition, the legislation allows for flexibility for the province to enter into agreements with a broader range of Indigenous governments. Further, it provides a framework for decision-making between Indigenous governments and the province on areas of joint concern. The act will be far reaching, covering a range of policy areas including: Children and Families, Fisheries and Aquaculture, Agriculture and Ranching, Forestry, Environmental Assessment, Mining and more.

Federally, the Canadian government was unable to pass Bill C-262,<sup>2</sup> a federal private member's bill which sought to "ensure that the loans of Canada are in harmony" with the UNDRIP. Though passing the House of Commons in May 2018, the bill died in the Senate when Parliament rose for an election in June 2019. Following the re-election of Prime Minister Trudeau and the Liberal Party, the Canadian government has committed to implementing the UNDRIP into federal law, with Bill C-262 as the floor, and a 2020 target for legislation.<sup>3</sup>

## **Pipelines and the development of fossil fuel infrastructure**

In 2019, the extractive resource industry and the development of fossil fuel pipelines continues to be a primary source of conflict between governments and Indigenous Peoples. On 13 December 2019, the UN Committee on the Elimination of Racial Discrimination (UN CERD) released

a two-page statement that urged Canada to immediately stop the construction of the Coastal GasLink Pipeline, the Trans Mountain Pipeline (TMX) expansion and the Site C Dam until it has obtained the free, prior and informed consent of First Nations. The committee noted its concern with the lack of free, prior and informed consent from the impacted Indigenous groups, alongside the forced removal, disproportionate use of force, harassment and intimidation, and escalating threat of violence being used against Indigenous land-defenders.

### **Coastal GasLink**

In the province of BC there are plans to build a 670-kilometre pipeline which is expected to transport natural gas from northeastern BC to LNG Canada's export terminal in Kitimat on BC's coast. Despite having been reviewed by the BC Environmental Assessment process and obtaining the approval and required permits from the provincial and federal governments, a large portion of the pipeline crosses the territory of the Wet'suwet'en Nation, a route rejected by most of the Nation's Hereditary chiefs, who remain fiercely opposed to the project and the potential impacts to their lands and way of life. This is further complicated by the five elected Indian Act band council, which constitute the Wet'suwet'en Nation, having signed benefit agreements with both Coastal GasLink and the BC Government.

In an expression of their Indigenous and sovereign rights, Wet'suwet'en Hereditary Chiefs, members and supporters have reoccupied their territory and established a number of checkpoints and healing camps. These checkpoints and camps have currently prevented Coastal GasLink workers and contractors from accessing the Nations' territory to clear the permitted right-of-way for the construction of the pipeline.<sup>4</sup>

The Wet'suwet'en people established the Gidimt'en checkpoint in December 2018 to block construction of the CGL pipeline. In January 2019, RCMP officers, in paramilitary attire and armed with loaded assault rifles, stormed the checkpoint, dismantling the gate and arresting Indigenous land-defenders and supporters.

In December 2019, a Royal Canadian Mounted Police (RCMP) report from a strategy session on Indigenous protesters opposing the Coastal GasLink pipeline became public.<sup>5</sup> The report articulates an RCMP strategy to use "lethal overwatch" against the Wet'suwet'en checkpoint in a

militarised raid to enforce an interim provincial court injunction against the Indigenous protesters as part of the Coastal Gaslink's litigation against Wet'suwet'en land-defenders. The reports reveal RCMP tactics and strategies could have included the arrests of children and Elders, alongside possible child apprehension strategies.

Twenty-two kilometres from the checkpoint raided in early 2019 lies the Unist'ot'en healing camp, established in 2009 as a re-occupation of their traditional territory. The Unist'ot'en, the People of the Headwaters, belong to the Gilseyhu clan of the Wet'suwet'en Nation, and have continued their re-occupation of their land within these camps and other checkpoints. In an upcoming and related lawsuit, the Unist'ot'en and the Office of the Wet'suwet'en are calling for a stop-work order of the Coastal GasLink project, citing the ongoing destruction of their cultural heritage as a violation of their Indigenous rights as affirmed in the UN Declaration. On 31 December 2019, the BC Supreme Court approved Coastal Gaslink's extension of the existing injunction, granting access to Coastal GasLink workers to move further into Wet'suwet'en territory, and providing the RCMP the mandate to enforce it.

Indigenous organisations and supporters throughout the province have called for de-escalation and a commitment to non-violent dialogue as concerns about the potential for violence rise.

On 13 January 2020, the Wet'suwet'en Hereditary Chiefs submitted a formal request to the United Nations to monitor the actions of the RCMP, the State and Coastal GasLink on their traditional, unceded territory.<sup>6</sup>

In 1997, hereditary Wet'suwet'en and Gitxsan chiefs won a landmark ruling in the Supreme Court of Canada when all nine judges affirmed the existence of Aboriginal title post-Confederation. The Wet'suwet'en, like most First Nations in the province of British Columbia have not signed treaties with the Crown, nor ceded their respective territories through sale or loss of territories through warfare.

### **Trans Mountain Pipeline (TMX) Expansion**

Alongside the Coastal GasLink pipeline, the UN CERD urged the Canadian government to immediately suspend work on the TMX expansion, which extends from Alberta through BC to the coast. Despite federal approval, some Indigenous groups have not provided their free, prior and informed consent for the project and continue to fight the TMX ex-



pansion project in the nation's courts.

In the spring of 2018 the federal government bought the TMX project from Kinder Morgan. In August 2018, the Supreme Court ruled that Canada failed to meaningfully consult with Indigenous Peoples. Following this ruling, the government began yet another consultation process in an effort to address the court-identified shortcomings of the previous process. Canada re-approved the project in June 2019. Indigenous communities have again taken the government to court citing an inadequate consultation process. In December 2019, the Squamish Nations, Tsleil-waututh Nation, Coldwater Indian Band and a collective of Stó:lo bands are challenging the renewed federal consultations process citing the use of federally doctored reports to support the government's intentions.<sup>7</sup>

Indigenous opposition to the TMX remains strong with concerns about environmental consequences, and a lack of recognition for Indigenous title and rights.

The completion of the TMX pipeline remained a top priority for the recently elected federal government, which began their second term in October of 2019.

The Crown-corporation-owned expansion project would twin an existing 1,150-kilometre pipeline that extends from Edmonton to Burnaby, BC., nearly tripling the existing pipelines capacity to move oil from Alberta to coastal BC, and then to markets in Asia via tankers.

### **Site C Dam**

The third project referenced in the UN CERD statement to Canada is the Site C Dam, currently being constructed in northeastern BC.

Construction of the dam began in 2015 despite the opposition of impacted Indigenous Peoples. Despite numerous calls to halt construction by the UN CERD in 2017,<sup>8</sup> 2018<sup>9</sup> and now 2019, in a June 2019 letter to UN CERD, Canada claimed it had obtained the free, prior and informed consent of impacted Indigenous Peoples.<sup>10</sup>

In a 19 November 2019 letter to the UN CERD Human Rights Treaties Division and the Office of the United Nations High Commissioner for Human Rights, Chief Roland Willson of the West Moberly First Nation asserted that the West Moberly First Nation never consented to the construction of the dam, nor have many other affected Indigenous Peoples.

The West Moberly First Nations and Prophet River First Nation are

awaiting trial dates to determine if the dam unjustifiably infringes on their constitutionally protected treaty rights, as the nations claim in civil actions filed in 2018. They assert that the dam will destroy culturally, spiritually and historically significant sites, including burial sites, sacred sites and important hunting and fishing grounds.

The project would flood 128 kilometres of the Peace River valleys and its tributaries in the heart of Treaty 8 territory. To date, neither the federal nor the provincial governments have withdrawn their support for the project.

## Children and Families

Canada has introduced a new Indigenous child welfare law, Bill C-92,<sup>11</sup> which came into force 1 January 2020. The new legislation creates national standards on how provincial and territorial child welfare agencies deal with apprehended Indigenous children. It also delineates jurisdiction for Indigenous governing bodies – First Nation, Inuit and Métis – to pass laws governing their own child welfare systems that would supersede provincial, territorial and federal laws.

Indigenous Peoples have criticised Canada for failing to work in cooperation with Indigenous organisations to prepare for the new law's implementation, though many organisations celebrated the law's passing as the result of a collaborative effort between Indigenous Peoples and the Canadian government.

On 6 September 2019, the Canadian Human Rights Tribunal ordered federal compensation for First Nations children and youth removed from their homes by the child welfare system, and the parents and grandparents affected, including in cases where children were denied essential medical and other services. This ruling has been celebrated by Indigenous representative organisations as a significant step forward.<sup>12</sup> The case, originally filed in 2007, is being challenged by Canada to provide time for a judicial review aimed at quashing the Tribunal compensation order. Indigenous child welfare advocates have accused the Canadian government of unjustifiably delaying the tribunal ordered distribution and pursuing child-welfare policies which actively discriminate against Indigenous children and their families.<sup>13</sup>

## Indigenous languages

Fewer than one in five Indigenous Peoples in Canada are fluent in their traditional language, with many languages facing an imminent threat of extinction.

In June 2019 the federal government passed Bill C-91,<sup>14</sup> an act respecting Indigenous languages. The bill will ensure that the government provides long-term, sustainable funding of Indigenous languages, establishes an Office of the Commissioner of Indigenous Languages and facilitates collaboration between federal, provincial, territorial and Indigenous governments to support Indigenous languages.

## Bill S-3 and the elimination of sex-based discrimination within the Indian Act

In 2017 the federal government passed Bill S-3,<sup>15</sup> a bill to eliminate the continuing sex-based discrimination within the Indian Act. The bill would extend government recognised “Indian” status eligibility to descendants of women who lost status due to historic policies which discriminated against Indigenous women and their descendants dating back to 1869.

In January 2019, the United Nations Human Rights Committee released an 18-page decision,<sup>16</sup> wherein the committee called on Canada to remove the discrimination and to ensure that all First Nations women and their descendants are granted Indian status on the same footing as First Nations men and their descendants.

In August 2019, following calls to action by the Union of BC Indian Chiefs<sup>17</sup> and other Indigenous organisations, Crown-Indigenous Relations Minister Carolyn Bennett implemented the final provisions of Bill S-3, removing the 1951 cut-off,<sup>18</sup> effectively extending the eligibility for Indian status to possibly hundreds of thousands of people.

This act sets the necessary process in motion to eliminate the sex-based discrimination which for decades stripped Indigenous women, and their descendants, of their status if they married a non-Indigenous man, while simultaneously not applying to Indigenous men who married non-Indigenous women.

The stripping of Indian status from Indigenous women and their descendants has denied these individuals their rights, access to their culture, communities, amenities and services.

## Climate emergency

In June 2019 the federal government declared a national climate emergency,<sup>19</sup> echoing many of the same declarations by provincial, territorial, municipal and Indigenous governments. The declaration does not commit the federal government to any actions or budgetary expenditures, other than recommitting Canada to meeting its national targets under the Paris Agreement and to support actions which meaningfully reduce greenhouse gas emissions.

Some Indigenous organisations have criticised the federal declaration as empty aspirational words, as the government continues to pursue the development of its fossil fuel resources.<sup>20</sup>

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**Matthew Norris** is a member of the Lac La Ronge First Nation in Northern Saskatchewan, Canada. He is a PhD student at the University of British Columbia's Department of Political Science and is researching issues pertaining to international Indigenous rights frameworks. He is the Vice-President of the Urban Native Youth Association in BC and prior to enrolling in school was a Policy Analyst for the Union of BC Indian Chiefs.



# United States of America



The number of Indigenous people in the United States of America is estimated at between 2.5 and 6 million,<sup>1</sup> of which around 20% live in American Indian areas or Alaska Native villages. Indigenous Peoples in the United States are more commonly referred to as Native groups. The state with the largest Native population is California; the place with the largest Native population is New York City. While socio-economic indicators vary widely across different regions, the poverty rate for those who identify as American Indian or Alaska Native is around 27%.

With some exceptions, official status of being American Indian or Alaska Native is conferred on members of federally recognised tribes. Five hundred and seventy-four Native American tribal entities were recognised as American Indian or Alaska Native tribes by the United States in December 2019, and most of these have recognised national homelands. Federally recognised Native nations are inherently sovereign nations but their sovereignty is legally curbed by being unilaterally defined as wards of the federal government. The federal government mandates tribal consultation for many issues but has plenary power over Indigenous nations. Many Native nations have specific treaty rights and the federal government has assumed responsibility for Native peoples through its guardianship, although those responsibilities are often underfunded.

There are also state-recognised and non-recognised American Indian tribes but these are not officially Native nations in the eyes of the federal government.

The United States announced in 2010 that it would support the UNDRIP as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169. While American Indians in the United States are generally American citizens, they are also citizens of their own nations.

In December, the Little Shell Tribe of Chippewa Indians of Montana became the 574th federally recognised tribe so far. The tribe had been without recognition or a land base since 1892, when Chief Little Shell



refused to sign the McCumber Agreement that took most of the Plains Ojibwe's land in North Dakota and established the Turtle Mountain reservation. Because he refused to sign the agreement, the government no longer recognised his group. The Little Shell Tribe have fought for decades to be recognised; their recognition was finally passed as an amendment to the National Defense Authorization Act.

## **Climate change**

All Native nations in the United States are affected by climate change, and the United States' policies on climate change affect Indigenous Peoples around the world. In November, President Trump (R) officially notified the United Nations that the United States would withdraw from the Paris Climate Accord. If nothing changes, the withdrawal will take effect one day after the 2020 U.S. presidential elections. The Trump administration has a record of ignoring, restricting, contradicting or prohibiting scientific research into climate change.<sup>2</sup>

As an example of politics taking precedence over science, in June, a day after President Trump met with Alaska Governor Dunleavy (R), the Environmental Protection Agency (EPA) informed its staff that it would no longer oppose the Pebble Mine project (see *The Indigenous World* 2015 and 2018). Governor Dunleavy had been meeting with Pebble Limited Partnership officials and had received advice, ghost-written letters, and talking points from them to lobby the president.<sup>3</sup>

In October, the Alaska Federation of Natives (AFN) declared a climate emergency. Alaska Native villages have been particularly hard hit by the effects of climate change. Melting permafrost, a lack of sea-ice build-up along the coast, drought, wildfires and erosion have made some villages uninhabitable (see *The Indigenous World* 2016 and 2017). After decades of planning, the Yup'ik village of Newtok was finally able to begin its relocation to a new site, Mertarvik, 10 miles away.

In November, the U.S. Army Corps of Engineers and the University of Fairbanks released a new report on the threats to Native communities from erosion, flooding and permafrost melting. Five communities - Shaktoolik, Shishmaref, Kivalina, Golovin and Napakiak - ranked highest in all three categories but many more are at high risk.<sup>4</sup>

In December, the Arctic Slope Regional Corporation (ASRC), one of 13 Alaska Native Regional Corporations established in 1972 under the Alaska Native Claims Settlement Act, decided to leave the AFN. In the discussions over a climate emergency at the AFN annual convention in October, ASRC representatives had tried to introduce language supportive of oil extraction. ASRC is a major player in the Alaska oil industry and, since its inception, has paid out over US\$915 million in dividends to its shareholders, currently some 11,000 mostly Inupiat Native people.

In November, the Bureau of Land Management (BLM) released a draft new Integrated Activity Plan and Environmental Impact Statement for the National Petroleum Reserve area in Alaska, which neighbours the Alaska National Wildlife Refuge (ANWR).<sup>5</sup> The ASRC has supported expanding oil activities in both areas, while other Alaska Native villages, especially the Gwich'in, have opposed this (see *The Indigenous World* 2018). In September, the BLM released the final Environmental Impact Statement for the coastal plains of ANWR,<sup>6</sup> and the Trump administration announced that 1.6 million acres would be opened to drilling.

Severe spring weather brought record flooding to the Missouri River basin, which impacted several tribes. On the Pine Ridge reservation, around half of the 20,000 residents had their water delivery disrupted or had to evacuate during historic flooding in March. The Yankton Sioux Tribe saw inundation of housing areas from March until the end of the year. When the state of South Dakota raised a road to protect it from floodwaters, it inadvertently created a dam that has flooded a tribal housing development. In December, the Cheyenne River Sioux Reservation secured US\$5 million of a needed US\$120 million to fix the damage to its infrastructure caused by the floods.

## Extraction

In August, the Navajo Transitional Energy Company (NTEC) bought three coal mines in Wyoming and Montana from Cloud Peak Energy. The Navajo Nation, which owns NTEC, refused to provide financial backing to NTEC in November. This backing would have provided security for US\$400 million in bonds that would guarantee the clean-up of the mines should they be closed. The states of Montana and Wyoming

are also demanding that NTEC give up its sovereign immunity before signing off on new mining permits. As inherently sovereign nations, tribal governments are immune from civil suits and criminal prosecution unless they abrogate that right or Congress explicitly removes it. Since NTEC is wholly owned by the Navajo Nation, it also enjoys that immunity. This development underscored discussions about energy policies and economic development within Native nations, as some Navajo urged the nation's government to oppose NTEC's operation of coal mines. NTEC now also owns development rights over another of Cloud Peak's potential mines, which would be built on coal rights held by the Crow Tribe of Montana (see *The Indigenous World* 2017). NTEC is now the third-largest coal producer in the United States.

In March, President Trump issued new permits for the Keystone XL pipeline that would bring oil from Canadian tar sands to U.S. refineries. The new permits were designed to circumvent a federal court decision that halted the pipeline in 2018 (see *The Indigenous World* 2019) and argued that the authority to permit the pipeline rests solely with the president. In December, a federal court in Montana refused to issue an injunction blocking preliminary work on the pipeline because that work was scheduled to begin only in 2020. However, the court decided that a case against the pipeline brought by the Indigenous Environmental Network and the North Coast Rivers Alliance could go forward.<sup>7</sup> The court also ruled that the Rosebud Sioux Tribe in South Dakota and the Fort Belknap Indian Community in Montana could move forward with a separate lawsuit against the pipeline. Here, the court decided that both tribes "have alleged sufficiently that depredations will or have occurred already on their land if the 2019 Permit authorises the entire Keystone pipeline" and that the Rosebud Sioux Tribe "has alleged sufficiently that TC Energy is required to comply with tribal laws as it seeks to construct and operate Keystone".<sup>8</sup>

In October, the state of South Dakota settled lawsuits against laws it had passed in March that would have largely prevented protests against the pipeline. Since the protests against the Dakota Access Pipeline near Standing Rock Sioux Reservation in 2016, several states have passed such laws, creating stiff penalties for protesting against or near to energy infrastructure projects. The decision in October means that these laws will not be enforced in South Dakota. In May, the Oglala-

la Sioux Tribe Council had voted to ban South Dakota Governor Kristi Noem from the Pine Ridge reservation over the laws the governor had pushed through the state legislature.

In September, a federal judge denied the Trump administration's attempt to have a lawsuit dismissed that is challenging the 2017 decision to revoke the Bears Ears National Monument (see *The Indigenous World* 2018).<sup>9</sup> That decision by President Trump, reversing the creation of the National Monument by President Obama, had lifted protection for archaeological sites and opened the area up to mining and gas and oil extraction. The Hopi Tribe, the Pueblo of Zuni, and the Ute Mountain Ute Tribe, among others, are bringing suit.

## Treaty rights

The U.S. Supreme Court decided two cases in favor of tribes in March and May. In *Washington State Department of Licensing v. Cougar Den*, the court held that the treaty rights of the Confederated Tribes and Bands of the Yakama Nation should protect a tribal member, the owner of a gas station, from having to pay fuel tax to the state of Washington.<sup>10</sup> In *Herrera v. Wyoming*, the court upheld the treaty rights of the Crow Tribe in Montana to hunt on off-reservation lands that the nation had ceded in the state of Wyoming. In its decision, the Supreme Court also explicitly overruled an 1896 case, *Ward v. Race Horse*, which had argued that the establishment of the state of Wyoming had automatically voided the treaty hunting rights of the Shoshone-Bannock Tribes.<sup>11</sup>

Off-reservation hunting, fishing and gathering rights often create conflict between states and tribes, as states often do not accept that treaties, which are federal law, can give tribes sovereign powers on state territory. The Makah Tribe in the state of Washington is seeking to revive its treaty right to whaling after a decades-long process of academic studies and an initial whale hunt in 1997.<sup>12</sup> Based on a 2015 Environmental Impact Statement,<sup>13</sup> National Oceanic and Atmospheric Administration (NOAA) Fisheries proposed a 10-year waiver to the Marine Mammal Protection Act in April. A hearing was held in November.<sup>14</sup> Many environmental and conservation organizations continue to oppose the hunt.

The Supreme Court did not render a verdict in the most widely anticipated Native case, however. Instead, in July, it decided to have *Carpenter v. Murphy*, now *Sharp v. Murphy*, re-argued. The case should determine whether the state of Oklahoma has jurisdiction over major crimes committed by Native people on land that was guaranteed to the Muscogee (Creek), Cherokee, Choctaw, Seminole and Chickasaw nations in the 19th century. These lands, held by the nations in common, were broken up into individually owned parcels when Oklahoma became a state. The state has long argued and assumed that this terminated the reservation status of the land. However, legal precedent holds that land remains in reservation status unless Congress has explicitly declared otherwise. This would give the federal government jurisdiction over major crimes committed by Native people. In the *Sharp v. Murphy* case, the offender was sentenced to death by the state but could have received a different sentence in a federal court. In the wider context, if the reservations were never explicitly disestablished, the state would not have jurisdiction over Native people committing major crimes in most of eastern Oklahoma. In December, the Supreme Court announced the addition of a new case to its docket, *McGirt v. Oklahoma*. This case revolves around the exact same issue. While one of the Justices, Neil Gorsuch, had to recuse himself from *Sharp v. Murphy*, setting up the potential for an impasse, all nine Justices will be able to hear *McGirt*. This is one of the most consequential court cases of the past decades.

## Indigenous women

In November, President Trump signed an executive order creating the Task Force on Missing and Murdered American Indians and Alaska Natives.<sup>15</sup> The task force will establish protocols of cooperation and data sharing between law enforcement agencies and governments and establish a multi-jurisdictional team to look at cold cases, among other initiatives. The federal government will also invest US\$1.5 million to hire coordinators for 11 U.S. Attorney's offices to better respond to violence against Indigenous people. In September, the Minnesota Missing and Murdered Indigenous Women Task Force met for the first time, one of

seven such task forces established by states to study the scope of violence against Native women and the responses by law enforcement (see The Indigenous World 2015).

In December, the Senate failed to pass a bill to re-authorise the Violence Against Women Act. Since 2013, this act has given tribes limited jurisdiction over non-Native perpetrators of domestic violence against Native women if the tribes meet specific guidelines (see The Indigenous World 2014 and 2015). Tribes have seen this as a cornerstone of preventing violence against women. However, the Republican-controlled Senate could not find a way to vote on two opposing re-authorization bills. The bills differ in gun control measures, which is a big obstacle, but the one written by Senator Feinstein (D, California) would also enlarge tribal jurisdiction, and the one written by Senator Ernst (R, Iowa) would put more burdens on tribal jurisdictional efforts and shift authority away from tribal courts.

In August, a three-judge panel of the Fifth Circuit Court of Appeals affirmed that the Indian Child Welfare Act (ICWA) was constitutional and reaffirmed the unique political status of Native nations.<sup>16</sup> In *Brackeen v. Bernhardt*, the states of Texas, Indiana and Louisiana, together with a few individuals, had challenged the constitutionality of the law that gives sovereignty over Native children in adoption and foster care decisions to tribes (see The Indigenous World 2016 and 2019). The case will be reconsidered by the full court.

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**Sebastian Braun** is Director of American Indian Studies and Associate Professor of Anthropology in the Department of World Languages and Cultures at Iowa State University. [sfbraun@iastate.edu](mailto:sfbraun@iastate.edu)



# The Pacific





# Aotearoa (New Zealand)



Māori, the Indigenous people of Aotearoa, represent 15% of the 4.5 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7.3 years less than non-Māori; household income is 78% of the national average; 45% of Māori leave upper secondary school with no qualifications and over 50% of the prison population is Māori.<sup>1</sup>

The Treaty of Waitangi (the Treaty) was signed between the British and Māori in 1840. There are two versions of the Treaty, an English-language version and a Māori-language version. The Māori version granted a right of governance to the British over their subjects, promised that Māori would retain sovereignty over their lands, resources and other treasures, and conferred the rights of British citizens on Māori. The Treaty has, however, limited legal status; accordingly, protection of Māori rights is largely dependent upon political will and *ad hoc* recognition of the Treaty.

New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010 (UNDRIP). New Zealand has not ratified ILO Convention 169.

## Māori demand climate action

**M**āori, like many Indigenous Peoples, are disproportionately impacted by climate change. Not only are they over-represented in negative socio-economic indices and thus positioned to bear the brunt of its effects but flooding threatens the *papakāinga* (traditional villages), *urupā* (burial grounds), *wāhi tapu* (sacred sites) and other significant places of Māori coastal communities, while ocean acidification threatens important traditional resources such as fisheries.<sup>2</sup>

New Zealand has enacted the *Climate Change Response (Zero Carbon) Amendment Act 2019*. The Act sets “a new domestic greenhouse gas emissions reduction target for New Zealand to reduce net emissions of all greenhouse gases (except biogenic methane) to zero by 2050” and “reduce emissions of biogenic methane to 24 – 47 per

cent below 2017 levels by 2050, including to 10 per cent below 2017 levels by 2030”; requires “the Government to develop and implement policies for climate change adaptation and mitigation”; and establishes “a new, independent Climate Change Commission to provide expert advice and monitoring”.<sup>3</sup> The Act does not, however, go far enough.

Throughout 2019, Māori climate campaigners have been active in calling for more effective climate change action, including participating in major school climate strikes around the country, attending the UN Climate Change Conference (COP25) in Spain, and instituting legal action.<sup>4</sup> For example, Mike Smith, chair of the Climate Change Iwi Leaders Group, filed court proceedings against the government in 2019 in a personal capacity, citing the interests of all Māori, for breaches of the Treaty and the *New Zealand Bill of Rights Act 1990* due to its failure to act quickly enough to protect Māori from the effects of climate change.<sup>5</sup> Smith is seeking a declaration from the courts that the Crown will be in breach of its duties “unless it reduces total greenhouse gases by half by 2030, and to zero by 2050”.<sup>6</sup>

## UNDRIP action plan in development

Promisingly, in March, nine years after New Zealand belatedly endorsed the UNDRIP, the Minister for Māori Development, Nanaia Mahuta, announced that the government was going to develop an action plan to promote and assess New Zealand’s progress towards implementing the UNDRIP.<sup>7</sup> The following month, a delegation from the UN Expert Mechanism on the Rights of Indigenous Peoples visited New Zealand to guide the government and Māori on the plan.<sup>8</sup> A government-appointed technical working group, chaired by leading Māori scholar Dr Claire Charters, has since been established to advise on the plan and engagement process.<sup>9</sup>

## Māori rights featured in UPR

The human rights situation of Māori was the subject of sustained attention during New Zealand’s third UN Human Rights Council Univer-

sal Periodic Review. Recommendations from states included that New Zealand address discrimination and socio-economic disparities affecting Māori;<sup>10</sup> “[t]ake all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements”;<sup>11</sup> and “[s]trengthen joint work with the Māori people aimed at the implementation of the United Nations Declaration on the Rights of Indigenous Peoples”.<sup>12</sup> New Zealand accepted 160 of the recommendations, including those cited here, noting the remaining 34.<sup>13</sup> In many instances, however, the recommendations echoed those of previous cycles, with marked progress proving elusive.

## Māori children over-represented in care

Hearings began in 2019 in the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions, abuse that has disproportionately affected Māori.<sup>14</sup>

The continuing over-representation of Māori in state care and state approaches to uplifting children were at the forefront of national attention in 2019 after a young Māori mother resisted multiple attempts by Oranga Tamariki (the Ministry for Children) to wrongfully take her days-old baby from her. The attempt sparked protests, four inquiries into Oranga Tamariki and an urgent Waitangi Tribunal hearing.<sup>15</sup> Following the damning findings of its own internal review, Oranga Tamariki committed to changing its practices.<sup>16</sup>

On a positive note, new legislative provisions came into effect in July that outline specific duties for Oranga Tamariki in relation to the Treaty and Māori. These include reducing disparities for Māori children in care; having regard to the *mana* (honour) and the *whakapapa* (genealogy) of Māori children and *whanaungatanga* (kinship) responsibilities of their *whānau* (family), *hapū* (extended family) and *iwi* (nation) in its work; developing strategic partnerships with iwi and Māori organisations; and reporting annually on the fulfilment of these duties and their impact.<sup>17</sup> Reports suggest that the new provisions are already being utilised in the courts to help keep Māori children in the care of their *whānau*.<sup>18</sup>

## Land occupation at Ihumātao intensified

The land occupation at Ihumātao intensified in 2019. The occupiers, some *mana whenua* (those with traditional authority over the land), including Save Our Unique Landscape or SOUL, are opposing a proposed housing development there. The lands were confiscated by the Crown in 1863, sold into private ownership and then designated a special housing area in 2014. The current owner, Fletcher Residential Limited, plans to build 480 houses on the land. SOUL argues that the lands were wrongfully taken, consultation over their use was limited, and that the historically important lands should be returned to *mana whenua*.<sup>19</sup>

The occupation forms part of years of legal and political activism by SOUL, which in 2019 also included two petitions to central government and a 20,000-signature petition to the Auckland mayor asking the Auckland council to intervene. Tensions peaked when an eviction notice was served on occupiers in July.<sup>20</sup> At the Prime Minister's request, Fletcher Residential has put the development on hold while a resolution is found.<sup>21</sup> The Kingitanga or Māori King movement (which has ties to the land) has been helping to broker a resolution. While no resolution has yet emerged, the talks have had the positive effect of uniting the previously divided *mana whenua* around calling for the return of the land. Pressure is now on the government to buy back the land from Fletcher Residential and return it to *mana whenua*.<sup>22</sup> The stand-off highlights the injustice of Crown confiscations, the complexities that arise when those lands are sold to private third parties, and the ineffective protection afforded to Māori heritage sites.

## New direction for criminal justice

The government announced a new approach to criminal justice in December 2019,<sup>23</sup> following acknowledgement that the system is failing Māori.<sup>24</sup> It will include "[w]orking with Māori on decision-making to improve outcomes across the justice system".<sup>25</sup> The new direction looks set to fall short of the justice transformation called for by Māori at the Māori-led *Ināia Tonu Nei – Now is the Time hui* (meeting) in April but is a welcome start. Notably, this hui called for the abolition of prisons by

2040 with immediate steps to decolonise the system and design inter-generational reform centred on a *Mana Ōrite* model of partnership between Māori and the Crown.<sup>26</sup> The government's announcement comes on the back of four powerful reports released in 2019 concerned with justice reform, of which the position of Māori was a significant focus.<sup>27</sup>

Additionally, in November, the police launched a new Māori strategy, *Te Huringa o Te Tai*, which aims to reduce Māori reoffending by 25 per cent in the next five years, including through more partnerships with Māori and Māori-led intervention schemes.<sup>28</sup>

## Health and freshwater treaty breaches

The Waitangi Tribunal issued a series of critical reports throughout the year on breaches of the Treaty by the Crown. These included its stage 2 report on national freshwater and geothermal resources, highlighting the Crown's failure to uphold the Treaty in the *Resource Management Act 1991* and freshwater management policies,<sup>29</sup> and its report on stage 1 of the health services and outcomes inquiry, which found, among other things, that the Crown had failed to give effect to the Treaty guarantee of *tino rangatiratanga* (self-determination) in the provision of primary health services to Māori.<sup>30</sup>

## Further developments

Further developments in 2019 worthy of note and celebration included the enactment of legislation apologising for the Crown's invasion of Parihaka in 1881 - Parihaka was a community that symbolised peaceful resistance to the confiscation of Māori land;<sup>31</sup> belated government progress on the Waitangi Tribunal's recommendations in the Wai262 Indigenous traditional knowledge claim;<sup>32</sup> legislation acknowledging Crown wrongs and pardoning Rua Kēnana, a Tūhoe pacifist and prophet who was unlawfully imprisoned;<sup>33</sup> and the appointment of Justice Joe Williams as the first Māori judge to the Supreme Court, New Zealand's highest court.<sup>34</sup>

## Acknowledgement

The author wishes to acknowledge those members of Christchurch's Muslim community whose lives were taken in the racist-fuelled terror attack in New Zealand in March. The attack cast a long shadow over our country. *Moe mai rā e hoa mā* (sleep my friends).

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**Fleur Te Aho** (Ngāti Mutunga) is a Senior Lecturer in the Auckland Law School at the University of Auckland. Email her at: [f.teaho@auckland.ac.nz](mailto:f.teaho@auckland.ac.nz)





# Australia



Aboriginal and Torres Strait Islander people make up 3.3% of the nation's population. Geographically, 62% of the Indigenous population live outside Australia's major cities, including 12% in areas classified as very remote. The median age for Aboriginal and Torres Strait Islander people is 23 compared to 38 for the non-indigenous population.<sup>1</sup> Aboriginal and Torres Strait Islander peoples are vastly overrepresented in the Australian criminal justice system, with 2,481 prisoners per 100,000 Indigenous people—15 times greater than for the non-indigenous population.<sup>2</sup>

Official government targets set for 2018 in 2008, to halve the gap between Indigenous and non-indigenous Australians in child mortality, employment, and reading and numeracy, as well as closing the gap in school attendance, were not met. The target to close the gap in life expectancy by 2031 is not on track.<sup>3</sup>

There are approximately 3,000 Aboriginal and Torres Strait Islander corporations registered under the federal Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act), including 186 registered native title land-holding bodies.<sup>4</sup>

There is currently no reference to Aboriginal and Torres Strait Islander peoples in the national Constitution although the movement towards constitutional recognition has intensified, as reported below.

## **Timber Creek – A landmark decision for the Ngaliwurru and Nungali peoples**

One of the most significant events affecting Aboriginal and Torres Strait Islander<sup>5</sup> peoples across Australia in 2019 was the High Court's ruling that the Government of the Northern Territory was to pay AUD 2.53 million in compensation to the Ngaliwurru and Nungali peoples for the loss of Native Title in the town of Timber Creek.

Previously covered in the 2019 edition of *The Indigenous World*, the Timber Creek case followed the award of Native Title to the Ngaliwurru

and Nungali peoples for parts of the land surrounding Timber Creek. At the time of the decision to award Native Title, it was also found that these rights had been lost in other areas where government infrastructure had been built. Under the *Native Title Act 1993* (Cth), a right of compensation is provided for the “impairment and extinguishment” of native title rights in a range of circumstances. In 2011, the Ngaliwurru and Nungali peoples sued the Northern Territory government for the loss of these rights.

In its judgement, the High Court noted that the relationship of Aboriginal peoples to their land encompasses all of the country and not just sacred sites. The relationship of the Ngaliwurru and Nungali peoples with their land could thus be seen as a spiritual and metaphysical one which was not capable of assessment on an individual small allotment basis. Any damage to a single part of their land, such as a bridge that was built through their sacred dingo dreaming site,<sup>6</sup> could thus be seen to affect the entirety. The High Court’s decision has set a precedent that may influence and spur on future claims for compensation by groups of Aboriginal and Torres Strait Islander peoples across Australia. Importantly, this outcome has also provided a key benefit to Aboriginal and Torres Strait Islander peoples through the legal recognition of their spiritual and cultural connection to the land.

## **Closing the Gap results from 2019 and the new Refresh process**

In February 2019, the Australian government released the tenth Prime Minister’s Closing the Gap Report. The 2019 report reflected on a decade of efforts undertaken by governments across Australia to meet the targets set in 2008 to close the gap in disadvantage between Aboriginal and Torres Strait Islander peoples and non-indigenous Australians. Unfortunately, progress against the targets remains slow and, in 2019, only two of the seven Closing the Gap targets were on track to be achieved. These were the target to have 95% of Aboriginal and Torres Strait Islander four-year-olds enrolled in early childhood education by 2025, and the target to halve the gap in Year 12 attainment or equivalent by 2020.<sup>7</sup>

Noting the low levels of achievement against the targets set in 2008, the Council of Australian Governments (COAG) agreed to a “Refresh” process for the Closing the Gap targets. In December 2018, COAG released a set of new draft targets, and committed to finalising them by mid-2019. A key element of the Refresh process was the establishment of a partnership agreement between COAG and a coalition of Aboriginal and Torres Strait Islander peak bodies. The agreement was finalised in March 2019 and, affirming the importance of shared decision-making with Aboriginal and Torres Strait Islander community controlled representatives, it established the Joint Council on Closing the Gap.<sup>8</sup>

The Joint Council comprises 12 representatives elected by a coalition of Aboriginal and Torres Strait Islander peak bodies, a Minister nominated by the Commonwealth, Ministers from each state and territory government, and one representative from the Australian Local Government Association. Following its second meeting in August 2019, the Joint Council agreed to develop a new National Agreement on Closing the Gap, covering the next ten years, that would continue the successful elements of the previous agreement, strengthen others, and address foundational areas. The Joint Council also agreed on three new reform priorities for collective action that would be built into the new National Agreement and accelerate improvements in life outcomes for Aboriginal and Torres Strait Islander peoples.<sup>9</sup>

Over the past decade, there have been key lessons learnt which formed the foundation of the Refresh process and moved it forward. These include: working in partnership, a strengths-based community-led approach, working with state and territory governments, a robust evidence base and accountability. COAG has committed to working together to improve outcomes in every priority area of the Closing the Gap Refresh, which are:

- Families, children and youth
- Housing
- Justice, including youth justice
- Health
- Economic development
- Culture and language
- Education

- Healing
- Eliminating racism and systemic discrimination.

## **Appointment of Australia's first Aboriginal Minister for Indigenous Affairs**

Following the federal elections in May 2019, and the commencement of the 46th Parliament of Australia, the government appointed the Honourable Kenneth Wyatt AM, MP as Australia's first Aboriginal Minister for Indigenous Affairs.

Minister Wyatt is an Aboriginal man from the Watjarri, Noongar and Wongi nations. He was first elected to the Federal Parliament in 2010, becoming the first Indigenous member of the Federal House of Representatives. He attended the opening of the 43rd Australian Parliament to take up his seat in 2010 wearing a traditional *Booka* – a kangaroo skin coat with feathers from a red-tailed black cockatoo. The coat was presented to him by Noongar elders and signifies a leadership role in Noongar culture.

## **Establishment of the National Indigenous Australians Agency**

Following the commencement of the 46th Parliament, the Australian government announced the establishment of the National Indigenous Australians Agency (NIAA) as the Commonwealth entity with overall responsibility for Aboriginal and Torres Strait Islander Affairs. The portfolio had previously been held by the Department of the Prime Minister and Cabinet, following the government's centralisation of Aboriginal and Torres Strait Islander Affairs in 2013.

The CEO of the NIAA is Mr Ray Griggs, AO, CSC, the former Chief of the Australian Navy. The NIAA is expected to lead and coordinate Commonwealth policy development, program design and implementation and service delivery for Aboriginal and Torres Strait Islander peoples, as well as the implementation of Australia's Closing the Gap targets in partnership with Indigenous Australians.<sup>10</sup>

## **Constitutional recognition and the establishment of the Senior Advisory Group on the Voice to Parliament**

Reflecting on the Uluru Statement from the Heart, the 2019 edition of *The Indigenous World* noted that there were relatively positive signs that a referendum on the establishment of a representative Voice to Parliament for Aboriginal and Torres Strait Islander peoples would take place soon, followed by a comprehensive agreement-making process. However, by the conclusion of 2019 the situation seemed less promising.

The May 2019 election saw a return of the previous government, which had previously expressed concerns about establishing a body that it considered a “third chamber of parliament”.<sup>11</sup> However, in October 2019, the Minister for Indigenous Affairs announced the establishment of a Senior Advisory Group to co-design the Aboriginal and Torres Strait Islander voice. The Senior Advisory Group is chaired by two prominent Aboriginal academics: Professor Tom Calma AO and Professor Marcia Langton AM.<sup>12</sup>

In announcing the establishment of the Senior Advisory Group, the government referred to the development of a “Voice to Government” rather than one to Parliament, and ruled out enshrining the Voice in the Constitution.<sup>13</sup> Aboriginal and Torres Strait Islander peak bodies, such as the Central Land Council, have expressed concerns that the Voice will not be enshrined in the Australian Constitution, as recommended by the Uluru Statement. If the Voice is established through legislation, there is a future risk it could be abolished, as occurred with the Aboriginal and Torres Strait Islander Commission in 2005.

The Senior Advisory Group met for the first time in November 2019 and committed to ensuring that Aboriginal and Torres Strait Islander peoples across Australia have direct input to government with regard to their experiences, ideas and aspirations for the Voice.<sup>14</sup> The Senior Advisory Group will work over the next two years to design the Voice. The government has previously stated that it will hold a referendum on establishing the Voice in the next three years, although this will be conditional on the results of the design process.<sup>15</sup>

## **First People's Assembly of Victoria established**

Australia remains the only Commonwealth country that has not negotiated a treaty with its Indigenous Peoples. Despite the promise of a treaty from the Prime Minister Bob Hawke in 1988, following his receipt of the Barunga Statement, there has been little progress made towards a treaty at a federal level. However, this lack of progress has now seen some Australian states take steps of their own to begin treaty negotiations.

In 2016, the Australian State of Victoria commenced the process of negotiating a treaty with the Victorian Aboriginal community. A central part of this process was the establishment of an Aboriginal Representative Body that would represent the Victorian Aboriginal community and work in partnership with the Victorian government to deliver the treaty. The design of the Aboriginal Representative Body was informed by consultation across Victoria, and, in early 2019, it was renamed the First People's Assembly of Victoria.

In November 2019, the Assembly was elected and formed for the first time. It currently consists of 32 seats, with 21 determined in a vote of Aboriginal communities, and 11 reserved for formally recognised Traditional Owner groups. The Assembly met for the first time in December 2019 and elected its co-chairs. The next steps for the Assembly over its three-year term will be to establish a framework for Treaty negotiations, the Treaty Authority (an independent umpire), and an Elders' Voice within the Assembly.<sup>16</sup>

## **Uluru closed for climbing**

Uluru has been a sacred site to the Anangu people for tens of thousands of years, although climbing of Uluru was not permitted under Tjukurpa (Anangu traditional law). Uluru was handed back to the Anangu people in 1985. At the time of the handover, the Anangu spokesman, Kunmanara Lester, said that while the Anangu did not like people climbing Uluru, it would be allowed for the time being.

However, climbing Uluru caused significant damage to the site. Human waste, polluted waterholes, and the steady stream of tourists carved scars into Uluru itself. It is reported that 37 people have died climbing Uluru, which has caused significant distress to the Anangu

people. In 2017, the Board of Management for the Uluru -Kata Tjuta National Park agreed that the climb should be closed based on the fact that the proportion of visitors who climbed it had fallen below 20%, and that the cultural and natural experiences on offer were instead the main reasons tourists were visiting.

The decision was not universally popular and a number of individuals criticised the closure as impinging on the rights of Australians more broadly. This echoed criticism made in 1985 that handing Uluru back to the Anangu meant that it “was being taken away from all Australians”.<sup>17</sup> It reflects an ongoing tension in Australia that sees significant sacred sites for Aboriginal and Torres Strait Islander peoples being afforded little respect by some non-indigenous Australians.

On 26 October 2019, the 34th anniversary of the handing back of Uluru to the Anangu people, the climb was closed permanently. The Anangu people welcomed the closure as a demonstration of Tjukurpa and Australian law working together in joint management, with a vision that the park would become a place where Anangu law and culture is kept strong for future generations.

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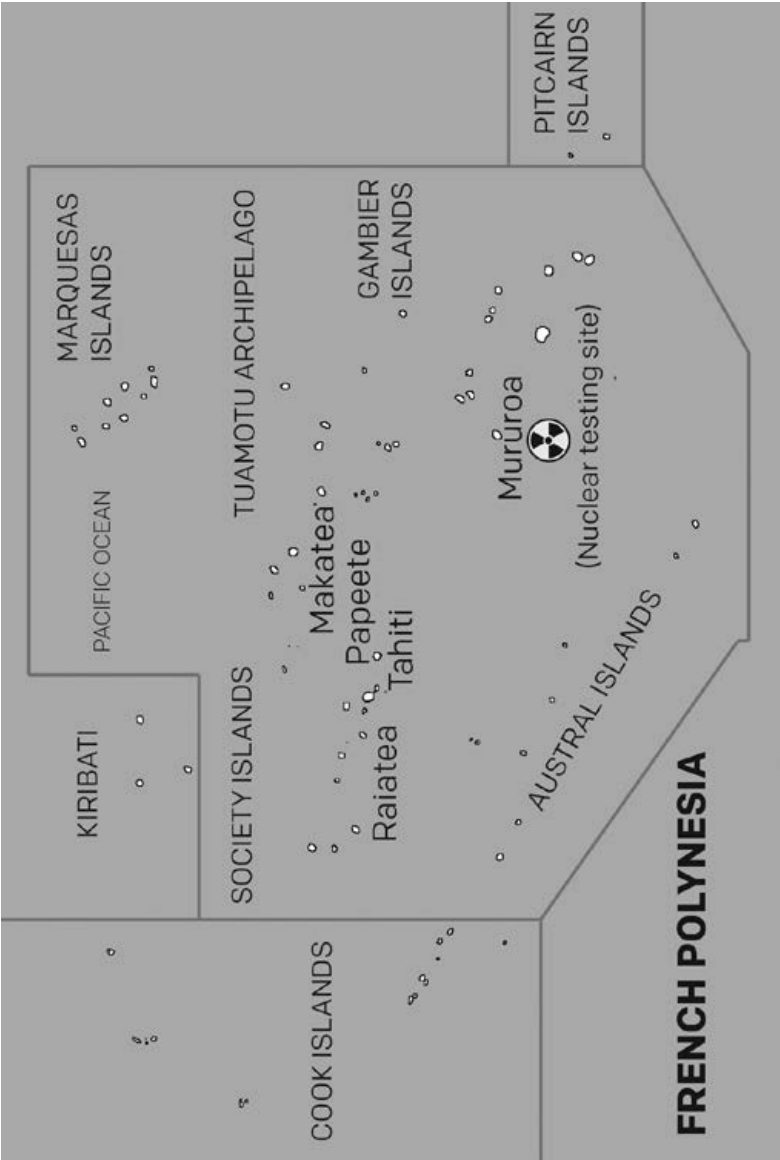
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**Iain Gately** trained as an archaeologist and worked with traditional owners in the Pilbara to protect and record their cultural heritage before transferring to the public sector to work in Aboriginal and Torres Strait Islander policy. He has been involved in a number of audits and evaluations of significant government programs that target Aboriginal and Torres Strait Islander people. Iain is a strong believer in the importance of Aboriginal and Torres Strait Islander culture as an integral part of the Australian story.

**Belinda Kendall** is a Worimi, Barkindji, Wailwan and Wiradjuri woman from NSW and is a Director of Aboriginal enterprise Curijo Pty Ltd. Belinda’s studies and employment have primarily been in the human and community services, and the child, family and adult education sector, with her passion being to improve the lives of and outcomes for Aboriginal and Torres Strait Islander peoples and all Australians through leadership and healing.



# French Polynesia



A former French colony, French Polynesia has since 2004 been an Overseas French Territory (*Collectivité d’Outre-mer*) of 277,000 inhabitants (around 80% of whom are Polynesian)<sup>1</sup> with relative political autonomy within the French Republic through its own local institutions: the government and the Assembly of French Polynesia. Despite the recovery of economic growth and increased tourism in the last three years, social equality has declined. Surveys conducted by the French Polynesian Statistics Institute – the 2015 Family Budget survey in particular – show that income inequality is greater in French Polynesia than in metropolitan France. This can be explained largely by the “very poor redistribution effort of the Polynesian tax system”,<sup>2</sup> i.e. the lack of income tax. In 2015, a fifth of the Polynesian population was living below the poverty line.<sup>3</sup>

A bipolarisation of political life has long characterised French Polynesia with, on the one hand, *Tavini Huiraatira* – the pro-independence party led by Oscar Temaru and, on the other, Gaston Flosse’s pro-autonomy party *Tahoera’a Huiraatira* – which advocates remaining within the republic. A succession crisis within *Tahoera’a* in 2016 following the bar on Gaston Flosse running for office resulted in the creation of a third political party, *Tapura Huiraatira*. This pro-autonomy party was founded in 2016 by Edouard Fritch, president of French Polynesia since September 2014 and who was re-elected in the April-May 2018 elections. During the May 2019 European elections, Edouard Fritch’s list gained 43.3% of the vote and Gaston Flosse’s 9.4%, with the pro-independence party refusing to take part.<sup>4</sup> Despite the high (77%) abstention rate, these results confirm the marginalisation of Gaston Flosse’s party. Nonetheless Flosse’s party wishes to stand in the March 2020 local elections as he will by then be eligible to run. These electoral results are regularly raised by *Tapura*’s elected members to remind both the French representatives and those at the UN that while these elections do not have the standing of a self-determination referendum, they do highlight the weak support in French Polynesia for independence.

## The UN and the right to self-determination

French Polynesia has been on the UN's list of Non-Self-Governing Territories since May 2013. While opponents of French Polynesia's re-listing see this as an implicit demand for independence, its supporters note that the aim of this action is to organise a referendum on self-determination that will offer the possibility of becoming a French department, gaining independence or becoming an associated state. The French State considers "the Polynesian issue" an internal matter and has therefore thus far not cooperated with the UN's Fourth Committee (Special Political and Decolonisation Committee).

In October 2019, Edouard Fritch formally demanded the removal of French Polynesia from the list of non-self-governing territories: "Our victory confirms that the population does not wish to change French Polynesia's institutional framework".<sup>5</sup> For his part, Teva Rohfritsch, Vice President of French Polynesia, considered that "the French presence gives us a chance to face up to the challenges posed by our oceanic location, our isolation and our scattering in small islands across an area as vast as Europe".<sup>6</sup> These statements have been made in the context of the preparations for a visit by French President Emmanuel Macron in April 2020, during which he will be holding an international summit on climate change in Oceania. For their part, representatives of *Tavini* and of the *mā'ohi* Protestant Church (EPM) recalled the French State's failure to take responsibility for the social and health consequences of nuclear testing in French Polynesia.<sup>7</sup> They also lamented the fact that this re-listing had had no effect due to the French State's refusal to cooperate. Richard Tuheiava, *Tavini* member of the French Polynesian Assembly, thus called for a real programme of work to enable the start of a decolonisation process.<sup>8</sup>

On December 13, 2019, the General Assembly of the United Nations adopted a new resolution confirming the inclusion of French Polynesia on the list of non-self-governing territories where it reaffirms the inalienable right of the people to self-determination.<sup>9</sup> It asks France to cooperate without reserve in the work of the special committee, to guarantee the permanent sovereignty of the people of French Polynesia over its natural resources and to inform the UN "of all new developments on the environmental, ecological, health and other nuclear tests for 30 years".<sup>10</sup>

## Nuclear testing 25 years on

Nuclear testing and its social, environmental and negative health consequences was once again at the top of French Polynesia's political news. The discussions focused on the consequences of Polynesian Senator Lana Tetuanui's legislative amendment of December 2018.<sup>11,12</sup> The nuclear testing victims' associations are worried that reintroducing a minimum exposure principle as a criterion for the admissibility of cases will make the compensation procedures extremely difficult.

In November 2019, Alain Christnacht, President of the Nuclear Testing Victims Compensation Committee (CIVEN) visited French Polynesia with a delegation. He recalled that the minimum exposure principle was not an absolute criterion and conducted an assessment of the compensation procedures: while only 11 requests for compensation were favourably received over the 2012 to 2017 period, this rose to 110 cases between 2018 and 2019.<sup>13</sup> This progress did not satisfy the nuclear test victims' association, however. In addition to the high number of cases still being rejected, the association noted the procedural delays that mean that some cases are now having to be initiated by the children of the deceased. The *Moruroa e Tatou* association, which has - with EPM support - been working on recognising nuclear test victims since 2001, recently lost three of its founding members: John Doom, former secretary general of the *mā'ohi* Protestant Church and Pacific representative to the World Council of Churches died in December 2016; Bruno Barillot, former Catholic priest of the Diocese of Lyon died in March 2017; and Roland Oldham died in March 2019. On being elected President of EPM in July 2019, Pastor François Pihaatae assessed the actions of the *Moruroa e Tatou* association, recalling that "Of the 700 files submitted by *Moruroa e Tatou* and supported by the Church, only twelve have been successful".<sup>14</sup> This illustrates the extent to which recognising the victims of nuclear testing is "a fight that is struggling to gain traction".

In May 2019, the French Parliament adopted a reform of French Polynesia's self-governing status, recognising that this region "contributed [to France] when building its nuclear dissuasion capacity".<sup>15</sup> The text also specifies that the state "will ensure the upkeep and surveillance of the sites affected" by the testing and "support the economic

and structural conversion of French Polynesia following the cessation of nuclear testing.”<sup>16</sup> This text has no binding legal or regulatory effect, however. It will therefore not enable better compensation of victims. In particular, Taaroanui Maraea, President of the *mā’ohi* Protestant Church until July 2019, commented that the term “contribution” was an absurdity that gave “the impression of a flagrant revision of history”.<sup>17</sup>

## Nuclear testing memorial

In January 2018, during her visit to French Polynesia, the Overseas Minister Annick Girardin announced the creation of a nuclear testing memorial centre in Papeete, explaining that it was a desire of the Polynesian population given that the local associations had made compensating nuclear testing victims their priority for more than 20 years. In June 2019, the 193 Association (referring to the number of nuclear tests carried out in French Polynesia between 1966 and 1996) – chaired by Father Auguste Uebe Carlson – announced that it was withdrawing from the project, considering the memorial centre to be a “State propaganda tool”.<sup>18</sup> In November 2019, the Overseas Minister specified that the funding for this centre would be the responsibility of French Polynesia and not the French State. The French State later made the land of a former hotel available in the centre of Papeete.<sup>19</sup> Annick Girardin also specified that the State would be involved in deciding the content of the memorial centre. A steering group has been set up to manage progress towards this future centre and, in addition to the state and country-level departments, this group includes the Atomic Energy Commission and the Ministry of the Armed Forces.

This state policy of symbolic and memorial recognition is aimed at smoothing over the nuclear testing and making it a thing of the past. The victims’ associations, for their part, fear a state stranglehold on the memorial centre that will result in the production of a new official history. Yet, as the EPM President recalls, “The health and environmental consequences of nuclear testing are not something that can be relegated to the past. They are something that will remain with us throughout our lifetime and over many generations”.<sup>20</sup>

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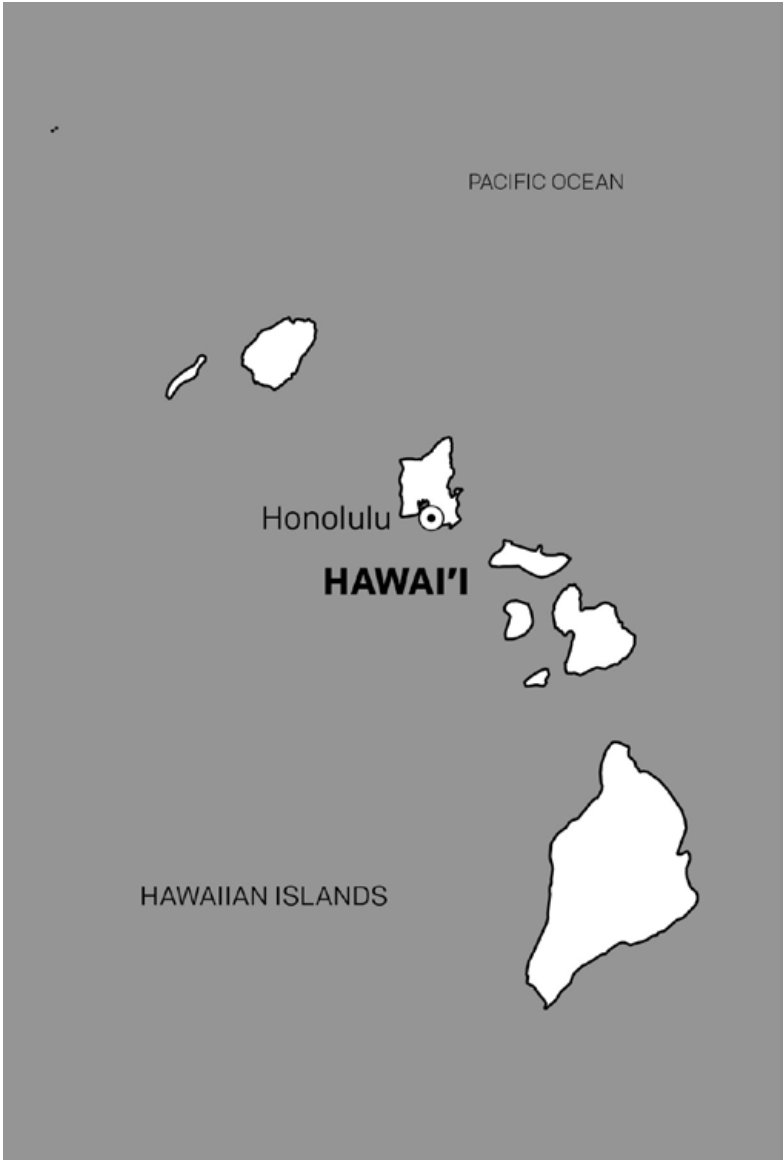
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**Gwendoline Malogne-Fer** is a research sociologist with the Maurice Halbwachs Centre (CNRS/EHESS/ENS) in Paris. In 2017 she published a book based on her sociology thesis entitled *Les femmes dans l'Eglise protestante mā'ohi. Religion, genre et pouvoir en Polynésie française* (Women in the mā'ohi Protestant Church. Religion, gender and power in French Polynesia) (Karthala). Her work lies at the intersection between gender studies, the sociology of Protestantism and the anthropology of migration. Together with Yannick Fer, she has also produced two documentaries, one on cultural demands within the mā'ohi Protestant Church "Pain ou coco. Moorea et les deux traditions" (Bread or coconut. Moorea and the two traditions) (<https://vimeo.com/104943192>) and the other on the challenges of cultural transmission in French Polynesia "Si je t'oublie Opunohu. Les chemins de la culture à Moorea" (Lest I forget you Opunohu. Cultural paths in Moorea) (<https://archive.org/details/Si-JeToubliepnohu-LesCheminsDeLaCultureMoorea>)





# Hawai'i



Ka Pae Aina (the Hawaiian archipelago) is formed of 137 islands, reefs and ledges stretching for 2,451 kilometres south-east / north-west in the Pacific Ocean and covering a total of some 16,640 km<sup>2</sup>.

The Kanaka Maoli, the Indigenous people of Ka Pae Aina or Hawaii, account for some 20% of the total 1.2 million population.

In 1893, the Government of Hawaii, led by Queen Liliuokalani, was illegally overthrown and a provisional government was established without the consent of the Kanaka Maoli and in violation of international treaties and law. It was formally annexed by the United States and became the Territory of Hawai'i in 1898.

From 1959, Hawaii has gained statehood, and formed a part of the United States of America. The Kanaka Maoli continue to fight for self-determination and self-governance and suffer due to past injustices and violations of their rights, ongoing to this day. Some members participate in the Hawaiian sovereignty movement, which views the overthrow of the Kingdom of Hawaii in 1893 as illegal and views the subsequent annexation of Hawaii by the United States as illegal. The movement seeks, among other things, free association and/or independence from the United States.

There have been formal requests for redress from the United States for the 1893 overthrow of Queen Lili'uokalani, and for what is described as a prolonged military occupation beginning with the 1898 annexation. The so called "Apology Resolution"<sup>1</sup> passed by US Congress in 1993 is cited as a major impetus by the movement for Hawaiian sovereignty.

The United States announced in 2010 that it would support the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169. While American Indians in the United States are generally American citizens, they are also citizens of their own nations. However, the UNDRIP guides the actions and aspirations of Hawaii's Indigenous people, together with local declarations such as the Palapala Paoakalani.<sup>2</sup>

## The Thirty Meter Telescope (TMT)

Several hundred demonstrators, mainly Indigenous Polynesians (Kanaka Maoli) have been blocking the construction of the Thirty Meter Telescope (TMT) since mid-July 2019.<sup>3</sup> This is set to be the largest telescope in the northern hemisphere.

This blockade is the culmination of a ferocious battle that has been tearing the Hawaiian Islands apart. After the site for the telescope was identified in 2009, preparations continued toward construction. From 2014, protests have been continuing against the TMT and in December 2015, Hawaii's Supreme Court declared the TMT's construction permit invalid due to failures in the consultation process in an apparent victory for the protestors. This obstacle was removed in October 2018, however, when the court finally gave the go-ahead for construction to proceed.<sup>4</sup> Since then, the campaign against the TMT has regained its momentum.

Hundreds of Indigenous people have been campaigning over the last six years to put a stop to this giant telescope project as its preferred site is on the sacred Mauna Kea volcano on the main island. When David Ige, the island's Democrat governor, announced the start of works in July 2019, these groups set up camp on the mountain and blocked the access road, determined to allow nothing to pass.<sup>5</sup>

On 15 July, protestors blocked the access road to the mountain preventing the planned construction from commencing. On 17 July, 33 protestors were arrested, all of whom were kūpuna, or elders, as the blockade of the access road continued.<sup>6</sup>

This struggle is symbolic of the defence of Indigenous rights across the island chain. The TMT, as it is known, is being funded by an international consortium of universities from five different countries and has a valid scientific value. It is also intended to be one of the largest telescopes in the world. The total estimated cost of the works amounts to USD\$1.4 billion. However, opposition to these kinds of projects, which have neither respected Indigenous rights nor their right to consultation is not new. Thirteen other smaller telescopes have already been established on Mauna Kea since the 1960s. This in part is due to the volcano's topography and location as it is an ideal site sheltered from all light pollution. The issue of Indigenous Peoples, and their rights regarding their lands, culture and religious practices has continued to come into conflict with attempts to build these large-scale projects. While the construction of these 13 observatories has succeeded, they have been

consistently accompanied by protracted litigation. The University of Hawaii has committed to remove five of these existing telescopes as a condition of the permit to build the TMT. The three chosen so far are among the oldest telescopes on Mauna Kea.<sup>7</sup>

According to legend, Mauna Kea, the highest mountain in the archipelago (4,201 metres) is the place where Wakea, the god of the sky, met Papa Hanau Moku, the goddess of the earth. It is not only a sacred space, but an ancestral burial ground where many Hawaiians from the Kanaka Maoli tribe are buried.<sup>8</sup>

## Notes and references

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**Patrick Kulesza** is the Executive Director of GITPA (Groupe International de Travail pour les Peuples Autochtones [www.gitpa.org](http://www.gitpa.org))



# Papua New Guinea



Papua New Guinea (PNG), formally the Independent State of Papua New Guinea, is a country in Oceania that encompasses the eastern half of the island of New Guinea and covers an area of 462,840 km<sup>2</sup>.<sup>1</sup> The country's name comes from "Papou" which, according to the naturalist Alfred Wallace, originates in the Malaysian *puwah-puwah* or *papuwah* meaning "frizzy".<sup>2</sup> New Guinea was the name given to the area by a 16th century Spanish explorer due to the assumed resemblance of its inhabitants to those of Equatorial Guinea in Africa. The country gained independence in 1975 and is now a member of the Commonwealth of Nations.<sup>3</sup>

Almost symbolically a federal structure, Papua New Guinea comprises 20 administrative provinces: Bougainville, Central, Chimbu, Eastern Highlands, East New Britain, East Sepik, Enga, Gulf, Madang, Manus, Milne Bay, Morobe, National Capital, New Ireland, Northern, Sandaun, Southern Highlands, Western, Western Highlands and West New Britain.

The island of Bougainville, which geographically forms part of the Solomon Islands but politically and administratively falls under Papua New Guinea, became a self-governing region in 2004. The inhabitants of PNG are known as Papua New Guineans or Papuans. It is the most multilingual country in the world, with 830 languages spoken among a population of 8.4 million, i.e. an average of 9,100 speakers per language.<sup>4</sup>

Papua New Guinea was absent from the vote on the UN Declaration on the Rights of Indigenous Peoples in September 2007.

## Situation in Bougainville

**T**he island of Bougainville has been the theatre of disturbance since 1988 when the Bougainville Revolutionary Army was created to fight for the island's independence. The reasons for this demand for secession lie in the running of the Panguna copper mine because while none of the economic benefits have accrued to the local

inhabitants, it has been an ecological disaster for the region. The withdrawal of the PNG army from Bougainville in March 1990 was followed by a proclamation of the island's independence in May 1990.

A peace agreement was signed between the two parties in January 1991 but the return of the government's military to Bougainville in October 1992 resulted in a resumption in hostilities. The capital, Arawa, was taken in January 1993. In October 1994, a peace conference was organised which culminated in a ceasefire but fighting resumed once more in 1996 following the murder of Bougainville's transitional head of government. The year 2001 saw an end to the murderous conflict in Bougainville with the signing of a new peace agreement in Arawa, the island's capital.

Bougainville was granted the status of "self-governing region" within Papua New Guinea and Joseph Kabui, former head of the Bougainville Revolutionary Army, became the first President of the autonomous region. The aim was to organise a referendum on Bougainville's independence "in the coming years". Twelve years of conflict resulted in between 10,000 and 20,000 victims, equalling 10% of the island's population, the most bloody conflict in the Pacific since 1945.

The referendum outlined in the peace agreement took place between 23 November and 7 December 2019 and the result was resounding: 176,928 voters, or 98% of the votes cast, voted for independence, according to official figures published on 11 December. "Now we feel free, at least psychologically," stated the President of the region, John Momis, on hearing the result.

Will the island therefore become the 194th state to be recognised by the United Nations? Nothing is certain. The referendum was not binding and represents only one stage in a process that dates back nearly 20 years.<sup>5</sup>

## **The extractive industries**

PNG's economy is a dual one. Economic growth is largely ensured by relatively prosperous mining enclaves that have few if any impacts on the rest of the economy. Strongly capitalistic and in large part the domain of foreign investors, this industry is a modern one that exports all its production. It accounts for the bulk of private investment, but only

a small proportion of employment, and coexists alongside a stagnant subsistence economy.<sup>6</sup>

There have been numerous conflicts, many of them ongoing, both among the Papuan tribes affected by the mines and between the Papuan tribes and the government or provincial officials in power, termed *neo-Guineans* by the Papuan tribes.

## Major mining conflicts in the region<sup>7</sup>

### **Ok Tedi Mine – North West Province - copper – BHP Billiton**

By-products from the mine have caused harm to the approximately 50,000 people living in the 120 villages downstream of the mine in various and widespread ways, both environmental and social. In 2007, the UNEP noted that *“uncontrolled releases of 70 million tonnes of waste rock and tailings from the Ok Tedi mine are found every year along more than 10 km<sup>2</sup> of the Ok Tedi and Fly rivers, resulting in flooding, sediment deposition, forest damage and a serious decline in the region’s biodiversity.”*<sup>8</sup> *“Waste from the Ok Tedi mine has resulted in a loss of fish, a vital source of food for the local community, a loss of forest and crops due to flooding, and a loss of areas of great spiritual value to villagers, which are now submerged in mine waste.”*<sup>9</sup>

### **Porgera Mine – Enga Province – Gold and silver - Barrick Gold**

Human Rights Watch (HRW) has investigated six cases of alleged gang rapes committed by the security staff employed by Barrick Gold. In each of these cases, the women were allegedly raped after being found on the slag heaps by the company’s guards. The women interviewed by HRW described acts of extreme violence. One of them recounted having been raped by six security guards after one of her aggressors had kicked her in the face, breaking her teeth. HRW has also investigated the cases of people who claim to have been beaten or mistreated by guards after being detained on the slag heaps.<sup>10</sup>

### **Ramu Mine – Madang Province - Nickel – MCC (Metallurgical Corporation of China)**

In 2019, PNG’s environmental authority shut down the Ramu Mine and Nickel processing plant in August after a spill of 80,000 litres of toxic



slurry went into the bay and surrounding ocean. The temporary closure in 2019 is the latest challenge to the \$2 billion Ramu Nico mining operation. The mine and processing plant which was China's first major resource project in PNG when it opened in 2012. Local communities have repeatedly demanded compensation for the negative impacts of the mine and the pipeline since the project began, contesting its plans to dispose of its tailings into the ocean, which failed in 2010. After operations began, the mine has faced attacks from the local community, leaked slurry and had one reported fatal accident in 2016 which also forced a closure.<sup>11</sup> The court case against MCC and the Ramu Mine will continue into 2020.<sup>12</sup>

### **Hela Mine – Hela Province – Liquefied Gas - EXXON Gaz**

*"When we protested, the PNG police shot us. We want the company to relocate us by buying us land, and providing the public services we were promised!"* insists M. Dale, barefoot. Around him, a crowd of red teeth nod in agreement. Anger is rising in the Highlands region, where the land of 20,000 traditional owners has now been crossed by the project. These landowners contest that ExxonMobil, its development partners and the PNG government, failed to follow the required processes to identify them, ensure benefits in accordance with the agreements and pay royalties on time and to the correct people.

In 2018, Papua New Guinean landowners in the Highlands took up arms against the natural gas project. Mongabay reported, "heavily armed civilian groups set fire to construction equipment and assets owned by the ExxonMobil-led PNG LNG project". Armed tensions have continued to escalate.<sup>13</sup>

On 10 July 2019, a conflict over control of a gold deposit broke out in Hela Province between rival Highlands tribes, resulting in 24 deaths. The Highlands tribes have been at loggerheads for centuries but the clashes have become more murderous recently with the influx of automatic weapons.<sup>14</sup>

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**Patrick Kulesza** is the Executive Director of GITPA (Groupe International de Travail pour les Peuples Autochtones - [www.gitpa.org](http://www.gitpa.org)). He conducted an information gathering mission to Papua from November 2018 to June 2019.





# PART 2

International Processes and Initiatives

# African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights (ACHPR) was established in accordance with Article 30 of the African Charter on Human and Peoples' Rights with a mandate to promote and protect human and peoples' rights on the continent. It was officially inaugurated on 2 November 1987 and is the premier human rights monitoring body of the African Union (AU). In 2001, the ACHPR established a Working Group on Indigenous Populations/Communities in Africa (WGIP), marking a milestone in the promotion and protection of the rights of Indigenous Peoples in Africa.

In 2003, the WGIP produced a comprehensive report on Indigenous Peoples in Africa which, among other things, sets out common characteristics that can be used to identify Indigenous communities in Africa. The report was adopted by the ACHPR in 2003 and was subsequently endorsed by the AU in 2005. The report, therefore, represents the official position of the ACHPR as well as that of the AU on the concept and rights of Indigenous Peoples' in Africa. The 2003 report serves as the basis for constructive engagement between the ACHPR and various stakeholders based in and outside the continent, including states, national human rights institutions, NGOs, Indigenous communities and their organizations.

The continued participation of Indigenous Peoples' representatives in the sessions of the ACHPR as well as in the various activities of the WGIP, which include sensitisation seminars, country visits, information activities and research, also play a crucial role in ensuring and maintaining this vital engagement and dialogue.

## Sessions of the African Commission

The rights of Indigenous Peoples were on the agenda of the ACHPR during its 64th Ordinary Session held in April-May 2019 in Egypt and 65th Ordinary Session held in October-November 2019 in The Gambia. During the examination of the state reports of Chad and Zimbabwe, the ACHPR raised questions and made recommendations relating to the promotion and protection of Indigenous Peoples' rights.

Indigenous Peoples' representatives from Kenya, Uganda and Ethiopia participated in the 65th Ordinary Session and made public statements relating to serious human rights violations that Indigenous Peoples' in their respective countries are facing.

During the 65th Ordinary Session, The Ogiek Peoples' Development Program (OPDP) organised a side event focussing on how to promote and increase voices of Indigenous Peoples at the ACHPR. Speakers on the panel included Indigenous representatives from Kenya, the Democratic Republic of Congo and Botswana. The International Work Group for Indigenous Affairs (IWGIA) and Minority Rights Group (MRG) also gave presentations on their work and role in supporting Indigenous Peoples' land rights in Africa and in supporting Indigenous Peoples to access the ACHPR. The side event was well attended – mainly by Indigenous Peoples but also by government representatives, representatives of the national human rights commission of Kenya, academia and mainstream human rights organisations – and discussions were very lively and engaged.

## Meeting of the WGIP

On 19-20 October 2019 the WGIP held its annual meeting in The Gambia prior to the commencement of the 65th Ordinary Session of the ACHPR. The WGIP took stock of the activities that it had undertaken for the past year and planned activities for the forthcoming year.

## Kenya National Dialogue on Extractive Industries and Indigenous Peoples

Following the adoption of the Study entitled "Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights"<sup>1</sup> by the

ACHPR at its 58th Ordinary Session held from 6-20 April 2016 in Banjul, The Gambia, the WGIP has been organising various activities (including National Dialogues) aimed at launching the study and popularising its findings and recommendations. The first National Dialogue was held in Yaoundé, Cameroon, from 7-8 September 2017. The second National Dialogue was held in Kampala, Uganda, from 27-28 November 2018. The third National Dialogue was held in Nairobi, Kenya, from 7-8 October 2019.

The Kenya dialogue was attended by 37 participants, including representatives of government, the Kenya National Commission on Human Rights, extractive industries, NGOs and a strong presence of Indigenous Peoples. Members of the WGIP made presentations on the various findings and recommendations of the study relevant to Kenya ensued via enriching discussions with participants. The perspectives of the Indigenous Peoples, national human rights institutions, NGOs, academia and businesses on the findings of the report were also shared.

A final communique has been released by the ACHPR capturing the recommendations from the dialogue.<sup>2</sup> Dr. Kanyinke Sena, expert member of the WGIP, was designated as a focal point in Kenya for follow-up matters and a steering committee has been set up to monitor the implementation of the recommendations from the dialogue.

## **Advanced course on the rights of Indigenous Peoples' in Africa**

The 9th Advanced Course on the Rights of Indigenous Peoples' in Africa was held at the Centre for Human Rights of the University of Pretoria in South Africa from 23-27 September 2019. The course was attended by 30 participants representing eight African countries. Participants included postgraduate students, human rights activists, academics, judicial officers and policymakers.

Themes that were explored during the course included the definition and conceptualisation of indigeneity, Indigenous Peoples' rights within the African regional human rights system, Indigenous Peoples' rights within the global human rights system, land acquisition, the right to manifest, practice, develop and teach spiritual and religious

traditions, and development and its impact on Indigenous communities. Course participants made country presentations on the issues discussed throughout the week. Documentaries, mainly focussing on business and human rights-related themes were also screened during the course.

Selected experts working on the issue of Indigenous Peoples served as resource persons. From the WGIP Dr. Melakou Tegegn, Dr. Albert Barume and Mr. Samuel Tilahun lectured on wide-ranging topics. Other resource persons included Dr. Christina Holmgren, a Senior Labour Standards Specialist at the ILO and Prof. Cindy Baskin from the Ryerson University of Toronto.

The course is held annually in the month of September at the Centre for Human Rights of the University of Pretoria in South Africa in cooperation with the WGIP and IWGIA. The Pretoria Course is one of the activities of the WGIP that has proved to be a successful model for collaboration with stakeholders. It has demonstrated visible impact and has developed into one of the most important capacity building platforms on Indigenous Peoples' rights on the African continent.

## **Resolution on sacred sites**

In May 2017 the ACHPR adopted Resolution 372 (ACHPR/Res.372 (LX) 2017)<sup>3</sup> on the protection of sacred natural sites and territories, which calls on State Parties to recognise sacred natural sites and territories and their traditional systems of governance. Having recognised the obstacles and difficulties in achieving the objectives of resolution 372, the ACHPR in November 2018 adopted Resolution 403, which mandates the WGIP to conduct a study on the need to protect and regenerate sacred natural sites and territories and traditional systems of governance in Africa.

It is in the context of the implementation of these resolutions that the WGIP decided to conduct the study in collaboration with the Gaia Foundation and the African Biodiversity Network. The WGIP met in October 2019 with representatives of the two organisations and had the opportunity to discuss the terms of reference of the study as well as the provisional timetable for this project.



## **Resolution on the Recognition, Promotion and Protection of Indigenous Language**

The ACHPR adopted a resolution on the Recognition, Promotion and Protection of Indigenous Language (ACHPR/Res.430(LXV)2019)<sup>4</sup> at its 65th Ordinary Session in November 2019. In the resolution, the ACHPR:

- Expresses its full support to the United Nations' initiative to declare 2022-2032 as the International Decade of Indigenous Languages;
- Urges State Parties to give legal recognition to Indigenous languages and allocate the necessary budget for the preservation and enjoyment of the languages and cultures of Indigenous populations;
- Strongly encourages African governments, Indigenous populations, intergovernmental organisations, national human rights institutions, civil society organisations and academic institutions to increase efforts towards the sustainable preservation, protection and promotion of Indigenous languages; and
- Calls upon the AU to promote Indigenous languages in Africa as part of its mandate.

## **Continued monitoring of the situation of Indigenous Peoples' rights**

In 2019 the ACHPR continued to closely monitor the situation of Indigenous Peoples on the African continent. As part of this monitoring exercise, the Chairperson of the WGIP gave updates on the state of Indigenous Peoples in Africa in her activity reports to the 64th and 65th Ordinary Sessions of the ACHPR. The public sessions of the ACHPR and the various side events organised before and during the sessions serve as vital platforms where the plight and grievances of Indigenous Peoples are expressed and heard. The WGIP thus invites Indigenous activists and organisations to its pre-session meetings with a view to listen to their issues of human rights violations and discuss how the ACHPR can strategically engage with them, their respective governments and other stakeholders in order to improve their situation. In 2019 the WGIP met with Indigenous Peoples' representatives from the Endorois and Ogiek Indigenous communities of Kenya.

An urgent appeal was sent by the WGIP to the Eritrean authorities in September 2018 concerning the forced evictions of the Afar and Kunama peoples from their ancestral lands, without prior consultation or compensation, following the construction and expansion of a United Arab Emirates military base in the port city of Assab, in the southern Red Sea region. The State replied on 10 December 2018, refuting the concerns raised by the WGIP.

## Collaboration between the WGIP and the UN

On 20 October 2019, the WGIP held a working session with representatives of the UN Permanent Forum on Indigenous Issues (UNPFII) and the UN Inter-Agency Support Group on Indigenous Issues (IASG). The main objective of the session was to discuss ways to strengthen the WGIP's participation in international fora and re-inforce the collaboration between the relevant UN bodies and the WGIP in Africa. UNPFII, ILO, UN Women and OHCHR were present in the meeting. Following fruitful discussions, it was decided that the WGIP and the IASG will explore ways forward to work together to better advance the rights of Indigenous Peoples in Africa.

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**Geneviève Rose** is senior advisor on regional human rights mechanisms and gender for IWGIA. She is the programme coordinator of the African Commission on Human and Peoples' Rights' project. She has a master's degree in conflict resolution from the University of Bradford in the UK. For the last 10 years she has been working mainly with the African continent and Indigenous Peoples' rights on various thematic, including among other, human rights and business, gender issues, land rights and participation in regional processes.



# Association of Southeast Asian Nations (ASEAN)

The Association of Southeast Asian Nations (ASEAN) established on 8 August 1967 with the signing of the ASEAN Declaration (Bangkok Declaration) by its founding member states: Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei, Cambodia, Lao PDR, Vietnam and Myanmar later joined, making ASEAN a 10-member state institution.

The ASEAN Charter was adopted in November 2007 and came into force in December 2008. It is the legally binding agreement among the member states that provides ASEAN with a legal status and institutional framework.

ASEAN's fundamental principles, more commonly known as the 'ASEAN Way', are founded on non-interference, respect for sovereignty and decision-making by consensus. Although lauded by the ASEAN member states, this principle has been considered a major challenge in moving things forward in ASEAN, particularly within the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Despite having around 100 million people identifying as Indigenous in Southeast Asia,<sup>1</sup> Indigenous Peoples and human rights are 'sensitive' topics in ASEAN, especially within the AICHR. As such, the issues on involving Indigenous human rights defenders rarely make it to the discussion table. However, the 40th ASEAN Ministerial Meeting on Agriculture and Forestry (AMAF) departed from this typical circumstance in ASEAN regarding Indigenous issues. Its *Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry*, adopted in October 2018, explicitly mentions Indigenous Peoples in reference to ILO Convention 169 and the Universal Declaration

on the Rights of Indigenous Peoples (UNDRIP) as well as the importance for member states to uphold Indigenous Peoples' right to free, prior and informed consent (FPIC).

## **ASEAN human rights mechanisms and the 'ASEAN Way'**

**T**he ASEAN Intergovernmental Commission on Human Rights (AICHR) is the core human rights mechanism of ASEAN. Created in 2009, its primary function is to interpret provisions and ensure the implementation of the ASEAN Human Rights Declaration (AHRD), which was adopted in 2012. The AHRD has, however, fallen short of human rights organisations' expectations in the region<sup>2</sup> and does not make any direct reference to "Indigenous Peoples".<sup>3</sup>

The other human rights mechanisms are the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) and the ASEAN Committee on Migrant Workers (ACMW). Each has its own mandate to ensure the rights of its corresponding sector.<sup>4</sup> The ACWC was established in 2010 and the ACMW in 2007. Of the three mechanisms, Indigenous organisations engage more with the ACWC and AICHR. Indigenous issues also find more space within these mechanisms for discussion.

Compared to the ACWC, the AICHR is considered to have a better position regarding the promotion and protection human rights in the region. Aside from the fact that its mandate has a wider and more general scale, it falls within ASEAN's pillar of Political-Security Community – one of ASEAN's three pillars – while the ACWC and ACMW are within the Socio-cultural Community. The third pillar is the ASEAN Economic Community.<sup>5</sup> Although these pillars are expected to equally contribute to achieving ASEAN's Vision, there is an implicit understanding that the economic pillar is regarded with more importance, after which comes the Political-Security Community, and finally the Socio-cultural Community, which is often taken as limited to cultural exchanges and so-called 'soft power'.

Nevertheless, since its creation, the AICHR has been criticised for

its weak mandate in protecting human rights and addressing violations. As the former ASEAN Secretary-General, Rodolfo Severino, has stated, the AICHR has “acted merely as an ‘information centre’ for human rights protection, and nothing else”.<sup>6</sup> The AICHR shies away from issues considered to be controversial, such as human rights defenders and even more so, Indigenous Peoples human rights defenders. The ACWC does not fare any better, however. It has even fewer opportunities for consultation or discussion with civil society organisations (CSOs) in general; it is not as visible and does not provide information.

Among the notable challenges in moving things forward within the AICHR, and in ASEAN in general, is the so-called ‘ASEAN Way’. Every decision has to be arrived at by consensus, with high consideration of the principle of non-interference and respect for sovereignty. This consequently affects how Indigenous Peoples engage with the AICHR because ASEAN member states, except for the Philippines, do not legally recognise Indigenous Peoples as distinct peoples with specific rights, particularly their collective rights to lands, territories and resources. Other member states have reservations in recognising Indigenous Peoples, especially in using the term Indigenous Peoples, although Indonesia, Laos and Vietnam continue to insist that all their people are Indigenous Peoples.<sup>7</sup>

Regardless of this criticism and nagging concern for Indigenous Peoples and CSOs in the region, the AICHR remains the only available regional institution working on human rights in South-East Asia. There have been some gradual changes in making the AICHR more inclusive and consultative in its engagement with those CSOs with consultative status with the AICHR. Specific reservations on the part of member states regarding specific issues prevail, however, in its overall discussions and expected outcomes. As such, it remains a struggle to incorporate Indigenous issues or even get the term “Indigenous Peoples” used in their documents. Indigenous Peoples are often included and implied within the phrase “marginalised and vulnerable groups”.

## **Indigenous Peoples Task Force (IPTF) for the ASEAN**

The IPTF for the ASEAN was initiated by the Asia Indigenous Peoples Pact (AIPP) in 2009, where the Indigenous Peoples organisations in

ASEAN member states gather to prepare for the engagement in ASEAN and other relevant bodies. Additionally, the role of the IPTF is to coordinate at the national and regional levels. The gathering of Indigenous Peoples serves to exchange knowledge and share experiences and come out with common statements, from there it continues working with other CSOs and voices Indigenous Peoples issues in the ASEAN Charter. This task force is aligned with the Indigenous Peoples Human Rights Defenders Network as a focal organisation playing a key role in ASEAN engagement.

On 10-12 September 2019, the IPFT met 'back-to-back' with the ASEAN Civil Society Conference (ACSC) /ASEAN Peoples Forum (APF) and discussed several thematic areas, including: 1) Human Rights, Democracy and Access to Justice; 2) Trade, Investment and Corporate Power; 3) Peace, Security, and Migration; 4) Decent work, Health and Social Protection; 5) Ecological Sustainability, and 6) Digital Rights. Some of the cases highlighted by Indigenous Peoples in ASEAN countries were cases where Indigenous Peoples are affected by corporate investment on a large scale from extractive industries, energy and infrastructure projects; for example, in Thailand, the open coal mining in Omkoi District, the proposed uranium mining and nuclear power plant in Kalimantan, Indonesia, the vast mining operations in the Philippines, and economic concessions in Cambodia, all of which threaten to deprive Indigenous Peoples of their land, territories and resources without their 'Free, Prior and Informed Consent' (FPIC). The construction of a mega dam in Malaysia and special economic zone and building programs in the Philippines will displace Indigenous Peoples on a massive scale.

The engagement modalities are the annual ASEAN Civil Society Conference/ASEAN Peoples' Forum (ACSC/APF), which in 2019 were in parallel with the bi-annual ASEAN Summit of Leaders, which had the key aims of knowledge sharing and exchanging among peoples of the SEA region<sup>8</sup> and delivering recommendations to ASEAN Leaders. During the ACSC/APF event, the IPTF released separate statements<sup>9</sup> which were published regionally and at the country level. The CSOs' intervention during the convergence space and town hall session with government representatives has opened up a discussion on Indigenous Peoples' issues, which led to the formulation of recommendations. Some of the recommendations are to ensure legal recognition of Indigenous Peoples' land, territories and resources; the halting of corporate invest-

ments that violate the rights of Indigenous Peoples to land, territories and resources; and ensuring genuine FPIC of Indigenous Peoples for any intervention in their communities.

## Engagement with the AICHR consultation

Engagement of Indigenous Peoples organisations with the AICHR consultation in 2019 was limited to AIPP, which has a consultative status.

On 8-10 December 2019, the AICHR representative of Indonesia, in collaboration with AICHR Malaysia, organised a consultation on Freedom of Opinion, Expression and Information in ASEAN (Article 23 of the ASEAN Human Rights Declaration/AHRD) in Bali, Indonesia. The 97 participants were from ASEAN Member States, CSOs, media practitioners, university, national human rights institutions, the private sector and ASEAN sectoral bodies. Among many issues, the consultation discussed the state of human rights in the digital age in Southeast Asia and its implications, opportunities and challenges. The consultation also touched on strategies to address the issues related to freedom of opinion and expression in Southeast Asia and the role of stakeholders in addressing the issues related to freedom of opinion and expression. The achievement from this participation was that the AICHR representative highlighted the recommendation that ASEAN member states need to pay the highest attention to freedom of opinion and expression, particularly among minority and vulnerable groups. It further elaborates both conventional and emerging challenges on freedom of expression in ASEAN, particularly for women; people with diverse sexual orientation, gender identity – expression, and gender characteristics; youth; Indigenous Peoples and migrant workers; as well as human rights defenders, journalists and those who express dissenting opinions against governments and the majority. In general, freedom of expression in ASEAN countries is significantly low and needs to be given further attention.

The intervention from CSOs really wanted to push for the consideration of AICHR to further develop its recommendation and help ASEAN member states on the articulation of Article 23 of the AHRD as a way to strengthen the promotion and protection of human rights in ASEAN, as well as expanding their obligation under international human rights law as it is mandated.



## **ASEAN guidelines on promoting responsible investment in food, agriculture and forestry (FAF)**

The purpose of these guidelines is to promote investment in food, agriculture and forestry in the ASEAN region that contributes to the regional economic development, food and nutritional security and equitable benefits, as well as the sustainable use, of natural resources. These guidelines are voluntary in nature without conflicting with existing national laws, regulations and binding international treaties. Indeed, a stronger and more equitable regulatory environment at the national level is the best guarantee to achieve social, economic and environmental benefits from investment. These are also with relevant UN Sustainable Development Goals (SDGs), including 'No Poverty' (Goal 1 to end poverty in all forms and dimensions by 2030); 'Zero Hunger' (Goal 2 to be achieved by the same date); 'Gender equality' (Goal 5, ending all forms of discrimination against women and girls); and 'Climate Action' (Goal 13). The ASEAN guidelines on promoting responsible investment in food, agriculture and forestry are recognised by ASEAN member states and regional global value chains.

In the ASEAN context, agricultural activities consist of three sub sectors: crops, livestock and fisheries. Forestry as a category in itself is excluded in the ASEAN definition of agriculture, unlike, for instance in the definition of the UN Food and Agriculture Organization of the United Nations' (FAO).

There is a strong link between land rights and food security. Involuntary resettlement and displacement may disrupt the household or the community's ability to grow their own food, access natural resources, forage for food and find land for animal grazing.

The ASEAN food, agriculture and forest document (FAF) is very relevant as an advocacy tool to engage with the AICHR, ACWC and other sectoral bodies for lobbying with ASEAN member states. Some of the recommendations from the FAF document include improving the transparency of ASEAN member states, improving governance systems and introducing community engagement strategies in investor-state contracts, including a community development agreement in line with the FPIC principles. Currently, some of member states have started working towards a transparency system, including Malaysia, Laos and Cambo-

dia. According to Zhan et al, 2015,<sup>10</sup> Malaysia has published its environment and social impact assessment on the Department of Environment website. The increasing land scarcity, investor competition and learning process of stakeholders at different policy levels is leading to more inclusive investment based on case studies in Laos and Cambodia (Messerli, et al. 2015).<sup>11</sup>

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**Frederic Wilson** is an Indigenous Peoples of Dusun Putih ethnic group in Sabah, Malaysia. Previously, he has worked with the Indigenous Peoples in Malaysia, especially in Sabah State. Currently, he works as the Human Rights Campaign and Policy Advocacy Programme Officer of Asia Indigenous Peoples Pact (AIPP).



# European Union Engagement with Indigenous Issues

The European Union (EU) is a political and economic union of 27 Member States established in 1951. Its legislative and executive powers are divided between the EU's three main institutions: the European Parliament (co-legislative authority - EP), the Council of the European Union (co-legislative and executive authority - CoEU) and the European Commission (executive authority - EC). In addition, the EU has its own diplomatic service: the European External Action Service (with EU "embassies" throughout the world).

The EU has influence within the territory of its Member States but has also a global impact as an international key player, notably on human rights, development and environment issues. In this sense, "While internal competences concern the European Union's internal functioning, external competences are those that fall within the framework of the EU's relations and partnerships with non-EU countries and international, regional or global organisations."<sup>1</sup>

The EU is part of the international process of promoting and protecting the rights of Indigenous Peoples. Since 1996, four EU Member States have ratified the ILO Convention No 169,<sup>2</sup> all EU Member States have signed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, and the EU has contributed to and supported the Outcome Document of the World Conference on Indigenous Peoples in 2014.

**"T**he European Union is founded on values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons

belonging to minorities”<sup>3</sup>. Those values also guide the EU’s action both inside and outside its borders.

In this regard, the EU requires that all its development, investment and trade policies respect human rights and it is the largest provider of development aid in the world as it puts respect for human rights at the forefront of its aid granting policy.

The following pages are a summary of the main actions undertaken by the EU to protect and promote the human rights of Indigenous Peoples.

## **Evolution of EU legislation regarding Indigenous Peoples**

First of all, even if the EU contributes to and applies the various UN legal instruments that protect the rights of Indigenous Peoples, it also develops its own legislation to support Indigenous Peoples.

The first step taken by the EU is the “Communication from the EC [European Commission] to the European Council of 27 May 1998 on a partnership for integration: a strategy for integrating the environment into EU policies”<sup>4</sup>. The EC Working Document of May 1998 entitled “On support for Indigenous Peoples in the development co-operation of the Community and Member States” establishes the objectives of supporting Indigenous Peoples’ rights and integrating the concern for Indigenous Peoples as a cross-cutting aspect of human empowerment and development cooperation. It advocates for the full and free participation of Indigenous Peoples in all stages of the project cycle and that their participation in development activities should include elements such as prior consultation, their consent to envisaged activities, their control over activities affecting their lives and land, and the identification of their own priorities for development.

The ensuing November 1998 Council Resolution of Development Ministers of the EU Member States<sup>5</sup> welcomes the Working Document and recognises that “cooperation with and support for the establishment of partnerships with Indigenous Peoples is essential for the objectives of poverty elimination, sustainable development of natural resources, the observance of human rights and the development of democracy”. The CoEU further acknowledges that development coop-

eration should contribute to enhancing the right and capacity of Indigenous Peoples to their self-development. It equally confirms that this includes the right to object to projects, in particular in Indigenous Peoples' traditional areas, and compensation where projects negatively affect the livelihoods of Indigenous Peoples.

On 11 June 2002, the EC submitted a report to the CoEU on the review of progress of working with Indigenous Peoples.<sup>6</sup> In November 2002, the CoEU adopted Council Conclusions<sup>7</sup> that recall the 1998 Council Resolution commitments and invites the EU to pursue their implementation. The EC and Member States are invited to ensure coherence (including through the establishment of dedicated focal points in the EC and Member States), coordination in multilateral fora, as well as training of personnel on issues related to human rights of Indigenous Peoples. Moreover, Indigenous Peoples' issues are to be mainstreamed into the EU policies, practices and work methods. The CoEU also decided that the EU has to provide for capacity building of organisations representing Indigenous Peoples as well as to integrate the concerns of Indigenous Peoples in political dialogues with partner countries (as an integral part of the human rights clauses of the different co-operation and association agreements).

In 2008, the EU adopted the "EU Guidelines on Human Rights Defenders"<sup>8</sup> to provide practical suggestions for enhancing EU action in relation to human rights defenders. The guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the EU to promote and encourage respect for the right to defend human rights. The guidelines also provide for interventions by the EU for human rights defenders at risk and suggest practical means to support and assist human rights defenders. In addition, the EU has established "Protect-Defenders.eu",<sup>9</sup> a mechanism established to protect defenders at high risk worldwide through an emergency support platform.

Furthermore, although the EU has included Indigenous Peoples in its "EU Annual Reports on Human Rights and Democracy in the World",<sup>10</sup> the 2016 Report is a turning point as the EU increased its concern by referring massively to Indigenous Peoples issues, not only recognising them among vulnerable groups and the need for a stronger emphasis but also analysing their situation on the ground through the work of EU delegations worldwide. In its 2017 and 2018 Reports, the EU dedicates

a specific part to the “Rights of Indigenous Peoples” and makes direct references in the part of “Civil Society and Human Rights Defenders”.

In 2016, the CoEU adopted “An integrated European Union policy for the Arctic”.<sup>11</sup> In 2014, the CoEU and the EP asked the EC and the High Representative for Foreign Affairs and Security Policy to develop an integrated policy on Arctic matters, and to develop a more coherent framework for EU action and funding programmes. This policy focuses on climate change, environmental protection, sustainable development, international cooperation and particularly the participation of local stakeholders.

The following year, the CoEU adopted “Council Conclusions on Indigenous Peoples” (15 May 2017).<sup>12</sup> The CoEU underlines the importance of addressing discrimination and inequalities based on Indigenous origin or identity as well as the importance of actions taken to address the threats to and violence against Indigenous Peoples. The CoEU also highlights the crucial importance of further enhancing opportunities for dialogue with Indigenous Peoples at all levels of EU cooperation.

These conclusions follow the “Joint Staff Working Document - Implementing EU External Policy on Indigenous Peoples”<sup>13</sup> published by the High Representative and the EC in October 2016. It identifies ways for the EU to strengthen its support to Indigenous Peoples through existing external policies and financing.

A month later, the EU adopted “The new European Consensus on Development” (2017).<sup>14</sup> This Consensus offers a common development vision for the EU and constitutes a comprehensive common framework for European development cooperation. It integrates the economic, social and environmental dimensions of sustainable development. In doing so, it aligns European development action with the 2030 Agenda for Sustainable Development adopted by the international community in September 2015.

At the end of year, the European Parliament published a study on “The situation of indigenous children with disabilities” (2017).<sup>15</sup> Indigenous children with disabilities (ICwD) face discrimination at many levels, based on ethnicity, age, ability and gender and this often leads to serious human rights violations. The lack of data, both on the prevalence of disabilities among indigenous children and young people and on specific violations of their human rights, is a serious constraint to any policy intended to respect, protect and promote their rights. The

study seeks to identify these gaps, point to certain patterns and recommend ways of improving data collection and the situation of ICwD in the future.

This legislative evolution shows the EU's increasing involvement and protection for Indigenous Peoples' rights.<sup>16</sup> In this sense, the EP has strengthened its commitment by adopting the resolution on "violation of the rights of Indigenous Peoples in the world, including land grabbing"<sup>17</sup> on 3 July 2018. The resolution covers the main issues and human rights violations faced by Indigenous Peoples around the world. It focuses particularly on human rights of Indigenous Peoples, land grabbing, business and human rights, sustainable and economic development for Indigenous Peoples and EU cooperation policy with third countries. By doing so, this resolution sets the EU main priorities and future steps regarding the rights of Indigenous Peoples, as well as calling for the establishment of four different mechanisms to strengthen the protection of their rights:

- a grievance mechanism to lodge complaints regarding violations and abuses of their rights resulting from EU-based business activities [art. 45];
- a mechanism to carry out independent impact assessment studies prior to the conclusion of trade and cooperation agreements [art. 72];
- an effective administrative complaint mechanism for victims of human rights violations [art. 81]; and
- a standing rapporteur on Indigenous Peoples within the EP with the objective of monitoring the human rights situation, and in particular the implementation of the UNDRIP and ILO Convention No. 169 [art. 85].

## Indigenous Peoples' participation in EU events

Indigenous Peoples regularly participate in events organised by the EU relating to human rights and development.

### **Sakharov Prize<sup>18</sup>**

Since 1988, the EP awards the annual Sakharov Prize for Freedom of Thought to individuals who have made an exceptional contribution to

the fight for human rights across the globe, drawing attention to human rights violations as well as supporting the laureates and their cause. In 2017, Ms. Aura Lolita Chavez Ixcaquic, a human rights defender from the Ki'che' Peoples (Guatemala) was one of the three finalists and the first indigenous candidate of the Prize. In 2019, the EP awarded the Prize to Mr. Ilham Tohti, a renowned Uyghur human rights defender from China's Uyghur people.

### **European Development Days (EDD)<sup>19</sup>**

Organised by the EC, the EDD brings the development community together each year to share ideas and experiences in ways that inspire new partnerships and innovative solutions to the world's most pressing challenges. The 2020 EDD will focus on biodiversity and the EU acknowledges the key role of Indigenous Peoples with whom participation and contribution are encouraged.

### **EU-NGO Forum on Human Rights<sup>20</sup>**

As part of the broader dialogue and engagement between the EU and civil society organisations, the forum is organised every year by the European External Action Service (EEAS), the EC and the Human Rights and Democracy Network (HRDN). The 2019 Forum was dedicated to the nexus between human rights and the environment and several Indigenous representatives were invited to discuss what role the EU can play in advancing a fair environmental future through three entry points: "Access to information and participation", "Due diligence and access to justice", and "Empowering and protecting human right defenders working on environmental issues".

### **Bridging the Gap II<sup>21</sup>**

Funded by the EU, this project aims at making development cooperation accessible to and inclusive of persons with disabilities, which is an obligation for EU and its Member States as parties to the Convention on the Rights of Persons with Disabilities (CRPD). With a view to fully take into account intersectional discrimination, this project includes the perspective and participation of Indigenous persons with disabilities in the design of the program and in its implementation on the ground.



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**Amalia Rodríguez Fajardo** and **Mathias Wuidar** are human rights lawyers. They work as representatives to the EU at the Indigenous Peoples' centre for documentation, research and information (Docip).



# Global Indigenous Youth Caucus

It is estimated that there are 370 million Indigenous persons in the world, approximately 45% of whom are between 15 and 30 years of age. This group of Indigenous Peoples face numerous challenges, including marginalisation, migration and premature maternity. Despite these problems, Indigenous youth continue organising to attain their rights and bring their situation to the light of day.

The Global Indigenous Youth Caucus (GIYC) is a global network of Indigenous youth from the seven Indigenous sociocultural regions. Ever since the first session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), Indigenous youth participants have been meeting and developing statements and positions expressing the concerns of Indigenous youth in various bodies, mechanisms, and international processes.

In 2008, the UNPFII recognised the Youth Caucus as a stable working caucus. The Youth Caucus has two or three co-chairs, who have the responsibility of organising, coordinating and communicating with caucus members. It also has two to three regional focal points from each of the seven sociocultural regions, who maintain communication with the Indigenous youth of their region. The caucus's objective is to bring Indigenous youth together across borders and continents in order to contribute to the struggle for the rights of the Indigenous Peoples and strengthen their capacity to act as custodians of Indigenous cultural heritage.

When one speaks of hope, youth have always been important to bear in mind. The youth of today have distinct aspirations, dreams, desires and many challenges that lie ahead for them. Much of the data of the United Nations Population Fund (UNFPA) reaffirms that there are 1.8 billion adolescents in the world, representing 18% of the world's population. That great strength that the world's youth represents includes Indigenous youth, who have a need to undertake new challenges in defense of the lives and the futures of their peoples.

Indigenous youth from the seven sociocultural regions<sup>1</sup> who belong to the Global Indigenous Youth Caucus (GIYC),<sup>2</sup> have promoted the creation of participatory political action mechanisms to defend the rights of Indigenous Peoples where their aspirations as youth can be reflected.

It is fundamental that Indigenous youth be included in spaces of social participation through permanent mechanisms. Over the years, Indigenous youth have demanded spaces that guarantee their full and effective participation. In 2019, this demand grew, fundamentally due to an increase in human rights violations, murders, the persecution of Indigenous leaders, illegal exploitation in Indigenous territories and the direct consequences of all of this on our identity.

The UN Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) have been two of the most important international spaces for Indigenous youth, which have served to shed light on the issues, advances and challenges faced by Indigenous youth.

The report issued by the UNPFII in 2016 "Youth: Self-Harm and Suicide"<sup>3</sup> and the report "Perspective of Indigenous Youth 10 Years after the Adoption of the United Nations Declaration on the Rights of Indigenous Peoples"<sup>4</sup> marked the guideline for analyses involving Indigenous youth. This was further strengthened in the document entitled "Rome Statement"<sup>5</sup> presented at the 16th session of the UNPFII, where Indigenous youth underscored the urgency of recognising Indigenous youth as a fundamental agent of change and action.

Indigenous youth have engaged in a series of efforts to promote their participation in monitoring the implementation of individual and collective rights of Indigenous Peoples. In this regard, the review process on the implementation of the Sustainable Development Goals (SDGs) has given Indigenous youth an important opportunity to bring their situation to light, speak transversally about their rights and be ho-

listically contemplated in the global agenda.

During 2019, the advocacy work and participation of Indigenous youth in various national and international spaces made it possible for them to develop positions on the implementation of the 17 Sustainable Development Goals (SDGs), principally highlighting the transversal nature of SDG 13 (Climate Action) and of SDG 15 (sustainable use of terrestrial ecosystems), since those SDGs have a direct impact on the lives of the world's Indigenous Peoples.

## **Indigenous youth commitment and activities at a global level in UN processes**

When weighing the dualism of modernity and traditionality, Indigenous youth cannot set aside the history endured by their peoples, including the genocide and acculturation to which they have been subjected. Despite that, century after century, Indigenous Peoples have resisted and maintained their cultural and territorial identity. Yet currently, Indigenous youth are extremely concerned as they see an acceleration of the consumption model, an advance of new models of production innovations, a changing sociodemographic dynamic and certain changes in the use of the lands and territories, which are significantly increasing pressure on the natural resources and ancestral territories of the Indigenous Peoples.

Climate change is affecting everyone, generating an enormous mobilization worldwide led by youth such as Greta Thunberg.<sup>6</sup> In 2019, Indigenous youth have made great efforts to ensure their participation in international spaces addressing climate change. Their work has aimed to call attention to the climate crisis and its impact on Indigenous Peoples. They have also called upon the States to recognise the impact on Indigenous Peoples of climate change itself and of mitigation measures, and not to deny climate justice for Indigenous Peoples.

## **Indigenous Youth in the 2030 Agenda**

The SDGs are formulated to end poverty, promote well-being and protect the environment, with the message of "leave no one behind", all

based on the principle of equality and nondiscrimination. In order to achieve this it is necessary to ensure Indigenous Peoples' right to participation through permanent institutional mechanisms.

The demand by Indigenous youth to have their right to participate recognised has been supported by various important actors, for example the UN Secretary-General's Special Envoy for Youth, Ms. Jayathma Wickramanayake, who has been involved in the Global Indigenous Youth Caucus (GIYC) and who has pointed out the need for their inclusion: "We need to ensure that Indigenous youth have a voice not only in their communities, but also in decision-making processes at a national and international level."<sup>7</sup>

It is important to recognise the connection between the SDGs and other global negotiating processes addressing issues of an economic, social and environmental nature in order to ensure synergies in meeting the objectives and ensure their scope at a country level and in the Indigenous communities.

It is necessary to continue creating and strengthening alliances with UN bodies, in particular with members of the Inter-Agency Support Group on Indigenous Peoples' Issues (IASG), States, NGOs, institutions, academia and other actors, so that they will collaborate in mobilising resources to help ensure the implementation of the SDGs, fundamentally at the country level.

In 2019, Indigenous youth participated in following global events:

- Forum of the Indigenous Peoples at International Fund for Agricultural Development (12 - 13 February 2019, Rome, Italy)
- UNPFII 2019 (22 April - 3 May 2019, New York)
- Preparatory Meeting for the Climate Action Summit (30 June - 1 July 2019, Abu Dhabi)
- EMRIP (15 - 19 July 2019, Geneva)
- Global Landscapes Forum (22 -23 June 2019, Bonn, Germany)
- Youth Climate Summit (23 September 2019, New York)
- Sustainable Development Summit (25 - 27 September 2019, New York)
- High-Level Meetings during the 74th session of the General Assembly (23 - 27 September 2019, New York)
- Nairobi Summit on ICPD25 (12 - 14 November 2019)
- COP 25 (2 - 13 December 2019, Madrid)

## Advances and challenges

When seeking to identify the principal advances and challenges it is important to indicate that all of the progress made by Indigenous youth has been possible thanks to the confidence bestowed by Indigenous organisations, UN offices that have worked with Indigenous youth, non-governmental organisations and international bodies that have given them support, but, above all, the confidence placed in them by their elders.

Among the progress made, Indigenous youth from Asia, Africa, Latin America and the Pacific were included in the Indigenous Steering Committee of the IFAD Indigenous Peoples Forum.

The youth have also indicated that there has been recognition of and inter-sectional attention paid to the situation of Indigenous youth on the UN global agenda. In this context, the attention given by UNFPA has been particularly relevant.

The importance of the commitment by the Food and Agriculture Organisation of the UN (FAO) and IFAD in recognising the rights of Indigenous Peoples and the special attention granted to Indigenous youth in recent years are especially important. The interest demonstrated by the special youth envoy to Indigenous youth issues and climate change has also been a great achievement for Indigenous youth.

With respect to best practices, at a regional level in Latin America, it is important to recognise and share the work carried out by the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (FILAC)<sup>8</sup> and its commitment towards Indigenous youth based on their Unity of Youth. FILAC is the only international entity with parity participation of governments and Indigenous Peoples, where Indigenous youth are involved in their actions, programmes and projects. Among FILAC's major actions in relation to the involvement of Indigenous youth, the youth participated and specific strategies were developed at the Regional Dialogue of Indigenous Peoples of Latin America and the Caribbean in the framework of the Green Climate Fund, which was convened by FILAC and supported by the Government of Nicaragua and FAO.

Recognition must be given to the important role played by the global youth movement to ensure equitable and differentiated partic-

ipation of Indigenous youth in the various decision-making spaces on public policies, strategies, plans and projects for climate change adaptation and mitigation.

## Conclusion

Indigenous youth understand that their mission in the international arena is to contribute to the unity of the Indigenous movement, strengthening its demands, increasing awareness on what is occurring at a local and regional level, and developing collective recommendations and strategies.

For Indigenous youth, transmission of traditional knowledge is a core element for empowerment. Indigenous Peoples are not separate from the earth, and an attack on Mother Earth is an attack on the preservation of traditional knowledge and on the cultural and spiritual identity of its peoples. They request that investments be made in Indigenous organisations as principal actors for actions aimed at mitigating climate change.

The survival of Indigenous languages and their traditional knowledge are fundamental for integral development of communities and the world. Indigenous Peoples are the guardians of Mother Earth and defenders of life. They do not need to change the climate; they need to change the system.

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**Jessica Vega Ortega** is an Indigenous youth belonging to the Mixteco people of Mexico. She is currently Vice-Chair of the Global Indigenous Youth Caucus (GIYC).

**Rayanne Cristine Máximo França** is an Indigenous youth activist from Brazil who is part of the Indigenous Youth Network of Brazil.



# Indigenous Data Sovereignty

Indigenous Peoples have always been ‘data warriors’. Our ancient traditions recorded and protected information and knowledge through art, carving, song, chants and other practises. Deliberate efforts to expunge these knowledge systems were part and parcel of colonisation, along with state-imposed practices of counting and classifying Indigenous populations. As a result, Indigenous Peoples often encounter severe data deficits when trying to access high quality, culturally relevant data to pursue their goals, but an abundance of data that reflects and serves government interests regarding Indigenous Peoples and their lands.

The concept of Indigenous data sovereignty (ID-SOV) is a relatively recent one, with the first major publication on the topic only appearing in 2016.<sup>1</sup> ID-SOV is defined as the right of Indigenous Peoples to own, control, access and possess data that derive from them, and which pertain to their members, knowledge systems, customs or territories.<sup>2,3,4</sup> ID-SOV is supported by Indigenous Peoples’ inherent rights of self-determination and governance over their peoples, territories and resources as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as in domestic treaties. ID-SOV recognises that data is a strategic resource and provides a framework for the ethical use of data to advance collective Indigenous wellbeing and self-determination.<sup>5,6</sup> In practice ID-Sov means that Indigenous Peoples need to be the decision-makers around how data about them are used.

Given that most Indigenous data is not in the possession of Indigenous Peoples, Indigenous data governance (ID-GOV) is seen as a key lever for addressing ID-SOV. ID-GOV harnesses Indigenous Peoples’ values, rights and interests to guide de-

cision-making about how their data are collected, accessed, stored, and used.<sup>7</sup> Enacting ID-GOV results in Indigenous control of Indigenous data through both internal Indigenous community data governance policies and practices and external stewardship of Indigenous data via mechanisms and frameworks that reflect Indigenous values.

## Oñati workshop and launch of Global Indigenous Data Alliance

In July 2019 a workshop on international law, ID-SOV and the UNDRIP was held at the International Institute for the Sociology of Law, Oñati, Spain. The purpose was to provide a forum for ID-SOV scholars and practitioners to advance the legal principles of Indigenous collective and individual data rights in the context of UNDRIP. The workshop brought together participants from seven nation states and included representation from the Maïam nayri Wingara Collective (Australia); Te Mana Raraunga Maori Data Sovereignty Network (Aotearoa New Zealand); and the United States Indigenous Data Sovereignty Network. The Oñati communiqué<sup>8</sup> highlighted three key points:

- UNDRIP provides a necessary but insufficient foundation for the realisation of Indigenous rights and interests in data. Indigenous Peoples also require Indigenous-designed legal and regulatory approaches founded on ID-SOV principles.
- While national ID-SOV networks are best placed to respond to and progress data sovereignty for their peoples and communities, a global alliance is needed to advocate for and advance a shared vision for ID-SOV.
- The international focus on the protection of personal data and privacy rights is inadequate for Indigenous Peoples. There is an urgent need for the development and implementation of collective Indigenous privacy laws, regulations and standards.

A key outcome of the workshop was the formation of the Global Indig-

enous Data Alliance (GIDA). GIDA<sup>9</sup> aims to provide a visible, collective approach to progressing ID-SOV and ID-GOV internationally, including building strategic relationships with global bodies and mechanisms. The UN Special Rapporteur on the Rights of Privacy has recognised ID-SOV in key UN documents<sup>10</sup> and the UN Permanent Forum on Indigenous Issues has an enduring interest in Indigenous data disaggregation for self-determination and development. As a ‘network of networks’, GIDA is also well placed to share best practice with respect to ID-SOV and ID-GOV frameworks, tools and processes. GIDA is also the mandated steward for the CARE principles of Indigenous data governance, see below.

## CARE principles for Indigenous data governance

A key concern for ID-SOV networks is the lack of protection afforded Indigenous Peoples within the Open Data and open science movements. The widely-used FAIR principles (Findable, Accessible, Interoperable, Reusable) are just one example of the increasing push for greater data sharing among researchers and entities.<sup>11</sup> The emphasis on increased data sharing creates a tension for Indigenous Peoples who want a greater say over how their data are protected, shared and used.

The CARE Principles for ID-GOV is a framework designed to operate alongside the FAIR Principles, and encourages data collectors and users to engage with Indigenous worldviews and ID-SOV perspectives when considering appropriate data use.<sup>12</sup> The four core principles comprising CARE are:

- *Collective benefit:* data ecosystems shall be designed and function in ways that enable Indigenous Peoples to derive benefit from data.
- *Authority to control:* Indigenous Peoples’ rights and interests in Indigenous data must be recognised and their authority to control such data be empowered.
- *Responsibility:* Those working with Indigenous data have a responsibility to share how those data are used to support Indigenous Peoples’ self-determination and collective benefit. Accountability requires meaningful and openly available evidence of these efforts

and the benefits accruing to Indigenous Peoples.

- *Ethics*: Indigenous Peoples' rights and wellbeing should be the primary concern at all stages of the data life cycle and across the data ecosystem.

As mainstream data communities advance standards and practices to facilitate data sharing and reuse, the CARE Principles serve to enhance that work to allow for Indigenous participation on their own terms. Implementation of the CARE Principles alongside the FAIR Principles by data producers, stewards and publishers must occur with the use of mechanisms that convey Indigenous control throughout data lifecycles and ecosystems. Such mechanisms comprise but are not limited to including origin information in metadata, using dynamic consent for reuse, and employing data science practices to enhance data protections while allowing for data sharing.

## Indigenous data sovereignty and Open Data

On a global scale, ID-SOV scholars and practitioners have engaged with Open Data and open government communities through participation in the International Open Data Conferences in 2015, 2016, and 2018, as well as via discussions with the International Open Data Charter (ODC).<sup>13</sup> Open Data environments are sites of unease for Indigenous Peoples as opportunities for sustainable development and participation in the knowledge economy are hampered by ongoing experiences with settler-colonialism and historic power imbalances.<sup>14</sup> The ODC sets out six principles to guide how governments publish data: 1) open by default, 2) timely and comprehensive, 3) accessible and usable, 4) comparable and interoperable, 5) for improved governance and citizen engagement, and 6) for inclusive development and innovation. The ODC Implementation Working Group discussed operationalizing the CARE Principles in Open Data contexts, using the ODC as a guide. ODC Principles 2, 3, and 4 coincide with the FAIR Principles. Principles 5 and 6 are purpose driven, addressing the CARE Principle of 'Collective benefit'. ODC Principle 1 (open by default) sits in direct conflict with the CARE Principles of

‘Authority to control,’ ‘Responsibility’ and ‘Ethics’.<sup>15,16</sup> As such, the CARE Principles provide an opportunity to inform the application of ‘Open by Default,’ raising awareness of the responsibility: to include Indigenous Peoples and other communities in Open Data decision-making; to access and apply Indigenous values and ethics to Open Data policies and practices; and to create mechanisms that protect the access and use of Indigenous Peoples’ data.

## 2018 New Zealand Census

Issues relating to control, consent and the secondary use of Indigenous data came to a head in Aotearoa New Zealand with the botched 2018 Census of Population and Dwellings. The census is the flagship of the Official Statistics System (OSS), providing essential data for monitoring national and community wellbeing, and informing decisions about the resourcing of services and infrastructure. Despite a fraught history of state-controlled data collection which facilitated domination and exploitation, the Indigenous Māori people generally support and see value in the census, and there is a shared interest in ensuring that it is high quality.

Operational failures resulted in a very low response rate in 2018 – less than 70% from individual forms for Māori.<sup>17</sup> Stats NZ, the national statistics office, tried to backfill the missing data by drawing extensively on other government administrative data – a move that was publicly challenged by the Māori Data Sovereignty Network Te Mana Raraunga (TMR). In a series of public statements,<sup>18</sup> TMR questioned whether the agency had social and cultural licence to use alternative data without free, prior and informed consent, and called on the agency to be more transparent about the quality of Māori data from Census 2018. A report by an independent data quality panel also raised questions about Stats NZ’s social and cultural licence to include other government data in the Census 2018 dataset.<sup>19</sup> The panel also flagged the importance of Māori data sovereignty and governance for future censuses and noted that the agency had not met its treaty obligations to Māori by failing to collect high quality tribal data.

## Opportunities and challenges ahead

The rise of Big Data technologies heralds a period of unprecedented and accelerating change in data ecosystems, globally. These technologies, combined with a nation state led impetus for Open Data underpin new data practices such as administrative data linkage, data mining across multiple platforms and the incorporation of Artificial Intelligence (AI) into social programs. For Indigenous Peoples, this new data world provides previously unimagined opportunities to access our data as a cultural and economic resource. For example, the huge cache of Indigenous-related administrative data could potentially instigate a new era of Indigenous policy development and delivery, and AI is being used to tell stories on country and in language revitalisation activities.<sup>20,21</sup>

This rapidly evolving space also poses new challenges. The legacy of traditional data ecosystems translates to a Big Data infrastructure that neither recognises Indigenous worldviews nor considers Indigenous data needs. Domestic regulatory frameworks focus on individual privacy, with little regard of collective rights or privacy. For example, a discussion paper on upcoming legislation for Australian Government Departments to release and share data did not include any reference to Indigenous data.<sup>22</sup> This absence was remedied via submissions from the Maïam nayri Wingara Collective, but the exclusion of Indigenous considerations in this new data space highlights the challenge. While the Report of the UN Special Rapporteur on the Rights of Privacy includes ID-SOV related recommendations these remain non-binding on nation states.

There is also a growing awareness of the harm that can arise from the careless use of Big Data and algorithmic processes, particularly for groups that are racialised and over-surveilled. The marginalised social, cultural and political location of Indigenous Peoples means that we are over-represented in datasets relating to disadvantage. Resultant analysis, regardless of the data power of the technologies utilised, will likely just reinforce rather than challenge the trope of 5 D (disparity, difference, disadvantage, dysfunction, difference) Indigenous data narratives.<sup>23</sup>

Finally, in the context of climate change and environmental justice, there is a risk that collective Indigenous knowledge and traditions re-

lating to the environment will be exploited or inappropriately used. In Australia, for example, the recent catastrophic bushfires have belatedly bought to the fore an interest by government entities and others<sup>24</sup> in Aboriginal cool fire burning. Practiced across Australia, traditional cool fire burning involved the deliberate firing of the forest understorey during the cooler months, in a mosaic pattern that would ensure different parts of the forest were burnt each year. These fires burned at a much lower intensity than wildfires, keeping the tree canopy protected. The purpose was to manage the landscape, keep trails and grasslands open and reduce the impact of the expected hot season wildfires through the reduction in ground level fuel load.<sup>25</sup> However, in modern day Australia, where towns have been built in places Aboriginal and Torres Strait Islander peoples knew to vacate during fire season, such practices cannot just be picked up as a panacea to mitigate the increased risk of fires due to climate change. Data needs to be sought and collected on these practices from Indigenous knowledge holders. More importantly, this process must be Indigenous led and Indigenous controlled to reduce the risk that these practices will be digitally captured and then applied without the deep knowledge that underpins them - with predictable poor results.

ID-GOV can mediate some of these risks and provide pathways to collective benefits. Within this, building Indigenous data capacity and capability is an essential element of enacting ID-GOV and the associated requisite Indigenous cultural and social licence for Big Data and Open Data access to Indigenous data. Indigenous Data Sovereignty Networks, globally, are involved in this work. In Australia, the Mayi Kuwayu Study examining Aboriginal and Torres Strait Islander wellbeing includes in its methodology, working directly with communities to increase Indigenous data literacy.<sup>26</sup> In the United States, the Native Nations Institute provides hands on courses on ID-SOV and ID-GOV for Native researchers and tribal leadership.<sup>27</sup>

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**Tahu Kukutai** (Ngāti Tiipa, Ngāti Kinohaku, Te Aupōuri) is a Professor at the University of Waikato, Aotearoa New Zealand and a co-founder of the Māori data sovereignty network, Te Mana Raraunga.

**Stephanie Russo Carroll** (Ahtna-Native Village of Kluti-Kaah) is an Assistant Professor at the University of Arizona, USA, and a co-founder of the United States Indigenous Data Sovereignty Network.

**Maggie Walter** (palawa) is a Distinguished Professor at the University of Tasmania, Australia, and a co-founder of the Australian Maïam nayri Wingara Indigenous Data Sovereignty Collective.



# Indigenous Women at the Commission on the Status of Women (CSW)

The Commission on the Status of Women (CSW) is the principal global intergovernmental body exclusively dedicated to the promotion of gender equality and empowerment of women. It is a functional commission of the Economic and Social Council (ECOSOC).

The CSW is instrumental in promoting women's rights, documenting the reality of women's lives throughout the world, and shaping global standards of gender equality and empowerment of women. In 1996, ECOSOC expanded the CSW's mandate and decided that it should take a leading role in monitoring and reviewing progress and problems in the implementation of the 1995 Beijing Declaration and Platform for Action. During the CSW's annual sessions, representatives of Member States, civil society organisations, and UN entities gather for two weeks at the UN headquarters in New York to discuss progress and gaps in the implementation of the 1995 Beijing Declaration and Platform for Action, the key global policy document on gender equality, adopted by the 23rd Special Session of the 2000 (Beijing +5) General Assembly.<sup>1</sup> In addition, they discuss emerging issues that affect gender equality and the empowerment of women.

During the CSW sessions, the Member States agree on measures to accelerate progress on these issues and promote women's enjoyment of their rights in political, economic and social realms. The conclusions and recommendations of each session are forwarded to ECOSOC for follow-up.

## 2020, a strategic year for Indigenous women

2020 is of crucial importance for the agenda of Indigenous women at the UN, given that it marks the 25th anniversary of the adoption of the Beijing Declaration and Platform for Action. The eyes of states, organisations and allies will be set upon the evaluation of the achievements, challenges and recommendations for gender equity in a world where, paradoxically, violence against women is on the rise, yet women are increasingly organising themselves. Indigenous women arrive on this stage with hundreds of years of experience in defending the lives of our peoples and our territories, with lessons learned through 20 years of global organisation, and with a diagnosis developed through consensus regarding the public institutional actions necessary for a more dignified and equitable life of Indigenous women.

In this framework, it is worthwhile to review the progress<sup>2</sup> made on the agenda of Indigenous women at the CSW sessions, with particular emphasis on Session Number 63 held in 2019, and on the steps we are taking in advance of Session Number 64.

## The participation of Indigenous women in the CSW

The first globally coordinated participation of Indigenous women took place at the Fourth World Conference on Women (which led to the adoption of the 1995 Beijing Declaration and Platform for Action). Since then, with support from friendly states, the Secretariat of the UN Permanent Forum on Indigenous Issues, as well as NGOs and feminist allies, Indigenous women have made major contributions, from an Indigenous perspective, to attain a world not only with greater gender equity and less violence against women, but also greater sustainability.

In particular, the International Forum of Indigenous Women (FIMI) has focused its efforts on this international setting and facilitated co-ordination to increase visibility and engagement of Indigenous women, thereby ensuring a significant presence in decisions taken at this high-level forum and that the voice of Indigenous women is included in the work to be carried out by states and international institutions.

By raising a voice built through consensus, spaces have been

opened through which the perspectives and specific demands of Indigenous women have gained visibility during the CSW sessions. This was first accomplished during Session Number 49,<sup>3</sup> held in 2005. Later came Resolution 56/4,<sup>4</sup> of 2012 (with the section entitled *Indigenous Women: Key Actors in Poverty and Hunger Eradication*). Reference to Indigenous women was also included in the document adopted at Session Number 57,<sup>5</sup> and at Session Number 61,<sup>6</sup> in which recognition was given to the importance of economic empowerment for improvement of our social, cultural and political engagement, as well as the importance of our contributions to the communities.

The Commission's Session Number 62<sup>7</sup> focused on gender equity and the empowerment of rural women and girls. There, Indigenous women made very significant contributions, on account of which CSW's recommendations to the Member States and UN institutions made an urgent call to include the specific conditions, proposals and demands of Indigenous women in decision-making processes.

During Session Number 63,<sup>8</sup> held 11-22 March 2019, FIMI made recommendations based on the following considerations, which are worth highlighting.

First, it was pointed out that the intersection between access to decent work, social protection, public social services and infrastructure is fundamental for attaining gender equality, the eradication of poverty and to ensure social bonding and inclusive development. It was also emphasised that Indigenous women have a lower level of participation in the remunerated labor force, especially in formal employment, and also have less access to social protection systems addressing specific gender risks, such as maternity and nonremunerated family responsibilities, which diminish their power to have income of their own.

Other challenges for Indigenous women that FIMI presented were unequal access to culturally relevant education and training, lack of recognition and respect for traditional knowledge in national policies, as well as lack of access to credit and market facilities.

At the community level, it was indicated to CSW that rural and Indigenous communities are dealing with critical conditions of vulnerability when faced with infrastructure development projects. This is despite the indication, in General Recommendation No. 34 on the Rights of Rural Women, which states that Member States must ensure that projects are implemented only after participatory gender and environmental im-

pact assessments have been conducted with full participation of rural women, and after obtaining their free, prior and informed consent.

Based on these considerations, Indigenous women called upon Member States, multilateral organisations and key actors to consider the following recommendations pursuant to Agenda 2030:

- Ensure that public investments are made for social protection services and infrastructure with a gender approach in order to support the economy of nonremunerated care and to contribute to job creation for Indigenous women who live in rural areas, with special attention to youth and women with disabilities.
- Promote and protect the rights of Indigenous women and girls through the implementation of specific measures, ensuring access to quality, intercultural, inclusive education, healthcare, public services – including maternity and reproductive rights –, economic resources, access to decent work and to systems of justice in order to eliminate all forms of violence.
- Invest in sustainable infrastructure in keeping with international human rights standards, respecting the right to free, prior, and informed consent at all stages, and the means of subsistence and traditional knowledge of Indigenous Peoples, including the protection of and dialogue with human rights defenders.
- Take concrete measures to eliminate political and structural violence against women, particularly for women in rural and Indigenous zones, by designing public policies and programmes with their corresponding budget allocation, guaranteeing their full and effective participation and respect for their cultural diversity.
- Adopt the recommendation of the UN Permanent Forum on Indigenous Issues to organise an interactive high-level dialogue on the rights of Indigenous women, coinciding with the 25th Anniversary of the Fourth World Conference on Women, in order to review progress towards the Sustainable Development Goals, with a special tie-in to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Paragraph 25 of the agreed conclusions of CSW Session Number 63 mentions that the low levels of birth records of Indigenous women may make them more vulnerable to marginalisation, exclusion, discrimina-

tion, violence, statelessness, exploitation and abuse. Its recommendations included express mention of the promotion and protection of the rights of Indigenous and rural women, recognising the intersectionality of discrimination and the barrier constituted by violence, as well as the need to ensure access to quality, inclusive education, health services, public services, financial resources, land, natural resources and decent work.

A call is also made for ensuring truly significant participation of Indigenous women in the economy and in decision-making processes for the protection of ancestral knowledge, and for recognition that Indigenous women in rural contexts often face higher rates of violence, poverty, limitations on health services, and access to information and communication technologies to financial resources and services, infrastructure, education and employment.

Finally, a call is made to recognise the contributions of Indigenous women at a cultural, social, economic, political and environmental level, including in the mitigation of climate change.

## **Looking towards CSW 64**

In the CSW discussions, the collective voice of Indigenous women has been key for including measures that move local economies to eradicate poverty, procure sovereignty, food security and sustainable development.

The importance of this inclusion lies in the fact that the resolutions and recommendations emanating from the CSW constitute a very important framework, which Indigenous women can use as a basis for advocacy in public policies and programme actions since they are commitments assumed by the Member States. It is therefore necessary that Indigenous women at all levels be familiar with these commitments in order to be able to demand that the states fulfill them.

Unfortunately, many commitments appear to just stay on paper. Implementation is the greatest challenge for Indigenous women, which includes having the states assume these commitments at a national level and succeed in making them operational through a legal framework with the necessary resources for their full and effective exercise.

The discussions that have been taken place, and those that will

take place in 2020, also demonstrate that it is still necessary to address challenges presently restricting Indigenous women from fully exercising their individual and collective rights, equity and well-being; the various degrees and manifestations of discrimination and violence; an aggressive appropriation of our lands and resources; militarisation of our territories; forced displacement and migration; as well as criminalisation and repression of social protest, including gender violence, exploitation and human trafficking.

Shedding light on the specific situation of Indigenous women in statistics and public policies; combating the violence they are suffering; gaining access to justice, education and health services (including sexual and reproductive health services) with cultural relevance; accessing quality and culturally adequate education; ensuring economic empowerment of Indigenous women and their organisations; land ownership; the right to free, prior and informed consent; the protection of territories; the exercise of political engagement; and full participation in the implementation of Agenda 2030<sup>9</sup> are fundamental points of advocacy in order to implement the recommendations of the 1995 Beijing Declaration of Indigenous Women,<sup>10</sup> which Indigenous women affirm as totally pertinent and current.

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# International Fund for Agricultural Development (IFAD)

The Indigenous Peoples' Forum at the International Fund for Agricultural Development (IFAD) constitutes a unique process within the UN system and is a concrete way for IFAD to institutionalise consultation and dialogue with representatives of Indigenous Peoples' institutions.

The forum focuses on monitoring and evaluating the implementation of the IFAD Policy on Engagement with Indigenous Peoples (2009)<sup>1</sup> and supports IFAD in translating the policy's principles into action on the ground. The forum also promotes the participation of Indigenous Peoples in IFAD activities at country, regional and international levels, and at all stages of project and programme cycles. The overall process is guided by a steering committee composed of seven representatives of Indigenous Peoples' organisations from the different regions and a representative, respectively, from the Indigenous Peoples Assistance Facility (IPAF),<sup>2</sup> the UN Permanent Forum on Indigenous Issues (UNPFII) and IFAD.

The global meeting of the Indigenous Peoples' Forum convenes every other year, in conjunction with IFAD's Governing Council, its main decision-making body. In preparation for each global meeting, regional consultation workshops are organised to ensure that the forum reflects the diversity of perspectives and recommendations gathered from Indigenous Peoples in the various regions.

## International Fund for Agricultural Development (IFAD)

**T**he global Indigenous Peoples Forum meeting is the culmination of a unique process of dialogue and consultation with Indigenous Peoples at the regional level.

In late 2018, four regional consultation workshops were held – in Africa (Nairobi, Kenya), Asia (Bogor, Indonesia), Latin America and the Caribbean (Ciudad de Panama, Panama) and the Pacific (Fiji) – in preparation for the fourth global meeting of the Indigenous Peoples' Forum at IFAD.

Within the thematic focus of the forum, the objectives of the workshops included: exchange knowledge, experiences and good practices on Indigenous Peoples' knowledge and their innovations for climate resilience and sustainable development; identify challenges and opportunities to promote and support Indigenous Peoples' knowledge and innovations; identify key elements for regional strategies to enhance IFAD's support; and formulate action-oriented recommendations and draft regional action plans that will guide discussions during the fourth global meeting of the Indigenous Peoples Forum at IFAD.

The workshops brought together: representatives of Indigenous Peoples organisations, institutions and communities; national and regional organisations involved in IFAD-funded projects; IFAD staff; (Indigenous Peoples Assistance Facility (IPAF) partners; UNPFII members; and government representatives.

The regional workshops also provided an opportunity for participants to assess the progress of implementation of IFAD's Policy on Engagement with Indigenous Peoples, and to review the status of implementation of the recommendations of the third global meeting and the regional action plans agreed upon with IFAD regional divisions in 2017.

During the workshops, participants assessed progress in implementation of the IFAD Policy on Engagement with Indigenous Peoples and reviewed the status of implementation of the recommendations of the third global meeting and the regional action plans, as agreed upon with IFAD regional divisions in 2017.

Participants had the opportunity to exchange knowledge and experience on climate resilience and sustainable development. They further

identified challenges and opportunities for strengthening good practices as sustainable solutions for the future, as well as key elements for enhancing IFAD's strategies and supporting their implementation.

Based on the discussions, the regional workshops provided suggestions and action-oriented recommendations in relation to Indigenous Peoples' knowledge and innovations on climate resilience and sustainable development, which they brought to the global meeting.<sup>3</sup>

## **Highlights of the 4th Global Forum of the Indigenous Peoples Forum at IFAD**

The fourth global meeting took place on 12-13 February 2019,<sup>4</sup> in conjunction with the forty-second session of the IFAD Governing Council.

The meeting brought together 38 Indigenous Peoples' representatives, of which 45% were women and 24% were young people under 35 years of age. Indigenous representatives from Africa, Asia and the Pacific, and Latin America and the Caribbean attended the meeting in order to exchange views on developments in the partnership with IFAD.

Over 40 representatives from partner organisations such as NGOs, foundations, international organisations, UN agencies, research institutes and universities joined the meeting as observers. The global meeting was officially opened by IFAD President Gilbert Houngbo, who highlighted the fund's special commitment to Indigenous Peoples. In relation to the theme of the global meeting, the President Houngbo acknowledged that due to Indigenous Peoples' deep connection with and dependence on ecosystems, they perceive the changes related to climate better than others. As custodians of 80% of the world's remaining biodiversity, Indigenous Peoples have much to teach about how to respect, protect and conserve natural resources. He emphasised that the world needs Indigenous Peoples' knowledge and innovations, which can provide valuable lessons on how to adapt to and mitigate climate change and increase resilience.

Interventions from members of the forum's Indigenous Steering Committee further stressed the results achieved in the partnership and expressed their deep appreciation of IFAD's commitment and support in the past years. Several Indigenous representatives highlighted the opportunities offered by key developments in the global context to

enhance the partnership between Indigenous Peoples and IFAD, such as the 2030 Agenda for Sustainable Development and the Paris Agreement on climate change. Both offer important opportunities to engage in developing projects and programmes with clear targets and indicators for the sustainable development of Indigenous Peoples, and to contribute to strengthening resilience and adaption capacities of Indigenous Peoples using their traditional knowledge.

In her keynote address, Ms. Victoria Tauli-Corpuz (UN Special Rapporteur on the rights of Indigenous Peoples), particularly underlined how Indigenous Peoples in many parts of the world still face discrimination and are victims of the worst forms of impunity and criminalisation. She called for adoption of a zero-tolerance approach to the killing and violence against Indigenous Peoples Human Rights Defenders, and for addressing the root causes of attacks on them and their criminalisation, with the recognition of the collective land rights of Indigenous Peoples.

In relation to the theme of the forum, she said that Indigenous Peoples have the experience and knowledge systems to help address climate change. Therefore, they persist in their actions and advocacy and insist on using, sharing and transmitting their traditional knowledge to protect their ecosystems as crucial for resilience and adaptation. Within that context, it will be key to provide resources to further enhance the traditional knowledge, innovations and practices of Indigenous Peoples related to climate change mitigation and adaptation, including through the Green Climate Fund.

## **Partnership in progress**

As is the practice at the global meetings of the Indigenous Peoples' Forum, IFAD presented a report analysing the trends and developments in IFAD's partnership with Indigenous Peoples in the respective biennium and taking stock of IFAD's various experiences in collaborating with Indigenous Peoples, while investigating the forms of the ongoing collaboration and highlighting success stories and achievements. Among the experiences presented were the country policy engagement initiatives facilitated in 11 countries by IFAD and IWGIA.

## **Promoting Indigenous Peoples' knowledge and innovations for climate resilience and sustainable development: What can Indigenous Peoples and IFAD do together?**

Many interventions and presentations by partners, such as the Green Climate Fund, UNESCO, the Indigenous Peoples Major Group on the Sustainable Development Goals, International Labour Organization (ILO) and Food and Agriculture Organization of the UN (FAO), enriched the discussion and enabled participants in the forum to debate and dialogue on issues of relevance to its theme, strengthen mutual knowledge and assess opportunities for improving linkages and developing synergies and partnerships.

### **Synthesis of deliberations**

Based on the discussions and contributions from the debates, the Synthesis of Deliberations of the 2019 global meeting of the Indigenous Peoples' Forum at IFAD was adopted.

The Synthesis of Deliberations was read and discussed during the last plenary session of the forum and in presence of Indigenous Peoples' delegates, IFAD Management and the representatives of IFAD Member States. Indigenous Peoples recognised the forum at IFAD as a unique process within the UN system. The forum enables participants to assess IFAD's engagement with Indigenous Peoples, consult on rural development and poverty reduction, and promote the participation of Indigenous Peoples' institutions and organisations in IFAD's activities at the country, regional and international levels. Overall, these activities help IFAD to implement its policy and translate its principles into action on the ground, contributing to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Synthesis of Deliberation included recommendations to IFAD, governments and Indigenous Peoples.

On behalf of IFAD's management, Mr. Donal Brown (Associate Vice-President, IFAD) welcomed the substantive Synthesis of Deliberations presented and emphasised that IFAD is committed to ensuring

that the projects it finances will apply the principle of free, prior and informed consent. He also expressed his personal admiration for the work and advocacy conducted by representatives of Indigenous Peoples, who often put their lives at risk. He hoped that through their partnership, IFAD and Indigenous Peoples will contribute to creating a safe space for Indigenous Peoples to advocate for the issues that are of critical importance to the survival and well-being of not only Indigenous Peoples but all the human family.

## **Closing of the forum**

The forum was closed by the Vice-President of IFAD, who in his closing remarks emphasised the need to allow broader and more active participation by Indigenous youth and the commitment of IFAD to join efforts to enhance the representation of Indigenous Peoples within the existing international policy forums. He further emphasised that IFAD recognises the vast traditional knowledge of Indigenous Peoples for the management of natural resources and for sustainable development, and that collaboration is needed to further enhance and promote that knowledge and to learn from it. He concluded by affirming that the forum is not merely a biennial event, but the basis for an ongoing dialogue.

## **Other events around the Global Forum**

### **Indigenous Peoples' Forum reception**

On 13 February, IFAD hosted a reception for forum participants on the IFAD premises and a dinner at the restaurant of the Agricoltura Nuova cooperative.

### **Indigenous Peoples at IFAD's Governing Council**

On 14 February, the Synthesis of Deliberations was delivered to the forty-second session of the IFAD Governing Council held at FAO headquarters by Ms. Thin Yu Mon (Chin Human Rights Organisation, Myanmar).

### **Showcase of IPAF project photos (IPAF projects in Colombia and Ethiopia)**

A mobile photo showcase on IPAF projects was organised on the prem-

ises of IFAD (lobby) and FAO (atrium) to share information on Indigenous Peoples' traditions, livelihoods and culture through texts and photos. This mobile exhibition might be replicated at other venues, as well as in IFAD country offices or regional hubs.

### **Nutrition food booth**

A nutrition food booth was produced as a contribution to the forum by Slow Food in collaboration with IFAD, aiming to emphasise the role of Indigenous food systems.

### **Meeting with Pope Francis**

On 14 February, a delegation of Indigenous Peoples' representatives attending IFAD's Global Forum was received on the FAO premises for a private audience with Pope Francis on the occasion of the opening of the IFAD Governing Council.

Highlighting the extreme importance of environmental issues, the Pope said that the forum constituted an invitation to look again at our planet, wounded in many regions by human greed, war, conflicts and natural disasters that leave scarcity and devastation in their wake. Within that context, Indigenous Peoples are a "living cry for hope" who remind us that human beings have a shared responsibility in the care of their "common house".

## **Notes and references**

1. IFAD Policy on Engagement with Indigenous Peoples can be downloaded at: <https://www.ifad.org/en/document-detail/asset/39432502>
2. More information about the IPAF is available at: <https://www.ifad.org/en/ipaf>
3. The summary and regional consultation workshop reports are available at: <https://www.ifad.org/documents/38714174/41098608/Regional+Consultative+Meeting+2018.pdf/586dfea0-a3de-7ffd-05fe-8f69b9ffdd61>
4. The proceedings of the 4th Global Meeting of Indigenous Peoples at IFAD are available at: [https://www.ifad.org/documents/38714174/41191703/ip2019\\_proceedings\\_e.pdf/4ce0d8cc-ed67-e733-9eda-ee24b2ed9ae3](https://www.ifad.org/documents/38714174/41191703/ip2019_proceedings_e.pdf/4ce0d8cc-ed67-e733-9eda-ee24b2ed9ae3)

**Lola García-Alix** is the Senior Adviser on Global Governance at IWGIA's Secretariat





# The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

The Expert Mechanism on the Rights of Indigenous People's (EMRIP)<sup>1</sup> is a subsidiary body of the Human Rights Council composed of seven independent members, one from each of the seven indigenous sociocultural regions: Africa; Asia; the Arctic; Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia; Central and South America and the Caribbean; North America; and the Pacific. Resolution 33/25, adopted by the Human Rights Council in 2016, amended EMRIP's mandate to provide the Human Rights Council with expertise and advice on the rights of Indigenous Peoples as set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and assist Member States, upon request, in achieving the ends of the UNDRIP through the promotion, protection and fulfilment of the rights of Indigenous Peoples. This includes, offering technical assistance and dialogue facilitation upon request. To that end, and with a view to focusing on the UNDRIP's implementation, EMRIP undertakes regular thematic studies on specific rights enshrined in the UNDRIP, carries out country engagement missions, and brings expertise to relevant national initiatives on Indigenous Peoples' rights.

In 2019, the Expert Mechanism on the Rights of Indigenous People's (EMRIP) worked to fulfill its mandate to assist states and Indigenous Peoples in fulfilling the aims of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as to advise the Human Rights Council on the situation of Indigenous Peoples around the world. In many respects, this was a year of "firsts" – landmark events in which

EMRIP advanced Indigenous rights in notable ways. In 2019, EMRIP made the mechanism's first visit to Africa, holding an intersession in South Africa; met for the first time with ILO supervisory bodies; and held the UN's first-ever panel on Indigenous Women in Power. Other major highlights included a country engagement mission to New Zealand regarding a national action plan to implement the UNDRIP and the publication of a foundational study on The Rights of Indigenous Peoples in the Context of Borders, Migration, and Displacement.

## **Indigenous Women in Power**

One of the highlights of EMRIP's annual session this year (15-19 July 2019)<sup>2</sup> was a panel on "Indigenous Women in Power", showcasing seven extraordinary Indigenous women from around the world. These Indigenous women had overcome great odds to become elected to parliaments, ministries, and other national offices. They shared their stories of their personal rise to power, highlighting the hardship, prejudice, and discrimination they had to face: fighting against their own disadvantage and poverty before being in a position to help their people.

Many inspiring and powerful points came out of this meeting. Joenia Wapichana a member of the Wapichana people of Brazil, was the first Indigenous woman to become a lawyer and the first elected, as a representative in the Brazilian government. She was also the recipient of the United Nations Human Rights Prize in 2018. She says her "duality" – being female and Indigenous – has given her both a unique perspective and strength. "I am here because I know who I am. I am here because I know my people. I know where I want to go and we are all part of this planet. We have to protect Indigenous lands and Indigenous rights."<sup>3</sup>

## **Implementation of its country engagement mandate**

Resolution 33/25 provides EMRIP with a mandate to: engage with States at the national level by offering technical assistance on legislation and policies and capacity building; provide advice on the implementation of

recommendations of human rights mechanisms; and act as a dialogue facilitator between the State and/or the private sector, and Indigenous Peoples, all with the purpose of implementing the rights in the UNDRIP. This mandate is thus a complement to monitoring mechanisms like the treaty bodies, the special procedures of the Human Rights Council and the Universal Periodic Review procedure (UPR).

EMRIP undertook a country engagement mission to New Zealand from 8 to 13 April 2019. The request for this country engagement came from the Aotearoa Independent Monitoring Mechanism on behalf of the National Iwi Chairs Forum and the New Zealand Human Rights Commission. The purpose of the mission was to provide advice on the development of a National Plan of Action or other measure to achieve the ends of the UNDRIP. During its mission, EMRIP traveled to Wellington and Auckland, where it met with the requesters, Maori from different communities, NGOs, state and legal officials, academia and others. Following the Mission, EMRIP sent an Advisory Note<sup>4</sup> to the government and Maori. Although specific to New Zealand, this Note should be of assistance to others in developing plans of action on Indigenous Peoples' rights.

During its session in July 2019, EMRIP heard positive reports from New Zealand and Maori on this Mission. New Zealand reinforced its support of the process by referring to a powerful quote from the Minister of Justice made during the Mission, "Perhaps it is no longer about changing Maori to suit the government's needs, it's time that we change the government to suit Maori".

EMRIP has devised and made public a short online form for country engagement requests and encourages States as well as others to do so: to date the majority of requests have come from Indigenous Peoples.<sup>5</sup> New country missions relating to these requests are under preparation. Requests for country engagement include: repatriation of ceremonial objects; implementation of regional court decisions; implementation of Universal Periodic Review recommendations; eviction of Indigenous Peoples from their land; the protection of Indigenous children; the implementation of legislation recognising Indigenous Peoples; and traditional fishing rights.

## **Building relationships with UN mechanisms and the ILO Supervisory Bodies**

EMRIP has continued to cooperate and engage with the UN Permanent Forum on Indigenous Issues, the UN Special Rapporteur on the Rights of Indigenous Peoples and the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples, including through coordination meetings hosted by EMRIP.

In the context of its new mandate, EMRIP regards it as crucial to build closer links and collaboration with the treaty bodies, not least because EMRIP's new mandate specifically refers to the provision of advice on the implementation of treaty body recommendations.

During its 12th session in July 2019, EMRIP maintained an agenda item on exchange with the UN Human Rights Committee and the UN Committee on the Elimination of Discrimination against Women. EMRIP is also developing closer collaboration with the UN Committee on the Elimination of Racial Discrimination, which has begun encouraging States to seek technical advice from EMRIP, like the most recent example of Canada.<sup>6</sup>

EMRIP also met in a closed session with the ILO supervisory bodies, the Special Rapporteur and the Human Rights Committee, on the ILO's understanding of free, prior and informed consent. This meeting resulted in improved understanding between the bodies on the meaning of free, prior and informed consent, an agreement on the complementarity of the two instruments (C169 and the UNDRIP), and a commitment to work more closely together and to meet regularly.

## **Study on Borders, Migration and Displacement and Report on Recognition, Reparation and Reconciliation**

During its 12th session, EMRIP adopted its study and advice on Borders, Migration and Displacement (A/HRC/EMRIP/2019/2/Rev.1), under paragraph 2 (a) of Human Rights Council resolution 33/25 and a report on Recognition, Reparation and Reconciliation (A/HRC/EMRIP/2019/3/Rev.1). The study and report were subsequently submitted to the Human Rights Council at its 42nd session in September 2019.

The study on migration is the only study by a body of independent UN human rights experts on this topic and contains advice to States on how to ensure Indigenous rights in the context of migration. In this regard, it is an important complement to the Global Compact on Migration of 2018 and should be read with the Compact when States and UN agencies make migration policy with respect to Indigenous Peoples. The study makes clear that Indigenous Peoples carry their identity and their rights with them when they move, whether voluntarily or not, from their homes. Accordingly, the UNDRIP, in conjunction with the international UN human rights treaties, the regional human rights treaties and ILO C169 all apply to the situation of Indigenous Peoples as migrants.

The study speaks to migration in the context of traditional migratory patterns – where migration is a way of life of Indigenous Peoples, like the Amazigh in North Africa or Sami in the Nordic countries. It also sets out the socio-economic factors that lead to migration such as disproportionate rates of poverty, lack of land and unemployment, as well as structural factors such as inequality in access to health, education and housing. It considers the different forms of forced movement caused by non-recognition of Indigenous Peoples as Indigenous Peoples; encroachment on Indigenous land for commercial activities, militarisation and conflict and climate change. It also highlights some of the challenges for Indigenous Peoples due to this movement, the greatest of which is the uprooting of Indigenous Peoples from their land and the consequent loss of their culture, spiritual connection to their land and language. The study concludes with Expert Mechanism Advice No. 12, which puts forward some measures that States, Indigenous Peoples and other stakeholders can take to ensure the protection of Indigenous Peoples on the move.

EMRIP also issued a report – Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: recognition, reparation and reconciliation – focusing on recognition, reparation and reconciliation initiatives undertaken since the adoption of the UNDRIP, providing an overview of these concepts and anchoring them in the UNDRIP and other international human rights instruments. It provides a series of examples from throughout the Indigenous sociocultural regions to illustrate the central nature of recognition, reparation and reconciliation for the implementation of the UNDRIP. The report offers conclusions and recommendations, with a view to assisting Indigenous Peoples and

States to better address the long-term effects of colonisation, discrimination and dispossession of lands, territories and resources.

## **Inter-sessional meeting, expert seminar and future reports**

EMRIP held an expert-seminar hosted by the Centre for Human Rights, Faculty of Law, Pretoria University, South Africa, from 30 September to 1 October 2019, and an inter-sessional meeting, from 2 to 4 October 2019, Pretoria, South Africa.

The purpose of the seminar was to gather information for EMRIP's study on the, "Right to Land under the UN Declaration on the Rights of Indigenous Peoples: A Human Rights focus" (resolution 33/25, para. 2a, of the Human Rights Council). The seminar provided an opportunity for exchange among academics, practitioners and other experts on this issue. This seminar launched the work on EMRIP's study on the topic for 2020.

EMRIP will also prepare a report in 2020 on the repatriation of ceremonial objects and human remains (resolution 33/25, para.2b, of the Human Rights Council). This report will be informed by the input to a seminar to be held in the University of British Colombia, in cooperation with EMRIP, in March 2020. A draft report on this theme as well as a draft study on land rights will be discussed and finalised by EMRIP during its 13th session from 8 to 12 June 2020.

The purpose of the inter-sessional meeting was to plan for EMRIP's forthcoming activities. During this meeting, EMRIP decided *inter alia* that its annual study for 2021 (resolution 33/25, para. 2a) will focus on the rights of Indigenous children and confirmed that its biannual report for 2021 (resolution 33/25, para. 2b) will focus on self-determination, as expressed in the UNDRIP.

## **Prospects for EMRIP's future and continuing work**

EMRIP's concern, expressed in this publication last year, relating to the worsening situation of violence, killings and criminalisation of Indigenous Peoples as human rights defenders, remains a particular worry.

EMRIP's concern also relates to individuals whose livelihoods, work and movement is impeded by States. As in the past, EMRIP's own members have not been exempt from such reprisals, which remains a concern given that these matters affect individuals who are both UN mandate holders and Indigenous people themselves.

In an unfortunate "first", EMRIP was informed of an unprecedented number of claims of reprisals arising from attendance at its session in 2019. Many of these cases were against Indigenous fellows, former fellows of the UN Office of the High Commissioner for Human Rights and Indigenous grantees of the UN Voluntary Fund on Indigenous Peoples. EMRIP had to express its alarm at allegations of reprisals that arose at the closing of its session. After the session, EMRIP communicated its concern regarding these matters to the appropriate bodies.

EMRIP will take into account the issue of reprisals in its work, including under its country engagement mandate. It is hopeful that the Human Rights Council panel on the protection of Indigenous human rights defenders to be held in 2020<sup>7</sup> will shed some more light on the causes, consequences and possible solutions to the issue of violence and reprisals against Indigenous Peoples. EMRIP is convinced that it can contribute to alleviating the negative reaction against the defense of Indigenous land through its new mandate combined with its advice in its studies such as the one on free, prior and informed consent, and the study to be produced this year on land rights.

## Notes and references

1. See more information about the EMRIP at <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/EMRIPIndex.aspx>
2. It is important to note that EMRIP sessions are webcast and are fully accessible to all persons with disabilities including sign language in the room and captioning in three languages. See <http://webtv.un.org/search?term=EMRIP&sort=date>
3. A story on this panel can be found at this link: <https://www.ohchr.org/EN/NewsEvents/Pages/IndigenousWomen.aspx>
4. See this link for the Advisory Note - <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Session12.aspx>
5. OHCHR. Requests under new mandate - Country engagement. Accessed 4 March 2020: <https://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/RequestsUnderNewMandate.aspx>
6. OHCHR. Committee on the Elimination of Racial Discrimination. "Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure". 2019: <https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/>

INT\_CERD\_EWU\_CAN\_9026\_E.pdf

7. A/HRC/Res/39/13 - [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/39/13](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/39/13)

*The article was produced by **Kristen Carpenter**, who is currently the Chair of EMRIP and its member from North America. She is the Council Tree Professor of Law and Director of the American Indian Law Program at the University of Colorado Law School. She is a graduate of Dartmouth College and Harvard Law School. At Colorado Law, Professor Carpenter teaches and writes in the areas of Property, Cultural Property, American Indian Law, Human Rights, and Indigenous Peoples in International Law. She has published several books and legal treatises on these topics, and her articles appear in leading law reviews.*





# The Indigenous Navigator: Self-Determined Development

The Indigenous Navigator is an online portal providing access to a set of tools developed for and by Indigenous Peoples. Through the Indigenous Navigator framework, data is collected that can be used by Indigenous people to advocate for their rights and to systematically monitor the level of recognition and implementation of these rights. The Indigenous Navigator framework encompasses over 150 structure, process and impact indicators to monitor central aspects of Indigenous Peoples' civil, political, social, economic and cultural rights and fundamental freedoms enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169 (ILO 169). In addition, the framework enables monitoring of the outcome document of the World Conference on Indigenous Peoples (WCIP) and the Sustainable Development Goals (SDGs).

By using the Indigenous Navigator, Indigenous organisations and communities, duty bearers, NGOs and journalists can access free tools and resources based on updated community-generated data. By documenting and reporting their own situations, Indigenous Peoples can enhance their access to justice and development and help document the situation of Indigenous people globally.

The Indigenous Navigator Initiative (INI), begun in 2014, has been developed and carried forward by a consortium consisting of the Asia Indigenous Peoples Pact (AIPP), the Forest Peoples Programme (FPP), the International Work Group for Indigenous Affairs (IWGIA), the Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education (TEBTEBBA), The Danish Institute for Human Rights (DIHR) and the International Labour Organisation (ILO). This consortium works in partnership with the European Commission.

## Indigenous-led, by and for Indigenous Peoples

With its rights-based approach, the tools of the Indigenous Navigator allow Indigenous communities to document their situation in a way that is easily communicable to authorities and development actors. The standardised indicators make it possible to compare results across sectors, communities, countries and continents. It also enables longitudinal comparison over time to measure progress and identify major implementation gaps. This data strengthens the position of Indigenous communities as they engage with civic, state and global entities to claim their rights.

The Indigenous Navigator Initiative was launched through a pilot action implemented from 2014 to 2016 with support from the European Instrument for Democracy and Human Rights (EIDHR) which created the conceptual basis for a community-based framework for monitoring Indigenous Peoples' rights and development. During this period (2014-2016), this framework was implemented at the community level by the six consortium members (AIPP, FPP, IWGIA, TEBTEBBA, DIHR and ILO) and their national partners. Data gathered and analysed by communities in the pilot phase, contributed to the expansion of the Indigenous Navigator in the next phase (2017-2019). The community-based monitoring framework and tools for the implementation of the UNDRIP and ILO169 were updated and adjusted. Based on the monitoring and data collected, actions and strategies were developed for Indigenous Peoples and communities that enhanced their ability to claim their rights.

Data gathered and analysed by communities in the pilot phase assisted the Indigenous Navigator to expand the number of communities covered in the next phase (2017-2019) and to develop actions and strategies for Indigenous Peoples and communities to claim their rights based on the monitoring and data collected.

Given the strength and validity of the data and framework, the second phase of the initiative oversaw the inclusion of 11 countries, with regional representation: Latin America: Bolivia, Colombia, Peru and Suriname; Asia: Bangladesh, Cambodia, Nepal and the Philippines; and in Africa: Cameroon, Kenya and the United Republic of Tanzania. National partner organisations and communities were identified, and over the three-year period (2017-2019), 165 (Community-150/National-15) ques-

tionnaires were completed and entered into the global portal; these questionnaires are a result of the engagement of 200 communities in the data-gathering and analysis process. The scale of population coverage among the 150 community surveys has been particularly striking, covering a population of over approximately 270,000 people by the end of 2019. Further, the results of these surveys have been analysed by the communities and national partners and, as of December 2019, the results are now taking shape in 49 data-driven small grants which are driving forward pilot projects.

## From local to global

At the country level, building on the data gathered through the surveys, the consortium has produced several knowledge products and regularly engages in direct dialogues and alliance-building activities. Country-level knowledge products range from guides to engagement with municipal authorities<sup>1</sup> to direct contributions to the Universal Periodic Review process,<sup>2</sup> as well as the data gathered and freely accessible on the global portal.<sup>3</sup> Baseline fact sheets on the situation of Indigenous Peoples in the countries have also been produced.<sup>4, 5, 6, 7</sup> These products help to concretise the experiences of the communities, and also feed into both regional and global knowledge products that serve to inform policy makers and duty bearers. The results captured by the community and national surveys inform policy and advocacy documents and complement efforts and reports produced through the contributions of the Indigenous Peoples Major Group (IPMG)<sup>8</sup> at the global level, for example at the High-Level Political Forum.<sup>9</sup>

The country level and global level knowledge products, through their findings, continue to contribute to ensuring the effective participation of Indigenous Peoples in the development, implementation, monitoring and review processes of policies and development initiatives at all levels. As an example, the communities in Jach'a Marka Tapacari-Cóndor Apacheta (Bolivia), have used the Indigenous Navigator framework and process as an opportunity to establish an alliance with the local municipality. Through this alliance, and supported by the survey process, representatives from the local government have participated in several workshops and meetings. They have closely followed

the process and developments reaped from the Indigenous Navigator, especially in relation to the pilot projects. As a result of this alliance, the municipality provided financial funding to scale up one of these projects directly benefitting the community.<sup>10</sup> They have also showcased their results in briefs and reports that have helped make the data and issues more accessible.<sup>11</sup>

In April 2019, the Indigenous Navigator was presented during the 18th session of the UN Permanent Forum for Indigenous Issues, bringing national representatives to the forum to present their findings. The session was titled: “Indigenous Peoples’ Rights and Development on the Ground: Emerging Findings from the Indigenous Navigator Initiative”. It highlighted the experiences of Indigenous communities across our 11 countries, with poignant presentations by Indigenous leaders from Bangladesh, Kenya, Peru and the Philippines.<sup>12</sup>

In June, the Indigenous Navigator was presented to an eager audience at the European Development Days (EDD) in Brussels during a project lab session. The EDD is organised by the European Commission and is designed to bring the development community together each year to share ideas and experiences in ways that inspire new partnerships and innovative solutions to the world’s most pressing challenges. Ensuring representation of Indigenous Peoples and their priorities through the session was a key priority. EDD is a special space that acts as a hub for networking and for development agents to interact and share best practices. The Indigenous Navigator organised a session to share about the project, its progress and its structure. In addition, session members shared advocacy efforts towards achieving the SDGs and entered into constructive dialogue with participants. The presentation was titled: “The Indigenous Navigator – Data by and for Indigenous Peoples: Participatory approaches to collecting data, mobilising communities and overcoming the implementation gap with regard to Indigenous rights” and showcased results from the data alongside presentations from national partners from Kenya.<sup>13</sup>

These actions helped raise priorities identified at the national level to the global and acted as an avenue to strengthen engagements with development actors both nationally and internationally by providing concrete advocacy products. Further, the Indigenous Navigator produces a bi-annual newsletter that showcases developments and stories from national partners on both social media and via its website.<sup>14</sup>

## Broader relevance

While the Indigenous Navigator's tools have been developed for use by Indigenous communities, they are also relevant and useful for NGOs, human rights institutions and specialists, development actors and others who need to anchor their work in the provisions of the UNDRIP, WCIP and SDGs. These tools can be used together with the questionnaires for data collection or on their own. Actors can, and have, made use of the indicators to monitor their own interventions; explore the links between the UNDRIP and other human rights instruments; and design targeted programmes to reach the SDGs based on the UNDRIP.

The Indigenous Navigator can serve a number of purposes – for example to:

- Raise awareness of Indigenous communities about their rights and contribute to their empowerment and ability to claim their rights;
- Guide and orient Indigenous Peoples' self-determined governance and development strategies;
- Hold states accountable by evidencing their compliance with—or failure to meet—human rights obligations regarding Indigenous Peoples;
- Assist with the development of legislative reforms and political actions at multiple levels to address issues captured;
- Deliver data on Indigenous Peoples' human rights and development situation to UN agencies and UN mechanisms addressing Indigenous Peoples' rights (UN Special Rapporteur, Expert Mechanism on the Rights of Indigenous Peoples [EMRIP]m and UN Permanent Forum for Indigenous Issues [UNPFII]);
- Evidence whether states are complying with the commitments they made at the WCIP;
- Guide and orient development policies and development programmes, including those designed to reach the SDGs;
- Generate attention and action in relation to the recognition and protection of Indigenous Peoples' rights;
- Document the national and regional particularities and various historical and cultural backgrounds of Indigenous Peoples worldwide; and

- Provide an accurate state of play of the discrimination and inequalities as well the level of threats that Indigenous Peoples are facing.

The importance of the Indigenous Navigator Initiative, as well as some preliminary findings from the data gathered, continue to be highlighted across local, national and international levels, with several Indigenous organisations and communities, governmental actors, civil society groups, National Human Rights Institutions (NHRIs) and international organisations or development actors showing enthusiasm, support and interest towards this unique initiative. As of 2019, twenty-nine NHRIs have been trained around the world in Asia, Anglophone and Franco-phone Africa respectively, South America and Central America. Including NHRI's serves the double purpose of enhancing NHRIs' awareness of the global standards related to Indigenous Peoples' rights, emanating from the UN Human Rights System and its special procedures, and facilitating their direct engagement with both the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)<sup>15</sup> and the UN Special Rapporteur on the rights of Indigenous Peoples.

The growing interest among national statistical agencies<sup>16</sup> regarding data on Indigenous Peoples is a testament to successes in dialogues and outreach at national levels. For instance, in Bangladesh and Tanzania, engagements with statistical institutions as well as other government institutions have been enhanced at the country level. In the Philippines, Bangladesh, Tanzania and Suriname, dialogues have been established with relevant institutions on matters concerning Indigenous data generation, management and disaggregation of data, to ensure that Indigenous Peoples data is captured.

Through the continued organisation of orientation workshops, as well as training and alliance building activities in the 11 countries, an increasing number of target groups have been engaging with the framework and have benefited from enhanced capacities regarding Indigenous Peoples' rights. The tools, training resources and guidance materials on the initiative are playing an important role in strengthening capacities as well as awareness-raising regarding the Indigenous Navigator framework in the context of data collection, Indigenous Peoples' rights and the SDGs.

## Continued commitment, a valued tool

An external review of the Indigenous Navigator was conducted in March and April 2019, during which the review team noted that the Indigenous Navigator is “highly relevant given that adequate data on the situation of Indigenous Peoples are a precondition to improve the policy planning and allocation of resources to the development of Indigenous Peoples”. Further, the observations and recommendations highlighted in the review confirmed the high level of ownership among the partners and beneficiaries and that the Indigenous Navigator is an important empowerment tool for Indigenous communities.

Further reviews from the national partners’ assessments and testimonies from the direct beneficiaries clearly express that the interventions, projects and framework are relevant, and are based on the reality and issues they experience in their everyday life. For many communities, this has been the first opportunity they have had to interact with and learn about their rights. It has also been unique in that the pilot projects are often the first chance these communities have had to design a project based on the issues *they* have prioritised and on their proposed actions to address these.

The national partners, as well as the beneficiary communities, have proven, and continue to prove, their engagement and commitment to the Indigenous Navigator as a valued tool to realise their rights. National partners have organised and conducted planned events and activities that have performed beyond expectations given the local contexts. They are also continuously supporting the communities who have shown their enhanced capacity in developing grant proposals, managing the implementation of pilot projects and strengthening their demands, to describe their internal strategies and engage with local municipal authorities alongside their visions for their own development.

## Notes and references

1. The guide is available, in Spanish, here: <https://nav.Indigenousnavigator.com/index.php/es/peru-es/369-peru-guia-municipios>
2. Centro de Estudios Jurídicos e Investigación Social has contributed to Bolivia’s alternative report on the Universal Periodic Review, which is available here: <http://nav.Indigenousnavigator.com/images/documents-spanish/>

reports/2019\_-CEJIS\_UPR\_ENGLISH.pdf

3. Indigenous Navigator Initiative. 2020. "Learn more about the Indigenous Navigator". *The Indigenous Navigator*. <http://nav.Indigenousnavigator.com/index.php/en/>.
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5. "Nepal Fact Sheet". 2018. *The Indigenous Navigator*. Available at: <http://nav.Indigenousnavigator.com/index.php/en/nepal>.
6. The Indigenous Livelihoods Enhancement Partners (ILEPA) & Tebtebba Indigenous. 2017. "Kenya's Base-Line Factsheet on Indigenous Peoples in the Context of the Sustainable Development Goals (SDGs)". The Indigenous Navigator Initiative. [http://nav.Indigenousnavigator.com/images/Documents/Factsheets/Kenyas\\_baseline\\_fact\\_sheet.pdf](http://nav.Indigenousnavigator.com/images/Documents/Factsheets/Kenyas_baseline_fact_sheet.pdf).
7. Centre for Public Policies and Human Rights (Perú EQUIDAD). 2017. "Hoja Informativa De Perú: Baseline Information for The Indigenous Navigator". The Indigenous Navigator Initiative. <https://spark.adobe.com/page/SQPYXHvMUcl5a/>.
8. The Indigenous Peoples Major Group (IPMG) is an initiative to ensure full participation and representation of Indigenous Peoples' rights as affirmed by the UNDRIP. The focus of the IPMG is on global engagements relating to sustainable development, however it also endeavors to generate all forms of solidarity support and assistance for Indigenous Peoples at the national level in relation to sustainable development. These include awareness-raising, capacity building, support for lobby, advocacy and community mobilisations, among others. <https://www.Indigenouspeoples-sdg.org/index.php/english/>
9. Indigenous Peoples Major Group and the International Work Group for Indigenous Affairs. "Indigenous Voices at the High-Level Political Forum" 2018. *The Indigenous Navigator*. <https://nav.Indigenousnavigator.com/index.php/en/news/221-Indigenous-hlpf>
10. The article on the project and the municipality's support can be read here: <http://nav.Indigenousnavigator.com/index.php/en/news/358-bolivia-ayni>
11. Tamburini, Leonardo, Ángela Ágreda, Vania Sandoval, and Carla Illescas. 2019. *Indigenous Rights Monitoring Results in Lomerío And Tapacari-Cóndor Apacheta*. PDF. 1st ed. CEJIS. <https://nav.Indigenousnavigator.com/index.php/en/news/276-cejis-magazine-Indigenous-rights-monitoring-results-in-lomerio-and-tapacari-condor-apacheta>.
12. The session description, invitation and a video recording are available here: <https://nav.Indigenousnavigator.com/index.php/en/news/287-unpfii2019>
13. You can listen to the session here: The European Development Days (2019). *The Indigenous navigator – Data by and for Indigenous Peoples*. [podcast] European Development Days - EDD. Available at: <https://soundcloud.com/user-410503258/the-Indigenous-navigator-data>.
14. Read December 2019's newsletter for the Indigenous Navigator here: <https://mailchi.mp/e82cfc8a9f96/the-Indigenous-navigator-in-2019>
15. EMRIP was established by the Human Rights Council (HRC), the UN's main human rights body, in 2007. It is mandated to provide the HRC with expertise and advice on the rights of Indigenous Peoples as set out in the UNDRIP, and assists Member States, upon request, in achieving the ends of the declaration through the promotion, protection and fulfilment of the rights of Indigenous Peoples.
16. Sometimes referred to as "official data sources" as they are linked to government.



**David Nathaniel Berger** is a programme coordinator at the International Work Group for Indigenous Affairs (IWGIA) and is a member of the team responsible for the Indigenous Navigator. He is passionate about sustainability, human rights and data, and works to ensure that Indigenous Peoples' rights are recognised, promoted and protected.



# The Inter-American Human Rights System (IAHRS)

The Inter-American Human Rights System (IAHRS) comprises two human rights bodies: the Inter-American Commission on Human Rights (IACHR or the Commission) and the Inter-American Court of Human Rights (IA Court). Both bodies work to promote and protect human rights in the Americas. The IACHR is composed of seven independent members and two independent Special Rapporteurs and has its headquarters in Washington D.C., USA; the Court is composed of seven judges and has its headquarters in San José, Costa Rica.

In 1990, the IACHR created the Rapporteurship on the Rights of Indigenous Peoples, with the aim of bringing attention to the hemisphere's Indigenous Peoples and of strengthening, promoting and systematising the work the Commission itself is doing in this regard. To this end, the IACHR draws on different tools, including thematic studies and reports; petitions and cases, including friendly settlements; precautionary measures; thematic hearings; confidential requests for information from states; and press releases. The Rapporteurship also participates in conferences and seminars organised by the states, academic institutions and civil society. The Inter-American Court, in contrast, has responsibility for issuing advisory opinions and passing judgments, among other things.

This article describes the main activities of the IACHR and the IA Court with regard to Indigenous Peoples' rights throughout 2019.

## Thematic reports

During 2019, the IACHR published a report on the “*Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan-Amazon Region*”. In this document, the Commission provides background to the complex transformations affecting the Pan-Amazon Region, where the human rights of Indigenous communities are being negatively affected by regulations, public policies, expanding natural resource extraction and infrastructure megaprojects.

The IACHR describes how oil and gas exploitation, mining, logging, use of genetic resources, dam, oil and gas pipeline construction, fishing and industrial-scale agriculture, tourism and the establishment of protected areas and national parks are all taking place without prior consultation, jeopardising the physical and cultural survival of Indigenous communities.

The first chapter of the report focuses on the international standards, approaches and principles that states need to take into account when drafting laws, programmes and policies in order to protect the human rights of the Indigenous and tribal peoples’ of the Pan-Amazon Region. The second chapter provides information on the primary effects of development projects on the region’s Indigenous and Tribal Peoples. The third section considers the main human rights impacts on the region’s Indigenous Peoples while the fourth chapter explains the particular situation of Indigenous Peoples living in voluntary isolation or initial contact. The fifth and final chapter makes a number of recommendations to the region’s states.

## Public hearings

There were 16 thematic hearings on Indigenous Peoples’ rights over the course of the four periods of sessions held during 2019.

### 171st period of sessions<sup>1</sup>

During this period, the IACHR addressed the “Human rights situation of Indigenous Peoples in Brazil”. In this hearing, the petitioners noted

the different human rights violations faced by Indigenous Peoples, including the entry of outsiders onto their territories; the lack of delimitation, demarcation and titling of Indigenous lands; the persecution of and violence against human rights defenders and leaders; and a lack of protection of Indigenous Peoples in voluntary isolation. They also provided information on the institutional changes being made by the new government, noting that these were affecting the interests of Indigenous Peoples. For its part, the state emphasised the government's commitment to the situation of Indigenous Peoples, indicating that it was adopting different measures to provide targeted attention to these groups. The IAHCR repeated its concerns regarding the structural issues affecting Indigenous communities, such as the demarcation of Indigenous lands; the "temporal framework" thesis; the institutional weakening of FUNAI; and the threats, attacks and harassment of Indigenous leaders and defenders.

A hearing also took place on the "Situation of Indigenous defenders in Colombia". At this hearing, the petitioning organisations expressed their concern at the violence being experienced by Indigenous rights defenders and the systemic discrimination against Afro-descendant and Indigenous communities. They also reported that defenders were being constantly subjected to intimidation by drug traffickers and paramilitaries and that many of them were ending up dead. They highlighted the mass displacements of communities due to disputes over territories and aggression by these groups. For its part, the state noted that it was working on a differential approach to individual and collective protection, and that there was a specific protocol for evaluating the risks facing the Indigenous population. They also reported that they had identified five factors affecting ethnic peoples, namely: intensified competition for dominance and control of different criminal economies, including illegal mining; the slow progress in stabilising the spaces in which the FARC guerrilla used to exert their influence; the expansion of illicit crop growing; the persistent activity of illegal armed groups; and the diversification of the interests of organised crime. The IACHR stated that, given the magnitude of the problem, it was essential to identify the aggressors and take direct and effective action. It also proposed establishing channels of communication between the state and civil society to provide Indigenous Peoples with guarantees of their life and cultural preservation.

## 172nd period of sessions<sup>2</sup>

The IACHR held a hearing on the “Situation of the Indigenous and Afro-descendant Peoples of Nicaragua’s Caribbean Coast”. The petitioning organisations reported that although 316 territories had been demarcated to the benefit of the Caribbean Coast’s Indigenous and Afro-descendant peoples between 2007 and 2016, this had been without completing their regularisation (*saneamiento*). This situation had resulted in conflicts between communities and settlers, most of them former soldiers, who had moved onto their territories and begun to extract the natural resources with the state’s acquiescence. They also indicated that the communities were facing serious violence which, in turn, had culminated in a food crisis for those who are unable to access the land. In terms of the right to self-determination, they noted that the state had interfered in the communities by creating governments parallel to their own traditional forms of organisation. For its part, the IACHR expressed its concern at the information received and requested further detail on the human rights violations described. The Nicaraguan state did not attend this public hearing.

During this period, the IACHR also considered the “Protection and Guarantee of Indigenous Peoples’ Rights in Brazil”. In this hearing, the petitioners denounced the fact that the Brazilian state was adopting measures resulting in a serious deterioration in Indigenous Peoples’ rights. Among other things, they noted that FUNAI no longer came under the supervision of the Ministry of Justice but had passed to the Ministry of Women, Family and Human Rights; that measures were being implemented to fragment the legal framework on the environment; that powers to demarcate Indigenous lands had been transferred from FUNAI to the Ministry of Agriculture; and that rates of deforestation and invasion of Indigenous lands had increased. The above had all resulted in serious threats being made to environmental and Indigenous defenders. The state responded that the aim of its work was to provide Indigenous Peoples with the best government possible and that public policy had been produced in constant dialogue with the Indigenous Peoples, who were demanding development. It added that the measures adopted all formed part of the legal administrative process. For its part, in

addition to repeating the importance of respecting Indigenous Peoples' rights, including the right to prior consultation, the IACHR noted the importance of ensuring that agreements between companies and Indigenous Peoples were reached under conditions of equality. Finally, the IACHR stated its concern at the situation of violence affecting this country's Indigenous rights defenders.

During this period of sessions, the IACHR also considered the situation of the "Human Rights of the Indigenous Peoples in Isolation in the Peruvian Amazon". The petitioners reported that a decree was in place in Peru declaring the departments of Cusco and Ucayali a State Territorial Reserve for Kugapakori, Nahua, Nanti and other ethnic groups in voluntary isolation and initial contact (RTKNN), and that this guaranteed their territorial integrity. However, they noted that an Additional Categorisation Study was now being produced that would grant the status of Indigenous Reserve, thus opening up the possibility of companies being allowed in to exploit the territory's natural resources. They also noted that the Nahua people were being seriously affected by mercury contamination. For their part, the state's representatives commented on the efforts being made from an intersectoral perspective to protect these peoples' rights, and they reported on the existence of commissions and investigations underway to resolve the problems of mercury pollution. The IACHR indicated that the object of the hearing was being addressed in the Report on Indigenous Peoples of the Pan-Amazon Region and emphasised the importance of providing a culturally appropriate response to the health problems described.

During this period of sessions, the IACHR also addressed the issue of "Criminalisation and Indigenous Justice in the Americas". According to information from the petitioners, although a number of the region's countries have constitutional laws or have signed international human rights treaties that recognise customary justice, the Indigenous authorities are being criminalised for exercising their laws. The petitioners reported on the situation in countries such as Bolivia, Chile and Peru. For its part, the IACHR noted the importance of the issues raised in the hearing and emphasised the need to promote an intercultural dialogue between the state and Indigenous Peoples.

## 173rd period of sessions<sup>3</sup>

The IACHR held a hearing on “Indigenous Women and Girls Assassinated and Disappeared in Canada”. The organisations addressed the conclusions of the Report “Reclaiming Power and Justice” produced by the National Inquiry into Murdered and Missing Indigenous Women and Girls in Canada, and highlighted that this National Inquiry had concluded that the state was complicit in a “planned genocide” based on race, identity and gender. The state’s representatives repeated that Canada had recognised the conclusions and accepted the recommendations of the report and reiterated their commitment to defend and guarantee the rights of Indigenous women and girls. Finally, the IACHR recognised the important work of the National Inquiry, underlined the importance of giving Indigenous women and girls a voice in the search for truth and justice, and called on the state to implement concrete measures to correct this situation and follow-up the National Inquiry’s recommendations.

In addition, during this period the IACHR addressed “Environmental Protection in the Amazon and the Rights of Indigenous Peoples in Brazil”. The participating organisations reported that increased deforestation and fires in the Amazon during 2019 had violated Indigenous Peoples’ enjoyment of their human rights, including some uncontacted groups. They also noted their deep concern at the entry of outsiders onto Indigenous territories; the effects of production, construction and extraction activities; as well as the obstacles placed in the path of environmental defenders. They also noted that there had been a 62% increase in deforestation during 2019 and that 236 Indigenous lands had been removed from the management system of the National Institute for Settlement and Agrarian Reform (INCRA). For its part, the state noted its government’s commitment to containing the fires in the Amazon, and highlighted the actions being taken to control illegal activities on the territories along with their commitment to protect Indigenous Peoples and defend human rights. The IACHR emphasised the fundamental role of the Amazon region for the enjoyment of human rights and noted the importance of establishing joint strategies between states that share the Amazon basin in order to combat the threats facing it and to guarantee the right to a healthy environment.

## 174th period of sessions<sup>4</sup>

The IACHR held a hearing on “Violations of the Rights of Indigenous Peoples in Mexico”. Civil society organisations submitted information on how the Mexican state’s current agrarian system, in place since the early 20th century, was violating Indigenous Peoples’ rights to their lands, territories and natural resources, as well as their right to self-determination. They added that the institutions responsible for arbitrating Indigenous Peoples’ efforts to gain recognition of their right to their territories were suffering a number of problems, including: a lack of finances; corruption of officials; and the lack of a rights-based approach to their actions and decisions. For its part, the state noted that Congress was currently debating a reform of agrarian legislation and that a dialogue and consultation process had commenced on Indigenous reform in 2019. It also recognised the continuing existence of challenges with regard to the agrarian system, as well as the need to intensify the efforts in order to comply with international human rights standards. The state’s delegation also extended an invitation to the IACHR to visit and provide technical support to the participatory processes mentioned in the hearing. The IACHR stated its willingness to provide technical support to these processes.

During this period, the IACHR also addressed the “Violence and Situation of Indigenous Peoples in Cauca Department of Colombia”. In the hearing, the petitioning organisations referred to the rising number of murders and threats against ancestral authorities and Indigenous guards being made by organised armed groups in revenge for their organisational processes to claim their rights. They noted that Cauca department was the second most militarised zone in Colombia and stated their concern at the military deployment announced by the state. They also noted a lack of compliance with different points of the Peace Agreement, including the ethnic chapter and the guarantees proposed in the context of the voluntary substitution of illegal crops. For its part, the state referred to the roll-out of a comprehensive strategy to address the situation in Cauca, which would have two dimensions: a social aspect and a security aspect. For its part, the IACHR stated that the exponential increase in these acts of violence demanded an urgent response from the state. It also highlighted the fundamental work being done by the



Indigenous guards to protect their territories and urged the state to co-ordinate joint actions with the communities to determine the necessary protective measures to guarantee their safety and personal integrity.

## Precautionary measures

Two sets of precautionary measures were granted in 2019 with reference to Indigenous Peoples and their members, and one with reference to a defender of the human rights of these peoples.

- *MC 458/19 - Members of the Guýraroká of the Guaraní Kaiowá Indigenous People, Brazil:*<sup>5</sup>

In this case, the IACHR decided to grant precautionary measures because the applicants were at risk, having been subjected to a series of threats, harassment and acts of violence, allegedly at the hands of landowners due to a conflict over land ownership.

The Commission asked the Brazilian state to take the necessary measures to protect the rights to life and personal integrity of the members of the Guýraroká community and to avoid acts of violence by third parties; to adopt culturally appropriate protection measures to protect the life and personal integrity of the Guýraroká community, implementing, for example actions aimed at improving their access to healthcare, food and clean drinking water; to agree measures to be adopted with the beneficiary people and their representatives; and to report on the actions implemented with the aim of investigating the acts that gave rise to the adoption of this precautionary measure in the first place and thus avoid its repetition.

- *MC 487/19 - Quélvín Otoniel Jiménez Villalta, Guatemala:*<sup>6</sup>

In this case, the IACHR granted precautionary measures due to the threats being received by the beneficiary because of his work to defend Indigenous rights from a mining company.

- *MC 181/19 – Indigenous Peoples from the Pemón ethnic group of San Francisco de Yuruaní or “Kumaracapay” community et al, Venezuela:*<sup>7</sup>

The IACHR decided to grant precautionary measures because the beneficiaries were at risk due to their involvement in events that took place on 22 and 23 February 2019 on the Venezuela/Brazil border in relation to the entry of humanitarian aid.

## Petitions and cases

### Friendly settlements

Two friendly settlement reports were published during 2019:

- *Friendly settlement report, Petition 214-06 Antonio Jacinto López Martínez Mexico:*<sup>8</sup>

According to the report, the IACHR received a petition on 8 September 2006 alleging that the Mexican state had violated the political rights, judicial guarantees, legal protection and ongoing development of Antonio Jacinto Lopez, an Indigenous Triqui leader, and his family.

During 2019, the IACHR finally declared that the agreement had been substantially implemented and partially fulfilled and they therefore indicated that they would continue to monitor its implementation until fully complete.<sup>9</sup>

- *Friendly settlement report, Case 13,408 Alberto Patishtán Gómez Mexico:*<sup>10</sup>

This case was related to Mexico's international responsibility for violations committed by state agents on 19 June 2000 in Chiapas state. The alleged violations included violation of due criminal process and a lack of adequate medical diagnosis and treatment for Alberto Patishtán Gómez, a member of the Indigenous Tzotzil community who was at that time a political activist from the region's Indigenous communities.

During 2019, the IACHR finally declared that the agreement had now been fully implemented.

### Admissibility report

There were no admissibility reports published on the IACHR website

during 2019.

### **Merits reports**

There were no merits reports published on the IACHR website during 2019.<sup>11</sup>

### **Judgments of the Inter-American Court of Human Rights**

There were no judgments published on the IA Court's website during 2019.

### **Advisory opinions of the Inter-American Court**

There were no advisory opinions published on the IA Court's website during 2019.

## **Notes and references**

1. Section written on the basis of IACHR, Press Release, IACHR Concludes 171st Period of Sessions, 20 February 2019. Annex to the Press Release for this Period of Sessions, available at: [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/038A-EN.pdf](https://www.oas.org/en/iachr/media_center/PReleases/2019/038A-EN.pdf)
2. Section written on the basis of IACHR, Press Release, IACHR Completes 172nd Period of Sessions, 29 May 2019. There is no Annex to the Press Release for this Period of Sessions. Other public hearings held during this period related to Indigenous rights were as follows: "Implementation of Precautionary Measures with a differential and collective ethnic approach in Colombia" and "Criminalisation of indigenous rights defenders and the extractive industry in the US".
3. Section written on the basis of IACHR, Press Release, IACHR Completes 173rd Period of Sessions, 04 October 2019. Annex to the Press Release for this Period of Sessions, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/248.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/248.asp). Other public hearings held during this period and related to Indigenous rights were as follows: "Protection of indigenous communities, children and adolescents and human rights defenders affected by environmental contamination in Peru"; "Climate change and the economic, social, cultural and environmental rights of women, children and adolescents, Indigenous Peoples and rural communities" and "Threats and murders of social leaders in Colombia".
4. Section written on the basis of IACHR, Press Release, IACHR Completes 174th Period of Sessions, 20 November 2019. IACHR. Annex to the Press Release for this Period of sessions, available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/301A.pdf](http://www.oas.org/en/iachr/media_center/PReleases/2019/301A.pdf). Another public hearing held during this period and related to Indigenous rights was: "Indigenous Peoples' right to water and food in Guatemala".
5. IACHR, Resolution 47/19, available at: <http://www.oas.org/es/cidh/decisiones/>

- pdf/2019/47-19MC458-19-BR.pdf [in Spanish only]
6. IACHR, Resolution 33/19, available at: <https://www.oas.org/en/iachr/decisions/2019/URIN870-11EN.pdf>
  7. IACHR, Resolution 181/19, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2019/7-19MC181-19-VE.pdf>
  8. Report No. 35/19 of 08 April 2019, available at: <https://www.oas.org/en/iachr/decisions/2019/MXSA1014-06EN.pdf>
  9. IACHR, Press Release, IACHR Publishes Report No. 35/19 Concerning Petition 1014-06, Antonio Jacinto López, Mexico, 12 April 2019.
  10. Report No. 43/19 of 30 April 2019. Available at: <https://www.oas.org/en/iachr/decisions/2019/MXSA13408EN.pdf>
  11. In accordance with the provisions of Article 50 of the American Convention on Human Rights, when the IACHR approves a report it is confidential and only notified to the parties involved (state and petitioner). However, in accordance with the provisions of Article 51(3) of the same instrument, approved reports may subsequently be published, if the IACHR so decides. Information available at: <http://www.oas.org/en/iachr/decisions/merits.asp>
  12. The information compiled in this document is the sole responsibility of the author and does not form work undertaken in the context of her role within the IACHR.

**Elsy Curihuinca Neira** is a lawyer with a Master's in International Human Rights Law and a diploma in the recognition, strengthening and legal protection of Indigenous children's and adolescents' rights. During 2018 and 2019, she was a specialist within the Inter-American Commission on Human Rights' Rapporteurship on the Rights of Indigenous Peoples.<sup>12</sup>



# The Sustainable Development Goals (SDGs) and Indigenous Peoples

Since the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) by the UN General Assembly in September 2015, Indigenous Peoples have been engaging in national, regional and global processes related to the SDGs. The main objective is to promote the recognition, protection and realisation of Indigenous Peoples' rights, wellbeing and dignity, and to enhance their contributions to sustainable development. The long-term perspective is to include their perspective and initiatives and thereby advance their self-determined sustainable development. This report is focused on key global developments relevant to Indigenous Peoples and the SDGs, including the High-Level Political Forum (HLPF), which is the global review process of the SDGs that is held every July at the UN Headquarters in New York. The Indigenous Peoples Major Group for Sustainable Development (IPMG) coordinates the engagement of Indigenous Peoples in the HLPF and related processes.

## The High-Level Political Forum 2019

The theme of the HLPF in 2019 was "Empowering people and ensuring inclusiveness and equality". The SDGs in focus were:

- Goal 4: Quality Education for all;
- Goal 8: Economic Growth and Decent Work;
- Goal 10: Reducing inequality within and between countries; and

- Goal 13: Climate Action.

Of the 47 countries that presented their Voluntary National Review (VNR) in 2019, there were 18 countries with Indigenous Peoples.

The HLPF 2019 was attended by 28 Indigenous Peoples representatives, including representatives from 11 of the VNR countries. They were able to speak and present the statements prepared by the IPMG in a number of sessions relating to the focus SDGs. Likewise, Indigenous representatives spoke in three side events, in the main SDG media zone, and all Indigenous representatives participated in the moderated discussions in the Indigenous Media Zone, which was streamed through social media. In addition to the statements, a thematic report was also produced by the IPMG to present the realities on the ground regarding continued discrimination, marginalisation and exclusion of Indigenous Peoples, as well as highlighting the contributions and initiatives of Indigenous Peoples for sustainable development.

The statement by the IPMG on Goal 16 stressed that:

*The recurrent violation of the rights of Indigenous Peoples increases the inequality and discrimination suffered by Indigenous Peoples. What is happening in Brazil reflects the experience of millions of Indigenous Peoples around the world. The defense of our rights results in persecution, criminalisation and assassinations, and other gross human rights violations against our leaders and communities. For Indigenous Peoples, Goal 16 should be translated into concrete actions to ensure the respect and protection of our rights and our access to justice. This includes the security and peace in our territories and an end to criminalisation. The international community needs to uphold its obligation to ensure the protection of our territories and resources and treat us with respect, dignity and equity to ensure the future of the planet and the people.*

Further, the Indigenous Peoples representative who spoke in the session on Goal 16 added that the lack of citizenship, legal recognition and social protection measures for Indigenous Peoples remain barriers for the meaningful participation and inclusion of Indigenous Peoples in the SDGs.

On Economic Growth and Decent Work (Goal 8), Indigenous representatives stressed that decent work implies the recognition and

protection of our sustainable traditional occupations, such as farming, seed preservation, shifting cultivation, hunting and fishing, which integrates the transmission of Indigenous knowledge. These sustainable occupations contribute to Indigenous Peoples' livelihood and food security, cultural diversity, and strengthening Indigenous institutions, social values of cooperation and collective management of resources. Therefore, their traditional occupation is an integral part of the identity and dignity of Indigenous Peoples, which needs to be protected and integrated in the implementation of the SDGs with the pledge of leaving no one behind.

In relation to the Agenda on Financing the SDGs, the IPMG highlighted that the priority of states for public-private partnerships (PPPs) to drive economic growth is causing massive land and resource grabs. As these PPPs are not based on the respect and protection of our rights and for social equity, they push Indigenous Peoples further behind. This includes financing for basic social services, including renewable energy, which hardly reaches Indigenous Peoples, particularly those in remote areas.

At the 2019 HLPF session on the VNRs, only one Indigenous Peoples representative was able to make a statement on behalf of all the Major Groups and Stakeholders. While many of the VNRs acknowledge "marginalised groups" as those left behind, most states do not provide mechanisms for their meaningful participation. There are also no specific plans, targets and budgets to address the specific condition of Indigenous Peoples. In fact, most countries with Indigenous Peoples neither mentioned Indigenous Peoples as distinct groups nor did they make reference to their collective rights and contributions to sustainable development. Further, there is a continuing lack of awareness on the SDGs at the grassroots level, including by Indigenous communities who face serious risks to their rights and wellbeing in the implementation of economic growth targets in the implementation of the SDGs.

## **Four years of SDG implementation**

According to the Global Sustainable Development Report (GSDR) in 2019, the world is not on track for achieving the 17 SDGs and the 169 targets. "Just over 10 years remain to achieve the 2030 Agenda, but no

country is yet convincingly able to meet a set of basic human needs at a globally sustainable level of resource use.” The recent trends in fact illustrate rising inequalities, climate change, biodiversity loss and increasing amounts of waste from human activity. “Recent assessments show that, under current trends, the world’s social and natural biophysical systems cannot support the aspirations for universal human well-being embedded in the Sustainable Development Goals.”

Further, the 2019 GSDR made explicit reference to Indigenous Peoples. It highlights the continuing “discrimination and exclusion from political and economic power with disproportionately high rates of poverty, ill health, poor education and destitution. Additional challenges include dispossession of ancestral lands and the threat of extinction of traditional languages and identities”. It further stresses that:

*individual and collective land rights are important for the improved resilience of Indigenous Peoples, women and other vulnerable groups. Currently, 2.5 billion people worldwide live on and use land to which they have no secure legal rights, with much of this land used by communities and claimed through customary means. Nature managed by Indigenous Peoples and local communities is under increasing pressure. At least a quarter of the global land area is traditionally owned, managed, used or occupied by Indigenous Peoples. Those areas include approximately 35 per cent of the area that is formally protected and approximately 35 per cent of all remaining terrestrial areas with very low human intervention.*

In relation to climate change, this report states that:

*many Indigenous Peoples do not possess the financial resources or technological capacity required for climate change adaptation. However, women, Indigenous Peoples and other vulnerable communities can be powerful agents of change when included in the design of solutions, since they are the first-hand witnesses of climate change impacts.*

The 2019 GDSR affirms the findings and claims made by the IPMG and other Indigenous organisations, networks and advocates. After four



years of implementation of the SDGs, Indigenous Peoples remain not only furthest behind in terms of poverty reduction and access to appropriate social services, among others, but also continue to suffer from land dispossession, rising inequalities, climate change, forest degradation, loss of biodiversity, conflicts on resource-use and development, and lack of access to justice. At the same time, their contributions to sustainable development as agents of change and the persistence of their sustainable lifeways, knowledge, skills and values as critical to advancing sustainable development are not protected and supported. On the contrary, Indigenous Peoples' sustainable livelihoods and legitimate actions to defend their rights to lands, territories and resources are being criminalised with increasing cases of persecution, extra-judicial killings and other gross human rights violations. This illustrates the huge gap in the respect, protection and realisation of the rights and wellbeing of Indigenous Peoples across the globe in relation to the implementation of the SDGs. This is despite the pledge of "leaving no one behind" and the commitment of states to respect and protect Indigenous Peoples rights as imperative to achieving the SDGs.

As the UN declared a Decade of Action (2020 to 2030) to achieve the SDGs, this should result in transformational changes on the ground, including the reversal of negative trends such as rising inequalities, climate change, biodiversity loss and increasing amounts of waste from human consumption. All these have serious implications for the wellbeing and rights of Indigenous Peoples. It is thus important for Indigenous Peoples to engage with the SDG processes at all levels for the recognition and protection of their rights and wellbeing, including in advancing their self-determined development.

## **The High-Level Political Forum 2020**

The Theme of the 2020 HLPF is "Accelerated action and transformative pathways: realizing the decade of action and delivery for sustainable development". Starting this year, until 2024, the format of the thematic discussions will not be on four selected SDGs but will follow the proposed entry points and levers for change identified in the 2019 GSDR 2019. The six entry points are:

1. Welfare and human capabilities;
2. Sustainable and fair economies;
3. Sustainable food systems and healthy nutrition patterns;
4. The decarbonisation of energy and universal access to energy;
5. Sustainable urban and peri-urban development; and
6. Security of the global environmental commons.

The four levers of change are:

1. Government;
2. Economics and finance;
3. Individual and collective action; and
4. Science and technology.

Through these entry points and levers, it is expected that the presentations and discussions will focus more on the interlinkages of the goals and targets in achieving the SDGs, and on actions on key drivers of change as the four levers. For example, the entry point on Welfare and Human Capabilities will include Goal 1 on ending poverty, Goal 4 on Education for all, Goal 5 on gender Equality, Goal 10 on reducing inequality and Goal 16 on Peace, justice and strong institutions. The key elements of these entry points and levers are provided in the 2019 GSDR.

As part of the HLPF, 50 countries have committed to present their VNRs on the national implementation of the SDGs. Of these countries, 24 have Indigenous Peoples, which are Burundi, Democratic Republic of Congo – DRC, Kenya, Nigeria, Uganda, Zambia and Zimbabwe from Africa; Bangladesh, India and Nepal from Asia; Finland from the Arctic; Argentina, Belize, Ecuador, Honduras, Panama and Peru from Latin America and the Caribbean; Papua New Guinea, Samoa and Solomon Islands from the Pacific; and Russia from Eastern Europe. Kenya, Bangladesh, Finland, Nepal and Peru are reporting for the second time, while the rest are reporting for the first time.

As 24 countries with Indigenous Peoples will present their report on the implementation of the SDGs at the HLPF 2020, it is important for Indigenous Peoples in these countries to engage with their respective states and demand consultations and participation in decision-making in relation to the implementation of the SDGs. It is critical for Indigenous Peoples to be reflected in the national SDG action plans with specific measures and strategies to fully address the structural barriers

and challenges they face in order to ensure the respect, protection and realization of their rights, wellbeing and aspirations for sustainable development as distinct peoples.

*Article prepared by **Joan Carling**, Co-convenor, Indigenous Peoples' Major Group on the SDGs.*



# The Work of the UN Treaty Bodies and Indigenous Peoples Rights

The treaty bodies are the committees of independent experts in charge of monitoring the implementation by state parties of the rights protected in international human rights treaties. There are nine core international human rights treaties that deal with civil and political rights; economic, social and cultural rights; racial discrimination; torture; discrimination against women; child rights; migrant workers' rights; persons with disabilities; and enforced disappearances. The main functions of the treaty bodies are to examine periodic reports submitted by state parties, adopt concluding observations and examine individual complaints. Concluding observations contain a review of both positive and negative aspects of a state's implementation of the provisions of a treaty and recommendations for improvement. Treaty bodies also adopt general comments and recommendations which are interpretations of the provisions of the treaties. A large number of treaty bodies' general comments makes reference to Indigenous Peoples' rights. However, so far, only the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC) have adopted general comments specifically addressing Indigenous Peoples' rights.

**T**his article contains a non-exhaustive overview of the reference made by the treaty bodies to Indigenous Peoples or to groups who are otherwise self-identifying as Indigenous Peoples with a specific focus on five treaty bodies: the CERD, the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Commit-

tee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW) and the CRC.<sup>1</sup>

## **The treaty bodies and Indigenous Peoples' rights**

Over the past decades, the treaty bodies have contributed to the development of a solid body of jurisprudence on Indigenous Peoples' rights. In 2019, the committees formulated a large number of observations highlighting acts of violence and other grave abuses faced by Indigenous Peoples notably for their opposition to extractive projects, criminalisation of the work of Indigenous human rights defenders, forced evictions, displacements and increased lands dispossession. The committees also highlighted absence of consultation and denial of the right to free and prior informed consent (FPIC), intersectional discrimination faced by Indigenous women and children, sexual and gender based violence, as well as discrimination in accessing justice, education and health services and enjoying adequate standards of living.

The committees adopted a number of recommendations reminding state parties of their obligations to protect the rights of Indigenous Peoples to equality and non-discrimination including their collective rights to access, own, use, develop and control their lands, territories and resources and to FPIC. A number of state parties were referred to the provisions of the UNDRIP and ILO Convention 169.

## **The Committee on the Elimination of Racial Discrimination (CERD)**

The CERD continued to adopt comprehensive observations and recommendations on Indigenous Peoples' rights including under its early warning and urgent action procedures. The CERD underlined discrimination faced by Indigenous Peoples in Cambodia, Colombia, El Salvador, Guatemala, Israel Mexico and Mongolia,<sup>2</sup> as well as intersectional discrimination faced by Indigenous women in Cambodia, Guatemala, Israel and Mexico. The Committee underlined the multiple violations faced by Indigenous Peoples, in particular the lack of recognition of the existence of Indigenous Peoples in Zambia, limited access to ed-

ucation, health care services, employment and fair working conditions (Cambodia, Colombia, Israel, Guatemala, Mexico, Mongolia and Zambia), adequate housing (Cambodia, Israel and the State of Palestine (Palestine))<sup>3</sup> as well as representation and political participation (Colombia, Guatemala, Israel, Mongolia and Zambia). The Committee also expressed concerns at poverty (El Salvador, Colombia, Guatemala, Israel, Mexico and Zambia), child malnutrition (Colombia and Guatemala), labour exploitation (Guatemala and Mexico) and the recruitment of Indigenous children by armed groups (Colombia). The Committee also singled out difficulties in accessing justice (Cambodia, Colombia, Guatemala, Israel and Mexico) notably for victims of the armed conflicts (Colombia and Guatemala) and the lack of recognition of Indigenous legal systems (Guatemala and Mexico). The CERD also highlighted criminalisation of the work of Indigenous rights defenders (Colombia, Guatemala and Mexico), acts of violence including threats, attacks and assassinations of Indigenous leaders and Indigenous human rights defenders (Cambodia, Colombia, Guatemala and Mexico) and sexual and gender based violence (Cambodia, Colombia, El Salvador, Guatemala and Mexico), including sterilisations without FPIC (Mexico).

In relation to land rights, the Committee noted patterns of forced evictions and internal displacements (Colombia, Guatemala, Israel, Mexico and Palestine) and violations of the rights to consultation and FPIC (Colombia, Cambodia, Guatemala, El Salvador, Mexico and Mongolia). The CERD also noted low level of land tenure (El Salvador), lack of protection of collective property (Guatemala) and difficulties in: registering and titling collective lands (Cambodia and Guatemala), obtaining land restitution (Colombia, Guatemala and Mexico) and accessing and using lands (Cambodia, Colombia, Mongolia and Zambia), in particular for Indigenous Peoples living in protected areas (Colombia and Mongolia). The CERD finally underlined the negative impact of the effects of the climate crisis (El Salvador and Mexico), lack of implementation of court decisions calling for the protection of the Awa and Uitot peoples in danger of extinction, and the lack of measures to protect Indigenous Peoples living in voluntary isolation or in situation of initial contact notably the Nukak-makú (Colombia).

Drawing on its General Recommendation n° 23 on the rights of Indigenous Peoples, the CERD made extensive recommendations addressing Indigenous rights. The Committee called upon state parties

to adopt measures or affirmative actions to combat and eliminate structural racial discrimination against Indigenous Peoples (Colombia, Guatemala and Mexico) and against Indigenous women (Colombia, El Salvador, Guatemala, Israel, Mexico and Palestine). Guatemala was especially recommended to restructure its institutional framework for the protection of the rights of Indigenous Peoples. The Committee further called upon El Salvador and Mongolia to protect Indigenous languages and El Salvador to protect Indigenous handicrafts and traditional knowledge. State parties were further recommended to ensure Indigenous Peoples' access to education (Cambodia, Colombia, El Salvador, Israel, Guatemala, Mongolia, Mexico and Zambia), including bilingual and/or intercultural education (Guatemala and Mongolia) and health care services (Cambodia, Colombia, El Salvador, Guatemala, Israel, Mexico, Mongolia and Palestine), taking into consideration the needs, traditions and cultural specificities of Indigenous Peoples (Guatemala). Cambodia, Colombia, Guatemala, Israel and Mexico were invited to reduce poverty and improve standards of living while Colombia and Guatemala to guarantee the right to adequate food. The Committee advised Guatemala, Colombia, Israel, Palestine and Zambia to ensure Indigenous participation and representation in public affairs and Cambodia, Colombia, El Salvador, Guatemala, Israel, Palestine and Zambia to guarantee access to employment and fair working conditions.

State parties were recommended to ensure access to justice (Colombia, Cambodia, Guatemala, Israel and Mexico), notably by eliminating racial discrimination in the justice system (Guatemala and Mexico) and by recognising and respecting the Indigenous justice systems (Colombia, Guatemala and Mexico). The CERD recommended to prevent the criminalisation of Indigenous leaders and human rights defenders (Guatemala) and ensure their protection (Cambodia, Colombia, Guatemala and Mexico). State parties were also recommended to prevent gender-based violence, protect Indigenous women and investigate, prosecute and sanction such acts (Colombia, El Salvador, Guatemala and Mexico), in particular involuntary sterilisation (Mexico). Colombia was invited to prevent and eliminate the recruitment of Indigenous children by non-State armed groups.

The Committee called upon Guatemala, Colombia, Cambodia, El Salvador, Mexico and Mongolia to guarantee the FPIC of Indigenous peoples prior to the approval of any project or any legislative or admin-

istrative measure affecting their rights and Colombia, Guatemala and Mexico to undertake impartial human rights impact studies prior to projects development. El Salvador and Mexico were additionally requested to develop and adopt legal instruments to guarantee the right to FPIC in line with international standards. With respect to land rights, Israel and Zambia were advised to recognise and ensure access to lands and natural resources, and Colombia and Mongolia to guarantee the rights of Indigenous Peoples living in the Tayrona and Tengis Shishged protected areas to access their lands and freely dispose of their resources. El Salvador, Guatemala and Mexico were recommended to recognise Indigenous Peoples' right to ownership and control of their lands, territories and natural resources, El Salvador to grant property titles and Cambodia to simplify its land titling procedure. Cambodia, Guatemala and Mexico were requested to guarantee land restitution with Guatemala and Mexico being additionally requested to establish a dedicated mechanism to this end. State parties were requested to ensure protection against forced displacements or evictions (Cambodia, Colombia, Guatemala and Mexico) while Israel was requested to stop evictions of Bedouin people from their homes and ancestral lands. Colombia was finally urged to take protection measures to ensure the physical and cultural survival of Indigenous Peoples in danger of extinction, voluntary isolation or in situation of initial contact.

Under its Early Warning and Urgent Action Early procedure,<sup>4</sup> the CERD considered a number of Indigenous rights-related cases in Brazil,<sup>5</sup> Canada,<sup>6</sup> Cameroon,<sup>7</sup> Canada,<sup>8</sup> Chile,<sup>9</sup> France,<sup>10</sup> Panama,<sup>11</sup> Peru<sup>12</sup> India,<sup>13</sup> Thailand<sup>14</sup> and the United States of America.<sup>15</sup> The Committee issued a decision regarding the Trans Mountain Pipeline Extension project in Canada.<sup>16</sup>

The CERD is currently developing Draft General Recommendation n° 36 on preventing and combating racial profiling.<sup>17</sup>

## **The Committee on Economic, Social and Cultural Rights (CESR)**

The CESCR reviewed Cameroon, Denmark, Ecuador and Israel<sup>18</sup> in 2019 and underlined difficulties faced by Indigenous Peoples in accessing education in all four countries, in particular bilingual intercultural edu-



cation (Cameroon and Ecuador), employment and decent working conditions (Cameroon and Ecuador) and health care services (Cameroon, Ecuador and Israel). The Committee singled out forced labor (Cameroon), poverty (Ecuador and Israel), child malnutrition (Ecuador), child mortality (Israel) and child poverty and youth suicide in Greenland. The Committee further expressed concerns at acts of violence, harassment and reprisals against Indigenous Peoples human rights defenders (Cameroon and Ecuador) and at a court ruling on the Thule tribe breaching the right to self-identification (Denmark).

The Committee underlined failure to respect the rights to consultation (Israel) and FPIC (Cameroon and Ecuador). In relation to land rights, the CESCR stressed the lack of access of Indigenous Peoples to land (Cameroon and Ecuador) and land ownership (Ecuador), forced sale of land (Ecuador), as well as forced evictions and displacements (Cameroon, Denmark, Ecuador and Israel). The Committee also highlighted the negative impacts of some development projects on the lifestyles, adequate food supply and adequate standards of living (Cameroon) and the relaxation of the rules governing extractive activities around the Yasuní National Park, home of Tagaeri and Taromenane peoples living in voluntary isolation in Ecuador. The Committee finally expressed serious concerns at the environmental impact of large-scale mining and other extractive activities, notably on global warming (Ecuador).

The Committee formulated a number of recommendations covering the economic, social and cultural rights of Indigenous Peoples. State parties were invited to combat discrimination (Cameroon and Ecuador), ensure equal access to education (Cameroon, Ecuador and Israel), notably via culturally appropriate education in Indigenous languages and health services (Cameroon and Ecuador). Denmark was invited to address youth suicide in Greenland and Israel the poor health status of Bedouins. State parties were recommended to adopt measures to reduce poverty (Ecuador and Israel), unemployment (Cameroon and Ecuador) and to stop forced labour (Cameroon). Denmark was recommended to respect the right to self-identification of the Thule tribe and of other Indigenous communities, Cameroon to recognise the rights of Indigenous Peoples and protect their cultural diversity, and Ecuador to ensure the use of Indigenous languages in the public sphere and the protection of the intellectual property rights of Indigenous Peoples to native seeds. Ecuador was urged to adopt a policy to protect human

rights defenders including measures to protect Indigenous Peoples, while Cameroon to conduct independent investigations into reports of violence.

All four state parties were recommended to prevent displacement and forced evictions. The Committee called upon Cameroon to guarantee the right of Indigenous Peoples to freely dispose of their lands and territories, Ecuador to protect collective and customary forms of land tenure systems and Israel to resolve pending claims of land ownership. Ecuador was further requested to strengthen the legal security of the Indigenous territories impacted by extractive industries, including the integrity of the territories of Tagaeri and Taromenane peoples, prevent extractive activities in the Yasuní National Park, discontinue extractive activities in the territories of Sápara and Shiwiar peoples, enforce judicial decisions prohibiting resource exploitation and reconsider the increase of oil and mining activities to reduce greenhouse gas emissions. Cameroon and Ecuador were advised to respect the right to FPIC, while Cameroon was invited to draw up guidelines and rules for evaluating the impact of natural-resource exploitation projects on Indigenous territories.

The CESCR is currently developing a general comment dedicated to the right to land.<sup>19</sup>

## **The Human Rights Committee (HRC)**

The HRC reviewed Angola, Eritrea, Mexico, Niger, Nigeria, Paraguay and Vietnam<sup>20</sup> in 2019 and expressed concerns at the lack of legal recognition of Indigenous Peoples (Vietnam), lack of protection of Indigenous rights (Angola, Paraguay and Vietnam) and at the multiples forms of discrimination faced by Indigenous Peoples (Angola, Mexico, Paraguay and Vietnam) in particular in relation to access to: employment, health, education and other public services (Angola, Paraguay and Vietnam); participation and representation in political and public life (Mexico and Paraguay) and freedom of movement and of religion (Vietnam). The Committee pointed out high rates of maternal mortality (Mexico) as well as labor exploitation and trafficking (Paraguay).<sup>21</sup>

The Committee expressed concerns about access to justice in both Mexico and Paraguay. The HRC underlined impunity in relation

to extra judicial killings, enforced disappearances and tortures and in particular the absence of prosecution of the perpetrators of enforced disappearance of the 43 students of Ayotzinapa in 2014 in Mexico. The Committee also noted the lack of progress made in the investigation and prosecution of grave human rights violations that have occurred during the Paraguay dictatorship and the Mexican Dirty War. The Committee also expressed concerns at the criminalisation of the work of Indigenous Peoples human rights defenders opposing development projects (Mexico), physical assaults based on religious grounds (Vietnam), arbitrary arrest and detention (Eritrea, Paraguay and Vietnam) notably involving the Saho people in Eritrea, and the criminal convictions of human right defenders (Niger and Vietnam).

The Committee further highlighted failure to respect the rights to consultation and FPIC (Angola, Mexico and Vietnam), the restrictive interpretation of the definition of Indigenous Peoples used to justify the absence of consultation (Mexico) and the lack of a legal framework for consultation (Angola). The Committee pointed out negative impacts of development activities on the enjoyment of Indigenous traditional ways of life (Angola and Vietnam), obstacles in accessing lands and natural resources (Angola and Paraguay) and in registering and returning lands (Paraguay), land expropriation (Angola and Vietnam) and the limited implementation of judgments of the Inter-American Court for Human Rights (IACHR) (Paraguay).

The Committee formulated a number of recommendations related to the protection of the civil and political rights of Indigenous Peoples and notably called upon Angola, Paraguay and Vietnam to adopt laws and measures protecting the rights of Indigenous Peoples, Niger to review its anti-terrorist legislation to ensure freedom of expression and Vietnam to review its Law on Religion and Belief to ensure freedom of religion. State parties were also recommended to take measures to ensure access to social and public services (Angola, Mexico, Paraguay and Vietnam), participation in decision-making processes (Angola, Paraguay and Vietnam), representation in public and political life (Mexico, Nigeria and Paraguay), and consultation and FPIC (Angola, Mexico, Paraguay and Vietnam), based on the right to self-identification (Mexico).

Mexico and Paraguay were recommended to ensure access to justice, notably for the victims of serious human rights violations that occurred during the Paraguayan dictatorship and the Mexican Dirty War.

Mexico was also recommended to investigate attacks against human rights defenders as well as violent crimes, in particular the enforced disappearance of the 43 students of Ayotzinapa. In relation to land rights, Angola, Mexico and Vietnam were requested to protect Indigenous Peoples' right to lands, territories and natural resources, Paraguay to expedite the return and registration of Indigenous lands and ensure the implementation of the judgments<sup>22</sup> of the IACHR.

The Committee also adopted views under its individual communications procedure for two cases submitted against Nepal involving persons belonging to the Tharu people.<sup>23</sup>

## **The Committee on the Rights of the Child (CRC)**

The CRC reviewed Australia, Botswana, Japan and Panama<sup>24</sup> in 2019. The Committee expressed concerns at discrimination faced by Indigenous children in Australia in relation to access to basic services and underlined high rates of domestic and sexual violence, mental health issues and over-representation of Indigenous children in the justice system and in alternative care. The Committee also highlighted the effects of climate change on the rights to life, survival and development of children and expressed concerns at the continuing investment of Australia in extractive industries. The Committee further expressed concerns in relation to persisting societal discrimination in Japan, discriminatory attitudes and disparities in accessing basic services in Botswana and at the recruitment of Indigenous children by non-state armed groups in Panama.

The Committee invited Australia, Botswana and Japan to take measures and affirmative actions to prevent and eliminate discrimination. Japan was invited to organise awareness-raising programmes, campaigns and human-rights education. Botswana was recommended to ensure access to social services for children living in remote areas or in nomadic communities by expanding health facility-based birth registration centres and improving access to quality healthcare and nutrition services. The CRC called upon Australia to improve access to mental health services, respect the right to identity, name, culture and language of Indigenous children, enhance their participation in policy and decision making processes, prevent family violence, avoid their re-

moval from their families and reduce high rates of incarceration. The Committee also recommended Australia and Japan to reduce their emissions of greenhouse gases, accelerate the transition to renewable energy and hold the business sector accountable for complying with international standards relevant to child rights, including in relation to the environment and health. Panama was invited to establish mechanisms to identify Indigenous children at risk of being recruited by non-state armed groups and ensure their protection.

The CRC adopted general comment n° 24 (2019) on children's rights in the child justice system.<sup>25</sup> The Committee is currently drafting a general comment on children's rights in relation to the digital environment.<sup>26</sup>

## **The Committee on the Elimination of Discrimination against Women (CEDAW)**

The CEDAW reviewed Angola, Botswana, Cambodia, Colombia, Democratic Republic of the Congo (DRC), Ethiopia, Guyana and Myanmar<sup>27</sup> in 2019 and made references to multiple and intersecting forms of discrimination faced by Indigenous women and girls (Colombia, DRC and Guyana) and rural women (Angola, Ethiopia and Botswana) in relation to equal access: to employment (Cambodia and Guyana), public services (Botswana), education (Cambodia, Colombia, DRC and Guyana) and health care (Cambodia, Colombia, DRC and Guyana). The Committee expressed concern at the loss of cultural and tribal identities (Botswana), marginalisation and lack of representation of Indigenous women in political and public life (Botswana, Cambodia and DRC), absence of consultation (Angola, DRC and Guyana) and limited access to justice (Botswana, Cambodia, DRC and Guyana). The Committee highlighted gender-based violence against Indigenous women and girls (Colombia), high rates of exploitation of prostitution at mining sites (Guyana), violence against women human rights defenders, in particular homicides and threats (Colombia), and harassment and intimidation (Cambodia). The CEDAW further underlined forced evictions affecting Indigenous culture and traditional ways of living (DRC), as well as the impact of climate change, deforestation and extractive industries on Indigenous women (Guyana). The Committee finally underlined the failure

to recognise collective land rights in Guyana, the lack of ownership and land titles of Indigenous women in Cambodia, obstacles regarding land restitution in Colombia and the pending adoption of the draft law for the protection of Indigenous Peoples in DRC.

The CEDAW made a number of recommendations addressing the rights of Indigenous women and girls and notably called upon Guyana, Cambodia and Colombia to adopt temporary special measures to eliminate discrimination against Indigenous women and girls, Colombia to ensure that its legislation covers all intersecting forms of discrimination against Indigenous women, Botswana to develop a strategy to address the needs of Indigenous women, and Botswana and DRC to protect the right of cultural identity of Indigenous women. The Committee requested state parties to promote access to health care services (Cambodia, Colombia, DRC and Guyana), in particular sexual and reproductive health-care services (DRC and Guyana) and free anti-retroviral treatment (Botswana). The CEDAW recommended to ensure and promote access to education (Botswana, Cambodia, Colombia and DRC), including bilingual education (Colombia and Guyana). The Committee further called upon state parties to improve access to employment or income-generating opportunities (Cambodia, DRC and Guyana), representation and participation in political and public life (Botswana, Cambodia, Colombia, DRC and Guyana), consultation and participation in decision-making processes (Angola, Botswana, DRC, Ethiopia and Guyana) and justice via the availability of information in native languages (Colombia and Guyana). Colombia was recommended to investigate and prosecute homicides of women human rights defenders and Cambodia to guarantee the rights of women human rights defenders to freedom of expression. The Committee further called upon Colombia to prevent gender-based violence against Indigenous women and girls.

In relation to land rights, Angola and Ethiopia were recommended to protect and promote land ownership, Colombia to increase access to lands, Cambodia to re-allocate and redistribute lands to ensure equal ownership and DRC to eliminate traditional practices impeding women's rights to inheritance and land ownership. DRC was recommended to rapidly adopt the draft law for the protection of Indigenous Peoples, while Guyana was requested to amend: the Amerindian Act to recognise and protect land rights and the Environmental Protection Act to guarantee the right to FPIC, as well as benefit sharing. Angola was final-

ly requested to ensure respect for the right to FPIC and compensation.

The CEDAW is currently elaborating a general recommendation on trafficking of women and girls in the context of global migration.<sup>28</sup>

## Notes and references

1. Due to length, the activities of the Committee against Torture (CAT), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Committee on Migrant Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD) and Committee on Enforced Disappearances (CED) were not included.
2. CERD/C/COL/CO/17-19, CERD/C/SLV/CO/18-19, CERD/C/GTM/CO/16-17, CERD/C/MEX/CO/18-21, CERD/C/MNG/CO/23-24, CERD/C/ISR/CO/17-19, CERD/C/KHM/CO/14-17, CERD/C/KHM/CO/14-17
3. CERD/C/PSE/CO/1-2
4. In 1994, the CERD decided to establish early warning and urgent procedures as part of its regular agenda. They are directed at preventing existing problems from escalating into conflicts and urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.
5. Regarding the impact of the construction of federal highway BR-080 on Xavante peoples in the State of Mato Grosso, see [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT\\_CERD\\_ALE\\_BRA\\_8925\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT_CERD_ALE_BRA_8925_E.pdf)
6. Regarding the decision related to the Trans Mountain Pipeline Expansion project, see [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_EWU\\_CAN\\_9026\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_EWU_CAN_9026_E.pdf)
7. Regarding the impact of decree N° 2018/736 and a 1974 land law on Bagyeli peoples, see [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CMR/INT\\_CERD\\_ALE\\_CMR\\_8926\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CMR/INT_CERD_ALE_CMR_8926_E.pdf)
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  21. Including the judgments of the Inter-American Court of Human Rights concerning the Sawhoyamaxa, Yakye Axa and Xákmok Kásek communities.
  22. Including the judgments of the Inter-American Court of Human Rights concerning the Sawhoyamaxa, Yakye Axa and Xákmok Kásek communities.
  23. CCPR/C/125/D/2556/2015 and CCPR/C/126/D/2773/2016. The Committee found violations of a number of Covenant rights, notably articles 2(1), on non-discrimination, 9, on protection from arbitrary arrest and detention, 17, on arbitrary or unlawful interference with private life, and 24, on the special protection of children.
  24. CRC/C/AUS/CO/5-6, CRC/C/BWA/CO/2-3, CRC/C/JPN/CO/4-5, CRC/C/OPAC/PAN/CO/1. The Concluding observations for Panama were adopted following the consideration of Panama's report under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
  25. CRC/C/GC/24
  26. For more information, see <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>
  27. CEDAW/C/AGO/CO/7, CEDAW/C/BWA/CO/4, CEDAW/C/KHM/CO/6, CEDAW/C/COL/CO/9, CEDAW/C/COD/CO/8, CEDAW/C/ETH/CO/8, CEDAW/C/GUY/CO/9, CEDAW/C/MMR/EP/CO/1. At the request of CEDAW; Myanmar submitted an exceptional report on the situation of Rohingya women and girls from Northern Rakhine State.
  28. For more information, see <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/GRTrafficking.aspx>



**Mélanie Clerc** is a Human Rights Officer at the Office of the High Commissioner for Human Rights. She is the former Secretary of the UN Voluntary Fund for Indigenous Peoples and the focal point on Indigenous Peoples and minorities in the Human Rights Treaties Branch.

**Justine Berezintsev** is a Master's student of human rights and humanitarian action at Sciences Po in Paris, France. In 2019, she worked for the Indigenous Peoples and minorities section of the United Nations Office of the High Commissioner for Human Rights in Geneva, Switzerland.

*The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.*



# UNESCO'S World Heritage Convention

The Convention concerning the Protection of the World Cultural and Natural Heritage ("World Heritage Convention") was adopted by the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) General Conference in 1972. With 193 States Parties, it is one of the most widely ratified multi-lateral treaties today. Its main purpose is the identification and collective protection of cultural and natural heritage sites of "outstanding universal value" (OUV). The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the States in which they are located, but also a duty of the international community as a whole.

The implementation of the Convention is governed by the World Heritage Committee (WHC), consisting of 21 States Parties. The WHC keeps a list of the sites it considers to be of OUV ("World Heritage List") and monitors the conservation of these sites to ensure they are adequately protected and safeguarded. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated, and are classified as either 'natural', 'cultural' or 'mixed' World Heritage sites.

A large number of World Heritage sites overlap with Indigenous Peoples' territories. Although most of these are classified as purely 'natural sites', without recognition of Indigenous cultural aspects, there are also some sites that are listed for their Indigenous cultural values or interlinkages between nature and Indigenous culture.

The WHC is supported by a secretariat (the UNESCO World Heritage Centre) and three advisory bodies – International Union for Conservation of Nature (IUCN), International Council on Monuments and Sites (ICOMOS) and The International Centre

for the Study of the Preservation and Restoration of Cultural Property The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) – which provide technical evaluations of World Heritage nominations and help monitor the state of conservation of World Heritage sites. An Indigenous proposal to establish a “World Heritage Indigenous Peoples Council of Experts” as an additional advisory body was rejected by the WHC in 2001.

## **Human rights abuses by eco-guards at World Heritage sites: allegations against WWF**

In March 2019, BuzzFeed News began publishing a series of articles drawing attention to a pattern of serious human rights abuses connected with conservation activities implemented or funded by the World Wildlife Fund (WWF) at national parks in Africa and Asia.<sup>1</sup> According to these articles, which have received broad international media coverage, WWF has for years financed and equipped anti-poaching forces accused of beating, torturing, sexually assaulting and murdering Indigenous people living near the national parks they patrol. What was not stressed in the media is that almost all of the implicated parks are World Heritage sites: Salonga National Park (Democratic Republic of the Congo [DRC]), Lobéké National Park (Cameroon), Chitwan National Park (Nepal), Kaziranga National Park (India) and Dzanga-Sangha Special Reserve (WH buffer zone, Central African Republic).<sup>2</sup> According to BuzzFeed, internal WWF reports warned about the abuses for years, but were kept under wraps by the charity’s leadership.<sup>3</sup> In response to the allegations, WWF has commissioned an independent review led by former UN High Commissioner for Human Rights, Navi Pillay.<sup>4</sup>

## **43rd Session of the WHC, Baku, June/July 2019**

The WHC’s 43rd session in Baku, Azerbaijan, was highly significant for Indigenous Peoples as several important provisions on Indigenous

Peoples were added to the World Heritage Convention's Operational Guidelines and the WHC for the first time integrated references to human rights into the guidelines. Also remarkable was the exceptionally high number of Indigenous participants, which was due to several factors: the WHC's consideration of two nominations of Indigenous cultural landscapes (Budj Bim and Writing-on-Stone); two side events focusing on Indigenous Peoples, organised by the World Heritage Centre and the International Indigenous Peoples' Forum on World Heritage (IIPFWH);<sup>5</sup> and a special grant from the Government of Canada supporting the participation of members of the IIPFWH.

## Amendments to the Operational Guidelines

In endorsing the *2015 World Heritage Sustainable Development Policy* (WH-SDP), which encourages States to adopt a human rights-based approach and includes a special section on Indigenous Peoples, the WHC requested the World Heritage Centre to elaborate proposals for changes to the Operational Guidelines to translate the principles of the policy into actual operational procedures. Consequently, in May 2019, the centre submitted a set of proposed amendments to the WHC for consideration at its Baku session.<sup>6</sup> In developing the proposals relating to Indigenous Peoples, the centre drew on the WH-SDP, the UNESCO policy on Indigenous Peoples (2017), and the recommendations of the International Expert Workshop on the World Heritage Convention and Indigenous Peoples (Copenhagen, 2012).

After discussing the proposals in a working group during the Baku session, the WHC made a range of amendments to the Operational Guidelines, some of which are highly significant for Indigenous Peoples and the protection of their rights. For instance, because of the amendments, the Guidelines now:

- require States to obtain Indigenous Peoples' free, prior and informed consent (FPIC) before including sites affecting the lands, territories or resources of Indigenous Peoples on their "Tentative Lists" of potential World Heritage sites (the first step towards World Heritage listing);
- make it mandatory for States to demonstrate the FPIC of Indige-

nous Peoples when they nominate sites for World Heritage listing (previously this was only recommended practice);

- encourage States to adopt a human rights-based approach in the identification, nomination, management and protection processes of World Heritage sites;
- encourage States to mainstream international human rights standards and the principles of the UNESCO policy on Indigenous Peoples into their activities related to World Heritage;
- state that States should closely collaborate with Indigenous Peoples in managing World Heritage sites by developing equitable governance arrangements, collaborative management systems and redress mechanisms;
- recognise that in natural sites, biological diversity and cultural diversity can be closely linked and interdependent.<sup>7</sup>

## **Noteworthy decisions on specific nominations**

The WHC again considered several nominations affecting Indigenous Peoples' territories, adding several Indigenous sites to the World Heritage List. The Budj Bim Cultural Landscape (Australia), located in the traditional Country of the Gunditjmara people in south-eastern Australia, was inscribed as a living cultural landscape in recognition of the significance of the complex aquaculture system developed by the Gunditjmara for trapping, storing and harvesting eel. The site is comprised wholly of lands owned or co-operatively managed by Aboriginal groups and the nomination was prepared by the traditional owners themselves.

Writing-on-Stone/Áísínai'pi (Canada), a sacred landscape and rock art site in the northern Great Plains, was listed as a cultural landscape that provides exceptional testimony to the living cultural traditions of the Blackfoot people. The Statement of OUV notes that the Blackfoot "are fully participating in the management of Writing-on-Stone/Áísínai'pi", and the nomination dossier contains a detailed description of Blackfoot engagement throughout the nomination process and a statement of support from the Chiefs of the Blackfoot Confederacy.

Paraty and Ilha Grande (Brazil), which comprises the historic centre of the colonial town of Paraty and four Atlantic Forest protected areas, was listed as a mixed (cultural/natural) site. The area includes

several Indigenous and traditional communities (Guarani, Quilombola and Caiçara), whose continuing relationship with the Atlantic Forest landscape is recognised in the OUV Statement. However, although the OUV Statement states that “traditional communities have participated in the elaboration of the nomination and the management processes”, the nomination dossier contains no evidence of their FPIC. In inscribing the site, the WHC recommended that Brazil “strengthen participatory governance mechanisms to enshrine the principles of FPIC... in the management process”.<sup>8</sup>

The WHC also reconsidered the nomination of the Kaeng Krachan Forest Complex (KKFC) (Thailand), which it had referred in 2015 and 2016 due to concerns over persistent human rights violations against the Karen communities in the KKFC, potential negative implications of World Heritage status for their livelihoods and Thailand’s lack of consultation with the Karen regarding the nomination. The 2016 referral decision asked Thailand to “achieve a consensus of support for the nomination... that is fully consistent with the principle of FPIC” before resubmitting the nomination.

Upon receipt of the resubmitted nomination, IUCN requested advice on the situation of the Karen from the Office of the United Nations High Commissioner for Human Rights (OHCHR). The OHCHR responded with a joint communication from four UN human rights mandates<sup>9</sup> expressing serious concerns over alleged attacks against and renewed harassment of the Karen by the conservation authorities and Thailand’s continued lack of consultation with the Karen and failure to seek their FPIC. The communication also warns about “the negative impact that World Heritage status may have on the traditional livelihoods of the Karen, their exercise of land rights, and potential exposure to forced evictions”. It stresses that “adequate measures have not been taken to address these concerns between 2015 and... 2019”. IUCN therefore recommended that the nomination be *deferred* (rather than *referred*), as only a deferral would provide the necessary time to address the concerns, and suggested that Thailand be asked to engage directly with the OHCHR to resolve the human rights concerns.<sup>10</sup>

However, during the WHC’s debate in Baku, many committee members pressed for an immediate inscription as Thailand claimed it had enacted two new laws protecting the rights of local communities in conservation areas (National Parks Act; Wildlife Conservation and Pro-

tection Act). Thailand stated that these laws represented an “important paradigm shift” and ensured that the livelihoods of the Karen would be protected and that the Karen would be engaged in the conservation effort in accordance with the principle of FPIC.<sup>11</sup> Nevertheless, due to the insistence of some other committee members, the WHC decided on another *referral*, asking Thailand to “demonstrate that all concerns have been resolved, in full consultation with the local communities, in accordance with paragraph 123 of the Operational Guidelines [on Indigenous Peoples’ FPIC]”.<sup>12</sup>

## **Noteworthy decisions on the state of conservation of specific sites**

The WHC examined the state of conservation of 166 World Heritage sites, including numerous sites located in Indigenous Peoples’ territories. Several of the decisions passed by the WHC in this context refer to the livelihoods and rights of Indigenous Peoples or their roles in site management and decision-making.

In a number of cases, the WHC called on the relevant States Parties to ensure respect for Indigenous Peoples’ rights or their involvement in decision-making processes. For instance, the WHC’s decision on the Río Plátano Biosphere Reserve calls on Honduras to ensure the full involvement of Indigenous Peoples in a planned significant boundary modification of the site.<sup>13</sup> The decision on the Great Himalayan National Park Conservation Area requests India to ensure meaningful involvement of Indigenous Peoples in the governance and management, including in the ongoing efforts to significantly enlarge the World Heritage area (planned inclusion of Khirganga National Park).<sup>14</sup> The decision on the Sangha Trinational (Cameroon, Central African Republic and Congo) urges States Parties to strengthen efforts to “better involve local communities and to recognise the rights and traditional livelihoods of the Indigenous Baka communities, as well as efforts to ensure the respect of human rights by park rangers”.<sup>15</sup> The decision on Kahuzi-Biega National Park encourages the DRC to continue actions supporting the autonomy of Batwa communities and the recognition of their rights and traditional means of subsistence.<sup>16</sup> The decision on the Kenya Lake System urges Kenya to continue its efforts to implement the Endorois

ruling of the African Commission on Human and Peoples' Rights (ACH-PR),<sup>17</sup> and that on Wood Buffalo National Park commends Canada for its commitment to "fair, transparent and meaningful involvement of all legitimate stakeholders and rights-holders... in line with the UNESCO policy on engaging with Indigenous Peoples".<sup>18</sup>

Several WHC decisions refer to ongoing or planned relocations of Indigenous communities from specific sites. For instance, that on the South China Karst refers to the relocation of the old Sani village of Wuke-shu, which, after years of protest from the villagers, is being destroyed to make way for tourism construction.<sup>19</sup> The decision "notes with appreciation" the information provided by China that the relocation processes were carried out with the consent of the population concerned and requests China to "ensure that any such relocation programmes are in line with the 2015 WH-SDP and relevant international standards".<sup>20</sup> Similarly, the decision on Wulingyuan Scenic Area requests China to ensure that any relocation programmes are consistent with the WH-SDP and ensure effective consultation, fair compensation, access to social benefits, and the preservation of cultural rights.<sup>21</sup> Wulingyuan is home to three different ethnic minority peoples, the Tujia, Miao and Bai, who have been subjected to several waves of "ecological resettlement" since the area was declared a natural World Heritage site in 1992.<sup>22</sup>

Another example is the decision on Salonga National Park (DRC), which requests the State Party:

*to ensure that the resettlement procedure outside of the Park of the Yaelima communities is voluntary and in accordance with the policies of the Convention and the relevant international standards, including the principles of FPIC, fair compensation, access to social advantages and the preservation of cultural rights.*<sup>23</sup>

Conservation organisations like the WWF have for years pressed for a removal of the Iyaelima from their traditional homelands within the park.<sup>24</sup> In 2018, the DRC informed the WHC that "the managers of the property, with support from the Wildlife Conservation Society, ha[d] begun a process for the voluntary relocation of the Yaelima communities outside the Park"; however, the DRC has, to date, provided no further information on this "voluntary resettlement".<sup>25</sup>



Finally, the decision on the Ngorongoro Conservation Area (NCA) (Tanzania) requests the State Party to implement all the recommendations of a March 2019 UNESCO monitoring mission (including a recommendation to “continue to promote and encourage voluntary resettlement of communities... from within the property to outside by 2028”), and encourages Tanzania “to engage local communities... in exploring alternative livelihood solutions to its current voluntary resettlement scheme consistent with the policies of the Convention and relevant international norms”.<sup>26</sup> UNESCO, the WHC and the Advisory Bodies have for many years identified increasing human population as a major threat to the OUV of the site and have repeatedly recommended that Tanzania promote the “voluntary relocation” of Maasai pastoralist communities to areas outside of the NCA.

### **Subsequent developments in the Ngorongoro Conservation Area**

In September 2019, the Tanzanian government announced a plan to divide the NCA into four distinctive management zones. The plan, which is detailed in a comprehensive review of the Multiple Land Use Model,<sup>27</sup> would expand the size of the NCA from 8,100km<sup>2</sup> to 12,083km<sup>2</sup> by including parts of two adjacent Game Controlled Areas (GCA) – Loliondo GCA and Lake Natron GCA. At the same time, new restricted areas would be created within the NCA, significantly reducing the land available to the Maasai for pastoralism, housing and farming crucial to their livelihoods. According to local observers, this would be devastating given that the Maasai already face severe food insecurity as a result of existing restrictions. The plan would imply the eviction of people from wide areas of Ngorongoro district, including parts of the existing NCA, and has been strongly rejected by pastoralist representatives.<sup>28</sup>

Local commentators have highlighted the “egregious role of UNESCO in the new plan”,<sup>29</sup> linking it directly to the recommendations of the 2019 monitoring mission. This mission once again expressed various concerns about the impacts of pastoralism, human settlements and cultivation, and encouraged Tanzania to “complete the Multiple Land Use Model review exercise and share the results with the World Heritage Centre and the Advisory Bodies to advise on the most appropriate land use model, including in the matter of settling local communities in protected areas”.<sup>30</sup> Moreover, the Tanzanian National Commission for UNESCO is apparently advocating for the total abandonment of the multiple

land use model and the removal of people to create a nature reserve, only retaining traditional settlements (*bomas*) for cultural tourism.<sup>31</sup>

## Developments in Kahuzi-Biega National Park

After the killing of a Batwa boy by park guards in 2017, the “Whakatane Dialogue” process between the conservation authorities and the Batwa ground to a halt. The dialogue was aimed at addressing the persistent livelihood problems of the Batwa, who were forcibly evicted from the Kahuzi-Biega National Park (PNKB) in the 1970s and now live in a situation of extreme poverty in the periphery of the park. In August 2018, more than 200 Batwa families decided to return to their ancestral lands and began occupying areas of the park without authorisation from the conservation authorities. This led to an increase of prohibited activities such as hunting, wood cutting and charcoal-making in some parts of the park (to some extent carried out by non-indigenous individuals) and growing tension between Batwa and park guards. A series of violent clashes in mid-2019 resulted in the deaths of three Batwa and two eco-guards.<sup>32</sup> In September, a high-level dialogue meeting was organised in Bukavu in order to find ways of resolving the conflicts. At this meeting, representatives of the provincial government, the conservation authorities and the Batwa families agreed to work together for a peaceful co-existence of eco-guards and Batwa in order to conserve the exceptional biological values of PNKB. The government made various promises to the Batwa, including the granting of land outside the park, provision of brick houses, schooling of Batwa children, construction of a health centre and hiring of Batwa as eco-guards.<sup>33</sup> Based on these promises, the Batwa families in November voluntarily left the spaces they had occupied in PNKB.<sup>34</sup>

However, in late January 2020, eight Batwa people, whom the park authorities accused of carrying out illegal agricultural activities and making charcoal in the park, were arrested by the Congolese Army in a village near PNKB and charged with criminal conspiracy, illegal possession of firearms and malicious destruction of the park. On 4 February, after a one-day sham trial in front of a military tribunal, six Batwa were sentenced to 15 years, and two to one-year imprisonment. According to the UK-based Forest Peoples Programme,

*the Park authorities have shown no willingness to meet any of the commitments they have made to communities in previous discussions and instead have taken the route of violence and intimidation in order to keep Batwa people out of the Park by force... [They] are not seriously interested in a genuine dialogue.<sup>35</sup>*

In an unrelated development, the ACHPR, at its 64th ordinary session, decided to admit a human rights complaint brought on behalf of the Batwa evicted from PNKB in the 1970s. By declaring the complaint admissible, the ACHPR found that domestic remedies in the DRC were neither sufficiently available, effective nor efficient to ensure adequate redress for the violations suffered by the Batwa.<sup>36</sup>

## **Developments regarding the Kaeng Krachan Forest Complex**

In September 2019, Thailand's Department of Special Investigation (DSI) announced that the missing Karen human rights defender Porla-jee "Billy" Rakchongcharoen from Kaeng Krachan National Park (KKNP) had been murdered, as a fragment of his burnt skull was found in an oil drum submerged in a reservoir inside KKNP. Billy was last seen in April 2014 in the custody of KKNP officials, who had detained him for allegedly collecting wild honey illegally. At the time of his disappearance, he was involved in a lawsuit against park officials concerning the burning of Karen houses during a series of forced evictions in 2011. In early November 2019, arrest warrants were issued for the former chief of KKNP and three other park officials on suspicion they murdered Billy, and subsequently criminal charges were filed by the DSI.<sup>37</sup>

At around the same time, in late November, Thailand was elected as a member of the WHC by the 22nd General Assembly of States Parties and announced that it would "push its agenda" and immediately resubmit the nomination of the KKFC for consideration by the WHC in 2020.<sup>38</sup>

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**Stefan Disko** works as an independent consultant on issues related to Indigenous Peoples, heritage, and human rights. He holds an M.A. in ethnology and international law from LMU Munich and an M.A. in World Heritage Studies from BTU Cottbus.



# UN Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty adopted at the Earth Summit in Rio in 1992 to tackle the growing problem of global warming and the related harmful effects of a changing climate. The UNFCCC entered into force on 21 March 1994, and has near universal membership, with 197 ratifying Parties (196 States and one regional economic integration organisation). In 2015, the UNFCCC adopted the Paris Agreement, a universal agreement to reduce global greenhouse gas emissions. By January 2020, 187 of the 197 Parties to the UNFCCC had ratified the Paris Agreement.<sup>1</sup>

The UNFCCC recognises that achieving sustainable development requires active participation of all sectors of society. Therefore, nine ‘major groups’ are recognised as the main channels through which broad participation is facilitated in UN activities related to sustainable development. Indigenous Peoples constitute one of these major groups and thereby exercise an influential role in global climate negotiations. The Indigenous Peoples’ constituency is organised in the International Indigenous Peoples’ Forum on Climate Change (IIPFCC) which serves as a mechanism for developing common positions and statements of Indigenous Peoples, and for undertaking effective lobbying and advocacy work at UNFCCC meetings and sessions.

The Green Climate Fund (GCF) is a fund established by the UNFCCC as an operating entity of the financial mechanism to assist developing countries in adaptation and mitigation practices to counter climate change. The GCF has funded a total

of 124 projects since its operationalisation in 2015 with project investments amounting to USD\$5.6 billion. The GCF estimates that these projects will benefit 348 million people and prevent the emission of 1.6 billion tons of CO<sub>2</sub> equivalent.<sup>2</sup> No disaggregated data exist on how many projects affect Indigenous Peoples' land and territories, or how Indigenous Peoples are impacted positively and/or potentially negatively by the projects.

This chapter analyses developments and decisions involving Indigenous Peoples in 2019 – first at the UNFCCC first and second at the GCF.

**H**eralded as the #TimeforAction by the Chilean Presidency, 2019 was a mixture of significant procedural progress for Indigenous Peoples within the United Nations Framework Convention on Climate Change (UNFCCC), and utter frustration with the lack of meaningful progress in the face of a rapidly changing climate.

For several decades, Indigenous Peoples and their knowledge keepers have been raising their voice to tell us that Mother Earth is in crisis. In 2019, science, and thus the awareness of the global community, seemingly caught up, with the release of several international reports by the Intergovernmental Panel on Climate Change (IPCC), such as the Special Report on Global Warming under 1.5°C and the Special Report on Climate Change and Land, and by the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services (IPBES).<sup>3</sup> Alarmingly, some studies indicate there is only a 5% chance that humanity will achieve the Paris Agreement goal of limiting global warming to 2°C by the end of the 21st century.<sup>4</sup> Already, sea level rise, extreme weather events, forest fires and coastal erosion are disproportionately affecting Indigenous Peoples. Further inaction threatens the social, cultural, environmental, spiritual and economic security of Indigenous Peoples and everyone across the globe.

Despite this, Indigenous Peoples are not standing idle. In fact, they have been leaders on adaptation and living sustainably with Mother Earth for thousands of years, rejecting the stereotypes of passive recipients of climate impacts, or as 'canaries' in the proverbial coal mine.

This leadership is beginning to be recognised within the corridors of the UNFCCC as the year marked the first meetings of the Facilitative Working Group (FWG) of the Local Communities and Indigenous Peoples Platform – the first UN-constituted body with equal representation between Indigenous Peoples and States – and the adoption of the first co-developed official UNFCCC Work Plan for the Platform. This, however, is only the first step: Indigenous Peoples have two years to show Parties why their voices, solutions and knowledge are integral to solving the climate crisis.

## **COP 25: #TimeforAction or #TimeforInaction?**

For the majority of 2019, the international climate change community was planning to attend the twenty-fifth session of the Conference of the Parties (COP 25) in Santiago, Chile. All this changed on 1 November – little over one month prior to the supposed beginning of COP 25 – when the Chilean presidency announced its cancellation as massive protests swept the downtown core of Santiago. The protests were against domestic inequality and not related to climate change. Two days later, however, the Spanish government, in partnership with the Chilean presidency, announced that they had relocated COP 25 to Madrid on the exact same dates (2-14 December). With less than a month turnaround, the relocation caused significant problems for the participation of Indigenous Peoples – adding new financial and logistical barriers.<sup>5</sup>

If the previous COP in Katowice, Poland, was to be remembered for the adoption of weak Paris Agreement implementation guidelines (the Paris Rulebook), then criticism for this COP in Madrid must be equal, or more severe, actively preventing any reference to human rights and the rights of Indigenous Peoples. In the media, COP 25 was lamented as a complete failure, delivering either a mediocre or non-outcome (delayed until COP 26) on all relevant agenda items: the development of rules for carbon markets (Article 6), loss and damage, and increasing ambition to curb emissions. Even UN Secretary General Antonio Guterres released a public statement expressing his disappointment with the results of COP 25, after an overhyped Climate Action Summit held in September 2019 in New York equally failed to deliver meaningful pro-



gress on the climate crisis.

Article 6 – the last remaining open item of the Paris Rulebook – received a significant amount of attention from Indigenous Peoples’ representatives. Several proposed references to human rights and the rights of Indigenous Peoples were rejected, despite pressure by Indigenous Peoples and support by several Parties. A reference to “recalling the Paris Agreement, in particular its preamble” was all that remained before the Presidency determined that the negotiations were unsuccessful and should resume at COP 26 in Glasgow in November 2020. It is worth noting that the preamble does include a reference to both human rights and the rights of Indigenous Peoples. Other areas that will be considered in Glasgow are the governance arrangements for the Warsaw International Mechanism on Loss and Damage and the updating of Parties’ nationally determined contributions (NDCs).

Out of frustration, a precedent-setting demonstration of Indigenous Peoples, civil society, youth and other allies occurred outside the main plenary during the second week. The peaceful protest was met with swarms of media and UN security, quickly escalating as security forcibly pushed the crowd, including many Indigenous youth, through the warehouse door and into a closed courtyard. Such actions are only likely to continue as people demand real action, real solutions and real justice for the planet.

## **The Local Communities and Indigenous Peoples Platform**

Amid all the controversy and inaction circulating inside and outside the negotiating rooms, the Local Communities and Indigenous Peoples Platform, yet again, proved to be an exception to the rule. After two relatively painless negotiation sessions, the Parties confirmed the acceptance of the draft Work Plan of the Platform – marking the next two years of activities.<sup>6</sup> The Work Plan was the first fully co-developed product between Indigenous Peoples and State representatives of the FWG, demonstrating the massive leap forward that the COP 24 decision establishing the FWG made for Indigenous participation in the UNFCCC.

Arriving at this point did not occur overnight, requiring a great deal

of diplomacy by both Indigenous Peoples and friendly States. At COP 24, the decision on the Platform<sup>7</sup> was officially gavelled on 12 December 2018, which perhaps serendipitously, was also Indigenous Peoples Day — the day set aside at a COP to highlight Indigenous Peoples' involvement in climate action. The exact build up, and some of the challenges, to this decision can be found in previous editions of *The Indigenous World*. In the context of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the decision creates the first-ever constituted body (the FWG) that has equal representation between party and non-party representatives (Indigenous Peoples).

In advance of the first meeting of the FWG, all seven representatives from the Indigenous socio-cultural regions and the Party-groups, respectively, were nominated, except for the Eastern Europe group — which by the end of 2019 remained vacant. The nominated representatives met on 14–16 June, at the inter-sessional in Bonn (SB 50), where they were tasked with, under the COP 24 decision, the development of an initial two-year work plan for 2020–2021 for implementing the functions of the Platform, to be considered for adoption at COP 25.<sup>8</sup> In addition to this, the FWG was asked to elect its two Co-Chairs (one Indigenous and one State) and two Vice-Co-Chairs (one Indigenous and one State).

Attempting to reflect Indigenous worldviews, the meeting was organised in a series of concentric circles with FWG members and invited guests in the first circle, surrounded by Indigenous Peoples and other observers in subsequent circles. It was opened by Chief Howard Thompson offering a shortened version of the Haudenosaunee Thanksgiving Address and followed by opening comments from the UNFCCC Executive Secretary, SBSTA Chair, Polish Presidency and Indigenous Peoples' Focal Point. Soon after this, FWG members announced their consensus elections of the Co-Chairs and Vice-Co-Chairs. This was followed by the process to develop the initial two-year work plan which included the contribution of FWG members, Indigenous Peoples' representatives and other observers, remaining consistent to the open and inclusive process that begun in 2016. The final version, as agreed to by consensus by FWG members, included 12 activities organised in the three functions: capacity for engagement, exchanging knowledge, and climate action and policies.<sup>9</sup> Example activities included organising an

annual thematic training workshop, the mapping of policies and practices that include Indigenous participation, and the reporting of existing funding opportunities for Indigenous Peoples. All activities are intended to have multi-level impacts at the local/tribal/community, national, regional and international levels.

In addition to the development of the Work Plan, several mandated events occurred at the session, including an in-session thematic workshop intended to address the sticky issue of local communities' participation in the Platform; however, there was a clear lack of any meaningful participation of local communities, resulting in the reiteration of different views on what the term 'local communities' means, the specific considerations of Indigenous Peoples' participation and the lack of a formal constituency established for local communities.

The second FWG meeting took place in Madrid on 28-30 November, following a similar circular format and starting with a ceremonial opening by Indigenous representatives from Chile. Though there was relative comfort in the draft Work Plan for consideration by Parties, the most contentious discussion concerned funding for the Work Plan's activities. After much pressure from FWG members, the UNFCCC Secretariat begrudgingly shared background on the current funding (or lack thereof), which included 'core funding' for two meetings a year, but nothing confirmed for implementation of the aforementioned Work Plan activities. It was confirmed that FWG members, with support from the UNFCCC, would need to fundraise for supplementary funding for the activities, the first of which will take place at the intersessional in June 2020 (SB 52).

## **The road to COP 26**

While the adoption of the Work Plan of the Platform was an important outcome in advancing Indigenous participation in the UNFCCC, much remains to be done.<sup>10</sup> Notwithstanding the potential progress that the Platform could contribute to advancing Indigenous self-determination, Indigenous legal orders and Indigenous-led solutions in addressing the climate crisis, Indigenous Peoples' representatives are increasingly frustrated with a lack of ambition by Parties and their ongoing failure

to adopt a rights-based approach to the Rulebook – not to speak of the broader climate crisis. COP 26 in Glasgow will be an opportunity for Parties to listen to the voices of Indigenous elders, knowledge keepers, experts, youth and leadership, as well as the overwhelming (and growing) amount of scientific, economic and political evidence to make commitments to increase their nationally determined contributions (NDCs), and respond to the crisis. The world will be watching.

## The Green Climate Fund

2019 was also an important year for the Green Climate Fund (GCF) – as well as for Indigenous Peoples. The GCF undertook its first formal replenishment process during which 28 contributors made pledges totalling USD\$9.78 billion.<sup>11</sup> Among the key achievements for Indigenous Peoples, an Indigenous Peoples Specialist / Focal Person was appointed in the GCF Secretariat in line with the GCF Indigenous Peoples' Policy (hereafter IP Policy) adopted in 2018.<sup>12</sup> Furthermore, the GCF developed and approved the Operational Guidelines of the IP Policy at its board meeting in July 2019 (B.23).<sup>13</sup> They provide guidance on the application of the IP Policy that forms part of the environmental and social management system of the GCF. The guidelines explain the requirements of the IP Policy and the related environmental and social safeguards.

In 2019, the GCF undertook its strategic planning for 2020-2023 which includes a strategic plan for the period and a work plan for the Board. The work plan was adopted at the board meeting in November (B.24) and includes the scheduling of a review of the IP Policy in 2023.<sup>14</sup> The Strategic Plan 2020-2023 will be presented for consideration and adoption by the Board at its 25th meeting in March 2020. The draft Strategic Plan states that it "...will enhance its engagement with Indigenous Peoples, including through an Indigenous Peoples Advisory Group (IPAG)" established through the IP policy.<sup>15</sup> However, civil society organisations and Indigenous Peoples' representatives are concerned of the lack of clear human rights-based framing in the draft Strategic Plan and of its enhanced focus on the private sector.

In 2019, a decision on 'matters related to GCF support to adaptation' was also adopted.<sup>16</sup> Indigenous Peoples' representatives wel-

comed the aspects of community-based adaptation and enhanced direct access in the decision. At the same time, they were concerned of the lack of clear reference to the GCF's overall adaptation focus on the 'most vulnerable communities' and Indigenous Peoples. Of further concern, with this decision, the GCF failed to clearly describe its expectations and requirements towards the private sector regarding addressing adaptation needs, safeguarding social and environmental risk, and respect of the rights of Indigenous Peoples.

At B.24, the GCF adopted an Updated Gender Policy and Action Plan 2020-2023, despite strong dissatisfaction from civil society and Indigenous Peoples due to weak language regarding human rights in the Policy.

Throughout 2019, Indigenous Peoples' representatives called for the GCF to ensure that accredited entities and States comply with the IP Policy in accordance with relevant international standards, norms and practices. Among the requirements of the Policy, an Indigenous Peoples Plan (IPP) is to be prepared for any activity planned on Indigenous Peoples' lands or related to Indigenous Peoples, not only because of potential negative impacts to Indigenous Peoples, but also to harness need-based benefits to Indigenous Peoples. Identification of collective attachment (of Indigenous Peoples to their lands) is to be extended to cultural and spiritual attachment with intangible spaces. Similarly, 'free, prior and informed consent' (FPIC) is to be ensured, not only in cases of adverse impact (as a risk mitigation tool), but in any activity planned on Indigenous Peoples' lands and territories, or involving their resources, based on the principle of self-determination, and not only at the initial stage of project development, but also throughout the project cycle. Direct access, full and effective participation, and the recognition of Indigenous Peoples' positive contribution to the GCF goals and climate actions, including in country readiness and country programming, remained key calls of Indigenous Peoples in 2019.

## **REDD+ results based payments**

In 2019, for the first time, the Board approved projects for REDD+ results-based payments (RBP). Brazil, Chile, Paraguay and Ecuador

received REDD+ RBP amounting to a total of USD\$228.7 million.<sup>17</sup> Indigenous Peoples advocated for ensuring non-carbon benefits and compliance with the REDD+ Cancun Safeguards, the Paris Agreement and the GCF IP Policy, including proper FPIC processes, benefit-sharing schemes and inclusion of the knowledge and rights of Indigenous Peoples. Some of the REDD+ projects, especially the one in Brazil, were highly criticised by civil society for the lack of permanence of forest cover in the areas where RBP were allocated.

## **The first case of the Independent Redress Mechanism**

The Independent Redress Mechanism (IRM) of the GCF concluded its first self-initiated preliminary inquiry into the GCF Funded Project 001 (FP001) 'Building the Resilience of Wetlands in the Province of Datem del Marañón, Peru', which was the first project approved by the GCF, dating back to 2015.<sup>18</sup> The decision to initiate the preliminary inquiry was motivated by information contained in three civil society articles, hereunder two briefing papers by Tebtebba and Forest Peoples' Programme.<sup>19</sup> Key concerns regard the lack of clarity on how the project will affect the ongoing efforts of Indigenous Peoples to secure recognition of their collective customary lands; lack of information regarding Indigenous Peoples' rights to customary lands and their use of natural resources; limited disclosure of information regarding project risks; weak enforcement of FPIC; and miscategorisation of the project.<sup>20</sup> The IRM found that "...the evidence reviewed in its preliminary inquiry leads the IRM to the prima facie conclusion that the information in the three articles referred to above on miscategorisation and inadequacy of FPIC was credible".<sup>21</sup> The IRM followed up with the GCF Secretariat which agreed to time-bound actions around FPIC documentation requirements and risk categorisation in projects involving Indigenous Peoples.

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**Graeme Reed** is of mixed Anishinaabe and European descent. He works at the Assembly of First Nations leading their involvement in federal and international climate policy, including recently as co-Chair of the International Indigenous Peoples Forum on Climate Change at COP 25. In his free time, he is completing a doctorate at the University of Guelph studying the intersection of Indigenous governance, environmental governance, and the climate crisis.

**Tunga Bhadra Rai** belongs to the Rai Indigenous Nationality of Nepal. He completed a Master's Degree in Anthropology from Tribhuvan University and participated in the Cornell Nepal Study Program. He works with the Nepal Federation of Indigenous Nationalities (NEFIN) Climate Change Partnership Program based in Nepal.

**Lærke Marie Lund Petersen** is a social geographer from University of Copenhagen and Policy Advisor at IWGIA. She follows the GCF board meetings as a representative of IWGIA.

**Stefan Thorsell** is Climate Advisor and Programme Coordinator at IWGIA. He coordinates partner projects in Myanmar, Peru and Tanzania.



# UN Permanent Forum on Indigenous Issues (UNPFII)

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) is an expert body of the United Nations Economic and Social Council (ECOSOC) with the mandate to provide advice on Indigenous issues to the Council and through ECOSOC, to the United Nations agencies, funds and programmes, raise awareness on Indigenous Peoples' issues and promote the integration and coordination of activities relating to Indigenous Peoples' issues within the United Nations system.

Established in 2000, the Permanent Forum is composed of 16 independent experts who serve for a term of three years, functioning in their personal capacity. They may be re-elected or re-appointed for one additional term. Eight of the members are nominated by governments and elected by the ECOSOC, based on the five regional groupings used by the United Nations. Eight members are appointed by the ECOSOC President based on nominations by Indigenous Peoples' organizations representing the seven socio-cultural regions that broadly represent the world's Indigenous Peoples, with one seat rotating among Africa, Asia, and Central and South America and the Caribbean. The Permanent Forum has a mandate to discuss Indigenous Peoples' issues relating to culture, economic and social development, education, environment, health and human rights. Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples mandates the Permanent Forum to promote respect for and full application of the Declaration and to follow up on its effectiveness.

The Permanent Forum meets each year for ten working days. The annual sessions provide an opportunity for Indig-

enous Peoples from around the world to have direct dialogue with Member States, the United Nations system, including human rights and other expert bodies, as well as academics and NGOs. The Permanent Forum prepares a report of the session with analysis on priority issues, as well as recommendations to Member States, the UN system and Indigenous Peoples to advance implementation of the UN Declaration on the Rights of Indigenous Peoples. The Forum has grown to be recognised as the main global forum for global discourse and dialogue on rights of Indigenous Peoples.

The Indigenous Peoples and Development Branch, in the Division for Inclusive Social Development (DISD) of the Department of Economic and Social Affairs (DESA), is the substantive office on Indigenous Peoples at UN HQ. It supports the work of the Permanent Forum; follows up on the 2014 World Conference on the Indigenous Peoples, with a particular focus on the system wide action plan; and supports Member States in their implementation of the UN Declaration on the Rights of Indigenous Peoples and the 2030 Agenda for Sustainable Development.

## **International expert group meeting on Conservation and the Rights of Indigenous Peoples**

In January 2019, the United Nations Department of Economic and Social Affairs (UN DESA) organised a three-day international expert group meeting on Conservation and the Rights of Indigenous Peoples, as recommended by UNPFII at its 2018 annual session.<sup>1</sup> To engage with Indigenous Peoples in their regions and to facilitate the participation of Indigenous Peoples, the meeting was held at the United Nations Office at Nairobi in Kenya.

The meeting highlighted the need for a people-centred conservation model that collaborates with Indigenous Peoples and respects their right to self-determination, including the right to free, prior and informed consent (FPIC). Participants discussed Indigenous Peoples' experiences of forceful evictions, criminalization of traditional liveli-

hoods and the militarization of conservation, as well as good practices of co-management. The meeting highlighted the need for recognizing Indigenous Peoples' traditional knowledge and institutions, and the role they play in sustainably managing their environment. Several proposals were made to engage Member States and global conservation organizations in the monitoring and evaluation of conservation activities and projects and its effect on Indigenous Peoples, as well as the development of global standards on conservation and human rights.<sup>2</sup>

The meeting was attended by Indigenous experts, members of the Permanent Forum, the Special Rapporteur on the rights of Indigenous Peoples and the Chair of the Expert Mechanism, UN entities, governmental representatives, academics and NGOs. The report of the expert group meeting informed the discussions at the 2019 session of the Permanent Forum.

## **2019 session of the Permanent Forum on Indigenous Issues**

The Permanent Forum held its 18th session from 22 April to 3 May 2019 at the United Nations Headquarters in New York. The main theme was the Generation, Transmission and Protection of Traditional Knowledge. Panellists and participants highlighted the gains and achievements as well as the need to continue to address this key priority issue. The Forum stated that:

*Although there is increasing awareness in international forums related to climate change, environmental degradation, food security and genetic resources, as well as science, technology and innovation, of the importance of traditional knowledge, Indigenous Peoples' traditional knowledge remains threatened by misappropriation, misuse and marginalization. Urgent action is needed to ensure that such knowledge systems do not disappear. Furthermore, indigenous knowledge should be recognized as an equal source of information in the inter-scientific dialogue to meet the challenges mentioned above.<sup>3</sup>*

The Permanent Forum also facilitated dialogue around topics related to Indigenous languages, the 2030 Agenda for Sustainable Development, follow up to the World Conference on Indigenous Peoples, and conservation. Human rights and the continuing violence against Indigenous Peoples human rights defenders featured prominently in the dialogue on human rights.<sup>4</sup> The Forum continued its practice of conducting regional dialogues on the priority issues of the seven Indigenous socio-cultural regions. The regional dialogues brought together representatives of Member States and Indigenous Peoples, with the members of the Forum moderating the discussions to draw out key concerns and offer possible solutions and good practices as a way forward. The Permanent Forum also conducted interactive policy dialogues with Member States, the UN system and Indigenous Peoples' organizations to follow-up on actions taken or planned to implement the United Nations Declaration on the Rights of Indigenous Peoples.

Press conferences and in-depth interviews with Indigenous representatives and Permanent Forum members drew out key challenges faced by Indigenous Peoples in different countries around the world. An Indigenous media zone was organised by UNDESA in cooperation with the Department of Global Communications and other partners, to provide a space for Indigenous representatives to discuss and share widely through e-communication tools including in their own languages.

The 2019 Forum was attended by representatives of Governments, Indigenous Peoples' organizations and entities, parliaments, human rights institutions, intergovernmental and United Nations entities, academics and non-governmental organizations. Approximately 2,000 people from more than 70 countries attended the 18th session.<sup>5</sup>

## **International Year of Indigenous Languages**

Drawing on the findings of a 2016 DESA organised expert meeting on indigenous languages, the Permanent Forum on Indigenous Issues recommended that the UN declare an international year to mobilise attention and action on preserving indigenous languages. Following on from this, the UN General Assembly resolution (71/178) of January 2017 proclaimed 2019 as the International Year of Indigenous Languages in recognition of the urgent need to preserve, promote and revitalise en-

dangered languages.<sup>6</sup> The International Year was launched with events at UNESCO headquarters in Paris on 28 January 2019 and a High-Level meeting of the General Assembly on 1 February at UN Headquarters in New York.

The International Year was successful in raising awareness on the situation of Indigenous languages and the need for urgent action, inspiring events in all regions across the world. The Strategic Outcome Document of the 2019 International Year of Indigenous Languages identified eight conclusions and made specific recommendations regarding each conclusion. These conclusions reflect the importance for language preservation and promotion for Indigenous Peoples as well as all other peoples, not only to protect their identities and cultures but also to promote peace development and good governance in all societies. The conclusions also note that existing mechanisms do not reflect the needs of Indigenous language speakers and that Indigenous language users have been left behind. States, academia, the private sector, NGOs and Indigenous Peoples themselves must do more to protect and promote Indigenous languages. Finally, the Strategic Outcome Document supported the proclamation of an International Decade on Indigenous Languages.

Considering the rapid rate of disappearance of Indigenous languages and the fact that their reclamation and revitalization will require a sustained effort by all stakeholders, the General Assembly proclaimed an “International Decade on Indigenous Languages” 2022-2032 based on a Permanent Forum recommendation<sup>7</sup> and the preliminary results of the International Year, highlighting that a sustained effort is needed to preserve the world’s biodiversity through Indigenous languages. A closing event was organised by the President of the General Assembly on 17 December, calling for continued action and attention to reclaim and revitalise Indigenous languages.

## **International Day of the World’s Indigenous Peoples 2019 (9 August)**

The International Day of the World’s Indigenous Peoples is celebrated annually on 9 August at the United Nations Headquarters in New York. In 2019 the theme was Indigenous languages, to promote the Internation-

al Year on Indigenous Languages. The event brought together Indigenous Peoples' organizations, United Nations agencies, Member States, civil society and relevant stakeholders.

The aim of the event was to highlight the critical need to revitalise, preserve, and promote Indigenous languages and share good practices through a panel of experts, followed by storytelling and a presentation of innovative initiatives on Indigenous languages. The event also showcased creative initiatives including a map of Indigenous languages, a virtual storyteller, a game and videos on Indigenous languages at the United Nations visitor's lobby.

## **2030 Agenda**

2019 was the first time that two high-level political forums were organised – at ECOSOC and at the General Assembly, as called for in the outcome document of the United Nations Conference on Sustainable Development (Rio+20), entitled “The Future We Want”. At the July 2019 High-level Political Forum at UN headquarters in New York, an in-depth review of progress was undertaken on six of the Sustainable Development Goals 4, 8, 10, 13, 16 and 17, where Member States presented information on progress made at the national and sub-national level, as well as challenges and lessons learned. Thirteen out of 47 Member States referenced Indigenous Peoples in their voluntary national reviews, emphasizing that the key to successful implementation of the 2030 Agenda and the principle of leave no one behind centred on symbiotic partnerships forged with civil society, the private sector, academia, relevant State entities, and Indigenous communities. In the summary of the July 2019 High-level Political Forum, the President of the Economic and Social Council, stressed that legal barriers and discrimination were among the biggest challenges to reducing inequality. Groups including Indigenous Peoples, inter alia, were at risk of being left behind if barriers to their full and equal participation in society were not removed. On the issue of science policy interface, Governments, academia, the private sector, civil society and others were urged to come together to invest in science for sustainable development – and to consider mission-driven and innovative approaches that complemented traditional research, as well as the incorporation of Indigenous, local and lay knowledge.

At the 2019 Sustainable Development Goals Summit, held in Sep-

tember at the UN headquarters in New York, Heads of State and Government followed up and reviewed the progress in the implementation of the 2030 Agenda and the Goals. There was wide recognition that greater urgency was needed to reach the Goals. In response, Member States adopted a political declaration and unanimously pledged to mobilise financing, enhance national implementation and strengthen institutions to achieve the sustainable development objectives by the 2030 target date. United Nations Secretary-General António Guterres issued a global call for a decade of action to mobilise for the 2030 Agenda and announced annual platforms to drive the progress of the Goals, with the first scheduled for September 2020.

Within the context of the 2030 Sustainable Development Agenda and leaving no one behind, the Indigenous Peoples and Development Branch/Division for Inclusive Social Development of the Department of Economic and Social Affairs, has been providing technical support for Member States in their implementation of the United Nations Declaration on the Rights of Indigenous Peoples. In 2019, UN-DESA worked closely with the Governments of Uganda and Namibia, providing capacity development and policy advice. This support is provided within the framework of the System-Wide Action Plan on the Rights of Indigenous Peoples, as well as the 2030 Sustainable Development Agenda, and includes policy and legislative review, capacity development for government officials and indigenous representatives and the organization of dialogues that bring together Indigenous representatives, government officials and relevant stakeholders. This support is provided by UN-DESA at the request of governments from developing countries and it is always provided within the context of the Declaration on the Rights of Indigenous Peoples. UN-DESA will continue to provide support to Uganda and Namibia in 2020 as well as other countries when additional requests are received. UN-DESA also provides support to Resident Coordinators and United Nations Country Teams on matters related to Indigenous Peoples.

## **System-wide Action Plan on the Rights of Indigenous Peoples**

The Inter-Agency Support Group (IASG) for indigenous issues consists of more than 40 UN entities and other international organizations and



has the main task of implementing the System-wide Action Plan on the Rights of Indigenous Peoples (SWAP). The SWAP was officially launched by the United Nations Secretary-General in 2016, at the 15th Session of the Permanent Forum. IPDB/SPFII is the permanent co-chair of the Inter-Agency Support Group and plays a central role in the implementation of the SWAP. Throughout 2019, UN-DESA supported the implementation of the United Nations Declaration on the Rights of Indigenous Peoples through national action plans in Namibia and Uganda, with the active cooperation of other IASG colleagues.

The annual IASG meeting was hosted by the 2019 co-chair, the International Labour Organization (ILO), in cooperation with IPDB, and held from 11-13 September at ILO Geneva headquarters. In addition to United Nations representatives, the meeting was attended by the Chairs of PFII, EMRIP and the SRIP, representatives of the ILO tripartite system (Permanent Mission of Mexico, International Trade Union Confederation and International Organization of Employers) as well as the Indigenous Peoples Major Group for Sustainable Development. The meeting focused on ways forward to strengthening the implementation of the United Nations Declaration on the Rights of Indigenous Peoples further to relevant thematic discussions. The key outcome of the IASG annual meeting was to identify synergies and opportunities for greater collaboration, including at the regional level.

As follow up, the IASG co-chairs and other UN representatives met with the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights in Banjul, the Gambia in October 2019, to discuss cooperation and collaboration. The Chair of the PFII also participated at the meeting to provide input and support.

## **International expert group meeting on Peace, Justice and Strong Institutions (November 2019)**

In November 2019, UN DESA organised a three-day international expert group meeting in Chiang Mai, Thailand. The theme of the meeting was Peace, Justice and Strong Institutions: The Role of Indigenous Peoples in Implementing Sustainable Development Goal 16, which is also the special theme of the 2020 session of the Permanent Forum on Indig-

enous Issues. This followed the practice of organizing expert meetings outside of UNHQ, to bring the UN closer to Indigenous Peoples in the different regions, and to bring in the UN Country Teams.

SDG 16 aims to promote peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable and inclusive institutions at all levels. Participants discussed the impacts of conflicts on Indigenous Peoples and the challenges related to their participation in peacebuilding and conflict resolution, the recognition of their institutions, good practices, protection of indigenous human rights defenders, access to justice for remote communities, lessons learned from drafting of peace accords and their implementation and finally, the inclusion of Indigenous Peoples' representatives and institutions at different levels.<sup>8</sup> Gaps in the implementation of the United Nations Declaration on the Rights of Indigenous Peoples and opportunities to identify further areas where Indigenous Peoples can contribute were also discussed.

Based on the significant inputs, proposals and recommendations were made to ensure the recognition of Indigenous Peoples' rights and institutions in the context of SDG 16. The meeting was attended by Indigenous experts, members of the Permanent Forum, the Special Rapporteur on the rights of Indigenous Peoples and Expert Mechanism, UN entities including the country team, academia and NGOs. It was organised by UNDESA/IPDB in close cooperation with the University of Chiang Mai, and the Asia Indigenous Peoples Pact. The report of the expert group meeting will inform the discussions at the 2020 session of the Permanent Forum under the same theme.

## **Members of the Permanent Forum on Indigenous Issues for the 2020-2022 term**

The Permanent Forum on Indigenous Issues for the 2020 to 2022 term are as follows:

- Mr. Aleksei Tsykarev (Russian Federation)
- Ms. Anne Nuorgam (Finland)\*
- Mr. Bornface Museke Mate (Namibia)
- Mr. Darío José Mejía Montalvo (Colombia)

- Mr. Geoffrey Roth (United States of America)
- Mr. Grigory Evguenievich Lukiyantsev (Russian Federation)
- Ms. Hannah McGlade (Australia)
- Ms. Hindou Oumarou Ibrhaim (Chad)
- Ms. Irma Pineda Santiago (Mexico)
- Ms. Lourdes Tibán Guala (Ecuador)\*
- Mr. Phoolman Chaudhary (Nepal)\*
- Mr. Simón Freddy Condo Riveros (Bolivia)
- Mr. Sven-Erik Soosaar (Estonia)
- Ms. Tove Søvndahl Gant (Denmark)
- Mr. Vital Bambanze (Burundi)
- Ms. Xiaolan Zhang (China)\*

\*Nominated for a second term.

Please visit the UNPFII website for more information about the members and the selection process: [www.un.org/indigenous](http://www.un.org/indigenous).

## Notes and references

1. E/2018/43 – E/C.19/2018/11 p. 4
2. For more information, see the Report of the EGM at E/C.19/2019/7
3. E/2019/43 at p. 6
4. E/C.19/2019/7 at p. 1
5. E/C.19/2019/INF/1
6. See the General Assembly's Resolution at A/RES/71/178 p. 2
7. E/2019/43 at p. 8
8. See the Indigenous Peoples and Development Branch's concept note at [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/09/EGM-2019-Concept-Note\\_18.09.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/09/EGM-2019-Concept-Note_18.09.pdf)

*This article was elaborated by the **Secretariat of the Permanent Forum***



# UN Special Rapporteur on the Rights of Indigenous Peoples

The Special Rapporteur on the rights of Indigenous Peoples is one of the 56 “special procedures” of the United Nations Human Rights Council. The special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. The Special Rapporteur has a mandate to promote the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and relevant international human rights instruments; examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of Indigenous Peoples; to promote best practices; to gather and exchange information from all relevant sources on violations of the human rights of Indigenous Peoples; and to formulate recommendations and proposals on measures and activities to prevent and remedy violations of those rights.

She is also mandated to work in coordination with other special procedures and subsidiary organs of the Human Rights Council (HRC), the human rights treaty bodies, relevant UN bodies and regional human rights organisations. In accordance with this mandate, the Special Rapporteur can receive and investigate complaints from Indigenous individuals, groups or communities, conduct thematic studies, undertake country visits and make recommendations to governments and other actors. The first Special Rapporteur on the rights of Indigenous Peoples, Prof. Rodolfo Stavenhagen, was appointed by the then Commission on Human Rights in 2001, serving two three-year periods which ended in 2008. The second Special Rapporteur, Prof. James Anaya, was appointed by the HRC in 2008 and held

the mandate until 2014. Ms. Victoria Tauli-Corpuz from the Philippines was appointed as the third Special Rapporteur by the HRC and assumed her position in June 2014. She is the first woman and the first person from the Asian region to assume the position.

In September 2019, the HRC resolution renewed the mandate of the Special Rapporteur, including a request for the mandate-holder to participate in relevant international dialogues and policy forums on the consequences that climate change has on Indigenous Peoples, to undertake thematic research and to develop cooperation dialogue with States, intergovernmental organizations, civil society and other stakeholders on effective and sustainable practices.<sup>1</sup> The resolution also urges Governments to address all allegations and to condemn reprisals against UN mandate holders working on the rights of Indigenous Peoples. Ms. Victoria Tauli-Corpuz has herself been the victim of acts of reprisals in the Philippines.<sup>2</sup>

Throughout 2019, the Special Rapporteur continued to carry out work within her four principal work areas: the promotion of good practices; responding to specific cases of alleged human rights violations; conducting country visits; and undertaking thematic studies.

## 2019 thematic studies

Each year, the Special Rapporteur presents two thematic reports, one to the Human Rights Council (HRC) and one to the General Assembly (UNGA).

The Special Rapporteur submitted her annual thematic HRC report on the issue of the rights of Indigenous Peoples and justice in September 2019.<sup>3</sup> The report examines Indigenous Peoples' access to justice, both through the ordinary justice system and through their own Indigenous justice mechanisms, and analyses existing interaction and harmonisation between the two systems and the opportunities offered by legal pluralism.

The report observes that effective access to justice for Indigenous Peoples implies access to both the State legal system and their own systems of justice. Without accessible State courts or other legal mechanisms through which they can protect their rights, Indigenous Peoples are vulnerable to actions that threaten their lands, natural resources, cultures, sacred sites and livelihoods. At the same time, the recognition of Indigenous Peoples' own justice systems is essential to ensure their rights to maintain their autonomy, customs and traditions.

The Special Rapporteur recommends, *inter alia*, the support to Indigenous Peoples in their efforts to seek recognition of their justice systems, with a view to advancing UN Sustainable Development Goal (SDG) 16 of providing access to justice for all.<sup>4</sup> As a starting point, States should explicitly recognise, in constitutional or other legal provisions, the right of Indigenous Peoples to maintain and operate their own legal system and institutions. Consultations with Indigenous leaders and communities should be undertaken in order to better understand their systems, and to subsequently design, jointly with Indigenous representatives, engagement strategies. Measures for the adequate harmonization and interaction of both justice systems have to be adopted.

Moreover, States should include compulsory training on Indigenous justice in the formal training programs for judges, lawyers, prosecutors and law enforcement officials, which recognise the use of Indigenous judicial systems as a right. States and Indigenous justice systems should develop and institutionalise mechanisms and processes for exchanging information and mutual capacity-building with a view to operationalise legal pluralism and provide effective redress. Stronger links between State and Indigenous laws and institutions, based on mutual respect and understanding, such as integrated review bodies with representation of Indigenous and non-indigenous system judges, could contribute to ensuring respect for human rights in both Indigenous and State legal systems.

The second thematic study developed in 2019 and submitted to the UN General Assembly, dealt with the issue of the right of Indigenous Peoples to autonomy or self-government as a component of their right to self-determination.<sup>5</sup> The report comments on existing legal and other arrangements and processes reflective of or conducive to the recognition and implementation of the right of Indigenous Peoples to autonomy or self-government, with a view to identify positive elements as well as

limitations and challenges, and to provide some recommendations to move forward in the realization of these fundamental collective rights.

According to the Special Rapporteur, the recognition of the right of Indigenous Peoples to self-determination has had a positive and transformative influence in international law. Moreover, it also has a transformative impact when implemented at the national level. The adequate implementation of this right implies changes in the general governance of States, which in turn leads to constructive results in terms of human rights compliance, remedy of racism, discrimination and inequality, more democratic and inclusive societies, and enhanced legitimacy of the State itself. The full implementation of the right of Indigenous Peoples to self-determination is also at the core of redress for past and ongoing human rights violations and the foundation for reconciliation.

The report examines a variety of scenarios in which Indigenous autonomy or self-government is happening, including, *inter alia*, countries with no recognition of Indigenous Peoples, States with historic and contemporary treaty relations with Indigenous Peoples, Indigenous Peoples living in isolation, nation-building processes based on plurinationality, or instances of recognition of certain aspects of the right to autonomy or self-government. It concludes that all the steps ahead adopted by States in terms of realizing these rights have merit and should be pursued, although, in most cases the existing arrangements have not resulted in full compliance with these rights. Thus, Indigenous Peoples can generally only exercise what could be termed as ‘fragmented self-determination’.

The report states that the fulfilment of right of Indigenous Peoples to self-determination calls for the establishment of a true intercultural dialogue, that takes into account Indigenous Peoples’ own concepts of autonomy or self-government. UNDRIP, as a consensus framework, provides the best basis to start or continue an intercultural dialogue on how to implement Indigenous Peoples’ rights in an environment of reciprocal cooperation.

The Special Rapporteur is developing a report on the situation of Indigenous Peoples in Asia. In November 2019, the Special Rapporteur, in cooperation with the OHCHR, and with the support of the Asia Indigenous Peoples Pact (AIPP) and the Indigenous Peoples International Centre for Policy Research and Education (Tebtebba Foundation)

convened a regional consultation with representatives of Indigenous Peoples from twelve Asian countries. Among the objectives of the consultation were the exchange of experiences and a discussion regarding the current challenges faced by Indigenous Peoples in the region. In parallel, the Special Rapporteur published a public call for inputs to develop a report on the situation in Asia, following up on the reports developed by her predecessors in 2013 and 2007.<sup>6</sup> The Asia report will focus on the issues of lands, territories and resources, human rights defenders, business and human rights, conservation and environmental rights. Particular emphasis will also be placed on the impact of climate change on the enjoyment of economic, social and cultural rights and the critical role played by Indigenous Peoples in protecting the environment, including through traditional knowledge.

## Country visits

In 2019, the Special Rapporteur was able to undertake official missions to an Asian and African country. From 8-16 April 2019, she visited Timor-Leste, where she assessed a number of issues affecting Indigenous Peoples, including customary and formal justice systems, community lands and territories, measures related to conservation and climate change adaptation and mitigation, and enjoyment of economic, social and cultural rights.<sup>7</sup>

The Special Rapporteur welcomed Timor-Leste's commitment to a pluralistic legal system which recognised customary justice. During the visit, she learnt about the importance of customary justice for resolving disputes between individuals and communities and how such practices play a key role in conservation and natural resources management. Participatory community-determined rules and practices, such as the decision to enforce temporary no-fishing zones and mangrove reforestation measures, have translated into important biodiversity gains which can serve as inspiring examples for other countries.

She expressed concerns, however, over the ongoing land registration process in Timor-Leste, of the potential impacts of large-scale state-sponsored extractive activities, illiteracy and the lack of mother-tongue education as well as the high rate of chronic malnutrition among children. Among her recommendations, she called for increased



dialogue between the formal and customary justice systems in order to harmonise their coexistence and strengthen the SGD objective of providing access to justice for all. She also called for review of the land registration and the expansion of mother-tongue multilingual education.

From 14-24 October, the Special Rapporteur undertook a mission to the Republic of the Congo. During her visit, she held meetings in Brazzaville, visited Indigenous communities in several parts of the Sangha department, and met Indigenous representatives from the Lekoumou, Pool and Plateaux departments. In her end of mission statement,<sup>8</sup> she underlined the importance of the adoption of a national law on the rights of Indigenous Peoples in 2011,<sup>9</sup> but she remarked there is a long way to go for its actual implementation.

Among the main challenges she could observe during her visit, was the significant discrimination, exclusion and marginalisation that Indigenous Peoples suffer in the country, which impacts their access to health services, education, employment and political participation. She also stressed the negative impacts on the rights of Indigenous Peoples of measures to conserve nature and wildlife, which are taken without their participation. Such measures result in deprivation of their own means of subsistence and traditional way of life, while making them victims of violence and prosecution on charges of poaching. In this sense, the Special Rapporteur recommended that the government design and implement national actions that recognise and strengthen Indigenous Peoples' culture and traditional livelihoods.

The two reports from the country visits to Timor-Leste and the Republic of the Congo will be presented to the HRC in September 2020.

## Communications

In 2019, the Special Rapporteur issued more than 100 communications to more than 30 countries and to other entities, such as private corporations and intergovernmental organizations, in response to information received on alleged violations of the human rights of Indigenous Peoples.<sup>10</sup> Cases addressed are included in the special procedures' joint communications report, which is submitted to each session of the HRC and in the special procedures communications database.<sup>11</sup> She also issued press releases on cases of urgency or special concern.<sup>12</sup>

## **Collaboration with other UN specialised entities and regional human rights bodies**

The Special Rapporteur continued her collaboration with the Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). She participated in the annual sessions and coordination meetings of both bodies. During the sessions, she held bilateral meetings with delegations of Indigenous Peoples and interested governments to receive information and discuss issues within the scope of her mandate.

The Special Rapporteur participated in an International Expert Group Meeting on conservation and the rights of Indigenous Peoples held in Nairobi from 23-25 January 2019, arranged by the UNPFII.

In February 2019, she co-hosted a meeting in Mexico City, together with UNPFII, EMRIP, the Rapporteurship on Indigenous Peoples of the Inter-American Commission on Human Rights and IWGIA on the issue of Indigenous autonomies.

In July 2019, she participated, together with UNPFII and EMRIP, in discussions with ILO as part of the commemoration of the 30th anniversary of the entry into force of ILO Convention 169 in Geneva. In September 2019, the Special Rapporteur participated in Geneva in the UN Inter Agency Support Group on Indigenous Issues (IASG) to further the integration of Indigenous issues into the UN system' agenda and the implementation of the UN Declaration on the Rights of Indigenous Peoples.

In November 2019 she contributed to the Expert Group Meeting organised by the UNPFII on Sustainable Development Goal 16 on access to justice which took place at Chiang Mai University in Thailand.

In January 2019, she was invited by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to participate as a keynote speaker in the launch of 2019 as the International Year of Indigenous Languages, and also participated in the 4th Andean Meeting on Peace (Quito, 3-4 July) on the same issue. On 7 August 2019, she issued a media statement, jointly with EMRIP and UNPFII, supporting the call for the international decade of Indigenous languages.

The Special Rapporteur has continued cooperating with other special procedures, including through joint communications, as well as

with human rights treaty bodies. She submitted a written contribution to the forthcoming General Comment on land rights by the Committee on Economic, Social and Cultural Rights. She also maintained her engagement with UN agencies, with a view to promote good practices in their work with regards to the rights of Indigenous Peoples.

## Other activities

The Special Rapporteur carried out numerous academic visits along the year, including to Australia, Germany, Kenya, Mexico and the United States of America, and provided technical advice at the request of Member States. She continued to engage as a priority on international conferences and meetings of relevance to the rights of Indigenous Peoples and the environment, such as the session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Madrid in December 2019. She also participated in a conference in Berlin on the threat conservation poses to Indigenous Peoples in Africa.

Following the presentation of her thematic HRC report on access to justice in the ordinary and Indigenous justice systems, she was invited to present the findings to several events arranged by the International Development Law Organization (IDLO) and the International Commission of Jurists (ICJ).

She has developed several comments on laws and policies regarding Indigenous Peoples' rights such as the draft consultation law in Honduras, principles on consultation and consent and the law to establish the National Institute of Indigenous Peoples (INPI) in Mexico, the Presidential Provisional measure 870 in Brazil and the Law amending the vacant, fallow and virgin lands management of Myanmar.<sup>13</sup> She has provided *amicus curiae* and expert testimony for court procedures, as in the case of Santa Clara Uchunya under consideration by the Constitutional Court of Peru.<sup>14</sup>

She also continued engaging in different activities related to the issues of Indigenous human rights defenders, Indigenous Peoples and conservation, and the rights of Indigenous Peoples in isolation and recent contact. On this issue, she participated in the preparatory meeting for the Amazon Synod organised by REPAM at Georgetown University,

Washington, and was invited to address the Synod at the Vatican in October 2019.

As requested by her mandate, the Special Rapporteur has paid particular attention to the rights of Indigenous women and girls. She has been involved in the activities related to the celebration of the 25th anniversary of the Fourth World Conference on Women: Action for Equality, Development and Peace, which will culminate in a high-level meeting in 2020 on the theme of realization of gender equality and empowerment of all women and girls.

The Special Rapporteur has established a website where, in addition to the mandate page of the OHCHR,<sup>15</sup> her reports, statements and other activities can be accessed at [www.unsrvtaulicorpuz.org](http://www.unsrvtaulicorpuz.org).

## Notes and references

1. A/HRC/RES/42/20
2. See The Indigenous World 2018
3. A/HRC/42/37
4. Office of the United Nations High Commissioner for Human Rights (OHCHR). "Statement of Ms. Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples at the Human Rights Council 42nd Session". 18 September 2019: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25063&LangID=E>
5. A/74/149
6. 2013 (A/HRC/24/41/Add.3) and in 2007 (A/HRC/6/15/Add.3).
7. End of mission statement available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24492&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24492&LangID=E).
8. Press release: <http://unsr.vtaulicorpuz.org/site/index.php/en/news/notes/310-rep-congo> End of mission: <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/308-end-mission-rcongo>
9. Act No. 5-2011 on the promotion and protection of the rights of Indigenous populations of the Congo
10. For details of all communications sent and information received under the mandate, see <https://spcommreports.ohchr.org>
11. See Office of the United Nations High Commissioner for Human Rights (OHCHR), "Special communications report" at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>
12. For more information on the latest news from the Office of the United Nations High Commissioner for Human Rights (OHCHR), see: [www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR\\_Indigenous\\_People](http://www.ohchr.org/en/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Indigenous_People)
13. Office of the United Nations High Commissioner for Human Rights (OHCHR). "Comments on legislation and policy". Accessed 13 February 2020: <https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/LegislationAndPolicy.aspx>
14. Office of the United Nations High Commissioner for Human Rights

(OHCHR). "Amicus curiae and expert testimony". Accessed 13 February 2020: <https://www.ohchr.org/EN/Issues/IPeoples/SRIIndigenousPeoples/Pages/ExpertTestimony.aspx>

15. Office of the United Nations High Commissioner for Human Rights (OHCHR). "Special Rapporteur on the rights of indigenous peoples". Accessed 13 February 2020: <https://www.ohchr.org/en/issues/ipeoples/srIndigenouspeoples/pages/sripeoplesindex.aspx>

**Christine Evans** and **Claire Morclette** support the mandate of the Special Rapporteur on the rights of Indigenous Peoples at the United Nations Office of the High Commissioner for Human Rights.

**Patricia Borraz** is an external researcher supporting the mandate.

**Contact:** [Indigenous@ohchr.org](mailto:Indigenous@ohchr.org)



# World Intellectual Property Organization (WIPO)

Indigenous Peoples have rights over their traditional knowledge (TK), traditional cultural expressions (TCEs) and genetic resources (GRs), including associated intellectual property rights, as recognised in the UN Declaration on the Rights of Indigenous Peoples, Article 31. However, Indigenous Peoples' intellectual property rights do not comfortably fit within, and often lack protection under, conventional intellectual property laws. In the absence of effective legal recognition and protection, Indigenous Peoples' intangible cultural heritage is often treated as being in the "public domain" and misappropriation of their intellectual property is widespread and ongoing.

The World Intellectual Property Organization (WIPO), a UN agency with 192 Member States, provides a forum for negotiating new international intellectual property laws. In 2000, amid growing concerns about biopiracy, and with other international fora already engaging with Indigenous Peoples' intellectual property-related issues, WIPO Member States established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Since 2010, the IGC has conducted formal, text-based negotiations aimed at developing legal instruments for the protection of Indigenous Peoples' and local communities' TK, TCEs and GRs. The IGC concluded its 40th session in June 2019.

## Overview of IGC negotiations

Three separate legal instruments are under negotiation at the IGC, one dealing with each subject matter: TK, TCEs and GRs.<sup>1</sup> Generally speaking, TK refers to the technical know-how, skills and practices that are developed, utilised and passed down within a community's traditional context. Examples include medicinal, agricultural and ecological knowledge, as well as methods for doing things such as weaving and house construction. TCEs, also known as expressions of folklore, are the various forms in which traditional culture is expressed, such as music, dance, stories, art, ceremonies, designs and symbols. GRs are genetic material having actual or potential value found in plants, animals or micro-organisms. Examples include medicinal plants, agricultural crops and animal breeds. GRs found in nature are not creations of the mind and are thus not intellectual property. Intellectual property issues are associated with GRs, however, for example in the case of inventions utilizing GRs or where TK is associated with the use of GRs.

Although the three subject matters are related and are viewed by Indigenous Peoples in a more holistic, integrated fashion, in the intellectual property context TK, TCEs and GRs raise distinct concerns and may require different mechanisms for their protection. Nevertheless, there are substantial cross-cutting issues. At the suggestion of the IGC Chair, recent sessions (IGC 37-40) have productively considered TK and TCEs and their corresponding draft texts in tandem.

The IGC held two sessions in 2019 at the WIPO headquarters in Geneva, Switzerland, both focusing on discussion and negotiation of key outstanding issues in the TK and TCEs texts. IGC 39 took place from 18 to 22 March and IGC 40 from 17-21 June.

## Indigenous Peoples' participation

Indigenous Peoples participate in the IGC as other observers do but they also participate collectively through an *ad hoc* Indigenous Caucus, which serves a special function within the negotiations.<sup>2</sup> IGC Member States frequently comment on the vital role of Indigenous Peoples in the deliberations, and acknowledge the necessity of their involvement for

the legitimacy of the IGC's work. Nonetheless, Indigenous participation remains limited. During the 2019 IGC sessions, active participation in the Indigenous Caucus averaged around 15 to 20 persons per session.

Like other observers, the Indigenous Caucus may make interventions from the floor of the IGC and may propose modifications to the text under negotiation. Proposed modifications are incorporated into the draft text if they receive the support of at least one Member State. In addition the Caucus has a role beyond that of other observers, including the ability to nominate representatives to participate in the various IGC working methodologies, such as *ad hoc* expert groups, informals and small contact groups.<sup>3</sup>

Before each IGC session, the WIPO Secretariat facilitates an Indigenous Consultative Forum to brief the Indigenous Caucus on the relevant documents and key issues to be addressed in the upcoming negotiations. The Caucus meets daily during the IGC sessions, often multiple times per day, to review the revised text, discuss negotiation strategy and develop interventions for presentation in plenary. The Caucus also meets with the IGC Chair, engages with Member State delegates to exchange information and seek support for Caucus text proposals, and delivers opening and closing statements.

In further acknowledgment of the critical value of the contribution of Indigenous Peoples' experiences and viewpoints, each IGC session commences with a panel of Indigenous experts invited and funded by WIPO to present on topics relevant to the negotiations.

## The WIPO Voluntary Fund

In 2005, WIPO Member States created a Voluntary Fund to support the participation of Indigenous Peoples and local communities in the IGC sessions. The Fund depends exclusively on voluntary contributions from governments, NGOs and other private or public entities and is frequently insufficient. For the March 2019 (IGC 39) session, the Fund lacked resources to support the participation of even a single Indigenous representative. The situation improved with a contribution from Canada of 25,000 Canadian dollars, which allowed the Fund to support four Indigenous representatives to attend the June 2019 session (IGC 40). In September 2019, the governments of Finland and Germany



pledged contributions to the Fund of 15,000 euros each. To address the ongoing need for effective Indigenous participation, the United Nations Permanent Forum on Indigenous Issues has called upon WIPO to draw funds from its core budget for this purpose.<sup>4</sup>

## TK and TCEs text negotiations

The 2019 IGC sessions were the final two of four sessions devoted to TK and TCEs under the IGC's 2018-2019 work programme. The 2019 negotiations focused on four cross-cutting issues: (1) objectives, (2) subject matter, (3) scope of protection and (4) exceptions and limitations. The draft texts are heavily bracketed, with numerous alternative formulations of the various provisions, reflecting the diverging positions of Member States. The IGC Chair encouraged Member States to narrow the gaps between their positions, and to work toward a consensus so as to reduce the number of alternatives and bracketed language in the texts.

"Objectives" refers to the intentions and purposes to be achieved by the instruments. While many Member States articulate support for objectives aimed at protecting TK and TCEs and preventing their misappropriation, some Member States, such as Japan and the United States, prefer objectives that support the use of TK and TCEs within the intellectual property system, and emphasizing the protection of innovation and a vibrant public domain.<sup>5</sup> The Indigenous Caucus took the position that it is TK and TCEs that require protection not the public domain, and that all references to the public domain should be eliminated.<sup>6</sup> Agreement could not be reached, and the reference to the public domain remains in an alternative "objectives" provision in the texts.

"Subject matter" relates to what is to be covered by the instruments, including defining TK and TCEs and specifying eligibility criteria to determine which TK and TCEs are to be protected. One continuing issue of contention is whether a temporal component – requiring TK/TCEs to have been in existence for some period of time, e.g., 50 years or five generations before being subject to protection – should be included in the eligibility criteria. Many Member States, as well as the Indigenous Caucus, object to such a requirement because "traditional" does not mean "old"; rather, it is the development of the TK and TCEs within the traditional community and the linkage between the TK and TCEs and

the community that is important. Some Member States acknowledged a linkage between the temporal requirement and the objective of protecting the public domain.<sup>7</sup> Proponents of the temporal component, including Italy, Japan and the United States,<sup>8</sup> maintained their position that such a requirement is necessary and it remains in the draft texts as an alternative provision.

Concerning “scope of protection”, one key issue is whether there should be a “tiered approach” offering differentiated levels of protection based on the nature and attributes of the TK/TCEs (e.g., whether they are “secret” or “sacred”), the level of control retained by the TK/TCEs holders and/or the degree of diffusion of the TK/TCEs. Given that diffusion and use of TK/TCEs may be without the free, prior and informed consent of Indigenous Peoples and/or contrary to their customary laws, the Indigenous Caucus’ position is that any tiered approach must include a mechanism for Indigenous Peoples to protect their TK and TCEs regardless of the level of control or degree of diffusion.<sup>9</sup> The current TK and TCEs texts each contain three alternative “scope of protection” provisions, one of which includes a formulation of such a mechanism.

“Exceptions and limitations” refers to the circumstances under which the protections afforded under the instruments could be suspended by Member States, e.g., when necessary to protect the public interest. A key outstanding issue, reflected in alternative text provisions, is whether to set out a framework of exceptions and limitations in the instruments or whether to leave flexibility for determination at the national level. The Indigenous Caucus’ position is that any exceptions and limitations must be extremely narrow and must conform to Indigenous customary laws.<sup>10</sup>

The TK and TCEs texts as revised at IGC 39 and 40 will serve as the basis for further negotiations in 2020-2021.

## **IGC’s 2020-2021 mandate and work programme**

The IGC operates under two-year mandates, requiring biennial renewal by the WIPO General Assembly. A key component of the negotiations at IGC 40 consisted of stocktaking and developing recommendations for the General Assembly with regard to the IGC’s renewal and future work. It was a significant positive achievement when Member States unani-

mously agreed on a proposed mandate and work programme. This consensus was particularly noteworthy in light of what occurred in the final session of the 2016-2017 biennium, when Member States were unable to reach agreement on a proposed mandate and work programme and had to leave the matter for resolution by the General Assembly.

At its 2019 meeting, the WIPO General Assembly approved the 2020-2021 mandate and work programme recommended by the IGC. The mandate directs the IGC to “continue to expedite its work, with the objective of finalizing an agreement on an international legal instrument(s) ...which will ensure the balanced and effective protection of” GRs, TK and TCEs.<sup>11</sup> The work programme provides for six negotiating sessions, four in 2020 and two in 2021.<sup>12</sup>

## Other decisions of IGC 40

In addition to the consensus on the 2020-2021 mandate and work programme, Member States at IGC 40 agreed on several other matters of consequence.

Particularly important for Indigenous Peoples, the IGC acted on two recommendations made by the UN Permanent Forum on Indigenous Issues. Indigenous representatives at the Forum’s 18th session, which had as its theme “traditional knowledge”, advocated for and received recommendations from the Forum related to the IGC negotiations.<sup>13</sup> Two of the Forum’s recommendations were immediately embraced and acted upon by Member States at IGC 40: the IGC requested that the WIPO Secretariat (1) organise an Indigenous Expert Workshop during the 2020-2021 biennium; and (2) commission an Indigenous expert to update the technical review of key issues in the three draft texts prepared in 2016 by former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in order to reflect current issues in the texts.<sup>14</sup>

In another significant development, Member States agreed that the draft GRs text prepared by the IGC Chair following the unsuccessful negotiations at IGC 36 – where consensus on forwarding that session’s GRs text revisions as the basis for future work could not be reached and the official text reverted back to the IGC 35 version – should be included as an IGC working document in future GRs negotiation sessions.<sup>15</sup>

Negotiations will continue at IGC 41 in March 2020 and will focus on the GRs text.<sup>16</sup>

## Notes and references

1. Current versions of the TK, TCEs and GRs texts as of the conclusion of the 2018-2019 biennium are attached as annexes to the IGC's 2019 report to the WIPO General Assembly: WO/GA/51/12.
2. Local communities' TK, TCEs and GRs are within the IGC's scope; however, this article focuses on Indigenous Peoples' participation. Local communities do not at this time have a separate observer group for participation in the IGC.
3. In each of these modalities, smaller working groups focus on identified negotiation issues and the results of their work are reported back in plenary. In recent instances, *ad hoc* expert groups included two Indigenous Caucus representatives, contact groups included one Caucus representative and informals included wider participation, with the Caucus able to nominate two speaking representatives and two non-speaking representatives.
4. See E/2019/43-E/C.19/2019/10, para. 9, available at <https://undocs.org/en/E/2019/43>.
5. See WIPO/GRTKF/IC/39/18, paras. 56 and 60, available at [https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_40/wipo\\_grtkf\\_ic\\_40\\_39\\_18.pdf](https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_39_18.pdf).
6. Ibid., para. 21.
7. Ibid., paras. 141 and 142.
8. Ibid., paras. 142, 143 and 150.
9. See WIPO/GRTKF/IC/40/20 Prov. 2, para. 24, available at [https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_40/wipo\\_grtkf\\_ic\\_40\\_20\\_prov\\_2.pdf](https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_20_prov_2.pdf).
10. Ibid.
11. See [https://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc\\_mandate\\_2020-2021.pdf](https://www.wipo.int/export/sites/www/tk/en/igc/pdf/igc_mandate_2020-2021.pdf).
12. For the most up-to-date information on the schedule and work of the IGC, see <https://www.wipo.int/tk/en/igc/>.
13. E/2019/43-E/C.19/2019/10, paras. 9-11, available at <https://undocs.org/en/E/2019/43>.
14. WIPO, Decisions of the Fortieth Session of the Committee. "Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore". June 2019: [https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_grtkf\\_ic\\_40/wipo\\_grtkf\\_ic\\_40\\_decisions.pdf](https://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_40/wipo_grtkf_ic_40_decisions.pdf).
15. Ibid.
16. The provisional schedule for the 2020 negotiations is available at [https://www.wipo.int/export/sites/www/tk/en/igc/pdf/provisional\\_schedule\\_igc\\_2020.pdf](https://www.wipo.int/export/sites/www/tk/en/igc/pdf/provisional_schedule_igc_2020.pdf).

**Sue Noe** is a Senior Staff Attorney with the Native American Rights Fund (NARF), located in Boulder, CO USA. NARF is the oldest and largest non-profit law firm in the USA representing Native American tribes. Sue has attended IGC sessions since IGC 34 (June 2017) and served on the Indigenous Panel for IGC 36. She can be reached by email at [suenoe@narf.org](mailto:suenoe@narf.org).





# PART 3

## General Information

# About IWGIA

IWGIA is an international human rights organisation promoting, protecting and defending Indigenous Peoples rights. For over 50 years, IWGIA has supported the fight for Indigenous Peoples rights. We work through a global network of Indigenous Peoples organisations and international human rights bodies. We promote the recognition, respect and implementation of Indigenous Peoples rights to land, cultural integrity and development on their own terms.

## Our mission

We promote, protect and defend Indigenous Peoples' rights.

We work for a world where Indigenous Peoples voices are heard and their rights are implemented. We foster change by documenting Indigenous Peoples conditions and the human rights breaches they experience, thus contributing to global knowledge and awareness of Indigenous Peoples situations; supporting Indigenous Peoples own organisations to act and their capacities to access human rights bodies; and advocating for change in decision-making processes at local, regional and international levels, including active engagement in international networks.

## Our vision

Our vision is a world where Indigenous Peoples fully enjoy their rights. We exist to ensure a world where Indigenous Peoples can sustain and develop their societies based on their own practices, priorities and visions.

## How to get involved

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# Author List

Abel Koulaning	Heraclio López Hernández
Alexandre Sommer-Schaechtele	Hernando Silva
Amalia Rodríguez Fajardo	Higinio Obispo González
Angela Godfrey-Goldstein	Iain Gately
Anna Kamanzi	International Indigenous Women's Forum (FIMI)
Asia Indigenous Peoples Pact (AIPP)	Inuit Tapiriit Kanatami (ITK)
Bablu Chakma	Issa Diallo
Beatriz Valencia Otova	Jakob Siringoringo
Belinda Kendall	Janette Bulkan
Belkacem Lounes	Jason Pan Adawai
Ben Begbie-Clench	Jeff Gayman
Benjamin Ilabaca De La Puente	Jessica Vega Ortega
Benjamin Mutambukah	Joan Carling
Cambodia Indigenous Peoples Alliance (CIPA)	Joanna Absalonsen
Carlos Camacho-Nassar	Johannes Rohr
Carolina Sánchez García	John Palmer
Chebet Mungech	José Aylwin
Chin Human Rights Organisation (CHRO)	José Carlos Díaz Zanelli
Christine Evans	José del Val
Claire Morclette	Joseph Eliot Magnet
Colin Nicolas	Juan Mario Perez Martínez
David Nathaniel Berger	Judith Frost
Davy Ndlovu	Justine Berezintsev
Edith Kamakune	Dr. Kanako Uzawa
Edward Porokwa	Karina Vargas
Elia Avendaño Villafuerte	Katrine Gro Friborg
Elsy Curihuinca Neira	Kittisak Rattanakrajangsi
Emmanuel Bayeni	Krishna B. Bhattachan
Fleur Te Aho	Kristen Carpenter
Frederic Wilson	Lærke Marie Lund Petersen
Gabriela Croes	Laila Susanne Vars
Geneviève Rose	Leonardo Tamburini
Graeme Reed	Lesle Jansen
Grupo de Trabajo Socioambiental de la Amazonia (Wataniba)	Lola García-Alix
Gwendoline Malogne-Fer	Loupa Pius
Hawe Hamman Bouba	Luis Jesús Bello
Hélène Claudot-Hawad	Maggie Walter
	Marcel Didier

Maria de Lourdes Beldi de Alcântara  
Dra. María Luisa Acosta  
Maria Teresa Quispe  
Mario J. Barrios Cáceres  
Dr. Martemjen  
Mathias Wuidar  
Matthew Norris  
Max Ooft  
Mélanie Clerc  
Michael Tiampati  
Dr. Mohamed Handaine  
Negev Coexistence Forum (NCF)  
Nyikaw Ochalla  
Observatorio Ciudadano de Chile  
Olga Murashko  
Pablo Ortiz-T.  
Pallab Chakma  
Patricia Borraz  
Patrick Kulesza  
Paulina Acevedo  
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Robert K. Hitchcock  
Saidou Garba Bachir  
Sarah Bestang K. Dekdeken  
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Secretariat of the Permanent Forum  
Silvel Elías  
Silvina Ramírez  
Stefan Disko  
Stefan Thorsell  
Stephanie Russo Carroll  
Sue Noe  
Tahu Kukutai  
Tejang Chakma  
Tunga Bhadra Rai  
Victor Mambor  
Yesho Alex  
Zoé Quetu



**The compilation you have in your hands is the unique result of a collaborative effort between Indigenous and non-indigenous activists and scholars who voluntarily document and report on the situation of Indigenous Peoples' rights. We thank them and celebrate the bonds and sense of community that result from the close cooperation needed to make this one-of-a kind documentation tool available.**

For 34 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. This yearly overview serves to document and report on the developments Indigenous Peoples have experienced throughout 2019. The Indigenous World 2020 adds not only documentation, but also includes a special focus on climate change.

Rising temperatures, unpredictable weather and shifting climate patterns, coupled with a global insatiable land rush, are increasingly straining the lands Indigenous Peoples have traditionally been caring for and defending. Throughout 2019, Indigenous Peoples also continued to be persecuted, threatened, criminalised and killed in their efforts to defend their rights.

The 66 regional and country reports and 17 reports on international processes and initiatives covered in this edition underscore these trends. IWGIA publishes this volume with the intent that it is used as a documentation tool and as an inspiration to promote, protect and defend the rights of Indigenous Peoples, their struggles, worldviews and resilience.