



THE INDIGENOUS WORLD 2019



THE INDIGENOUS WORLD 2019

Copenhagen

THE INDIGENOUS WORLD 2019

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EDITORIAL

Juana Raymundo from Guatemala was only 25 years old when her life was cut short. Juana was an indigenous rights defender, a nurse and a coordinator at CODECA, a human rights organization promoting the rights of indigenous farmers - in particular to their lands. She disappeared on the evening of 27 July 2018. Her body was found the next day.

Billy's body has never been found. He was arrested in 2014 after collecting honey in one of Thailand's national parks, Kaeng Krachan. Billy and his wife are Karen, a group of indigenous peoples who live along the borders of the park. Billy was a well known indigenous rights activist, who passionately documented injustices against his community.

Before his disappearance, Billy had photographed camp guards burning down the houses of the Karen peoples. His 32-year-old wife Phinnape, a mother of five, believes that his photographs, documenting the violence against his people, are the real reason that he was arrested. No one has been held responsible for Billy's disappearance.

Billy and Juana are just two of the hundreds of indigenous rights activists who are killed or disappeared every year.

Over the last 33 years, *The Indigenous World* has documented an increasing trend towards harassment and criminalisation of indigenous peoples and communities. While the situation varies considerably between regions and countries, many indigenous peoples around the globe face similar issues, including: lack of recognition as collective rights holders; exclusion from decision-making processes; overall discrimination by mainstream society; lack of tenure security and therefore loss of land and resources; gross human rights violations; lack of access to justice; lack of institutional capacities; and lack of freedom of expression and/or access to media.

Throughout 2018, there has been an increase in the documentation and reporting of illegal surveillance, arbitrary arrests, travel bans to prevent free movement, threats, dispossession and killings. We have witnessed instruments which are meant to protect indigenous peoples being turned against them, through the use of legislation and the justice system, to penalise and criminalise indigenous peoples' assertion of their rights.

The collection of events compiled in this edition demonstrate the continuation of increased violence, criminalisation, harassment and lack of justice that indigenous peoples experience as they continue to defend their lands and identity.

Indigenous rights defenders at risk

Indigenous rights defenders are attacked and criminalised at an unprecedented rate all over the world. Often this is the result of conflicts over land and human rights violations that take place in the context of large-scale development or extractive projects.

In 2017, the deaths of over 400 environmental and human rights activists were recorded. It is nearly impossible to know the real number of deaths as data is limited; however, from the data that is available, tragically, an estimated 40-50% of these killed defenders are indigenous leaders or community members.

Every day new reports surface on disappearances, threats, acts of violence and different types of harassment, and all too often the perpetrators of these crimes against indigenous peoples continue to act with impunity.

In 2018, the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, paid particular attention to these issues in her 2018 report, *Attacks Against and Criminalisation of Indigenous Peoples Defending Their Rights*. That report addressed indigenous rights defenders and the availability of prevention and protection measures. It documents a worrying escalation in the criminalisation and harassment of indigenous peoples, in particular when they are defending and exercising their rights to their lands, territories and natural resources. The report assesses the root causes and drivers of the current situation, which has been termed a “global crisis” and maps global trends.

To further analyse these issues IWGIA organised an international conference entitled “Defending the Defenders: New Alliances for Protecting Indigenous Peoples’ Rights”, which took place 5-6 September 2018 in Copenhagen. The conference gathered a broad range of relevant actors to get a better understanding of the key drivers behind this alarming trend, and identify possible actions at the international, regional and national levels that could help change the situation and protect indigenous rights defenders at risk. The conference resulted in a

number of action-oriented recommendations on how to enhance the protection of indigenous rights defenders at risk.

The Indigenous World 2019 augments these efforts by chronicling many of the most egregious assaults on the rights of indigenous peoples, creating a global snapshot of the types of organised destruction that are perpetrated against indigenous peoples. Though access to data is an ongoing challenge, abuses against indigenous peoples are clearly greater in magnitude than what can be documented here, and the toll being extracted on these peoples and communities in terms of the loss of human life is horrific. The annual reports contained in this yearbook stand as testimony to the ongoing struggles faced by indigenous peoples around the world.

Indigenous peoples and their lands

Indigenous peoples worldwide share a deep and essential connectedness with their lands, territories and natural resources. Loss of these lands and resources not only jeopardise their survival as distinct peoples, but threatens their economic security, sociocultural cohesion and human dignity.

Indigenous peoples are recognised for their role as protectors of biodiversity and key actors in the implementation of sustainable development and land management. This connection is a central component of their collective identity as peoples. However, at the core of many of the threats they face, is that indigenous peoples' collective rights to their lands are seldom recognised or secured. The intensification of the exploitation of natural resources to feed global consumption pushes indigenous peoples away from their land often in the name of "development" or "progress", be it to realise large-scale development projects, establish conservation areas or parks, or implement extractive activities. The election of populist leaders who support those land grabs, like Bolsonaro in Brazil adds to the growing problem. Renewable energy projects are also increasingly targeting indigenous peoples' lands, leading to forced relocations without adequate compensation, such as the Lake Turkana Wind Power Project highlighted in the Kenya country report.

By uniting and organising themselves, indigenous peoples seek to protect their territories, livelihoods and knowledge from the influx of

businesses, settlers and other dominant or armed groups. Strategies including territorial self-governance, mobilisation, rights-awareness campaigns, documenting human rights breaches and taking cases to court, among other initiatives, are helping to protect indigenous peoples and their rights. However, indigenous peoples' assertion of those rights has, in many cases, been answered with brutality and even killing.

Power relations are skewed, institutional challenges remain and many private companies are drivers of human rights offences committed against indigenous peoples, all too often with the complicity of the state. It is in this context that we see indigenous leaders and human rights activists, who are seeking to defend their land rights, presented as a threat to the economic development of their country, portrayed as enemies of the state, or even officially persecuted as criminals and terrorists.

Hydroelectric development projects

Hydroelectric developments radically reshape the ecology and environment of their surrounding areas. When done improperly they can destroy food chains and result in the mass displacement of indigenous peoples and communities. Moreover, when they fail, the resulting flooding is disastrous.

Over the course of China's 13th Five-Year Plan (2016-2020), the southwest region became a major "hydropower hub". Giant hydropower projects have been constructed in some of China's most biologically primeval and culturally diverse river basins, often on indigenous territories and lands. The mountains and water in this area are spiritually linked to the local communities and form the material basis of indigenous peoples' distinctive way of life.

While official statistics on the displacement and relocation of these peoples are not available, fragmented reports on protests against these projects have been issued throughout 2018.

In Colombia, government policies supporting the Hidruituango hydroelectric project in Bajo Cauca Antioqueño, endanger indigenous communities. The project includes a dam 225 meters high, which would create a reservoir 70 kilometres long. Alongside the environmental consequences, there have been failures in the structures in the past, forewarning the potential for floods that could destroy Senú, Embera Chamí and Embera Katío communities located on the banks of the Cauca River.

Standing in opposition to such large-scale projects also leads to severe effects. In Honduras, Berta Cáceres was killed in 2016 because of her opposition to the Agua Zarca dam. In the Philippines, Ricardo Mayumi of the Ifugao Peasant Movement, who was known for leading the opposition against Santa Clara Power Corporation's hydropower project in his home town in Ifugao province, was shot dead on 2 March 2018.

Mining

Mining projects have devastating effects on indigenous communities. Environmental damage lasts long after the projects are concluded, but the fringe effects on indigenous people's social norms, cohesion and agricultural practices may also suffer from the presence of these mining projects.

By the end of the year, 230 of the 447 approved large-scale mining permits in the Philippines were located in ancestral territories. These projects cover 542,245 hectares of ancestral lands and comprise 72% of the total land area covered by all of the approved mining applications in the country. Alongside these extractive projects, the construction of mega-dam projects in indigenous territories continues to threaten indigenous lands and resources. Coal extraction is particularly worrisome, as coal operating contracts in the Andap Valley Complex and several provinces throughout Mindanao - which are issued by the Department of Energy - encroach upon hundreds of thousands of hectares of ancestral lands.

Tourism

While tourism has become a major and lucrative business, as evidenced from the creation of national parks and establishment of conservations areas and hunting grounds; the expansion of these areas often involves significant land grabs that force indigenous peoples off their lands.

In Tanzania the encroachment on indigenous peoples' land continued in 2018, especially around the Serengeti National Park. This was driven by a range of different forces, but most notably by the conservation and tourism industry. National parks and other conservation areas already make up a large part of Tanzania's land mass - and they continue to expand - often into indigenous peoples' lands, which prevents their access to and utilisation of their traditional lands. Maasai houses

in Loliondo, Tanzania were burned to give way to the expansion of the neighbouring wildlife park.

Viewed from a distance, these cases often seem to represent a larger debate on whether to prioritise human rights and indigenous peoples' livelihoods over the protection of wildlife. However, in some cases it is clear that the protection of wildlife is not the main concern when indigenous peoples are accused of poaching at the same time that big game hunting concessions are awarded.

Fishing

Access to, and protection of, traditional fishing grounds and fisheries, including the serious ecological threats created by pollution from mining and agriculture, have been a recurring struggle for indigenous peoples. In 2018, indigenous peoples continue to experience encroachment on their hunting and fishing rights, and ecological challenges, despite recognition of their rights and the protection of these areas by law.

In Russia, indigenous hunters and fishers had their tools and food stores confiscated, critically endangering their food security. In Thailand, the Chaoley peoples who live along the coastal areas have lost their access to traditional fishing grounds; no longer able to practice their sustainable and traditional approaches to fishery management. Many of their fishing areas are now considered protected areas, where fishing is prohibited. Although there is an argument for ensuring that these areas are preserved, many of these coastal areas are now occupied by hotels, resorts and private houses, calling into question the motive behind their new designation. To survive, Chaoley peoples must venture further and further away in the deep-sea area, a practice to which they are not accustomed, resulting in them having to dive deeper and venture into more dangerous currents, leading to some getting decompression sickness, becoming fully or partially paralysed, or worse, suffering death.

Framed as anti-development

As global consumption increases, the global demand to explore, exploit and develop new areas, especially in relation to land and access to

natural resources, seems to be never ending. In this context, indigenous peoples are left largely unprotected, defending their lands on the front line. Their defence and assertion of their rights often leave indigenous peoples accused of being anti-development or anti-modern, simply because they have a profoundly different approach to development where land, water and forest are not goods for sale.

As numerous studies have shown, indigenous peoples' way of living is environmentally sustainable and climate-aware. Indigenous peoples have protected the lands and territories they live in, maintaining them in trust for future generations, much more effectively than external groups. These studies have shown, for example, that forests managed by indigenous peoples have been preserved more efficiently than protected forests.

Nevertheless, in Thailand, the practice of shifting/rotational agriculture in the uplands resulted in the arrest of villagers by state officials during preparation of their rice fields. The villagers are being penalised for "causing deforestation and a rise in temperatures", despite scientific studies proving the opposite. Under the cover of conservation, the government has made a false equivalency: capitalising on the social capital and goodwill behind climate change to add a new dimension (environmental degradation) to the nature of the so-called "crime".

The role of government in perpetuating indigenous rights abuses

In many countries, state authorities are the most common perpetrators of violations against indigenous rights defenders, even though they bear the primary responsibility for ensuring their protection. Laws failing to recognise or protect indigenous rights defenders, combined with a global trend towards a shrinking civic space, pose a threat to indigenous communities around the world.

In 2018, Tanzania continued to witness decreasing freedom of expression and a shrinking civic space. A number of oppressive laws and policies made it difficult for indigenous peoples and human rights activists to operate freely, including *the Cyber Crimes Act of 2015*; *the Statistics Act of 2015*; *the Media Services Act of 2016*; *the Access to Information Act of 2016*; and *the Electronic and Postal Communications (Online Contents) Regulations of 2018*. In this new, limited reality, it be-

came increasingly difficult for indigenous rights defenders to operate and assist indigenous communities in need, which faced increasing challenges related to land grabbing, land conflicts and violations of human rights.

In Myanmar, the *Unlawful Association Act*, for example, sets out prison terms of up to three years for being either a member of, assisting or making contributions to, an “unlawful association” and was used during Myanmar’s decades of military junta rule to detain those linked to rebel groups.

In Vietnam, at least 246 people who participated in rallies against the draft laws on the creation of Special Zones and on internet security were arrested and imprisoned in 2018. These arrests were carried out under judgements and criminal convictions of a variety of violations, including “dissemination of propaganda against the state”, “activities to overthrow the government” and “breaking the solidarity”. These convictions have carried tough penalties, with most resulting in sentences of 10-20 years of imprisonment. Among these were some 30 indigenous people from the Central Highland who were convicted on charges of “breaking the solidarity” and served with 6-12 year sentences.

Physical violence and arbitrary arrests

Reports received throughout 2018 indicate that police and other security forces have carried out arbitrary arrests, illegal searches and physical violence against indigenous peoples. Non-state actors such as armed groups have also been reported to use killings, abduction and death threats, among other acts, as regular tactics to silence indigenous rights defenders.

The Inter-American Commission on Human Rights indicated in a press release dated 31 October, that at least 20 indigenous leaders had been murdered in Guatemala during 2018, largely activists defending their lands, territories and other rights.

In Bangladesh, the Kapaeeng Foundation documented a total of 117 indigenous rights defenders who faced false charges, 75 of whom were arrested in 2018. They further documented the illegal search of about 90 homes by security forces, who carried out their exercises in the middle of the night without any prior warrant or complaint.

Additionally, at least 53 indigenous women and girls in 47 inci-

dents were reportedly killed, raped, assaulted and violated in 2018, according to the foundation's findings. The violence that indigenous women and girls face is often political and connected to power relations; violence, especially sexual violence against women, is connected to stigma, humiliation and fear. This politicisation of violence is particularly evident in the impunity enjoyed by the perpetrators, especially when they are connected to the interests of the state. To date, not a single perpetrator has been prosecuted for the violence against indigenous women in the Chittagong Hill Tracts.

A similarly bleak picture of violence and impunity can be seen in the Philippines where the state has leveraged judicial actions against 31 activists advocating for indigenous peoples' rights. These activists were named in a petition by the Department of Justice, which essentially accused them of being terrorists. The KATRIBU national alliance of indigenous peoples documented 183 cases of the illegal arrest of indigenous peoples in the Philippines since July 2016. Of this number, 42 remain in detention for crimes they did not commit. The trumped-up charges filed by the Armed Forces of the Philippines against indigenous peoples include killing and the illegal possession of firearms and explosives.

Violence against indigenous peoples also continued on a large scale in Africa throughout 2018. In Uganda land rights actors who tried to defend the land rights of the Karamojong people in northern Uganda were criminalised and accused of promoting insecurity in the area. The situation was extreme in the Central African Republic, Cameroon, Niger, Eritrea and Burkina Faso. These countries experienced widespread and brutal violent conflicts that had serious consequences for indigenous peoples' livelihoods and survival.

Indigenous peoples continue to mobilise and stand up to claim their rights

On 21 November 2018, about 10,000 tribal farmers in India marched from Thane to Mumbai in the State of Maharashtra demanding loan waivers and land rights. They called off the protests on 22 November after Maharashtra Chief Minister Devendra Fadnavis assured them there would be redress for their grievances, including drought compensation and the transfer of forest rights to them by the end of December

2018. It is reported there were as many as 231,556 cases where land ownership was not given to tribal farmers cultivating the land or having it in their possession. Earlier, in March 2018, more than 35,000 farmers, mostly tribals, marched from Nashik to Mumbai to press for their demands, including land rights.

In Nepal, an aggressive road expansion project executed by the government in the ancestral land of the Newa indigenous peoples adversely impacted more than 150,000 people and caused gross human rights violations, including mass-forced eviction, demolishing of symbols of identity - such as cultural and religious sites and heritages - and intimidation. After mass mobilisation, protests, documentation and litigations they won a Directive Order from the Supreme Court that prohibited any work that adversely affected the security of a house, unless there are no alternative solutions; ordered that rights to relocation and rehousing of the displaced be dealt with equitably; provided benefits and compensation as per the *Land Acquisition Act* and the *Land Acquisition Regulations*; and that there should be a focus on conservation of the environment and archaeological sites while implementing any development project. Further, on 11 June 2018, the International Labour Organization (ILO) decided to set up a tripartite committee to examine alleged non-observance of ILO Convention 169 in response to a complaint lodged by the Nepal Telecom Employees' Union related to the project.

In Uganda, the United Organisation for Batwa Development in Uganda trained Batwa women in rights defence, and for the first time, some Batwa were elected during the village council elections as representatives for their villages.

In Bolivia, the process of autonomy for the Multi-ethnic Indigenous Territory (Territorio Indígena Multiétnico/TIM) in the southern Amazonian department of Beni has advanced. Multiple meetings took place throughout 2018 between the state and local offices of the Multi-ethnic, Movima and T'simane territories to consolidate a significant part of the Chimanes Forest in favour of the TIM, incorporating the territorial jurisdiction of the nascent indigenous autonomy. The government also agreed to sign a Titling Agreement, thus guaranteeing collective title to the area claimed through the agrarian procedure, along with a continuation of the process of autonomy with this area in the TIM territory.

In Costa Rica great progress was made thanks to indigenous peoples' fight for their rights. The executive decree which was issued on the

consultation mechanism and the adoption of the *Charter of Rights on Access to Justice for Indigenous Peoples*. Another important accomplishment was the incorporation by the General Comptrollership of the Republic of an intercultural approach to evaluate public policy, as well the participation by the National Indigenous Board of Costa Rica in various forums on environmental policy and climate change.

In Peru, in 2018, the Committee on the Elimination of all forms of Racial Discrimination indicated its concern at the growing signs of violence against human rights defenders and recommended that the state take action to protect them. In February 2018, the National Human Rights Plan 2018-2021 was thus enacted, committing the relevant authorities to: develop a mechanism to protect Human Rights Defenders (HRDs); approve the Protocol for Intersectoral Action (2018); and create the Registry of Attacks during 2019 and the Comprehensive Protection Policy by 2021. In January 2019, the National Human Rights Coordinating Body launched a campaign entitled #MeLaJuegoPor (I'm championing HRDs) with the aim of recognising the work of individuals and organisations who defend the rights of all, encouraging a change in society's somewhat preconceived notions of defenders and pressuring the Peruvian state to meet its commitment to enact the Protection Protocol for HRDs.

Progress for indigenous peoples at the international level

Over the last 40 years, indigenous peoples have made a major impact on the international political arena and have created new spaces, in the form of legal provisions and institutional mechanisms, for the promotion and protection of their rights. Concrete outcomes of indigenous peoples' struggle to gain recognition as subjects of international law have been the adoption of the UNDRIP (2007), the establishment of institutional mechanisms within the UN and regional human rights bodies dealing specifically with indigenous peoples' rights, and, at the national level, the adoption of laws and policies for the protection of the rights of indigenous peoples.

Further, an international focus on defining effective ways and measures to document performance and progress made through adopted laws and policies is needed. The implementation gap remains a major concern, and the lack of disaggregated data and indicators

which assess indigenous peoples' rights remain an urgent priority. Progress was made in this area through the pilot of the Indigenous Navigator project. Designed as a global portal for indigenous communities, the Indigenous Navigator provides a framework and set of tools for and by indigenous peoples to systematically monitor the level of recognition and implementation of their rights. It specifically monitors implementation of the UNDRIP, and state obligations as enshrined in core human rights conventions as they pertain to indigenous peoples; essential aspects of the Sustainable Development Goals (SDGs); and the outcomes of the World Conference on Indigenous Peoples.

In 2018, indigenous peoples achieved two significant milestones under the UN Framework Convention on Climate Change. First, a Facilitative Working Group was established to fully operationalise the Local Communities and Indigenous Peoples Platform and, second, the Green Climate Fund adopted an Indigenous Peoples' Policy. These are groundbreaking achievements for indigenous peoples fighting for their rights and recognition of their role in climate action.

The Expert Mechanism on the Rights of Indigenous Peoples (EM-RIP) also took considerable action in 2018, including initiating a focus on its new country engagement mandate, including its first two missions, to Finland and Mexico City; an annual session (from 9-13 July 2018); and an annual study that focussed on free, prior and informed consent and strengthened engagement with UN Human Rights treaty bodies, Regional and National Human Rights Institutions.

Indigenous peoples are central to achieving the SDGs but are too often ignored. During the UN High-level Political Forum on Sustainable Development in 2018 significant efforts were made to highlight indigenous peoples' rights through a series of events.

Indigenous governance systems

Indigenous governance systems have proven resilient for centuries despite colonisation, attacks and attempts to undermine them in the name of nation building and the state's territorial integrity. These indigenous governance systems, which often include customary laws, dispute resolution and adjudicative mechanisms, are essential in ensuring the well-being and rights of indigenous peoples today, especially in regard to self-determination and self-identified development.

Therefore, in 2019, the three UN mechanisms dealing with indigenous peoples' rights will pay particular attention to the implementation of indigenous peoples' rights to self-governance.

In January 2018, the UN Department of Economic and Social Affairs organised a three-day international expert group meeting on the theme "Sustainable Development in the Territories of Indigenous Peoples", as recommended by the UN Permanent Forum on Indigenous Issues at its 2017 session.

EMRIP conducted a study on free, prior and informed consent, which was submitted to the Human Rights Council in September 2018. In that study, the Expert Mechanism argued that the right to self-determination is the fundamental human right on which free, prior and informed consent is based, with strong links to the right to autonomy and self-government.

In October 2018, the Special Rapporteur presented her report to the 73rd session of Third Committee of the UN General Assembly on the theme "indigenous peoples and self-governance". The Special Rapporteur's report provides an initial overview of the international legal framework on the right to autonomy and self-government of indigenous peoples and reviews concrete examples of the broad diversity of indigenous governance systems that exist across the world.

Promote, protect, defend

Despite being one of the most vulnerable and marginalized groups in the world, 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 do our best to stop these injustices. We need to act. With this edition of *The Indigenous World*, we are honouring the lost lives, indigenous leaders in prison, harassed defenders and attacked indigenous women by giving space for their stories to be told to the world.

David Nathaniel Berger

General Editor

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Julie Koch

Executive Director

Copenhagen, April 2019

ABOUT THE INDIGENOUS WORLD

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 results from the close cooperation needed to make this one-of-a kind documentation tool available.

For 33 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. It serves to document and report, through a yearly overview, on the developments indigenous peoples have experienced. *The Indigenous World 2019* adds not only documentation, but also highlights the increase in attacks and killings of indigenous peoples while defending their lands and other natural resources. In 2019, the edition includes a special focus on indigenous rights defenders at risk.

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, their worldviews and their 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 this book, 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

The Arctic



KALAALLIT NUNAAT (GREENLAND)



Kalaallit Nunaat (Greenland) has been, since 1979, a self-governing country within the Danish Realm. The population is composed of 89.6 % Greenlandic Inuit out of a total of 57,691 of inhabitants (July 2018 est.). 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 / Avanersuarmiut 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 recognizes 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 the 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 UNDRIP and other international rights and human rights instruments. The government of Greenland had a decisive influence on the Kingdom of Denmark's ratification of ILO Convention 169 in 1996, as Greenland has prioritized actions to establish the indigenous peoples' collective rights to land and resources in their territories.

General elections

On 24 April 2018, general elections were held for the seats of the 31 members of Inatsisartut (the Greenlandic parliament). According to the law on Inatsisartut and Naalakkersuisut (Government of Greenland) the Premier is required to call elections prior to the end of the 4-year election period.¹ Premier Kim Kielsen chose to call the elections seven months early. In the election, 29,294 out of 40,769 voters casted a vote and gave a narrow victory to the largest party, Siumut. The two biggest parties, Siumut and Inuit Ataqatigiit, lost two and three seats respectively while the smaller Democrats and Partii Naleraq gained seats. The newly formed Samarbejdspartiet (Cooperation Party) and Nunatta Qitornai (the Descendants of Our Country) both entered Inatsisartut.² There are a total of six political parties in Inatsisartut, besides the above mentioned this includes Partii Naleraq (Point of Orientation Party) and Atassut (Solidarity).

After the election the Greenlandic government was formed by a coalition of Siumut, Atassut, Partii Naleraq and Nunatta Qitornai. Partii Naleraq left the coalition in September while the other parties remained in the Coalition and formed a Minority Government with the support of the Democrats.

Changes in legislation

Due to the elections Inatsisartut only held one of its usual two assemblies in 2018. The most disputed legislation during the assembly was the legislation on the framework conditions for construction, operation and financing of the planned international airport in the capital, Nuuk, and in Ilulissat as well as a regional airport in Qaqortoq.³ The main discussions evolved on whether public finances should be prioritized for building airports or other projects in the communities, for example to tackle social problems, what cities should be prioritized for building airports and the length of the landing strips. Albeit the legislation is not strictly related to indigenous rights, this has been a major decision for the future development for the country.

Furthermore, the financing of the airports are strongly related to an ongoing discussion about international financing and loan taking. In September 2018 the Danish and Greenlandic Governments signed an

agreement for Denmark to invest 700 million Danish kroner (\$109 million) for a 33 % stake in Kalaallit Airports, the government-owned company set up to build, own and operate the new airports in Nuuk and Ilulissat.⁴ Danish involvement in the airport project was the main reason that Partii Naleraq left the coalition. They commented that it posed questions about the Kalaallits' ability to do something on their own when the Danish State intervened in the project. They did not wish to participate in a development that undermined their goal for Greenlandic independence.⁵

Climate change

The consequences of climate change are increasingly affecting indigenous peoples living in close relation to their lands and natural resources. The Inuit cultures rely on the land and sea and the sustainability of the Arctic environment and its living resources is crucial for communities in Greenland. Shrinking sea ice, which is used as essential transportation routes during winter, is a prime example. Sea ice coverage in 2018 was reported at a historical low, according to the National Snow and Ice Data Center.⁶

The Greenlandic economy fundamentally depends on fisheries; the industry is responsible for more than 85% of the country's export. Climate Greenland, the Government of Greenland's website about climate change in Greenland, summarizes some of the areas where a changing climate is expected to impact fisheries: Shrimp fisheries are expected to be highly impacted, leading to a decline in the total amount of shrimp produced. The main reason for this decline, is that higher sea temperatures lead to an increase in cod, which feed on the shrimp.⁷ The changing climate also spurs increased access to industrial development, such as mining, oil and gas extraction, some types of fisheries and shipping.

International fisheries agreement concerning the Central Arctic Ocean

On 3 October 2018 the Greenlandic Minister for Fisheries, Hunting and Agriculture hosted a ceremony to sign an Agreement to Prevent Unreg-

ulated High Seas Fisheries in the Central Arctic Ocean. Parties of the agreement are Canada, the United States of America, the Russian Federation, the Kingdom of Norway, the Kingdom of Denmark (including the Faroe Islands and Greenland), Iceland, the European Union, the Republic of Korea, Japan and the People's Republic of China. By signing the Agreement, all parties have taken responsibility to engage in the future scientific cooperation and to work towards a future sustainable fishery management in the Central Arctic Ocean.⁸ The agreement recalls the UNDRIP, recognizing the interests of:

*(...) Arctic indigenous peoples, in the long-term conservation and sustainable use of living marine resources and in healthy marine ecosystems in the Arctic Ocean and underlining the importance of involving them and their communities; and desiring to promote the use of both scientific knowledge and indigenous and local knowledge of the living marine resources of the Arctic Ocean and the ecosystems in which they occur as a basis for fisheries conservation and management in the high seas portion of the central Arctic Ocean.*⁹

The Agreement underlines the importance of including indigenous and local peoples' knowledge to ensure that it is used as a primary source together with scientific knowledge.

Ilulissat Declaration 10 years anniversary

During the course of 2018, Greenland celebrated the 10 year anniversary of the Ilulissat Declaration of the five coastal Arctic states. These include Canada, the Kingdom of Denmark, Norway, Russia and USA. One of the chief goals of the declaration was to avoid a new international legal regime that would govern the Arctic Ocean and an agreement to settle any possible overlapping claims according to international law.¹⁰ The signing of the Ilulissat Declaration by only five Arctic coastal states (A5) was controversial and met resistance from indigenous actors, NGOs, the EU, and non-coastal states. These groups were not invited to be part of the Declaration and expressed that the A5 would undermine existing regional institutions, such as the Arctic Council.¹¹ In the 2018 commemoration, indigenous peoples representatives were invited, to-

gether with the Arctic Council countries. This was a welcomed initiative and some indigenous peoples used the opportunity to raise awareness of the risk of undermining indigenous peoples due to the increased attention to the Arctic's economic potential.¹²

Mining

There is an increased interest in exploring natural resources in Greenland. Currently there are six exploitation licenses, 61 exploration licenses, nine prospecting licenses, and 56 small-scale licenses around the country. Hudson Greenland A/S started its activities at the anorthosite mine in Kangerlussuaq. The anorthosite mine is one of two actively producing mines, the other one being the ruby mine in Qeqertarsuaq.¹³ Mining activities mean both more jobs and more raw materials that provide income for the national treasury. The activities have, however, also spurred a great amount of controversy nationally, as well as with Denmark and even internationally.

In Narsaq, in Southern Greenland, the Rare Earth Elements (REE) project by the Australian-based Greenland Minerals and Energy (GME) is of great local concern due to the environmental consequences of the potential open-pit mine. The Narsaq area is known for sheep farming, cattle ranching and agriculture. One of the challenges with the mine would be how to manage the tailings and the radioactive water the concern being that the waste products will end up in the river and the town. To others, however, the mine represents the prospect of new jobs and much needed development. For Denmark, and internationally, the main concern seems to be the 12.5 % Chinese ownership of the mine, and how this could have geopolitical implications. Naalakkersuisut expects several similar activities going forward, based on a positive international market for supply and demand for minerals.

Report from UN special rapporteur on hazardous waste

In September 2018 the UN Special Rapporteur on hazardous substances and wastes published his report on the implications for human rights of the environmentally sound management and disposal of hazardous

substances and wastes on his mission to Denmark and Greenland. Issues regarding the clean up after the military presence of the United States in Greenland was the main reason for the visit. In the report the Rapporteur underlined that:

*The total exclusion of the local population in past decisions over the US military presence in Greenland has fueled serious tensions and resulted in recognized past violations, such as the removal of the population originally living in the area where Thule Airbase was built. [...] Still today, the lack of transparency by US forces on the nature of all hazardous materials deployed in Greenland is a source of concern.*¹⁴

The Rapporteur underlined the injustice done to communities in Greenland and the Arctic through the contamination of the natural resources on which the Inuit depend by pollutants from foreign sources. The report highlighted that with the increase in autonomy, concerns about the management of wastes and hazardous substances have emerged. As Greenland has a small population and a vast territory it poses significant challenges for authorities. The reports underlines that due to its vulnerability to pollution originating in other parts of the world, Greenland needs to have its voice heard by the international community when solutions to major environmental concerns are being sought.¹⁵

The ICC General Assembly

The Inuit Circumpolar Council (ICC) is an international indigenous peoples' organization representing approximately 160,000 Inuit living in the Arctic regions of Alaska, Canada, Greenland and Chukotka, Russia. ICC is the only indigenous peoples' organization in Greenland and participates in national, as well as international, hearings and consultations on indigenous peoples' rights as well as representing Inuit in international fora. ICC Greenland monitors developments nationally that can have implications on indigenous peoples' rights. The Utqiagvik Declaration, adopted by ICC during its 2018 General assembly in Alaska, underlines, inter alia, the need to support responsible mining policies; the need to utilize indigenous knowledge to advice all future processes of the Agreement to Prevent Unregulated High Seas Fisheries in the Cen-

tral Arctic Ocean and the need to explore and pursue potential for mapping Inuit sea ice and coastal sea use and the multiple dimensions of the use of the sea ice in the Arctic. The Declaration reflects ICC's actions and priorities for the next four years. This provides an insight to the expected focus areas for the Inuit in Greenland.

International cooperation and coordination of inclusive engagement in international fora, including the UN, is one of these focus areas. The international community and international legislation have a direct effect on the Inuit communities and ICC recognizes a necessity to improve their capacity to fully engage in this work, such as the Arctic Council.¹⁶ Other issues include health, food security and suicide. Men and women born in Greenland have shorter life expectancies than the average in the western world, primarily due to a high mortality rate caused by accidents and suicide. Out of 435 deaths 32 were suicides in 2015¹⁷ and a comparison of the population suicide rates published by Statistics Greenland in 2011 greatly exceed those published by the World Health Organisation for Guyana, the country with the highest population suicide rates internationally that year.¹⁸ Suicide thus continues to be an extreme challenge for Inuit society.

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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 organizations 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.

Inuit made incremental progress in 2018 on advancing shared Inuit-Crown priorities. These priorities include facilitating reconciliation measures, such as securing apologies from the Government of Canada for past human rights abuses against Inuit, as well as financial commitments to help eliminate tuberculosis (TB) throughout Inuit Nunangat. The year included the release of the National Inuit Strategy on Research as well as the convening of the first ever national Inuit forum on preventing child sexual abuse.

The limits and opportunities within the current government's indigenous reconciliation agenda became clearer in 2018 amidst its efforts to advance several legislative, program and policy initiatives that directly impact Inuit Nunangat. These limits include the continued lack of action by the Government of Canada to meaningfully implement the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) nearly two years after its initial commitment to do so. Moreover, the federal government stumbled throughout 2018 in its efforts to complete key legislative and policy initiatives, including national First Nations, Inuit and Metis languages legislation as well as the Arctic Policy Framework.

Elections and leadership change

In 2018, elections and leadership changes took place among Inuit. The 13th General Assembly of the Inuit Circumpolar Council (ICC) was convened in Utqiagvik, Alaska in July. The ICC is a non-governmental organization (NGO) that was founded in 1977 to advocate on behalf of the approximately 160,000 Inuit living in Chukotka (Russian Federation), Alaska, Canada and Greenland. Dalee Sambo Dorough of Alaska was appointed Chair of the ICC by the Alaska delegation for the 2018 to 2022 period.¹ The Chair rotates between Alaska, Canada and Greenland every four years.

At the national level, Natan Obed of Nain, Nunatsiavut was re-elected president of Inuit Tapiriit Kanatami (ITK) in August during the organization's annual general meeting held in Inuvik, Northwest Territories.² The ITK president is elected for a three-year term by the president of the Inuit Circumpolar Council-Canada, who acts as ITK's vice president, the four voting members of the ITK board of directors, as well as two delegates from each of the four Inuit regions.

Inuit Circumpolar Council General Assembly

Sixty-six Inuit delegates from Greenland, Canada, Alaska, and Chukotka in the Russian Federation participated in the Inuit Circumpolar Council's 13th General Assembly convened in Utqiagvik, Alaska in July. Nineteen delegates from Canada participated in the event.

Delegates adopted the 2018 Utqiagvik Declaration, which sets out actions in the following 10 priority areas that will guide the ICC's work over the next four years: International Indigenous Human Rights and International Partnerships; Food Security; Families and Youth; Health and Wellness; Education and Language; Indigenous Knowledge; Sustainable Wildlife Management; Environment; Sustainable Development; and Communication and Capacity Building.³ The next ICC General Assembly will take place in Ilulissat, Greenland, in 2022.

Inuit-Crown Partnership Committee

The Inuit-Crown Partnership Committee (ICPC) was created in February 2017 in order to advance work on shared Inuit-Crown priorities through structured workplans. The ICPC is co-chaired by the president of ITK and the minister of Crown-Indigenous Relations. It is made up of the leaders of Inuit representative organizations and governments, as well as federal cabinet ministers. The ICPC convened three meetings in 2018, focusing on nine priority areas: Inuktitut Language Revitalization, Maintenance, Protection and Promotion; Environment; Housing; Reconciliation Measures; Education; Early Learning and Skills Development; Inuit Nunangat Policy Space; and Inuit Land Claims Implementation.⁴

The ICPC met three times in 2018 and achieved the following outcomes:

Tuberculosis elimination framework: The 2018 federal budget included CAD \$27.5 million over five years to eliminate TB throughout Inuit Nunangat as an outcome of ICPC discussions. In March, ITK and Indigenous Services Canada pledged to work together to eliminate TB throughout Inuit Nunangat by 2030. As a first step to achieving this goal, ITK released the Inuit Tuberculosis Elimination Framework in December 2018. The rate of TB among Inuit living in Inuit Nunangat in 2016

was over 300 times that of Canadian-born non-Indigenous people.⁵

Child First Initiative: The extension of the Child First Initiative to include Inuit was announced in September by ITK and the department of Indigenous Services Canada (ISC). It stems from the Crown's fiduciary responsibility to Inuit and is intended to support substantive equality by ensuring that Inuit children have access to the essential government-funded health, social and educational services available to other Canadian children. Further work on implementing the Initiative is being undertaken by the ISC in partnership with ITK.

Commitment to examine Inuit primary and secondary schooling: There is no national department of education in Canada or national education standards. With the exception of some self-governing First Nations, each province and territory is responsible for administering primary and secondary schooling and implementing their own education standards and curricula. The federal government administers specific primary and secondary school programs for First Nations on reserve but has traditionally declined to provide similar investments and support for Inuit. In November, the ICPC adopted a recommendation directing Inuit and the Crown to develop a proposal for targeted federal support in specific areas of Inuit primary and secondary school education, including IT/infrastructure; wraparound services and interventions; students with disabilities; and culture and language. This incremental step signals a possible departure from the existing federal position that Inuit primary and secondary schooling is within the sole jurisdiction of provincial and territorial governments.

Housing: Among Inuit living in Inuit Nunangat, 52 % live in crowded homes and almost one-in-three live in homes in need of major repair.⁶ The ICPC adopted the *National Inuit Housing Strategy* in November for release in 2019 as a key deliverable within the ICPC housing workplan. Through the strategy, the federal government and Inuit will work together to facilitate access to the federal government's *National Housing strategy* investments. The overall goal of the Strategy is to improve housing outcomes in Inuit Nunangat in line with outcomes for the rest of Canada.

Release of the *National Inuit Strategy on Research*

ITK released the *National Inuit Strategy on Research (NISR)* in March. The purpose of the strategy is to promote a shared understanding of the legacy of Inuit Nunangat research and connect this legacy to the current research context; define Inuit expectations for the role of research in our regions and communities; and identify areas for partnership and action between Inuit and the wider research community. The NISR identifies five priority areas in which coordinated action by Inuit, governments and research institutions is necessary to facilitate Inuit Nunangat research that is effective, impactful and meaningful to Inuit. It identifies practical steps to advance Inuit self-determination in research as the means for fostering respectful and beneficial research that serves the needs and priorities of Inuit. The NISR's objectives and actions are organized within the following five priority areas: advance Inuit governance in research; enhance the ethical conduct of research; align funding with Inuit research priorities; ensure Inuit access, ownership, and control over data and information; and build capacity in Inuit Nunangat research.

Continuing implementation of the *National Inuit Suicide Prevention Strategy*

Implementation of the *National Inuit Suicide Prevention Strategy* continued into its third year in 2018, culminating in November in the Prevention of Child Sexual Abuse in Inuit Nunangat Forum. Child sexual abuse is a powerful risk factor for suicide, and the distressingly high prevalence of child sexual abuse among Inuit in Canada, Alaska and Greenland is linked to elevated rates of suicide.⁷ The forum, convened in Ottawa, was the first national Inuit gathering to focus on preventing child sexual abuse. It included participants from across Inuit Nunangat as well as from Greenland and was aimed at facilitating the sharing of promising practices for preventing child sexual abuse. Presentations included an overview of Greenland's traveling psychological teams serving adult victims of childhood sexual abuse, specialized training for those interviewing child/youth victims of sexual abuse, and presentations focused on specific interventions such as Nunavik's Good Touch Bad Touch program.

A follow-up forum will be convened in the spring of 2019 which will focus on developing concrete pan-Inuit Nunangat actions to prevent and respond to child sexual abuse in Canada.

The Department of Fisheries and Oceans and the Canadian Coast Guard create new Arctic region

In October, the department of Fisheries and Oceans and the Canadian Coast Guard announced their intention to create a new operational region focused specifically on the Arctic and Inuit Nunangat to better serve the region's majority Inuit population.⁸ The creation of the new Arctic region would mark a policy change from the way the operational region was previously constituted; it included the provinces of Ontario, Manitoba, Saskatchewan and Alberta, yet excluded Quebec and Nunatsiavut. The new operational region will be headquartered in Rankin Inlet, Nunavut, and stretch from the Inuvialuit Settlement Region in the Northwest Territories to Nunatsiavut in northern Labrador. Its exact boundaries have not yet been finalized. The restructuring is intended to facilitate additional capacity for search and rescue, science and environmental monitoring driven by Inuit and indigenous priorities.

Liberal government stumbles on key legislative and policy initiatives

The department of Canadian Heritage continued work on co-developing national First Nations, Inuit and Metis languages legislation in partnership with representatives from the Assembly of First Nations, ITK and the Metis Nation throughout 2018, following the launch of this legislative initiative in July 2017. Inuit are seeking legislation that would include Inuktitut-specific provisions that create new legal obligations and funding arrangements in support of Inuktitut revitalization, maintenance and promotion. Inuit positions on legislative content have largely been ignored to date by the Government of Canada and Inuit are not optimistic that national legislation will build on existing rights for Inuktitut at the provincial and territorial levels when and if it is introduced in 2019. Eighty-four percent of Inuit in Inuit Nunangat self-report an ability to speak Inuktitut and the language is the most resilient indigenous lan-

guage in Canada. However, less than half of Inuit said that Inuktitut was the language used most often at home, the place where language is most likely to be passed on from one generation to the next.⁹

Similarly, release of the Government of Canada's Arctic Policy Framework was further delayed throughout 2018, more than two years after the initiative was first announced by the prime minister in December 2016. Inclusion of an Inuit Nunangat chapter within the Arctic Policy Framework is a key deliverable of the ICPC, and Inuit expect the Framework to set out ambitious goals for action and investment.

In November, Indigenous Services Canada announced work on co-developing national child welfare legislation in partnership with ITK, the Assembly of First Nations and the Metis Nation. Inuit lack national data on the number of Inuit children in care, yet approximately 52 % of children in foster care in private homes in Canada are indigenous.¹⁰ The legislative initiative is seen by Inuit as an important step toward more comprehensive reform. The legislation is intended to be introduced to Parliament in early 2019.

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More than 160 distinct peoples inhabit the territories of contemporary Russia. Forty of these peoples are officially recognised as the indigenous minority peoples of the North, Siberia and the Far East. These are groups of less than 50,000 members, who are able to preserve some aspects of their traditional ways of life and continue to inhabit their territories across the northern and asian parts of the country. In addition to these recognised groups, one more group is actively pursuing recognition, which continues to be denied, another is likely already extinct. Together, they number about 260,000 individuals, less than 0.2 % of Russia's population. Ethnic Russians account for 80 %. Other peoples, such as the Tatars (approximately five million), are not officially considered indigenous peoples, and their self-identification varies between peoples.

The latest official population figures from the 2010 national census do not provide disaggregated data on the socio-economic status of indigenous peoples. Two thirds of indigenous peoples are rural while Russia is, on the whole, a highly urbanised country.

Indigenous peoples are not recognised by Russian legislation as such; however, the constitution and national legislation set out the rights of "indigenous minority peoples of the North," including rights to consultation and participation in specific cases. There is, however, no concept similar or alike to free, prior and informed consent (FPIC) enshrined in legislation. Russia has not ratified ILO Convention 169 and has not endorsed the United Nations Declaration on the Rights of Indigenous Peoples. The country has inherited its membership of the major UN Covenants and Conventions from the Soviet Union: the ICCPR, ICESCR, ICERD, ICEDAW and ICRC. It also has ratified the Framework Convention on the Protection of National Minorities (FCNM) of the Council of Europe

There is a multitude of regional, local and interregional indigenous organisations. RAIPON, the national umbrella organisation, operates under tight state control. Some other indigenous organisations have been classified "foreign agents" and are therefore extremely vulnerable.

Legislative developments

In 2018 an amendment to the federal *Framework Law on Guarantees of the Rights of Indigenous Peoples* was being discussed by parliament. The amendment would make it possible for citizens to register themselves as members of indigenous peoples, something which has not been possible since Soviet passports were abolished. Those passports contained a “nationality” (meaning: ethnic identity, not citizenship) field. While the Russian Constitution in Art. 26 stipulates that “everyone shall have the right to determine and indicate his nationality,” indigenous peoples are regularly confronted with authorities who do not accept their self-identification as indigenous and demand documentary proof.

The challenge for indigenous peoples is that rights to fish, hunt and use other resources including pasture land, which indigenous peoples vitally depend on, are tied to their registered indigenous identity. In contrast to many other countries, indigenous peoples do not have the right to autonomously determine who is a member of their community and who is not, but rather the state authorities who register them or refuse to.

The five-page amendment, which has been presented in December 2018 to the State Duma (the federal parliament) has raised concern with indigenous organisations and representatives, because it introduces highly bureaucratic procedures to register as indigenous. According to observers, most indigenous individuals have trouble meeting the terms set by the procedures. They have to provide extensive documentation on their pedigree and family,¹ while at the same time being required to register individually. The law does not provide a possibility for registering entire communities or families collectively. A further concern is that a person has to provide proof of his or her engagement in one of the traditional livelihood activities listed in the “State register of traditional subsistence activities.”² This means that indigenous teachers, doctors or any other workers in non-traditional professions would not be eligible to register as indigenous, unless they are directly employed by indigenous-owned cooperatives or enterprises operating in one of the traditional spheres.

In addition, in the current text it is not clear to which list of officially recognised indigenous peoples it applies. There is a list of indigenous minority peoples of the Russian Federation from March 2000 as well as

a list of indigenous minority peoples of the North, Siberia and the Far East of the Russian Federation from April 2006.

Generally the fear is that the law will narrow the scope of recognised indigenous peoples to tundra and taiga dwellers while excluding those who – as a result of Soviet involuntary sedentarization – live in villages and towns. As a consequence the number of people that are entitled to the use of resources, but also to early pension and other rights guaranteed in Russian law for indigenous peoples, may be feared will be drastically reduced, further deteriorating the socio-economic status of the indigenous peoples.

Right to fishing and hunting

2018 was another difficult year for indigenous communities who depend on hunting and fishing for their livelihood. Regardless of federal legislation, which says that indigenous minority peoples are free to fish as part of their traditional way of life without the need for permits and without limits, the reality is that in Kamchatka as in many other regions, fishing is highly regulated by state authorities. Indigenous peoples cannot independently decide where and when they fish, nor what types of fish they catch. The fishing season of 2018 saw record amounts of salmon, but indigenous representatives reported that the region's authorities had.

One complaint said that community members had been assigned fishing places 150 km away from their settlement. Five rivers bar the way to those designated fishing places along the sea banks, they are also patrolled by armed Federal Security Service (FSB) border guard boats who have reportedly intimidated indigenous fisherfolk.³

In the Yamal Nenets Autonomous Area, Russia's largest gas extraction region, indigenous inhabitants complained of recurring raids by the "Bioresources Conservation Service" of the regional government, which undertook regular helicopter flights patrolling indigenous camps without indigenous representatives on board to monitor their conduct. The flights were marked by arbitrary confiscations of food and arms used for hunting. In one instance, all arms were confiscated from a Nenets man, despite him being in possession of a licence. The man is a widower and sole caretaker of his two underage children. In their immediate neighbourhood polar bears were hunting, therefore firearms were

vitality important to ensure their safety. Further, the service men confiscated the frozen fish he had prepared for the winter, even though he had applied for and received a fishing quota for himself and his children. Many other incidents involving the Bioresources service were reported, including a beating and shooting incident in Panayevsk village, which led villagers to be concerned about their safety.⁴

Extractive industries

In 2015, the right of local authorities to control land use and participate in decision-making regarding the allocation of land for construction purposes in indigenous territories had been erased from the *Land Code* together with its 31st article. After protests it reappeared in a weakened form in article 39. Article 31 explicitly stated that local governments must inform the population on possible land withdrawal; may hold gatherings and referenda; and must base their decision on the results of such gatherings and referendums. However, the 2015 wording does not say who has to inform the public, organize the gatherings and referendums and take the results into account. Ever since, companies have tended to withhold information on their projects and to refrain from meaningful public consultations with indigenous peoples and their representative authorities.

In 2018, in an increasing number of cases, Environmental Impact Assessments (EIAs) were no longer made publicly available. The same was true for information on the place and time of public hearings, despite provisions in Russian environmental legislation on the procedure for public consultation during the EIAs. Many companies have stopped to publishing information about projects on publicly accessible websites, as required by law, and have organized public hearings in cities hundreds of kilometres away from where the project was to be implemented, or in a very remote location, which external experts – who would assist the local population in asking the right questions and formulating demands – were unable to reach. Consequently, such hearings mostly took place without participation from the parties most affected by the impacts.

On the indigenous “Territory of Traditional Nature Resources Use” (TTNRU), which had been established according to the legislation of Yakutia, gold extraction operations had commenced without notifying lo-

cal authorities of the “Iengra” municipality and without any negotiations with the Evenks reindeer herders, who herded their deer in the area and had the legal title to do so. The reindeer herders submitted an appeal to the local administration and told Yakut news media: “Since April, they have been cutting trees, diverting rivers, deploying gold washing equipment and erected more than 10 buildings for the miners. On 3 June, 60 to 65 people, mostly non-locals, have begun to work.”⁵

In September 2018, a village meeting was held, where outraged villagers asked representatives of the company whether the company was aware that it was working illegally. Company representatives responded: “Yes, we know that we transgress from the law, but still the operations will not be stopped [...] It is just a republican law! And the license is a federal one.” Similar situations have been observed in other indigenous areas of Yakutia including the Momski, Oymyakon and Ust-Yanskiy districts, where extractive companies have received federal licenses and started operations without notifying the local authorities.

At the same time, Russia is stepping up its efforts to market its fossil fuels internationally. At the end of 2018, Russia and Germany were jointly pursuing the construction of another gas pipeline through the Baltic sea, which would mostly transport natural gas extracted at Gazprom’s Bovanenkovo operations on the Yamal peninsula.⁶ This is home to the world’s largest nomadic reindeer herding community. The Yamal area, a region the size of France, is a closed “border zone” and can only be entered with secret service permission, so that information on the actual situation of indigenous communities in gas extraction areas is extremely hard to come by, while local indigenous organisations’ activities are closely monitored by the state. Still, Germany is considering export guarantees for the NordStream 2 project, which is opposed by almost all its neighbours. In doing so, the German export credit agency Hermes explicitly disregards its supply chain responsibility under the UN Guiding Principles on Business and Human Rights, regarding the origin of the natural gas.

International mechanisms

In May 2018, the UN Universal Periodic Review (UPR) considered the Russian Federation under its third review cycle. Recommendations concerning indigenous peoples it received from other states are⁷:

- Ratify ILO Convention 169 (Madagascar, Paraguay, Honduras, recommendations 147.18);
- Formally endorse the UNDRIP and implement its principles in national legislation (Norway, 147.21).

Both recommendations were rejected by Russia, together with all other recommendations for the endorsement or ratification of additional human rights instruments, with the rather unspecific justification that “Decisions of this nature will continue to be taken on the basis of a thorough analysis of the existing situation, including the whole range of essential factors and conditions to be taken into account in becoming party to international agreements.”⁸ Russia accepted recommendations by Nicaragua and South Africa to protect indigenous languages and strengthen the legal framework on indigenous sustainable development. It also accepted two recommendations by Bolivia which both began with “continue to”, implying that these are things Russia is already doing: “actively involve the representatives of indigenous peoples in international activities relating to the protection of their rights” (147.295) and “strengthening policies for the promotion and protection of indigenous peoples’ rights” (147.296).

It did not accept Estonia’s recommendation to “improve the precarious situation of indigenous peoples” (147.297) and only partially accepted Hungary’s recommendation to “harmonize the various laws on the rights of indigenous peoples, particularly regarding access to land and natural resources, and pay specific attention to the protection of their natural environment” (147.298), without specifying which part it accepts.

During 2018, the fourth review cycle of the European Framework Convention on the Protection of National Minorities (FCNM) continued, but its report on Russia is to be published in 2019.

Several indigenous rights defenders suffered what seem to be reprisals for cooperating with UN mechanisms, specifically the CERD’s Urgent Action and Early Warning Mechanism. Together with IWGIA, indigenous Shor human rights activists from the Kazas community in Kemerovo region in South Siberia had submitted a complaint to the CERD in 2015, prompting it to exchange letters with the Russian government on the situation of the community whose village had been destroyed by the mining industry. In 2017, the CERD had issued its final recommen-

dations to the Russian government on the case. However, instead of these recommendations being fulfilled, the leading activists were subjected to threats and harassments, prompting them to leave the country and seek asylum in Europe. In December 2018, IWGIA's senior advisor on Russia, who had assisted in the preparation and submission of the complaint, received a 50-year entry ban for Russia without further explanation, two weeks after delivering brief comments on the situation of Russia's indigenous peoples in resource extraction areas during the UN Forum on Business and Human Rights.

Notes and references

1. The draft amendment demands: *Information about family members (direct descendant relatives) and the ascending line (children, including adopted, grandchildren, parents, grandparents), full and incomplete (having a common father or mother) brothers and sisters, as well as relatives of the third degree of kinship) - with their written consent.* About modification of the Federal law "On guarantees of the rights of indigenous minority peoples of the Russian Federation" regarding establishment of the order of the account of the persons belonging to indigenous minority peoples.
2. See the state register at, "Rasporiazhenie Pravitelstva RF ot 8 maia 2009 g. 631-r Ob utverzhdenii perechnia mest traditsionnogo prozhivaniia i traditsionnoi khoziaistvennoi deiatelnosti korennykh malochislennykh narodov RF i perechnia vidov ikh traditsionnoi khoziaistvennoi deiatelnosti" 18 May 2009. Available at: <http://bit.ly/2T5Vvsi>
3. See Regnum.ru: *Aborigeny Kamchatki pozhalovalis Putinu na bezzakoniia Rosrybolovstva Proisshestviia«Eto prosto nichem ne prikrityi rasizm!»* 13 February 2019. Available at: <http://bit.ly/2T3ICA1>
4. See Info Pressa, "Na iamskikh KMNS obiavili oblavu. Chinovniki IaNAO podozrevaiut v ekspropriatsii Rosgvardiui i Rybnadzor" 1 October 2018. Available at: <http://bit.ly/2T7jQ0R>
5. Assotsiatsiia Korennykh Malochislennykh Narodov Severa Respubliki Sakha (Yakutiya): *Zolotodobytychiki: My ne priznaem vashi zakoni!* (6 September 2018). Available at: <http://bit.ly/2T4ZTI0>
6. *NordStream 2: Fakten und Mythen.* Available at: <http://bit.ly/2T7jY0I> (accessed 25 February 2019).
7. Report of the Working Group on the universal periodic review: Russian Federation A/HRC/39/13 (12 June 2018).
8. Report of the Working Group on the Universal Periodic Review: Russian Federation. Addendum: Views on conclusions and/or recommendations,

voluntary commitments and replies presented by the State under review. A/HRC/39/13/Add.1 (3 December 2018).

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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 9 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, for example, 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 5 million. Around 2,000 live in Russia, and this 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 organized 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 in September 2007, while Russia abstained.

Constitutional recognition and the Sámi Convention

The Nordic governments have together with the Sámi Parliaments in Finland, Norway and Sweden made a common effort for developing a new legal framework for protection of the rights of the Sámi through the negotiations on the Nordic Sámi Convention. Negotiations lasted for six years, and the drafting of the Sámi Convention was finalized in 2017. The proposal is currently still under consideration in the relevant ministries of the governments of these countries.¹ Both the UN Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD) have recommended a speedy adoption of this convention as a measure for strengthening the protection of Sámi rights and give a common legal framework for further development of Sámi self-determination.

As the drafting process has taken so long, and the number of cases where the Sámi claim that their rights are being violated continues to grow, political tension between the Sámi and the Nordic states has intensified. This is mainly due to the governments' policies regarding development in the North, including strategies for welcoming more extractive industry and wind power projects in Sámi territories. In this context, the Sámi consider the Sámi Convention as an important standard-setting document that could be used to address the inequality in power balance between the Sámi and the state, and to secure fundamental human rights for the Sámi. One of the most important aspects of the Sámi Convention is that it builds on existing international law and aims at implementing these in a Nordic context.

From a Sámi perspective, reconciliation is seen as a prerequisite for the effective implementation of the human rights of the Sámi and for the shaping of a stronger relationship between the states and the Sámi peoples. In 2018, the Sámi Parliaments and Sámi organizations' initiative for the establishment of Sámi truth and reconciliation processes saw some results. The Sámi and Kven Truth and Reconciliation Commission – established by the *Storting*, the national parliament in Norway – was appointed and started its work.² The commission will finalize its report to the *Storting* by September 2022.³ There are still ongoing discussions on the establishment of similar Sámi reconciliation processes in Finland and Sweden.⁴

There are also parallel discussions on strengthening the consultation and negotiation arrangements between the Sámi Parliaments and

the states in all three countries.⁵ In its concluding observations on the most recent periodic report of Norway, the HRC recommended that Norway should “ensure meaningful consultation with the Sami peoples in practice and adopt a law for consultations with a view to obtaining their free, prior and informed consent, in consultation with them.”⁶ The government of Norway presented a proposal for a separate chapter on consultations in the *Sámi Act* in 2018, based on consultations with the Sámi Parliament Council and the consent of the Sámi Parliament.⁷ In 2019, the new government of Sweden was formed, and it will continue its discussions with the Sámi Parliament on the proposed *Sámi Consultation Act*.⁸ In Finland, there is still no agreement between the Sámi parliament and the state on the revision of the *Sámi Parliament Act*. The UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) visited Finland in 2018, in its first country engagement under its revised mandate and provided technical legal advice on how the *Sámi Parliament Act* should be revised in order to implement international human rights standards.⁹

Extractive industry in Sámi territories

The Nordic states still have no action plans for the implementation of the UNDRIP, and only Norway has ratified the ILO 169. For the last years, the Sámi have reacted to the effects of the “High North” industrial policies¹⁰ by declaring moratoriums around the Sámi territory, reclaiming Sámi self-determination over areas where there are ongoing disputes with the states and/or private sector. Statements by ministers calling the Sámi territory a “treasure chest” containing minerals worth millions of dollars¹¹, and state sponsoring of the mapping and exploration of the rich mineral deposits in the north, have made the political debate even more polarized.

The current *Mining Act* in Sweden does not contain any provisions to accommodate for any special rights relevant to Sámi people, and existing mining policies do not appear to be sufficient to protect Sámi interests and rights over lands affected by mining.¹² The Sámi in Sweden therefore declared moratoriums in the aftermath of the Gállok mining case that made international headlines between 2013 and 2015, as did Sámi reindeer herders from both the Swedish and the Norwegian side of Sápmi in the *Násavárri* mining case. The Sámi Parliament in Sweden

has clearly stated that it wants a moratorium on all exploitation in Sápmi, but its demand for Sweden's ratification of the ILO 169 and compliance with international human rights standards have so far not lead to any significant change in Sweden's position on these issues.

The Gállok mining project is disputed because of it established an iron ore mine in the middle of reindeer herding lands in Gállok, which led to conflicts with the Sámi reindeer herding villages that it affected. The case is on-going. Sámi activists, politicians, lawyers and others have for several years protested against Beowulf, a British mining corporation that has the licenses to extract minerals in this area. The corporation sees Sámi interests as "competing use of land," and the state has given the corporation protection against measures that may hinder future potential mineral extraction.¹³ The company also has several exploration projects in Lapland, on the Finnish side of the Sámi territory. The final decision on the Gállok-case is still pending with the Swedish authorities and protests against Beowulf continue.

In another Sámi area, in the Nása mountain case, Sámi reindeer herders of Svaipa, Grans and Semisjaur-Njarg Sámi villages and the Saltfjell reindeer herding district have declared a moratorium on mining in the Nása mountain¹⁴, a border area between Sweden and Norway. The company Elkem AS has applied for expropriation of the rights of the Sámi on the Nása mountain in order to open a quarry for mining quartz. The Nása moratorium means that the use of land, water and air may in no way infringe on the rights or interests of the Sámi in the geographical area of Nása. Thus, the Sámi explicitly prohibit any mining activities such as preparations, prospecting, road construction or other operations that disturb traditional reindeer herding in the area. These rules are to be enforced by the Sámi villages until local Sámi self-government, which recognizes reindeer herding as the primary form of land use, has been incorporated in the Norwegian and Swedish laws, and until mining and other land uses that infringe upon rights and cause environmental damage are prohibited in the area permanently.

The Norwegian government has evaluated the *Mineral Act*, and it concluded that the Act should introduce a new set of rules to guide the ministries in assessing the impacts of mining on Sámi livelihoods and communities.¹⁵ In Norway, the government's permits to the copper mining company Nussir, including a permit to deposit toxic mining waste in a protected national salmon fjord, Riehponvuotna/Repparfjorden, have sparked a national environmental protest for the protection of one of

the last wild salmon rivers in Europe and the rights of the Sea Sámi culture and Sámi reindeer herding siidas (families) that will be impacted by this project.¹⁶ The government has followed its policy of allowing more mining in Sámi territories and has continued to set aside the legal objections of the Sámi Parliament and environmental organizations in the Nussir case.¹⁷

The impact of renewable wind power in Sámi territories

The large number of mega wind power parks that have been, and still are, being established in Sámi territory in all three Nordic countries, are controversial from a Sámi human rights and environmental perspective.¹⁸ One of the paradoxes of “green energy” projects is that in many cases they lead to indigenous peoples losing land through state expropriation of lands which are used by indigenous peoples. Hence, “green energy” development projects could end up threatening the very existence of Sámi traditional livelihoods.

The Storheia wind park in Fosen, Norway, is one of the most recently established mega parks, with construction on-going.¹⁹ The Norwegian Petroleum and Energy Ministry have given the permits to proceed with the 288 megawatt (MW) Storheia wind park, which is part of Europe’s largest onshore wind power project being developed by the Fosen Vind consortium. In December 2018, the CERD requested Norway to suspend the project so it could examine a complaint that the project would be harmful for Sámi reindeer herding. The ministry has stated that they will reply to the CERD correspondence but will disregard the request for interim measures as the project has already acquired all the necessary domestic legal permits and is almost finished.²⁰

The Arctic Railway

The planned railway line to the Arctic Sea is another indication of the increased interest of both states and the private sector in the exploitation of natural resources in Sápmi. The Sámi Parliament in Finland, Suoma Sámi Nuorat (Sámi youth organization), the Sámi Council and the Sámi artists collective Suohpanterror are among those that have strongly opposed the Arctic Railway plans, arguing that international

law gives the Sámi people the right to consultations conducted in good faith in order to fulfil the right to free, prior and informed consent (FPIC) in matters like this.

In the spring of 2018, the Ministry of Transport and Communications in Finland founded a Finnish-Norwegian working group for the purpose of examining further the routing from Rovaniemi, Finland to Kirkenes, Norway. Its work was conducted over the period from May to December 2018. The task of the group was to analyse the (social) impact of the railroad at the national, regional, european and global levels as well as the possible schedule and next steps of the project. The tasks of the working group also included examining the key issues of the railroad routing that are, for instance, connected with the environment, permit procedures, costs and financing. The Sámi Parliament in Finland, the Skolt Sámi Village Meeting and the Sámi Reindeer-Herding Cooperatives were represented in the working group. The results of these assessments have still not been made public, but the Sámi representatives have stated that their views were not included in the report correctly. Therefore, the Sámi Parliament has, pursuant to Section 9 of the *Act on the Sámi Parliament*, requested negotiations with the Ministry.²¹

In 2018, Greenpeace, with the support of Sámi activists demonstrated against industrial exploitation of the Great Northern Forest in the Sámi territory in Northern Finland.²² They fear that exploitation of the Arctic's unfragmented forests threatens Sámi culture as these forests are essential for traditional Sámi reindeer herding. A planned industrial railway would not only cut through the forests of Sámi homeland and destroy them but would also have negative consequences for the traditional management of Sámi reindeer herding.²³

Protection of Sámi fishing rights

The Deatnu/Tana/Teno²⁴ Fishery Agreement, is a treaty between Finland and Norway on the rights to salmon fishing in the Deatnu river. The Norwegian and the Finnish Parliaments approved the Deatnu Fishery Agreement in 2017 on fishing in the Tana watercourse and related watercourse regulations, despite the strong and clear opposition from the Sámi parliaments in Norway and Finland, the Tana watercourse fish resource management, the municipalities involved, all of the rightshold-

ers' organisations and individual local Sámi salmon fishers.²⁵ The Sámi parliaments claim that the agreement has both procedural and material shortcomings that run counter to human rights.²⁶ The Sámi parliaments are advocating for amendments in this agreement so that it will respect the customary fishing rights of the Sámi living in the Deatnu valley. The Ellos Deatnu movement initiated by Sámi activists, politicians and local traditional fishers, came as a reaction to this agreement being approved without the proper participation, impact assessments and FPIC of the Sámi Parliaments and the Sámi who have fishing rights.²⁷ The Ellos Deatnu movement is an indigenous-led activist movement based in the transborder area in Deatnu, where indigenous activists declared Sámi self-determination, moratorium, over a small island in the Deatnu river.²⁸

The Tana agreement is Norway and Finland's attempt to protect the salmon as the Deatnu valley hosts one of the most diverse salmon populations in the world. But the local Sámi communities argue that fishing rights for traditional techniques deployed by the Sámi have been disproportionately reduced – by 80%, whereas leisure fishing has seen a cut of 30-40%. This is considered discriminatory and a threat to the traditional salmon fishing of the Sámi in the valley.²⁹ The Sámi claim that the ownership of the river, and the right to manage the fishing there, are rights of the local people, not the national states.

The current Finnish *Fisheries Act* (379/2015) restricts the fishing rights of the Sámi in a way that unreasonably restricts the Sámi cultural practices. Some local Sámi rights holders – who are part of the local Sámi community of the Deatnu River, are currently opposing these restrictive regulations in the Deatnu river through continuing their traditional Sámi fishing without the permission of the state forest enterprise, Metsähallitus. Four Sámi are being prosecuted by the Finnish government for illegal fishing under Chapter 28, Section 10 of the penal code as they lacked the proper permits to fish in rivers where the state claims ownership. The four Sámi deny that they have committed a crime in practicing their culture in waters that have been used by the Sámi since time immemorial. In 2018, a Sámi human rights organization called ALVA was established, with the aim of promoting the human rights of the Sámi.³⁰ ALVA is currently supporting the Sámi in Finland who are being prosecuted for illegal fishing.³¹

Recommendations from UN treaty bodies

In 2018, Norway received recommendations from the CERD, CRC, CAT and the Human Rights Committee. Sweden received recommendations from the CERD.³² These include recommendations on *inter alia* specific measures to: end violence and sexual assaults against Sámi women; give legal recognition to the land and resource rights of the Sami people; ensure effective consultations and FPIC; and to improve the legal framework on Sámi land, fishing and reindeer rights. Further, the treaty bodies urge the states to address outstanding concerns raised by the Sami Parliament and facilitate the speedy adoption of the Nordic Sami Convention and a follow-up of the proposals of the Sámi Rights Committee.³³ There is no coordinated follow-up of the recommendations on Sámi rights between the countries. There are also recent research projects that address the challenges with protection of the rights of the Sámi, in light of developments in international law.³⁴

Notes and references

1. For more about the Nordic Sámi Convention, see *Indigenous World 2018*, p. 30-32.
2. The Kven are descendants of immigrants from Finland, and they are one of Norway's recognized national minorities. The Sámi commissioners are in a minority in the Commission, and the Chair is the former leader of the Norwegian Christian Democratic Party, Mr. Dagfinn Høybråten.
3. For more about the mandate of the Sámi and Kven Truth and Reconciliation Commission in Norway: <http://bit.ly/2T2eJKe> (PDF)
4. About the reconciliation process in Finland: <http://bit.ly/2Tl1WHc>
5. For more about the proposal on a new Sámi consultation act in Sweden and the proposal for adding a new chapter on consultations the Sámi Law (Sameloven) in Norway, see *Indigenous World 2018*, p. 33. The latter proposal was presented to the Storting, the Norwegian parliament, in 2018, but the parliament has still not made its final decision. The Sámi Parliament in Norway gave its consent to the proposed amendments in 2018.
6. CCPR/C/NOR/CO/7, Concluding observations on Norway, para. 37 b).
7. See Regjeringen.no, "Sametingsrådet og regjeringen enige om lovregler for konsultasjoner" at: <http://bit.ly/2TlZDDF>
8. The Sámi Parliament in Sweden rejected the first draft bill on consultations, as it found it not to comply with international standards. For more about the Sámi experiences with consultations, see Christina Allard: The Rationale for the Duty to Consult Indigenous Peoples: Comparative Reflections from Nordic and

- Canadian Legal Contexts, in Arctic Review on Law and Politics, Vol. 9/2018, p. 25-43.
9. See the UN EMRIP's Advisory note, from 28 March 2018 at: <http://bit.ly/2TbYjTZ>
 10. See The Prime Minister's office, Norway. "Northern area strategy - between geopolitics and social development." Available at: <http://bit.ly/2Tb3Ryw> ; The Prime Minister's office, Finland. "Finland's Strategy for the Arctic Region 2013. Available at: <http://bit.ly/2Tese7> : See The Government Offices of Sweden. "Sweden's strategy for the Arctic Region." Available at: <http://bit.ly/2T9ieU1>
 11. See NRK, "The treasury in the north." Available at: <http://bit.ly/2Tb498A>
 12. See A/HRC/18/35/Add.2 at: <http://bit.ly/2ThTSHI>
 13. See Beowulf Mining for further information on the Gállok/Kallak-project at: <http://bit.ly/2TmEgC8>
 14. See NRK, "You are welcome today, but we don't want you in the future." Available at: <http://bit.ly/2T894ay>
 15. See Regjeringen.no, "Evaluation of the Mineral Act" at: <http://bit.ly/2Tp3tw0>
 16. See The Independent, "Norway approves copper mine in Arctic described as 'most environmentally damaging project in country's history'" at: <https://ind.pn/2ThVron>
 17. See Newsinenglish.no, "Sparks fly over Finnmark mining" at: <http://bit.ly/2ThsFV6>
 18. See Environmental Justice Atlas, "Large-scale Wind Farm in Sami reindeer land, Sweden" at: <http://bit.ly/2TpzW5n>
 19. For a map over all the planned and finished wind power/ turbine parks in Norway, see the official data for Norway at: <http://bit.ly/2TKAeu1>
 20. See Reuters, "Norway to build wind farm despite concerns of reindeer herders" at: <https://reut.rs/2Th88jo>
 21. In the working group, the Sámi Parliament has been represented by 1st Vice Chair Heikki Paltto, the Sámi herding cooperatives by Osmo Seurujärvi, the Chair of the Muddusjärvi, and the Skolt Sámi Village Meeting by Veikko Feodoroff. See The Barents Observer at: <http://bit.ly/2Tp3Uq8> for more information.
 22. See Greenpeace International, "Industrial railway line and logging threaten the Sámi homeland" at: <http://bit.ly/2Tp3Zdq>
 23. See Greenpeace International, "On track for disaster — how the Arctic Railway will affect you and the climate" at: <http://bit.ly/2TenxB2>
 24. Deatnu is the original North Sámi name of the river, Tana in Norwegian and Teno in Finnish language.
 25. See The Barents Observer, "Sámi Parliaments continue fight over fishing in Teno River" at: <http://bit.ly/2TkiO4O>
 26. See Sametinget, "The periodic report of the Sámi Parliament in Norway, to the ILO (2018)" at: <http://bit.ly/2TkB6Pj>
 27. For more about free, prior and informed consent from a human rights perspective, see study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, 10 August 2018.

28. See “Niillas Holmberg & Sara Marielle Gaup – ELLOS DEATNU” at: <http://bit.ly/2TmHFAQ> (video) and “Ellos Deatnu! - It's the Local People” at: <http://bit.ly/2TgyRN3> (video)
29. See Equal Times, “The EU's last indigenous peoples fight for self-determination and land rights” at: <http://bit.ly/2TbZIKf>
30. For more about ALVA, see www.samihumanrights.org
31. See Samihumanrights.org, “Fishing Rights” at: <http://bit.ly/2Th8G8W>
32. See CERD/C/SWE/CO/22-23, Concluding Observations Sweden, June 6, 2018.
33. CERD Concluding Observations, Norway, 2 January 2019, CERD/C/NOR/CO/23-24, CRC Concluding Observations, 4 July 2018, CRC/C/NOR/CO/5-6, Human Rights Committee Concluding Observations, 28 April 2018, CCPR/C/NOR/CO/7, CAT Concluding Observations, 5 June 2018, CAT/C/NOR/CO/8.
34. See The University of Lapland, “Report: Sámi people's rights should be reinforced to comply with the Constitution and international law” at: <http://bit.ly/2Th8M0i>

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North America



CANADA



Indigenous peoples in Canada are collectively referred to as “Aboriginal peoples”. The Constitution Act of 1982 recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2016 Canadian Census, there were 1,673,785 Aboriginal people in Canada, accounting for 4.9% of the total population.¹ 977,230 people identified as a First Nations person. First Nations (referred to as “Indians” in the Constitution) 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, numbering 587,545 in 2016, many of whom live in urban centres. Canada’s Constitution Act of 1982 recognizes 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 2010, the Canadian government announced its endorsement of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and in 2016 Canada re-affirmed its support “without qualification”. Canada has not ratified ILO Convention 169.

The UN Declaration on the Rights of Indigenous Peoples

In 2018, the Declaration was increasingly cemented in policy and law. Several pieces of federal government legislation included commitment to the Declaration.² The province of British Columbia also enacted legislation affirming the commitment to implementation of the UNDRIP.³

Private members' *Bill C-262, the United Nations Declaration on the Rights of Indigenous Peoples Act* (see previous yearbooks), advanced through the Canadian Parliament. It passed the process in the House of Commons and was forwarded to the Canadian Senate. For the bill to become law, it will be critical for the Senate to finish its examination of the bill before there is a scheduled federal election in 2019. The Bill received overwhelming support from indigenous peoples, faith communities, trade unions, and human rights bodies in Canada.⁴

In February 2018, the prime minister announced a major commitment to recognizing Indigenous rights. In his announcement, he stated that a new framework could "include new measures to support the rebuilding of indigenous nations and governments, and advance indigenous self-determination, including the inherent right of self-government."⁵ The process that followed fell flat with indigenous peoples. Called the "Recognition and Implementation of Rights Framework," government officials caused confusion with an engagement process that lacked clarity and transparency. Natural mistrust led indigenous leaders to reject the process and call for a process designed by Indigenous peoples themselves. Remarkably, successive governments in Canada have failed to grasp the necessity of indigenous peoples being able to voice for themselves what could and should be included in an indigenous rights recognition effort.

Conflict over resource development

Too often resource development projects are advanced without respect for indigenous rights. When this happens, indigenous peoples and their supporters often oppose these projects, including through civil disobedience. Their opposition can result in human rights defenders' arrest.

In a high-profile situation reported in the media, Wet'suwet'en hereditary Chiefs opposed the development of a pipeline to carry liquefied natural gas across their traditional territory in northwest British Columbia. For the past decade people have lived at the Unist'ot'en camp on the territory in

protest of proposed development. A second checkpoint into the territory was created by the neighboring Gidimt'en clan in December 2018. The pipeline corporation, Coastal GasLink applied for an injunction to have the camp dismantled to make way for construction, which led to the arrests of 14 people on 7 January 2019.⁶ Solidarity for the Wet'suwet'en prompted public actions across the country.

With both federal and provincial governments committing to the UN-DRIP and the right to free, prior and informed consent (FPIC) affirmed therein, serious questions arise. Why would such a court injunction be granted without apparent consideration of the human rights of the Wet'suwet'en?⁷ This case also underlines the critical need for independent processes to assist with conflict resolution.

Trans Mountain pipeline expansion

Pipelines are an ongoing source of conflict between governments and indigenous peoples. The Trans Mountain pipeline expansion provides another example.

In the spring of 2018 Kinder Morgan sold the pipeline to the federal government.⁸ In August 2018, the Supreme Court ruled that Canada failed "to engage, dialogue meaningfully and grapple with the concerns expressed to it in good faith by the indigenous applicants so as to explore the possible accommodation of these concerns."⁹ This was a result of "an unreasonable consultation process" that fell "well short of the mark set by the Supreme Court of Canada." Following this ruling, the government began yet another flawed consultation process. Ongoing protests of this project led to multiple arrests of indigenous people and their supporters.

On 14 December 2018 the UN Committee on the Elimination of All Forms of Racial Discrimination (CERD) expressed their concerns on this project, stating that "the Committee would like to underscore that the realization of the Trans Mountain Pipeline Expansion Project without free, prior and informed consent, would permanently affect the land rights of Secwepemc people and, as a result, would infringe their rights under the International Convention on the Elimination of All Forms of Racial Discrimination."¹⁰

Site C

The Site C dam in north-eastern British Colombia threatens one of the province's few remaining areas left relatively untouched by development and where First Nations can freely engage in traditional, Treaty-protected practices, including hunting, trapping and fishing. Despite a call from the CERD for an immediate halt on its construction¹¹, work on the dam continues. A joint environmental review carried out on behalf of the federal and provincial governments affirmed that the dam would "severely" undermine the ability of Indigenous peoples to hunt, make fish unsafe for at least a generation and wipe out hundreds of cultural and historic sites, including grave sites.¹²

Still, neither the federal nor the provincial government has withdrawn its support for the project and First Nations have been forced to shoulder the burden of defending their rights through the courts. While the civil suit launched in 2017 by West Moberly and Prophet River First Nations – which poses the question of whether the dam is an unjustifiable breach of Canada's Treaty obligations – has yet to begin and will likely take years to resolve, West Moberly sought more immediate rights protections through a temporary injunction to halt construction of the dam, even if only in certain critical areas. However, in October 2018, the British Columbia Supreme Court rejected this request.¹³ The court did demand that the issue of potential Treaty rights violations be resolved by mid-2023, before the worst of the damage is wrought by flooding the valley¹⁴, but the court failed to protect sacred sites and crucial habitat jeopardized by early construction activities.

In December 2018 – in response to an urgent appeal from the Union of British Columbia Indian Chiefs and Canada's failure to meet an August deadline to respond to a previous request for information on Site C¹⁵ – CERD called on Canada to outline steps taken to halt the dam's construction and report back by April 8, 2019.¹⁶ In its request, the Committee emphasized its concern "that the realization of the Site C dam without free, prior and informed consent, would permanently affect the land rights of affected indigenous peoples in the Province of British Columbia."¹⁷

Grassy Narrows

The Canadian and Ontario governments have yet to provide adequate support to address the impacts of mercury poisoning in Grassy Narrows First Nation. While the Ontario government committed in 2017 to clean up the

river system in 2017 the same year, no action has been taken to do so.

Nevertheless, the people of Grassy Narrows continue to work tirelessly in the fight for accountability and compensation for the myriad health and cultural impacts of mercury poisoning facing their First Nation. In December 2018, a delegation from Grassy Narrows, including youth advocates, travelled to Ottawa to raise awareness about the results of a new community health study, which documents how children whose mothers ate fish at least once a week while pregnant are four times more likely to have a learning disability or nervous system disorder.

First Nations child welfare

In February 2018, the Canadian Human Rights Tribunal issued its fifth non-compliance order addressing the federal government's continued failure to fully implement the Tribunal's 2016 ruling on First Nations child welfare (see previous yearbooks).¹⁸ In response to a complaint filed in 2007 by the First Nations Child and Family Caring Society and the Assembly of First Nations¹⁹, the Tribunal had ruled that the federal government discriminated against First Nations children by underfunding First Nations' child and family services, and ordered Ottawa to ensure that jurisdictional disputes between federal and provincial governments do not obstruct effective delivery of services to First Nations children.²⁰

The February 2018 ruling emphasized that "the seriousness and emergency of the issue" is still "not grasped with some of Canada's actions and responses," and urged that Canada not delay addressing specific, urgent needs expressed by First Nations.²¹ In the ruling, the Tribunal also stated, "Of particular significance especially in this case is the United Nations Declaration on the Rights of Indigenous Peoples [...]"²²

Soon after the Tribunal's ruling, Indigenous Services Minister Jane Philpott announced that her department would increase funding to First Nations child welfare services.²³ In November, Minister Philpott also announced the intent to co-develop new child and family services legislation with indigenous peoples.²⁴ It remains to be seen how effective the final legislation will be at responding to concerns raised by First Nations, and whether the legislation will be passed before the federal election scheduled for the fall of 2019.²⁵

Inquiry on missing and murdered indigenous women and girls

The National Inquiry on Missing and Murdered Indigenous Women and Girls concluded its final hearings in December 2018, and its final report is due to be submitted to the federal government by 30 June, 2019.²⁶ The Inquiry – which faced serious criticism for delays, as well as poor communication with families and survivors – was originally supposed to submit its final report by November 2018, but was granted a controversial extension.²⁷ Some felt that funding for the extension could have been better spent addressing more immediate needs of indigenous women and girls, such as affordable housing.²⁸

Government response to the crisis of violence against indigenous women, girls, and two-spirit people has similarly been critiqued for delay. Despite calls for the immediate implementation of previously identified solutions, or a prompt response to recommendations made in the Inquiry's 2017 interim report, the federal government did not take steps to respond until June 2018.²⁹ This delay in initiating reforms, coupled with the Inquiry's own slow progress, has increased frustrations and placed added strain on survivors and family members, as well as increased concern about how effectively government will respond to the Inquiry's final report.³⁰ Between 2001 and 2014 Aboriginal women were six times more likely than non-Aboriginal women to be murdered.³¹

CERD to Canada

CERD sent three inquiries to Canada in 2018, all in response to applications from indigenous peoples under the Early-Warning Measures and Urgent Action Procedures. In response to ongoing issues with conflict around resource development, CERD called on Canada to seek independent, expert advice on implementation of the right to FPIC.

Although Canada is inching forward with policies and legislation that support indigenous peoples' rights, FPIC is still regarded with suspicion or worse. Even with excellent legal analysis available³², decision-makers continue with confusion, fuelling ongoing conflict over lands, territories and resources, as well as the criminalization of land defenders. For Canada to honour its commitment to reconciliation, decision-makers must decolonize their thinking and truly respect Indigenous peoples' human rights, including FPIC.³³

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THE UNITED STATES OF AMERICA



The indigenous population in the United States of America is estimated between 2.5 and 6 million people,¹ of which 23% 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.

573 Native American tribal entities were recognized as American Indian or Alaska Native tribes by the United States in July 2018, and most of these have recognized national homelands. While socioeconomic indicators vary widely across different regions, the poverty rate for those who identify as American Indian or Alaska Native is around 27%.

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. Federally recognized Native nations are sovereign but legally wards of the state. The federal government mandates tribal consultation on many issues but has plenary power over indigenous nations. While American Indians in the United States are generally American citizens, they are also citizens of their own nations.

In January 2018, President Trump signed a bill to federally recognize six Native tribes in Virginia, the Chickahominy, the Eastern Chickahominy, the Upper Mattaponi, the Rappahannock, the Monacan, and the Nansemond. Recognition acknowledges the sovereignty of these tribes, establishes government-to-government relations with the United States, and makes tribes eligible for federal services and funding. The recognition of these six tribes was contingent on an agreement that they would not engage in tribal gaming.² This differs from the Pamunkey Indian Tribe, which was recognized in 2015 (see *The Indigenous World 2016*) and is actively looking for a casino site.

Elections

In the November federal elections, two indigenous women, Deb Haaland (D; Laguna Pueblo) and Sharice Davids (D; Ho-Chunk Nation) won election to the House of Representatives in New Mexico and Kansas respectively. They will join two American Indian Republicans from Oklahoma, Tom Cole (Chickasaw) and Markwayne Mullin (Cherokee). Peggy Flanagan (D; White Earth Ojibwe) was elected Lieutenant Governor of Minnesota, and Kevin Stitt (R; Cherokee) was elected Governor of Oklahoma. Among many other American Indians who ran for office, the victory of Willie Grayeyes (Navajo) is noteworthy. He won a seat on the San Juan County Commission in Utah where, together with Kenneth Maryboy (Navajo), the county commission will, for the first time, have a Native majority. Both oppose the Trump administration's shrinking of the Bears Ears National Monument (see *The Indigenous World 2018*), which is located in the county.

Sovereignty

In September, the Department of the Interior decided that the Mashpee Wampanoag Tribe in Massachusetts was not entitled to a reservation. In 2015, the Obama administration had established a reservation for the tribe, which won federal recognition in 2007. The tribe aimed to build a casino on one plot. Neighbors and interest groups sued the federal government over the casino plans and, in 2016, a federal judge decided that the Department of the Interior had to render an opinion on a decades-old

law. Tribal casinos can only be built on tribal trust lands. The Indian Reorganization Act of 1934 specified that the Secretary of the Interior could take lands into trust for American Indian tribes – thus extending Native and federal jurisdiction over them – but defined “Indian” as “all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction”. The Mashpee Wampanoag were recognized in 2007 and, therefore, according to the argument laid out by the Department of the Interior and according to the Supreme Court decision in *Carcieri v. Salazar* (see *The Indigenous World 2010*), do not fall under this law.³ The federal government could not therefore take lands into trust for them. This decision will potentially affect all tribes recognized after 1934 but immediately deprives the Mashpee Wampanoag of their reservation. In defense of the tribe, bills were introduced in Congress in March that would take the land into trust for the tribe as a matter of law.

A Supreme Court case with wide implications for sovereignty, *Carpenter v. Murphy*, was argued in November. The case revolves around the question of whether the Muskogee (Creek) Nation’s reservation still exists or if it was extinguished by several acts between 1898 and 1908. If the reservation still exists, the Muskogee and, by extension the Cherokee, Choctaw, Seminole, and Chickasaw nations and the federal government, would regain jurisdiction over most of eastern Oklahoma. While the federal government never explicitly terminated the reservation, the state of Oklahoma and the Trump administration argue that the reservation no longer exists.

The administration is, however, defending tribal interests in another Supreme Court case, *Herrera v. Wyoming*. Here, the administration is arguing that the establishment of the state of Wyoming did not end the Crow Tribe’s treaty rights to hunt on unoccupied lands. A Crow hunter had shot elk outside the reservation and across the Montana state line in Wyoming and was convicted of poaching. This case has attracted significant attention. The Crow Tribe is supported by tribes across the United States, while Wyoming has been supported by Nebraska, Kansas, North and South Dakota, Louisiana, and Texas.

Child welfare

In October, a judge for the United States District Court in Fort Worth, Texas, declared sections of the Indian Child Welfare Act (ICWA) unconstitutional. The Cherokee, Oneida, and Quinault nations and the Morengo Band of Mission Indians had joined with the federal government to defend the law. ICWA (see *The Indigenous World 2014*) was originally enacted to give tribes control over children to be placed in foster or adoptive homes and to prevent, if possible, these children from being placed in non-Native families. In this case, the judge found that the federal government could not order states to enforce ICWA and that by extending ICWA rules over all children who were potential tribal members, it was in violation of the Fifth Amendment of the constitution because it did not provide equal protection under the law.⁴ This case will probably go to the Supreme Court. It represents a major challenge to many federal regulations on American Indian affairs and could fundamentally change the legal standing of Native peoples in the United States.

Pipelines

Keystone XL Pipeline: After the Keystone XL pipeline was approved by the Trump administration in 2017 (see *The Indigenous World 2018*), tribes and environmental groups filed several lawsuits. In September, the Rosebud Sioux Tribe and the Fort Belknap Indian Community filed a joint suit in the federal court because the reapproval process ignored any impact on treaty rights, trust obligations, or cultural resources, and there had been no consultation with tribes. The permit for the pipeline thus violated several federal laws. The Yankton Sioux Tribe filed a similar suit with the Nebraska Supreme Court.

In November, a federal judge in Montana ruled on a suit brought in part by the Indigenous Environmental Network and vacated the permit, thus halting all work on Keystone XL. The judge ordered several supplements to the original environmental impact statement and asked the federal government for its reasoning as to why it was permitting the pipeline when the previous administration had rejected a permit. He also demanded the completion of cultural resource surveys along the route.⁵

Dakota Access Pipeline: In August, the Army Corps of Engineers delivered a court-directed consideration of the Dakota Access Pipeline's impacts on fishing and hunting rights and environmental justice (see *The Indigenous World 2017* and *2018*). The memorandum has remained sealed since then but the Corps maintained that it had sought input from Standing Rock, Cheyenne River, Oglala, and Yankton Sioux Tribes, and that the data it had gathered showed no risk. The Corps also wrote that

[w]hile the Tribes opposed the Corps' authorizations for the pipeline's Lake Oahe crossing, they did not provide information that demonstrated that a substantial dispute exists as to the size, nature, or effect of the federal action [i.e. granting the permit for the pipeline].⁶

This seems to be a highly cynical and political finding. In February, the Cheyenne River Sioux Tribe had filed a response to the court noting that "the Corps has been almost completely non-responsive to requests from the Cheyenne River Sioux Tribe to engage in active discussion about the ongoing [...] process or any of the Tribe's substantive requests."⁷

Enbridge Pipeline: In Minnesota, the Red Lake and White Earth bands of Ojibwe, as well as Native and environmental groups, filed appeals against the state's Public Utilities Commission approval of a plan to replace an old oil pipeline. Enbridge Energy wants to replace its Line 3 pipeline, which crosses the Leech Lake reservation. Under a new agreement, Enbridge would remove the old pipeline from Leech Lake and the new pipeline would avoid it. The Fond du Lac Band of Lake Superior Chippewa, on the other hand, reached an agreement with Enbridge in August to continue to allow pipelines to cross tribal lands. Opponents of the new pipeline fear that a spill would contaminate the headwaters of the Mississippi and waters important for wild rice harvesting, a traditional food for the Ojibwe.

Natural resource extraction

In January, the Environmental Protection Agency reversed course again

on the Pebble mine project near Bristol Bay in Alaska (see *The Indigenous World 2018*) and decided it would not withdraw limitations from the project. The mining project is undergoing an Environmental Impact Statement by the Army Corps of Engineers that should be completed in January 2019.

In September, a federal judge reinstated canceled oil leases in the Badger-Two Medicine area sacred to the Blackfeet in Montana.⁸ The leases had been suspended in 1993 and canceled in 2016 over concerns the original leases ignored environmental laws and the lack of consultation with the Blackfeet. In December 2017, then Secretary of the Interior Ryan Zinke had proposed a National Monument status for the area. Zinke ordered the Department of the Interior to file a notice to appeal the decision in November, but then resigned in December. The Blackfeet and environmental groups also filed intents to appeal.

Alaska Trust Lands

In June, the Department of the Interior rescinded an Obama administration decision to allow Alaska tribes to have their lands taken into trust by the federal government (see *The Indigenous World 2017*).⁹ Trust land status protects land ownership indefinitely and provides a sovereign territory for Native governments. Currently, Alaska has 229 federally recognized tribes. Only one, Metlakatla, had land in trust, and one other, the Craig Tribal Association, had been able to put land into trust before the June decision to halt all applications and review the authority to take land into trust for Alaska tribes.

Government shutdown and the border

In December, the federal government began a partial shutdown as a result of President Trump's insistence that the federal budget should include funding for a border wall on the Mexican border. This means that, among other agencies, the departments of Agriculture, Interior, and Housing and Urban Development are no longer being funded since 23 December. These departments deliver extremely important services to Native communities and people, and include the Bureau of Indian Affairs (BIA). While some personnel will be exempt and other federal em-

employees will be forced to work without pay, many will be furloughed and contractors will not receive payments at all until the government provides funds. For example, while the Indian Health Service continues to provide essential emergency services, payments to tribes who operate hospitals and clinics under agreements with the federal government are not being processed. Urban Indian health clinics are not being funded. Snow removal on BIA roads is no longer being funded, food aid programs can no longer count on federal monies, and housing applications dependent upon federal money will not be able to move forward. The Department of Agriculture delivers food aid to about 90,000 Native people a year, and supports free lunch programs in schools, which are often the only way poor children in the United States are assured meals.

A border wall would threaten Native nations such as the Tohono O'odham, whose traditional territory is bisected by the international border. Some 2,000 tribal members live in Mexico, and many important sites are on the Mexican side of the border. If the border becomes fortified, this would result in a loss of ties to people, land, and tradition. The disruption would, of course, not be limited to people but would also affect animal migrations and territories.

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Mexico and Central America



COSTA RICA



In Costa Rica there are 24 indigenous territories, comprising 6.7% of the country's territory (3,344 km²), at least according to the decrees that created them. According to the National Population Census of 2010, close to 100,000 people are recognized as indigenous, constituting 2.4% of the total Costa Rican population.

Eight distinct indigenous peoples inhabit the country. Seven of them are of Chibchense origin: Huetar in Quitirrisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Këköldi; Cabécar in Upper Chirripó, Tayni, Talamanca Cabécar, Telire and China Kichá, Lower Chirripó, Nairi Awari and Ujarrás; Brunca in Boruca, and Curré; Ngöbe in Abrojos Montezuma, Coto Brus, Conte Burica, Altos de San Antonio and Osa; Teribe in Térraba and one of Meso-American origin (Chorotega in Matambú).

In Costa Rica, as in other countries of the Americas, title was granted to indigenous lands without consent. This continues to create conflicts, both within the territories and along

its perimeters. These conflicts arise from the occupation of lands by third parties and illegal extraction of natural resources (lumber, animals and water, for example).

In Costa Rica, the indigenous peoples are among those with the most extreme poverty rates. The areas they inhabit have the lowest presence of public services, are difficult to access, and their best lands and natural resources are illegally occupied by non-indigenous persons, among other factors of a structural nature. If the human development index is used as a complex variable to indicate the degree of structural vulnerability, most indigenous territories are located in municipalities where that index is at its most negative levels.

ILO Convention 169 was ratified by Costa Rica more than two decades ago, but this did not lead to recognition of indigenous rights in the country. The indigenous peoples continue to be discriminated against, face the worst levels of social exclusion, and are allocated the lowest amounts of public investment.

The *Indigenous Act of 1977* recognized traditional organizations of the indigenous as their representatives. Nonetheless, a regulation imposed a legal construct that bears no resemblance to the traditional structures of power of the indigenous peoples.

One more year without passing the *Autonomous Development Act*

In 2018, the government issued a decree establishing an indigenous consultation mechanism, which is possibly the greatest advance in fulfilment of Costa Rica's indigenous rights obligations since ratification of ILO Convention 169.

In 1992, at the initiative of indigenous organizations, a process began to draft and pass a law to put ILO Convention 169 into practice and guarantee the rights of indigenous peoples. In 1994 that legislative bill was published in the *Official Daily Gazette*, and in 1997 an extensive consultation process was conducted (nearly 50 communities in the 22 territories that existed at the time). This consultation was approved by

the Office of the Ombudsman for the Inhabitants, the Supreme Electoral Court, the ILO, and the United Nations Development Programme (UNDP). Based on the observations made during that process, in late 1998 the *Indigenous Peoples' Autonomous Development Act* was introduced.

By 2018, that bill had been awaiting approval by the Congress of the Republic for more than a quarter of a century. On multiple occasions, Congress has submitted the text to a constitutional consultation, and time and again, the bill has been returned to them with a comment that it fails to comply with precepts of the Constitution of the Republic. In the first decade of the current millennium, the bill was also submitted to a new consultation in the indigenous territories, where the original text was approved. In 2014, the incoming government promised to get the law approved and introduced it to Congress, where it was shelved. In 2018, the incoming administration made the same promise, which it also failed to keep. Within Congress there is still strong resistance of a racist nature. The bill is also opposed by the private sector, which sees the right to self-determination and autonomous management of indigenous territories as posing a risk for investments in extractive industries.

Along the same lines, the 2014-2025 National Policy for a Society Free of Racism, Racial Discrimination, and Xenophobia, the implementation of which should have commenced in 2015, is yet to be put into practice in 2018.

Enactment of a consultation mechanism

After a participation process launched in 2016¹ to establish the rules for consultation in the country, the General Mechanism for Consultation of Indigenous Peoples was enacted on *March 6, 2018* through *Executive Decree number 40932-MP-MJP*. This is possibly the greatest legislative for indigenous rights in Costa Rica since the ratification of ILO 169 in 1993.

The General Mechanism for Consultation of Indigenous Peoples calls for creation of an Indigenous Consultation Technical Unit under the umbrella of the Ministry of Justice and Peace, in charge of technical and financial management of consultation processes, along with the creation of Indigenous Territorial Consultation Bodies as indigenous counterparts to act as spokespersons with the government of the Re-

public during consultation processes. These bodies are supposed to be elected within each of the indigenous territories, in keeping with their own rules and mechanisms of representation, and play a role of logistical, specialized coordination in consultation issues.

It should be noted that this executive decree contains definitions of importance for indigenous rights in the country. For example, self-determination:

Is the right of indigenous peoples to freely determine their political status in order to freely attain their economic, social, and cultural development and to form a part of decision-making processes that affect them, as well as to fully participate, if they so desire, in the political, economic, social, and cultural life of the State. This right implies, in turn, the obligation of the State to ensure to the Indigenous Peoples that they will be duly consulted on matters that have or could have a bearing on their cultural and social life, in accordance with their values, uses, customs, and forms of organization.

Inclusion of traditional authorities means that:

All consultation and intercultural dialogue processes must take into account the traditional community structures and institutions that, by custom, are recognized by an indigenous people as a source of counsel or decision-making, including but not limited to the council of elders recognized by the indigenous people.

The mechanism also states that the consultation must be carried out through culturally appropriate procedures. This is extremely important, because it recognizes the diversity of decision-making systems among the various indigenous peoples and territories, and is a step forward from the UNDP proposal referred to repeatedly since 2011, which has called for a single consultation protocol, in violation of indigenous rights and realities. The mechanism defines a culturally appropriate procedure as one that allows for:

The free and proper expression of the systems of cultural, social and political organization of the Indigenous Peoples, as

well as their forms of communication and their language, within the framework of their world view. All stages of the consultation process must be appropriate and in keeping with the cultural, socio-economic, geographical, demographic, and climatological particularities of the indigenous territories consulted.

The mechanism establishes that the state shall finance the consultations, and make sure they comply with international standards on indigenous rights. However, as 2018 came to a close, the Ministry of Justice and Peace, in charge of its implementation, had not made any progress in establishing the Indigenous Consultation Technical Unit. On the indigenous side, three Indigenous Territorial Consultation Bodies were created in Salitre, Cabagra, and Boruca, through a pilot plan supported by the Office of the United Nations High Commissioner for Human Rights (UNHCHR).²

Inadequate recognition of territorial rights

Costa Rica has recognized indigenous peoples' territorial rights since 1956, and more than 300,000 lands have been registered in the name of indigenous peoples and communities. Those lands, however, have never been fully in the hands of indigenous peoples. Even though the Indigenous Act of 1977 established an annual budget exclusively earmarked for regularization of indigenous territories, four decades later, those funds have yet to be allocated. Currently, invasions of lands continue, and indigenous production systems have been destroyed by settlers who disparagingly turn the rainforests into pastures for cattle. Non-indigenous landholders occupy more than half of the areas of some territories.

The state has ignored the invasion of indigenous lands. Indigenous Development Associations, legitimated by the state, have enrolled non-indigenous foreigners as indigenous persons so that they can occupy lands. These acts have generated high levels of conflict, impeding indigenous territorial governance and human development, help explain why indigenous peoples live in poverty and social exclusion. The governmental institution in charge of clearing title for indigenous territories is the Rural Development Institute (INDER).

In 2011, in the Bribri territory of Salitre in the country's Pacific South, a land recovery movement started, which spread to neighbouring territories, including Cabagra, Térraba and Rey Curré. Responses to this movement have included repeated outbreaks of violence on the part of non-indigenous landholders, while the state has taken no action to contain such violence. The Inter-American Commission on Human Rights (IACHR), since 2015, has thus requested that the government impose precautionary measures. It took two years, until 2017, for the Ministry of Justice and Peace to draft a protocol for implementing those measures. In 2018, they had yet to be implemented, and the acts of violence that form the basis for those measures continue to occur.

Frequent incursions by non-indigenous armed bands are still being seen in Salitre. These groups threaten indigenous members of the land recovery movement. On 25 December 2018, while homes and crops of movement members were burned, the national police never arrived. Discrimination in the region towards the indigenous in public services is also seen, for example, at the Social Security clinic, the middle school and in municipal governance.

In 2018, the INDER conducted an indigenous lands regularization program. No progress was made in clearing title for those lands, and no actions were taken for the physical demarcation of their perimeters. The illegal occupation of lands by non-indigenous persons continued.

In May 2018, the General Assembly of the Brunka Indigenous Territory of Rey Curré authorized the process for recovery of their ancestral lands, with the community itself commencing internal title-clearing actions:

An official communiqué issued by the Indigenous Development Association of Rey Curré states that as a local government and in the exercise of their powers, they now proceed to restore property, in defense of their territory, and to restore customary ancestral rights consecrated in ILO Convention 169, the Indigenous Act, and the principle of self-determination of Indigenous Peoples, for use of the collective in search of improving the quality of life of the community's inhabitants.

This process commenced with the recovery of a 250-hectare property held by a non-indigenous landholder who was using it as pastureland for his cattle. The population's main sources of water are located on those lands.

The situation is still similar to prior years: those involved in the land recovery movement continue their work with internal clearing of title within the perimeters of their lands, while those who hold the lands and other non-indigenous persons continue to engage in violence against the indigenous peoples. All the while, the government fails to apply the precautionary measures.

Access to justice³

In July 2018, Congress passed Act 17,805, *the Charter of Rights on Access to Justice for Indigenous Peoples*, aimed at ensuring that the justice system respects the cultural reality of indigenous peoples. According to this law, “the application of justice for indigenous peoples of the country must respect these populations’ world view.” The law made progress towards compliance with Articles 2, 8, and 12 of ILO Convention 169.

The law provides that the Judiciary shall grant assistance of counsel in cases that so require. It also calls for training of judges, auxiliary personnel, defence attorneys and prosecutors. Trials and hearings must be held at the site of the incident to ensure that the parties are not removed from the area. Priority treatment must be given to indigenous persons along with the right to a translator. Furthermore, access to justice is guaranteed with free specialized technical assistance from the Public Defender’s Office.

The law also obligates the Judiciary to produce its own statistics regarding prosecutions of indigenous peoples and agrarian cases and to include indigenous issues in its five-year strategic plan, thus impacting all projects formulated in the plan.

Advances in an intercultural approach to evaluating public policies

In 2018, the General Comptrollership of the Republic launched an auditing process for potable water services in the indigenous territories of Costa Rica.⁴ Of the 29 aqueducts analysed, only seven met all of the physical, chemical and microbiological standards required by Costa Rican regulations.

According to the Comptrollership's report, in working with indigenous communities, an intercultural approach is pertinent, since indigenous communities have cultural codes different from those of the dominant society. They have different languages, sources of livelihoods and patterns of settlement. The report indicates that, "As a premise, all Indigenous Peoples in the country face a situation of structural vulnerability due to poverty and social exclusion, which is accentuated on account of a deficient water service." It also indicates that the absence of an intercultural approach foments an indiscriminate vision of the indigenous territories, failing to recognize that they each require a different water management approach and that, given these circumstances,

Investments or acts of the Costa Rican Aqueducts and Sewers Institute might not be accepted and, therefore, might not meet their objective of ensuring a good service that improves conditions of life in these territories and contributes to overcoming their vulnerability.⁵

An intercultural approach would make it possible to take cultural norms into account in indigenous territories for handling water issues, using the indigenous peoples' own territorial governance systems. Those norms are related to those communities' consideration of water as a living being and as a manifestation of that which is sacred. The fact that an institutional audit is considering an intercultural approach to make public policy recommendations is of great significance.

Children's rights

In November 2018, women leaders of the indigenous territory of Cabécar in Upper Chirripó denounced that the National Council on Children frequently takes children away from their families on the grounds of domestic violence and alcoholism, placing them in shelters outside the community. In those shelters and, in other cases, in foster care, children face discrimination; are mocked on account of not speaking Spanish; and are insulted with racist slurs. Some of the children's removals have taken place during community festivals. During those festivals, the adults drink a corn-based alcoholic drink named *chicha de maíz*.

This is a dire situation that contrasts with the willingness to en-

gage in intercultural dialogue expressed by other governmental institutions. The denunciation of the practices of the National Council was submitted to the presidential advisor on indigenous rights, who passed it along to the authorities of the National Council. The response by the National Council to the denunciation attempted to justify the actions of their officers and indicated a lack of awareness of indigenous child-raising structures. Further, their response wrongly equates interculturality with simultaneous translation. The response also states that the National Council will prepare a specific policy for these communities.

Conclusions

In Costa Rica, the issue of indigenous rights, in particular rights to land and to self-determination, are strongly resisted by those who hold political and economic power. Despite ILO 169 being ratified in 1993, there is a general lack of compliance and implementation. The forms and structures of external social and political organizations continue to be imposed upon indigenous peoples throughout the nation. Their territories are being invaded by non-indigenous persons and agro-industrial companies, and public services are non-existent, insufficient or of poor quality.

In 2018 great progress was made thanks to indigenous peoples' fight for their rights. Of particular importance were the executive decree for the consultation mechanism and the Charter of Rights on Access to Justice for Indigenous Peoples. Another important accomplishment was the incorporation by the General Comptrollership of the Republic of an intercultural approach to evaluate public policy, as well the participation by the National Indigenous Board of Costa Rica in various forums on environmental policy and climate change. Also, in November 2018, the Office of the President of the Republic requested advice from the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (FILAC). The aim of this request was to improve the institutional structures that address the rights and development of indigenous peoples, in particular the National Indigenous Affairs Commission (CONAI), which, ever since its founding, has been relegated to a limited assistance role, in part due to a lack of resources. The FILAC welcomed that request.

However, discrimination persists; territorial issues are far from be-

ing resolved, and the levels of social exclusion of indigenous peoples continue to be of serious concern.

Notes and references

1. Through *Executive Order 042-MP*, which defined the steps to be taken to reach a consensus on the characteristics of processes for consulting Indigenous Peoples in the country.
2. *Executive Decree number 40932-MP-MJP*. Available in Spanish at: <http://bit.ly/2TaHbOY>
3. Bharley Quirós Navarro. *Aplicación de justicia respetará realidad cultural de indígenas*. Diario Extra, 9 July, 2018.
4. See Semanario Universidad, "Contraloría denuncia deficiencias en servicio de agua en comunidades vulnerables." Available at: <http://bit.ly/2T9rKH2>
5. Ibid.

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GUATEMALA



Guatemala continues to suffer from a lack of reliable data on its indigenous peoples. The 2018 Population and Housing census's ability to survey and report on the country's ethnic dimension is limited, given that it has been conducted in the midst of an unprecedented political and institutional crisis. The data which will be generated as a result will likely mirror the figures from the last census in 2002, which estimated indigenous peoples at 45% of the population. The main ethnic groups are 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, Uspanteko, Xinka and Garífuna. The social, economic and political situation of indigenous peoples has not improved in recent years and continues to run in sharp contrast to the rest of the country's population, as can be seen from the rates of unequal public investment and the persistence of discrimination, exclusion and racism.

Notable events relating directly and indirectly to indigenous peoples in 2018 included: a) the National Population and Housing Census, long overdue as the last census was in 2002, and which it is hoped may give more accurate data on the number of people self-identifying as indigenous; b) the government's unilateral dismantling of the International Commission against Impunity in Guatemala (CICIG), which leaves human rights defenders, including indigenous leaders, more vulnerable to the repositioning of the state's repressive forces and to organised crime; c) the visit of the Special Rapporteur on the rights of indigenous peoples, in early May, whose report highlighted the persistence of structural problems resulting in poverty and racial discrimination, an upsurge in violence, evictions and criminalisation, as well as impunity, corruption and institutional weakness in relation to protecting and recognising indigenous rights; d) the series of protests and legal demands that indigenous peoples continued to take before the courts to demand the return of their communal lands, which have been subjected to land grabs and fraud; e) the political struggle of a number of indigenous organisations around the forthcoming general elections in 2019; and, finally, f) the cases of military personnel accused of genocide and repression of indigenous leaders.

Indigenous peoples and the 2018 National Census of Population and Housing

In line with international standards, Guatemala usually conducts their census every ten years. The last was held in 2002 and the country's total population was then estimated at 11 million inhabitants, of which 40% were indigenous. A number of organisations did, however, claim that the methods used in the census made ethnic self-identification difficult. Preliminary estimates from the 2018 census indicate that the country's population could now be 20 million and, if the proportion were to remain the same as in the previous census, this would give an indigenous population of approximately 8 million.

The 2018 census was conducted at a time of political turmoil and uncertainty in the country, with public institutions weakened and their credibility damaged. This included the National Statistics Institute, the body responsible for the census. Public insecurity also affected the way the census was carried out because census officials had to be accompanied by the police in order to enter many areas. For their part, the indigenous organisations questioned the lack of sufficient information in native languages, although they themselves did not conduct any campaigns in favour of indigenous self-identification in the census process.

The Special Rapporteur's visit to Guatemala

The Special Rapporteur on the rights of indigenous peoples visited the country from 1 to 10 May 2018 with the aim of examining the situation of Guatemala's indigenous peoples through interviews with government bodies and indigenous organisations, as well as through independent information produced for this purpose. Her report was presented to the UN Human Rights Council at its 39th session from 10 to 28 September under Agenda Item 3: "Promotion and protection of all human rights, civil, political, social, economic and cultural rights, including the right to development." During her visit, the Special Rapporteur held meetings with representatives of indigenous organisations, including one with indigenous lawyers and another with indigenous women, at which she received specific information on current court cases and on gender equality. She also visited the indigenous territories in San Marcos, Chiquimula and Alta Verapaz, where indigenous inhabitants turned out

in large numbers to explain the exclusion and violations of their collective rights.

In her report, the Special Rapporteur indicated that the situation of the Maya, Xinka and Garífuna peoples is marked by serious structural problems, in particular a failure to protect their rights to land, territories and resources, together with the racial discrimination that permeates all spheres of society. She expressed her serious concern at the upsurge in violence, forced evictions and criminalisation of indigenous peoples defending their rights. Impunity, corruption, institutional weakness, a failure to implement the Peace Agreements and extreme socio-economic inequality are the main problems she identified. It is imperative that the Guatemalan government urgently identifies and commences work to resolve these structural problems.¹

The Special Rapporteur recommended that the state: support the International Commission on Impunity in Guatemala and the Public Prosecutor's Office in investigating corruption in the registration and ownership of land and the grabbing of indigenous peoples' lands; respect the indigenous Xinka, Garífuna and Maya peoples' right to self-determination in Guatemala; support the indigenous peoples' own processes so that they are able to strengthen and affirm their cultures and identities, including appropriate procedures when gathering and processing data on ethnic identity, that should include their active participation; and evaluate and adjust the country's institutions, policies and laws to bring them into line with indigenous peoples' aspirations.

Dismantling of the CICIG

The International Commission on Impunity in Guatemala (CICIG) was established in 2006 by means of an agreement between Guatemala and the United Nations, with the aim of combatting corruption and clandestine criminal networks. The arrival of Iván Velásquez to head the CICIG in 2013 brought about notable progress in the investigations conducted, leading to complaints being made against senior officials, politicians and businessmen, some of whom were arrested and brought to justice. All this work took place in coordination with the Public Prosecutor's Office, headed by Thelma Aldana.

The most notable cases included those of 2015 involving Otto Pérez and Roxana Baldetti, then President and Vice-President of the

country respectively, which led to both their resignations and subsequent imprisonment, thus triggering a chain of high-impact cases that are still making their way through the courts. Jimmy Morales, who took over the presidency in 2016, promised to support CICIG in its fight against corruption but very quickly turned against the Commissioner following complaints made against himself and some of his family. He made the Commissioner's job difficult to the point of declaring him *persona non grata* and ordering his immediate expulsion from the country, although protection granted by the Constitutional Court at the request of the Human Rights Ombudsman and the social groupings, including indigenous organisations, prevented it.

The president's disdain for CICIG only intensified, and he took advantage of the Commissioner's trip abroad to ban him from returning to the country. He subsequently stated that he would not be renewing the CICIG's mandate beyond September 2019, the date on which its last two-year extension was due to run out. Nevertheless, he subsequently hastily and unilaterally declared an immediate suspension of the agreement creating the CICIG and ordered its staff to leave the country. This situation resulted in institutional support being withdrawn from CICIG, in particular the support of the National Civil Police, who had been providing security for CICIG's staff and cooperating on criminal investigations.

For its part, the UN continued to support the CICIG but, due to security reasons, ordered expatriate staff to leave, with the Commissioner and investigators continuing to support investigations from abroad.

With this action, the president thus spearheaded the dismantling of the CICIG, in line with the demands of the main defendants in corruption and impunity cases, as well as private sector leaders, the military and the evangelical churches, who had all raised arguments of sovereignty and international non-interference to protect their acts of corruption, impunity and illicit enrichment. Although the international community and social and indigenous organisations mobilised to reject the government decision, they were unable to obtain a reversal in this regard.

For the country's indigenous peoples, the work of the CICIG and the Public Prosecutor's Office had offered them support against those who, protected by impunity, had been grabbing their lands and committing acts of violence against their communities. The non-renewal of CICIG's mandate thus leaves them more vulnerable to attacks both

from clandestine groups and from arbitrary government decisions against their collective rights.

Imposing consultation on the Xinca people

There has been a long-running legal dispute brought by the Xinca people's organisations to suspend a silver mine known as the El Escobal de Minera San Rafael Project from operating on their territory, in San Rafael Las Flores municipality, Santa Rosa department. This mine is owned by Tahoe Resources, a transnational mining company specialising in gold and silver mining, with its head offices in Vancouver, Canada, and investments in Canada, Guatemala and Peru. Their mining licence was granted without any consideration of the peoples living in the immediate vicinity and without implementing any prior consultation process.

Faced with complaints and calls for constitutional protection submitted to the Xinca People's Parliament, the organisation representing the Xinca people, the Supreme Court of Justice issued a ruling on 5 July 2017 ordering a suspension in the mine's activities due to the lack of a consultation process with the Xinca. In September 2018,² the Constitutional Court passed its final judgement in which it confirmed the suspension and made the mine's reopening conditional upon immediately holding a community consultation, to be organised by the Ministry of Energy and Mines, in line with ILO C169. The government therefore approved a kind of regulation governing consultations, a mechanism that the Constitutional Court had demanded of the Ministry of Labour due to another case related to the Oxec I and Oxec II hydroelectric projects affecting the indigenous Q'eqchi' territory in Alta Verapaz department. These consultations would not be binding, given that the company would be able to continue operating once they had taken place regardless of their outcome, but the Xinca communities nevertheless intended to use them to confirm their opposition to this extractive project.

The final ruling of the Constitutional Court was based on specialist studies commissioned from the San Carlos de Guatemala and Valle universities that showed that the mining activity's area of influence was located within the ancestral and current territory of the Xinca people, the existence of which had largely been denied by the mining company.

This mining project is large scale in terms of its investment and

production potential, making it the second largest in the world. More than USD 550 million has been invested and it is intended to extract around 20 million ounces of silver a year over a 19-year period. In November 2018, Tahoe Resources announced the sale of all its shares to the US company Pan American Silver, for USD 1.6 million.³ This company states that it is the largest silver mining company in the world, with mines in Canada, Mexico, Peru, Bolivia and Argentina.⁴

Upcoming general elections 2019

General elections are planned for 2019 to elect the president, vice-president, parliamentary representatives and local authorities. These elections will take place in accordance with amendments to the Electoral and Party Political Law approved in 2016, including a ban on re-electing deputies that have changed political party during their time in office; greater controls to avoid unlawful electoral financing; and restrictions on publicity. These are three elements that had previously turned elections into events in which organised crime and companies financing the candidates would buy goodwill to ensure public works contracts.

With the aim of stopping the abuse of political parties' advertising campaigns, the Association of the 48 Cantons of Totonicapán (*Asociación de los 48 Cantones de Totonicapán*), a body representing more than 200,000 K'iché inhabitants of Totonicapán municipality, passed an agreement banning all political paintings in the streets, highways and natural spaces around the community.

Reforms aimed at ensuring gender parity and greater ethnic representation among the candidates were not approved, however, and so no changes are expected in the current diversity of the parliamentary structures, in which only 10% of the 158 congressmen and women are of indigenous origin. Despite the likelihood of at least three indigenous candidates for President and Vice-President, the country is still very far from achieving an indigenous leader, even with an indigenous majority in the country; this is clearly a product of the discrimination, racism and cronyism that runs through Guatemalan society.

Little change in indigenous exclusion and poverty

The UN High Commissioner for Human Rights presented its 2017 Annual Report on 21 March, a report which demonstrates, yet again, that the fundamental rights of historically excluded and vulnerable peoples, including indigenous peoples, are being violated in Guatemala. The information indicates that 79.2% of the indigenous population live in poverty, a figure similar to previous years, meaning there has been no significant change in terms of overcoming poverty or social exclusion. Reports on the level of achievement of the Sustainable Development Goals indicate that Guatemala is the only Central American country where poverty has not declined but has, in fact, increased, evidencing the government's lack of interest in resolving the country's social and economic problems.

One example of this situation can be seen in the minimum wage, which has not been increased for the coming year. At the end of December, the government announced that the minimum wage would not be raised, despite evidence of an increase in the cost of living.

Increased repression against indigenous activists

2018 was particularly difficult for indigenous peoples in terms of the repression suffered by their activists. The Inter-American Commission on Human Rights indicated in a press release dated 31 October that at least 20 indigenous leaders had been murdered during the year, largely activists defending their lands, territories and other rights. Juana Raymundo, indigenous leader of the Ixil people, was kidnapped and murdered near Nebaj, Quiché, the town of her birth. These situations are reminiscent of the worst years of the internal armed conflict suffered by the country, a period that people thought was now behind them.

General Efraín Ríos Montt dies without being convicted of genocide

The 2013 trial of military personnel accused of the genocide of the Ixil indigenous population found General Efraín Ríos Montt guilty of this crime but, following pressure from the dominant elites, this verdict was

annulled by the Constitutional Court, forcing a re-trial.

Five years later, on 3 August 2018,⁵ a different court again ruled that he had committed atrocities against the Ixil people in a plan of systematic extermination implemented by the army, and the surviving defendants were each sentenced to 40 years in prison, thus ratifying the 2013 conviction. However, the main defendant, Ríos Montt, had already died on 1 April 2018 and so was never convicted of crimes against humanity in relation to the Ixil population.

Notes and references

1. See A/HRC/39/17/Add.3 at <http://bit.ly/2T3mDbo>
2. See Plaza Pública, "El fallo de la Corte: Los xincas serán consultados sin margen a oposición y la Mina San Rafael seguirá operando" at <http://bit.ly/2T3clrr>
3. See Tahoe Resources at <http://bit.ly/2T0tKRE>
4. See Pan American Silver at <http://bit.ly/2T2IDeE>
5. See Publinews, "Caso por genocidio llega a su fase final, el MP emite sus conclusiones" at <http://bit.ly/2T1tEt7>

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MEXICO



Mexico has the largest indigenous population in the Americas and the largest number of native languages spoken in its territory: 68 languages and 364 registered dialects. According to official statistics, principally from the National Institute of Statistics and Geography (INEGI), 6.5% of the national population speaks an indigenous language while 10.6% of the population indicated that they live in an indigenous household. 21.5% (27.5 million) of Mexico's population describes themselves as indigenous people.

Poverty within indigenous communities remains a major issue, with 71.9% of the indigenous population in the country living in a situation of poverty, and 28% in extreme poverty.¹ Indigenous peoples in Mexico experience sustained population growth due to higher rates of fertility (3.1) as compared to the national average (2.3), offset only in part by the higher

general mortality rate (with significant, persistent, and troubling infant and maternal mortality rates that are almost triple the national average in some states).

Mexico signed ILO Convention 169 in 1990, and in 1992 Mexico was recognized as a pluricultural nation through the amending of Article VI of the Constitution. In 2001, as a result of the mobilisation of indigenous peoples demanding that the “San Andres Accord” –negotiated in 1996 between the Government and the Zapatista National Liberation Army (EZLN)– be codified into law, Articles 1, 2, 4, 18, and 115 of the Mexican Constitution were reformed. Starting in 2003, the EZLN and the Indigenous National Congress started to put the Accords into practice throughout their territories, by creating autonomous indigenous governments in Chiapas, Michoacán, and Oaxaca.

Mexico voted for the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and is a signatory to ILO Convention 169.

On 3 July, 2018, the candidate of the left, Andrés Manuel López Obrador (AMLO) won the presidential elections with an unprecedented vote of 30 million people. The coming into office of this new political group has generated, at least in appearance, a restructuring of the federal body that develops public policy towards the indigenous peoples, since the National Commission for the Development of Indigenous Peoples was replaced by the National Institute of Indigenous Peoples (INPI) through a law enacted on 2 October, 2018. This new decentralized body of the federal public administration has a legal personality of its own and administrative and budgetary autonomy. It will be in charge of supporting processes of recognition, protection, defence and conservation of indigenous territories; guaranteeing and implementing processes of consultation and free, prior and informed consent (FPIC); drawing up and promoting Comprehensive Regional Indigenous Peoples’ Development Plans; integrating and operating a National Information System on Indigenous Peoples and Communities; and promoting the measures so that indigenous peoples may acquire, operate and administer their own communications media; among other measures.

There will also be a National Council of Indigenous Peoples, intended to function as an organ of participation, consultation and interaction with Indigenous and Afro-Mexican Peoples. Mexico has also designated the INPI to attend to the “Afro-Mexican people,” that is, the Mexican population of African descent. In said regard, the INPI has established three principal purposes: compliance with the Treaty of San Andrés; the inclusion of the United Nations recommendations on the autonomy of indigenous peoples; and engagement in public policy that allows the indigenous communities to exercise their sovereignty and free decision-making regarding their natural resources.²

Another aspect that should be highlighted is the presentation of the 2018 – 2024 National Program of Indigenous Peoples, in which Mexico:

Recognizes the Indigenous and Afro-Mexican Peoples as holders of public rights, with capacity to freely define their forms of political organization and their economic, social, and cultural development, as established in national legislation and international law, in order to overcome the conditions of poverty, marginalization, inequality, exclusion, and discrimination they have historically and structurally faced.

Among the program's various actions are:

- The creation of 133 Indigenous Peoples' Coordinating Centres;
- An expansion of the number of indigenous community concessions, and the creation of a program for financing community and indigenous communications media;
- The drafting of the bill for a *General Law on the Rights of Indigenous Peoples*;
- The implementation of Indigenous Regulatory Systems within a framework of legal pluralism and strengthening of community institutions for self-governance;
- The consolidation of the National Register of Translators and Interpreters in indigenous languages; the drafting of Comprehensive Regional Development Plans;
- The updating of the protocol for implementation of the right to consultation and to FPIC;
- The creation of an Indigenous and Afro-Mexicans Peoples' Consul-

tation and Participation System;

- The generation of consultation typologies as a function of potential impacts and effects;
- The development of concepts, in coordination with academic institutions, that comprise the right to consultation;
- The creation and support of the work of the National Council of Indigenous Peoples.

Crimes against indigenous defenders of the environment

Mexico in 2018 ranked as one of the most dangerous and lethal countries for defenders of the environment. This was indicated by Global Witness, a British organization that reports murders of defenders of the ecology throughout the world, whose report "At what price?" ranked Mexico as the country in Latin America with the third largest number of murders of activist defenders of land and of the environment, only after Brazil and Colombia.³

The country saw an unprecedented acceleration in its murder rate; in 2016 three environmental activists were murdered; in 2017 15 activists were murdered, 13 of whom were indigenous activists.⁴ Between 2008 and 2018, 125 crimes were committed against defenders of the environment in Mexico; 82, or approximately two-thirds of the victims of these crimes, were indigenous. The 125 crimes committed against activists and defenders of the environment consisted of 108 murders and 17 forced disappearances; 76 of those cases occurred under the administration of President Felipe Calderón (2006-2012) and 49 under the Peña Nieto Administration (2012-2018). 45 of these crimes are recorded as having been committed against inhabitants belonging to Nahua communities, 19 against Purépecha peoples, 8 against Rarámuris, 4 against Triquis, 3 against Wixárikas, and one each against the Yaqui, Ayuuk, Tsotsil, and Mixteco communities.⁵

Of these disputes 75% involved opposition by communities in which extractivist projects were underway that pollute natural resources such as water, air, minerals and biodiversity. During the first five years of the administration of President Enrique Peña Nieto, from 2012 to 2017, 335 conflicts were recorded, stemming from community opposition to various megaprojects sought to be developed in their territories.⁶

Opposition to mining projects is especially high, since the laws for such projects are the most ambiguous and open pit mining is especially polluting. Mining concessions stand out on account of allowing low payments of between .25 cents and six U.S. dollars per hectare to exploit, extract and sell the minerals for 50 years, extendable for another similar time period.⁷

Migration

At present, there is a significant indigenous population working in the agricultural fields of California, the United States. Their presence in these labour markets corresponds to the process that Durand calls “indigenization of agricultural labor in the United States.”⁸ This population has been incorporated into the work that requires the most physical effort and receives the worst pay. It is thus considered to constitute a labour reserve: “The last group willing and able to work in agriculture under current conditions [...]”⁵

In the United States, indigenous Mexicans live in conditions of high vulnerability. Solís and Fortuny explain that this is associated with the position they occupy in the social structure, where “vulnerability is amplified due to their position of political, social, and cultural subordination, as well as economic exploitation in Mexico and in the United States.”⁹

Indigenous presence in agricultural labour markets contradicts the policies of migratory control, because a large number of undocumented persons are involved in agricultural activities. Research by the University of California at Berkeley reported data in said regard: “In five years (from 1992 to 1997) the proportion of agricultural workers in California who are not authorized to work legally in the U.S., increased from 9 to 43%.” This coincides with what was stated by Barrón¹⁰ with respect to the existence of a labour market that absorbs them.

In Mexico, indigenous Mexicans were “ethnized,” turned into ethnic minorities upon being physically and symbolically cast out of their original territories.¹¹ With the formation of the state they were once again ethnized, given that the group in power did not include them as part of the nation, but rather sought a homogenization of Mexican society and the dissolution of indigenous cultures. Now, as international migrants, tied to the agricultural labour market, they form a part of the most dis-

advantaged ethnic minorities. Thus, they face a triple process of ethnization. Nonetheless, given the issues they face in their own country, paid agricultural labour continues to be a work option for them in the United States.

The EZLN, Maya Train and consultation

In 2017, the Zapatista Army of National Liberation (EZLN) and the National Indigenous Congress ran María de Jesús Patricio Martínez (Marichuy, an indigenous *nahua*) as a hopeful presidential candidate. However, she was unable to register as an independent candidate, which would have allowed her to run for president. In a national process aimed at obtaining her registration, Marichuy faced an unequal battle, full of irregularities and without real possibilities of obtaining 1% of the federally enrolled electorate in order to run. In February 2018 the National Electoral Institute announced that Marichuy did not obtain the number of signatures necessary to run. Even so, it recognized that she was the pre-candidate who obtained the largest number of real signatures, since her counterparts overtly committed fraud to attain their nominations.

The winner of the elections, López Obrador, was not supported by the EZLN, which, through sub-commander Galeano (antes Marcos), expressed its profound rejection. The EZLN considered Obrador to be a “representative of the false left,” and indicated that several officials tied to his blueprint for the nation were responsible for massacres such as those of Acteal, Chiapas. In addition, the EZLN indicated that López Obrador does not represent a genuine change and can be better described as belonging to the moderate right. For his part, the new president criticized the EZLN, considering it to have divided the vote on the left on account of having nominated Marichuy.¹²

Another point underscoring the discontent in this context is the announcement that the new federal administration has presented the multi-billion-pesos Maya Train project in the Yucatán peninsula, “uniting” five states of the country and crossing several indigenous territories and environmental reserves. The EZLN has openly announced its opposition to this project and has stated that it will not allow the Maya Train to cross through its territory. This opposition comes at a time when the federal government has been promoting a public consultation

for the Maya Train project and one more train that “will unite” the Pacific Ocean to the Atlantic through the Isthmus of Tehuantepec, Oaxaca. The measure consolidated as guaranteeing the rights of indigenous communities, recognized in ILO 169, appears to have been taken up by the federal government with the goal of legitimizing projects placed up for consultation, distorting the objectives of a free, prior and informed consultation. As such, some critics have denounced what they consider as a process of banalization of the mechanism.

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NICARAGUA



The seven indigenous peoples of Nicaragua are distributed, historically and culturally, between the Pacific coast, central and northern Nicaragua – inhabited by the Chorotega (221,000), Cacaopera or Matagalpa (97,500), Ocanxiu or Sutiaba (49,000) and Nahoia or Náhuatl (20,000) peoples – and the Caribbean (or Atlantic) coast, inhabited by the Miskitu (150,000), Sumu-Mayangna (27,000) and Rama (2,000) peoples. Other peoples who have collective rights under the Constitution of Nicaragua (1987) are the Afro-descendants, referred to as “ethnic communities” in the national legislation. They include the Creoles or Kriols (43,000) and the Garífunas (2,500).

In 1979, the Sandinista National Liberation Front (FSLN) came into power in Nicaragua, and later had to face an armed front supported by the United States. The indigenous peoples of the Caribbean coast, principally the Miskitus, participated in the armed opposition to the FSLN. In 1987, in order to put an end to the indigenous resistance, the FSLN created the Northern and Southern Autonomous Regions of the Caribbean (Atlantic) Coast (RACCN/RACCS), based on a New Constitution and an Autonomy Statute (Law 28). As a result of the judgment of the Inter-American Court of Human Rights in the case of the Mayangna (Sumo) Awas Tingni Community vs. Nicaragua in 2001, Law 445 was enacted on the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio, and Maíz Rivers. That law, as of 2003, also clarified the right to self-governance in the communities and created a procedure for the granting of title to the territories. As of 2005, the state initiated the title-granting process for the 23 indigenous and afro-descendant territories in the Autonomous Regions, culminating with delivery of the ownership titles in the year 2013. In addition, the General Education Act of 2006 recognized a Regional Autonomous Educational System (SEAR). In 2007, Nicaragua voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and in 2010 it ratified ILO Convention 169.

Nicaragua has been suffering from social and political unrest since 18 April 2018. The state maintains in this regard that: “These were not peaceful marches, they weren’t protests, it was a coup d’état.” In a report published on 21 December 2018, however, Amnesty International, the UN Office of the High Commissioner for Human Rights (OCHCR) and the Inter-American Commission on Human Rights’ Independent Panel of Experts (IACHR) all point to the government’s involvement at the highest level in committing crimes against humanity in the country.¹

The background to the crisis can be found in the abuse, discrimination and dismantling of the democratic institutions that has been undertaken by President Daniel Ortega and Vice-President Rosario Murillo’s government since coming to power in 2007.

The first abuses were committed in rural areas against peasant farmers and indigenous peoples. These were not reported by the international media either because there was no local reporting or because these actions were taking place in areas far from the country’s capital. There was also, however, some self-censorship on the part of journalists who feared clashing with the state machinery, under the control of Rosario Murillo, Government Spokesperson, Coordinator of the Communication and Citizenship Cabinet since 2007, and Vice-President of the Republic since 2016.

Initially, the Ortega-Murillo government built alliances with those who had been their adversaries during Daniel Ortega’s first term of office in the 1980s; different denominations of the Nicaraguan church, and big money, represented by the Higher Council of Private Business (*Consejo Superior de la Empresa Privada/COSEP*). It also maintained the economic policies established by neoliberal governments since the 1990s and adopted an extractivist policy that exacerbated individual and collective human rights violations of the indigenous and Afro-descendant peoples.²

The clash with YATAMA

A lack of access to public information has facilitated the encroachment upon and withholding of the fundamental right to free, prior and informed consultation which indigenous and Afro-descendant peoples should enjoy in relation to all issues affecting them. Given the govern-

ment's interest in obtaining the natural resources on indigenous and Afro-descendant territories, this has resulted in a severe and systematic deficit in the protection of these peoples' human rights and of their participation in the country's political decisions generally, and in those of their territories specifically, as stated by the IACHR in the case of *YATAMA vs Nicaragua*.

In 2010, in line with commitments made to the indigenous YATAMA party (*Yapti Tasba Masraka Nanih Aslatakanka/Children of Mother Earth*), the Ortega-Murillo government titled most of the indigenous territories of the Caribbean Coast.³ This was a process initiated by the neoliberal government of Enrique Bolaños in application of *Law No. 445*⁴ deriving from the IACHR's ruling on the case of the *Mayangna (Sumo) Community of Awás Tingni vs Nicaragua*.

The political alliance between YATAMA and the Ortega-Murillo government subsequently deteriorated, however, due to protests and the complaints of fraud that YATAMA submitted against the Sandinista National Liberation Front (FSLN). These protests were severely repressed by the Sandinista Youth, paramilitaries and the National Police during the 2008 and 2017 municipal elections, and also the 2014 regional and 2016 national elections. The split was evident in 2015 when YATAMA began to support the indigenous communities being invaded by armed settlers; this only worsened with the intervention of the FSLN, Police and Army riot squads against YATAMA's leaders, culminating in the unlawful removal of Brooklyn Rivera, leader and founder of YATAMA, as elected member of the National Assembly. Despite this, Brooklyn Rivera was again successful in winning election to this post in the 2016 national elections.⁵

During the 2017 elections, many YATAMA candidates were also unlawfully arrested and imprisoned. In 2018, YATAMA continued to denounce the main regional and national government leaders linked to the FSLN.⁶ In August, eight people died in Bilwi at the hands of riot squads. Even so, YATAMA is still preparing to participate "under protest" in the 2019 regional elections.

The government already had a clear intention in 2011 to centralise the political power of the municipalities, autonomous regions and territorial authorities in the 23 territories of the indigenous and Afro-descendant peoples. These latter control 55% of the autonomous regions following the states recognition of their ownership and dominion of the lands they historically claim, through *Law No. 445*. The mechanism

used to achieve such centralisation was party activism among the indigenous population, and the co-opting of authorities to ensure loyalty to the interests of the Ortega-Murillo government. Given various failures in implementing this strategy, however, they then chose to impose parallel government structures from within the party, known as Councils and Cabinets of Popular Power (CPC and GPC).⁷ These were in many cases controlled by public officials, thus undermining the stated self-determination of indigenous and Afro-descendant peoples.

Added to the deteriorating alliance with YATAMA, the above resulted in substantial changes in the government policies which had, up until then, included YATAMA in the process of demarcating and titling the indigenous territories of the Autonomous Regions of the Caribbean Coast. Since that point, however, the Ortega-Murillo government has refused to undertake the regularisation (*saneamiento*) as set out in *Law No. 445*, which involves establishing if there are third party legal titles superimposed on the titled indigenous and Afro-descendant territories.

Land encroachment on indigenous and Afro-descendant communities

Once the institutions of indigenous and Afro-descendant leadership had been neutralised within the communities, it became easier to grab the land and its natural resources. The relationship between these peoples and their environment has thus been eroded due to the deforestation and logging being undertaken by the Alba-Forestal company; the monocropping, for example of African palm (*Elaeis guineensis*),⁸ together with the expansion of the agricultural frontier and extensive cattle farming;⁹ the increase in mining activity, with the approval of the Nicaraguan Mining Company (ENIMINAS);¹⁰ and the imposition of the Grand Nicaraguan Inter-Oceanic Canal megaproject (GCIN) in 2013. The GCIN nonetheless attracted the attention of the international media and they also began to cover the peasant and indigenous resistance to the megaproject.

The Indigenous Black Creole community of Bluefields and the indigenous Rama people denounced the grabbing of their traditional lands and the forced displacement of the communities of Bangkukuk Taik (the last speakers of the Rama language)¹¹ and Monkey Point to make way for the GCIN route, 52% of which runs through their tradition-

al territories as titled by the state.¹² Given the lack of free, prior and informed consent (FPIC) or legal protection in relation to the project, these peoples lodged a case with the IACHR, with the support and legal representation of the Centre for Indigenous Peoples' Legal Assistance (*Centro de Asistencia Legal a Pueblos Indígenas/CALPI*). This centre's coordinator has since, together with various indigenous and Afro-descendant leaders, been threatened by the state¹³ and is now living in exile with her family, as is one of the Rama leaders.

From 2015 on, the state interest in the land for its extractivist potential and the ensuing concentration of power thus resulted in an increased number of attacks by armed settlers and third parties against indigenous Mayangna and Miskitu communities in the BOSAWAS Biosphere Reserve and the Wangki (Coco) River basin.¹⁴¹⁵ These have led to the forced displacement of a number of communities to the Republic of Honduras. These cases are under the jurisdiction of the IACHR, which has issued precautionary and provisional measures, respectively, in favour of these peoples and their leaders in order to protect their lives and physical and territorial integrity,¹⁶ as well as to protect the members of the Centre for Justice and Human Rights of Nicaragua's Atlantic Coast (*Centro por la Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua/CEJUDHCAN*) from the constant death threats they are receiving due to their support for the communities involved in these complaints.¹⁷ Nicaragua nonetheless continues to fail to comply with these measures and, worse still, despite irrefutable evidence, denies the validity of the complaints.

In 2015, the authorities and leaders of the indigenous and Afro-descendant peoples of Nicaragua decided to establish the Nicaraguan Alliance of Indigenous and Afro-descendant Peoples (*Alianza de los Pueblos Indígenas y Afrodescendientes de Nicaragua/APIAN*) with the aim of encouraging a space for reflection and action on their traditional and ancestral territories. At the start of 2018, they produced a report on the situation of the territorial rights of Nicaragua's indigenous and Afro-descendant peoples.¹⁸

Alongside the above, the forest fire that lasted ten days and destroyed 6,000 hectares of forest in the Indio Maíz Biological Reserve, 80% of which is located on the Rama and Kriol Territory, gave rise to student protests at the government's failure to act in the face of this disaster. The government's response was to prevent independent journalists from entering the area to cover the news. The River Foundation

(*Fundación del Río /FdR*), which has been working with the Rama and Kriol peoples to protect the reserve since 1990, nevertheless ensured that up-to-date information was available. After receiving direct and public attacks from two National Assembly deputies, however, on 13 December, together with another eight organisations, including the Nicaraguan Human Rights Centre (*Centro Nicaragüense de Derechos Humanos/CENIDH*), the FdR's legal status was removed and their assets confiscated.¹⁹ At the end of December, the FdR's director explained through social media that he was now in exile in Costa Rica, having been warned by government officials that he would be arrested, held and subsequently prosecuted for the alleged crime of "terrorism".

On 20 April 2018, the journalist Ángel Eduardo Gahona López was murdered during popular protests in Bluefields. The state has accused two Afro-descendant youths in the case. The criminal proceedings were flawed, however, and local journalists who witnessed the murder called for a prompt and independent investigation stating, as did the family of Gahona López, that the youths accused were innocent and that the crime had been committed by members of the National Police. Some of these journalists have now been forced into exile and the family's and defendants' lawyers have received death threats.²⁰

The Pacific Coast

On Nicaragua's Pacific Coast, popular uprising in the indigenous districts of Monimbó, Masaya, and Sutiaba, León, calling for Ortega and Murillo's resignations was suppressed by the combined forces of the police, Sandinista Youth and paramilitaries. During the subsequent "clean-up operation" conducted by the government, some were arrested and others harassed, forcing many to leave the country. They have largely gone to Costa Rica where, according to the IACHR, as of September there were already more than 52,000 Nicaraguans, some of whom are covered by the 143 precautionary measures that the IACHR had granted to those fearing for their lives and physical and moral integrity in Nicaragua during 2018.

Faced with this social and political crisis, the state created the Truth, Justice and Peace Commission with responsibility for investigating the deaths and damage caused during the protests that began on 18 April 2018. This Commission has not, however, played an effective role.²¹

Conclusions

Nicaragua's position in the face of the social and political crisis that is shaking the country has been similar to its position over the last decade with regard to indigenous and afro-descendant peoples: categorically deny that the events are happening; blame the victims, discredit and criminalise the work of those denouncing the events – particularly through harassment and persecution of the staff of human rights NGOs that have supported indigenous and Afro-descendant demands, such as the CEJUDHCAN and the CALPI, and cancel their legal status as in the case of the FdR and the CENIDH. Internationally, it has tried to discredit institutions such as the IACHR, the OAS or the OHCHR, calling them “biased” with resolutions “issued by North American imperialism”. Nationally, most of the members of the Civic Alliance for Justice and Democracy (*Alianza Cívica por la Justicia y la Democracia*) who participated in the National Dialogue with the government in search of a solution to the current crisis are now in exile or in prison and the few who do remain at liberty in the country are constantly threatened. Furthermore, bishops from the Catholic Church, which participated as a witness in the National Dialogue, have been discredited, threatened and, together with the Apostolic Nuncio, physically attacked.

Independent journalism in Nicaragua has become one of the victims of the government's lack of tolerance and openness to criticism (far less self-criticism). Dozens of journalists accused of “promoting hate” have been unlawfully imprisoned and exiled and, meanwhile, a prolonged attempt to fabricate an “alternative truth” is ongoing, simply exacerbating the current crisis.

The indigenous peoples are continuing their resistance, the rest of the population are on the alert, and the diaspora is active abroad making known the country's internal situation and approaching international bodies such as the European Parliament, the OAS and the UN in search of support for a negotiated and diplomatic solution to the crisis.

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South America



ARGENTINA



Argentina is a country made up of 23 provinces, with a total population of approximately 40 million people. The most recent national census in 2010 gave a total of 955,032 people self-identifying as descended from or belonging to an indigenous people.¹ 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.

Argentina focused on issues of security policy throughout 2018 which, for indigenous peoples, resulted in a hardening of the state's actions, aimed primarily at ignoring indigenous rights and punishing their demands and claims. Not only were legal actions taken against them with the aim of prosecuting and criminalising both indigenous individuals and their organisations' leaders but territorial demands central to the development of their life plans were also seen by the state as actions that could be deemed criminal.

This framing of certain acts of violence as "terrorism", the aggravated sentences, the impunity of members of the security forces who use violence against indigenous people, their imprisonment based on distorted or inadequately proven "facts", have all triggered warning lights among indigenous communities and peoples, their organisations, and human rights organisations.

This tightening of security policy has both an economic and a political explanation, the first drawing on the second. Given the government's political decision to generate income from the sale of the country's raw materials, and the key importance of "commodities" to the regional and national economy, the indigenous territories are becoming increasingly valuable and so natural resource exploitation, and thus the "neutralisation" of indigenous demands, now has to be achieved by force.

In addition to the cases affecting the Mapuche people of Patagonia (see 2018 report), there are also notable examples in the north of the country, such as that of the Wichí² people in Formosa and Salta provinces, who are being prosecuted by private individuals and the state itself precisely because they have put their land claims into effect given the lack of a legal response to their demands.³

Indigenous defenders and legal cases

The year 2018 was also noteworthy for the situation of indigenous human rights defenders, primarily due to demands for their territorial rights, to the actions their organisations and communities are taking to ensure their effective defence, and to the state response to requests that their rights should be respected.

Periodic violence has been taking place around the Vaca Muerta gas deposit in Neuquén Province, including harassment and criminalisation, with many cases being taken to court.⁴

The state has furthermore also failed to comply with resolutions issued by international bodies on issues affecting indigenous leaders. Such is the case of Mapuche Lonko (leader) Facundo Jones Huala, who was imprisoned in Esquel, Chubut Province, pending his requested extradition to Chile. The United Nations Human Rights Committee called for his extradition to be suspended until his case could be heard by the Committee.⁵ In September 2018, the Argentine State nonetheless decided to extradite him anyway. He was prosecuted by the Chilean State, convicted of criminal arson and carrying firearms and sentenced, in violation of all due process and his right to a defence, on the basis of evidence obtained through illegal intelligence practices. An appeal for annulment made by his defence was ruled admissible by Chile's Supreme Court of Justice precisely on the basis of the law on intelligence in criminal proceedings.

Moreover, although the prefects were prosecuted (for culpable homicide) in the murder of Rafael Nahuel in Río Negro Province, so too were the two Mapuche youths who helped Rafael when he was injured, both being charged with misappropriation and resisting authority, giving the impression of a confrontation when in reality there was already evidence that the Mapuche were unarmed.

In Salta Province, three Wichí *caciques* (chiefs) from Rivadavia

Banda Sur are being prosecuted for criminal damage and threats in a land conflict with an estate owner, without due respect for their procedural rights. The defence maintains that the case should only proceed with a Wichí interpreter (the mother tongue of the three defendants) but the judge has rejected these requests.

Criminal prosecution of indigenous individuals is a method that has gradually been taking hold at the federal level and in the different provinces of Argentina. Not only do the courts not give any response to indigenous rights violations, they have now become a constant threat. Procedures drag on over time, forming a constant reminder of the state's strength, which can even cause them to lose their freedom.

Feminism and the indigenous women's movement

The year of 2018 marked a turning point in Argentina in terms of increasing gender demands, focused largely around legalised abortion but also strongly around issues of gender violence, sexual abuse, femicide, and the need for the state to place gender policies firmly on the public agenda.

It was against this backdrop that the Indigenous Movement for Living Well Together (*El Movimiento Indígena para el buen vivir*)⁶ came into being. It defines itself as autonomous, self-managing, non-party political, non-religious, and self-convened in order to build "living well together" as a right. The organisation participated in the 33rd National Meeting of Women in Chubut Province, and at this meeting demanded plurinationality as an objective of the movement.

The arrival of the indigenous women's movement onto the feminist scene merits a whole section by itself. Despite the difficulties and complexities of the emerging feminist movement in Argentina, which has a widely varying agenda, native women are also demanding a diverse and specific arena for themselves.

The presence of indigenous women both in the indigenous communities and organisations and in a wider scenario that aims to question the state matrix and development model – and which is not simply taking place on the margins of the debate around gender justice – is part of the enormous challenge that indigenous peoples have placed on the State agenda.

Future prospects

Although no change in state policy is expected in the short-term, small steps are being made to raise the visibility of indigenous rights, often by means of confrontation with state agents. Given the prosecution, criminalisation and harassment of indigenous peoples that is occurring, other actions are now being taken with the aim of protecting their rights. One example is the draft bill of law on indigenous communal ownership that has been tabled with the Chamber of Senators of the Congress of the Nation,⁷ and which is intended to provide a framework of certainty for the majority of indigenous communities who lack any title deeds.

The growing presence of extractivist activities⁸ is an attack on indigenous peoples' territorial recognition and land regularisation. It is therefore essential that regulatory – but also administrative – progress is made in order to provide legal security in extremely precarious situations that often end in the eviction and prosecution of indigenous communities through misappropriation.

However, cases such as at the Vaca Muerta deposit in Neuquén Province (now Argentina's main hope of overcoming the economic crisis), or the progress being made at Salinas Grandes in Salta and Jujuy Provinces around lithium exploitation, where there has been no consultation of the indigenous communities, demonstrate the difficulties in giving a substantive response that results in a collective title.

The only case of territorial conflict involving indigenous peoples that is currently with the Inter-American Court of Human Rights was referred by the Commission in February 2018. It is the case of the Lhaka Honhat Aboriginal Communities Association in Salta Province. This association encompasses communities of the Wichí (Mataco), Iyojwaja (Chorote), Nivacklé (Chulupí), Qom (Toba) and Tapy'y (Tapiete) peoples. The Lhaka Honhat Association has been calling on the State to guarantee the communities' right to communal ownership of their ancestral territories since 1984. These territories are located in the former state plots 55 and 14 of Rivadavia department, Salta Province.⁹

Although there is no clear date by which the Court will issue its decision, the length of this process already needs to be taken into account when attempting to understand the difficulties and analyse the possible paths to reaching an agreement with the state.

Finally, 2018 was a year of struggle for indigenous rights in the face

of a state that insists on violating indigenous people. The previous year's focus on stigmatising them as "violent" or "terrorists" continues to result in a security policy that is coherent and consistent with the economic decisions being taken, namely to continue promoting extractive activities in the territories claimed by indigenous peoples, in accordance with domestic law and international regulations in force in the country.

Notes and references

1. INDEC. National Census of Population, Households and Housing 2010. See <http://bit.ly/2T4pD6n>
2. On 22 December 2018, the Ingeniero Juárez police, in Formosa Province, arrested 20 Wichí adolescents without disclosing their identity or giving their reasons why.
3. In Salta, in May 2018, the Provincial Government suppressed indigenous communities that were complaining at the conditions of extreme vulnerability in which they had been living since the flooding of the Pilcomayo River. See the Alternative Report produced by the National Aboriginal Pastoral Team (ENDEPA) for the Committee on Economic, Social and Cultural Rights on 30 August 2018.
4. The Chief Prosecutor of Neuquén indicted three leaders of the Mapuche Confederation of Neuquén (CMN) for repeated crimes of instigating misappropriation because of the camps they had set up at the entrance to the deposit. See infobae.com.ar on 20 December 2018.
5. Communication N° 3238/2018 issued by the Human Rights Committee in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights, which ruled to suspend the extradition of Francisco Facundo Jones Huala.
6. See www.resumenlatinoamericano.org
7. See www.vaconfirma.com.ar of 25 April 2018
8. See *The Indigenous World*, IWGIA 2018
9. See www.cels.org.ar

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BOLIVIA



According to the 2012 National Census, 41% of the Bolivian population aged 15 and over is of indigenous origin, although the 2017 projections from the National Statistics Institute (INE) indicate that this may now have increased to 48%.¹ Of the 36 peoples recognised in the country, most Quechua (49.5%) and Aymara (40.6%) speakers live in the Andean area where they self-identify into 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 remaining 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. With the approval of *Decree No. 727/10*, the TCOs gained the constitutional name of Peasant Native Indigenous Territory (*Territorio Indígena Originario Campesino/TIOC*). Bolivia has ratified the main international human rights conventions, has been a signatory to ILO 169 since 1991, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) has been in full force 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.

Evo Morales running for a further term

Decision No. 0084/2017 of the Constitutional Court, which established the right to run for president an indefinite number of times, was an event that marked virtually the whole year in Bolivia, and which also had an impact on indigenous organisations' (both pro-government and opposition) relationships with the national government. Over the course of the year, the presence of public officials in communities and areas with a high indigenous population intensified. Their presence aimed at negotiating development projects conditional upon indigenous peoples' continuing political support for the re-election of the presidential ticket. We will have to wait until October 2019 to see if this policy has borne the expected fruits, although there is already a sig-

nificant sector of indigenous organisations that have publicly withdrawn their support from the government because of its rejection not only of the Constitution but also of the indigenous principle of “shared power”.²

On 1 September, the bicameral Plurinational Legislative Assembly approved the new *Law on Political Organisations No. 1096/18*,³ which requires primaries to be held in February 2019. It was the Electoral Court, however, that decided on the candidates to be accepted for these preliminary elections, resulting in a new political conflict that ended with the resignation of the Court’s president and one of its most notable members.⁴ This altered the Court’s internal balance of power, leaving the body more susceptible to pressures from the governing party.⁵ This can be seen in the Court’s decision to validate the government party candidate at the start of December, which legitimised the possibility of a fourth presidential term.⁶

Sea ruling at International Court of Justice

One of the most important and eagerly anticipated events for the whole of Bolivia in 2018 was the ruling that would give the country access to the Pacific Ocean via an agreement with Chile, which had annexed Bolivia’s coastline in the 1879-1883 war. The case was lodged with the International Court of Justice in 2013 and a statement was made by the court on preliminary issues in 2014 that was broadly favourable to Bolivia. However, against all expectations and despite the overwhelming arguments demonstrating Chile’s commitment to granting a sovereign route through to the sea for its neighbour, the Court widely rejected Bolivian aspirations. This event had negative political repercussions for the government, which had hoped to legitimise its re-election with a victory The Hague.

Rejection of class action against “Rositas” dam

The Coordinating Body for the Defence of Indigenous Territories (*Coordinadora de Defensa de los Territorios Indígenas*)⁷ brings together a number of indigenous peoples’ organisations, activists and human and environmental rights defence bodies to coordinate efforts aimed at

halting government decisions authorising the construction of large infrastructure works on indigenous territories and communities without any consultation. As part of this strategy, the Guaraní communities of Tatarenda and Yimao have lodged a class action through their native authorities denouncing the violation of their right to free, prior and informed consultation as enshrined in the Constitution and the UNDRIP, in force in Bolivia since 2007. The action was submitted on 28 March and found admissible, with the administrative suspension of the project thus being ordered.⁸ However, faced with pressure from the government, the Guaraní and their lawyer⁹ state that the case was referred to the Lagunillas courts for lack of jurisdiction, which then ruled against the petitioners. In any case, President Evo Morales stated that the project would be halted and the funding channelled to other works. Towards the end of December, however, he noted the possibility of a referendum to decide on the dam's construction.¹⁰

Visit of the International Rights of Nature Tribunal (TIDN)

Between 14 and 23 August, a TIDN commission¹¹ visited the country specifically to investigate the complaints of a lack of consultation in the construction of the Villa Tunari-San Ignacio de Moxos highway through the Isiboro Sécore (TIPNIS) National Park and Indigenous Territory. Previously, on 7 and 8 November 2017 in Bonn, Germany,¹² this same commission had heard Marqueza Teco and Fabián Gil, chairs of the TIPNIS women's local chapter and TIPNIS local chapter respectively, talk of the effects that implementing this project would have on them.¹³ The commission visited the cities of Santa Cruz, Cochabamba, Trinidad and La Paz, meeting with human and environmental rights defenders, government officials and indigenous experts. In Tridinacito community, in TIPNIS, they were met by a large assembly of people and gathered testimonies from dozens of communities on the consequences of the planned highway and on the approval of *Law No. 180/11*. These testimonies declared TIPNIS intangible in order to protect their natural habitat.¹⁴ After the visit, the commission sent the plurinational state a questionnaire noting its concern on the basis of the complaints received and requesting information on the contracting process for the construction companies involved. It also sought to investigate provision of continuity in the

project, environmental mitigation measures in the areas of the civil works and questioned the causes of deforestation in “Polígono 7”.¹⁵

Indigenous autonomy in Chimanes Forest¹⁶

Self-government within their territories and municipalities has, for some time, been the main demand of Bolivia’s indigenous organisations. Rather hesitantly, the state has been supporting this demand, although there was no major progress in 2018 compared to previous years.

Where significant progress has been noted is in the process of autonomy for the Multi-ethnic Indigenous Territory (*Territorio Indígena Multiétnico*/TIM) in the south Amazonian department of Beni. Multiple meetings took place throughout the year between the state and the local offices of the multi-ethnic, Movima and T’simane territories to consolidate a significant part of the Chimanes Forest¹⁷ in favour of the TIM, incorporating the territorial jurisdiction of the nascent indigenous autonomy. Finally, the government agreed to sign a Titling Agreement,¹⁸ thus guaranteeing collective title to the area claimed through the agrarian procedure, along with a continuation of the process of autonomy with this area in the TIM territory.

Notes and references

1. INE 2017, consultation via the Indigenous Navigator –Bolivia.
2. See The New York Times, “En Bolivia, la base indígena le retira su apoyo a Evo Morales” <https://nyti.ms/2T59ygK>
3. Contrary to the Constitution and betraying the agreements on consultation in its drafting, *Law 1096* deprives indigenous organisations and peoples of their right to participate in national elections through their representative organisations and authorises participation solely through political parties.
4. The activist, Katia Uriona, and the sociologist, José Luis Exeni, former President of the National Electoral Court from 2006 to 2009.
5. See *Correo del sur*, “Más sobre las renunciaciones de Uriona y Exeni” at <http://bit.ly/2T7Hvxa>
6. The day following the TSE decision, opposition members had a hearing in the Inter-American Commission on Human Rights (IACHR) at which they requested that the matter be referred to the Inter-American Court for interpretation of Article 23 of the American Convention, in particular whether this considers

- indefinite re-election to be a human right, as ruled by *Decision 0084/2017* of the Plurinational Constitutional Court. A decision is expected in 2019.
7. The Coordinating Body comprises organisations and communities opposed to construction of the Rositas Dam (Santa Cruz) and dams on the Bala River, the construction of the Villa Tunari-San Ignacio de Moxos highway through TIPNIS, hydrocarbon activity in the Tariquía National Park and other works.
 8. See Pagina Siete, “Juez admite acción popular y dispone paralización del proyecto hidroeléctrico Rositas” at <http://bit.ly/2Tb1JGB>
 9. See Oxígeno, “Juez rechaza acción popular de comunidades guaraníes contra hidroeléctrica Rositas” at <http://bit.ly/2T76fWn>
 10. See La Razon, “Evo habla de hacer un referéndum para la construcción de proyecto hidroeléctrico Rosita” at <http://bit.ly/2T76H7I>
 11. The International Rights of Nature Tribunal is an ethical body aimed at investigating and ruling on violations of the rights of nature due to offences by international organisations, states, private or corporate bodies or individuals, in application of the Universal Declaration on the Rights of Mother Earth approved in 2010 during the World People’s Conference on Climate Change and the Rights of Mother Earth held in Tiquipaya, Cochabamba, Bolivia. [See http://bit.ly/2T5SG9A](http://bit.ly/2T5SG9A)
 12. The TIDN sat in parallel to the COP 23 Climate Change Conference.
 13. The Indigenous World (2018) p. 175.
 14. On 19 August, the TIDN’s Commission was delayed for more than five hours at the point known as “Polígono 7” while on its way to Santísima Trinidad community, at the invitation of the organisation Indigenous Council of the South (*Consejo Indígena del Sur/CONISUR*), comprising settlers from the southern area of TIPNIS who are advocating for the highway’s construction. See Monga bay at <http://bit.ly/2SX4ivN>
 15. See CEJIS at <http://bit.ly/2SZYOjQ>
 16. The Chimanés Forest is an area of more than 500,000 ha of forest and the scene of Messianic mobilisations in the search for so-called “sacred land” or “land without evil”, which have been organised by groups of indigenous Mojeño, Yuracaré and Movima at different moments in history. In the 1970s, the area was handed over to companies for logging purposes. The decrees recognising the indigenous territories following the 1st Indigenous March “For Territory and Dignity” in 1990 provided that, at the end of the companies’ contracts, the area should return to the ownership of the peoples inhabiting it. The 1996 *Forest Law* extended said contracts until 2011, since which date the state has not returned the forests to the people.
 17. Over an area of approx. 283,000 ha.
 18. See APCBolivia, “Corregidores y autoridades acuerdan titular tierras de indígenas del TIM” at <http://bit.ly/2T3ZzIA>

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BRAZIL



According to the 2010 census of the Brazilian Institute of Geography and Statistics, the Brazilian indigenous population is 896,917 indigenous persons, distributed among 305 ethnic groups, who speak 274 languages. Among indigenous persons over the age of five, only 37.4% speak an indigenous language, while 76.9% speak Portuguese.

The principal indigenous ethnic group is the Tikúna, who comprise 6.8% of the total indigenous population. Approximately, 502,783 live in rural zones and 315,180 in urban zones.¹ Currently there are some 713 indigenous areas, with a total area of 117,387,341 ha. This means that 13.8% of the lands in the country have been reserved for indigenous peoples. The majority of these territories are concentrated in the Amazon: 419 areas forming 115,342,101 ha, which represent 23% of the Amazon territory and 98.33% of indigenous lands. The remaining 1.67% is distributed in the regions of the northeast, southeast, and south in states such as Mato Grosso do Sul and Goiás.²

Brazil is the South American country with the largest known concentration of indigenous peoples in isolation, principally in the states of Amapá, Acre, Amazonas, Amapá, Acre, Amazonas, Goiás, Maranhão, Mato Grosso, Pará, Rondônia, Roraima and Tocantins. At present, there are 69 records of the presence of indigenous peoples in isolation in the Amazon region. The Constitution of 1988 recognizes the indigenous peoples as the first and natural owners of the land and guarantees them their right to land. Exploration and extraction of mineral wealth on indigenous lands must be carried out solely with authorization from the National Congress after listening to the communities involved, who must be guaranteed participation in the benefits of the mining activities. Eviction of indigenous peoples from their lands is prohibited. Brazil has signed ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007), and the American Declaration on the Rights of Indigenous Peoples (2016).

Indigenous Lands

Of 566 indigenous lands in the country, 44 have been demarcated, 73 have been declared, 13 have been homologated and 433 have been registered. There are 115-interdicted areas.³ During the 1980s, the National Indian Foundation, FUNAI, started the process to recognise indigenous lands through a framework of policies concerning national integration and consolidation. The consolidation efforts have targeted communities along the north and northwestern borders of Brazil.

In the 1990s, the legal framework for the demarcation of indigenous lands in Amazonia, as well as for the Yanomami tribe (AM/RR) and the people living in the Raposa Serra do Sol (RR) territory, was established. In other regions of the country, the indigenous communities managed to retain titles to their lands in small and isolated areas, many of which were recognized by the Indian Protection Service (SPI) between 1910 and 1967. These lands were appointed as indigenous reserves. There are 50 such reserves located in the northeastern, southwestern and southern regions, and in the state of Mato Grosso do Sul. In the Dourados reserve, in Mato Grosso do Sul, 18,000 people live on 3,560 hectares. The limited size of the reserve negatively affects the indigenous and their livelihoods. Despite constitutional recognition of the demarcation process, and Brazil's ratification of ILO 169, efforts to demarcate and protect indigenous lands have faltered.⁴

Over the last 20 years, demarcation procedures have decreased. Articulação dos Povos Indígenas do Brasil (APIB) has published a statement, which notes that one of the major obstacles for demarcation of indigenous lands is the influence exerted by the congressional rural caucus:

The Parliamentary Rural Assembly, the congressional majority numbering 162 representatives and 11 senators, represents the interests of the corporations and private land-owners in the country, a R\$ 440 billion (US\$ 118 million) agricultural and livestock business. Most of the congress members in this assembly are also owners of large extensions of land and their campaigns are financed by agroindustry corporations linked to several legislation proposals that restrict the rights of the

*indigenous communities and criminalize rural reform.*⁵

During the last 20 years, indigenous peoples in Brazil have experienced an escalation of attacks from the rural evangelical caucus, aimed at preventing the demarcation of indigenous lands. From the election of President Lula in 2003, there has been a steady decline in the demarcation of indigenous lands. The administration of Fernando Henrique Cardoso demarcated 175 indigenous areas between 1995 and 2002; Lula demarcated 87 from 2003 to 2010; while Dilma Rousseff managed only 11 demarcations during her term in office from 2011-2016. Michel Temer did not demarcate any lands during his term from 2016 to 2019.⁶

Situation of the indigenous communities in 2018

Michel Temer served for two years before a new election was called in October of 2018. On 1 January 2019, the new President, Jair Bolsonaro, the candidate of the evangelical caucus and a former captain of the Brazilian Army, took office.

Temer's term was plagued by reports of corruption and a major economic crisis. Brazil suffered an unemployment rate of 11.9%⁷ and disappointing growth. Several corruption scandals involving governmental agencies, business-people and other entities also contributed to the country's troubled situation. Corruption remains a major hurdle for the indigenous population of Brazil, as it is considered pervasive throughout the public and private sectors.

Even though Temer's presidency was short, severe consequences followed. His agenda and policies were openly in contradiction with the Constitution of 1988 and the two international conventions ratified by Brazil.⁸ In 2017, Temer released *Opinion No. 001/2017* of the Office of the Attorney General of the Union (AGU), an achievement of the rural caucus that makes the demarcation of indigenous lands unfeasible. The Public Prosecutor's Office (MPF) strongly opposed the opinion. Other measures were adopted by the administration, including the addition of a "time frame" applied in relation to demarcation procedures. According to the rural caucus, only those communities who possessed their land by 5 October 1988, the enactment date of the Constitution, would have a legal claim to the land.

Besides challenging existing land rights laws and precedents, the

administration has acted to dismantle the federal agency directly involved in the indigenous land demarcation process, known as FUNAI. In 2018, it received a small budgetary increase – a symbolic gesture, as it does not provide sufficient budget to continue operations. Further, action was taken to influence budget allocation.⁹ It is estimated that 72% of FUNAI's budget was allocated to personnel expenses (active and retired, including benefits), 12% to the agency's structure maintenance and 2% to payment liabilities. Only 14% (US\$ 22 million) of the budget is left to support its mandated activities.¹⁰

According to Márcio Santilli, former chairman of FUNAI, "This country is suffering the collapse of its democratic system and the indigenous people are suffering the most due to the open attack on their rights." Dinaman Tuxá, a coordinating member of Brazil's Indigenous People Articulation (API), agrees with Santilli, stating that, "This is even more clear since it is known that there exist demarcation procedures which have been completed, no formalities pending, and the government shows no sign of political intent to drive them forward."¹¹

There is a severe risk of a deterioration of the constitutional rights of the indigenous peoples of Brazil. The government has also threatened to grant access to lands traditionally inhabited by indigenous communities and black communities (also known as quilombolas) to commercial exploitation. To do so, it has indicated that it may revise and even revoke the reports, declaratory ordinances and the indigenous lands homologations which were agreed under the administration of Dilma Rousseff.

The Tierra Libre Camp of 2018 (23-26 April), is the most relevant annual indigenous demonstration in Brasília. It provides a significant framework for the revindication of the rights of indigenous communities, advocating against the threats posed by the rural, extractivist and mining caucuses. More than three thousand indigenous people, on behalf of over 100 villages, approved a final document that they titled: "Our clamor against the genocide of our people," which calls for:

- The immediate revocation, effective immediately, of AGU/Temer *Opinion 001/2017*.
- Revocation, effective immediately, of the 95th amendment to the Constitution, whereby the public budget is fixed for the next 20 years; immediate carrying out of the necessary measures to repel invaders from already demarked indigenous lands and effective

protection thereof.

- Demarcation and protection of all indigenous lands, in particular, the lands of uncontacted and recently contacted communities, by institutionally strengthening the FUNAI.
- Budget allocation, enough resources to enforce the Brazilian Policy for Territorial and Environmental Management of Indigenous Lands¹² and other social programs.
- Basic health care for our people through the Special Indigenous Health Department.
- A separate quality education policy for our people.
- Dismissal of all bills and proposed pieces of legislation adverse to our people and lands.
- Guarantees from different instances of the Judiciary that the fundamental rights of our people will be respected.
- That violence, criminalization and discrimination against our people and its leaders will come to an end, by ensuring punishment for those responsible for such behaviour and compensation of all damages caused.
- Enforcement of the international treaties entered into by Brazil, in particular the ILO 169.¹³

Conclusion

The rights of indigenous peoples and quilombolas are constantly threatened. These threats are based on the rationale that indigenous peoples represent a setback for the country's development in economic, social and cultural aspects.

Current President Jair Bolsonaro's electoral campaign was marked by rhetoric and actions which served to attack and disregard the rights of indigenous communities. During his campaign, he made the following statement which strongly reflects his assimilationist approach:

The indian [indio (pt)] wants to become part of the society. I was played a dirty trick by some sectors of the media. I will repeat it here. The indians want electricity, physicians, dentists, Internet, and they want to play soccer. They want what we want. [...] Here in Brazil, some people advocate to keep the Indian in reserves as if they were animals in a zoo. I do not

want that. I want to treat the indians as human beings and citizens.¹⁴

In response to this statement, Brazil's Indigenous People Articulation (APIB) released a detailed letter:

We do not accept to be treated as inferior beings, as your Excellency's statements seem to suggest. We are only different, and it is the Federal Government's obligation, according to the Constitution, to respect our "social organization, customs, languages, beliefs and traditions" (article 231 of the Constitution). Therefore, we repudiate your disparaging and limited view in considering us as zoo animals [...] Mr. President, over the last few days, the media has broadcasted a number of statements by you about the indigenous issue, including statements that damage the image and the dignity of our people and communities, which are a deep concern to us since they show disregard for our constitutional rights on one hand, and an assimilationist indigenism, retrograde, authoritarian, judgmental, discriminating, racist and integrationist view which had been banished from our country for more than 30 years by the Constitution of 1988.¹⁵

It is clear that the current president has an integrationist policy in mind. He has repeatedly called into question the lawfulness of legislation which recognises indigenous peoples and their rights. The administration continues to unconstitutionally threaten the demarcation procedures of indigenous lands, including those which have previously been enacted, and its rhetoric serves to justify prejudice and discrimination against indigenous communities by accusing them of being an obstacle that hinders the country's progress.¹⁶

Bolsonaro visited Mato Grosso do Sul, the state covering the third largest indigenous population in Brazil, where the greatest territorial conflicts between indigenous communities and non-indigenous land-owners have taken place. There, he visited Dourados, Brazil's most populated indigenous reserve, where he made the following statement:

Non-governmental organizations and the Government incite the indian into conflict. If I take over the presidency of the Republic, there will not be another centimeter for demarcation.

*In Bolivia, we have an indian who is president, why do they need land here?*²⁷

The outlook for the future is dire. Indigenous organisations view this administration and its rhetorical approach to indigenous rights as one of the worst crises of disrespect and deterioration of human rights.

Notes and references

1. Government of Brazil, "No Brasil, população indígena é de 896,9 mil." Available at: <http://bit.ly/2Et2QHx>
2. See Povos Indígenas no Brasil, "Demarcações." Available at: <http://bit.ly/2EusfBh>
3. Anthropological, historical, agricultural, mapping and environmental studies are being conducted to justify the identification and demarcation of indigenous lands. Demarcated lands are published in the Official Gazette. They are under analysis by the Ministry of Justice for issuance of a Declaratory Ordinance to establish traditional indigenous occupation. *Declared lands* have obtained the issuance of the Declaratory Decree by the Minister of Justice and are authorized to be demarcated physically, with the materialization of landmarks and georeferencing. *Homologated lands* have their limits materialized and georeferenced, whose administrative demarcation was approved by Presidential decree. *Registered lands* that were registered before a notary public on behalf of the country in the Asset Department of the Union after gaining approved status. *Interdicted lands* are subject to use and access restrictions to protect isolated indigenous communities. See FUNAI, at: <http://bit.ly/2EqB0w4>
4. FUNAI, 2014. "Bases Legais." Available at: <http://bit.ly/2ErPpYS>
5. Articulação dos Povos Indígenas do Brasil. "PEC 215." Available at: <http://bit.ly/2EuR1RT>
6. Instituto socioambiental.
7. See Government of Brazil, "Desemprego cai para 11,9% no terceiro trimestre de 2018, aponta IBGE." Available at: <http://bit.ly/2Eli5Te>
8. International Labor Organization Convention 169 on Indigenous and Tribal Peoples.
9. See INESC, "Orçamento 2018: Funai respira, mas não se recupera." Available at: <http://bit.ly/2EpckUD>
10. See INESC, "Direitos Indígenas: entre desmontes, oportunismos e resistência." Available at: <http://bit.ly/2EuunJh>
11. See Instituto Socioambiental, "Com pior desempenho em demarcações desde 1985, Temer tem quatro Terras Indígenas para homologar." Available at: <http://bit.ly/2EuLPNx>

12. The GATI Project (2006) was funded by the Global Environment Fund for conservation of biodiversity and sustainable use of forests (US\$ 6 million+ national contribution). Available at: <http://bit.ly/2EqBP88>
13. For full statement, see “Agradecimentos pelo apoio ao ATL 2018,” available at: <http://bit.ly/2Tb8Krw>
14. See Brasil de Fato, “Povos Indígenas a Bolsonaro: “Não Admitimos Ser Tratados Como Seres Inferiores.” Available at: <http://bit.ly/2Et9OwH>
15. Ibidem.
16. See Folha De S. Paulo, “Bolsonaro e índios: erros do presidente eleito sobre Funai e reservas.” Available at: <http://bit.ly/2EqAlp1>
17. See Dourados News, “Bolsonaro: ‘Se eu assumir, índio não terá mais 1cm de terra.’” Available at: <http://bit.ly/2Ep9dw6>

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CHILE



In Chile, nine indigenous peoples are recognized by statute,¹ comprised of 1,585,680 persons, they represent 9% of the country's total population. However, in the 2017 Census, 12.8% of Chile's population, totalling 2,158,792 people, were recognized as indigenous. These peoples and their populations are: Mapuche (1,754,147), Aymara (156,754), Diaguita (88,474), Atacameño (31,800), Quechua (27,260), Colla (16,088), Kawésqar (5,298), Rapanui (5,065), and Yámana or Yagán (131). Though mostly inhabiting urban areas, particularly the Metropolitan region (30.1%), Araucanía (19.6%) and Los Lagos (13.1%),² as of the year 2015, 24.7% resided in rural zones.

The 1980 Constitution does not recognize indigenous peoples or their rights. The process for a new Constitution included an effort launched in 2016 for consultation, but that process is currently suspended due to a lack of political will on the part of both the executive branch and the National Congress. Indigenous peoples' rights are regulated by *Law No. 19,253* of 1993 on the "Promotion, Protection and Development of the Indigenous," a law that does not meet the standards of international law on the rights of indigenous peoples. *Law 19,253* recognized indigenous rights, but Chile has yet to recognize indigenous rights constitutionally. Some peoples, such as the Changos and Chonos, are not recognized by statute, nor are the Chilean Afro-descendent tribal peoples, whose population – though excluded as a census category – is estimated in the Arica Parinacota region alone at 8,000 persons.³

ILO Convention 169, which was ratified by the Chilean Government in 2008, and went into effect as law in Chile in September 2009.

As of 2017 the indigenous peoples had Chile's highest rates of poverty, under-development and illiteracy. One-fourth of the Araucanía Region is Mapuche. The region has the highest poverty rate (17.2%), more than double the national average of 8.6%.

Contextualization: New government. Same old treatment.

In 2018 the conservative Sebastián Piñera became Chile's president for a second time. Prior to taking office, his party expressed its intention to pull out of ("denounce") ILO Convention 169. The idea was abandoned after the ILO issued a note clarifying that a denunciation would be allowable in September 2021.⁴

At the insistence of business associations, Piñera's government in 2018 advocated for the passage of the *Pro Investment Act* (Bulletin No. 11,747-03), and the *Law for Modernization of the Environmental Impact Assessment System* (Bulletin No. 11952-12). Both these bills sought to eliminate regulatory obstacles, promote investment, and reduce time spend on environmental assessments and participation. Indigenous peoples, despite being affected by these bills, have not been consulted.

In September 2018 the government announced the "National Accord for Development and Peace in Araucanía," as well as the "2018-2026 Araucanía Promotion Plan," which proposes constitutional recognition of indigenous peoples, a Ministry and a National Council of Indigenous Peoples, and indigenous representation quotas in the parliament. These announcements fail to take a rights approach. They also fail to consider the results of the consultation carried out in the framework of the 2017 indigenous constitutional reform process. Moreover, they weaken legal protections for indigenous lands, opening them up to the market and proposing tax incentives for investments of "all types" in Araucanía, which could lead to new natural resource extractive or infrastructure projects affecting the communities. In addition, they contemplate modernization of the police and intelligence efforts to combat "terrorism" in the country's south.⁵

The inter-ethnic conflict between the state and the Mapuche people in Araucanía reached a critical point with the extrajudicial murder – at the hands of government agents – of Camilo Catrillanca, a young Mapuche member of an emblematic community in the demand for territory. That crime had an impact at a national level and increased inter-ethnic tension in Chile.

Murder of Camilo Catrillanca

On 14 November 2018 the Carabineros (the national police force) have said they received a phone call reporting the theft of privately-owned vehicles. Upon hearing this, they sent their agents to an area close to *Temekuikui*, in Araucanía, a Mapuche community well-known for making claims to their land. This police intervention resulted in the Carabineros fatally shooting Camilo Catrillanca to the back of his head. Catrillanca was a 25-year-old Mapuche community member and the grandson of the *Longko* ("Chief") Juan Catrillanca.

A minor who was accompanying Camilo and was the key witness to the incident, was arrested and tortured.⁶ Government spokespersons claimed that Camilo was a dangerous criminal with a criminal record and that his death occurred in a confrontation. Yet upon investigation the court found that Camilo Catrillanca had no criminal record, and, moreover, that one of the policemen directly involved (belonging to what was called the "Jungle Command", so named because they were trained in the Colombian rainforest) was wearing his body camera, which revealed that there was no confrontation and that the shots were fired directly against the community members.

Based on the evidence implicating the policemen, the Chief of the Carabineros, Hermes Soto, was asked to resign. (Soto, a few months earlier, had replaced Bruno Villalobos, who had resigned due to his involvement in the Operation Hurricane scandal). Ten other Carabinero generals were also asked to resign, thus triggering a major political crisis and loss of confidence in the government. Charges are currently pending against former agents of the Special Police Operations Group (GOPE) and other public officials for homicide, obstruction of the investigation, falsification of a public instrument, and breach of public duty. The Mapuche people continue to seek justice.

Criminalization of indigenous protest

In 2018 the "Hurricane" police intelligence operation resumed. Under the operation, which started in September 2017, several Mapuche leaders were arrested, charged with terrorist conspiracy to commit a series of crimes, and held in pre-trial detention.

The "Hurricane" operation invoked the *Anti-Terrorism Act* and the

Law on the Government's Intelligence System and used telephone wire-taps later declared illegal by the Supreme Court. The operation also used a bogus computer program, "Antorcha", developed by a private party at the request of the Carabineros Intelligence Unit. The investigation revealed an adulteration and intentional planting of evidence aimed at incriminating innocent community members.⁷ These practices were violations of due process, and it was ordered that the persons charged be released. A criminal investigation was brought against the police officers and supervisory personnel involved. They were charged with conspiracy, falsification of a public instrument, and obstruction of justice. Several of them resigned or were discharged.

Nonetheless, during 2018 the *Anti-Terrorism Act* continued to be used against members of the Mapuche people, especially against leaders and traditional authorities. In last year's report, we mentioned the *Werner Luchsinger/Vivianne Mackay* case, related to the death in 2013 of this farming couple in Araucanía. Eleven Mapuche community members were charged in that case, including the *Machi* Francisca Linconao, a traditional spiritual authority, and brothers José and Luis Tralcal, defenders of ancestral lands and waters. Several of them were held in pre-trial detention for a long period of time.⁸ They were acquitted by the trial court, but the accusing party appealed the verdict, and the Temuco Appellate Court voided the trial. At the new trial the Tralcal Coche brothers were sentenced to life imprisonment for the crime of terrorist arson resulting in death. In addition, José Peralino Huinca, an informant who suffers from an advanced degree of cognitive disability, was tortured and offered illegitimate benefits to implicate the brothers. He was also found guilty.

In response to the guilty verdict and irregularities in the proceedings, the defense counsel filed an appeal for vacating the judgment with the Supreme Court. The appeal struck the terrorist nature of the crime, and lowered the sentences to 18 years for the Tralcal brothers (who are fugitives) and five years with supervised release for Peralino Huinca. The other eight community members, including *Machi* Linconao, were acquitted.

It should be noted that due to the violations of rights during the case and the accused's pre-trial incarceration, in February 2018 a second Judiciary Observation Mission was conducted by the Observatory for the Protection of Human Rights Defenders, a joint program of the International Federation for Human Rights (FIDH) and the World Organ-

ization against Torture (OMCT). The Mission reiterated the 2017 observations “regarding the problems identified with respect to the architecture of the Chilean criminal justice system, application of the *Anti-Terrorism Act*, the intelligence activities, and the pattern of criminalization of the Mapuche people.” The mission recommended that everyone charged in this case be acquitted; that international human rights obligations be honored; and that Chile should comply with the 2014 judgment of the Inter-American Court of Human Rights (IHR Court) in the case of *Norín Catrín et al. v. Chile* where Chile was found to have violated rights guaranteed in the American Convention due to its use of the *Anti-Terrorism Act*.

In 2018, *Longko* Juana Calfunao, a Mapuche leader who has been arrested on numerous occasions in the context of social protest, was tried. In July 2018 the Temuco Criminal Court found her guilty and sentenced her to five years and one day of imprisonment for the crime of assaulting a Carabinero, resulting in severe bodily injuries. This crime supposedly took place during a 2016 incident where she protested construction of an asphalt road being built across her community. In October 2018 the trial was voided by the Temuco Appellate Court, which ordered a new trial, given that in 2015 the Inter-American Commission on Human Rights (IACHR Commission) had decreed a precautionary measure in Juana Calfunao’s favor, ordering that her physical integrity be protected. The Supreme Court had also ruled in favor of Calfunao in a protection action brought by the National Human Rights Institute (IN-DH). There, the Supreme Court recognized that during the incident officials of the state reportedly violated the IACHR precautionary measure by forcibly entering her territory with machinery and with the execution of works.

Another 2018 case is that of the Pai-Ote community of the Colla people, who inhabit the Cordillera sector of the Atacama Region. Its members and its leader, Ercilia Araya, have been physically threatened over conflicts in their territory with gold, silver and now lithium mining companies, affecting pasture grounds, meadows and wetlands used by the community to raise their livestock. After the community denounced the Canadian company Yámana Gold for environmental damage in 2014, the police, rather than investigating the environmental issue, brought an investigation against Ercilia based on having found archeological remains and fossils at her home. She was prosecuted for several months on charges of violating the *National Monuments Act*, even

though this was her own heritage, protected for indigenous peoples under international law. The United Nations Special Rapporteur on the situation of human rights defenders in May 2018 was notified to request protection for the community and its leader.

Attorneys who defend indigenous peoples have likewise been criminalized, harassed and threatened, and have been victims of wire-tapping – later declared illegal by the courts. During “Operation Hurricane” in 2018 Karina Riquelme was harassed by civil officers of the Carabineros. She was photographed by intelligence agents – even inside the courts. One night in her own home, in the presence of her 6-year-old daughter, two unknown suspects pointed a laser light at their window. Such intimidation against Attorney Riquelme and the CIDSUR team to which she belongs are nothing new, but date back to 2011. They have had to file constitutional actions, granted in their favour, to help protect their rights and physical integrity. These incidents evidence the precarious situation of defenders of indigenous peoples’ rights in Chile.

Access to justice

Ximena Saldivia was one of the three judges of the Temuco Criminal Court that heard the second trial of the above-mentioned *Luchsinger-Mackay* case. In May 2018, a few days after the verdict, she filed a complaint over labour harassment and the excessive pressure she was subjected to by Judge Germán Varas Cicarelli. He presided over the case, because Saldivia was deemed to be more receptive to the Mapuche defense arguments over the course of the trial.

Judge Varas Cicarelli was seeking an appointment by the Executive Branch,⁹ and President Piñera and his ministers, during the trial, had stated that the defendants should be found guilty of crimes of terrorism. Judge Saldivia was replaced by Mauricio Poblete, who advocated a guilty verdict for the Mapuche community members. This situation was reported to the United Nations Special Rapporteur on the independence of judges and lawyers.¹⁰

Difficulties in access to justice were also seen in the case of the death of environmental activist Macarena Valdés Muñoz, who was the life partner of a Mapuche community member. In August 2016, during a conflict with the Austrian/Chilean company RP Global Chile Energías Renovables S.A. that develops hydroelectric projects in the Panguipulli

community, Los Ríos Region, her lifeless body was found inside her home in the Newen Community of Tranguil, under suspicious circumstances. A second autopsy concluded that she died at the hands of third persons, ruling out the official version of a suicide. More than two years after the fact, without substantial progress in an investigation of suspects, Macarena Valdés' life partner, community member Rubén Collío, indicates that he is being harassed in connection with the activities of the company, which is constantly forcibly entering the territory.

Francisco Facundo Jones Huala, a member of Mapuche Ancestral Resistance (RAM) and a Mapuche-Argentine *Longko* of Lof de Resistencia in Cushamen, was given a nine-year sentence in 2018. This verdict met with discontent. In September 2018, Argentina found Jones Huala as a fugitive and extradited him to Chile. There he was charged with arson and illegal possession of weapons, which allegedly occurred in Río Bueno in January 2013. He had been arrested in Chile a few weeks after the incident, when staying overnight at the home of *Machi* Millaray Huichalaf, a traditional spiritual authority convicted in 2014 as an accessory after-the-fact for the same fire. After spending 200 days in pre-trial detention, *Machi* Millaray Huichalaf was sentenced to 61 days of incarceration. Subsequently, Jones Huala fled to Argentina. A challenge against his conviction has been filed on the grounds of lack of evidence, seeking to void the guilty verdict.

Said case contrasts with Carabinero Second Sergeant Cristián Riveras Silva's three-year sentence of restricted release for the severe battery of Brandon Hernández Huentecol, a 17-year-old Mapuche shot from 30 centimetres away. Brandon received over 200 wounds from a shotgun that perforated his hip and fractured his pelvis in 2016 when he tried to defend his brother from an arbitrary arrest in the community of Collipulli. After more than fifteen surgeries, he still has shotgun pellets in his body. The meager sentence for the Carabineros officer reveals the continuing, biased impunity for police involved in these types of crimes. In fact, in prior cases of murders of Mapuches committed by the Carabineros, such as that of Alex Lemún,¹¹ Matías Catrileo and Jaime Mendoza Collío, the perpetrators have at most been sentenced to restricted release.

Land

A report from Observatorio Ciudadano and the Unified Workers Federation (CUT),¹² ten years after implementation of ILO Convention 169 in Chile, described the grave situation of land grabbing of Mapuche lands by forestry companies. It is estimated that these companies are holding almost three million hectares in territory traditionally occupied by the Mapuche, in contrast to less than a million hectares for which the Mapuche have gained recognition.

The indigenous lands policy developed since 1993 through the National Indigenous Development Corporation (CONADI) has been plagued by many problems. The *Indigenous Act* contemplated a term of three years for regularizing ancestral territories. This term has been grossly exceeded and there are demarcations that have yet to be started. The CONADI report states that between 2009 and 2018, in total, approximately 125,000 hectares, mostly in Mapuche territory, have been acquired through the Indigenous Lands Fund. These lands have been purchased at market prices, and have been limited, in the case of the Mapuche, to lands which they used to own legally. They did not receive restitution for the non-recognized, but traditionally occupied land. Furthermore, the government's investment in this Fund from 2009 to 2018 is 0.1615% of the national budget, far less than what is earmarked for the Armed Forces, averaging 2.6998%. With regard to the purchasing of the contested lands of the Mapuche communities, only 14% of the budget has been allocated to lands adjacent to those to which the Mapuche already held title; the remaining 86% of the budget has been allocated towards lands far away from the Mapuche, requiring their relocation.

In October 2018 the Civil Court Number One of Antofagasta issued an order to the Chilean treasury. The treasury was ordered to transfer the property of Lagunas Cejar and La Piedra, after the communities of the Lickanantay people, in San Pedro de Atacama, provided proof of their ancestral use and occupation of that zone dating back to Pre-Colombian times.¹³ Anthropological studies and declarations of witnesses belonging to the Atacameña Community of Solor, successfully demonstrated that their rights to the land in total accounted for 4,389.76 hectares.

The government intention to amend *Law 19,253* threatens the protection of currently held indigenous lands and the restitution of lands

taken from them. The amendment opens the way for their alienation and encumbrance, which up until now has been prohibited.

Notes and references

1. *Indigenous Act No. 19,253* of 1993.
2. National Socio-Economic Characterization Survey (CASEN) Database 2015.
3. INE (2014). First Census for Characterization of the Afro-Descendent Population of the Arica and Parinacota Region. Available at: <http://bit.ly/2IJdHD9>
4. ILO (2018). Technical Note. The denunciation system of Convention 169. Available at: <http://bit.ly/2IKuBBR>
5. Observatorio Ciudadano, September 2018. Available at: <http://bit.ly/2IJMmRo>
6. In response to this incident, Observatorio Ciudadano, on 28 November 2018, requested that the IAHR issue a precautionary measure in its favor, which is currently being processed.
7. In said regard, see the journalism report written by CIPER Chile (Journalistic Research and Information Center). Available at: <http://bit.ly/2IMCS7Q>
8. This situation was documented in 2016 through an urgent call submitted to Ms. Victoria Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples, aimed at exposing the prosecution and incarceration of *Machi* Linconao.
9. See Acuerdo no 224-2015, available at: <http://bit.ly/2ITtdYe> ; Going to press, Available at: <http://bit.ly/2IJX0HQ>
10. See Observatorio Ciudadano, “Comunicación urgente a Relator Especial de la ONU sobre independencia de los magistrados y abogados, caso Jueza Ximena Saldivia (mayo 2018),” available at: <http://bit.ly/2IMpm43>
11. The exception is the case of Alex Lemún. The Carabinero involved, upon a decision by the Supreme Court to reopen the 2017 case, was formally charged in October 2018 as the perpetrator of a homicide. He is being held in pre-trial custody.
12. See Observatorio Ciudadano, “El Convenio 169 De La Oit Sobre Pueblos Indígenas Y Tribales A 10 Años De Su Ratificación Por El Estado De Chile: Análisis Crítico De Su Cumplimiento,” available at: <http://bit.ly/2IXKfcT>
13. See Diario y Radio U Chile, “Juzgado ordena al Fisco transferir propiedad de Laguna Cejar a comunidad atacameña,” available at: <http://bit.ly/2IKuZQp>

Report by Observatorio Ciudadano of Chile (www.observatorio.cl) with contributions from **Marcel Didier, Jose Aylwin, Hernando Silva, and Felipe Guerra.**

COLOMBIA



The indigenous population of Colombia, according to official data, is 1,500,000 persons, which represents 3.43% of the national population. 78.6% of the country's indigenous population is concentrated in rural zones and 21.4% in urban zones. Out of the total indigenous population registered in Colombia in the year 2005, 796,916 inhabited reserves (57.2 % of the indigenous population). Growth in the indigenous population in recent years is notable, since in the year 1993 the indigenous population represented a mere 1.6% of the national total.

The great majority of the indigenous population is affiliated with the National Indigenous Organization of Colombia (ONIC), which brings together 80% of Colombia's indigenous population, equivalent to 1,394,202 persons and 335,784 families, grouped into 49 regional associations and 530 affiliated reserves.¹ ONIC is also one of the principal players in the negotiation and implementation of the final peace accord in Colombia.

The Constitution of 1991 recognized the fundamental rights of indigenous peoples and ratified ILO Convention 169 (currently Law 21 of 1991). In 2009, Colombia supported the United Nations Declaration on the Rights of Indigenous Peoples. With *Order 004* of 2009, the Constitutional Court mandated that the State protect 34 indigenous peoples at risk of disappearance due to armed conflict, and qualified that situation as "a state of unconstitutional things." In addition, President Juan Manuel Santos signed *Decree 1953* on 7 October 2014, which creates a special regime to implement the administration of the indigenous peoples' own systems in their territories. For its part, the Congress issued the *Organic Law on Territorial Zoning*, which will define relations and coordination between indigenous territorial entities and the municipalities and departments.

In December 2016 the negotiations culminated between the government of President Santos and the Revolutionary Armed Forces of Colombia (FARC) to end an armed conflict that had lasted half a century and that drove many peasant, indigenous, and Afro-Colombian families out of their territories.

During 2018, a series of events directly affected indigenous peoples and communities. The National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia*; ONIC), which represents the majority of indigenous peoples in the country, has reported serious incidents and has submitted complaints to several national and international organizations.²

The most alarming incidents intersect with the peace negotiations between the national government and the FARC-EP. Since then, there have been approximately 87 murders of indigenous people and 11,644 human rights violations against indigenous peoples.³

Given that context, the following is noted:

- 39 indigenous villages at risk of physical and cultural extermination
- 35 indigenous villages with less than 200 inhabitants
- 37 indigenous leaders murdered under the current government of Duque
- 87 indigenous leaders murdered in the two years since the signing of the Peace Agreement

For their part, the indigenous organizations indicate that the national government refuses to accept the systematic nature of these events, stating that the origin of these homicides are personal vendettas or problems unrelated to political motives. This denial keeps the problem from being addressed and overcome, enabling a repeat of those events in the post-peace agreement era, when all types of human rights violations should be overcome.⁴

It is also important to note that in the territory of the indigenous reserves, confrontations between armed groups and criminal organizations have accelerated, causing anguish, insecurity, and displacement. The indigenous peoples believe that this has caused the decline of economic activity based on agriculture, fishing, handicrafts and livestock (among other activities), leading to malnutrition, hunger, and poverty in their territories. It can thus be seen that the Colombian State is not fulfilling their duty to guarantee the security of the population, because the State has not acted in an effective manner against armed groups and criminal organizations.

Threats to social leaders and human rights defenders accelerated

during the year 2018. The various armed groups, including the Águilas Negras, paramilitary groups, and the dissidents of the FARC, circulate pamphlets in which they offer money for the lives of leaders of the Indigenous *Cabildos* (Councils), mainly in the Cauca region. According to the ONIC, in December 2018 alone there were at least 15 murders of indigenous people.⁵

Despite the disarmament of the oldest guerrilla group in Latin America, the FARC-EP, there has yet to be a noticeable improvement in overcoming systematic, critical human rights violations against social leaders and human rights defenders, especially in rural areas. The number of violations is rising and jeopardizing the wellbeing and *buen vivir* [the good life] of indigenous peoples and communities.⁶

In addition, the wealth of natural resources in the territory of indigenous peoples attracts large multinational corporations and armed outlaw groups seeking mining exploitation opportunities and territorial control. In departments such as Chocó, La Guajira, and Amazonas, this situation has caused displacement, environmental pollution, violence, and insecurity, which directly threatens the uses and customs of indigenous peoples.

According to an article published by *Semana* magazine, the Yuri and Passé peoples, in a situation of isolation, live their lives without knowing what is happening around them. They nourish themselves from the million hectares of forest that comprise the Puré River National Natural Park, a protected area created in 2002 with the aim of safeguarding them. They move among the forests without suspecting the dangers that surround them and threaten their native way of life. Illegal mining, indiscriminate felling, illegal groups, and even religious ones beset them.

Government policies on several occasions have gone against the wellbeing and *buen vivir* of indigenous peoples. An example of this is the current situation in the communities located in Bajo Cauca Antioqueño, due to the damming of the Cauca River by the Hidruituango hydroelectric project. The work includes a dam 225 meters high and 20 million cubic meters in volume, which would create a reservoir 70 kilometers long.⁷

This project has had a large part of the neighboring populations on red alert, since there have been failures in the structures, forewarning the potential for floods that could destroy shelters located on the banks of the Cauca River. The Senú indigenous people, located in the municipi-

palities of Cáceres and Caucasia, could be affected, as could the Embera Chamí and Embera Katío peoples, who live in Tarazá and Cáceres. The displacement of evacuated indigenous people puts their health at risk, as they do not have access to drinking water or sanitary services, and food is scarce due to the severity of the situation.⁸

In January 2019, the alarming situation continued, because shifts are still occurring inside the dam, threatening the safety of hundreds of indigenous and non-indigenous families.

The consultations

During 2018, three free, prior and informed consultations were held, which are a right and an instrument for participation in decisions on all matters concerning indigenous peoples, as established by ILO Convention 169.

In the first half of the year, a consultation was carried out, “By means of which gender equity criteria are established in the award of vacant lands, rural housing, and production projects. *Law 160 of 1994* is amended and other provisions are issued.” This project sought to modify the country’s vacant land regime, which, according to *Law 160 of 1994*, should be earmarked for communities that have no, or not enough, land. And it was concluded that these vacant lands can be delivered in ownership or with unlimited usage rights to mining, hydrocarbons, and hydroelectric entrepreneurs, ignoring the historical debt of the State in territorial terms owed to indigenous communities and peoples. Although the consultation was carried out, the proposals of the indigenous communities and peoples in relation to safeguards for their sacred and/or ancestral territories were not taken into account. In fact, the five indigenous organizations of Colombia with a seat on the Permanent Coordination Board (*Mesa Permanente de Concertación*; MPC) opposed a legislative bill that seeks to modify *Law 160 of 1994*, which, at the time, was the subject matter of the consultation. Their opposition has not yet been responded to; neither has the bill been introduced that seeks to modify *Law 160 of 1994* before the Congress, taking into account that the modification of this law is harmful and regressive with respect to the rights obtained on the lands of the indigenous peoples of Colombia.

Likewise, at the end of 2018, the second consultation was held for

indigenous peoples on the Integral System of Truth, Justice, Reparation, and Non-Repetition (*Sistema Integral de Verdad, Justicia, Reparación y no Repetición*; SIVJRNR), which provided records of previous peace discussions between the Colombian Government and the FARC-EP. There, the indigenous peoples were given a space for participation and an ethnic chapter became a part of these agreements, creating the Special Justice for Peace (*Justicia Especial para la Paz*; JEP). The consultation was carried out in order to establish guidelines/actions in response to the SIVJRNR instruments, without affecting the indigenous peoples' own systems of territory, spirituality, participation, women, and family, and without disregarding the institutional configuration of the Truth Commission (*Comisión de la Verdad*; CEV), the Search Unit for missing persons (*Unidad de búsqueda para personas desaparecidas*; UPBD), and the special justice for Peace, with an ethnic focus. Of particular note are the agreement for coordination and articulation of the integral, restorative, transformative reparation of the indigenous peoples of Colombia; the protocol for the coordination and articulation of the integral, restorative, transformative reparation of the indigenous peoples of Colombia; the relationship and coordination protocol between the Unit for the Search for Persons Disappeared (UBPD) and the Indigenous Peoples of Colombia.⁹

Finally, the third free, prior, and informed consultation was held regarding the 2018-2022 National Development Plan (*Plan Nacional de Desarrollo*; PND) in comparison to the 2014-2018 National Development Plan "Everyone for a New Country," which did not attain the required level of compliance, since it fulfilled only 6%, providing what were actually promotional activities and not investment for fulfillment of the agreements made with the indigenous peoples.

In spite of the above, and taking into account the lessons learned, indigenous peoples as collective political subjects are again demanding their fundamental and constitutional right to be consulted and included in the 2018-2022 National Development Plan. To this end, 96% of the indigenous proposals were signed at the session for the formal recording of agreements and disagreements with the 2018-2022 National Development Plan (PND) within the framework of the Consultation and free, prior, and informed consent with the 102 indigenous peoples of the country.

The indigenous peoples of Colombia have always fought for their rights, and it is so reflected in the current political Constitution - which

was consolidated in 1991 - where Colombia is recognized as a multi-ethnic and multi-cultural State. However, despite all these efforts, there are few guarantees and little implementation of those achievements. Even so, the indigenous movement has been proactive by staying up-to-date on the various strategic political scenarios in order to request compliance with the agreements that have been established.

It should be noted that with respect to the public policies issued by the government, the ONIC has been working to implement the Sustainable Development Goals - SDGs, with a differential indigenous approach, since these objectives are key to the well-being and *buen vivir* of the indigenous peoples.

Colombian indigenous women, over time, have gained importance in the economy, as was demonstrated in the "Artisan Expos" traditional crafts festivals, where several countries came to Colombia to market their products and, in this way, obtain an economic benefit for their family's sustenance. Indigenous women, through their ancestral knowledge, have led the way in playing a fundamental role for the survival of their culture, taking steps towards attaining the recognition of women's rights in different scenarios and, making it possible for women artisans to be increasingly involved in national and international markets. These situations demonstrate the achievements in Colombia for advancing the welfare of indigenous families.

In spite of the many situations that occurred during the year 2018 with respect to the rights of Indigenous Peoples, the Colombian Indigenous movement is still proudly engaged in the struggle to promote the values of its people, who have always defined their own path.

Notes and references

1. See ONIC, "La ONIC ratifica posible exterminio estadístico en el Censo 2018 por incumplimiento de acuerdos", available at: <http://bit.ly/2IPbjdW>
2. See ONIC, "National Indigenous Organization of Colombia", Available at: <http://bit.ly/2IRQui9>
3. Ibidem
4. See ONIC, "National Indigenous Organization of Colombia" 2018. Available at: <http://bit.ly/2IRQui9>
5. Verdadabierta, 2018. Available at: <http://bit.ly/2IMGTJh>
6. El espectador, 2018. Available at: <http://bit.ly/2ISba9G>

7. Semana Sostenible, 2018. Available at : <http://bit.ly/2lSaP6U>
8. Semana, 2018. Availabe at: <http://bit.ly/2lSaoJO>
9. See ONIC, “National Indigenous Organization of Colombia”, 2019. Available at: <http://bit.ly/2INK6bG>

ECUADOR



The indigenous population of Ecuador is close to 1.1 million, out of a total population of 17,200,000 inhabitants. The country is inhabited by 14 indigenous nationalities, joined together in a series of local, regional and national organizations. 24.1% of the indigenous population lives in the Amazon and belongs to ten nationalities.

60.3% of the Andean Kichwa live in six provinces of the Central Northern Sierra; 78.5% of them still inhabit the rural sector and 21.5% inhabit the urban sector. 7.3% of the Andean Kichwa inhabit the Southern Sierra, and 8.3% inhabit the Coastal region and the Galapagos Islands while the remainder are spread across Ecuador.

The Shuar, who comprise a nationality of more than 100,000 persons, have a strong presence in three provinces of the Central Southern Amazon, where they represent between 8% and 79% of the total provincial populations; the rest are dispersed in small groups throughout the country.

There are several nationalities with a very low population

who live in a highly vulnerable situation. In the Amazon, they are the A'i Cofán (1,485 inhabitants), the Shiwiar (1,198 inhabitants), the Siekopai (689 inhabitants), the Siona (611 inhabitants), and the Sapara (559 inhabitants). On the Coast, they are the Épera (546 inhabitants) and the Manta (311 inhabitants).

More than a decade since the new Constitution went into effect and twenty years since the ratification of ILO Convention 169, Ecuador still has no specific public policies that prevent or neutralize the risk of disappearance of these peoples, and no effective instruments that ensure the prevailing of collective rights already extensively set forth in the current Constitution.

The situation and enforcement of the rights of the indigenous peoples in Ecuador in 2018 was marked by a political and economic turn towards an overtly neoliberal model. That change in direction was the fruit of negotiations and pacts between the present government of Lenín Moreno; various opposing fractions of the agro-export ownership class; the commercial, banking, and financial class; certain indigenous and trade union organizations; and the Embassy of the United States of America, in a zealous endeavor to neutralize and overcome the “Revolución Ciudadana” [Civilian Revolution]” model led by Rafael Correa that had dominated Ecuador’s political scene for almost a decade.¹

The result of this coalition’s agreements, led by the government, consisted of two central measures: the approval of certain constitutional reforms by way of a referendum, and the enactment of the *Promotion of Production Act*.²

The referendum, even though it failed to meet basic legal requirements, including authorization by the Constitutional Court, was held in February 2018. Its outcome led to the approval of certain provisions, including the suspension of indefinite re-elections for positions filled by a popular election and the restructuring of the Council for Civic Participation and Social Control (CPCCS)³. The first of these changes was aimed at eliminating the possibility that in the future, Correa might once again participate in the elections. The second change was aimed at coopting the judicial and control system in order to prosecute high-ranking mem-

bers of the former administration for corruption.⁴

In addition, the referendum granted two demands of indigenous and environmental organizations. The first was a prohibition against mining for metals in protected areas, untouchable zones and urban centers, as well as a 50,000 hectare extension to the Yasuní National Park, inhabited by the Tagaeri and Taromenane, two peoples living in voluntary isolation. The second was a reduction from 1,300 to 300 hectares of the hydrocarbons operations area in that zone.

The main point of the *Promotion of Production Act*, approved in August, consisted of dismissing fines and interest and, as a "tax incentive", waiving income tax payments for up to 20 years on new investments. This goes against express provisions in effect in the tax regime, which had prioritized direct taxes, the fulfillment of redistributive functions and the ensuring of fixed revenues for the treasury.⁵ In its Article 45, the law makes changes to Article 55 of the *Hydrocarbons Act* and provides that the state's share in hydrocarbons shall be adjusted as a function of the reference price and volume of production, but eliminating the guarantee that the government will receive a share if there are surpluses in oil prices. The law directly benefited the country's 200 most powerful groups in an estimated total of 4.379 billion dollars, equivalent to tax debts, almost half of which are concentrated in a mere 43 companies, including transnational oil corporations, private telephony companies and the largest banks.⁶

Along with these decisions, the government held talks with multilateral credit institutions such as the International Monetary Fund (IMF)⁷ and the Chinese government, and has announced negotiations with the United States of America for a trade agreement and entry into the Asia-Pacific Trade Agreement, of which countries such as Peru, Chile and Colombia form a part.⁸

Towards the end of the year, the government eliminated subsidies on several fuels as part of its economic measures. Certain members of the opposition to the government, such as trade unions, the movement named "Revolución Ciudadana" and several peasant and indigenous organizations at a local level, responded to that change with protests in a number of cities.⁹ The formal response of national organizations such as the National Federation of Peasant, Indigenous, and Black Organizations (FENOCIN) and the Confederation of Indigenous Nationalities of Ecuador (CONAIE), was late in coming. Moreover, the response was divided. Some questioned the government's decisions and joined the protests, and

others defended the need to strengthen channels of dialogue and negotiation with the central government, while maintaining their distance from groups called “Correa’s People.”¹⁰

The march for water, life and against corruption

Heeding a call made by the CONAIE, several indigenous organizations of the Central and Southern Sierra, led by the Confederation of the Quichua Nationality of the Sierra, Ecuarunari, called a “March for water, life and against corruption,” from 4-14 November, which marched from the Tundayme sector in the province of Zamora Chinchipe, to the southeast Amazon.¹¹

In a press release, the organization stated that the objective of the march was to ask President Lenín Moreno to adopt their requests over environmental, educational, political, anticorruption and communication issues. For Yaku Pérez, president of Ecuarunari, it was “a nonviolent march, the idea for which is to arrive in Quito and submit a legislative bill to the Assembly that declares Ecuador as prohibiting mining for metals in the (indigenous) territory.”¹²

Approximately 300 people marched through provinces from the south of the country until reaching Quito, where they submitted a proposal for an *Organic Law Prohibiting Mining for Metals in Ecuador* to the National Assembly and to the Comptrollership.¹³

The demands set forth in a manifesto included urgent reforms to the *Law on Waters, Lands, Mining*, the Integral Organic Criminal Code (COIP) and others “that allow for monopolization of natural resources, strip away rights, and criminalize social protest.”¹⁴

Debate and negotiations around intercultural education

In the context of economic adjustment and the political redirection of government policy, education for the indigenous peoples had a dual significance. On the one hand, the government utilized two demands proposed in this regard by the indigenous organizations as a means of pressure and political conditioning. On the other hand, the government’s promises become untenable when the time comes to find the means necessary to fulfill them.

We are reminded that some years ago (under the Correa government, 2007-2017), several indigenous organizations unsuccessfully demanded the full restoration, with full autonomy, of the Bilingual Intercultural Education System. At the time, they accused the regime of imposing a mono-cultural educational policy, stripping them of the autonomy they had achieved during the 1980s, which included the authority to direct the system and define their own pedagogical model.

Talks between the Moreno government and indigenous organizations associated with CONAIE had the reversal of the Correa government's policy as a major issue on their agenda. In particular Moreno's government offered to reopen what were called one-room schools, openly questioning the academic model promoted during the Correa administration around what were called Millennium Educational Units. Support was offered for the Amauta Wasi Indigenous University project, and even included the building where the Union of South American Nations (USAN) is headquartered.¹⁵

To a certain extent the offers made by the Moreno administration demobilized a large part of the organizations affiliated with CONAIE in responding to controversial decisions of the government regarding economic matters or international relations, in particular its alignment with the foreign policy of the United States government in the region.

Despite the agreements reached, however, the offers appear to be lacking in actual support. The 2019 pro-forma budget includes a considerable USD 198 million reduction in educational spending for the coming year, along with a USD 221 million reduction in investments, which poses a grave risk for achieving several objectives, among them the expansion of educational coverage for vulnerable populations such as indigenous communities in remote zones, adequate infrastructure maintenance, or wage levels for teachers.

Resistance to mining by the A'i Cofán community of Sinangoe

The A'i Cofán community of Sinangoe, located along the banks of the Aguarico River in the canton of Gonzalo Pizarro, province of Sucumbíos, to the north of the Amazon, is inhabited by approximately 180 persons whose livelihoods depend upon fishing, hunting and the cultivation of small family gardens. Their territory, which measures approximately

35,000 hectares, borders the Cayambe Coca National Park.

Since 2017 this community elaborated an Autonomous Act for Control and Protection of the Ancestral A'i Cofán Territory of Sinangoe, which provided for an Indigenous Guard to take charge of monitoring the territory in the face of any external threat. That same year, the Guard took note of several events, such as the entry of illegal miners into the community's territory with their machinery. This was reported to the People's Ombudsman, to the Prosecutor's Office and to the Municipality of Gonzalo Pizarro, which issued a report which concluded that "illegal mining, hunting poachers, illegal logging of the forest, and nonconventional fishing are severely affecting the lifestyles and survival of the A'i Cofán Community of Sinangoe." Despite this, the perpetrators faced no sanctions.¹⁶

Later, in January 2018, the Indigenous Guard again detected the presence of backhoes for the opening of roads to the Aguarico River. When this was denounced to the Agency for Regulation and Control of Mining (ARCOM) the officials reported that 20 concessions had been granted in the zone and another 30 were being processed for small and medium mining, with permits for exploitation with terms of up to 30 years.¹⁷

In March, the Ministry of the Environment inspected the area and determined that one of those exploitations, in Puerto Libre, did not have environmental or water concession permits. It therefore ordered the suspension of the mining concession until it met the requirements. By May, the mining operations had advanced, including the felling of 15 hectares of forest and the opening of a road to the Chingual River, to the north of the concession, without the Ministry taking any action whatsoever to prevent it.

After several denunciations and denials by the Ministry of the Environment, the A'i Cofán community of Sinangoe sought judicial protection in coordination with the Office of the Peoples' Ombudsman. On 12 July, the community filed an action for protection before the Constitutional Guarantees judge of the Canton of Gonzalo Pizarro for protection from the mining activities and concessions in their territory.

On July 27, the action for protection was initially granted. With that, the extractive mining activities in this territory were suspended, in recognition of the violation of the right to free, prior and informed consultation. All mining activities granted by the Ministry of Mining along the banks of the Aguarico, Chingual, and Cofanes Rivers were ordered to be

undone immediately.¹⁸ This decision was ratified three months later by the judges of the only courtroom of the Provincial Court of Justice of Sucumbíos.¹⁹

According to Mario Criollo Quenamá, President of the A'i Cofán Community of Sinangoe:

Our right to free, prior, and informed consultation was violated, as were the rights of nature, the right to the environment, to water, to health, and to food; all of that was due to the granting, without consultation, of at least 20 mining concessions along the banks of the Aguarico and the impacts generated by this activity inside and outside the limits granted by way of concessions [...] We, the Cofán, depend upon those rivers for our lives. If the water of those rivers gets contaminated, that contamination reaches us directly, since we fish from, bathe in, and drink directly from the river.²⁰

Threats against the Kichwa people of Pastaza

Two recent threats have appeared on the horizon of the Indigenous Territory of Pastaza (TIP), a territory measuring nearly 30,000 sq. km², inhabited by seven nationalities: Kichwa, Shiwiar, Waorani, Andwa, Zápara, Achuar and Shuar. There is the Piatúa Hydroelectric Project, which seeks to exploit the waters of the Piatúa River, located in the Kichwa Territory of Santa Clara, to the northwest of Puyo, at the provincial boundary between Pastaza and Napo, in the Central Amazon. There is also a tender process being promoted by the central government for a new round of hydrocarbons exploitation in what are referred to as the southeast fields, in particular the fields of Blocks 86, 87, and 28.

With respect to the Piatúa Hydroelectric Project, according to the Agency for Control and Regulation of Electricity (ARCONEL), it would contribute an average estimated energy production of 172.12 GWh/year.²¹ The Piatúa River is located along a flank of the Andean mountain range, to the east of the Llanganates National Park, at elevations ranging between 600 and 700 meters above sea level, in the midst of thick forests of moist subtropical vegetation. It is part of the basin of the Anzu and Napo rivers.²² The Territory of the Kichwa People of Santa Clara, measuring approximately 11,190 hectares, is home to some 320 fami-

lies, who live in 8 communities. Their central organization is the PONAK-CISC. According to Cristian Aguinda, President of the Kichwa People of Santa Clara:

*The company in charge of the Piatúa River project is Genefrán S.A., which has come into our territory since 2016, without consultation. And in response to the opposition on the part of the communities that are affected by this project, we, its inhabitants and leaders, have been victims of several forms of intimidation and threats, such as court summons aimed at demobilizing our strong organization.*²³

Faced with the offensive by Genefrán S.A., in charge of the hydroelectric project, the Kichwa communities of Santa Clara decided to commence direct actions in order to get that company expelled.²⁴ The types of collective actions included demonstrations outside the government hall of Pastaza; the holding of a youth encampment where together the various organizations invited could discuss the impacts or effects of that hydroelectric project²⁵; and finally the taking of the highways and roads that connect Santa Clara, along in the principal roadways between two provinces, Napo and Pastaza.²⁶ The actions of the Kichwa of Santa Clara communities succeeded in having the company temporarily leave the zone.²⁷

With respect to the new round of hydrocarbons exploitation, in the month of February Carlos Pérez, Minister of Energy and Nonrenewable Natural Resources, announced a new round of tenders for hydrocarbons exploitation in the southeast Amazon: “to avoid conflicts with the communities, the Southeast Round will only tender Blocks 86 and 87, which are the closest to the border with Peru,” indicated Pérez at an event with oil companies in Quito.²⁸

In Pastaza, Block 10 has been operating since the year of 1998, operated by the Agip Oil Company of Italy.²⁹ Other hydrocarbons blocks have been suspended over the past 20 years due to the strong opposition of the indigenous organizations. The Kichwa of Sarayaku case was the most emblematic success, as it managed to expel the Argentine Compañía General de Combustibles (CGC) from Kichwa territory.³⁰

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FRENCH GUIANA



Guiana is an overseas department and region of France in South America. It is bordered to the west by Suriname and the south and east by Brazil. It has a population of 259,865 inhabitants (INSEE, 2015). The interior of the country (90% of the land mass) is covered by dense equatorial forest that is only accessible by plane or canoe along the Maroni River from the west or the Oyapock River from the south-east.

Indigenous peoples account for 5% of the population, or around 10,000 people. The Pahikweneh, Lokono and Tékéuyu (or Kali'na) live along the coast between Saint Laurent du Maroni and Saint Georges de l'Oyapock. The Wayampi and 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 mining activities.

France has ratified the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) but not ILO Convention 169. It only recognises Areas of Collective Land Use Rights (*Zones de Droits d'Usage Collectifs* / ZDUC), concessions and transfers. These areas cover 8% of the area of Guiana and give only a simple right to use of the land.

The President of the Grand Customary Council of Amerindian and Bushinenge Populations (*Grand conseil coutumier des populations amérindiennes et bushinenge*), Sylvio Van Der Pilj, reminded the Congress of Deputies¹ at the Guiana Territorial Authority (CTG) on 27 November 2018 of the following: "[...] This change will need to be made with us, and we need to be listened to whenever the issue affects us [...] Always remember, always recall that the history of Guiana is above all Amerindian."² As in 2017, Guiana's indigenous world remained mobilised largely around the 'Montagne d'Or' (Gold Mountain) mining project, the land issue and the production of the statutory change bill in 2018. This mobilisation is highly significant in the struggle for recognition of indigenous peoples' rights.

‘Montagne d’or’ mining project

Gold mining in Guiana has long been a semi-artisanal affair focused on secondary alluvial exploitation. Nevertheless, the Montagne d’Or company (CMO) is looking to develop what it calls “responsible” industrial-scale opencast mining. Located 125 km south of Saint Laurent du Maroni, near the Lucifer Dékou Biological Reserve, it aims to extract around 6.7 tonnes of gold per year over a 12-year period, being 85 tonnes in all. The company is, however, facing questions and challenges from some sectors of the population, who are denouncing the project.

On 5 March 2018, the file prepared by CMO enabled a public debate to take place between March and July, and the National Commission for Public Debate (CNDP) subsequently decided to call for additional expert reports into cyanidation and hydrogeology. The CNDP’s Report³ notes that 1,500 people attended the meetings or thematic workshops, and more than 5,900 visits were made to the participatory platform, giving rise to 232 opinions, 211 questions and 39 contributions. The mobilisation reflected the deep fractures in Guianese society, fractures that have come to the surface around a plan that has been debated for more than 18 months. Some elected representatives and economic circles favourable to the project had limited participation in the debate, rejecting the principle of it or organising parallel discussions in other fora. The sector of the population most vulnerable to its potential economic consequences also had limited engagement. Representatives of Amerindian populations, either their associations or customary leaders, stated their opposition to the project. The Grand Customary Council of Amerindian and Bushinenge Populations issued “a negative opinion on the project”, particularly on 9 August during the International Day of the World’s Indigenous Peoples at Saint Rose de Lima, and again on 31 August at the Plenary Assembly of the Grand Customary Council of Amerindian and Bushinenge Populations.⁴

While the Bushinenge⁵ and Hmong⁶ groups were less represented, despite the documents being translated, it was noted that:

The opinions expressed during this public debate were generally hostile to the project. It is possible that those in favour did not make their opinions known [...] Several technical questions seriously challenged the project’s feasibility [...] The issue of environmental impacts could not be properly clarified

due to the lack of an impact study [...] This public debate was riven by the deep cleavages in Guianese society, more particularly between the so-called 'indigenous' population and the economic and political leaders.⁷

On 5 May, the international scientific community sent the President of the Republic a statement noting their opposition to the project in order to prevent a “veritable human and environmental disaster.”⁸

On 14 June, in its report on human rights in the Overseas Territories,⁹ the National Consultative Human Rights Commission (CNCDH)¹⁰ made arguments for and against the project and recommended a moratorium pending an independent study into its social, environmental and human rights impacts, to gain a better understanding of the identified risks. On 26 June, a delegation from Indigenous Youth (*Jeunesse autochtone*), invited to Paris by MEP Yannick Jadot, participated in several demonstrations against the project. On 18 September, François de Rugy, appointed Minister of State for Environmental Transition and Solidarity on 4 September, stated: “The public debate alone has shown that this project cannot be implemented as planned. We will need to reconsider it in one way or another. I will work on it. My belief is now that we cannot implement it as it is. That’s quite clear.” On 16 November, CMO submitted a number of major developments in response to the concerns raised during the public debate. These concerned the use of cyanide, the production of on-site energy, and the creation of a Fund for the Development and Diversification of the Guianese Economy. On 18 November, David Riché, Guiana’s President of Mayors, called for a Guiana-wide referendum on the Montagne d’Or project.

At the end of December 2018, the Organisation of Amerindian Nations of Guiana (*Organisation des Nations Amérindiennes de Guyane / ONAG*) lodged a petition concerning the project with the Committee on 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 and France has been a member since 28 July 1971. In its petition, ONAG emphasises: “Montagne d’or is a mining site situated on ancestral lands, close to sacred pre-Colombian relics with a risk of polluting hunting and fishing areas. [...] The public debate and the express visit of the Interministerial Commission on Gold Activity in October 2018 in no way represents a consultation process” and recalled Article 32 of the UNDRIP.¹¹ On 14 December, CERD sent a

letter to the French state requesting that it provide information on a number of points, including the location of the mining project on the territory of the indigenous Kalina and Wayana peoples and the lack of consultation.¹²

The Grand Customary Council of Amerindian and Bushinenge Populations

On 11 February 2018, elections for the Grand Customary Council were held in the presence of the Amerindian and Bushinenge chiefs and associations. As *Law No. 2017-256*, of 28 February 2017, on Real Overseas Equality (EROM) stipulates, the aim of the Grand Customary Council is “to provide representation of French Guiana’s Amerindian and Bushinenge populations and to defend their environmental, educational, cultural, social, economic and legal interests” (Article L7124-11).¹³ This new institution replaces the former Consultative Council of Amerindian and Bushinenge Populations (*Conseil consultatif des populations amérindiennes et Bushinenge/CCPAB*).¹⁴

Decree No. 2018-273, of 13 April 2018, on the Grand Customary Council of Amerindian and Bushinenge Populations draws on Article 78 of *Law No. 2017-256* - EROM by updating the Grand Council’s operating procedures.¹⁵

The Grand Customary Council elected its officers for six years on 12 June. Two of its members form part of the ad hoc commission appointed on 10 December during the Plenary Assembly of the Guiana Territorial Authority (CTG). This commission comprises 33 members responsible for developing plans for Guiana.

Day of action on teaching maternal languages at school

On 22 September 2018, a petition to the Vice-Chancellor of the Guiana Academy on maternal languages was launched in the context of a “Day of Action for Guiana’s Languages.”¹⁶ The petition states that:

On paper, everyone would seem to be in agreement: the teaching of maternal languages at school is a factor of success for

pupils. Linguists have long said this, the Ministry has acted, the academic project clearly confirms it: the training of teachers that speak Guianese languages is a priority, with the aim of opening up bilingual courses and schools that give equal hours to French and maternal languages, along the Maroni and Oyapock rivers in particular.

And yet mother-tongue speakers (ILM) working in primary schools for years, even decades, are still not given their rightful place. They teach Amerindian languages (kali'na, wayana, teko, wayãpi, parikwaki), businengue (nenge(e) tongo, saama-ka tongo), hmong or Portuguese, they have participated alongside their Creole-speaking counterparts in the creation of learning methods, educational tools, dictionaries, they encourage – within pedagogical teams – thousands of children to take up apprenticeships each year [...]

They were promised a training pathway in order to access the competitive entry examinations (CRPE) and permanent posts. And yet, as this new school year begins, there has been nothing from the Vice-Chancellor's Office. No budget released, no information, and not even any response to their letter sent to the Vice-Chancellor two months ago. While they wait, they continue to work in insecure conditions, with no clearly defined status, often without equipment, and even sometimes without a regular classroom [...]

Moreover, the post of Guiana Languages Inspector, which should have been created last year, is still not up and running. The same tinkering that has been going on for years risks discouraging the most motivated and dedicated colleagues, at a time when their work is close to bearing fruit. A new generation of multilingual teachers, experienced, trained and wishing to work in their communities, is in the process of emerging, just at a time when there is a lack of teachers in numerous classes.

This is why we are calling on the Vice-Chancellor and Minister to provide a response within the briefest delay, in order to release the funds promised for the training of ILM and for the Guiana Languages Inspector.

At a time when the working conditions and training of teachers and administrative staff are being seriously eroded,

at a time when management are accusing us when really it is the government that is failing, at a time when the teaching of Guianese Creole should be consolidated, the situation of ILM and bilingual teachers is a concern to each and every one of us!

Lead poisoning: one in every five children is suffering

A study has for the first time measured the levels of lead in children across Guiana.¹⁷ This study was conducted from 2015 to 2017 by Public Health France. It shows that, of the 590 children aged one to six included in the study, 100 registered above the threshold of 50 µg per litre of blood – the mandatory reporting threshold for lead poisoning has been set at this level since June 2015. After extrapolating this sample, the study concludes that 20% of children in Guiana are suffering from an excessive presence of lead in their blood. It notes that there are high levels among the infant population, among the inhabitants of Trois-Sauts (Camopi), in cassava and its by-products, and that there is simultaneous exposure to lead and methylmercury among the inhabitants of Haut-Maroni and Haut-Oyapock.¹⁸

The study recalls that the sources of over-exposure are many (artisanal ceramic food receptacles and cooking utensils, water distributed via lead piping, etc.) and that the health effects are neurological, haematological and renal. Among children, the toxic effects appear even at low levels of lead poisoning.

To conclude, 2018 ended with partial successes for the indigenous peoples of Guiana. The populations of the interior are again facing a wave of suicides and attempted suicides but the fight for rights continues and, for the first time in its history, France now has to explain to the international community its failure to abide by the Convention on the Elimination of all Forms of Racial Discrimination and the UNDRIP.

Notes and references

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2. See Guyane 1^{ère}, <https://www.youtube.com/watch?v=vXEYij2IFHo>
3. GITPA letter: <http://bit.ly/2N4AZlt>
4. Press release: “Montagne d’or: commitments in the wind”: <https://www.facebook.com/onag973/>, viewed on 15 January 2019.
5. Bushinenge comes from the English term Bush Negroes and nenge(e), the name of the Creole language based on English lexicography. This generic term covers all Maroon populations: slaves having escaped the plantations (Jolivet M.J., 2008, “Histoire du marronnage ou le difficile renoncement des Ndjuka”, in *Histoire, identités et logiques ethniques* coordinated by Collomb G & Jolivet M-J, coll. Le regard de l’ethnologue n°18). The Bushinenge (around 37,000 in 2003) live along the coast and in the country’s interior. (M. Elfort, 2010: Pouvoirs publics, populations amérindiennes et bushinenge en Guyane Française. <https://journals.openedition.org>.)
6. The Hmong are political refugees (fleeing from the communist regime in Laos). They arrived in Guiana in 1977. They account for some 2% of the Guianese population, or around 5,000 persons.
7. GITPA letter, op. cit.
8. 31 May 2018: Statement from the international scientific community against the “Montagne d’or” mining megaproject in Guiana. See <http://bit.ly/2N5us9W>
9. See the CNCDH report: <http://bit.ly/2N5uHBS>
10. The National Consultative Human Rights Commission (CNCDH), founded in 1947 at the initiative of René Cassin, is the national institute for the protection and promotion of human rights, accredited with consultative status with the United Nations. In French law, it is an independent administrative authority, with the task of advising public decision-makers on issues of human rights and international humanitarian law, and monitoring France’s international commitments in this regard.
11. See CERD/EWUAP/France 2018, <https://www.facebook.com/onag973/>, viewed on 14 January 2019.
12. ONAG Press Release dated 11 January 2019, online on ONAG’s Facebook page, viewed on 14 January 2019.
13. See the General Code on Territorial Authorities, Article L 7124 on Légifrance: <http://Legifrance.gouv.fr>, viewed on 15 May 2017.
14. The CCPAB was created by Law No. 2007-24 of 21 February 2007 following an amendment of the Guianese Senator, Georges Othily.

15. See: <https://www.legifrance.gouv.fr>, viewed on 21 January 2019.
16. Day of Action for Guiana's Languages, Petition sent to the Vice-Chancellor of the Guiana Academy [online] <http://bit.ly/2N2CjoQ>
17. Audrey Andrieu, Agnès Verrier, Abdessattar Saoudi, Abdelkrim Zeghnoun, Alain Le Tertre, Vanessa Ardill, 18 January 2018, Etude Guyaplomb imprégnation par le plomb des enfants de 1 à 6 ans en Guyane, CIRE GUYANE (ARS, Public Health France), <http://bit.ly/2TOsQEa> [viewed on 30 January 2019]
18. The inhabitants of Haut Maroni and Haut Oyapock are largely indigenous (Wayana, Teko, Apalai, Wayampi).

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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).¹ 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 in Regions 3, 4 and 6. As a former British colony, Guyana is the only English-speaking country in South America.

The Amerindians are grouped into nine Indigenous Nations, based on language. The Warao, the Arawak and the Carib (Karinya) live on the coast (mainly in Regions 1 and 2). The Wapichan, the Arekuna, the Makushi, the Wai Wai, the Patamona and the Akawaio live in villages scattered throughout the interior (mainly Regions 7, 8 and 9). Amerindians constitute the majority of the population of the interior, in Region 1 (18,000) where they represent 65% of the residents, and in Region 9 (20,000) where they constitute 86%. The natural resources of these regions – rainforests and minerals, including bauxite, gold and diamonds – are legally under the control of national government agencies or are within titled Amerindian Village Lands. The poorly regulated exploitation of these resources by multinationals as well as by illegal miners and loggers is one of the challenges faced by the indigenous peoples. Their primary concern is therefore to achieve full recognition of indigenous land rights (Native Title) so that they can defend their ancestral territories (customary lands) from mining and timber companies.

The land tenure situation of Amerindian communities is their major perennial concern. 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 process has also been a protracted one, and many communities are still without title.

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 promulgation of policies for their communities”.² There is a Ministry of Indigenous Peoples’ Affairs (MoIPA – formerly the Ministry of Amerindians’ Affairs MoAA); and Guyana endorsed the UNDRIP in 2007. Guyana is one of the few countries in South America that has not ratified ILO Convention 169.

The land titling process made little progress in 2018. By far the year’s most positive development for Amerindians was the government’s Hinterland Employment and Youth Services programme (HEYS). Most other news was of election promises from 2015 still unfulfilled, indeed not even started.

Amerindian communal land rights

The coalition of APNU (A Partnership for National Unity) and the AFC (Alliance for Change), which won the national elections in 2015, has reduced its efforts to resolve the perennial arguments over land rights. The Amerindian Land Titling project (ALT, USD 10.5 million),³ a Low Carbon Development Strategy (LCDS) project funded by Norway under a 2009 Memorandum of Understanding (MoU) and administered by the UN Development Programme (UNDP), was intended to complete the formal land titling promised to Amerindians under the 1965 Independence Agreement. Communal land titling had stalled under the People’s Progressive Party (PPP) government.⁴ Ninety-seven (97) Amerindian Villages had paper titles by 2009, or approximately two-thirds of the eligible communities with at least 250 inhabitants during the five years preceding the titling process. The government has provided inconsistent figures for land titling since 2009.

Contrary to the simple procedure specified in the *State Lands Act* of 1972 and subsidiary Regulations of 1974, the PPP complicated the hinterland titling process in 2010 by dividing it into two stages, without legislative backing, and requiring a hitherto unnecessary physical demarcation of boundaries,⁵ to be undertaken only by accredited surveyors. There being no accredited Amerindian land surveyors, the survey crews were Chinese and coastlanders, who often disagreed with the Amerindian communities over boundary locations. Completion of land titling thus became a fraught and uncertain process. Without any publicity, the incoming coalition government closed the ALT unit in mid-2015, so no Amerindian titles were issued or extended between 2016–2018.⁶ The UNDP recruited a new international adviser in September 2018 and a new phase may be agreed for hinterland land titling to restart in 2019.

The High Court case of the Akawaio and Arekuna Amerindian villages

Under the 1951 version of the *Amerindian Act*, some indigenous areas were defined as districts. The villages of Paruima, Waramadong, Kamarang (Warawatta), Kako, Jawalla and Phillipai in the Upper Mazaruni have long sought a collective legal title as one Akawaio/Arekuna district.⁷ After more than two decades of government prevarication, the seven villages finally took their case to the High Court in 1998; however, there have been repeated postponements since, including in 2018. Several other groups of Amerindian villages have likewise requested collective rather than individual communal titles, as this would allow them to follow their traditional ecological practices of semi-nomadic rotational agriculture that prevents the exhaustion of soil fertility, as well as to defend their customary territory against the imposition of mining licences by coastlanders. It is unclear why the seven villages do not use other channels to press their case forward, nor why other Amerindian nations, such as the Wapichan in the southern Rupununi, do not support the Mazaruni villages as the same arguments apply to much of Amerindian customary land in Guyana.

Overlap of property interests impedes Amerindian land titling

Since the 1972 *State Lands Act*, granting of absolute title over Amerindian customary lands has depended on whether other parties hold mining or logging licences, which are expressions of property and which take precedence according to the law in Guyana.⁸ Maps acquired and compiled by the Forest Peoples Programme⁹ show large areas of Amerindian customary lands covered by adjacent (wall-to-wall) blocks of mining concessions. These concessions are cheap to acquire and to hold as “evergreen” licenses.¹⁰

As these concessions are handed out so freely by the Guyana Geology and Mines Commission (GGMC), the mining blocks present a severe obstacle to Amerindian communities trying to secure title to their customary lands. One recent example is the struggle between the community of Batavia, which received Amerindian communal title in 2018, and gold miner Rickey Ramnarine, who had held two mining blocks since 2002 but had not worked them previously.¹¹ Another example is in the South Rupununi sub-region, where the long-running dispute between the Wapichan Amerindian communities and the Canadian-owned Romanex Guyana Exploration Company continued in 2018. The dispute concerns access to gold in the Marudi Mountain concession, which was allocated to Romanex. Among the various disagreements, the environmental and social impact assessment (ESIA) submitted by Romanex did not include consultations with the affected Wapichan communities, while Romanex has in turn complained that a mediated settlement with Amerindian miners working on the Romanex concession was broken by the indigenous miners.¹²

Neither the PPP nor the coalition government has been willing to place a moratorium on mining concessions while the Amerindian land titling process is being finalised. In addition, in 2017-2018, the coalition government declared townships overlapping some Amerindian customary lands, without any attempt to implement the UNDRIP-style free, prior and informed consent which successive governments have undertaken to conduct.¹³

Revision of the *Amerindian Act 2006*

The revision of the *Amerindian Act* addressed half of the recommendations made by indigenous communities in 2003 but disregarded their concerns over land insecurity.¹⁴ In 2018, the coalition government claimed it had started consultations on the revision, as promised by the 2015 election manifesto. However, that consultation seems to have been confined to one sub-district inhabited mainly by Arawak (Lokono) Amerindians, and there is no published schedule for broader consultations.¹⁵

Addressing Amerindian unemployment

After the May 2015 elections, which saw the PPP lose power, the new coalition government scrapped the PPP's Youth Entrepreneurship and Apprenticeship Programme (YEAP). This programme targeted young unemployed Amerindians recruited by the Ministry of Amerindian Affairs, providing 198 of them with training to gain basic computer skills and technical skills regarding the installation of solar panels.¹⁶ The youths were also to serve as Community Support Officers. The intention was to recruit three or more young people in more than 169 communities and to pay them G\$ 25-35,000 (US\$ 125-175) per month to assist the elected Amerindian Village Councils (AVCs) or community councils (CCs) to manage village affairs.¹⁷ Training and supervision were minimal, and only families supportive of the PPP were allegedly contacted, with the scheme widely derided as vote-buying.¹⁸ The high level (40%) of formal unemployment is a consequence of the low quality of schooling, itself caused by the poor quality of housing for teachers and the poor prospects of promotion for teachers in hinterland locations. Youths leaving secondary school often do not have the academic grades even for entry-level positions in formal employment in the private sector or with government agencies. Men seeking income and adventure therefore tend to work as manual labourers in the dangerous artisanal hydraulic mining for gold, often without formal contracts or assured pay, while women may enter equally precarious domestic service in urban areas.¹⁹

The Hinterland Employment Youth Service (HEYS)²⁰ is the coalition government's response to the youth unemployment rate in the interior

and riverain areas of Guyana. Over the 2015-8 period, it has been under the responsibility of Junior Minister Valerie Garrido-Lowe of the Ministry of Indigenous Peoples' Affairs (MoIPA).²¹ The HEYS scheme stems from President Granger's promise to the National Tshaoos Council (NTC) in 2015²² to train Amerindian youths from the hinterland (Regions 1, 7, 8 and 9). HEYS has no ties to political parties and its objectives are to improve the Amerindian youths' standard of living and thereby contribute positively to the development of their communities.²³ From 2016 to 2018, cohort 1 of HEYS trained 752 youths with six months of classroom remedial teaching and six months of business development. The intake of cohort 2 almost doubled to 1,302 youths. HEYS recruited more youths per village but with fewer villages covered by the available budget. HEYS pays G\$ 30,000 (US\$ 140) per month per person for the 12 months of training but then allocates a lump sum of up to G\$ 50,000 (US\$ 250) as a business starter grant. The MoIPA claims that 869 small and micro-businesses have been started in the four target regions. Another 300 sprang up in the other six administrative regions during 2018,²⁴ from the budget of more than USD 4 million. Some HEYS graduates have pooled their starter grants and are running multi-person enterprises. HEYS also provides post-course monitoring and mentoring of the start-up companies. In total, in the budget statement for 2019, the Ministry of Finance claimed that 2,054 small businesses had emerged, 1,300 of them by 1,965 trainees in 2018 alone.²⁵ HEYS aims to recruit from 215 Amerindian villages and communities but it is uncertain whether the allocated budgets will allow such expansion.

Amerindian business contracts

If continued, the HEYS programme may help to address the complaint that Amerindian business contractors almost invariably fail to gain government contracts compared to (non-indigenous) "coastlander" companies. They complain not only about bias in the selection of contractors but about the poor quality of construction work delivered by "coastlander" contractors in the hinterland.²⁶

In parallel to the HEYS programme, the International Fund for Agricultural Development (IFAD) has provided a loan of US\$ 7.9 million and a grant of US\$ 0.5 million for the Hinterland Environmentally Sustainable Agricultural Development project (HESAD), to which the Government of

Guyana has added US\$ 2.4 million and beneficiaries are expected to contribute US\$ 0.3 million. HESAD aims to benefit 30,000 people in the hinterland, most of whom will be Amerindians, in 4,500 poor households, 30% youth and 50% women.²⁷ Progress on this project seems slow, with only US\$ 0.5 million from IFAD and US\$ 0.2 million from Guyana budgeted for 2018.²⁸

Amerindian Development Fund (ADF) with cash from Norway

The ADF provides cash from Norway to support Amerindian development planned at the village and community levels. The Ministry of Indigenous Peoples' Affairs has stimulated 10-year village improvement projects (VIPs),²⁹ 38 of which had been completed by the end of 2018 with a budget of more than US\$ 1 million.³⁰

Allegations of broken promises to Amerindians

By mid-July 2018, the National Tshaos Council (NTC) was protesting that five promises made during pre-election campaigning had not been implemented: the establishment of a Lands Commission; full recognition of Amerindian land rights; revision of the defective *Amerindian Act* of 2006; constitutional reform; and award of a plot of urban land to build a permanent home for the NTC.³¹ At the annual NTC conference, President Granger denied breaking any promises and instead urged the Amerindian leaders to focus on community development.³²

Reports in the independent press indicate that the coalition government is following the preceding 23 years of PPP government by largely ignoring the Amerindian population except during election time. Discontent in this regard led to the launch of the new Liberty and Justice Party in January 2019, which will not be exclusively Amerindian but claims to represent Amerindian issues in ways that are not obvious in the two main parties.³³

Notes and references

1. 2012 Census, Compendium 2 at <http://bit.ly/2TphLwE>
2. See Constitution of Guyana, Preamble, Cap.1:01, p.26 at <http://bit.ly/2TkiKxZ>
3. See Guyana REDD+ Investment Fund, “Amerindian Land Titling” at: <http://bit.ly/2Tp3FL0>
4. The PPP has been the ruling party on several occasions, most recently between 1992 and 2015 (ed.)
5. See Low Carbon Development Strategy (LCDS), version 3, Appendix V: Status of Amerindian lands, the Process for Amerindian Lands, May 2010, pages 118-119 at <http://bit.ly/2ThsMjo>
6. See Kaieteurnews online at <http://bit.ly/2SMvCwr> and Stabroeknews at: <http://bit.ly/2SIQNQ8>
7. George, Laura and Oda Almás. 2014. “Amerindian lands and resources in the Upper Mazaruni under siege. Key issues.” In APA, FPP. 2014 *Indigenous peoples’ rights, forests and climate policies in Guyana*. UK: Forest Peoples Programme.
8. Mining concessions are issued by the Guyana Geology and Mines Commission (GGMC) and logging concessions by the Guyana Forestry Commission (GFC). Both Commissions have some minor procedural requirements for identification and assessment of prior Amerindian claims and rights but generally pay no attention to the implementation of their own procedures. See Mining Act 1989, section 111, the “quiet enjoyment” clause at <http://bit.ly/2TaC8hu>; GFC applications procedure for SFEPs 1999, appendix 1-4, section 4; Forests Act 2009, section 5 (2).
9. Griffiths, Tom and Jean La Rose. 2014. “Searching for justice and land security: Land rights, indigenous peoples and governance of tenure in Guyana” in APA, FPP. 2014, op. cit.
10. Walrond, G.W., Heesterman, L.J.L., Goolsarran, J., 2015. Guyana Geology and Mines Commission Management and Systems Review. Inception Report. (Mines Division, Land Management Division, Geological Services Division). Georgetown, Guyana.
11. See Stabroeknews at <http://bit.ly/2STq7vU>
12. See Stabroeknews at <http://bit.ly/2SNiNSJ> and <http://bit.ly/2SLgJuv>
13. See Stabroeknews at <http://bit.ly/2SMvU6v>
14. See Land of six peoples at <http://bit.ly/2SODZrt> and <http://bit.ly/2SLrHjA>
15. See DPI Guyana, “Consultation for revision of Amerindian Act 2006 begins” at <http://bit.ly/2TioOa5>
16. Ministry of Finance budget speech for 2014, para 4.110, at <http://bit.ly/2Tjx4Xj>
17. Stabroeknews at <http://bit.ly/2Tip5tD>
18. See Kaieteurnews online at <http://bit.ly/2STroDc>
19. Information from field interviews and focus groups in 2013 and 2017; see also Pierre, Laureen Adele, “The Role of Training in the Development of Amerindian Communities in Guyana: A Qualitative Case Study” (2016). Doctoral dissertations. 794. At <http://bit.ly/2SISb5i> and <http://bit.ly/2SN3zwY>

20. See MOIPA at <http://bit.ly/2SR0s7a>
21. See Kaieteurnews online at <http://bit.ly/2SNkG1v>
22. All elected leaders of AVCs and CCs are automatically members of the NTC.
23. See MOIPA at <http://bit.ly/2SR0s7a>
24. See Stabroeknews at <http://bit.ly/2SGtcQb>
25. Ministry of Finance, "Budget 2019 Speech" at <https://finance.gov.gy/?p=6335>
26. See Kaieteurnews online at <http://bit.ly/2SGtWEX>
27. See Kaieteurnews online at <http://bit.ly/2SRvuf6>
28. See Ministry of Finance at <http://bit.ly/2SLqOYl> (PDF)
29. See MOIPA at <http://bit.ly/2SM1Qb7>
30. See Ministry of Finance at <http://bit.ly/2SLqOYl> (PDF)
31. See Guyana Times at <http://bit.ly/2SLt5mi>
32. See Kaieteurnews online at <http://bit.ly/2SRvE6c>
33. See Stabroeknews at <http://bit.ly/2SU0Zpb>

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PARAGUAY



According to the third National Census of Population and Housing for Indigenous Peoples in 2012, 117,150 people living in Paraguay (2% of the Paraguayan population) self-identify as indigenous. They belong to a total of 19 indigenous peoples. The population that self-identifies as belonging to or being descendants of one of these 19 indigenous peoples are distributed over 5 linguistic families: Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, Guaraní Ñandeva, Western Guaraní), Maskoy (Toba Maskoy, Enlhet North, Enxet South, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zamuco (Ayoreo, Yvytoso, Tomáraho) and Guaicurú (Qom). It should be noted that the census did not record, although it did mention, the Ayoreo people living in voluntary isolation.

Indigenous peoples have constitutionally recognised rights in the Republic of Paraguay, set out in a constitution dating from 1992. Chapter V of the Constitution recognises indigenous peoples as cultural groups. They are acknowledged as predating the formation and organisation of the Paraguayan state. The Constitution further recognises rights that correspond to indigenous peoples. Paraguay has an extensive legal framework that guarantees and recognises a very broad range of rights in favour of indigenous peoples. It has ratified the principal instruments of International Human Rights Law, both of the universal system and the Inter-American system. Paraguay has recognised the main human rights instruments, including ILO Convention 169, and transposed its body of regulations into national legislation. It is also a member of and has obligations under the American Convention on Human Rights and its bodies. The Inter-American Court of Human Rights has issued three rulings with high standards of indigenous rights, in particular related to territorial rights. However, the state lacks regulatory laws and effective programmes of implementation. Indigenous peoples' rights are constantly being violated.

Given this edition of *The Indigenous World* focuses on the situation of indigenous human rights defenders, it should be noted that as each five-year cycle comes to a close for the Office of the President of Paraguay, there is a decline in the respect for and guaranteeing of the rights of indigenous peoples. They are the most disadvantaged segment in a society characterized by social inequality, and are victimized by structural discrimination. Even so, their rights are repeatedly extolled in the principal candidates' election campaign speeches.¹

The legacy of the Horacio Cartes administration

The outgoing Horacio Cartes administration (2013-2018) was marked by an absence of policies for overcoming poverty, as well as pro-business leanings, with rhetoric tied to achieving progress through mega-investments. The rights of indigenous peoples were ignored by the administration, and their lands were viewed as areas for expansion of major business projects.² In this context, the government's protective actions became ever-weaker, taking the form of generic obligations and protection plans related to containing and reducing poverty. This, in turn, was coupled with setbacks in Paraguay's restitution policy, which lacked a budget and had no ascertainable priorities.³

The Cartes administration, under this business model, advocated the promotion, expansion and extension of the exportation system, together with a concentration of land under *latifundistas*.⁴ The administration's advocacy was bolstered through both legal and illicit mechanisms and coupled with business alliances with the private and transnational sectors.⁵ The administration's pro-business agenda, which prioritised economic interests, has left a problematic legacy, which the new administration of Mario Abdo Benítez must contend with.

Indigenous peoples lack access to information with regards to this new administration's designations concerning government posts on indigenous matters. Without this information, they have difficulty assessing how appropriate these designations are, and what the outcomes thereof might be. Upon taking office, President Mario Abdo Benítez designated Ana María Allen Dávalos as the president of the Paraguayan Institute for the Indigenous. Less than one hundred days after taking that post, she found herself facing resistance from indigenous sectors, who accused her of being unfit for the job due to her management approach and inability to speak in the local language.

Disappearances and threats

The turn towards ultra-conservatism in the region will potentially aggravate the conflict along the border zone, where *de facto* powers associated with agro-business routinely engage in violence, including disappearances and threats in response to territorial claims.

Amada Martínez, an educator and human rights defender from the indigenous Tekoha Sauce community of the Avá Guaraní Paranaense people, was violently detained and threatened by five men dressed as park rangers and armed with shotguns and revolvers. At the time of the incident, she was with her 7 year-old son, her sister, and her nephews. The men aimed their weapons at them and threatened them, presumably due to Ms. Martínez's work in defence of her community's human rights.⁶

Following the incident, the Assistant Minister of Internal Security ordered that the community be visited, and that a post be installed as a protective measure. Community members requested to have a police patrol provide security at certain hours of the day.

The Itakyry community, which has experienced several cases of abuse and forced displacements, found itself obligated to take to the streets to demand title to their lands and the quashing of the arrest warrant issued against several of its leaders.⁷ The case, and the abuses and forced displacement were reported in *The Indigenous World 2018*.

At the start of 2018, members of the Jetyty Mirí community had already been present for an entire month in the country's capital, where they denounced how they had been evicted, the burning of their homes, and how they were forced from their lands. Under extraordinarily precarious conditions, they hoped for a response and support which never came. The situation of abandonment was so extreme that a pregnant indigenous woman, whose son died while still in her womb, had no place to bury him other than where they were, in the city's main square.⁸

The Makutinga community of the Mbya Guaraní have faced repeated conflicts with local police. At one point, more than 50 policemen and ten patrol cars seized the soybean crop from the indigenous community.⁹ Despite the case being submitted, no action has yet been taken.

On 16 September 2016, 27-year-old Isidoro Barrios from Tacuara'i community, was disappeared following a confrontation between indigenous persons and the guards of a group of Brazilian settlers. The conflict arose around a claim for 1,500 hectares of traditional territory from the Avá Guaraní Paranaense people, in Corpus Christi, Department of Canindeyú, where 170 families reside.

A visit by the Human Rights Coordinating Body of Paraguay (CODEHUPY) verified the dire situation of these families, and the lack of medical care or humanitarian assistance to support the elderly, children and youth within the occupied area. CODEHUPY expressed great concern over the government's approach to the conflict, given the role of agro-business and the dynamics of power in the border zone. They stated:

Up until now it [the government] has solely been focused on adopting measures aimed at protecting the private property of certain individuals, without considering indigenous property rights under the legal framework granted by the Constitution of the Republic and international human rights law in effect for such matters.¹⁰

Indigenous participation in the general elections

The general elections held on 20 April 2018 saw an increase in indigenous participation. A series of politically-driven I.D. campaigns throughout 2016 granted the indigenous people of Bajo Chaco identification documents which allowed them to participate in the elections, often for the first time. In addition to the campaign which was launched in 2016, participation in electoral politics by indigenous peoples in general, and indigenous women in particular, improved in Paraguay, with training and support provided to assist in the registration of these groups in the Permanent Civil Registry.¹¹

In addition, the Pluri-national Indigenous Political Movement (MPIP) ran indigenous candidates on its election ticket. These candidates sought positions in both chambers of Congress, governorships, and departmental councils.¹² Gerónimo Ayala, of the Mbyá Guaraní people, an MPIP candidate for Senator, obtained more than 25,000 votes.

Destruction of Mbyá Guaraní ceremonial objects

Based on a video that went viral on social media, the Ethnic Rights Office of the government attorney's office filed charges against an Evangelical pastor identified as Serafín Navarro, for the commission of pun-

ishable acts against Peoples: Genocide and War Crimes.¹³ During the incident, which occurred at the home of a 97-year-old indigenous elder, the pastor “confiscated” and destroyed ritual objects belonging to the Mbyá Guaraní people. He claimed to be “expelling demons”¹⁴ as he broke them. This was a flagrant violation of the rights recognised in Article 63 of the National Constitution and Article 5 of Convention 169. This incident emphasised how indigenous culture is still deeply stigmatised in the eyes of the dominant society.

Ex-president of the Paraguayan Indigenous Institute (INDI) and officials found guilty of corruption

Corruption in 2018 has become a key topic in public debate. Particularly because of how it affects the quality and effectiveness of governance. The government is seen either as weak in enforcing anti-corruption standards and laws, or as a legislative agent of *ad hoc* norms that increase the lack of accountability in relation to corruption.

Rubén Darío Quesnel Velázquez, the former president of the INDI, was sentenced to ten years of incarceration, plus a four-year bar from holding public office, for the crimes of “breach of trust” and “embezzlement”, as well as a fine of fifty times his daily salary.¹⁵ Although there were several stays¹⁶, Quesnel was found guilty of misappropriating PYG 3.127 billion (approximately USD 520,000) earmarked for the Sawhoyamaya and Yakye Axa indigenous communities of the Chaco as part of the restitution established by the Inter-American Court of Human Rights.

In 2015, Quesnel Velázquez had been found guilty of the crimes of “breach of trust” and “abandonment of duty”, based on an illicit sale of 25,000 hectares of lands of the Cuyabía community of the Ayoreo people, with a value of PYG 1.250 billion (approximately USD 208,000) and sentenced to six years and six months of incarceration. In addition, a former administrator of the entity and another former official were sentenced to six years and three and a half years, respectively, for embezzlement. The verdicts were appealed and, as of the writing of this report, are pending a decision from the Appellate Court.

Notes and references

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PERU



According to the 2007 Census, Peru's population includes more than 4 million indigenous persons, of whom 83.11% are Quechua, 10.92% Aymara, 1.67% Ashaninka and 4.31% belong to other Amazonian indigenous peoples. The Database of Indigenous or Original Peoples notes the existence in the country of 55 indigenous peoples at present, who speak 47 indigenous languages. It should also be noted that 21% of Peru's territory consists of mining concessions, which are superimposed upon 47.8% of the territory of peasant communities. Similarly, 75% of the Peruvian Amazon is covered by oil and gas concessions. The superposition of rights over communal territories, the enormous pressure of the extractive industries, the absence of territorial zoning, and the lack of effective implementation of prior consultation exacerbate territorial and socio-environmental conflicts in Peru, even though the country has signed and ratified ILO Convention 169 on Indigenous and Tribal Peoples and, in 2007, voted in favour of the United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP).

Defending human rights is a high-risk activity in Peru, as borne out by the figures, which indicate that 87 defenders have been killed in the country since 2011.

Forty-eight of these died at the hands of gunmen, and only two of these cases have ever been brought to justice. A further 155 cases of arbitrary use of police force have also been recorded since 2005, without any convictions for these actions to date.¹

To date, more than 800 cases of protest have been criminalised, meaning that people are prosecuted purely for exercising their right to peacefully protest.

Most cases of people putting their lives at risk to defend their rights take place in the context of the extractive industry and illegal economies – such as illegal mining, human trafficking, drugs trafficking – or in the context of local criminal groups and organised crime.

Environmental rights defenders, LGBTI defenders, sexual and reproductive rights defenders, women's and gender rights defenders are all also particularly vulnerable.

Criminalisation of protest

The 2018 Alternative Report on “Meeting the Peruvian state’s obligations under ILO C169” describes the backdrop against which this criminalisation of protest is taking place in Peru:

The Peruvian state has made a series of regulatory amendments to the criminal and criminal procedural law that are in violation of fundamental rights such as the right to personal freedom, personal integrity and freedom of expression.²

The report’s regulatory analysis notes that, under the pretext of “fighting organised crime,” laws have been approved that can be used as tools for criminalising those exercising their right to social protest, affecting the rights of indigenous peoples, their communities, leaders and organisations nationally:

During the government of Pedro Pablo Kuczynski, laws were drawn up and issued aiming, firstly, at creating new kinds of offences. These were associated with the exercise of protest and a toughening of the penalties for this. They were aimed, secondly, at ensuring the security force’s intervention in socio-environmental conflicts and the protection of extractive companies. The following legislation was issued to criminalise the right to social protest: legislative decrees 1244, 1245, 1267, 1298, 1307 and Law 30558.³

Agreements have been reached between the National Police and the extractive companies to protect their corporate interests and such agreements are harmful to the region’s population, enabling different ways of criminalising socio-environmental protest to be gradually introduced.

According to information provided by the Ministry of the Interior (Mininter) in response to various public information requests made to this institution,⁴ 145 extraordinary police service agreements were signed between Peru’s National Police and extractive companies (from the mining and hydrocarbons sector) between 1995 and 2018. The departments with the greatest number of such agreements are Arequipa (21), Cusco (17), Cajamarca (13), Áncash (9) and Apurímac (7).

The backdrop of social conflict and socio-environmental protest throughout 2018 has shone a spotlight on the criminalisation of human rights defenders (HRDs), who have been prosecuted up and down the country, via the criminal and administrative courts, primarily through links to their representation work in their communities of origin.

Protective actions

Peru has not escaped the crisis of democracy that is shaking Latin America. There has been a clear weakening of the democratic system, and the weaker a country's democracy the greater the vulnerability of HRDs because they are the people who denounce bad practices, expose people and situations involving abuses of power and defend the basic rights of individuals. The debate on the right to defend rights is new in the country.

Both civil society and the state authorities have a limited understanding of the legal framework of this right, even though several international bodies have recommended the implementation of mechanisms to protect HRDs. In 2013, the Human Rights Committee recommended that the Peruvian state effectively investigate complaints of attacks committed against HRDs and journalists. In 2016, the Peruvian state undertook to enact a Security Protocol although, to date, no progress has been made in this regard. In 2018, the Committee on the Elimination of Racial Discrimination (CERD) indicated its concern at the growing signs of violence against HRDs and recommended that the state take action to protect them.⁵ In February 2018, the *National Human Rights Plan 2018-2021*⁶ was thus enacted, committing the relevant authorities to: develop a mechanism to protect HRDs; approve the *Protocol for Intersectoral Action* (2018); and create the *Registry of Attacks* during 2019 and the *Comprehensive Protection Policy* by 2021. In January 2019, the National Human Rights Coordinating Body launched a campaign entitled #I'm Championing Human Rights Defenders⁷ with the aim of recognising the work of individuals and organisations who defend the rights of all, encouraging a change in society's somewhat preconceived notions of defenders and pressuring the Peruvian state to meet its commitment to enact the Protection Protocol for HRDs.

Deforestation

A growing problem for Peru and the whole of the Amazon in recent decades has been the increased deforestation being caused by a proliferation of illegal mining and logging mafias. Over the last decade, Madre de Dios has been the most affected region, with Amazonian forest disappearing strongly linked to the construction of the Inter-Oceanic Highway.⁸ This project is being implemented by the construction company Odebrecht, which was recently involved in a major corporate corruption scandal. During 2018, the National Forest Conservation for Climate Change Mitigation Programme published a report on the losses which revealed that, during 2017, more than 23,000 hectares of forest were lost⁹ the highest figure since the turn of the century. Although information is not yet available for 2018, the prospects for improvement are not that great, despite the hopes for greater protection of the most badly affected forests that emerged following the elections last year.

The figures for the Peruvian Amazon are disheartening. Most NGOs dedicated to forest observation and monitoring calculate that annual deforestation currently stands at some 150,000 hectares. Faced with this reality, indigenous communities have taken a leading role in the struggle against deforestation over the last 12 months. In Madre de Dios, the Boca Pariamanu Native Community has been implementing different daily practices to counter deforestation in the area. One of these is their support for the project "Land Security for Indigenous Peoples,"¹⁰ which is being implemented through the Peruvian Environmental Rights Society (*Sociedad Peruana de Derechos Ambiental/SPDA*). The aim is to create brigades of native community members who will be responsible for establishing boundary markers as points by which to georeference their territories in the face of the advancing mafias. The immediate success of, and participation in, this initiative has led to the project being extended to Loreto, the largest area of Peruvian forest and an area that is under threat from oil exploration and the expansion of tourism.

In addition, last August, eight indigenous communities from Loreto and Madre de Dios received 364 titles recognising the intellectual property of their collective ancestral knowledge. Several indigenous peoples of the Peruvian forest have thus been able to protect the use of their biological resources for nutritional, medicinal, textile and spiritual purposes.

One of the most discussed issues of the year was a draft bill of law through the Congress of the Republic which seeks to implement the so-called “Hidrovía Amazónica,”¹¹ a waterway transport system that involves rechannelling rivers and undertaking a series of river excavations. Several indigenous bodies protested at this project, including the Regional Organisation of Indigenous Peoples of the East (*Organización Regional de los Pueblos Indígenas del Oriente/ORPIO*). Through a number of statements made by its President, Jorge Pérez Rubio, this organisation has been calling for a consultation process prior to any implementation of the waterway, along with the production of an adequate environmental impact study. With most forest indigenous peoples rejecting it and the Cohidro public-private consortium supporting it, 2019 began with this project – which will affect more than 2,600 kms of the Huallaga, Marañón, Ucayali and Amazonas rivers – still at a standstill.

Titling and the Law on Territorial Organisation

‘In recent years, titling has been an issue of relevance to all the different regions of Peru. Both in the Amazon and in the Andes, the lack of a Law on Territorial Organisation has generated a series of conflicts over the use of land in rural and community spaces. This problem has unfortunately not gained the expected political support of central government. This became clear in the middle of 2018 when, in a message to the nation during the national holidays, President Martín Vizcarra focused on an aggressive anti-corruption policy and failed to mention proposals related to titling and territorial organisation.¹² As a result, an opportunity was lost to include territorial organisation in the public debate during the second half of 2018.

An in-depth analysis of the problems caused by the lack of a Law on Territorial Organisation was offered in the middle of the year by the lawyer Juan Carlos Ruiz Molleda, who clarified that there is no private property within the peasant communities as it is all communally-owned, with the sale of land therefore only being possible with the approval of two-thirds of the members of that community.¹³ Nevertheless, under market criteria of private property and inheritance, a number of problems have emerged in recent years with families trying to sell peasant lands that are in communal use. To this must be added the fact that the crime of land grabbing has become more prevalent in recent

years for these communities. The Amazon region has, in this regard, been among the most active in its demand for land titles. In July, in the context of an indefinite strike on the part of 51 communities in Ucayali, the Interethnic Association for the Development of the Peruvian Forests (*Asociación Interétnica de Desarrollo de la Selva Peruana/AIDSEP*) described the failure to title communal properties as an act of corruption, a historic debt which on more than one occasion had been recognised by the Peruvian state itself. The claims became even stronger when the renowned Ashaninka leader, Ruth Buendía, denounced the government's institutional "favouritism" towards the forest concessions, to the detriment of land titling.

As for the Andean zone, 2019 began with uncertainty over some of the most controversial mining projects of the last few years. These include the Tía María project, located in Arequipa and which, since 2013, has been at a standstill due to a dispute over the environmental impact on the rural area. While a number of local voices are beginning to call for a referendum in Arequipa to establish the social viability of Tía María, Southern Copper Corporation has been conducting an outreach campaign with the local population, in parallel with the trial that is underway for the acts of violence that took place in the Tambo Valley in 2014. For the moment, a number of statements made by the new regional governor of Arequipa, Élmer Cáceres Llica, form the latest milestone in Tía María's long history. He has announced that the mining project will be not be moving forward "without the people being consulted," although he has not specified whether this should be through a referendum or a regular process of prior consultation.

Environmental and indigenous legislation

In terms of environmental legislation, 2018 was not one of the best years for Peru. Despite certain laws being enacted, such as restrictions on the use of plastic and the *Framework Law on Climate Change*, there is a draft bill of law in the pipeline that seriously threatens the biodiversity of the Andes and the Amazon. This is the *Organic Law on Hydrocarbons*,¹⁴ which is being promoted by the Government of Peru and which has been the subject of some debate in Parliament. This law proposes a series of amendments that seek to speed up implementation of extraction projects in Peru, with the most alarming new element being the

possibility of using fracking as a method of fossil fuel exploration. Resistance to this legislation, from various different groups in Congress, came swiftly and even reached down to the indigenous delegations attending COP24 in Katowice (Poland) in December where AIDESEP¹⁵ denounced the fact that the government was seeking to make a laughing stock of environmental legislation by bringing in a law that would enable fracking, a method that destabilises the very foundations of the territories by drilling through underground rock to find sources of fuel. If it were to put this method into practice, Peru would be going against the global trend which, in recent years, has been to ban fracking due to the damage it causes to the soil and to water sources. In fact, the use of this mechanism has already had negative impacts on Peruvian territory as this practice was responsible for the serious pollution of the Marañón, Tigre, Corrientes and Amazonas river basins around Plot 192.

Some progress was noted in environmental law when the former Minister of Culture, Patricia Balbuena, and the current Minister of the Environment, Fabiola Muñoz, announced that they would be holding a prior consultation, with indigenous peoples' involvement, on the implementing regulations for the *Framework Law on Climate Change*.¹⁶ This announcement came after a series of indigenous organisations had made requests to the Peruvian state, through the Vice-Ministry of Interculturality, and following a letter sent by AIDESEP to the Prime Minister, César Villanueva. The indigenous organisations thus hope to rectify several omissions and violations of indigenous law noted in the enactment of the *Framework Law on Climate Change*, an initiative of the Ministry of the Environment, which forms part of the commitments taken up by the Peruvian state when it signed the Paris Agreement and its goals. It is worth noting in relation to this process that the National Organisation of Indigenous Andean and Amazonian Women (*Organización Nacional de Mujeres Indígenas Andinas y Amazónicas/ON-AMIAP*) has made a series of proposals,¹⁷ with a gender focus, on issues such as climate change mitigation and adaptation, as well as food sovereignty.

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3. Ibid. p. 41.
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RAPA NUI



The 2012 census estimated Rapa Nui's (Easter Island) total population at around 5,761 across an area of 163.6 square kilometers. This estimate turned out to be flawed, and as a result has largely been nullified.¹ The 2002 census, which estimated the total population at 3,765 people is therefore referenced in most calculations. That census recognized 60% of the population as indigenous Rapa Nui, while 39% were mainland Chileans with mixed decent. Easter Island's traditional language is Rapa Nui. The 2017 projections from the Chilean Instituto Nacional de Estadísticas (INE), estimated a population of 7,750.

The rights of indigenous peoples are regulated by *Law No. 19,253* of 1993 on "indigenous promotion, protection, and development." However, that law does not meet the standards of international law regarding the indigenous peoples' rights. Rapa Nui is covered by Chile's ratification of ILO convention 169 in 2008, which went into effect in 2009.

Refusal to recognize ancestral property rights

During 2018, the Rapa Nui people of Easter Island have maintained their demands for recognition of their territorial and political rights, that is, recognition of their right to self-determination and their ancestral property rights over the entire territory of the island.

In November 2017, Chile finalized the complete transfer of the administration of the Rapa Nui National Park to the Ma'u Henua Indigenous Community, a community constituted under *Law No. 19,253*, which establishes regulations on Protection, Promotion, and Development of Indigenous People, and which creates the National Indigenous Development Corporation.² Although this is an important step towards recognition of the Rapa Nui people and for their right to administer their property, the truth is that this transfer was made in the form of a concession to administer the park.

The state still systematically refuses to recognize indigenous peoples' collective rights to ownership of the land. In particular, ownership of the territory comprising the Rapa Nui National Park, which contains all of the Rapa Nui's sacred and ancestral sites. This has exacerbated conflicts with the government, as the Rapa Nui see the action as forcing them to live on their land not as owners, but rather as occupants.³

***Migratory Act* and failure to protect the cultural integrity and archaeological heritage of the Rapa Nui people**

In 2018, *Law No. 21,070* came into force and was implemented. This law regulates the exercise of the right to reside, remain in and move to and from the Special Territory of Easter Island.⁴ This legislative development, unique in its kind at the national level, is aimed at protecting and safeguarding against the overpopulation that has affected Rapa Nui (Easter Island) in recent years. Although census figures are disputed, as noted above, the increase in population noted on the island has resulted in irreparable environmental damage. Such environmental damage consists of a depletion of resources and an eventual collapse in the treatment of waste on the island.

It should be noted that the island of Rapa Nui is located approximately 3,800 kilometers away from the South American continent, and

its original people live the farthest away from another inhabited point than any other people on the planet. Such extreme geographical conditions pose a true challenge for the survival of members of this community, even in the 21st century. The new law fails to provide a concrete solution to these issues. This is partly due to the lack of participation of the Rapa Nui people in the procedure leading up to the passage of this legislation and the clear lack of information regarding the constant modifications to the original bill.

Drafting and implementation of a Special Statute for Rapa Nui Governance and Administration

In the political realm, for the exercise of the people of Rapa Nui's right to self-determination over the island's territory, the first obstacle lies in the Constitution of the Republic of Chile. Chile, as a unitary state, considers only the mainland's reality for purposes of governing and legislating, without taking into account the traditions, customs and culture of the Rapa Nui people. This has led to a constant conflict between the application of the international human rights treaties signed and ratified by Chile – which protect and guarantee indigenous rights – and the application of Chilean law.⁵

In innumerable situations it is simply impractical to apply the law in effect in Chile to Rapa Nui, since it often contradicts the customs and ancestral culture of our people. These same impracticalities are apparent in the way that public administrative institutions of the state operate. On the island's territory they are incapable of functioning in accordance with the mainland's legal system, because no national regulations have been created that take the unique geographical and cultural conditions of the Rapa Nui people into account.

These issues are directly linked to the Republic of Chile's Political Constitution's absence of recognition of the pluricultural nature of the state and the existence of indigenous peoples throughout its territory. Only through laws of lower hierarchical rank have nine original peoples been recognized within Chile: eight Amerindian peoples and one Polynesian (the Rapa Nui people) who inhabit or inhabited the present territory of that country since before the arrival of the Spanish conquistadors in the sixteenth century.⁶

These issues directly affect the political participation of members

of the Rapa Nui people within Chile's legislature. They have no representation or voice, and throughout history have failed to be considered when laws are developed, which generates constant conflict over the application of national legislation on the island. When developing laws, the existence of this community, its remoteness, its culture and customs have never been considered, causing a sense of neglect among Rapa Nui's inhabitants.

Under Chile's current electoral system, the Rapa Nui people have no possibility of having a representative in any Chamber of the National Congress. They are thus unable to express an accurate opinion, which is mandatory in order to be considered in the national legislative process. Historically, the Rapa Nui people have had to go begging in search of political will on the part of mainland congressmen. They are compelled to foment empathy among them, so that the congress members will consider their needs when legislating. This produces an obvious unease and discontent among the Rapa Nui People.⁷

There seems to be an obvious lack of political will to implement a Special Statute for Rapa Nui, to which Chile committed more than 10 years ago. In fact, in 2007, after an arduous struggle lasting more than a century, the Chile, through *Law No. 20,193*, amended the Political Constitution of the Republic, establishing Easter Island as a "special territory"⁸:

*Article 126A. Easter Island and the Juan Fernández Archipelago are special territories. The Governance and Administration of these territories shall be governed by such special statutes as the respective constitutional organic laws may establish.*⁹

To this, the following interim provision was added:

*Twenty-two. Until the special statutes referred to in Article 126A come into force, the special territories of Easter Island and the Juan Fernández Archipelago shall continue to be governed by the standard regulations regarding political-administrative division, governance, and the interior administration of the State.*¹⁰

The Special Governance and Administration Statute, which the Rapa Nui people long for, has not been developed, and there is no political will at the governmental level to make progress in implementing the mandate set forth in the Constitution itself. The Rapa Nui people believe that such a statute would make it possible to solve the majority of the constant, innumerable conflicts with Chile, and ensure the effective exercise of their right to self-determination. For it to be effective, it must emanate from and be refined by the Rapa Nui people, encompassing their considerations and needs, based on their worldview and understanding of their ancestral culture and traditions. The creation and implementation of this Special Statute is currently the main challenge for the Rapa Nui people in the defense of their rights and conservation of autonomy over their territory.

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SURINAME



The indigenous peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638 (census 2012).¹ 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 Akurio, Apalai, Wai-Wai, Okomoyana, Mawayana, Katuena/Tunayana, Pireuyana, Sikiiyana, Alamayana, Maraso, Sirewu 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 recognize indigenous or tribal peoples, and Suriname has no legislation governing indigenous 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 (UNDRIP) in 2007.

Kaliña and Lokono judgment and land rights

Implementation of the judgment by the Inter-American Court of Human Rights (IACHR), in the *Kaliña and Lokono Peoples v. Suriname* case², has not progressed, other than the translation into Dutch and Sranantongo of the summary of the judgment. The important legislative and policy measures that were ordered, as well as a 1 million USD Development Fund to be established, have still not been complied with by Suriname. The last implementation deadline was due on 28 January 2019, three years after the effective date of the judgment. The Kaliña and Lokono peoples of the lower Marowijne region, organized in the organization Kaliña and Lokono in Marowijne (KLIM) and the national Association of Indigenous Village Leaders in Suriname (*Vereniging van Inheemse Dorpschoufden in Suriname*, VIDS) have announced that they will evaluate the possibility to undertake domestic legal actions to demand compliance with the Court's orders.

The Court ordered Suriname to, among other things, legally recognize the collective property of the Kaliña and Lokono peoples to their traditional lands and resources, and their legal personality before the law. In addition, the judgment also affirms the rights of the Kaliña and Lokono over the protected areas that were established in their territories and ordered a process for restitution 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. Suriname is also held to rehabilitate the area affected by bauxite mining in

the Wane Kreek Nature Reserve. Because of the repetitious nature of Suriname's violations of indigenous and tribal peoples' rights (see also the Saramaka³ and relevant parts of the Moiwana⁴ cases), the Court ordered similar measures for all indigenous and tribal peoples of Suriname in this judgment.

In response to street manifestations organized by the VIDS, the government had established a Presidential Commission on Land Rights which worked on a "Roadmap" that includes a workplan towards the legal recognition of indigenous and tribal peoples' land and other rights. The President of Suriname, after various delays, in June 2018 instructed the Minister of Regional Development to implement the Roadmap, which initially had an estimated duration of 12 months. Only in December 2018 the relevant commissions were installed, and the time for delivering the expected results is now very limited.

The Roadmap was developed jointly by government and representatives of the indigenous and tribal peoples' traditional authorities, who are also represented jointly in the various commissions and the umbrella Management Team. The three main commissions that have been established will work respectively on draft laws on collective rights of indigenous and tribal peoples, demarcation of traditional territories and broad awareness among the general Surinamese society. The main results will be legal proposals to be submitted to the National Assembly (parliament) of Suriname in September 2019. The National Assembly, however, retains its prerogative to reject or make amendments to the proposals delivered by the Roadmap process, and various opinions have been expressed that this is just another "carrot process" to keep indigenous and tribal peoples from revolting. The VIDS has made clear that while this is an encouraging development in which they fully participate, this roadmap process alone does not adequately guarantee the full implementation of the Kaliña and Lokono judgment.

A contentious draft law for "protecting" indigenous and tribal peoples' lands and territories, approved by the National Assembly in December 2017, has not been signed into law by the President of Suriname, purportedly because of strong objections by the VIDS and other indigenous and tribal peoples' organizations. The VIDS had indeed expressed fundamental reservations against the law, which is an amendment to a core *Domain Land Law* of 1982. This law considers all land over which no title can be proven, to be state domain (property), including all indigenous and tribal peoples' lands and territories, none of which hold written

titles. The recent amendment intends to “protect” their traditional lands by prohibiting the state to give any (mining or other) concession right or land title in areas that are within a radius of five kilometre from indigenous and tribal peoples’ villages, without the community’s consent. However, pre-existing third-party rights are upheld, and the explanatory note to the amendment reiterates that all land remains domain land over which the state has exclusive decisive authority.

Indigenous and tribal peoples’ organizations have expressed fundamental concerns about the amendment, which was hastily approved without their involvement or comments, saying that this amendment uses an arbitrary and unrealistic five kilometre radius; that the village-based “protection” does not correspond to indigenous and tribal peoples’ concepts of territories; and that it effectively confines their territories to restricted reservations around which everything is now expressly allowed. Some have expressed that the draft law has not been endorsed yet in order to provide an opportunity to investors to get concession rights before the law enters into force.

A proposal, spearheaded by Conservation International Suriname, for replacing the very old (1954) *Nature Protection Law*, has also been stalled for some time already, after having been submitted to the National Assembly for consideration. The reason for that is said to be the wish of the lawmakers to look at such a proposal within a broader scope, namely the wider environmental legislation and policy of Suriname. An environment framework law has been developed over ten years ago but has also not been substantially considered yet.

The issue of the planned expansion of the Johan Adolf Pengel International Airport which would occur within the traditional territory of at least two indigenous villages namely Witsanti and Hollandse Kamp, is getting into another phase. An environmental and social assessment (ESIA) has been undertaken but aforementioned villages criticized the report, saying that it does not properly address their rights to their lands and free, prior and informed consent (FPIC). Talks between the villages and the consultants undertaking the ESIA are currently ongoing. The expansion is to be financed and implemented by investors from China.⁵

Other developments

The World Bank has embarked on the implementation of its renewed

Country Strategy for Suriname, with the announcement of an intended 25 million dollar loan for support to private sector development, in particular extractive industries and agrobusiness.⁶ The project triggers various World Bank safeguard policies, including Operational Policy 4.10, and at the time of writing this article, a draft “Indigenous and Tribal Peoples Planning Framework” was in the making, with only limited involvement of indigenous and tribal peoples’ representatives.

An ex-chairperson of the board of the VIDS in a surprise statement in August 2018, declared that he and some other chiefs had decided to withdraw from the VIDS. The reasons given were the lack of dissemination of information by the VIDS and its ideas on implementing the Kaliña and Lokono judgment of the IACHR which, according to the ex-chairperson, “do not sufficiently take into account the aspirations of other groups in Surinamese society”. This move was generally conceived as a political one, given the function of the ex-chairperson as board member of the ruling coalition political party and the VIDS’ determination to demand the full implementation of the Kaliña and Lokono judgment. Some of the village leaders that were mentioned to have withdrawn later announced that they had not been consulted beforehand and remain in the VIDS. The current chairperson of the VIDS has clarified that the VIDS is not a western individual membership organization but the national structure of the traditional authorities, and as long as village leaders are supported by their community they remain part of the traditional authority and will be considered part of the VIDS. A “mini-conference” held by the VIDS in January 2019 underlined this with a resolution on the indestructible unity among the indigenous peoples of Suriname.

The VIDS protested against other perceived efforts to undermine its traditional indigenous leadership position and right to self-determination. In at least two instances, government agencies interfered actively in changing the village leadership which, till now, has been an exclusive responsibility of the villages themselves with process support from the VIDS. Similar efforts had been noticed before, particularly prior to previous national elections (the next national elections are scheduled for May 2020). The Saamaka Maroon authorities protested strongly against government interference in their traditional authority system, when president Desiré Bouterse decided to appoint a person of his choice to become paramount chief of the Saamaka tribe.⁷ The decision who would be the next paramount chief had been long and deeply dis-

puted for various years already, after the death of the former chief. According to the president, it had been chiefs of the tribe themselves who asked him to take a decision, which was disputed by others. The IACHR asked for clarification, in particular whether international standards on the rights of indigenous and tribal peoples had been adhered to in this matter.⁸

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).
2. See Inter-American Court of Human Rights, Case of The Kaliña And Lokono Peoples V. Suriname Judgment of 25 November 2015 at <http://bit.ly/2EjbRDC>
3. See Inter-American Court of Human Rights, Case of the Saramaka People v. Suriname Judgment of 28 November 2007 at <http://bit.ly/2EhUXVO>
4. See Inter-American Court of Human Rights, Case of the Moiwana Community v. Suriname Judgment of 15 June 2005 at <http://bit.ly/2EsJbrZ>
5. See Starnieuws, "Ambassadeur Zhang focuste zich op projectuitvoering" at <http://bit.ly/2EsJJOz>; See Starnieuws, "Lening US\$ 205 miljoen nodig voor groei luchthaven" at <http://bit.ly/2Ec8VbC>
6. See The World Bank, "Facilitating Private Investment and Sector Diversification (P166187)" at <http://bit.ly/2Ehm7fx>
7. See DWOnline.com, "Verklaring Vereniging Saamaka Gezagsdragers" at <http://bit.ly/2EjZWFt>
8. See DWOnline.com, "OAS stelt vragen over Aboikoni" at <http://bit.ly/2EkRaql>

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VENEZUELA



Official estimates indicate that indigenous peoples comprise approximately 2.8% of Venezuela's total population of some 32 million inhabitants. Others, however, believe that the indigenous population is larger, perhaps surpassing 1.5 million. The indigenous population encompasses more than 40 peoples, including the Akawayo, Amorúa, Añú, Arawak, Arutani, Ayamán, Baniva, Baré, Barí, Caquetío, Cumanagoto, Chaima, E'ñepá, Gayón, Guanono, Hoti, ilnga, Japreria, Jirajara, Jivi, Kari'ña, Kubeo, Kuiva, Kurripako, Mako, Makushi, Nengatú, Pemón, Piapoko, Píritu, Puinave, Pumé, Sáliva, Sánema, Sapé, Timoto-cuica, Waikerí, Wanai, Wapishana, Warao, Warekena, Wayuu, Uwottüja, Yanomami, Yavarana, Ye'kuana and Yukpa. They are mainly found in the states of Zulia, Amazonas, Bolívar, Delta Amacuro, Anzoátegui, Sucre and Apure. Some of these areas overlap with Brazil, Colombia and Guyana. Indigenous territories and protected areas, which in large measure overlap, cover almost 50% of the national territory.

Venezuela has included indigenous rights in its Constitution, starting with the right to territory as a fundamental requirement for the fulfilment of distinct rights. The 1999 Constitution recognises the multiethnic, pluricultural and multilingual nature of Venezuelan society. In 2001, the Venezuelan government ratified ILO Convention 169 and, in 2005, it enacted the *Organic Law on Indigenous Peoples and Communities*, on the basis of this international convention.

The Venezuelan State has also enacted a series of laws that directly develop the rights of constitutionally recognised indigenous peoples. Among them are the *Law on Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples* (2001), the *Organic Law on Indigenous Peoples and Communities* (2005), the *Indigenous Languages Act* (2007), the *Indigenous Peoples and Communities Cultural Heritage Act* (2009), and the *Indigenous Craftspersons Act* (2009). In 2007, Venezuela voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples and created the Ministry of Popular Power for Indigenous Peoples as part of the executive branch's cabinet.

Peoples living in relative isolation and initial contact

When considering the national indigenous reality in Venezuela, mention must be made of the presence of groups living in relative isolation and little contact in the country. Belonging to the indigenous Uwottuja, Hoti and Yanomami peoples, these are groups or factions that have, to this day, remained in relative isolation or in little contact with the wider Venezuelan society due to the remote areas in which they live, normally around the upper reaches of rivers.¹ These groups and their territories are now under threat from different external factors, particularly from people who enter their territory to undertake illegal mining activities without a thought for the consequences. These extractive groups act as vectors, bringing in infectious/contagious diseases. Cooperation between miners and unlawful armed groups is also increasing the risk to territories that are home to isolated indigenous groups, as reported by organisations such as Wataniba.²

Building consultation protocols

In 2018, two Amazonian indigenous peoples made significant progress in building specific models of free, prior, and informed consultation in relation to intended development projects on their territories. The indigenous Uwottuja people from Autana municipality (Amazonas state) completed a process involving workshops and sessions for the methodological production, revision and translation of their own protocol, with a General Assembly to approve the work. The Yanomami people from Parima sector have also made progress in a similar process. These two advances are important:

[...]... because, in Venezuela, none of the Indigenous Peoples had a particular model setting out a specific method of free, prior and informed consultation in line with their customs and habits.”³

Political engagement and illegal mining

Indigenous peoples have not escaped the polarised political environ-

ment that has been taking shape in the country since 2002 and yet, despite this situation, the indigenous movement has managed to embed itself in a series of political spaces, with active involvement in the self-demarcation of their territories, consolidation of a legal framework of autonomy for the promotion and defence of their rights, and cultural self-determination.

Despite these achievements, however, much of the initial momentum behind public policies was lost in 2018. Particularly noteworthy was the lack of continued progress in the process of demarcating indigenous lands and habitats. The intercultural education programmes also declined due to the economic situation, a lack of incentives, and teachers moving into other sectors such as illegal mining or the urban informal economy. Health care programmes were also diminished through misappropriation/smuggling and a lack or absence of drugs, not to mention the insecurity caused by the presence of unlawful armed groups in indigenous territories, involved in goods smuggling, drugs trafficking, road blocks, extortion and kidnapping, tax collection and illegal mining.⁴

The curtailment of security and defence policies in the border areas and indigenous territories has resulted in a burgeoning of illegal mining, with all the concomitant environmental and sociocultural impacts this entails. In Zulia state, the constant expansion of the agropastoral model, present across much of the country since the start of the 20th century, remains the main reason why indigenous Yukpa, Barí and Japrería communities are losing their lands, and why murders and human rights violations against indigenous peoples go unpunished.⁵

Arco Minero del Orinoco

On 24 February 2016, the government designated the “Arco Minero del Orinoco” (AMO) as a national strategic development zone. The AMO will turn over an area of 111,843.70 km² to the large-scale exploitation of gold, coltan, diamond, copper, iron and bauxite deposits. Agreements have been signed with transnational companies from around the world. These agreements involve open-cast mining, which is having serious environmental and sociocultural consequences for the indigenous peoples, particularly in Bolívar state, where the project has been initiated.

The Coordinating Body of Indigenous Organisations of the Amazon

(*Coordinadora de Organizaciones Indígenas de la Amazonía/COIAM*) issued a press release warning that this large-scale natural resource extraction was the new face of Venezuela's mining policy. They called for a moratorium on the basis that rights to free, prior, and informed consultation were being violated; and for the demarcation of their lands. There was no consultation, either of the main local bodies or the indigenous communities, not in Bolívar state nor in its immediate area of influence in the north of Amazonas. Nor was any environmental or sociocultural impact assessment conducted. This threatens both the biodiversity and the indigenous territories.

Illegal mining is also taking place over vast areas of Venezuela's Amazonian region, with no effective state action to prevent it. Complaints have been made by various indigenous organisations in Amazonas state - ORPIA, COIAM, OIYAPAM and KUYUNU - raising the issue of illegal mining in the river basins of important tributaries of the Orinoco (Atabapo, Guainía, Negro, Ventuari and many of their affluents). This has resulted in the mercury contamination of the main water courses, destruction of the biodiversity, prostitution, alcoholism and the recruitment of young people into mining-related activities.⁶ David Kopenawa, a Yanomami leader from Brazil, has been denouncing the presence of more than 5,000 illegal gold miners (*garimpeiros*) on the Yanomami people's lands on both sides of the Brazilian/Venezuelan border since February 2018.⁷

Epidemiological alert in indigenous territories

The Wataniba Association published a report in 2018 on the epidemiological situation in the Yanomami territory of the Upper Orinoco due to an outbreak of measles in the communities of Alto Ocamo and Parima, in Venezuela, and in the region of Ônkiola on the Brazilian side of the border. It cited the Pan-American Health Organisation (PAHO), which stated that low vaccination coverage, a lack of ongoing monitoring, delays in applying disease-control measures and a lack of capacity to isolate patients, along with the high level of movement within the region during the incubation or virus transmission period, were all factors in the spread of the disease.⁸

In its September 2018 report, PAHO set out its epidemiological assessment of Venezuela for 2018, in which it confirmed 535 cases of

measles among indigenous peoples in the states of: Amazonas (170 cases, of which 135 among the Sánema, 24 among the Yanomami, 3 among the Ye'kwana, 3 among the Baniva, 3 among the Piapoco and 1 among the Yeral people); Delta Amacuro (341 cases among the Warao); Monagas (22 cases, being 20 Warao, 1 Chaima and 1 Eñepa); and Zulia (2 cases among the Wayuu). In addition, 646 deaths were recorded, of which 37 in Delta Amacuro (all among the Warao) and 27 in Amazonas (16 among the Sánema). Finally, in November 2018, PAHO recorded 101 deaths among the Yanomami people, not including places outside the area covered by the monitoring bodies.

Forced migration of indigenous communities

The deteriorating national economic situation has shaken the foundations of Warao communities in the Orinoco Delta and Monagas, as well as the Eñepa de Bolívar ethnic group. This is causing their forced migration to regions as far distant as Boa Vista and Manaus (both in Brazil) in search of humanitarian relief. The local authorities have consequently considered them refugees and forced them to live in temporary camps with the aim of preventing any migratory flow to other areas of the country. In Perijá, Zulia state, Yukpa communities have also been forced to move to Colombia as a result of conflict between armed groups over territorial control and the protection of illegal crops on indigenous territories and because of the recruitment of youths to form foot soldiers in the ranks of the illegal groups that still remain active in this area. The situation is constantly bubbling under the surface, waiting for a mediated solution.⁹

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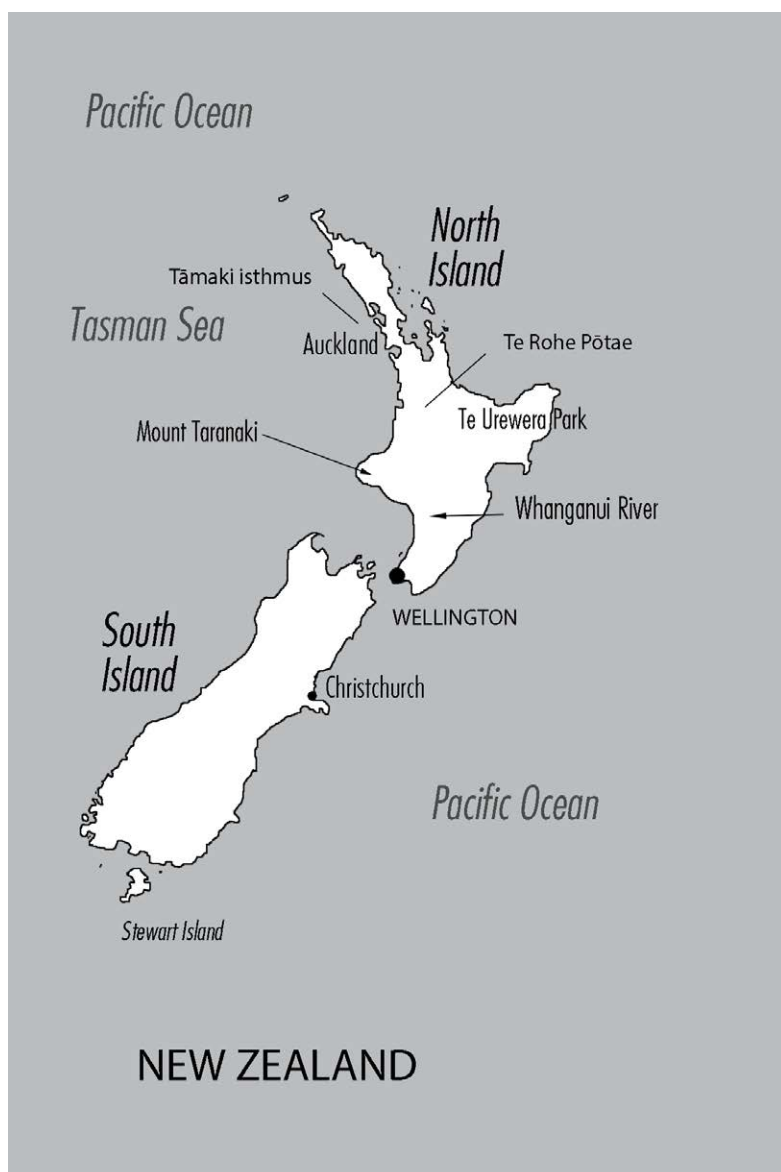
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Socio-Environmental Working Group of the Amazon “Wataniba”
(Grupo de Trabajo Socioambiental de la Amazonia “Wataniba”) with the
 collaboration of **Arturo Jaimes**



Australia and the Pacific

AOTEAROA (NEW ZEALAND)



The Māori, the indigenous people of Aotearoa, represent 15% of its 4.5 million people. The gap between the Māori and non-Māori is pervasive: Māori life expectancy is on average 7.3 years shorter than non-Māori; household income is only 78% of the national average; 45% of the Māori leave upper secondary school with no qualifications, and over 50% of the prison population is Māori.¹

The Treaty of Waitangi (the Treaty) was signed between the British and the 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, 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 mainly 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 human rights defenders

In 2018, defenders of Māori rights in Aotearoa were free from the extreme levels of stigmatisation that indigenous rights defenders endured in other parts of the world, although indifference and hostility persisted in varying degrees. Positively, there were indications of a renewed willingness (yet to be fully realised) on the part of the Government to engage with some advocates - for example, the independent mechanism monitoring the state's implementation of the UNDRIP established by the Iwi Chairs Forum.²

Māori/Crown relations office launched

In December, the new Office for Māori Crown Relations - Te Arawhiti - was launched.³ It is officially "dedicated to fostering strong, ongoing

and effective relationships with Māori across Government”, including a mandate to generate better solutions for Māori “social, environmental, cultural and economic development” and to provide “strategic leadership and advice on contemporary Treaty issues”.⁴ It consolidates several existing governmental units, including the Office of Treaty Settlements, the Marine and Coastal Area Unit and the Settlement Commitments Unit.

The Office is significant for Māori as it may signal a shift from government perceptions of the Māori/Crown relationship as defined by the negotiation of historical Treaty grievances to a broader, ongoing and forward-focused, partnership relationship.⁵ Dr Carwyn Jones, a prominent Māori legal academic, remarks that “[t]his new portfolio clearly creates opportunities for more consistent, more sophisticated, and more effective participation of Māori in public life,” but its promise will need to be matched by action.⁶ One of the key areas where action is required is how the Māori/Crown Treaty partnership is reflected in New Zealand’s constitutional arrangements. The Crown is still yet to formally engage with the recommendations made by the independent *iwi* (nations) led working group on constitutional transformation, the Matike Mai Aotearoa, in its 2016 report on an inclusive constitution for Aotearoa (see *The Indigenous World 2017*).

Tribunal finds breaches of self-determination

Amongst the Waitangi Tribunal reports released in 2018, was the pre-publication version of Parts I and II of *Te Mana Whatu Ahuru*, the report on the claims of the *iwi* and *hapū* (extended kinship groups) of *Te Rohe Pōtae* (the King Country).⁷ The report found that “[t]he Crown’s significant breaches of the Treaty of Waitangi caused serious damage to the *mana* [authority, power, influence] and autonomy of the *iwi* and *hapū* of Te Rohe Pōtae.” Accordingly, and importantly, the Tribunal recommended that “the Crown take immediate steps to act, in conjunction with the mandated settlement group or groups, to put in place means to give effect to their *rangatiratanga* [in general terms, their self-determination and autonomy].” The Tribunal identified that the precise nature of these means will be for the claimants and the Crown to determine, but it did recommend that “at a minimum, legislation must be enacted that recognises and affirms the *rangatiratanga* and the rights of autonomy and self-determination of Te Rohe Pōtae Māori”.⁸

Inquiry into abuse

In February, the Government established the Royal Commission of Inquiry into Historical Abuse in State Care, expanding the mandate to include abuse in the care of faith-based institutions in November.⁹ Its establishment followed media attention to stories of abuse and neglect and the lodging of a Waitangi Tribunal claim for an inquiry into the abuse of Māori children in state care.¹⁰ The Inquiry is concerned with historical abuse – it covers the period from 1 January 1950 to 31 December 1999. It has two-strands. The first strand will examine the extent of abuse of children in state and non-state care, its impact and causes and contributing factors. The second strand will review the current systems in place to prevent abuse to test whether they are sufficient and to identify what legislative, policy, practice and other changes are needed.¹¹ The Inquiry is anticipated to take several years.

The abuse of children in care has disproportionately affected Māori, the effects of which are still felt today. This is due in large part to the overrepresentation of Māori children in care – by the 1970s nearly half of all children in state care in Aotearoa were Māori.¹²

The Inquiry's terms of reference instruct the Inquiry to "give appropriate recognition to Māori interests, acknowledging the disproportionate representation of Māori, particularly in State care." The terms identify that "[t]he Inquiry will be underpinned by Te Tiriti o Waitangi, the Treaty of Waitangi, and will partner with Māori throughout the Inquiry process."¹³ Positively, there is Māori representation on the Inquiry: Māori legal academic and rights advocate, Dr Andrew Erueti, has been appointed as a Commissioner. It will be crucial that the commitment to partnership with Māori is honoured when the Inquiry's work begins in earnest in 2019.

Treaty settlement decisions judicially reviewable

In September, the Supreme Court handed down an important decision that will impact how the Government engages with iwi and hapū interests.¹⁴ The Court held that Crown decision-making regarding Treaty settlement negotiations (which, if successfully concluded, are ultimately enacted in settlement legislation and therefore subject to Parliamentary approval) is judicially reviewable. In doing so, the Court limited the

principle of non-interference with Parliamentary proceedings. It may also prompt reconsideration of the Crown's policy for dealing with overlapping claims in Treaty settlements, which provides that when there are cross-claims by iwi to a particular area, iwi are encouraged to resolve it among themselves, and only if they cannot do so does the Crown make a decision regarding the claims.¹⁵

The case was brought by Ngāti Whātua Ōrākei, an iwi with *mana whenua* (authority over land) in the Tāmaki isthmus, whose historical Treaty settlement with the Crown was concluded via legislation in 2012. In subsequent Treaty settlement negotiations between the Crown and other iwi with interests in the Tāmaki isthmus (Ngāti Paoa and the Marutūāhu Collective), the Crown offered land over which Ngāti Whātua Ōrākei asserts *mana whenua* to those iwi, without consultation. In response, Ngāti Whātua Ōrākei initiated judicial review proceedings challenging the decision. In turn, the Crown sought to rely upon the non-interference principle – as the offer was ultimately subject to Parliamentary approval via settlement legislation. The argument was successful in the High Court and Court of Appeal, but the Supreme Court limited the principle and ruled that Ngāti Whātua Ōrākei may return to the High Court for a hearing on its substantive rights over the land, where the Crown's overlapping claims policy will also be challenged.¹⁶

Strong international criticism

International bodies were vocal in their criticism of the human rights situation of Māori in 2018. The United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) identified far-reaching concerns. In its concluding observations on New Zealand's fourth periodic report under the International Covenant on Economic, Social and Cultural Rights, the CESCR noted, for example, the legal and constitutional insecurity of the Treaty of Waitangi; the non-binding nature of recommendations of the Waitangi Tribunal; "the limited efforts that have been made to ensure meaningful participation of Māori in decision-making concerning laws that impact their rights, including land and water rights"; the lack of systematic implementation of the principle of free, prior and informed consent "in particular in the context of development and extractive activities carried out on territories owned or traditionally used by Māori"; the "entrenched unconscious bias towards Māori in ed-

ucation, health, justice and social services”; “the prevalence of domestic and gender-based violence” that particularly impacts Māori women and girls; the disproportionate rates of Māori in unemployment, living in poverty and experiencing severe housing deprivation; and disparities for Māori in health and education, including the limited availability of Māori-speaking teachers.¹⁷

The CESCR's strong recommendations included that New Zealand, in partnership with Māori, “implement the recommendations of the Constitutional Advisory Panel regarding the role of the Treaty of Waitangi within its constitutional arrangements, together with the proposals put forward in the 2016 Matike Mai Aotearoa report”; fully implement the Tribunal's recommendations, including those in *Ko Aotearoa Tēnei*; “[d]evelop a national strategy to bring legislation and public policy into line” with the UNDRIP and resource the independent mechanism monitoring it; implement “mechanisms to ensure meaningful participation of Māori in all decision-making processes affecting their rights”; “[t]ake effective measures to ensure compliance with the requirement of obtaining the free, prior and informed consent of indigenous peoples”; “introduce a government-wide strategy” to combat unconscious bias against Māori; pay particular attention to Māori in its measures to protect victims of domestic and gender-based violence and when addressing child abuse, poverty and housing issues; and partner with Māori to take targeted measures to address underemployment, health outcomes and to “develop culturally appropriate education programmes”.¹⁸ Māori contributed to the CESCR's review process, informing the recommendations made.

The UN Committee on the Elimination of Discrimination against Women (CEDAW) also raised a host of concerns regarding the human rights situation of the Māori.¹⁹ In its concluding observations on New Zealand's eighth periodic report under the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW's recommendations included that New Zealand “[i]ncrease the availability of legal aid” for Māori women; “recognize the special needs of Maori women and girls” in the development of culturally appropriate guidelines to respond to violence; “[u]rgently address the working conditions” of Māori women; “[t]ake measures to reduce poverty and improve the economic empowerment” of Māori women; “improve the availability and quality of accessible mental health-care services” targeting Māori women; “adopt all legislation, including temporary special measures

and awareness-raising measures, necessary to combat intersecting forms of discrimination against women”; and “provide alternatives to detention to reduce the high number of Māori women detainees”.²⁰

Overview and looking forward

The launch of Te Arawhiti potentially signals a positive shift in the Māori/Crown relationship. Calls to recognise the rangatiranga of iwi by the Waitangi Tribunal, the launch of the Inquiry into the abuse of children in care, and the Supreme Court’s ruling that Treaty settlement decisions are judicially reviewable are also promising developments. Yet, serious concerns persist. Some of these were highlighted by international oversight mechanisms – including the lack of appropriate recognition of the Treaty partnership in New Zealand’s constitutional arrangements. Coordinated action to give life to the Government’s rhetoric of Treaty partnership will be necessary if Aotearoa is to flourish.

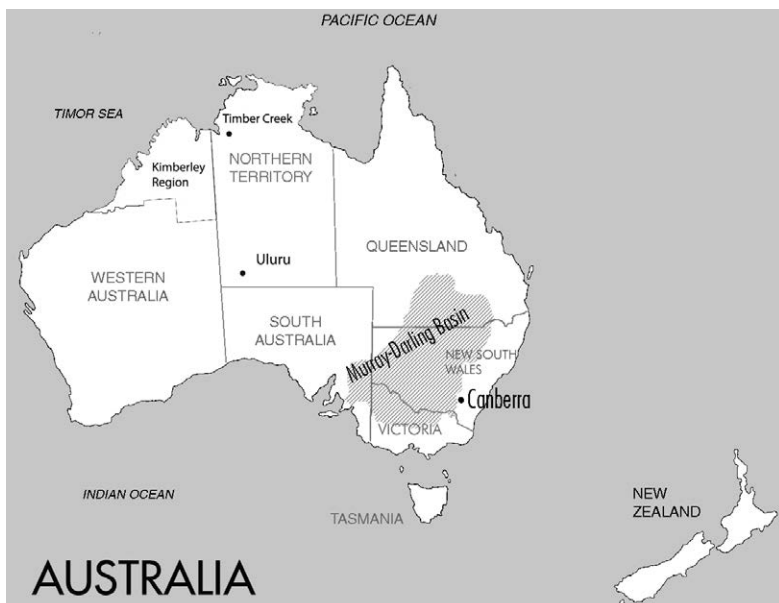
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AUSTRALIA



Aboriginal and Torres Strait Islander people make up 3.3% of the nation's population. Geographically, 62% of the Indigenous population lives 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.¹ 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.²

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.³

There are approximately 3000 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.⁴

There is currently no reference to Aboriginal and Torres Strait Islander peoples in the national Constitution, though the movement towards constitutional recognition has intensified, as reported below.

Compensation Test Case on Land Loss

Over the last 50 years, two different legal paradigms – a nation-wide system for recognition of ‘native title’, and various statutory land rights regimes that operate in the States and Territories – have effected a partial repossession of the Australian continent and its surrounding islands by Aboriginal groups and Torres Strait Islanders. These areas for exclusive or shared use by First Nations peoples are, however, very unevenly distributed and are found overwhelmingly in very remote areas of the country.⁵ This means a large proportion of the Indigenous population have not regained territory lost in the process of frontier conflict and dispossession that commenced with the arrival of the British in 1788. Compensation and redress or reparations for the loss of land and other severe impacts of colonisation remains an important and largely unaddressed issue. This underlines the significance in 2018 of the Timber Creek litigation regarding compensation for the legal extinguishment of native title.

Timber Creek is a small township of a few hundred people in the north of Australia. The Ngaliwurru and Nungali peoples won legal recognition of their exclusive native title rights over parts of the township in 2007, but the Federal Court of Australia found that in other areas their native title had been extinguished by public works and the past grant of freehold title and leases to third parties.⁶ In 2011 the Ngaliwurru and Nungali peoples started a compensation claim under the federal *Native Title Act 1993* relating to this past extinguishment. Twenty years after they first launched a defensive action against the government for compulsorily acquiring township blocks, and many court battles later, the

Ngaliwurru and Nungali peoples are awaiting the verdict in their compensation case from the country's highest judicial body, the High Court of Australia.

The High Court appeal in the Timber Creek compensation case was heard in Darwin in September 2018. It was the first time the Court had sat in the Northern Territory, where Aboriginal people constitute almost 30% of the population (by comparison with a national figure of 3.3%).⁷ Timber Creek is a test case of Aboriginal and Torres Strait Islander rights that ranks in importance alongside the key native title decisions from the High Court. That includes *Mabo*, which in 1992 first recognised the existence of pre-existing common law property rights held by Indigenous groups in Australia,⁸ and the *Wik* case from 1996, which found that such native title rights could co-exist with other property rights that had been granted by the Crown, such as pastoral leases for cattle and sheep grazing.⁹

At trial in 2016, the judge found that, based on market value for land in Timber Creek, the economic loss from over 50 extinguishing acts carried out between 1980 and 1996 was A\$512,400 (USD \$364,000). The pre-judgment interest on that sum was nearly A\$1.5 million (USD \$1.06 million). The most difficult question was the quantification in monetary terms of the non-economic loss, the harm experienced from the loss or diminution of traditional connections with the land. The judge acknowledged that the task, though complex, was essentially intuitive. He heard extensive evidence from the traditional Aboriginal owners about damage to sacred sites, as well as what he described as 'emotional, gut-wrenching pain'¹⁰ and a 'sense of failed responsibility' for the obligation under traditional law to have cared for the land and protected it against unauthorised use by others.¹¹ The trial judge awarded A\$1.3 million for non-economic loss. This was left undisturbed on appeal to an intermediate court in 2017, but the compensation sums for economic loss and interest were reduced by about 20 %.¹² The Northern Territory and Commonwealth government have argued vigorously that the High Court should make further substantial reductions in all three elements of the award. The position of the Northern Territory is that 94% of the award for non-economic loss should be wiped out.¹³

The outcome of the Timber Creek litigation is being closely watched by Indigenous groups around the country, by governments, and by third parties who may face future compensation liabilities, such as mining companies. It is the first time the Australian courts have quantified 'just

terms' compensation for native title extinguishment. In strict legal terms, the consequences of this test case for other groups are limited. As noted, native title is achievable only by some Indigenous groups, mainly in areas far from the population centres of Australia. The legal pathway to compensation for past extinguishment is even more restrictive. As a threshold issue, a group must first prove that their native title existed up until the time the relevant extinguishing acts occurred, generally understood to mean until after the enactment of the federal *Racial Discrimination Act* in October 1975. That is typically an arduous, expensive and highly legalistic process. It is only then that the argument begins about the particular acts of extinguishment that occurred post-1975, their impact on the affected group and how that loss should be quantified. Because the *Mabo* decision denied that compensation is payable at common law for native title extinguishment, the orthodox legal position is that most of the dispossession that occurred in Australia after 1788 (that is, official action on land taken before October 1975) is not compensable at all under the *Native Title Act*.

If, however, in a decision expected in 2019, the High Court resists government submissions that call for a more tight-fisted approach, the Timber Creek case could have profound and broad-ranging consequences. Even allowing for the legal restrictions on recovery, governments will face the prospect of large compensation liabilities for post-1975 extinguishment. It will also intensify a wider debate about the losses suffered everywhere as a consequence of dispossession.

A sound public policy response would look to negotiations of comprehensive settlements, regionally-based but within an agreed national framework. It is here that this potential landmark development in native title law intersects with the other major issue addressed in this report, the increasing prospects during 2018 of constitutional and structural reform based on the Uluru Statement from the Heart.

Structural Reform and the Uluru Statement

The Indigenous World 2018 reported on the outcome from a historic Indigenous-designed and led deliberative process of Regional Dialogues on constitutional recognition. The culmination of that process, at the First Nations Constitutional Convention held in central Australia in May 2017, was the Uluru Statement from the Heart.¹⁴ Widely acknowledged

for the short and simple power of its message and language, the Uluru Statement called for a single constitutional reform to be put to a referendum of Australian voters: a representative First Nations Voice that can influence the political and law-making process. The Uluru Statement also called for a national body, to be known as a Makarrata Commission, which would oversee agreement-making between governments and First Nations, and a process of truth-telling about Australian history. Makarrata is a word from the Yolngu people of northern Australia, which essentially means coming together to make peace after conflict.

Despite the then Prime Minister Malcolm Turnbull having rejected the proposal for a constitutionally-entrenched Voice, his governing Liberal Party joined others in March 2018 in establishing a parliamentary committee inquiry into constitutional recognition that focused almost entirely on the Uluru Statement. In November 2018 the committee reported that the Voice should become a reality and said it should be “co-designed with government by Aboriginal and Torres Strait Islander peoples”.¹⁵ In pursuit of bi-partisan support, the report abstained from committing to constitutional entrenchment and said that a legislative basis for the Voice should also be kept under consideration.

The firmer message from key Aboriginal leaders of the Regional Dialogues was for an Indigenous-led approach to designing a Voice proposal for parliamentary consideration. They also restated the importance of constitutional entrenchment. They said that constitutionalising the Voice kept faith with the consensus outcome from the Uluru convention and achieved greater certainty and stability, given the past history of governments abolishing Indigenous representative bodies. Endorsement by popular vote at a referendum and placement in the Constitution, they said, would also secure enduring legitimacy for the Voice and accord it a proper place in Australia’s system of government.¹⁶ They pointed out that in the Dialogues, ‘participants considered the potential for legislative, administrative and other forms of change to achieve structural reform, as compared with constitutional change, before emphatically embracing a constitutionally enshrined First Nations Voice’.¹⁷

Although the new Liberal Party Prime Minister Scott Morrison reiterated government reservations about a constitutionally-enshrined Voice,¹⁸ the proposal continued to gain momentum through 2018. The Opposition Labor Party, strongly favoured in opinion polls to win a May

2019 election, committed to implementing the constitutional and structural reforms called for in the Uluru Statement.¹⁹ As civil society organisations continued to advocate for the Uluru Statement, the business sector also began to come on board. Most recently, mining giants BHP and Rio Tinto, who both have regular dealings with Aboriginal groups in minerally prospective parts of Australia, endorsed a referendum to constitutionally entrench a Voice, and BHP pledged A\$1 million (USD\$708,315) to support an education project about the Uluru Statement and constitutional change.²⁰

The Uluru Statement represented the historic achievement of Indigenous consensus on viable proposals for structural reform through an Indigenous-designed deliberative process. It broke the logjam in a public debate about constitutional recognition that had been mishandled and frequently neglected by mainstream politicians over the preceding decade. At the end of 2018, the signs are relatively positive that a referendum on a representative First Nations Voice will occur soon and that Australia will shift national attention to a comprehensive agreement-making process, as well as a belated and much-needed reckoning with the history of colonisation and its impacts.

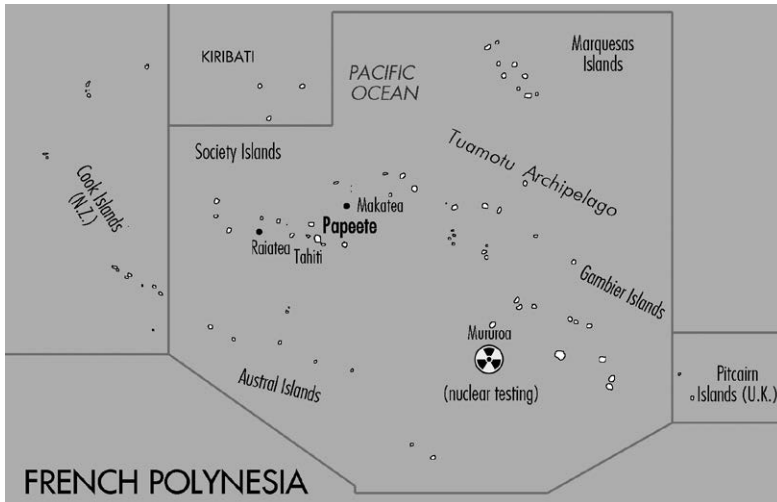
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FRENCH POLYNESIA



A former French colony, French Polynesia became an Overseas Collectivity (Collectivité d’Outre-mer) in 2004, with approximately 275,000 inhabitants (around 80% of whom are Indigenous Polynesian).¹ As a collectivity, it enjoys relative political autonomy within the French Republic through its own local institutions: The Government and the Assembly of French Polynesia. Social inequalities have been severely exacerbated by the economic crisis that has afflicted French Polynesia since the turn of the millennium. In 2015, one in every five households lived below the poverty line.² Despite the recovery of the tourist sector starting in 2017, the Minister for Overseas considers the collectivity’s economy as “fragile,” citing the kind of jobs which are available (cleaners or security guards, bar staff, receptionists, etc.), the fact that “the rate of employment remains stable at a low level”³ and the high levels of emigration among 18 to 25-year-olds: one in 10 leave the Territory every year.⁴

Three large political parties have characterised local political life since 2016: *Tavini Huiraatira*, a pro-independence party led by Oscar Temaru; Gaston Flosse's *Tahoera'a Huiraatira*, a pro-autonomy party which is in principle in favour of maintaining French Polynesia within the French Republic; and, following a split in this latter group, the *Tapura Huiraatira*. This pro-autonomy breakaway party was set up in 2016 by Edouard Fritch, who has been the French Polynesian President since September 2014, when he replaced the now ineligible Gaston Flosse.

2018 was marked by territorial elections, debates within the UN on the right to self-determination, the nuclear issue and the related lawsuit on compensation for victims. Forty years after his death, the father of Tahitian nationalism, Pouvanaa a Oopa, was finally rehabilitated.

Territorial elections

Set against a backdrop of a war of succession within the pro-autonomy family of political parties, the founding of *Tapura Huiraatira* enabled Edouard Fritch to establish a new majority in the French Polynesian Assembly and win re-election as the President of French Polynesia in May 2018. During the territorial elections of April/May 2018, the three parties: *Tavini*, *Tahoera'a* and *Tapura*, obtained 23.12%, 27.70% and 49.18% of the vote.⁵ *Tapura* now holds 38 of the 57 seats in the French Polynesian Assembly, presided over by Gaston Tong Sang, mayor of Bora Bora. These electoral results have been vaunted by *Tapura's* elected representatives as a sign to the French representatives and the UN that even though these elections did not have the status of a self-determination referendum, they clearly underscored the poor performance of pro-independence candidates. That being said, the two parties have never clarified the deep differences between the pro-autonomists, especially now that Gaston Flosse is more or less constantly advocating for an "associated State" – status for French Polynesia.

The UN and the right to self-determination

French Polynesia has been on the UN List of Non-Self-Governing Territories since May 2013. While opponents of this re-listing see French Polynesia's inclusion as an implicit demand for independence, its supporters note that this inclusion should go further, and should culminate in a referendum on self-determination that would offer the option to become a French department, to gain independence or to become an associated State. The French state considers "the French Polynesian issue" an internal matter and has thus far refused to cooperate with the UN General Assembly's Fourth Committee, which is responsible for decolonisation issues. On the 12 October 2018, during government question time, Annick Girardin, new Minister for Overseas since Emmanuel Macron's election in May 2017, explained the "empty chair policy" in relation to its refusal to participate in the Fourth Committee as follows: "The situation of Polynesia does not justify its place on the list of non-self-governing territories. This is why the French representatives do not participate in these meetings".⁶ This has not prevented the French state from putting pressure on the Committee to remove paragraph 11, which calls on it to report back to the General Assembly on economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories", including the consequences of nuclear testing.⁷ Although the French state is refusing to participate in the work of the Committee, the pro-autonomy *Tapura* party has participated since October 2016, thus providing an alternative voice to those of the pro-independence movement and the representatives of nuclear test victims' associations at the UN. As in the previous year, the October 2018 discussions focused on the reality of French Polynesia's actual autonomous status within the French Republic (see *The Indigenous World 2018*). Edouard Fritch considers "French Polynesia [...] an autonomous country, freely and democratically governed", while representatives of Tavini and supportive/like-minded Civil Society Organisations (CSOs) have, for their part, regretted the absence of French state representatives at the UN. They also criticise the form of "colonialism by consent" that they associate with the overly "accommodating" leaders (of *Tapura*) in relation to the French state.⁸

The discussions on institutional reform that are taking place within the National Assembly and Senate at the behest of the President of the French Republic, Mr. Emmanuel Macron, underline this variable ge-

ometric understanding of French Polynesia's autonomy. The call for a reduction of one-third of deputies and senators is to be applied to the whole of France, including Overseas Territories, despite French Polynesian representatives arguing that the specific features of French Polynesia (remoteness and geographic dispersion of the population) mean that this reduction in Polynesians elected to represent their territory nationally is inappropriate.⁹ In response, Annick Girardin expressed her belief that some principles cannot form the object of a territorial exemption.¹⁰

It was also at the meeting of the UN Fourth Committee that the leader of the pro-independence party, Oscar Temaru, announced that on 2 October 2018 he had lodged a complaint against France with the International Criminal Court for crimes against humanity. He explained that "the aim of this lawsuit is to bring all living Presidents of France since nuclear testing began in our country to account".¹¹ Annick Girardin reacted by denouncing "the use of international courts for local political purposes".¹² It should be noted that Oscar Temaru was later declared ineligible for one year by the State Council on the 26th of October 2018, following a report from the National Campaign Accounts and Political Financing Commission (CNCCFP).

Nuclear testing 20 years on

Nuclear testing and its health, social and environmental consequences was once again at the top of Polynesia's political news. In January 2018, during her visit to French Polynesia, the French Overseas Minister, Annick Girardin, announced the forthcoming establishment of a memorial centre in Papeete, specifying that it had been requested by the Polynesian people. In actual fact, compensation for nuclear test victims has been at the heart of the local associations' concerns for more than 20 years and has stood as a higher priority which has not been resolved. The issue of France's claim that the nuclear tests conducted in French Polynesia were of a (non)-hazardous nature and did not incur risks has been raised on multiple occasions. In June 2018, the French Armed Forces inaugurated a new system (at a global cost of some 105 million euro) aimed at preventing the risk of the Moruroa atoll collapsing (and with it the distribution of radioactive matter). The project seeks to use a network of underground motion sensors to monitor the atoll.¹³ Edouard

Fritch, the pro-autonomy president of French Polynesia, recognised for the first time during a debate in the French Polynesian Assembly on the 15 November 2018 that he had lied with regard to the safety of the nuclear tests.

*I am not surprised I am considered a liar when, for 30 years, we have lied to this population saying that the tests were clean: we lied, I was a part of that group.*¹⁴

While this admittance of guilt was intended to highlight a change in direction on the part of a new and concerned government, undertaking to “repair what has been done to this country” with funding from the French state, it has also contributed to a feeling of perplexity and even distrust of politicians who seem tempted to say one thing and mean another. Brother Maxime, from the 193 Association which represents the victims of nuclear tests, thus questions the honesty of Edouard Fritch’s statements to the UN where he still defends the state’s position regarding the denial of the 4th commission’s relevance regarding item 11, “and we can but wonder if there are not some untruths in there”.¹⁵

The lawsuit for victim compensation

The numerous difficulties in obtaining compensation for the nuclear test victims, despite this being established in the Morin Law of January 2010, have still not been overcome (see *The Indigenous World 2018*). Lana Tetuanui (Tapura member), Senator and Chair of the Extra-Parliamentary Commission for monitoring victim compensation thus reminded the UN that this law “was too complex and unsatisfactory and that the compensation system was not conclusive”.¹⁶ And yet, in February 2017, the National Assembly voted to eliminate the “negligible risk” contained in the Morin Law, which had been presented as leading to better recognition and compensation for victims.

On 4 December 2018, Senator Lana Tetuanui tabled an amendment meant to facilitate the admissibility of compensation claims by explicitly authorising claimants to complete the steps embarked on when the victim died, and by authorising a re-examination of files that had been rejected before the law was voted through on February 2017, thus easing the rules of admissibility for compensation claims.¹⁷

The 2017 activities report of the Committee for Compensation of Victims of Nuclear Testing (CIVEN) highlights another difficulty related to compensating nuclear test victims: the lack of administrative and financial means allocated to this administrative authority, which prevents it from exercising its tasks properly.¹⁸

Pouvanaa a Oopa's innocence finally acknowledged

Pouvanaa a Oopa (1895-1977) is today considered the father of Tahitian nationalism and a pioneer of anti-colonialism. This politician, originally from Huahine (Leeward Islands) was the first Polynesian elected to the Territorial Assembly of French Polynesia and the founder of Rassemblement démocratique des populations tahitiennes (Democratic Rally of the Tahitian People/RDPT) in 1949. During the September 1958 referendum to approve the Constitution of the 5th Republic, the Overseas Territories were also called upon to vote for or against continuing as part of that Republic. Pouvanaa a Oopa encouraged the people to vote "no" in the referendum, i.e. for French Polynesia's independence. On the 11 October 1958, he was arrested and accused of arson in the town of Papeete. He was sentenced to eight years in prison and 15 years in exile in Metropolitan France at a time when the French state was already considering setting up the experimentation centre in French Polynesia, as evidenced in the work of the historian Jean-Marc Regnault.¹⁹ Although pardoned by General de Gaulle in 1968, he was never cleared of this crime. Christine Taubira, then Minister of Justice, referred the case to the Committee for Review of Criminal Procedures in 2014.²⁰ On the 25 October 2018, the Court of Cassation finally overruled the 1959 judgment and declared Pouvanaa a Oopa innocent 40 years after his death.²¹

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East Asia and South East Asia



CAMBODIA



Cambodia is home to 24 different indigenous peoples, who speak mostly Mon-Khmer or Austronesian languages, and constitute 2-3% of the national population, around 400,000 individuals.¹ Indigenous territories here include the forested plateaus and highlands of Northeastern 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 coerced displacement from their lands that are extinguishing them as distinct groups.² These patterns are driven by ongoing state and transnational corporate ventures for resource extraction/conversion (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. It has not assented to ILO Convention 169. During its last Universal Periodic Review (UPR) (2013), Cambodia accepted a recommendation that it

“increase measures to tackle illegal land evictions [of] indigenous people, and consider fortifying the legislative framework consistently with international standards.”³ This has not led to any actual remedy to the discrimination and land insecurity indigenous peoples faced in 2017. An indigenous rights movement that began in the late 1990s continued to develop in 2017; however, with recent government crackdowns on political parties, NGOs, media and others perceived to be in “opposition” to the reigning Cambodian Peoples Party (CPP),⁴ the ground on which the Indigenous rights movement exists has become more precarious.

The hope that the 2001 *Land Law* and the 2002 *Forest Law* would lead to a substantive remedy that protected indigenous peoples’ lands through collective/communal land titling (CLT) continued to fade in 2018. By the end of 2018 only a few indigenous communities had gained a CLT.⁵ In the meantime, the occupation of indigenous territories by developers advanced, aided by state management of affected communities that included use of force and sometimes law to displace peoples and log what remains of Cambodia’s forests.⁶ This brief chapter highlights the cost for five indigenous peoples fighting for their rights to these resources and the consequences of their battle – there are many more such cases.⁷

Areng Valley environmental activist attacked

An Areng Valley activist was threatened to be killed by local authorities of a commune in the Cardamom Mountains in 2018. They filed this case to the police administration of the commune, but there was no resolution from the police, therefore they had to leave his house with their family to hide temporarily for their personal security. After two weeks in hiding, they returned home alone, leaving their family hidden in order to answer to their complaint regarding the death threat at the local police station, since the two sides had agreed to amicably solve the case. However, on a evening in May a shot was fired at them, while they were outside their house, by an unknown person. Fortunately, the bullet did

not harm them. They told a local news source that: "I feel scared and worried about my personal security. I think this time they missed me, but I will die next time if attacked again. This attack is not good, so I urge the armed forces and police to [intervene]." The victim and human rights groups continue to demand authorities to investigate the case and bring the offender to trial. The victim identified two motives for the threat and attack:

"I was a former member of Cambodia National Rescue Party (CNRP)⁸ and they wanted me to join with Cambodia Peoples Party (CPP) and I refused. Secondly, I am an environmental activist who is their target as well. Wood traders could not do as they pleased without protests, and we colluded with some of [the] authorities. Activists and forest lodgers are in a conflict."⁹

LICADHO (a Cambodian human rights organization) calls for urgent investigation by competent authorities to bring the offender to trial. A human rights officer at LICADHO told the authors:

"While negotiating with [the] two sides, they were asked whether they were backed by someone. But they dared not to tell, so [it can be] assumed there must be a third party [involved]. So, the police should not close the case this way, despite agreement of the two sides as it is a criminal case, leading to an attack. There should be a concrete investigation of who is behind [it]. This leads to disclosure of the attacker."

The human rights officer found that the HRD was discriminated against and that their life was threatened following their delivery of petitions to the Ministry of Rural Development and other institutions, to request an intervention and an acceleration of indigenous identification in the Areng Valley. They is an environmental activist having advocated against the construction of a hydropower dam in Areng Valley and was a former CNRP supporter, refusing to join hands with the CPP after the dissolution of the CNRP.

Kui activists facing arbitrary arrests

For many years, an activist from Preah Vihear province, has been engaging in the struggle to protect the land and natural resources of his community. The most recent cases involved two big companies; China Group and Dellcom Cambodia. These companies are associated with the local authority, and they want to plunder indigenous Kui territory, forest, farms, land and natural resources. On top of this, the community is dealing with illegal mine extraction from individuals as well as from the company.

The activist is mobilizing his community to take action in order to stop the companies' activities; protesting, demonstration, petitioning, conducting dialogues and blocking the road. Over the years, his community has faced many challenges, including arbitrary arrests from the local authority especially from the district governor. To date, he and the community members still receive constant threats from the district governor including arbitrary arrest, if they continue their protest action.

These threats come on top of other challenges that the community faces as a result of the companies' actions in the area. These actions result in chemical substance waste and air and water pollution which threatens the community's physical and mental health. They are unable to farm their traditional lands as they are occupied by the companies. Women and children are disproportionately affected because the land, forest and farms have been grabbed. As a result, they have lost their daily income and experience an increased dropout rate of indigenous children from local schools. The water pollution has killed many animals and the communities are unable to use the water.

In another Kui community in Preah Vihear, another activist is playing a vital role to assist indigenous peoples in his province. In 2017, the number of land grabbing, arbitrary forest clearing and illegal logging events increased, especially with regard to the activities of the Heng Fu company. The land being grabbed is used by the indigenous communities for many purposes; viable farming, conservation, collective land uses and to protect spiritual forests. Three indigenous Kui areas were especially affected; Tbeng Meanchey, Chey Sen and Chheb. Indigenous individuals and their communities work hard to protect their land, forests and farms. The actions taken include; camping at the disputed basin, patrolling, petitioning and organising demonstrations. So far, in 2018 eight activists have been threatened and summoned by the pro-

vincial court for illegally obstructing two bulldozers in 2014.

The activist has received numerous threats to his life and threats of arrest from the local police. He has not taken any action on these acts of intimidation. However, in late 2018 he was part of the group which was summoned by the provincial court for illegally obstructing two bulldozers in 2014 and for preventing government development efforts. To address this allegation, he has worked with his lawyer to delay his court appearance in 2018. He received support from local NGOs such as NGOForum, CIYA and the CCHR. They made press releases, condemnations of the actions and broadcast on news and social media. He emphasized that these issues have negatively impacted many indigenous community members. Especially in terms of their income, food security, mental and physical health. The number of outsiders has increased considerably. Community members complain that many of them have brought drugs, affecting many of the local community's youth. The activist and his family are also impacted due to the ongoing court case, which limits his freedom of movement, speech and assembly and threatens to affect his mental and physical health.

Struggles of indigenous human rights defenders in Mondulkiri

A Bunong activist from Mondulkiri province is one of the most proactive activists and is a key mobilizer for indigenous communities in Mondulkiri province. He has two children and supports his family as a sustainable farmer. Considering the increased rights violations and discrimination of indigenous peoples, he began to work as an activist in 2015. Although he recognises the danger of his work, he feels compelled to do it to prevent the suffering of indigenous peoples. He is afraid that without their land, indigenous peoples will lose their identity, culture, traditions, natural resources and homes. He has advocated on various cases, including issues of land concessions, environmental degradation, and extraction of forest, oil and mineral resources. So far, he has taken many initiatives to intervene in the companies' actions. He has helped block roads, protested, demonstrated, marched and conducted dialogues with local authorities as well as provincial level authorities.

He is a coordinator of the Indigenous Networking Group. There he plays a vital role providing communities direct assistance as issues

arise. As soon as communities send a petition or a claim he calls on the provincial authorities to intervene and broadcasts the issue on social media. Due to these activities, he has received a series of anonymous threats. His life and that of his family has been repeatedly threatened if he continues to defend the rights of his community and act against the company and government actions. He was also threatened with arrest by the district police when he obstructed illegal logging in 2017. He has remained steadfast in his commitment to protect indigenous communities as well as the forest. He says he is not afraid of being killed. However, the threats to him and his family affect them economically, and in terms of their mental and physical health. Furthermore, local authorities limit his freedom of movement, speech, assembly, life and those rights enshrined in the UNDHR, UNDRIP, ICCPR and ICESPR. Even though he has filed a petition, no solutions have been provided by the provincial department.

Another activist, an indigenous Bunong, lives 26 kilometres from the provincial capital, in Kbal Romeas village, Steung Treng province, Cambodia. An active indigenous human rights defender, he too works as a farmer. His village community used to be able to add to their income with the natural resources provided by the nature surrounding the village. This all changed in 2012, when an agreement was signed between the Royal Group of Cambodia and China's Hydrolancang International Energy, forcing many of them to be relocated. The Dam's 400 MW capacity has damaged the environment, their crops, farms, conservation lands and spiritual sites. Although the Bunong community tried to protest this project in many ways, it was completed in 2017. Their protests led many of the community members, especially the activist, his sister and his niece to be accused of resisting government development.

In September 2017, the Dam's floodgates closed, resulting in the flooding of the Kbal Romeas village. Around that time, the community organised a traditional ceremony apologizing to their ancestors, forest and water spirits for their failure to protect the village. When the activist went to the market to buy groceries, a tourist bus caught his eye. When police, including the district governor, came to stop the tourist bus from continuing on their journey, they accused him of inviting the tourists, who were on their way to the Bunong ceremony. When he denied the accusation, the district governor grabbed his motor key from him, strangled his neck and forced him into his car. the activist managed to es-

cape, but lost his motor, which was confiscated by the police. This affected his income and strained his mental and physical health. The local authority threatened his life, accusing him of obstructing government development. Due to these threats, his family has asked him to end his activism. He has not been able to recover his property to this day.

Notes and references

1. There is variation in the estimates, because different writers perceive linguistic boundaries differently, see past editions of *Indigenous World*, as well “Indigenous Groups in Cambodia 2014: An Updated Situation” by Frédéric Bourdier (published by AIPP).
2. These include multiple governmental agencies, CSOs and NGOs. The last assessment of indigenous peoples’ land rights which was carried out by the Cambodian Center for Human Rights (CCHR, 2016) is one example. See “Access to Collective Land Titles for Indigenous Communities in Cambodia,” available at <http://bit.ly/2IIG9F4>
3. See UN documents A/HRC/26/16 and A/HRC/26/16/Add.1. Cambodia’s next UPR is scheduled for January 2019 see <http://bit.ly/2IDdxM>
4. A fast and accurate summary of these state actions as of Jan 2018 is available from Human Rights Watch at <http://bit.ly/2IIG1U>
5. Op. cit. CCHR, 2016. 11 communities, out of an estimated 500
6. Despite the passage of national legislation that bans the logging of Cambodia’s forests, the CPP state has a long history of complicity in the illegal logging industry in which Hun Sen and his family are directly implicated. See Global Witness 2016 at <http://bit.ly/2IR1Djs>
7. The cases cited here have been shared by the victims to the authors of this article to be used in *The Indigenous World 2019*
8. See Phnom Penh Post, “‘Death of democracy’: CNRP dissolved by Supreme Court ruling” at <http://bit.ly/2IleAS>
9. This quote comes from a local news source which has been kept anonymous to protect the identity of the activist.

The activists in this country section have been kept anonymous to protect their identities and maintain their safety and that of their families.

*This article was produced by **Cambodia Indigenous Peoples Alliance** (CIPA). CIPA is an alliance of indigenous communities and peoples’ organisations, associations, and networks.*

CHINA



Officially, the People's Republic of China (PRC or China) proclaims itself to be 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 recognizes 55 minority nationalities within its borders. According to the latest national census in 2010, the minority nationalities' population stands at 111,964,901 persons, or 8.49% of the country's total population. There are also "unrecognized ethnic groups" in China, numbering a total of 640,101 persons.

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 recognize the existence of "indigenous peoples" in the PRC despite voting in favor of the UNDRIP. The right to self-determination as "indigenous peoples" is thus not applicable and it results in a lack of legitimate institutions for indigenous group representation. The "minority nationalities" are socially marginalized in the Chinese context.

Constitutional amendment and the "Chinese Nation" (zhonghuaminzu)

In 2018, the 1st Session of the 13th National People's Congress adopted a Constitutional Amendment which, for the first time, articulates the term "Chinese nation" (zhonghuaminzu) in the Chinese constitution.¹ To emphasize the singular form of Chinese "nation" instead of the plural "nationalities" indicates a clear trend towards a nation-building goal of achieving "the great rejuvenation of the Chinese nation".² This normative change may negatively affect indigenous peoples' possibilities of claiming their rights and their legal status as minority nationalities in the Chinese legal framework.

Communist Party's leadership on ethnic and religious affairs

The Central Committee of the Communist Party of China (CPC) adopted a decision on deepening reform of the Party and state institutions at the third plenary session of the 19th CPC Central Committee in March 2018.³ According to this decision, the United Front Work Department of the CPC Central Committee will exercise unified leadership over the State Ethnic Affairs Commission and directly administer religious affairs. These institutional reforms have implications for some laws, making it inadmissible to file a complaint through the courts as it is would now also be filed against the CPC. The changes in the law alter their focus because these laws only regulate actions taken by an administrative agency or any employee thereof that infringe upon the lawful rights and interests of citizens, legal persons, or other organizations.⁴ These institutional changes thus severely reduce the possibility of accessing legal remedy for individuals belonging to China's ethnic, linguistic and religious groups, including those claiming to be indigenous peoples.

Input to and outcomes of the CERD and the UPR

The major events of importance in the UN mechanisms this year were the 31st session of the Universal Periodic Review (UPR) under the Human Rights Council (HRC)⁵ and the Committee on the Elimination of Racial Discrimination's (CERD) review on the combined 14th to 17th periodic reports of China.⁶ There were numerous related issues raised during these UN processes, including side events organized by NGOs.⁷

Criminalization

Abuse of laws on countering "terrorism", "separatism" and "religious extremism"

The broad definition of terrorism, separatism and the vague references to religious extremism in Chinese law could potentially and practically lead to the criminalization of peaceful civic and religious expression and facilitate the criminal profiling of ethnic and ethno-religious minorities including, in particular, the Muslim Uyghurs, Buddhist Tibetans and Mongolians.

Under the Criminal Law of the PRC, the crimes of “endangering national security”, “splitting the State or undermining the unity of the country” (Article 103) and “subverting the State power or overthrowing the socialist system” (Article 105) have been used and abused in various cases. The newly amended *Counter-Terrorism Law* of 2018⁸ and the Religious Affairs Regulations that came into effect on 1 February 2018⁹ reflect the state’s emphasis on using ambiguously defined notions of “state security”, “religious extremism”, and “terrorism” to attempt to link religious activities to politically-charged crimes. The following leading cases will further explain the risks.

Mr. Tashi Wangchuk is a Tibetan advocate for Tibetan language education in schools in Tibetan areas where Mandarin has become the sole language of instruction.¹⁰ He was arrested in January 2016 for participating in the New York Times’ documentary - “A Tibetan’s Journey for Justice”, in which he appealed for education in the Tibetan minority language and for the right of Tibetan people to partake in their cultural life. On 22 May 2018, the Intermediate Court in Yushu, Qinghai province found him guilty of “incitement to separatism” and sentenced him to five years in prison. Six UN human rights experts condemned this sentence as unjustified.¹¹

In addition to this case, in its 2018 observations, the CERD expressed its concerns that Tibetan language teaching in schools in the Tibet Autonomous Region had not been placed on an equal footing in either law, policy or practice with Chinese, and that it had been significantly restricted.¹² Banning of the Uyghur language in schools in Xinjiang,¹³ and a significant reduction in the availability of Mongolian-language public schooling in Inner Mongolia Autonomous Region are of further concern.¹⁴

Mr. Ilham Tohti, an Uyghur scholar, used to serve as a Professor of Economics at the Minzu University of China. He founded the website *Uyghur Online* in 2006, which was designed to promote understanding between Uyghurs and Han Chinese. He was frequently harassed by the Chinese authorities for his outspoken views on Uyghur rights and, in 2014, he was sentenced to life imprisonment on charges of “splitting the State or undermining the unity of the country”.¹⁵ His commitment to improving human rights is recognized worldwide. The international community is voicing ongoing concerns about his health¹⁶ and making efforts to obtain his freedom.¹⁷ In January 2019, on the five-year anniversary of his arrest, civil society and scholars called for China to grant his

immediate release and to heed calls for the release of an untold number of Uyghur scholars currently detained.¹⁸

State measures on counter terrorism or religious extremism in Xinjiang

Michelle Bachelet, UN High Commissioner for Human Rights expressed that she was “deeply disturbed” by the widely reported allegations of mass detentions of Muslim Uyghur minorities in so called re-education camps in Xinjiang during her opening statement at the 39th session of the HRC on 10 September 2018.¹⁹ The international community is appealing for investigations into these alleged arbitrary detentions, restrictions on religious practice, and “forced political indoctrination” in a mass security clampdown.²⁰

China called for respect for its sovereignty and urged the international community not to listen to what it termed “one-sided information”. It also said that although security measures in Xinjiang were necessary to combat “extremism and terrorism”, they did not target specific ethnic groups or restrict religious freedoms. In September 2018, both the Xinjiang Uyghur Autonomous Region Regulation on De-extremification (2017)²¹ and the Xinjiang Uyghur Autonomous Region Implementation Measures on Counter-Terrorism Law (2016) were amended by regional legislative bodies to provide a legal basis on which to establish an “education and training center” so that existing security measures could be justified.²²

The CERD’s concluding observations on the situation of Muslim Uyghur minorities highlight the lack of data on persons in detention and the reasons for their detention; the mass surveillance of Uyghurs; restrictions on travel for religious purposes; and restrictions on the safety of Uyghurs who have been forced to return to China.

Land rights

Many sources report that large numbers of farmers and nomadic herders in the regional national autonomous areas have lost their traditional lands and livelihoods owing to hydropower or extractive industry development, infrastructure construction, ecological restoration and through the application of poverty alleviation measures that required the relocation of minority nationalities in 2018.

Hydropower resettlement

During the 13th Five-Year Plan (2016-2020), Southwest China became the major “hydropower hub” being prioritized for development.²³ Giant hydropower projects have been constructed in some of China’s most biologically primeval and culturally diverse river basins where indigenous peoples live. The mountains and water in this area are spiritually linked to the local communities and form the material basis of indigenous peoples’ distinctive way of life. Reports on protests over the relocation of these peoples have been fragmented and statistics are not available. During the 12th Five-Year Plan (2011-2015), according to official documents, an estimated 400,000 persons were relocated.²⁴ The real number of affected and relocated communities may be higher.

Relocating nomads

Some 1,102 Tibetan herders from two villages in Nyima county located at an average altitude of over 5,000 meters were relocated to Doilungdepen county in Lhasa, more than 1,000 kilometers away from their original herding area in June 2018.²⁵ While Xinhua News reported that this was for their own good and for the protection of wild animals, the International Campaign for Tibet saw it as a denial of the herders’ fundamental rights. They argued that it was the state’s various development initiatives and not nomadic Tibetans that were the greatest threat to Tibet’s fragile ecology.²⁶

The CERD is concerned that compensation for expropriated property is often insufficient to maintain an adequate standard of living. This affects not only Tibetans but Mongolians too. Despite an official policy of voluntary resettlement, the CERD is concerned that, in practice, informed consent is not consistently obtained. It recommends that Chinese authorities work closely and effectively with ethnic minority government officials and communities to provide financial allowances that ensure an adequate standard of living, as well as livelihood restoration measures and, where needed, linguistic and cultural integration assistance.²⁷

Accessing traditional lands

For decades, state authorities have continuously promoted the sedentarization of minority nationalities with distinctive ways of life such as hunting, reindeer herding, nomadic herding or mountain farming, as a

way of ensuring their modernization and development. In addition to the more recent implementation of nomadic settlement plans in Tibet, Xingjiang and Inner Mongolia, the previous forceful resettlements or banning of hunting activities of other peoples, such as the Oroqin hunters²⁸ and the Ewenki reindeer herders,²⁹ have created difficulties for them in terms of accessing their traditional forest lands and continuing their ways of life.

Large-scale infrastructure projects and extractive industry operations in minority nationalities' homelands result in violations of the affected peoples' land rights and other economic social and cultural rights.³⁰ In March 2018, a Tibetan man was detained in the northern part of Driru County in Nagchu Prefecture after opposing a mining project on the sacred mountain of Serra Dzagen.³¹

Access to justice

Indigenous human rights defenders face major obstacles in accessing justice in China, for the following reasons:

Lack of recognition, information and remedy: The state does not recognize the existence of indigenous peoples in China and denies the relevance of all UN instruments on indigenous peoples. This makes claiming indigenous peoples' rights difficult.

More than 640,000 people belong to "unidentified nationalities", according to the 2010 national census. These people neither belong to the Han majority nor one of the 55 recognized minority nationalities. This means they have no right to establish their own autonomous area, and they encounter difficulties in obtaining political representation and special measures. This is not a new phenomenon as their subjective identification as independent and distinctive groups in law has long been denied.

The state's reports to the UN treaty bodies normally lack comprehensive statistics, surveys, administrative records or registers of acts of racial discrimination and related administrative and civil complaints, investigations, procedures and sanctions. Other sources report that ethnic Uyghurs, Mongolians and Tibetans face discrimination in recruitment processes, and this is of concern to the CERD. China's regional unemployment and poverty rate statistics are not disaggregated by

ethnicity, however, and there is a lack of information on state investigations into racially discriminatory practices.³²

China's National Human Rights Action Plan (2016–2020) is committed to a “people-centered development approach”. However, in the 2018 CERD review, the CPC provided information showing that acute poverty remained widespread throughout the regional national autonomous areas. In its response, the CERD highlighted that China should include human rights in its people-centered approach to development. It pointed, in particular, to meaningful consultations with minority nationalities before and during poverty alleviation projects, increased measures to reduce the high levels of poverty and the reduced inequality among them.³³

Dechen Shingdrup is a major annual religious prayer event held at the Tibetan Buddhist Larung Gar Institute and this year it fell on 27 October. This festival attracts Tibetan devotees from across the Tibetan plateau and has become a very popular mass prayer gathering. On 16 October 2018, the festival was banned for the third consecutive year despite local Tibetans and devotees appealing to the authorities that the festival was lawful, in accordance with freedom of religion.

Striving to access the UN mechanism: Mr. Dolkun Isa, president of the World Uyghur Congress, and a member of the Society for Threatened Peoples (STP), received accreditation through this NGO to attend the annual UN Permanent Forum on Indigenous Issues (UNPFII) in New York from 16–27 April 2018. UN diplomatic security stopped him from entering UN headquarters on 17 April, however, based on unspecified “security concerns”. The Chinese government has, for many years, accused Mr. Isa of being a “terrorist” but has failed to produce any substantiated evidence.³⁴ Finally, on 25 April, Mr. Isa finally gained entry to the UN building so that he could participate in the last three days of the UNPFII session. In May 2018, China tried to call for withdrawal of STP's consultative status in relation to its accreditation of Mr. Isa.³⁵

Despite shrinking space for expression, in 2018 Mongols continued to try and access justice by registering the “South Mongolia Genocide Incident” in the UNESCO Memory of the World Programme.³⁶ There have been some 153 self-immolation cases among Tibetans since February 2009. The most recent was that of Tsekho Tugchak who died on 7 March 2018 in Ngaba, Sichuan Province.³⁷

Role of civil society

The implementation of new legislation, such as the *Law on the Administration of Activities of Overseas Non-governmental Organizations in the Mainland of China* (2016)³⁸ and the *Charity Law* (2016),³⁹ has meant that many civil society and charitable organizations have been unable to register, or re-register, as required in order to operate in mainland China. The CERD expressed concern in 2018 that the number of NGOs in China had decreased tremendously in the past few years, and that no organizations working to combat racial discrimination were registered.⁴⁰

Notes and References

1. The Constitutional Amendment, see The National Peoples Congress at <http://bit.ly/2SYLn3y>
2. See Xinhuanet at <http://bit.ly/2SUFZyx>
3. See Gov.cn at <http://bit.ly/2T0gPyr>
4. For example, the application of Administrative Litigation Law of the People's Republic of China adopted 1989 and amended 2014.
5. China Review - 31st Session of Universal Periodic Review, 6 Nov 2018 see <http://bit.ly/2SWTcXw>
6. Committee on the Elimination of Racial Discrimination, Concluding observations, 19 September 2018, CERD/C/CHN/CO/14-17
7. The Geneva Human Rights Forum – 2018-11-03, <http://southmongolia.org/en/277/>
8. The 2018 Amendment to the Counter-Terrorism Law (2015 adopted), see NPC at <http://bit.ly/2TOWDMW>
9. See gov.cn at <http://bit.ly/2SZ6Au1>
10. See Free Tibetan Heroes at <http://bit.ly/2SUwejO>
11. These UN experts include Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in the field of cultural rights, on minority issues, of the Working Group on Arbitrary Detention, on the situation of human rights defenders, on the promotion and protection of the right to freedom of opinion and expression. See “China: UN human rights experts condemn 5-year jail term for Tibetan activist”, UNHRC at <http://bit.ly/2SUKWY7>

12. Committee on the Elimination of Racial Discrimination, Concluding observations on the combined 14th to 17th periodic reviews of China (including Hong Kong, China and Macao, China), 43, CERD/C/CHN/CO/14-17.
13. Ibid, para. 41.
14. Ibid, para. 44.
15. See China Court at <http://bit.ly/2TOWQjc>; See the judgement at VOA news <http://bit.ly/2SXFfbF>
16. We Shouldn't Allow Ilham Tohti to Become a Second Liu Xiaobo', 27 July 2018, See RFA at <http://bit.ly/2T1l6jZ>
17. See World Uyghur Congress at <http://bit.ly/2SZbuqV>
18. See World Uyghur Congress at <http://bit.ly/2SXELSV>
19. See UNHRC at <http://bit.ly/2SXxxif>
20. Committee on the Elimination of Racial Discrimination, Concluding observations, CERD/C/CHN/CO/14-17, para. 40-42
21. See People.cn at <http://bit.ly/2SUDaNX>
22. See XJPCSC at <http://bit.ly/2SULz3V>
23. These plans in the central authorities mainly include the Outline of the 13th Five-Year Plan on National Economic and Social Development, the 13th Five-Year Plan on Energy Development, the 13th Five-Year Plan on Renewable Energy Development, and the 13th Five-Year Plan on Hydroelectricity Development. There are a series of corresponding plans in the local authorities as well.
24. The 12th Five-Year Plan on Hydropower Development, Bureau of Energy, 2012.
25. Zhang Jingping report, See People.cn at <http://bit.ly/2SXFun5>
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27. CERD/C/CHN/CO/14-17, para. 26-27.
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30. Joint submission report by: International Federation for Human Rights (FIDH), (France); and International Campaign for Tibet, (USA), para. 3. See <http://bit.ly/2SWX1fk>
31. Tibetan Man Detained After Villagers Protest Chinese Mine Plans, Radio Free Asia, March 20, 2018.
32. CERD/C/CHN/CO/14-17, para. 47.
33. Ibid, para. 18-19.
34. In February 2018, Interpol removed a longstanding China-initiated red notice (i.e., an international alert) against Mr. Isa.
35. Andrea Worden, 10 July 2018, China Fails in its Gambit to Use the UN NGO Committee to Silence the Society for Threatened Peoples and Uyghur Activist Dolkun Isa, See <http://bit.ly/2Tb9HiZ>
36. See Southern Mongolia Congress at <http://bit.ly/2T2ewe8>

- 37. Tibetan man dies after self-immolation; oppressive measures intensified in March 10 anniversary week, International Campaign for Tibet, 7 March 2018.
- 38. See The Ministry of Public Security at <http://bit.ly/2SXyxm1>
- 39. See The National People's Congress at <http://bit.ly/2SRQz9x>
- 40. CERD/C/CHN/CO/14-17, para. 33.

Author: *Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.*

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 Kurile 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 recognized as an 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.¹

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 colonized 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 reincorporated 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 recognize Okinawans as indigenous people.

Japan has adopted the UN Declaration on the Rights of Indigenous Peoples (although it does not recognize the unconditional right to self-determination). It has not ratified ILO Convention 169.

Renewed focus on Ainu issues

In 2018, Hokkaido celebrated the 150th anniversary of the naming of the prefecture, holding various commemoration ceremonies and projects. For the Ainu, however, the anniversary served as a bitter reminder of the colonization of their ancestral homelands and the history

of suffering that followed. One Ainu human rights defender, Sinrit Eoripak Aynu Kawamura, organized a protest against the Hokkaido government, stating that it was “unacceptable to celebrate these 150 years without an official apology to the Ainu, obscuring the history of oppression that took place under the name of opening up [Hokkaido].”²

There has been increased attention for Ainu culture in popular media as well as discussion to feature Ainu culture as part of the 2020 Tokyo Summer Olympics. This increased attention has led to discussions about proper representation and usage of Ainu cultural and intellectual property. In March, the Ministry of the Environment released the first-ever guidelines regarding the use of Ainu designs for the Akanko Onsen area, providing cultural context and specifying that any use should be in consultation with a committee formed by members from the local Ainu community.³ Meanwhile, the Sapporo Ainu Association established a “Sapporo Ainu Design” certification system in June, providing its stamp of approval to designs and products created with their input, the first system of its kind for the Ainu.⁴

Also in 2018, the Hokkaido government released its report on the Ainu Survey on Livelihood that it had conducted the preceding year. The report counted the Ainu population at 13,118, a drop of 3,500 from its survey in 2013 and nearly a 40% drop in the total population from its survey in 2006. Experts noted that the survey likely left out tens of thousands of additional Ainu, and that concerns about privacy, as well as continued budget cuts to Ainu support programs and recent instances of hate speech that deny the very existence of the Ainu are contributing factors to wariness among Ainu in partaking in the survey. The drop in numbers also raised concerns that this might be used to justify further cuts in programs and support for the Ainu. The survey also indicated that while the gap between Ainu and non-Ainu was closing, the rate among Ainu receiving government welfare was four points higher, while the rate of those advancing to university was 12.5 points lower than average.⁵

In December, President Vladimir Putin of Russia stated that he agreed with a proposal made by the member of the Moscow Human Rights Commission to recognize the Ainu as an indigenous people of Russia. The Ainu are indigenous to the Northern Territories disputed between Russia and Japan, and it is yet unclear what such recognition would mean in practical terms for the Ainu community.⁶

Return of ancestral remains

While 2018 saw the return of additional human remains still held by Japanese universities to Ainu communities, the issue remains one of contention. Hokkaido University returned three human remains to the Asahikawa Ainu community and 14 to that in Urahoro. Keio University in February 2018 completed its return of six human remains, after it was discovered that despite the process being started in 2016, one former professor removed portions of the remains and kept them at his home, purportedly for “further research.” While Keio University apologized, it was unclear if any action was taken against the former faculty member.⁷ Additionally, two groups filed a lawsuit in January against Sapporo Medical University for the return of 36 remains to the community.

One of the leaders on the issue of human remains has been Yuji Shimizu, President of the Kotan Association. He and the organization have used grassroots support, media coverage and the legal system to build pressure to allow *kotan* (villages/communities) to accept the return of all human remains, not just individuals or families. Undoubtedly as a result of his and others’ efforts, the Japanese government released updated guidelines in December 2018 that direct universities to return human remains to communities if they can demonstrate their ability to bury the remains and that there are no competing claims.⁸

Towards a “New Ainu Law”

2018 saw continued debate and discussion between the Ainu community and the Japanese government about the content of the “New Ainu Law,” which the government confirmed it intended to pass in the beginning of 2019. Ainu activists were critical of the process, noting that one-sided hearings reeked of colonialism, and failed to treat the Ainu as equal participants.⁹ Ainu activists organized numerous discussions on their own, formulating several demands including an apology for historical wrongs; establishment of the right to self-determination and the right to natural resources; and the halting of all further research on Ainu ancestral human remains. Other demands included a focus on educational empowerment, a ban on discrimination, and support for livelihoods.¹⁰

One human rights defender and head of the Monbetsu Ainu Association, Satoshi Hatakeyama, challenged current Japanese law that re-

quires Ainu to apply in advance for permission to catch salmon, an important offering in traditional ceremonies. Citing in part the UN Committee on the Elimination of Racial Discrimination's 2018 recommendations regarding Ainu rights to natural resources, he attempted to catch salmon without filing for permission from the Japanese government and was stopped by the police. Garnering media attention, he raised the issue to the Hokkaido and national government, putting the issue of salmon fishing and access to natural resources clearly on the radar in discussions about the "New Ainu Law."¹¹

Acceding to some of the grassroots pressure, the Japanese government held several *caranke* (debates, an important part of traditional Ainu culture) on the "New Ainu Law." At the end of the year, the government outlined the core principles of the law, including an official recognition of the Ainu as an indigenous people of Japan, with the aim of enabling them to live in Japanese society with pride and dignity. The two main pillars of the law are a grant system for local government's "regional and industrial development" using Ainu culture, and an establishment of special measures for Ainu to collect natural resources such as salmon and plants. In response to ongoing concerns about the inadequacies of the 2016 *Hate Speech Act*, the law would also prohibit hate speech and discrimination.¹² While the failure to meet such demands, including an apology, make the current proposal far from ideal, activists recognized that much of their hard work and pressure on the Japanese government paid off to achieve important progress in shaping the content of the "New Ainu Law."¹³

Notes and references

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MALAYSIA



As of 2017, the indigenous peoples of Malaysia were estimated to account for around 13.8% of the national population of 31,660,700 million.¹ 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 about 215,000 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. It has not ratified ILO Convention 169.

Change of government with a promise of change

On 9 May 2018, the coalition government, in power since 1957, lost control of power in the general elections. The incoming government, a coalition of once-opposition parties under the banner of *Pakatan Harapan* (Alliance of Hope) promised a “New Malaysia” where, among other progressive and development-oriented programmes and policies, the rights of the Orang Asal of Malaysia, especially to their customary lands, would be recognised and respected. The first few months of the “New Malaysia”, however, saw a chequered prospect of hope for the Orang Asal.

The Election Manifesto of the *Pakatan Harapan*² made 60 promises and four “Special Commitments”. At least eleven promises relate directly to the rights and needs of the Orang Asal, including the delivery of development services, economic opportunities, environmental protection and recognition of, and restitution for, customary lands. The new government pledged to recognise, uphold and protect the dignity and rights of this indigenous community.³

It also pledged to implement the proposals of the National Inquiry into the Land Rights of Indigenous Peoples. The Inquiry’s report was prepared by the Human Rights Commission of Malaysia (SUHAKAM) in 2013.⁴ This report, which included 18 recommendations to resolve the

Orang Asli land problem, was never debated in parliament. Further, despite being vetted by a special task force, no known action has been taken on the Inquiry report and its recommendations. The new government has however promised to bring this report “for parliamentary debate within the first year of the Pakatan Harapan administration.”⁵

For Sabah and Sarawak, the administration promised that it would “enhance the role and functions of the Land Department to properly conduct perimeter studies, with funds being provided to carry out a complete study which can accurately identify the customary land boundaries.”⁶ From 2010 this was already being done in Selangor state under the then opposition Pakatan Rakyat coalition. The Selangor Orang Asli Land Task Force (BBTOAS), comprising indigenous Orang Asli community mappers and trainers, worked with Orang Asli communities to prepare their own perimeter maps. The intention was to secure formal recognition by the state of their customary territories. Ironically, the task force was disbanded in one of the first acts of the new government.⁷

Threats to indigenous land rights defenders

Indigenous land rights defenders continue to be targeted by operatives of corporations intent on preventing the recognition of Orang Asal rights to their customary territories. The latter’s bravado is partly due to the apparent acquiescence of the state government, the police and the state forest departments, who tend to side with the appropriators of indigenous lands. Indigenous land rights defenders, especially in Sarawak, have been verbally threatened, physically injured or had their property destroyed. Over the last decade, at least twenty indigenous land rights defenders have been threatened by “gangsters” linked to parties wanting to claim the customary lands of the native peoples.⁸ Bill Kayong, who was killed in a mafia-style shooting in 2016, was gunned down while seated in his 4WD vehicle at a traffic light.⁹ Although four persons were eventually arrested, including a politically well-connected plantation owner, all were set free except for the person who pulled the trigger (who received the death sentence in 2018).¹⁰

In Peninsular Malaysia, Orang Asli activists continue to face harassment and threats from loggers and agribusinesses. The Temi-ar-Orang Asli in Gua Musang have been forced to put up blockades in

various locations since 2016 to protect the integrity of their forest homelands. The authorities, especially the Forestry Department, have acted several times to bring down these blockades, only to have the Temiar erect them again. Of late, operatives of logging and agribusiness companies have also worked to demolish the blockades. In one instance in 2018, shots were fired in the air, while in another a group of 50 operatives of a fruit farm company aggressively approached the blockade with chainsaws and started destroying it.¹¹ No actions were taken against these operatives by the police or other government agencies despite their extra-legal acts.

Developments in the recognition of land rights

The 2017 Federal Court decision in *Director of Forest, Sarawak v TR Sandah ak Tabau*¹² (also referred to as the “TR Sandah case”) limited native customary rights recognition to those lands that are settled, cleared and cultivated (*temuda* lands). It held that the written laws of Sarawak did not accord the broader traditional territory (*pemakai menoa*) and communal forest (*pulau galau*) with the required “force of law” to allow the natives to stake a customary claim to them. This court ruling on the final appeal immediately placed in jeopardy more than a hundred native title cases in Sarawak.

To counter the politically damaging impact of this ruling, the *Sarawak Land Code* was amended in July 2018 to provide for the issuance of a title in perpetuity for communal native customary lands that fell under the category of *pemakai menoa* and *pulau galau*. However, a statutory limit of 1,000 hectares per title was set. This act was seen as “short-changing” the natives as communal customary claims in excess of 10,000 hectares are not uncommon, and in fact have been accepted by the courts in the past. The natives of Sarawak continue to protest this amendment and call for the concepts of *pemakai menoa* and *pulau galau* to be incorporated into the *Land Code*.

In Peninsular Malaysia, a legal compromise was seen in Kelantan – a state where rampant logging and non-recognition of Orang Asli rights to their customary lands traditionally inform the state’s position vis-à-vis the Orang Asli. After the High Court ruled in 2017 that the Temiar-Orang Asli of Pos Belatim enjoyed native title rights to 9,360 hectares of their traditional territories, the state government, on appeal,

agreed to seek an amicable settlement with the Orang Asli in this matter. The Orang Asli, for their part, were also amenable to such a settlement, especially in light of the looming TR Sandah ruling that could compromise their “win” at this lower court. In a consent judgment recorded by the Court of Appeal on 13 April 2018, the Kelantan state government agreed to grant title to the settled, cultivated and occupied areas, while the remaining forest and catchment areas will continue to be recognised as forest reserves or protective forests, but with logging prohibited and allowing the Temiar inhabitants to use these forests for their traditional subsistence and cultural activities.

In Sabah, where the issuance of so-called “communal titles” by the previous government has caused much dissatisfaction and evoked anger, the new Sabah government has decided to revoke those titles already issued. About 96 communal titles were issued since 2010, involving 61,620 hectares to 13,789 native or indigenous beneficiaries (not title holders) in 15 districts in Sabah. Such communal titles are land held in trust by the district office or the assistant collector of land revenue, who have power over what crops are cultivated and whether or not land can be given to next of kin. The government has also used communal land for joint ventures with private companies or developers, often without the free, prior and informed consent (FPIC) of native communities. This has drawn much anger from the native communities, resulting in the (new) chief minister of Sabah announcing that communal land titles were to be scrapped, beginning December 2018, in order for native land rights to be better protected.

Conformity with international standards

The UN Special Rapporteur for water and sanitation, Leo Heller, visited Malaysia in November 2018. He found that although the majority of Malaysians had access to clean water and proper sanitation facilities, the same cannot be said for many of the Orang Asal. Environmental degradation brought about by deforestation, the introduction of mono-crop plantations and the construction of dams have affected the quality of, and access to, water for many Orang Asal communities.¹³

In keeping with the Pakatan Harapan’s election manifesto to remove any vestige of discrimination in the administration and the application of laws of Malaysia, the prime minister of Malaysia, in his address

to the United Nations General Assembly on 28 September 2018 affirmed that “the new Malaysia will firmly espouse the principles promoted by the UN in our international engagements. These include the principles of truth, human rights, the rule of law, justice, fairness, responsibility and accountability, as well as sustainability.”¹⁴ However, his first move towards fulfilling this pledge – the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) – was politicised by the new opposition. They were able to garner considerable support among the conservative Muslim-Malay majority to oppose any attempt at ratifying the ICERD on perceived fears that it would diminish or decimate their rights as Malays and Muslims. The caving-in by the new government is seen by many as an indicator of how it is likely to be guided more by popularism than human rights when it comes to acknowledging the rights of the Orang Asal.

Positive outlook

In recent years, disputes and clashes between Orang Asal and the Forestry Department have occurred particularly where Orang Asal forage and cultivate land on forest reserves that they claim as ancestral or customary land. While the *National Forestry Act* 1984 provides for the creation of permanent forest reserves, they are deemed to be reserved for the purpose of timber production unless they are specifically gazetted as another type of forest (such as a water catchment reserve or wildlife sanctuary).¹⁵ Under new leadership, the Sabah Forest Department appears to be embarking on a more inclusive approach to forest management, with collaboration and respect for indigenous rights an accepted principle.¹⁶

Several Orang Asal communities continue to map out their customary territories, either to support their claims to those lands, or to use these maps as a management tool for conserving and protecting these areas. The Penan community of Sarawak, however, has taken community mapping to a higher level. For the past 15 years, the community worked hard to complete 23 detailed land-use maps of their ancestral territories totalling 10,000 sq. km. On Nov 15, 2017, Penan leaders from Baram and Limbang presented these maps to the state government with the petition that this area be protected as a rainforest park to be called the Baram Heritage Forest (formerly known as the Penan Peace

Park).¹⁷ The planned park is to be managed by the local indigenous communities, with the support of the state government, which has yet to come fully onboard.

The new government has also brought some positive changes in the way indigenous leaders and institutions are given prominence and responsibility. For the first time, the Chief Justice is an Orang Asal - Justice Richard Malanjun from Sabah.¹⁸ His elevation to the judiciary's highest position has meant he is able to take proactive measures to make sure indigenous rights are internalized into the mindsets of the members of the judiciary by way of training, exposure and seminars. The Chief Justice has also called for elevating the role of the Native Court system so that it is on par with the civil courts.¹⁹

To this end, the assistant minister for Law and Native Affairs, a new ministry in the Sabah state government, who is also a prominent indigenous woman activist,²⁰ Jannie Lasimbang, has plans to elevate the role of the Native Court system and to systematically prepare the native chiefs for their new responsibilities and roles.

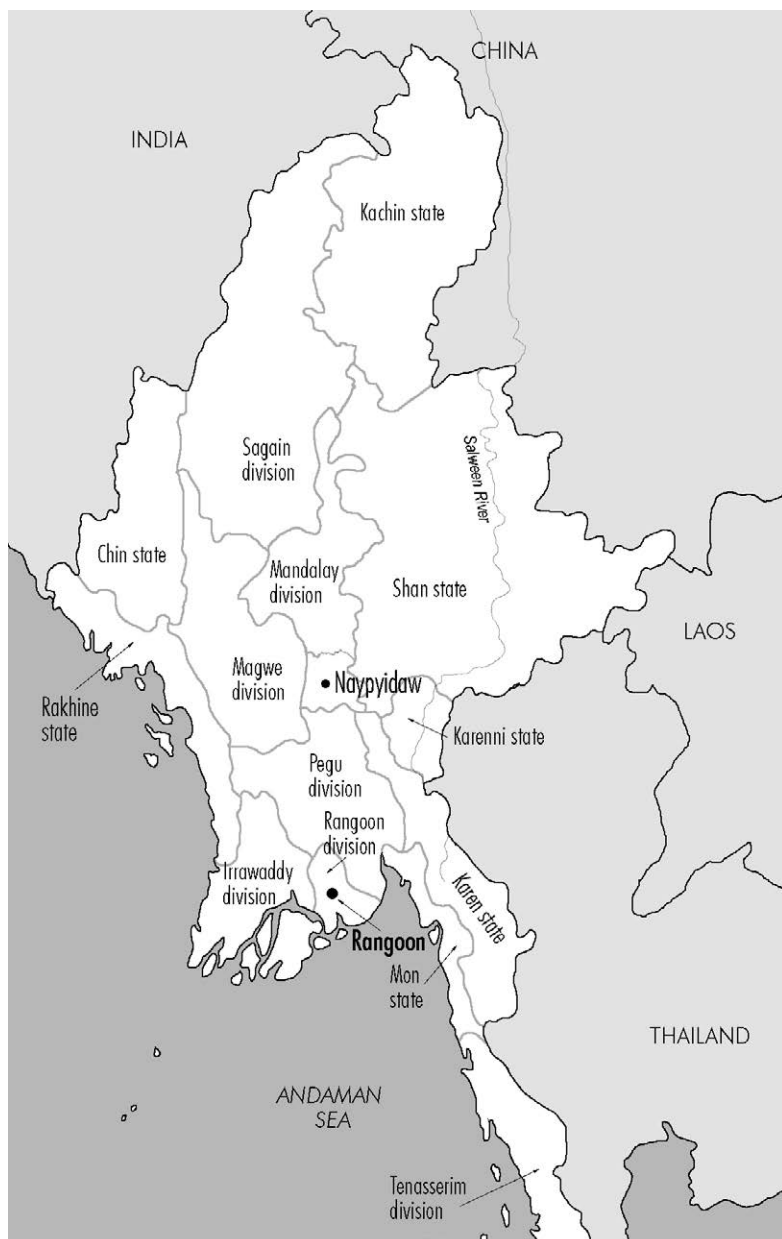
Notes and references

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2. The manifesto, entitled *Buku Harapan: Rebuilding our nation, fulfilling our hopes* is available at: <http://bit.ly/2Egspfr>
3. Op. cit. Promise 38 of the Pakatan Harapan manifesto, *Buku Harapan: Rebuilding our nation, Fulfilling our hopes*.
4. See SUHAKAM, "Report of the national inquiry into the land rights of indigenous peoples." Available at: <http://bit.ly/2Ec4Fc8>
5. Op. cit. Promise 38 of the Pakatan Harapan manifesto, *Buku Harapan: Rebuilding our nation, Fulfilling our hopes*.
6. Op. cit. Promise 48 of the Pakatan Harapan manifesto, *Buku Harapan: Rebuilding our nation, Fulfilling our hopes*.
7. While there was no formal announcement of this discontinuation, the writer is privy to the fact as he sat on the Task Force as an independent consultant.
8. Amnesty International has reported on the extent of risk faced by Indigenous peoples in Malaysia and the failures of the state to protect these human rights defenders from threats, intimidation and violence in their 2018 publication, "*The Forest is Our Heartbeat*": *The Struggle to Defend Indigenous Land in*

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MYANMAR



Myanmar's diverse population encompasses over 100 different ethnic groups. The Burmans make up an estimated 68% of Myanmar's 51.5 million people. The country is divided into seven Burman-dominated regions and seven ethnic states. The Burmese government refers to those groups generally considered to be indigenous peoples as "ethnic nationalities". This includes the Shan, Karen, Rakhine, Karenni, Chin, Kachin and Mon. However, there are more ethnic groups that are considered or see themselves as indigenous peoples, such as the Akha, Lisu, Lahu, Mru and many others. Myanmar has been ruled by a succession of Burman-dominated military regimes since the popularly-elected government was toppled in 1962. The general election held on 8 November 2015 saw Aung San Suu Kyi's National League for Democracy (NLD) unseat the Union Solidarity and Development Party (USDP) in a landslide.

The subsequent transfer of power took place peacefully and, after half a century of military-dominated rule, the new administration took office with a formal handover ceremony on 30 March 2016. The NLD, led by Aung San Suu Kyi as State Counsellor, has begun the process of "national reconciliation" in a delicate coexistence with the military, which retains 25% of unelected seats in the Hluttaw (House of Representatives), allowing it a veto over constitutional change. Myanmar voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, but has not signed the International 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), although it has thus far failed to consider many of the CEDAW and CRC committees' respective recommendations.

Criminalization of humanitarian aid distribution under national law

The continued application of archaic law to punish those exercising basic freedoms, and the inability and unwillingness of the elected civilian government to utilize the parliamentary majority to repeal or amend such laws continues to form a barrier to peaceful coexistence and the development of a genuine federal union of Myanmar's ethnic states and peoples. 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 and runs contrary to pre-election commitments to "revoke legislation that harms the freedom and security that people should have by right".¹

The *Unlawful Association Act*,² for example, sets out prison terms of up to three years for being either a member of, assisting or making contributions to, an "unlawful association" and was used during Myanmar's decades of military junta rule to detain those linked to rebel groups. The Tatmadaw (Burmese Military) has blocked aid to an estimated 100,000 Internally Displaced Persons (IDPs) since the ceasefire between the Kachin Independence Army (KIA) and the Tatmadaw collapsed in 2011. Despite filling major gaps in humanitarian assistance following government restrictions on humanitarian aid, Kachin civil society organizations have been targeted with this law.³

In June 2018, Church aid workers from the Kachin Baptist Convention, which acts as one of the largest aid distributors to displaced communities, were warned by Colonel Thura Myo Tin, the Kachin State Security and Border Affairs Minister, that arrests under this law would take place for travelling within KIA-controlled areas.⁴ Despite all border areas being located in KIA-controlled areas, the KBC was forced to cease its humanitarian operations.⁵ Later, in October, 15 members of the Kachin Baptist Convention were detained by the authorities under Article 17 of the *Unlawful Association Act* as they travelled back from an aid distribution mission.⁶

On 27 August 2018, the UN Fact-Finding Mission released findings that the Myanmar authorities "frequently and arbitrarily denied" humanitarian aid to civilians in Kachin State. Yanghee Lee noted in May that "wilful impediment of relief supplies" would likely amount to war crimes under international law.⁷

Criminalization of freedom of speech and freedom of assembly under national law

In December 2018, the Assistance Association for Political Prisoners (AAPP) confirmed that there were 327 individuals oppressed for their political activities in Myanmar, with many of the activists charged and sentenced under Sections 19 and 20 of the *Peaceful Assembly and Peaceful Procession Law* (PAPPL) and Article 500 of the Penal Code. These laws are used as tools to restrict the right to freedom of expression and, in December alone, 29 activists fell afoul of the PAPPL and Article 3 of the Penal Code.⁸

Designed to silence criticism of the military and its actions, the PAPPL requirements on consent to hold an assembly, and the Penal Code's criminalization of statements "likely to cause fear or alarm to the public, or to any section of the public, whereby any person may be induced to commit an offence against the State or against the public tranquillity"⁹ continue to be used extensively to detain peaceful protestors speaking out on matters of public interest.¹⁰

Again, rather than repealing or amending such policy, the 2018 PAPPL amendment bill, which will impose tougher restrictions, was passed in the Amyotha Hluttaw (Upper House of Parliament). Under the proposed amendments, organizers of peaceful assemblies will be required to submit information on their sources of funding for any assemblies, the content of all slogans and signs to be used in the protest, and must submit to a requirement to follow pre-defined local regulations and related agreements. Such provisions mean that protestors must come to an agreement with the local authorities and police which, if not upheld, will result in criminal charges.¹¹

In October, three Kachin activists, Nang Pu, Lum Zawng and Zau Jat, were arrested for leading a peaceful demonstration in violation of Article 19 of the PAPPL by calling for humanitarian assistance for Kachin IDPs caught in the crossfire between the KIA and Tatmadaw.¹² They were also sued by Lt. Col. Myo Min Oo for defaming the military, under Article 500 of the Penal Code. The three activists were subsequently sentenced to six months in prison and each fined 500,000 MMK (320 USD).¹³ Following their imprisonment, three more Kachin activists, Brang Mai, Seng Hkum Awng, and Sut Seng Htoi, were charged and sentenced under the PAPPL for protesting against the sentencing of their friends.

In response, national coalitions and networks such as the World Kachin Congress, the Karen Peace Support Network and international organizations such as Human Rights Watch and Burma Campaign UK called for the release of three Kachin protestors charged under the PAP-PL and called upon the civilian government to exert its executive power to address arbitrary arrests under the Penal Code.¹⁴

It is important to emphasize that this is not confined to areas of the country still suffering from ongoing conflict. In January 2018, five Karenni men were sentenced to 20-day prison terms for violating Article 19 of the PAPL by refusing a fine. The five men, members of the Union of Karenni State Youth (UKSY) and the Karenni State Farmers Union, were protesting at the State Government's and Parliament's silence over the alleged killings of three Karen National Progressive Party (KNPP) staff and one civilian two days earlier.¹⁵ It is alleged that the killings took place during a raid on the group's base in Loikaw, Kayah State on 20 December 2017.¹⁶

In July, 16 Karenni youth activists were sued under Sections 19 and 20 of the PAPPL and Section 505 of the Penal Code in connection with protests over the construction of a statue of General Aung Sang, as well as the distribution of pamphlets describing the history of Karenni State. Approximately 1,000 local Karenni marched against the planned statue on 3 July 2018. The march turned violent when police blocked the protestors from entering the park where the statue was to be erected.¹⁷ After meeting with the protestors, the state minister agreed to postpone the project and ordered local officials to consult their constituents in order to understand whether there was support for the statue before making a final decision. Despite the apparent reprieve, 16 people who were involved in organizing the protest were later informed that they were being sued by the Loikaw Township Administrator under the stated legislation.¹⁸

“Landless Criminals”: 2018 Amendments to the Virgin Fallow and Vacant Land Law

The beginning of 2018 saw the initiation of the much anticipated National Land Use Council, with a mandate to implement the aims, guidelines and basic principles of the National Land Use Policy (NLUP).¹⁹ The policy, described at the forum as a “living document”, completed two

years earlier, stipulates the creation of a National Land Use Council to coordinate the drafting of the *National Land Law*, which will seek to harmonize overlapping land policy. Following its inaugural meeting in April, the Council organized the multi-stakeholder National Land Use Forum for October.²⁰

Participants at the forum included: Ministers on the National Land Use Council; chief ministers of states and regions; lawmakers; ethnic representatives; academics; civil society groups; and international organizations. The discussion focused largely on a strengthening of land tenure rights, reflecting the first “basic principle” of the NLUP: “To legally recognize and protect legitimate land tenure rights of people, as recognized by the local community, with particular attention to vulnerable groups such as smallholder farmers, the poor, ethnic nationalities and women.” Examples discussed were the right to own property as an individual or joint titleholder, to divide property in case of divorce, and to recognize customary tenure and shifting cultivation.²¹

The long-awaited and much anticipated formation and subsequent panel meetings of the National Land Use Council were, however, overshadowed by the continued tinkering with existing policy, known and understood to not only fail to safeguard local communities but also to violate indigenous land rights. Amendments to the *Vacant Fallow and Virgin Land Law* (VFV) and the *Land Acquisition Act* sparked fresh campaigns by farmers’ groups, indigenous rights groups, internally displaced people and Ethnic Armed Organizations.²²

Amendments to the VFV law in 2018 introduced a six-month deadline for people who are eligible to register portions of land they may claim as private.²³ In doing so, the amendment continues to disregard known barriers in land registration, the ill-defined land areas stipulated under the law and to exasperate long-existing tensions related to perspectives on land. The policy also fails to take into account hundreds of thousands still displaced by both active conflicts and those under a ceasefire across the country.²⁴

Under the policy, the government estimates that 50 million acres of land will be categorized as VFV land, 75 % of which is located in Burma’s ethnic states. This will render indigenous communities illegal squatters as failure to register will result in illegal trespass and fines and imprisonment. The March deadline put forward was stated as being “a declaration of war”²⁵ on ethnic/indigenous communities in Myanmar.

In November, Land in Our Hands (LIOH) and the Myanmar Alliance

for Transparency and Accountability (MATA) launched a campaign to develop a federal land law and completely abolish the much-hated concept of VFV land in response to the amendments.²⁶ In addition to the direct impact on ethnic communities, the government's land law reform and implementation appears to contradict its commitments under the Nationwide Ceasefire Agreement (NCA) and relevant bilateral ceasefire arrangements that the NCA reaffirms, which require the government to coordinate with signatory EAOs on land management.²⁷

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The author and publisher of this article are well aware of the existing Myanmar/Burma name dispute; however, Myanmar is here used consistently to avoid confusion.

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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 yet come out. 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.

Indigenous peoples (IPs) in the Philippines experienced intensified violations of their human and collective rights in 2018 with the declaration of martial law in Mindanao and all-out war against so-called terrorists. A crackdown by the government against political dissenters followed the declaration of the New Peoples' Army (NPA) and Communist Party of the Philippines as terrorist organizations. The government of the Philippines unilaterally suspended peace talks with the National Democratic Front of the Philippines, continued its counter-insurgency program Oplan Kapayapaan, and implemented other policies that threaten peoples' rights.¹

2018 was another year of impunity in the country, where IPs and human rights defenders experienced unbridled attacks under the tyrannical rule of President Rodrigo Duterte. Indigenous human rights defenders were criminalized for protecting their rights to their lands and resources from plunder and destruction by so-called development projects, and for fighting against human rights violations and tyranny.

Terrorist tagging, illegal arrests and detention

IPs all over the country are facing a trend of criminalization, especially those who are vocal in criticizing government policies that undermine their democratic rights. The filing of trumped-up charges against IPs and human rights defenders was further systematized through the formation of the government's Inter-Agency Committee on Legal Action (IACLA) in October 2017. The Alliance for the Advancement of People's Rights (KARAPATAN) national alliance of human rights organizations claims that IACLA will legitimize the criminalization of dissent and serves as an instrument of political repression.²

The National Alliance of Indigenous Peoples Organizations in the Philippines (KATRIBU) documented 183 cases of illegal arrest of IPs since July 2016. Of this number, 42 remain in detention for crimes they did not commit.³ The trumped-up charges filed by the Armed Forces of the Philippines (AFP) against IPs include murder, frustrated murder and illegal possession of firearms and explosives. In Mindanao, Datu Jomorito Goaynon of the Higaonon people and chairperson of the Kalumbay Regional Lumad Organization was illegally arrested and detained in July, together with 12 participants of a project assessment meeting led by the Iglesia Filipina Independiente (IFI) Diocese of Libertad.⁴ Goaynon

is just one of many Lumad indigenous leaders in Mindanao who are facing trumped-up charges.

In the Cordillera region, Rachel Mariano, a health worker, and four other women human rights defenders are facing trumped-up charges of 14 counts of frustrated and attempted homicide. In February 2018, they presented themselves to the courts and posted bail to prove their innocence. In September 2018, Mariano was again charged with another set of trumped-up charges of murder and eight cases of frustrated murder, alleging that she is a member of the NPA. Because a case of murder is non-bailable, Mariano was detained when she submitted herself to the court and she remains in jail as of this writing.⁵ Three other Cordillera IPs were illegally arrested and detained in July 2018. Trumped-up charges of multiple murder were filed against siblings Edmond and Saturnino Dazon, linking them to the encounter between the AFP and the NPA where some AFP soldiers were killed, which transpired in the area five days before their arrest.⁶ In Abra province, Cordillera Peoples Alliance Abra (CPA-Abra) member Ceasario Baluga was illegally arrested and detained during the conduct of military operations.⁷

The terrorist tagging of indigenous human rights defenders and activists has also intensified. These were done through the circulation of text messages, social media posts and distribution and posting of flyers with names of activists tagged as terrorists. Worse, indigenous human rights defenders are outrightly being labeled terrorist by the government through the judicial court.

Department of Justice (DOJ) terrorist proscription petition

In February 2018, the DOJ filed a petition in the Regional Trial Court Branch 19 in Manila, which seeks to proscribe the NPA and the Communist Party of the Philippines (CPP) as terrorist organizations. It listed 649 names of alleged NPA and CPP officers and members, including at least 31 indigenous leaders. Named in the list are UN Special Rapporteur on the rights of indigenous peoples Vicky Tauli-Corpuz, the Co-Convener of the UN IP Major Group on the UN Sustainable Development Goals Joan Carling, former member of the UN Expert Mechanism on the Rights of IPs Atty Jose Molintas, and leaders of the Cordillera Peoples Alliance. The petition is pursuant to the *Human Security Act of*

2007. Under this law, once organizations are judicially considered as terrorists, warrantless arrests, surveillance and freezing of assets are legally allowed against a person who is merely suspected of committing terrorist acts or conspiring to commit terrorist acts.

Philippine IPs criticized the petition as malicious and baseless, with intent to vilify, harass and intimidate the people struggling for their democratic rights and indigenous communities fighting for their rights to their ancestral lands and self-determination.⁸ It was widely criticized and condemned by the international community, including UN agencies and government bodies. In a statement, US Senator Patrick Leahy said, *“The problem with this ‘terrorist list’ is that the government is apparently using it to persecute people who have nothing to do with terrorism, but who have engaged in legitimate, peaceful dissent and protests in opposition to government policies that threaten their way of life.”*⁹

Vicky Tauli-Corpuz, Jose Molintas and two others listed in the petition were cleared in August 2018. On 3 January 2019, the DOJ amended its petition and trimmed down its list to only eight names, which the agency wants to declare as terrorists.¹⁰ However, DOJ Secretary Menardo Guevarra said that the dropping of names of several individuals in the amended petition does not mean that they are no longer linked to terrorism cases in the country.¹¹

Extrajudicial killings

Extrajudicial killings remain rampant in the country. In July 2018, Global Witness reported that the Philippines is the most dangerous country for environmental defenders in Asia in 2017, with 47 defenders killed – the highest number ever documented in an Asian country.¹² KATRIBU meanwhile documented at least 51 IPs killed from July 2016 to October 2018.¹³ Most of the victims were accused of being members or supporters of the NPA. These are on top of the victims of Duterte’s infamous War on Drugs, which has reportedly claimed the lives of more than 20,000 people and yet the problem of illegal drugs persists.

Many of the victims of extrajudicial killings among IPs were leaders and members of communities and grassroots organizations who protested destructive projects such as large-scale gold mining, agribusiness plantations, mega-dams and energy-generation projects. Ricardo Mayumi of the Ifugao Peasant Movement, who was shot dead on 2

March 2018, was known for leading the opposition against the hydro-power project of Santa Clara Power Corporation in his home town in Ifugao province.¹⁴ ASEAN Members of Parliament condemned this killing in their 12 March 2018 statement, which stated that the killing highlights the increasingly hostile climate faced by activists in the Philippines.¹⁵ On 15 September 2018, 23-year old Rex Hangadon was killed in Caraga Region allegedly by members of the Philippine Army's 23rd Infantry Battalion.¹⁶

Martial law and forced evacuation

In December 2018, the congress has, for the third time, approved the request of President Duterte for the extension of martial law in Mindanao up to the end of 2019. Mindanao has been under martial law since 23 May 2017, during which time KARAPATAN documented at least 346,940 people affected by bombings of communities by the military.¹⁷ This is in addition to the cases of extrajudicial killings, illegal arrests and detention, and the continuing attacks against schools set-up by the Lumad IPs in partnership with non-governmental organizations.

Under Duterte's martial law in Mindanao, bombings, military encampment of communities, forced evacuations, mass illegal arrest and detention, harassment and intimidation are continuously committed with impunity. Twenty-four out of the 51 victims of extrajudicial killings of IPs were committed under martial law.¹⁸

Lumad IPs continued to forcibly evacuate their communities due to militarization, military operations and human rights violations committed by the Philippine army and paramilitary groups. Under the Duterte administration, KATRIBU documented 67 incidents of forced evacuation of communities, affecting a total of 38,841 individuals belonging to IPs.¹⁹

In July 2018, 1,600 residents of Lumad communities in Lianga and San Agustin, Surigao del Sur, were forcibly evacuated due to military operations in their communities. At the evacuation center, they suffered from lack of water and tight security measures by the military who were reportedly pressuring them to return to their homes despite their anxiety and fear for their safety. Members of the Magahat-Bagani paramilitary group, which was implicated in extrajudicial killings of IPs, were also stationed in front of the evacuation center and, through a public ad-

dress system, accused the evacuees of being supporters of the NPA.²⁰ The Andap Valley, which is occupied by the evacuees, is where five coal mining companies are reportedly set to operate. The valley is among the areas that President Duterte has said he wanted to open up to investments. Hence, the Lumad IPs believe that the purpose of militarization in their ancestral lands is to silence any opposition against coal mining projects.

Mining and energy projects in indigenous lands

Indigenous territories remain a target for destruction and plunder by the state and private corporations through large-scale mining, energy projects, agribusiness plantations and infrastructures. Under Duterte's "Build! Build! Build!" economic development program, at least 29 contract agreements between the Philippine government and the government of China have been signed in November 2018 alone.²¹ These include the Chico River Pump Irrigation Project in the provinces of Kalinga and Cagayan, and the New Centennial River Dam Project or Kaliwa Dam in the provinces of Rizal and Quezon. Both projects lack the free, prior and informed consent (FPIC) of the affected indigenous communities.

Both projects will also favor China, including high interest rates on the loans (US \$62 million for the Chico Project and at most \$234 million for the Kaliwa Dam Project), which will be an added burden that the Filipino masses will carry on their backs. In 2018, the government passed and implemented the *Tax Reform for Acceleration and Inclusion* (TRAIN) law, which is aimed at raising money for projects under the "Build! Build! Build!" program. Combined with high inflation rates, the TRAIN law resulted in soaring prices of basic goods and commodities that impact greatly on the poor and marginalized IPs.

Under the regime of President Duterte, the construction of mega-dam projects in indigenous territories continue to threaten indigenous lands and resources. These include the Agus-Pulangi Dams²², Jallaur Dam²³, Balog-Balog Dam²⁴, Alimit Hydro Complex²⁵, Karayan Dam²⁶ and other hydropower projects.

Coal Operating Contracts issued by the Department of Energy are encroaching hundreds of thousands of hectares of ancestral lands in the Andap Valley Complex and several provinces in Mindanao.²⁷

On large-scale mining, at present there are 230 out of 447 approved mining applications that are located in ancestral territories. These cover 542,245 hectares of ancestral lands, comprising 72% of the total land area covered by all of the approved mining applications in the country.²⁸ In September 2018, at least 97 people died in Benguet Province after being buried alive in massive landslides when typhoon Ompong hit northern Philippines. Local residents believe that the large-scale underground mining operations of Benguet Corporation since 1903 have aggravated the instability of the soil thereby causing massive landslides during typhoon season.²⁹

Indigenous peoples' response

IPs, joined by various civil society groups, have staged numerous protests condemning the Duterte regime's attacks against them. They also called for the government to resume its peace talks with the National Democratic Front of the Philippines to address the roots of the armed conflict.

In May 2018, representatives of IPs in different regions gathered for a National Consultation with UNSR Vicky Tauli-Corpuz. The event included documentation of IP rights violations, followed by an online dialogue and submission of cases to the UN Special Rapporteur.³⁰

Representatives of KATRIBU, CPA and Lumad IP participated in the International Peoples Tribunal (IPT) on the Philippines, which was held in Belgium in September 2018. They provided testimonies on community bombings, criminalization and other human rights violations perpetrated by state security forces, and the economic issues related to these, such as mining and dam projects. The IPT concluded that the Duterte regime is guilty of gross violations of human rights, international humanitarian law and self-determination.³¹

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TAIWAN



The officially-recognized indigenous population of Taiwan numbers 565,043 people (2018), or 2.39% of the total population. Fourteen distinct indigenous peoples are officially recognized. In addition, there are at least nine Ping Pu ("plains or lowland") 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, nearly half of the indigenous population has migrated to live in urban areas.

The main challenges facing indigenous peoples in Taiwan continue to be rapidly disappearing cultures and languages, low social status and very little political or economic influence. The Council of Indigenous Peoples (CIP) is the state agency responsible for indigenous peoples. A number of national laws protect their rights, including the Constitutional

Amendments (2000) on indigenous representation in the Legislative Assembly, protection of language and culture and political participation; 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 Romanized script. Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of laws guaranteeing the rights of indigenous peoples, have stymied progress towards self-governance.

Since Taiwan is not a member of the United Nations it has not been able to vote on the UN Declaration on the Rights of Indigenous Peoples, nor to consider ratifying ILO Convention 169.

Endangered indigenous language teaching

The Government of Taiwan launched a program for the "Revitalization of Endangered Indigenous Languages" in April 2018, which is administered by the Council of Indigenous Peoples (CIP) in collaboration with seven universities located across Taiwan. With initial CIP funding of NT\$30 million (around one million USD) for 2018, it provides financial and educational resources, and other assistance to take the language classes to regional indigenous populations.¹ Classes will be opened in the ten listed Indigenous Peoples areas. CIP Minister Icyang Parod said that, for Taiwan's main indigenous tribes, most people aged 60 or over are still able to speak their language of origin well but proficiency among people aged 40-60 had deteriorated, and the proficiency of people under 40 was very worrying.² The national program was therefore set up to specifically save ten of Taiwan's indigenous languages that are deemed endangered and at risk of dying out due to the dwindling population of elders and mother-tongue speakers. The ten languages identified are Thao, Puyuma, Sakizaya, Kavalan, Saisiyat, Kanakanvu and Hla'alua, along with three sub-branches of the Rukai

language (whose people inhabit the high mountains in southern Taiwan): Mantauran-Rukai, Maga-Rukai, and Tona-Rukai.

The program institutes a “mentoring system” that is meant to ensure one-to-one tutoring with a certified teacher. The program is intended to be immersive and provide full-time work, with the program starting in seven universities in July (including National Chengchi University (NCCU) in Taipei City, National Dong Hwa University, in Hualien County and National Chi Nan University, in Puli, Nantou County). Most of the teachers selected are mother-tongue speakers who are of an advanced age although some are certified teachers or indigenous language specialists. Teachers receive a monthly salary for their work, while CIP also provides financial incentives to learn by also paying a monthly salary to students signed up to the program. Officials hope to ensure the success of the program through the “mentoring system” and full-time program, ideally pairing an elderly speaker with a student of younger age from the community. In this way, when they complete the program, the student can become a “seed teacher” in the future meaning that the teaching of indigenous language can become his or her main career thus preserving the language and passing it on to the new generation in their own area. Funding has thus far been guaranteed for two years.

Activists and linguistic experts agree that the project is essential to rescuing the ten IP languages, but they are seriously concerned that the program ignores the Pingpu peoples and their three Pingpu languages – Pazeh, Kaxabu, and Siraya. These are considered the most critically endangered and are at risk of extinction within a decade.³

Two IP languages for Wiki

The Center for Aboriginal Studies at National Cheng Chi University (NCCU) of Taipei City has presented the results of its support to Taiwan's incubator programs, which should join the worldwide “Wikimedia Indigenous Languages” project (WIL). In October 2018, researchers at the Center said that revitalization efforts and related preparatory work had borne fruit and they expected Taiwan's Atayal and Sakizaya languages to be added to the WIL project in 2019. They should have their own Wikipedia pages and information listed in their respective writing systems.⁴

Work on Taiwan's indigenous language editions of Wikipedia was

started in 2014 by Taiwan's Ministry of Education. The NCCU's Center for Aboriginal Studies carried out the project, with assistance from Wikimedia Taiwan. The Center's Professor Huang Chi-Ping said the incubator programs had been set in motion for all 16 of Taiwan's officially-recognized indigenous groups but that Truku and Seediq had been combined, making it 15. The groundwork and preparation for Tayal and Sakizaya are ready for final review by Wikipedia's language committee, to ensure fulfilment of the criteria and required conditions. When approved, they will become the first two Taiwanese indigenous languages to have their own Wikipedia platform. It has been a very difficult and slow process. The program requires input and engagement with nearly all speakers of each language. This has been a challenge because most of the older generations who can contribute are not well-versed in the use of computers and Internet technology. Nor are these groups often familiar with Wiki's WIL incubator program. Professor Huang notes that, despite these challenges, Sakizaya speakers and editors have contributed over 3,300 entries and over one million words through the process.⁵

Many of those who participate have taken on the task as their life's mission. They cherish the opportunity to preserve their mother tongue, and the younger generation has used the work to learn their native language, and to write up articles and digitally document it as a way of modernizing the language from the past oral tradition and preserving their indigenous culture.

Politicians rebuff Pingpu IP recognition

Pingpu indigenous rights activists encountered major setbacks in 2018 when politicians in the Parliament and CIP continued to stall legal procedures regarding the recognition of Pingpu groups as "indigenous peoples" of Taiwan. Activists and local Pingpu organizations had expected the central government and legislators to finalize the process, and to approve the amendments to the existing law, the "Status Act for Indigenous Peoples" during the last year (Indigenous World 2018). They had hoped for a successful conclusion to their decades-long campaign to gain recognition as "Pingpu indigenous peoples". Tied to this campaign was their hope for inclusion in the CIP, as equal members of Taiwan's recognized IP groups. Pingpu activists and community leaders

actively participated in the deliberations and hearings held in the legislature in April⁶ and May as they urged legislators to pass the amendments in 2018. They insisted on recognition as full-status indigenous peoples, with legal protection for their indigenous rights, while rejecting other options that offered only partial recognition, or to have IP status in name only but without any legal protection of their indigenous rights.

They were surprised that the process was derailed yet again, with two unexpected obstructions from politicians. The first statement came in June from the CIP, when officials announced that if IP recognition obtained approval in the legislature then Pingpu groups would still not receive full indigenous rights.⁷ The CIP said that in order to have indigenous rights, and to receive the range of welfare and educational support programs guaranteed under them, the decision would rely on each Pingpu peoples' current level in their original language and culture. For those Pingpu peoples who have lost most or all of their language and culture, this means that they cannot have indigenous rights and are not eligible for CIP subsidies and support programs.

The second obstruction came from the legislature in November when opposition Kuomintang Party (Chinese Nationalist Party (KMT)) dragged out and delayed the process through to the end of 2018. KMT's Indigenous legislators said that they opposed the amendments due to concerns that, once granted the status, Pingpu peoples would take much-needed government funding for support programs and resources away from the 16 currently recognized IP groups.⁸ They also raised concerns about the "broad conditions" proposed regarding legal recognition of a person as belonging to a particular Pingpu community. They worried that Pingpu population numbers could be too large under these general definitions, which would dilute the indigenous rights and privileges of the current 16 IP groups.

As a result of these concerns, KMT's indigenous legislators have stalled the passage of the amendments. The amendments are now bogged down in the legislature's cross-party negotiation process, which is resulting in the exclusion of the Pingpu peoples from CIP and other government agencies. This prevents them from receiving IP status, and continues to deny their indigenous rights. The process is ongoing.

KMT politicians have said that they represent the majority opinion of the officially recognized IP groups and CIP officials. They assert that there is strong opposition to the idea of Pingpu peoples gaining recog-

dition and, as a result, exercising their indigenous rights. As a suggested solution, KMT offered to establish a "Pingpu Peoples Affairs Council", a new government agency outside of CIP. Doing so would mean Taiwan would never recognize Pingpu groups as IPs, and that the Pingpu would have no indigenous rights.⁹

Thao people's traditional territory

Thao people living around the Sun Moon Lake of central Taiwan have been caught up in political disputes between CIP and Nantou County Government over land and natural resources. Thao activists and community leaders wanted to assert their traditional domain even before the arrival of Han Chinese settlers. After completing studies based on mapping and field investigation, verification of historic documents and written records, on 11 June the CIP presented the first phase of delineation of the traditional territories for the Thao and Atayal peoples.¹⁰

In CIP's document, some 8,000 hectares, including most of Nantou County's Yuchih Township and parts of Shueili Township and Renai Township, have been delineated as belonging to the Thao people's traditional territory. This delineation means that the free, prior and informed consent (FPIC) of the Thao people must be sought through their traditional governance - Council of Elders and community representatives - before going ahead with economic, tourism or land development projects or environmental and wildlife conservation programs.

The day after the announcement, on 12 June, the Nantou County Government moved to approve the EIA (environmental impact assessment) report¹¹ and give the go-ahead for a BOT (build-operate-transfer) project to build a major tourist resort hotel on "Peacock Garden" park on the shores of Sun Moon Lake, which is on the Thao's traditional land.

Thao activists had fought against the resort for several years because it infringes on their traditional territory and land rights. The activists accused some Nantou County Government officials of colluding with the resort development company to profit from the project. Government officials have tried to hide details of the project from outside evaluation, the Thao peoples said. The Thao peoples also opposed it because, with increased tourism activities and added pressure on local resources, the resort will result in environmental damage and more pollution of Sun Moon Lake. As of today, the resort has not materialized due

to the ongoing protests.

Led by Thao elder, Panu Kapamumu, the Thao community has fought this and other projects all the way, refusing to accept the EIA, and appealing to the public for support over the years. The political battle escalated in August when Lin Ming-chen, local governor and head of Nantou County Government of KMT party, announced that under his administration the County would not accept the CIP's delineation of Thao people's traditional territory, saying he had the majority support of people in these townships.¹² Lin said CIP did not consult with his local government, and that the delineation of indigenous lands would impede road improvement, public infrastructure construction and economic development projects, and that the dispute would lead to open conflict between the Thao people and non-indigenous populations.

During the political dispute, with support from other indigenous groups, Thao activists released statements calling on the authorities to uphold indigenous peoples' rights to their traditional territory and natural resources and pointed out that, throughout history, the Thao people had lost land and much of their rights due to encroachment by Han Chinese settlers. They demanded that the local government comply with Taiwan's *"Indigenous Peoples Basic Act"*.¹³ Meanwhile, a group of protesters continued to hold out at a park in downtown Taipei City against CIP's announced guidelines on restoring traditional territory to indigenous communities issued in 2017 (Indigenous World 2018). Officials of Taipei City authority issued eviction orders for them to vacate the protest location several times over the last year, which were enforced by police and city crews.¹⁴ The protest, which was led by indigenous activists Panay Kusui and Nabu Husungan Istanda, nevertheless kept returning to the same site to continue their activities. In their protest, they are arguing that CIP has not gone far enough to return all the land lost to Han Chinese settlers and government agencies over the past centuries.

Thao indigenous human rights defender

Thao elder, Panu Kapamumu, has been recognized as being among the foremost indigenous human rights defenders in Taiwan. He has led the fight against incursions onto the Thao traditional territory around Sun Moon Lake by land developers, tourist resort businesses, and Nantou County Government in past years. Elder Panu rallied the Thao people in

the sustained campaign against the construction of a tourist resort at "Peacock Garden" park, and organized protest rallies at government offices, holding press conference to publicize their cause.¹⁵ In his statement on the project, Elder Panu spoke out against it:

*We are fighting for our traditional territory and to protect our Thao homeland. Some government agencies and officials are working with businesses for profiteering to take our land, violate our indigenous rights, and even had damaged Thao's sacred sites, and also have polluted the water and natural resources which our people depend on. [...] Without consultation and our consent, we are totally opposed to any further development on our land, and I will use my life to stop these new projects.*¹⁶

Notes and references

1. See Council of Indigenous Peoples website announcement, 24 April. "Project for Revitalization of Endangered Indigenous Languages", at: <http://bit.ly/2T9FUqI>
2. See United Daily News, "CIP set up mentor system for teaching endangered indigenous languages", at: <http://bit.ly/2T8iNNm>
3. See Economic Daily News, "2018 Siraya Cultural Festival, with result of mother tongue restoration", at: <http://bit.ly/2T80EPE>
4. See United Daily News, "Taiwan indigenous languages to get own Wikipedia sites next year", at: <http://bit.ly/2TgmBME>
5. See United Daily News, "Sakizaya community young and old mobilized to produce language materials", at: <http://bit.ly/2T80KH0>
6. See Taiwan Central News Agency, "CIP officials oppose granting Pingpu indigenous status, suggest for separate law amendment regarding indigenous recognition", 12 April, at: <http://bit.ly/2T82tMu>
7. See United Daily News, "CIP says subsidy to Pingpu groups to base on level of cultural preservation", 10 June, at: <http://bit.ly/2TaLIWr>
8. See Central News Agency, "No agreement on granting indigenous status to Pingpu groups, still require negotiation between political parties", Dec 24, at: <http://bit.ly/2T8LLfP>
9. See Nihao's It Going? "Why Taiwanese aboriginals vote Blue (KMT) and not Green (DPP)?" at: <http://bit.ly/2T90EPd>
10. See Liberty Times, "CIP announce traditional territory delineation, will protect indigenous rights", 11 June, at: <http://bit.ly/2T917AX>
11. See The News Lens, "BOT project on Peacock Garden still passes EIA, after CIP

- announcement*”, 12 June, at: <http://bit.ly/2TbklR4>
12. See Liberty Times, “Lin Ming-chen overturns CIP decision on Thao traditional territory”, 15 August, at: <http://bit.ly/2T8mtyx>
 13. See Taipei Times, “Concessions deal blow to Aboriginal land rights: group”, Aug 14, at: <http://bit.ly/2T8FQr9>
 14. See Newtalk, “Taipei City Government to tear down protester site after 400 days”, 31 March, at: <http://bit.ly/2Tcl5d5>
 15. See United Daily News, “Thao people demand revoke BOT project at Sun Moon Lake Peacock Garden”, 12 June, at: <http://bit.ly/2Tcl9cP>
 16. See Civil Media@Taiwan, “Local government force through EIA on BOT resort project at Peacock Garden, Sun Moon Lake, on Thao People’s Traditional Territory”, 12 June, <http://bit.ly/2T2A5vl>

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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.¹

The estimated indigenous population in Thailand is around 5 million people, which accounts for 7.2% of the total population.² According to the Department of Social Development and Welfare (2002), the total of the officially recognised “hill-tribe” population is 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 decolonization, 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 Chaoley³ and Karen, on 2 June and 3 August respectively.

Situation of indigenous peoples in Thailand

Key problems faced by indigenous peoples in Thailand over the past few decades centre around three main issues, namely: stereotyping and discrimination; rights to land, forests and resources; and rights to traditional occupation, livelihood and food security.

Stereotyping and discrimination against indigenous peoples

Derogatory terms for indigenous peoples, including Chao-Khao, are still used by the Thai. The Mani, a hunter-gatherer group in the south, are often referred to by the derogatory terms Sakai and Ngaw Pa (literally meaning “slave” or “savage”). The Moken, Moklen and Urak-lawoy are called “Chaoley” or “Sea gypsies”, which has negative connotations. In opposition to these negative connotations, indigenous organisations and indigenous rights advocacy groups began to promote the term “Chon phao phuen mueang” as the translation of “indigenous peoples” over ten years ago.

While many laws, policies and programmes targeting indigenous peoples still carry misperceptions and prejudices, in recent years there have been some positive developments, such as the use of the neutral term “Chon Chatiphan” or “ethnic group” within these policies. Unfortunately, discriminatory attitudes and actions are still prevalent among government officials and the general public.

Rights to land, forests and resources

Many indigenous peoples live and have been dependent upon the forest and natural resources for their survival for hundreds of years. This right has never been recognised by the government. At the same time, the declaration of protected areas and imposition of conservation laws overlapping indigenous communities’ lands have posed grave concerns to indigenous communities and sometimes led to conflict and violence.⁴ Indigenous peoples’ and local communities’ struggles over land rights and forest management have led affected communities to form different networks, e.g. the Northern Farmers’ Network (NFN), the As-

sembly of the Poor (AoP), the Assembly of Indigenous and Tribal People in Thailand (AITPT) and the Network of Indigenous Peoples in Thailand (NIPT).⁵

The communities' right to their lands, forests and resources was clearly stipulated in Chapter 3, Section 66 of the 2007 Thai Constitution. Thailand's various, mostly older, forestry laws and cabinet resolutions are, however, major obstacles to achieving this right, as most of these laws came into force before the passing of the 1997, 2007 and 2016 constitutions. They classified the areas inhabited by indigenous peoples as being parts of national parks, no-hunting areas or wildlife sanctuaries. The state has used these laws as tools to establish control over forests and the country's natural resources while disenfranchising indigenous and other communities, as they have no title deeds to prove their ownership over their land and forests. For instance, according to the *Land Law*, all land that does not have a title is owned by the state and so when the state claims this land, indigenous peoples suddenly become encroachers and violators of the law.⁶

Many communities, especially in the mountainous, upper Northern provinces and in the west of Thailand, thus live in constant fear of being arrested or relocated. The nature of the problem is well illustrated by the case of Wang Mai village in Lampang Province, and the case of Bang Kloi Bon in Kaeng Krachan National Park (KKNP), Phetchaburi Province.

In early 2008, villagers from Wang Mai village in Wang Neua District, Lampang Province, were told by park officials to discontinue their yearly return to areas they had been evicted from years earlier because of the 1994 relocation policy. They would return to these areas every year to harvest their former fruit and coffee trees. On 29 July 2008, these trees were cut down by the park officials and their allies (police officers, soldiers and local administrative organisation officers), resulting in the loss of land for food production as well as income for the families. The villagers submitted this case to the National Human Rights Commission (NHRC). The case was investigated and the NHRC reported that villagers' rights has been violated, requesting that the park officials redress this problem. So far, however, no action has been taken.

Kaeng Krachan eviction case

As mentioned in previous Yearbooks, in 2010-2011, Karen communities

living in Bang Kloi Bon, an administrative area of Kaeng Khachan District, Phetchaburi Province, and in KKNP, were forced to move from their traditional homelands to live in Bang Kloi Lang, the designated relocation site. Their houses and rice barns were destroyed and burned down by the park officials and military. This has had serious consequences for their lives and livelihoods (for more detail see *The Indigenous World 2011*).

In response to this, the affected Karen and their supporters have jointly voiced their concerns at national and international fora. At a national level, the affected villagers entrusted the Lawyers' Council of Thailand to take a legal case against the KKNP officers both at the Central Administrative Court and the Civil Court, on charges of human rights violations and causing damage to personal property. Both courts took up their case.

On 7 September 2016, the Central Administrative Court ruled that the park authorities were not breaking the law by burning the Karen people's properties and forcefully evicting them from KKNP in 2011. The court dismissed all the demands of the Karen, who had filed the case in 2014, including compensation for the loss of their properties. The court ordered the Department to pay compensation of 10,000 Baht (approx. USD 287) to each of the six Karen plaintiffs, as opposed to their initial demands of 100,000 Baht each.⁷ The Department has refused to pay this compensation and pledged to appeal against it.⁸

The plaintiffs were also not satisfied with this verdict. They therefore decided to launch an appeal with the Supreme Administrative Court on 5 October 2016.⁹ On 12 June 2018, the judges overturned the Central Administrative Court's decision. In its verdict, the court stated that although the national park officials had the authority to remove the properties, which encroached on the forestland, they could not burn down people's properties without prior notice and so this operation was in violation of Article 22 of the *National Park Act*. The court ordered the National Park Office to compensate the affected families with 50,000 Baht each.

This Supreme Administrative Court decision has opened up more space for the promotion of community rights. Firstly, it recognised Karen people as the original people living in that area. Secondly, it referred to the cabinet resolution of 3 August 2010 to restore the traditional livelihoods of the Karen. This will help publicise the cabinet resolution to be legally used against the *Forestry Law*.¹⁰

Karen spiritual leader Ko-ei Meemi's request to return to his birthplace at Bangkloy Bon was denied because he did not have legal land ownership documents issued by the government¹¹

New body established to solve land issues in Thailand

With regard to land rights, the current policy initiated under the National Council for Peace and Order (NCPO) to resolve the longstanding land problems in forest areas was adopted by the cabinet on 26 November 2018. This policy is under the responsibility of a newly-established body - the National Land Policy Committee (NLPC). This body has been tasked to resolve problems both in national forest reserves and protected areas. Criticism against such action includes complaints that it does not recognise community or indigenous peoples' rights, that it lacks their participation, and that it is a state-centric and temporary solution.

In addition, state conservation policy and measures used to resolve the problem have contributed to gross human rights violations against indigenous peoples, both on an individual and a community level. One of the most prominent cases is the forced disappearance of Karen activist Pholachi Rakchongcharoen who is known as "Billy". He was arrested on charges of possessing wild honey and was taken into custody by park officials under Chaiwat Limlikhit-aksorn on 17 April 2014, after which he went missing. He was one of those protesting against the eviction of Karen people from Bangkloi Bon and Jai Paen Din. In addition, he was a primary witness to the case. His case is currently being investigated by the Department of Special Inspection (DSI) but progress has been very slow.

Rights to traditional occupation, livelihood and food security

According to Section 43 of the 2016 Thai Constitution, all Thai people - including indigenous people - have the right to their traditional occupation or livelihood practices. In fact, such rights have never been realised on the ground, particularly in marine and forest areas. The peoples who live in these areas are, for example, the Chaoley people of the south of

Thailand. Their traditional way of life has been totally wiped out as many of the areas where they used to fish no longer exist or fishing has become prohibited. Many areas are now occupied by hotels, resorts and private houses. Further, more marine protected areas have now been declared, covering a larger area of the sea and overlapping with Chaoley traditional fishing areas. To survive, the Chaoley must fish further from the coast, in the deep-sea areas, which they are not accustomed to. Some get decompression sickness and become paralysed or semi-paralysed. Some have even lost their lives.¹²

Another example is the practice of shifting/rotational agriculture in the uplands, which has resulted in some villagers being arrested by state officials while preparing their rice fields. Despite scientific studies proving the opposite,¹³ villagers are now being penalised for “causing deforestation and a rise in temperature”¹⁴ Making specific reference to climate change has added a new dimension to the nature of the so-called “crime”.

These actions have threatened indigenous peoples’ food security and increased their poverty. It has also resulted in deep-seated conflicts with the authorities and many have been forced to leave their homelands or have been relocated to distant places, imposing an alien lifestyle on them. Some have migrated, mostly to urban areas in search of employment. Many are employed as construction workers, masseurs, or are doing menial jobs in restaurants and petrol stations, selling flower garlands at the road intersections or soybean milk on the roadside. Some have also joined the sex industry. Their lifestyles are consequently being transformed.

Indigenous peoples’ movements

Since 1992, indigenous peoples in Thailand have become more active in monitoring, documenting and reporting human rights violations, such as the evictions of indigenous peoples from Doiluang National Park (covering three provinces – Phayao, Chiang Rai and Lampang) in 1994 and 2008. Another example is the staging of a protest against the Master Plan for Highland Communities, Environmental Development and Narcotic Plant Control in 2002. This was undertaken under the umbrella of the Coordination Centre for Non-governmental Organisations (CON-

TO), the Assembly of Indigenous and Tribal Peoples in Thailand (AITT) and the Network of Indigenous Peoples in Thailand (NIPT). In 2015, a draft law on the National Council of Indigenous People in Thailand was finalised and forwarded to Parliament for consideration. The process is still ongoing.

Notes and references

1. Ten groups are sometimes mentioned, i.e. the Palaung are also included in some official documents. The directory of ethnic communities of 20 northern and western provinces of the Department of Social Development and Welfare of 2002 also includes the Mlabri and Padong.
2. From the Council of Indigenous Peoples in Thailand (CIPT)'s report.
3. Composed of Moken, Moklen and Urak-rawoy.
4. For example, the conflict over resource use between lowland and highland communities in Chomthong district area in 1998.
5. Interview Mr. Sakda Saenmi, the NIPT Coordinator 12 January 2019.
6. For example, NCPO Order 64/2557 or, as it is known, the government land reclaim policy.
7. See Thai PBS news at <http://bit.ly/2lyNBTc>
8. See The Nation news at <http://bit.ly/2IEWRVS>
9. See Prachatai at <http://bit.ly/2IBFkht>
10. From the viewpoint of a lawyer from the Lawyer Council in Thailand.
11. See IPHRD Net, "Thailand: Elder Karen Ko-i Mimi dies, aged 107" at <http://bit.ly/2IG3RSE>
12. From the survey jointly conducted by Indigenous Peoples' Foundation for Education and Environment and its partner organisations in 2017-2018, nine of Moken people experienced water decompression sickness. Two out of the nine died. The rest remain semi-paralysed.
13. FAO, IWGIA and AIPP. Shifting Cultivation Livelihood and Food Security: New and Old Challenges for Indigenous Peoples in Asia. 2015
14. See Asia Indigenous Peoples Pact (AIPP), "Global Warming Scapegoat: A New Punishment Measure Imposed on Indigenous Peoples for Practicing their Sustainable Traditional Livelihood Activities" at <http://bit.ly/2IDQ3Ij>

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VIETNAM



As a multi-ethnic country, Vietnam has 54 recognised ethnic groups, 53 of which are Ethnic Minority (EM) groups. These groups comprise an estimated 14 million people or around 14.6% of the country's total population of some 98 million. Each EM group has its own distinct culture and traditions. The term "ethnic minorities" is often used interchangeably with "indigenous peoples" in Vietnam. All EM have Vietnamese citizenship, and Vietnam's Constitution recognises that all people have equal rights. Among EM communities, there is a higher proportion of peoples living in poverty. While the national poverty rate is 5.35%, it is still 50-60% within the EM population. The process of poverty reduction is unstable, and there is a high poverty relapse rate.¹ Approximately 54,000 households lack access to land for cultivation, 58,000 households lack residential land, and 223,000 households lack access to drinking water.²

Since the 2018 edition of Indigenous World, Vietnam has ratified two additional conventions on human rights, namely the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention Against Torture (CAT) (February 2015). Vietnam is thus now a member of seven of the nine core international human rights instruments and continues to consider ratifying the International Convention for the Protection of all Persons from Enforced Disappearances (CPED) and the International Convention on the Protection of all Rights of Migrant Workers and their families (ICRMW).

Vietnam has not ratified ILO Convention No.169,³ and although Vietnam voted in favour of the UNDRIP it does not recognise ethnic minorities as indigenous peoples.

Criminalisation

In 2018, at least 246 people who participated in rallies against the draft laws on the creation of Special Zones and on Internet security were arrested and imprisoned. These arrests were carried out under judgments and criminal convictions of a variety of violations, including "dis-

semination of propaganda against the state” or “activities to overthrow the government” or “breaking the solidarity”. These convictions have carried tough penalties, with most resulting in sentences of 10-20 years of imprisonment. Among these were some 30 EM people from the Central Highland who were convicted on charges of “breaking the solidarity”, with 6-12 years of imprisonment.⁴

The right to freedom of movement is stipulated in the Constitution and asserted in the *Civil Law, Law on Nationality, Investment Law* and other relevant legal documents. It is a consistent policy of Vietnam to guarantee lawful, safe and regular migration, prevent illegal migration, and protect the legitimate rights and interests of citizens during the migration process in its entirety.⁵

However, when EM such as Mong, Yao, Tay, and Nung people migrate from the North to the Central Highland, fuelled by a shortage of land for cultivation and difficulties in living conditions, these migrants are considered “illegal migrants”. This label causes them to suffer many deprivations in terms of rights, including: not being able to register for residence; not enjoying the benefits of policies for EM such as fee exemptions/reductions for tuition and free medical care; being denied birth certificates and/or having the child marked as “illegitimate” etc.⁶

Local authorities have applied many actions to prevent “illegal migration”, such as forcing migrants to return to their homeland. However, these people become landless as they have already sold all their property, including land, before leaving and are not able to buy it back.⁷

Assimilation efforts and defending rights to cultural practice

There were complaints in December 2018 regarding a communal notification of the People’s Committee in Hoa Binh province. This notification cancelled the traditional spring festival of Mong people in four communes and changed it coincide with the country’s common Tet holiday. Mong people in this locality have not been able to enjoy the spring festival in line with their traditional calendar since this notification. Mong people in other areas of Vietnam (such as in Mu Cang Chai, Tram Tau (Yen Bai province) or in Ha Giang, Lai Chau and Dien Bien) had already “been successfully persuaded” to give up their traditional festival and join the common national Tet holiday. However, in many other localities,

regardless of the “persuasion” campaigns of local authorities, people are still organising their own traditional festivals.⁸

Implementation of UPR recommendations

Vietnam is up for review by the UPR mechanism in 2019. The Office of the High Commissioner for Human Rights (OHCHR) announced the receipt of 77 reports submitted to the UN Human Rights Council by organisations both inside and outside Vietnam. They include little information on how situations surrounding the use and preservation of the environment relate to and are affected by human rights structures. These reports also lack information on injustices related to land management and disputes.

The UPR included 57 individual reports and 20 common reports; of these 25 of the 57 individual reports and eight of the 20 common reports were from Vietnam’s domestic organisations and associations. This is a major achievement for domestic organisations compared to the second term (2014) and first term (2009) of the UPR when there were no domestic organisations included. The Centre for Sustainable Development in Mountainous Areas (CSDM) has also submitted its report accordingly.⁹

During the second cycle of the UPR, Vietnam accepted 182 out of 227 recommendations. There were 34 recommendations on protecting the rights of vulnerable groups, and nine on EM groups were accepted. In 2015, the prime minister approved the Masterplan for the Implementation of the Accepted Recommendations, assigning specific implementation tasks to 18 agencies and a number of other coordinating units. Various agencies have actively developed their own action plans in relevant areas and have effectively mainstreamed the implementation of UPR recommendations into socio-economic development strategies and plans such as the 2016-2020 National Target Program for Sustainable Poverty Reduction, the 2016-2020 National Target Program for New Rural Areas, and the Plan for the Implementation of the 2030 Agenda. To narrow the socio-economic gap among the ethnicities, the government has adopted the 2017-2020 Special Policy on Socio-economic Development Assistance for EM and Mountainous Regions, Program 135 under the 2016 – 2020 National Target Program for Sustainable Poverty Reduction, and many other important projects.^{10 11 12}

By October 2018, Vietnam had implemented 175 recommendations (96.2% of accepted recommendations); of these, 159 have been fully implemented and 16 partially; seven recommendations remain outstanding, either under implementation or with implementation being considered for a suitable time. Several recommendations concerning the making and amendment of laws have also been carefully considered and, in consultation with a wide range of government agencies, NGOs and citizens, draft laws submitted to the National Assembly for consideration. A number of amendments have been accepted by the National Assembly.¹³

Land rights

Land issues were not mentioned in the draft of the 3rd Universal Period Review¹⁴ (UPR) of Vietnam, despite lobbying efforts from civil society and despite this remaining a major and controversial issue. Reasons for land disputes include: a shortage of land for cultivation, causing people to claim land illegally; land mismanagement causing disputes among different groups; the transformation of land from protective forest lands to production lands in an ambiguous manner; many projects having land allocated but with no effective implementation due to a lack of capacity within forest protection and management teams, all of which results in the loss, appropriation and trading of forests. According to the Department of Dang Nong Agriculture and Rural Development, there are 40 projects, with more than 31,600 ha of land allocated, being inefficiently implemented in non-compliance with the planning.¹⁵ In the Central Highland, approximately 285,000 ha of land with and without ownership certificates has remained in prolonged litigation for more than 20 years.¹⁶ The main land disputes are between local EM people and state/private forestry companies. A typical dispute dates from July 2018 when a Nung person from Quang Truc commune, Tuy Duc district, Dac Nong province was convicted and sentenced to death because he had shot and killed three people and injured 16 more. This violence was the consequence of a land dispute that had been continuing for many years with a private company that wanted to encroach on the land claimed by the IP man.¹⁷

In central provinces such as Quang Binh, Quang Tri, Thua Thien – Hue, forest land disputes are long-lasting and regular.¹⁸ In this area, EM

people have lost their forest land, upland fields, pasture lands, jobs, wages and compensation for land, which the company has not paid. In addition, they have lost valuable natural water resources and their income from forest products, while the land has been degraded significantly as a result of commercial eucalyptus cultivation.

Access to justice

Between 2014 and 2018, Vietnam amended, revised and promulgated 96 new laws and ordinances related to human and citizens' rights in compliance with and to help institutionalise the 2013 Constitution. These laws included: the *Civil Code* (2015), the *Law on Beliefs and Religions* (2016), the *Law on Children* (2016), the *Press Law* (2016), the *Law on Access to Information* (2016), and the *Law on Legal Assistance* (2017). However, EM people's access to justice is still very limited, especially for women and youth. Access to the judicial system occurs primarily through village leaders but, even then, on a very limited basis. Access is available through the communal authorities but the police are rarely contacted. The regulations on prohibiting complaints in groups and beyond administrative levels and the people's inability to overcome them remain some of the biggest barriers to local people having their litigation resolved, especially for disputes relating to lands and forests. This has not been addressed in recent legislation.

EM women and youth

To address gender issues, on 27 April 2007, the Communist Party of Vietnam issued *Resolution No.11-NQ/TW* on promoting women's participation in the period of accelerated national industrialisation and modernisation. The author has produced a case study on the impact of the policies under Resolution 11 that relate to EM women in Vietnam.

The author collected together 56 policy documents and two national programs related to EM from 2007 to 2017. The two major conclusions from an analysis of these documents are that: 1) the roles and rights of EM women are not reflected in most national and provincial policies, and Resolution 11 has not been mentioned in most specific laws, policies or action programs related to EM; 2) Resolution No.11 has

not been clarified in the laws and policies promulgated by the government and authorities. The 53 official documents which were analysed did not take Resolution No. 11 as their base guideline.¹⁹

EM youth

There has recently been an increase in research papers on EM youth who leave home to find job opportunities in urban areas. The major reasons for their movements are: a shortage of opportunities to forge a stable livelihood and attempts to escape from social formalities and improve their own capacity and preparation for changing jobs in the future.²⁰ EM youth consider family homes as “safe spaces” to which they can return when there are ups and downs. EM youth movements are influenced by relationships among their family and villages; the first to move will persuade others to follow, often outside of official employment channels. Most EM youth are basic labourers who are more vulnerable and at risk of discrimination when finding jobs. EM discrimination results in discrimination during recruitment, work and promotion. Their characteristics (such as accents, names, costumes, skin colours, etc.) make EM youth easily identifiable, and they are humiliated, considered “primitive”, discriminated against and sometimes face violence as a result. Most EM youth work with employers on the basis of trust and mutual agreement, without signing a contract. Due to a lack of awareness about labour law, human rights or the concept/idea of a contract, they most often do not insist on one being signed. As a result, they are easily cheated or deprived of their rights. The urban socio-economic scenario also serves to blur and eliminate their indigenous cultural practices.²¹

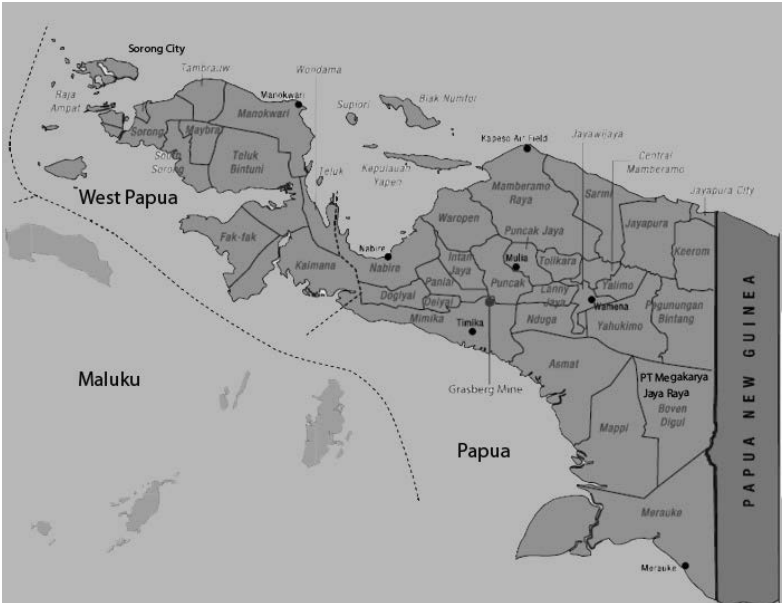
Notes and references

1. Decision No. 59/2015/QĐ-TTg of 19 November 2015 on the multidimensional approach to poverty standard for the period 2016-2020
2. See <http://bit.ly/2SKer5b>; <http://bit.ly/2RZ5B8H>; <http://bit.ly/2N4WWku>;
3. See <http://bit.ly/2NQ47F>
4. See <http://bit.ly/2N4r1Rd>
5. See the results of the third UPR
6. See <http://bit.ly/2N3luJs>
7. At present, there are approximately 25 million people living in mountainous areas, of which some 14 million are EM.

8. See <http://bit.ly/2N3JbCx>
9. See OHCHR | Universal Periodic Review - Vietnam at <http://bit.ly/2N1UkDX>
10. See the results of the 3rd UPR
11. Evaluation on policy and programme on social and economic development in mountainous areas – Recommendations for the period 2021-2025, towards 2030.
12. Important projects noted in the 3rd UPR include: Decision for the Implementation of the SDGs concerning ethnic minorities (2015), Project on Socio-economic Development Assistance for ethnic micro-minorities for the period 2016-2025, the Project on Assisting Gender Equality Activities in Ethnic Minority Areas for the period 2018-2025, the Project on Reducing Early Marriage and Intermarriage in Ethnic Minorities Area for the period 2015-2025, the 2016 Project on Ethnic Minorities Issues Training for officials and public servants, and the Project on Assisting Ethnic Minorities in the Application of Information Technology.
13. See the results of the 3rd UPR
14. The Universal Periodic Review (UPR) is a unique mechanism of the Human Rights Council (HRC) aimed at improving the human rights situation on the ground of each of the 193 United Nations (UN) Member States. Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years by other Member States. The result of each review is reflected in the Final Report of the Working Group, which lists the recommendations the State under review (SuR) will have to implement before the next review.
15. See <http://bit.ly/2N5B48h>
16. Ibidem
17. See <http://bit.ly/2N52hYl>; <http://bit.ly/2N4rbbh>; <http://bit.ly/2N2hASc>; <http://bit.ly/2N1DUv4>
18. See <http://bit.ly/2N43n7h>; <http://bit.ly/2N53Hm0>; <http://bit.ly/2N53P4Y>; <http://bit.ly/2N4Xmay>; <http://bit.ly/2N0QxGX>; <http://bit.ly/2N43rE3>
19. Resolution No. 11-NQ / TW of the Communist Party of Vietnam was promulgated on 27 April 2007 on women's affairs in the period of accelerated national industrialization and modernization. The goal of the Resolution is: By 2020, women's capacity will be raised for all aspects to meet the requirements of industrialization, modernization and international economic integration; their material, cultural and spiritual life will be improved; consequently, women will be increasingly involved in social works and equality in all fields, providing increasing contributions to the society and their families.
20. Study on EM youth migrant working in northern cities of Vietnam by the Institute of Social and Environment Study 2018.
21. Ibidem

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WEST PAPUA



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). Fifty percent of its 2.7 million inhabitants are of indigenous Melanesian origin and 50% are Indonesian migrants, many of them drawn to West Papua by the large-scale transmigration programme pursued by the Indonesian government following the incorporation of the former Dutch colony in 1963.

Geographically and culturally, West Papua is the most diverse region of Indonesia, with more than 250 different indigenous linguistic groups. The official language is Indonesian. In terms of religion, while Indonesian migrants are generally Muslim (38.4%), the indigenous population are Protestant Christians (53.7%) albeit with traditional beliefs still widely practised. The forests of West Papua cover 42 million ha, or 24% of Indonesia's forested area, and are home to 54% of Indonesia's biodiversity. 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.

Despite this natural wealth, West Papua has the lowest Human Development Index (HDI) in Indonesia: 60.1, while the national average stands at 70.2 (2016). In 2016, poverty affected 27% of the population (11% for Indonesia), with rates seven times higher in rural areas than in some urban zones. As for other social parameters – maternal mortality, illiteracy, HIV infection etc. – the rates for the region are all clearly higher than the national average.

Papuans have always demanded their autonomy. The hopes that were raised with the enactment of the *Law on Special Autonomy* for West Papua in 2001 and the adoption of the UN Declaration on the Rights of Indigenous Peoples by Indonesia in 2017 have, however, thus far been frustrated. Their socio-economic situation remains alarming and the creation of a new province in the western part of the island in 2003 – the province of Papua Barat – was seen as dividing the region and a violation of the law on special autonomy. Oppression on the part of the security forces is ongoing.

Visit of the UN High Commissioner for Human Rights to Indonesia

The UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, visited Indonesia in February 2018. During a press conference in Jakarta on 7 February,¹ he raised the situation in West Papua and expressed his deep concern at the poverty and malnutrition in the two provinces, with large multinational logging and mining companies being responsible for serious violations of indigenous communities' rights. The High Commissioner stated that, "Open dialogue and consultation are clearly necessary and such projects must not be undertaken without the free, prior and informed consent of the communities affected".²

The High Commissioner also called on the Indonesian government to "ensure the protection of human rights defenders, who must not be punished or prosecuted for having exercised their right to freedom of expression and freedom of peaceful assembly". He expressed his concern at the increasing evidence of an excessive use of force by the security forces, along with harassment, arbitrary arrests, and detentions.³

During the 37th (March 2018) and 38th (June 2018) sessions of the Human Rights Council, the High Commissioner again expressly stated his "concern at the living conditions in West Papua".⁴ At the end of June 2018, the Indonesian government cancelled its invitation to the High Commissioner, made during his February trip, to visit the two provinces of West Papua.

Critical food and health situation results in the deaths of 72 children in Azmat

Ms Hilal Elver, UN Special Rapporteur on the right to food, visited Indonesia from 9 to 18 April 2018. At the end of her visit, she made a statement in which she referenced West Papua:

I would like to draw your attention to one very tragic incident. In recent months, 72 children have died in the Asmat district of West Papua: 66 from measles and six directly from malnutrition. The deaths were caused by a number of factors, particularly problems of chronic food insecurity and a lack of access to appropriate health services. Their deaths were avoida-

*ble but were allowed to happen.*⁵

In addition, the preliminary observations of the Special Rapporteur take into account other issues related to West Papuans' right to food, particularly large-scale agriculture, illegal mining activity and the conversion of forests into oil palm plantations.⁶

Restrictions on freedom of information

The Indonesian authorities are systematically preventing foreign journalists and human rights observers from visiting West Papua. These restrictions are despite an announcement made in 2015 by the then recently-elected Indonesian president, Joko Widodo, stating that accredited foreign media would have unhindered access to West Papua. The access restrictions that have been imposed for decades in West Papua are due to the government's suspicions of the reasons as to why foreigners' wish to report on the region, affected as it is by a small-scale pro-independence insurrection, widespread corruption, and environmental degradation. The security forces are thus rarely held responsible for violations committed against government critics, particularly the murder of peaceful protesters.⁷

At the start of February 2018, Rebecca Henschke, a BBC journalist, and her team of photographers were forced to leave West Papua for having allegedly offended members of the armed forces on her Twitter account. Henschke was in the Asmat region covering the health situation following the deaths of at least 72 indigenous children. She published a photo on Twitter of goods standing in a warehouse at the port explaining that "These are humanitarian supplies intended for malnourished children in West Papua – instant noodles, soft drinks and sweet biscuits". The army complained, stating that the journalist had hurt the feelings of soldiers who were intending to help the inhabitants of Asmat district, and that Henschke's photo actually showed deliveries intended for local stores not humanitarian supplies.⁸

Pro-independence activist arrested and insulted

On 3 January 2018, at Jakarta Cengkayang airport, five air force officers arrested Filep Karma, former political prisoner and pro-independence

activist, for wearing a Morning Star flag pin badge – the symbol of cultural identity used by the Papuan independence movement. He was questioned for nearly two hours during the course of which one member of the army insulted him and called him a monkey. Following this, Filep was taken to the neighbouring police station where police officers began to write out a Police Investigation Report (PAP), which usually leads to prosecution. With the help of civil liberties defender, Uchok Sigit Prayogi, the police never completed the PAP and had to release Filep Karma given that there was no legal basis on which to pursue a case.⁹

Forty-five students illegally arrested

On 4 April 2018, members of the local police force, intelligence service (BIN), “BRIMOB” special police unit and “Kodim 1701 Jayapura” military district command raided several houses in the “Perumnas III Waena” residential district of Jayapura and detained 45 students despite having no arrest warrants. During the raid, the police confiscated 35 motor-bikes along with laptops and the Morning Star flag. The students were held at the Jayapura district police station. According to the director of the Papuan Association of Human Rights Advocates in West Papua (PAHAM Papouasie), the members of the security forces resorted to unnecessary physical violence against some of the students. At least eight of the students arrested were members of the National Committee of West Papua (KNPB), part of the political indigenous movement that supports the Papuan people’s right to self-determination.¹⁰

Mass layoffs at the Freeport–McMoRan mine

Conflicts have been ongoing for several years between thousands of miners, most of them Papuan, and the Freeport Indonesia Company.¹¹ The current conflict dates back to 2017 when Freeport introduced a programme of furlough leave affecting around 12,000 full-time workers and 20,000 contract workers – i.e. a reduction in 10% of the total number of staff. This measure was taken without any prior notice or negotiation between union representatives (PUK SPSI) and management and resulted in a strike. Declared illegal by Freeport, the company took the opportunity of this strike to lay off 4,200 miners on the pretext that they

had “voluntarily resigned”.¹² No mediation has succeeded to date and the situation remains extremely tense.

On 28 August 2018, hundreds of miners protested outside the offices of Freeport in Jakarta. The security forces repeatedly tried to disperse the demonstration without success. On 29 August, eight representatives were authorised to attend a meeting with the Freeport management. On 30 August 2018, with the support of the human rights defence organisation LOKATARU, based in Jakarta, the workers reported the Minister for Employment, Hanif Dhakiri, to the Office of the Ombudsman in Jakarta for poor administration, given that the Minister had not remained neutral in the conflict and had never responded to a request for a meeting from the miners.¹³

Greenpeace denounces international company involvement in deforestation

A survey undertaken by Greenpeace has revealed that Mars, Nestlé, PepsiCo and Unilever are all buying palm oil from a group whose subsidiary is responsible for the illegal destruction of tropical forests in West Papua.¹⁴ This is despite these companies being committed to a policy of “no deforestation, no peat, no exploitation” that should prevent them from obtaining palm oil from companies whose production is not sustainable. Greenpeace published a video and photographs taken in March and April 2018 showing that PT Megakarya Jaya Raya (PT MJR), a palm oil concession controlled by the Hayel Saeed Anam (HSA) group, had cleared around 4,000 ha of tropical forest – an area almost half the size of Paris – between May 2015 and April 2017. After a pause of four months, the clearing began once more in September and October 2017.

Part of the area affected is protected peatland. These protected zones were established by the Indonesian government in response to the devastating forest fires of 2017 and they prohibit any rainforest from being cleared within these areas. Although PT MJR is no longer producing palm oil, two other HSA subsidiaries - Arma Group and Pacific Oils & Fats - have provided palm oil to Mars, Nestlé, PepsiCo and Unilever, according to information published by the brands themselves earlier this year.

This is not the first time that Unilever, which claims to be a pioneer in the use of sustainable palm oil, has purchased palm oil from compa-

nies that are deliberately destroying Indonesia's tropical forests. In 2015, the Indonesian government identified dozens of companies responsible for millions of hectares of burnt forests and peatlands. The RKK palm oil company – a plantation company of the Makin group, which is a Unilever supplier – was prosecuted for arson. The examples show that palm oil production can never be totally sustainable. These cases also raise serious doubts over the Roundtable on Sustainable Palm Oil (RSPO). RSPO policy requires its members to have no unaffiliated palm oil divisions. Although PT MJR and the other concessions of the HSA group are not direct members of the RSPO, numerous other oil palm-producing companies in the HSA group are RSPO-certified.

The Indonesian government is currently negotiating a free trade agreement with the European Union. The trade in palm oil is a dominant feature in these discussions. International environmentalists fear that the EU-Indonesia FTA could result in an increase in national oil palm production due to growing demand from the European markets. This would lead to increased deforestation in areas of primary rainforest and a proliferation of land conflicts with local communities.

Commemoration and clashes

On 1 December, Papuan and Indonesian students organised a number of peaceful demonstrations to commemorate the 57th anniversary of the Declaration of Independence of West Papua,¹⁵ involving waving the Morning Star flag and demanding an independence referendum. More than 500 people were arrested across 10 towns. On 2 December, an armed group affiliated to the National West Papua Liberation Army killed at least 17 people, including one soldier, who were working on a construction site at Nduga, in the Central Islands. A punitive operation comprising more than 100 police and army officers was unleashed against the activists.¹⁶ As feared, and as has often been the case, the operation resulted in serious excesses and abuses on the part of the security forces. In the absence of independent observers and journalists capable of gathering testimonies and verifying the events on the ground, the full impact will not be known until later this year.

Notes and references

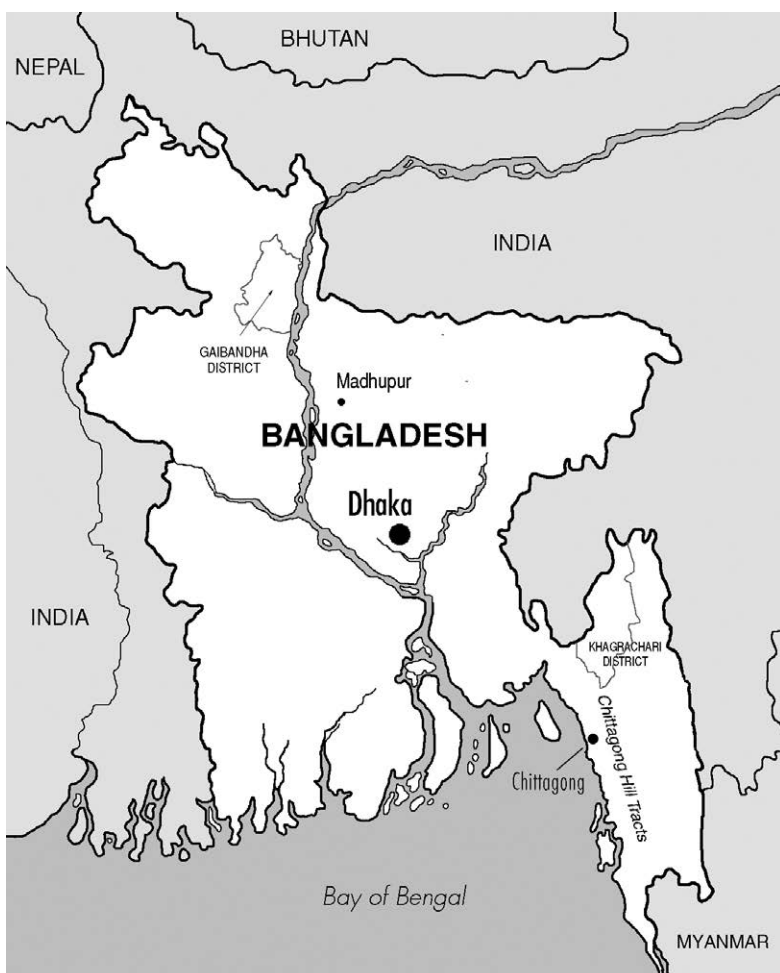
1. OCHCHR: UN Human Rights Chief ends visit to Indonesia – Full statement. 7 February 2018. <http://bit.ly/2IE96lE>
2. Idem.
3. See also Amnesty International, Report “Indonesia police and military unlawfully kill almost 100 people in Papua in eight years with near total impunity”, 2 July 2018. <http://bit.ly/2IHuoz>
4. See Minority Rights, May 2018 at <http://bit.ly/2IH123u>
5. See International Coalition for Papua – (ICP), 24 April 2018 at <http://bit.ly/2IHizsn>
6. Amnesty International, op.cit.
7. Human Rights Watch, 20 June 2018 “Letter on Indonesia’s New Counterterrorism Law to President Joko Widodo and Speaker Bambang Soesatyo” <http://bit.ly/2IHW86q>
8. International Coalition for Papua – (ICP), 1st Quarterly Report 2018. <http://bit.ly/2IE9iBp>
9. Idem.
10. ICP, 2nd Quarterly Report, 2018.
11. See, for example, Pataud Célérier Philippe, «En Papouasie, la grève oublié des mineurs». *Le Monde Diplomatique*, 19 October 2011 at <http://bit.ly/2IE9jFt>. See also IWGIA Yearbook 2015. <http://bit.ly/2IG1sr7>
12. See ICP, “Update on Freeport’s mass layoffs - dismissed laborers report Employment Minister to Ombudsman” October 2018 at <http://bit.ly/2IG1Rd7>
13. Idem.
14. See Greenpeace, “Final Countdown Report 2018” at <http://bit.ly/2IHWBF1>
15. The Netherlands had promised independence and created a parliament, the “Council of Western New Guinea”. It was this council that raised the flag in 1961 and this event was interpreted as a declaration of independence when, in fact, the territory was still under Dutch sovereignty. The transfer of the territory to Indonesia took place in 1963. See ICG Asia Report N° 23 op.cit., p.9.
16. Human Rights Watch, 9 December 2018 at <http://bit.ly/2IHWf8q>

Patrick Kulesza, is the Executive Director of GITPA, the Groupe International de Travail pour les Peuples Autochtones (www.gitpa.org). He conducted an Information Mission to Papua in November 2018, resulting in the production of a web documentary that can be found at: <http://bit.ly/2UOVtSd>

South 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 1,586,141,¹ which represents 1.8% of the total population of the country. Indigenous peoples in the country, however, claim that their population stands at some 5 million.² The majority of the indigenous population live in the plains districts of the country,³ and the rest in the Chittagong Hill Tracts (CHT). The Government of Bangladesh 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.⁴ 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-two 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.

Quotas in public services abolished

Through a gazette notification, on 4 October 2018, the government abolished its reservation for indigenous peoples along with other quota categories for first and second class government services. The decision came in response to a series of countrywide protests. These protests, by the "Quota Reform Movement" (QRM), demanded reforms in policies concerning recruitment practices in the government services. The mandate of the QRM was to bring reform to the existing public service recruitment system, which reserved 56% of job entry po-

sitions for the children and grandchildren of “freedom fighters”, women, certain districts based on population, indigenous peoples and persons with disabilities. These quotas left 44% of placements based on merit. Instead of reforming the existing system, however, the government completely abolished the quota in first and second class government jobs. This decision has resulted in the direct deprivation of the most underprivileged groups, including indigenous peoples.

The indigenous or “tribal” quota of 5% has not ensured indigenous participation properly since it was introduced in 1985. In two ILO studies⁵ conducted by Ferdous and Islam, only 271 (0.66%) of 2,051 positions were filled with indigenous candidates between the 24th and 33rd (2005-2014) Bangladesh Civil Service recruitment examinations.⁶ Although it is apparent that the stipulated percentage has never been allocated in any given year, at least some indigenous candidates were able to serve in the public sector because of the quota. The complete removal of the quota puts indigenous job-seekers in direct competition with all others, which is unbalanced and unequal. Indigenous peoples in Bangladesh are disadvantaged in every socio-economic and political way. As a result, they cannot compete with their “mainstream” counterparts. The absence of the quota will further reduce the representation of indigenous peoples in the state bureaucracy.

Government to recognise 50 ethnic groups

A committee within the Ministry of Cultural Affairs⁷ has decided to include those indigenous peoples who were left off the list of “ethnic groups” during the framing of the Small Ethnic Groups Cultural Institution Act of 2010. This issue has been a longstanding demand of indigenous groups. After a series of expert meetings, the committee, headed by the Cultural Affairs Minister, Asaduzzaman Noor MP, decided to include a total of 50 indigenous groups on the list. This is a major improvement, doubling the number of indigenous groups recognised from 24 to 50.⁸ This recognition also provides pathways for indigenous peoples who were previously discriminated against when accessing government services.

Civil and political rights and human rights defenders

The situation of the CHT throughout the year was characterised by very limited freedom of speech, expression, assembly and association. Representatives of different local indigenous political and rights platforms reported numerous incidents of interference by the local administration and state forces when indigenous peoples attempted to hold public meetings. Public rallies and demonstrations were particularly restricted, including socio-cultural festivals and observations. Interference by the authorities can be epitomised in the following three incidents: on 20 May 2018, the Rangamati district administration did not allow the CHT Hill Students' Council (PCP) to organise an outdoor public meeting in Rangamati. This meeting would have marked the founding anniversary of the organisation. On 31 July 2018, in Khagrachari and Bandarban districts, authorities prevented peaceful rallies to protest the rape and killing of Kirtika Tripura, a ten-year-old girl, by a Bengali settler. Furthermore, in October 2018, local authorities prevented a dialogue on the SDGs with government officials and civil society members, jointly initiated by ILO and Kapaeeng Foundation in Rangamati.

Amid this dreadful human rights situation, those who have suffered the most are the indigenous human rights defenders (IHRDs), especially those affiliated with local political platforms, as well as many ordinary indigenous villagers. The alarming state of IHRDs was evidenced in many reported incidents of criminalisation and subjection to arbitrary search operations, arrests, detentions and false charges across the CHT. The Kapaeeng Foundation documented a total of 117 people facing false charges, 75 of whom were arrested in 2018. Additionally, some 90 houses were searched by security forces in the middle of the night without any prior warrant or complaint in 2018.

Rights of women and girls

This human rights situation becomes the most glaring, disturbing and chronic in terms of violations when it comes to indigenous women and girls. Indigenous women have been targets of violence, intimidation, harassment and discrimination for years. Indigenous women and girls routinely faced sexual, physical and mental violence throughout the year, on the part of members of the state authorities, Bengali settlers,

influential land grabbers, and sometimes even men from within their own communities. The Kapaeeng Foundation documented that at least 53 indigenous women and girls, in 47 incidents, were reportedly killed, raped, assaulted or violated in 2018.⁹

More often than not, the violence that indigenous women and girls face is political, connected to power relations, although sometimes it is due to the lust of the perpetrators. As violence, especially sexual violence against women, is connected to stigma, humiliation and fear, vested interests use it as a weapon time and again. This politicisation of violence is particularly evident in the impunity enjoyed by the perpetrators, especially when “he” or “they” are connected to the state. The absolute impunity enjoyed by the perpetrators of the rape and sexual harassment of the Marma sisters from Farua of Rangamati (22 January 2018) and the Tripura sisters from Lama sub-district of Bandarban (22 August 2018) stand as evidence. In both cases, the survivors identified the perpetrators – members of the state authorities. Whenever a case involves a state agency or influential person, it is therefore the survivor and her family, and not the perpetrator, who have to live in fear, anxiety and trauma. In many cases, the deprivations to which the survivors are subjected are manifold, totally lacking in any psycho-physical care, legal justice or rehabilitation. None of the measures taken by the state in the form of laws, policies and institutional mechanisms, nor the recommendations made by international bodies such as CEDAW¹⁰ to address violence against indigenous women and girls, have served to protect the survivors.

11th general elections and manifestos of major political parties

On 30 December 2018, Bangladesh held its 11th general elections. The outcome was that the ruling political party – the Awami League-led Grand Alliance – was successful in forming the government again for the 2019-2023 period. They won by a landslide victory of 288 seats out of the 299 constituencies in the country. There has, nonetheless, been much debate over the victory in terms of the fairness of the elections among different watchdogs. International agencies, including the BBC and Transparency International Bangladesh (TIB), published reports and evidence of election rigging.¹¹

There were allegations of voter fraud made against the ruling party candidates and their supporters in the elections held in the three constituencies of the CHT. The allegations included ruling party supporters occupying polling stations, driving out or expelling the election agents of competing candidates, stuffing ballot boxes with forged votes, and preventing actual voters from casting their votes.¹² Use of force and violence was not uncommon throughout the three districts. There were allegations that, in many places, the Election Commission, local administration and the law enforcement agencies either actively supported or ignored the blatant irregularities and vote rigging. There were also allegations that many supporters of the opposition were intimidated, detained and falsely charged by the authorities for months prior to the general elections. Amid all these allegations, three indigenous candidates affiliated to the ruling political party officially bagged their tickets to parliament.

Interestingly, in its election manifesto, the Awami League - the victor in the 11th general elections - pledged to form a National Minority Commission to ensure the safety of minority communities. It also promised that laws which discriminate against religious and ethnic minorities would be amended and the communities' property rights ensured within a fixed timeframe. Moreover, steps would be taken to implement the sections of the CHT Accord that had not yet been implemented. However, these pledges are simply a repetition of the commitments it made during the 9th and 10th parliamentary elections. Left-leaning political parties and the Bangladesh Nationalist Party (BNP)-led Jatiya Oikyofront (National Front for Unity), which lost their coalition bid to lead parliament, have also included some pledges related to minority and indigenous peoples in their election manifestos.^{13 14}

CHT Accord Implementation Monitoring Committee reformed

The implementation of the CHT Accord remained stagnant in 2018 with the sole exception of the reform of the CHT Accord Implementation Monitoring Committee. This committee oversees the implementation process of the deal. Abul Hasnat Abdullah, Awami League lawmaker and one of the signatories of the historic CHT Accord, has been appointed as the chair of the committee, replacing Sayeda Sajeda Chow-

dhury, former Deputy Leader of the House. At the same time, another ruling party parliamentarian from the CHT, Kujendra Lal Tripura, has also been appointed as a committee member. Jyotirindra Bodhipriya (Santtu) Larma, the chair of the CHT Regional Council, by default, remains the third member of the three-member committee. According to the provisions of the CHT Accord, this committee is responsible for monitoring progress in implementation and advising the government accordingly.

3rd Review of Bangladesh under the UPR

May 2018 was the third time the human rights situation of Bangladesh had been reviewed by the Working Group on the Universal Periodic Review. A 29-member delegation, led by the Minister of Law, Justice and Parliamentary Affairs, Anisul Huq, was present for the review, held at the 30th session of the UPR Working Group. The Bangladesh delegation condemned violence against religious and ethnic minorities and claimed that allegations of such incidents had been addressed as promptly as possible during the period under review. In a similar vein, the delegation emphasised a “zero tolerance” policy towards crimes perpetrated by members of the law enforcement agencies. This same government policy statement appeared in the second UPR review of Bangladesh in 2013. Moreover, the delegation reiterated previously made commitments concerning implementation of the 1997 CHT Accord and existing constitutional provisions on protecting the local culture and traditions of indigenous peoples. The issues covered by the delegation of Bangladesh concerning indigenous peoples were thus merely a reiteration of pronouncements made by the government during previous reviews.

Four Member States (Argentina, Madagascar, the Netherlands and Spain) noted and welcomed the measures taken to combat discrimination and violence against ethnic and religious minorities in the country. Austria, however, expressed concerns over attacks on religious minorities. Considering the slow and ambiguous process of implementing the CHT Accord, Australia and Denmark made recommendations on implementing the Accord, with a plan of action and a roadmap with a clear timeline, while the Maldives and New Zealand emphasised increasing

efforts in the ongoing implementation process. Given the dire human rights abuses, nine Member States (Austria, Brazil, Estonia, France, Iran, Honduras, Madagascar, Peru and South Africa) emphasised that measures should be taken to ensure protection of indigenous peoples and other minorities. While most of these Member States recommended that the government take legal, constitutional and administrative action, Madagascar pointed to ratification of ILO Convention No. 169 as a way forward to protect and promote the rights of indigenous peoples. The government replied to the recommendations specifically mentioning “indigenous peoples” with comments that all the country’s citizens were considered indigenous to the land. A total of 105 Member States put forward 251 recommendations to Bangladesh related to the overall human rights situation of the country. The Bangladesh government, however, has not accepted 61 of these.

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INDIA



In India, 705 ethnic groups are recognized as Scheduled Tribes. In central India, the Scheduled Tribes are usually referred to as *Adivasis*, or tribals which literally means indigenous peoples.¹ 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 after independence all Indians are considered indigenous. However, it does not consider the concept of “indigenous peoples”, and thus UNDRIP, applicable to India.

Legal rights and policy developments

On 11 January, the Chhattisgarh government led by then Chief Minister Raman Singh was forced to withdraw its controversial *Land Revenue Code (Amendment) Bill* of 2017, after it was passed by the state’s legislative assembly, following vehement protests by the tribals. The bill allowed the Chhattisgarh government to purchase tribal land for government projects.² On 24 December, in a rare move, the new government of Chhattisgarh led by Chief Minister Bhupesh Baghel decided to return 1,764 hectares of land which the state government had acquired in 2015 from tribal farmers for a steel plant of the Tata Group in Lohandiguda block of Bastar district.³ Earlier on 4 November, Assam’s Chief Minister Sarbananda Sonowal inaugurated the

process of handing over land titles to nearly 11,500 landless tribal families.⁴ In Jharkhand, on 6 December, the state cabinet cleared a regulation to prevent non-tribals from buying lands in the name of their tribal wives. The aim of the regulation was to check indiscriminate acquisition of tribal land by non-tribals in Scheduled Areas in violation of the *Chotanagpur Tenancy Act*.⁵

Human rights violations against indigenous peoples

On 9 August, the *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill 2018* was passed by the Parliament⁶ and notified in the official gazette on 17 August following assent by the president.⁷ These amendments to the *SC/ST (Prevention of Atrocities Act) 1989* (PoA Act) were brought to overturn the judgement of the Supreme Court dated 20 March 2018⁸ which, among other things, banned denial of anticipatory bail under Section 438 of the Criminal Procedure Code to the accused under the *PoA Act*.⁹ The central government held that the judgement had diluted the provisions of the *PoA Act* and it would hamper the dispensation of justice to the Scheduled Tribes and Scheduled Castes.¹⁰ A new section, Section 18A, has been inserted in the *SC/ST (PoA) Amendment Bill 2018* to nullify the Supreme Court judgement by stating after that “The provisions of section 438 of the Code [Code of Criminal Procedure] shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.”¹¹ The *SC/ST (PoA) Amendment Bill 2018* therefore restored the original *SC/ST (Prevention of Atrocities Act) 1989* following outcry over the Supreme Court judgement dated 20 March 2018.

Over the past year, the tribals in hundreds of villages in states of Jharkhand, Madhya Pradesh, Odisha and Chhattisgarh rose in rebellion in what is called the “Pathalgarhi” movement, protesting against years of neglect and exploitation.¹² The tribal villagers inscribed various tenets on huge stone slabs and banned entry of outsiders in their area.¹³ The tribals in these areas sought to declare themselves as “independent” from the state and central government.¹⁴ Tribal rights activists and constitutional experts see the demands for autonomy of the Gram Sabhas as constitutional since the *Panchayats (Extension to Scheduled Areas) Act, 1996* (PESA) provides for self-rule to tribal areas and protection of tribal rights regarding land, water and forests, etc., but the means

adopted by the movement leaders to achieve this are in conflict with the law.¹⁵ This conflict led to state action against the rebellion, particularly the state acted in the aftermath of the gang-rape of five women activists allegedly by Pathalgarhi activists in Khunti district of Jharkhand in June 2018.

Human rights violations by security forces

In 2018, the security forces continued to be responsible for violations of human rights against the tribals (indigenous peoples). In the areas affected by armed conflicts, the tribals are sandwiched between the armed opposition groups (AOGs) and the security forces. Cases are numerous and many go unreported. Some cases became public and are included here to illustrate the severity of these violations.

On 23 January, four tribal teenagers aged between 13 and 17 were illegally detained in police lock-up and tortured at Kamla Nagar Police Station in Bhopal, Madhya Pradesh. The teenagers accused the police of framing them in a jewelry theft case.¹⁶

On 8 February, Abinash Munda, from Bhalupali village in Sambalpur district of Odisha, died at Ainthapalli police station following his arrest the previous day in a theft case. Police claimed that his body was found hanging with a bed sheet inside the Ainthapalli police station. However, Munda's family members alleged custodial torture.¹⁷ On 9 February, local groups burned the Ainthapali police station, accusing the police of killing Munda.¹⁸

On 27 August, Pappu Bheel (30), a tribal, of Namana village in Bundi district of Rajasthan, died due to alleged torture at Sadar Police station in Bundi district, a day after he was taken into custody in connection with a theft case. The deceased's family members alleged that he died due to custodial torture and demanded a judicial inquiry.¹⁹

On 21 December, a tribal youth identified as Pritam Debbarma (23) allegedly committed suicide at his residence following brutal custodial torture by the police at the Baijalbari police outpost in Khowai district of Tripura. The youth was picked up on 20 December on drug peddling charges.²⁰ Four policemen including Baijalbari outpost officer-in-charge Sukanta Debbarma, were booked for alleged custodial torture of Pritam.²¹

Human rights violations by armed opposition groups

AOGs continued to be responsible for gross violations of international humanitarian law, including killings during 2018.

The Maoists continued to kill innocent tribals accusing them of being “police informers”, or simply for not obeying their *diktats*. The majority of the victims were killed in Jan Adalats or People’s Courts held by the Maoists. According to the Ministry of Home Affairs, between 2004 to August 2018 about 7,907 people have been killed by the Maoists in different parts of India, and the majority of the civilians killed are tribals.²² The tribals who were killed by the Maoists during 2018 included Ganga Madkami (30) at Sudhakunda village under Kalimela police station in Malkangiri district, Odisha on the night of 20 June;²³ Jayaram alias Sa-loo (30) at the Chukka Goyyi tribal hamlet in Visakhapatnam district, Andhra Pradesh on 28 July;²⁴ Irpa Venkateswarlu (52) near Kurnavalli forest area in Bhadradi Kothagudem district, Telangana on 11 September;²⁵ Ananta Ram Bhumia at Dhakadrasi village in Malkangiri district, Odisha on 23 October;²⁶ and Guru Khila (48) near Badadural in Tankamuna area in Malkangiri district, Odisha on 27 December;²⁷ among other victims.

Non-restoration of alienated tribal land

There are a plethora of laws prohibiting the sale or transfer of tribal lands to non-tribals and restoration of alienated lands to the tribal landowners. However, these laws remained ineffective, not invoked or attempts were made to weaken them.

According to Land Conflict Watch, there are currently about 666 ongoing land conflicts involving 2,414,014 hectares and affecting 7,363,509 persons across India.²⁸ There is unabated alienation of “tribal lands” but the Government of India does not maintain any centralised data on this issue.²⁹ In the area of Telangana, for example, the tribal landowners have filed 50,358 cases challenging the legality of transfer/occupation of 200,655 acres of their lands by the non-tribals in Khammam, Warangal and Adilabad districts falling under the 5th Schedule Area as of January 2018. Out of these, 94,520 acres of lands (i.e. 47% of alienated tribal lands) were legally decided in favour of non-tribals as of January 2018. The courts decided 30,004 cases covering an area of

101,910 acres (i.e. 50.8% of alienated lands) in favour of tribals. However, the enforcing agencies could only restore 81,887 acres pertaining to 22,704 cases. This means that a total of 20,023 acres of land still remained in the hands of non-tribals. The extent of land to be restored to tribals after court verdicts in their favour increased from 10,444 acres in 2005 to 20,023 acres in 2018 in the state of Telangana.³⁰ On 28 May, the National Commission for Scheduled Tribes' (NCST) chairperson, Nand Kumar Sai, confirmed that non-tribals were occupying lands in the Tripura Tribal Areas Autonomous District Council and urged the state government of Tripura to restore those alienated lands to their tribal landowners.³¹

Conditions of the internally displaced tribal peoples

The government has failed to rehabilitate millions of tribals displaced due to both conflicts and development projects over the years. On 31 December, Minister of State for Tribal Affairs Sudarshan Bhagat admitted in the Lok Sabha (Lower House of Indian Parliament) that out of a total of 8.54 million tribals displaced due to various development projects during 1951-1990, only 2.12 million tribals were rehabilitated which meant that 6.42 million tribal internally displaced persons (IDPs) were not rehabilitated. Most tribals were displaced due to the building of dams (6.32 million), followed by mines (1.33 million), wildlife protection (0.45 million), industries (0.31 million) and other projects (0.13 million).³²

Even in cases where the government claims to have rehabilitated the tribals after their displacement/eviction, the tribals have lost their livelihood due to lack of proper rehabilitation. For example, a total of 56,495 tribal families have been affected by the Polavaram Irrigation Project in Andhra Pradesh and out of these, 1,317 families have been shifted to resettlement colonies. The Andhra Pradesh government has claimed that it has allotted only cultivable lands to tribal displaced families in line with the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act* (RFCTLARR), 2013.³³ But the NCST, following a field visit in March 2018, found that the tribal families were given uncultivable land in lieu of agricultural lands acquired from them. The NCST also stated that many tribal families who were hitherto depending on minor forest products were deprived of their livelihood after displacement due to the project.³⁴

About 32,000 indigenous Bru IDPs who fled Mizoram in 1997 were living in six relief camps in Tripura by the end of 2018. On 3 July, a four-party agreement was signed involving the Government of India, the state governments of Tripura and Mizoram and the Mizoram Bru Displaced Peoples Forum (MBFPF) in New Delhi for repatriation of the Bru IDPs to Mizoram, before 30 September.³⁵ But the Brus were not happy with the rehabilitation package and the MBDPF withdrew from the agreement.³⁶ The Government of India stopped all relief in the Bru relief camps from 1 October to force them to return to Mizoram. The supply of relief was resumed from 22 October with the condition that it would continue only until 15 January 2019.³⁷ The stoppage of relief including rations reportedly led to starvation in the relief camps.³⁸ Only 45 families out of 5,407 Bru IDP families returned to Mizoram under the four-party agreement.³⁹

Repression under forest laws

Almost 90% of the tribal population of the country lives in rural areas.⁴⁰ A large number of forest-dwelling Scheduled Tribes continued to be denied their rights under the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006* (in short, FRA). As per information available with the Ministry of Tribal Affairs (MoTA), a total of 4,210,378 claims (4,064,741 individual and 145,637 community claims) were received from across the country under the FRA as of 31 August 2018. Out of these, 1,879,372 titles (1,808,819 individual and 70,553 community), i.e. 44,6%, were accepted, while 1,940,492 claims or 46,1% were rejected. The extent of forest land for which titles have been distributed is 15,523,868 acres – i.e. 4,582,216 acres for individual claims and 10,941,652 acres as community forests.⁴¹ On 27 June, the MoTA raised concerns about the violation of the FRA and asked all the state governments to stop rejecting claims on invalid grounds.⁴²

On 21 November, about 10,000 tribal farmers marched from Thane to Mumbai in Maharashtra demanding loan waiver and land rights, among other things.⁴³ They called off the protests on 22 November, after Maharashtra Chief Minister Devendra Fadnavis assured to redress their grievances, including compensation for drought and transfer of forest rights to tribals by the end of December 2018.⁴⁴ It is reported that there were as many as 231,556 cases where land ownership was not

given to the tribal farmers who were cultivating the land or were in possession of it..⁴⁵ Earlier, in March 2018, more than 35,000 farmers, mostly tribals, marched from Nashik to Mumbai to press for their demands, including land rights.⁴⁶

On 14 March, the Ministry of Environment, Forest and Climate Change (MoEFCC) released the Draft National Forest Policy, 2018 (DNPF) for public comments which the tribal activists termed as “anti-Adi-vasi, anti-forest dwellers and anti-ecology” and demanded its withdrawal.⁴⁷ The DNPF sought to dilute the FRA which guarantees rights to the tribals and traditional forest dwellers over their forest land and forest resources. The MoTA also opposed the DNPF fearing that it will promote privatisation of forests and undermine the rights of communities who live in them. In a letter to the MoEFCC secretary CK Mishra on 19 June, Leena Nair, the secretary to MoTA, stated that the MoEFCC did not have “exclusive jurisdiction” to frame policies related to forests and lamented lack of consultation with the MoTA in framing the DNPF.⁴⁸ The Draft Policy has not been adopted as of January 2019. Further, on 3 December, the MoEFCC told the Maharashtra government that the projects seeking to divert forest lands do not need to comply with the FRA for initial clearance.⁴⁹

The Jharkhand government identified about 1,000 families living in eight villages for relocation outside of the Palamu Tiger Reserve (PTR) area. In November 2018, the state government enhanced the compensation from Rs 1 million to Rs 1.5 million per family to lure the tribal families to voluntarily move out of the PTR.⁵⁰ After the NCST raised concerns, the state government on 20 December assured the NCST that no one will be evicted from the PTR without their consent.⁵¹

Situation of tribal women

Tribal women and girls in India are deprived of many of their rights. Both collective and individual rights are violated both in private and public spaces. Sexual violence, trafficking, killing/branding as a witch, militarisation or state violence and the impact of development-induced displacement remained major issues.

The security forces also target tribal women for sexual violence. According to a fact-finding team of Women against Sexual Violence and State Repression (WSS) and Coordination of Democratic Rights Or-

ganisations (CDRO), the Jharkhand Police raided Ghaghra village in Khunti district on 26 June on the pretext of arresting three Pathalgarhi movement leaders in the incident of the rape of five women and charged the villagers with their lathi (batons). One of the villagers, Birsu Munda, died on the spot after being hit on the head with a lathi. On 27 June, a 1,000-member force drawn from the Central Reserve Police Force, Rapid Action Force, Jharkhand Action Force and other units raided Ghaghra and seven neighbouring villages. The WSS and CDRO fact-finding team found that: _

[...] the security forces unleashed brutal violence in the form of beatings and atrocities on men, women and children, lathi-charge, tear-gassing and rubber pellet shootings, and also raided the homes of the residents. Women who were fleeing from the violence were caught and assaulted. One woman was dragged, molested and her clothes torn by the forces. There is a confirmed account of at least one woman having been raped, with indications of numerous other rapes and molestations in neighbouring villages.⁵²

On 20 April 2018, a 70-year-old tribal woman named Tara Devi of Badsa village in Hisar district of Haryana was tortured in the custody of Hansi police station in Hisar district after she was arrested in connection with a theft case. The Haryana State Commission for Women confirmed that the victim was subjected to custodial torture.⁵³

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 km². The Nagas form several tribes, primarily in the north-eastern region of India and north-western Myanmar.

Status of the peace process

While the 1997 ceasefire agreement between the Government of India (GoI) and the National Socialist Council of Nagalim (NSCN-IM) has held,

Indian intelligence agencies and the political establishment continue to undermine the cohesion of the Nagas. Journalists openly write and discuss India and Myanmar orchestrating political divisions.⁵⁴ Nevertheless, political talks have continued between the GoI and the Nagas. On the table is the integration of all Naga areas.⁵⁵ The question of creating a separate constitution, flag,⁵⁶ passport, joint defence,⁵⁷ control of resources, separate United Nations representation and foreign policy are believed to be among the major issues which are being worked out.

Speculations about Naga compromises were fuelled in part by a report in the Indian parliament.⁵⁸ Indian interlocutor Mr R. N. Ravi informed a parliamentary committee that the NSCN(IM) had agreed on a settlement within the Indian federation, with a special status, claiming it a departure from the Naga group's earlier position of "with India, not within India".

However, NSCN(IM) maintains the sovereignty of the Nagas has never been compromised.⁵⁹ Chief Naga negotiator Th. Muivah questioned if India would retract from commitments made in the course of the two-decade-old negotiations.⁶⁰ Meanwhile, GoI representatives have initiated a dialogue with another conglomeration of Naga national political groupings⁶¹ although the parameters are largely confined to the current Indian state of Nagaland. However, Naga civil society have welcomed the process hoping some political dialogue and understanding would ensue between this relatively new group and the NSCM(IM) and in the process create conditions for intra Naga reconciliation.

Nagas without borders

On 10 January, 2018, the 1st Naga Day⁶² was commemorated to uphold the spirit of the memorandum submitted to the British Simon Commission in 1929. The memorandum sought to lay out the Naga desire for self-determination for Nagas and devolution⁶³ from the Indian union:

*[...] we pray that we should not be thrust to the mercy of people who could never have conquered us themselves and to whom we were never subjected; but to leave us alone to determine for ourselves as in ancient times [...]*⁶⁴

The Naga Day declaration resolved to work rapprochement with Naga's neighbours.⁶⁵ It challenged India and Myanmar to apologise for gross human rights violations upon the Naga people in order to facilitate rebuilding of relationships. A call was made to address the collective trauma caused by decades of militarisation pursued by India and Myanmar upon the Nagas.

Threat from within

Even as the Naga political and economic elite maintain close ties with the Indian establishment, new power blocs are asserting themselves. Naga anthropologist Dolly Kikon argues that India has engineered political divisions among the Naga people by pitting one section against another and creating new power structures, authorities and tribal elites, which allows for the political terror and nightmare to spread.⁶⁶ The definition of who is indigenous and "local" in the Naga domain is being used to segregate another Naga based on where they are currently bracketed within the physical state boundaries.

Furthermore, India uses its surveillance technologies and informers (including Nagas) to disrupt and malign the Nagas. In 2018, the Naga Hoho, the primary traditional body, has been undermined with its functionaries dealing with multiple internal crises.⁶⁷ Together with the Naga Peoples Movement for Human Rights (NPMHR), the Naga Mother's Association (NMA) and the Naga Students' Federation (NSF), the Naga Hoho are often the target of vilification campaigns.⁶⁸

Human rights defenders, including journalists and analysts, do not feel safe to speak freely about these campaigns. There is a narrative, within a section of civil society as well as the Naga national armed groups, "to protect Nagas of Nagaland from other Nagas".⁶⁹ Nagas must stop suppressing each other, states Neingulo Krome, secretary general of the NPMHR.⁷⁰ He urged the Nagas of the Indian state of Nagaland to take greater responsibility for the peacemaking process and rally behind the Naga movement again.

Cutting the support base

Human rights defenders with known political positions on the Naga is-

sue have been subjected to harassment and arrests. Prominent Indian national Gautam Navlakha was arrested on 28 August, 2018. As a member of the People's Union for Democratic Rights (PUDR) Gautam was closely associated with the Naga peace movement. He was arrested along with four other activists and lawyers on allegations of Maoist involvement in the organization of Elgaar Parishad⁷¹ at Pune, Maharashtra state on 31 December 2017. Gautam was released from house arrest on 1 October 2018 by the Delhi Police following a court order. The rights activist said he cannot forget the thousands of political prisoners in India who remain incarcerated for their ideological convictions or on account of false charges against them under the *Unlawful Activities (Prevention) Act (UAPA)*.⁷²

Another India-based rights activist, Rona Wilson, was arrested on 6 June 2018 along with several other activists under the UAPA and sections of the *Indian Penal Code*, in what Human Rights Watch and Amnesty International India described as politically motivated charges.⁷³ In 2007, Rona had gone to Nagaland to plead against sending highly trained Nagas of the Indian Reserve Battalion (IRB) to Chattishgarh to battle tribal insurgents in that state. He argued that this was a policy of pitting one indigenous group against another in the guise of national security. He remains in prison.⁷⁴ UN human rights experts defended Gautam and Wilson urging India to halt criminalisation of human rights defenders.⁷⁵

Peace brokers without political say

In January 2018, the NMA visited Myanmar and met with NSCN-K⁷⁶ to encourage them into re-entering peace negotiations with India and other Naga national groups. The trip was fraught with dangers and at risk of interception by the Burmese intelligence. Alongside Naga Women's Union operating out of the present Manipur state, the NMA remains at the forefront of most peace initiatives. In truth, women who are "marked as hostile by the majoritarian state of India, negotiate with both the government and the underground movements".⁷⁷

Meanwhile, the February 2018 assembly elections in Nagaland state witnessed every woman candidate get defeated. Some CSOs protesting the women quota in the municipality elections pressed for invoking legal provisions within Article 371(A) of the Indian Constitution

that established safeguards to preserve Naga customary laws. Such customary laws, however, exclude women from political power.⁷⁸ Following violent protests,⁷⁹ Indian courts “shelved the substantive questions of women’s empowerment and justice by leveraging contingent concerns of law and order, distortion and disruption of Naga way of life”.⁸⁰ Advocates for greater participation of women in representative legislative bodies received death threats. NMA advisor Rosemary Dzu-vichu was forced into hiding as a result.⁸¹ Despite this, Naga women have been proactive politically. A delegation of women from the Indian side toured the Naga Self-Administered Zone in Myanmar to build networks and engage in difficult conversations in order to resolve conflicts.

At the 39th session of the UN Human Rights Council, the Naga Women’s Union accused the government of the Manipur region and some of the CSOs in the Imphal valley of opposing Naga integration.⁸² It pushed for a visit by the Special Rapporteur on the Rights of Indigenous Peoples to Northeast India.⁸³

Reparation and justice

Victims of human rights abuses must have access to remedy. Nagas have revived proceedings in the High Court of Manipur on the 1987 Oin-am case⁸⁴ with the first hearing conducted on 2 October 2018. The NP-MHR is facilitating legal preparations.

Meanwhile, Indian security personnel have been speaking out against brutality towards civilians and non-state actors. In July 2018, Lt. Colonel Dharamvir Singh of the 1st Para Commandos (Special Forces) turned whistle blower as he voiced opposition to the Corps Intelligence and Surveillance Unit’s extortion and fake encounter deaths perpetrated against innocent individuals.⁸⁵ Nagas have protested extra-judicial and staged encounter⁸⁶ killings with Indian police and security forces consistently claiming the deaths resulted while acting in self-defence against non-state actors.

On 14 October 2018, seven Indian army officers were sentenced to life in prison in a 24-year-old fake encounter case, in Tinsukia district of neighbouring Assam state.⁸⁷ It is in these circumstances that the security agencies exert pressure and rationalise the promulgation of legislations.

Declaration of disturbed areas

As the year 2018 ended, India's Ministry of Home Affairs declared the whole of the state of Nagaland to be a "disturbed area" for a period of six months effective from 30 December 2018 and to be continued for another six months after the first period ends.⁸⁸ The declaration gives the Indian military "special powers", which India says are a necessity.⁸⁹ Without the safeguards from legal harassment and empowerment of its officers which AFSPA⁹⁰ provides, there would be serious repercussions at the tactical level.⁹¹

In this climate of perpetual militarisation, indigenous peoples human rights defenders (IPHRDs) have come forward, representing many different forms and advocating for a wide range of issues – from domestic and sexual violence, gender, disability, migration of predominantly non-indigenous peoples from Bangladesh, resource extraction and climate change, to abolition of the death penalty.

Nagas in Myanmar

Among the most neglected regions of Asia, the Nagas' attempt to organise and mobilise themselves is met with cynicism by Myanmar and the Burman ruling class.⁹² Myanmar continues to infringe on civil and political liberties through a bevy of legislations and continued militarisation. The 2011 *Peaceful Assembly and Peaceful Procession Law* has vague provisions that enable authorities to reject a request to conduct a peaceful and democratic assembly on ambiguous grounds.⁹³ In 2018, a Bill of Amendment to this law brought controversial changes. The new provision of Article 18 added to Chapter 7 seeks to punish anyone who finances or provides support to a protest. They are deemed to be in breach of national security regulations.⁹⁴

The *Electronic Transactions Law* targets activists and journalists who use new media tools. The law punishes anyone who digitally distributes information "detrimental to the interest of or to lower the dignity of any organisation or any person".⁹⁵ These legal tools can be abused by authorities to target perceived political opponents.⁹⁶

Even in this climate, there is increased interaction and synergy between the Nagas living in the four Indian states as well as those in Myanmar. Social media networks, not-for-profit engagements of Burmese

Naga human rights defenders and the past groundwork of Naga national groups (non-state actors) and faith-based groups has opened up new opportunities of solidarity and partnership which were difficult to establish until a few years ago.

The way forward

Nagas and the states of India and Myanmar must seize this opportunity. India and Myanmar have much to gain by recognising the Naga assertions for a self-determined future. Nagas must demonstrate statesmanship in rallying neighbours and all stakeholders. This is no easy task to achieve but a demilitarised environment can help facilitate dialogues.

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NEPAL



According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 castes and ethnic groups, including 63 indigenous peoples; 59 castes, including 15 Dalit castes¹; and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples 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 collective way of life.

The new Constitution of Nepal promulgated in 2015 denies the collective rights and aspirations for identity-based federalism of indigenous peoples,² in spite of the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Council of Indigenous Peoples (WCIP) Outcome Document. Their implementation is still wanting. The recent amendments in the laws and draft bills are not in line with the UNDRIP and ILO Convention 169.

Legislation without FPIC

The *Criminal (Code) Act*, 2017, the *Criminal Procedure (Code) Act*, 2017, the *Civil (Code) Act*, 2017 and the *Civil Procedure (Code) Act*, 2017 went into effect from 17 August 2018.³ According to the International Institute for Democracy and Electoral Assistance (International IDEA):

The government has put forward the proposal to amend 56 laws that are against the constitutional rules promulgated in

2015. According to the spokesperson of the Ministry of Law, Justice and Parliamentary Affairs [...] the government has also sent a proposal to the Cabinet regarding another bill that calls for amendment of more than 110 existing laws.⁴

These laws and bills are not in line with the UNDRIP, ILO Convention 169 and the Outcome Document of the WCIP 2014, and the free, prior and informed consent (FPIC) of indigenous peoples was not obtained by the state during the making, amending, passing or implementation of these laws.

Conflict between Nepal and the European Union

The ruling dominant caste Khas Arya has been unhappy with European donors regarding their provision of support to the Dalit and Madhesi indigenous peoples. Support to help them claim their human rights and social justice through advocacy and dialogue has been especially contentious. The conflict between the rulers of Nepal and the European Union (EU) culminated in 2018. The EU Election Observation Mission (EU EOM) presented its final report on their observation of the House of Representatives and Provincial Assembly elections, which were held in Nepal in two phases (26 November 2017 and 7 December 2017). It included recommendations for elections on 20 March 2018.⁵ The EU EOM recommended the government to review the impact of the quota system on the ethnic composition of the parliament and to “remove the Khas Arya from the groups included”.⁶ In Art. 84 (2) of the Constitution of Nepal, the Khas Arya have been defined as consisting of the Kshetri, Brahmin, Thakuri and Sanyasi (Dashami) communities. In its recommendations, the EU stated:

[...] The equality provisions refer only to indigent Khas Arya, but this qualification is not contained in the electoral provision. This is arguably in contravention of international standards on equality, as, under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination, affirmative action measures are foreseen only as a means to promote equality.⁷

In the article, “Is European Union instigating ethnic conflict in Nepal?” the Ministry of Foreign Affairs, the Election Commission of Nepal, the Press Council Nepal and leaders strongly criticised the EU EOM report as “unfounded”, “misleading”, “biased”, “baseless”, “mischievous” and “in contravention with the election observation with the election observation code of conduct....”⁸ *The Indian Express* quoted Nepal’s prime minister saying, “I and the Nepali people have felt humiliated by the EU’s report. I humbly request the EU to correct it immediately.”⁹ The EU response to the government’s objection on the report was that it was as per standard practice for international election observation missions.¹⁰

Struggles for lands, territories and resources

Demand for FPIC as well as protests against aggressive development deepened this year. For example:

- The aggressive Road Expansion Project (REP) executed by the government in the ancestral land of the Newa indigenous peoples adversely impacted more than 150,000 peoples.¹¹ Gross human rights violations, including mass-forced eviction, demolishing of symbols of identity such as cultural and religious sites, as well as intimidation, have occurred. The Supreme Court issued its Directive Order on 17 September 2017 on the case of *Shanu Shrestha v. Prime Minister Office et. al*. In the full text of the verdict (made available only in 2018), the Court said not to proceed with any work that adversely affects the security of a house, unless there are no alternative solutions; it said to address the rights to relocation and rehousing of the displaced equitably; and to provide benefits and compensation as per the *Land Acquisition Act* and the *Land Acquisition Regulations*, and focus on conservation of environment and archaeological sites while implementing any development project.¹² On 11 June 2018, the International Labour Organization (ILO) decided to set up a tripartite committee to examine alleged non-observance – relating to Nepal’s REP – of ILO Convention 169 in response to a complaint lodged by the Nepal Telecom Employees’ Union (NTEU).
- With support of the Lawyers’ Association for Human Rights of

Nepalese Indigenous Peoples (LAHURNIP), an appeal was launched in the Provincial Court of Sindhuli against the conviction and fining of community leaders who had led a movement against the adverse impact of human rights violations in the form of loss of housing, lands and resources, resulting from the electricity transmission line in the Sindhuli District. On 21 December 2018, the Court reversed the decision of the Chief District Officer (CDO) and the community leaders were acquitted from the charge.¹³

- On 8 October 2018, with support of LAHURNIP and the Accountability Council, a complaint was lodged requesting mediation by the Head of the Complaint Mechanism of the European Investment Bank (EIB) regarding adverse impacts on particularly indigenous peoples – loss of their lands, resources and livelihood – caused by the high voltage electricity transmission line project in Lamjung. The EIB indicated that it would take the case further and that it is pending.¹⁴

Armed conflict and alleged organised crime

Khambuwan Mukti Morcha Samyukta, an indigenous armed group that has been fighting for separate statehood in the eastern hill districts for the past eight years has, according to a news article, “surrendered weapons and pledged peaceful political activism” to the government.¹⁵ On 5 November 2018, fourteen indigenous leaders of the *Mongol Mulbasi Rastriya Force* (Kirat), who had been detained in judicial custody since 16 October 2016, were acquitted by the District Court Bhaktapur from the charge that they were involved in organised crime .

The CERD grills the State party

The Committee on the Elimination of Racial Discrimination (CERD) issued its concluding observations on the combined 17th to 23rd periodic reports of Nepal on 29 May 2018 and made several recommendations relating to indigenous peoples. It recommended that “the right of indigenous peoples to participate in government bodies [is] effectively respected and that indigenous peoples can freely choose their representatives”; that laws that criminalise aspects of indigenous cultures are

repealed; and that FPIC is obtained “prior to the approval of any project affecting the use and development of their traditional lands and resources”.¹⁶

Indigenous women

The Committee on the Elimination of Discrimination against Women (CEDAW) considered the sixth periodic report of Nepal at its meetings held on 23 October 2018 in Geneva. A consortium of indigenous women’s organizations¹⁷ led by the National Indigenous Women’s Federation (NIWF) had submitted a Shadow Report on the Situation of Rights of Indigenous in Nepal to the CEDAW.¹⁸ The CEDAW Shadow Report Preparation Committee (SRPC) with 93 mainstream women’s organizations,¹⁹ had invited the indigenous women’s consortium to take part and submit one report, but the indigenous women’s consortium submitted a separate shadow report as the issues of indigenous women’s rights are distinct.

On 14 November 2018, the CEDAW made 15 recommendations to Nepal relating to indigenous women.²⁰ It observed a “lack of recognition of the rights of indigenous women in the Constitution, and the general lack of recognition of the right of indigenous peoples to self-determination”.²¹ It, therefore, recommended that these rights should be explicitly recognised by amending the constitution in line with the UNDRIP was historic, and indicative of indigenous women’s success at the world stage.

Economic empowerment of indigenous women (NIWF/UNDP)

As a part of the follow-up of the 61st session of the Commission on the Status of Women (CSW) with a special focus on economic empowerment of indigenous women, the UN Development Programme (UNDP) Nepal, together with the NIWF, carried out research on the *Economic Empowerment of Indigenous Women in Nepal* and published it.²² Its recommendations were that any economic empowerment programmes being or about to be implemented in Nepal should focus on customary knowledge and skills of indigenous women; amend or enact new legis-

lation to give ownership and control over lands, territories and resources in line with UNDRIP and ILO Convention 169; and on developing the indigenous business hub.²³

Mounting pressure on the nomadic Raute

The Raute, the last nomadic indigenous peoples of Nepal, were given ID cards that stated the Gurans Rural Municipality in Dailekh district as their permanent address, as ordered by the Ministry of Federal Affairs and General Administration following a Cabinet meeting on 14 June.²⁴ As Raute have no control over their customary lands, territories and resources and as there has been a mounting pressure on them to live a settled life, the distribution of ID cards could lead to the Raute abandoning their nomadic lifestyle.

Notes and references

1. Hindu cosmology divides the population into hereditary caste groups who are ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system and are highly marginalized to this day (Ed. note).
2. 61 indigenous peoples were initially officially recognised in Nepal through the ordinance *Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054*. Indigenous peoples have been officially and legally recognised by the government since 2002 (2059 B.S.) through the *National Foundation for the Development of Indigenous Nationalities Act* (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country.
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 28. See the shadow report on the Situation of the Rights of Indigenous Women in Nepal, available at: <http://bit.ly/2N5KGjn>
 29. See the SRPC shadow report, available at: <http://bit.ly/2N2xgos>
 30. See the CEDAW Recommendations, available at: <http://bit.ly/2N4lzh3>
 31. See para 40(a) of the CEDAW Recommendations, available at: <http://bit.ly/2N4lzh3>
 32. This research was carried out by a team of researchers led by Krishna B. Bhattachan. To download the book, see: <http://bit.ly/2N2xSKM>
 33. *Economic Empowerment of Indigenous Women in Nepal*. Page 104. Available at: <http://bit.ly/2N2xSKM>
 34. See Kathmandu Post, available at: <http://bit.ly/2N2q4IP>

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Middle East



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. Combining herding with agriculture, they are settled in villages linked by kinship systems, and this has largely determined land ownership. Prior to 1948, some 65,000-100,000 Bedouin lived in the Negev. After 1948, most were expelled or fled to Egypt and Jordan, with only around 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 of "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 Negev and were transferred to the Siyāj area.¹

Today, approximately 258,500 Bedouin citizens of Israel live in the Negev in three types of localities: government-planned townships, recognised villages, and villages that Israel refuses to recognise (unrecognised villages).² There are 35 unrecognized Bedouin villages in the Negev that Israel refers to either as the "dispersion" or as "illegal villages", calling their inhabitants "trespassers" on state land and "criminals".³ Most of the Bedouin population lost their land when Israel declared it as *Mawat* ("dead", uncultivated agricultural lands) and claimed them as state lands.⁴ In addition, the *Land Purchasing Law* of 1953 determined that any land not found in its owners' right in April 1952 would become state land, resulting in more Bedouin losing all rights to their lands outside their living area.⁵ There was no exception made for the Negev 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.

Since the beginning of the 1970s, Israel has been conducting an ongoing non-consensual and non-participatory process of urbanisation. As a result, today more than 72% of the Bedouin population in the Negev resides in recognised townships and villages, which are characterised by poverty, deprivation, high unemployment, crime and social tension, as well as inadequate provision of state services.⁶

The remaining 28% of the Bedouin population (around 72,000 people) live in unrecognised villages⁷ 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 they are represented only in the Regional Council for the Unrecognized Villages (RCUV), an informal community body.

Human rights defender Sheikh Sayah to spend ten months in jail

On 25 December 2018, Sheikh Sayah Abu Madhi'm A-Turi, the iconic leader of the unrecognised village of al-'Arāgīb, and one of the leaders in the longest battles against dispossession of Bedouin land in the Negev, went to prison. Convicted by the Beer Sheva Magistrates Court⁸ in 2017 of 19 counts of trespass, 19 counts of unlawful entry onto public land and one count of "breach of the law", and his appeal having been denied, Sayah was sentenced to ten months in prison, five months of probation and a 36,000 Israeli new shekel (ILS) fine.

Sayah, 69, was born in al-'Arāgīb village in 1949. This village was established during the Ottoman period, on land village residents had purchased in the early 20th century from the al-'Ukabi tribe and for which they paid land taxes to the Ottoman and British authorities. Since 2000, the Israeli government has nonetheless made repeated efforts to dispossess them of their homes while rejecting their claims to the land. It has tried to prevent the village residents from cultivating their land – initially by using aerial spraying of hazardous chemical substances,⁹ later by plowing the fields and destroying the crops. On 27 June 2010, the village was destroyed by state authorities, forcing village residents to build sheds and live in unbearable conditions, experiencing the continued destruction of their village every month – by the end of 2018, the village had been demolished 137 times.¹⁰

The criminalisation of Sayah's life on this land and the findings that these offenses carry prison sentences effectively criminalises thousands of Bedouin citizens with similar status. There is reason to believe that Sayah and his family have been singled out for enforcement action

to the full extent of the law precisely because they have opted for a non-violent struggle for Bedouin rights in the Negev. Sayah has used his public position to raise awareness and promote recognition of other unrecognised villages in the Negev facing similar difficulties.

Mechanisms of forced displacement

In 2018, Israel continued its deliberate policy of making the residents of the unrecognised villages relinquish their land ownership claims and move to crowded urban areas.

While the policy of house demolitions is often presented as used only for the purpose of enforcing the planning and construction laws, it is actually used to reorganise and redesign the space in the Negev-Naqab Southern Region of Israel in accordance with the aspirations of the state to remove the unrecognised villages. In other words, laws designed to regulate planning and construction in Israel become tools for exerting pressure on citizens to enter “regularisation” procedures, which result in the dispossession of Bedouin from their lands and a forced transfer from the unrecognised villages into the government townships.

Two recent laws are such tools:

The Kaminitz Law was enacted on 6 April 2017 to increase the “enforcement and penalisation of planning and building offenses”. The law harms Bedouin citizens of Israel as it disregards their historical claims to their ancestral land, as well as decades of forced displacement, dispossession and discrimination in state land planning and allocation against them, which has left them unable to comply with the law. In addition, the law is intended as a tool for promoting home demolitions in the Bedouin villages.¹¹

The Basic Law: Israel – The Nation-State of the Jewish People was enacted in July 2018 and institutes ethnic segregation as a new legal norm throughout Israel (Article 1). Article 7 of the new *Basic Law* stipulates that the development of Jewish settlement is a “national value”, and that the state must act to encourage, promote and consolidate it. Within the Green Line,¹² the law is likely to be used to establish exclu-

sively Jewish towns, including in the Negev and other areas where Arab citizens are most concentrated.

Three categories of demolition

The authorities classify demolitions in the Bedouin villages as “initiated”, “self-afflicted” and “in procedure”. “Initiated” demolitions are those carried out by the authorities and performed during concentrated days of demolition, in which inspectors from the various authorities, accompanied by large forces from the Israel Police’s elite Yoav Unit¹³ and bulldozers, enter villages in order to demolish structures.¹⁴

Demolitions carried out by the buildings’ owners are called “self-afflicted”. They also include structures that are demolished “in procedure”, i.e., demolitions carried out by the owners prior to receiving any order. The latter amount to approximately 30% of the total “self-afflicted” demolitions.

The self-afflicted and “in procedure” demolitions are carried out for a variety of reasons: the desire to avoid the trauma of the arrival of large police forces without prior warning; the criminal sanctions that may be imposed on the owners of the structures; the possibility of saving personal equipment and building materials in controlled demolitions; threats by the authorities to sue the owners for the costs of the demolition, and more. This type of demolition has become more common in recent years, quadrupling in a period of just four years: from 376 demolitions in 2013 to 1,579 in 2017.¹⁵

Since the Bedouin are poor and located at the bottom of the socio-economic ladder in Israel, it is reasonable to assume that many of them will not be able to pay these fines, thus risking criminal proceedings. The data indicates a hardening of the authorities’ stance and an increase in pressure aimed at achieving the forced transfer of Bedouin citizens from the unrecognised villages to the recognised townships and villages, through a constant presence of law enforcement units, demolitions and patrols.¹⁶

The impact of the demolitions

Initiated demolitions are carried out violently and with heavy tools.

At times, the forces are accompanied by horses, dogs and various aircraft, such as drones. Residents report feelings of humiliation, trauma from their physical displacement from their homes, and confusion as to their future.

In January 2017, the planned demolition of Umm al-Hīrān went terribly wrong when Israeli police shot and killed a 50-year-old Palestinian math teacher Ya'aqub Abu al-Qian (see *The Indigenous World 2018*) while he was driving away in his car with his personal belongings before his house was to be demolished. His car subsequently hit and killed a policeman. The police and the Minister of Public Security immediately claimed it to be a deliberate act of terrorism. Subsequent separate investigations by the Police Investigation Department and Shin Bet (Israel General Security Service) found no evidence of Abu al-Qi'an's intention to kill the policeman. At the end of 2017, Shin Bet forwarded its findings to the State Attorney, Shai Nitzan. In April 2018, Nitzan decided to close the file. Claiming the evidence to be inconclusive and stating that "it is impossible to decide whether this was a terrorist attack", Nitzan did not mention any of Shin Bet's findings; nor did he clear Abu al-Qian of the allegations directed against him.¹⁷

In March 2018, Umm al-Hīrān residents received notice that their homes were to be demolished during the second half of April 2018. A majority of the residents later signed an agreement with the state, under great duress, to move to the Bedouin town of Hūrah. A community leader, Ra'ad Abu al-Qi'an, said that the Israeli authorities had forced residents to sign the agreement in the early hours of the day as the Israelis brought police and demolition teams into the village. He said that the families of some 170 residents signed the agreement, fearing a repeat of the "blood and murder" of January 2017.¹⁸

High poverty rates

Of every 20 Bedouin babies born today in the Negev, 14 will be poor.¹⁹ Data published in 2017 by the Israeli National Insurance Institute (NII)²⁰ show that the poverty rate among Bedouin families was 58.5% in 2016, compared to 13.3% among Israeli Jewish families and 48.7% among non-Bedouin Arab families. Among Bedouin individuals, the poverty rate stood at 63.4%, and among Bedouin children at 68.2%. These figures compare to rates of 17.4% and 23.9%, respectively, among Jewish

Israelis living in the south. According to this official data, a staggering two-thirds of Bedouin families, individuals and children were thus living below the poverty line in 2016. Despite this reality, Israel has no plans to alleviate poverty among the Bedouin.

As alarming as these figures are, they significantly underestimate poverty levels among the Bedouin, since the most impoverished group, the 72,000 people living in unrecognised villages, were not included in the NII's survey. These people receive very few government services and, in most cases, no services at all. In most of the villages there are no schools, kindergartens or health clinics. There is no infrastructure, including electricity, running water, paved roads and sewage disposal systems, in any of them. Consequently, the populations of these villages are reduced to severe hardship and poverty, compounded by the fact that they cannot access their basic civil, political and social rights. The policy of house demolitions, led by the Israeli government and various enforcement authorities, contributes to the poverty of the Bedouin people as they are constantly being denied their basic right to adequate housing.

Israeli institutions systematically fail to collect specific, detailed data on the Bedouin citizens of Israel, leaving them absent from many relevant surveys, statistical reports and other sources of data. The state's inconsistent and incomplete data-gathering on the Bedouin as a whole, and those in the unrecognised villages more specifically, adds to the exclusion of the Bedouin, as it impedes effective policy-making by Israel to protect and promote their human rights.²¹

Outlook for 2019

Plans to go ahead with the development of the planned phosphate mine at Sde Barir, near Arad, were approved by the inter-ministerial cabinet for planning, building, land, and housing (Cabinet HaDiyur) in January 2018.²² This approval has paved the way for the forced dislocation of the al-Fur'ah, al-Ġazzah and az-Za'arūrah Bedouin villages, which are home to thousands of Bedouin. It will also expose thousands more to health and environmental hazards. An environmental impact survey has not yet been finalised. Adalah, the municipality of Arad and others, have petitioned the Israeli Supreme Court against the new mine and the first hearing on the matter will be held on 27 February 2019.

Several other “development” plans are already slated for final adoption and implementation in the coming years and could likewise result in the forced eviction [transfer] of several thousand Bedouin. These plans include the extension of Road 6 (Trans-Israel highway);²³ the Ramat Beka special industrial zone for the use of Elbit Systems, a recently privatised Israeli Arms-producing company;²⁴ and the expansion of the Beka’at Kana’im firing zone for military purposes.²⁵

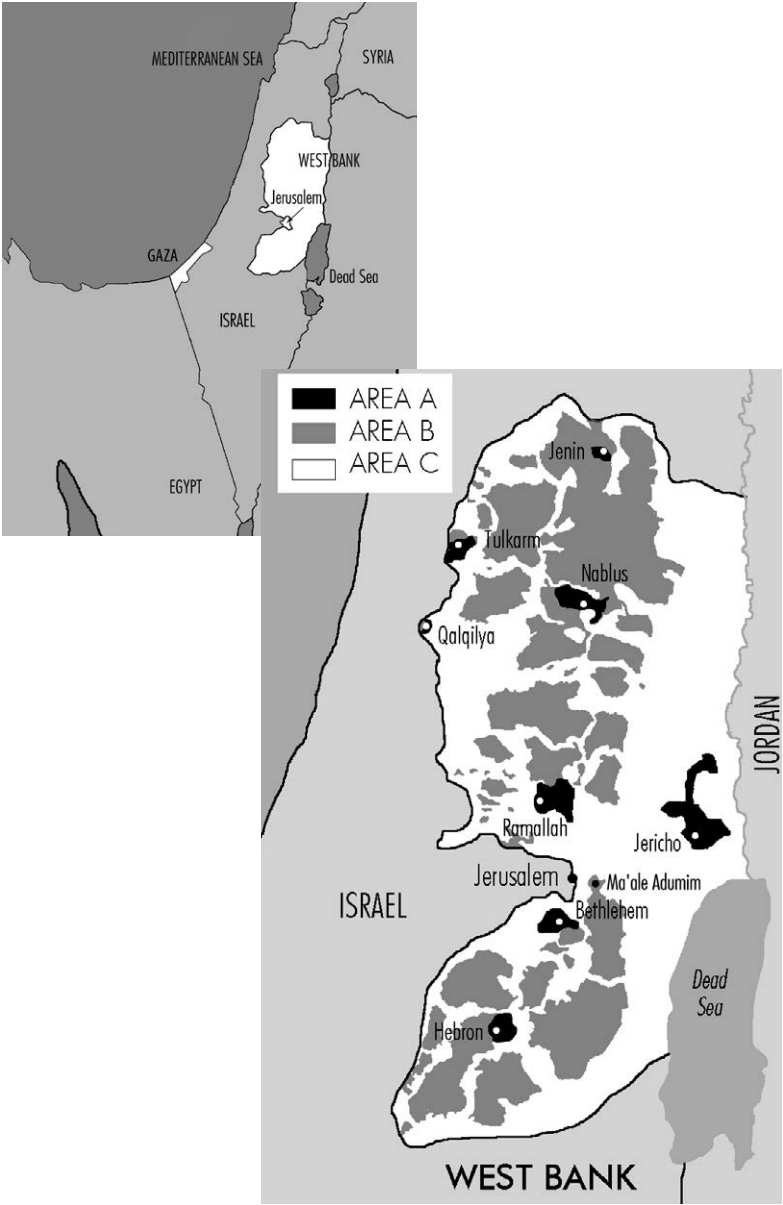
Notes and references

1. See NCF, “The Arab-Bedouin Community in the Negev-Naqab” at <http://bit.ly/2T1Ddrk>
2. See Central Bureau of Statistics (CBS), 1 January 2018 at <http://bit.ly/2T0wRZa>
3. For an interactive map of the Arab Bedouin Villages in the Negev-Naqab, including background and information on services and infrastructure, see <https://www.dukium.org/map/>
4. For example, see Colonialism, Colonization, and Land Law in Mandate Palestine at <http://bit.ly/2T0u7uT>
5. See the Knesset, 2010 at <http://bit.ly/2T8fHIY>
6. See CBS, 2017. Total population estimations in localities, their population and other information.
7. Ibid.
8. Beer Sheva Magistrates Court is one of Israel’s five Magistrates Courts - the basic trial courts of the Israeli system (first instance).
9. This practice was ended as the result of a petition filed with the High Court of Justice, with the help of the Legal Center for Arab Minority Rights in Israel Adalah, and the Negev Coexistence Forum.
10. Record of House Demolitions and Crop Destruction, 2018 at <http://bit.ly/2NeMire>
11. The law is also intended as a tool for promoting home demolitions in Arab towns, villages and neighborhoods throughout Israel and East Jerusalem. See Haaretz at <http://bit.ly/2T5wH2C>
12. The Green Line refers to the 1949 armistice lines established between Israel and its Arab neighbors in the aftermath of the 1948 War of Independence.
13. The Yoav Unit is a special patrol unit of the police established in 2012 as part of the government’s decision to approve the Praver Plan, and with the purpose of assisting the plan’s implementation. The area of work of the Yoav Unit is mainly the Bedouin villages in the Negev/Naqab.
14. See NCF Report “House Demolitions as a Central Tool for the Dispossession and Concentration of the Bedouin Population in the Negev/Naqab Updated Data for 2017”, 2018 at <http://bit.ly/2T5x0KQ>

15. Ibid.
16. Ibid.
17. See NCF Report, op.cit.
18. See Jerusalem Post, "Bedouin agree to leave village that saw deadly standoff with police" at <http://bit.ly/2T0x3Yo>; See The Electronic Intifada at <http://bit.ly/2T2DQ3P>
19. See NCF, 1 March 2018 at <http://bit.ly/2T5U8ZJ>
20. See NII, December 2017 at <http://bit.ly/2T53Uep>
21. See NCF, 21 January 2019 at <http://bit.ly/2TbpLBj>
22. The master plan for the Sde Barir phosphate mine was approved in 2015 by the National Committee for Planning and Construction but its development has been delayed due to, among other things, objections from the Health Ministry, which expressed concern that mining activity at Sde Barir would pose a danger to the health of residents of nearby communities.
23. See BTL at <http://bit.ly/2T3POtN>
24. See Branza at <http://bit.ly/2T5xNLM>
25. See Adalah, "Israel announces massive forced transfer of Bedouin citizens in Negev" at <http://bit.ly/2T4resU>

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 Jahalin 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 the 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.¹

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 and forcible resettlement by Israeli authorities remains a constant threat.

2018 was an extraordinary year for Al Khan al-Ahmar Bedouin village. As reported in previous issues of *The Indigenous World*, Al Khan al-Ahmar has been an example of Israeli occupation policies of “landgrabbing”, forcible displacement of indigenous Bedouin and denial of recognition of Palestinian rights in Area C of the OPT. In 2018, the village and its famous car tyres and mud school became the focus of an internationally known campaign that has – so far – thwarted their demolition.

Threats against Al Khan al-Ahmar

Twice during 2018, Israeli military bulldozers, military forces, riot police and Border Police have entered the village, which has been forced to “host” them while it was declared a closed military zone, prior to its scheduled demolition. Hundreds of non-violent solidarity activists sleeping there – sometimes as many as 200 per night – have been under violent attack by the Israeli riot police. This violence peaked during weekly Friday demonstrations, which followed shared prayers. These demonstrations were organised by the Palestinian non-violent popular committees, supported by thousands of Palestinians, Israelis, internationals, leading Palestinian politicians, church leaders and high-ranking Palestinian Authority ministers. Despite demolition deadlines, due within days to raze the entire village and its iconic school, the demolition has repeatedly been avoided at the last minute or postponed. Al Khan al-Ahmar still stands.

Twice in 2018, the Israeli High Court rejected the Bedouin residents’ petitions, including their appeal against a decision allowing for demolition. High Court lead judge, Noam Sohlberg, himself a resident of Alon Shvut (a settlement illegal under international law) and a religious Zionist, stated in his ruling that the structures had been built illegally, without military-issued building permits, and that they could therefore be demolished.

Schools as specific targets for demolition

In Area C, 300,000 Palestinians have no civil rights at all, including the right to access education. On the contrary – some 42 schools² in Area C

currently bear demolition or stop work orders, as Israel works to prevent Palestinian development,³ while nearby Israeli settlements continue to expand in order to prevent the future viability of a Palestinian state. For example, in May 2018 when UK Minister of State for the Middle East, Alistair Burt, visited Al Khan al-Ahmar and its school, the neighbouring Israeli settlement, Kfar Adumim, declared its plan to build 92 new housing units on the hill overlooking Al Khan al-Ahmar. Even those Bedouin who are landowners regularly suffer demolitions and fail to get building permits on their land.

Bedouin culture is non-consumerist. It is sustainable even under harsh desert conditions. The Bedouin practice a semi-nomadic lifestyle which is closely in tune with nature; they cherish freedom, having an open and welcoming heart, intelligence, spiritual strength, simplicity, honesty, trust and generous hospitality. This closeness to nature and natural laws influences their cultural norms, which share many of the characteristics recognised in indigenous cultures all over the world. Israel, however, has regularly denied the Bedouin their indigenous status, and pejoratively refers to them as “nomads” in order to dispossess them of land rights.

The International Criminal Court

Under occupation, with divide and rule policies deliberately working to undermine it, Bedouin culture is under attack. The campaign for Al Khan al-Ahmar does not therefore merely represent a political struggle for recognition of Bedouin rights as refugees. It is also a campaign to prevent forcible displacement to semi-urban settings – targeted by Israel to be either next to a garbage dump, or a sewage farm, or on land privately owned by Palestinians – with a disastrous impact on that culture. Israeli policies of forcible displacement and the coercive environment of the Israeli military occupation has forced people to move elsewhere, as if of their own free will, and as if in accordance with the principles of free, prior and informed consent (FPIC). These policies are already recognised by the International Criminal Court (ICC) – which is being petitioned to prevent this specific displacement, classifying it as a war crime.

A statement⁴ by the ICC’s chief prosecutor, Judge Fatou Bensouda, on Wednesday, 16 October, may have been the reason that the dem-

olition did not take place as scheduled. She stated, *inter alia*:

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. [...] As Prosecutor seized of the situation in Palestine, I therefore feel compelled to remind all parties that the situation remains under preliminary examination by my Office. I continue to keep a close eye on the developments on the ground and will not hesitate to take any appropriate action, within the confines of the independent and impartial exercise of my mandate under the Rome Statute, with full respect for the principle of complementarity.

International solidarity

This statement was made at a time when demonstrations against demolition were at their most violent. A video is available⁵ showing how new, remote control Taser guns⁶ were being tested by the Israeli riot police and how demonstrators had to be evacuated by ambulance (access for which was delayed by the military) due to the resulting heart problems and epileptic fits. During the same demonstration, a young Bedouin woman was violently arrested, having her head-covering ripped off in public, and other demonstrators were viciously attacked. These scenes were broadcast worldwide, causing outrage in the Muslim world, especially during the next day's Friday prayers.

German Chancellor Angela Merkel's reportedly harsh words about the demolition of Al Khan al-Ahmar to Prime Minister Benjamin Netanyahu during her visit to Israel may have also prevented the demolition. *Jahalin Solidarity* organised a demonstration of 18 Bedouin schoolchildren from the car tyres school⁷ outside the Israeli president's official residence while Chancellor Merkel was lunching there. A letter⁸ from *Jahalin Solidarity*, similar to one given to HRH King Abdullah and Queen Rania of Jordan at the UN General Assembly in September, was handed

to Ms Merkel by the German ambassador and then translated into German for wide distribution in Germany; similarly, an online appeal⁹ to the Chancellor went viral on Facebook.

In early November, UN Special Rapporteur for Human Rights in OPT, Prof. Michael Lynk, wrote an important opinion piece, published internationally in Newsweek.¹⁰ In it, he says:

The tragic fate of Khan al-Ahmar is part of Israel's annexationist trend, which has worrying consequences well into the future. Israel is moving with dispatch to entrench a sovereignty claim by annexing parts or all of the West Bank. It already annexed East Jerusalem in 1967, a move that the international community condemned as illegal and has not recognized to this day. The West Bank is now clearly within Israel's sights. [...]

Michael Sfard, a noted Israeli human rights lawyer, has recently written that Israel's [...] goal is clear: a single state containing two peoples, only one of whom has citizenship and civil rights.' Yet, despite Israel's ongoing record of non-compliance with the directions of the international community, it has rarely paid a meaningful price for its defiance, and its appetite for entrenching its annexationist ambitions in East Jerusalem and the West Bank has gone largely unchecked. For the past 50 years, the international community has been playing checkers while Israel has been playing chess.

Alas, neither international law or UN resolutions are self-executing. Only after decisive action by the United Nations insisting that Israel must either fully annul its annexations and relinquish its occupation or be prepared to bear the full consequences of international accountability, will we start moving towards a compassionate peace in the Middle East.¹¹

The above confirms the involvement of international bodies such as the United Nations and the ICC; governments too, such as those of the United Kingdom and France have been supportive in the campaign against demolition. Local diplomats based in Jerusalem, Ramallah and Tel Aviv have also conducted solidarity visits, including all EU Heads of Mission, as have the European Parliament's DPAL Committee and MPs

from other countries; the Russian Representative visited on various occasions, including engaging in media work there. The ongoing campaign also involves the United States Congress: lobbyists (Rebuilding Alliance and J Street) have written letters signed by members of Congress addressed to President Trump, just as Jahalin Solidarity managed, through its social media campaign¹² featuring short films,¹³ to get the signatures of 109 Members of Parliament on Early Day Motion 1169,¹⁴ who had been spurred on to act by the thousands of letters and tweets from voters generated by that online campaign.

Once initiated, the campaign was supported by many civil society activists and NGOs: CAABU (the Council for Arab-British Understanding), Palestine Solidarity Campaign, Medical Aid for Palestine, and Labour2Palestine in the UK, and Jewish Voice for Peace, J Street and the Rebuilding Alliance in the US. In Brussels, activists worked for a successful European Parliament vote¹⁵ calling on Israel not to demolish Al Khan al-Ahmar and its school. Similarly, EU member states at the Security Council also issued a statement.¹⁶ Equally, in Israel-Palestine, organisations such as B'Tselem supported Jahalin Solidarity's campaign, highlighting its visibility by retweeting posts, involving Jahalin Solidarity in its field briefings, as well as issuing its own op-eds,¹⁷ calling on the EU for clarification¹⁸ or referring to Al Khan al-Ahmar in an address to the Security Council.¹⁹

Moreover, Jahalin Solidarity set up and administered a WhatsApp group of 250+ international journalists, in which journalists and key activists posted real-time reports, creating a living body of information. This information was also shared with over 100 diplomats, including at ambassador level, both in Israel-Palestine and key capitals. This work is continuing into 2019 due to the demolition orders being outstanding, and the military²⁰ appearing on New Year's Day to inform the Bedouin – contrary to the Israeli High Court ruling which insisted that while demolition could be undertaken, displacement was not allowed – that they would have to move soon.

Community spokesman awarded a Peacemaker's Award

Eid abu Khamis Jahalin, whose longstanding contribution is immeasurable as an advocate for his village and its school, has been recognised

for a Peacemaker's Award.²¹ He has spoken at various foreign parliaments, welcomed visitors in his home and been the intermediary for his community's relationship with its lawyers, journalists as well as the Israeli military. This has resulted in intense pressure on him as community leader, including efforts by far-right activists to deliberately undermine his integrity by quoting him out of context in their media reports, misrepresenting him or seeking to ambush him by pretending to be neutral journalists. It is his *sumud* (steadfastness) in relation to his people that has been recognised by the Rebuilding Alliance in San Francisco and, alongside the author, earned him the award.

Outlook for 2019

So far, Al Khan al-Ahmar and its famous car tyres and mud school still stand. International pressure and media attention have been sufficient (substantially assisted by the solidarity of so many Palestinians who have either slept at or visited or organised in the protest tent, as well as Israelis who have been a fundamental component of this campaign, together with the 24/7 presence of many journalists) to deter the government's efforts. 2019 is still young, however, and ongoing calls for demolition are strident during this election period. Al Khan al-Ahmar's continued existence cannot be taken for granted, nor can its function (described in previous yearbooks of *The Indigenous World*) as "guardian of Jerusalem and the two-state solution". Moreover, even if Al Khan al-Ahmar remains standing and the Israeli landgrab for settlement expansion is somewhat foiled there, the conditions of the village – and of the 300,000 other Palestinians living in Area C, especially in pastoral herding communities in the Jordan Valley and the South Hebron Hills – remain excruciating. Just as the conditions of the 300,000 Palestinians in Occupied East Jerusalem also continue to be, living in a coercive environment absolutely deprived of any semblance of civil rights or democracy.

Notes and references

1. "Expel and Exploit: The Israeli Practice of Taking over Rural Palestinian Land". B'Tselem, 2016, at <http://bit.ly/2T5xfpq>.

2. See HRW at <http://bit.ly/2T5xiBC>
3. See +972 magazine at <http://bit.ly/2SYdyzx>
4. See The International Criminal Court at <http://bit.ly/2SXOLeV>; See +972 Magazine at <http://bit.ly/2T3Zv2>
5. See Video uploaded in Google Drive at <http://bit.ly/2T2Law4>
6. A Taser is an electrical weapon that causes neuromuscular incapacitation. It fires two small barbed darts intended to puncture the skin and remain attached to the target. The darts are connected to the main unit by thin insulated copper wire and deliver electric current to disrupt voluntary control of muscles. <https://en.wikipedia.org/wiki/Taser>
7. See Jahalin at <http://bit.ly/2SW5zDk>
8. See Jahalin at <https://bit.ly/2Sxofd0>
9. See Middle East Eye, "Israeli Campaigners Plea to German Chancellor Angela Merkel" at <http://bit.ly/2SBFEkt>
10. See Newsweek at <http://bit.ly/2SB3VHH>
11. Ibidem
12. See Jahalin at <http://bit.ly/2SZoTiJ>
13. See Jahalin at <http://bit.ly/2SW5zDk>
14. An early day motion (EDM), in the Westminster system, is a motion, expressed as a single sentence, tabled by Members of Parliament that formally calls for debate "on an early day". In practice, their main purpose is to draw attention to particular subjects of interest. See the UK Parliament at <http://bit.ly/2T0ullF>
15. See Noa Landau on twitter at <http://bit.ly/2SULRru>
16. See UN Web TV at <http://bit.ly/2Szc5E>
17. See Haaretz at <http://bit.ly/2SXYYYL>
18. See B'TSELEM at <http://bit.ly/2SS7xVh>
19. Ibidem at <http://bit.ly/2SXERKw>
20. See Jahalin Mailchimp Newsletter at <http://bit.ly/2T0oixn>
21. See The Rebuilding Alliance at <http://bit.ly/2SXFeoq>

Angela Godfrey-Goldstein is Director of Jahalin Solidarity, a Palestinian organization she set up to support Jahalin Bedouin with capacity raising and advocacy, especially as 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. Together with Eid abu Khamis Jahalin she was a Rebuilding Alliance Peacemaker awardee 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 new book *a Defending Hope Dispatches From The Front Lines In Palestine And Israel*.

North and West Africa



ALGERIA



The Amazigh are the indigenous people of Algeria and other countries of North Africa and 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: Kabylia in the north-east (Kabyls 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.

The Amazigh language

The constitutional reform adopted in 2016 enabled Tamazight to be established as a national and official language (Article 4) and anticipated that “implementing regulations governing this article will be set out in an act of parliament”¹ Amazigh organisations have since then been repeatedly calling for the adoption of a law that would formalise Tamazight’s status as an official language and, finally, such a law was passed on 2 September 2018. It does not, however, focus on implementing the official nature of the language, as anticipated, but merely on creating the “Algerian Academy of the Amazigh Language” (Act No. 18-17 of 02/09/2018). There are therefore serious questions as to the aims of this act of parliament.

There was no consultation regarding the bill to create this body, nor its aims, membership and governance, nor was there any free, prior and informed consent of the Amazigh themselves. Moreover, none of the recitals set out in the preamble to the law refer to any such consultation or consent. It was the head of state who called on the government to establish “a draft bill of law to create an Algerian Academy of the Amazigh Language”² and the government simply implemented these instructions. It should also be noted that the president and members of this academy have been chosen by the government in a process totally lacking in any transparency and that it is also the government that can remove them from office. This institution is thus not independent of the executive power.

Amazigh civil society organisations (CSOs) have complained that this law does not address the urgent need to formalise the official nature of Tamazight and, in October, high school students from the Amazigh regions, particularly Kabylia, went on strike to protest at the politico-administrative obstructions to providing an education in the Amazigh language.³

Violations of the rights and freedoms of assembly and expression

Amazigh rights defenders, members of associations promoting the Amazigh culture and language and members of movements working for the right to self-determination in their territories (particularly the

Movement for Self-Determination in Kabylia (Mouvement pour l'Autodétermination de la Kabylie) and the Movement for Mزاب Autonomy (Mouvement pour l'Autonomie du Mزاب)) are being closely monitored and suffering intimidation, arbitrary arrests and threats, with their activities banned or violently suppressed by the police. Some associations are finding that their administrative authorisation is not being renewed, which leads to a de facto halt to their activities. The Tiawinin association publicly complained that the state authorities had "cancelled conferences and were trying to reduce their culture to silence and to stifle freedom of speech".⁴

Public conferences, literary cafes, discussion fora and peaceful marches have all been banned or prevented by the police in Vgayet, Aokas, Bouzguène, Tizi-Wezzu, Iwadiyen, Sidi-Aich and Hizer. Dozens of peaceful meetings have been prevented from being held, not to mention all those that have been cancelled by their organisers for fear of being banned.

On 10 March 2018, the Kabyl people were planning to celebrate the 38th anniversary of the "Amazigh Spring". Popular gatherings organised for that day in several towns around Kabylia (Tizi-Wezzu, Vgayet, Tuvirett, etc.) were violently dispersed by the police. Several dozen people were unjustifiably arrested and taken to different police stations for identification and questioning.

In July 2018, 12 students from Tuvirett (Bouira) University in Kabylia, members of the National Collective to Defend the Amazigh Identity (Collectif national pour la défense de l'identité amazighe), were sentenced to two years in prison and a fine for having participated in a people's march on 11 December 2017.

In June, the Kabyl blogger Merzoug Touati was sentenced to seven years in prison by the Vgayet Court of Appeal for having published an interview on his blog with an Israeli citizen. Merzoug Touati is accused of having links to the agents of a foreign power and for calling people to disobey the state authorities.⁵ On the day of the trial, 40 people (including human rights defenders and elected representatives) who turned up to the hearing were arrested by police and prevented from attending the trial. According to the defence lawyers, there was no reason to convict Merzoug Touati as he had merely been exercising his freedom of opinion and expression, as protected by the country's Constitution. It was therefore a wrongful conviction.

Salim Yezza, one of the main organisers of the people's movement

in the Aurès region (Tamazight-speaking region in the east of Algeria), was forced to flee persecution by the Algerian police in 2011 and seek refuge in France. On 5 July 2018, on returning home to the village of Tkukt, near Batna (400 km east of Algiers) to attend the funeral of his recently-departed father, he was arrested by the border police at Biskra airport. He was then prosecuted by the Taghardayt (Ghardaya) Court for “incitement to violence” and sentenced to one year in prison and a 100,000 dinar fine. His lawyers, Noureddine Ahmine and Koceila Zerguine, believe this to be an arbitrary conviction because there was no evidence that Salim Yezza had incited anyone to commit an act of violence. They said that “he had simply exercised his freedom of opinion and expression”.⁶

On his return from Tunis on 14 November, where he had been participating in the 8th General Assembly of the Amazigh World Congress, Hamou Chekebkeb, a member of the Federal Council of this NGO, representing the Mزاب people, was arrested by the police at the Algerian/Tunisian border and held for two days without reason.

Despite the release of some 30 detainees in 2017, there remain an unknown number of local people held following unfair trials in the Mزاب region (600 km south of Algiers). The region remains subject to close police surveillance, including monitoring of telephone and internet communications. Several Mozabites have had to flee Algeria in secret because they are being sought for having expressed their political opinions.

Naima Salhi, a member of the Algerian parliament, regularly expresses her hatred of the Amazigh in Algerian newspapers and on social media and suffers no consequences due to her parliamentary immunity. CSOs have repeatedly called in vain for her immunity to be removed.⁷

Marginalisation of the Tuareg

According to the Amazigh cultural movement in Aurès, historic Amazigh remains (the Medghassen tombs, the grave of Dihya, the Massinissa site, Ghoufi, etc.) in the Aurès region to the east of Algeria are being neglected and are now in a worrying state of disrepair.

At the start of 2018, the Amenokal (Tuareg tribal chief) of Hoggar (Tuareg territory in the south of Algeria), Ahmed Edabir, publicly de-

nounced “the exclusion, marginalisation and disdain to which the Tuareg of Hoggar are being subjected”.⁸ The Tuareg representative deplored the discrimination suffered with regard to jobs and social benefits, and the closure of Algeria’s southern borders, which prevents Tuareg from Tamanrasset and Djanet, in particular, from maintaining their traditional relationships (family, socio-cultural and trade) with Tuareg communities in the Azawad (northern Mali) and Fezzan (southern Libya) regions.

Examination by UN Human Rights Committee

At the international level, Algeria submitted its report to the UN Human Rights Committee on 4 and 5 July 2018, in application of the International Covenant on Civil and Political Rights (CCPR/C/SR.3494 and 3495). Having examined this report and the shadow reports submitted by NGOs, the Human Rights Committee published its concluding observations, including the following:

- The Committee takes note that, pursuant to article 150 of the Constitution, treaties take precedence over laws. However, it is concerned that, in practice, the Covenant does not always take precedence over national laws. [...] the Committee reiterates its concern and finds it regrettable that few examples were provided of cases in which the Covenant has been invoked [...] The State party should take measures to ensure the precedence of the Covenant over national laws and thus give full effect to the rights enshrined in the Covenant. It should also take measures to raise awareness of the Covenant and the Optional Protocol thereto among judges, prosecutors and lawyers in order to ensure that their provisions are more fully considered and applied by national courts. [...]
- [...] the Committee remains concerned that the definition of discrimination does not include such grounds of discrimination as language, religious belief, sexual orientation and gender identity, and finds it regrettable that current legislation does not offer victims effective civil and administrative remedies. The Committee is also concerned by allegations of acts of discrimination, stigmatisation and hate speech against migrants, asylum seekers and Amazigh communities. [...]

[...] The State party should undertake to combat hate speech by public or private persons, including on social media and the internet, in accordance with articles 19 and 20 of the Covenant and general comment No. 34 (2011) on freedoms of opinion and expression [...]

- [...] It further reiterates its concern regarding articles 96, 144, 144 bis, 144 bis 2, 146, 296 and 298 of the Criminal Code, pursuant to which activities linked to exercise of the freedom of expression, such as defamation or insults against civil servants or State institutions, continue to be crimes and are subject to fines. The Committee expresses its concern at claims that these criminal provisions are being used to impede the work of journalists and human rights defenders, including Hassan Bouras, Mohamed Tamalt and Merzoug Touati (arts. 6 and 19 of the Covenant).

The State party should align the relevant provisions of Organic Act No. 12-05 of 12 January 2012 and of the Criminal Code with article 19 of the Covenant and release from prison all persons whose conviction has stemmed from their having exercised their right to freedom of expression under article 19 of the Covenant and grant those persons full compensation for the harm suffered. [...]

- [...] The Committee expresses concern at Act No. 12-06 of 12 January 2012 (the Associations Act), inasmuch as its provisions are restrictive and subject an association's stated objective to vague, imprecise general criteria, such as the public interest and respect for national values and principles. It is also concerned that, under that legislation, (a) the founding of an association is subject to an authorisation procedure; (b) cooperation with foreign organisations and the receipt of funds from abroad are subject to prior clearance by the authorities; and (c) associations may be dissolved by simple administrative decision for reasons of "interference with the domestic affairs of the country or affront to national sovereignty". In addition, it is concerned by numerous credible reports of the Government having rejected the by-laws of existing organisations that had been updated to align them with the new legislation, as that practice limits the freedoms of associations and exposes their members to hefty penalties for unauthorised activity (art. 22). The State party should amend Act No. 12-06 of 12 January 2012 on

associations to make it fully consistent with the provisions of article 22 of the Covenant and ensure that the updated by-laws of existing associations are legally recognised, and refrain from using the provisions of Act No. 12-06 as a means to suspend de facto the activities of specific associations. [...]

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LIBYA



Arabs of different origins (Egyptian, Sudanese, Tunisian, Palestinian, Bedouin, Maltese, etc.) make up the majority of the Libyan population, accounting for approximately 90%. They are followed by the Imazighen (4.7%), Westerners (1%), Indo-Pakistanis and other Asians (around 1%), Nilo-Saharan (less than 1%) and Filipinos (less than 1%). Most Arabs of Libyan origin are of mixed descent, i.e. Arab/Imazighen.

The Imazighen live in small villages in the west of Libya; they tend to identify along tribal or village lines rather than as Libyan nationals. The Tuareg and the Toubou live in the south of the country; they are generally nomadic, moving from one place to another with their livestock and living in tents.¹

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

General situation

International mediation between the Libyan factions intensified throughout 2018 without, however, culminating in any tangible results. On the ground, the split between the Cyrenaica region (in the east), under the control of Marshal Khalifa Haftar's National Libyan Army (ANL), and the Tripolitania region (in the west) where Faïez Sarraj's internationally-recognised "National Union" government sits, remains a gaping one. Two summits involving the main protagonists of the crisis, one in Paris in May and the other in Palermo (Italy) in November, resulted in nothing more than vague declarations of principle.

Exploiting these divisions, core groups of Islamic State (IS) again made their presence felt with a number of high-profile actions, in particular the May attack on the Election Commission, in the heart of Tripoli, where 12 people were killed and seven wounded.

By hosting a further summit in November 2018, the Italian government was seeking to play a role of diplomatic mediation but the recalcitrant attitude of Marshal Haftar threw a shadow over the meeting. The objective of holding elections was upheld but postponed until spring 2019. A "national conference" is scheduled for the spring of 2019 to prepare this electoral timeline.²

Referendum on the Constitution

A referendum on Libya's new Constitution could take place in February 2019 if the security conditions are met, announced Mr Sayeh, President of the High National Election Commission (HNEC) on 7 December 2018. Mr Sayeh specified, however, that the Commission's funds were "in the red" and that they would need 40 million dinars (around US\$ 30 million) to conduct the process successfully. Validation of the Constitution via a referendum should open the path to legislative and presidential elections in Libya, intended to mark an end to the interminable transition period and to separate the rival camps in this oil-rich country.³

Minority Rights Group's 2018 report on Libya

The Minority Rights Group (MRG) report, published in early 2018, ranks

Libya's peoples 11th on the international most vulnerable list. This classification is based on a summary of ten indicators, including conflicts over self-determination, armed conflict and the number of displaced persons.⁴

Anger following abduction of an Amazigh activist

On 4 January 2018, Rabie-Al-Jayash was accused of espionage for being in possession of a book written in the Tifinagh alphabet and speaking in the Amazigh language. The abduction of this high-level Amazigh activist by armed men linked to Khalifa Haftar resulted in a wave of anger among Libya's Imazighen.⁵

Tamazight-speaking towns want legal status for their language

Libyan towns inhabited by the Imazighen want to extend a ruling that is already being applied in the town of Zaouara by which written communications – on advertisements, in shops and administrative buildings, as well as on official logos – are all written in Tamazight. A Zaouara source stated that at least two districts from the mountainous west would shortly be announcing a decree legalising the status of the Amazigh language, Tamazight.⁶

Toubou and Ouled Slimane Arabs clash in Sebha (Fezzan)

Although a peace agreement was signed, with Italian mediation, in Rome on 2 April 2017, clashes between the Toubou and Ouled Slimane Arabs resumed at the end of February 2018.⁷ Bitter grudges – the Ouled Slimane deny the Toubou their "Libyanity", defining them as "Blacks" and "Chadians" – and tribal vendettas have been ripping the two communities apart since 2012. Above all else, however, it is competition over access to economic resources that fans the flames of this conflict. Sebha is the door to the Sahara and so flows to (and from) Sub-Saharan Africa inevitably pass through this town of 130,000 inhabitants.⁸

Influential Arab individuals from Ouled Slimane have joined Haftar's self-proclaimed "National Libyan Army" while some Toubou military chiefs have joined Sarraj from the Tripolitania region. Neither of the two leaders truly exercise any authority over Sebha, the "capital" of Fezzan (South region). It is generally thought that the resumption in hostilities in Sebha is more linked to local factors than to the national battle raging between Haftar and Sarraj.

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MOROCCO



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The Amazigh (Berber) peoples are the indigenous peoples of North Africa, and primarily speak Tamazight. The most recent census in Morocco (2016) estimated the number of Tamazight speakers to be 28% of the population or roughly ten million speakers. Amazigh associations, however, strongly challenge this and instead claim a rate of 65% to 70%. They estimate that the Tamazight-speaking population may 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 advocate for their rights. It is a civil society movement based on universal values of human rights. There are now more than 800 Amazigh associations established throughout Morocco.

The administrative and legal system of Morocco has been highly Arabised, and the Amazigh culture and way of life is under constant pressure to assimilate. Morocco has for many years been a unitary state with a centralised authority, a single religion, a single language and systematic marginalisation of all aspects of the Amazigh identity. The Constitution of 2011 officially recognises the Amazigh identity and language. This has the potential to be a very positive and encouraging step forward for the Amazigh people of Morocco. Unfortunately, its official implementation is still pending enactment of the organic law that would establish rules as to how Tamazight is to be officially implemented, along with methods for incorporating it into teaching and into life generally as an official language. Work to harmonise the legal instruments with the new Constitution has not yet commenced and no steps have been taken to implement the Constitution.

Morocco has not ratified ILO Convention 169 and did not vote in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Implementing official recognition of the Amazigh language

Little changed throughout 2018 in terms of the use of Tamazight as an official language. The organic law that will establish rules on how the Amazigh language is to be officially implemented is still being obstructed by Parliament's Teaching, Culture and Communications Committee, even though its review is complete. Substantive amendments are expected to this piece of legislation but a consensus within the Committee is difficult to find. Given the enormous differences between committee members, it has even been reported on several occasions that the law has actually been adopted. Members of the ruling Islamic Party remain hostile to the widespread use of Tamazight throughout public life. According to Ahmed Boukous, Vice-Chancellor of the Royal Institute for Amazigh Culture (IRCAM): "There are several possible reasons for this failure to enact the legislation. The most plausible is a lack of political will on the part of both government and legislature. The widespread use of Tamazight would not, indeed, be viewed favourably by their current members, who do not agree with this approach."¹

The President of the Chamber of Representatives, Habib El Malki, believes it will be necessary to reach a consensus on this important legislation before it can be ratified.² The draft bill of law anticipates the use of Tamazight in several areas of public life (teaching, legislation, Parliament, media and communication, culture, art, administration, public services and justice).

Given the situation as it stands, no promotion of the Amazigh language is currently possible. Another major problem is that any other laws adopted before this organic law is enacted will not be compatible with it as they will not take into consideration the implementation of this new organic law. They will therefore not be harmonised and this will create even more difficulties in terms of implementing Tamazight as an official language of Morocco.

Teaching the Amazigh language: small steps and huge dedication

Without the organic law implementing the official status of the Amazigh

language, its teaching remains at the mercy of head teachers' interpretations, in line with their opinions and personal convictions. Although the competitive entry examinations for the preparatory cycle of primary and secondary school teaching include a Tamazight option, some schools subsequently require Tamazight-speaking teachers to teach languages other than their specialisation, giving pupils the impression that it is not an important priority within the education system.

The example of a teacher in the Dakhla region of southern Morocco – who had to teach a language in which he was not specifically trained – is noteworthy. The Amazigh organisations denounced this discriminatory behaviour.³ This led Prime Minister Saadeddine Othmani to express his disagreement with this practice in Parliament and reassure school teachers that schools must respect their teachers' specialisations.⁴ According to an article on the new school year 2018:

*There will clearly be no change in the teaching of this language during this school year. Amazigh activists and the Royal Institute for Amazigh Culture should raise the alarm, calling for implementation of the constitutional provisions; until the organic law on implementing the official status of the Amazigh language has been ratified by the legislature, however, the situation will not change. The text anticipates a gradual roll-out of Tamazight teaching to all levels over 15 years (...) The vice-chancellor of the IRCAM, Ahmed Boukous, argues for the promotion of foreign language teaching in the same way as national, namely Arabic and Tamazight.*⁵

The problem of Amazigh names

The issue of registry offices refusing to recognise Amazigh first names remains an ongoing one, albeit with fewer cases now being noted. There are still individual examples of poor behaviour, however. Yet again, the Casablanca civil registry refused to register a new born baby with the first name of "Amnay" ("Horseman" in English). This happened in the district of Sidi Moumen, under the Prefecture of Sidi Bernoussi, according to the Thursday 11 January issue of the daily newspaper Assabah. The refusal to register this name incurred the wrath of numerous civil society actors, particularly human rights activists. The latter spoke of

“racial discrimination against the Amazigh” noted Assabah. And, in a letter sent to the Head of Government and to the Minister of the Interior, the National Federation of Amazigh Associations (Fédération nationale des associations amazighes) denounced the “persistence of racial discrimination in Morocco”, emphasising that this ban is an “abusive and unjustified” act.⁶

The Ministry of the Interior rapidly issued a press release explaining that investigations conducted:

*Showed that the first names chosen by citizens are not a reason for refusing to register births but that refusals are instead due either to a lack of necessary documents or to a request for a delay to enable consultation, in accordance with current legal and procedural provisions.*⁷

Indeed, this problem seems to have been resolved by the government in comparison to the previous year; there are now only a few civil registry staff who are failing to follow Ministry of the Interior guidelines in this regard.

The land issue, an ever more serious problem

The land problem goes back to the time of the French Protectorate when the Amazigh people were dispossessed of their lands. After Morocco became independent, the Amazigh people did not recover their lands and the problem still remains unsolved.

Despite King Mohamed VI's instructions to review this problematic issue in Morocco, particularly that of the communal lands, it is becoming increasingly serious given the attitude of the High Commissioner for Water and Forests, who has commenced a procedure for demarcating land without any prior direct consultation with the population. This has resulted in anger among the indigenous population, above all in the Souss region of southern Morocco. Once demarcated, the population will no longer have the right to access pastureland and, in addition, the introduction of wild boar into these spaces is threatening the population. The population of the Souss region mobilised to protest against this situation, with several newspapers covering the demonstration. The newspaper Albayane wrote:

A huge crowd built up on the streets of Casablanca on Sunday 25 November to denounce the State policy on pastoral transhumance and management of pastoral and silvo-pastoral spaces. The march, organised by the AKAL (land) coordination for defence of the population's right to land and wealth, included activists from the Amazigh movement as well as dozens of human rights associations and civil society organisations from the Souss region.⁸

This is the first time that a protest demanding the right to land has taken place, with protestors calling on the state to repeal all legislative texts dating back to the time of the Protectorate that authorise expropriation on grounds of public interest. Protestors were also demanding the cancellation of Law 113.13 on pastureland management, drawn up without any consultation.

The Head of Government was not indifferent to this serious demand and he agreed to receive the AKAL movement's leaders. The meeting took place in the Amazigh language, the first time an official government meeting has ever done so. Instructions were given to all regional governors to make contact with representatives of the AKAL movement to find a solution to this problem.

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TUNISIA



As elsewhere in North Africa, the Amazigh are Tunisia's indigenous population. There are no official statistics regarding their number in the country, but Amazigh associations estimate that there are around 1 million speakers of Tamazight (the Amazigh language). This is approximately 10% of the total population. It is in Tunisia that the Amazigh have suffered the greatest forced Arabisation. This explains the low proportion of Tamazight speakers in the country. There are nonetheless many Tunisians who, while no longer able to speak Tamazight, still consider themselves to be 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 (Tamazight) 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 the 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.

Law on racial discrimination

Following recommendations made to the Tunisian government by the UN Committee on the Elimination of Racial Discrimination (CERD) in 2009 and by the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2016, Tunisia adopted *Law 50/2018* of 23 October 2018 on “eliminating all forms of racial discrimination”¹. The stated aim of this law is to “eliminate all forms of racial discrimination and its manifestations and protect human dignity, ensure equal enjoyment of rights and fulfil [the State’s] duty in line with the Constitution and international treaties ratified by Tunisia”. This law understands discrimination as being “any distinction, exclusion, restriction or preference based on race, colour, national or ethnic origin or any other form of racial discrimination, within the meaning of internationally ratified treaties, that is likely to obstruct or prevent the exercise of equal rights and freedoms, and which requires additional tasks or responsibilities”. The law also anticipates that the State will “undertake to disseminate a culture of human rights, equality, tolerance and acceptance of the other among the different components of society”. This law was welcomed as a step in the right direction towards fighting racial discrimination, but it will be difficult to apply for the Amazigh, above all because the Constitution denies their existence. Amazigh organisations are therefore demanding a reform of the Constitution to include recognition of their community. The new law on the elimination of racial discrimination could help them achieve this objective but only if these organisations dare take the issue to court.

Intolerance of Amazigh cultural identity

In Tunisia, as long as Amazigh's cultural expression remains confined to the family sphere or is presented as a matter of local folklore, it is tolerated. Once it begins to manifest itself publicly and show an ambition to exist as an equal culture, however, it becomes subject to all kinds of censure on the part of the authorities. Examples of this censure include:

In the Gabès municipality, in the south-east of Tunisia, a local pharmacy shop sign written in Tamazight was removed at the order of the Regional Governor.

The municipality of Sfax situated by the Mediterranean coast refused to register the Amazigh first name "Massin", quoting a circular from the Ministry of Justice dating back to 1965, which bans the registration of non-Arab first names in the civil registry. The baby's parents had to resort to the courts, which ruled in their favour. The judge was immediately moved to another region. Such a transfer would appear to be a disciplinary measure against a judge who dared order Sfax municipality to record the birth of a child with an Amazigh first name.

Lack of concern for Amazigh heritage

During its 13th session held in Port Louis, Mauritius, from 26 November to 1 December 2018, UNESCO's Committee for the Safeguarding of Intangible Cultural Heritage decided to register the know-how of women potters from the village of Sejnane in Tunisia on the list of humanity's intangible cultural heritage.² In order to preserve the authenticity of this pottery and prevent it from being falsified, the committee alerted the Tunisian government to the "high risks of excessive commercialisation" of this heritage and strongly "encouraged it to focus on these social and cultural aspects". The government, however, declared that it had no plans for measures to "limit in any way access to the knowledge and know-how related to women's pottery in Sejnane". In other words, Sejnane³ pottery can be freely copied, and this represents a plundering of these women's "intellectual property" and an attack on the historical and cultural value of their work. Moreover, the file⁴ that the government submitted to UNESCO was hazy as to the origin of this work and made no mention of the fact that similar heritage is also found in other Amazigh regions of North Africa. It is also important to note that while

some 20 people and associations were consulted in drafting this file, none of them were Amazigh or specialists in Amazigh culture.

Despite warnings from associations for the protection of Amazigh heritage and from municipal councils, historic Amazigh sites remain abandoned, with no protection, exposed to the elements and open to looting. The “Berber caves” in Sened, are particularly vulnerable, as are other sites, including the Chenini cave dwellers’ village, etc.

It is also worth noting that none of the recommendations on the Amazigh made to the Tunisian government in 2016 by CESCR have been implemented. The discrimination being suffered by the Amazigh is therefore ongoing.

Notes and references

1. OJ of Tunisian republic, No 86 of 26 October 2018, at <https://bit.ly/2lr1cMk>
2. Unesco, Patrimoine culturel immatériel, ITH/18/13.COM/10.b.38, 27 November 2018 – at <https://ich.unesco.org>
3. Village in the north of Tunisia where the potters live.
4. The file submitted to UNESCO by the Tunisian government to obtain the registration of the know-how of Sejnane’s potters to the intangible heritage of humanity.

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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.¹

Political situation in 2018

In the war on jihadi terrorism in the Sahel 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, this country – 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, which 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 2018.²

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 on Burkina Faso report³ 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.⁴

75. The Committee is concerned by the communitarian and sometimes ethnic dimension of these conflicts, especially those involving the Fulani people.⁵ [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.⁶ [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.⁷

Future for pastoralism

The Platform of Action for Pastoral Household Security (Plateforme d'action pour la sécurisation des ménages pastoraux/PASMEP) pub-

lished 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.*⁸

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.⁹ 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.*¹⁰

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 and 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.¹¹

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, *Koglweogo* are the result of a popular initiative that is 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 previously 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.¹²

Notes and references

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3. See UNHRC A/HRC/WG.6/30/BFA/2, Compilation on Burkina Faso - Report of the Office of the United Nations High Commissioner for Human Rights at <http://bit.ly/2TaEf4j>
4. Ibidem, referencing CERD/C/BFA/CO/12-19, para. 12.
5. Ibidem, para. 15. See also: CCPR/C/BFA/CO/1, paras. 41–42.
6. Op. cit. UNHRC referencing CCPR/C/BFA/CO/1, para. 42.
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9. UNOWAS Report, *"Pastoralism and Security in West Africa and the Sahel: Towards Peaceful Coexistence"* (Pastoralisme et sécurité en afrique de l'ouest et au sahel) at <http://bit.ly/2Izb9Ym>
10. Ibidem
11. Interview with Oumarou Traoré, Inspector at the Ministry of National Education, technical advisor to the Asmae Association. La Croix, 1 June 2018
12. Dupuy, Romane, and Tanguy Quidelleur. 2018. «Mouvement D'Autodéfense Au Burkina Faso : Diffusion Et Structuration Des Groupes Koglweogo - Noria». NORIA - Network Of Researchers In International Affairs. See <http://bit.ly/2TdfUL8>

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; 8.5% of the population, or 1,248,914, were Fulani, 8.3% or 1,219,528 were Tuareg, and 1.5% of the population, or 220,397, were Toubou.

The Fulani can be further subdivided into the Tolèbé, the Gorgabé, the Djelgobé and the 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. 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.

Terrorism in the Sahel results in atrocities against the Fulani

Never in living memory (that of the Nigeriens and of the country's different communities - Haoussa, Djerma, Fulani, Tuareg, Arab, Toubou, Gourmantché and Kanouri) has a community been forced to live in such a serious and sensitive situation as the Fulani community of Niger. This is being caused by an influx of terrorism and terrorist groups into the Sahel (Islamic State in the Greater Sahara/ISGS in the north of Tillabéry region and Boko Haram in Diffa, specifically), with all the ensuing discrimination, stigma and flagrant human

rights violations.

This has been the case since the first incursions of different terrorist groups into Niger and, in particular, the regions of Diffa (Boko Haram) and Tillabéry (ISGS). These incursions have resulted in a high number of victims, both among the Defence and Security Forces and the civilian population, and are likely to continue to do so.

In the war on terror, and particularly in the north of Tillabéry region on the border with Mali, it should be noted that several armed groups and movements legitimised by the Malian State, such as GATIA (Tuareg, Imghad and Allies Self-Defence Group), created on 14 August 2014 by General El hadj Ag Gamou, and the MSA (Movement for the Salvation of Azawad), created on 2 September 2016 by Moussa Ag Acharatoumane, are conducting joint operations with the Nigerien army. Unfortunately, in the name of the war on terror, these groups are settling their own accounts and historic feuds, resulting in serious attacks against the Fulani community who are the historic rivals of the Daoussak Tuareg to the north of Tillabéry, and of the Dogon in the centre of Mali.¹

On 18 May 2018, a massacre of Fulani took place in Niger two kilometres from the border with Mali, resulting in 18 dead and one wounded. Witnesses state that the assailants appeared to be Tuareg who retreated rapidly into Mali and could thus not be arrested. The Nigerien Minister of the Interior, Mohamed Bazoum, visited the area on 19 May with the Tillabéry Governor and Prefect of Ayorou. The authorities were in no doubt that this was a reprisal attack. The attackers appeared to have knowingly targeted and murdered 17 Fulani in revenge for the deaths of a similar number of Tuareg in recent weeks in an attack in Mali.²

On 29 April, Aboubacar Diallo, President of the Tillabéry Pastoralist Council (Fulani of the North) stated that he was:

[...] Deeply concerned at the stigmatisation of the Fulani community. We the Fulani community of Niger note with bitterness and distress that the Niger State has been involved for some time in the use of foreign armed groups for the so-called war on terror but, to our great surprise, these mercenaries are indulging in a genocidal extermination of the Fulani community in Niger. As we informed the government and national and international opinion during our first statement in November 2016, and again following the gruesome and deadly events of 11 July 2017 committed by the GATIA of El Hadj Ag Gamou and

the MSA of Moussa Ag Acharatuman, the authorities are beginning to realise the serious depths to which the government has been deceived and betrayed in the conduct of its mission, (...) it should also be recalled that this is not the first time that these armed bandits and their chiefs have targeted members of the Fulani community. This was also the case in 2013 and in 2017. These groups have embarked on their operations in a spirit of vengeance (...) The alliance between GATIA, MSA and other actors in the conflict in northern Mali is becoming an unjust and inhumane machine for exterminating the Fulani communities of north Tillabéry.³

Investigation mission of the Association for the Revival of Pastoralism in Niger (AREN) and the Niger National Human Rights Commission (NNHRC)

In July and November 2018, as part of the Oxfam-funded Conflict and Fragility Project in the Diffa and Tillabéry Regions, investigation missions carried out by AREN and the NNHRC concluded that GATIA and MSA had indeed been involved in actions against the Fulani community.⁴

International Committee of the Red Cross (ICRC) concerned at explosive situation on the Niger/Mali border

On 4 May 2018, an ICRC press release raised concerns over the extent of violence in the border area between Niger and Mali, which is one of the most difficult places to reach in terms of humanitarian access. Given the recent violence, the ICRC was calling on all stakeholders present in the area to avoid throwing oil on the fire. The organisation is holding no-one responsible in particular, but describes this violence as, above all, a community conflict, explains Loukas Petridis, ICRC Head of Mission in Niger:

It is very difficult to gain an objective overview as we are not on the ground, we can't visit where the massacres are taking

place. But I think that is not the most useful way of viewing things in this context. This relates to communities that have had problems in the past and who continue to have problems. The presence of armed groups, with their own agenda, has only made matters far worse. I think this upsurge in violence is also a consequence of this.⁵

Different projects for Fulani pastoralists

With the support of CARE, AREN has been implementing three different capacity-building projects for pastoralists:

- **Training of pastoral populations**

In the context of the regional pastoral education and training programme (PREPP-AREN NIGER), an identification mission took place from 8 to 12 August 2018 to camps located on the pastoralists' transhumant routes running from Benin to Chad.

- **Training on conflict management**

In the context of implementing the Protection and Fair Management of Agropastoral Resources in the Tillabéry Region (PGERAT) project, and in partnership with the Open Society Initiative For West Africa (OSIWA), AREN has embarked on a series of training workshops on land conflict management aimed at helping bring about a peaceful co-existence between pastoralists and farmers by establishing effective mechanisms for sharing the available natural resources in their day-to-day activities. This project is focused on three communes in the Tillabéry region: Tagazar, Hamdallaye and Dantchandou, and will run for 18 months.

- **HAMZARI project on partner roles and capacities**

The start-up workshop for the CARE Niger HAMZARI Project on Partner Roles and Capacities took place in Niamey from 4 - 9 November 2018. AREN is involved in its implementation, in supporting the development of community-level pastoral resources, value chains for livestock and poultry in the community-level pastoral zone, establishing links to market, accessing veterinary inputs and services, providing training to beneficiaries and contributing, where appropriate, to developing livestock companies.

Conclusion

2018 was a year of serious attacks on the Fulani community with the local authorities failing to take measures to confront this sad reality, resulting in the terrible suffering of the Fulani people. The position of some of Niger's Fulani leaders is that this situation has gone on for far too long and that they can no longer stand by and accept the lack of action from a State unable to guarantee their community's safety. The consequences can already be seen in the fact that the Fulani community are now mobilising in self-defence, a situation that will clearly have consequences for the unity and stability of Niger.

Notes and references

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2. Declaration of the Fulani community of Niger dated 29 April 2018
3. Ibid
4. Reports of the joint missions of the Association for the Revival of Pastoralism in Niger (AREN) and the Niger National Human Rights Commission (CNDH) in July and November 2018 in Tillabéry region.
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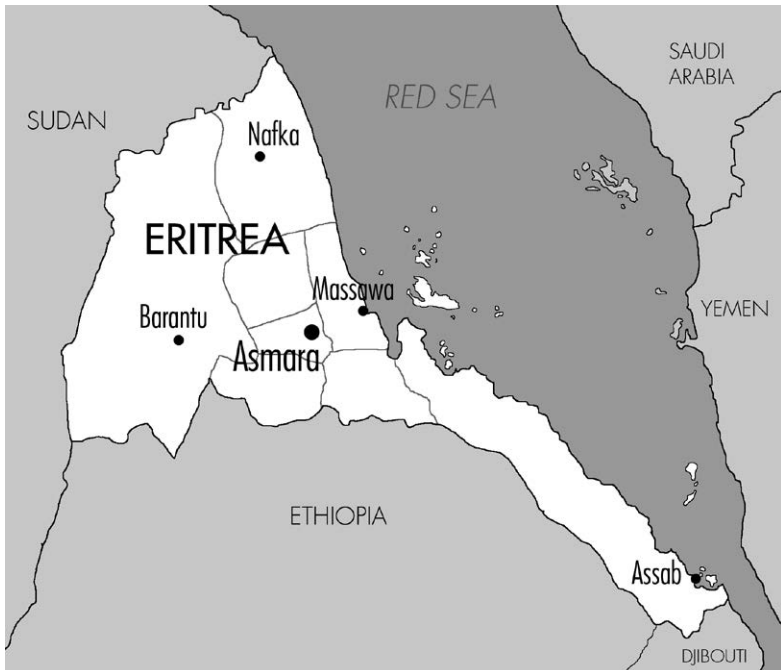
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East Africa



ERITREA



Eritrea borders the southern Red Sea in the Horn of Africa. It emerged as an Italian colonial construct in the 19th century, superimposed over indigenous populations. Eritrea's current population is between 4.4 and 5.9 million inhabitants.¹ There are at least four indigenous peoples: the Afar (between 4 and 12% of the total population), Kunama (2%), Saho (4%) and Nara (>1%).² These groups have inhabited their traditional territories for approximately two thousand 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.³ 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 arose immediately when Ethiopia interfered with 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 nor 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 on the brink

On 8 June 2016, the Commission of Inquiry on Human Rights in Eritrea (COI) reported that Eritrean officials had committed widespread and systematic crimes against humanity against two of Eritrea's four indigenous peoples, the Afar and the Kunama, over the past 27 years. The COI provided detailed evidence relating to enslavement, imprisonment, enforced disappearance, torture, reprisals and other inhumane acts, persecution, rape and murder⁴ before recommending that the Security Council refer the situation in Eritrea to the Prosecutor of the International Criminal Court.⁵

On 23 June 2017, the Special Rapporteur on the situation of human rights in Eritrea (SR-Eritrea) detailed new acts of persecution in Eritrea committed against indigenous peoples and concluded that "the situation of human rights in Eritrea has not significantly improved".⁶

Appropriation of indigenous land (and other crimes against indigenous peoples)

In 2013, the SR-Eritrea reported that Eritrea had engaged in a campaign to force the Afar and Kunama indigenous people from their traditional territory, and to destroy their traditional means of subsistence and livelihood. The means used were arbitrary arrests, killings, disappearances, torture and rape.⁷

Eritrea's land policy "does not recognize land rights for pastoralists".⁸ As all land is state property, indigenous lands are routinely confiscated without compensation.⁹ This undermines "the clan-based traditional land tenure system" of the indigenous people.¹⁰ Nomadic and semi-nomadic indigenous peoples are losing their traditional herding and grazing lands. The COI concluded that the government's actions "may be construed as an intentional act to dispossess [the Kunama and Afar] of their ancestral lands, their livelihoods and their cultures".¹¹

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."¹² To make the ethnic cleansing situation clearer, on 23 October 2018, the SR-Eritrea reported that: "The Afar people have been evicted without any compensation from the port area of Assab"¹³ and that

The Government [of Eritrea] continues to pursue a land policy that has legitimized forcible displacement and dispossession of indigenous populations and minorities, leading to arbitrary and uncompensated evictions. For example, the Afar people, a pastoralist ethnic minority, have been forcefully evicted, affecting their means of livelihood. They depend on their land, salt mines and fishing and they have been removed from around Assab, the port city in the Southern Red Sea Region, an area traditionally belonging to or used by them.¹⁴

Approximately 200,000 Eritrean Afar and an unknown number of other indigenous Eritrean peoples have fled Eritrea and now live as refugees in neighboring Ethiopia, Sudan and Djibouti. The UNHCR maintains that: “Voluntary repatriation remains the most durable solution to the world’s refugee crisis”¹⁵ Nobody would voluntarily return to Eritrea today unless they had reliable guarantees of personal security, protection from indefinite national service, prospects for the enjoyment of human rights and expectations of a job. These conditions do not now exist in Eritrea.

Eritrea-Ethiopia rapprochement

On 9 July 2018, Ethiopia and Eritrea signed a Joint Declaration of Peace and Friendship, which provides for the two countries “to forge intimate political, economic, social, cultural and security cooperation”¹⁶ This event ended a tense, mobilised-for-war standoff that had characterised their relations for a generation. On 17 July 2018, Ethiopia announced that preparations were underway for landlocked Ethiopia to use Eritrea’s port of Assab, and that a task force had been established for implementation in this regard.¹⁷

These are the very same lands and waters that the SR-Eritrea and the COI-Eritrea concluded were the Afar’s “traditional territory”, meaning, in respect to indigenous peoples, “an area traditionally belonging to or used by them [the Afar]”¹⁸ In case there is any doubt as to whether the SR-Eritrea and COI-Eritrea are correct that the Afar are indigenous, with indigenous rights to their lands in the legal sense, this question was considered by Sébastien Grammond, former Dean of Law at the University of Ottawa and now a Justice of the Federal Court of Canada.

Grammond considered facts relating to Afar history, language, culture, economy and way of life in Eritrea before testing these against international law criteria for determining indigenous status. He concluded that the Afar are indigenous according to international law criteria.

The Afar people show all the characteristics usually associated with the concept of indigenous people in international law. Hence, their assertion that they are indigenous and that they are entitled to the rights and to the protection afforded to indigenous peoples in international law should be respected.¹⁹

To date, neither the Afar people nor any Afar representative organization have been consulted about the planned use of their lands by Ethiopia, nor involved in any other way in either Ethiopia's or Eritrea's preparations to redevelop the port of Assab. It appears that Ethiopia is on track to take advantage of Eritrea's crimes against humanity by paying the offending Eritrean regime to use the Assab port and surrounding lands.

International criminal law

Unsurprisingly, international criminal law does not allow Ethiopia to take the spoils of Eritrea's crimes by paying the criminals to use the plundered Afar lands. The international criminal law system imposes criminal liability on people who permit, support, aid, assist or provide the means for crimes.

International criminal law statutes and precedents would consider Ethiopian officials as parties and/or accessories to Eritrea's crimes against humanity when, as is the case here, Ethiopian officials are:

- aware of Eritrea's persecution of the Afar;
- know that the crime of persecution is ongoing;
- pay the criminals to use lands taken from the Afar by persecution, a crime against humanity;
- intend to profit from using the plundered lands and waters without consulting or involving the indigenous Afar victims in any way.²⁰

All these conditions are met as Ethiopia has voted to accept the SR-Eritrea & COI reports containing this information.

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 are allowed to operate; there is no freedom of speech or political space; there are no guarantees for, 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 extrajudicially executed."²¹ The indigenous people are viewed with suspicion by the regime and persecuted to such an extent that the United Nations COI and SR-Eritrea have called for the perpetrators to answer for crimes against humanity.

The present situation is unlikely to last long: there is an unstable geopolitical environment; the president is 73 years old; there are splits within the ruling regime; and in 2013 there was an attempted coup.²² Because of Eritrea's strategic location on the southern Red Sea,²³ geopolitical/military interests are present which likely trump concern for the plight of Eritrea's indigenous peoples in the calculations of the American-backed Saudi-led coalition contending with the Iranian-backed Houthi militias. Nevertheless, the rights of indigenous peoples as articulated in ILO Convention 169, the UNDRIP, the missions to protect indigenous peoples in the Human Rights Council, special procedures mandate holders, the Security Council, the ICC and other UN agencies are powerful aspirational and operative counterweights to the Eritrean regime and its gross human rights violations.

All of these international agencies and institutions, including the HRC and its mandate holders, need to continue working to ensure justice, security and peace for Eritrea's indigenous peoples. These parties might also consider reminding Ethiopia that it cannot simply profit from the plunder of Eritrea's crimes against humanity without its officials becoming parties or accessories to those crimes themselves. International institutions may 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, derived from the Joint Declaration of Peace and Friendship and subsequent implementing machinery, to try to put a stop to the ongoing

ing crimes against humanity being committed there. Ethiopia is well-placed to impress on the Eritrean regime the wisdom and justice of working together to ensure that indigenous peoples are brought into the discussion and involved in the planning process for the redevelopment of the port of Assab. This foundation would ensure a stronger framework to ensure that other projects intending to use indigenous lands and resources also respect indigenous rights. At the very least, to the extent that the UNDRIP codifies customary international law,²⁴ both countries have an obligation to consult. Eritrea, moreover, has a legal obligation to make reparations for past human rights violations and crimes against indigenous peoples.

Ethiopia has a new leader, Prime Minister Abiy Ahmed Ali. Dr Abiy has embarked on transformative changes to Ethiopia's political environment. He has sought and obtained the end of a tense, generation-long, armed-to-the-teeth confrontation with Eritrea, freed political prisoners and journalists, opened space for free expression and political dissent, reframed unbridgeable ethnic rifts within the multinational Ethiopian polity, and nominated a respected human rights lawyer as Chief Justice of the Supreme Court. He has shrouded himself in liberal democratic credentials of peace, democracy and development. Now is the time for international agencies and agencies to bring their influence to bear on Ethiopia to try to persuade it and Dr Abiy to insist on beginning this process before any deal to use indigenous lands is sealed.

Notes and references

1. 4.39 million is an estimate by the World Bank, see *World Bank Country Profile: Eritrea*, at <http://bit.ly/2SQTIGv>; 5.9 million is an estimate by the CIA, see CIA, *World Factbook*, at <http://bit.ly/2SLaQph>
2. The numbers are disputed. There are no reliable figures to resolve the dispute as there is no count and no census that has been conducted by Eritrea or others. The CIA, *World Factbook*, reports Afar at 2% but this is unlikely given that there are 20,000 UN-documented Afar refugees in two refugee camps in neighboring Ethiopia and many more undocumented asylum seekers inside Ethiopia – this alone would likely account for 2% of the Eritrean population. The figure for the Saho is reported by Abdulkader Saleh Mohammad, *The Saho of Eritrea: Ethnic Identity and National Consciousness* (Berlin: Lit Verlag, 2013).
3. *Eritrea: Constitutional, Legislative and Administrative Provisions Concerning Indigenous Peoples* (University of Pretoria, 2009) pp. 5-7. This is a joint publication of the International Labour Organization, the African Commission

- on Human and Peoples' Rights, and the Centre for Human Rights. See <http://bit.ly/2DZCbCy>
4. *Second Report of the UN Commission of Inquiry on Human Rights in Eritrea*, A/HRC/32/47, 8 June 2016, paragraph 60, at <http://bit.ly/2E69rlu>
 5. Para 132(b)
 6. *Report of the Special Rapporteur on the situation of human rights in Eritrea*, A/HRC/35/39, 23 June 2017, para 54, at <http://bit.ly/2E55Wld>
 7. *Report of the Special Rapporteur on the situation of human rights in Eritrea*, A/HRC/23/53, 28 May 2013, para 77, 80, 82 See <http://bit.ly/2StfDg0>. The First Report of the COI in 2015 confirmed these findings.
 8. *Id*, para 1156
 9. *Id*, para 1159
 10. Para 80.
 11. *Id*, para 1171
 12. *Report of the Special Rapporteur on the situation of human rights in Eritrea*, Sheila B. Keetharuth, paras 90-93, 11 June 2018, A/HRC/38/50. Online: <http://bit.ly/2E3h6af> - <http://bit.ly/2Ec5AJZ> at 47:30
 13. *Id*, 47:30
 14. See OHCHR <http://bit.ly/2SScTj9>
 15. UNHCR, Global Trends: Forced Displacement in 2016, p. 25, Online: <http://www.unhcr.org/5943e8a34.pdf>
 16. Eritrea, Ministry of Information, Joint Declaration of Peace and Friendship between Eritrea and Ethiopia. Online: <http://bit.ly/2SRn3Rc>
 17. ESAT News, Ethiopia Ready to Use Eritrean port. Online: <http://bit.ly/2E69W5k> (accessed 14 October 2018).
 18. See OHCHR <http://bit.ly/2SScTj9>
 19. Sébastien Grammond, Legal opinion, 21 March 2011, p. 6, online: <http://bit.ly/2E6FeJ0>
 20. International law scholars take a broad view of aiding and abetting. As Werle & Jessberger, *Principles of International Criminal Law*, p. 649, write: " ... where the presence of a person bestows legitimacy on, or provides encouragement to the actual perpetrator, that may be sufficient to constitute aiding and abetting."
 21. *Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea*, A/HRC/29/CRP1, 5 June 2015, p. 1, <http://bit.ly/2E19x3P>
 22. Jeffrey Gettleman, "Coups Attempted by Rebel Soldiers Is Said to Fail in Eritrea," *The New York Times*, Jan 21, 2013, <https://nyti.ms/2E0jOgU>; In-depth details on the Eritrean Defense forces operation for change (Operation Forto), <http://bit.ly/2E2BcBC>
 23. Eritrea has a presence on the Bab el-Mandeb Strait – a strategic link between the Mediterranean Sea and the Indian Ocean through which 4.8 million barrels of oil flow per day. Eritrea also has the Port of Assab, which is presently being used as a staging ground for the UAE-led coalition war against Yemen.
 24. This is the opinion, among other international law scholars, of Hohman, J. and Weller, M., *The UN Declaration on the Rights of Indigenous Peoples: A Commentary*. Oxford: OUP, 2018, p. 62, fn 126.

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ETHIOPIA



The indigenous peoples of Ethiopia make up a significant proportion of the country's estimated population of 95 million. Around 15% are pastoralists and sedentary farmers who live across the country, particularly in the Ethiopian lowlands, which constitute some 61% of the country's total landmass. There are also a number of hunter-gathering communities, including the forest-dwelling Majang (Majengir) and Anuak people, 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 which, in recent years, has become the subject of 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 villagization has seen many pastoralist communities and small-scale farmers moved off their traditional 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 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.

Ethiopia, a long-time trusted ally of the West because of its strategic location and key role in combating terrorism, continues to maintain a culture of brutality against human rights and civil society. Recently, however, the arrest of senior security officials and military personnel involved in the mismanagement of the Metal and Engineering Corporation (METEC) was applauded by human rights groups, activists and journalists. In November 2018, a total of 66 Ethiopian intelligence officials and military personnel accused of human rights abuses and fund mismanagement were arrested and charged.¹ The arrest of these officials is perhaps an effort that has arisen as a result of insecurity fatigue. Such fatigue is widely blamed on poor development policies and a lack of a democratic culture and political infrastructure.

In 2015, protestors took to the streets to oppose the continuing expansion of the capital city into surrounding areas, fearing that this could displace small-scale farmers and destroy livelihoods. The country plunged into chaos as a result, forcing the country's Prime Minister to resign in February 2018 to make way for political reform, to end endemic corruption and widespread human rights abuses, and to avoid the path of state disintegration.

In early 2018, Ethiopia experienced a significant political transformation towards democracy and better governance, while also maintaining its course to become a middle-income country by 2025. Most importantly, for the first time, in Ethiopia's history, the Prime Minister stepped down and handed political power over to his successor peacefully. The new Prime Minister, who is Oromo, and thus belongs to the largest, yet marginalised, ethnic group in the country, assumed power in April 2018. As part of his reform, the new Prime Minister extended an olive branch to exiled political parties, activists and journalists to participate in nation-state building and reconstruction.²

In September 2018, Addis Ababa was alight with jubilation over the return of opposition political parties and the prospect of the country embarking on a path towards peaceful political transformation. The last months of 2018 saw new waves of political instability in the country, however, in the form of ethnic conflicts and border disputes.

Despite significant changes, including efforts to ensure gender parity in the organs of the Executive branch, with a woman as Head of State, and women appointed to the positions of Supreme Court President and President of the Electoral Board Commission, the situation for other groups across the country, including indigenous peoples, remains precarious.

Violence and insecurity

As part of the Ethiopian nation-state building process, development policies such as land investment and villagization programmes have had a considerable impact on indigenous peoples and have caused violent conflicts which, in turn, have negatively affected livelihoods and food security. In many instances, military and security agents are accused of using excessive force against innocent civilians.³ In September 2018, Anuak youths in Gambella protested against widespread un-

employment, nepotism and corruption, despite the political reforms in Addis Ababa. As a result, military soldiers in uniform murdered eight and wounded 22 more Anuak teenagers, echoing the violent landscape that surrounded the Anuak Genocide of 13 December 2003, when the Ethiopian military and Habesha settlers killed hundreds of Anuak boys and men across Gambella town.

The adjacent northern regional state of Benishangul-Gumuz also saw the negative effects of the country's political reforms in the latter half of 2018 when, after the federal transition of power, a deadly attack on indigenous peoples was carried out along the south Sudan border by the Oromo Liberation Front, a separatist organisation established to champion the ideals of an exclusive independent Oromo state in an attempt to extend Oromia's borders. The violent conflict was triggered by the killing of four Benishangul-Gumuz officials.

In this long-running regional conflict between Benishangul-Gumuz and Oromia, an estimated 1.7 million indigenous peoples have been displaced, while tens of thousands more have sought refuge and protection across the border in Kenya, Sudan and South Sudan.

Large-scale development projects

Ethiopia has a long history of development projects with devastating effects on local communities. In the 1950s, the last Ethiopian monarch established a sugar and cotton project along Awash River, forcing the Afar to relocate away from their grazing areas and water points.⁴ Today, an Oakland Institute report suggests that sugar and cotton plantations have been factors contributing to food insecurity, competition over scarce resources, and soil erosion.⁵ Large-scale development interventions are a part of the nation-state building strategies aimed at ending poverty and making Ethiopia a middle-income country by 2025. So far, however, such development policies, along with large-scale interventions such as land investments, villagization programmes and irrigation dams, have displaced a large number of indigenous peoples, and are widely seen as major causes of the high rate of rural-urban migration, unemployment and increased crime rates.

Land investment

The Horn of Africa is one of the most environmentally-vulnerable and most food insecure regions in the world. Ethiopia in particular is among the most food insecure countries on the African continent. Some 18 million people are affected by food insecurity annually and rely on financial and food aid from international donors. In addition, Ethiopia has recently seen food insecurity exacerbated by climate change, which has badly affected the economic performance of the country's steadily growing economy.⁶ Efforts to alleviate poverty and to uplift small-scale farmers have not materialised, and neither have efforts at rapid industrialisation based on agricultural inputs. Critics point to the country's poor human rights record and development policies, which the government has been aggressively defending.⁷ A report that Karuturi Global, an Indian Conglomerate accused of land grabbing, planned to return to Gambela surfaced in April 2018.⁸ This new deal suggests that Karuturi Global is expected to develop 25,000 ha of land.⁹ Karuturi lost its license in 2017 after only utilising 7,000 of the 100,000 ha of land initially allocated to it through concessions.¹⁰

Outlook for 2019

The journey to transform Ethiopia's broken political spirit and lack of democratic governance, via the rule of law and electoral reform, promises to provide political parties a level playing field and give stakeholders optimism and hope, a feeling compounded by the peace pact between Ethiopia and Eritrea. The indigenous peoples of the country hope to gain opportunities and push for the government to sign and comply with the international legal frameworks that aim to protect indigenous peoples in terms of their rights to lands and territories, culture, language and economic autonomy.

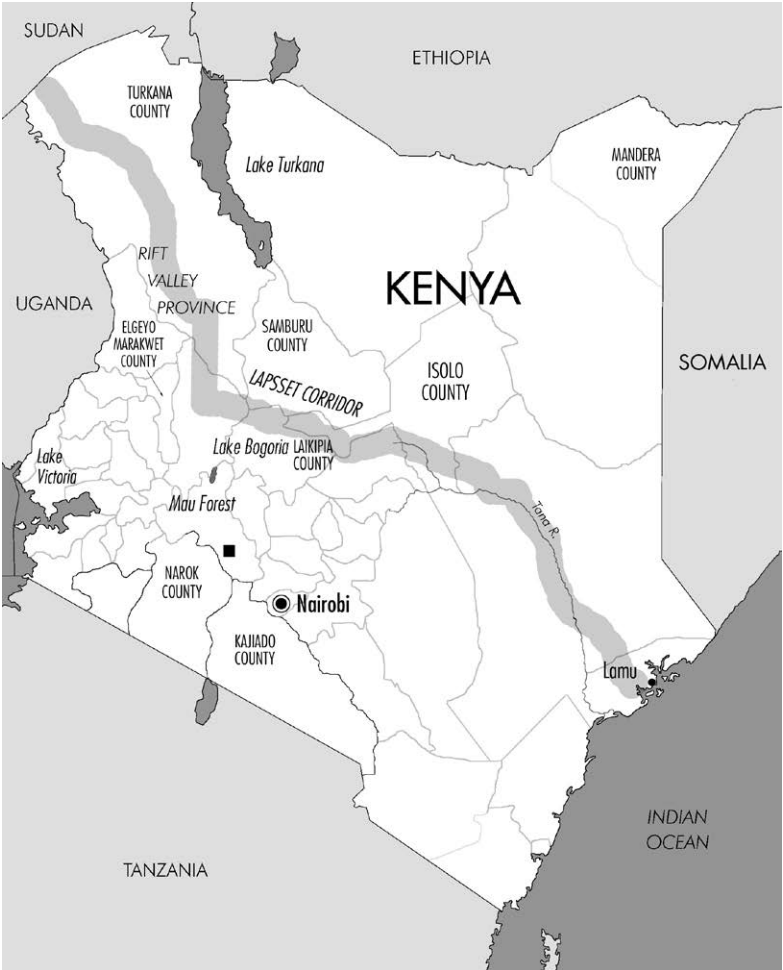
Notes and references

1. See DW News at <http://bit.ly/2lyAVf4>
2. See The Guardian at <http://bit.ly/2lyQEL1>
3. See Human Rights Watch at <http://bit.ly/2lQl3nt>

4. Ibid
5. Ibid
6. See The Oakland Institute's "Miracle or Mirage: Manufacturing Hunger and Poverty In Ethiopia" at <http://bit.ly/2IDDRqL>
7. Ibid
8. See Farmlandgrab.org at <http://bit.ly/2IDE1hR>
9. Ibid
10. Ibid

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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 number 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 and Awer (Boni). While pastoralists include the Turkana, Rendille, Borana, Maasai, Samburu, Ilchamus, Somali, Gabra, Pokot, Endorois and others. Each of these groups 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 in the national context; 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) or 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) and the Convention on the Rights of the Child (CRC).

Chapter Four of the Kenyan Constitution contains a progressive *Bill of Rights* that makes international law a key component of the laws of Kenya and guarantees protection of minorities and marginalized groups.

Under Articles 33, 34, 35 and 36, freedom of expression, freedom of the media, and access to information and association are guaranteed. However, the principle of free, prior and informed consent (FPIC) remains a pipedream for indigenous peoples in Kenya.

The *Community Land Act*

Following the 2010 promulgation of a new Constitution for Kenya, indigenous peoples were optimistic that their century-long claims to their lands and territories would finally be settled. The new Constitution recommended an overhaul of all land laws in the country and created three categories of land in Kenya: Private, Public and Community Lands. To address land grievances, the new Constitution, under Article 67, created a National Land Commission (NLC) with a key mandate to initiate investigations into historical land injustices and recommend appropriate redress.

A *Community Land Act* passed into law in September 2016. However, there were concerns among stakeholders about the lack of clarity on the mandates of the Ministry for Lands and Housing and the NLC as well as about the lack of mechanisms for operationalization of the *Community Land Act* and two other land acts (the *Land Act* and the *Land Registration Act*) – and how these could be implemented without overlaps and conflicts.

In January 2017, the Minister for Lands and Housing through the *Land Laws Amendment Act*, 2016, set up a taskforce to interrogate the three laws and develop regulations on effective operationalisation of these laws. The taskforce has prepared draft regulations, rules and guidelines in accordance with the relevant provisions of the Constitution, however, there are not yet signs of implementation.

Most of indigenous peoples' lands in Kenya are under the classification of community lands, where the *Community Land Act* underscores recognition, protection and registration of community lands. Nonetheless, indigenous peoples are currently experiencing that their lands are being subjected to extractive activities and mega infrastructural projects, and they are concerned that this will cause diminishing

space for their entire livelihood and production systems, land degradation and destruction of cultural and religious sites.

Potential for addressing historical land injustices

In accordance with section 15 of the *National Land Commission Act* of 2012, the NLC in 2017 generated the “investigation of historical land injustices regulations” that provided a framework for conducting investigations into historical land injustices which are generally defined as: (i) a violation of land rights on the basis of the law, a declaration, administrative practice, treaty or agreement; (ii) resulting in displacement of people from their habitual place of residence; (iii) occurred between 15 June 1985 and 27 August 2017; or, (iv) commenced between 15 June 1985 and 27 August 2017 and have not been resolved. The 2017 regulations lay out the procedures through which historical land injustices are defined, the merits of acceptability of claim(s) and the regulatory frameworks for notices of public presentation of grievances, supporting evidence and remedial measures and revocation mechanisms.

There is an urgent need for indigenous peoples, their organisations and supporters both locally and internationally to undertake sensitisation campaigns to make use of this window of opportunity to enable indigenous communities and individuals with historical land claims to seek specific guidance from the NLC.

The Lake Turkana Wind Power Project court case

For the past five years, the indigenous peoples of Laisamis constituency have been battling the mega Lake Turkana Wind Power project, seeking redress for the takeover of about 150,000 acres of their communally-owned and managed land in Laisamis constituency, Marsabit County in Kenya’s Upper Eastern region for the establishment of the Wind Power Project.

They initially filed a case in 2014 in Nairobi’s Environment and Land Court. This case was then transferred to Meru’s Environment and Land Court. The plaintiffs are nomadic pastoralists who have legitimately occupied and utilised the suit land from time immemorial and have held it as ancestral, cultural and grazing land for themselves and in trust for

future generations.

The indigenous peoples claim that the land in question was un-procedurally hived off and allocated to a private entity, Lake Turkana Wind Power Limited, and that therefore, the ancestral ownership of community land was annulled through an illegal process. It is against this background that plaintiffs on behalf of the community filed the suit seeking orders of cancellation of the titles to the suit land and orders of nullification of the wind power project as it sits on fraudulently acquired land. The project has been completed with 365 wind turbines installed and it is expected to generate 310 megawatts of electricity per year to the national grid.

On 25 April 2018, the Meru Environment and Land Court referred the case to the Chief Justice of the Supreme Court of Kenya for selection judges to hear this case which – according to the judge of the Meru Environmental and Land Court – is “of great public importance and of great public interest, are weighty, complex and will require substantial amount of time to conduct the trial”.

Indigenous peoples are waiting with bated breath to see the direction that the case will take after it has been transferred to the Supreme Court in Nairobi.

FGM and indigenous Maasai girls

It is indisputable that Female Genital Mutilation (FGM) exposes women and girls to significant risks, especially during childbirth. In Kenya, FGM is prohibited in order “to safeguard against violations of a person’s mental or physical integrity”, according to the *Prohibition of Female Genital Mutilation Law* of 2011.¹

In Kenya’s Narok County, which is home to Maasai indigenous peoples, the local County Commissioner (a representative of the national government at the County level), directed that school girls in the County undergo mandatory pregnancy and FGM tests in the first week of January 2019 as part of identifying girls that have been subjected to FGM during the 2018 December school break – as well as identifying those that have fallen pregnant during the same period. However, some of the emerging propositions by some government functionaries are tantamount to violation of the rights of the very girls and women that the law seeks to protect.

While FGM forms part of the violation of children's rights to bodily integrity, forced FGM and pregnancy testing violates the same principle of bodily integrity in the context of children's rights to autonomy and self-determination over their own body. Enforcement of the directive by the Narok County Commissioner therefore amounts to unconsented physical intrusion which is a gross human rights violation.

The County Commissioner administrator warned that parents of children who are found to have been subjected to FGM will be arrested and prosecuted.

The Kenya Government Demographic Health Survey (KDHS) of 2014 states that Kenya has made progress in reducing the occurrence of FGM with prevalence dropping from 27% in 2008/9 to 21% in 2014. However, the report notes that "in spite of the steady decline nationally, the prevalence still remains very high amongst some communities such as the Somali at 94%, Samburu 86%, Kisii 84%, and Maasai at 78%".²

In addition, Narok County leads nationally in teenage pregnancies the prevalence of which is estimated at 40 %, according to the Demographic Health Survey (DHS) report by the Kenya Bureau of Statistics. In 2018, some 233 school girls from eight secondary and primary schools aged between ten and 19 years were forced to drop out after they were found to be pregnant. According to media reports, more than 60 girls failed to write their national examinations due to pregnancies in Narok County.

According to the United Nations Population Fund (UNFPA)³ and the United Nations Children's Fund (UNICEF), Kenya is one of the 17 countries globally that are implementing the Joint Programme on FGM, the main focus being the implementation of the *Prohibition of FGM Act* of 2011, relevant policies, service delivery and coordination framework, as well as county and community engagement on cessation of the FGM practise in the country.

There is a need to interrogate further why, with all the interventions being implemented, the practice is still prevalent in some parts of the country and especially among indigenous peoples, including the Somali, Samburu and Maasai.

The Sengwer people

For over a decade, the Sengwer and Ogiek indigenous peoples have been battling waves of state-sponsored evictions from their ancestral homes in Cherangany Hills, Embobut, Kabolet and Mau forests in Western Kenya and Rift Valley under the guise of conserving or protecting these forests from destruction due to “human activities”. Reports abound on the atrocities that these two indigenous groups have suffered at the hands of Kenya’s security agencies which have at times led to deaths and injuries, destruction of livelihoods and production systems, shelters, property, cultures and beliefs.

Implementation of the African Court ruling on Ogiek indigenous peoples

Following the May 2017 historic ruling by the Tanzania-based African Court on Human and Peoples Rights (ACHPR) on the rights of the Ogiek indigenous peoples, the government of Kenya in November 2017 formed a taskforce to develop a framework for the implementation of the ruling. However, the Ogiek were not consulted and the taskforce lacked representation of the Ogiek community.

According to representatives of the Ogiek, numerous attempts to seek the intervention of Kenya’s Attorney General to ensure the participation of the Ogiek in the taskforce process did not bear any fruits. Yet the terms of reference of the taskforce included conducting public awareness and studies on the rights of indigenous peoples, as well as making recommendations on compensation, restitution and redress for the land injustices suffered by this indigenous people in accordance with relevant judgments in relation to the case and other legal and policy mechanisms regarding the Ogiek land.

In addition, in September 2018, the Ogiek were faced with violence in Nesuit and Mauche areas of Njoro in Nakuru County when their houses were burned and property destroyed by members of the neighbouring Kipsigis community in what the Ogiek suspected to be an attempt to evict them from their ancestral lands in spite of the ACHPR ruling that reinstated their land rights.

Based on these realities, the Ogiek indigenous peoples threatened to lodge another legal suit at the ACHPR on the government of Kenya’s

contempt of the ACHPR ruling – and to compel the government to speed up the implementation of the ruling.

State agency sets precedent in consulting indigenous peoples prior to project implementation

In 2018, in an unprecedented move, the Kenya National Highways Authority (KeNHA) under the Ministry of Transport, Infrastructure, Housing and Urban Development initiated engagement with representatives of Kenya's indigenous peoples that included the Maasai and Ogiek prior to the upgrading of the 175-kilometre-long Nairobi-Mau Summit Highway and the improvement of the 57.8 kilometre of the highway between Rironi and Naivasha via Mai Mahiu. This highway construction is funded under the World Bank-financed Kenyan Infrastructure Finance and Public Private Partnerships Project (IFPPP).

According to project documents shared by the KeNHA to members of the indigenous peoples, this project forms part of the Trans-African Highway (Northern Corridor), part of the main transport route serving East and Central African countries through the Indian Ocean seaport of Mombasa.

The consultations with representatives of indigenous peoples and on the ground engagement with communities along the project areas were aimed at sharing information on the project and further sought to inform the processes of undertaking Environmental and Social Impact Assessments (ESIAs) as part of anticipating and identifying the adverse environmental and social risks and generating the requisite mitigation measures.

Indigenous people's organisations together with representatives of the KeNHA and the World Bank held two meetings in Nairobi and representatives of indigenous peoples and organisations recommended continuous consultative process, taking into account their historical grievances; and abiding by Kenya's *Bill of Rights* and relevant international human rights conventions ratified by Kenya.

The KeNHA said it will use these recommendations to develop an indigenous people's safeguard protocol for the project. This forms one of the best practices by a Kenyan government body in articulation of its responsibilities to Kenya's indigenous peoples as prescribed in the Constitution of Kenya and international instruments relevant to indigenous

peoples that Kenya has ratified or is in support of.

Indigenous peoples challenge the LAPSSET project

The 2.5 trillion shilling (USD 2.4 billion) Lamu Port-South Sudan-Ethiopia-Transport (LAPSSET) Corridor infrastructure project seeks to combine a multi-lane highway, a railway line and oil pipeline linking the Kenyan coastal town of Lamu to South Sudan and Ethiopia and it has been lauded by the Kenyan President as an economic and trade game changer.

Isiolo forms the epicentre of the LAPSSET project. As part of the project's appreciation of the implications of the *Community Land Act* of 2016, which places the custodianship of community land under the county government, in January 2018 the LAPSSET Corridor Development Authority top management had a meeting with the Isiolo county government seeking to have the county set aside land for the planned inland dry port, pipelines, railway line, dam, resort city and highway.

While the Isiolo County government welcomed the project, the governor insisted on the need for national government to prioritize the process of issuance of title deeds (certificates of ownership) to Isiolo residents before the community land is hived off as part of ensuring compensation mechanisms for those communities that will be displaced by the project.

In May 2018, the high court in Malindi ruled in favour of 4,600 fishermen in Lamu after they moved to court seeking reparations for the destruction of their livelihoods as a result of LAPSSET activities for the construction of the Lamu Port. In the ruling, the court offered the plaintiffs 1.76 billion shillings (USD 170 Million) compensation for the violation of their rights to a clean and healthy environment, cultural rights and failure to meet constitutional and legal thresholds in the implementation of the port project. However, upon appeal by the Kenya Airports Authority the court of appeal suspended this ruling arguing that the high court had issued orders that the fishermen people had not pleaded.

In July 2018, the Boni indigenous peoples threatened to move to court to challenge what they termed as discrimination by the LAPSSET Development Authority in failing to sufficiently compensate them for their lands that have been annexed for the project.

Human rights defenders challenging the LAPSSET project face harassment and intimidation

Human rights defenders advocating against the harmful impacts of the mega infrastructure LAPSSET project on the rights of indigenous peoples, especially in Lamu at the Kenyan Coast, have been targeted for intimidation and harassment by state security agencies.

In December 2018, Human Rights Watch (HRW) and the National Coalition of Human Rights Defenders-Kenya (NCHRDK) released statistics indicating that about 35 human rights defenders challenging the implementation of the LAPSSET project were subjected to arbitrary arrests and detention, physical violence and threats by the Kenyan Police and military personnel.⁴

According to the NCHRDK and HRW report on the situation of human rights defenders in Kenya, the most convenient accusation used by security agencies against human rights defenders is to label them associates or sympathizers of the extremist Al Shabab terror group operating in neighbouring Somalia and carrying out terror forays in Kenya. It cited at least 15 such incidents which are meant to besmirch the reputation of human rights activists and distort the fact that they are seeking a rights-based implementation of the LAPSSET project.

As the implementation of the LAPSSET proceeds to the mainland, a replication of what is happening in Lamu is expected to befall indigenous peoples' human rights defenders and their organisations, especially in regards to land, ecological, livelihoods, cultural and religious rights.

There is therefore urgent need for regional and global indigenous peoples' movements, organisations and partners to consolidate their efforts to support human rights defenders and organisations to ensure that harassment and intimidation by security agencies is minimised through effective community awareness creation and mobilisation to seek responsive and rights-based development within their lands and territories.

Notes and references

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2. See Kenya Demographic and Health Survey, 2014 at <http://bit.ly/2lJA9Mp>
3. UNFPA/UNICEF Joint Programme on Female Genital Mutilation (FGM) in Kenya - Accelerating Change 2014-2017 at <http://bit.ly/2lK4r1x>
4. See HRW, Report on Abuses Against Environmental Activists at Kenya's Coast Region" at <http://bit.ly/2lKjQiq>

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TANZANIA



Tanzania is estimated to have a total between 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, the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and the Maasai have organised themselves and their struggles around the concept and movement of indigenous peoples. Accurate figures are difficult to capture, as ethnic groups are not included in the population census; however, population estimates¹ put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belong at 87,978, the Hadzabe at 1,000² 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, vulnerabilities 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 civil society space

Tanzania continued to witness decreasing freedom of expression and shrinking civil society space in 2018, negatively affecting the situation of indigenous peoples in the country. The implementation of different oppressive legislation and policies has made it difficult for indigenous peoples and human right activists to operate freely and they are facing an environment characterised by impunity. There are

generally undue influences over political power in relation to the rule of law; impunity; a failure to take due action against the perpetrators of human rights violations and the enactment of draconian laws that limit and restrict peoples' freedom and access to information and justice. These laws include the *Cyber Crimes Act of 2015*; the *Statistics Act of 2015*; the *Media Services Act of 2016*; the *Access to Information Act of 2016*; the *Electronic and Postal Communications (Online Contents) Regulations of 2018*; and the *Wildlife Conservation Act of 2009*. All of these have a number of provisions that limit and deny the public's right to enjoy their fundamental human rights.

The shrinking space for civil society has facilitated increasing challenges related to land grabbing, land conflicts, violations of human rights, gender-based violence as well as food insecurity. Many land-related conflicts were reported in 2018 and a lack of land tenure security continues to be a major problem for indigenous peoples (pastoralists and hunter/gatherers) in many parts of Tanzania.

The Maasai pastoralists in Mabwegere village of Morogoro Region

One such conflict relates to Mabwegere village in Morogoro Region. Maasai pastoralists maintain that they inhabited the area now legally known as Mabwegere village, in Kilosa District, Morogoro Region, prior to 1956 and they therefore call it their ancestral land. The government allegedly set the Mabwegere area aside for pastoralists in 1966.

Mabwegere became a pastoralist village in 1989 and, on 5 January 1990, the village obtained a title deed for 99 years covering a total area of 10,234 hectares. The village was registered on 16 June 1999. Pastoralists, on the one hand, and farmers supported by the Kilosa District authorities, on the other, have had a very poor relationship in the area ever since. With the passage of time, the situation has turned from bad to worse, and politicians in Kilosa District have been making increasing efforts to flush out the pastoralists from Mabwegere village. Farmers (supported by local government authorities) have tried, time and again, to invade Mabwegere village to cultivate it. The Mabwegere Village Council consequently went to court in 2006 and, in 2012, the Tanzania Court of Appeal ruled in favour of Mabwegere Village Council and ordered that the boundaries should be respected.

Since 2012, the state has categorically refused to implement the ruling. In 2018, and as if the Court of Appeal ruling did not exist, the Minister for Lands, Housing and Human Settlement declared that the government was going to redraw the boundary of Mabwegere village. This was reported by the *Mwananchi* newspaper on 2 October 2018.³

The situation of indigenous peoples in Loliondo, Arusha Region

In Loliondo, Ngorongoro District, court contempt is manifested to an even greater extent than elsewhere. Since 1992, Maasai pastoralists have been struggling against the forced occupation of their ancestral land by a wildlife hunting company known as the Otterlo Business Corporation (OBC) from the United Arab Emirates. Working together with the Tanzanian state apparatus, in particular the police force, it attacked pastoralists in 2009 in an attempt to evict them from the area. A similar brutal attack followed in 2013 and, in 2017, the most recent assault followed, including burning of Maasai settlements, torture, humiliation, harassment as well as arrests and prosecution of people.⁴

The government is now adamantly trying, despite fierce opposition from the community, to grab 1,500 sq. km. of land that forms part of the village lands. Serengeti National Park and Ngorongoro Conservation Area have revealed their wishes to have the Maasai pushed out of said area such that it can be turned into yet another wildlife conservation area.⁵

In 2018, the Prime Minister ordered the establishment of a so-called special management authority to manage the disputed area. He reiterated that the authority would consider the interests of all parties, including the community and OBC.

In September 2017, the pastoralist villagers from Loliondo filed a legal case at the East African Court of Justice (EACJ). Apart from filing the principal court case, the villagers also applied for a court injunction to stop ongoing evictions, harassment, intimidation and any sort of intervention that might interfere with the peace and harmony of the region while the case was being determined.

In March 2018, the government filed a preliminary objection challenging the legal capacity of villages to sue the central government. The EACJ rejected the preliminary objection. By so doing, it set the path for

the main case to proceed. The government's second strategy to technically impair the court case was the allegation that the minutes used to file the court case were forged, and it thus charged the village chairpersons who took the lead in filing the court case.

Finally, however, on 25 September 2018, the EACJ ruled in favour of the villagers. The court ordered the respondents to stop the eviction and to stop harassing and intimidating the applicants. The court ordered a temporary injunction based on the facts and evidence presented before it, which restrained the government from carrying out any eviction until the main lawsuit had been determined. In December 2018, two human rights activists from Loliondo, namely Supuk Maoi and Clinton Kairung, were detained for several days without bail for an alleged offence of sedition.⁶ They were released but detained once again in January 2019. This is a continuation of the endless intimidation suffered by the pastoralists of Loliondo.

The Parakuyo pastoralists of Kambala village in Mvomero District

There have been serious and violent conflicts in Kambala village in Mvomero District. This pastoralist village was registered in 1975 and had its 99-year title issued in 1989 with a survey plan clearly showing the village boundaries.

The Kambala villagers, who are mainly pastoralists, have been anxious to live and cooperate with the surrounding farmers. This is due to both sides needing to comply with the required procedures and standards, in order to maintain peace and harmony. Kambala village has thus been directing farmers to apply for land-use permits so that they would be allowed to cultivate on areas which are not open livestock routes in order to avoid land-use conflicts. To ensure this is done, in its various General Assemblies Kambala village passed resolutions to terminate all the permits that were issued prior to this decision, and informed the public, including farmers, that they should apply for new farming permits subject to conditions amenable to both farmers and pastoralists to ensure planning and sustainable land use.⁷ No farmer applied, and farmers have rejected the very existence of Kambala. The farmers have continuously, over the years, tried to invade Kambala village and grab the lands of the pastoralists.

Time and again, farmers have mobilised through gangs known as *muano* in the Kaguru language. Sometimes they seize cattle. When the animals' owners show up they are forced to pay unlawful fines. Some other times, the *muano* mobs sell off the animals for slaughter.

In revenge, pastoralists mobilise in what often turn out to be fatal clashes. Over the decades, the conflict has claimed dozens of lives. People have been wounded. Houses have been set on fire. Livestock has been killed and stolen. Tensions raged throughout 2017. On 5 February 2018, *muano* invaded Kambala village once more, setting fire to three *bomas*⁸ of Maasai pastoralists. Miraculously no life was lost in the attack. An anonymous source notes that no one has been arrested in connection with this.

The situation of indigenous peoples in the Ngorongoro Conservation Area

The Ngorongoro Conservation Area (NCA) was established in 1959 and covers an area of 8,292 sq. km. It is a multiple land-use area with the purposes of: (1) conserving its natural resources, (2) promoting tourism, and (3) safeguarding and promoting the interests of the Maasai. However, the NCA authority (NCAA) disregards the obligation to "safeguard and promote the interests of the Maasai". The Maasai and their livestock are increasingly restricted from accessing vital areas and, in 2018, the Maasai's livestock were banned from entering three vital craters, namely Ngorongoro Crater, Olmoti and Embakaai and Lake Ndutu Basin, as well as the highlands. The ban has far-reaching implications for pastoralism in the area.

There is a fear that the government is planning major evictions of the Maasai pastoralists from Ngorongoro Conservation Area. In a recent article published in the *Jamhuri* newspaper, the Ngorongoro Conservator seems to confirm just that: that the government wants to overhaul the NCA's legal set-up.⁹ Should this happen, the pastoralists will face dire consequences. The development of the revised General Management Plan (GMP), which was being forced through in 2018 in an unparticipatory manner, seems to have been halted. Four handpicked but supposedly community representatives were dismissed from the process in the very initial stages. So far, the GMP is allegedly waiting for a new Ngorongoro Conservation Area law. It is unclear if and when the law

will be enacted. What is clear is that the indigenous resident community is simply being ignored.

Expansion of protected areas

Tanzania has allocated some 34% of its territory to 16 national parks – and these are continuously being expanded. The national parks have been created through the violent and forceful eviction of pastoralists, hunter-gatherers and others. The victims of this national park creation in Tanzania receive no compensation.

The expansion of national parks continued to be a serious problem in 2018 for indigenous communities who live around the edges of these in Tanzania. The Serengeti National Park, which is already the size of Belgium, continued to try to shift its boundaries in districts such as Serengeti, Ngorongoro and Tarime (Gibaso village is the largest victim of this expansion, which is costing the innocent lives of pastoralists) in order to further enlarge the park. Villages in Bunda District (Serengeti, Nyatwali and Tamau villages, in particular) in 2018 battled the expansion, allegedly meant to allow wildlife to reach Lake Victoria.

Threat of dispossession in Hai District for expansion of Kilimanjaro International Airport

Another serious land-induced conflict is taking place in Hai District, Kilimanjaro Region. It is between seven villages of mainly Maasai pastoralists, on the one hand (Sanya Station, Chemka, Mtakuja, Majengo, Samaria, Malula and Maroroni villages), and Kilimanjaro Airport, on the other.

The Maasai have been in the area since before recorded memory. The government neither sought nor received the free, prior and informed consent¹⁰ of the Maasai pastoralists to construct the airport on their ancestral land in the 1970s. The Maasai resisted the land grab – and managed to limit the fenced-off area allocated for the airport to 460 hectares.¹¹

However, in the mid-1980s, the Ministry of Land Affairs arbitrarily set aside 110 sq. km. surrounding the airport in the name of development. This has been the source of many conflicts ever since. In 2018, the police arrested around 20 herdsman for grazing livestock in a forest

that was ironically planted by the community on its ancestral land. Intimidating patrols on the part of the Kilimanjaro International Airport (KIA) staff have also been witnessed in the area. In the meantime, the General Secretary of the Ministry of Livestock Affairs visited the area. He said that he wanted to hear about the land-induced conflict from the pastoralists so that the government could act on it.

Final eviction of the Barabaig in Vilima Vitatu

On 13 September 2018, the 18 *bomas* belonging to Barabaig pastoralists of Maramboi in Vilimavitatu village, Babati District, were burnt to the ground. It was alleged that the Babati District Commissioner had ordered the burning to contain the spread of an outbreak of anthrax disease in that area. However, the government were in fact forcibly evicting the 18 families from the land to make way for a tourist company called UN Lodge en Afrique Ltd., which operates a tourist facility in the Burunge Wildlife Management Area (WMA).

These forced evictions took place despite the fact that the victims of the attack had won legal case number 77 of 2012 (*Halmashauri ya Kijiji cha Vilima Vitatu na Jumuiya ya Hifadhi ya Wanyamapori-Burunge vs Udaghwenga Bayay and 16 Others*) at Tanzania's Court of Appeal. Nearly 300 pastoralists, including the elderly and young children, have been rendered homeless. So far, they have not received any assistance from any party.

On 15 January 2019, the President of the United Republic of Tanzania spoke against expropriation of land in the name of wildlife preservation at the expense of pastoralists. He instructed the Ministry for Natural Resources and Tourism to stop the arbitrary planting of boundary demarcation beacons, which are sparking conflicts with villages. This is a ray of hope at the end of a long dark tunnel of human rights violations. However, this hope is only tentative, given the fact that local government elections are scheduled for the end of 2019, to be followed by general elections in 2020.

Notes and References:

1. See www.answers.com/Maasai; www.answers.com/Datoga; www.answers.com/Hadza.
2. Other sources estimate the Hadzabe at between 1,000 – 1,500 people. See, for instance, Madsen, Andrew, 2000: *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community*. Copenhagen: IWGIA.
3. See IPP media, "Migogoro ya ardhi kutumbua vigogo" at <http://bit.ly/2IBtEep>
4. See IWGIA Urgent Alert August 2017 "Forced evictions of Maasai people in Loliondo, Tanzania"
5. See Conservation Watch, "KfW comments on its support to the Serengeti Ecosystem Development and Conservation Project, Tanzania" at <http://bit.ly/2INGu6>
6. See IPP media, "Arusha police admit case of mistaken identity in arrest of Belgian" at <http://bit.ly/2IC6JQj>
7. See a letter from the Kambala Village Chairman to the District Commissioner dated 3 December 2000; minutes of Kambala Village General Assembly dated 18 December 2000 as well as the District Commissioner's letter dated 24 October 2005.
8. Bomas are homesteads each containing multiple houses
9. See Gazeti la Jamhuri, "Ngorongoro: Haijapata kutokea" at <http://bit.ly/2ID2QL4>
10. Article 19 of UNDRIP requires States "to consult and cooperate in good faith with the indigenous people concerned through their own representatives' institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them."
11. The size of the fenced area was supplied by Mattijs Smith, pers. comm. 27 November 2014. At the time of the interview, Smith was KADCO Managing Director.

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UGANDA



Indigenous peoples in Uganda include former hunter/gatherer communities, such as the Benet and the Batwa, also known as Twa. They also include minority groups such as the Ik, the Karamojong and the Basongora 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, who live primarily in the south-western region, were dispossessed of their ancestral land when Bwindi and Mgahinga forests were gazetted as national parks in 1991.¹ 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 numbered 1,025,800² 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; 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; and resulting in their continued impoverishment, social and political exploitation and marginalisation.

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.³ 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 forest, thus nullifying the customary land rights of indigenous peoples.⁴

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.

Extensive land debate in Uganda

The year 2018 was characterised by extensive land debate in the media and rural communities. Land grabbing kept the Commission of Inquiry into Land Matters busy. People are worried over the ongoing demand by the state to amend the Constitution and the *Land Act* to allow compulsory acquisition of land by government for public investments without prior consent of the land owner. The Uganda Constitution of 1995 (Article 237) vests land in the citizens. It provides for four land tenure systems under which land can be owned as customary, freehold, *Mailo*, or leasehold. The Uganda National Land Policy (2013) and the draft Rangeland Management Policy are the documents that deal with land issues of pastoral communities. Both underline that the state shall exercise the power of public regulation of land use in the interest of socio-economic welfare and development.⁵ The National Land Policy affirms that the land rights of pastoral communities will be guaranteed and protected by the state, among other things, by ensuring that pastoral lands are held, owned and controlled by designated pastoral communities as a common property under customary tenure.

The land situation of the Karimojong people

Karamoja sub-region in north-eastern Uganda occupies 27,000 square miles and is currently inhabited by approximately 1.4 million diverse people – most of whom speak the Nga'karimojong language. It is environmentally, socially, politically and economically different from the rest of Uganda. Being largely dryland, its economy has traditionally been based on livestock complemented by opportunistic crop cultivation.

Since colonial days, the government of Uganda has gazetted 40.8% of Karamoja land for wildlife protection, 12.5% for forestry conservation and as of 2010 had given mining concessions on 24.8% of the land according to a 2010 report.⁶ Other lands are now covered by urban centres, schools and health centres. Although the above land uses overlap, it is evident that the Karimojong are substantially deprived of their land.

In Karamoja, over 99% of the land is under customary land tenure. Most Karimojong have hitherto not had land titles under any of the ten-

ure systems. The situation is beginning to change though. For example, during the Karamoja Cultural Day on 1 September 2018, the Ministry of Lands, Housing and Urban Development issued over 168 Certificates of Communal Ownership to clans in the Kaabong district. The event was attended by about 5,000 people from Ethiopia, Kenya, South Sudan and Uganda. Other activities included dialogue on land, pastoralism, gender and culture.

In August 2018 it was reported in *The Daily Monitor* newspaper that “Rupa locals and residents of Moroto district accused the President of grabbing land using local elites”.⁷ This was because some investors, ministers and local leaders were allegedly using the head of state’s name to create fear among the local people. The protesting residents rejected a plan by one Mr Kodet to Ateker Cement factory on a piece of land measuring 442 hectares on the mineral-rich land in Rupa. Residents insisted they had not been consulted about the project. Attempts by the Minister of State for Ethics Hon. Fr. Simon Lokodo (himself a Karamojong) to address residents on the issue failed as the people turned rowdy and accused the President of using Mr Kodet to grab their land.⁸

Criminalisation of land actors

During 2018, several people were accused by security agencies of allegedly fuelling the land rights demand for rural people. One Lokiru John Bosco, the Chairman of the Loyoro sub-county, was alleged to have mobilised the local community to boycott the demands of Ateker Cement Limited to start extracting limestone before prior consultation and environmental impact assessment were conducted. In Rupa sub-county, Mr. Nangiro Simon, the Chairman of the Karamoja Elders Association and the coordinator of the Forum for Democratic Change (FDC) political party, was accused because of doing land rights advocacy for the Karamojong people. He was accused by security personnel of promoting insecurity in the area.

Situation of pastoralists living in mining sites

Despite the abundant resource wealth of Karamoja (livestock, minerals and people), people still live in abject poverty depending on relief food

during most of the dry seasons. The minerals are extracted by both locals and non-locals and no value is added locally. The processing takes place in other parts of the country like Jinja, Tororo and Mbale.

The local population can only access lowly paid manual work where even children are employed. For example, in the marble quarry and many other mining sites of Karamoja most of the activities are done by children below the age of 14. Children are paid a small amount of UGX10,000 (about USD2.7) per truck to crush stones and load a five-ton truck. To make matters worse, payment is made in the form of sachets of a local potent gin. The involvement of children to work in the mines is contrary to Ugandan as well as international labour laws and policies as well as international soft laws like the ILO Minimum Age for Employment Convention No. 138 (1973), which sets the minimum age for children to work at 15 years. For work considered hazardous, the minimum age is 18.

During the Karamoja Policy Committee Dialogue in the C&D hall in Moroto on 6 December 2018, Hon. Achia Remigio the Member of Parliament for the Pian Constituency called on the Ministries of Karamoja Affairs and Minerals and Energy Development to stop issuing and activating mining licenses in the region without the knowledge of the Karamoja Parliamentary Group (KPG).

Defending indigenous Batwa rights

It is now 28 years since the Batwa were evicted from their ancestral lands without free, prior and informed consent (FPIC) and their situation is still very precarious. They continuously face human rights violations like rape, defilement, torture and abuse. In 2018, their situation continued to be characterised by landlessness, poverty, marginalisation, very poor levels of education and inadequate representation at all levels.

In view of the violations listed above, the Batwa in 2013 filed a petition in the Constitutional Court of Uganda (C/s No 003 of 2013). The petition was largely a call to draw the government's attention to the Batwa's prolonged and continuous suffering since their eviction from the forests in 1991 affected unspecified numbers of Batwa families. Unfortunately, this case has been delayed.

The Batwa now have very limited access to the forests, and in the rare cases when they are allowed to enter the forest to collect firewood

or medicinal plants, they are always accompanied by a guard. Anyone violating the rules risks being shot at or being punished heavily including imprisonment.⁹

Positive actions in 2018 have contributed to defending Batwa rights – even though these have not been adequate to wipe out the above violations.

The United Organization for Batwa Development in Uganda (UOB-DU) has put up some measures to reduce the human rights violations of the Batwa. In 2018 it trained Batwa women rights defenders from each of their communities so that they can fight and reduce human rights violations at the community level by working hand in hand with the local leaders and the police.

There were no Batwa in positions of influence that can speak for their people. For the first time though, the village council elections of 2018 saw a few Batwa elected as their village representatives.

The ongoing review of the *Uganda Wildlife Authority (UWA) Bill* looks among other things at addressing conflicts between wildlife and people in the vicinity of the National Parks. However, the draft does not address the indigenous peoples' issues.

Those who defend and fight for the rights of indigenous peoples put their lives at stake as they end up being threatened, tortured, imprisoned, interrogated, falsely accused and even have their bank accounts frozen. During the last district council meeting of 2018, one of the councillors pointed out that the UOB-DU receives a lot of funding and thus should be audited. This is not the only accusation in recent years. Several politicians have threatened to have UOB-DU closed on allegations that it does not fulfil its obligations to the Batwa.

These allegations have been overcome by the UOB-DU through the sharing of its budgets, activities and work plans with the district authorities who in turn have found that the UOB-DU is implementing its obligations.

Despite the existence of various actors like Defend the Defenders, the Uganda Human Rights Network and many others that aim to protect human rights defenders, the majority of them are situated in the capital city and have little presence upcountry so that they are unable to adequately advocate for players at the local level.

The situation of the Basongora people

The Basongora people live in the Kasese district of Western Uganda. They occupy the lowlands to the south and south-east of Mt. Rwenzori. The year 2018 was characterised by unfulfilled promises on the part of government as far as the community was concerned. In June 2018 the Prisons Service communicated that in 2007 it had ceded 3,500 acres previously used for two prison farms of Ibuga and Mubuku in the Kasese district and had given it to the landless Basongora community.

Although there was a cabinet directive for the land to be allocated to the Basongora, no efforts were made to survey it, boundaries were not demarcated and titles were not issued to those who were to be its owners. Consequently, the Basongora have never accessed said land, notwithstanding a court order of 30 August 2016 to the Uganda Land Commission. As a result of the delay, it was noted by the KTA Advocates, who are the lawyers representing the community, that serious conflicts had arisen which threaten peace. In a letter from the KTA Advocates to the Uganda Land Commission dated 19 December 2018, lawyers observed that it has also led to the “rising of several court cases by unscrupulous people as a way of grabbing these lands assisted by corrupt elements in the Local Government administration.” It is not certain when the community will be able to access the land.

Dialogue with government

The Government of Uganda made efforts in 2018 to understand the situation of the indigenous people. On 20 February 2018, the Ministry of Gender, Labour and Social Development, conducted a one-day workshop in Kampala. It sought to enhance the development of its indigenous population in accordance with its Vision 2030 policy under the theme “Leaving no one behind”. The workshop was partnered with the United Nations Department of Economic and Social Affairs (UNDESA).

After the meeting, the Ministry of Gender, Labour and Social Development conducted community consultations across the country to establish who the indigenous peoples/communities in Uganda are, their numbers and aspirations. On 25 and 26 April 2018 follow-up meetings were held in Benet and Bukwo whereby the community gave its input on

matters of concern, including especially land rights. They also proposed possible solutions to the issues.

From 12-14 June 2018, the Ministry had a national dialogue with the indigenous people of Uganda at Labamba county resort where a position paper was presented to the State Minister for Gender, Labour and Social Development, Ms Peace Mutuso. In her remarks she said that the indigenous people should enrol their children in schools if they are to get involved in development. She also said that it was not possible that the indigenous people like the Benet and Batwa get back their forest lands, but that they should continue dialogue with government. This statement conflicted with an earlier court judgement that called upon government to allow the Benet access to the forest.

On a positive note, a National Dialogue on the Rights of Indigenous Communities/Populations and Extractive Industries in Uganda was held from 27-28 November 2018 in Kampala. It was spearheaded by the African Commission on Human and Peoples' Rights (ACHPR), co-hosted by the Uganda Human Rights Commission and supported by the International Work Group for Indigenous Affairs (IWGIA).

The dialogue was attended among others by commissioners from the Ministry of Gender, Labour and Social Development, the Justice Law and Order Sector (JLOS), the Equal Opportunities Commission and other government representatives. The dialogue noted challenges affecting indigenous communities in Uganda and made several important recommendations to the Government of Uganda as well as to other stakeholders.¹⁰

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10. For the Final Communique of the National Dialogue please, see: <http://bit.ly/2Tc8MzC>

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Central Africa



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 missionaries¹ 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 1930s² 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,³ the Twa were gradually expelled from their forests following different waves of deforest-

ation and forestry protection over the centuries.⁴ 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."⁵

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.⁶ 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.

The issue of identity documents

The International Day of the World's Indigenous Peoples was postponed from 9 August, and celebrated on 24 August 2018 in Bujumbura Province.^{7 8} This event enabled the people of Burundi, and in particular the Twa, to take stock of the progress in and challenges facing indigenous peoples' rights in Burundi. Focus was placed particularly on the lack of identity cards issued to the Batwa, as this severely restricts travel and forces a part of their population to remain sedentary.⁹ Evariste Ndikumana, President of the Hope for Young Batwa Association (*Association Espoir pour les Jeunes Batwa / Assejeba*) explains: "Indigenous people are fundamentally nomadic. In Burundi, however, due to a lack of identity cards, the Batwa are deprived of this aspect of their tradition."

The lack of identity documents (national identity cards, marriage or birth certificates, etc.) prevents some Twa households from accessing the rights that are guaranteed, by ministerial order,¹⁰ to all Burundian citizens, such as free health care for the under-fives. Indigenous rights defenders have focused on ensuring that these documents are more widely issued. With the support of the US Embassy, the Hope for Young Batwa Association distributed more than 1,000 national ID cards and birth certificates to Twa in Kanyanza Province last July.¹¹

Land problems and gender issues

The action of national and international indigenous rights organisations has resulted in an acceptance of the need for more Twa representation in political spheres. Most Twa households still suffer from serious economic vulnerability, however. This situation can be explained by a lack of land to cultivate combined with a lack of dynamism in the pottery market.¹² In September 2018, households in Muyinga Province mobilised in order to raise these economic difficulties, particularly in terms of the land problems facing them: "Forty households living on one hectare. [...] Given the size of this plot, it is scarcely even possible to build decent-sized brick houses."^{13 14}

The Inabeza Centre, in Buterere, organised a day of information and discussion on the issue of gender-based violence (GBV) on 7 December 2018.¹⁵ Established in 2014, the centre is a transit point for vic-

tims of gender violence, offering medical and legal assistance to victims of GBV. This day was specifically devoted to the region's Twa communities.

Conclusions

Local associations, individual initiatives and international mobilisations have all contributed to highlighting the specific issues of the Twa in Burundi over the last year. Despite these efforts, however, the vast majority of Twa households continue to face social stigma, severe economic vulnerability and are only partially represented in the political arena.

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5. Ibidem
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8. International Day of the World's Indigenous People was established in 1994 by the United Nations and is celebrated on 9 August. In Burundi, it is celebrated every year. This year, however, the celebrations were postponed to 24 August 2018. The official celebrations were held in Nyabiraba commune, Bujumbura province, in the presence of the Minister in charge of human rights, the provincial and communal administration, parliamentarians, the World Bank representative, the Independent National Human Rights Commission, human

rights defenders and a multitude of Twa people representing indigenous people in Burundi.

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10. This right is guaranteed by Ministerial Ordinance No. 630/848 on the implementation of Decree No. 100/136 to grant care to children under five years of age.
11. Nkurunziza Édouard, "Muhanga: plus de 1000 Batwa bénéficient des pièces d'identité", *Iwacu, les voix du Burundi*, 18 July 2018 at <http://bit.ly/2lmfjmb>
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13. Ndabashinze Rénovat, "Muyinga/L'inacceptable vie des Batwa de Rutoke", *Iwacu, les voix du Burundi*, 24 September 2018 at <http://bit.ly/2loKXPM>
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CAMEROON



Cameroon's population is just over 24 million. Although reliable statistics are difficult to find, a number of communities accounting for approximately 14% of the population self-identify as indigenous. These indigenous peoples 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 recent developments in international law, civil society and the government are increasingly adopting 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 Bagyeli 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 are primarily found in the eastern and southern regions of Cameroon. The Bakola and Bagyeli live in an area of around 12,000 square km 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 1 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.

Legislative changes

No major legislative changes took place in 2018. All the laws that are under revision including those laws on the forest and fauna, land tenure and the pastoralist code – to which indigenous peoples and civil society organisations (CSOs) made important contributions – are still pending.

Programmes and policies

In 2018 indigenous peoples through their respective organizations participated in the activities of CISPAV (*Comité de Suivi des Programmes et Projets Impliquant les Populations Autochtones Vulnérables*).¹ The objectives of CISPAV are:

- The identification and centralisation of the needs for the socio-economic inclusion of indigenous peoples of Cameroon;
- The identification and evaluation of the human, technical and financial resources available and required to put into action major development activities in favour of indigenous peoples;
- The coordination and supervision of all programmes within the different sectorial administration bodies, non-governmental organisations (NGOs) and CSOs in favour of indigenous peoples;
- Make proposals on how to improve all the actions that can better serve indigenous peoples.

The Committee held its 5th session in the form of a workshop on 7 August 2018 in Yaoundé as a prelude to the celebration of the International Day of the World's Indigenous Peoples, to take stock of what the government and its technical partners have done in form of actions towards indigenous peoples. Indigenous leaders from the forest and pastoralist communities attended. During the one-day workshop, the technical partners (Plan Cameroon, FEDEC, UN agencies, PNDP, WWF and the National Institute for Human Rights, etc.) gave their reports on their promotional and protection activities relating to indigenous peoples. These organizations have worked mostly with the hunter gatherer communities in the South and East Regions, and their actions have centred on providing water, schools and birth certificates.

Indigenous peoples, REDD+ and climate change

In June 2018 Cameroon validated the REDD+ National Strategy. The validation of the Strategy was preceded by a broad consultation with stakeholders from all five agro-ecological zones of the country.

Self-assessments related to the REDD+ Readiness Package were also carried out. Indigenous peoples did the self-assessment in two groups: the forest people did theirs in Mbalmayo in the Centre Region, while the pastoralists did the self-assessment in Bafoussam in the West Region of Cameroon. The results of the assessments were good and qualified Cameroon for additional funds. In multi-stakeholder meetings in the month of November 2018 an additional grant of USD 5 million was accorded to the government of Cameroon. It was agreed that two envelopes will be made to civil society and indigenous peoples to continue capacity building efforts to reinforce their participation in the REDD+ process.

In January 2018 in a workshop organised by the African Indigenous Women Organization Central African Network (AIWO-CAN), indigenous organisations created the Platform REDD+ and Indigenous Peoples of Cameroon (PREPAC) through which they can better participate in the REDD+ process with AIWO-CAN as the lead organisation.

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

In 2008, the Government of Cameroon passed a decree to officially recognise the UN International Day of the World's Indigenous Peoples. In August a number of activities were carried out by the government and indigenous peoples which culminated in the celebration of the day. As is the tradition, the celebration in 2018 was officially launched on 7 August in Yaoundé. The celebration of the day itself was done in Nyabaka, a locality in the Adamawa Region, inhabited by Mbororo pastoralists. The Minister in charge of Social Affairs Mme Pauline Irene Nguene presided over the ceremony.

National dialogue on indigenous peoples' rights and access to citizenship

The hunter gatherers through their platform GBABANDJI² and the OKANI organization organized a dialogue from 10 to 12 December 2018 in Yaoundé. The main theme of the dialogue was a "National dialogue on indigenous peoples' rights and access to citizenship". The objective was to look at ways to push their civil rights so as to enjoy these rights and participate fully in the affairs of the state.

For many decades the forest peoples of Cameroon have organised themselves in various associations and networks to make their voices heard, and the following organisations participated in the dialogue: AS-BAK, CADDAP, ABAWONI, ABAGUENI, ADEBAKA, ARBO, BACUDA, BUMA BO KPODE, ASKOBAK, ADEPA, ASBANGO. Other indigenous organisations like the Mbororo Social and Cultural Development Association (MBOSCUDA) – and the Working Group on Indigenous Populations of the African Commission on Human and Peoples' Rights and *Reseau de Population Autochtones et local pour la gestions durable des eco-systeme forestiere en Afrique Central* (REPHALEAC) were also present to share their experiences. The European Union, the Forest Peoples Program and important government departments were also present.

Among the many problems faced by the forest peoples, the question of the right to citizenship is the most serious. It is therefore urgent to find solutions and measures to resolve this persistent problem.

The results of a community study³ that was carried out in 2018, reveals that half of the forest peoples do not possess identity documents. This situation is very serious as it considerably limits the enjoyment of their rights of citizenship, the right to move around freely, to vote, to access education and to participate in the public affairs of their country.

At the end of the dialogue some practical resolutions were adopted:

- To produce 6,000 birth certificates and national identification cards to the indigenous communities;
- To technically accompany indigenous peoples to access birth certificates and national identification cards;
- To facilitate indigenous peoples' access to public services;
- To put in place systematic measures for the registration of births in indigenous communities;
- To train traditional nurses to follow up on rights to citizenship in their communities;

- To sign agreements between indigenous organisations and sectorial services like local governments, health centres, police services and courts to facilitate services for the indigenous peoples.

Civil strife and its effects on the Mbororo pastoralist

Une crise à caractère ségrégationniste couve en marge de la crise du nord Ouest et du sud ouest, où le Mbororo font les frais de la violence aveugle, sous fond de xénophobie, des combattants sécessionnistes, à l'insu des toutes communications. ⁴

The civil strife in the two English-speaking regions of Cameroon, the North-West and the South-West, remains a cause of great concern for the Mbororo pastoralists. In 2016, lawyers' and teachers' associations from these two regions began a strike aimed at improving their socio-economic and civil rights. This situation has degenerated into civil war with a demand for total secession of these two regions from the republic of Cameroon. All attempts at negotiation have failed and the situation has escalated into total chaos. This violence has taken the form of abductions, killings, looting and the burning of public and private properties. The abductions and killings in early 2018 targeted mainly the military and government officials in the two regions.

Towards the last quarter of 2018 civilians were caught in between the military and the separatist groups with each accusing the other of excessive use of force and human rights violations on the civilian population. Mbororo pastoralists were targeted particularly during this period. This is partly because they live in dispersed and remote areas due to their economic activity of cattle herding. The leaders of the separatist groups living abroad, and those on the ground, have used social media to call for attacks on the Mbororos. They also believe that the Mbororos are strangers and don't belong in the new state that they want to create.

This feeling has given rise to generalised attacks on the Mbororo pastoralists in the form of hostage taking, demands of ransoms, killings, maiming of cattle, looting and burning of their homes and properties. This has caused displacement of about 2,500 Mbororo people from the two regions to other parts of the country and to Nigeria in the last quarter of the year. Over 1,000 of their cattle have been stolen and

maimed. In the last quarter of 2018, 48 Mbororo pastoralists were killed by the separatist's groups in the North West Region.⁵

Mbororo children whose enrolment in schools has otherwise for the last decades been on the rise, in the North-West Region has dropped considerably, thus thwarting all of the MBOSCUA's efforts in promoting education over the last two decades.

Support to displaced pastoralists

The MBOSCUA and other NGOs carried out humanitarian assistance to Mbororo pastoralists fleeing attacks and killings from the two English-speaking regions of the country. In 2018 the conflict degenerated into unprecedented violence and the pastoralists who survived fled to the city centres and the neighbouring regions and to Nigeria (Taraba State) to seek refuge. Assistance in the form of food, first aid and sleeping bags were distributed in Douala, Baffoussan town, and the Noun Division, Adamawa and the North West Region itself. More aid is being collected and will be channelled to these localities. The pastoralists of Nigeria returned the hospitality that was extended to them in 2017 by giving their brothers refuge, food and clothing.

The insecurity in the Adamawa Region

Another region affected by insecurity is the Adamawa Region, which is plagued by what can be termed a silent war. The hostage taking in exchange for heavy ransoms⁶ is more disastrous than any normal war. This phenomenon has been going on for many years and has affected the population of the Region in a dramatic way. The Mbororo pastoralists have been particularly affected since their cattle is wealth that is attractive to the kidnappers.

Three hundred and eleven Mbororo pastoralists (women, children and men) have been taken as hostages in the region from 2015 to 2018. Twenty-nine persons were liberated by the forces of law and order while 212 persons were freed because they sold their cattle and paid the ransoms. Seventy persons were killed either because they couldn't pay or because intervention was inefficient and often late. More than 5,000 cattle have been stolen and about 2,157,400,000 CFA franc (around 3.8

million USD) were paid out as ransom by the Mbororos people within the period.

Many wonder if these colossal amounts of stolen money are just armed robbery or rather a phenomenon entertained at some higher levels of society. What is glaring are the socio-economic consequences. Poverty has set in and juvenile delinquency is on the rise with the risk to prolong the cycle of conflict.

Notes and references

1. Created by Ministerial Order n° 022/A/MINAS/SG/DSN of 6 August 2013 by the Ministry of Social Affairs
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6. Statistics from Mboscuda Adamawa Regional office.

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CENTRAL AFRICAN REPUBLIC



There are three indigenous groups in the Central African Republic (CAR): the M'bororo Fulani, the Aka and the Litho. The M'bororo Fulani are largely nomadic pastoralists. They are found in the prefectures of Ouaka in the centre-east, M'bomou in the south, and Lobaye in the south-west. The 2003 census estimated their population at 39,299 people or approximately 1% of the total population. The proportion of M'bororo is higher in rural areas, where they represent 14% of the total population, while they account for only 0.2% of the population 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 of CAR, which they consider their homelands and where they carry out their traditional activities of hunting, gathering and fishing. The Aka live in the following prefectures: Lobaye, Ombella M'polo and Sangha-Mbaéré in the south-west, and Mambéré Kadie in the west.

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

CAR voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) 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.

Political and security context

The political climate in the Central African Republic (CAR) remains deeply marked by recurrent violence. On 7 and 8 April 2018, serious outbursts of intercommunal violence occurred in Bangui, resulting in 70 dead and 330 injured, mostly civilians.¹ On this occasion, like many others, "the fighting gave rise to international and humanitarian human rights violations".²

In the country's interior, massacres are virtually a daily occurrence. Three-quarters of the country is now in the hands of different armed

groups, which violently oppose each other. Since 2018, the regions of Bambari, Bria, Ndélé, Kaga-Bandoro, Markounda, Paoua and Bokaranga have experienced serious loss of life, as was previously the case in Bangassou, Mobaye, Alindao and surrounding areas, where large numbers of people have also died. Six UN peacekeeping soldiers were furthermore killed during 2018,³ as well as three Russian journalists and three Chinese nationals. Three priests have been brutally attacked despite being in full religious dress, and mosques have been burned down.

The re-organisation of the Central African Armed Forces, recently deployed in support of the UN peacekeeping force, seems to have given the population a glimmer of hope. That hope remains fragile and has been repeatedly tarnished by further attacks, including those in the centre of the country in August and September 2018. These attacks, in the town of Bria and along the Bria-Irabanda highway in Basse Kotto Prefecture, ended with 30 dead and four wounded. "According to surveys of the United Nations Mission in the Central African Republic (MINUSCA), many of these crimes, which could constitute crimes against humanity, can be attributed to the rebel armed groups."⁴

At the end of October 2018, other "clashes resulted in several victims and forced displacements of the population to Batangafo to the north and Bambari in the centre of the country".⁵

In November 2018, rebel armed groups attacked the site where internally-displaced persons (IDPs) were living in Alindao in the south-west of the country, killing 100, including two priests. This brought the number of priests killed in 2018 to five. When the government was challenged by MPs on this subject in the National Assembly, the prime minister stated that "the UN peacekeeping groups [...] are not meeting our expectations".⁶

Following the massacres at Alindao and Batangafo, several people have attempted to hold the UN forces responsible for having abandoned the population to the mercy of the disparate rebel groups. Since November 2018, the escalation in number and severity of massacres has only deepened the Central African crisis. In response, the President of the Republic has declared that, "there is serious violence being planned".⁷ Faced with these massacres, he declared three days of national mourning and again called on the UN Security Council to lift the arms embargo that was imposed in 2013. The president of the National Assembly also sent out a distress call to the Security Council calling for a "total" lifting of the arms embargo to enable the Central African army

to become operational. Other voices, such as those of “civil society women, insistently called (during a press conference at the start of November 2018) on a total and unconditional lifting of the arms embargo. [According to them] to ignore the people’s distress is to shut one’s eyes to the massacres, to the benefit of other interests...”⁸

Through the voice of the Cardinal, during a press conference, the clergy castigated the serious lack of international opinion and the absence of UN forces in the light of the repeated attacks. Amnesty International has ordered an inquiry to shed light on the Alindao massacres, particularly with regard to the behaviour of the UN forces.

Overnight on 30-31 December 2018, armed groups attacked the town of Bakouma, a strategic uranium mining site, killing four people including the sultan, an important “identity and cultural figure” in the area. Just prior to this, recognising this upsurge in criminal activity, on 14 December 2018, the Security Council had renewed the UN peace-keeping force’s mandate in the CAR for another year. At the same time, the UN Secretary-General appointed a new representative to head up MINUSCA in the CAR.

It should be noted that “the armed conflicts have [also] contributed to a rise in cases of sexual violence and physical aggression, in particular inhuman and degrading treatment of women and young girls”.⁹ The population is demanding justice and that the perpetrators are brought to trial. A former head of the anti-Balaka militia was arrested in November and taken before the International Criminal Court (ICC) in The Hague for war crimes and crimes against humanity. Another former anti-Balaka leader* arrested in Paris is in the process of being extradited to The Hague. The population have expressed surprise and confusion that the Séléka*, mercenary warlords and the perpetrators of numerous crimes, still enjoy freedom of movement while only the anti-Balaka militia have been taken before the ICC.

Population movements

Thousands of people have been forced into an exodus the size of which has never before been seen in the country’s history: “More than 577,000 refugees [remain] in neighbouring countries and 669,997 IDPs, of which 50,000, remain [displaced] in the capital, Bangui.”¹⁰ However, “the Commission for Population Movement has observed an overall decline

of 7% in the number of IDPs.”¹¹ Despite these reports the issue remains monumental: “At the end of June 2018, the total number of IDPs was 608,000: 249,522 at sites and other meeting places, 354,017 estimated to be living with host families and 4,489 in the bush.”¹²

Voluntary return of IDPs

A timid return of IDPs to their homes has been observed in 2018: “41,670 people in the Sub-Prefecture of Paoua; 3,575 in the Sub-Prefecture of Batangafo, still occupied by rebel groups; 1,076 in the Sub-Prefecture of Carnot and 13 in the Sub-Prefecture of Berbérati.”¹³

Nonetheless, insecurity remains high in these regions, as in many others. In addition, “one person in every four is still either internally displaced or a refugee”. In October 2018, “a large number of M’bororo Fulani who had taken refuge in Cameroon returned to the region of Baboua in the west of the country with their livestock. [...] The local authorities conducted a census and warned them against illegally carrying arms.”¹⁴ Since the start of 2018, 15,000 IDPs have voluntarily returned home and received support from humanitarian organisations. In general, thanks to a lull in the violence in some areas, there has been a more or less continuous return of displaced persons.

Another widespread scourge is famine, despite temporary assistance from humanitarian organisations. According to the UN Food and Agriculture Organization (FAO), “550,000 people are in an urgent situation of food insecurity”.¹⁵ The crisis is growing to the extent that, according to UNICEF, “1.5 million children are in need of humanitarian aid”.¹⁶

Impacts of conflict on indigenous peoples

There are three groups of indigenous peoples in the CAR: the Pygmies, the M’bororo and the Litho, a minority group rarely acknowledged. There are also the Ndris, considered to be the first inhabitants of Bangui, the capital, prior to colonial settlement. Today, they are totally unknown and on the verge of extinction.

The Pygmies.

The Aka Pygmies live in Lobaye and Ombelle-M'poko in the south of the country. The Babéznélé Pygmies live in Sangha-M'Baéré in the south-west and Mambéré-Kadei in the west.

The invasion of armed groups into the CAR in 2013 caused considerable harm to the Pygmies with consequences that can still be seen to this day. There was loss of life and serious plundering of the biodiversity. The forest, home and food source of the Pygmies has served to feed the war, just as the gold and diamonds have in mining areas. More than 50 elephants have been destroyed for their ivory in the Dzanga-Sangha Forest Reserve in the west of the country. Constantly under pressure, the Pygmies, known for their hunting skills, have been forced to embark on large-scale hunting to the benefit of their oppressors when, traditionally, they would take only what they needed from the forest for their daily needs. The insecurity is such that they no longer go into the forest to gather, hunt or fish. Now, because of the trauma they have suffered, they have settled around the outskirts of villages.¹⁷

This is simply reinforcing the effects already being suffered due to constant deforestation by multinational companies.

The Mbororo Fulani

A nomadic people, the Mbororo are constantly on the move in search of grassland. They are found over a large area of the country, particularly in the prefectures of Ouaka in the centre of the country, M'Bomou in the south-east, Nana-Mambéré in the west, Ouham in the north, and Ombelle-M'Poko and a part of Lobaye in the south-west. During their movements, they come into constant conflict with agricultural farmers because of the damage their herds cause to the plantations. The local authorities (prefects, sub-prefects and mayors) have repeatedly intervened to resolve disputes between these groups.

The prefectural and communal-level authorities have designed regulations to try to ensure reciprocal respect for agricultural and pastoral spaces.

The Litho

The Litho are a minority group living in the north of the CAR

around Bamingui, Ndélé, Kaga-Bandoro and Kabo. They are also found at Sido 2 and Maro in Chad, on the border with the CAR. They are semi-nomadic. They practise agriculture and live from hunting, gathering and fishing. Like the Pygmies, they reject modern medicine and remain traditionally attached to their pharmacopeia, for which they enjoy a wide-spread reputation.¹⁸

Their vision of the world is strongly influenced by their spiritual beliefs, which they invoke to regulate the life of the group. Their way of life is similar to that of the Pygmies, with the sole difference that they live in a wooded savannah environment while the Pygmies inhabit the equatorial forests. It is not currently possible to say what effects the political and military crisis is having on their community. What is certain is that they live in areas of high insecurity in which the warmongers have established their bases.

Legal protection of indigenous peoples

Since the Central African Constitution incorporated the provisions of ILO Convention 169 on the protection of indigenous peoples in 2015, the country has struggled to put this into effect. Plans, including a draft bill of law, remain no more than good intentions. The conflict in the country is preventing government and civil society initiatives for indigenous peoples from being implemented. Nevertheless, in 2018, through the SENI Project (a project to support the CAR's health system), the government's national public health policy took the sanitary conditions of indigenous peoples, in particular the Pygmies, as one of its focal points. In June 2018, a "Framework Plan for Indigenous Peoples/CPPA" was thus drawn up with the aim of "providing responses to the precarious sanitary situation [...] of indigenous peoples [who] do not participate, for example, in vaccination campaigns and who have no access to health facilities."¹⁹ The Framework Plan anticipates that "Aka populations from Sangha-Mbaéré prefecture, in Health Region 2 covered by

SENI",²⁰ will be the first to benefit from this project.

Indigenous peoples' representation and participation

Two of the indigenous peoples are organised into associations. The Mbororo have created the NGO Mbororo Social and Cultural Development Association (MBOSCUDA) to represent them within civil society and state structures.

The Aka Pygmies are organised in the Association for the Defence of Ba Aka Interests in the CAR (ADIBAC) for the same reasons and objectives. These associations are now virtually paralysed due to the conflicts. They also still have little access to other areas such as education. Initiatives in this regard are at an embryonic stage and quickly dashed through lack of pedagogical strategies appropriate to their way of life. The lack of information due to illiteracy is a serious obstacle for indigenous peoples, who find themselves unable to defend their interests in different areas of public life.

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The **Séléka** ("Coalition" in Sango) is an ethnic and Muslim coalition formed in August 2012 among rebel groups to remove the Central African President, François Bozizé, from power, which they did in March 2013.

The **anti-Balaka** are a self-defence militia established by farmers in the Central African Republic. They took up arms in 2013 against the Séléka during the third Central African civil war.

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CHAD



Chad is one of the six member states of the Central African Economic and Monetary Community (CEMAC). Its population is estimated at 14 million inhabitants living across an area covering 1,284,000 km². The country is divided into three broad ecosystems: desert in the north, savannah in the centre and forest in the south.

Two peoples are considered indigenous to Chad: the Mbororo sub-group of the Fulani people and the Toubou. The Mbororo Fulani live primarily from pastoralism and subsistence farming. According to the 1993 census, they number some 250,000 clustered in the dry centre and tropical south where there is pasture for their livestock. It is estimated that they make up some 10% of the Chadian population. Many of the Fulani have emigrated to neighbouring Cameroon, the Central African Republic or Niger. They can be recognised by their way of life, culture, language, and by the discrimination they suffer. The Fulani are often poor, the majority of them are illiterate and they have no political representation at the national level.

The Toubous are considered one of the oldest groups currently living in the Sahara. Their origin remains a mystery and they have always been an enigma in the eyes of others. Warriors and pastoralists like many other Saharan peoples, these nomads are feared by their neighbours, and owe their reputation to their legendary capacity for adaptation and survival in the particularly arid environment of the Tibesti mountains. They rear camels and cattle and live largely in northern Chad, with the exception of small communities settled in Niger, Libya and Egypt.

Chad was absent on the day of the vote on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly.

Due to a lack of available information on the Toubou, this article will limit itself to the situation of the Mbororo.

General situation of the Mbororo Fulani people in Chad

The Fulani are a large group living throughout the whole Sudano-Sahelian belt, largely in West and Central Africa. They can be divided into several sub-groups, including the Mbororo, who now live in five countries: Chad, Niger, Nigeria, Cameroon and the Central African Republic. In Chad, they are represented by several dozen communities, including the Wodaabé, Dya-dyaé, Bibbé Woila, Fukarabé etc., and are also commonly known as “Fulbé Laddé”. When nomadic, their communities practise cross-border transhumance, following the rhythm of the seasons in search of water and pasture for their cattle. Primarily pastoralists, some communities are 100% nomadic while others are semi-nomadic, practicing subsistence farming. These latter are generally nomads who have lost their cattle due to land grabbing, the closure of transhumance corridors and climate change.

Increasing - but still insufficient - recognition

The Mbororo people are not officially recognised by the Chadian government in law. Despite the lack of official recognition, the UNDRIP ensures recognition through self-identification: a people must recognise itself as indigenous and meet all the criteria as specified in the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities.¹

An International Forum on Indigenous Peoples of Central Africa (FIPAC)² was held in Impfondo in the Republic of Congo in 2014. President Idriss Deby Itno of Chad opened the Forum alongside President Denis Sassou Nguesso of the Republic of Congo, and Boni Yayi, then Head of State of Benin. This conference also resulted in a further conference of Central African ministers, which culminated in the creation of an indigenous peoples' structure in the sub-region. Although recognition of indigenous peoples remains a challenge in Chad, the cause is becoming increasingly understood and recognised. At the same time, the conditions and way of life of these peoples are being increasingly threatened by environmental phenomena and climate change. This makes them more vulnerable and their most fundamental rights are not yet recognised and/or applied.

Land issues

Given the absence of any legal clarifications on land, there are still many ongoing problems in this regard. Nomadic land issues are regulated by *Law 004* of 1959 (enacted during colonisation), which governs “pastoral lands”. This was updated by a *Pastoral Code* in 2014,³ some parts of which were adopted or rejected by parliament and the government. The lack of legal clarity disadvantages not only Chad’s Fulani but its nomadic communities as a whole.

The closure of transhumance corridors, privatisation of water sources and land grabbing remain a major obstacle, preventing indigenous peoples’ access to land and natural resources.

A planned decision by the Ministry of Livestock in 2012 on whether or not to re-open 60,000 km of transhumance corridors would have returned the indigenous peoples’ right to land and prevented conflicts between farmers and cattle herders. However, after six years, at the end of 2018, it remains at the draft stage.

The administrative division of Chad means that nomadic indigenous peoples are reliant on decisions from several different administrative districts which do not communicate. When moving from one area to another, they often have to pay the same taxes several times. In addition, this division acts to marginalise indigenous peoples, preventing their access to political processes. In 2018, very few Fulani were able to participate in decision-making circles and even fewer could access the arenas in which the implementation of these decisions are planned.

Consequences of climate change on the living conditions of Chad’s Fulani

Climate change and continued desertification exacerbated land and natural resource difficulties throughout the Sahel in 2018. Workshops with indigenous communities raised numerous land-related problems, often highlighting abuses by the local authorities which include: payment of illegal taxes and fines; improper sale of land; and abnormal increases in farmland titles across the country.⁴ These sales and re-allocations of land contribute to the destruction of Chad’s indigenous peoples’ way of life and culture. They reduce and, at worst, completely close off the transhumance corridors. Although nomadic and semi-nomadic

indigenous groups in 2018 helped maintain the Sahel's fragile natural ecosystems, the closure of transhumance corridors and conflicts over land, as well as changes in their way of life (including government attempts to settle them) are increasing the environment's vulnerability and reducing its resilience to climate change. This has been demonstrated in several studies, including efforts by the UN Environment Program (UNEP) to highlight sustainable pastoralism.⁵

Education

In 2010, the indigenous organisation Women's Association of Indigenous Fulani in Chad (AFPAT) participated in a study organised by the Ministry of Education and Livestock Rearing on the education of isolated and remote nomadic children. This resulted in the creation of a Department for Nomadic Children's Education (DNCE) in 2012. Despite the implied progress, however, the real impact for indigenous communities is minimal. The rare schools that do exist, and serve these indigenous groups, often have charitable origins, independent of the government. AFPAT has run workshops with these communities, and reports that a lack of resources devoted to the DNCE has resulted in a failure to achieve satisfactory results. Average school registration rates among nomadic children remained very low in 2018, at less than 1% for boys and virtually zero for girls.

Health and healthcare

In 2014, AFPAT participated in a study on nomadic health which resulted in the creation of a Health Programme for Nomadic Peoples, another step in the right direction. Four years on, however, there are no health centres along any of the transhumance corridors nor in many indigenous villages. These groups remain unable to benefit from primary healthcare. Women, children and the elderly suffer the highest rates of mortality among certain sectors of the population due to childbirth and numerous preventable diseases. The lack of facilities means that they are forced to travel long distances to reach health centres and, once there, they face discrimination, for instance being referred to as dirty, poor people.

Civil registry

In 2018, entire nomadic communities lack birth certificates. Often there are just a handful of men with identity cards in any settlement or village, largely because they are required to travel for the cattle trade. Despite a lack of documentation, most community members have voting cards, meaning that the state sets more store on distributing polling cards for electoral purposes than on providing identity cards. Without an identity card it is impossible to access most government services, including schools and medical centres.

Clean water

Access to drinking water is improving for semi-nomads as they themselves are paying for new pumps or water towers. The religious departments of Arab countries that build mosques in the country also provide water points. The nomads, however, to this very day drink the same water as their cattle, be it from a river, pond or lake. This basic right to clean water thus remains a great challenge and a source of conflict, particularly around Lake Chad.

Lack of progress in adopting a Pastoral Code

Worthy of note is *Law No 4* of 31 October 1959 “On regulating nomadism over the territory of the Republic of Chad”.⁶ Since its enactment, this law has been invoked by indigenous peoples to obtain respect for their traditional areas of transhumance. Social harmony thus up until recently was maintained between the indigenous and the majority non-indigenous population. Poverty and the impacts of climate change have broken this understanding. The heads of non-indigenous communities are selling land to generals, ministers and others with more resources.

Given that the draft Pastoral Code regularising transhumance and other rural activities was largely rejected by the government, the 1959 law remains the only valid legal text.

In 1987, a new law, the *Law on Protected Areas*, placed restrictions on pastoral areas. These protected areas continued in 2018 to create

problems and legal disputes between nomadic Fulani and sedentary farmers; security issues caused by forest guards who abuse the pastoralists; and problems of limited access to pasture because these areas are now closed.

Since the climate change conference COP21 in 2015, however, the Ministry of Environment and the Metrology Department have involved increasing numbers of indigenous people in their work in order to better understand their needs.

Indigenous women and climate change

Indigenous women are disproportionately vulnerable to the consequences of climate change. In traditional Mbororo society in Chad, women are responsible for most day-to-day tasks: preparing meals, fetching water and firewood, and the education and health of their children. Their activities further include the sale of milk and other livestock products.

According to different studies by the Intergovernmental Panel on Climate Change (IPCC), the main impacts of climate change on the Sahel are:

- Lower rainfall, which is affecting pastoral communities by reducing their milk production, forcing them to change their transhumance routes and reducing the productivity of their farming activities;
- Flash flooding, which can destroy crops and threaten herds;
- Increased heatwaves, which threaten human and animal health.

AFPAT's work with the communities has noted the following consequences of climate change on the indigenous peoples of the Sahel:

- Declining incomes linked to milk and agricultural production;
- Shortage or disappearance of some plant varieties used for traditional medicine or animal pasturing;
- Increasing conflicts with settled farmers over land and natural resources, linked to changing transhumance corridors due to climate change;

- Conflicts over the use of water, linked to a depletion of resources.

AFPAT has developed a project to face up to the consequences of climate change. It is supported by the French Embassy in Chad and the Swiss Cooperation and is enabling women from nomadic and semi-nomadic communities to obtain additional incomes with which to offset the decline in milk production related to the change in seasons.

Two communities have thus far benefited from a series of training workshops aimed at understanding the challenges of climate change and fundamental rights and they have also been provided with investment to establish women's income-generating cooperatives:

- In the communities of Mayo Kebbi – Est, at Gournoida, the women have set up a cooperative to transform groundnuts, which are plentiful in the region, into paste and oil for sale.
- In the communities of the Centre – Chari Bagrimi, at Wouro Biridgi, a cooperative has been established to transform millet, thus enabling women not only to lighten their daily workload but also to obtain additional income.

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DEMOCRATIC REPUBLIC OF CONGO



The concept of “indigenous peoples” is accepted and approved by the government and civil society organisations (CSOs) in the Democratic Republic of Congo (DRC). In the DRC, the term refers to the Mbuti, Baka and Batwa peoples, who consider the generic denomination of “Pygmies” to be derogatory and discriminatory.

The exact number of indigenous peoples in the DRC is unknown. The government estimates it at around 600,000 (1% of the Congolese population) but CSOs give a figure of up to 2,000,000 (3% of the population). They live in nomadic and semi-nomadic groups throughout virtually all of the country's provinces. Indigenous peoples' lives are closely linked to the forest and its resources: they practise hunting, gathering and fishing and treat their illnesses through the use of their own pharmacopeia and medicinal plants. The forest lies at the heart of their culture and living environment.¹

Kahuzi Biega National Park: World Heritage Committee ignores indigenous Batwa communities' rights

In January 2018, the Forest Peoples' Programme (FPP) and several other indigenous and CSOs in the DRC and elsewhere sent a letter² to UNESCO's World Heritage Centre raising the situation of the Batwa and drawing attention to the violation of their human rights as exemplified by their longstanding expulsion and permanent exclusion from the Kahuzi Biega National Park. The letter particularly noted a case from 2017 when a young Batwa (17 years of age) was shot and killed by park guards for having entered the park. The young man's father, who was with him at the time, states that they were in the park to gather forest produce.

Having received no response to this first letter, the same organisations sent a second letter³ to the World Heritage Committee prior to its 42nd session. This letter urged the Committee to bring its decisions into line with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and called on the Congolese government to embark on positive dialogue with communities that have ancestral links to the park.

This second attempt to bring serious human rights concerns to the

attention of the World Heritage Committee also received no response. Two statements were subsequently published in solidarity with the Batwa of KahuziBiega. The first⁴ was issued by World Heritage Watch (WHW), a civil society gathering that meets prior to the sessions of the World Heritage Committee. The second was officially submitted to the Committee by the International Indigenous Peoples' Forum on World Heritage (IIPFWH).

During its 42nd session, the Committee again decided to overlook these serious concerns and ended the discussion on the conservation status of the KahuziBiega National Park without mentioning the human rights concerns of the indigenous Batwa once.

3rd International Festival of Indigenous Peoples (FIPA)

This festival, organised by the Congolese Indigenous Peoples Network (DGPA), took place from 7-9 September with the aim not only of promoting the cultural diversity of indigenous Pygmies around the world but of offering a framework of endogenous knowledge and exchanges on environmental issues, biodiversity and climate change.

Patrick Saidi, DGPA coordinator said: "This festival should enable concrete solutions to be identified that will put indigenous issues back on the agenda. FIPA is intended as an international framework of reference for the promotion and defence of indigenous peoples' rights and an appreciation of their traditional knowledge."

The ministers or their representatives present at the event spoke on their ministries' commitment to advancing the indigenous Pygmy peoples' cause, above all with regard to the discrimination they face:

- The Minister for Culture and Art, Mrs. Astrid Madiya Ntumba, undertook to "ensure their sustained support until we can co-exist side by side without discrimination, and until indigenous peoples' culture is integrated with those of other peoples."
- The Minister for Land Planning, Mr. Félix Kabange Numbi, stated: "Personally, I have always supported the indigenous peoples and will continue to do so. In terms of the forest reform, land reform and land planning reform underway, we will take local communities, and particularly indigenous peoples, into account."

- The Minister for Customary Affairs said: "Indigenous peoples are our fellow citizens; my Ministry undertakes to continue efforts to integrate them."
- The representative of the Ministry for Environment and Sustainable Development said: "The forest forms the indigenous peoples' supermarket, we want effective measures taken to protect this. We want to help them benefit more from this supermarket."⁵

Lethal conflict between the dominant Luba community and Batwa indigenous peoples in Tanganyika Province

Over the course of the last seven years, the lethal conflict between the dominant Luba community and the indigenous Batwa peoples of Tanganyika Province has persisted. The causes include conflict over natural resources, land and customary practices, and the indigenous Batwa having suffered human rights violations for years.

In August 2017, a comprehensive report by the International Rescue Committee (IRC) entitled, *A silent crisis in Congo: The Bantu and the Twa in Tanganyika*, described the structural and circumstantial causes of the conflict and made recommendations to the authorities on how to bring the conflict to an end. In the introduction, it notes: "This conflict illustrates how marginalization of the Twa minority group due to a combination of limited access to resources, exclusion from local decision-making and systematic discrimination, can result in large-scale violence and displacement." The document goes on to examine the opportunities and threats and gives a list of practical recommendations, from the viewpoint of transforming and resolving the conflict.⁶

On 13 April 2018, a conference was held in Geneva on humanitarian assistance in the DRC at which the disastrous results of a "'forgotten' conflict between the Bantu (majority African population) and minority Pygmy militia" were deplored. According to figures published by Voice of America (VOA), some 500,000 to 650,000 people have been displaced by the violence caused by this conflict around the shores of Lake Tanganyika (southeast) since 2016/17.

Around the provincial capital of Kalemie, located between the lake and the fertile plans of Rugumba, 67,000 displaced Bantu are trying to survive in twelve displacement camps, having fled raids, pillaging, and

other atrocities such as the burning of villages, rapes, etc. According to the Norwegian Refugee Council (NRC), more than 80% of the people living in the displacement camps have no access to clean water and 75% have no access to latrines. Furthermore, most have no shelter other than a mosquito net.

Among the underlying causes of a conflict that has been ongoing since 2013, Jean Omasombo, lecturer at Kinshasa University and researcher at the Royal Central African Museum in Tervueren, notes: “The declining standard of living among Bantu, which has pushed them into the forest for their survival, forests on which the Pygmies depend.” Numerous agreements aimed at ending the conflict have failed to resolve it.⁷

Organic law on indigenous peoples in the DRC

During its Universal Periodic Review in 2014, the DRC accepted the following recommendations, which it aims to implement or is in the course of implementing:

- Continue to work for the recognition of indigenous peoples nationally;
- Guarantee indigenous communities’ – particularly Pygmies’ – land rights in the protected natural parks;
- Harmonise projects to reduce greenhouse gases, deforestation and forest degradation, in accordance with the UN Declaration on the Rights of Indigenous Peoples.

A procedure for adopting a specific law on indigenous peoples has been in place for the past few years. This initiative was launched by a consortium of non-governmental and indigenous peoples’ organisations in 2003, coordinated by the DGPA.⁸

Four years on, questions have been raised as to the outcome of this draft law within the Congolese parliament, despite repeated investigations into violations of indigenous peoples’ rights. In an interview dated 21 August 2018, Kone Lassana, lawyer and head of the FPP’s Legal and Human Rights Programme, believed the delay in the adoption of the law to be unjustified, particularly in a country such as the DRC, which has signed the African Human Rights Charter and many other

human rights instruments: "For us, this political reticence is unjustified. During the last parliamentary session, we had hoped there would be some courageous decisions taken in terms of adopting this draft legislation. There were no such positive developments. [...] They think adopting a specific law on indigenous peoples will create division, because they have a fixed vision of the nation, sovereignty and territorial integrity."⁹

Review of the *Land Law*

With World Bank support, the DRC has been implementing a land reform process since a start-up workshop was held in Kinshasa from 19-21 July 2012. This workshop formed the starting point for a process of reflection on sustainable and appropriate responses to the different land issues noted across the country.

A National Land Reform Commission (CONAREF) was created by prime ministerial decree on 30 May 2013.¹⁰

The 4th National Steering Committee meeting for the land reform process took place from 26-27 June 2018. At the end of the meeting, the Minister of Land Affairs, Lumeya Dhu Maleghi, announced that the DRC could have a new and realistic *Land Law* by 2019, incorporating all the country's specific features and replacing the law enacted on 20 July 1973 and amended in 1980. For its part, the UN Habitat delegate, one of the main technical and financial partners, repeated their organisation's commitment to support the DRC until completion of the process.¹¹

On 17 and 18 December 2018, several experts and Pygmy delegates met in Kinshasa to study the outlines and possibilities of including indigenous peoples' rights within the new draft law. The representative of the Support to Forest-Dependent Communities Project (REPALEF), Joseph Itongwa, acknowledged that some progress had already made in this regard: "Indigenous peoples' land issues are a major concern for Pygmies when advocating for defence of their rights. In addition to land issues, REPALEF is also involved in other reforms with the aim of ensuring that indigenous rights are taken into account," he stated.¹²

On the occasion of the National Dialogue on including indigenous peoples' rights in land reform, held on 17 and 18 December 2018, the Indigenous Peoples' Ambassador to the Economic Community of Central African States (ECCAS), Kapupu Diwa Mutimanwa, spoke on behalf of

indigenous people to welcome the Congolese government's stated commitment to restore equality. He noted that 92 essential options had been validated with the aim of guiding the final drafting of the national land policy document.¹³

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RWANDA



The population of the Batwa in Rwanda is estimated at between 25,000 – 30,000,¹ which is less than 1% of the approximately 12 million people in Rwanda as of 2018 (National Institute of Statistics of Rwanda). Post-genocide law prevents the collection and dissemination of data disaggregated by ethnicity, and so exact numbers of the Batwa cannot be calculated. Although there has been an increase in political focus on the problems faced by the Batwa in Rwanda, they remain extremely socio-economically disadvantaged. In Rwanda, the Batwa are also known as: “Potters”, an occupation historically associated with the Batwa; the “Historically Marginalised People,” a non-ethnic reference to their second-class status throughout Rwandan history; *abasangwabutaka* (original inhabitants of the land); 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 rep-

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 which led up to the genocide. The Batwa are therefore not officially recognised as an indigenous group or 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 the UNDRIP or ILO Convention 169.²

The Batwa are widely recognized as the indigenous or autochthonous people of the Great Lakes Region of Africa and their ancestral territories lie 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 the country’s three national parks – Volcanoes, Gishwati, and Nyungwe – which hold the majority of Rwanda’s biodiversity and generate significant tourism revenue.

Lack of recognition, exclusion and marginalisation

2018 saw some small signs of progress for the Batwa in the form of increased political attention, although these signs are complex given the political context of post-genocide Rwanda. The Rwandan government previously banned the use of ethnic references and identities in an attempt to prevent a return to ethnic violence and in order to promote na-

tional 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; however, for the Batwa they preclude any opportunities to claim indigenous status and rights. Lack of official indigenous recognition has made it difficult to counter discrimination and protect their land, livelihoods, and distinct culture. Insufficient political representation, particularly at lower levels of government, means that Batwa are often excluded from decision-making processes. It is imperative for the local authorities to include their Batwa constituents in all decisions that affect their lives.

Problems of inequality for the Batwa in Rwanda persist despite attempts by the government and civil society to eliminate them. Today, many Batwa face marginalization, 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, and under/un-employment. 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.

Recent events

- In June 2018, a Batwa community in the southern province was reportedly attacked by a neighbouring village for unknown reasons.³ One person was killed, and several were injured. A similar attack in the same area took place in 2012 and the 2016 Rwanda article in *The Indigenous World* details another violent incident in the same district.

- The Japanese Embassy has agreed to fund a school for Batwa children but land needs to be purchased first. AIMPO, a Rwandan NGO dedicated to the Batwa community, has started a GoFundMe campaign⁴ to raise money to purchase the land for the school.
- Twenty-seven hectares of land were donated by the African Wildlife Foundation (AWF) to the Rwandan government in order to expand the habitat of mountain gorillas in Volcanoes National Park in north-western Rwanda.⁵ The expansion of the park will force thousands of people to relocate, some of whom are Batwa resettled there after being evicted from the forest many years ago.

Livelihoods

A lack of sufficient income-generating activities is prevalent throughout Rwanda but Batwa struggle with this to a significantly higher degree due to discrimination and a lack of education and land. Batwa people have been making and selling or trading clay pots for generations. Now that plastic and metal cookware is ubiquitous, clay pots are no longer desired. Only poor people continue to use these for cooking, and few are sold by potters each month. Obtaining clay has become increasingly difficult as many of the valleys where clay is found are now being used to cultivate rice. Pottery making is a time-consuming task and requires additional materials, such as firewood or charcoal, for it to be completed. A single pot can take days to be ready for the market because of the drying and firing processes. That pot will then sell for 50-150 FRW, equivalent to USD 0.10 or USD 0.15. Despite these obstacles, many Batwa communities throughout the country continue to make pottery.

One potential benefit to maintaining this activity is the ability to form cooperatives or associations to work and sell pottery collectively in a known and accessible location. This has been done successfully in the capital city of Kigali for several years now. Pottery cooperatives in Kigali benefit from tourism, local and foreign customers, and a plot of land for clay collection and livestock. Support for various kinds of cooperative formations (including agricultural, pottery making and other crafts) should be prioritised in rural areas in particular, and Batwa communities would benefit from being targeted in this way. Another common income-generating activity among Batwa is day labouring on oth-

er people's land. This does not generally pay well enough to feed a family for the day but generates more money than pottery making. This activity highlights the ability and willingness of many Batwa to learn and practice cultivation techniques and should be seen as a positive indicator that granting much-needed land to Batwa families would be immensely beneficial to them.

Housing and landlessness

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. Furthermore, the 2009-2011 *Bye Bye Nyakatsi* development initiative destroyed the thatched-roof homes of many 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 and inadequate construction for many Batwa communities. This change left affected families more vulnerable to cold weather and rain damage or destruction of their new homes.

Batwa throughout Rwanda face the extreme challenge of landlessness as a result of their uncompensated removal from the forest, extreme and chronic poverty, and unfair land transactions. In addition, crises of land scarcity and depletion, returning refugees, and the need to support rapid population growth and urbanization have led to a radical restructuring of the landscape, which has contributed to the dispossession of the Batwa.

In 2008, a community of Batwa were relocated to Kayonza district and, since 2014, 43 families have sold their land and homes because of a dire need for money. The properties were sold for a fraction of what they were actually worth, and the Minister of State for Local Government travelled to Kayonza in 2018 to survey the situation. The community expressed great regret and are now more aware of property ownership and management. Local government is also taking measures to prevent vulnerable communities from being taken advantage of in this way again and other families who are given land from the government will now not be allowed to sell it.⁶

Education

As part of the rigorous development goals of Rwanda's Vision 2020 programme, primary education has been free to all families for several years. While this is a generous investment in Rwanda's future, this goal is difficult for many Batwa families to achieve. Uniforms, books, and school supplies all have to be purchased for each child and schoolchildren must be adequately fed to be able to perform at school. Chronic poverty in many Batwa communities prevents children from remaining in school. Dropout rates among Batwa in primary and secondary school remain high due to financial insecurity, lack of adequate food and supplies, and discrimination. Un- or under-educated Batwa should be targeted for vocational training and funding should be available to Batwa families to access the supplies needed for children to attend school.

Civil society organisations

Several grassroots organisations have emerged to support the Batwa in education, agriculture and integration into broader society, although there is still much to be done to improve their conditions. These organisations have benefitted from relationships with larger international and non-governmental organisations, some of whom 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 organisations have to be extremely cautious in their activities in order to maintain political correctness. On several occasions in the past, the Rwandan government has prevented organisations from explicitly targeting Batwa for workshops or training on the grounds that it is divisive and exclusionary and not in line with the promotion of *ndumunyurwanda* – pan-Rwandan identity. Local organisations supporting the Batwa must tread lightly but they are committed to improving the lives of Batwa people. The Rwandan government needs to support them in facilitating their work.

Batwa and “Historically Marginalised” labels

Constitutional laws that prevent the use of certain identity labels have

prevented the Batwa and those who aim to help them from claiming Batwa or indigenous identity. “Historically Marginalized People” (HMP) has been used widely for several years to identify the Batwa; recently, however this has been contested by some Batwa. In Nyaruguru district, Batwa villagers conveyed their wish to stop being called Historically Marginalized People because it continued to identify them as different and highlighted the discrimination they had been facing for generations.⁷ Other Batwa communities have also contested this label, arguing that they are *still* marginalized. Many would like to simply be called “Batwa” but understand that doing so does not conform to the government’s wishes for a non-ethnic Rwanda. The Rwandan government should consult with Batwa communities and civil society as to the use and purpose of the “Historically Marginalized” label.

Notes and references

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3. See UNPO, “Batwa: Recent Attacks Wake Memories of Ethnic Conflict” at <http://bit.ly/2N2me2s>
4. See GoFundMe, “Help Kwizera & Others Go to School” at <http://bit.ly/2N4DlVl>
5. See Volcanoes National Park, “AWF Donates Land to Expand Volcanoes National Park” at <http://bit.ly/2N5z5Ro> and African Wildlife Foundation, “AWF Donates Land to Rwanda to Protect Mountain Gorilla Habitat” at <http://bit.ly/2N4fe5h>
6. See IGIHE, “Kayanza: Abasigajwe inyuma n’amateka mu marira nyuma yo kugurisha amasambu bahawe na leta” at <http://bit.ly/2N2uFuz>
7. See Umuseke at <http://bit.ly/2N7YLx6>

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Southern Africa



BOTSWANA



Botswana is a country of 2,250,000 inhabitants which 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, 2.9% of the population identifies as belonging to indigenous groups. These include the San (known in Botswana as the Basarwa) who number about 65,000; the Balala (1,950); and the Nama (2,400), a Khoekhoe-speaking people.¹ The San in the past were traditionally hunter-gatherers but today the vast majority consist 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, ǀX'ao'aen, !Xóǀ, ǀHoan, ǀKhomani, Naro, G//ui, G//ana, Tsasi, Deti, Shua, Tshwa, 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. Among 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). Botswana took part in the Universal Periodic Review (UPR) meetings of the Human Rights Council's 29th session, from 15-26 January 2018.² There are no specific laws on indigenous peoples' rights in the country nor is the concept of indigenous peoples included in the Botswana Constitution.

During 2018, indigenous peoples in Botswana continued to face difficulties in their efforts to remain on their land and to have access to sufficient natural resources to sustain themselves. Botswana, which is known for its human rights record, with the notable exception of how it treats indigenous and marginalised communities, continued to prevent human rights defenders Gordon Bennett and Steven Corry from entering the country to work on behalf of indigenous peoples.³ Fortunately, there were no members of indigenous communities who lost their lives in 2018 as a result of government actions.

A new president, Mokgweetsi Masisi, took power in Botswana on 1 April 2018. He appointed the former Minister of Local Government and Rural Development, Slumber Tsogwane, as Vice President. Mr. Tsogwane had attended the United Nations Permanent Forum on Indigenous Issues (UNPFII) 17th annual meetings, from 16–27 April 2018 in New York along with several Botswana San.

The 2018 Ibrahim Index of African Governance (IIAG) of the Mo Ibrahim Foundation (MIF) ranked Botswana number five out of 54 African countries, noting that in its abuse index no journalists had been jailed or killed in 2018. At least a dozen journalists, however, were still on the list of those who had been declared Prohibited Immigrants (PI).⁴ Transparency International ranked Botswana 34 in its corruption index, the best ranking for a Sub-Saharan African country.

Conservation, hunting and anti-poaching issues

Debates about the impacts of the no-hunting and anti-poaching policies in Botswana intensified in 2018.⁵ There were indications that the new government under President Masisi might reverse the hunting ban and allow for citizen and safari hunting to take place in Botswana, which had been banned since 2014. This was especially good news for the San, who have a greater dependence on wild animals for subsistence than other groups in the country. However, as of the end of 2018, no change in policy has occurred regarding the anti-poaching or the hunting ban, and impacts of the hunting ban on San communities in Botswana continued to be felt.⁶

Indigenous people of the Okavango Delta, a world-class tourism area and a World Heritage Site in north-western Botswana, are concerned that wealthy tour operators will soon gain rights to a large por-

tion of the Delta and push them out of their ancestral lands. This is particularly true in the case of the billionaire Sir Richard Branson, who has applied for rights to large areas of the Delta.

The Tourism Land Bank (TLB) was created by the government in order to permit potential investors to gain large stakes in tourism concessions in the Delta. According to Leburu Moletedi, a representative of the International Indigenous Peoples of Africa Coordinating Committee (IPACC) “[...] indigenous communities of the Okavango Delta who include Basarwa, Hambukushu and Wayeyi are worried they will lose access to their land [...to...] river reeds, fish and other veldt products”, since the introduction of the TLB. Molatedi went on to say that the TLB threatens to interfere with the Community Based Natural Resources Management Programme (CBNRM), which was designed to enable local communities to remain on their land and benefit from its resources.⁷

The Central Kalahari Game Reserve (CKGR) and other resettlement issues

There were approximately 350-400 San and Bakgalagadi people in five communities in the Central Kalahari in 2018: Metsiamonong, Mothomelo, Gope, Molapo and Gugamma. These communities have been supplied with food, water and other goods by the Ghanzi, Kweneng and Central District Councils. It was still difficult, however, for people living in the CKGR to meet their water needs for themselves and their animals. Water provision was limited to 10,000 litres per month for each location but deliveries were often late and inadequate. Many former residents of the CKGR and their children were denied entry to the reserve.

The Department of Wildlife and National Parks and the Ghanzi District Council held discussions with CKGR residents in 2018 about how the reserve's resources and the communities within it were to be managed. The Ghanzi District Council sent a delegation to the communities in the Central Kalahari from 21-25 May. Ghanzi then had a special Full Council meeting on 27 June on the issues that were raised by the communities in the meetings.⁸

Promises had been made by government to the CKGR residents that each of the existing communities in the Central Kalahari would be able to develop its own community trust to oversee tourism activities. The problem was that the government, using the Botswana law firm Le-

cha and Associates, developed a different plan for a community trust: one that would encompass all five of the communities in the CKGR and an external Wildlife Management Area, titled the Memoghamoga Community Trust. A board of trustees was established with two-year terms but community leaders in the CKGR were not represented in the trust.⁹

The CKGR Residents Committee (RC) wrote to the Botswana government in November 2018, rejecting this plan, maintaining that they wanted to have their own individual trusts and to be able to elect members of the trust management committees, in line with Botswana's CB-NRM Policy.

Hundreds of San whose ancestral land is in the Boteti region in the Central District have been repeatedly relocated since the 1960s, when diamonds were discovered in their territory. DeBeers, the diamond company, which later joint-ventured with government to form Debswana, then developed the Orapa, Letlhakane and Damtshaa Mines, making Boteti the richest and most productive mining centre in the world. In 2018, several of the Boteti San communities were resettled again, for reasons that were unclear. Those living in Makolwane were forced to move to Metsiaela, which has been described as enduring "grinding poverty just a stone's throw away from where the largest diamond in a hundred years was found [...]"¹⁰ Officials plan to move another group from Makgama to Mosu, according to the Botswana Khwedom Council, which has been advocating for the residents.¹¹ The Boteti San "have to travel long distances to access schools and health posts", according to Banyatsi Salutu of the Khwedom Council. He reported that more than four women had given birth in the open veldt while trying to walk to the nearest hospital.¹²

Shortly after Botswana's elections in 2018, a delegation from Boteti, aided by the Botswana Khwedom Council, visited newly appointed Vice President Slumber Tsogwane, to discuss ways of alleviating their hardships.¹³ By the end of 2018, no follow-up by Tsogwane had been reported. In June 2018, the Member of Parliament (MP) for Boteti East, Sethomo Lelatisitswe, brought the issue of compensation for Boteti residents displaced by mining activities to the floor of the Botswana Parliament. Questioned by members, the Minister of Minerals said that there are no records of people relocated from the land allocated for the mines, but he promised an investigation that he estimated would take about 3 months. At year's end, there was no word of the outcome of any investigation.¹⁴

Another case of resettlement of members of a San community without their consent is the Ranyane community in Ghanzi District. Attorneys for the Ranyane community wrote a letter to the Ministry of Local Government and Rural Development to request that Ranyane be granted formal status as a community, which would entitle it to government services such as health care, clean drinking water and a school.¹⁵ As of the end of 2018 there had been no decisions made by the Central Government or Ghanzi District on the future of the Ranyane community.

Botswana and international human rights

The 17th Session of the UNPFII, held in New York from 16-27 April 2018, saw a statement made by Ghanzi District Councilor for New Xade, Jumananda Gakelebone, on behalf of the San. This statement called for recognition of the rights of the San and other indigenous and marginalised communities.

From 3-5 December 2018, a regional meeting on San and inclusion was held in Windhoek. Titled the “Sub-Regional Workshop on Inclusive Development for San People in the Framework of the United Nations Declaration on the Rights of Indigenous Peoples” and sponsored by the United Nations Division for Social Policy and Development, the meeting was attended by Steven Ludick, the director of the Department of Community Development in the Ministry of Local Government and Rural Development who presented the Botswana government position at the meeting.

Gender and children’s issues

San, Nama and Balala women in Botswana in 2018 continued to press for their rights, saying that they wanted equitable treatment before the law, for example in land inheritance cases.¹⁶ The San Youth Network (SyNet) was active in 2018 in promoting education training, and programs for youth. The Tane Ko Teemahane Women’s Foundation based in Khwaai was in the process of seeking assistance for San women in tourism, craft production and marketing. Craft production is an important source of income for indigenous women in Botswana¹⁷

Lessons learned and best practices

The activism of the San and the organisations working with them has led to some positive results in a number of areas in Botswana. The Kuru Family of Organizations (KFO), the Botswana Khwedom Council (BKC), First People of the Kalahari (FPK) and the Kalahari Wildlands Trust (KWT) have pursued diversified development strategies in rural Botswanan communities. To take one example, in western Ngamiland, Ju'hoansi from the Dobe area developed a community tourism project at !Harin//axo (Qarinxago) and were seeking to ensure that they had long-term tenure rights over the area. While they faced the threat of outsiders taking over their *n!ore* (territory), the Ju/'hoansi appealed their case for land rights to the sub-land board, the Tawana Land Board, and the Ministry of Local Government and Rural Development.

Based on their experiences, Ju/'hoansi and other community members sought to actively raise the issues of human rights, social justice and equity at district and regional meetings and to engage in local-level sustainable development activities.

Notes and references

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3. Sunday Standard Reporter 2018. Bennett's Visa Ban Pits Khama Against US, UK, FPP. Sunday Standard 18 March 2018; B.B. Carril 2018. Conversations about Indigenous Peoples and Adjudication: Interviews with G. Bennett, and S. Corry. ELR no. 1, DOI: 10.5553/ELR 000099.
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NAMIBIA



The indigenous peoples of Namibia include the San, the Ovahimba and Ovatombe, and potentially a number of other peoples including the Ovahimba 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 2018. 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 Kaol||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 are now some of the poorest and most marginalized peoples in the country.

The Ovatombe and Ovatombe (Ovatombe) 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. The Ovatombe are considered to have traditionally inhabited the more remote mountainous areas. The Ovahimba are a larger and locally dominant pastoralist group who reside over a greater area of Kunene. Closely related but separate to the Ovahimba is a smaller group called the Ovazemba. The Ovahimba, Ovatombe, Ovatombe and Ovazemba number some 26,000 in total. The Nama, a Khoe-speaking group, number over 100,000 and live mainly in central and southern Namibia and the north-west of South Africa. Related to the Nama are the Topnaars (≠Aonin) who number approximately 2,600 and who reside in the Kuiseb River Valley, in Dorob National Park, and in the area in and around Walvis Bay in the Erongo Region.

The Namibian government prefers to use the term “marginalised communities” when referring to the San, Ovatombe and Ovatombe, support for whom falls under the Office of the President: Division Marginalised Communities. The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of indigenous peoples, and there is currently no national legislation dealing directly with indigenous peoples,

though there is a new 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). The Namibia government office responsible for indigenous peoples and minorities is the Division for Marginalised Communities (DMC), now under the Office of the President.¹ The office considers its main objective to be integrating marginalised communities into the mainstream national economy and improving their livelihoods.

Human rights and governance in Namibia

Namibia was ranked 4th out of 54 African countries by the 2018 Mo Ibrahim Foundation's Ibrahim Index of African Governance (IIAG). In 2018, Namibia had a zero on the abuse index, which meant that no journalists were arrested, jailed or killed in 2018. There were also no members of indigenous or marginalised communities killed or wounded in the context of anti-poaching operations. Mistreatment of Namibian civilians, refugees and immigrants was also low and security and safety were relatively high. Namibia ranked 4th in Africa with respect to absence of government violence against civilians. It was 2nd out of 54 countries for the absence of corruption. There was no government involvement in armed conflict against its neighbors.²

Namibia continues to be recognised for its commitment to freedom of expression, as noted in the Freedom House report for 2018, although the report indicated a slight decline in press freedom. Transparency International considers it to be one of the least corrupt nations on

the African continent.³ The World Bank and the United Nations have designated Namibia as an upper middle-income country. This determination has had some negative impacts on Namibia's ability to obtain international grants and loans at low to moderate interest rates and it has also limited international donor investment in its development programs.

Land reform

There were a number of important developments for Namibia's indigenous peoples in 2018. The crucial issue of land reform continued to be debated, and the Second National Conference was held from 1-5 October 2018.⁴ Much of the discussion revolved around the complex issues of communal land reform, willing seller-willing buyer, and how freehold and urban land should be handled. Several San representatives made brief presentations at the conference regarding communal land, access to protected areas and resettlement farms.

Status of the draft white paper

Meetings supported by the UN Department of Social and Economic Affairs' (UNDESA) Division for Social Policy and Development and the Office of the Vice President were held on the Namibian draft white paper on the rights of Indigenous Peoples/Marginalised Communities in Windhoek in April, in Swakopmund in July and in Windhoek again in November. The draft white paper is expected to be finalised and submitted to the Ministry of Justice for review and Cabinet approval in early 2019.

The draft white paper was also presented to the government and San representatives from six southern African countries at a workshop held in Windhoek from 3-5 December 2018. Entitled the "Sub-Regional Workshop on Inclusive Development for San People in the Framework of the United Nations Declaration on the Rights of Indigenous Peoples", the workshop was sponsored by UNDESA and hosted by Namibia.⁵ Regional follow-up activities to this meeting are expected in 2019.

Government participation in indigenous rights meetings

Kxao Royal Ui/o/oo, the San Deputy Minister, and Gerson Kamatuka, director of the Division for Marginalised Communities within the Office of the Vice President, attended the United Nations Permanent Forum on Indigenous Issues' (UNPFII) 17th annual session in New York from 16–27 April 2018. The Deputy Minister also attended a Food and Agriculture Organisation High-Level Expert Seminar on Indigenous Food Systems in Rome from 7–9 November 2018. Both attended the Regional Workshop on San Inclusion from 3–5 December 2018 along with other members of the Division for Marginalised Communities and representatives of Namibian San communities.

Legal cases

A hearing was held from 26–29 November 2018 by a three-judge panel of the High Court on the Hai//om collective action legal case against the government and 19 others regarding a land claim for a significant portion of both Etosha National Park and Mangetti West. Class action lawsuits have not been previously used in Namibia, and the judges postponed a decision on whether to recognize the Hai//om as a class until 28 August 2019.⁶ Issues that have arisen in the Etosha National Park and the Hai//om resettlement farms on its southern border include a continuing dispute over the handling of the !Gobaob concession during 2018. This relates to tourism development of a culturally significant pan in southern Etosha which has been granted to the Hai//om Concession Association, a community organisation that was set up to manage the concession under an agreement with the Ministry of Environment and Tourism.⁷

The Nꞛa Jaqna Conservancy in north-eastern Namibia continued to press for government implementation of the 2016 High Court decision to remove illegal grazers and their fences. The Conservancy gathered and presented evidence during 2018 on the continued presence of most of the fences found during the time of the ruling, as well as more illegal fences erected since the ruling.

Pressure from the Nꞛa Jaqna Conservancy (NJC) to prevent the establishment of small-scale farms that were unlikely to directly bene-

fit the San in the Aasvoelnes area was successful.⁸ The project, sponsored by the Ministry of Land Reform and KfW Development Bank (KfW Entwicklungsbank) (KfW), has now been redesigned to take into consideration the local communities' priorities.

To the east of Nꞑa Jaqna Conservancy, the Nyae Nyae Conservancy's case against seven illegal grazers (selected out of over 120 in the Conservancy who had brought their cattle there) was won and then appealed in 2018 by the lawyers for the pastoralists. As of the end of 2018, no decision had been made by the High Court in spite of a number of pleadings on the part of the applicants (the Nyae Nyae Conservancy and Community Forest and the Ju/'hoan Traditional Authority) that were filed by the Legal Assistance Centre in November and December 2018.

Decisions have yet to be made by a New York federal court judge on the issue of a German genocide of the Herero and Nama in 1904-1908 after arguments were presented by lawyers for the Herero and Nama applicants and Germany in New York on 31 July 2018.⁹ The Herero and Nama are seeking an apology and reparations for the actions of the German government.¹⁰ They and their supporters are also requesting the return of the remains of Herero and Nama, victims of the 1904-1908 genocide whose bodies and skeletons were taken from Namibia to Germany and, eventually, to the United States and other countries.¹¹

Conservancies and national parks

Sizeable numbers of indigenous peoples and other rural Namibians continued to gain some benefits from the conservation and poverty-alleviation efforts of communal conservancies in 2018. The Nyae Nyae Conservancy, for example, generated over N\$5 million through its activities in 2018, while the Nꞑa Jaqna Conservancy generated over N\$1 million.

In Nyae Nyae, the Ju/'hoan Traditional Authority (JUTA) received nearly a dozen new requests for *n!oresi* (territories) from Ju/'hoansi Conservancy members in 2018, some of which were granted.

The several thousand Khwe in Bwabwata National Park in the Zambezi Region faced severe restrictions in terms of accessing natural resources. In 2018, they were told again by the Ministry of Environment and Tourism (MET) that they could not gather wild plant products in the

park, including Devil's Claw (*Harpagophytum procumbens*), a root with pharmaceutical applications which is an important source of income for sizeable numbers of Khwe due to MET anti-poaching activities. There were some Khwe who were afraid to go into the bush as a result.¹² Khwe in Bwabwata National Park, particularly those in Chetto and Omega 3, engaged in gardening with the assistance of Agriconnexions Africa and anthropologists. Constraints in the gardens included domestic and wild animals eating some of the crops and problems of consistency in watering.¹³

Education, health and gender

Education is a key topic of concern in indigenous and marginalised communities in Namibia.¹⁴ In 2018, the Division for Marginalised Communities in the Office of the President continued its support of San, Ovaherero and Ovambo education activities. In Zambezi region, Khwe students were able to enroll on various courses at the Zambezi Vocational Training Centre (VTC); however, due to administrative and financial constraints, students did not receive any financial, transportation or food assistance. In many parts of Namibia indigenous and marginalised students prefer to have mother-tongue languages taught; Otjiherero is taught in some schools, as is the Ju/'hoan language in Nyae Nyae.¹⁵

The Namibian San Council, the ||Ana-Jeh San Trust (a Namibia San youth organisation), and the Legal Assistance Centre met several times during 2018 to discuss issues involving San men, women and youth. Issues that were highlighted in these meetings included the high drop-out rates from rural schools, low levels of participation of San, Ovambo, and Ovaherero in the socio-political life of the country, the lack of recognition of some local leaders as traditional authorities (TAs), the high rates of rural and urban unemployment, and a lack of training and educational opportunities for some marginalized community members. The Women's Leadership Centre (WLC) has undertaken various programs of work aimed at promoting young San women in their communities and wider society.

Namibia has made some significant strides in increasing women's representation in Parliament, with women currently holding 48 of the 104 seats in the National Assembly. This means that it is more likely that

women's interests and women's voices are heard in the political arena. Domestic abuse and rape continue to be major sources of concern for women in Namibian indigenous and marginalised communities.

Namibia was ranked number one in Africa in terms of its efforts to cope with HIV/AIDS, and it is continuing to ramp up the availability of anti-retrovirals (ARVs) and tuberculosis medications to marginalised as well as other communities. Nutritional levels varied in remote communities in Namibia, with social safety net programs helping to fill in the gaps.¹⁶

Outlook for 2019

The draft white paper on the rights of indigenous peoples in Namibia may be adopted by Cabinet in 2019, which would influence new policy development and programmes. Following the regional workshop in December, further cross-border activities are likely. The various legal cases brought by San and their supporters on land rights may yet see implementation of the High Court orders in the coming year. The Hai//om collective action legal case is also to be decided in 2019. The US federal court in New York will likely decide whether the Herero-Nama genocide case can be heard there, and there may be new developments in requests by Namibians for the repatriation of human remains and cultural property to Namibia. There is no doubt that indigenous and marginalised communities in Namibia will continue to seek land and resource rights, equitable treatment before the law, gender equality, greater access to social services, and better social safety nets in 2019.

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SOUTH AFRICA



South Africa's total population is around 50 million, of which indigenous groups are estimated to make up approximately 1%. Collectively, the various African indigenous communities in South Africa are known as the Khoe-San/Khoisan, comprising 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 Khoi-Khoi consist of the Nama who live mainly 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 KwaZulu-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, Khoi & San communities are engaged in a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created space for deconstruction of the racially-determined Apartheid social categories, such as "Coloureds". Many previously "Coloured" people are now exercising their right to self-identification and identify themselves as San and Khoi-Khoi or Khoe-San. African indigenous San and Khoi-Khoi peoples are not formally recognised in terms of national legislation as a customary/indigenous community; however, this is shifting with the pending Traditional and Khoisan Leadership Bill of 2015. It is however unclear when this Bill will be signed into law. At the time of publication, this law was adopted by the provincial National Council of Provinces. South Africa has voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) but has yet to ratify the ILO Convention No. 169.

Human rights defenders: West coast fishermen

The South Africa-based organisation Natural Justice during 2018 set up a Human Rights Defenders and Strategic Litigation Fund to support activists from indigenous and local communities who are at the frontline in their struggles for recognition, land and fundamental human rights. There is an increasing practice of intimidation, violence and killings of human rights defenders (HRDs) resulting from a quest by companies to exploit natural resources. In many ways indigenous communities are the last line of defence to protect the world's biodiversity and people, as evidence points to the imminence of a new, largely man-created phase of mass species extinction. The Fund aims to ensure that activists and communities are supported with high priority and that Natural Justice can proceed with strategic litigation without having to depend on funding cycles.

During 2018 Natural Justice's Human Rights Defenders and Strategic Litigation Fund supported one such HRD, namely the indigenous fisherman Nicolaas Booysen from the West Coast. He and his community work to address the unfair fishing permitting allocation system whereby commercial companies benefit off marine resources at the cost of small-scale fishermen facing unfair criminalization for wanting to access their customary resources for livelihood purposes. He also advocates on behalf of his community's struggle to live their cultural way of life by accessing their customary food sources and material resources located on municipal land and private commercial farms which were historically lands they occupied.

Nicolaas Booysen and his Guriqua community have to cross both municipal and private farmland to gain access to resources such as wood, which they collect for household purposes. Booysen was arrested on several criminal charges for addressing these injustices. After becoming historically dispossessed of their lands, Booysen's community took up fishing as an alternative livelihood. During the Apartheid era, Booysen experienced land loss in addition to loss of livestock and he presently faces continued conflict with the law on charges of trespassing and illegal use of resources belonging to private owners. During 2017, Nicolaas and his community developed a Biocultural Community Protocol (BCP) documenting their customary resources through a community mapping process. Natural Justice supported them by building ties with the police to ultimately help the police understand the com-

munity's customary resources and lifestyles that they are now reaffirming and rebuilding through the development of their biocultural community protocol. It became clear that the customary laws, protecting the way this community lives and sustains itself, should equally be considered in monitoring criminal law. Meaning, both criminal law and customary law should find harmonisation and equal status in enforcement by the police.

Nicolaas was held in custody since 11 February 2017 and released from prison in August 2017. Natural Justice's Fund was able to support him while in custody to ensure he would be released from prison and able to return to his family and community.¹²

Land reform: Section 25 of the Constitution

South Africa continues to go through vigorous land reform debates and parliamentary processes around how best to ensure that the majority of historically disadvantaged South Africans have access to lands. South Africa has a relatively comprehensive land reform policy, however progress in land reform remains slow with President Cyril Ramaphosa reporting that "most of the country's land remains in the hands of the few". "The high-level panel of [former] President Kgalema Motlanthe has spoken candidly about the challenges of land reform and basically attributed it to weak policy, corruption in the state, to a lack of will and capacity."³

During late 2018, the South African parliament approved a report endorsing a constitutional amendment of Section 25 of the Constitution that would allow expropriation of land without compensation. Parliament's constitutional review committee indicated that amending Section 25 of the Constitution in this way would make it explicitly clear that such expropriation could be carried out to accelerate land reform. The South African national assembly endorsing this report recommending its constitution be amended allowing expropriation of land without compensation came about as a result of country-wide public consultations and written submissions before parliament and across different provinces. The president also appointed an expert panel to advise him on land reform.⁴ However, some sectors of the Khoi-Khoi and San do not feel represented by or included in the composition of this advisory structure of the president.⁵ While it is crucial that South Africa

reflects and plans how best to deal with the legacies of colonialism and Apartheid especially in relation to land, the Khoi-Khoi and San peoples find themselves either excluded from or at the margins of development initiatives that are meant to help redress land dispossession. Other than ceremonial references to the Khoi-Khoi and San's role in South Africa's history, no process is outlined as to how their land concerns will be included and accommodated in South Africa. How to move forward with meaningful land reform for the Khoi-Khoi and the San in compliance with the UN Special Rapporteur on Indigenous Peoples recommendation of 2005 on land remains especially concerning.⁶

South African human rights report 2018

The South African Human Rights Commission (SAHRC) released its report⁷ on the human rights situation of the Khoi-Khoi and San communities in South Africa during March 2018.⁸ The SAHRC forms part of Chapter 9 of the South African Constitutional Dispensation created to monitor and report on human rights in South Africa. It undertook a process of national hearings on the human rights situation of the Khoi-Khoi and San in the different provinces during 2015–2017.

According to the SAHRC website, the hearings were hosted against a background of “ongoing allegations of rights violations, including inadequate recognition of the Khoi and San peoples as a distinct group as well as multiple forms of discrimination and marginalization, lack of land redistribution, access to basic services, equitable employment opportunities and inadequate measures to protect and promote language and cultural rights”. The SAHRC inquiry found that more than a decade after the visit of the UN Special Rapporteur on Indigenous Peoples, the Rapporteur's recommendations remain largely unfulfilled.⁹ Some of the recommendations include the recognition of the Khoi-Khoi and San, their land rights and their right to be educated in their indigenous languages. None of those recommendations were implemented within the appointed period.

A renewed spirit of hope initially emerged with the release of the SAHRC report during March 2018 and the inclusion of deadlines which the ministry will be held to for implementation of the SAHRC recommendations. Most, if not all, of the recommendations were to be completed within 12-24 months from the date of publication.¹⁰ The report

has become an important advocacy tool for the Khoi-Khoi and San activists.¹¹

Thus far, the Ministry of Cooperative Governance and Local Government has been the only ministry which has worked towards the implementation of the SAHRC's recommendations. However, much remains to be done.¹² Nearly 12 months since the release of the report, confusion remains around how the SAHRC intends to move forward with implementation and monitoring of its recommendations given its time for implementation lapsed already.

Bethany indigenous land and water

The acuteness of the plight of indigenous peoples in relation to the ownership of lands and sacred sites is clear from the experiences of the Griqua indigenous community. The Griqua community is located in the Bethany mission station in the Free State some 50 kilometres outside of Bloemfontein. The land which currently forms part of their ancestral territory consists of different territories they consider sacred. In 1833, some of their land within their current Bethany Farm (Bandewysfontein) was granted by Mr. Adam Kok II (regarded as one of the Griqua's legendary leaders) to Mr. Jan Kraalshoek. This granting of land currently forms the basis for their indigenous lands and sacred sites struggle. The communities' rights were gradually and systematically eroded over time through colonialism and Apartheid, fronted by the Berlin Missionary Church.

The Griqua community successfully claimed back a portion of their ancestral land through the South African land restitution process. However, the Griqua community's struggle for their ancestral lands as per their 1881 treaty with Adam Kok continues. Post-Apartheid legislation and policies have still not ensured the return of the lands or water groves to the Griqua community. They currently find themselves embroiled in a host of expensive legal processes to fight for the protection of their land rights as well as the recognition of the rest of their ancestral territories. Access to justice remains an elusive option for this community.

Xolobeni mining judgement: Consent

The sands of the Wild coast in the Eastern Cape province where the Umgungundlovu community (also known as the “Xolobeni community”) have lived for centuries, is rich in titanium. For years, an Australian mining company, Transworld Energy and Mineral Resources (TEM), has attempted to get a mining right to conduct open-cast mining on an estimated 900 hectares.¹³ Their attempts have not yet been successful, because of the resistance of the community members who would lose their land because of TEM’s plans. Tensions within this community escalated to such an extent that an anti-mining community leader, Bazzooka Radebe, was assassinated in March 2016. As a result, the then Minister of Mineral Resources, Mosebenzi Joseph Zwane, instituted an 18-month moratorium on the granting of a mining right in the area in the course of August 2017.

In April 2018 the North Gauteng High Court decided on the dispute since the Umgungundlovu community had approached the Court asking for an order declaring that the Minister of Mineral Resources must seek their consent before granting a mining right to their land. In deciding the issue, the Judge emphasised the special place that customary law has under the Constitution, in particular because of the historic discrimination against indigenous forms of law in South Africa. The rights that South Africans have under customary law, including the rights to land, require special protection precisely because for so long, these rights have gone unrecognized and deliberately ignored. The court confirmed that no mining can take place on their lands without the community’s consent.¹⁴

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2. Nicolaas faced 7 criminal charges in the pursuit of accessing customary resources belonging to his community including theft, resisting arrest and damage to property. The historic land dispossession in the case of the Guriqua community was so disruptive as to necessitate violations of law, such as theft and trespassing, in order to access his community’s resources located on a natural reserve. In this instance, the BCP complimented the criminal law in highlighting his community’s particular customary rights to access and use their wildlife and biodiversity resources for their fishery practices.

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4. See Fin24, "Meet Ramaphosa's new 10-person land reform advisory panel" at <http://bit.ly/2EhdS35>
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8. See SAHRC at <http://bit.ly/2N4SwtK>
9. See SAHRC Media Statement, "SAHRC releases its National Hearing Report on the Human Rights Situation of the Khoi & San Peoples in South Africa" at <http://bit.ly/2EbZgIm>
10. See SAHRC at <http://bit.ly/2N4SwtK>
11. They use it in their advocacy initiatives such as referencing it in their engagements with parliament, governmental ministries and the media. They also use it to address particular concerns around issues raised in the report.
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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, Tebomvura) of Mbire District in north-central Zimbabwe. Population estimates indicate that there are 2,800 Tshwa and 1,350 Doma in Zimbabwe, approximately 0.03% of the country's population of 14,030,368 in 2018.

Many of the Tshwa and Doma live below the poverty line in Zimbabwe and, together, they form some of the poorest people in the country. Available socio-economic data is limited for both groups although baseline data was collected for the Tshwa in late 2013 and followed up on in 2018. Both the Tshwa and Doma have histories of foraging and continue to rely to a limited extent on wild plant, animal and insect resources. Most Tshwa and Doma households have diversified economies, often working for members of other groups in agriculture, pastoralism, tourism, and small-scale business en-

terprises. Remittances from relatives and friends working in towns, commercial farms or the mines, 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, including Botswana, Mozambique, South Africa and Zambia, in search of income-generating opportunities, employment and greater security.

Though somewhat improved in recent years, 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 2018 to meet requirements. Zimbabwe also voted for the adoption of the UNDRIP. In recent years, Zimbabwe has also participated in the Universal Periodic Review (UPR) process of the UN Human Rights Council, the most recent meeting of which was held on 2 November 2016. Like many African states, Zimbabwe has not signed the only international human rights convention addressing indigenous peoples, ILO Convention 169 on Indigenous and Tribal Peoples of 1989.

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.

Elections

Country-wide elections were held in Zimbabwe between 23 and 31 July 2018. The elections were won by ZANU-PF (Zimbabwe African National Union-Patriotic Front), and Emmerson Mnangagwa was elected as president. There were complaints about partisan food distribution, particularly in Matabeleland North, voter intimidation, and violence both before and after the election.¹

Relatively few San voted in the elections, in part because they lacked the appropriate documents, such as identity cards. Some San said that the elections were a distant spectacle for them since they had so little opportunity to participate in them.²

Serious economic situation

Sizable numbers of Tshwa, Doma and other Zimbabweans were seriously affected by the continued decline in the country's economic situation in 2018. There was hope on the part of indigenous and other Zimbabweans that the new government of Emmerson Mnangagwa would lead to improvements in their conditions.

Both the Doma and the Tshwa San faced ongoing discrimination, food insecurity, low employment levels, limited political participation, and a lack of broad access to social services in 2018.³

Doma, Tshwa and other farm workers in Zimbabwe were affected by changes in their conditions on commercial and smallholder resettlement farms in western and northern Zimbabwe.⁴ Farm workers in western and northern Zimbabwe reported that they had gone several months without pay in 2018, and some of them said they were not supplied with food by the farm owners. Fewer than 50% of the Tshwa and Doma were supplied with commodities by the Government of Zimbabwe or NGOs under various programs in 2018.⁵

Policy, legislation and San self-organisation

There were no new policies issued or legislation passed regarding indigenous peoples and minorities in 2018. The Zimbabwe Constitution was translated into the San language of Tjwao, as per the recognition of the "Koisian" language in the Constitution.

The Zimbabwe Human Rights Commission (ZHRC), which paid a visit to San communities in Tsholotsho District in June 2016, had still not produced their report on the San as of the end of 2018.⁶

Four Zimbabwe representatives attended a regional workshop on the San and inclusion sponsored by the United Nations Department of Social and Economic Development, held in Windhoek, Namibia from 3-5 December 2018. Two government representatives from the Ministry

of Local Government, Public Works and National Housing and two representatives of the Tsoro-o-tso San Development Trust, Davy Ndlovu and Christopher Dube, attended the meeting, the first international San meeting attended by both Zimbabwean San and government officials.

The only San organisation in Zimbabwe, the Tsoo-o-tso San Development Trust (TSDT) was very active in 2018. It is a registered Trust that advocates for and facilitates the development of the Tshwao/San people of south-western Zimbabwe. TSDT has been working since 2012 to enhance the livelihoods and well-being of the marginalised San communities and, according to observers, operates effectively despite a significant lack of resources.⁷

With the support of the Open Society Institute for Southern Africa (OSISA), the Tsoro-o-tso San Development Trust held a conference entitled, “Land, Language and Identity: The story of the San in Zimbabwe” on 16 February 2018 in Bulawayo.⁸ It was a follow-up to the launch of the International Work Group for Indigenous Affairs, OSISA, and Government of Zimbabwe’s report on Zimbabwe San in November 2017. One of the issues raised at the conference was that land reform has been of little benefit to the San.⁹ This gathering, like others involving discussions of land and human rights issues in the country, was monitored by government officials.

The San in Tsholotsho have written a letter asking the government for their own councillor and chief.¹⁰

Land, conservation and livelihoods

Both Tshwa and Doma face pressure from the Zimbabwe Republic Police and the Department of National Parks and Wildlife Management for suspected poaching in and around conservation areas and national parks; some of the incidents involve elephants and other animals killed with cyanide, a poisonous substance used in gold mining.

An incident involving attempted poisoning of wild animals using cyanide-laced oranges occurred in Zambezi National Park (ZNP) in August 2018. Two poachers were arrested and were found to have cyanide and illegally-obtained copper wire in their homes. They were charged for these acts, and jailed for their crimes.

Dozens of poachers have been arrested in the Hwange area, according to the Bhejane Trust, a non-profit conservation organisation

that monitors poaching activities in the northern sector of Hwange and engages in water development for animals and tourist facility development. The International Anti-Poaching Foundation has supported wildlife protection operations together with the Department of National Parks and Wildlife Management game rangers, who have been involved in shootings and arrests of suspected "poachers".¹¹ There is no evidence, however, that Tshwa were involved in wildlife-related crimes or trafficking of wildlife products in 2018.

Hwange National Park (HNP) is Zimbabwe's largest protected area and a prime tourism location. Covering an area of 14,651 km², Hwange contains the largest and most diverse population of wild animals, reptiles, amphibians and birds in the country. It has a rich archaeological history and contains sites of foragers, farmers, traders and explorers.¹² Hwange, which saw the displacement of San and other people in the 1920s, is an important economic engine for western Zimbabwe. Descendants of the Tshwa who were displaced to make way for the national park, now a World Heritage site, live in Tsholotsho and Bulilima-Mangwe. They all have extensive interactions with other groups, including the Nambya, Kalanga, and Ndebele; some Tshwa work for these other groups in exchange for food, cash, and other goods.¹³ In November 2018, government officials told the Tsoro-o-tso San Development Trust that, for their own benefit, the Tshwa could develop a tourist camp inside Hwange that visitors would be able to access through a gate in the southern boundary of Hwange.

In the mid-Zambezi Valley, the Doma are also experiencing human-wildlife conflict (HWC) and facing difficulties because their fields are being invaded by elephants and antelopes and their livestock are being killed by lions and other predators. Doma lands has already been restricted by the Chewore National Park and Dande Safari Area, as well as by rural in-migration and population growth. The Doma maintain that they are seeking access to additional land over which they could obtain legal rights.¹⁴

Several Doma have been shot at and arrested because of suspected poaching activities in the Kanyemba area and the Chewore Safari Area. Relations between Doma and the game scouts of the Department of National Parks and Wildlife Management remain strained.¹⁵

Gender, youth and participation

Tshwa and Doma have stated in community meetings that they continue to be concerned about women and children being exposed to physical and verbal abuse, both domestic and other.

Unlike Botswana, Namibia and South Africa, Zimbabwe does not have a San Youth Network, in part because most San lack Internet access. The National Gender Policy, which focuses on women's well-being, was presented to Tshwa in Tsholotsho in community meetings during 2018 to positive acclaim.

Increased number of Tshwa children were able to attend school in Tsholotsho District during 2018 although the dropout rate by 7th grade is still high. The Tsoro-o-tso San Development Trust provides support to two Early Child Development (ECD) Centres in the sub-district areas of Wards 7 and 8, and the NGO helps cover the costs of Tshwa children attending secondary school.

In 2018, with the assistance of Plan International, an NGO, the Zimbabwe government opened a new primary school in Mgodimasili, Tsholotsho District, in order to cater for the San community. San school children previously had to travel more than 10 km to get to the only primary schools in the two areas of Butababili and Skente. Even though the school is closer for some of the Tshwa, the problem of school fees continues to be a problem for them.¹⁶

On 6 September 2018, it was announced that a University of Zimbabwe linguist would help to pay the school fees for 24 San students to attend Landa John Nkomo secondary school in Tsholotsho as long as the school taught the Tsjwao/Tjwao language in the school, a recommendation endorsed by the Tsoro-o-tso San Development Trust, which has long been concerned with the need for San students to be educated in their own language.¹⁷

Hopes for the future

At the end of 2018, Zimbabwe's indigenous peoples were continuing to press the government for equitable and fair treatment before the law and full recognition of their social, political, economic and cultural rights. Some Tshwa and Doma have said they are encouraged that there is a greater sense that their concerns may be addressed by the new

government elected in July 2018. Human rights defenders and NGOs are also somewhat encouraged that they may have a greater say in the situations of indigenous and marginalized communities in Zimbabwe.

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PART 2

INTERNATIONAL
PROCESSES

EUROPEAN UNION ENGAGEMENT WITH INDIGENOUS ISSUES

The European Union (EU) is a political and economic union of 28 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 - CE). 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 also has a global impact being 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."¹

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 169,² all EU Member States have signed the UNDRIP in 2007, and the EU has contributed to and supported the Outcome Document of the World Conference on Indigenous Peoples in 2014.

“The 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.”³ 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

The EU contributes to and applies the various UN legal instruments that protect the rights of indigenous peoples, however it also develops its own legislation to support indigenous peoples.

The first step taken by the EU was the “Communication from the EC to the European Council of 27 May 1998 on a partnership for integration: a strategy for integrating the environment into EU policies”.⁴ 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 States⁵ 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 de-

mocracy". The CoEU further acknowledges that development cooperation should contribute to enhancing the right and capacity of indigenous peoples to their self-development.

On 11 June 2002, the EC submitted to the CoEU a report on the review of progress of working with indigenous peoples.⁶ In November 2002, the CoEU adopted Council Conclusions⁷ that recall the 1998 Council Resolution commitments and invites the EU to pursue their implementation.

Furthermore, although the EU includes indigenous peoples in its "Since 2016, the EU's Annual Report on human rights and democracy in the world" has repeatedly referred to issues related to indigenous peoples and their situation.

In 2016, the CoEU adopted "An integrated European Union policy for the Arctic".⁸ 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).⁹ 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.

These conclusions follow the "Joint Staff Working Document - Implementing EU External Policy on Indigenous Peoples"¹⁰ identifies ways for the EU to strengthen its support to indigenous peoples through existing external policies and financing.

On the same year, the EU adopted "The new European Consensus on Development" (2017).¹¹ This Consensus offers a common development vision for the EU, constituting a comprehensive common framework for European development cooperation, which aligns with the 2030 Agenda for Sustainable Development.

Finally, the EP published a Study "on the situation of indigenous children with disabilities" (2017)¹² which seeks to identify the discrimination and the human rights violations they face as well as the lack of data collection.

This legislative evolution, alongside specific human rights and development budgets for indigenous peoples, show the EU's increasing involvement and protection for indigenous peoples' rights. In this sense, the EU has shown its commitment to become a key-player in the promotion and protection of indigenous peoples, and the EP has strength-

ened this commitment by adopting its last resolution specifically on the rights of indigenous peoples in July 2018.

The current process: European Parliament's resolution on "violation of the rights of indigenous peoples in the world, including land grabbing" (03/07/18)

On 3 July 2018, the EP adopted a resolution on "violation of the rights of indigenous peoples in the world, including land grabbing" (by 534 votes to 71, with 73 abstentions).¹³

The resolution covers the main issues and human rights violations faced by indigenous peoples around the world (it covers indigenous peoples both within and outside the EU).¹⁴ 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's main priorities and future steps regarding the rights of indigenous peoples.

At the outset, the EP "calls for the EU, the Member States and their partners in the international community to adopt all necessary measures for the full recognition, protection and promotion of the rights of indigenous peoples, including to their lands, territories and resources" (art. 1). It also "calls for the EU to make sure that all its development, investment and trade policies respect the human rights of indigenous peoples as enshrined in human rights treaties and conventions" (art. 2). Moreover, it appeals to all states to ratify ILO Convention No 169 on Indigenous and Tribal Peoples, and in particular to the EU Member States and it "calls for all states, including the EU and its Member States, to follow all the necessary steps to effectively comply with the provisions contained in ILO Convention No 169" (art. 3 and 4) as well as "to create conditions for the fulfilment of the objectives set out in the UNDRIP" (art. 6).

In the part of "Human rights of indigenous peoples" (art. 8-27), the EP makes recommendations to all states regarding, among others, territorial autonomy and self-determination of indigenous peoples (art. 9), due attention to women, children and indigenous persons with disabilities (art. 11 and 26), access to judicial mechanisms (art. 13), the importance of consulting indigenous peoples in all deliberations on issues

that could affect them, thereby guaranteeing their right to free, prior and informed consultation" including in "strategies for tackling climate change" (art. 17 and 18), continuing criminalisation of human rights defenders (art. 23) and international repatriation and the establishment of an international mechanism to fight the sale of indigenous artefacts taken from them illegally" (art. 25).

In the part of "Land grabbing" (art. 28-39), the EP stresses the importance of the return of dislocated indigenous and local communities to their traditional territories in the context of post-conflict peace building involving land rights (art. 30), effective access to justice and remedy for indigenous peoples and pastoralists (art. 31), the impact of land grabs on women and girls (art. 33) and the request of "disclosure of land acquisitions involving EU-based corporations and actors or EU-funded development projects" and "the indispensable free, prior and informed consent" (art. 34).

In the part of "Business and human rights" (art. 40-48), the EP urges the EU "to maintain support for the UN Guiding Principles for Business and Human Rights" and to ensure that they are "fully integrated into the national programmes of Member States" (art. 40 and 41), "to engage in constructive negotiations on a UN treaty on transnational corporations that guarantees respect for the human rights of indigenous peoples" (art. 42) and it also "recommends that the EU develop a European regional action plan for business and human rights" (art. 43). Moreover, the EU insists on the importance for its institutions and its Member States to "work to hold multinational corporations and international financial institutions to account for their impact on indigenous communities' human and environmental rights", "to ensure that all violations of the rights of indigenous peoples by European companies are duly investigated and sanctioned through appropriate mechanisms" (art. 44) and "to fulfil its extraterritorial duties related to human rights" (art. 48), notably by setting up a grievance mechanism (art. 45), and by guaranteeing both the access to remedy for victims (art. 46) and the right of indigenous peoples to free, prior and informed consultation (art. 47).

In the part of "Sustainable and economic development for indigenous peoples" (art. 46-61), the EP invites the EU and its Member States "to integrate the issue of the rights of indigenous peoples and land grabbing into the EU's implementation of the 2030 Agenda for Sustainable Development" (art. 49). It underlines the direct impact that climate

change has on indigenous peoples and particularly on women (art. 52) and the key role played by indigenous peoples in both protecting the environment (art. 50) and “for sustainable management of natural resources and conservation of biodiversity” (art. 55). For this purpose, the EP “stresses the need to strengthen the Indigenous Peoples Major Group for Sustainable Development (IPMG) as the global mechanism for coordination” (art. 54). By reiterating “that indigenous peoples around the world suffer disproportionately from violations of human rights, crime, racism, violence, exploitation of natural resources, health problems, and high rates of poverty” (art. 53), the EP “calls on all states to commit to ensuring that indigenous peoples have genuine access to health, education, employment and economic opportunities” (art. 58).

In the part of “EU cooperation policy with third countries” (art. 62–86), the EP requires the EU to take a holistic and integrated approach to sustainable development (art. 71). It recommends “that greater prominence be given to the situation of indigenous peoples in the EU’s foreign policy, including in its human rights dialogues with third countries” (art. 62 and 63). Furthermore, the EP urges EU delegations and Member State embassies to “collect disaggregated data” (art. 67), “to review and improve their implementation of the EU Guidelines on Human Rights Defenders, taking into account [...] the specific situation of indigenous human rights defenders who face multiple discrimination, such as women, the elderly, LGBTI people and those with disabilities” (art. 64). It also recalls the EU to ensure that all EU-funded development projects implemented on indigenous lands should respect the rights-based approach (art. 79) and comply with the principle of free, prior and informed consent (art. 70).

Finally, the EP calls for the establishment of four different mechanisms to strengthen the protection of indigenous peoples: (1) a grievance mechanism to lodge complaints regarding violations and abuses of their rights resulting from EU-based business activities (art. 45), (2) a mechanism to carry out independent impact assessment studies prior to the conclusion of trade and cooperation agreements (art. 72), (3) an effective administrative complaint mechanism for victims of human rights violations (art. 81) and (4) 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).

By this resolution, the EP has taken a step forward regarding the rights of indigenous peoples. By implementing the effective and concrete measures included in the resolution, the EU will achieve its purpose, as reiterated by the EP Rapporteur on the resolution:

There is no part solution for this kind of issue. That is why it is important that the EU fully shows its responsibilities. If we make a commitment to indigenous peoples, what we are doing first and foremost is signing up to a commitment to give the best we can. Mr. Francisco Assis, MEP, Rapporteur "Violation of rights of indigenous peoples in the world" - Strasbourg, 2 July 18.¹⁵

Notes and references

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2. Denmark (1996), The Netherlands (1998), Spain (2007) and Luxembourg (2018 - entry into force on 05 June 2019).
3. See Council of the European Union, "Council Conclusions on Indigenous Peoples" at <http://bit.ly/2BDDbM3>
4. See EUR-Lex Document 51998DC0333 at <http://bit.ly/2GxYz9K>
5. See European Commission - PRESS RELEASES - Press release - 2141th Council meeting Development Brussels, 30 November 1998 at <http://bit.ly/2BJ6kFJ>
6. See EUR-Lex Document 52002DC0291 at <http://bit.ly/2BClwVh>
7. See European Commission Press release - 2463rd Council meeting - GENERAL AFFAIRS - Brussels, 18 November 2002 at <http://bit.ly/2Gz8mMS>
8. See the EC Joint Communication to the European Parliament and the Council at <http://bit.ly/2Gxyho3>
9. See Outcome document from 15th May 2017 <http://bit.ly/2BDDbM3>
10. See Joint staff working document on Implementing EU External Policy on Indigenous Peoples at <http://bit.ly/2GyIbXE>
11. See The New European Consensus on Development 'Our World, Our Dignity, Our Future' at <http://bit.ly/2GxymIn>
12. See the European Parliament, The situation of indigenous children with disabilities <http://bit.ly/2EkHuN5>
13. See Texts adopted - Tuesday, 3 July 2018 - Violation of rights of indigenous peoples in the world at <http://bit.ly/2GxrLOc>
14. See point AM., articles 74 and 86.
15. See European Parliament at <http://bit.ly/2Gxypnx>

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (the 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 2nd of 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 (the WGIP), marking a milestone in the promotion and protection of the rights of indigenous peoples in Africa.

In 2003, the Working Group 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 62nd and 63rd Ordinary Sessions held in April-May 2018 in Mauritania and in October-November 2018 in The Gambia. During the examination of the state reports of Nigeria, Eritrea, Angola, Togo and Botswana, the ACHPR raised questions and made recommendations relating to the promotion and protection of indigenous peoples' rights.

Indigenous peoples' representatives from Kenya, Tanzania and the Democratic Republic of Congo participated in the 63rd Ordinary Session and made public statements relating to serious human rights violations that indigenous peoples' in their respective countries are facing.

Uganda National Dialogue on Extractive Industries and Indigenous Peoples

Following the adoption of the Study entitled "Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights"¹ by the ACHPR at its 58th Ordinary Session held from 6 to 20 April 2016 in Banjul, The Gambia, the WGIP has been organizing various activities (including National Dialogues) aimed at launching the Study and popularizing its findings and recommendations. The first National Dialogue was held in Yaoundé, Cameroon, from 7 to 8 September 2017. The second National Dialogue was organized in Kampala, Uganda, from 27 to 28 November 2018.

The Uganda National Dialogue was organized in collaboration with the Uganda Human Rights Commission and IWGIA. It brought together more than sixty representatives of various Government Ministries and Offices, civil society and indigenous peoples' organizations, and the media. Members of the WGIP made presentations on the various findings and recommendations of the Study relevant to Uganda ensued by enriching discussions with participants. Several other related topics were also extensively discussed, including the perspectives of the Government, indigenous peoples, the Uganda Human Rights Commission and NGOs on the impact of extractive industries on indigenous communities in Uganda, and the principle of free, prior and informed consent (FPIC). Further discussions on international and regional mechanisms,

safeguards and voluntary guidelines were also held.

Small group discussions were held to brainstorm on the recommendations of the Study and to formulate a national Plan of Action for the implementation of the recommendations. The National Dialogue ended by adopting a Final Communique that includes, among others, pertinent recommendations to all stakeholders.

Advanced course on the rights of indigenous peoples' in Africa

The 8th 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 the 24 to 28 September 2018. Twenty-seven (27) participants from nine (9) African countries, three (3) European countries and one (1) South American country attended the course. The participants included indigenous communities' representatives, post-graduate students, lecturers, government officials, civil servants, NGOs and international organizations working with and on the issue of indigenous peoples' rights.

The Course covered various topics pertinent to the rights of indigenous peoples' in Africa including the meaning and applicability of the concept in Africa; international and regional legal and institutional frameworks; indigenous women and children; sustainable development and indigenous peoples; international financial institutions and indigenous peoples; policy and practice of African states; indigenous peoples, conservation and climate change; and protection of indigenous knowledge.

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 Specialists at the ILO; Dr Roger Chennels, founder of Chennels Albertyn Attorneys; and Dr Jegede Ademola, Lecturer at the University of Venda. Participants also made presentations on the policies, laws and practices, and the situation of indigenous peoples in their respective countries.

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 co-

operation 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 and demonstrated visible impact, and it has developed into one of the most important capacity building platforms on indigenous peoples' rights on the African continent.

Resolution on sacred sites

Studies indicate that the lands and territories inhabited by indigenous communities of Africa are home to many sacred natural sites and territories. It is believed that putting in place policies and laws that protect such sites is not only critical for preserving the cultures and identities of communities, that will in turn foster national inclusivity and diversity, but will also greatly contribute to the conservation of nature and biodiversity. Mindful of this fact, in 2017 the ACHPR adopted a resolution, *ACHPR/Res.372 (LX) 2017*² on the Protection of Sacred Natural Sites and Territories, which calls on State Parties to recognise sacred natural sites and territories and their customary governance systems, as contributing to the protection of human and peoples' rights.

Subsequent to the adoption of the resolution, the WGIP together with partner organizations have been popularizing the resolution. In the meantime, the WGIP continued gathering and receiving information on the state of sacred natural sites and territories and their protection in Africa. According to the reports received, sacred natural sites and territories in Africa have been significantly eroded during the past decades, and currently face dangers from climate change and environmentally damaging industrial activities and inappropriate development projects. The reports further indicate that many African countries do not have laws, policies or appropriate mechanisms to protect sacred natural sites and territories.

In light of the above, at its 63rd Ordinary Session held from 24th of October to the 13th of November 2018 in Banjul, The Gambia, the ACHPR decided to task the WGIP to conduct a study on the need to protect and regenerate sacred natural sites together with the related customary governance systems in Africa, and to report on its findings within a period of one year.

Continued monitoring of the situation of indigenous peoples' rights

In the year 2018, the ACHPR has 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 62nd and 63rd Ordinary Sessions of the African Commission held from 25 April to 9 May 2018 in Nouakchott, Mauritania, and from 24 October to 13 November 2018 in Banjul, The Gambia, respectively.

She also reported that a letter of Urgent Appeal was sent to the President of the State of Eritrea, Eisaies Afwerki, on 14 September 2018 regarding the alleged eviction without compensation of the Afar and Kunama peoples from their ancestral lands. The letter highlights the plight of more than 2000 families that have been evicted without compensation because of a United Arab Emirates military base construction and expansion project in and around the port city of Assab of the Southern Red Sea Region.

The public Sessions of the ACHPR and the various side events organized before and during the Sessions of the ACHPR serve as vital platforms where the plight and grievances of indigenous peoples are expressed and heard. Cognizant of this fact, the WGIP invites indigenous activists and organizations to its pre-session meetings with a view to listen to their story and discuss how the ACHPR can strategically engage with them, their respective governments and other stakeholders in order to improve their situation. In this regard, in 2018 the WGIP met with indigenous peoples' representatives from the Samburu and Ogiek indigenous communities of Kenya; the Masaai of Tanzania and the Batwa of the Democratic Republic of Congo.

Notes and references

1. See ACHPR & IWGIA, "Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights" at <http://bit.ly/2STPsWV> (PDF)
2. ACHPR, 2017. Resolution on the Protection of Sacred Natural Sites and Territories - ACHPR/Res. 372 (LX) 2017 <http://bit.ly/2SLcEXb>

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ASSOCIATION OF SOUTHEAST ASIAN NATIONS

The Association of Southeast Asian Nations (ASEAN) was 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 ten 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,¹ 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 with regard to 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”

The 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 region² and does not make any direct reference to “indigenous peoples”.³

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.⁴ 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 with regard to promoting and protecting 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.⁵ 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. Then comes the Political-Security Community, and then 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”.⁶ The AICHR shies away from issues considered to be controversial, such as human rights defenders and even more so indigenous human rights defenders. The ACWC does not fare any better, however. It has even fewer opportunities for consultation or discussion with 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 (LTR). 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.⁷

Regardless of this criticism and nagging concern for indigenous peoples and CSOs in the region, the AICHR remains the 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 of 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”.

Engagement with the AICHR on consultation and on business and human rights

Engagement with the AICHR is often personality-based; the more progressive the AICHR representative, the more opportunities to lobby for indigenous peoples. Decision-making by consensus, however, is a persistent obstacle. Despite opportunities for individual work and cooperation, it is a challenge to ensure that such work convinces all members of the AICHR to comply with the requirement for consensus. The current AICHR representatives of Malaysia and Thailand have been most relevant as allies of indigenous peoples. This may soon change as the term of the current representatives will end in 2019.

In June 2018, the AICHR representative of Thailand organised the “Interregional Dialogue: Sharing of Good Practices on Business and Hu-

man Rights”. Through the CSO consultative relationship with the AI-CHR, Asia Indigenous Peoples Pact (AIPP) was given the opportunity to speak in the plenary session on the experience and issues of indigenous peoples within the business and human rights (BHR) discourse. The most concrete achievement from this participation, aside from the general awareness-raising, was the hope that the issues discussed, and recommendations put forward would be considered in AICHR’s final document, if not in any related deliberations between the representatives. Among the recommendations put forward during the Dialogue were for the Member States to “ensure transparency of the steps and processes involved before any development projects start or continue and ascertain that guidelines and safeguards are in accordance with international human rights standards” and for AICHR to “strengthen collaboration with CSOs in promoting human rights in the region and explore establishing a mechanism of working with NHRIs in the region and strengthen work in monitoring and protection and promotion of human rights in ASEAN”.⁸

An intervention from the CSOs present in the Dialogue was also given permission to be read out during the official session. This opportunity is rare in AICHR meetings and is dependent on the organising representative. The CSOs recommended that the AICHR “provide further information on the continuity of dialogues such as this, and clear ways forward, including how the outcomes of this forum will be carried forward in AICHR’s work with governments and other stakeholders” and “engage with other regional human rights mechanisms to learn from their experiences including on civil society engagement”.⁹

ASEAN’s five focus areas in the Sustainable Development Goals (SDG)

Together with the UN’s Economic and Social Commission for Asia and the Pacific (ESCAP) and the Government of Thailand, ASEAN has recently launched a report entitled, *Complementarities between the ASEAN Community Vision 2025 and the United Nations 2030 Agenda for Sustainable Development: A Framework for Action*.¹⁰ The report identifies five focus areas, and recommends seven “flagship initiatives” that would support countries in achieving the ASEAN Community Vision 2025 in line with the SDGs. The five focus areas are (1) poverty eradica-

tion, (2) infrastructure and connectivity, (3) sustainable management of natural resources, (4) sustainable consumption and production (SCP), and (5) resilience.¹¹ The ESCAP and the ASEAN Secretariat will jointly conduct the monitoring and evaluation of the implementation of the report and present it to appropriate UN and ASEAN bodies.

The 2017 *Declaration on the Gender-Responsive Implementation of the ASEAN Community Blueprint of 2025 and SDGs*¹² reiterates the importance of collecting, managing, analysing, disseminating and ensuring access to high-quality, reliable and timely data disaggregated by sex, age, and socio-cultural and economic characteristics. The Declaration “task[s] the ASEAN Ministerial Meeting on Women (AMMW), with the support of the ASEAN Committee on Women (ACW), to review, coordinate, monitor and report its progress through appropriate instruments and actions, with the support of ASEAN Member States”.

These ASEAN documents related to the SDGs narrow down the relevant institutions within ASEAN that can be followed by CSOs when monitoring SDG implementation in the region. The data disaggregation by socio-cultural and economic characteristics should capture and highlight the situation of indigenous peoples with regard to the 2030 Agenda. The ACWC can now also be directly included in the institutions to engage with as regards SDG implementation for its annual report to the ASEAN Ministers Meeting on Social Welfare and Development (AMMSWD), which is copied to the ACW.

Investment in food, agriculture and forestry in ASEAN

The *Guidelines on Promoting Responsible Investment in Food, Agriculture and Forestry* were adopted at the 40th Senior Official Meeting of the ASEAN AMAF in October 2018. The *Guidelines* make direct reference to indigenous peoples and the definition of indigenous peoples is in line with ILO Convention 169 and the UNDRIP. Furthermore, its guidelines on “contributing to equitable, sustainable and inclusive economic development and the eradication of poverty” places an emphasis on Member States introducing - for areas that involve indigenous peoples - a community engagement strategy in investor-state contracts, including a community development agreement that follows FPIC principle as per the UNDRIP and UN Food and Agricultural Organisation (FAO) FPIC Manual.¹³

This document is a huge departure from documents within the AI-CHR or even with the ACWC. It is a useful advocacy document for indigenous organisations and its allies within the region. The “ASEAN Way” will, however, remain a challenge should this document be used in the AICHR or ACWC. These mechanisms within the ASEAN structure often work in silos and bridging them will not be an easy task, especially for an institution that still struggles to both conduct and sustain meaningful engagement with civil societies and recognise indigenous peoples without any reservations.

Notes and References

1. Two-thirds of the approximately 370 million indigenous peoples in the world live in Asia but no accurate data is available on the population of indigenous peoples in the ASEAN region as few Member States consider their indigenous identities, which are, therefore, not taken into account in national censuses.
2. See *The Diplomat*, “Human Rights Declaration Falls Short” at <http://bit.ly/2IFFOmP>
3. “Association of Southeast Asian Nations (ASEAN)”, *The Indigenous World*. International Work Group for Indigenous Affairs, pp. pp. 604-611. April 2018. At <http://bit.ly/2IPjkzw>
4. See links for more information on ACWC and ACMW, respectively: <http://bit.ly/2IT0o3h> and <http://bit.ly/2IHgVXJ>
5. On ASEAN’s Three Pillars: <http://bit.ly/2IB1kZB>
6. See *The Diplomat*, “Is Promoting Human Rights in ASEAN an Impossible Task?” at <http://bit.ly/2IT278L>
7. See further information on recognition of indigenous peoples in ASEAN at <http://bit.ly/2IGadRI>
8. See presentation and all the recommendations at <http://bit.ly/2IGaCUe>
9. Read the full statement from CSOs during the AICHR interregional dialogue at <http://bit.ly/2IE7k3Z>
10. See the SDG Knowledge Hub, “ASEAN, ESCAP Propose 7 Initiatives to Achieve SDGs in the Region” at <http://bit.ly/2ICVs28>
11. See the full UN ASEAN Complementarities Report at <http://bit.ly/2ICVwio>
12. Op. cit. *Indigenous World 2018*
13. See the full ASEAN Guidelines on responsible investment in food, agriculture, and forestry at <http://bit.ly/2IT36FZ>

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THE EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES IN 2018

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) 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 UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and assist Member States, upon request, in achieving the ends of the Declaration 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.¹

Implementation of a new mandate

The EMRIP remained focused on the implementation of its new country engagement mandate in 2018. 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 the recommendations of the 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.

One of the strengths of the EMRIP under this new mandate is its role in offering technical assistance and in facilitating dialogue with a view to easing tensions, building trust and thus contributing to a conducive environment for the UNDRIP's implementation. Its role is not to monitor the implementation of indigenous peoples' rights but to focus on a particular issue and help the parties find innovative solutions together. Its new mandate is thus a complement to the monitoring mechanisms, like the treaty bodies, the special procedures of the Human Rights Council and the Universal Periodic Review procedure (UPR).

The EMRIP undertook a mission to Finland from the 10-16 of February 2018, under the request of the Sámi Parliament and with the agreement of the government of Finland, to consider amendments to the Sámi Parliament Act. The objective of the engagement was to provide assistance and advice, and to facilitate dialogue leading to the implementation of relevant recommendations made by human rights mechanisms to Finland.

During its mission, the EMRIP met with members of the Sámi Parliament, Sámi representatives, NGOs, State and legal officials, academics and other stakeholders. Following the mission, the EMRIP transmitted a written advisory note to the parties on the two issues upon which it had focused: the definition of Sámi for the purpose of the electoral roll and the obligation of the State to negotiate with the Sámi.² During EMRIP's 11th session, all parties indicated the successful nature of the mission.

The EMRIP undertook a mission to Mexico City, from 26 February to 2 March 2018, in response to a request from the city's Secretariat for Rural Development and Equity for Communities. The mission focused on provisions regarding indigenous peoples set forth in the Constitution of Mexico City, adopted on 31 January 2017 (arts. 57–59), with the purpose of supporting city authorities in the development of laws and policies for the implementation of the rights of indigenous peoples under the Constitution.

During its mission, the EMRIP held meetings with: the federal Ministry of Foreign Affairs; Mexico City authorities, including the head of government and members of the Cabinet; representatives of indigenous organisations; agencies of the United Nations system; the Commission on Human Rights of Mexico City; and civil society representatives. The EMRIP also had the opportunity to visit several indigenous

communities within Mexico City and to participate in capacity-building events for indigenous representatives and Mexico City civil servants. A technical note was sent to the Mexico City government on 17 October 2018, with the purpose of feeding into the process to consider secondary laws and policies to implement the Constitution of Mexico City³ with due regard to the right to consultation.

Importantly, under its new mandate, States, indigenous peoples and other stakeholders, including the private sector, can make requests demonstrating their willingness to effectively implement the UNDRIP on specific issues. The EMRIP has devised and made public a short on-line 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.⁴

New country missions relating to these requests are under preparation. Engagement requests include the following: on repatriation of cultural and/or spiritual objects; the development of a national plans of action, the implementation of regional court decisions; the implementation of UPR recommendations; on the eviction of indigenous peoples from their land; the protection of indigenous children; and the preservation of traditional fishing rights.

Building relationships with UN mechanisms and National Human Rights Institutions (NHRIs)

The EMRIP has continued to cooperate and engage with the Permanent Forum, the 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 the EMRIP.

In the context of its new mandate, the EMRIP regards building closer links and collaboration with the treaty bodies as a crucial action, not least because EMRIP's new mandate specifically refers to the provision of advice on the implementation of treaty body recommendations. During its 11th session, the EMRIP included an agenda item on exchange with the Human Rights Committee and the Committee on the Elimination of Discrimination against Women. This allowed indigenous peoples' representatives and Member States to exchange views with these

bodies and develop an understanding of how they are supporting indigenous peoples' rights. The EMRIP also held closed meetings with these two bodies facilitated by the Geneva Academy. The mechanisms improved their understanding of each body's specific expertise and challenges in protecting the rights of indigenous peoples and encouraged mutual support. The EMRIP is also developing a closer collaboration relationship with the Committee on the Elimination of Racial Discrimination, which is taking initiative to support EMRIP's new mandate.

Further, EMRIP engaged with the Global Alliance of NHRIs (GANHRI) and, following a dialogue with NHRIs at its 11th session, developed a paper on interaction between NHRIs and the EMRIP in all areas of its work.⁵

Thematic study on free, prior and informed consent (FPIC)

During its eleventh session, the EMRIP adopted its study and advice on FPIC: a human rights-based approach (A/HRC/39/62)⁶, under paragraph 2 (a) of Human Rights Council resolution 33/25. The study was subsequently submitted to the Human Rights Council at its 39th session in September 2018.

The study focuses on FPIC as it is contained in the UNDRIP. As the only study by a body of independent UN human rights experts on this topic, this is an important contribution to the thinking and discourse on this issue, which is currently widely debated. It also highlights the human rights basis of FPIC, grounded in the right to self-determination and protection against racial discrimination. It sets out the rationale for FPIC and its nature as a human rights norm through an exploration of the work of the treaty bodies, and national and regional courts. It indicates that FPIC has a wider scope than 'participation' or 'consultation' as described by ILO 169, as it denotes a right of indigenous peoples to influence the outcome of the decision-making process. The adopted study further reviews FPIC practices, giving a critical evaluation of the implementation across the private and financial sectors, States, indigenous peoples' own protocols, and the UN and its agencies. In its 'Advice' chapter at the end, the study provides concrete recommendations that States should apply to ensure that consultation and FPIC are properly operationalised.

Inter-sessional meeting, expert seminar and future reports

The EMRIP held an expert-seminar hosted by Chiang Mai University, Thailand, from 5-6 November, followed by an inter-sessional meeting, from 7-9 November. The purpose of the seminar was to gather information for the EMRIP's study on Indigenous Peoples' Rights in the Context of Borders, Migration and Displacement (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.

Under its new mandate, the EMRIP advises the Human Rights Council, through a thematic study, on specific rights set out in the UN-DRIP, including developments in international law and practices. Another report advises on good practices and lessons learned by all stakeholders in the implementation of the Declaration. The study chosen by the EMRIP this year was on the topic of migration and the report will focus on recognition, reparations and reconciliation.⁷ A draft report on this theme as well as a draft study on migration will be discussed and finalized by the EMRIP during its 12th session in July 2019.

During its annual inter-sessional meeting the EMRIP planned forthcoming activities. It decided *inter alia* that its annual study for 2020⁸ will focus on the right to land, and that its biannual report for 2021⁹ will focus on self-determination, as expressed in Art. 3 of the UN-DRIP.

Prospects for EMRIP's future and continuing work

One of the areas of great concern to the EMRIP is the worsening situation of violence, killings and criminalization of indigenous peoples, as human rights defenders. This issue has been highlighted by many UN bodies, including the treaty bodies, the UPR procedure and the Special Rapporteur on the Rights of Indigenous Peoples, in particular in her 2018 report (A/HRC/39/17).¹⁰ A recent report by Frontline Defenders reported that 2018 has the highest number of deaths of human rights defenders: 77% of whom died defending environmental and/or indigenous rights.¹¹ Much of this violence arises in the context of large-scale projects involving extractive industries, agribusiness, infrastructure, hy-

droelectric dams and logging and often stems from a lack of land tenure for indigenous peoples leaving them ill-equipped to defend their lands. Climate change mitigation and conservation may also lead to violence due to failure to obtain the FPIC of the indigenous peoples concerned.

The EMRIP looks forward to hearing from States and others on this issue during the Human Rights Council panel on the protection of indigenous human rights defenders in 2020.¹² It hopes that its new mandate combined with the advice it provides in its studies, such as the one on FPIC, can assist indigenous peoples and States to try to resolve the underlying causes and tensions behind such violence.

Notes and references

1. All EMRIP reports and documents can be found at: <http://bit.ly/2IE9r86>
2. See UNHRC, "11th session of the Expert Mechanism on the rights of Indigenous Peoples" at <http://bit.ly/2lwKF9C>
3. The First Constitution of Mexico City
4. See OHCHR, "Requests under new mandate." at <http://bit.ly/2IEakgW>
5. A/HRC/39/68 at <http://bit.ly/2ltxlTm>
6. See <http://bit.ly/2IsM9BO>
7. resolution 33/25, para.2b, of the Human Rights Council.
8. resolution 33/25, para. 2a
9. resolution 33/25, para. 2b
10. See A.HRC.39.17 at <http://bit.ly/2lw8wWW>
11. See Front Line Defenders Global Analysis at <http://bit.ly/2IEaXqO>
12. A/HRC/Res/39/13 - <http://bit.ly/2lvxi9F>

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THE INTER-AMERICAN HUMAN RIGHTS SYSTEM*

The Inter-American Human Rights System (IAHRS) is composed of two human rights bodies: The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR). Both bodies work to promote and protect human rights in the Americas. While the IACHR is made up of seven independent members and two independent special rapporteurs, and is based in Washington, D.C., the Court is composed of seven judges and sits in San José, Costa Rica. In 1990, in a reaffirmation of the fact that this protection is a fundamental obligation of states, the IACtHR established a Rapporteurship on the Rights of Indigenous Peoples to devote special attention to the indigenous peoples of the Americas and strengthen, promote, and consolidate the Commission's work in that area.

The IACHR's work, through its various mechanisms, seeks to bring about change for indigenous communities and their members. To this end, the IACHR – and notably its Rapporteurship on the Rights of Indigenous Peoples – uses a range of instruments including exhaustive thematic studies and reports on topics related to indigenous peoples' rights; petitions and cases, including friendly settlements; precautionary measures; thematic hearings; confidential requests for information from states; and press releases. The Commission also participates in conferences and seminars with states, academia and civil society, to raise awareness of indigenous peoples' human rights, and has conducted training sessions and seminars with indigenous peoples to increase their understanding of the Inter-American Human Rights System (IAHRS). The Court, on the other hand, issues precautionary measures, judgments and advisory opinions.¹

Regional thematic report on the Rights of the Indigenous and Tribal Peoples of the Pan-Amazon region.

In 2018, as part of a joint initiative with the Pan-Amazon Ecclesial Network (REPAM)², the Commission decided to produce a thematic report on the Rights of the Indigenous and Tribal Peoples of the Pan-Amazon region.

The report seeks to apply and expand the standards developed in the Inter-American system to the context and challenges faced by indigenous peoples in the Pan-Amazon region. With that in mind, the report will include an analysis of human rights infringements resulting from extractive industries and investment projects, and the social and environment impacts on the communities established there. The report is expected to be published and circulated in 2019.

Hearings

Over the four sessions held in 2018 there were 118 thematic hearings, 14 of which were focused on indigenous peoples' rights.

The 167th session³ exposed the situation of indigenous women's cultural rights in Guatemala and addressed the human rights situation of indigenous peoples in Canada. Attention was also called to alarming suicide rates among indigenous youth and the need for a national suicide information system, a national suicide prevention strategy, and programs and services for the children and families of the First Nations. The 168th session⁴ addressed the human rights situation of indigenous communities affected by oil spills in Cuninico and Vista Alegre, Peru, and condemned the violation of the communities' human right to water, among other rights, that has occurred because of oil spills from the North Peruvian Oil Pipeline and inadequate action by the state and the state-owned company Petroperú.

Also discussed was the human rights situation of indigenous peoples in the context of the Colombian Peace Agreements. Representatives of the Emberá people from Chocó, the Siona people from Putumayo and the Arhuaco people from the Sierra Nevada de Santa Marta reported an increase in violence in their territories in the post-agreement period and the implementation of mining and hydrocarbon mega-projects that failed to respect their right to free, prior and informed consent (FPIC).

The 169th session⁵ addressed the rights situation of indigenous Maya Q'eqchi' families affected by forced evictions in Guatemala. This session exposed a failure to guarantee the rights of children belonging to Colombia's 102 indigenous groups. Attention was drawn to the vulnerable situation of most indigenous children, which entails extreme poverty, social exclusion, structural racism and the absence of effective state mechanisms to guarantee their rights. This period also saw reports of criminalization of the exercise of indigenous jurisdiction in Ecuador. There were also allegations of killings, threats and forced displacement of Afro-descendant and indigenous defenders in Colombia. Another topic addressed was the lack of indigenous land titling and demarcation in the Caribbean states of Belize, Guyana and Suriname, and for the Emberá, Wounaan, Guna, Buglé, Ngäbe, Naso and Bribri peoples in Panama. Reports were also presented of killings, disappearance and various forms of discrimination against indigenous communities and native Alaskan women in the United States.

Lastly, in the 170th session⁶, the Commission was alerted to violations of the human rights of members and leaders, both male and female, of the Native Community of Santa Clara de Uchunya in the Peruvian Amazon.

Precautionary Measures

Of the 86 precautionary measures granted in 2018, eight were in relation to indigenous communities and their members. Two of these measures concern the protection of the lives and personal integrity of defenders of indigenous peoples' human rights. In the first case, the beneficiary is a member of the Zapotec community of Juchitán, in the state of Oaxaca, Mexico. Additionally, the IACHR requested precautionary measures in favour of Y.P.G., who identifies as a Cañari Kichwa native, in Ecuador. In both cases, the Commission requested, among other matters, that the governments of Mexico and Ecuador, respectively, take the necessary steps to preserve the lives and personal integrity of the beneficiaries, and enable them to further engage in their activities as human rights defenders without being subjected to threats, harassment, or violent acts in the course of doing so.⁷

In 2018, the IACHR also granted precautionary measures aimed at protecting the lives and personal integrity of indigenous authorities and

traditional leaders. In this sense, it was decided to request these measures in favour of the Siona authorities and the families living on the Siona (ZioBain) reserves known as Gonzaya (Buenavista) and Po Poyuya (Santa Cruz de Piñuña Blanco), in Colombia. Among other matters, the Commission requested that Colombia take the necessary steps to safeguard the lives and personal integrity of the Siona authorities and the families of the Gonzaya and Po Piyuya Siona reserves, and that it take culturally appropriate protective measures to enable them to live safely on their territory, without being subjected to violence, threats or harassment.

Other precautionary measures granted by the Commission in 2018 concerned forced eviction and internal displacement. The first case relates to indigenous families from the Chaab'il Ch'och' community in Guatemala. The community is made up of families that fled internal armed conflict in various parts of Alta Verapaz, having been persecuted and dispossessed of their land. Precautionary measures were also requested in favour of evicted and displaced families from the Maya Q'eqchi' community Nueva Semuy Chacchilla, in Guatemala. Likewise, the IACHR decided to adopt precautionary measures in favour of families from the Maya Q'eqchi' community La Cumbre Sa'kuxhá, in Guatemala.⁸

Similarly, precautionary measures were requested in favour of Tzotzil natives reported displaced from the Puebla *ejido* in the city of San Cristóbal de Las Casas, Chiapas, and members of the Ku'untik Human Rights Center in Mexico. In a similar vein, precautionary measures were required in favour of Tzotzil natives of the Cruzton, Tzomolto'n, Bojolochojo'n, Cruz Cacanam, Tulantic, Bejelto'n, Pom, Chenmut and Kanalumtic communities from Chalchihuitán, and the Majompepentic community from Chenalhó, in Mexico.

In all the cases of forced displacement and eviction described, the IACHR requested, among other matters, that the governments of Guatemala and Mexico, respectively, take culturally appropriate measures to protect the lives and personal integrity of families and prevent acts of violence by third parties; ensure that community members can carry out their work as human rights defenders without being subjected to threats, harassment or acts of violence in the course thereof; and report on action taken in order to investigate the facts that gave rise to this precautionary measure, and thus prevent their recurrence.

Finally, based on an intersectional analysis of human rights, the IACHR granted a precautionary measure in favour of an indigenous girl

and her family in Mexico. It is claimed that the beneficiaries have been subjected to threats, intimidation and accusations within their community for having reported the alleged rape of the girl, who is reported to suffer from health issues as a result.

Petitions and cases

Friendly settlements.

In 2018, the G.B.B., C.B.B. and Chile report was approved.⁹ On 15 May 2011, the IACHR received a petition filed by the Corporación Humanas Regional Human Rights and Gender Justice Center and the Observatorio for Indigenous Peoples' Rights.¹⁰

The petitioners alleged that between 18 and 23 July 2007, G.B.B. and her son D.E.B., then aged 3 years and 11 months, who both belonged to the Aymara indigenous community, were shepherding in the General Lagos commune. On their way home after finishing their work, the boy reportedly got lost, and subsequently G.B.B. looked for him until night-fall with no success. The next day, the report states, the victim went to report her son's disappearance to the Carabiniers of Chile police force. However, state authorities centred their attention on prosecuting G.B.B. for the incident in the report, subjecting her to torture and cruel, inhuman and degrading treatment to extract a confession, which resulted in a 10-year prison sentence for the abandonment and subsequent death of her son. It is claimed that G.B.B.'s public defender filed an appeal to nullify the first-instance judgment. Later, the petition states, a second trial was held, resulting in G.B.B. being sentenced to 12 years' imprisonment for her role as the perpetrator of the crime of abandonment of a child under 10 in a secluded place, resulting in the child's death. The petitioners alleged that while G.B.B. was arbitrarily deprived of her liberty, she was prohibited from seeing her other two children, C.B.B. and R.B.B., leading to her daughter and youngest child C.B.B. being unlawfully given up for international adoption, without regard for her ethnic origin and despite both parents' express objection.

On 18 March 2013, Chile submitted to the Commission its response on admissibility. Finally, following several working meetings, the parties signed the following Friendly Settlement Agreement:

- Acknowledgment of responsibility by the State of Chile;

- Expungement of G.B.B.'s criminal record;
- That a livelihood is to be provided for G.B.B.;
- Adequate housing for G.B.B.;
- Background information relating to the petition filed to the Commission is to be included in the adoption process of the girl C.B.B., along with post-adoption information about the girl, and action is to be taken to facilitate re-establishing a bond between Mrs. G.B.B. and her family;
- Guarantees of non-recurrence.

The IACHR has been closely monitoring the development of the friendly settlement reached in this case. In this regard, the Commission declares that items 1, 3, and 4, and subsections a), c), and d) of item 5 have been fully met. However, item 2; subsections b) and e) of item 5; and item 6 of the agreement have been partially met, and the Commission will therefore continue to monitor the implementation of the settlement.

Admissibility reports

In 2018 there were two admissibility reports on indigenous issues. The first concerns the situation of five indigenous Maya Achi communities, who claim to have inhabited a country estate (*finca*) since pre-Hispanic times, which historically they have managed communally. They stated that to protect their property, they bought land from the state, which they obtained titles to and registered in the name of seventeen community members as joint owners, the land having been purchased with money from all those living on the estate. They add that in the context of the internal armed conflict, community members belonging to the Civil Defense Patrols (PAC), acting in bad faith, conducted intestate succession proceedings to succeed the 17 original owners, obtaining individual title deeds to the estate. They claim that, in that context, the alleged victims have been subject to eviction, persecution, and even acts of violence including killings, assault and threats by community members who obtained the title deeds or their family members.

The government, on the other hand, submits that this matter concerns alleged violations that took place between 1981 and 1986. Consequently, it objects to the petition being filed in the future in the Inter-American Court of Human Rights as the court lacks jurisdiction to hear events occurring before 9 March 1987, and claims that it has not

violated the petitioners' rights because the conflict arose between members of indigenous communities, and no public official took part in the alleged violations.

In view of the aspects of fact and law set forth by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the allegations regarding the reported killing, the death threats and assault experienced by community members, the absence of an investigation into the above incidents, the lack of a public defender in proceedings initiated against the joint owners and lack of legal counsel on proceedings they may have been able to institute to contest the ownership of the land, the alleged violations of due process, and the disruption of the ownership of their ancestral land, may constitute violations of Articles 4, 5, 8, 21, 24, 25 and 26 of the American Convention to the detriment of the alleged victims, all in light of Articles 1.1 and 2 of the aforesaid instrument.¹¹

The second report concerns the alleged violation of rights to freedom of expression, equality before the law, and cultural identity to the detriment of the indigenous Kaqchikel Maya people from Sumpango, Sacatepéquez; the Maya Achí people from San Miguel Chicaj, Baja Verapaz; the Maya Mam people from Cajolá, Quetzaltenango; and the Maya indigenous people from Todos Santos Cuchumatán, Huehuetenango. This is the result of the lack of legal recognition of the radio stations that operate in their communities and the continuing discriminatory legal conditions that prevent them from accessing the radio spectrum and criminalize the development of their own means of communication. According to the petition, the four indigenous peoples mentioned have organized themselves to set up radio stations in their communities with the aim of spreading information among community members and promoting and protecting their native cultures and languages.

The petitioners allege that these communities have not accessed broadcasting licenses to operate these radio stations due to the constraints imposed by existing legislation. They explained that the *General Telecommunications Law* of Guatemala has a direct impact on the alleged victims' ability to exercise their rights. Furthermore, the petitioners allege that the lack of recognition and the legal barriers to accessing the frequency spectrum have gone hand in hand with heavy criminalization of indigenous community radio broadcasting.

The government, on the other hand, requests that the IACHR find this petition inadmissible claiming the state has not violated any right

enshrined in the American Convention.

The IACHR found this petition admissible in relation to Articles 13, 24, and 26 of the American Convention, in conjunction with Articles 1.1 and 2 of the aforesaid instrument, and Article XIII of the American Declaration of the Rights and Duties of Man.¹²

Cases before the Court

On 1 February, the IACHR submitted to the jurisdiction of the Inter-American Court of Human Rights case no. 12,094: Indigenous Communities Belonging to the Lhaka Honhat (Our Land) Association with respect to the Republic of Argentina.

The Commission requested that the Inter-American Court deduce and declare the international responsibility of the State of Argentina for the violation, to the detriment of the indigenous communities in the Lhaka Honhat Association, of rights to property, judicial guarantees and protection, and rights to access information and participate in matters that may affect them, as established in Articles 21, 8, 25, 13, and 23 of the American Convention on Human Rights, in relation to the obligations set forth in Articles 1.1 and 2 of the aforesaid instrument.

Judgments by the Inter-American Court of Human Rights

The first case is that of the *Xukuru indigenous community and its members vs. Brazil*.¹³ This case concerns the violation of the right to collective property as a result of the over 16-year delay – from 1989 to 2005 – in the administrative process for the recognition, titling, demarcation and delimitation of their ancestral land and territories.

The Court found, among other issues, that the state is responsible for violating rights to judicial guarantees within a reasonable time and judicial protection, and the right to collective property.

The second judgment is that of the case of *Coc Max and others (Xamán massacre) vs. Guatemala*¹⁴, which relates to a “massacre” carried out by members of the Armed Forces of the Republic of Guatemala on 5 October 1995, in which 11 people from the indigenous Q’eqchi’, Mam, Q’anjob’al, Ixil and K’iche peoples, who occupied the Xamán country estate (*finca*) after having taken refuge in Mexico, were killed – including a girl and two boys.

The Court found, among other issues, that the state is responsible

for violating rights to judicial guarantees and judicial protection, and the right to life and personal integrity.

Advisory Opinions of the Inter-American Court

There were no advisory opinions on indigenous rights in 2018.

*This article has been reduced for the English publication. The full version of the article is available in Spanish, in *El Mundo Indígena* 2019.

Notes and references

1. The 2018 description of the Inter-American System, drawn up in 2018, has been kept.
2. This initiative is the first experience in implementing Program 12 of Objective 3 of the IACHR's Strategic Plan 2017-2021, which seeks to strengthen agreements with academic research centers and promote the creation of an academic network specialized in the IAHRS that can contribute studies, research, and other joint activities to expand knowledge and generate important information for the promotion and defense of human rights in the region and the human rights situation of indigenous peoples in the context of the Colombian Peace Agreements.
3. IACHR, Hearings, 167th Session: Cultural rights situation of indigenous women in Guatemala, 26 February 2018; and human rights situation of indigenous peoples in Canada, 28 February, 2018. Available at: <http://bit.ly/2T8HHx0>
4. IACHR, Hearings, 168th Session: Human rights situation of indigenous communities affected by oil spills in Cuninico and Vista Alegre, Peru, 7 May 2018; and human rights situation of indigenous peoples in the context of the Colombian Peace Agreements, 10 May 2018. Available at: <http://bit.ly/2T9KNRA>
5. IACHR, Hearings, 169th Session: The rights of the indigenous Maya Q'eqchi' families affected by forced evictions in Guatemala, 1 October 2018; Guarantees of children's rights in the 102 indigenous groups of Colombia, 2 October 2018; Reports of criminalization of the exercise of indigenous jurisdiction in Ecuador, 3 October 2018; Reports of killings, threats and forced displacement of defenders of Afro-descendant and indigenous land rights in Colombia, 3 October 2018; Demarcation and titling of indigenous land in the Caribbean, 4 October 2018; Collective land titling and protection of indigenous Emberá, Wounaan, Guna, Buglé, Ngäbe, Naso, and Bribri peoples in Panama, Friday, 5 October 2018; Reports of killings, disappearance and various forms of discrimination against indigenous communities and native Alaskan women in the United States, 5 October 2018. Available at: <http://bit.ly/2T8ME94>
6. IACHR, Hearings, 170th Session: Situation of indigenous peoples in the Peruvian

Amazon, land and the environment, 5 December 2018. Available at:

<http://bit.ly/2Tb5psz>

7. IACHR Resolution 67/18 (only available in Spanish), Precautionary Measure 807/18 - Yaku Pérez Guartambel, with respect to Ecuador. Available at: <http://bit.ly/2TeoKcf>
8. IACHR, Resolution 43/18 (only available in Spanish), Precautionary Measure 44/18 – Families of the Maya Q'eqchi' community "La Cumbre Sa'kuxhá", with respect to Guatemala. Available at: <http://bit.ly/2TaiD8U>
9. IACHR, Report No. 138/18, Petition 687-11. Friendly settlement G.B.B. and C.B.B. 21 November 2018. Available at: <http://bit.ly/2TfyxdC>
10. The petition alleged the international responsibility of the Chilean State for the violation of Articles 1.1. (obligation to respect and guarantee rights), Article 2 (right to adopt provisions of domestic law), Article 5 (right to integrity), Article 7 (right to personal liberty), Article 8.1 (judicial guarantees), Article 17 (protection of family), Article 19 (rights of children), Article 24 (equality before the law and non-discrimination), Article 25 (judicial protection), and Article 26 (progressive development) of the American Convention on Human Rights and for the violation of Articles 7 a) and b), 8, 9, and 26 of the Convention of Belém do Pará, to the detriment of G.B.B. and her daughter C.B.B.
11. IACHR, Report No. 10/18. Admissibility. Indigenous Maya Achi families. Guatemala. 24 February 2018. Available at: <http://bit.ly/2Tb5v3p>
12. IACHR, Report No. 51/18. Admissibility. Indigenous Kaqchikel Maya people from Sumpango and others. Guatemala. 5 May 2018. Available at: <http://bit.ly/2EsZDls>
13. Inter-American Court of Human Rights, *Case of the Indigenous Xukuru community and its members vs. Brazil* (only available in Spanish), Preliminary Defenses, Substance, Reparations, and Costs. Judgment dated 5 February 2018. Series C N° 346. Available at: <http://bit.ly/2EqKxTQ>
14. Inter-American Court of Human Rights, *Case of Coc Max and others (Xamán massacre) vs. Guatemala* (only available in Spanish), Substance, Reparations, and Costs. Judgment dated 22 August 2018. Series C N° 356. Available at: <http://bit.ly/2Eo0Fpb>

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INDIGENOUS WOMEN AT THE 62ND SESSION OF THE COMMISSION ON THE STATUS OF WOMEN

The Commission on the Status of Women (CSW) is the main international intergovernmental body devoted exclusively to promoting gender equality and women's empowerment. It plays a crucial role in promoting women's rights, documenting the reality in which women throughout the world live, and drafting international standards on gender equality and women's empowerment.

The Commission plays a leading role in follow-up and review of progress made and difficulties encountered in implementing the Beijing Declaration and Platform for Action, the main international document on gender equality, as well as on emerging issues that affect gender equality and women's empowerment.

During the Commission's annual period of sessions, representatives of UN Member States, civil society organisations and UN bodies meet for two weeks at the UN headquarters in New York to discuss progress made and gaps found in the application of the 1995 Beijing Declaration and Platform for Action. On the basis of these discussions, the Member States agree actions to speed up progress in this regard and to promote women's enjoyment of political, economic and social rights. The conclusions and recommendations of each session are sent to the Economic and Social Council for follow-up.

Indigenous women's involvement and influence in global decision-making spaces such as the Commission on the Status of Women is highly relevant in strategic terms as it has a direct impact on the individual and collective rights of 185 million indigenous women throughout the world, who belong to more than 5,000 different indigenous peoples.

Indigenous women at the 62nd session of the Commission on the Status of Women

The Commission on the Status of Women (CSW) is a fundamental space for raising awareness of, and positioning, the individual and collective rights of indigenous women among the representatives of Member States, United Nations bodies and ECOSOC-accredited non-governmental organisations (NGOs) attending the session from around the world.

Since its first intervention at the 56th session of the CSW in 2012, the Indigenous Women's International Forum (FIMI) has actively helped coordinate indigenous women around political advocacy, ensuring a presence at this high-level political forum with the aim of making known their views on the agreed conclusions, and thus promote gender equality and the empowerment of indigenous women and girls.

The 62nd session of the Commission was held from 12-23 March 2018 and considered the issues, challenges and opportunities in achieving gender equality and the empowerment of rural women and girls. Rural areas are home to many indigenous women around the world, with unique and distinct realities that require specific approaches and measures to tackle their issues in a culturally-sensitive way and guarantee their individual and collective rights.

Indigenous women's contributions include their sustainable practices and livelihoods, being agents of change that provide food security, health and wellbeing in the communities despite the deep inequalities, racism and discrimination they face. The recommendations made by the indigenous women who participated in the coordinating meeting for the CSW 62 thus addressed the main priorities of the world's indigenous women:

- To encourage the organisation of a High-Level Forum on indigenous women, including regional consultations, with the effective participation of indigenous women, to review progress and challenges in implementing the 2020 Beijing Platform for Action, focusing on the linkages with and progress made in the situation of indigenous women and the Sustainable Development Goals.
- To recognise that access to ownership and control of lands, territories and resources, and free, prior and informed consent are critical for indigenous women's empowerment and for achieving the Sus-

tainable Development Goals, including protecting indigenous women's human rights defenders.

- To recognise indigenous women and youths with disabilities as being the most vulnerable to climate disasters and to provide contextually-relevant and culturally-sensitive safeguards, along with technical and financial support to ensure their economic, social and environmental protection and wellbeing.
- In consultation with, and on equal terms, to take concrete actions to ensure technical and financial assistance for the economic activities of indigenous women, taking into account their knowledge and cultural context, including data disaggregated by ethnicity and gender, in order to formulate appropriate public policy interventions that ensure empowerment, wellbeing and services in rural contexts and indigenous communities.¹

Through these recommendations, indigenous women were endeavouring to get States, the Commission and other UN institutions to urgently consider the need to consider the specific conditions of rural indigenous women in their decisions, along with issues specific to the context of rural indigenous women in order to collectively address the gaps and challenges as seen from the perspective of these women themselves.

It should be noted that the resolutions, recommendations and paragraphs that mention and include indigenous women in the CSW ultimately form the framework for advocacy documents. This is because the States are supposed to take these resolutions up as part of their internationally-assumed commitments. Nonetheless, if this information is not disseminated from the global level down to the local by the indigenous women themselves then its impact will be limited; it is therefore essential that the indigenous women leaders take up the commitments made and use the documents as tools for political advocacy work in their countries.

Drawing on the previously stated recommendations, the Commission established policies and measures that governments and other interested parties will need to implement, organising them under three headings:

- Strengthening of regulatory, legal and policy frameworks;
- Application of economic and social policies for the empowerment of all rural women and girls;

- Strengthening of the collective voice and leadership of all rural women and girls and their participation in decision-making.

Two of the headings directly involve indigenous women, their individual and collective rights.²

On the issue of strengthening regulatory, legal and policy frameworks, the Agreed Conclusions document states that:

*The Commission recognizes that indigenous women and girls living in rural and remote areas, regardless of age, often face violence and higher rates of poverty, limited access to health care services, information and communication technologies (ICT), infrastructure, financial services, education and employment, while also recognizing their cultural, social, economic, political and environmental contributions, including to climate change mitigation and adaptation.*³

In light of the previous recommendation, it is clear that rural indigenous women and girls continue to be denied access to wellbeing and the exercise of their fundamental rights. It is therefore important for Member States and interested parties to envisage legal frameworks that seek to provide them with a life free from violence and that improve their living conditions through access to social justice. This recommendation also recognises the contributions of indigenous women to the cultural, social, economic, political and environmental spheres, and opens a window of opportunity for Member States and interested parties to implement public policies, programmes or mechanisms that eliminate all forms of racism and discrimination, and in which indigenous women are included as rights-holders whose contributions are essential to finding solutions to the realities that are critically affecting life on our planet.

In terms of applying economic and social policies for the empowerment of all rural women and girls the recommendation was to:

Invest in and strengthen efforts to empower rural women as important actors in achieving food security and improved nutrition, ensuring that their right to food is met, including by

supporting rural women's participation in all areas of economic activity, including commercial and artisan fisheries and aquaculture, promoting decent working conditions and personal security, facilitating sustainable access to and use of critical rural infrastructure, land, water and natural resources, and local, regional and global markets, and valuing rural women's, including indigenous women's, traditional and ancestral knowledge and contributions to the conservation and sustainable use of terrestrial and marine biodiversity, for present and future generations.⁴

This conclusion notes the importance of indigenous women's participation in the process of formulating projects, programmes and policies aimed at achieving food security and better nutrition not only because it is their right but also because their contributions are relevant and relate to concrete realities. It is also necessary in this regard to envisage that, once they are included in all economic sectors, technical support will be essential to ensure a positive impact on their standard of living. While it is therefore important to implement a strategy of knowledge transfer and tool handling for the economic activity being taken up there should above all be a sustainable approach that guarantees financial incomes that will actually empower women.

The following was also included within the recommendations for economic and social policies to empower all rural women and girls:

Promote and protect the rights of indigenous women and girls living in rural and remote areas by addressing the multiple and intersecting forms of discrimination and barriers they face, including violence, ensuring access to quality and inclusive education, health care, public services, economic resources, including land and natural resources, and women's access to decent work, and promoting their meaningful participation in the economy and in decision-making processes at all levels and in all areas, while respecting and protecting their traditional and ancestral knowledge, and noting the importance of the United Nations Declaration on the Rights of Indigenous Peoples for indigenous women and girls.⁵

Last but not least, this recommendation lays the foundations for guaranteeing the individual and collective rights of rural indigenous women and girls by seeking to align the decision-making of Member States' representatives and UN bodies with regard to legislation so that it results in public policies that are in line with the UN Declaration on the Rights of Indigenous Peoples.

Challenges in implementing the resolutions

Whether the States are really committed or not will be seen in the extent to which they implement the resolution. Different UN resolutions have been approved by States but many of them remain no more than paper commitments. The main challenge lies in ensuring that States have the political will to implement the resolution nationally and this is something that will be seen specifically in relation to public policies, programme development, institutional harmonisation along the lines suggested in the recommendations and the allocation of the necessary and appropriate resources.

One proposal is for more indigenous women to be included in the government delegations participating in the CSW, as well as in the UN Permanent Forum on Indigenous Issues, in order to improve political advocacy. This is very important in terms of ensuring that the recommendations of both mechanisms are coordinated and that their implementation is realised through public policies. Such complementary coordination and harmony has yet to be achieved.

Notes and references

1. See Foro Internacional De Mujeres Indigenas, "Political Statement by the International Indigenous Women's Forum to the 62nd session of the Commission on the Status of Women" at <http://bit.ly/2SLf6wO>
2. 2018 Agreed Conclusions of the Commission on the Status of Women, p1.
3. Ibid, p6.
4. Ibid, p11.
5. Ibid, p17.

*Article written by the **International Indigenous Women's Forum (IIWF/ FIMI)***

THE SUSTAINABLE DEVELOPMENT GOALS AND INDIGENOUS PEOPLES

Indigenous Peoples have been engaging in the global processes relating to sustainable development since the Rio Summit on Development in 1992, and during the process of negotiations which led to the 2030 Agenda for Sustainable Development, known as the Sustainable Development Goals (SDGs), which was adopted in 2015. This global agreement, which calls for “leaving no one behind”, is for implementation at the local and national levels. Further, there are national, regional and global review processes which track progress and document challenges in its implementation.

The High-level Political Forum (HLPF) is the main United Nations platform on sustainable development and it has a central role in the follow-up and review of the SDGs at the global level. The Forum meets annually under the auspices of the Economic and Social Council for eight days, including a three-day ministerial segment and every four years with Heads of State and Government under the auspices of the General Assembly for two days.

The main engagement mechanism for the engagement of indigenous peoples is the Indigenous Peoples’ Major Group (IPMG). Through the sustained engagement of the IPMG, there are significant advances in the inclusion of indigenous peoples in the related global Declarations, regional and national reports, though much is yet to be done to ensure the respect, recognition and realisation of the rights of indigenous peoples, their contributions and aspirations and self-determined development.

HLPF 2018: Raising the visibility of indigenous peoples

HLPF on the SDGs Held in New York in July 2018 was: Transformation towards sustainable and resilient societies. Forty-six countries presented their Voluntary National Reviews (VNR) of which 12 have indigenous peoples.¹ The HLPF also reviewed the implementation of six out of the 17 SDGs: Water and sanitation for all (SDG 6); sustainable and modern energy for all (SDG 7); cities and human settlements (SDG 11); sustainable consumption and production patterns (SDG 12); sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss (SDG 15); and global partnership for sustainable development (SDG 17).²

The Indigenous Peoples Major Group for Sustainable Development (IPMG) coordinated the participation of 47 indigenous representatives (29 women and 18 men) from 25 countries to the 2018 HLPF. Indigenous representatives were able to read the IPMG statements for the six focus SDGs during the plenary sessions, while one representative was a discussant on the session on Goal 7 (modern energy for all). Further, three indigenous representatives from Mexico, Paraguay, and Colombia presented the joint Major Groups intervention during the VNR of their respective countries.

Indigenous peoples from seven countries (Lao PDR, Vietnam, Mali, Colombia, Peru, Ecuador and Paraguay) also prepared their reports with concrete recommendations for the meaningful inclusion of indigenous in SDG national plans and strategies including the respect and protection of their rights, aspirations and wellbeing. The IPMG in collaboration with others also published and distributed Policy Briefing papers on two SDGs: SDG 15 on Conservation of Forest and Biodiversity and Goal 7 (Modern Energy for all). Further, the IPMG also coordinated the preparation of five regional reports on Indigenous Peoples' Lands, Territories and Resources and Sustainable Development, from Asia, North America, Pacific, Russia and Latin America.³

As part of raising the visibility of Indigenous Peoples, the indigenous media zone was set-up with 12 brief panel discussions by indigenous leaders, UN agencies, advocates and government (Canada) speaking on the conditions, challenges, aspirations, gaps, recommendations and initiatives of indigenous peoples relating to sustainable de-

velopment. These discussion events were put on social media (Facebook live streaming), gaining more than 100,000 views. Likewise, one side event was co-organized by the IPMG on the Status of Indigenous Peoples' Lands, Territories and resources and Sustainable Development wherein the regional reports prepared by indigenous peoples on this critical issue were presented. Indigenous leaders were also speakers in three side events organised by other organisations and institutions and the press conference organised by the UNPF secretariat. A learning session on leaving no one behind: Sharing major groups and other stakeholders good practices for an inclusive implementation of the 2030 agenda was also co-organised by the IPMG with different institutions: including the Office of the High Commissioner on Human Rights, the Danish Institute for Human Rights, Plan International, and the Global Platform for the Right to the City.

During the high level briefing to Member States and the launch of policy briefs on SDG 7 and its interlinkages with other SDGs, the IPMG delivered a statement emphasising that the implementation of Goal 7 (modern energy for all) should be guided by clear policies on the respect and protection of human rights, ensure equitable benefits for communities, and mechanisms for participation and inclusion of indigenous peoples and marginalised groups in the planning (including decision-making), implementation and monitoring of them. The representative from Denmark appreciated the statement and recommended for the inclusion of human rights in the implementation of SDG 7.

Launching of the Right Energy Partnership

Based on the report prepared by the IPMG on Indigenous Peoples and Renewable Energy, a concept note on the establishment of the Right Energy Partnership was prepared and circulated to indigenous organisations and key potential partners from May to July 2018. This initiative was successfully launched on the side of the HLPF in New York in cooperation with the European Commission. This event was attended by more than 60 participants, and several institutions expressed their support to this initiative including the European Commission (EC), The UN Development Programme (UNDP), the UN Environment Programme (UNEP), the International Fund for Agricultural Development (IFAD), the Climate Justice and Resilience Fund, the Danish Institute for Human

Rights (DIHR), the Business and Human Rights Resource Center, the Columbia Center for Sustainable Investment, and Jeffrey Sachs of the Sustainable Development Solutions Network, among others.

The Right Energy Partnership (REP) is an open multi-stakeholder partnership led by indigenous peoples. It is underpinned by a rights-based approach to renewable energy development, indigenous women and community empowerment, and equitable benefit-sharing. It aims to deliver renewable energy to 50 million indigenous peoples across the globe by 2030. This Partnership provides a win-win solution for people and the planet through its contributions to achieving sustainable development that integrates actions to combat climate change (Goal 10), end poverty and hunger (SDG 1 & 2); empowerment of women (Goal 5), economic growth and decent work (Goal 8) protection of forest and biodiversity (Goal 15) in addition to access to modern energy (Goal 7) among other multiple benefits.

Outcomes of the HLPF relating to indigenous peoples

Through the engagement of indigenous peoples, and by gaining support from states and development actors at different levels of the SDG processes (national, regional and global), key UN documents on the SDGs have increased reference to indigenous peoples and relevant concerns.

The Ministerial Declaration of the HLPF 2018 which is the key outcome document of the HLPF includes the following paragraph, which is particularly relevant for indigenous peoples:⁴

Leaving no one behind requires addressing the specific needs of people in vulnerable situations but also supporting their empowerment and participation in decision-making that affects their lives. Those whose needs are reflected in the 2030 Agenda include [...] indigenous peoples. Emphasize that universal respect for human rights and human dignity, peace, justice, equality and non-discrimination is central to our commitment to leaving no one behind. Our commitment also includes respect for race, ethnicity and cultural diversity, and equal opportunity, permitting the full realization of human potential and contributing to shared prosperity.

Likewise, the UN Economic and Social Council (ECOSOC) President's Summary of the 2018 HLPF on Sustainable Development also included highly significant and critical references to indigenous peoples. The relevant findings and recommendations were:

- To strengthen collaboration at the bilateral, regional and global levels for capacity-building and sharing of best practices for collecting, producing, disseminating, analysing and using quality data and statistics, disaggregated by income, sex, age, race, ethnicity, migration status, disability, geographical location and other characteristics relevant in national contexts.
- Strengthening statistics on vulnerable groups such as women, children and youth, aging, indigenous peoples, and persons with disabilities will require more and better data, as well as improved use of existing data. Data should therefore be accessible and readable by policy makers. It is important to consider cultural differences, contexts and starting points, embrace innovation and organization, and ensure legislative access.
- Indigenous peoples are also disproportionately suffering from a lack of recognition of their rights in some countries, and meaningful consultations are often the exception rather than the rule.
- Certain populations remain at high risk of being left behind, including women and girls, children and youth, aging, indigenous peoples, and persons with disabilities.
- Strengthening of global partnerships that address the challenges of LDCs, LLDCs and MICs to benefit all persons—particularly children and youth, aging, women, older persons, persons with disabilities, indigenous peoples, and migrants.
- Synergies between modern and indigenous knowledge are important, and interdisciplinary science should incorporate indigenous knowledge more fully. Mobilizing STI to reach those furthest behind requires better identification of people at risk, in order to understand their needs. IT infrastructure can help to increase connectivity and reach isolated areas.
- Emphasized the role of local governments, local communities and indigenous people in water resources management.
- All countries referred to the importance of multi-stakeholder engagement and the need to include women, ethnic minorities, elderly people, people with disabilities, and indigenous peoples.

- To ensure that custodians of terrestrial ecosystems were not forgotten in the implementation of SDG 15, and stressed the need to empower rural women, respect the rights and knowledge of indigenous peoples, and engage youth and other excluded or marginalised groups in the context of policy planning and implementation, to increase the sustainable management of resources and ensure sustainable livelihoods. Governments were called upon to better monitor, assess and ensure sustainable livelihoods.

Reference to Indigenous Peoples in the Voluntary National Reviews (VNR)⁵

Several Country reports mentioned that indigenous peoples are part of those who are being left behind. This includes the countries of Canada, Paraguay, Ecuador, Mexico, Paraguay, Vietnam (as Ethnic Minorities) and Australia.

- Canada acknowledges the inequitable and unfair treatment of indigenous peoples and commits to develop, in full partnership with First Nations, Inuit and Métis to better align laws and policies with the UN Declaration on the Rights of Indigenous Peoples in the implementation of a Right Framework to the SDGs. It also commits to undertake actions to improve primary and secondary education on reserves.
- Paraguay claims to be in the process of developing a National Plan for Indigenous Peoples (Plan Nacional de Pueblos Indígenas), based on several rounds of consultations with indigenous communities.
- Ecuador highlights the need to provide incentives to indigenous peoples who voluntarily commit themselves to food production, conservation and the protection of native forests, thereby protecting ecosystems important for biodiversity and food security.
- Mexico acknowledges that over 70% of indigenous peoples are considered either poor or extremely poor. It provided details on several measures taken to improve their situation, for instance through the Indigenous Infrastructure Program
- Vietnam stated that disaggregated data on ethnic minorities allowed it to identify vulnerable sub-groups requiring policy action.
- Australia stated that its government is committed to recognising

Aboriginal and Torres Strait Islander peoples in their Constitution and highlights that all 17 SDGs are significant for these communities. Indigenous procurement policies were put in place to help support and grow Aboriginal and Torres Strait Islander businesses around the country and promote economic inclusion and resilience in disadvantaged communities.

Progress, gaps and continuing challenges

While there were significant advances in making indigenous peoples more visible based on the outcomes of the HLPF 2018 as evidenced above, serious gaps remain in the meaningful and substantive inclusion of indigenous peoples in the SDGs. While there is increasing acknowledgement of indigenous peoples as part of those left behind and more commitments were made to ensure inclusion of indigenous peoples, these are still to be translated into concrete actions, measures and specific and targeted programmes to address the barriers, root causes, needs and priorities of indigenous peoples in line with the recognition, protection and realisation of their rights, their self-determined development and wellbeing. Further, the contributions of indigenous peoples to sustainable development are also not fully acknowledged and enhanced.

The recognition and protection of the right of indigenous peoples to their lands, territories and resources as imperative to achieving the SDGs remain a central concern as land dispossession and destruction are taking place, and conflicts are escalating, including the killing and criminalisation of indigenous human rights defenders. Further, most of the national action plans and strategies of countries with indigenous peoples are designed and implemented without the meaningful participation of indigenous peoples. Thereby, their needs, priorities and perspectives are not incorporated, and they continue to face the serious risk of not only being left behind, but also pushed behind due to proposed ambitious plans for economic growth and development that are not anchored on human rights protection.

It is thereby necessary for indigenous peoples to intensify their capacity building efforts to promote and protect their rights and wellbeing; increase solidarity, collaboration and partnerships with other rights

holders and development actors; and strengthen indigenous movements at all levels to advance their self-determined development. Further, it is also critical at this juncture to gather and consolidate in one unified global platform the engagement of indigenous peoples in different processes including climate change, biodiversity and human rights to ensure complementarity, synergies and concerted actions in these interrelated processes.⁶

Notes and references

1. See the VNR Synthesis Compilation. Available at: <http://bit.ly/2IJM2lx>
2. See the President's Summary of the 2018 High-Level Political Forum on Sustainable Development. Available at: <http://bit.ly/2IUvbfI>
3. See the Statements and Publications of the IPMG for the HLPF-2018 at <http://bit.ly/2IMwTQk>
4. See the Ministerial Declaration of the HLPF-2018 at <http://bit.ly/2IGAxLt>
5. See the Synthesis of Main Messages submitted by the countries conducting voluntary national reviews at the 2018 High-level Political Forum on Sustainable Development at <http://bit.ly/2IJON81>
6. Further information on the Indigenous Peoples' and the SDGs can be found in the website of the IPMG. Available at: <http://bit.ly/2IJN3tR>

UNITED NATIONS 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.¹

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 2018, the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, continued to carry out work within her four principal work areas. These are the promotion of good practices; responding to specific cases of alleged human rights violations; conducting country assessments; and undertaking two thematic studies.

Thematic report on attacks against and criminalization of indigenous rights defenders

The first thematic report presented to the HRC in 2018 addresses the situation of attacks against and the criminalisation of indigenous human rights defenders and the availability of prevention and protection measures.² The report documents a worrying escalation in the criminalisation and harassment of indigenous peoples, in particular when they are defending and exercising their rights to their lands, territories and natural resources. Human rights violations often arise when indigenous leaders and community members voice concerns over large-scale projects related to extractive industries, agribusiness, infrastructure, hydroelectric dams and logging which are undertaken on their lands, territories and resources without consultations or their free, prior and informed consent (FPIC). The report assesses the root causes and drivers of the current situation, which has been termed a “global crisis”, maps global trends and provides country examples of cases of violence, attacks, criminalisation and harassment of indigenous peoples who defend their rights.

In the report’s conclusions and recommendations, the Special Rapporteur calls for a zero-tolerance approach to violence and killings of indigenous human rights defenders as well as prompt and impartial investigations of attacks. Combatting criminalisation requires a comprehensive review of national laws and the revocation of legislation and criminal procedures that violate the principle of legality and contradict international obligations. Provisions that criminalise the freedom of expression and assembly and indigenous livelihoods such as rotational agriculture, hunting and gathering, should be repealed. Private companies have a responsibility to exert human rights due diligence in all operations, perform ongoing human rights impact assessments for all projects with the full participation of affected indigenous communities, and cease acts of defamation which stigmatise indigenous peoples.

The international community, international financial institutions (IFIs) and donors must require safeguards that are consistent with human rights obligations and monitor compliance thereof. Protection measures for indigenous peoples need to be culturally appropriate, consider gender aspects and be developed jointly with the communities concerned. Support for community-led protection measures should be prioritised.

The findings in the report are based on consultations with indigenous peoples' representatives and more than 70 written submissions from indigenous and human rights organisations and other stakeholders. The Special Rapporteur continues to monitor the situation through her reports, communications as well as engagement in a global campaign to ensure constant focus to the risks that indigenous peoples face.

In the middle of the preparation of the report, the topic of "criminalisation of indigenous peoples" became personal for the Special Rapporteur. In retaliation for having raised concerns over the escalating violence in the Philippines, in February 2018, she was mentioned together with some 30 other known advocates for indigenous peoples' rights and around 600 people in total, in a petition filed by the Department of Justice, *de facto* alleging them of being terrorists and members of the New People's Army and the Communist Party of the Philippines. There was a global outcry against the petition and the Special Rapporteur received support from indigenous peoples, United Nations agencies and governments across the world. On 27 July 2018, the Regional Trial Court of Manila declared the Special Rapporteur as a non-party to the petition.

Thematic report on indigenous peoples and self-governance

In October 2018, the Special Rapporteur presented her second report of 2018 to the 73rd session of the Third Committee of the UNGA.³ The report provides an introductory comment on the theme "indigenous peoples and self-governance", a subject that the Special Rapporteur is looking further into in her thematic studies in 2019. Indigenous governance systems have proven resilient for centuries despite colonisation, attacks and attempts to undermine them in the name of nation building. Still today, these systems, which often include customary laws, dispute res-

olution and adjudicative mechanisms, are essential in ensuring the well-being and rights of indigenous peoples, in particular to self-determination and self-identified development. The report provides an initial overview of the international legal framework on the right to autonomy and self-government of indigenous peoples and then reviews some concrete examples of the broad diversity of indigenous governance systems that exist across the world.

In light of the 2030 Agenda for Sustainable Development, the report discusses the contribution of indigenous peoples' self-governance systems to development outcomes, including to conflict reduction, climate adaptation and mitigation measures, conservation, culturally appropriate social services and health care, economic progress and other development outcomes. Mounting evidence indicates that development programmes that maximize indigenous peoples' ability to participate in decision-making and implementation perform better than those controlled by external actors. The report highlights that self-determined development can only be achieved by guaranteeing the effective involvement of indigenous peoples in the implementation of the 2030 Sustainable Development Goals.

Country visits

The Special Rapporteur carried out two country visits in 2018 to Guatemala and to Ecuador. She submitted her report on the Guatemala visit to the 39th session of the HRC in September 2018, while the report from her visit to Ecuador will be presented to the 42nd session of the HRC in September 2019.

The Special Rapporteur conducted her visit to Guatemala from 1 to 10 May 2018.⁴ During the visit, she witnessed how indigenous peoples continue to face structural racism and lack of access to justice, political participation, education, health care and formal employment. This despite the fact that indigenous peoples constitute the majority of the population. The levels of inequality are increasing and around 40% of indigenous peoples still live in extreme poverty. More than half of all indigenous children in Guatemala are malnourished.

The report looked into the root causes of this situation, which include impunity, corruption, institutional weakness and the legacy of violence from the internal armed conflict from 1960 to 1996. The failure to

implement the Peace Agreements since the conflict has undermined progress in many areas, including land reform, recognition of indigenous authorities and access to justice, political participation and bilingual intercultural education. The Special Rapporteur noted as a particular concern the lack of protection and legislation on the rights of indigenous peoples to lands, territories and natural resources. She expressed deep concern over the resurgence of violence, attacks, forced evictions and the criminalisation of indigenous peoples who defend their rights.

From 19 to 29 November 2018, the Special Rapporteur conducted a visit to Ecuador. In her end-of-mission statement,⁵ she concluded that Ecuador's Constitution of 2008 provides a basis to build a plurinational and intercultural state, but that more needs to be done to ensure that indigenous peoples' rights come before resource extraction and short-term economic gains. While she welcomed the dialogue that the new government has initiated with indigenous peoples and initial results, in particular related to intercultural, bilingual education, the Special Rapporteur called for priority to be given to the structural problems affecting the rights of indigenous peoples in the country. These include first and foremost the protection of their rights to lands, territories and resources, adequate consultation and FPIC, especially in light of extractive, agribusiness and investment projects, and harmonisation of the indigenous and ordinary justice systems. The Special Rapporteur also assessed the specific situation of indigenous peoples with small populations; indigenous peoples near the northern border, in voluntary isolation, in regard to their initial contact and indigenous women.

During the remaining time of her mandate, the Special Rapporteur will make special efforts to seek invitations to conduct country visits in the regions of Africa and Asia.

Communications

The Special Rapporteur continued examining cases of alleged violations of the human rights of indigenous peoples and addressed the concerned countries and other private actors through the communications procedure, either independently or jointly with other special procedures. Cases addressed are included in the special procedures' joint communications report, which is submitted to each HRC session.⁶ In 2018, the mandate issued 55 communications to more than 20 differ-

ent countries as well as to other entities, such as private corporations and inter-governmental organisations.

During 2018, the Special Rapporteur also issued press releases⁷ on a range of different topics, including indigenous migrant children in detention in the United States of America, the landmark environmental Escazu treaty from Latin America and Caribbean, a court ruling recognising the Ixil Mayans as victims of genocide in Guatemala, the conviction of seven persons involved in the murder of Berta Cáceres in Honduras, the Local Communities and Indigenous Peoples' Platform in the implementation of the Paris Agreement on climate change and several specific cases of killings, violence and criminalisation of indigenous individuals and communities defending their rights.

Some of the communications and press releases had immediate impact. In January 2018 for instance, the Special Rapporteur together with other special procedures issued a press release to draw attention to violations against the Sengwer in relation to a major climate change project in the Embobut forest in Kenya. Within 48 hours, the European Commission, which was funding the project, decided to suspend the entire climate change project pending a human rights assessment. The Special Rapporteur continues to monitor the situation of the Sengwer.

Collaboration with other specialized UN bodies and regional human rights bodies

In line with her mandate, the Special Rapporteur collaborated with the UN Permanent Forum on Indigenous Peoples (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and participated in the annual sessions and coordination meetings of both bodies. During their sessions, the Special Rapporteur also held bilateral meetings with more than 35 delegations of indigenous peoples and with interested Governments to discuss issues within the scope of her mandate.

She further participated in several UN expert group meetings, including the expert group meeting of the UN Department of Economic and Social Affairs on the topic of "Sustainable Development in the territories of indigenous peoples" in January 2018 and the expert group meeting of the Special Rapporteur in the field of cultural rights on "Strengthening the Cultural Rights Approach to the Universality of Hu-

man Rights” in February 2018.

The Special Rapporteur considers it important to strengthen the coordination with regional human rights bodies, as well as the UN human rights treaty bodies and other mandate holders of the special procedures. In terms of cooperation with other special procedures, the Special Rapporteur issued joint communication and press releases and attended the annual meeting of special procedures. She continued prioritising collaboration with the Inter-American Commission on Human Rights (IACHR), which included presenting a report to the HRC on the situation of indigenous peoples in isolation and recent contact, following a joint meeting with the IACHR and the Regional OHCHR Office for South America in 2017.⁸

The Special Rapporteur has also pursued her engagement with UN agencies and funds to promote the respect for the rights of indigenous peoples in their areas of work. In particular, she focused on drawing attention to the rights of indigenous peoples in the framework of the 2030 Agenda for Sustainable Development. With this in mind, she attended the 2018 High Level Political Forum (HLPF) in New York, where she participated in the national voluntary reviews and spoke on the panel on “Leaving no one behind” to emphasise the importance of respecting indigenous peoples’ rights and ensuring their participation in the context of sustainable development. During the HLPF, the Special Rapporteur also spoke at several events organised by UN agencies, amongst them by the UN Environment Programme (UNEP) and the UN Development Programme (UNDP).

Other activities

In 2018, the Special Rapporteur undertook several academic country visits. In October 2018, she visited Cambodia to speak at a conference on “Indigenous Peoples and the Business Sector” at the Royal University of Law and Economics (RULE). She furthermore engaged with various ministries to discuss the collective land titling process in Cambodia. Later in the year, the Special Rapporteur made a working visit to Mexico, where she presented the findings from her 2017 country visit report. She also conducted an academic visit to Colombia to deliver a lecture at the National University of Colombia.

The Special Rapporteur is mandated to pay particular attention to

the rights of indigenous women in her work. Apart from specific observations and recommendations in her country reports, she participated at the 3rd International Indigenous Women's Symposium on Environment and Reproductive Health at the University of Columbia and delivered a keynote speech at the 4th Conference of the Asian Indigenous Women's Network in Bangkok.

The Special Rapporteur continued to be an advocate for indigenous peoples' rights in the context of climate change and conservation projects. This involved her engagement in ongoing awareness raising as well as her attendance amongst others at the 24th Conference of the Parties to the United Nations Convention on Climate Change in Poland and the California Climate Summit.

In September 2018 she spoke at the conference organised by IWGIA titled: "Defending the defenders: new alliances for protecting indigenous peoples' rights". In December 2018, she participated at the Annual Forum of the International Commission of Jurists, held in Bangkok on the topic of indigenous and other traditional or customary justice systems in Asia.

In 2019, the Special Rapporteur will continue to prioritise advocacy for the protection of indigenous human rights defenders. In her thematic work, she will focus on indigenous peoples and self-government, as well as indigenous peoples' access to justice and the harmonisation of indigenous and ordinary justice systems.

The Special Rapporteur has established a website where, in addition to the mandate page of OHCHR,⁹ her reports, statements and other activities can be accessed at: www.unsrvtaulicorpuz.org.

Notes and references

1. See OHCHR, "Mandate of the Special Rapporteur on the rights of indigenous peoples" at <http://bit.ly/2IEkqOH>
2. A/HRC/39/17, see <http://bit.ly/2SBCL3A>
3. A/73/176, see <http://bit.ly/2IHdVuo>
4. A/HRC/39/17/Add.3, see <http://bit.ly/2IHe9Sg>
5. See OHCHR, "End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz on her visit to Ecuador" at <http://bit.ly/2IHepRe>
6. See OHCHR, "Special communications report" at <http://bit.ly/2IFrMS6>
7. See OHCHR News Search, at <http://bit.ly/2IPu68W>

8. A/HRC/39/17/Add.1, see <http://bit.ly/2SBCL3A>
9. See OHCHR, "Special Rapporteur on the rights of indigenous peoples" at <http://bit.ly/2IDXu27>

Christine Evans and **Julia Raavad** 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. Contact: indigenous@ohchr.org

THE WORK OF THE 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.

This article contains a non-exhaustive overview of the main activities of the treaty bodies in relation to indigenous peoples' rights, with a specific focus on the work of five treaty bodies: the CERD, the Committee on Economic, Social and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Elimination of Discrimination against Women (CEDAW) and the CRC.¹

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 2018, the committees formulated a large number of observations highlighting threats, acts of violence and other grave abuses faced by indigenous peoples; lands dispossession, absence of consultation and denial of the right to free and prior informed consent (FPIC); intersectional discrimination faced by indigenous women and children; as well as discrimination in accessing employment, education, health services and justice. 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 rights to own, use, develop and control their lands, territories and resources and to FPIC. A number of state parties² were encouraged to ratify ILO 169 while a number of others were referred to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The Committee on the Elimination of Racial Discrimination

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 the multiple violations faced by indigenous peoples in particular in relation to their rights to: self-identification (Japan, Nepal)³, non-discrimination (Sweden, Honduras, Peru, Japan)⁴, participation (Peru, Nepal), representation (Honduras, Japan), land ownership (Nepal, Sweden, Japan, Peru, Honduras, Norway⁵) and FPIC (Sweden, Peru, Honduras). The CERD also expressed concerns in relation to: poverty and gaps in living standards (Honduras, Japan), forced labour (Peru) intersectional discrimination faced by indigenous women (Peru, Honduras Japan) as well as limited access to: justice (Honduras, Peru), health-care services (Honduras, Peru, China⁶, Japan), employment (Japan, Peru) and education (Honduras, Peru, Japan). The CERD also highlighted acts of violence and harassment (Honduras, Peru, Nepal). In particular, violence against indigenous women (Norway, Peru, Japan), as well as torture, ill

treatment and arbitrary detention of ethnic minorities (China). Finally, it noted the negative impact of development projects (Peru, Honduras, Nepal) including the threat they pose to the survival of indigenous peoples in voluntary isolation or initial contact in Peru.

Drawing on its General Recommendation No. 23 on the rights of indigenous peoples,⁷ the CERD made extensive recommendations addressing indigenous rights. The Committee notably called upon Japan to recognize the Ryukyu as indigenous peoples, Nepal to ensure the formal recognition of all indigenous peoples in its national legislation and Norway to facilitate the adoption of the Nordic Sámi Convention. The CERD recommended to adopt measures or affirmative actions to combat racial discrimination (Peru, Honduras, Sweden), poverty and discrimination in employment (Peru, Honduras, Japan), repeal laws that criminalize aspects of indigenous cultures, prosecute hate crimes against Sámi people (Sweden) as well as cases of labour exploitation and forced labour (Peru, Honduras). The Committee further called upon state parties to ensure access to health-care services (Japan, Honduras) and education (Japan, Nepal, Peru, Honduras) notably via the elaboration of an intercultural curriculum in Honduras or via intercultural bilingual education in Peru. The Committee advised Honduras and Peru to guarantee indigenous participation in public administration, China to ensure political representation of persons belonging to all ethnic groups, Japan to increase Ainu representation in consultative bodies and Nepal to respect the rights of indigenous peoples to freely choose their representatives and participate in government bodies.

State parties were recommended to ensure access to justice notably by increasing the number of interpreters and by providing free legal assistance (Peru, Honduras) and training judges and law enforcement officers on cultural knowledge of Sámi communities (Norway). Peru and Honduras were encouraged to eliminate the intersectional discrimination faced by indigenous women, Japan and Norway to protect indigenous women from violence and Peru to ensure the investigation of forced sterilization of indigenous women. The CERD further recommended to prevent, investigate and prosecute perpetrators of attempted killings, acts of violence and threats committed against indigenous leaders (Peru, Honduras, Nepal) and of custodial deaths, acts of torture and ill-treatment and harassment against members of ethnic minorities (China).

With respect to land rights, Nepal was recommended to resolve

dispute over indigenous traditional lands including by revising its legislation, Honduras and Peru to ensure legal recognition and protection of the rights of indigenous peoples to own their lands and territories and Japan to adopt measures to protect Ainu land rights. The Committee additionally recommended Sweden to draw up legislation to further protect the land rights of Sámi people and Norway to improve its legal framework on Sámi land, fishing and reindeer rights. Peru was urged to expedite the establishment of indigenous reserves and to adopt measures for ensuring the physical and cultural survival of indigenous peoples in voluntary isolation or initial contact. Peru and Honduras were advised to establish a mechanism for filing land claims and for land restitution, Nepal to provide remedies to peoples affected by eviction and Honduras to give full effect to the judgments of the Inter-American Court of Human Rights.⁸ The Committee called upon Peru, Nepal and Honduras to obtain the FPIC of indigenous peoples prior to the approval of any project or legislative/administrative measure affecting their rights. Sweden was requested to enshrine the right to FPIC into law and Honduras to carry out a review of its bill on prior consultation to be in line with international standards. Peru and Honduras, finally, were recommended to conduct environmental and social impact assessments (ESIAs) prior to development projects as well as to ensure compensation and benefits participation.

Under its Urgent Action Early Warning procedures,⁹ the CERD considered a number of indigenous rights-related cases in Australia¹⁰, Canada¹¹, Chile¹², French Guiana¹³, Guyana¹⁴, Papua New Guinea¹⁵, the Philippines¹⁶ and the United States of America¹⁷.

The Committee on Economic, Social and Cultural Rights (CESCR)

The CESCR continued to make extensive reference to indigenous rights and notably underlined the absence of constitutional recognition of the Treaty of Waitangi in New Zealand¹⁸ and of constitutional and legislative recognition of indigenous peoples in Bangladesh¹⁹. The Committee also underscored threats and acts of violence (Argentina²⁰), gender-based violence (New Zealand), poverty (Mexico, Central African Republic (CAR))²¹, discrimination (South Africa²², CAR, Mexico, New Zealand), difficulties in accessing employment (New Zealand, Mexico, CAR), health

care services (CAR, New Zealand), education (Mexico, New Zealand, CAR), education in indigenous languages (New Zealand, Bangladesh, South Africa) and identity documents (CAR). The CESCR further highlighted the absence of indigenous participation in decision-making processes or political affairs (New Zealand, Bangladesh, CAR), failure to protect indigenous languages (Argentina, South Africa) and to promote cultural diversity (Mexico, Niger, Mali)²³. In relation to land rights, the Committee expressed concerns about unresolved land disputes (Bangladesh), difficulties in obtaining lands (CAR), failure to demarcate indigenous lands (Argentina, Mexico), the absence of mechanisms to title indigenous lands (Argentina), evictions or expropriation (Argentina, Bangladesh), the clearing of protected forests (Argentina), the negative impact of economic projects (Mexico), as well as denial of the right to FPIC (Bangladesh, Argentina, Mexico).

The Committee formulated a number of recommendations covering the economic, social and cultural rights of indigenous peoples and notably called upon Bangladesh to enact a law recognizing and protecting the rights of indigenous peoples, CAR to adopt a national strategy to promote and protect the rights of indigenous populations favouring the implementation of the UNDRIP, New Zealand to implement the recommendations of the Waitangi tribunal and to bring domestic legislation and policy in line with the provisions of the UNDRIP and Bangladesh to intensify its efforts to implement the Chittagong Hill Tracts Peace Accord. State parties were invited to combat discrimination (CAR, Mexico, South Africa, New Zealand) notably via the introduction of a strategy to ensure that the nature and impact of unconscious bias towards Maori peoples is understood by governance bodies and employees in New Zealand. South Africa, Bangladesh and New Zealand were also advised to implement or set up mechanisms to ensure indigenous representation and participation in all decision-making processes affecting their rights.

The CESCR further recommended to improve or guarantee access to health care (Mexico, New Zealand, CAR, Niger), employment (Mexico, New Zealand), identity documents (CAR) and to eradicate slavery among indigenous populations (CAR). The Committee called upon CAR, Niger and Mexico to ensure access to education, notably via education in indigenous languages (Niger, Mexico, New Zealand, Bangladesh), culturally appropriate education curricula (New Zealand, South Africa, Niger) and intercultural bilingual education (Argentina), to protect/pro-

mote cultural rights and heritage (Argentina, Mali, Niger, Mexico) as well as to preserve indigenous languages (Argentina, New Zealand). Argentina was requested to combat impunity and identify state agents responsible for acts of violence, CAR to strengthen the protection of indigenous populations in the framework of the conflict and New Zealand to protect victims of gender-based violence as well as to investigate claims of abuse of children in state care.

In relation to land rights, the CESCR called upon Mexico to legally recognize the right to land ownership, Argentina and Mexico to complete the demarcation of indigenous lands and Argentina to secure land tenure and community lands. Drawing on its General comment No. 24 (2017) on state obligations in the context of business activities, the Committee recommended Argentina, New Zealand and Mexico to undertake human rights and environmental impact assessments before exploration or development projects. Argentina was recommended to relocate non-indigenous families settled in Lhaka Honat community, Mexico to ensure restitution of lands occupied by non-indigenous persons and Bangladesh to provide remedial mechanisms for land deprivation and land-dispute applications. The Committee further called upon Argentina, Bangladesh, Mexico and New Zealand to ensure or obtain the FPIC of indigenous peoples before developing projects or granting concessions, in accordance with ILO Convention 169 and the UNDRIP (Mexico).

The Human Rights Committee

The HRC continued to address the violations faced by indigenous peoples in relation to Articles 1, 2, 14, 25, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR). The Committee expressed concerns regarding discrimination faced by indigenous peoples (Norway, Algeria, El Salvador)²⁴, arbitrary arrests and detentions (Lao²⁵), acts of violence (Guatemala²⁶, El Salvador), violence against Sámi women (Norway), forced evictions and relocations (Guatemala²⁷, Lao). The HRC further underlined lack of consultation (Guatemala, Belize²⁸, Lao); the absence of consultation mechanisms to facilitate indigenous peoples' participation in decision-making processes (El Salvador); the absence of legal recognition and implementation of the right to FPIC as well as the absence of a legislative framework ensuring Sámi land rights, in-

cluding fishing and reindeer husbandry (Norway); and the lack of recognition of customary land tenure of Maya peoples (Belize) and of the right of indigenous peoples to acquire land titles (El Salvador).

The Committee formulated a number of recommendations related to the protection of the civil and political rights of indigenous peoples and notably called upon El Salvador to protect the rights of indigenous peoples, Norway to adopt the Nordic Sámi Convention and combat discriminatory attitudes and practices towards Sámi peoples, and Algeria and El Salvador to adopt legislation against discrimination towards indigenous peoples. Both Guatemala and El Salvador were advised to increase indigenous representation in political and public life. The HRC also recommended strengthening institutions protecting the rights of indigenous persons including women (Guatemala), combat violence against women and girls and launch a new national plan of action to eliminate violence against women and girls (Norway). El Salvador and Guatemala were recommended to adopt special legislative measures or public policy for the protection of indigenous rights defenders victims of acts of violence and threats and ensure prosecution of perpetrators and redress to victims. Lao was requested to cease the persecution of the Hmong, ensure prosecution of perpetrators and provide redress to victims and their families. Belize was invited to comply with the Caribbean Court of Justice' Consent Order calling for the recognition and protection of the customary land tenure of Maya peoples, El Salvador to adopt a legislation on the granting of land titles and Norway to enhance the legal framework on Sámi land, fishing and reindeer rights and ensure the legal recognition of fishing rights. The HRC called upon Norway, Guatemala, Belize and Lao to ensure consultation with indigenous peoples with a view to obtaining their FPIC for development projects that have an impact on their livelihood, lifestyle and culture (Lao), before concluding concession agreements (Belize) or taking measures affecting their way of life and culture (Guatemala). Norway was requested to adopt a law for consultation with a view to obtaining FPIC, El Salvador to create a national consultation mechanism to safeguard the exercise of the right to FPIC and Guatemala to amend laws impeding the exercise of the right to FPIC.

Under article 5(4) of its Optional Protocol, the HRC adopted views²⁹ on complaints submitted by the President of the Sámi Parliament of Finland³⁰ and by twenty-five members of the Sámi people³¹ against Finland.³² The HRC also adopted views³³ following a complaint³⁴ submitted

by two Canadian members of the First Nations in British Columbia.³⁵

The HRC adopted General comment No. 36 (2018) on article 6 of the ICCPR, on the right to life, which makes reference to the rights of indigenous peoples.³⁶

The Committee on the Rights of the Child (CRC)

The CRC continued expressing concerns about multiple forms of discrimination faced by indigenous children (Guatemala, Panama, Argentina, El Salvador, Norway, Lao)³⁷ in particular in relation to access to healthcare (Guatemala, Panama), education or bilingual education (Guatemala, Panama, Lao). It also underlined child poverty (Guatemala, Panama, Argentina), child mortality and malnutrition (Guatemala, Panama), child abuse (Argentina, Norway, Guatemala) as well as child labour and sexual exploitation of indigenous children (Guatemala). The Committee further noted the absence of legislative and policy frameworks to protect the right of indigenous children to FPIC (Guatemala), the harmful effects of mining activities and the use of agrochemicals by corporations on environment and on the health of children (Argentina), the presence of explosive ordnance affecting children (Lao) and disputes over landownership which resulted in forced evictions of indigenous children and families (Guatemala).

Drawing on its General Comment No. 11 on indigenous children, the CRC made a number of recommendations addressing the rights of indigenous children and notably invited state parties to take measures to combat or eliminate discrimination (Norway, Angola³⁸, Argentina, El Salvador, Guatemala, Panama, Sri Lanka³⁹, Lao), prevent hate speech and violence (Norway, Sri Lanka), prevent and reduce abuse, violence and exploitation (Norway, Guatemala, Panama), ensure access to health services (Guatemala, Panama, Argentina, El Salvador); including by developing programmes in local languages (Lao) or by ensuring culturally sensitive health services in indigenous languages (Panama). The Committee also called upon state parties to improve standards of living or tackle poverty (El Salvador, Argentina, Panama, Guatemala), eliminate food insecurity (El Salvador, Panama), provide care programmes for child victims of mines or explosive ordnance (Lao), ensure access to birth certificates (Argentina, Panama) and quality education (Argentina, El Salvador, Guatemala, Panama), notably via Sámi-lan-

guage education (Norway) or intercultural bilingual education programmes (Guatemala, Panama, El Salvador).

In relation to land rights, the CRC recommended Sri Lanka to ensure the preservation of the rights, traditions and lands of indigenous children, Guatemala and Panama to consult with indigenous peoples including indigenous children in order to obtain their FPIC before adopting and implementing legislative or administrative measures that may affect them and Argentina to strengthen implementation of measures to protect the physical and mental health of indigenous children from environmental harm caused by the impact of mining and agro-chemicals, hold entities responsible accountable and afford effective remedies to victims. The CRC requested Panama to prevent evictions of indigenous families and children and Guatemala to consider the impact of forced evictions on children and ensure the implementation of resettlement plans and humanitarian assistance.

The Committee on the Elimination of Discrimination against Women

The CEDAW made a large number of references to violations and intersectional discrimination faced by indigenous women and girls (Australia, Chile, Fiji, Suriname, Mexico, Nepal, New Zealand)⁴⁰ and underlined the absence of recognition of the rights of the First Nations in Australia and of the right of indigenous peoples to self-determination in Nepal. The Committee underscored poverty and inequalities (Suriname, Mexico, Congo⁴¹, Nepal), high rates of maternal mortality (Mexico) and suicides (Australia). It also noted difficulties in accessing healthcare (Australia, Chile, Malaysia⁴², Mexico, Nepal, Suriname, Lao⁴³), sexual and reproductive health education and services (New Zealand, Suriname) and birth registration (Australia, Congo, Lao, Mexico). The CEDAW further underlined high school drop-out rates (Chile, Congo, Malaysia, Nepal; Australia) and discrimination in relation to access to education (Australia, Chile, Congo, Lao, Mexico, Nepal, Suriname, New Zealand) and employment (Chile, Malaysia, Nepal, Suriname, Australia⁴⁴, Mexico). The Committee noted lack of representation of indigenous women in political and public life or decision-making processes (Chile, Malaysia, Nepal, Lao, Suriname), barriers to gaining access to justice (Chile, Mexico, New Zealand, Suriname), high rates of incarceration

(Australia, New Zealand) and removal and placement of indigenous children (Australia). The CEDAW further highlighted gender-based violence (Nepal, New Zealand, Australia, Chile), in particular threats, sexual abuse and killings of indigenous women rights defenders and the disproportionate application of anti-terrorism legislation to criminalize certain acts by indigenous women (Chile). The Committee also expressed concerns regarding the lack of recognition of land ownership (Chile, New Zealand) and land titles (Mexico), difficulties in claiming native titles (Australia) and disparities accessing lands (Lao, Nepal, Congo). The CEDAW further underlined the absence of consultation to ensure FPIC of affected women prior to development projects conducted in Chile, Mexico, Australia, Papua New Guinea and South Africa, the negative impact of extractive industries and agribusiness companies (Suriname) and forced evictions (Chile, Palestine, Mexico).

The CEDAW made a large number of recommendations aimed at promoting and protecting the rights of indigenous women and girls and notably called upon Nepal, New Zealand, Lao, Mexico and Fiji to undertake measures to eliminate intersectional discrimination; Chile, Mexico, New Zealand to implement poverty reduction strategy or measures; to amend the Nepalese Constitution to explicitly recognize the rights of indigenous women to self-determination in line with the UNDRIP; and to recognize First Nations in the Australian Constitution. The Committee requested state parties to promote access to education (Suriname, Mexico, Chile, Lao, Nepal, New Zealand, Congo) notably via the provision of bilingual education (Suriname), intercultural education (Lao) or the elimination of schooling costs (Congo). The CEDAW further invited state parties to improve access to: birth registration (Mexico, Congo, Australia), employment and economic development (Australia, Chile, Lao, Malaysia, Suriname, Nepal, Mexico), healthcare services (Australia, Malaysia, Nepal, New Zealand, Mexico), justice for victims of gender-based violence or discrimination (Chile, Mexico) particularly via the introduction of a system of mobile courts (Mexico), and representation in political and public life (Malaysia, Australia, Lao, Suriname, Nepal) and in decision-making-processes (Chile, Malaysia, Suriname, Australia, Mexico). Australia was requested to address intergenerational trauma in culturally appropriate ways and eliminate the overrepresentation of indigenous children in out-of-home care while both Australia and New Zealand were asked to provide alternatives to detention. Chile was recommended to ensure that perpetrators of violence against indigenous

women human rights defenders be prosecuted and punished and to not apply anti-terrorism legislation for acts committed in connection with the assertion of land rights.

In relation to land rights, the Committee recommended Chile, New Zealand and Mexico to recognize and protect indigenous women's right to land tenure or land ownership, Suriname to develop a policy to overcome inequalities limiting access to land, Congo to ensure access to property and provide reparations and compensation, Nepal to enhance access to land and natural resources and Australia to train more indigenous legal professionals to provide legal assistance to make claims under land rights schemes. The CEDAW further called upon Mexico, Chile and Australia to ensure that development projects are implemented with the FPIC of indigenous women and notably include benefit-sharing arrangements (Australia, Mexico). Chile and Australia were recommended to set up mandatory consultation mechanisms on the right to FPIC and Mexico to establish a legal framework on FPIC. In relation to business and human rights, Suriname was advised to strengthen its legislation governing the conduct of companies to establish minimum standards for environmental protection and Australia to establish a mechanism to investigate violations of women's human rights by corporations and ensure compensation for victims of such violations, including the victims of the Bougainville conflict.

The CEDAW adopted General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change which makes reference to the rights of indigenous women and girls.⁴⁵

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. Notably China, Japan, Bangladesh, South Africa, New Zealand, Malaysia, Suriname, Panama and El Salvador
3. CERD/C/JPN/CO/10-11; CERD/C/NPL/CO/17-23
4. CERD/C/SWE/CO/22-23; CERD/C/HND/CO/6-8; CERD/C/PER/CO/22-23

5. CERD/C/NOR/CO/23-24
6. CERD/C/CHN/CO/14-17
7. Contained in document A/52/18, annex V.
8. In the cases of the Garífuna Communitiers and the Garífuna Triunfo de la Cruz Community.
9. 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.
10. Regarding the impact of the Carmichael Coal Mine and Rail Project in Queensland on the Wangan and Jagalingou peoples, see <http://bit.ly/2Tbdc8R>
11. Regarding the reform of the Department of Indian Affairs and Northern Development and the proposal for the elaboration and adoption of the Recognition and Implementation of Indigenous Rights Framework; the impact of the Site C dam on indigenous peoples in British Columbia as well as the Trans Mountain Pipeline Expansion Project and its impact on the Secwepemc people see <http://bit.ly/2Tg8tmB>; <http://bit.ly/2T8KoxF>; <http://bit.ly/2TcmYaP>
12. Regarding the impact of a touristic and real estate project on Mapuche communities in Coñaripe see <http://bit.ly/2TcmWzJ>
13. Regarding the impact of the Russo-Canadian consortium Columbus Gold and Nordgold mining project on Kalina and Wayana peoples see <http://bit.ly/2Td3AdG>
14. Regarding the situation of the Akawaio villages of Tassarene and Kangaruma and of the Wapichan people of the South Rupununi as well as the impact of a mining project on Marudi Mountain on the Wapichan people, see <http://bit.ly/2T4Obwd>; <http://bit.ly/2Tbeq46>
15. Regarding the impact of the use of Special Agricultural Business Leases on indigenous lands, see <http://bit.ly/2T8qmU3>
16. Regarding the inclusion of Victoria Tauli Corpuz, two former UN experts as well indigenous leaders and human rights defenders in the list of persons accused of affiliation with terrorist organisations as well as alleged killings of 60 human rights defenders in 2017 see <http://bit.ly/2T9SXbv> and <http://bit.ly/2T81yf6>
17. Regarding the impact of the “zero tolerance policy” of migration on indigenous migrants and asylum seekers from Guatemala, El Salvador, Mexico and Honduras, see <http://bit.ly/2T9qwdW>
18. E/C.12/NZL/CO/4
19. E/C.12/BGD/CO/1
20. E/C.12/ARG/CO/4
21. E/C.12/MEX/CO/5-6; E/C.12/CAF/CO/1
22. E/C.12/ZAF/CO/1
23. E/C.12/NER/CO/1; E/C.12/MLI/CO/1
24. HRC/C/NOR/CO/7; HRC/C/DZA/CO/4; HRC/C/SLV/CO/7
25. HRC/C/LAO/CO/1

26. HRC/C/GTM/CO/4
27. HRC/C/GTM/CO/4
28. HRC/C/BLZ/CO/1/Add.1
29. HRC/C/124/D/2668/2015 and HRC/C/124/D/2950/2017
30. Communication No. 2668/2015
31. Communication No. 2950/2017
32. The complainers claimed their right to effectively participate in public affairs was violated by the electoral roll call being extended to 97 new electors. The Committee found that Finland improperly intervened in the complainers' rights to political participation regarding their specific rights as an indigenous people. The Committee 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 the IHRC, which Finland ratified in 1975 (HRC/C/124/D/2668/2015 and HRC/C/124/D/2950/2017)
33. HRC/C/124/D/2020/2010
34. Communication No. 2020/2010
35. The complainers claimed that their rights to equality before the law and non-discrimination (article 26) and right, in community with the other members of their group, to enjoy their own culture (article 27), were violated by the sex-based hierarchy for the determination of entitlement to Indian registration status contained in the *Indian Act*. The Committee found that the continuing distinction based on sex in section 6(1) of the *Indian Act* constituted discrimination, which has impacted the right of the authors to enjoy their own culture together with the other members of their group. The Committee requested Canada (a) to ensure that section 6(1)(a) of the 1985 *Indian Act*, or of that Act as amended, is interpreted to allow registration by all persons including the authors who previously were not entitled to be registered under section 6(1)(a) solely as a result of preferential treatment accorded to Indian men over Indian women born prior to 17 April 1985 and to patrilineal descendants over matrilineal descendants, born prior to 17 April 1985; and (b) to take steps to address residual discrimination within First Nations communities arising from the legal discrimination based on sex in the *Indian Act* (HRC/C/124/D/2020/2010).
36. Para 23 of the General comment requires state parties to take special measures of protection towards persons in situations of vulnerability - whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence - which include indigenous peoples. According to Para 26, the duty to protect life also implies that state parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include degradation of the environment and deprivation of land, territories and resources of indigenous peoples. Para 61 finally provides that the right to life must be respected and

ensured without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste, ethnicity, membership of an indigenous group, sexual orientation or gender identity. Legal protections for the right to life must apply equally to all individuals and provide them with effective guarantees against all forms of discrimination, including multiple and intersectional forms of discrimination (HRC/C/GC/36).

- 37.** CRC/C/GTM/CO/5-6; CRC/C/PAN/CO/5-6; CRC/C/ARG/CO/5-6; CRC/C/SLV/CO/5-6; CRC/C/NOR/CO/5-6; CRC/C/LAO/CO/3-6
- 38.** CRC/C/AGO/CO/5-7
- 39.** CRC/C/LKA/CO/5-6
- 40.** CEDAW/C/SUR/CO/4-6; CEDAW/C/CHL/CO/7; CEDAW/C/FJI/CO/5; CEDAW/C/SUR/CO/4-6; CEDAW/C/MEX/CO/9; CEDAW/C/NPL/CO/6; CEDAW/C/NZL/CO/8
- 41.** CEDAW/C/COG/CO/7
- 42.** CEDAW/C/MYS/CO/3-5
- 43.** CEDAW/C/LAO/CO/8-9
- 44.** CEDAW/C/SUR/CO/4-6
- 45.** Para 26 of the General recommendation calls upon state parties to ensure that all policies, legislation, plans, programmes, budgets and other activities relating to disaster risk reduction and climate change are gender responsive and grounded in human rights-based principles, including equality and non-discrimination, with priority being accorded to the most marginalized groups of women and girls, such as those from indigenous groups. Para 31 calls upon state parties to take specific, targeted and measurable steps: (a) To identify and eliminate all forms of discrimination, including intersecting forms of discrimination, against women in legislation, policies, programmes, plans and other activities relating to disaster risk reduction and climate change. Priority should be accorded to addressing discrimination in relation to the ownership, access, use, disposal, control, governance and inheritance of property, land and natural resources, as well as barriers that impede the exercise by women of their full legal capacity and autonomy in areas such as freedom of movement and equal access to economic, social and cultural rights, including to food, health, work and social protection. Para 36 requires state parties to take positive measures to ensure that women belonging to indigenous groups are provided with opportunities to be represented in forums and mechanisms on disaster risk reduction and climate change, at the community, local, national, regional and international levels, in order to enable them to participate in and influence the development of policies, legislation and plans relating to disaster risk reduction and climate change and their implementation. Para 37 underlines that women should be accorded equality before the law and that the recognition of the legal capacity of women as identical to that of men and equal between groups of women, including indigenous women, as well as their equal access to justice, are essential elements of disaster and climate change policies and strategies. Finally, Para

54 e) calls upon state parties to promote the understanding, application and use of the traditional knowledge and skills of women in disaster risk reduction and response and climate change mitigation and adaptation as well as to identify and eliminate all forms of discrimination against women in legislation, policies, programmes, plans and other activities relating to disaster risk reduction and climate change. (CEDAW/C/GC/37)

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The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

UN PERMANENT FORUM ON INDIGENOUS ISSUES

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 UN agencies, funds and programmes, to raise awareness on indigenous peoples' issues and promote the integration and coordination of activities relating to indigenous peoples' issues within the UN system.

Established in 2000, the Permanent Forum is composed of 16 independent experts who serve for a three-year term in a 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 UN, while eight are nominated directly by indigenous peoples' organizations and appointed by the ECOSOC President representing the seven socio-cultural regions that broadly represent the world's indigenous peoples, with one seat rotating among Asia, Africa, and Central and South America and the Caribbean. The Permanent Forum has a mandate to discuss indigenous peoples' issues relating to the following thematic areas: culture, economic and social development, education, environment, health and human rights. Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) mandates the Permanent Forum to promote respect for and full application of the UNDRIP and to follow up on its effectiveness.

The Permanent Forum meets each year for ten working days. The annual sessions provide an opportunity for indigenous peoples from around the world to have direct dialogue with members of the Forum, Member States, the UN system, including human rights and other expert bodies, as well as academics and NGOs. The Permanent Forum prepares a report of the session containing recommendations and draft decisions that are submitted to the ECOSOC.

2018 was an ambitious year for the UN Permanent Forum on Indigenous Issues. Having just celebrated the ten-year anniversary of the UN Declaration on the Rights of Indigenous Peoples in 2017, which was an opportunity to take stock of progress, the Permanent Forum was well-prepared to advise on concrete actions to bridge the implementation gap between the Declaration and the reality for indigenous peoples around the world. The Permanent Forum urged action across numerous cross-cutting issues, including collective rights to lands, territories and resources, advancing the rights of indigenous women and girls, and incorporating indigenous rights and priorities into the implementation of Agenda 2030 and the Sustainable Development Goals (SDGs).

International Expert Group Meeting on Sustainable Development in the Territories of Indigenous Peoples

In January 2018, UN DESA organized a three-day international expert group meeting on the theme Sustainable Development in the Territories of Indigenous Peoples; as recommended by UNPFII at its 2017 session. The meeting served as an opportunity to highlight the need for a comprehensive approach to addressing the rights of indigenous peoples, as well as the cross-cutting dimensions of economic, social and environmental development. Participants discussed indigenous peoples' right to self-determination, the relationship between self-determined sustainable development and forms of autonomy, land grabbing and displacement of indigenous peoples, and the 2030 Agenda. Several proposals were made during the discussions, including to the need to recognise the rights of indigenous peoples to their lands, territories and resources, their experiences of self-government and different forms of autonomy as part of the right to self-determination and to support indigenous peoples' participation in international processes. The meeting was attended by PFII members, the Special Rapporteur on the rights of indigenous peoples and the Chair of the Expert Mechanism, along with experts from the seven indigenous socio-cultural regions, academics and NGOs. The report of the meeting informed the discussions at the 2018 session of the Permanent Forum.

Pre-sessional meeting (Bolivia)

Each year, a pre-sessional meeting of the UNPFII is hosted by a Member State. At the invitation of the Government of Bolivia, the Permanent Forum members convened from 24 February to 3 March 2018 in La Paz and Sucre, Bolivia. The Forum members met with the President of Bolivia, Evo Morales Ayma, representatives of indigenous peoples' organisations, government ministries and civil society, as well as with the UN Country Team to be better informed on the situation of indigenous peoples in Bolivia. They discussed the policies and priorities of the government in implementing the UN Declaration on the Rights of Indigenous Peoples. The Forum members also discussed the preparations and conduct of the upcoming session.

17th session of the Permanent Forum on Indigenous Issues

The Permanent Forum held its 17th session from 16 April to 27 April 2018 at the United Nations Headquarters in New York. The main theme of the 2018 session was Indigenous peoples' collective rights to lands, territories and resources; which was discussed through interactive panels. Although some States have recognised the collective rights of indigenous peoples to lands, territories and resources, there remains a wide gap between formal recognition and actual implementation. The Forum stated that:

*The lack of enforcement of laws, as well as contradictory laws and regulations, frequently results in the de facto denial of the rights accorded to indigenous peoples." The Forum stressed that "ensuring the collective rights of indigenous peoples to lands, territories and resources is not only for their well-being, but also for addressing some of the most pressing global challenges, such as climate change and environmental degradation. Advancing those rights is an effective way to protect critical ecosystems, waterways and biological diversity."*¹

The Permanent Forum also facilitated dialogue around topics related to the follow-up to the 2014 World Conference on Indigenous Peoples, in-

cluding the development of national action plans, and implementation of the United Nations system-wide action plan on the rights of indigenous peoples and the SDGs. There were concerns raised regarding acts of intimidation and reprisals against indigenous leaders and human rights defenders who are targeted for their advocacy and actions in support of indigenous rights, with indigenous women often at the forefront of these struggles.

The Forum initiated a series of regional dialogues to focus on the specific situation and priority issues of the seven indigenous socio-cultural regions. The regional dialogues brought together representatives of Member States and indigenous peoples, with the Forum members moderating the discussions to draw out key concerns and offer possible solutions and good practice as a way forward. The Permanent Forum members also continued the practice of interactive policy dialogues with Member States, UN agencies and indigenous peoples' organisations to follow-up on the efforts being made or planned to implement the UN Declaration on the Rights of Indigenous Peoples. Over 2,000 people from more than 80 countries attended the 17th session, representing more than 300 indigenous peoples' organisations and 75 academic institutions.

During the PFII session, there were press conferences and in-depth interviews with indigenous representatives and UN expert members. An Indigenous Media Zone was organized during the 2018 session, in close cooperation with the Department of Public Information and indigenous journalists, which offered a space for indigenous representatives to discuss and share widely through e-communication tools.

Indigenous women at the Commission on the Status of Women

The March 2018 session of the Commission on the Status of Women focused on challenges and opportunities in achieving gender equality and the empowerment of rural women and girls as well as women's participation in and access to the media, and information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women. In the agreed conclusions² of the Commission, several references were made to indigenous women, recognizing that those living in rural and remote areas, regard-

less of age, often face violence and higher rates of poverty, limited access to health care services, information and communication technologies, infrastructure, financial services, education and employment, while also acknowledging their cultural, social, economic, political and environmental contributions, including to climate change mitigation and adaptation. A Vice-Chairperson of the Forum, as well as other indigenous women leaders, participated in this discussion. In addition, two panel discussions³ were held entitled Indigenous Women: Key Actors in Achieving the 2030 Agenda (Implementing SDG 5; and Indigenous Women's Rights: a vital tool to ensure gender equality and economic and social empowerment. These were co-organised by the Indigenous Peoples and Development Branch-Secretariat of the PFII/DESA, International Indigenous Women's Forum (FIMI), International Work Group for Indigenous Affairs and other partners.

Agenda 2030

As an expert body of the Economic and Social Council, the Permanent Forum on Indigenous Issues has a key role in ensuring that the rights and priorities of indigenous peoples are considered in the review and implementation of the SDGs and Agenda 2030. Drawing on key issues that emerged from panel discussions and dialogues on the 2030 Agenda at its annual session, in its report to ECOSOC the Permanent Forum emphasized that the implementation of SDG 7 on ensuring access to affordable and modern energy for all poses threats as well as opportunities for indigenous peoples. The Permanent Forum thus encouraged States to work with indigenous peoples to develop guidelines for responsible renewable energy development. The Permanent Forum reiterated that countries undergoing voluntary national reviews at the high-level political forum in 2019 should include indigenous peoples in their reviews, reports and delegations. Member States were also invited to report on good practices of including indigenous peoples' indicators in the voluntary national reviews to the Forum at its 2019 session.

System-wide Action Plan on the Rights of Indigenous Peoples

The Inter-Agency Support Group, which consists of more than 40 UN entities and other international organizations, is in the process of implementing the *System-wide Action Plan on the Rights of Indigenous Peoples* (SWAP), which was officially launched at the 15th Session of the UN Permanent Forum on Indigenous Issues in April 2016 by the United Nations Secretary-General. As the main UN body tasked with advising ECOSOC on indigenous issues – and, through ECOSOC, to the UN agencies, funds and programmes – the Permanent Forum has a central role and contribution to play in strengthening the implementation of the SWAP. Several Member States have already produced national and international action plans, such as El Salvador, and there is the Ibero-American Plan of Action for the Implementation of the Rights of Indigenous Peoples, adopted in April 2018 by the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean. The annual inter-agency support group meeting was organized in Colombia by FILAC and IPDB-SPFII as co-chairs, bringing together IASG members as well as indigenous representatives and the UN Country Team in Colombia. The focus was on the implementation of the SWAP rights of indigenous peoples at country, regional and global level.

International Day of the World's Indigenous Peoples 2018

The International Day of the World's Indigenous Peoples is celebrated each year at UN headquarters on 9 August. Increasingly, this Day is gaining recognition, with celebratory events taking place around the world. The theme of the 2018 International Day was "Indigenous peoples' migration and movement." The event included a panel discussion on the current situation of indigenous territories, the root causes of migration, trans-border movements and displacement, with a specific focus on indigenous peoples living in urban areas and across international borders. The panel also examined the challenges and ways forward to revitalize indigenous peoples' identities and encourage the protection of their rights in or outside their traditional territories. Guest panellists ranged from government representatives to indigenous experts repre-

senting different regions of the world. More information can be found at the International Day's dedicated website.⁴

Notes and references

1. E/2018/43 – E/C.19/2018/11 at p. 10
2. See UNWomen's outcome document from CSW 62 at <http://bit.ly/2SOslwQ>
3. See Indigenous Women and the Commission on the Status of Women at <http://bit.ly/2SNoNed> v
4. See UN DESA's page on the International Day of the World's Indigenous Peoples 2018 at <http://bit.ly/2SPiqXK>

UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

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 countries as ratifying parties (hereafter Parties). In 2015, the UNFCCC adopted the Paris Agreement, a universal agreement to reduce global greenhouse gas emissions. By March 2019, 185 of the 197 Parties to the UNFCCC had ratified the Paris Agreement.¹ The Green Climate Fund 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 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’ Major Group (hereafter Indigenous Peoples) 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 Paris Agreement Implementation Guidelines

COP24, which was held in Katowice, Poland, in December 2018, might be remembered for the adoption of the rather weak Paris Agreement Implementation Guidelines, or “rulebook”, omitting any clear reference to human rights or the rights of indigenous peoples. The rulebook includes references to indigenous peoples’ “knowledge” with regards to communication of information on adaptation action. The rulebook also includes a reference to “engagement” with indigenous peoples with regards to the “information, clarity, transparency and understanding” Parties should promote when communicating their future nationally determined contributions (NDCs). However, proposed human rights references under these sections were rejected. With regards to new market mechanisms, a proposed reference to human rights in the guidance for cooperative approaches through “internationally transferred mitigation outcomes” was also rejected. Ultimately, negotiations on market and non-market mechanisms failed and will be taken up again at COP25 in Chile in December 2019.

Beyond the rule book, the COP welcomed a report by the Task Force on Displacement under the Executive Committee of the Warsaw International Mechanism on Loss and Damage and invited Parties and other stakeholders to consider its recommendations which include that Parties take into consideration their respective human rights obligations. Other decisions and declarations at COP24 saw references to human rights dropped last minute.

The Local Communities and Indigenous Peoples Platform

One exception to the above, was the decision reached by Parties to operationalise fully the Local Communities and Indigenous Peoples Platform (hereafter the Platform).² Containing a human rights reference, this decision was largely perceived as a victory not only by Indigenous Peoples, but also by Parties who had participated in many hours of formal, informal and “informal-informal” discussions, cultivating solid relationship, mutual trust and understanding in the process.

The negotiation over the establishment of a Facilitative Working Group for the operationalisation of the Platform has been a delicate process since COP21 in 2015 (see also previous editions of *The Indige-*

nous World). There has been a great deal of diplomacy employed by Indigenous Peoples and they have worked successfully in partnership with Parties. Since COP23 in 2017, it has become customary for Parties to invite Indigenous Peoples to the negotiating table during informal discussions, and have their representatives participate in consultations and provide input on draft decision text.

In 2018, efforts to reach agreement on the full operationalisation of the Platform including the establishment of the Facilitative Working Group continued. Key events throughout the year included an informal workshop in Helsinki in February, an intersessional meeting in Bonn in May, an informal event in Cochabamba in October, and finally, COP24 in Katowice during which the decision was adopted.

The intersessional meeting in May began with a multi-stakeholder workshop on the operationalisation and implementation of the functions of the Platform. During this one-day meeting, more than one hundred participants acknowledged the important role that indigenous peoples and local communities play in addressing the adverse effects of climate change in a holistic and integrated manner and “converged on the need to collaborate and commit to enabling the full operationalisation of the Platform and the implementation of its functions.”³

Two issues related to the operationalisation of the Platform dominated the subsequent negotiations. Firstly, some Parties expressed their concerns over the definition of “local communities” (or lack thereof) and its impact on the structure of Facilitative Working Group. Secondly, some Parties were concerned that the Platform may be used as a means to undermine the “territorial integrity and political independence of sovereign states” as enshrined in the UN Charter. The Platform is named the Local Communities and Indigenous Peoples Platform, but the absence of local communities as a self-organised constituency at the UNFCCC made it challenging for both Indigenous Peoples and Parties to find a common solution to overcome these concerns.

Despite coming to an impasse in Bonn in May, efforts by Indigenous Peoples and Parties to build mutual trust and understanding continued, resulting at COP24 in a decision which contained satisfactory language on the following contested issues:

- The Facilitative Working Group will have seven Indigenous Peoples’ representatives (one from each socio-cultural region) and seven Party representatives.

- Only once local communities organise as a constituency, these will also be given seats in the Facilitative Working Group with a corresponding number of Party seats.
- 'Territorial integrity' is only referenced with regards to functions involving local communities, whereas the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) is referenced with regards to functions involving Indigenous Peoples.

One important thing to note is that in theory, Parties can appoint indigenous persons as their representative in the Facilitative Working Group. This has precedence from the UN Permanent Forum on Indigenous Issues at which several indigenous persons have been appointed by States. With regards to the Facilitative Working Group members nominated by Indigenous Peoples, each socio-cultural region will exercise their self-determined process to choose its representative and alternate.

The activities of the Platform will focus around its three main mandates which include knowledge, capacity building, and climate change policies and actions. The actual activities, however, are yet to be determined. These will be decided upon through an open consultation process in 2019, amongst other initiatives. Many participants have already experienced, through the repeated interventions by Indigenous Peoples, the potential of "knowledge" in addressing the adverse effects of climate change. Through this practice, the discussions have demonstrated a lot of promise as to what the Facilitative Working Group and the Platform could become when they are operational and what is possible for Indigenous Peoples and Parties in the UNFCCC and other international conventions.

While many Indigenous Peoples' representatives seem genuinely content with this COP24 outcome, there are also voices of concern fearing indigenous peoples' issues will now be "parked" in the Platform rather than being prominent in the main negotiations. Uncertainty also hangs over how the local communities will emerge in this process, and what kind of impact it will have on the Facilitative Working Group and Indigenous Peoples' influence in the UNFCCC. In addition, Indigenous Peoples are concerned that the lack of ambitions by Parties and their failure to adopt a strong rulebook with a rights-based approach, may undermine indigenous peoples' rights and therefore the effectiveness of the Platform in implementing its functions. Nevertheless, the Plat-

form is widely regarded an important milestone for the Indigenous Peoples fighting for their rights and the recognition of their role in climate action at the UNFCCC.

Green Climate Fund

2018 was an important year for indigenous peoples' issues in the Green Climate Fund (GCF). At its first board meeting, board members adopted the Indigenous Peoples' Policy (hereafter IP Policy).⁴ The IP Policy represents a high-level rights-based benchmark for the Fund's operation and for climate finance at large.

The development of an IP Policy was one of the most important elements of the work of the indigenous peoples' advocacy team which has followed the GCF over the past years. The GCF is considering and approving an increasing amount of project proposals that will have potential impact on the lands, territories and resources of indigenous peoples. By the end of 2018, the GCF had approved 93 projects for a total amount of USD 4.6 billion.⁵ This stresses the urgency and need for an IP Policy in order to protect indigenous peoples' rights and ensure that projects funded by the GCF are also of benefit to indigenous peoples. The Policy also demands continuous engagement of indigenous peoples and right-based organisations in the GCF.

Indigenous peoples' representatives had long argued that the GCF would not be fully compliant with emerging international best practice in terms of recognition, respect and promotion of indigenous peoples' rights, until it adopted a stand-alone comprehensive IP Policy containing provisions and criteria for the implementation of the highest international human rights standards and obligations, including ILO Convention 169 and the UNDRIP.

The IP Policy is a progressive and important instrument to guide the work of the GCF, as well as to monitor projects for their compliance with, and respect for, indigenous peoples' rights. The policy recognises indigenous peoples' rights, their crucial and active contribution to climate change mitigation and adaptation, and the importance of indigenous peoples' knowledge and their livelihood systems. The policy also explicitly states that it "will apply to GCF-financed activities supporting the REDD+ actions."⁶

The IP Policy also establishes the position of a Senior Indigenous Peoples Specialist within the GCF Secretariat who will be responsible for the management of the implementation of the Policy. Recruitment for this position was on-going in 2018 and is expected to be finalised in 2019. Furthermore, the policy establishes an indigenous peoples' advisory group (IPAG) "to enhance coordination between GCF, accredited entities and executing entities, states and indigenous peoples." The IP-AG will consist of one representative from each of the four regions where GCF projects are being implemented (Africa, Asia, Latin America and the Caribbean, and the Pacific). It will provide advice to the GCF and review and monitor the implementation of the Policy. In 2018, indigenous self-determined processes started in the four regions to identify and nominate the IPAG members. The selection is based on specific criteria for candidates.

In 2018, work on guidance for the implementation of the IP Policy also started. The guidelines, which are expected to be developed in 2019, will include guidance on free, prior and informed consent (FPIC).

At the same time as adopting the IP Policy, GCF board members were supposed to adopt a revised Gender policy. Unfortunately, board members could not agree, and the policy was not adopted in 2018. Major issues of disagreement included the introduction of a national contextualisation and an exclusion of the reference to international human rights instruments. The Gender Policy remains on the agenda for 2019.

Notes and references

1. See United Nations Treaty Collection at <https://bit.ly/2azM5fT>.
2. See UNFCCC, Decision -/CP.24 "Local Communities and Indigenous Peoples Platform" at <http://bit.ly/2Tkn68e>.
3. Multi-Stakeholder Workshop Report, 2018.
4. The IP Policy can be found on the GCF's website in English and Spanish: <http://bit.ly/2Tkmkbp>.
5. A complete overview of GCF-funded projects, and projects in the pipeline for consideration, is available on its website under the country profile pages at <http://bit.ly/2TeKkNb>.
6. See GCF, "Indigenous Peoples Policy" at <http://bit.ly/2TeKxQt>.

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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 recognized in the UNDRIP, Article 31. However, because of their unique characteristics, indigenous peoples' intellectual property rights do not comfortably fit, and for the most part are unprotected, under existing intellectual property laws. Consequently, indigenous peoples' intangible cultural heritage is often treated as "public domain" and misappropriation of their intellectual property is widespread and ongoing.

The World Intellectual Property Organization (WIPO), a UN agency with 191 Member States, among other functions, provides a forum for negotiating new international intellectual property law treaties. 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 38th session in December 2018.¹

Overview of IGC negotiations

Three separate draft legal instruments are presently under negotiation at the IGC, dealing with the three subject matters: TK, TCEs and GRs.²

While there are as yet no agreed definitions of these terms within the IGC, generally speaking TK can be considered as “knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.”³ Examples include medicinal, agricultural, and ecological knowledge, traditional housing construction methodologies and weaving practices. TCEs, also called expressions of folklore, are the “forms in which traditional culture is expressed,” such as music, dance, stories, art, ceremonies, handicrafts, clothing designs, and architectural forms.⁴ GRs refer to any material of plant, animal, microbial, or other origin, containing functional units of heredity, having actual or potential value.⁵ Examples include medicinal plants, agricultural crops and animal breeds. GRs found in nature are not creations of the mind and thus are not intellectual property. But intellectual property issues are associated with GRs, for example in the case of inventions created utilizing GRs or where TK is associated with the use of GRs.

Although establishment of the IGC reflects the recognition of all WIPO Member States of the need for a forum to address intellectual property issues associated with TK, TCEs and GRs, the IGC is plagued by a divergence of views, not only on substantive positions but also on the ultimate goal of the negotiations. At a fundamental level, there is disagreement amongst Member States as to the desired legal nature of the instruments being negotiated. “Demanduers” – the term commonly used for proponents of increased protections for TK, TCEs and GRs (mostly developing countries and megadiverse countries) – support the adoption of binding legal treaties, whereas other Member States, referred to as “non-demanduers”, prefer, at most, some type of non-binding, “soft law” instruments. In addition, the three texts are highly bracketed, with numerous alternative provisions, and different wording within provisions, reflecting Member States’ varying positions and the complexity of the issues.

Demanduers and indigenous peoples’ representatives have expressed frustration at the slow progress of the negotiations, with demanduers urging that the work of the IGC be brought to conclusion and

a diplomatic conference be convened by the WIPO General Assembly to adopt one or more legally binding instruments. Non-demandeurs counter that a diplomatic conference is premature as there is no common understanding yet on core issues such as the objectives of the instruments, scope of protections to be provided or the intended beneficiaries. Because the IGC operates based on consensus, forward movement in the negotiations requires agreement of all participating Member States.

Indigenous peoples' participation

Indigenous peoples' participation⁶ is widely acknowledged as being critical for the legitimacy of the IGC negotiations and each IGC session commences with an indigenous panel of experts invited and funded by WIPO to present on topics relevant to the negotiations. However, indigenous peoples' participation in the actual IGC negotiations is limited, both in the number of participants and in the scope of participation permitted.

Indigenous peoples participate in the IGC as observers and join together to participate collectively through an *ad hoc* Indigenous Caucus. The Caucus is formed anew each IGC session and consists of indigenous peoples' representatives present at the IGC who choose to join. During the 2018 IGC sessions, active participation in the Indigenous Caucus averaged around ten persons per session.

Like other IGC observers, the Caucus may itself directly propose modifications to the text under negotiation. The IGC Chair will then ask whether any member state supports the proposal. Only those observer-proffered proposals that receive support from a member state are incorporated into the draft. But the Caucus also has a role that is distinctive from that of other IGC observers. The Caucus' special role within the IGC is recognized and facilitated in various ways, including the Caucus' ability to nominate representatives to participate in the various IGC working methodologies which bring together smaller groups to work on key issues, such as *ad hoc* expert groups, informals and small contact groups.

At each IGC session, the work of the Indigenous Caucus commences with an Indigenous Consultative Forum facilitated by the WIPO Secretariat, typically held the Sunday afternoon before the IGC session

begins on Monday. The WIPO Secretariat provides a short briefing on the relevant documents and key issues to be addressed in the upcoming negotiations, and then leaves the Caucus to go about its other business, including election of the Caucus co-chairs, discussion of strategies for the upcoming IGC session, and preparation of the Caucus' opening statement. The Indigenous Caucus meets daily during the IGC sessions, often multiple times per day, to review the revised text(s), strategize, and develop interventions to be presented in the IGC 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 develops and delivers a closing statement at the end of the IGC session. WIPO provides meeting space for the Caucus and funds interpretation and translation services provided by the Documentation Centre for Indigenous Peoples (Docip).

Although its participation is limited, the Indigenous Caucus plays an important role in voicing Indigenous Peoples' perspectives within the IGC.

WIPO Voluntary Fund

One factor limiting indigenous peoples' participation is the expense of attending the IGC sessions, which are held at the WIPO headquarters in Geneva, Switzerland. The WIPO General Assembly has established a Voluntary Fund to support participation of indigenous peoples and local communities. However, the fund depends exclusively on voluntary contributions by governments, NGOs and other private or public entities, and as of December 2018, was almost entirely depleted, with insufficient resources to fund even a single participant for the next IGC session (in 2019). In response to a recommendation from Member States at IGC 37, the 2018 WIPO General Assembly encouraged Member States to contribute to the fund and also to consider other alternative funding arrangements to support indigenous peoples' and local communities' participation.

UN Expert Mechanism on the Rights of Indigenous Peoples

Two experts from the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Mr. Aleksey Tsykarev (Russian Federation) and Ms. Kristen Carpenter (United States of America (U.S.)), joined the Indigenous Caucus during IGC 36 in June 2018. In July, 2018, in its Expert Mechanism advice No. 11 on Indigenous Peoples and free, prior and informed consent, EMRIP called upon WIPO and Member States in their negotiations of the TK, TCEs and GRs instruments to reference UNDRIP, and especially the norm of free, prior and informed consent (FPIC), with respect to the ownership, use and protection of indigenous peoples' intellectual property and other resources.⁶ At IGC 37, in August, 2018, the Indigenous Caucus drafted a letter requesting an EMRIP study on the issue of indigenous peoples' intellectual property.

IGC's 2018-2019 mandate and work program

The IGC operates under two-year mandates, requiring biennial renewal by the WIPO General Assembly. The 2018-2019 IGC mandate directs the Committee to "continue to expedite its work, with the objective of reaching an agreement on an international legal instrument(s) ...which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs)."⁷ Toward this end, the mandate includes an aggressive work program of six negotiating sessions.

Pursuant to the work program, four IGC sessions were held in 2018, two addressing GRs and two addressing cross-cutting issues related to TK and TCEs.

2018 GRs text negotiations

The first two 2018 IGC sessions, IGC 35 (March 19-23, 2018) and IGC 36 (June 25-29, 2018), addressed the GRs text.⁸ IGC 36 was preceded by an ad hoc expert group, convened to focus on key GRs-related issues, which included participation of two Indigenous Caucus representatives.

The GRs text includes two broad approaches, reflecting the different concerns of Member States. One approach is a disclosure of origin requirement, demanding certain information to be disclosed in patent (and perhaps other) intellectual property applications, such as the country of origin or source of GRs and associated TK, and information about compliance with national access and benefit sharing requirements and FPIC. Such a requirement would increase transparency in the intellectual property system, help to protect the interests of indigenous peoples in their GRs and associated TK, and be supportive of the Convention on Biological Diversity's 2010 Nagoya Protocol on Access and Benefit Sharing.⁹ However, some Member States oppose a disclosure requirement on the grounds of perceived increased regulatory burdens, increased costs and introduction of legal uncertainty into the patent system.

The other broad approach focuses on defensive measures to avoid the erroneous grant of patents, such as the use of databases to support prior art searches, and voluntary codes of conduct for users of GRs and associated TK. While Member States supporting a disclosure of origin requirement view such defensive measures as being complementary to the disclosure requirement, other Member States view these measures as an alternative to disclosure.

In interventions at IGC 35 and 36, the Indigenous Caucus supported a disclosure of origin requirement as well as complementary defensive measures. However, the Caucus interventions highlighted concerns about the development and use of TK databases, including concerns with their construction, population, access, and the status of the TK included therein, as well as the need for FPIC and consideration of indigenous peoples' own laws.

As far as progress on the draft text, negotiations at IGC 35 yielded a revised GRs text which, in addition to clarifying Member States' differing positions, included a new alternative preamble and other, relatively minor modifications aimed at narrowing gaps and removing duplications. The text was approved by consensus and transmitted to IGC 36 as the basis for further work.

Negotiations at IGC 36 were less fruitful. Although a revised text was developed that was considered by many Member States as reflecting considerable progress, consensus on forwarding the text as the basis for future negotiations was not reached due to opposition from the U.S. The U.S. complained that its textual contributions were not accu-

rately reflected in the revised text and that the working methodologies and process used in the session were deficient, in particular the small contact groups which the country described as “non-inclusive.” Many Member States expressed frustration at this unexpected turn of events, questioning the motivations and intentions of the U.S. and pointing out that the working methodologies had been established at the beginning of the session and yet the U.S. had not objected until the negotiations’ concluding moments. Members of the Indigenous Caucus left the plenary in protest. Not wanting to lose the momentum of the work done during IGC 36, the IGC Chair committed to produce a Chair’s text on GRs that will be made available for consideration prior to the IGC’s stocktaking of its progress under the current mandate, set to occur at IGC 40 in June 2019. However, for now the official GRs text remains the text transmitted from IGC 35.

TK and TCEs text negotiations

The final two sessions for 2018, IGC 37 (August 27-31, 2018) and IGC 38 (December 10-14, 2018), addressed the TK and TCEs texts in combination, focusing on cross-cutting issues.¹⁰ IGC 38 was preceded by an ad hoc expert group, which included participation of two Indigenous Caucus representatives.

A particularly contentious issue discussed during IGC 37 and 38 is whether the definition of “traditional” should include a temporal requirement, such as requiring that TK and TCEs have been in use for a minimum of 50 years to be eligible for protection. Opponents, including the Indigenous Caucus, asserted that such a requirement was not meaningful or workable, highlighting the question of how a period of use would be proved, and the gap in protection that would exist for new TK and TCEs not yet in use for the required period. The Indigenous Caucus explained in an intervention that it is how TK and TCEs fit within indigenous peoples’ cultural and traditional contexts that makes them “traditional,” not how old they are.

IGC 37 and IGC 38 each yielded only minor improvements in streamlining the TK and TCEs texts and in clarifying Member States’ differing positions.

Work on the TK and TCEs texts will continue at IGC 39 (March 18-22, 2019) and IGC 40 (June 17-21, 2019). Member States at IGC 40 will en-

gage in stocktaking and developing recommendations for the WIPO General Assembly, including consideration of a proposed mandate and work program for the continuation of the IGC for the next biennium.

Notes and references

1. More detailed information about the origins and functions of the IGC is available at <http://bit.ly/2SM6eqQ>.
2. Current version of the TK, TCEs, and GRs texts are available at the following links: The Protection of Traditional Knowledge: Draft Articles - <http://bit.ly/2SRg2zy>; The Protection of Traditional Cultural Expressions: Draft Articles - <http://bit.ly/2SLTWlr>; Consolidated Document Relating to Intellectual Property and Genetic Resources - <http://bit.ly/2SITJfF>.
3. See <https://www.wipo.int/tk/en/tk/>
4. See <https://www.wipo.int/tk/en/folklore/>
5. See <https://www.wipo.int/tk/en/genetic/>
6. Expert Mechanism advice No. 11 on Indigenous Peoples and FPIC, para. 1, Annex to “Free, prior and informed consent: a human rights-based approach,” Study of the Expert Mechanism on the Rights of Indigenous Peoples, A/HRC/39/62, Sept. 2018, available at <http://bit.ly/2SGl3LB>
7. See WIPO 57th session on 2 to 11 October 2017 at <http://bit.ly/2SIV5qL>
8. Detailed reports of IGC 35 and 36 are available at <http://bit.ly/2SJjiwZ> and <http://bit.ly/2SIV7in>
9. Nagoya Protocol on Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization, available at <http://bit.ly/2STIVeQ>
10. A detailed report of IGC 37 is available at <http://bit.ly/2SRnkUO>. The IGC 38 report is not yet available.

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UNESCO'S WORLD HERITAGE CONVENTION

The Convention concerning the Protection of the World's Cultural and Natural Heritage ("World Heritage Convention") was adopted by UNESCO's General Conference in 1972. With 193 States Parties, it is today one of the most widely ratified multilateral treaties. 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), an intergovernmental committee consisting of 21 States Parties. The WHC keeps a list of the sites it considers to be of OUV and monitors the conservation of these sites to ensure that they are protected for future generations. 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.

Although many World Heritage sites are fully or partially located in indigenous peoples' territories, there is a lack of regulations and appropriate mechanisms to ensure the meaningful participation of indigenous peoples in Convention processes and decisions affecting them. In 2015, the WHC inserted some references to indigenous peoples into the Convention's Operational Guidelines, however, the guidelines do not make the involvement of affected indigenous peoples an obligation to states.

The WHC is supported by a secretariat (the World Heritage Centre) and three advisory bodies. The International Union for Conservation of Nature (IUCN) and the International Council on Monuments and Sites (ICOMOS) provide technical evaluations of World Heritage nominations and help in monitoring the state of conservation of World Heritage sites. The

International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) provides advice and training related to cultural sites. An indigenous proposal to establish a “World Heritage Indigenous Peoples Council of Experts” (WHIPCOE) as an additional advisory body was rejected by the WHC in 2001.

Adoption of the UNESCO Policy on Engaging with Indigenous Peoples

As noted in *The Indigenous World 2016*, an important step towards enhancing the role of indigenous peoples in the implementation of the Convention was taken in 2015, when the General Assembly of States Parties adopted a comprehensive policy for integrating a sustainable development perspective into the processes of the Convention.¹ Additionally, in October 2017 the Executive Board of UNESCO approved a UNESCO Policy on Engaging with Indigenous Peoples, which:

- Reaffirms that “consistent with Article 41 of the UNDRIP, UNESCO, as a specialized agency of the UN, is committed to the full realization of the provisions of the Declaration [and seeks to] implement the UNDRIP across all relevant programme areas”;²
- Underscores that “protecting and promoting culture in all its diversity [...] requires the effective involvement of all actors and stakeholders concerned and, in particular, indigenous peoples, who are recognized as stewards of a significant part of the world’s biological, cultural and linguistic diversity”;
- Recognises that the governing bodies of UNESCO’s Culture Conventions, such as the WHC, “can play an important role in developing relevant standards, guidance and operational mechanisms to ensure full and effective participation and inclusion of indigenous peoples in the processes of these instruments”;
- Affirms that UNESCO is committed to respecting, protecting and promoting indigenous peoples’ “rights related to culture, cultural integrity and identity, and [...] to full and effective participation in all matters affecting their lives and cultures [including their] right

to be consulted regarding activities that concern their heritage and cultural expression”;

- Notes that indigenous peoples “should be able to take part in the development of policies concerning their cultures, cultural expressions and heritage, including through effective participation in relevant consultative bodies and coordination mechanisms [and that] all interactions with regard to their future development should be characterized by transparent collaboration, dialogue, negotiation and consultation”;

In relation to cultural and natural heritage sites specifically, the UNESCO Policy:

- States that “many natural and cultural heritage sites constitute home to or are located within land managed by indigenous peoples, whose land use, knowledge and cultural and spiritual values and practices may depend on, shape or constitute part of the heritage. In such places, indigenous peoples have the right to their traditional lands, territories and resources, and are partners in site conservation and protection activities that recognize traditional management systems as part of new management approaches”;
- Recommends that in and around such heritage sites, conservation and management policies, interventions and practices should “recognize, respect, and take into account the spiritual and cultural values, the interconnections between biological and cultural diversity as well as cultural and environmental knowledge of indigenous peoples [and] ensure adequate consultations, the free, prior and informed consent and equitable and effective participation of indigenous peoples where nomination, management and policy measures of international designations affect their territories, lands, resources and ways of life”;
- Underlines that “forced relocation of indigenous peoples from their cultural and natural heritage sites is unacceptable [and notes that] indigenous and local initiatives to develop equitable governance arrangements, collaborative management systems and, when appropriate, redress mechanisms” should be actively promoted;
- Notes that indigenous peoples “should play a significant role in determining what constitutes threats to their cultural (tangible and intangible) and natural heritage and in deciding how to prevent and mitigate such threats”;

- Reaffirms that the UNESCO Policy is meant to “guide the Organization’s work, in all areas of its mandate, that involve or are relevant for indigenous peoples and of potential benefit or risk to them [and to] support the efforts of the Secretariat to implement the UNDRIP across all relevant programme areas”.^{3 4}

Prior to the approval of the policy, the WHC has decided that it would re-examine the role of indigenous peoples in the processes of the World Heritage Convention following the adoption of the UNESCO policy.⁵

Establishment of the International Indigenous Peoples Forum on World Heritage (IIPFWH)

A long-standing and ongoing concern of indigenous peoples regarding the World Heritage Convention has been, and continues to be, the lack of appropriate mechanisms to ensure that indigenous peoples can effectively participate in the Convention processes affecting them. Already in 2000, a forum of indigenous peoples held during the WHC session in Cairns, Australia, called for the establishment of a World Heritage Indigenous Peoples Council of Experts (WHIPCOE) as a consultative body to the WHC, out of concern about the “lack of involvement of indigenous peoples in the development and implementation of laws, policies and plans [...] which apply to their ancestral lands within or comprising sites now designated as World Heritage areas”.⁶

Although the proposal was discussed by the WHC at the time, it did not approve the establishment of WHIPCOE as a consultative body or a network to report to.⁷ Subsequently, following the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, according to which UN specialised agencies and other intergovernmental organisations shall establish “ways and means of ensuring participation of indigenous peoples on issues affecting them” (Art. 41), the three UN mechanisms on indigenous peoples and other international bodies have repeatedly, but unsuccessfully, called on the WHC to establish a mechanism through which indigenous peoples can provide advice to the WHC, bring concerns to its attention and effectively participate in its decision-making processes affecting them.⁸ The International Expert Workshop on the World Heritage Convention and Indigenous Peoples that took place in Copenhagen in 2012 as part of the Convention’s

40th anniversary, recommended that the WHC establish an advisory mechanism consisting of indigenous experts, which “should play a consultative role to the WHC in all processes affecting Indigenous peoples, to ensure that the Indigenous peoples concerned are adequately consulted and involved in these processes and that their rights, priorities, values, and needs are duly recognized, considered and reflected”⁹

In light of the continued inaction of the WHC, indigenous delegates attending the 41st session of the Committee in Krakow, Poland in 2017, decided to create an “International Indigenous Peoples’ Forum on World Heritage [as a] standing global body aiming to engage with the WHC during its meetings, in order to represent the voices of indigenous peoples with regards to the World Heritage Convention”¹⁰ The decision to create the Forum was relayed to the WHC, which subsequently recognised the formation of the IIPFWH in a decision that notes “the establishment of the IIPFWH as an important reflection platform on the involvement of Indigenous Peoples in the identification, conservation and management of World Heritage properties”¹¹

The IIPFWH is modelled after similar structures at the Convention on Biological Diversity and the UN Framework Convention on Climate Change (UNFCCC) and is supposed to be a platform for strategising and advocacy that is open to all indigenous peoples participating in World Heritage processes. Its overall objectives are to give voice to indigenous peoples and promote respect for their rights in all aspects of the World Heritage Convention. Due to the ever-changing participation of indigenous peoples at the WHC sessions – the extent of indigenous participation very much depends on where a given session takes place and what heritage sites are under discussion – the membership within the IIPFWH is expected to be relatively fluid. Presently the IIPFWH’s activities are coordinated by an interim steering committee involving indigenous experts from different regions, with the organisation Indigenous Peoples of Africa Coordinating Committee (IPACC) serving as the interim secretariat.¹²

At least until now, the IIPFWH does not fulfil any official functions under the Convention, nor has its establishment resulted in an enhanced role of indigenous peoples in the WHC’s decision-making processes, which continues to be marginal in many respects. Moreover, given the absence of a funding mechanism, establishing a sustained and effective (ideally regionally balanced and representative) indigenous presence in World Heritage processes presents a significant chal-

lenge for the IIPFWH. To date, the WHC, UNESCO and the individual States Parties have not made any funding available to the Forum or announced plans to do so. Nevertheless, UNESCO is presenting the launch of the IIPFWH as a “major step” in engaging indigenous peoples from around the world in the field of World Heritage, and towards advancing the participation of indigenous peoples in UN processes in accordance with the UN system-wide action plan to achieve the ends of the UNDRIP.¹³ UNESCO also falsely claims on its website that the WHC established the IIPFWH.¹⁴

42nd Session of the WHC, Manama, June/July 2018

During the 42nd session of the WHC in Manama, Bahrain, the IIPFWH was formally launched. At a well-attended side-event, representatives of the forum provided an overview of their provisional strategy for a stronger engagement of indigenous peoples with the World Heritage Convention and appealed to the international heritage community to support the Forum’s activities. Attendees included the Director of the World Heritage Centre, Mechtild Rössler, and representatives of the IUCN, ICOMOS and ICCROM, who all welcomed the establishment of the Forum and expressed their general support.¹⁵

In the course of the WHC’s session, members of the IIPFWH presented a number of statements to the plenary, both on overarching policy issues and situations at specific World Heritage sites.¹⁶ Among other things, the IIPFWH highlighted the need for the World Heritage Sustainable Development Policy to be followed up with changes to the Operational Guidelines to translate its principles into actual operational procedures. Drawing attention to the adoption of the UNESCO policy on indigenous peoples in October 2017, the IIPFWH suggested that the WHC establish an inter-sessional working group to re-examine the recommendations of the 2012 expert workshop in Copenhagen.¹⁷ The IIPFWH also proposed the establishment of a voluntary fund to facilitate the effective participation of indigenous peoples in World Heritage processes, and criticised that the World Heritage Capacity-Building Strategy does not make any reference to indigenous peoples.¹⁸

Newly inscribed indigenous sites

The WHC again added several new sites to the World Heritage List that are located in indigenous peoples' territories. After a deferral in 2013 and a referral in 2016 (see *The Indigenous World 2014, 2017*), Pimachio-win Aki (Canada), which includes portions of the traditional lands of four Anishinaabe First Nations, was inscribed as a mixed cultural/natural site and a living Aboriginal cultural landscape, in which effective First Nation-led stewardship is important to the continuity of natural and cultural values. The WHC expressed:

*Deep appreciation for the combined efforts of the First Nations, working with provincial governments and the State Party, and for the joint dialogue undertaken with IUCN and ICOMOS, in deepening the understanding of nature-culture connections in the context of the World Heritage Convention, and for presenting a revised nomination which is a landmark for properties nominated to the World Heritage List through the commitment of indigenous peoples.*¹⁹

Aasivissuit – Nipisat, Inuit Hunting Ground between Ice and Sea, Greenland, was listed as an “organically evolved and continuing cultural landscape”, the outstanding universal value (OUV) of which is based on “the abundant evidence of culture-nature interactions over several millennia, intact and dynamic natural landscape, intangible cultural heritage and continuing hunting and seasonal movements by Inuit people”.²⁰

The Tehuacán-Cuicatlán Valley in Mexico, which is inhabited by eight different indigenous peoples recognised by their languages, was inscribed as a mixed cultural/natural site in recognition of the area's rich biodiversity and exceptional archeological features, including an ancient irrigation system.²¹

The Bikin National Park in Russia, located in the traditional territory of the Udege and Nanai peoples, was placed on the World Heritage List because of its globally significant biodiversity values, as an extension of the Central Sikhote-Alin natural World Heritage site. The WHC's decision notes that in 58.1% of Bikin National Park, indigenous peoples are permitted to use natural resources for traditional economic activities, as a way of life and for subsistence, in line with the 2015 federal decree that established the national park and subsequent regulations.²² The

indigenous peoples of the area have welcomed the establishment of the national park and the World Heritage site as a way of protecting their territory from unwanted development, logging, mining and poaching.²³

Chiribiquete National Park in Colombia, which is home to several indigenous peoples in voluntary isolation, was inscribed as a mixed site due to its importance as a wilderness area, its biodiversity, and the cultural significance of indigenous rock art sites inside the property. The WHC's decision recognises the need to ensure "respect of rights for the uncontacted tribes living in voluntary isolation [and that] tourism and scientific expeditions are a potential threat to the rights to self-determination, territory and culture of the uncontacted tribes".

At present, "there is no tourism allowed inside the property and it is important to strictly control any tourism access [...] New challenges, for example linked to tourism development, may arise from the inscription of the property which will require continued attention and further investment". While the decision requests Colombia to "continue the archaeological investigations, the inventorying and the documentation of the rock art sites", although emphasizing the need for the State Party to "strictly apply the preventive measures in place so as to prevent possible contact between [...] external agents and the members of isolated uncontacted communities."²⁴

Fanjingshan (China) was listed as a natural site in recognition of its significant biodiversity, including a high number of endemic and endangered species. The inscription raises significant questions concerning the consideration of indigenous peoples' rights by the WHC. There are five villages within the site, with some 2,600 residents, most of whom belong to indigenous peoples such as the Tujia, Miao, and Dong. According to the nomination documents submitted to UNESCO:

*During the inscription period, strict protection and management measures were developed, at the beginning, villagers were not used to them [While] traditional planting is still one of the main modes of operation for the indigenous people [...] the protection of the nominated property has greatly restricted the natural resource use of the community residents.*²⁵

The Chinese authorities seek to:

*Decrease resource dependence, [decrease] the number of residential areas in the nominated property by reducing permanent population, [...] encourage residents to participate in tourism activities, such as tourism development, tourism commodity production, sales and reception, etc., and provide more employment opportunities for residents in the nominated property and the buffer zone.*²⁶

To support these efforts, the authorities have developed a relocation plan which is included in the nomination documents. While the State Party “asserts that the relocation process is entirely voluntary”, as the IUCN notes in its advisory body evaluation, “neither the nomination, nor the supplementary information, clarify adequately the process followed to ensure that this is the case”.²⁷ In inscribing Fanjingshan on the World Heritage List, the WHC therefore requested China to:

*Clarify the process and measures taken concerning the relocation of residents living within the boundaries of the property to ensure that this process is fully voluntary and in line with the policies of the Convention and relevant international norms, including principles related to free, prior and informed consent, effective consultation, fair compensation, access to social benefits and skills training, and the preservation of cultural rights.*²⁸

However, the WHC did not refer the nomination back to the State Party as recommended by IUCN, which had underlined in its evaluation that these matters “need to be clarified before inscription could be recommended.”²⁹

Noteworthy WHC decisions on the state of conservation of existing World Heritage sites

In a decision on the state of conservation of East Rennell (Solomon Islands), the WHC noted, with utmost concern, a letter by the Tuhunui Tribe of East Rennell raising serious concerns about the practical modalities for customary management and decision-making in the World

Heritage site. The letter expressed the tribe's wish to "withdraw all its customary land" from the World Heritage site, in light of their concern that they are not benefiting from World Heritage status and their opposition to the proposed designation of East Rennell as a protected area under national law. Noting that "the long term conservation of the property's OUV can only be secured with the full consent of the customary land owners and land users in full respect of their rights", the decision requests the State Party to invite a UNESCO monitoring mission to facilitate dialogue and "evaluate how the concerns expressed by the customary land owners can be addressed, whilst fully respecting their right to self-determination".³⁰

In another decision, the WHC inscribed Lake Turkana National Park (Kenya) on the List of World Heritage in Danger, due to its utmost concern over the cumulative impacts of the multiple developments in the Lake Turkana Basin on the OUV of the site, including already existing and potential impacts of the Gibe III dam, the Kuraz Sugar Development Project, and the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Corridor Project. The impacts of these developments also present a serious threat to the livelihoods of the indigenous communities in the region. The WHC's decision urges the States Parties of Kenya and Ethiopia to assess the cumulative impacts of the development projects through environmental and social impact assessments (ESIAs), and requests Kenya to invite a UNESCO monitoring mission to review the impacts and develop a proposed set of corrective measures.³¹

A decision on the state of conservation of Kahuzi-Biega National Park (PNKB) in the Democratic Republic of the Congo is noteworthy as it fails to express the Committee's regret at the 2017 killing of a Batwa boy – who had entered the PNKB to forage for honey and medicinal plants – by PNKB park guards. UNESCO and the IUCN had been informed about the incident in a joint letter by a group of NGOs in January 2018.³² The WHC's decision once again fails to address the plight of the Batwa who have been evicted from the PNKB and continue to be excluded from accessing their traditional resources inside the park, which has had devastating effects on them and is directly contributing to the impoverishment of their communities. While not taking the security of the Batwa communities and the historic and on-going violations of their human rights into consideration, the WHC's decision:

[C]ommends the courage of the field staff of the property who exercise their functions under extremely difficult conditions and often at the risk of their lives [and] encourages the State Party, when security permits, to deploy personnel to all the sectors of the property to ensure an effective surveillance.³³

Other noteworthy WHC decisions

The WHC examined the first draft of a Policy Compendium (see *The Indigenous World 2017*), and requested the World Heritage Centre to submit a final draft to the WHC in 2019 for examination at its 43rd session.³⁴ The Policy Compendium is a compilation of existing policies, guidelines and relevant decisions of the WHC and the Convention's General Assembly, and has special sections on "Indigenous peoples" and on a "Human Rights and Rights-based Approach". It does not refer to external policies and standards that were developed outside of the Convention, such as the UNDRIP of the UNESCO Policy on Indigenous Peoples, and thus falls short of reflecting on the existing international consensus on indigenous peoples' rights and the minimum standards to be upheld to secure the survival, dignity and wellbeing of indigenous peoples.

Notes and references

1. Doc. WHC-15/20.GA/INF.13. For a discussion of the policy, see Disko, S. and Ooft, M. (2018) "The World Heritage and Sustainable Development Policy: a turning point for indigenous peoples?" In: P. Larsen and W. Logan (eds.), *World Heritage and Sustainable Development*. London: Routledge.
2. Doc. 202 EX/9, Annex.
3. UNESCO (2018) *UNESCO policy on engaging with indigenous peoples*. Paris: UNESCO.
4. Doc. 202 EX/9, Annex. While UNESCO provides the secretariat for the WHC, a challenge stems from the fact that the WHC, as the governing body of a self-standing multilateral treaty with its own States Parties, may take decisions independently from UNESCO that are contradictory to UNESCO policy, as UNESCO has noted in a 2014 submission to the UNPFII, available at: <http://bit.ly/2Iltgw>
5. Decisions 39 COM 11 (2015); 37 COM 12.II (2013).
6. UNESCO Doc. WHC-2001/CONF.205/WEB.3, p. 2.
7. Doc. WHC-01/CONF.208/24, p. 57.

8. See, e.g., the statements of the Permanent Forum on Indigenous Issues at the 34th and 35th sessions of the WHC in 2010 and 2011 (see: <http://bit.ly/2XyqE6i>); EMRIP's Study on "Promotion and protection of the rights of indigenous peoples with respect to their cultural heritage" (2015, UN Doc. A/HRC/30/53); EMRIP's "Proposal 9: World Heritage Committee" (2012, UN Doc. A/HRC/21/52); Resolution 197 of the African Commission on Human and Peoples' Rights (2011); and Resolution 5.055 of the IUCN World Conservation Congress (2012). For background, see IWGIA's submission to EMRIP' study on cultural heritage (2015). Available at: <http://bit.ly/2LEbUq>
9. See the Call to Action of the Copenhagen workshop, available at: <http://bit.ly/2T8fsOV>
10. See the International Indigenous Peoples Forum on World Heritage at IIPFWH, available at: <http://bit.ly/2ILGjeS> (accessed 25 February 2019).
11. Decision 41 COM 7.
12. IIPFWH draft strategic planning document and information brochure, June 2018, available at: <http://bit.ly/2ILGjeS>
13. See UNESCO's questionnaire response submitted to the 18th session of the UNPFII; Also see UNESCO's 2018 brochure "UNESCO's engagement with Indigenous peoples" available at: <http://bit.ly/2Vo3rpO>
14. See World Heritage Centre, "World Heritage and Indigenous Peoples" available at: <http://bit.ly/2VI6QWp>
15. See UNESCO World Heritage Centre, "Indigenous peoples launch Forum on World Heritage," available at: <http://bit.ly/2ILv6ej>
16. See IIPFWH publications, available at: <http://bit.ly/2IG5QWS> and UNESCO Doc. WHC/18/42 COM/INF.18.
17. Statement on Item 5A.
18. Statement on Item 6.
19. Decision 42 COM 8B.11.
20. Decision 42 COM 8B.27.
21. Decision 42 COM 8B.13.
22. WHC Decision 42 COM 8B.9.
23. See IWGIA, "Indigenous land in Russia declared World Heritage" available at: <http://bit.ly/2IG6GTw>; and Sulyandziga, P. (2017) "Parks and Arbitration". *World Policy Journal*, Vol. XXXIV, No. 4.
24. Decision 42 COM 8B.12.
25. See UNESCO World Heritage Centre, "Fanjingshan," available at: <http://bit.ly/2IMQMqs> Supplementary Information, p. 14.
26. Ibid., Management Plan, pp. 79-82.
27. Ibid., IUCN evaluation, p. 21.
28. Decision 42 COM 8B.6.
29. IUCN evaluation, p. 21.
30. Decision 42 COM 7A.41.
31. Decision 42 COM 7B.92. Also see Decision 42 COM 7B.44 on the Lower Valley of the Omo (Ethiopia).

32. See Forest Peoples Programme, "WHC fails to consider indigenous peoples' rights in the Democratic Republic of Congo," available at: <http://bit.ly/2lYr1nt>; and the resolution on PNKB of the Civil Society Forum 2018 in Bahrain, available at: <http://bit.ly/2lTYfv0>
33. WHC Decision 4e COM 7A.48. Also see Decision 7A.52.
34. See WHC Decision 42 COM 11 and Doc. WHC-18/42.COM/11.

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PART 3

GENERAL INFORMATION

ABOUT IWGIA

IWGIA is an international human rights organisation promoting, protecting and defending indigenous peoples' rights. For 51 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 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 level, including active engagement in international networks.

Our vision

Our vision is a world where indigenous peoples fully enjoy their rights, and our mission is to promote, protect and defend indigenous peoples' 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

You can follow our work by signing up for our newsletter [http://bit.ly/IWGIA Newsletter](http://bit.ly/IWGIANewsletter) and follow us on Facebook <https://www.facebook.com/IWGIA/> and Twitter <https://www.twitter.com/IWGIA> for weekly updates. If you are interested in supporting us, please find various options here: <https://www.iwgia.org/en/get-involved>

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PUBLICATIONS IN ENGLISH

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Documento Final: Defendiendo a los defensores
IWGIA

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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 results from the close cooperation needed to make this one-of-a kind documentation tool available.

For 33 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. It serves to document and report, through a yearly overview, on the developments indigenous peoples have experienced. *The Indigenous World 2019* adds not only documentation, but also highlights the increase in attacks and killings of indigenous peoples while defending their lands and other natural resources. In 2019, the edition includes a special focus on Indigenous Rights Defenders at risk.

Rising tensions between states and indigenous peoples are reaching a tipping point, and with an ever-shrinking civic space worldwide, the topics of criminalisation of Indigenous Rights Defenders' activities and their organisations; land rights issues; and access to justice are more important than ever. The 62 country reports and 13 reports on international processes covered in this edition underscore this trend.

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, their worldviews and their resilience.



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