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THE INDIGENOUS WORLD 2018

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EDITORIAL

"First they ignore you, then they laugh at you, then they fight you, then you win". This legendary quote accurately describes the stages that movements and social conflicts often go through and indigenous peoples' struggle and resilience is no exception.

While the quote's origin remains uncertain, it provides a good image with which to sum up the events that impacted on indigenous peoples during 2017. The collection of events compiled in this book shows that indigenous peoples are meeting the highest ever recorded levels of criminalisation and violence. Again and again, the local insights in the book illustrate that indigenous peoples' collective rights to land, territories and resources remain at the core of social and environmental conflict, which is currently on the rise across the globe. As the world moves fast to explore and exploit new territories and meet increasing consumption demands, indigenous peoples are left largely unprotected on the frontline, defending their lands.

A call to respect indigenous visions of sustainable development

This increase in land conflicts is taking place as the world forges ahead with the common framework of the 2030 Agenda for Sustainable Development (SDGs). This global framework of action calls upon leaders to develop alternative solutions to sustainable development by ensuring they "leave no one behind". In this context, indigenous peoples have voiced a strong call to respect their distinct visions of sustainable development. In particular, indigenous peoples have highlighted over and over again that, for them, land is not merely an economic resource but a vital element of their survival as peoples. In fact, 73 out of the 169 global targets of the SDGs relate directly to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Within the UN context, the coordination of indigenous peoples' engagement with the SDGs moved forward in 2017. The Global Coordinating Committee (GCC) of the Indigenous Peoples Major Group on Sustainable Development (IPMG) was established in April, involving 63 or-

ganisations as affiliate members. The efforts made by IPMG in 2017 have resulted in improved cooperation, collaboration and participation of indigenous peoples in the High Level Political Forum (HLPF).

The inclusion of indigenous peoples in the 2017 Ministerial Declaration significantly contributes to their further visibility and hopefully places more attention on them in the implementation of the SDGs. Additionally, the Ministerial Declaration also repeated the need for data disaggregation by ethnicity, which is critical for indigenous peoples to be visible in monitoring the achievements and gaps in the implementation of the SDGs.

The first 10 years of upholding the Declaration on Indigenous Peoples' Rights

First they ignore you. Overall, 2017 was shaped by the celebrations of the 10th anniversary of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), an endpoint of more than 20 years of discussion at the United Nations. The anniversary offered a window to take stock of and assess existing gaps in the implementation of the UNDRIP. Many of the articles in this edition showcase the different ways in which the anniversary was commemorated around the world. "In spite of the commitment to the UNDRIP, reiterated by UN Member States, the implementation situation of UNDRIP is one of limited progress," concluded the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, in July 2017.

In 2017, the Declaration was referenced 1,000 times in the first two cycles of the Universal Periodic Review (UPR). This shows that the Declaration has become a well-recognised international human rights instrument which States and other relevant stakeholders increasingly refer to when reporting on implementation of human rights obligations.

After a decade of experiences and lessons learned in using the UNDRIP to fight for land rights, the Declaration remains key to ensuring that indigenous peoples' right to free, prior and informed consent is respected with regard to development activities affecting the well-being of indigenous communities and their future generations. Nonetheless, to succeed in this implementation, a paradigm shift is required: "racism and discrimination are prevalent mindsets and attitudes that prevent

the establishment of equal relationships between indigenous peoples and States," noted the Special Rapporteur in her assessment of the current status of UNDRIP. For this, rhetorical claims of reconciliation need to be met with effective public policies, developed in close collaboration with indigenous peoples.

On the immediate horizon, the challenge is to find effective ways to measure performance and progress made through the laws and policies adopted. Disaggregated data and indicators that assess indigenous peoples' rights are urgently needed to reduce the gaps and align national policies with UNDRIP. This task is without doubt a universal responsibility.

Indigenous peoples' rights to land at the centre of a paradigm shift

Then they fight you. Indigenous peoples are one of the marginalised groups that are most exposed to violence and suppression for asserting their rights. Rising tensions between States and indigenous peoples are reaching a tipping point and *The Indigenous World 2018* adds to the documented records highlighting an increase in attacks on and killings of indigenous peoples while defending their lands.

The escalation of violence recorded in 2017 and its increased visibility has placed indigenous peoples right at the centre of a global conversation, pushing for a paradigm shift based on the recognition of their rights. In this sense, last year can be read as the beginning of an era that offers substantial opportunities for the world to change its relationship with indigenous communities, and their ancestral land and identities.

States –while not necessarily the perpetrators– are unwilling or unable to protect indigenous peoples and are even, in some cases, collaborating with these forces to push their survival to the edge. The 56 country reports and 13 reports on international processes in this edition underscore this global trend, as the following examples highlight.

The numbers speak for themselves. In 2017, Brazil was among the four most risky countries for activists, especially triggered by large-scale mining. There are now 37 million ha reserved for exploration and exploitation on indigenous land in the country. In Peru, the second largest area of Amazonian forest after Brazil, 49.6% of indigenous land is affected by concessions granted by the government.

The pressure exerted over individual and collective control of land is evident in Nepal, where 150 thousand indigenous peoples are affected by a national road expansion project, paired with forced evictions, torture and the destruction of countless religious, spiritual and sacred sites. In Ecuador, 50,000 ha of land are under mining concessions in breach of the right to participation and to free, prior and informed consent of the indigenous communities affected.

Mining is also driving violence against indigenous peoples in the Philippines, where large corporate mining operations for gold, copper and nickel continue to wreak havoc in indigenous territories. As of June 2017, 229 mining applications had been approved on indigenous ancestral territories.

In Chile, 2017 showed an intensification in the use of the anti-terrorist law against indigenous peoples, which was enforced against 23 indigenous Mapuche in the context of an upturn in mining activities on their territories. As Paraguay registers the highest rate of deforestation, indigenous communities have held the State accountable in land-related conflicts through three cases brought before the Inter-American Court of Human Rights, although the rulings thus far remain unfulfilled.

Recording the toll of violence

As a countermeasure, indigenous organisations are gearing up to track the toll in terms of deaths and harassment. In Colombia, the National Indigenous Organisation of Colombia (ONIC) reported in 2017 alone: 45 murders, 122 threats, 827 unjust incarcerations and 3,800 indigenous peoples displaced.

Meanwhile, on the other side of the world, KATRIBU in the Philippines recorded 37 cases of extrajudicial killings of indigenous peoples, 62 illegal arrests, 21 political prisoners, 20 incidents of forced evacuation affecting 21,966 indigenous peoples and more than a hundred people facing trumped up charges since President Duterte was elected in July 2016. The Alliance of Indigenous Peoples of the Archipelago (AMAN) in Indonesia also recorded 21 land-related cases faced by indigenous peoples in relation to infrastructure development projects on indigenous territories.

Heavy militarisation of indigenous land in Asia continues to have devastating effects for indigenous communities, especially indigenous

women. In Bangladesh, a total of 141 indigenous human rights defenders were reportedly arrested or detained, while 161 people were harassed with false charges throughout the year. According to the Kapaeeng Foundation, an increasing number of indigenous women and girls in Bangladesh are being raped in land-related conflicts. An estimated 56 indigenous women were sexually or physically assaulted by 75 alleged perpetrators, most of them non-indigenous. What is more, most of the rape victims were children and girls under the age of 18.

Eritrea's crimes against indigenous peoples are especially concerning. Since the Commission of Inquiry on Human Rights in Eritrea (COI) reported accusations of crimes against humanity, pastoralists' rights to land continue to be unrecognised. The UN Special Rapporteur on the situation of human rights in Eritrea reported that the government had destroyed indigenous livelihoods through killings, disappearances, torture and rape. Complaints alleging ethnic cleansing including substantial eyewitness testimony and analysis of 21,000 interviews had been sent to the UN Special Rapporteur Victoria Tauli-Corpuz and await follow-up.

Land grabbing under cover of investments and conservation

Extractive industries remain a concrete threat to indigenous communities. In Africa, forced evictions and land grabbing in the name of conservation, development and investments continues its encroachment with impunity. This was thoroughly documented by the African Commission on Human and Peoples' Rights (ACHPR) in its report on extractive industries and their impact on indigenous peoples published in 2017.

In Kenya, the US$25.5 billion Lamu Port South Sudan Ethiopia Transport (LAPSSET) Project bridging Kenya's coast to Cameroon cuts across indigenous peoples' territories. This large-scale infrastructure project will potentially affect small farmers, hunter-gatherers, fishing and pastoralist communities, who have consistently raised concerns regarding implementation of the project, which is taking place without due regard for tenure or resource rights.

Land grabbing and land conflicts in Tanzania continued to be related to the expansion of national parks. In 2017, protests continued against the invasion of rangelands in West Kilimanjaro by the Tanzania National Parks Authority, which in 2016 left maasai without their entire

territory of 5,500 acres, upon which they and their livestock depend heavily for their survival.

The forced evictions in Loliondo (northern Tanzania) were also a clear example of land grabbing in 2017. These attempted evictions, carried out in the name of "wildlife conservation", gained international attention when the Ngorongoro District Commissioner issued an order to evict legally-registered village lands in the vicinity of Serengeti National Park. Maasai houses were burnt to the ground and most of their property destroyed, leaving families without any shelter, food or water.

In Ethiopia, the government continues to lease vast fertile farmlands to foreign and domestic companies, directly affecting indigenous peoples along the Ethiopian lowlands-Gambela, Benis-Hangul-Gumuz and the Lower Omo Valley. With the aim of increasing agricultural investment, indigenous land is unfairly labelled by the government as "underutilised" and indigenous peoples are thereby being dispossessed of their lands and their food security seriously undermined. These lands comprise an estimated 11 million hectares and are the source of livelihood for about 15 million indigenous peoples – pastoralists, small-scale farmers and hunter-gatherers – whose customary land rights are being constantly violated.

Large-scale investment continues to expand in Laos, especially due to a dam-building spree, including 72 new large dams, 12 of which are under construction and nearly 25 in the advanced stages of planning. These hydropower development plans give rise to the forced removal of indigenous peoples, with 100 families reported as victims in 2017.

In Cambodia, the largest hydropower source was carried through to near-completion in 2017 with total opposition from indigenous communities. In December 2017, the government redoubled its lack of respect of their rights by announcing that more than 30,000 hectares around the dam would also be converted into economic land concessions.

In 2017, Mexico ranked as the fourth most dangerous country for activists to defend land rights. This fact is directly linked to the 29,000 mining, hydroelectric and wind power concessions currently active in the country, over 35% of its national territory. Half of the operations on this area run on indigenous territory.

Suppressing indigenous peoples' demands will have an impact on how our planet will look if natural resource extraction keeps expanding. If States and business fail to protect those last standing on the world's remaining natural diversity, what else remains to be exploited?

Environmental human rights protection gains momentum

At the time of writing this editorial, violent accusations hit the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, who, along with other indigenous human rights defenders, has been labelled a "terrorist threat" by the Government of the Philippines. These accusations come at a crucial time when, as part of her mandate, the Special Rapporteur is collecting input for a thematic report on the criminalisation of indigenous human rights defenders.

The outbreak of violence against indigenous human rights defenders proven by this act and many others contained in this book is, however, also met with policy changes aimed at improving the safety of environmental defenders. As this edition goes to press, the United Nations Environment Programme (UNEP) is launching a new policy for the protection of environmental defenders. In Latin America, where most land rights defenders are killed, States are moving towards a regional agreement specifically targeted at protecting environmental defenders. This shows that environmental demands, including indigenous peoples' claims, are finding their way into the development of systemic responses.

Formally recognising the right to a healthy environment would contribute to protecting those who are increasingly putting their lives at risk to defend natural ecosystems.

What is working?

Then you win. Some encouraging developments in this edition also show that the indigenous movement has placed itself at the core of a paradigm shift, pushing for a more inclusive and sustainable development. Indigenous peoples, in partnership with civil society and other human rights defenders, have strengthened their resilience on all fronts, increased their capacity to advocate for their demands and to lead a global wake-up call to respect and abide by indigenous traditional knowledge and worldviews.

In Bolivia, 36 indigenous territories have started the procedure to become autonomous governments in a country where 21% of the land is

collectively owned by indigenous peoples. These game-changing autonomous processes are also strong in Peru, where the Autonomous Territorial Government of the Wampis Nation (GTANW), established in 2015, is working on guidelines and roadmaps aimed at re-establishing their own institutional structures and attaining better conditions for a dialogue with the Peruvian State. Other indigenous communities such as the Shawi, Kandozi and Shapra in the Peruvian Amazon have also expressed their desire to establish an autonomous government to represent them as a people.

Significant progress has been made in Costa Rica in establishing an indigenous consultation mechanism, which will be discussed in 2018. The mechanism is described as promising because it takes into consideration the fact that each indigenous people takes its own decisions differently and that different issues require different consultation procedures.

In an unprecedented move, Mexico witnessed the first candidacy of an indigenous woman for the presidency in 2017. Her nomination still requires the support of 1% of the electoral roll to run, in the face of discrediting campaigns and personal attacks. Against all odds, in Kenya, indigenous women performed impressively in the general elections, with five indigenous women elected. This signals a shift towards more inclusive competitive political contests in the country.

On the protection of indigenous women's rights, the Inter-American Commission on Human Rights (IACHR) emphasized the need to act upon the violence encountered particularly by indigenous women in the Americas during armed conflicts, the implementation of development, investment and extractive projects and militarisation of their territories. In 2017, the IACHR published a legal tool to defend their rights, and this offers guiding principles with which to urge States to acknowledge indigenous women's agency. Tools such as this are meaningful, as they focus on promoting guiding principles and good practices that can be used by indigenous organisations, lawyers and human rights defenders in general.

In the Pacific region, through the support of non-indigenous allies and Reconciliation Action Plans, Australian media has increased its coverage from an Aboriginal and Torres Strait Islander perspective. In 2017, indigenous peoples' water rights were at the centre of the debate. As more Australian land is handed back to its traditional owners through Native Title, water management policy is gaining a place at the policy-making table.

The Inuit in Canada won a historic Supreme Court victory in June 2017 when a unanimous decision overturned Petroleum Geo-Services Inc.'s plans to collect more than 16,000 km of seismic data in their search for oil. Inuit are also awaiting new national indigenous language legislation, which Prime Minister Trudeau has announced will be developed in partnership with indigenous peoples.

Following a national apology to indigenous peoples, Taiwan moved forward in setting up the "Indigenous Historic Justice and Transitional Justice Committee" composed of representatives from the 16 indigenous groups and three from the Pingpu groups. Besides strengthening transitional justice, Taiwan's Parliament addressed the impact of extractive industries by amending the Mining Act. The law amendment proposed would require more stringent impact assessments, stricter monitoring and a suspension of the operating license if serious violations are found. What is more, the Council of Indigenous Peoples (CIP) announced guidelines on the delineation of traditional indigenous territories, with the participation and consultation of 800 indigenous peoples.

At the United Nations, 2017 was an exciting year for the UN Permanent Forum on Indigenous Issues, which welcomed 12 new experts and held the first-ever Indigenous Media Zone. This space proved to be a driver in improving information flows on indigenous peoples' issues and a vital meeting point for different opinion makers, editors and journalists covering indigenous peoples' issues.

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) celebrated its tenth anniversary in 2017 and started to implement its new mandate. Among the changes is a specific and enhanced collaboration with National Human Rights Institutions (NHRIs) and considerably higher country-level engagement. In this regard, EMRIP held three inter-sessional meetings in Canada, the Russian Federation and Chile throughout the year and launched new online forms to request technical assistance. Such requests can be made by States, indigenous peoples and other stakeholders, including the private sector. Overall, in 2017, EMRIP reaffirmed its efforts to build capacities and trust, while easing tensions between States and indigenous peoples.

"Nothing about us without us"

The increasing emergence of platforms for dialogue in which high-profile indigenous leaders play an active role in decision-making was remarkable in 2017, especially in the area of climate action. Being disproportionately vulnerable to climate change because of their strong traditional ties with their lands and natural resources, indigenous peoples made their voices heard at the United Nations Climate Change Conference (COP23) in November 2017 in Bonn. The engagement of indigenous representatives showed a renewed commitment under the motto of "nothing about us without us", highlighting the fact that, apart from being victims of climate change, they are the best observers and key actors to effectively combat climate hazards.

Among the 31 decisions taken at COP23 was one of key significance for indigenous peoples: the decision on the operationalisation of the Local Communities and Indigenous Peoples' Knowledge-Sharing Platform (LCIP). This platform was lauded by many as a step forward in enhancing indigenous peoples' engagement in the United Nations Framework Convention on Climate Change (UNFCCC) processes. However, many others considered it insufficiently strong to ensure that indigenous peoples can negotiate or inform decision-making on an equal footing.

Without a doubt, the platform's operationalisation was a highlight of 2017, and the main focus for most indigenous peoples' representatives. What is clear is that the adoption of the platform opens up a new space to bring to and share indigenous knowledge, positive contributions and lessons learned with the climate conversations, and it thus presents an opportunity for strengthened engagement between indigenous peoples and the climate change community.

Following the decision to develop an Indigenous Peoples Policy in December 2016, the Green Climate Fund (GCF) prepared a final draft in December 2017 based on consultations with and inputs from indigenous peoples and board members. The GCF has been functional for three years now and the Indigenous Peoples Policy was one of the key areas of focus in 2017. The policy's objective is to include adequate safeguards, participation and free, prior and informed consent (FPIC) of indigenous peoples.

Given that indigenous peoples were not significantly engaged in the early days of climate change policy-making back in the 1990s,

these developments are promising. They show that persistent advocacy work is rewarded and that indigenous peoples are steadily becoming a recognised part of the solution to the challenges climate change poses to the world.

Pamela Jacquelin-Andersen
General Editor

Julie Koch
Executive Director

Copenhagen, April 2018

ABOUT THE INDIGENOUS WORLD

The compilation you have in your hands now is the unique result of a collaborative effort between indigenous and non-indigenous activists and scholars who voluntarily share their valuable insights and analysis. We thank them and celebrate the bonds, strengths and sense of community that emerge from making this one-of-a kind documentation tool available.

For 32 years, the purpose of *The Indigenous World* has been to give a comprehensive yearly overview of the developments indigenous peoples have experienced. It is our hope that indigenous peoples themselves, along with their organisations, will find it useful in their advocacy work aimed at improving indigenous peoples' human rights situation. In this regard, the book is envisaged as a documentation tool to inspire their work on the basis of lessons learned and good practices. 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 the precarious human rights situation that makes it difficult to obtain articles 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 author. 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

GREENLAND

Kalaallit Nunaat (Greenland) has been, since 1979, a self-governing country within the Danish Realm. In 2009, Greenland entered a new era with the inauguration of the new Act on Self-Government, which gave the country further self-determination within the State of Denmark. Greenland has a public government and it aims to establish a sustainable economy in order to achieve greater independence. The population numbers 56,000, of whom 50,000 are Inuit. Greenland's self-government consists of Inatsisartut (Parliament), which is the elected legislature, and by Naalakkersuisut (Government), which is responsible for the overall public administration, thereby forming the executive branch.The elected assembly or the parliament of Greenland, Inatsisartut, was established by the introduction of the home rule on 1 May 1979. Inatsisartut has 31 elected members.

The working year in Inatsisartut usually begins on a Friday in September and lasts one year. Inatsisartut meets at least twice a year for regular gatherings. If special circumstances make it necessary, Inatsisartut can be called in for extraordinary meetings. Inatsisartut has ratified the Alta Declaration. 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. The Inuit Circumpolar Council (ICC), an Indigenous Peoples' organisation and an ECOSOC-accredited NGO, represents Inuit from Greenland, Canada, Alaska and Chukotka (Russia) and is also a permanent participant in the Arctic Council. 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. In 1996, at the request of Greenland, Denmark ratified ILO Convention No. 169.

In 2017, the Government, consisting of a three-party coalition, was led by Mr. Kim Kielsen, leader of the largest political party, Siumut (the social democratic party), together with the left socialist party Inuit

Ataqatigiit (IA) and the newly founded Partii Naleraq (Naleraq is a centrist party formed by the former chairman of Siumut). The coalition signed an agreement in order to achieve autonomy from the Danish realm and for all communities to be treated equally in the provision of electricity, water and heat supply. The coalition also aims to ensure stable and affordable food prices regardless of the size of the community and of their remote location.

However, there are also a number of issues where they are divided, not the least is the question of uranium mining, which is supported by Siumut but strongly opposed by the other two parties. The coalition has a majority of 24 out of 31 seats in the Greenlandic Parliament, the Inatsisartut.

Resource extraction

There are 44 small-scale mining and oil drilling concessions in Greenland. A concession has been given to a zinc mine project by Ironbark in the Citronen Fjord.[1] The project is expected to be of great importance for Greenland. In addition, the approval of this exploitation license can make Greenland potentially more attractive for other projects.

There have been more demonstrations than ever in the history of Greenland, regarding uranium mining (see also The Indigenous World 2017). There is fear that the nearby community of Kuannersuit will have to be closed because of danger of contamination and that the tailings from the uranium mining will contaminate the environment for 100,000 years. Half the population wants a referendum while the other half does not. A smaller group of the population argues that many more hearings throughout Greenland are needed in order to make a decision. In 2017 a group of activists started to file actions with the highest court of the land to prosecute the Inatsisartut, parliament of Greenland for removing the zero tolerance of uranium from the law without a referendum.

There have been several hearings in the local community, but very few locals showed up to these hearings. This is mainly because outsiders often lead the hearings and the interpretation for the hearings is very poor or non-existent.

Co-management of open seas

The Inuit Circumpolar Council has initiated the Pikialaorsuaq Commission. The Comission is to consult with Canadian and Greenlandic communities that are most closely connected to the North Water Polyna (Pikialaorsuaq in Greenlandic).

People linked by history and bloodlines are now being separated due to the changing the waters of the Pikialasorsuaq. These waters are being affected by climate change, tourism and industrial development. The North Water is an area vulnerable to climate change. The Inuit in the region have expressed a preference for exploring locally-driven management options before considering increased shipping, tourism, fishing, and non-renewable resource exploration/development. The Commission's mandate will be to listen to Inuit community members and knowledge holders, who use and depend on this region, concerning their vision of the future collaborative use of the North Water region.

Reconciliation Commission in Greenland

A Reconciliation Commission was initiated by the Government of Greenland, and in 2015 the first meetings began. The reconciliation commission was started with the hope that through this process, knowledge about societal relationships would increase and understanding among the citizens would improve. The reconciliation process would lead to greater awareness of their own shared commonalities to provide better opportunities for constructing an inclusive and respectful society as well as a safe social, economic and cultural development.

The Commission reveals how colonial times have influenced today's society. The Commission focuses in particular on the assimilation period from 1950 onward. However, this focus does not exclude other historical events in the past, such as the significance of World War II in the development in Greenland. These historical events might be relevant to the work of the Commission. The Government of Denmark has been invited to review the work of the Commission; heretofore the Danish government has not been a part of the commission. Although the Danish government is not involved in the work, the commission has

worked arduously and has arrived at certain discoveries that can benefit Greenland's decolonizing process.[2]

Protest over Russian rocket launch

In October 2017 Pikialasorsuaq Commission issued a press release where the Commission called upon the Governments of Canada and Denmark to demand the postponement of a Russian rocket launch scheduled to deliver a European Space Agency satellite into orbit on October 13th.

The demand for the postponement was due to the risk of residual hydrazine fuel and metal debris falling into the Pikialasorsuaq, a region of the Arctic Sea that local Inuit communities depend on for their livelihoods.

The effects on wild life and humans have not yet been studied in ocean waters and more specifically in Arctic waters. Whilst other non-toxic fuels are available and generally used for all rocket launches, the deliberate disposing of residue fuels and metal debris into the Pikialasorsuaq is not acceptable for the Inuit People living and hunting in the Arctic. The issue has not yet been solved.

Education

As of late, more students are completing upper secondary education. The number of students completing secondary education has almost doubled in the last ten years. 55% of the courses completed were in the category of vocational education.

In 2017 approximately 300 students completed higher education in and out of Greenland. The largest portion 53% was in the field of professional bachelor, while one in four received their degrees in the short-term upper secondary vocational education programs.

Around 40% of those taking a higher education, focused on health and welfare in Greenland. This sector covers, among other things, nurses and social educators. Nearly one in four completed degrees in the education sector, which includes schoolteachers.

Ili Ili is a students' organization aimed at supporting students, both socially and politically. The Ili Ili Board is comprised of volunteer students who are elected at an annual general meeting, where the majority

decides what the Board of Directors will work on for the coming year. In 2017 there were a total of nine board members, their common purpose is to ensure greater participation of students in relation to social and political events. Ili Ili aims to be more involved in promoting students' rights at the national and international level and for the third consecutive year, Ili Ili was represented at the UN Permanent Forum on Indigenous Issues (UNPFII).

Tsunami in North of Greenland

Nuugaatsiaq a village near Uummannaq City in North Greenland was struck by a tsunami on June 17, 2017. A massive landslide measuring 300m by 1100m caused the tsunami in the Karrat Fjord. It caused major devastation and the population was evacuated to Uummannaq and still has not returned. A whole family drowned, and the entire village has been closed due to major damage caused by the tsunami. The catastrophe was one of the most severe that Greenland has witnessed in centuries.

Notes and references

1. See http://ironbark.gl/projects/greenland/citronen/
2. See http://saammaatta.gl/da/Forsoning/Groenlands-forsoningskommission

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SÁPMI

NORWEGIAN SEA
Finnmark
Girjas
Sámi village
Inari
Kola
Peninsula
ROVANIEMI
Kallak
Bottenviken
RUSSIA
FINLAND
NORWAY
Oslo
SWEDEN
Helsinki
Stockholm
ESTONIA
DENMARK
LATVIA
LITHUANIA
Sápmi
GERMANY
POLAND

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 there are; 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 northwestern 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 College, 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.

Nordic Sámi Convention

The Nordic Sámi Convention (hereafter Sámi Convention) is a new international instrument and its objective is to confirm and strengthen the rights of the indigenous Sámi people in Finland, Norway and Sweden.[1] In January 2017 the lengthy negotiations on the Sámi Convention, were concluded. The Convention was negotiated jointly with representatives from the three States' Sámi Parliaments.

The aim of the Sámi Convention is to give a common Nordic legal framework for the future implementation of the Sámi people's right to self-determination and the protection of both individual and collective rights of the Sámi to their lands and resources. Chapter IV of the Sámi Convention includes seven articles on rights to lands and resources. This includes articles that safeguards property and usufruct rights to lands and resources for the Sámi in Finland, Norway and Sweden. The articles also include the rights to participate in the decision making and management of lands which are currently owned by the state.[2] The Sámi Convention recognizes that the Sámi are an indigenous people and that access to land and water is the foundation for the Sámi culture, language and social life. This convention is, however, not the first international attempt to recognize the rights of the Sámi people, these rights were recognized long before the current state borders were decided. The supplementary document (known as the Lapp Codicil) to the border agreement signed on 7 and 18 October 1751 created a basis for cross-border cooperation and recognized the rights of the Sámi in accordance with long-standing customs.

The Nordic countries have a strong tradition as supporters of the development of international standards for protection of indigenous peoples' rights. The rights of the Sámi are safeguarded by international human rights treaties, as the Nordic states have ratified all the main United Nations human rights conventions.[3] The rights safeguarded by the Sámi Convention are minimum rights and shall according to Article 2 not prevent any State from extending the rights of the Sámi or from adopting more far-reaching measures. They may not be used as a basis for limiting the rights of the Sámi under international law. The States shall also effectively safeguard the rights of the Sámi and, if needed, take special measures to facilitate the enjoyment of these rights.

The Sámi Convention, as it stands after the conclusion of the negotiations in 2017, has been met with criticism from both human rights

experts and Sámi organizations, who have argued that the convention falls short in securing the minimum standard of rights enshrined in international law. One major challenge for the negotiations between Finland, Norway and Sweden has been the fact that only Norway has ratified the ILO Convention 169 (ILO C 169). Experts have criticised both the land rights chapter and particularly the preambular paragraph 10 (PP10) of the Sámi Convention, a provision which they argue will water down indigenous peoples right to determine their own identity and membership according to their own customs as it follows from UNDRIP Article 33.[4] PP 10 can be interpreted as giving the States the final say when determining who is identified as a Sámi person with the right to vote for the Sámi Parliament elections in these three countries.

The Norwegian National Human Rights Institution (NHRI) has advised the co-operative body of the three Sámi Parliaments, Sámi Parliamentary Council, on the Sámi Convention, according to the Norwegian Act on National Human Rights Institution Article 3 (b). NHRI has *inter alia* stressed the need for the Sámi Convention to comply with the UNDRIP, more specifically Articles 4 and 33 of the Declaration, safeguarding indigenous peoples right to self-determination and right to self-identification.

Article 4 (2) of the Sámi Convention is another provision that some legal experts have criticised for not being in accordance with international law. This article reads: "Article 4 Right to self-determination

The Sámi shall have the right to self-determination as a people. By virtue of this right, the Sámi shall freely determine their political status and freely pursue their economic, social and cultural development.

The right to self-determination is exercised through autonomy in internal affairs and through consultation in matters which may prove to be of particular significance to the Sámi."

The language in the second paragraph could, according to critics, imply that the Sámi people's right to self-determination is limited to a right to autonomy in internal matters and a right to consultations with the states. Further, critics have claimed that the land rights articles in the Sámi Convention are not in accordance with international human rights, as the Convention does not give sufficient legal protection for Sámi lands and territories against, for example, extractive industry and development projects that might be harmful for traditional Sámi livelihoods, such as reindeer herding, hunting, gathering and fishing. Nevertheless, the Sámi Convention reflects recent developments in international law, as seen in Article 17 which explicitly recognizes the principle of

Free, Prior and Informed Consent (FPIC), making this principle applicable in all decision making processes which may be of particular significance for the Sámi.

The Sámi Parliaments of Finland, Norway and Sweden have not yet given their consent to the final wording of the Sámi Convention after the negotiations ended in January 2017. In December 2017, the Sámi Parliamentarian Council decided to request to reopen the negotiations on the Draft Convention, so that the parties could amend the draft. The discussions on the final wording of the Nordic Sámi Convention will continue in 2018 between the three Sámi parliaments and the Governments of Finland, Norway and Sweden.

Autonomy, consultations and reconciliation processes

The Constitutions of Finland, Norway and Sweden all include sections that in slightly different ways recognize that the Sámi people have a right to autonomy.[5] All three countries have their own representative bodies for the Sámi, the Sámi Parliaments, where the authority of these parliaments is described in a Sámi Parliament Act. Currently, all three states are developing new or amended legislation with the aim of providing a stronger legal basis for consultations between the state and the Sámi Parliments and other representative bodies like the reindeer-herder's autonomous cooperatives.[6] All three Sámi Parliaments have in numerous cases claimed that they are not being consulted in matters that directly affect the Sámi.[7]

In Finland, there is an ongoing process for amending the existing Sámi Parliament Act, a process which so far has not resulted in an agreement between the state and the Sámi Parliament. One of the main challenges is the implementation of the right to negotiations according to Section 9 of the Sámi Parliament Act. Another challenging issue is the Supreme Administrative Courts decisions that overrules the understanding of the Sámi Parliament on the definition of a Sámi person when considering applications for voting rights for the Sámi Parliament elections.[8] The status of the Sámi as the only indigenous people in Finland is recognized in the 1999 Constitution, and the Sámi people's right to autonomy is outlined as Sámi linguistical and cultural autonomy within the Sámi Homeland area.[9] In November 2017, the Sámi Parliament in Finland requested the UN Expert Mechanism for Indigenous

Peoples (EMRIP) to give legal advise to the Sámi Parliament Act negotiations. The Finnish government responded positively to this request, as did EMRIP, making this the first country mission of EMRIP under its renewed mandate.[10]

On 21 September 2017, the Government of Sweden presented a bill on consultations[11] with the aim of strengthening the participatory rights of the Sámi Parliament and other representatives of the Sámi, in matters that will affect them directly.[12] This proposal is a follow up to the negotiations on the Nordic Sámi Convention-proposal, and is inspired by the 2005 Consultation Agreement between the Sámi Parliament in Norway and the Norwegian Government[13] and the ILO C 169. The Sámi Parliament rejected the proposal in December 2017, and several Sámi and human rights organizations have also concluded that it does not comply with indigenous peoples rights under international human rights law.[14] The Government and the Sámi Parliament will continue their dialogue on the bill in 2018.

The Government and the Sámi Parliament in Norway are still having consultations on the Government's follow-up of the Sámi Rights Committee and particularly the proposal of strengthening the state's duty to consult under the ILO C 169 by amending the Sámi Parliament Act. These consultations have so far not resulted in an agreement between the two parties. The ILO Expert Committee has several times stressed the need for strengthening implementation of Article 6 and 7 of the ILO C 169. The Ministry on Local Government and Modernisation is planning on presenting the proposed amendments to the Sámi Parliament Act to the National Parliament in June 2018.[15]

Public debate on indigenous issues during the last years has concentrated on the need for truth and reconciliation processes in the Nordic countries. In June 2017 the Norwegian Parliament, *Stortinget*, decided to establish a Truth Commission to assess how the state's assimilation policy has affected the indigenous Sámi and the Kven national minority.[16] At the same time, there are parallel discussions on establishing Truth and Reconciliation Commissions in Finland and Sweden, which has so far not resulted in an agreement on establishment of such commissions. The colonial relationship between the state and the Sámi is a complex issue, and one of the main issues is land rights, and how state assimilation policy has deprived the Sámi of their rights to manage their own lands and resources. The State promoted large-scale exploitation of forests, minerals, rivers and other resources, which has ef-

fectively displaced the Sámi with very little influence over the developments and use of their lands. Whether the reconciliation processes will include land rights issues, is still an open question.

Sámi reindeerherding, hunting and fishing rights

There have been several court cases dealing with the rights of the Sámi in Norway and Sweden in 2017. In December 2017, a majority of judges in the Supreme Court of Norway found that the forcible cull ordered by the Reindeer Husbandry Board of a proportion of the herd of the Sámi reindeer-herder Jovsset Ánte Sara was not a violation of his human rights. Sara manages his family's share of the *siida*, an administrative and legal local unit within Sámi reindeer husbandry. Sara filed a case against the Norwegian state claiming that an enforced cull of his herd from 116 reindeers to 75, would deny him his right to culture according to Article 27 of the ICCPR, and violate his property rights under Article 1 of Protocol 1 to the European Convention on Human Rights. Sara won the case both in the district and appeals courts, but lost in Supreme Court in a split 4-1 decision.[17] One of the five Supreme Court judges found that the decision to forcibly reduce Sara's herd would violate his right to culture according to the ICCPR Article 27. The majority of judges found that the cull was founded on reasonable and objective criteria, and that it served the interests of the reindeer herding Sámi as a group. All five judges agreed that the decision to reduce his herd was in compliance with the European Convention on Human Rights. The 2007 Norwegian Reindeer Husbandry Act recognizes that the Sámi reindeer herding communities have self-rule in internal matters. However, this act has also imposed on reindeer herding districts a requirement to adapt to so-called ecologically sustainable resource management by developing usage rules, including determination of a maximum number of reindeer for each herding district. Many Sámi reindeer herders have opposed the whole system of determining the maximum number of reindeer, as their own perception of the sustainable management of reindeer herds based on Sámi traditional knowledge has not been taken into account. Sara's attorney has informed the media that this case will be appealed before the United Nations Human Rights Committee in 2018.

In the 1990s the Swedish Government proclaimed that the hunting and fishing rights belong to the State and thereby claimed that the

State should manage the hunting and fishing in the whole Sámi territory in Sweden. The *Girjas* case is a decisive court case between the *Girjas* Sámi village and the Swedish State, on the rights to hunt and fish on state-owned lands in parts of the traditional territory of the Sámi reindeer herders of *Girjas*.[18] In 2009, the *Girjas* Sámi village sued the State and claimed that the Sámi village has an exclusive right, in relation to the State, to hunting and fishing on the land in question. They claimed that right to deed the rights for hunting and fishing should belong to the Sámi village.[19] As an alternative claim, the Sámi village claimed that the right to hunt and fish in the area is owned by both the State and the Sámi village. The State party pleaded that the State is the owner of the land, and as landowner, it owns the right to hunting and fishing, as well as the right to deed these rights. The judgement from Gällivare District Court was handed down in February 2016, granting *Girjas* exclusive rights to control fishing and hunting in the area, restoring powers that were stripped from the Sámi people by Sweden's Parliament in 1993.[20] The court in its decision emphasized that the Sámi population had used the land much longer than the Swedish state. Lawyers for the state claimed that the indigenous status of the Sámis was irrelevant to the case. They declared that "Sweden has in this matter no international obligations to recognize special rights of the Sami people, whether they are indigenous or not." The State appealed to the Regional court (*hovrätt*) in Umeå in 2016, and the court proceedings ended in December 2017, and the judgment was announced in January 2018.

The Finnmark Commission and Finnmark Land Rights Tribunal

The right to land and water is the very foundation for the existence of the traditional Sámi culture. In Norway, the recognition of Sámi land rights through the Finnmark Commission and the Finnmark Land Rights Tribunal is one of the measures used to implement ILO C 169.[21] The establishment of the Commission and the Tribunal was a part of the agreement that led to the consent of the Sámi Parliament of the Finnmark Act in 2005. Two decisions from the Land Rights Tribunal have been appealed before the Supreme Court. One of them, the Stjernøya-case, where two reindeer herding *siidas* claimed ownership rights to a part of their traditional grazing territory on the island of St-

jernøya in Finnmark, ended up with both siidas losing the case. In the other case, the Nesseby/Unjárga-case, both the Finnmark Commission and the Land Rights Tribunal concluded that the inhabitants of a local Sámi village, *Unjárga* have hunting and fishing rights on their traditional lands. In addition to this, the Land Rights Tribunal concluded that the local people in this community have customary hunting and fishing rights and that they should have the exclusive right to manage these lands and resources.[22] The Finnmark Estate (FeFo) appealed the Unjárga-decision before the Supreme Court through a 4-2 split vote in the Board of the Estate. The main reason for this appeal was not that the Estate opposed the existence of usufruct rights of the local people in *Unjárga,* but that the Estate wanted to clarify the issue of whether the Finnmark Estate should continue to manage these lands or if the local rights holders should be able to establish local management of these lands, in accordance with the decision of the Land Tribunal.[23] The case concerns clarification of the rights of use of the Sámi and other inhabitants to land owned by the Finnmark Estate, pursuant to the special procedural rules in the Finnmark Act Chapter 5. The Supreme Court announced in 2017 that the case proceedings would start in a plenary session in January 2018.[24]

Notes and references

1. For more information about the background of the drafting and negotiations on the Draft Nordic Sámi Convention, se The Indigenous World 2017, p. 61-62.
2. See Articles 27-33 of the Draft Nordic Sámi Convention.
3. Finland and Sweden have not ratified the ILO C 169.
4. Among the experts that have analysed the Draft Convention is the former member of the UN Human Rights Committee professor Martin Scheinin, professor at the University of Oslo, Geir Ulfstein, and professor at the University of Tromsø, Mattias Åhrén. The assessments of the Draft Nordic Sámi Convention can be downloaded at: https://www.sametinget.no/Soek?search=nordisk samekonvensjon&tag=92)
5. §108 of the Norwegian Constitution (amended in 2014), Section 17 and 121 (2) of the Finnish Constitution (1999), and Article 2 in the Instrument of Government, one of the four laws that form the Swedish constitution.
6. The entities have different names in each state, in Sweden: Čearru, Norway: *Siida/Sijte,Orohat*, Finland: *Bálgos*.
7. The negotiation process on the new agreement on the regulation of salmon fishing in the Deatnu/Tana river in the Northern- Sámi area in Finnmark county

(Tana-agreement) between Finland and Norway is one of the most recent examples where the Sámi Parliaments in Finland and Norway claim that the right to consultation has been breached.

8. The Supreme Administrative Court of Finland (Finnish: *korkein hallinto-oikeus*, Swedish: *högsta förvaltningsdomstolen*) is the highest court in the Finnish administrative court system, parallel to the Supreme Court of Finland. Its jurisdiction covers the legality of the decisions of government officials, and its decisions are final. http://www.kho.fi/en/index.html. The Supreme Administrative Court of Finland accepted in 2015 nearly 100 new people as Sámi persons against the will of the Sámi Parliament. The president of the Sámi Parliament stated that this decision is *de facto* a forced assimilation of the Sámi people into the Finnish people. https://yle.fi/uutiset/osasto/sapmi/nearly_100_new_people_accepted_as_sami_persons_against_will_of_sami_parliament/8343268

9. The Sámi Homeland is defined in Section 2, subsection 2 of the Law on the Use of the Sámi Language by authorities. The Sámi homeland area comprises the territory of the municipalities of Enontekiö, Inari and Utsjoki, and the Lapland reindeer herding area in Sodankylä.

10. See http://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/CountryEngagementFinlandMissionStatement.pdf, The EMRIP mission to Finland, and the outcomes of this mission, will be described in Indigenous World 2019.

11. See http://www.regeringen.se/rattsdokument/departementsserien-och-promemorior/2017/09/ds-201743/

12. In a report published in January 2011, the UN Special Rapporteur on indigenous people, James Anaya, heavily criticized Sweden, especially over the lack of say the Sámi people have over applications for prospecting, mining, forestry and wind power projects and over the structure put in place for the Sámi Parliament under the Sámi Parliament Act." See: *The Situation of the Sami People in the Sápmi Region of Norway, Sweden and Finland,* Human Rights Council, A/HRC/18/XX/Add.Y (Jan. 12, 2011), at 12.

13. "Procedures for consultations between the state authorities and the Sami Parliament of 11 May 2005" https://www.regjeringen.no/en/topics/indigenous-peoples-and-minorities/Sami-people/midtspalte/consultation-duty-in-sami-matters/id86931/

14. See http://sverigesradio.se/sida/artikel.aspx?programid=2327&artikel=6833750

15. See https://www.regjeringen.no/no/dokumenter/planlagte-saker-til-stortinget-varsesjonen-2018/id2587850/

16. See https://www.stortinget.no/no/Saker-og-publikasjoner/Vedtak/Vedtak/Sak/?p=67518

17. Inner Finnmark District Court, TINFI-2015-84532, (18th of March 2016) and Hålogaland Court of Appeal, LH-2016-92975 (17th of March 2017) This case also features an assessment of the duty to consult indigenous peoples in decisions

relating to their rights. For more about the consultation agreement, see Sametinget; Konsultasjonsavtalen: www.sametinget.no/Om-Sametinget/Bakgrunn/Konsultasjonsavtalen

18. A Sámi village, čearru (northern Sámi) or sameby (Swedish) – is not a traditional village but a complex economical and administrative union for reindeerherding Sámi in Sweden. It is regulated by the Reindeer Husbandry Act. Members of a sameby are entitled to engage in reindeer husbandry in their particular area, including building and setting up facilities they need for their reindeer herding, in addition to fishing and hunting rights.

19. For more about the background of the Girjas case, see The Indigenous World 2017.

20. See https://thebarentsobserver.com/en/society/2016/03/sweden-appeals-land-use-case

21. Fore more about the mandate of these two institutions: https://www.domstol.no/finnmarkskommisjonen, https://www.domstol.no/en/Enkelt-domstol/Utmarkskommmisjonen/

22. Finnmarkseiendommen – Finnmarkkuopmodat- Finnmark Estate (FeFo) is a landowner enterprise which owns and administrates 95% of the land and natural resources in Finnmark. Half of the board members are elected by the Sámi Parliament, the other half of the Finnmark County. http://www.fefo.no/en/Sider/default.aspx

23. See https://www.ifinnmark.no/debatt/fefo/nesseby/derfor-anker-vi-dommen/o/5-81-449367

24. There are very few cases that are heard in plenary, normally just one or two cases a year.

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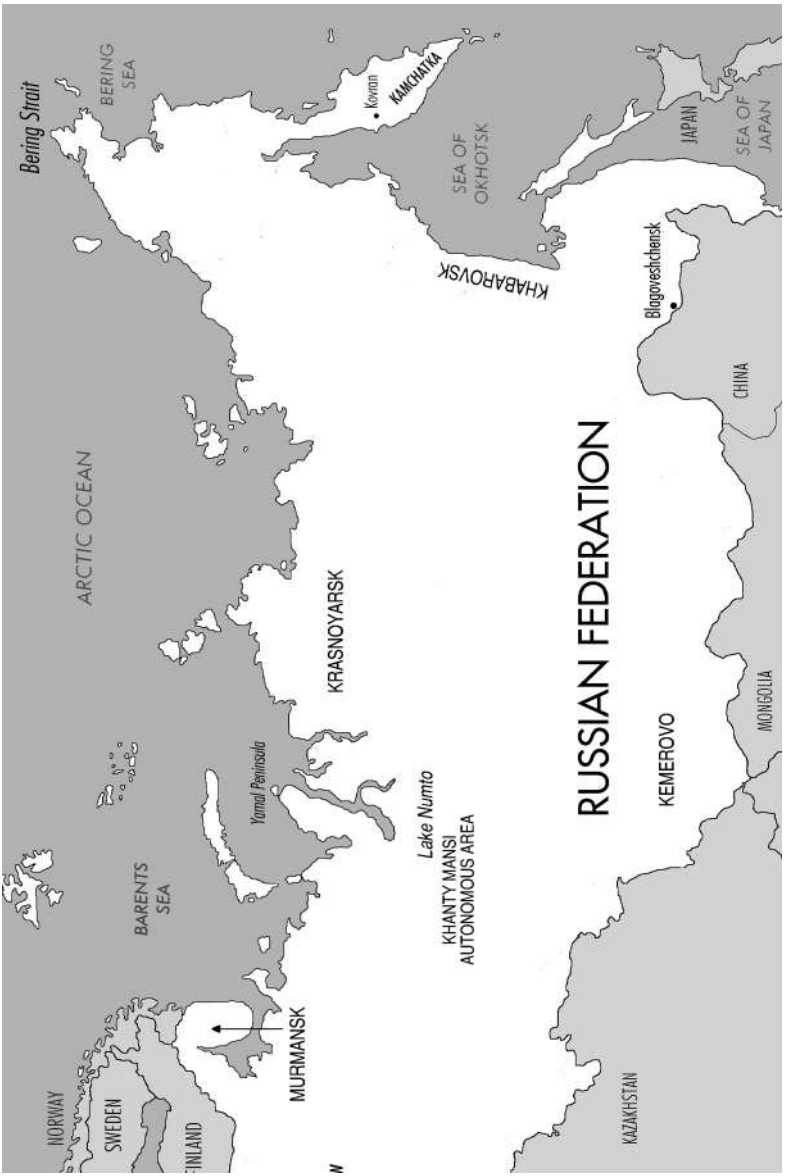
RUSSIAN FEDERATION



Of the more than 160 peoples inhabiting the territory of contemporary Russia, 40 are officially recognised as "indigenous minority peoples of the North, Siberia and the Far East." These are groups of less than 50,000 members, perpetuating some aspects of their traditional ways of life and inhabiting the Northern and Asian parts of the country. One more group is actively pursuing recognition, which continues to be denied, another is most likely already extinct. Together, they number about 260,000 individuals, less than 0.2% of Russia's population. Ethnic Russians account for 80% of the population. Other peoples, such as the five million Tatars, are not officially considered indigenous peoples, and their self-identification varies.

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 dwellers 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 forth the rights of "indigenous minority peoples of the North", including rights to consultation and participation in specific cases. There is, however, no such concept as "Free, Prior and Informed Consent" enshrined in the legislation. Russia has not ratified ILO Convention 169 and has not endorsed the UNDRIP. 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.

In 2017, very few legislative decisions were made at the federal level, affecting indigenous peoples. A number of draft amendments has been proposed in that period, which all but further weaken indigenous land rights. Especially the pending revision of the federal law "On Territories of Traditional Nature Resource Use of Indigenous Minority Peoples of the North, Siberia and the Far East" has been widely criticized by indigenous activists and environmentalists as it would force indigenous communities to agree with potential resource users entering their territory or else loose even the right to compensation. The wording of the draft law seems to treat indigenous peoples and companies equally as land users, abolishing the original purpose of Territories of Traditional Nature Resource Use (TTNRU), as legally set out when the law was adopted in 2001. TTNRU is what comes closest to indigenous land titles in Russia. The law's basic function is that it served to protect against uses that were not indigenous peoples' traditional subsistence activities. Although the reality is that in most of the existing regional TTNRU, especially in Western Siberia, oil has been extracted for a long time, and the main benefit the indigenous inhabitants have from the status is that they receive some monetary compensation. The now pending revision would modify the law in such a manner that what should have remained as the exception could now be the norm.

Access to natural resources

One regulatory change passed in 2017 making fishing applications for members of indigenous peoples much more difficult to acquire. Fish is the basic foodstuff for most indigenous communities. The legal principles are that they have the right to fish without special permits, but especially in the Pacific region of Russia, where fishing is big business, special rules and regulations require indigenous peoples to go through a tedious application process first, accept the amount, time and place assigned by the authorities for fishing and accept a number of additional restrictions.

The highly bureaucratic process often leads to applications getting rejected for formal reasons, depriving indigenous people of the right to feed themselves through fishing for the whole year. In 2017 a regulation was adopted that rewrote the rules for fishing applications.[1] Rules were again made much more complicated. One indigenous expert estimates that as a consequence: "the number of people deprived

of the legal opportunity to engage in traditional fishing will increase. That is, this draft regulation leads to the deterioration of the situation of indigenous peoples while easing the work of civil servants in the territorial branches of the federal fishing agency (Rosrybolovstvo), and it will increase the number of 'poachers' among indigenous peoples in reports by the Agency." The highly restrictive regime has been criticized again by two UN treaty bodies: CERD and CESCR (see below). At the same time, a media campaign was underway accusing indigenous peoples of illicit commercial fishing under the guise of traditional fishing,[2] an accusation that indigenous representatives have rejected as slander.

A worrisome tendency which has continued in 2017 is that indigenous traditional fishing grounds were grabbed and licensed to private fishing businesses, not only in the Pacific region where this is a common occurrence but also in Northwestern Russia. The leases that private businesses obtain last for 49 years, so that indigenous communities are permanently deprived of their means of existence. From Murmansk region, where Russia's Saami live, it was reported that through tenders, all fishing sites located in indigenous ancestral lands were reallocated for paid recreational fishing, including six fishing grounds on the Ponoy River adjacent to the Saami villages of Krasnoshchel'ye and Kanivka.

Numto sacred lake and national park

In 2017, the battle for Numto national park continued, where Surgutneftegaz, the biggest regional oil company in Khanty-Mansi Autonomous Area stepped up its quest for oil in this area most sacred to the Khanty people. (See The Indigenous World 2017). A new assault started against the sacred lake Numto.

In early December 2017 Leonid Pyak, a herder from of Numto village called Greenpeace to inform them about on-going construction of oil wells in floodplains on his territory. The company told the Leonid and his brother that no one was interested in their opinion, because they have no formally recognized Territory of Traditional Nature Resource Use. The site licensed to the oil company Surgutneftegaz is part of Numto Nature Park.

Further investigation by Greenpeace showed that on October 5, illegal hearings had been held in the town of Beloyarski, rubber-stamping the project. According to the law, when such hearings are conducted, everybody has the right to submit comments, suggestions, and re-

marks about the project within 30 days. However, reindeer herders, who would be affected, had received no information about the hearing, the actual project documentation was not available. Only an announcement of the hearing had been published on the website of Beloyarski district, to which the herders have no access. According to Greenpeace, the notice contained no information about where and when the draft Environmental Impact Assessment could be accessed. The public hearing thus did not comply with the required procedure and therefore the project is not ready for State environmental expert review.[3]

25 October 2017, the members of the Aborigen Forum network submitted an appeal to the Federal service for the supervision of nature resources use, which urged "not to allow this project to undergo State environmental expert review as long as the applicant cannot provide information about the conduct of public hearings with the participation of representatives of indigenous peoples."[4] The signatories received a "reassuring" answer from the Service for nature management control and supervision of Khanty-Mansi Autonomous area, claiming that all occurrences past and present are in compliance with the law.

In 2016 the authorities decided to change the zoning of the Park to accommodate drilling, ignoring the 36,000 signatories of a petition initiated by Greenpeace Russia.[5] In the summer of 2017, indigenous activists and IWIGIA also included information on the case in an alternative report to the UN CERD.[6] The Committee in its concluding observations urged the government to ensure prior consultations with indigenous people for all extractive projects. (see below). But in autumn of 2017, Surgutneftegas continued to ignore the rules for project approval and environmental impact assessments.

In connection to this, it is interesting to note that in early 2018 the "Ministry of natural resources proposes to radically increase the fines for such violations. If a project such as a pipeline is implemented without environmental clearance, the fine will increase by 2.5 times. Officials cite the increased number of such violations and the ineffectiveness of existing sanctions." Ecologists, however, believe that the changes will not have a noticeable impact on business conduct: "the proposed increase of the fines will change the situation only with regard to small companies for whom a fine of 200-250,000 roubles (approximately 4000 USD) is a considerable sum." Simply increasing fines is therefore not enough: to radically change the situation, it is necessary to substantially overhaul the legislation. The problem is not so much

that environmental assessments are not carried out, but that it is difficult to identify projects that are implemented entirely without them. Therefore we need to strengthen monitoring at the construction stage."[7]

Yamal LNG project

In late 2017, the first shipments of liquefied natural gas from the multi-billion Yamal LNG project have reached buyers around the world. With a total cost of 27 billion USD, Yamal LNG is the largest investment in the extractive sector in recent years, located on the Northeast of the Arctic Yamal peninsula, extracting gas from the Yuzhno-Tambeyskoye gas field. Its goal is to reach a global LNG market share of 7%.[8] LNG has the advantage of being independent of pipeline routes and still able to penetrate new markets. The project is operated by Russia's second gas producer Novatek together with France's Total and China National Petroleum Corp. (CNCP)[9] as well as China's Silk Road fund.[10]/[11] The project is strongly supported by the Russian government and President Putin.

Yamal peninsula, where the gas is extracted is the home of the world's biggest nomadic reindeer herding community, with several thousand Nenets roaming the tundra year round with their herds. The company claims to have obtained to the Nenets' FPIC, something that is virtually impossible to verify, since the region is a closed zone, where foreigners cannot visit without secret service permission. The available evidence, however, suggests that no genuine FPIC process could have taken place and the disruption of migration routes, the impacts on fish reserves and pasture lands is going to force a substantial share of reindeer herders in the region to give up their way of life.

Oil and gas extraction in Taimyr

Taimyr is the large peninsula and formerly autonomous region located to the east of Yamal. Until 2008 it was part of the Dolgan-Nenets Autonomous Area, which then was absorbed by the Krasnoyarsk region to form one new mega-region reaching from close to the Mongolian border to the high Arctic. As a "border zone" the region, whose only external border is with the Arctic Ocean, is inaccessible to foreigners without special permission from the intelligence service.

One 2017 land rights case stems from the changes to the land legislation mentioned above. An obshchina (rural community) of indigenous Dolgans on the peninsula is being deprived of the lands on Cape Khara-Tumus, which it relies on for its traditional subsistence activities. The land where their reindeer graze, and where they hunt and fish has now been licensed to Rosneft for oil and gas extraction, one of Russia's biggest oil producers, whose majority owner is the Russian state. Former German Chancellor Gerhard Schröder heads its supervisory board. Indigenous peoples have appealed to the General Prosecutor of the Russian Federation Yuri Chaika, to prevent the holding of a tender over land traditionally used by indigenous peoples for reindeer herding and other traditional types of nature resource use. This tender being offered by the Office of property relations of the Taimyr Dolgan-Nenets municipal district of Krasnoyarsk region,[12] would violate Federal law and rights of indigenous peoples guaranteed by the Russian constitution to their ancestral land and traditional way of life. "On 30 October 2017, the Prosecutor's office of the Russian Federation responded to this appeal, claiming that there are no violations and no action was therefore warranted."

This state of affairs is a consequence of modifications to the federal Land Code in 2016, where it has been specified that persons are to be provided with compensation for property taken from them for public or municipal purposes.[13] Their ancestral lands, which they customarily use free of charge are not considered property, so the government underhandedly deems that they are not entitled to compensation. This means that the licensee can disregard the actual land users of the land, the indigenous obshchina, as it uses this land customarily, without formal recognition of its land tenure, and free of charge for traditional subsistence activities for the livelihoods of their families. Lacking formally recognized land rights, the "obshchina" will not only lose their pasture and fishing grounds but will also not receive any compensation for the alienation from their land.

Another on-going case in Taimyr is about the violation of hunting rights of indigenous peoples. The indigenous communities which are members of the Local Association of Civic Associations of Indigenous Peoples of the Taimyr Dolgan-Nenets Municipal district of Krasnoyarsk, insist on their legal right to hunt for the purpose of maintaining their traditional way of life, whereas the local administration strictly follows the sectorial regulations and claims that their traditional hunting amounts to

poaching. The rules would have required them to apply for permits first, even though the law clearly says that they are not required to do so.

Indigenous representatives point out that they have a right to free of charge access to wildlife in accordance with the laws "on the Animal Kingdom", "on Hunting" as well as the tax code, and that they have the right to freely dispose of their harvest according to the provisions of the law "on Non-profit Organisations" and the law "on Hunting."

But local authorities deny them the legal hunting quota based on local regulations which hold, *inter alia*, that there are insufficient hunting resources in public lands[14], suggesting that indigenous hunters apply and pay for hunting vouchers for private hunting estates.

The Prosecutor's office is undertaking criminal prosecution of hunters and imposing fines for hunting the annually allowed quota not only for the hunters themselves but also on behalf of their family members, i.e. elderly, women, children and other members of the family of the tribal community who cannot go out and hunt. That is, according to the prosecutor's view, each individual has to use their own quota personally; even close relatives are not allowed to hunt on their behalf. Prosecution had been on-going in 2016 but was not completed.

In November 2017 the case was suddenly reopened, but now as a criminal case against the head of the association of "obshchinas" (communities), Gennady Shchukin who is considered to be the instigator, as he has always defended the legal standpoint that it is the lawful right of indigenous peoples to engage in traditional hunting. In a verdict of 28 December 2017, he was sentenced to a fine of 120,000 roubles (approximately US$ 2,100) but the court immediately granted him an amnesty "in connection with the 70th anniversary of Russia's victory in World War II." Shchukin has vowed to defend his innocence through all legal instances available.

Developments at the international level

In 2017, two, UN treaty bodies reviewed Russia: the Committee on Elimination of Racial Discrimination (CERD), during its 93 session (31 July – 15 August) and the Committee on Economic, Social and Cultural Rights (CESCR) during its 62 session (18 September to 6 October). Indigenous representatives participated in both sessions and submitted shadow reports in collaboration with IWGIA.

Additionally, the Framework Convention for the Protection of National Minorities of the Council of Europe started to consider Russia in its 4th review cycle with the receipt of shadow reports from civil society and a country visit, including several meetings with indigenous peoples, which is one key step in the review process. Finally, submission of shadow reports was due under the 4th review cycle of the UPR. The actual review of Russia will take place in May 2018.

As in prior considerations, CERD noted in its concluding observations[15] that Russia had again failed to provide disaggregated data on the socio-economic status of indigenous peoples and other vulnerable groups, something that had been explicitly requested by the committee in the previous concluding observation. It also noted with concern the broad application of the term "extremism" to silence indigenous and other organisations as well as the classification of more and more NGOs as "foreign agents" or "undesirable organisations." It recommended "that the Federal laws on Non-commercial Organizations and on 'Undesirable Organizations' be reviewed to ensure that NGOs, including those working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups that are subjected to discrimination, are able to carry out their work effectively to promote and protect, without any undue interference, the rights contained in the Convention." Further concerns and recommendations were noted regarding indigenous land rights, specifically Russia's failure to create federally protected Territories of Traditional Nature Resource Use, irreparable harm caused to indigenous land by extractive industries and denial of hunting and fishing rights.

CERD in detail considered the issue of Kazas, a village in Kemerovo region, South Siberia, which was destroyed in the context of open cast mining and whose residents in cooperation with IWGIA had submitted information to the CERD's Early Warning Mechanism in 2015 and recommended "that the State party take effective measures to restore fully the rights of Shor people, in close consultation with Shor representatives and bodies. To that end, the Committee recommends that the State party: (a) provide compensation to Shor people for the loss of their lands and houses, including in the form of land substitution; (b) ensure that Shor people can gain access to their ancestral lands and cemetery; and (c) guarantee that the principle of free, prior and informed consent is respected in all decisions affecting Shor people."

Russia's review in the CESCR was led by newly appointed committee member Michael Windfuhr, vice director of the German Institute for

Human Rights. The concluding observations by the CESCR[16] are very similar to those of CERD. It is noteworthy, though, that indigenous peoples' land rights are mentioned in paragraph 14 under the heading "Right to freely dispose of natural wealth and resources," which refers to paragraph 1 of the covenant where the right of peoples to freely dispose of their resources is framed by the of the right of peoples to self-determination, thereby implying that indigenous peoples are peoples in the full sense of the word. While this should be standard, it is something, for example, the HRC (the committee for civil and political rights) still tends to avoid. CESCR also highlighted the possible impacts of climate change on the economic, social and cultural rights on indigenous peoples, encouraged monitoring and requested further information on the matter (paras. 43, 44).

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INUIT NUNANGAT (INUIT IN CANADA)

The majority of the 65,030 Inuit in Canada live in 53 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. Inuit land claims agreements shape the political contours of each of the four Inuit regions and form the basis of the Inuit-to-Crown relationship. Through these constitutionally protected agreements, Inuit representational organizations co-manage, with the federal government, approximately 35 percent of Canada's landmass and 50 percent 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: Inuvialuit Regional Corp., Nunavut Tunngavik Inc., Makivik Corp., and the Nunatsiavut Government.

Increasing engagement and focus on Inuit issues

Inuit remain cautiously optimistic that promises made by the current Liberal government will translate into transformative action on a range of policy issues. The federal government took steps in 2017 that demonstrate its commitment to renewing its relationship with indigenous peoples based on rights, respect, cooperation, and partnership. The creation of the Inuit-Crown Partnership Committee in February 2017 reflects an unprecedented level of engagement by federal cabinet ministers with Inuit on a range of policy issues such as housing, health and wellness, and implementation of land claims agreements. However, it is too early to tell wheth-

er the high-level, shared commitments that have been facilitated through this process will translate into improvements in the lives of Inuit.

The federal government has also strayed in its commitment to partnership with indigenous peoples. For example, the federal government's statement at the UN Permanent Forum on Indigenous Issues in May 2016 that it would move forward with adoption and implementation of the UN Declaration in full partnership with First Nations, Metis, and Inuit, has been anything but.[1] Instead, the Prime Minister announced in February 2017 the establishment of a Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples, whose mandate includes ensuring that the Crown is adhering to the UN Declaration.[2] The Working Group's mandate and scope of work remain unclear. Furthermore, the Working Group unilaterally developed and released 10 principles in July 2017 that are intended to guide its work.[3] The piecemeal approach to implementing the UN Declaration "through the review of laws and policies" described in the principles is deeply concerning.

Activities at the regional level included boundary setting in August 2017 for a future national marine conservation area in Tallurutiup Imanga (Lancaster Sound) by the Government of Canada, Government of Nunavut, and Qikiqtani Inuit Association.[4] Once completed, with an Inuit impact benefit agreement in place, the conservation area will contribute around two percent towards the federal government's target of pro-

tecting five percent of its marine and coastal areas by 2017 and 10 percent by 2020.

In November 2017, Prime Minister Trudeau apologized to Newfoundland and Labrador residential school survivors at a gathering in Happy Valley-Goose Bay, the majority of whom are Nunatsiavut Inuit.[5] Survivors were not included in a settlement and apology in 2008 by then Prime Minister Stephen Harper because the Moravian-run residential schools they attended were not administered by the federal government. The apology comes after 1,000 students who attended the five residential schools in the region accepted a CAN $50 million settlement last year from the Trudeau government after launching a class-action lawsuit.

Inuit win historic Supreme Court victory

The Hamlet of Clyde River, Nunavut, won an historic victory in June 2017 in the Supreme Court case "Clyde River (Hamlet) v. Petroleum Geo-Services Inc". The unanimous decision overturned Petroleum Geo-Services Inc.'s plans to collect more than 16,000 km of seismic data in their search for oil in Tallurutiup Imanga (Lancaster Sound) near the community of 1,000 using controversial soundwave technology. Many Inuit in Clyde River opposed the project because of the technology's potentially harmful impacts on the marine mammals they harvest and rely on to feed their families.

The decision focused on the National Energy Board's flawed process for consulting with Inuit. As an agent of the Crown, the National Energy Board convened only one meeting with the community in order for officials from the oil company to answer questions. Petroleum Geo-Services Inc. addressed community concerns in the form of a 3,926-page English language electronic document that was inaccessible to residents due to limited internet connectivity and the fact that Clyde River is a majority Inuktitut-speaking community.

The Court clarified that the Honour of the Crown requires that the duty to consult and accommodate be applied when the Crown contemplates action, including approving permits for industry which might impact the rights of Inuit. The ruling obligates the Crown to ensure that the process of consultation and accommodation is one which is informed – in this case by scientific evidence and traditional knowledge, as well as by the rights and interests of Inuit.

The ruling highlights the need for consistent application by the courts and regulatory bodies of contemporary human rights standards, including the right of indigenous peoples to free, prior and informed consent. The Court held that the Crown cannot secure the free, prior and informed consent of Inuit, nor can it consult with Inuit, if Inuit are not informed about the potential impacts of a project.

Continued social and economic inequity among Inuit

The 2016 census data, released in 2017 by Statistics Canada, show that the Inuit population has grown rapidly in the last decade, against a backdrop of continuing social and economic inequity. The Inuit population grew by 29 percent between 2006 and 2016, from 50,345 to 65,030. Population growth during this period was greatest among Inuit living outside of Inuit Nunangat, with that population growing by 62 percent. More than 27 percent of Inuit in Canada now live outside of Inuit Nunangat.

The projected life expectancy for Inuit in 2016 continues to lag behind that of the non-indigenous population of Canada. Life expectancy at birth for Inuit is 72.4 years compared to 82.9 for the non-Indigenous population. In 2015, the Inuit tuberculosis rate of 166.2 per 100,000 population was 277 times the Canadian born non-indigenous rate of 0.6 per 100,000. Inuit are also more likely than most other Canadians to live in crowded homes and have lower incomes. Among Inuit in Inuit Nunangat, 52 percent live in crowded homes, nearly six times the rate for non-indigenous people in Canada. The median pre-tax individual income for Inuit aged 15 years and over in Inuit Nunangat was CAN$23,485 compared with CAN$92,011 for the non-indigenous population in this region, representing an income gap of almost CAN$70,000.

Advancing Inuit-Crown partnership

The Liberal government that was elected in October 2015 ran on a platform that promised a renewed relationship with indigenous peoples based on recognition of rights, respect, cooperation and partnership. The federal government announced in December 2016 its intent to advance this commitment by creating "permanent bilateral mechanisms" with Inuit Tapiriit Kanatami, the Assembly of First Nations, and the Metis Nation.[6]

Inuit and the federal government struck the Inuit-Crown Partnership Committee on 9 February 2017 at a meeting convened with Prime Minister Justin Trudeau and four federal cabinet ministers in Iqaluit, Nunavut.[7] Committee members include the presidents of the Inuvialuit Regional Corporation, Nunavut Tunngavik Inc., Makivik Corporation, and the Nunatsiavut Government, as well as relevant federal cabinet ministers. The Committee is chaired by the president of Inuit Tapiriit Kanatami and the Prime Minister. Its purpose is to advance shared priorities through a process of ongoing collaboration between Inuit representational organizations and federal departments.

The Inuit Nunangat Declaration on Inuit-Crown Partnership document that was signed by Committee members in Iqaluit states that members will collaboratively identify and take action on shared priorities and monitor progress going forward.[8] The initial priorities identified by the Committee are as follows: Inuit-Crown land claims agreements; development of an Inuit Nunangat chapter of Canada's Arctic Policy Framework; housing; Inuktut[9] revitalization, maintenance, and promotion; advancing reconciliation measures; education, early learning and skills development; and health and wellness.

Inuit and the federal government finalized an accompanying Committee workplan in May 2017 whose objectives and actions are intended to guide the day-to-day work of Inuit representational organizations and federal departments on each of the identified priority areas. The Committee convened three times in 2017 and will report on progress to the Prime Minister in March 2018.

National indigenous languages legislation

Prime Minister Trudeau announced in December 2016 that the Liberal government is committed to introducing national indigenous languages legislation in 2018 aimed at revitalizing, maintaining, and promoting First Nations, Metis, and Inuit languages. Minister of Canadian Heritage, Melanie Joly, jointly announced in June 2017, along with the presidents of ITK, Assembly of First Nations, and Metis Nation, that legislation would be co-developed in partnership with indigenous peoples.[10]

ITK is actively participating in this co-development process on behalf of Inuit, along with AFN and Metis Nation representatives. More than 82 percent of Inuit in Inuit Nunangat self-identify as being conver-

sational Inuktut speakers. Inuktut is recognized as an official language in Nunavut and the Northwest Territories where it enjoys varying levels of support. The language enjoys the most robust legislative support in Nunavut under the 2008 "*Inuit Language Protection Act*". The Inuktut dialects of Inuinnaqtun, Inuvialuktun, and Inuktitut are also recognized as official languages by the 1988 Northwest Territories "*Official Languages Act*."

ITK is seeking to strengthen Inuktut through the legislative co-development process by advancing legislative content that is distinctions-based and transforms federal support for Inuktut through the affirmation of rights and re-design of federal programs and supports. The fall of 2018 is targeted for the tabling of national First Nations, Metis, and Inuit language bills, following a period of public consultation.

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North America

CANADA

The indigenous peoples of Canada are collectively referred to as "Aboriginal peoples." The Constitution Act, 1982 of Canada recognizes three groups of Aboriginal peoples: Indians, Inuit and Métis. According to the 2011 National Household Survey, 1,400,685 people in Canada had an Aboriginal identity, representing 4.3% of the total Canadian population. 851,560 people identified as a First Nations person, representing 60.8% of the total Aboriginal population and 2.6% of the total Canadian population. First Nations (referred to as "Indians" in the Constitution and generally registered under Canada's Indian Act) are a diverse group, representing more than 600 First Nations and more than 60 languages. Around 55% live on-reserve and 45% reside off-reserve in urban, rural, special access and remote areas. The Métis constitute a distinct Aboriginal nation, numbering 451,795 in 2011, many of whom live in urban centres, mostly in western Canada. 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." Canada's highest Court has called for reconciliation of "pre-existing Aboriginal sovereignty with assumed Crown sovereignty."[1] Canada has never proved it has legal or de jure sovereignty over indigenous peoples' territories, which suggests that Canada is relying on the racist doctrine of discovery.[2] In 2010, the Canadian government announced its endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UN General Assembly in September 2007. This decision came as a reversal of Canada's earlier opposition to the Declaration, which it had pursued together with Australia, the USA and New Zealand, who have all since revised their attitude towards the UNDRIP. Canada has not ratified ILO Convention No 169.

Curiously, 2017 was "celebrated" as the 150th birthday of the modern nation state called Canada. Indigenous peoples and their allies repeated pointed out the irony of this anniversary. For 150 years indigenous peoples have experienced dispossession, discrimination, and cultural genocide in their traditional territories, where their ancestors have lived for thousands of years.

A major change in the federal government's approach to indigenous peoples came in the form of restructuring one of the most "hands-on" government departments that has performed very poorly. What was once Indian Affairs and Northern Development, then Aboriginal Affairs, then Indigenous Affairs, was unexpectedly split into two ministries or departments. Now, there is a Ministry of Crown-Indigenous Relations and Northern Affairs AND a Ministry of Indigenous Services. Following an interesting pattern for a government who speaks very well on partnership, the announcement was a surprise to the national indigenous peoples' organizations. It was also a surprise to indigenous people in their communities. In announcing the split, Prime Minister Trudeau said this was part of the process of de-colonizing governance structures and eroding the power of the Indian Act. Such a split was recommended by the 1996 report of the Royal Commission on Aboriginal Peoples.

However, it remains to be seen how effective the restructuring will be. Based on over 11 years of audits, a Fall 2016 report of the Auditor General of Canada has described the disparity in the treatment of indigenous peoples in Canada as "beyond unacceptable."[3]

UN Declaration implementation

2017 continued the excellent political commitments at the federal level and the disappointing continued lack of meaningful substance in actions. In February the Prime Minister announced a working group of Ministers to review and decolonize all federal laws, policies and operational practices including to ensure consistency with the *UN Declaration*.[4] This work was to be done in consultation with indigenous peoples. While the working group did meet and presumably work on this critical task, the engagement with indigenous peoples' representatives and other experts was woefully minimal.

After the split of the federal department, in the new mandate letter to the Minister of Crown-Indigenous Relations, the Prime Minister re-

stated the commitment to the *Declaration*: "I expect you to work … through established legislative, regulatory, and Cabinet processes to deliver on your top priorities…. Work with the Minister of Justice to implement the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)* in full partnership with Indigenous Peoples."[5]

The 10th anniversary of the *UN Declaration* was celebrated across the country with various events. The city of Montreal held a major two-day celebration which included a ceremonial raising of a new flag for the city, honouring the indigenous peoples whose territory the city was founded on and who continue to live in the territory. In August 2017, Montreal formally endorsed the *UN Declaration* in a meeting of the municipal council.[6]

The Coalition for the Human Rights of Indigenous Peoples held a Symposium to celebrate the 10th anniversary. *Implementing the UN Declaration on the Rights of Indigenous Peoples: Priorities, Partnerships and Next Steps* was held in the Capital region and included academics, human rights advocates and indigenous leadership. On the opening evening the Minister of Justice and Attorney General for Canada, Jody Wilson-Raybould, announced that the federal government would support Bill C-262,[7] described in *The Indigenous World* last year. A member of the opposition, Cree MP Romeo Saganash, introduced the Bill in 2016. Bill C-262, in its essence, is a legislative framework for implementing the *UN Declaration*. Critically, the Bill affirms that the *UN Declaration* has "application in Canadian law."[8] The Bill still needs to

complete the parliamentary processes but with the support of the government, we are excitedly optimistic that Canada will have a law creating the implementation framework. Bill C-262 also calls for a national action plan[9] to implement the *Declaration* be created in partnership with indigenous peoples.

National Inquiry into Murdered and Missing Indigenous Women and Girls

As reported in last year's *The Indigenous World*, Canada established a National Inquiry into Missing and Murdered Indigenous Women and Girls. The Inquiry is mandated to inquire into and report on systemic causes of all forms of violence against indigenous women and girls in Canada. The Inquiry will fulfil this mandate by holding:

- Part I: Community Hearings (where families/survivors/families of the heart share their stories)
- Part II: Institutional Hearings (where institutions such as Child and Family Services/Police/Justice/among others are investigated and can be cross-examined) and
- Part III: Expert Hearings (where experts, including academics, are consulted)

By year-end, only Community (family) Hearings and one Expert Hearing had been held. Many advocates are concerned that the testimonies given in Part I Hearings will not be transformative if there is not a thorough systemic review conducted through Parts II and III.

The Inquiry has been criticized by some indigenous organizations and grassroots advocates for concerns raised by the many resignations of staff and one Commissioner, for re-traumatizing those affected by its work, as well as for not having a clear plan of how the Part II and Part III hearings will be carried out. The Inquiry has stated that an extension of their work will be requested from the federal government, however this has not yet happened. An interim report was presented in November 2017. Indigenous organizations and civil society were critical of this report, as it provided little new information, analysis or recommendations. Meanwhile, the crisis of Missing and Murdered Indigenous Women and Girls is on-going.

Child Welfare

The Child Welfare case was reported on in previous issues of *The Indigenous World*. The Canadian Human Rights Tribunal (CHRT) had ruled that the federal government discriminated against First Nations children by systematically underfunding child and family services on reserves and in the Yukon, relative to what is provided for children elsewhere and relative to the real needs of First Nations children and families.[10] The complaint was initially filed in 2007 by the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN).[11] Sadly, the federal government continued to drag its feet to comply with the ruling. The CHRT issued four compliance orders, signalling the serious nature of the concern. Following the creation of a new federal Ministry of Indigenous Services, there has been improved engagement with First Nations on this issue and there is cautious optimism that funding will be increased.

UN Committee on the Elimination of Racial Discrimination (CERD)

Canada was reviewed by CERD in August 2017. Concerns raised by indigenous peoples and their allies were a major component of the review. In the report and recommendations from CERD these were reflected, including the need for a national action plan and legislative framework for implementing the *UN Declaration*.[12] Other important issues that CERD included in the report and recommendations focused on the need to respect free, prior, and informed consent; action on equality for indigenous children in the child welfare system; addressing the crisis of violence against indigenous women and girls; action on respecting indigenous peoples' rights in the face of mega resource extraction (see below).

The report is very solid and well-informed. Indigenous peoples' organizations and non-governmental organizations urged Canada to use a parliamentary process to both study the report and implement its recommendations.

The Site C Dam

As one of the recommendations of its 2017 review, CERD called on Canada to "immediately suspend all permits and approvals for the construction of the Site C dam" in northeastern British Columbia.[13] The Committee also cited violations of Treaty rights and the right of free, prior and informed consent. Completion of the hydroelectric dam would flood more than 80 km of the Peace River valley, one of the few areas in that region that has so far been protected from the impacts of large-scale resource extraction. The severe impact of losing this valley is beyond dispute. A joint federal-province environmental impact assessment concluded that the dam would "severely undermine" indigenous use of the land, would make fishing unsafe for at least a generation, and would submerge burial grounds and other crucial cultural and historical sites.[14]

After the election of a new provincial government in May 2017, the province referred the project to the independent provincial utilities commission for an economic review. That review raised further questions about the need for the dam and the failure to pursue less costly and less destructive alternatives. Despite evidence that there is no sound economic rationale for the dam, the province announced on December 11, 2017 that construction would continue. The West Moberly and Prophet River First Nations, which had been previously unsuccessful in halting the dam through a streamlined judicial review procedure, have now launched a civil suit alleging violation of their Treaty rights. CERD has asked Canada to report back on the Site C dam by August 2018.

Grassy Narrows

The unresolved situation of mercury poisoning of the Anishnaabe people of Grassy Narrows was reported on in previous issues of *The Indigenous World*. Due to the tireless work of the people of Grassy and their supporters, facts on the poisoning and the corporate denial, combined with apparent government indifference,[15] continue to be revealed. The Ontario government committed to clean up the river system, a welcome and long overdue action. Late in 2017 the federal government agreed to support a medical treatment facility in the community, as the resulting

Minamata disease affects so many people. It was announced in November that the facility would be built.

Bilateral Mechanisms

Late in 2016 the Prime Minister announced new bilateral mechanisms between the federal government and the three national representative bodies for indigenous peoples: The Assembly of First Nations, Inuit Tapiriit Kanatami, and the Métis Nation. Such formalized relationship between the federal government and indigenous peoples is certainly a step in improving relationships and working in a more collaborative manner.

Litigation

Litigation is too often the course indigenous peoples feel compelled to resort to, as constitutionally protected rights continue to be violated by governments at both federal and provincial levels. Such violations are often caused by the desire for resource extraction, regardless of the far-reaching adverse impacts on indigenous peoples and individuals – and often future generations.

Every year there are important cases at different levels of the judicial system. This year, two important cases heard at the Supreme Court of Canada were *Clyde River (Hamlet) v. Petroleum Geo-Services16*, and *Chippewas of the Thames First Nation v. Enbridge Pipelines17*. Resource companies and governments in Canada continue to struggle with the meaning of free, prior and informed consent. Canada's Supreme Court has ruled in various cases on the fundamental issues of the "duty to consult and accommodate."

However, it would appear that Canada's highest court is also struggling with leaving the colonial approach to indigenous peoples' rights behind. This of course speaks to the need for the Supreme Court to start using the *UN Declaration* as a "principled framework for justice, reconciliation, healing and peace."[18] In doing so, the Court – as well as non-indigenous governments – in Canada must unequivocally characterize indigenous peoples' rights as human rights. This essential approach must be consistent with international human rights law.

In *Tsilhqot'in Nation* v. *British Columbia*, the Supreme Court ruled: "The [*Canadian*] *Charter* forms Part I of the *Constitution Act, 1982*, and the guarantee of Aboriginal rights forms Part II. Parts I and II are sister provisions, both operating to limit governmental powers, whether federal or provincial."[19] There can be no discriminatory double standard in regard to indigenous peoples' human rights.

Reconciliation

In the years following the work of the Truth and Reconciliation Commission, there continues much discussion around "Reconciliation" and what that means. There are many perspectives on this question, however, it is widely agreed that reconciliation is a journey and not a moment in time. While we see small "victories" or actions that can assist in the goal of reconciliation, there remains significant need for much more engagement and commitment by all sectors of society.

Notes and references

1. Canada is part of the British Commonwealth. The British Crown is the symbolic head of state and the term refers to government. The federal government is the Crown in right of Canada and each of the provincial governments is the Crown in right of the province.
2. See Permanent Forum on Indigenous Issues, Study on the impacts of the Doctrine of Discovery on indigenous peoples, including mechanisms, processes and instruments of redress. UN Doc. E/C.19/2014/3 (20 February 2014) Study by Forum member Edward John, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/241/84/PDF/N1424184.pdf
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6. City of Montreal, Extract of minutes of meeting of Municipal Council, 21 August 2017, Résolution CM17 0918.
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8. Bill C-262, s. 3.
9. *Ibid.*, s. 5.
10. See, *e.g.*, *First Nations Child and Family Caring Society of Canada* v. *Canada (Attorney General)*, 2017 CHRT 14.
11. For further information on this case, visit https://fncaringsociety.com/i-am-witness
12. Committee on the Elimination of Racial Discrimination, *Concluding observations on the twenty-first to twenty-third periodic reports of Canada*, UN Doc. CERD/C/CAN/CO/21-23 (13 September 2017).
13. *Ibid.*, para. 20(e).
14. See also *Prophet River First Nation* v. *Canada (Attorney General)*, 2015 FCA 15, para. 13: "In its report, the JRP [Joint Review Panel] concluded that the project would likely have many significant adverse environmental effects, some of which could be mitigated. Specifically, with respect to Treaty 8, the JRP concluded that the Site C Project would likely cause significant adverse effects on fishing opportunities and practices, on hunting and non-tenured trapping, and on other traditional uses of the land. It found that the effects on fishing, hunting and trapping could not be mitigated, nor could some of the effects on other traditional uses of the land.
15. "Ontario knew about Grassy Narrows mercury site for decades, but kept it secret", Staff Torstar News Service Published on Sat Nov 11 2017, https://www.thestar.com/news/canada/2017/11/11/ontario-knew-about-mercury-site-near-grassy-narrows-for-decades-but-kept-it-secret.html
16. 2017 SCC 40
17. 2017 SCC 41.
18. Human Rights Council (EMRIP), *Access to justice in the promotion and protection of the rights of indigenous peoples: Study by the Expert Mechanism on the Rights of Indigenous Peoples*, UN Doc. A/HRC/27/65 (7 August 2014), Annex – Expert Mechanism Advice No. 6 (2014), para. 1. See also Permanent Forum on Indigenous Issues, *Report on the fourteenth session (April 20 – 1 May 2015)*, Economic and Social Council, Official Records, Supplement No. 23, United Nations, New York, E/2015/43-E/C.19/2015/10, para. 33: "The Permanent Forum reminds States that the implementation of the United Nations Declaration provides a common framework for reconciliation, justice, healing and peace."
19. *Tsilhqot'in Nation* v. *British Columbia*, 2014 SCC 44, para. 142.

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UNITED STATES OF AMERICA

The indigenous population in the United States of America ranges from 2.5 to 6 million people, of which 23% live in American Indian areas or Alaska Native villages. The largest indigenous population is concentrated in the state of California and New York City. 567 Native American tribal entities were recognized as American Indian or Alaska Native tribes by the United States in January 2017, and most of these have recognized national homelands.

While socioeconomic indicators vary widely across the different regions, the poverty rate for those who identify as American Indian or Alaska Native alone 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 powers over indigenous nations. American Indians in the United States are generally American citizens; they are also citizens of their own nations.

Presidential politics

One of the first actions of the new Trump administration was to fast-track the permission process for the Dakota Access pipeline (see The Indigenous World 2017) and to revive the permission process for the Keystone XL pipeline (see The Indigenous World 2016), two oil pipelines heavily opposed by indigenous peoples in the United States. The Army Corps of Engineers was told in January to provide the final permission for the pipeline to cross the Missouri River under Lake Oahe in North Dakota, thus cutting short a full Environmental Impact Statement. Although the Standing Rock Sioux Tribe, the Chey-

enne River Sioux Tribe, and others, continued their lawsuits against the pipeline construction, the pipeline became operational in March. In October, a federal judge ruled that oil could continue to flow in the pipeline, although he recognized that there were "deficiencies" in its approval.[1] In the meantime, the company behind the pipeline, Energy Transfer, has sued the environmental organizations that helped Standing Rock, including Greenpeace and Earth First!, for defamation and racketeering, calling them eco-terrorists.[2]

TransCanada, the company behind the Keystone XL project, stated that it had received a permit to construct the pipeline in March. It still needs state approvals. In May, the Blackfoot Confederacy, the Ponca Tribe of Oklahoma, and Sioux tribes of the Oceti Sakonwi signed a common declaration against the pipeline and the further development of the Tar Sands in Canada.

Policies consistent with diminishing tribal land rights, sovereignty, and input into land and resource issues have multiplied under the Trump administration. In North Dakota, two lawmakers introduced a state bill calling on the federal government to allow states to solve economic problems on reservations.[3] Since its early days, the administration has mulled over proposals to privatize Native lands. This would remove federal guidelines and tribal sovereignty, which are seen as obstacles to development. In the United States, American Indians can

own lands like any other citizen but, officially, Indian lands over which tribal sovereignty is the strongest are so-called "trust lands". These lands are owned by individuals or tribes but the federal government holds the title to the lands in trust for the owners, thus making the lands federal lands. Giving the titles to the owners would clear the way for the owners to sell, lease and develop the lands however they want; it would also clear the way from federal guidelines and regulations for resource developers. In July, one BIA official told the Mandan, Hidatsa, and Arikara tribes in North Dakota that he wanted to remove those hurdles as the "federal government has been in the way for far too long".[4] These ideas are reminiscent of the Termination policies in the 1950s and 60s, when tribes whose trust status was terminated sank into deepest poverty.

The Trump administration has also ended the Land Buy-Back Program. This program has helped alleviate the effects of "fractionation"; the titles to lands held in trust are indivisible so that, over generations, the lands become fractionated, that is, multiple individuals – up to several hundred – can come to own the same parcel in common, thus rendering the land unusable. The government had tried to rectify the situation by buying fractionated land interests from individuals, consolidating the ownership, and turning the land over to tribal governments.

In addition, the administration, in October, proposed new rules for taking new lands into trust for tribes. These new rules would make the process, especially for lands away from current reservations, much more cumbersome. Tribes would have to explain how the new trust lands would impact local and state economies. Trust lands are exempt from state and local property taxes, new trust lands will therefore reduce the tax base for counties and states. When tribes ask to turn fee lands into trust lands, states and counties argue against this because their tax base will be diminished. This means that tribes have to negotiate with states and counties before even asking the federal government to take lands into trust for them.[5]

It is unclear how these new trends in federal policy will affect Alaska Native nations, for whom the land-into-trust process has just begun. The Craig Tribal Association received a one-acre parcel in trust in January, still under the Obama administration.

In November, the Supreme Court rejected an appeal against returning 13,000 acres of land to the Oneida Nation of New York as trust lands. However, in his dissent, Justice Clarence Thomas argued that

the whole land-into-trust process was illegal. The land in question is a small part of the 300,000 acre reservation the tribe was guaranteed in a 1794 treaty, which was later broken by the state of New York (see The Indigenous World 2006). Justice Thomas argued that the transfer creates a burden for local and state governments and negatively affects neighboring landowners.[6] The dissent is a reminder that changes in the composition of the Supreme Court can have extreme effects on Native sovereignty, land rights, and resource ownership, because the court is the last guarantor of American Indian rights.

Resources and lands

In May, the Environmental Protection Agency changed course under the new administration and came to a settlement that would allow the Pebble mine to apply for a permit (see The Indigenous World 2015). The Pebble project targets copper deposits near to Bristol Bay in Alaska. A confederation of local Alaska Native village corporations, the United Tribes of Bristol Bay, opposes the mine for fear that it will destroy the rich salmon fishery in the bay. In June, however, Pebble, owned by Northern Dynasty Minerals, signed a contract with the Arctic Slope Regional Corporation (ASRC) subsidiary, Energy Services Alaska. The ASRC is an Alaska Native corporation on Alaska's north shore, over a thousand miles away from Bristol Bay. In December, Northern Dynasty acquired a new partner for the project, First Quantum Minerals, and announced that it was starting the permit process.

Another decision by the Obama administration was reversed in December. President Trump, on the recommendation of the Secretary of the Interior, Ryan Zinke, reduced both the Grand Staircase-Escalante and Bears' Ears National Monuments in Utah. Bears' Ears, established in December 2016 (see The Indigenous World 2017), was reduced by 85%, from 1,351,849 acres to 201,876 acres. This will allow the state of Utah to open lands for resource extraction: they hold uranium, oil, and gas deposits. A coalition of organizations filed three lawsuits against President Trump's action; one of those is a suit by the Hopi, Navajo, Ute, Ute Mountain Ute, and Zuni tribes of Arizona, Utah, Colorado, and New Mexico.[7] National Monuments in the U.S. are created under the Antiquities Act, and Bears' Ears is an area estimated to hold more than 100,000 prehistoric and historic sites, a landscape that as a whole is extremely

meaningful to regional Native nations. Resource extraction projects would threaten this landscape and the sites.

In March, Secretary Zinke issued Secretarial Order 3348 under direct orders from President Trump, thus overturning a 2016 moratorium on new coal leases on federal land (including Indian lands), put in place to prepare a Programmatic Environmental Impact Statement on the federal coal program under the National Environmental Policy Act. In response, a coalition of environmental organizations and the Northern Cheyenne Tribe of Montana sued the administration. The Northern Cheyenne Tribe made a conscious decision not to extract the rich coal deposits on their lands in the 1970s, but they are surrounded by deposits. "It is alarming and unacceptable for the United States, which has a solemn obligation as the Northern Cheyenne's trustee, to sign up for many decades of harmful coal mining near and around our homeland without first consulting with our nation," said Northern Cheyenne President Jace Killsback. "The Nation is concerned that coal mining near the Northern Cheyenne Indian Reservation will impact our pristine air and water quality, will adversely affect our sacred cultural properties and traditional spiritual practices and ultimately destroy the traditional way of life that the Nation has fought to preserve for centuries."[8]

In May, Secretary Zinke signed Secretarial Order 3352 to reassess and open oil and gas drilling in the coastal plains of the Alaska National Wildlife Refuge (ANWR) and the Alaska National Petroleum Reserve. Drilling in ANWR is highly controversial because it contains the calving grounds of the Porcupine caribou herd. In discussions dating back to 1977, the Gwich'in nation has opposed drilling because the herd is economically and spiritually of prime importance to them. The ASRC, however, are in favor of drilling.[9] In response to Zinke's order, the U.S. Geological Service revised its estimate of recoverable oil in the area from 1.5 billion barrels estimated in 2010 to 8.7 billion barrels.[10]

To more easily facilitate energy extraction from federal and Indian lands, Secretary Zinke signed Secretarial Order 3358 in October, which established the Executive Committee for Expedited Permitting. This committee includes no tribal representation. It will work toward the fulfillment of "energy dominance", a "top priority" for the Trump administration.[11]

Other developments

In August, Cherokee Freedmen regained citizenship rights in the Cherokee nation (see The Indigenous World 2008). The decision in *Cherokee Nation v. Nash* held that the descendants of former Cherokee slaves are entitled to full citizenship in the Cherokee nation.[12]

Also, in Oklahoma, a federal judge ruled in favor of Kiowa, Apache, and Comanche landowners who own a parcel of trust land crossed by a gas pipeline. The landowners sued the pipeline company for trespass. In *Davilla v Enable Midstream Partners*, the judge ordered the pipeline company to cease operation and remove the pipeline from the land.[13] The company has been operating without an easement for the pipeline since 2000. Enable argued that it had permission from five landowners, but these hold less than 10% of the title. The company is appealing the decision.

In Washington State, the Swinomish Indian Tribal Community has received permission to sue the Burlington Northern Santa Fe (BNSF) railroad for infractions against a railroad easement. BNSF runs crude oil rail cars to a refinery over Swinomish lands, and holds a 1991 easement, limiting the traffic to two trains a day with a maximum of 25 cars each. However, it has been running six trains a week with 100 cars. Crude oil railcars have been known to explode upon derailment, and the Swinomish are trying to protect their people and the environment from an accident.

In general, it seems that recourse to court decisions have become increasingly important again this year, as the policy priorities of the Trump administration do not place importance on dialogue with American Indian or Alaska Native nations. While the Obama administration at least placed an emphasis on consultation and listening to Native positions, the new administration seems to be going in a direction of limiting sovereignty, a position that at times is reminiscent of the Termination era of the 1950s.

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Mexico and Central America

MEXICO

Mexico is the country of the Americas with the largest indigenous population and the largest number of native languages spoken in its territory: 68 languages and 364 registered dialects. The National Institute of Statistics and Geography (INEGI), the National Population Council (CONAPO), as well as the Economic Commission for Latin America (ECLAC) registered 16,933,283 indigenous people in Mexico, representing 15.1% of all Mexicans (112,236,538). There is a sustained population growth due to higher rates of indigenous fertility, 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). The country 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. Although the states of Chihuahua, Nayarit, Oaxaca, Quintana Roo, and San Luís Potosí have provisions regarding indigenous peoples in their state constitutions, the indigenous legal systems have yet to be fully recognized. In 2007, Mexico voted in favor in the United Nations Declaration on the Rights of Indigenous Peoples.[1]

The year 2017 did not see fundamental changes in the situation of indigenous peoples of Mexico. The attack on their human rights accentuated, with an increase in murders of indigenous leaders and defenders of rights. In addition, the struggle for defense of indigenous territories has intensified in the face of the onslaught of extractive megaprojects. The earthquakes that shook many regions of the country worsened this situation. In this context, 2017 will be remembered as the year when an indigenous woman ran for the office of president and the UN Special Rapporteur on Indigenous Peoples made a country visit to Mexico.

The health of indigenous peoples

With respect to the health of indigenous peoples, five major factors have had a negative influence during the period under consideration. These factors have affected traditional settlements (25 indigenous regions, which are mostly rural, are recognized by the National Commission for the Development of Indigenous Peoples); as well as large and mid-sized Mexican cities; agro-industry fields that recruit agricultural day laborers; Central American migrant populations that settle in or transit through Mexican territory; and Mexican natives who migrate to the fields and cities of the United States and Canada.

Significantly, the 2012 National Survey on Health and Nutrition (ENSANUT) indicates a "Persistent inequity in the health of indigenous peoples: challenges for the social protection system" in its analytical studies (published with noticeable delay), stating that "Studies on the health situation of indigenous peoples document their high vulnerability, as well as their constant exposure to a number of risks in conditions of social inequity that reduce their response capacity for mobilizing social resources when faced with health problems."[2] Upon analyzing the data, ENSANUT found that the nutritional state of indigenous persons, analyzed in terms of their height, continues to show unfavorable indices surpassing national averages. In its general observations ENSANUT concludes: "The persistence of conditions of social inequity in health limit social programs' contribution to improving access to health services for the indigenous peoples."[3] Those five negatively influencing factors include general conditions of life for indigenous peoples (and the social determinants of employment, education, nutrition, housing, access to services, etc.), dramatic increases in levels of violence and

insecurity, indigenous zones controlled by organized crime, and even, paradoxically, extension of life expectancy, which has increased the rates of elderly indigenous persons who do not have services, along with a decrease in public spending earmarked for health.

The figures released at the close of 2017 reveal that there was a reduction in health spending at the federal level. In 2018, it is estimated that the percentage of health expenses will rise from 4% to 5.5%, with an increase in out-of-pocket expenses for users and a significant decrease in the number of beneficiaries of healthcare programs.[4] Another factor that will have a negative impact is public financing by the states. The Mexican states that will have the lowest share of participation, GDP, and local income are precisely the regions with the largest indigenous populations. From lowest to highest, they are: Guerrero, Oaxaca, Hidalgo, Michoacán, Morelos, Chiapas, Puebla, San Luis Potosí, and Veracruz.[5] In the particular case of Oaxaca, the new state government –which came into office on 1 December 2016– has recognized that the State Health Department "is in critical condition, due to a deficit of 6 billion pesos [approximately 32,500,000 dollars], as a result of irregularities of the two prior administrations."[6]

The impact of the mining on indigenous territory

In Chiapas, a conflict over boundary limits that dates back 45 years among the communities of Chalchihuitán and Chenalhó accentuated in the second half of 2017, fundamentally due to an error by federal and state agrarian agencies. "Civic groups report that more than 5,000 indigenous persons have been displaced in Chalchihuitán and more than 900 in Chenalhó," with resulting deaths and injuries, and people are affected by the precarious health, nutrition, and sanitation conditions. This situation was specifically denounced by the National Human Rights Commission (CNDH). "More than 500 inhabitants of Majompepentic, community of Chenalhó, fled to the hills to avoid being assaulted, since their housing is next to those of Canalumtic, by the neighboring municipality. Before the problem worsened, the indigenous of both places got along without problems."[7]

An unprecedented advance of mining into indigenous regions has harmed health in many ways. Especially damaging is open pit mining, almost all of which is carried out by Canadian companies or their subsidiaries. An exemplary, well documented case of the health harms is seen at Los Filos and El Bermejal, in the State of Guerrero, exploited by the Canadian company GoldCorp in the indigenous culture zone of Balsas Mezcala. That case can be referred to in an extensive report prepared by the Meso-American Movement against the Extractive Mining Model.[8]

Diversification of indigenous migration to the US

The high levels of marginalisation of the Mexican indigenous population continue to drive their displacement into the United States. The ethnic composition of indigenous Mexican migrants has diversified, but Mayans, Zapotecas, Purépecha, and Mixtecos continue to be the most numerous. Even prior to the Bracero Program and continuing to the present, indigenous migration to the United States has been constant and on the rise. The difference now is the growing volume of indigenous persons who participate in it, as well as the variety of groups that are now part of the migration to the U.S. and the variety of their destinations. This is reflected in the 2010 United States census data, which reports languages such as Amuzgo, Cuicateco, Ixcateco, or Popoloca, which in Mexico are on the verge of extinction.

When analyzing the distribution of the Mexican indigenous population in the United States, one's attention is drawn to the great variety of U.S. states where their presence is recorded, which reflects a phenomenon of dispersion of the members of these ethnic groups in that country. At first, the trend was to concentrate in specific states such as California. However, according to the 2010 census, their presence is now recorded in all 50 states. The number of destinations vary by group. Of particular note are Mayans, with a presence in all the states; followed by Purépechas in 47 states; Tarahumaras in 41; Mixtecos and Zapotecos in 40; Otomíes in 39; Nahuas in 36; Huicholes and Coras in 34; Mixes in 28; Huastecos in 22; Tepehuas in 17; Chatinos in 16; Seris, Mazahuas, and Triquis in 15; Chinantecos in 14; Popolocas, Tseltales, and Tlapanecos in 8; Tsotsiles, Lacandones, and Chocholtecos in 6; Amuzgos, Ixcatecos, and Zoques in 4; Tojolabales in 3; Cochimíes in 2; and Huaves in one.

Human rights defenders in a situation of high risk

With respect to human rights, the *Front Line Defenders* report reveals that Mexico ranks fourth among the world's most dangerous countries for defenders of rights. During 2017 there were 31 murders, the majority of which were of activists involved in indigenous and environmental causes.[9] On 20 May, the indigenous leader of the Wixárrika people and the former president of communal property of that people, Miguel Vásquez and his brother Agustín, were murdered. Just days later, a Tzotzil activist and Council Member of the National Organization for Popular Power, Guadalupe Huet, was also murdered. In response, Jan Jarab, the representative in Mexico of the United Nations High Commission for Human Rights, condemned those acts. These are just some of the many cases recorded.

Indigenous communities affected by earthquakes

On 7 September, an 8.2 magnitude earthquake shook the states of Chiapas, Oaxaca, Veracruz, Tabasco, and Puebla. Major physical damage and a significant loss of human life occurred, specifically impacting indigenous zones, with the Zapoteca and Huave region of the Tehuantepec Isthmus perhaps being the hardest hit. It is estimated that 110,000 houses

were damaged, and more than 80 deaths were recorded. At the time of writing this article, the problems of health, housing, food, and security, affecting more than 60,000 indigenous persons, have yet to be solved. This same scenario repeated on 19 September, when a 7.2 magnitude earthquake was recorded in the State of Morelos, with heavy impacts in the State of Puebla, the State of México, and Mexico City. Once again, the indigenous Nahua, Mazahua, and Otomí populations who inhabit the region were among the most severely affected. They now face legal insecurity due to loss of their housing. Silence and inaction on the part of the authorities now pose a risk of creating a history of tragedy, poverty, and neglect.

Visit by the United Nations Special Rapporteur on the Rights of Indigenous Peoples

From 8 to 17 November 2017, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Ms. Victoria Tauli-Corpuz, paid an official visit to Mexico, touring Mexico City, Chihuahua, Guerrero, and especially Chiapas. During her visit she met with federal and state authorities, as well as with representatives of indigenous peoples and organizations of civil society. In total, she met with more than 200 persons from 23 different indigenous groups, of which, the rapporteur notes, half were women. After learning about the histories of many indigenous peoples and analyzing the country's official data, the Special Rapporteur highlighted historic and structural discrimination afflicting the indigenous peoples, which increases their vulnerability to poverty, marginalisation, violence, and impunity.

Some of the issues highlighted by the Rapporteur in her end-of-mission statement are the following. First and foremost, the fact that the indigenous peoples are not being adequately consulted in accordance with international standards on projects and other decisions that affect their rights, including the right to the life. An alarming 99% impunity rate in cases of human rights violations particularly affects indigenous persons (femicides, massacres, murders, human trafficking, or the taking of lands).

The Rapporteur emphasized the violence faced by indigenous groups who struggle for their rights, in particular in cases of implementation of extractive megaprojects. She noted that 35% of Mexican territory is affected by more than 29,000 mining, hydroelectric, and wind

energy concessions, of which 17% are in indigenous territories, resulting in an increased denial of their right to territory.

In the *Report on the situation of the rights of indigenous peoples of Mexico*,[10] the Rapporteur indicates that the report's objective is to make known the principal violations of the rights of indigenous persons and communities in Mexico. She furthermore notes that the report is a collective result of the Mexican civil society organizations, communities, and collectives that have historically been devoted to the defense of human rights in the country. In addition, the Rapporteur explains that the report consists of nine sections addressing the national context, describing the barriers, obstacles, and challenges for guaranteeing the rights of indigenous peoples in the country; the report then analyzed violations, grouped by theme, such as autonomy and self-determination; the right to the territory; lack of access to justice as a great obstacle for protecting their human rights and, above all, for integrally redressing human rights violations. Finally, the report analyzes the situation of insecurity and violence faced by indigenous persons and communities and of which they are also victims. This fact accentuates and intensifies the impact of violations of their human rights.

In her visit to Guerrero, the Rapporteur met with mothers and fathers of the 43 normal school students disappeared by the Mexican State in September 2014, known as the "Ayotzinapa 43." These parents discussed the obstacles for learning the truth and obtaining justice, and denounced that the Mexican government is refusing to comply with the recommendations of the Interdisciplinary Group of Independent Experts to thoroughly investigate what happened. "Of the 43, 17 are indigenous youth, who were violently victimized, and up until today we still have no news of them," stated Cristina Bautista, the mother of student Benjamín Ascencio. After the meeting, the Rapporteur stated: "The pain that the fathers and mothers feel, I feel as well. I share the pain of all those fathers and mothers who have lost their children; this type of injustice is unacceptable."

An indigenous woman running for president of Mexico

In an unprecedented act, on 28 May 2017, the National Indigenous Congress and the Zapatista Army of National Liberation formed the Indigenous Council of Government (CIG) to run an independent candidate for

the presidency of Mexico in the 2018 federal elections. The responsibility to run for president was given to its spokeswoman, who is Nahua indigenous, María de Jesús Patrico Martínez (nicknamed Marichuy).

Representatives of 58 peoples and an equal number of languages from 32 states of Mexico who participated in the Constitutional Assembly indicated that "from below and from the left the rebuilding of our country is possible, and we thus organize ourselves without fear. We can rebuild ourselves and plant on the ruins left by capitalism, and can put an end to the racist-patriarchal order."[11] The candidature was the target of countless attacks and racist, sexist, and even classist disparagement, both from individuals and from political parties, public and private institutions. As one example, banking institutions refused to open a bank account for her. Nonetheless, Marichuy succeeded in registering her campaign on 7 October.

The CIG spokeswoman, who announced that she will not accept public money from the National Electoral Institute, has until 19 February 2018 to gather signatures from 1% of the registered voters in 17 states of the country, that is, approximately 850,000 persons. In her interviews with the communications media, she repeatedly indicated that what is important in her candidature will not be to act under a demagogic logic in search of votes, but to give a voice to those who have none, promoting the organization of the country's various communities and peoples in thematic groups, "which are the working group on land and territory; the groups on justice; on autonomy; on women; on youth and children; on migrants and the displaced; on work and exploitation; on sexual diversity groups; and on persons with disabilities." This candidature is characterized as being the fifth peaceful social organization proposal promoted by the EZLN since 1994, when it held /sponsored the National Democratic Convention.[12]

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GUATEMALA

GUATEMALA
BELIZE
MEXICO
La Pasión River
Cambalam R.
Alta Verapaz Department
Cahabón River
Huehuetenango Department
HONDURAS
Guatemala
EL SALVADOR

Guatemala continues to lack a solid statistical basis for accurately indicating the total number of its indigenous population. The official census (last taken in 2002) estimates that 45% of the population is indigenous, but alternative reports indicate a figure closer to 60%, that is, some 6 million people.

The principal ethnic groups are the Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Po- qomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil, Uspanteko, Xinka, and Garífuna. The social, economic, and political situation of the indigenous peoples continues to lag behind that of the rest of society, which reflects unequal public investment and the persistence of discrimination, exclusion, and racism that are still prevalent in the country. Two studies published in 2017, one on public investment in indigenous peoples and one on the fulfillment of the Peace Accords, evidence the precarious conditions in which the majority of the indigenous population lives. This situation results from a public institutionality designed to maintain ethnic disparity, and the current situation offers no possibilities for transformation.

The political crisis stemming from the fight against corruption and impunity over the past two years has relegated to second rung the implementation of the State's commitments to indigenous peoples. Yet social organizations continued to fight for the recognition of their rights and participate in political debate. These organizations have brought their proposals to processes such as the discussion of the failed constitutional reforms of the justice sector, the Water Act and Regulation for community consultations. They also mobilised to demonstrate their resistance to extractive investments in their territories despite suffering from repression and criminalisation. Guatemala ratified ILO Convention in 1996 and in 2007 voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples.

The political crisis and indigenous peoples

The judicial actions brought by the International Commission against Corruption and Impunity in Guatemala (CICIG), filed new cases against high-ranking public officials, business leaders, and political leaders that evidence just how deeply corruption is entrenched. These cases show how they have diverted large quantities of economic resources in a country ravaged by poverty. But the fight against corruption also gave rise to a counterattack by the accused, among them the President of the Republic himself and his Minister of Foreign Affairs, both of whom in August declared the CICIG Commissioner to be a personna non grata and demanded his expulsion from the country. A rapid and extensive social mobilisation, which included indigenous peoples, reversed the presidential decision, but not the insistence on requesting the Commissioner's removal. This insistence showed a lack of commitment of the current president in the fight again corruption. Indigenous organizations and authorities such as the 48 cantons of Totonicapán, the Indigenous Municipal Council of Sololá, the Council of Mayan Peoples and the Indigenous Peoples' Observatory all gave their support to the Commissioner and demanded greater governmental commitment against corruption and impunity.

Rejection of the community consultations regulation

After having provisionally protected the communities of the Q'eqchi people, who oppose the construction of two internationally funded hydroelectric projects in their territory (Oxec I and Oxec II), the Constitutional Court eventually issued a final judgment that approves the continuation of the projects and forces the Government so that within one year, it will formulate and approve a regulation to standarise the holding of community consultations.

In response to this ruling, the Ministry of Labor formulated the regulations for the consultations. Indigenous and social organizations expressed their opposition because doing so violates the rights of indigenous peoples and Convention 169 of the International Labor Organization and the laws of the country itself. According to the experts, community consultations do not require any regulation and must be carried out according to the mechanisms of the indigenous peoples.

The regulation is nothing more than a tool that the extractive industries long to use to legitimise their investments, and they are mobilising everything in their power for it to be approved. The regulation poses a risk to indigenous territories because it will fuel the dispossession of their lands and the pillaging of their natural resources, and will also have social and environmental impacts.

Criminalisation of human rights defenders

Throughout the year, the state continued to persecute indigenous leaders who defend their territories. Arrests and imprisonment of Q'eqchi, Ch'orti and Q'anjob'al indigenous leaders forms a part of the strategy of militarising the territories,[1] which is promoted by the mining and the hydroelectric dam companies.

In December an arrest warrant was issued against Bernardo Caal, a leader of the Q'eqchi resistance against the Oxec I and Oxec II dams in the Municipality of Santa María Cahabón, Department of Alta Verapaz. The warrant was executed a few days later and Mr. Caal is still being held as a political prisoner. This demonstrates the strategy by the economic elite to silence the voices of resistance against extractive projects. It has reached such an extreme that the congressional representatives of the most conservative constituents have launched an anti-terrorism bill. This bill would label indigenous and campesino mobilisations in defense of their territories as acts of terrorism.

Reforms of the judicial sector cut short

Several sectors of civil society, academicians and indigenous organizations made an effort to discuss and propose improvements to the constitutional reforms of the judicial sector. Yet this process was later abandoned and ceased to form a part of the country's political agenda. Among the proposed reforms was recognition of indigenous jurisdiction and customary law, which were challenged by the business sector and conservative politicians, As a result, the rest of the reforms were largely ignored. In an effort to overcome such obstacles and move forward on other fundamental aspects contained in the reforms, the indigenous organizations withdrew these two issues from the agenda. In spite of this

sacrifice, the reforms did not advance, due to the opposition of the majority of the congressional representatives who form a part of what is popularly known as the *Pacto de Corruptos* (Pact of Impunity).

Exclusion after twenty years of the Peace Accords

A study prepared by the United Nations Development Programme on the occasion of the twentieth anniversary of the Peace Accords presented an analysis of advances and non-fulfillment in the implementation of the Agreement on the Identity and the Rights of Indigenous Peoples. The results show progress on soft aspects such as the creation of the Commission against Discrimination and Racism (CODISRA), bilingual intercultural education, and the Mayan Language Act. However, the substantive commitments have not been fulfilled, such as rights to lands and territories and the best equity in political representation of indigenous peoples in government structures. The state's indigenous institutions are made up of units that attend to indigenous matters within the ministries and secretariats of government agencies. In reality, they are small islands made up of no more than five officials, less than 1% of the government's officers. They do not have the avenues or decision-making power to intervene in the official agendas on behalf of the indigenous peoples.

This is corroborated by a study on public investment in indigenous peoples prepared by the Central American Institute of Fiscal Studies (ICEFI),[2] which documents the historical inequity of public investment in health, education, infrastructure, and production-oriented investment. Only 45% of public investment is earmarked for indigenous peoples, which is inconsistent with the fact that they make up 60% of the country's population. Along the same lines, the National Human Development Report 2015-2016 presented in March 2017 entitled, "Beyond Conflict, Struggles for Well-Being,"[3] points out that the neoliberal development model promoted since 1990 has done nothing but increase inequalities and exclusion, especially against indigenous peoples, while also exacerbating environment decline and social conflict.

The Water Act decoy

Diverse sectors of society took on the task of discussing and proposing inputs for a Water Act, sought for from a variety of perspectives. The impacts of climate change have produced a conflict. On one side, large-scale industry and agriculture plantations seek access to water without significant restrictions. They argue that water is a public resource for which they should not have to pay any tariffs. They also believe that they have the right to divert the rivers to satisfy their own interests. On the other side, people living in the water recharge zones strive to maintain the natural ecosystems that protect the main aquifers of the country and are demanding to be compensated for their efforts.

During the year, different avenues were set up for discussion about this law, however there was very limited opportunity for dialogue since many bills were introduced, each reflecting the interests of its proponents. In the end, the Congress of the Republic paralysed this process and postponed its debate. In the meantime, the problems related to water access, use and control continued to cause a lot of problems from the local community level to the national level.

Restoration of the rights to ancestral lands

Indigenous peoples have ongoing claims to their lands, which have been dispossessed from them and encroached upon through allegedly legal mechanisms. On behalf of the *Mesa de Tierras Comunales*, (Communal Lands Authority) a body comprised of ancestral authorities, various lawsuits have been filed for the restoration of these rights. In most cases, the communities have been able to demonstrate that their lands were usurped and then recorded in the land registries through illegal or false mechanisms. Although there is still a long road ahead in the process of land restitution, the legal struggle by the communities has borne fruit in judgments issued by the Constitutional Court for the restitution in certain emblematic cases. The restitution process is only the beginning of a long legal struggle started by the communities, taking into account that many of lands and territories claimed were taken from them through illegal and fraudulent practices.

The struggle for self-identification during the census

In accordance with international standards, the country has a commitment to take a census every ten years, but in Guatemala the last census was conducted in 2002. This means that there has been a six-year delay for the new census. Indigenous peoples do not have high expectations regarding the census, since in previous years it only served to exacerbate the pressures they face. Furthermore, the latest censuses have shown a trend towards a decline in the number of indigenous inhabitants most likely because they have not favored self-identification of the inhabitants.

For the current census projected for 2018, several indigenous organizations have proposed to wage information campaigns to encourage indigenous people to identify themselves as such. Undoubtedly, this an arduous task, considering that many indigenous people hide or downplay their indigenous identity precisely as a defense mechanism against the practices of exclusion, discrimination, and racism that still prevail in Guatemalan society.

Notes and references

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NICARAGUA

HONDURAS
NORTH CARIBBEAN COAST AUTONOMOUS REGION
Cayos Miskitos
Coco R.
Rio Grande Estuary
SOUTH CARIBBEAN COAST AUTONOMOUS REGION
Cayos Perlas
NICARAGUA
Rama
Cayo Grape
Managua
Bluefields
Nicaragua Lake
RÍO SAN JUAN
PACIFIC OCEAN
CARIBBEAN SEA
COSTA RICA

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 Nahoa or Náhuatl (20,000) peoples; and, on the other hand, in Caribbean (or Atlantic) coast, inhabited by the Mískitu (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 Mískitus, 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 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 favor of the United Nations Declaration on the Rights of Indigenous Peoples and in 2010 it ratified ILO Convention 169.

The principal events that occurred during the year 2017 were characterized by the State of Nicaragua's failure to protect the human rights of the indigenous and afro-descendant peoples, specifically in terms of protecting the physical integrity of their members and defenders of their traditional territories, their self-determination as peoples, and access to, use and enjoyment of their collective lands or territories. This was evidenced by the government's failure to guarantee collective ownership for the indigenous peoples of the Nicaraguan Pacific, Central, and Northern zones (hereinafter "PCN") or to implement the review stage on third-party land ownership ("saneamiento") for the 23 territories whose title was granted by the State itself as of the year 2005 in the Autonomous Regions of the Caribbean Coast. It was also evidenced by the illegal imposition of "parallel governments", formed by members of the party in office, over the authorities elected under traditional protocols by these peoples, thus weakening their organization and, hence, their resistance to State interference. The government also failed to prevent or wage a fight against the invasions systematically and recurrently perpetrated by armed settlers in indigenous and afro-descendant territories of the Autonomous Regions of the Caribbean Coast, the Special Regime Zone (hereinafter "ZRE"), and in the BOSAWAS and Southeast Nicaragua/San Juan River Biosphere Reserves. All of this is aimed at taking possession of the lands and the natural resources of these peoples.

Indigenous territories of the Pacific, Central and Northern Regions of Nicaragua (PCN)

There have been several cases where indigenous peoples of the Pacific, Central and Northern regions (PCN) have faced severe encroachment upon and pillaging of their lands, within a context of government policies aimed at privatizing the collective lands of the indigenous peoples. Particularly concerning is the implementation of the Territorial Zoning Program (hereinafter "PRODEP") in the territories of the Chorotega indigenous peoples, financed by the World Bank, which has been imposing legalization for third persons of areas that have been taken from indigenous peoples through overlapping titles, refusing to recognize property titles of the indigenous peoples.[1] The State and the World Bank office in Nicaragua itself have not responded to requests and proposals from the Chorotega indigenous peoples for changes to the PRODEP in their terri-

tories.[2] In fact, the Government Attorney's Office has criminally prosecuted leaders, authorities, and human rights defenders of the indigenous peoples of Jinotega, Sutiaba, Matagalpa, Urbayte and Las Pilas for defending their traditional territories.[3]

Indigenous and afro-descendant ownership rights

The State of Nicaragua, between the years 2005 and 2017, granted title to 23 indigenous territories, whose land areas represent 32% of the national territory and 56% of the Nicaraguan Caribbean Coast.[4] Nonetheless, the State has not fully honored these collective ownership titles, by failing to commence the review stage on third-party land ownership ("saneamiento"),[5] established by Law No. 445, which consists of determining the ownership rights of third parties who claim such rights within indigenous territories. On account of that, the indigenous and afro-descendant peoples have petitioned the State to implement that review process in the territories for which their peoples have received title, thereby seeking an institutional form of protection of their territorial rights. The State is not responding, however, and has failed to evict the invaders of indigenous lands.[6] This means that the title-granting process is an incomplete one, undermined by the violence of armed settlers who are invading indigenous territories and the Bosawas and Indio-Maíz Reserves. These invaders are evicting entire communities, principally in the Autonomous Region of the Northern Caribbean Coast (hereinafter "RACCN"). Indeed, even "third persons" who, due to internal migration generated by promises of jobs for the Grand Transoceanic Canal of Nicaragua megaproject (hereinafter the "Nicaragua Canal"), have remained in the territories for which title was granted in the Autonomous Region of the Southern Caribbean Coast (hereinafter "RACCS"), are being pushed to find alternative lands.

Violations of the right to self-determination

The State of Nicaragua, by its acts and omissions, has committed violations of the right to self-determination and autonomy of these peoples, principally through the creation of "parallel governments" that are submissive to the interests of the party currently in office, as well as

through the Municipalities for the indigenous peoples of the PCN and through the Regional Councils in the Autonomous Regions.[7] Once the traditional internal structure is weakened, it becomes easier to take and encroach upon the lands and other natural resources of the indigenous and afro-descendant peoples of Nicaragua. The most emblematic of such cases are those of the community of Muy Muy[8] and of the Black Creole Indigenous Community of Bluefields.[9] Both of these cases are currently before the Inter-American Commission on Human Rights (IACHR).[10]

Deforestation and forced displacement

Likewise, the Bosawas Biosphere Reserve (hereinafter "RBB") superimposed on the Mayangna and Mískitu indigenous territories in the RACCN, as well as the Special Regime Zone (ZRE), principally in the Department of Jinotega, have been severely deforested in the past 10 years by forestry[11] and mining companies. This, added to the invasion by settlers equipped with weapons of war, are the greatest problem for the indigenous communities, who are being forcibly displaced from their traditional territories.[12] The authorities and leaders of the indigenous territories of Mayangna Sauni As, Mayangna Sauni Bas, Mayangna Sauni Arungka, and Mayangna Sauni Bu in the RBB have filed hundreds of administrative and judicial legal actions with the corresponding authorities, but have not obtained a response from the State. Once the settlers have taken possession, they proceed to engage in slash and burn activities, to then turn these indigenous territories into pastures for large-scale livestock raising, gold mining encouraged by the recent formation of the government owned Empresa Nicaragüense de Minas (ENIMINAS),[13] and the planting of African palm ("Elaeis guineensis Jacq.").[14] Privileging these activities, the State refuses to ensure the physical and territorial integrity of the indigenous peoples.

Deforestation and Nicaragua Canal

Even though the works have not commenced on the ground, governmental sources are reporting that the studies for the Nicaragua Canal are still continuing.[15] 52% of the Nicaragua Canal's route transverses the territory of the indigenous Rama peoples and of the Kriol afro-de-

scendants communities, as well as the traditional territory of the Indigenous Black Creole Community of Bluefields.[16] The route of the Nicaragua Canal, according to the auxiliary works schedule presented during the project's launching by HKND on December 22, 2014 contemplates the measurement, design, and acquisition of properties. It also contemplates construction of an access road on the Eastern span of the Nicaragua Canal, of which 72 kilometers have advanced, 26 with financing from the World Bank and from the IDB, all without the required consultation.[17] Nonetheless, the theory that the Nicaragua Canal is more likely a scheme of land encroachment and speculation is gaining acceptance.[18] Through the Nicaragua Canal project, the government has attempted to take 93% of the territory claimed by the Indigenous Black Creole Community of Bluefields (hereinafter "CNCIB")[19] and the heart of the Rama and Kriol Territory. Yet no official report has been provided to these peoples, much less has any alternative plan whatsoever been drawn up.[20] The lack of judicial protection in this case has been evident, given that 16 actions have been filed, including *amparo* proceedings against acts of administrative officials, actions on the grounds of unconstitutionality, and actions for *habeas corpus* before the Supreme Court of Justice of Nicaragua, but no positive results have been obtained.[21] In June 2014, these peoples took their case to the IACHR, initially due to a lack of Free, Prior, and Informed Consent. Then, due to the subsequent government intent to encroach upon their traditional collective lands coupled with the lack of judicial protection,[22] they also petitioned for precautionary measures. Both petitions were sent to the State of Nicaragua in the years 2016 and 2017, but the Nicaraguan government has not responded to the IACHR.

Similarly, the Rama and Kriol peoples are working to protect the Indio-Maíz Biological Reserve, superimposed upon their traditional territory and forming a part of the Biosphere Reserve of Southeast Nicaragua. Seeking to curtail the invasion of armed settlers, the Rama and Kriol peoples have engaged in joint actions that bring together their leaders, nongovernmental organizations such as Fundación del Río ["River Foundation"],[23] Universidad Centroamericana (UCA), and other interested parties in search of a peaceful and legal resolution of conflicts. Yet the State has responded by denying Fundación del Río its operating permit.[24] Just as occurs in other indigenous territories, governmental institutions have not responded to the denunciations; instead they have favored the invasion by settlers and the permanence of third

persons. In this way, the government is encouraging the deforestation of the Indio-Maíz Biological Reserve, and, as in the Bosawas Biosphere Reserve, the sale of timber, large-scale livestock raising,[25] gold mining,[26] and the planting of industrial monocrops such as African palm.

In addition, the webpage of the Caribbean Catastrophe Insurance Facility and Segregated Portfolio Company (CCRIF SPC) announced that the Government of Nicaragua collected 1,110,193 US$ on a catastrophic insurance policy in response to the direct impact occasioned by Hurricane Otto in the country, which severely impacted the Reserve. The compensation was granted on December 9, 2016, that is, 14 days after the hurricane came through. Nonetheless, the Rama and Kriol Territorial Government (hereinafter "GTR-K") issued a press release, stating that they had no information on whether the funds acquired would be used in the communities of the Rama and Kriol Territory, which were the ones that suffered the worst damage from Otto. The GTR-K stated that the emergency situation in the affected communities would require immediate support, with food, supplies of seeds for the production of crops, and the rebuilding of homes.[27]

The State of Nicaragua in contempt

Invasions and attacks by armed settlers against the indigenous peoples, principally the Mayangna and Mískitu peoples, have sown terror among hundreds of indigenous families, who have had to move to other communities or take refuge in the Republic of Honduras, where it is reported that there are more than 1,300 indigenous Nicaraguan persons. That situation is intimately related to the extractivist policies of the State over natural resources in their ancestral territories, for which, paradoxically, the State itself has granted them title in the past decade. In the case of RACCN the situation with the settlers has been exacerbated since the year 2015 to such an extent that both the Inter-American Commission of Human Rights and the Inter-American Court of Human Rights (hereinafter "IACHR Court") as of years 2016 and 2017, granted precautionary and interim measures, respectively, to protect the lives and integrity of the members and the communities of the affected — and in some cases forcibly— displaced indigenous peoples.[28] Nonetheless, the State of Nicaragua is in contempt, due to ignoring the measures required by these international bodies.[29]

Vulnerability of defenders of indigenous peoples' rights

The vulnerability of the defenders of the human rights of indigenous and afro-descendants peoples, particularly those who exercise the defense of their identity, lands, natural resources, and environment, is accompanied by a high degree of impunity in Nicaragua,[30] as is reflected in the Case of Acosta et al. Vs. Nicaragua.[31] In the judgment issued on that case in April 2017 the IACHR Court ordered the State, among other things, "to take the necessary measures so that the homicidal act [whose victim was Mr. Francisco José García Valle in the year 2002] does not remain in impunity...[32] and to develop protection mechanisms and investigation protocols for cases with situations of risk, threats, and aggressions against human rights defenders."[33] The State has yet to take such actions. Throughout year 2017 the Ministry of the Interior denied the nongovernmental organization Fundación del Río its administrative permit to operate, even though that Foundation met all the legal requirements.[34] Harassment continued against Rama and Kriol leaders and authorities and those of the creoles of Bluefields, as did the lack of protection for the physical integrity of the president and other members of the Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (hereinafter CEJUDHCAN), a nongovernmental organization that has accompanied the Miskitu peoples in their search for governmental protection state against attacks by armed settlers in the RCCN.[35] Criminalization and the lack of investigation persist in response to the murders of indigenous leaders and authorities, as occurred with the Representative to the National Assembly and indigenous leader of the regional YATAMA party, Brooklyn Rivera.[36] The former human rights ombudsman for indigenous peoples of the PCN has repeatedly denounced deaths of indigenous persons that have not been investigated by the corresponding authorities and thus have not been solved.[37] During the year 2017 the IACHR has reiterated its concern for defenders of rights to land and to natural resources, and for indigenous persons and afro-descendants engaged in such defense work, who continue to face great risks of violence in Nicaragua.[38]

Notes and references

1. Authorities of the Indigenous People of Totogalpa and Telpaneca on November 13 and 14, 2017 respectively, reported to Attorney Rigoberto Mairena Ruiz that

these guidelines have been applied in a manner manipulated by the PRODEP implementation authorities, where authorities have been brought together for consultation; however, without any consent whatsoever being issued, the Topographical Survey has been carried out and titles have even been granted to the occupants of indigenous lands. See also: The final report of the "Social Analysis" of the Territorial Zoning Program II, conducted for the month of December 2012, which recognized the existence of conflicts and categorized them as a problem among stakeholders: "The principal conflicts found are those existing between the indigenous peoples of the Pacific, Central, and North regions and the other social players" (Page 10).

2. Communication sent to the Office of the Attorney General and the World Bank Office by the Territorial Governments of the Chorotega Peoples of the North, received by both institutions on December 17, 2015.
3. Unpublished investigation by Attorney Rigoberto Mairena Ruiz.
4. "Comandante-Presidente Daniel entrega títulos comunitarios a pueblos originarios de la Costa Caribe de Nicaragua". 19 Digital. October 29, 2016. Available at: https://www.el19digital.com/articulos/ver/titulo:48337-comandante-presidente-daniel-entrega-titulos-comunitarios-a-pueblos-originarios-de-la-costa-caribe-de-nicaragua.
5. Law No. 445, the Law on the Communal Property Regime of Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio, and Maíz Rivers.
6. President Daniel Ortega, this past May First, defended the right of peasants and squatters to conserve their lands, lots, and homes, even if not legally theirs, and he expressly asked the National Police not to evict them even if a court order has been issued for doing so, because "it is a crime" to take them out of their homes. "Presidente ordena a la Policía no desalojar a nadie cuya propiedad esté en disputa". Radio La Primerísima, May 1, 2007. Available at: http://www.radiolaprimerisima.com/noticias/13168/presidente-ordena-a-la-policia-no-desalojar-a-nadie-cuya-propiedad-este-en-disputa
7. The citizen power model is organized at all territorial levels, from the community up to the national level, as well as based on productive or social sectors. The citizen power structure is considered to play a triple role at a territorial level: community organization in order to give a voice to group of inhabitants; para-governmental organization in order to support the government in fulfilling the government's function of providing social services; and para-party organization that works to strengthen and broaden the electoral base of the FSLN. *Consejos del Poder Ciudadano y gestión pública en Nicaragua*. Stuart Almendárez, Roberto. Centro de Estudios y Análisis Político, for the Department for International Development of the United Kingdom (DFID) Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_consejos.pdf
8. "Indígenas de Muy Muy, los más conflictivos". La Prensa. Luis Eduardo Martínez M. May 10, 2003. Available at: https://www.laprensa.com.ni/2003/05/10/departamentales/883373-indgenas-de-muy-muy-los-ms-conflictivos

Indígenas de Muy Muy más divididos. Tres grupos se disputan los bienes de la Comunidad. La Prensa. Luis Eduardo Martínez M., June 23, 2010. Available at: https://www.laprensa.com.ni/2010/06/23/departamentales/28819-indigenas-de-muy-muy-mas-divididos "Indígenas denuncian que mafia de empleados públicos invaden sus tierras. Identifican "una mafia" tras invasión a tierras ancestrales". La Prensa, Elizabeth Romero, April 7, 2016. Available at: https://www.laprensa.com.ni/2016/04/07/nacionales/2014320-les-invaden-tierras-indigenas "Denuncian despojo de tierras indígenas en Matagalpa. Pobladores denuncian a nuevos representantes de la comunidad indígena de Muy Muy". La Prensa. Elizabeth Romero, August 29, 2017. Available at: https://www.laprensa.com.ni/2017/08/29/nacionales/2287833-denuncian-despojo-tierras-indigenas-matagalpa

9. IACHR Video. 156th Ordinary Session. Thematic Hearing: "Vulneración a la autodeterminación y territorios de los Pueblos Indígenas y Afrodescendientes de la Costa Caribe de Nicaragua," ["Violation of self-determination and territories of the Indigenous and Afro-descendant Peoples of the Caribbean Coast of Nicaragua"] October 20, 2015. Available at: http://www.oas.org/es/cidh/multimedia/sesiones/156/default.asp

10. Once the appeal was denied that was filed through the Administrative Law system before the Supreme Court of Justice of Nicaragua against the Municipal Council of Muy Muy in the year 2013, the MC-390-13 Precautionary measures were sought before the IACHR, but they were not granted. For that reason, on October 23, 2015 a Petition was filed against the State of Nicaragua, P-1771-15, regarding the same acts as before the IACHR. On August 3, 2017 the State of Nicaragua was granted a term of three months to respond to the Petition. The State has not responded.

11. "Gobierno protege a Alba Forestal." Confidencia, Octavio Enríquez, June 5, 2013. Available at: http://confidencial.com.ni/archivos/articulo/12124/quot-gobierno-protege-a-alba-forestal-quot

12. VIDEO: "Noticiero Contacto Bonanceño: Pobladores de la Comunidad de Wilu del Territorio Sauni As (Nación Mayangna) hace 10 días dejaron sus hogares y están Refugiados..." [Inhabitants of the Community of Wilu from the Sauni As Territory (Mayangna Nation) abandoned their homes 10 days ago and are Refugees]. "Indígenas abandonan comunidad por enfrentamiento contra colonos". La Prensa, José Garth Medina, December 9, 2017. Available at: https://www.laprensa.com.ni/2017/12/09/departamentales/2344103-indigenas-abandonan-comunidad-por-enfrentamiento-contra-colonos. In early December some seventy families from the Wilu community were displaced from the territory to the buffer zone of Bosawas and are living at a school in Musawas. Many of their needs are not being met, stated the member of a commission of community leaders, Norman Davis. "Peligrosa situación en Bosawas tras invasión de colonos a territorios indígenas". La Prensa, Elizabeth Romero, December 18, 2017. Available at: https://www.laprensa.com.ni/2017/12/18/nacionales/2348490-peligrosa-situacion-en-bosawas-tras-

invasion-de-colonos-a-territorios-indigenas "Situación de la propiedad comunal indígena en Nicaragua".

13. The National Assembly, in full session, approved the creation of Empresa Nicaragüense de Minas, ENIMINAS, which will allow the State of Nicaragua to have representation in all concessions granted for mining exploitation. "Crean por Ley Empresa Nicaragüense de Minas, ENIMINAS". National Assembly Press, June 21, 2017. Available at: http://www.asamblea.gob.ni/360792/aprueban-por-ley-empresa-nicaraguense-de-minas-eniminas/
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15. "Obras del Gran Canal de Nicaragua comenzarán a partir de la segunda mitad de 2017". La Voz del Sandinismo. Central Editorial Board, January 27, 2017. Available at: http://www.lavozdelsandinismo.com/economia/2017-01-27/obras-del-gran-canal-de-nicaragua-comenzaran-a-partir-de-la-segunda-mitad-de-2017/
16. For more information see: Acosta. María L. "El Impacto de la Ley del Gran Canal Interoceánico de Nicaragua sobre los Pueblos Indígenas y Afrodescendientes de Nicaragua". Available at: http://portalderevistas.upoli.edu.ni/index.php/cuaderno-juridico-y-politico/article/view/317
17. Of the more than 72 kilometers of the highway that will link Bluefields with Naciones Unidas, Nueva Guinea, and thus with the Nicaraguan Pacific, the Ministry of Transportation and Infrastructure (MTI) already concluded the first 26.5 kilometers with hydraulic concrete and is making progress with the rest of the road. There are already 26.5 kilometers of hydraulic concrete going to Bluefields. La Prensa. Roy Moncada. November 1, 2017. Available at: https://www.laprensa.com.ni/2017/11/01/nacionales/2323572-ya-hay-26-5-kilometros-de-concreto-hidraulico-para-ir-a-bluefields
18. "Canal interoceánico en Nicaragua se desvanece tras acuerdos de Panamá con China". La Prensa, Octavio Enríquez, November 30, 2017. https://www.laprensa.com.ni/2017/11/30/politica/2339467-canal-interoceanico-en-nicaragua-se-desvanece-tras-acuerdos-de-panama-con-china
19. VIDEO: "The Golden Swampo" displays the intent by the State of Nicaragua to encroach upon the traditional lands of the Black Creole Indigenous Community of Bluefields. Available at: https://www.youtube.com/watch?v=RBzw4f-iV1o
20. VIDEO: "We Do Not Consent" presents the testimonies of indigenous authorities and leaders denouncing the lack of free, prior, informed consent from the indigenous and afro-descendants peoples. Available at: https://vimeo.com/184864298
21. See: Acosta. María L. El título del territorio de los creoles de Bluefields y el gran canal interoceánico por Nicaragua. Available at: https://www.calpi-nicaragua.org/el-titulo-del-territorio-de-los-creoles-de-bluefields-y-el-gran-canal-interoceanico-por-nicaragua/

22. See: Acosta. María L. "Reflexiones sobre el Gran Canal Interoceánico por Nicaragua y el Déjà vu de la Comunidad de Monkey Point ISTMO", Revista de Estudios Literarios y Culturales Centroamericanos. Instituto de Historia de Nicaragua y Centroamérica (IHNCA), Universidad [Available at: http://istmo.denison.edu/n33/articulos/03_acosta_maria_luisa_form.pdf]

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24. See Note 33 below.

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28. IACHR. Resolution 2/2016, Precautionary Measure No. 505-15, "*Pueblo Indígena Mískitu de Wangki Twi-Tasba Raya respecto de Nicaragua*", [Mískitu Indigenous People of Wangki Twi-Tasba Raya with respect to Nicaragua] January 16, 2016. Available at: http://www.refworld.org/pdfid/5747f9b94.pdf . IACHR. Resolution 44/2016, Precautionary Measure No. 505-15, "Pueblo Indígena Miskitu de Wangki Twi-TasbaRaya respecto de Nicaragua", [Mískitu Indigenous People of Wangki Twi-Tasba Raya with respect to Nicaragua] August 8, 2016. Available at: https://www.oas.org/es/cidh/decisiones/pdf/2016/MC505-15-ES-2.pdf. Resolution of the Inter-American Court of Human Rights of September 1, 2016 "Asuntos Pobladores de las Comunidades del Pueblo Indígena Miskitu de la Región Costa Caribe Norte". [Matter of Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region] Available at: http://www.corteidh.or.cr/docs/medidas/miskitu_se_01.pdf. IACHR Court. "Asunto Pobladores de las Comunidades del Pueblo Indígena Miskitu de la Región Costa Caribe Norte". [Matter of Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region] Resolution of the Inter-American Court of Human Rights of November 23, 2016. Available at: http://www.corteidh.or.cr/docs/medidas/miskitu_se_02.pdf The Inter-American Commission of Human Rights expands protection for Miskita communities. "CENIDH condena amenazas de muerte contra defensoras/es de

CEJUDHCAN". CENIDH. March 8, 2017. Available at: http://www.cenidh.org/noticias/979/.

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30. "Nicaragua, el país percápita más peligroso para los defensores de la tierra y el medio ambiente. Nicaragua aparece en el sexto lugar a nivel mundial donde han asesinado a defensores de la tierra del informe mundial Defender la Tierra». La Prensa, Elízabeth Romero July 13, 2017. Available at: https://www.laprensa.com.ni/2017/07/13/nacionales/2262509-nicaragua-mas-peligroso-percapita Felipe Pérez Gamboa, Celedonia Salazar Point, Tito José González Bendles, Camilo Frank López are the four Nicaraguans who died in defense of their territory last year, according to statistics from Global Witness. In 2016, according to that same organization, 11 murders took place in the country of defenders of the land and the environment. "197 personas murieron en defensa de sus tierras en 2017, según Global Witness". La Prensa, Cinthya Tórrez García, February 12, 2018. Available at: https://www.laprensa.com.ni/2018/02/12/nacionales/2375484-197-personas-murieron-en-defensa-de-sus-tierras-en-2017-segun-global-witness

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32. "Every soldier wants to be a general" was the explanation given by Judge Julio Acuña Cambronero regarding his aspirations to be an Appellate Judge. "Juez que motivó sentencia contra Estado de Nicaragua busca ser magistrado". La Prensa. Elizabeth Romero, February 7, 2018. Available at: https://www.laprensa.com.ni/2018/02/07/nacionales/2372813-juez-que-motivo-sentencia-contra-estado-de-nicaragua-busca-ser-magistrado

33. VIDEO: Thematic hearing, IACHR, Situation of women human rights defenders in Nicaragua, 164th Special Period of Sessions in Mexico. September 6, 2017. Available at: https://www.youtube.com/watch?v=c4Pr6A3Yiq8

34. VIDEO: «Fundación del Río denuncia "presiones" de Gobernación". [Del Río Foundation denounces "pressure" from the Department of the Interior] Available at: https://www.youtube.com/embed/fGn3_vM3NVM

35. "CIDH pide protección para activista de derechos humanos del Caribe. La CIDH encontró méritos a la solicitud realizada para que otorgara medidas cautelares a favor de la presidenta de Cejudhcan, Lottie Cunningham." La Prensa. Elízabeth Romero, June 15, 2017. Available at: https://www.laprensa.com.ni/2017/06/15/nacionales/2247303-IACHR-pide-proteccion-activista-derechos-humanos-del-caribe IACHR. Precautionary Measure No. 505-15,

Lottie Cunnigham with respect to Nicaragua (Extended), June 11, 2017. https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf "La CIDH concede medidas de protección a defensora de derechos humanos nicaragüense". CEJIL. June 22, 2017 https://www.cejil.org/es/cidh-concede-medidas-proteccion-defensora-derechos-humanos-nicaraguense

36. Rivera: "Gobierno se lava las manos en violencia contra indígenas." Confidencial, Arlen Cerda, January 4, 2017. Available at: https://confidencial.com.ni/rivera-gobierno-se-lava-las-manos-en-violencia-contra-indigenas/ VIDEO: "Brooklyn Rivera habla sobre la violencia que azota a las comunidades indígenas". Confidencial TV, January 20, 2017. Available at: https://confidencial.com.ni/brooklyn-rivera-habla-la-la-violencia-azota-las-comunidades-indigenas-del-caribe/

37. In a press release, the Indigenous Movement of Nicaragua reported on the indigenous leaders of the Nicaraguan Pacific, Central, and Northern regions murdered for defending indigenous property. Among the most recent cases are those of Bayardo Alvarado Gómez, of the Muy Muy people, murdered by machete blows in March 2013; Rafael Baquedano, a leader from El Viejo; she was murdered by gunshot and stoning in November 2012. The press release also indicates the case of Eusebio González, ex-president of the indigenous people of Matagalpa, murdered by gunshot in November 2010. In the case of Gerardo Mena, he was murdered by three gunshot wounds in the early morning on Wednesday in his house, 2015. "Indígenas no creen en robo sobre el móvil del crimen del líder indígena de Nahualapa, Rivas". La Prensa, Elizabeth Romero, February 14, 2015. Available at: http://www.laprensa.com.ni/2015/02/14/nacionales/1782241-indigenas-no-creen-en-robo

38. "La CIDH se pronuncia por familia indígena asesinada en el Caribe. Nunca capturaron a los que mataron a Bernicia Dixon Peralta, su esposo Feliciano Benlis Flores y su hijo de 11 años". Feliciano Benlis Dixon. La Prensa, Elizabeth Romero, February 8, 2017, https://www.laprensa.com.ni/2017/02/08/nacionales/2179266-la-IACHR-se-pronuncia-familia-indigena-asesinada-caribe

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COSTA RICA

The indigenous territories in Costa Rica account for some 6.7% of the national territory (3,344 km^2) while the indigenous peoples make up 2.4% of the total population. According to the 2010 National Population Census, around 100,000 people self-recognise as indigenous.

Eight different peoples live in the country's 24 indigenous territories, seven of them of Chibchense origin (Huetar in Quitirrisí and Zapatón; Maleku in Guatuso; Bribri in Salitre, Cabagra, Talamanca Bribri and Këköldi; Cabécar in Alto Chirripó, Tayni, Talamanca Cabécar, Telire and China Kichá, Bajo 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). Indigenous territorial rights are constantly violated in the country and more than half the area of some territories is now occupied by non-indigenous settlers, with the State doing nothing to rectify this theft. In Costa Rica, as in other countries of the continent, the indigenous lands were titled without a prior process of regularisation.

ILO Convention 169 was ratified more than two decades ago but this did not result in recognition of indigenous rights in the country. The indigenous peoples continued to be discriminated against, with greater levels of social exclusion and less public investment. Although the 1977 Indigenous Law recognises the traditional indigenous organisations, the concept of Integral Development Associations (ADIs) has, in practice, been imposed on them with the aim of representing each territory.

Although the government made concrete progress on indigenous consultation in 2017 and on the studies to regularise their territories, the indigenous rights agenda continued to be deferred, and particularly the discussion in Congress on the Law on Autonomous Development of Indigenous Peoples. This law has yet to be discussed after more than two decades due to strong and racist resistance as well as opposition from the private sector, which considers the right to self-determination and autonomous management of indigenous territories to be a risk to extractive investment.

The National Policy for a Society Free from Racism, Racial Discrimination and Xenophobia 2014 – 2025, which was supposed to begin in 2015, is still awaiting start-up.

Progress in identifying the indigenous Bröran people

The Bröran people (also known as the Teribe, Térraba and Naso in Panama) have, since the 1970s, had alien forms of organisation imposed on their traditional government and decision-making structures, as have other indigenous peoples in the country. Associations for Indigenous Integral Development (ADII) legally represent the indigenous territories and can be suspended by the State if they do not follow the rules of operation set out by law. The institution responsible for supervising them and renewing their legal status is unable to work from, far less understand, an intercultural approach. The ADIIs have become incorporated into networks of local political patronage and corruption, as witnessed by the inclusion of non-indigenous population within them and in the allocation of land rights to outsiders. This has resulted in conflict, territorial dispossession and violence for decades. Faced with this situation, the Council of Bröran Elders, an ancestral body, lodged a constitutional appeal before the Constitutional Court to request a systematic identification of their members so that they would be able to ascertain who does and who does not belong to the Térraba nation by birth and who, by virtue of this fact, has the legal right to make decisions over the indigenous territory. The Constitutional Court admitted the appeal and requested that the Supreme Electoral Court (TSE) produce a database of all indigenous Térraba people having the right to form part of their Association for Indigenous Integral Development. The identification process took as its starting point the 12 families that have been living in Térraba

for 200 years. A pattern of indigenous population was drawn up in 2017 that was accepted by the community and which will henceforward be used by all public institutions. According to the Council of Elders, the community's main objective with the database is to establish who is able to take decisions over the distribution and use of the communities' lands. The ADII is refusing to validate the database developed by the TSE.

A slow response to disasters

The current indigenous territories are located in areas highly vulnerable to climate threats. This is due in part to the dispossession of their ancestral lands and also anthropic action such as deforestation, which has been caused by extensive livestock farming and industrial agriculture, particularly pineapple plantations. The collateral effects of this dispossession and environmental destruction are manifested in a high level of risk to disasters. In 2017, the indigenous Brunka people of Curré and Bribri people of Cabagra suffered serious harm from tropical storm Nate. Roads and bridges collapsed and schools were seriously damaged. A large part of the population had to be evacuated outside of the flooded area for several days. Complaints from the communities to the Office of the Ombudsman and the National Emergencies Commission

noted the State's slow response in rebuilding the damaged infrastructure and supporting people to return to their homes. No support policy was put in place for damage to crops. It seems that industrial plantations were prioritised for rehabilitation in the area, plantations that are themselves contributing to the risk. Nor does there seem to be an intercultural approach when designing the response to disasters and threats.

Establishing an indigenous consultation mechanism

The process of designing an indigenous consultation mechanism began in 2016 and significant progress was made throughout 2017. Workshops, regional assemblies and national meetings were held with the indigenous territories to discuss the consultation procedure and its nature in each territory. At the end of 2017, together with a technical team from the Ministry of the Presidency, an Indigenous Drafting Commission reviewed the results of the process and produced a final draft for discussion in February 2018. It should be noted that the National Indigenous Committee of Costa Rica (MNICR) and part of the Indigenous Council of Central America (CICA) were involved in the process from the start, thus increasing its legitimacy in the territories. This process has had the clarity to understand that each indigenous people takes its decisions differently and that different issues require different consultation procedures. This approach, called for by the indigenous organisations, has prevented the risk of conflict that would have been caused by a previous position, promoted by UNDP, to build a "single consultation protocol".

New status for an indigenous territory

On 25 July 2017, the indigenous Chorotega community of Matambú (1,200 people and 1600 ha), was declared the fifth district of the municipality of Hojancha, in Guanacaste Province, in the north of the country. Up to this point, Matambú had been part of the municipalities of Hojancha and Nicoya, which made coordination with local government difficult, as the municipal boundary ran right through the territory. The decree creating the district instructs the Supreme Electoral Court to launch the process for electing the full and substitute representatives

that will represent it in local government. "With this act, we are giving the inhabitants of Matambú a guarantee of better conditions in their territorial development so that they can preserve their rich identity and diversity as a fundamental right of the four communities that make up this new district," stated President Solís Rivera. For Juan Marín, the aim of the proposal to Congress, "is to protect this indigenous community, preserve the integrity of their land, their customs and their culture. In addition, it will enable greater economic and social development for the population, promoting better living conditions for their inhabitants."

Continuing violence against those recovering land

The indigenous organisations have been recovering their lands in the indigenous territories of Salitre and Cabagra for several years now and the Inter-American Commission on Human Rights (IACHR) has issued precautionary measures in this regard. In 2016, the State did not comply with these measures but, in December of that year, signed an agreement to implement them in 2017. In July, the Ministry of Justice completed the protocols for these measures and submitted them to the Ministry of the Presidency. By December, however, they had still not been implemented. In August, an indigenous community member from Cabagra, Tomás Claudino Figueroa, was shot in the head. According to organisations such as the Iriria Jtechö Wakpa Council of Elders, the Indigenous Regional Council of the South Pacific, Ditsö and Voces Nuestras (Our Voices), among others, this act of violence took place in the context of a land recovery in which Figueroa was participating. Those responsible were arrested and taken to the police station in Buenos Aires de Puntarenas, only to be released shortly afterwards. In Salitre, in compliance with indigenous requests, the Interinstitutional Commission for Evictions, approved a number of evictions in 2017 but these have still not been implemented due to action from the Ministry of the Presidency.

Chronic failure to defend indigenous peoples

The tendency to fail to defend violations of indigenous peoples' rights continued throughout 2017. The National Commission for Indigenous Affairs (CONAI), which has institutional responsibility in this regard, re-

corded more than 150 legal processes related to land over the year, most of them legal appeals for protection. However this organisation has just one lawyer responsible and insufficient budget. Indigenous actors are therefore not represented and their access to justice is limited. CONAI's budget has been diminishing for a number of years now such that, although it is an institution with limited legitimacy at regional level, it is unable to provide activities of legal assistance to the communities and indigenous peoples.[1]

Progress in regularising indigenous lands

In 2016, the Rural Development Institute (INDER), the institution that is responsible for titling, regularisation and restructuring of indigenous lands, began to implement the National Plan for Recovery of Indigenous Territories. That same year, prior studies for nine territories were completed: Salitre, Térraba, Cabagra, Guaymí de Osa, Zapatón, Altos de San Antonio, Guatuso, Këköldi and China Kichá. In 2017, INDER completed the demarcation of Cabagra, Guatuso, China Kichá, Këköldi and Guaymí de Osa with Altos de San Antonio, Térraba, Zapatón and Salitre still pending. Progress was also made in the census of properties, with the aim of identifying non-indigenous occupants. They managed to complete the census in Cabagra (525 plots), Guatuso (447 plots) and China Kichá (17 plots). Progress was also made in Këköldi and Salitre but the rest are pending. If the process of regularisation and restructuring of indigenous lands is to be completed, the budget assigned by INDER to this activity will need to be maintained for at least five more years and the studies will need to be backed up with concrete actions of land recovery, compensation of third-party rights holders and consideration of the rights of illegal tenants.[2]

Affirmative action for indigenous peoples

The University of Costa Rica has since 2014 been developing an institutional plan that seeks to promote and ensure the admission and continuation of students from indigenous peoples and territories throughout the country in university. The plan consists of providing academic support to students in the 10th and 11th years of secondary school, advice

and support during the admissions process, monitoring to help them to remain in university and strategies that respond to the specific cultural needs of each indigenous people. In 2017, the university was involved in mentoring some 400 students in the 10th and 11th years. These students came from the following schools: Kabebata Rural High School, Cabagra Rural High School, Ujarrás Indigenous High School, Yimba Cajc Rural High School, Salitre Rural High School, Yeri Rural High School, La Casona Rural High School, Sepecue Indigenous Academic College, Useklar Rural High School, China Kichá Rural High School, and Coroma Rural High School. The above breakdown of schools shows that the programme is working with the Bribri, Cabécar, Ngäbe and Brunca peoples and has a presence in the Bribri and Cabécar territories of Talamanca, and the Cabécar territories of Ujarrás, Salitre, Cabagra, Yimba Cajc, La Casona and Chirripó. The support actions that seek to ensure that new indigenous students remain in university are taking place in all of the university's faculties. In 2017, this work was undertaken with 32 new students coming from indigenous peoples and territories.[3]

Evaluation and outlook for 2018

The situation of indigenous rights in 2017 was in practice no different from that of previous years. However, for the first time in decades, the Rural Development Institute took up its institutional responsibilities for the regularisation of indigenous lands and the Ministry of the Presidency, together with the indigenous territories and the National Indigenous Committee of Costa Rica, drew up a proposed consultation mechanism that should form the object of a Presidential Degree in 2018.

It should be noted that, during the presidential and legislative elections to be held in February 2018, of the 10 political parties that are presenting proposals on indigenous peoples within their government plan, only one is undertaking to promote the Law on Autonomous Development of Indigenous Peoples and three contain structural proposals related to the land, territory and defence of indigenous culture and rights.[4] The rest limit their perspectives to a paternalistic form of welfare.

Notes and references

1. Interviews with Clementino Villanueva, executive director of CONAI, Álvaro Paniagua and Marjorie Herrera, Defensoría de los Habitantes.
2. Interview with Jimmy Garita, Institute for Rural Development, 2018.
3. Contribution of Johnny Arias Aguilar, University of Costa Rica, 2018.
4. Source: Systematisation of the political parties' proposals on indigenous peoples by Geyner Blanco.

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PANAMA

According to the 2010 national census, the seven Indigenous peoples of Panama (Ngäbe, Buglé, Guna or Dule, Emberá, Wounaan, Bri bri, and Naso Tjërdi) represent 12% of the Panamanian population (417,559 inhabitants). The indigenous peoples have the following five *comarcas* (regions) recognized by independent laws and based on their constitutional rights: Guna Yala (1938), Emberá-Wounaan (Cémaco and Sambú) (1983), Guna de Madungandi (1996), Ngäbe-Buglé (1997), and Guna de Wargandi (2000), which comprise a total of almost 1.7 million hectares. The Afro-descendent population does not claim their rights as collective subjects.

Since 2008 there has been a new mode for attaining title to collective lands: Law 72, which establishes the special procedure for awarding collective ownership of lands of the indigenous peoples that are not within the *comarcas*.[1] To date only five territories have been granted title through that law. Those territories were also excluded from what are actually the traditional territories. It is estimated that once the title granting process for collective lands is finalized, more than 2.5 million hectares will be recognized as being under collective land ownership. This, in turn, corresponds to the majority of the forest vegetation in the country. Several protected areas have been established in these territories, the majority without consultation or consent from the indigenous peoples. The lack of title granting to 25 territories is urgent, given the fact that this is an effective mechanism for preserving forest areas in Panama, where the level of deforestation over the past 10 years has been approximately 16,000 hectares per year. Indigenous peoples are organized in representative congresses and councils affiliated with the National Coordinating Body of Indigenous Peoples of Panama (COONAPIP).[2]

Since 2010, the Government has announced many times that it would ratify Convention 169 (ILO), yet its ratification still remains pending.

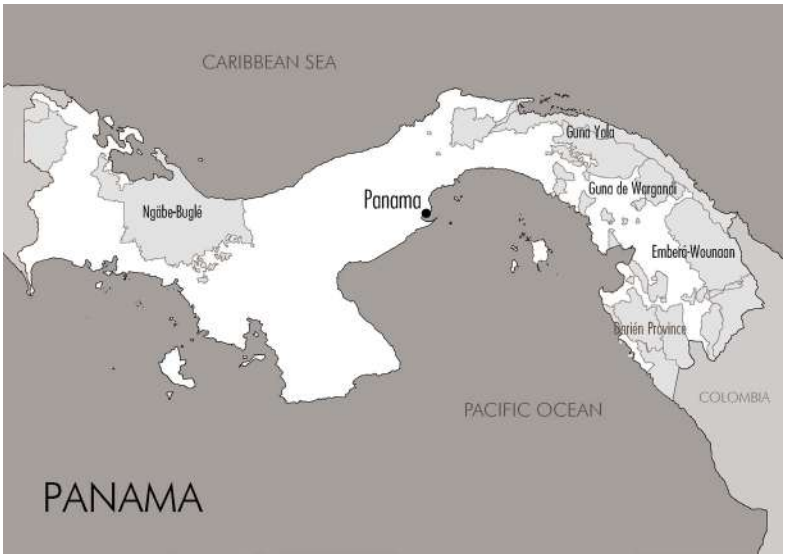
More than ever this year, the matter of territoriality has been the principal issue in the struggle of the indigenous peoples of Panama. Through Law 72 of 2008, five cases of collective ownership of lands have been recognized: Caña Blanca and Puerto Lara of the Wounaan in the province of Darién, Piriatí Emberá and Ipetí Emberá in the province of Panamá, and Arimae Emberá in the province of Darién. Still awaiting legal recognition are another 24 collective territories through that same Law 72, as well as one *comarca*, that of Naso Tjërdi.

An ever-present risk in the second half of 2017 paralyzed all advances in the title-granting process: The Ministry of the Environment asserted that the granting of favourable opinions for awards of collective lands would be based on Articles 12 and 62 of the Forestry Act and its regulation when the polygons requested by such communities overlap with protected areas. The Ministry supported its stance based on the principle of strict legality, consecrated by Article 18 of the Constitution. A draft Resolution of the Secretariat General is now on the desk of the Minister of the Environment. That document has been worked on and analysed by the Expanded Indigenous Technical Committee together with the legal advisors of the Ministry of the Environment, within the planning framework for the REDD+ Panama National Strategy. At the close of year 2017, the Ministry of the Environment had yet to give the National Lands Administration Authority (ANATI) approval to allow collective lands to be awarded when the polygons requested by the communities overlap with protected areas.

On 4 August 2017, the Association of Indigenous Attorneys of Panama (CAIP), acting on behalf and in representation of the General Congress of Collective Emberá and Wounaan Lands (CGTCEW), filed a petition with the Ministry of the Environment, in the exercise of the right to petition, consecrated by Article 41^{3} of the Constitution and developed by Articles 40 et seq. of Law 38 of 2000. The petition requested that the Ministry of the Environment approve the award process for special collective indigenous ownership.

The petition to the Ministry of the Environment

By the Ministry of Environment. In a note issued on 31 March 2017, the former Minister of the Environment sent a request for consultation to the Honourable Attorney General of the Administration, with the follow-



ing content: "Request for consultation in relation to whether Law 72[4] of 23 December 2008 needs to be amended in order to permit the granting of an opinion in favour of awarding collective lands to indigenous communities on polygons that overlap Protected Areas."

In the legal foundation part, it says that: "The Ministry of the Environment considers that Article 258(5) of the Constitution –developed by Articles 51 of the Consolidated General Environmental Act, Article 10 of the Law on Title Granting for Islands and Coasts, and other concordant provisions of the Forestry Act, the Wildlife Act, and the General Environmental Act– does not establish any exception whatsoever to the absolute nature of protected areas as public property of the State. The Ministry of the Environment also considered that the Collective Indigenous Lands Act is not a special norm regarding public property of the State in general or regarding protected areas in particular. For the Ministry of the Environment it was thus clear that Article 13[5] of Law 72 of 2008 on Collective Indigenous Lands does not empower any authority to ignore the clear text of the constitutional and statutory norms that grant protected areas the nature of public property, since that provision does not exclude the overlapping polygons."

By the Office of the Attorney General: The Response to the Request for Consultation was dated 26 June 2017. The response took 115 days to

be issued, even though the law in such cases grants a maximum of 30 days. It was short and curt: ''In relation to the questions posed, the opinion of the Administration's Office of the Attorney General is that the Panamanian State, through the Ministry of Foreign Affairs, must request advice on the matter from the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, as bodies with competent jurisdiction to hear matters related to fulfilment of the commitments undertaken by the State parties to the Convention, particularly on possible incompatibility between Domestic Law and International Law with respect to Articles 41 and 64 of Law 15 of 28 October 1977 and with respect to the award of collective lands to indigenous communities when the same overlap with protected areas.'' The Office of the Attorney General focused, on the one hand, on the duty to comply with the judgment of 14 October 2014, issued by Inter-American Court of Human Rights (CIDH), ''Case of the Kuna Indigenous Peoples of Madungandí and Embera Indigenous People of Bayano and their members v. Panama,'' and, on the other, on events occurring subsequent to those judgments of 14 October 2014, where Panama continues to be summoned to the CIDH (years 2015 and 2016), due to the position taken bthe Ministry of the Environment, which is acting as part of the representation of the Panamanian State.

Action taken by the indigenous traditional authorities

In the month of October, the traditional spokesperson, jointly with his caciques, kings, *bulu*, and *sagladummagan* colleagues, signed a letter[6] addressed to the president of the Republic of Panama in which they reminded him of the following: 1) The Ministry of the Environment has not granted the favourable opinion for the collective title-granting process; 2) The ANATI has not established the roadmap for processing the legislative bill for the Naso Tjërdi Comarca Act before the National House of Representatives, and for the Adjoining Areas of the Ngäbe-Bugle *Comarca*; 3) the judgment of the Inter-American Court of 2014 has not been complied with through the review stage on third-party land ownership (*saneamiento*) for the indigenous *comarcas* and collective titles on lands invaded by exogenous settlers, and 4) the incorporation of the location codes for the *comarcas* and collective titles has not been established in the public registry. Thus, the traditional authorities of the 11 structures ''will not participate in and will not approve the REDD+ strategy.''

The Resolution awaits the signature of the Minister of Environment

As a product of the joint work between the Expanded Indigenous Technical Commission (Legal), the team from the Environmental Quality Protection Service (DIPROCA), and the legal team comprised by the Protected Areas and Wildlife Service (DAPVS), the Directorate of Administration of Environmental Information Systems (DASIAM) and REDD+, and the National Roundtable created to propose the language for the National REDD+ Panama Strategy, meetings were also held in response to pressure from the authorities of the indigenous peoples of Panama regarding territorial security. As result of the dialogue and participation, a Resolution was drafted,[7] which ruled on the petition that had been filed on 4 August 2017 and supplemented on 8 September 2017 by the Association of Indigenous Attorneys of Panama of the General Congress of Collective Emberá and Wounaan Lands (CGTCEW). The resolution was drafted by Félix Wing Solís, General Secretary of the Ministry of the Environment and was addressed to Emilio Sempris, Acting Minister (now Minister) of the Ministry of the Environment. After a meticulous analysis, the resolution concludes "that it is legally viable for the Ministry of the Environment to grant approval for the ANATI to award the lands traditionally occupied by the indigenous peoples" whose polygons overlap protected areas, but provided that said occupation is proven to the satisfaction of the Ministry of the Environment. By virtue of the foregoing, said office found that it was proper to accede to what was requested by the traditional authorities of the indigenous peoples. Shortly thereafter, after Félix Wing was fired.

Convention 169 in the hands of the Minister of Foreign Affairs and Vice President of the Republic

In the framework of the second meeting of the Planning and Coordination Commission of the forum of congresses and councils of the indigenous peoples of Panama, an expanded training was conducted both for the traditional spokesperson and for other members regarding ILO Convention 169. The opinion held by the Ministers of Government as of 1993 and up until today were examined regarding the inadvisability of ratifying Convention 169, which they based on the following phrases and assertions:

"Public power only emanates from the People." In other words, according to the State and the Government of Panama, only one people's existence is constitutionally recognized throughout the territory of the Republic. The Constitution itself, according to them, prohibits "immunities and privileges."

The Constitution at no time uses the term "People" to refer to indigenous communities.

The use of the term "populations" does not exclude or ignore the characteristics of autochthonous identity, applicable to the indigenous community.

As a consequence, they (one government administration after another), have concluded that "the definition of "people" posed by the Convention "is not compatible with our constitutional system," because in our national territory there is only one people, the "Panamanian people," and the indigenous communities are nothing more than an ethnic group of the Panamanian people. The contrary "would be an attempt at creating an autonomous territorial division of the Panamanian jurisdiction that, from any point of view, is incompatible with the legal, political, and constitutional system of the Panamanian State."

On the other hand, the government administrations consider ratification of ILO Convention 169 to be inadvisable given that Part II of the Convention regarding "lands" contains provisions that could create serious problems with the peasant communities that jointly inhabit lands reserved for indigenous communities. Therefore, they proposed "if there is an urgent, inevitable concern... on the part of the indigenous communities... they will consider the possibility of drafting a law that will provide a concrete framework for response to their particular situation, for whose drafting the pertinent appropriate state entities would be consulted in relation to the issues inherent to their functions, thus eliminating possible conflicts in the functionality of our political, economic, legal, and administrative system."

Very recently, after the current president of the Republic committed to ratifying ILO Convention 169 on 30 September of last year (2016), the Vice-Ministry Advisory Group on Multilateral Affairs and Cooperation of the Ministry of Foreign Affairs of Panama stated that "prior to commencing the ratification process, it is necessary to strengthen institutionality and governance and take the following recommendations into account:[8] Institutionality and governance; Education on the rights and duties of the indigenous peoples; Collaboration of the ILO and International cooperation.

At almost the close of October 2017, an indigenous commission was officially established, comprised by COONAPIP and the Forum of the 12 structures, accompanied by the Ombudsman's Office. The role of the indigenous peoples in the inter-ministerial commission of the State was that of an interlocutor, with the objective of developing strategies.

The indigenous peoples have understood that what is involved is no longer a technical matter or one of advisability of ratifying ILO Convention 169. Rather, what is involved is an overt act of lack of political will. One could say that it marks the line in the sand of the Panamanian State's discrimination towards the indigenous peoples of Panama. Currently, the interests of the national government are focused on the carbon market and the swapping of debt for nature. Where are the forests? These exist precisely in the spaces where the indigenous peoples live, in the spaces that the indigenous peoples inhabit. That is why the collective territories are coveted.

A "circus" has been created in the inter-institutional commission that is addressing the case of ratification of Convention 169. In order to delay and divert attention from the ratification of Convention 169, the country's Ministry of Foreign Affairs demanded that the indigenous peoples certify who is their "legitimate representative in the negotiations." The national coordinating body of the indigenous peoples of Panama (COONAPIP) attempted to send names of its members, certifying that they are the representatives of the indigenous peoples. But the Vice-Ministry of Indigenous Affairs of the Ministry of Government was not much in agreement, and requested the representatives be invited from each congress and council. In other words, it advocated for the participation of the 12 structures of the indigenous peoples, alleging that it could thereby certify the representativity of each of them in the negotiations. Nonetheless, the year closed without the Ministry of Foreign Affairs having convened the 12 structures of the indigenous peoples.

Dialogue and work with authorities of the states

An avenue for dialogue was opened between the authorities of the states and the traditional authorities of the eleven structures (Gunayala, the only one initially out of the negotiations on REDD+, had already withdrawn years prior) in the framework of drafting the National Climate Change Strategy (REDD+). The Minister of the Environment participated

in these meetings, and was requested to discuss the issue of territorial security in the working group with the National Lands Administration Authority (ANATI), the Vice-Ministry of Indigenous Affairs, and the Ministry of the Presidency, among others. Through this avenue, the indigenous peoples submitted the claims comprising their 19 demand points.[9] Some issues considered are: granting of title for collective territories, ratification of Convention 169, and resolution of land tenancy conflicts with third persons within the *comarcas* and collective lands.

The indigenous movement seeks to renew its strategy of unity

The current focus for indigenous peoples is on territorial governance, concentrating on the management of their territorial resources; institutionality of territorial authorities; collective legal security; a vision of the future; and a development model of their own (plan of life). That model would look inward, with an endogenous economic development process and sustained management of territorial resources (mother earth); indigenous education; traditional healthcare, and safe transportation. At the same time, it would look outward, in terms of political engagement based on collective rights; a proactive attitude in favour of collective rights; self-defence and negotiations vis-à-vis third parties, other governments, and NGOs; and inclusive collective participation in other political spaces through their own institutions.

Office of Title Granting and Territorial Defence

The Office of Title Granting and Territorial Defence of the indigenous peoples of Panama, located in Ciudad del Saber, opened its offices in the second half of 2017 as a platform for accompanying the traditional authorities in their territorial management. It has a Meeting Room that the traditional authorities themselves made use of for planning, coordination, and communication. It was also gathering place for the GEOIndígena technicians (a group of young professionals who support the traditional authorities in drawing up community territorial maps with the use of earth observation technology). Special support has been given to the Nurdargana area of the Gunayala *Comarca*, to the Embera juä

So territory (*Corazón* Territory) situated in the watershed of the Panama Canal, and to the Ancestral Tule Territory of Tagarkunyal of the Paya and Púcuro communities in the province of Darién, among others.

Participation of youth

The youth of the Gunayala Comarca spoke loudly and clearly in favour of all the youth of the indigenous peoples of Panama. In their first regular meeting,[10] called by the Guna General Congress, they approved several resolutions, among them:

- Creation of the Guna youth training school, whose plans include the teaching of Guna history, medicinal treatments, traditional knowledge in general, and political formation as future leaders.
- Use of traditional dress.
- Request to show a greater interest in meeting and conversing with youth.
- Creation of a youth commission to support the Secretariat of Territorial Defence and participate in the activities that are carried out.

Notes and References

1. Enacted in 2008 and regulated through Executive Decree No. 223 of 29 June 2010.

2. The number of councils and congresses affiliated with COONAPIP actually varies depending upon the topics decided upon to be addressed there, and the level of representativity perceived by the authorities of each territory/people in the various different political situations. At the end of 2016, the following councils and congresses were not involved in the COONAPIP dynamic: Congress of the Guna Yala Comarca, Guna Congress of the Madungandi Comarca, Wounaan Congress, General Embera Congress of Alto Bayano, and General Naso Tjërdi Council.

3. Every person has a right to submit respectful petitions and complaints to public servants on the grounds of social or private interest, and to obtain a prompt resolution. The public servant to whom a petition, request for consultation, or complaint is submitted must resolve the same within a term of thirty days. The law will indicate the penalties that correspond in case of a violation of this norm.

4. Republic of Panama. National Assembly. Legislation of the Republic of Panama. Law No. 72 of 23 December 2008, which establishes the special

procedure for awarding collective land ownership to Indigenous Peoples who are not within the *comarcas*. Official Gazette 26193. Page 3.

5. Article 13 of Law 72 of 2008 states verbatim: "The National Environmental Authority shall coordinate with the traditional authorities of each community on actions and strategies for executing a plan of sustainable use of natural resources and community development in the event that the lands are recognized as part of the National System of Protected Areas." This is the only article that relates the granting of title on collective lands to the National System of Protected Areas. Nonetheless, its interpretation has been very ambiguous and polemicized, and the award of collective territories ceased to advance throughout the year 2017.

6. Letter. Panama City, 10 October 2017, sent to Juan Carlos Varela, Constitutional President of Panama, received at his office, Presidency of the Republic. Documents Administration 12/October/17. Time 2:25 pm.

7. Ministry of the Environment. MEMORANDUM SG-012-2017. To: Emilio Sempris, Acting Minister (now Minister) From: Félix Wing Solís, Secretary General. 3 October 2017. Page 24.

8. Questions and recommendations sheet. 2016. Alejandro I. Mendoza Gantes. Advisor to the Vice-Minister of the Vice-Ministry of Multilateral Affairs and Cooperation. Ministry of Foreign Affairs.

9. The 19 demand points of the indigenous peoples of Panama are**:**

- Plan for participation of the indigenous peoples in all processes of REDD+ Panama (based on equality, transparency, and respect)
- Evaluate collective territorial rights over the lands and natural resources of the indigenous peoples in the REDD+ document.
- Promote treaties and international instruments on indigenous peoples, analyzing ILO Convention 169 and the United Nations Declaration on the Rights of the Indigenous Peoples.
- Plan for strengthening the General Indigenous Congresses and Councils.
- Training of indigenous technical professionals and traditional scientists.
- Review, analysis, and improvement of norms regarding indigenous rights in national laws.
- Legal certainty for Indigenous Territories. Overlapping of territories and lands.
- Environmental Management / Protection of Mother Earth and natural resources: COONAPIP, COMARCAS AND CONGRESSES AND COUNCILS
- 10. Free, Prior, and Informed Consent (FPIC) of Indigenous Peoples, using their own mechanisms (dissemination, reference to international instruments)
- Communication and coordination of activities in indigenous areas: COONAPIP
- Legal recognition of the existence of the forest zone in indigenous *comarcas* and territories as collective property.
- Administration of forests. Forestry activities must have the approval of

the indigenous peoples.
- The development of *Buen Vivir* ("Good Living") / Equitable distribution of the benefits.
- Strengthen respect for the internal governance and administration of the indigenous peoples.
- Establish ongoing monitoring and evaluation of any actions to be carried out regarding REDD+ among the indigenous peoples.
- Pay special attention to the issue of the protection of Medicinal Plants.
- Food sovereignty for indigenous peoples.
- Recognition and validation of the methodological instruments of Balu Wala for the process of consultation with the Indigenous Peoples.

10. General Congress of Guna Youth, 24 to 27 August 2017, in the community of Mammidub, Gunayala Comarca. Resolutions No. 1, 2, 3, 4, 5, and 6.

Heraclio López Hernández (Surub), *advisor and coordinator of congresses and councils of the indigenous peoples of Panama in matters of territorial governance and defence.*

South America

COLOMBIA

CARIBBEAN SEA
LA GUAJIRA
ATLANTICO
MAGDALENA
CESAR
NORTE DE SANTANDER
PANAMA
SUCRE
VENEZUELA
CORDOBA
BOLIVAR
Cúcuta
Páramo de Santurban
ANTIOQUIA
Bucaramanga
SANTANDER
ARAUCA
Medellín
RISARALDA
CALDAS
BOYACA
CASANARE
PACIFIC OCEAN
CHOCO
CUNDINAMARCA
Bosa
Bogotá
QUINDIO
VICHADA
VALLE DEL CAUCA
Cali
TOLIMA
META
HUILA
CAUCA
GUAINIA
NARIÑO
GUAVIARE
VAUPES
CAQUETA
PUTUMAYO
BRAZIL
ECUADOR
AMAZONAS
PERU

The indigenous population of Colombia, according to official data, is currently 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 the armed conflict, and qualified that situation as "a state of unconstitutional things." In addition, President Juan Manuel Santos signed Decree 1953 of 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.

Colombia has been immersed in armed internal conflict since the 1960s. The indigenous peoples of this territory, however, have been builders of peace processes as of more than 500 years ago, when violence arrived in their territories. They have been pillaged, torn from their places of origin, and exterminated in the colonizing process. With this in mind, it is imperative to state that the indigenous peoples continue committing and contributing to peace processes such as the current one between the National Government and the Revolutionary Armed Forces of Colombia (FARC) and the People's Army (EP).

This process commenced on 12 February 2012 and culminated with the final accord announced on 24 August 2016. The accord was placed on the ballot for a referendum on 2 October of the same year. As a consequence of the victory of a "No" vote in that plebiscite, the accord was renegotiated, making it possible to include proposals from different sectors. This resulted in a concerted content, signed on 24 November 2016. Yet the national government did not invite the ethnic groups to participate in the peace negotiation process, despite the fact that the indigenous peoples and Afro-descendants of Colombia have been considering how they should participate ever since the year 2012. With that as a background, on 7 March 2016 an ethnic commission was created, named "Ethnic Commission for Peace and Defense of Territorial Rights" comprised by various indigenous and Afro-Colombian organizations, among which ONIC played a leading role through its Chief Council Member, Luis Fernando Arias.

This ethnic commission, after engaging in intense processes of mobilization and networking with international entities, urged the Colombian government to grant political participation through the inclusion of an Ethnic Chapter[2] in Point 6.2 of the Final Peace Accord. With this, the indigenous and Afro-Colombian authorities advocated for their political, economic, social, and cultural rights, and for their constitutional right that "Peace is a right and a duty whose fulfillment is mandatory," raising the hope that the ethnic peoples will attain a stable and lasting peace in their territories.

The Final Peace Accord is structured in six points: 1. Integral Agrarian Development, 2. Political Participation, 3. End of the Conflict, 4. Solution to the Problem of Illicit Drugs, 5. Victims and 6. Implementation, Verification, and Approval through Referendum. Point 6.2 includes the ethnic chapter, which is cross-cutting for all points of the peace agenda, given that: "We, the ethnic peoples, have contributed to build-

ing a sustainable and lasting peace, as well as to progress, to the economic and social development of the country (...) while enduring historic conditions of injustice; therefore guarantees must be promoted for the full exercise of our human and collective rights in the framework of our aspirations, interests, and world views."[3] The Final Peace Accord also contains certain principles regarding self-determination, autonomy, and self-governance; participation; recognition of ancestral practices; and rights to one's lands, territories and resources; among other aspects. Finally, it includes certain safeguards, guaranteeing the right to free, prior, and informed consultation and consent; the incorporation of a cross-cutting approach to ethnicity, gender, women, families, and generations, and states that under no circumstances shall the accords be implemented to the detriment of their rights.

Can the Colombian government comply with the agreement?

With the understanding that this concerted document is structured around the six points mentioned above, it is reasonable for indigenous, ethnic, and civil society organizations in general to ask themselves: Is it possible for the Colombian government to comply with what is established in the final peace accord, without undermining other agreements already made? That doubt is well-founded, given that between the year 1996 and 2016 (and according to official figures from the Permanent Working Group for Concertation of Indigenous Peoples and Organizations)[4] the government has had a 97% noncompliance rate with the indigenous peoples with respect to public policies, and that out of the 1,449 agreements registered, 63% corresponded to public policies.

It is clearly apparent that the legislative agenda for implementation of the peace accord has dodged these central points of the indigenous agenda, thus violating indigenous rights. This raises concerns, since these are agreements resulting from the direct, historic needs of the peoples in their territories.

The final peace accord commits to fulfill the following six points:

- *Point 1*. Integral Rural Reform: Political reforms will be made to ensure an integral development of the countryside, guaranteeing an

ethnic perspective, collective property, legal certainty for lands, the creation of a land fund, and implementation of the Development Plans with a Territorial Approach, which must contemplate mechanisms for prior consultation.

- *Point 2*. Political Participation: Full political participation shall be ensured for all aspects of the implementation framework, both on the issue of policy reform and on that of Special Interim Peace Zones.
- *Point 3*. Guarantees of Security: Security shall be provided to individuals and to organizations that are human rights defenders, so that they may carry out their work in the territories, bearing in mind the ethnic perspectives on security, such as that of the ONIC Indigenous National Guard.
- *Point 4*. Solution to Illicit Drugs: The National Integral Program for Substitution of Illicitly Used Crops shall be implemented, which shall be agreed upon with the communities, respecting and protecting the cultural use and consumption of traditional plants. In addition, Comprehensive Community and Municipal Plans for Replacement and Alternative Development shall be developed. It is also important to stress that the eradication of illicitly used crops shall be manual, and that a landmine removal and cleaning program shall be implemented in the areas of the indigenous territories affected by anti-personnel mines and unexploded munitions.
- *Point 5*. Victims of the Armed Conflict: The truth, justice, reparations, and non- repetition system shall be created, comprised by the Truth Commission, the Search for Disappeared Persons Unit, and the Special Peace Jurisdiction. All of them must adopt an ethnic approach, respecting the decision-making functions of the traditional authorities, and respecting consultation in the determination of these mechanisms, in keeping with their jurisdictional authority. Therefore, the Special Jurisdiction for Peace must take into account the mechanisms for coordinating with the special indigenous jurisdiction.
- *Point 6*. Implementation and Verification: The Special High Level Body with Ethnic Peoples is created for follow-up on implementation of the ethnic chapter in the final accord. This body shall be consultative, representative, and shall act as a voice with the Commission for Follow-up, Promotion, and Verification of the Final Peace Accord.

Based on the foregoing, the Colombian government, with the purpose of guaranteeing implementation and compliance with the peace accord, developed a legal framework through Legislative Act No. 1 of 2016. That Act creates a special legislative procedure for peace through two legal instruments. One of them provides for the processing of legislative acts and statutes introduced by the government. The other grants powers to the President of the Republic to issue decrees with force of law.

Prior consultation violated

For the country's indigenous peoples, it is painful to note the violations of the fundamental right to free, prior, and informed consultation and consent and the poor rate of compliance with the accords to date. This is demonstrated by the fact that the Colombian government provided just one option for political participation, through the fast track consultation mechanism,[5] which had to be implemented through a methodological route developed in five steps, distributed over 10 days. In the framework of this process, it should be noted that out of a total of 85 proposals for legislation to be introduced to the Congress issued by the President of the Republic under the powers granted to him in Legislative Act 1 of 2016, 55 were identified as involving indigenous peoples. Of these, on 25 that should have been mandatorily submitted to a prior consultation process, that process did not take place. As a result, only five proposals were brought before the Permanent Working Group for Concertation of Indigenous Peoples and Organizations.

These figures speak for themselves, evidencing the violation of human rights and the difficulty that the government has in complying with truly inclusive, democratic processes for civil society, who were marginalized throughout the negotiation process. Clear and troubling examples include the failure to define a framework implementation plan with measurement indicators evidencing the ethnic approach in disaggregated form. Also, as expressed by the general evaluation that the National Indigenous Organization of Colombia conducted of the fast track process, flaws in the implementation are seen in the fact that the voluntary and collective agreements for substitution of crops of illicit use have already commenced, but without formulating the national Integral Rural Reform plans (health, education, housing, electrification, tertiary roads, food, labor formalization, etc.) or the implementation in practice

of formalization and access to lands. Spaces of participation for the victims have yet to be defined in the Integral Truth, Justice, and Reparations System. Also pending is the reform of the law on victims and restitution of lands, as well as the Special Jurisdiction for Peace. And procedural and material guarantees have yet to be established for participation of the victims, among many other gaps for fulfilling the final peace accord.

With respect to compliance by the FARC – EP, despite the various different positions taken by civil society, it is evident that there has been significant compliance. They have ceased hostilities and turned in weapons. In addition, among several other good-faith actions, they have indicated the location of the "*caletas*" (hidden stashes of dollars); the removal of landmines has started; they have facilitated processes for reincorporation into civil society; have commenced the truth and pardon process; and have founded their political party.

Increased political violence in indigenous territories

Even with the understanding that the FARC has made it possible for the indigenous territories to be available for peace building, the problem of political violence continues in many of those territories, especially in Nariño, Northern Santander, Choco, Antioquia, Córdoba, Valle, Cauca, and Caquetá, which are places where paramilitary forces have occupied strategic territorial spaces in order to maintain control of the territory and the population so as to further their ideals as an armed outlaw group.

This has generated displacement, threats, and murders of indigenous leaders —both men and women—, as well as other social leaders in rural zones. In 2017, in the framework of the peace process, it resulted in 45 indigenous persons being murdered, 122 indigenous persons threatened, 827 indigenous persons taken prisoner, 3800 indigenous persons displaced, and 10 forced recruitments of indigenous persons, according to documentation of the ONIC.[6]

International support and challenges

In the peace process, accompaniment by international entities has been fundamental. The government of the United States of America, in

alliance with the Afro-Colombian peoples, opened the way for political engagement to incorporate the ethnic chapter. This, along with the participation of the United Nations and of the Mission to Support the Peace Process in Colombia/Organization of American States (MAPP/OAS) throughout the process, have been basic, key elements for verification and follow-up of the peace process.

Colombia and its government are at a decisive stage for the final accord to move from being mere words on paper and come to life in the implementation phase. For that, it is of the utmost importance to generate pedagogic processes that can lead to changes in both civil society and in institutions, through which the national government will have the capacity to respond in a timely fashion to the demands of society in a democratic and inclusive fashion.

ONIC, together with the other indigenous organizations of the country and the national government, faces the challenge of joining forces for fulfillment of the peace accords.

At the same time, the indigenous organizations will continue the process of demanding the rights that have been and are being denied them. And they will accomplish that by strengthening their own government structures and by generating organizational capacities among their bases for administering this implementation process.

Notes and references

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VENEZUELA

CARIBBEAN SEA
TRINIDAD AND TOBAGO
ZULIA
Caracas
SUCRE
TRUJILLO
MONAGAS
DELTA AMACURO
GUARICO
ANZOATEGUI
Orinoco R.
APURE
VENEZUELA
BOLIVAR
GUYANA
COLOMBIA
AMAZONAS
Orinoco R.
BRAZIL
Orinoco Mining Arc (Arco)

Official estimates indicate that indigenous peoples comprise approximately 2.8% of Venezuela's total population (approximately 32 million inhabitants). Others, however, believe that the indigenous population is larger, perhaps surpassing one and a half million. The indigenous population is distributed over more than 40 peoples, including the Akawayo, Amorúa, Añú, Arawak, Arutani, Ayamán, Baniva, Baré, Barí, Caquetío, Cumanagoto, Chaima, E´ñepá, Gayón, Guanono, Hoti, iInga, 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 distributed in the states of Zulia, Amazonas, Bolívar, Delta Amacuro, Anzoátegui, Sucre, and Apure. Some of these areas are shared 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 consecration of the right to territory as a fundamental requirement for the fulfillment of differentiated rights. The Constitution approved in 1999 recognizes the multiethnic, pluricultural, and multilingual character 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, whose point of reference was that international convention. The Venezuelan State has also enacted a series of laws directly developing the rights of constitutionally recognized 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 favor of the United Nations Declaration on the Rights of the Indigenous Peoples and created the Ministry of Popular Power for Indigenous Peoples as part of the executive branch's cabinet.

In the year 2017 Venezuelan society's structural crisis deepened, as the way of life shaped around the rentier petro-state/extractivist model collapsed. This process was marked by both new and accentuated trends, problems, and conflicts. The year saw a marked overextension of norms and decrees regulating civic coexistence, coupled with a continual undermining and violating of the bases and limits of the formal economy. It also saw sustained deterioration of the social fabric and increasing destabilization of the institutional framework. In general, the conditions of life of the population worsened, with major impacts in a wide range of realms. Of note was an increase in rates of undernourishment and malnutrition, a worsening of health conditions, deterioration of the health centers, a shortage of inputs for surgeries, and for anti-retroviral treatments, dialysis and cancer treatments, as well as an upturn in illnesses such as diarrheas, diphtheria, HIV/AIDS, and, most especially malaria. On an environmental plane, of special note were the impacts generated by mining activities, especially in the south of the country. Worth mention as particular manifestations of this general situation were: hyperinflation levels (with the world's highest inflation rate, surpassing 2000%);[1] an ever diminishing availability of cash; a pronounced 15% decline in the GDP,[2] shortages of food and medicines; deterioration of the infrastructure and of public services; skyrocketing tensions in the labor realm; insurrectional protests lasting four months, which left more than 120 dead or wounded; grave physical harm and denunciations of severe human rights violations by contending stakeholders; street actions toward the end of the year principally motived by the lack of food and medicines; a precarious monetary situation; and notable shortcomings in services such as electricity, potable water, gas, public transportation, and care at health centers. Added to all of that was an acute confrontation between different government entities, marked by intense exchanges of accusations regarding the breakdown of constitutionality, contempt of court, usurping of institutional functions, and corruption. The Executive Branch and the Supreme Court of Justice, on the one hand and the National Assembly and the Office of the Attorney General of the Republic on the other, issued decisions denying recognition to one another. The prosecutor general was replaced; parliamentary immunity for members of the National Assembly was rejected; and the President of the Republic called for a National Constitutional Assembly, which was rejected by sectors of opposition and dissident groups of the government alliance. A state of exception

was even declared in order to adopt measures in the civil, economic, military, penal, administrative, political, legal, social, and legislative realms.[3] In this context an unprecedented number of Venezuelans migrated to destinations in Brazil, Colombia, Ecuador, Chile, Peru, Panama, Spain, and the United States, where applications for asylum and work permits by Venezuelan citizens sharply increased. The crisis environment was topped off by a series of condemnations and sanctioning measures adopted by governments of countries in the Americas and Europe against officials of the national government. In this scenario, though the immense population of Venezuela have been suffering from the ravages of the grave situation, the Indigenous Peoples stand out given their vulnerability and the extent to which they are affected.

Orinoco Mining Belt and indigenous rights

A clearly major component of the unprecedented worsening of the crisis in Venezuela in 2017 was implementation of the Orinoco Mining Belt megaproject, as the acute disputes unleashed in 2016 regarding its current and potential impacts prolonged. It is worth remembering that in February 2016 President Nicolás Maduro decreed the creation of the "Orinoco Mining Belt" National Strategic Development Zone (an idea that had already been announced by his predecessor in 2011), which encompasses a territory situated to the south of the Orinoco River, measuring 111,843 km^2 in area.

The Orinoco Mining Belt overlaps with indigenous auto-demarcated territories, involving communities of the Pumé, Kari'ña, Pemón, Sapé, Uruak Arutani, Hoti, E´ñepa, Mapoyo, Piaroa, Hiwi, Ye´kuana, and Sanema peoples. It forms a part of what are called the dynamic mining drivers, and is the eighth of 14 of them established by the government, aimed at restoring and reinvigorating the country's sluggish economy. This megaproject has been promoted as a measure to bring order to the disorderly mining activity taking place in the zone. With the wealth of mineral deposits (gold, diamonds, coltan, iron, bauxite, etc.) offered as a lure, national and foreign investors have established fly-by-night companies to obtain greater advantages from this opportunity for doing business with the Venezuelan State.

The Venezuelan Government announced that it has invited 150 Venezuelan and foreign companies in order to finance the large-scale

mining project. So far a mere 16 have formalized agreements, while four mixed companies have been created, only one of which has a visible presence in the eastern zone of the Orinoco Mining Belt.

Several institutions, movements, organizations, and individuals from the community, along with academic, professional, student, and political sectors, and indigenous organizations, have denounced the fact that this megaproject was designed and approved without engaging in prior consultation with the indigenous peoples and communities of the zone and without conducting environmental and sociocultural impact assessments, which are obligatory per Article 120 of the Constitution. They have likewise underscored the profoundly negative impacts that, in their opinion, will be generated by development of the Orinoco Mining Belt at a social, cultural, labor, and ecological level and in terms of national sovereignty.[4] Nonetheless, in 2017 the government stood firm in moving forward with the challenged endeavor.

In this regard, the following events stand out for the year 2017: The first was the establishment on March 27 of Empresa Mixta Ecosocialista Siembra Minera, S.A. between Corporación Venezolana de Minería and an affiliate of the Canadian company Gold Reserve. That Canadian company has been accused of a history of pollution in Venezuela and of waging an international campaign against the Venezuelan State, in which ICSID eventually ruled in favor of the company. In that same month of March, the Coordinator of Indigenous Organizations of the Venezuelan Amazon (COAIM) and the Regional Organization of Indigenous Peoples of Amazonas (ORPIA) expressed great concern over the effects of illegal mining and the continuing implementation of the Orinoco Mining Belt "which jeopardizes the country's most important water reserves." On November 2, Luisa Ortega Díaz, known as the Prosecutor General in exile, filed an appeal for nullification and motion for temporary injunction against the Mining Belt decree before the Supreme Court justices designated by the parliament. In that action, she argued that the government is seeking to officialize civilian and military mafia structures that are behind mineral exploitation in order to benefit the interests of large companies. She also indicated the need to protect the biodiversity of the zone and to ensure the survival of the indigenous peoples who inhabit it but were never consulted. On November 27 the Popular Mining Council, which claims to have some 150,000 members, expressed its support for the Orinoco Mining Belt,

which it qualified as "a chance for rational and responsible mining." That same day, the Law on the Tax Regime for the Sovereign Development of the Orinoco Mining Belt was approved in a regular session of the National Constitutional Assembly. On December 6 president Nicolás Maduro approved permits to commence mining work in 23 communities of the Orinoco Mining Belt, covering a territorial extension of 3,409 km^2. On December 7, at the National Assembly, the deaths of 5 miners was denounced, who died when trapped in a gold mine of the zone. On December 15, the National Assembly approved the report prepared by a Mixed Commission on the creation of the "Orinoco Mining Belt" National Strategic Development Zone, revoking the negotiations being conducted by the Executive branch. During the final week of the year the Minister for Ecological Mining Development, Víctor Cano, reported that the Orinoco Mining Belt in 2017 contributed a total of 8.5 tons of gold to the Central Bank of Venezuela.

It is also important to point out that in 2017 several investigations and reports, among other sources, made mention of a notable increase of the crime in the zone, enabled by a growing substitution of the government authorities with prison gang bosses, mafias, and organized criminal groups, which benefit from illegal mining and impose their rules through violence.

The mines are the scene of frequent accidents due to cave-ins. This is coupled with murders and confrontations between illegal mining bands. Sources also indicate that deforestation and the use of mercury in mining activity, which continues to be carried out chaotically, is causing severe environmental damage to the soils, waters, fauna and flora, while also violating the land rights of some 198 indigenous communities. Indeed, some of those communities have categorically opposed the use of cyanide, promoted by the government as an allegedly ecological alternative (the officially promoted form of organization of small mining, which is the socialist mining brigades, continues using that substance). The reports indicate that those most affected by this ecocide are the indigenous peoples and the ecosystems. Monitoring by NASA determined that 200 hectares of forest were lost in the first six months of 2017, equivalent to more than 141 soccer fields. Deforestation and contamination due to mercury use have extended all the way to the Canaima National Park.

Creation of the Caura National Park

On March 22, 2017, the Executive branch announced the creation of the Caura National Park in the Caura River basin, with the aim of protecting the hydroelectric potential and biodiversity of the zone, as well as promoting environmental restoration actions in response to the negative effects of illegal mining. The new protected area was created and superimposed on Zone 2 of the Mining Belt itself plus a 4-million hectare polygon which, based on the Constitution of 1999 and the Indigenous Peoples Act of 2005, has been claimed for several decades by the Sanemá and Ye´kwuana peoples as ancestral territory. The Caura National Park is also the home of the Hoti ethnic group, the Afro-descendant population of Aripao, and the criolla and mestiza communities that arrived 60 years ago to inhabit Puerto Cabello del Caura, Trinchera and Jabillal, on the banks of the Caura River.

The park, which measures a total of 7.5 million hectares, is currently the largest park in Venezuela. Its creation has been supported by certain groups who identify themselves as environmentalists and declare themselves to be pro-government. Nonetheless, voices from the scientific and academic community, as well as organizations such as FUDECI, PROVITA, Wataniba, and PHY NATURA, and indigenous organizations such as the Kuyujani civil association, have indicated that the legal requirements necessary for creation of the Caura National Park have not been met. It is noteworthy that there has been no free, prior, informed consultation with the indigenous peoples. Neither were the legally required environmental studies submitted, which must also be evaluated by the National Assembly. These critics agree, however, that the zoning of the national park has the potential to fill gaps and overcome technical faults, effectively address problems of illegal mining, armed groups, prostitution, violence, and abuses by members of the military, among other problems. Yet to accomplish that, they maintain that the observations made by scientists and by leaders of the original peoples must be taken into account in the Zoning Plan and Usage Regulation.[5]

Mining, environment and contraband in Zulia

The situation created by the spread of both legal and illegal mining in the south of the country is also seen in other regions and territories in-

habited by indigenous peoples and communities. In the State of Zulia, several groups of critics have persisted in challenging the opening of new coal mines in the Perijá mountain range; installation of a coal-fed thermoelectric power plant; and construction of a deep-water port at the outlet of Lake Maracaibo. In the case of the coal mining, whose expansion has been officially announced for purposes of export to obtain foreign currency,[6] it is feared that an accumulation of factors could soon lead to a major environmental catastrophe. The operations in Zulia against "bachaqueo" (practice of unauthorized reselling Venezuelan subsidized goods in Colombia) have actually strengthened all the illicit activities revolving around these criminal practices: prostitution, human trafficking, the sale and consumption of drugs, smuggling of fuel and food, and the presence of armed persons. All these factors hurt the indigenous peoples of the zone, particularly the Wayüu people.

Health and indigenous peoples

Article 122 of the Constitution states that "indigenous peoples have a right to integral health that considers their practices and cultures." Nonetheless, according to information provided by experts, the indigenous peoples not only suffer from the impact of the general effects of the crisis, but also by an age-old situation of margination with respect to the health system.

Along this line of ideas, several information sources have expressed their concern over the worsening crisis of insufficient and deficient access to health services, coupled with an under-reporting of epidemiological information and even the existence of zones where no such reporting whatsoever is taking place. Of particular note is a series of data from which we extract the following: the indigenous population, especially indigenous children, in the majority of communities, now have a greater probability of dying from respiratory diseases, diarrhea, diseases preventable by vaccination, tuberculosis, and malaria. For example, among the Yanomami the infantile mortality rate is measured at 10 times higher than the national average; infantile mortality among the Pumé ethnicity ranges between 30% and 50% of live births, with most of these deaths occurring before the child reaches 4 years of age. In general, diseases with a high prevalence among the indigenous population include malaria, tuberculosis, and onchocerciasis ("river blind-

ness"), the latter of which occurs with great frequency among the Yanomami ethnicity.[7]

In 2017, alarming cases of malnutrition were detected in the Wayuu communities of the Venezuelan Guajira. In addition, malaria became significantly widespread this year in the territory of several southern states of the country. In fact, Venezuela tops the records for South America, with Amazonas and Bolívar, where illegal mining is widespread, being the most heavily affected. The indigenous populations of this zone are also negatively impacted by mercury contamination of the rivers, and there has been an increase in the suicide rate among the Pumé and the Ye´kuana. When it comes to the food component of the general crisis, malnutrition is increasingly affecting many communities, especially among children, and is particularly acute among the Pumé and Warao peoples. In general, the groups most affected are those that are the most acculturated, since those that mainly conserve their basic traditional food patterns are in better conditions for resisting the impacts of the crisis.

Special mention is warranted for the continued health crisis of the HIV epidemic detected in prior years among the Warao. According to certain investigators, this year has seen a dramatic spread of the HIV/AIDS in that ethnic group, who principally live in the Amacuro Delta. This health problem's prevalence is 10%; in other words, 10 out of every 100 indigenous Warao suffer from this condition.[8] The Warao also a have a high incidence of tuberculosis. These two diseases represent a great mortality risk, due to the lack of access to treatment as well as a failure to detect the cases on time.

Demarcation of lands and migrations

In the period considered, the closing of borders has been promoted as a measure to combat smuggling. This, along with centralization, mining, hydrocarbons exploitation, and other megaprojects, has had a negative influence in the territorial realm. There are also certain signs of imminent re-colonization, expressed in proposals or recommendations made to the National Constitutional Assembly and to the National Government itself by certain prominent spokespersons who for quite some time have questioned the recognition of indigenous territorial rights and stated their possible secessionist objectives.

In terms of territorial matters, attention should also be paid to the situation of failure to abide by the formal limits of the Orinoco Mining Belt, given that socioenvironmental, economic, demographic, and political dynamics are projecting beyond them, towards other areas and even across national borders. Thus, in practice, the officially recognized area of the Orinoco Mining Belt is not real. At the same time delays continue in the process of recognition and demarcation of indigenous territories throughout the country. That process has stagnated and is now years behind.

A particularly emblematic case is the incomplete demarcation of Yukpa lands in the Perijá (Zulia) mountain range. Title has thus failed to be given to ten communities of the native Chaktapa center, a focal point in the struggle for territorial rights, with five haciendas. Improvements there not have been paid, even though the respective appraisals and infrastructure studies are already completed. In general, the national process of demarcation of indigenous habitat and lands as a constitutional obligation of the State Venezuelan is *de facto* though informally paralyzed; with no significant advances on demarcations or on titles delivered.[9] Some positive aspects can be identified, however, including the return to complete legal status of the Bari lands in the State of Zulia and the creation of the Caura National Park, which at least is a legal grant of environmental protection and entails a recognition (albeit insufficient) for the lands of certain indigenous communities.

Notes and references

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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[1] (census 2012). The four most numerous Indigenous peoples are the Kali'ña (Caribs), Lokono (Arawaks), 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, Katuena/Tunayana, Mawayana, Pireuyana, Sikiiyana, Okomoyana, Alamayana, Maraso, Sirewu and Sakëta. The Kali'ña 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.

Suriname is one of the few countries in South America that has not ratified ILO Convention 169. It did vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007 but 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, along with respect for their rights, particularly given the strong focus that is being placed on Suriname's many natural resources (including oil, bauxite, gold, water, forests and biodiversity).

Kaliña and Lokono judgment and land rights

In the case of Kaliña and Lokono against the Suriname State,[2] the Inter-American Court of Human Rights has ordered Suriname to, among other things, legally recognize the Kaliña and Lokono peoples' collective ownership of their traditional lands and resources, and their legal personality before the law in Suriname. In addition, the judgment also affirms the rights of the Kaliña and Lokono to the protected areas that were established in their territories and ordered a process of 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. The Suriname State is also required to rehabilitate the area affected by bauxite mining in the Wane Kreek Nature Reserve. Although the government of Suriname has repeatedly stated that it will fully comply with the judgment of 25 November 2015, officially published on 28 January 2016, none of the ordered measures have been implemented to date. Because of the repeated nature of Suriname's violations of Indigenous and tribal peoples' rights (see also the Saramaka[3] and relevant parts of the Moiwana[4] cases), the Court ordered similar measures for all Indigenous and tribal peoples of Suriname in this judgment.

Some steps were taken but are yet to result in tangible results. Among others, a Presidential Commission on Land Rights was established in December 2016 which worked in 2017 on a "Roadmap" that includes a work plan for the legal recognition of Indigenous and tribal peoples' land and other rights. This Roadmap is yet to be approved by the President of Suriname before implementation (with an estimated duration of 12 months) can start.

A rather contentious piece of legislation was approved by the National Assembly (parliament) of Suriname in December 2017, namely an amendment to a core "Domain Land" law of 1982. That law declares all land over which no title can be proven to be State Domain (property), including all Indigenous and tribal peoples' lands and territories, as none of them hold written titles. As a result, all sorts of land titles and concessions have been given to individuals and companies within Indigenous and tribal lands, resulting in an endless stream of conflicts and, eventually, recourse to the Inter-American Court of Human Rights on the part of the Indigenous and tribal peoples, in the absence of domestic legal protection. The recent amend-

ment says to "protect" the traditional lands of Indigenous and tribal peoples by prohibiting the State from giving any concession right or land title in areas that are within a radius of five kilometres of Indigenous and tribal peoples' villages, without the community's consent. Pre-existing third-party rights are upheld, however, 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 regarding the amendment, which was hastily approved without their involvement or comments, stating that this amendment uses an arbitrary and unrealistic five km 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 else is now ex-

pressly allowed. The amendment law has yet to be signed into force by the President.

The Maho village's longstanding land dispute with private land owners continued in 2017, with flare-ups of violence and various protests. In one instance, villagers were said to have been beaten by one land owner's workers, and others have been taken to court for breaching the rights of another private land owner. The village, together with the *Vereniging van Inheemse Dorpshoofden in Suriname*, VIDS (Association of Indigenous Village Leaders), has meanwhile requested that the Inter-American Commission on Human Rights (IACHR) submit their case, admitted by the Commission in 2009,[5] to the Inter-American Court of Human Rights, as their only recourse to justice.

Another longstanding issue – the planned expansion of the Johan Adolf Pengel International Airport of Suriname and its land title, which covers the traditional territory of at least two Indigenous villages, namely Witsanti and Hollandse Kamp – has also boiled up into grimmer proportions. Two village leaders from Witsanti were brutally arrested after they prevented airport workers from undertaking technical measures aimed at expanding within their village. The villages broke out in protest and barricaded the road to the airport, resulting in the release of their leaders. Subsequent dialogue with the government has not resulted in a solution and, at the time of writing this article, an investor from China has been found who is willing to finance the planned expansion.

Protected areas and REDD+

The REDD+ readiness preparation project that started in Suriname in July 2014 with USD 3.8 million of financing from the Forest Carbon Partnership Facility (FCPF) has gone through another year of limited Indigenous peoples' participation in its decision-making structures. VIDS and the *Vereniging van Saramakaanse Gezagsdragers* (VSG, Association of Saramaka Authorities) have, over the years, submitted various protests, demanding to be included in their own right as representative traditional authority structures and their self-selection respected. The implementing agencies of the project, however, continues to consider the individuals it has appointed as "REDD+ Assistants" to be the "representatives" of Indigenous and tribal peoples. After dis-

cussions with REDD+ project staff and pressure from monitoring missions, a breakthrough seemed to have been achieved in a meeting of all Indigenous traditional authorities at which a consensus decision was taken regarding this representation. However, this decision was subsequently not implemented after some contentious objections were expressed and the situation has remained unchanged. The REDD+ project is scheduled to end in 2018.

A notable development in 2017 was the push for new legislation on protected areas in Suriname. Current legislation dates back to 1954, with outdated protected area categories and rules that do not consider Indigenous and tribal peoples' rights and interests. Conservation International (CI) in Suriname has initiated a project to support the development of new legislation, closely linked to its efforts to establish a "South Suriname Conservation Corridor" (SSCC). VIDS has repeatedly expressed its deep concerns over these projects which, even though the Southern Indigenous communities are agreeing with and cooperating on, may have adverse long-term consequences for the land and other rights of these communities, in the absence of a supportive legal environment.

At the same time, however, a constructive dialogue shaped up in 2017 among environmental and Indigenous organizations whereby VIDS, as the traditional Indigenous authorities' structure, will work with the environment NGOs to achieve a more rights-based approach in their project planning and implementation. The development of a set of guidelines is also foreseen in this initiative, which is part of a global "Shared Resources, Joint Solutions" programme of WWF and IUCN Netherlands.

EU Human Rights Award and other developments

VIDS, the "Vereniging van Inheemse Dorpshoofden in Suriname" (Association of Indigenous Village Leaders) has been awarded the inaugural EU Human Rights Award by the Delegation of the European Union for Guyana, Suriname and Trinidad and Tobago, in recognition of its valuable contributions in working towards promoting and defending the rights of Indigenous peoples in Suriname.[6] Throughout 2016 and 2017, VIDS implemented an EU-funded national awareness programme on Indigenous peoples' rights in order to gain more understanding of and sympathy for Indigenous peoples' rights among the general public.

VIDS has embarked on an ambitious project of "Monitoring Indigenous peoples' rights and making the SDGs work for Indigenous peoples", as local partner in a global project managed by the International Labour Organization (ILO) and the International Work Group for Indigenous Affairs (IWGIA), with funding from the European Commission. The three-year project will focus on community-based human rights' monitoring; promoting Indigenous peoples' social inclusion in the context of the implementation of the 2030 Agenda for Sustainable Development; and facilitating Indigenous communities' access to social services and social protection. The global project is managed by a consortium of organizations (ILO, IWGIA, AIPP, FPP and Tebtebba Foundation) and implemented in 11 countries worldwide.[7]

The Ministry of Regional Development of Suriname established a "Directorate for Indigenous Peoples' Sustainable Development" in 2017, as well as a "Directorate for Afro-Surinamese Sustainable Development in the Interior", by way of dedicated support to the development of Indigenous and tribal peoples. This was not consulted with Indigenous and tribal peoples, who gave it a lukewarm welcome. The abovementioned work plan for the recognition of Indigenous and tribal peoples' rights has been developed in cooperation with these departments.

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 http://www.corteidh.or.cr/docs/casos/articulos/seriec_309_ing.pdf
3. See http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf
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5. See http://www.oas.org/es/cidh/decisiones/2013/SUAD1621-09ES.doc
6. See https://www.facebook.com/eudelegationguyana/posts/2231903153490416
7. See also www.indigenousnavigator.org

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ECUADOR

The indigenous population of Ecuador numbers some 1.1 million out of a total country population of 16,464,448 inhabitants. There are 14 indigenous nationalities living in the country, grouped into local, regional and national organisations. 24.1% of the indigenous population live in the Amazon, divided into 10 nationalities. Of the Andean Kichwa population, 7.3% live in the Southern Mountains and 8.3% live in the Coastal region and on the Galapagos Islands. The majority of them, however, 60.3%, live in the six provinces of the Central-North Mountains. Of these, 87.5% still live in rural areas and 21.5% in the urban sector. The Shuar, who form a nation of more than 100,000 people, have a strong presence in three provinces of the Amazonian Centre-South, where they account for between 8% and 79% of the total population; the rest are spread in small groups across the country. There are different nationalities with very little population who are in a highly vulnerable situation: in the Amazon, the A'i Cofán (1,485 inhabs.); the Shiwiar (1,198 inhabs.); the Siekopai (689 inhabs.); the Siona (611 inhabs.); and the Sapara (559 inhabs.); and on the coast, the Épera (546 inhabs.) and the Manta (311 inhabs.). After more than eight years of a new Constitution and 20 years of having ratified ILO Convention 169, there are still no specific public policies in place to prevent and neutralise the risk of disappearance of these peoples or effective instruments that could ensure their collective rights, as set out fully in the current Constitution.

Ecuador is currently going through a rather uncertain political and economic transition, following more than a decade of the so-called "Citizens' Revolution", which was preceded by more than two decades of neoliberal adjustment policies, established by the so-

called "Washington Consensus". These policies involved the roll-back and de-institutionalisation of the State and the country suffered the consequences of this: increased poverty and inequality; the removal of subsidies from the poorest, such as peasant and indigenous farmers;[1] the greater flexibility of labour and more incentives for private companies and multinational corporations.[2] These consequences resulted in deep social unrest, a loss of institutional legitimacy and the collapse of the political system with seven different governments over a nine-year period (1997 – 2006). This phase concluded with the triumph of Rafael Correa and the convening of the Constituent Assembly in 2008, which was held in Montecristi, Manabí.

The 2008 Constitution formed part of what became known as Latin America's plurinational constitutionalism[3] and marked the start of a new political/economic phase in the country: it amended the State's institutional structures with five functions, strengthened the Executive, enshrined direct citizen participation, aligned with the principle of guaranteeing the widest individual, social, working, collective and environmental rights, strengthened State capacities, directed the economy along a nationalist and strongly social path, established a redistributive system of taxation, prioritised the social and solidarity economy and, in particular, devoted Sections VI to the "Development Regime" and VII to the "Good Living Regime", fundamental themes of the construction of a

post-neoliberal model. This Constitution was approved by referendum on 28 September 2000 by 63.93% of the population, while being attacked by sectors of the right as "statist", "socialist" or "Bolivarian" and inspired by "Chavez".[4]

A World Bank report pinpoints Ecuador as being the Latin American country that has most greatly reduced the gap between rich and poor, and which has increased the income of these latter the most.[5] Another report from the same body indicates that, between 2006 and 2014, Ecuador's GDP grew an average of 4.3%, enabling greater public expenditure on social issues and investments in particular. By virtue of this, "poverty fell from 37.6% to 22.5% and the Gini inequality coefficient fell from 0.54 to 0.47 because the incomes of the poorest sectors of society grew more rapidly than the average".[6] According to UNDP, around 1,500,000 people in Ecuador have been lifted out of poverty in the last 10 years, with social sector investment of USD 60,668 million.[7]

In terms of indigenous rights, however, the general panorama is not quite as clear, marked as it is by conflict and continuing disagreement between the central government and a number of the main indigenous organisations: protests by indigenous peoples and other social groups were triggered by the approval of various laws, such as those on land and water, due to lack of a full process of free, prior and informed consultation. The Confederation of Indigenous Nationalities of Ecuador (CONAIE), above all, has opposed extractive activities of petroleum and mining due to their effects on their ancestral territories and the pollution they cause.[8] Some of the protests have turned violent and many activists and leaders have been arrested for injuring police officers, damaging property and paralysing public services.[9]

Presidential elections

The 2017 presidential elections in Ecuador were held on 19 February. Given that no pairing managed to triumph at the first round, a ballot took place on 2 April in which Lenín Moreno, candidate for the governing Alianza País party, won with 51.16% of the vote over Guillermo Lasso, candidate for the right-wing coalition headed by the CREO and SUMA movements, with 48.84%.[10]

The different indigenous organisations' fragmented and contradictory positions became clear throughout the electoral process: some,

such as the National Federation of Indigenous and Black Organisations (FENOCIN), the Ecuadorian Indigenous Federation (FEI), the Single Confederation of Peasant Social Security Affiliates (CONFEUNASSC) and some sections of the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE), supported Moreno's candidacy; others, such as the Confederation of Indigenous Nationalities of Ecuador (CONAIE) and Ecuarunari, aligned in opposition to the Correa government and participated in the "National Agreement for Change" (ANC), a movement created in 2011 with the support of the Maoist Marxist-Leninist Communist Party (PCMLE) and the Popular Democratic Movement (now Popular Unity), Pachakutik (PK), Revolutionary Socialism, Montecristi Vive and sections of the United Workers Front (FUT). In principle, they supported Alberto Acosta, a well-known left-wing economist and former president of the Montecristi Constituent Assembly, who won the primaries within the Front but later decided to support the candidacy of General Paco Moncayo, who went on to obtain 6.7% of the vote.[11]

In the ballot, the coalition headed by CONAIE decided to support Guillermo Lasso, a banker and candidate for the right-wing coalition. "A banker is preferable to a dictatorship that has dispossessed us of our territories, declared a state of emergency, and imprisoned us," said Carlos Pérez Guartambel, president of Ecuarunari, who joined a protest rally with CREO supporters outside the National Electoral Council (CNA) to reject the electoral results and declare an alleged electoral fraud.[12] Lourdes Tibán, lawyer and senior leader of the Pachakutik Movement, who participated as a candidate for the Andean Parliament, also made her support of Lasso public. The CREO candidates even publicly thanked the indigenous leader for her support.[13] There were other positions, however, such as that of Humberto Cholango, former president of CONAIE (2011-2014), who decided to support Moreno's candidacy.

Lenín Moreno's triumph in the presidential elections resulted in a readjustment of the political environment and substantial changes in the correlation of social forces. In less than nine months, Lenín Moreno's government (its term commenced on 24 May 2017) has demonstrated not only differences but a total rupture with the government of Rafael Correa. This change in political environment has been possible because of the government's so-called "open dialogues": old parties, traditional policies, leaders of social movements, the main professional associations and banking representatives, the agro-exporting bourgeoisie, left-wingers and right-wingers from across the spectrum are all

agreed that there is now a new space for their expression. And, in this environment, the social forces, including indigenous organisations such as CONAIE, who felt sidelined during the decade of Correa, have gained a renewed presence, expression and force, to the point that some of its leaders, such as Cholango, Olmedo Iza, Mariana Yumbay and María Andrade, have been appointed to senior government positions.[14]

In this context, Ecuador's economy and politics are now marked by a kind of ideological, cultural and media-based hegemony. Just as it was pre-2007, the spokespeople for what should or should not be done are once again the leaders of the chambers of production, big businessmen and professionals defending their interests. Atilio Borón, Argentine sociologist, notes:

Ecuador was moving in one direction and now it is quite clearly moving in another although, for the moment, this has not been fully demonstrated. But the signs are clear: the close relationship with Washington is evident in the FBI's invitation to collaborate on the investigation into the attack in San Lorenzo, in the statements made to the media by the Minister of Foreign Trade, Pablo Campana, on the search for a Free Trade Agreement (FTA) with the United States, in the presence of the US Ambasssador, and in Ecuador's withdrawal from the progressive Latin American space. The right's agenda has been, gradually, taken up by Moreno's government. The media are still supporting him, unlike his predecessor, and the White House's acceptance of the new government is apparent.[15]

Extractive industry on indigenous territories

After calling a referendum in November, to be held in February 2018, Moreno ensured the support of the indigenous movement and environmental groups by including questions on banning extractive activities, for example, metal mining in ecologically fragile areas, and on limiting oil exploitation in Block 43 of the Yasuní National Park.

At the end of November, the different subsidiary bodies of CONAIE met in an Extended Council in Latacunga to evaluate the dialogue with the government. Days later, Marlon Vargas, president of CONFENIAE, indicated that they had decided to mobilise from the Amazon in what was called a "March for Dialogue with Results". "We reaffirm our position in the defence of territories and water sources, the right to bilingual

intercultural education, free access to universities, free self-determination of our organisations and the struggle against corruption at all levels,'' stated CONAIE's press release.[16]

According to Severino Sharupi, a CONAIE leader, one of the organisation's central demands has been a pardon for 177 social leaders and activists detained during the protests. ''We must seek issues that unite us, encourage that unity through dialogue and, above all, obtain an amnesty for those indigenous peoples who have been and are being prosecuted. This is the only condition we have imposed on dialogue with the government,'' stated Jaime Vargas, president of CONAIE.[17]

At the start of the year, a number of organisations came out in solidarity with the president of the Shuar Federation, Agustín Wachapá, accused of ''instigating violence'' during one of the protest days against mining projects in the Condor Mountains in 2016. CONAIE and Wachapá's lawyers have denied the accusations and, in April 2017, after four months in prison, he was released on payment of bail of USD 6,000 to the judge in the Gualaquiza Multipurpose Judicial Unit.[18]

According to Alberto Acosta, ''Since the government of the 'citizens' revolution' opened the doors to mega mining – completing the work begun under the governments of the 'long neoliberal night' –, there has been constant repression and violence from the State in order to access mineral resources''.[19]

After the march organised by CONAIE on 11 December 2017, Miguel Carvajal, National Secretary for Policy Management, stated that the government had instructed the Ministry of Mining ''to suspend the process of issuing concessions until there is compliance with all the environmental procedures stated in the Constitution''.[20]

A press release from Acción Ecológica indicated: ''We hope that Lenín Moreno's government will comply with the announcement made to the indigenous movement on Monday 11 December regarding the suspension of new mining concessions and will address the serious violations of human rights and the environment in the Condor Mountains as a priority.''[21]

The Condor Mountains form one of the richest areas of biodiversity in the world and are inhabited by Amazonian societies, including the Shuar nation, which is the most numerous Amazonian group in Ecuador. The Panantza-San Carlos and Mirador mining projects have been established in these territories by the Chinese consortium CRCC-Tongguan Investment Company, which now has nearly 50,000 ha under conces-

sion,[22] and the Fruta del Norte project owned by the Swedish-Canadian consortium Lundin Gold Corp. These projects were authorised and are maintained in breach of the right to participation and to free, prior and informed consultation, as established in Article 57.7 of the Ecuadorian Constitution, and in Articles 6 and 15.2 of ILO Convention 169.

The Panantza-San Carlos project affects multiple communities from at least 10 indigenous Shuar centres of the Tariamiat, Arutam and Churuwia associations, as well as numerous peasant families. The project's area of influence includes the Shuar centres of Ayantás, Piunts, Kupiamais and Waakis, subsidiaries of the Bomboiza and Arutam Shuar associations. This area includes peasant farms and enclosures such as Rocafuerte, Santa Rosa, La Delicia, San Miguel, La 27 and others.[23]

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PERU

ECUADOR
COLOMBIA
Pastaza R.
LORETO
Amazon R.
Cenepa R.
Río Blanco
PIURA
AMAZONAS
CAJAMARCA
PERU
BRAZIL
Marañón R.
Huallaga R.
HUÁNUCO
Ucayali R.
UCAYALI
Lima
Tambo R.
Madre de Dios R.
CUSCO
Pisco
APURIMAC
Apurimac R.
Cotabambas
Grau
AREQUIPA
BOLIVIA
PACIFIC OCEAN
Moquegua
Tambo

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 socioenvironmental conflicts in Peru, even though the country that has signed and ratified ILO Convention 169 on Indigenous and Tribal Peoples and, in 2007, voted in favor of the United Nations Declaration on the Rights of the Indigenous Peoples.

2017 was a year of political turmoil in Peru, generated by the corruption scandals that have plagued the governments of the past thirty years.[1] The unrest, unleashed by the revelations of the Lava Jato case and the system put together by the Brazilian Odebrecht company in the Latin American region not only implicated the upper echelons of the business sector, but also the various political groups. Marcelo Odebrecht, the former CEO of that Brazilian construction company, testified before the Peruvian justice system that all the candidates received some type of support,[2] alluding to the principal political leaders. The investigations are still underway. Yet, this scandal has already evidenced the magnitude of corruption in the country, as well as its implications at the highest level of business and politics.[3] The case threatens to even bring down the current government, presided over by Pedro Pablo Kuczynski (PPK), who eluded impeachment on December 21, 2017, thanks to the support of a sector of the Fujimori block. Three days later, Kuczynski granted a "reprieve and pardon for humanitarian rea-

sons" to Alberto Fujimori, even though that ex-dictator had been sentenced for murder, battery, and aggravated kidnapping, which, under international law, constitute crimes against humanity.[4]

The Peruanos Por el Kambio party (PPK), won by a slim margin in the second round of the presidential elections against Keiko Fujimori, the daughter of the ex-dictator. But the party has failed to demonstrate its capacity to develop a course of action of its own. In late 2017, the government displayed weakness and extreme burnout. At the same time, its legitimacy wore thin, generating a political crisis and high levels of polarisation at a national level. The Fujimori block, which holds a majority in the parliament and controls the Congress of the Republic, passed laws in the interests of private parties in collusion with the current government, to the detriment of the environment, natural resources, and the indigenous peoples, as described below.

2017 census and ethnic self-identification

The 2017 national census, for the first time in the history of Peru, included a question calling for ethnic self-identification. The effort to reach a consensus in the formulation of the census question and gain an awareness of the self-perception of the country's original population was hampered by a series of "deficiencies and errors in planning, budget, and operational organisation,"[5] which cast severe doubt on it. The first results will be announced in March 2018, from now on the application of this question is expected to mark a first step toward lending statistical visibility to the various ethnic and cultural groups that comprise Peru.[6]

Lack of will to fight against climate change

The Congress of the Republic displayed its disinterest in debating and passing the Framework Act against Climate Change. The bill was approved on November 7 by the Commission of Andean, Amazon, and Afro-Peruvian Pueblos, Environment and Ecology. As of the close of this report, the Congress has yet to pass that initiative. What makes the situation especially grave is that Peru is one of the countries that is the most vulnerable to climate change. 2017 was a difficult year due to the impact of disasters provoked by El Niño. In the first half of the year,

floods and mudslides caused by that weather phenomenon left a toll of 28,784 victims, 38,382 homes destroyed, and 43,718 hectares of lost crops, according to data from the National Civil Defense Institute.

Territorial conflict: The Plunder Act

Ever since the adoption of the Constitution of 1993, issued under the Fujimori regime, the assault on communal lands has been constant. In 2017, the indigenous movement waged an intense battle to counteract and repeal Legislative Decree 1333 (dubbed the "Plunder Act"), which created a special body known as APIP (Special Project for Access to Property for Prioritised Investment Projects) aimed at fomenting investment projects in the "national interest" in rural territories, whether public or private, formal or informal. The law, which passed in February, contained technical irregularities and deficiencies, and threatened the right to territory of the original peoples and communities, especially when it is considered that the Peruvian State has not complied with granting title to ancestral lands, and that 49.6% of indigenous territory is impacted by government granted concessions.[7]

A communication and engagement campaign was led by the Unity Pact of Indigenous Organisations of Peru, the Interethnic Association for Development of the Peruvian Rainforest (AIDESEP), the associations of the Working Group on Indigenous Peoples of the National Human Rights Coordinator (CNDDHH) and the parliamentary caucuses of the Frente Amplio ("Broad Front") and Nuevo Perú ("New Peru") blocks. That campaign succeeded in getting the controversial law repealed on May 25.

Despite that success of the indigenous movement, the PPK government introduced a new "Plunder Act" with Bill 1718, whose objective was to modify some of the prior language, such as "investment projects" and replace it with "prioritised infrastructure works." Despite the word tweaking, in substance Bill 1718 maintains access to communal lands, even at the cost of violating the territorial security of the original communities or that of any beneficiary of a rural property. This new bill has yet to be debated.

Bill 1910, for its part, also attempts to weaken communal ownership in the Piura region by stipulating that titles will be individual. As has been noted by the Muqui Network, the bill's purpose is to refuse to recognise the status of original peoples of the Piura communities, ignore

their collective rights, and facilitate processes of land re-concentration. Bills 1718 and 1910 have now become the principal threats to the integrity of the rights of peasant and native communities. The outcome of these bills be known in 2018.

Increase in socio-environmental conflict

According to the report on conflict issued by the Ombudsman's office, as of December 2017 there were 169 scenarios of dispute, of which 120 were due to socio-environmental causes. 66 conflicts are undergoing a dialogue process, which represents 55.5% of the active cases.[8] A conflict of great magnitude exists in Las Bambas, province of Cotabambas (in the Apurímac region). The population of the districts of Challhuahuacho, Haquira, and Mara have been living in a state of emergency since August 16. They are not opposed to mining activity, but are demanding that the Chinese company MMG Limited not contaminate the air and the river, and take actions to prevent harm to health, livestock, and their crops. The Mining Conflicts Observatory notes that one of the underlying problems is the recurring breach of the agreements. A second problem is the continual modification of the mining project. A CooperAcción report indicates that Las Bambas was modified as many as five times in less than twenty months: the environmental impact study was modified twice, and on three occasions the procedure was used known as the Technical Sustaining Report, created by the first environmental "heavy blow" package (DS 054-2013-PCM), which allows changes to be approved for projects in an expedited manner, in fifteen days, without civic participation mechanisms.

Highways affecting peoples in isolation and initial contact

One of the most worrisome legislative developments was Bill 1123, introduced by the Fujimori block congressman Glider Ushñahua, which was passed by the Congress of the Republic on December 7. The text declares that the construction of highways in border zones and the maintenance of drivable dirt roads in Ucayali are in the national interest. This initiative is questioned, because it would facilitate penetration by exogenous settlers

(read: lumbermen, illegal miners, and drug traffickers) into zones that are difficult to access in the Amazon rainforest. The bill was questioned by public agencies such as the National Service for Natural Areas Protected by the State (SERNANP), the Ministry of the Environment (MINAM), and the Ministry of Culture (MINCU). Observations were also issued by the Ombudsman's office, and the bill was also opposed by the Commission of Andean, Amazon and Afro-Peruvian Peoples, Environment and Ecology. Just hours following Pope Francis's departure from Peru after he pleaded for the defense of the Amazon and the lives of the indigenous peoples, the Congress of the Republic enacted Law 30723 on January 22, 2018.

Deforestation and timber industry in Ucayali

Peru is the country with the second largest area of Amazonian forest, after Brazil. In 2015 the region of Loreto had 35,185,486 hectares, Ucayali had 9,438,899 hectares, and Madre de Dios had 7,984,748 hectares.[9] However, the Peruvian forests are threatened by deforestation and degradation. Between 2001 and 2016 almost two million hectares of forests were lost, that is, an average of 123,388 lost each year.[10]

Ucayali is not only the region most plagued by deforestation of the Amazon; it is also characterised by the introduction of a system of trafficking of properties[11] that has favored investments in African oil palms and cacao in primary forest zones, encouraged by regional government and state operators, which paves the way for the trafficking of lands and corruption of government officials.[12] The concentration of lands, led by United States businessman Dennis Melka in complicity with the regional authorities, succeeded in gaining access to more than 13,000 hectares of Amazon lands for the planting of African oil palm and cacao through his companies Plantaciones de Ucayali (today Ocho Sur U SAC) and Plantaciones de Pucallpa SAC (today Ocho Sur P SAC). Farmers from the village of Bajo Rayal and from the Santa Clara community of Uchunya denounced the loss of hectares after the Regional Directorate for the Agriculture Industry of Ucayali irregularly delivered certificates of possession to persons tied to Melka. Currenly, in addition to Melka, authorities of the Regional Government of Ucayali are being denounced, among them the regional governor, Manuel Gambini Rupay, and government officials from the agrarian service of Ucayali (DRAU), who are being investigated by the Government Attorney's Office. Despite the denunci-

ations, Melka has employed several strategies to keep the authorities from taking control of the deforested lands. It is clear that the magnitude of this problem is closely tied, once more, to corruption of the government apparatus, which has played a complicit role, and whose mechanisms have started to come to light in a number of investigations.[13]

Complicity of the government in illegal logging

The Center for International Environmental Law (CIEL) published the report "Continuous Improvement,"[14] which states that practices of "laundering" for illegal timber have been sophisticated in Peru and are aided by the complicity of government officials. The investigation demonstrates that the timber is exported, depending upon the level of risk, to importing countries that are lacking in strict laws, such as Mexico and China, which are markets that do not prohibit the entry of illegal timber. The report makes reference to a "continuous improvement" to encourage illegal logging rather than curtailing it. The investigation also indicates that the pattern persists of laundering timber from unauthorised areas by utilising official documents and the information systems of the OSINFOR (Supervision Entity for Forest and Wildlife Resources), paradoxically created to foment transparency. During 2015, the year on which the investigation focused, the largest quantity of Peruvian timber was exported to China (42%), followed by the Dominican Republic (20%), the United States (10%) and Mexico (9%).

Other latent conflicts

In the Amazon a conflict has arisen over the project for connecting Yurimaguas, Balsapuerto, and Moyobamba by highway. The indigenous organisations requested prior consultation and an environmental impact study, fearful that the mega project would directly affect their territories. Experts on Amazon issues also warn that highways are the worst infrastructure for interconnecting the Amazon, due to their ecological and social impact, which facilitate migration and exogenous settlement. In addition, the Moyobamba-Iquitos Electricity Transmission Line mega project is questioned, due to the high degree of deforestation it would occasion. The indigenous peoples of the region demand a rejection of

the environmental impact study prepared by the Spanish company Isolux, and compliance with the right to prior consultation.

In 2017 the crisis continued over oil spills in the Marañón, Tigre, Pastaza, and Corrientes basins. In late 2016 the Environmental Remediation Contingency Fund was created, which obligated the company that caused the spill to restore the impacted zones. It likewise permitted indigenous participation in the co-management of the fund. Nonetheless, implementation of the fund was plagued with bureaucratic obstacles and sluggishness in the system. In the case of Lot 192, the indigenous federations of the four basins, in November, succeeded in ensuring their right to prior consultation. Yet that landmark does not put an end to their demands, given that they still have to cope with the devastation produced by pollution and the lack of potable water and food. In Purús (Ucayali) another conflict has developed, with the passage in June of Law 30574, which approved the multimodal connection; that Law leaves open the possibility of a highway that would open the way for a massive influx of illegal loggers and drug traffickers into one of the zones with the largest density of mahogany. At present, an initial 14 kilometer dirt roadway already exists, which would impact the indigenous peoples in isolation and initial contact as well as the forests.[15]

In addition, the case of indigenous Andean and Amazon women sterilised without their consent was the topic of a roundtable in which the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz made a commitment to intercede with the government in favor of the victims. It is calculated that 270,000 victims were affected by this government policy, engaged in between the years 1996 and 2000, during the administration of Alberto Fujimori. As reported by Sandra Enríquez, who is in charge of the Registry of Victims of Forced Sterilisations, there have been 89 denunciations out of a total of 5933 registrations. Even though this is a crime against humanity, as characterised by Maria Ysabel Cedano, representative of the Follow-up Group on Restitution to Victims of Forced Sterilisations, the cases were closed in 2009, 2014, and 2016.[16]

The emergence of autonomous governments

A positive development from the perspective of the indigenous movement is the emergence and empowering of autonomous indigenous

governments, which are regarded as good institutional examples in a political context dominated by corruption, extractivism, and inattention to actions for environmental protection and against climate change. The principal initiative corresponds to the Autonomous Territorial Government of the Wampis Nation (GTANW), established in 2016, and then, with a greater or lesser degree of consolidation, the autonomous governments of the Shawi, Kandozi and Shapra peoples. The Harakbut and Ese Eja peoples, in the Madre de Dios region, also have expressed their desire to establish an autonomous government to represent them as a people.

This is a new, emerging process in which the original peoples seek to gain autonomy and reaffirm their territoriality and representativity. To achieve that, they are working on guidelines and roadmaps aimed at re-establishing their own institutionality and attain better conditions for a dialogue with the Peruvian State. The Wampis people (Amazonas region) is the one leading and showing the greatest advances. This has been accomplished in the course of a year of work in which, on their own initiative, they have been confronting illegal mining that is expanding in the Santiago River basin, given the absence of the respective authorities. In April they started operating Radio Wampis, the first autonomous radio broadcaster of the Peruvian Amazon. It was installed in the Soledad native community and principally covers the communities of the Santiago River basin. A repeating station is still needed to reach the communities of the Morona River basin, separated by the Kampagkis mountain range that limits the radio coverage.

Forest conservation: indigenous alternatives

Given the government's passivity for implementing a climate agenda and effective management to curtail forest deforestation, proposals are coming from the indigenous peoples. One such proposal is that of Amazon Indigenous REDD from the national organisation AIDESEP, whose objective is full compensation for forest conservation, based on a holistic management of the territory that would reduce the ecological footprint and deforestation. Amazon Indigenous REDD counters proposals that seek to remunerate forest conservation based on measurements and issuances of car sbon bonds. An example of Amazon Indigenous REDD is the Amarakaeri Communal Reserve[17] with more than 402,335 hectares, protected by the indigenous communities of Madre de Dios.

The Amarakaeri Communal Reserve applies a model of territorial co-management, with the presence of the State through the National Service for Natural Areas Protected by the State (SERNANP) and the Administration Contract Executor, who represents the native communities of the zone. Of special note among the results are the advances in communal monitoring, conservation practices in the face of climate change, and the elaboration of Plans for a Full Life. The Amarakaeri model of Amazon Indigenous REDD serves as an inspiration for another nine communal reserves and indigenous territorial bases of the AIDESEP. 2018 is expected to see more advances, considering that the Amarakaeri Communal Reserve provides an opportunity for the indigenous peoples to apply their traditional knowledge in environmental conservation.

Outlook for 2018

Ever since the president took office in July 2016, it is becoming harder each day for the PPK to remain in office. The disintegration propitiated by the Fujimori block has been accentuated by the errors of the president himself and the corruption scandals that envelop him. The incapacity to rebuild the zones affected by El Niño, the bending of environmental norms in order to favor investments and weaken the legal certainty of ancestral territories of the communities ("the Pillage Act" and its variations[18]), characterise a government in crisis that makes the continuity of his administration questionable.

The pardoning of Alberto Fujimori has unleashed a series of mobilisations within the country and abroad. For their part, the Fujimori block, in complicity with the APRA (American Popular Revolutionary Alliance) block (*Fujiaprismo*), fans up political destabilisation whenever investigation processes of their leaders or parties occur. This political posture coincides with ultra-conservative initiatives (from evangelical groups and the Congress of the Republic) such as the initiative that promotes the eradication of a gender approach in the national educational curriculum, which might end up being modified.[19] Another common line of defense of the Fujimori/APRA block is its refusal to defend the human rights of the civilian population victimised by government operators and the armed forces.

PPK will have to combat the return of the ghost of a presidential vacancy. In this critical panorama, the social and alternative forces are

putting forth a proposal for a Constitutional Assembly that would redefine the political and economic model and open an outlook for a State that recognises the rights of the original peoples, protects ecosystems and natural resources, places limits on extractive activities, and foments the development of a sustainable economy.

Notes and references

1. Except for the short term of Valentín Paniagua after the ex-dictator Alberto Fujimori resigned, from Japan.
2. See: https://www.servindi.org/actualidad/30/12/2017/marcelo-odebrecht-apoyamos-todos
3. See: http://rpp.pe/politica/judiciales/caso-odebrecht-cuatro-de-los-empresarios-llegaron-a-la-sala-penal-para-que-se-ejecuten-sus-arrestos-noticia-1092402
4. See: http://larepublica.pe/politica/1167166-san-martin-crimenes-de-fujimori-constituyen-lesa-humanidad
5. See: https://www.servindi.org/actualidad-noticias/26/10/2017/aidesep-exige-garantizar-la-aplicacion-de-los-censos-en-zonas-rurales
6. See : http://larepublica.pe/sociedad/1168386-inei-continua-verificando-viviendas-censadas-en-2017
7. See: https://www.servindi.org/actualidad/14/05/2017/13-razones-para-derogar-el-dl-1333-ley-del-despojo
8. See: https://www.defensoria.gob.pe/modules/Downloads/conflictos/2018/Reporte-Mensual-de-Conflictos-Sociales-N-166---Diciembre-2017.pdf
9. See: http://www.keneamazon.net/Documents/Others/Informe-de-Adjuntia-001-2017-DP-AMASPPI.MA-P.pdf
10. See: http://www.bosques.gob.pe/peru-pais-de-bosques
11. See: http://www.proetica.org.pe/publicacion/los-negocios-la-deforestacion-una-investigacion-realizada-convoca-alianza-proetica-trafico-tierras-deforestacion-corrupcion-la-region-ucayali/
12. See: https://www.servindi.org/actualidad-noticias/05/09/2017/proetica-y-convoca-publican-investigacion-sobre-deforestacion-trafico
13. See https://www.servindi.org/actualidad-noticias/16/01/2018/peru-exportan-madera-ilegal-utilizando-mecanismos-legales
14. See: http://www.ciel.org/wp-content/uploads/2017/11/CentroReportV15.pdf
15. See: https://www.servindi.org/actualidad-informe-especial/11/06/2017/la-verdad-sobre-la-conexion-multimodal
16. The event entitled "Forced Sterilisations: Indigenous Women in Search of Truth, Justice, and Restitution" was organised in Lima on June 9 by the National Organisation of Andean and Amazonian Indigenous Women (ONAMIAP), with support from the International Work Group for Indigenous Affairs (IWGIA). See:

https://www.servindi.org/actualidad-noticias/12/06/2017/victimas-de-esterilizaciones-forzadas-pidieron-que-onu-interceda-por

17. See: https://www.servindi.org/16/06/2017/amarakaeri-comunidad-amazonica-que-hace-frente-los-efectos-del-cambio-climatico
18. See: https://www.servindi.org/actualidad-noticias/08/11/2017/nueva-ley-del-despojo-podria-aprobarse-el-9-de-noviembre
19. See: https://elcomercio.pe/peru/curriculo-escolar-apelan-fallo-anulo-parcialmente-enfoque-igualdad-genero-noticia-457415

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BOLIVIA

According to the 2012 National Census, 41% of the Bolivian population over the age of 15 are of indigenous origin, although the National Institute of Statistics' (INE) 2017 projections indicate that this percentage is likely to have increased to 48%.[1] Of the 38 peoples recognised in the country, the majority in the Andes are Quechua-speaking peoples (49.5%) and Aymara (40.6%), who self-identify as 16 nations. In the lowlands, the Chiquitano (3.6%), Guaraní (2.5%) and Mojeño (1.4%) peoples are in the majority and, together with the remaining 2.4%, make up 34 recognised indigenous peoples. To date, the indigenous peoples have consolidated 23 million ha. of collective property under the status of Community Lands of Origin (TCOs), representing 21% of the country's total land mass. With the approval of Decree Number 727/10, TCOs were constitutionally renamed Native Peasant Indigenous Territories (TIOCs). Bolivia has been a signatory to ILO Convention 169 since 1991. The UN Declaration on the Rights of Indigenous Peoples has been fully transposed by means of Law Number 3760 of 7 November 2007. With the entry into force of Bolivia's new State Political Constitution in 2009, the country took the name of Plurinational State.

A number of events occurred in Bolivia during 2017 that made it a highly conflictive year, both socially and politically. The most controversial decision was probably that of the Plurinational Constitutional Court (TCP) enabling President Evo Morales and Vice-President Álvaro García Linera to stand for a fourth term in office.

Through ruling 0084/2017 of 28 November, the government managed to avoid the result of the referendum held on 21 February 2016 by which the people were consulted as to whether they accepted a reform to Article 168 of the Constitution or not that would enable the current

president and vice-president to stand for further re-election. 51.3% of the population voted no. With this, it seemed clear that the legal channels had been exhausted, insofar as the referendum result was obligatory on the forthcoming electoral process (see The Indigenous World 2017).

However, this constitutional ruling sets an unusual legal precedent by stating that it would be in violation of Article 23 of the American Convention on Human Rights to restrict the number of times someone can stand for elective office. Article 23 protects the political right to elect and be elected. This precedent would therefore seem to suggest that any restriction on the number of times a person can be re-elected to public office would be in contradiction with the American Convention. With this, the political and social stage became tense and the issue became a talking point as so many people felt betrayed.

This decision was to culminate in a social reaction to the so-called medical conflict. This conflict originated in the context of popular opposition to approval of the Code on the Criminal System, which regulated medical negligence or malpractice in a way that offered few guarantees to healthcare professionals. The underlying reason for the conflict was, however, the fact that the president could now stand indefinitely for re-election. While this issue remains a backdrop to political discussions, such conflicts will only strengthen and worsen, judging by the sustained process of social mobilisation that continued until the end of the year.

Election of judges by popular vote

Towards the middle of the year, a parliamentary procedure was instigated to draw up the lists for the preselection of future judges to the main justice bodies.[2] In Bolivia, these positions are chosen by popular vote, similar to that for the candidates preselected for the Plurinational Legislative Assembly (ALP).

The number of representatives that each political party has in the ALP is crucial to this process and, at the moment, Evo Morales' party, the Movement to Socialism (MAS), holds a more than two-thirds majority in each chamber. One analysis suggests that the idea in 2017 was not to repeat the negative situation of the previous judicial elections held in 2011, when criticism of some of the lists of judges established by a MAS-dominated Congress led most of the population to cast blank or spoiled votes.[3] Another analysis concluded, however, that the new judg-

es selected by the majority party in Congress would end up ruling favourably on the case (already submitted by a group of MAS deputies) calling for the possibility of a fourth term in office for the president.[4]

Questions were raised regarding the process being followed by the joint Congressional Committee because of the criteria used to establish the interview questionnaires and other formal aspects. To avoid sensitivities, the Executive Committee of the Bolivian University (CEUB) was invited to be involved, although others, such as the San Andrés de La Paz University, refused to participate, denouncing the lack of transparency and objectivity in the process. A number of observations re-

garding the regulation having been made, the planned preselection went ahead, endorsed by the MAS's vast majority in both legislative chambers, even though the candidates chosen were queried for being, in large part, former public officials of the current government with a low professional profile. It did not help that many possible candidates did not trust the process and so decided not to apply.

The ensuing elections simply underscored the public's rejection of the preselection process, as only 35% of the votes were cast for all of the candidates combined, with blank and spoiled papers accounting for nearly 70%. This demonstrates that a large proportion of the population are still highly critical of the Bolivian justice system, which is politically linked to the national government.

CIDOB's Grand Assembly

Towards the end of August, the Confederation of Indigenous Peoples of the Bolivian East, Chaco and Amazon (CIDOB) held its Grand National Assembly of Indigenous Peoples (GAA), its highest organic body. Its governing body was the vestiges of the team that removed then president Adolfo Chávez in 2012, and replaced him with Melva Hurtado.[5] In 2015, when the case of the Indigenous Fund broke,[6] the president at that time was involved and arrested on 4 December of that year, only being released in October 2017. All these events meant that the leadership, strongly supported by the national government, fell into crisis and had to convene a GAA to fill the positions.

Twelve of the 13 organisations that make up CIDOB (albeit with significant internal divisions, according to their support or not of the government or rather, more concretely, their support or rejection of decisions and laws passed by the current national administration in violation of indigenous peoples' rights, above all the case of TIPNIS) attended this Grand Assembly.

The leader of the Indigenous Peoples' Committee of Beni (CPIB), Pedro Vare, was elected president by a comfortable margin. Vare's campaign positioned him far more clearly in a pro-government stance than his other like-minded challengers, the Guaraní Efraín Balderas or the Chiquitano Justo Seoane, and he therefore received all of the government's logistical and media support. On the other side was Bertha Bejarano, leader of the IX Indigenous March, former president of the Com-

mittee for the Ethnic Mojeño People of Beni (CPEM-B) and fierce defender of TIPNIS, who demanded a clear position from the other candidates in this regard, as a condition for becoming CIDOB President. Bertha failed to win any of the seats, albeit by just one vote, and so the entire Board of Directors is now clearly supportive of the national government's policies.

This process has resulted in a deepening of the crisis of representativeness, and the social and political action of the indigenous peoples of the lowlands has been neutralised yet further. In addition, Vare, who comes from a pro-ruling party area of TIPNIS, guarantees the government a position contrary to the legitimate leadership of the TIPNIS subcommittee and its communities, given that he unconditionally supports the planned highway through this territory. It is therefore to be expected that CIDOB as it stands will simply defend the ruling party and repeat its discourse fully, particularly with regard to the right of the president and the vice-president to stand for a further term in office.

Construction of the highway: Law No. 969 TIPNIS

The national government this year decided to revive the conflict over the building of the Villa Tunari-San Ignacio de Moxos highway through the Isiboro Séruce National Park and Indigenous Territory (TIPNIS) by approving Law No. 969/17 on 13 August.

The VIII Indigenous March, organised by the peoples and organisations of TIPNIS and supported by all of the country's indigenous organisations, had successfully managed to stop construction of this highway. As a result of this march, Law No. 180/11 of 24 October 2011 was passed, Article 3 of which prohibited the construction of this or any other highway through TIPNIS, declaring it an "intangible zone".[7] In 2012, however, the government promoted the adoption of Law No. 222/12 of 10 February by means of which, towards the end of 2012, it conducted a "prior consultation" in the Territory, in blatant disregard for all national and international standards governing this process and by which it obtained an apparent agreement for the highway to go ahead, despite Law No. 180/11 effectively prohibiting this.[8]

This discussion was revived in 2017 with the approval of Law No. 969/17, following a supposed "request" from TIPNIS, which its leadership and communities denied ever sending. The adoption of this law

approved the civil engineering works that were already being conducted to the south of the territory, occupied by more than 15,000 coca leaf producers who were demanding the opening of a road. Significant protests took place in opposition to Law No. 969/17 and appeals for unconstitutionality and class actions were signed, in the first case by opposition deputies and in the second by the Permanent Assembly of Human Rights of Bolivia (APDHB) and other human rights organisations.

The real objectives of Law No. 969/17 can be found in Articles 9,[9] 10[10] and in the First Abrogating Provision,[11] which authorise the opening up of the reserve for the construction of the highway that is in fact already being built. Despite the overwhelming rejection of the peoples living within the reserve, this law permits the exploitation of its natural resources, both renewable and non-renewable, by outside operators and, the most important provision for the government, the repeal of the intangible nature of TIPNIS and of the express prohibition on building any highway through it, as established in Law No. 180/11; and all this was apparently made possible by the results of the "prior consultation" of 2012.

On 7 and 8 November, taking advantage of the Climate Change Summit being held in Bonn, Germany (COP 23), the TIPNIS organisations referred the case to the International Rights of Nature Tribunal, a non-state body established to rule on actions of harm to nature in its broadest sense, in other words, all living things.[12] The Tribunal called on the State to place a moratorium on the highway construction and civil works, as well as on any oil exploitation, and accepted an invitation from the TIPNIS leaders to conduct an *in loco* visit to the Territory, which will probably take place in 2018.[13]

Approval of the Criminal System Code: Medical conflict

In 2015, the national government entrusted the drafting of legislation to combine the Criminal Code and the Criminal Procedures Code to a number of national and international specialists. The aim was to adapt these codes to the new requirements of the constitution approved in 2009 and the new regulations that have since been adopted. The political climate became highly charged when the professional associations directly affected by some of the articles, in particular the doctors, noted that the regulation would effectively criminalise their work or at least regulate it in an extremely condemnatory way, in cases of wilful or

wrongful action. As in other conflicts, using its vast parliamentary majority, the government approved the code on 15 December despite strong criticism and the threat of future protests, believing that it would be able to control this, as it had done on other occasions. The popular reaction was organised very quickly and no longer involved simply the traditional social movements such as the workers, miners, shopkeepers and peasant farmers but spontaneous platforms and organisations, highly influenced by social media, which became the sounding board and ideal medium for organising, sharing opinions and producing protest slogans. The government had calculated that the summer holidays and Christmas period would calm the disquiet but the discontent only grew and President Evo Morales had no alternative but to announce the repeal of the articles being challenged.[14] The protest radicalised towards the end of the year, however, and began to call for a repeal of the whole code, i.e. Law No. 1005/17, and for the president to withdraw from standing for a further term in office, which of course was the real reason behind the growing conflict in the country in the first place.

Progress in the indigenous autonomies

One process worth noting, despite serious setbacks in other areas of compliance with indigenous rights, is that of the indigenous autonomies because, although there are significant delays due to the extremely bureaucratic procedures established by the Framework Law on Autonomies 031/10 of 22 July, a number of indigenous peoples are now forming their own self-governments.

Thirty-six indigenous autonomies have commenced the process for accessing self-government, 21 by means of municipal conversion and 15 by territorial means or TIOC.[15] Of these, three have already established their governments and are up and running: Charagua-Iyambae, in the Chaco Region, Raqaypampa in the Cochabamba Valley and Uru-Chipaya on the Oruro *altiplano*. Another five have their autonomous statutes in place through a declaration of constitutionality: Pampa de Aullagas, Totora Marka, Mojocoya, Huacaya and Multiethnic Indigenous Territory I (TIM I), and two have their statutes awaiting declaration by the Constitutional Court: Corque Marka[16] and Lomerío.[17] The others are in the process of fulfilling the requirements required by the law to access self-government.

Notes and references

1. INE 2017, consulted via the Bolivian indigenous browser.
2. The 2009 Constitution anticipates a mixed system for the election of judges to the Supreme Court of Justice, the Plurinational Constitutional Court, the Agro-Environmental Court and the Council of the Magistracy. Candidates are preselected by means of lists drawn up in the Legislative Assembly and then elected by a simple majority in open elections run by the Plurinational Electoral Body. (Articles 182-187-193-199 of the CPE). In the case of the Constitutional Court and the Agro-Environmental Court, criteria of plurinationality are prioritised in the preselection.
3. See The Indigenous World 2011, pp. 174-182.
4. In the end, it did not happen as the decision was taken by the judges of the outgoing Constitutional Court and not those who were elected as a result of the process conducted in December.
5. See CNAMIB, Consejo de Mama T'allas, NINA "Derechos Humanos de los pueblos indígenas en Bolivia. Informe 2016." IWGIA Report 25, March 2017.
6. This involved an embezzlement of at least USD 25 million from the Development Fund for Native Indigenous Peoples and Peasant Communities (FONDYOCC), which was formed primarily of income generated by oil exploitation, as anticipated in the Law on Hydrocarbons No. 3058/05. Melva Hurtado was accused of channelling 21 million Bolivianos into personal accounts (USD 3 million).
7. Tamburini, Leonardo, Bolivia, in The Indigenous World 2011, pp. 174-182
8. Tamburini, Leonardo, Bolivia, in The Indigenous World 2012, pp. 159-167
9. Article 9.- (Coordination and integration of TIPNIS) The activities of coordination and integration that will improve, establish or maintain indigenous peoples' rights such as free movement through the opening of neighbouring roads, highways, river/air and other navigation systems, will be designed in a participatory manner with the indigenous peoples and in compliance with current environmental regulations, ..."
10. Article 10.- (Agreements and distribution of benefits) I. The exploitation of renewable natural resources and the development of productive activities will be undertaken with the participation of private individuals provided there are agreements or associations with the indigenous peoples of TIPNIS and authorisation and monitoring by the relevant state bodies.
11. "First Abrogating Provision. In accordance with the agreements resulting from the free, prior and informed consultation of the Mojeño-Trinitario, Chimán and Yuracaré indigenous peoples, Law No. 180 of October 2011 on protection of the Isiboro Sécure National Park and Indigenous Territory is hereby repealed."
12. See https://therightsofnature.org/tribunal-internacional-derechos-de-la-naturaleza/
13. See https://therightsofnature.org/tribunal-cases-bonn/
14. Thus leaving 15 articles.

15. Municipal conversion means transforming the administrative jurisdiction into an indigenous autonomy, following a decision by the majority indigenous population, via referendum, to become this kind of administration. The territorial path or TIOC, is the collective territory titled by agrarian means, plus other areas of third parties, which will form the new jurisdiction of the indigenous autonomy. This sometimes means crossing provincial or municipal boundaries, which therefore need to be amended to give rise to the new territorial unit.

16. Corque Marka del Suyu Jach'a, Ayllu Tanka Villa Esperanza, Ayllu Kara.

17. CEJIS:2107, with information from the Ministry of Autonomies.

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BRAZIL

VENEZUELA
GUYANA
SURINAME
FRENCH GUIANA
ATLANTIC OCEAN
COLOMBIA
RORAIMA
AMAPÁ
R. Negro
R. Amazonas
Manaus
AMAZONAS
Madeira R.
Xingu R.
MARANHÃO
CEARÁ
PARA
BRAZIL
ACRE
RONDÔNIA
TOCATINS
PERU
MATO GROSSO
BAHÍA
BRASILIA
Cuiabá
GOIAS
BOLIVIA
MINAS GERAIS
MATO GROSSO DO SUL
ESPIRITO SANTO
Vitória
R. Paraná
PARAGUAY
São Paulo
Santos
CHILE
PARANÁ
ARGENTINA
PACIFIC OCEAN
ATLANTIC OCEAN
RIO GRANDE DO SUL
URUGUAY

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. Indigenous peoples are present in:the Northern region concentrates the largest population (342,800), while in the South the total is much less (78,800). Of the total indigenous population, 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, Maranhao, Mato Grosso, Pará, Rondônia, Roraima, and Tocantins. At present, there are 107 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 (2007), and the American Declaration on the Rights of Indigenous Peoples (2016).

National policy on indigenous peoples

The year 2017 brought in the government of Michel Temer, after the impeachment of President Dilma Roussef in November 2016. The period has been plagued by corruption scandals involving the great majority of government institutions, the business sector, and nongovernmental organizations, among others. It has become clear that the relationship between the public and private sectors is marked by corruption and business dealings that principally harm the indigenous peoples and other vulnerable social players.

The threat exists that new indigenous territories will no longer be established. Permissiveness prevails with hydroelectric and mining companies that directly or indirectly affect indigenous territories. There is also an attempt to gradually deactivate the National Indian Foundation (FUNAI) by cutting its financing and its strategic personnel. All of this reveals the intentions of the government administrations in recent years.

The strengthening of the Brazilian indigenous movement was directly reflected in public demonstrations that forced the government to make changes to or suspend crucial decisions affecting the survival of indigenous peoples. As such, a wrangling over all the official decisions related to demarcation of indigenous territories, coupled with legislation approving mining, timber, and hydroelectric companies, as well as successive changes in the presidency of FUNAI, marked the agenda of the period.

The visits by the United Nations special rapporteurs on indigenous rights, James Anaya (2008) and Victoria Tauli-Corpuz (2016), confirm that there have been enormous setbacks with respect to accords signed by Brazil, such as ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the Constitution of Brazil. These setbacks have been based on a disdain for human rights.

Laws against the demarcation of indigenous territories

Brazil's constitution established that the government should have demarcated all indigenous lands prior to 1993, based on the criterion of traditional occupation of lands. Nonetheless, their demarcation is far from fulfilled. In addition to suffering the slow pace of fulfilment of their rights, now the indigenous peoples are the target of systematic, violent attacks by the Democratic Association of Ruralists (UDR) and

by transnational companies that have been granted mining or timber concessions.

A series of laws have been introduced in the Congress National, some dating back to the year 2000, that are clearly counter to the demarcation of indigenous territories:[3]

Proposed Constitutional Amendment-PEC 215/200. Under this amendment, the Executive Branch would no longer be in charge of demarcations of indigenous lands. Rather, the National Congress would have exclusive jurisdiction for approving the demarcations of lands traditionally occupied by indigenous peoples, as well as the ratification of demarcations already approved. Congressional representatives and senators would even have the power to reconsider and reverse former demarcations or cases that have already been closed. The author of the bill is Almir Sá (Brazilian Progressive Party-PPB from the State of Roraima).

Decree 419/2011. This decree would create absurd time limits for the work of FUNAI and other government bodies responsible for issuing opinions in environmental licensing processes. The decree seeks to expedite approval of works such as hydroelectric dams or the opening of roads. In addition to shortening the terms, the legislation indicates that the only lands that should be considered indigenous are those whose perimeter is declared in the Official Bulletin. Consideration would not be given to potential environmental impacts for lands undergoing a recognition process. The bill was introduced by the Executive Branch, under the signatures of the Ministers of the Environment, Justice, Culture, and Health.

Supplementary Bill (PLC) 227/2012. This bill, considered to be in the public interest, seeks to legalize the existence of *latifundios*, rural settlements, cities, economic undertakings, development and mining projects, forestry activity, power plants, and other works on indigenous lands. The author is Homero Pereira (Social Democratic Party from the State of Mato Grosso).

Decree 303/2012. This decree makes an interpretation of the conditions established by the Federal Supreme Court in the judgment of the Raposa Serra do Sol case, extending its application to all indigenous lands in the country and reverting that judgment's applicability *ad eternum*. The decree determines that demarcation procedures already "finalized" shall be "reviewed and adapted" in accordance with its terms. This decree was edited by the Federal Attorney General, Luis Ignacio Adams.

Decree 795/2013. This decree, "of a preventive or repressive nature," created the Environmental Operations Company of the National Public Security Force, whose attributes include "providing assistance to the conducting of research and technical awards on negative environmental impacts." In practice, it creates a government instrument for the militarized repression of any action of indigenous peoples, communities, organizations, and social movements who oppose undertakings that might impact their territories.

"*Proposed Regulation on the Demarcation of Indigenous Lands*" *12/2016.* Under current regulations, the government offers financial indemnifications to owners of rural properties when they are within areas recognized as indigenous lands. What the new decree establishes is that now the indigenous peoples will be indemnified and will not return to those lands. The proposal also violates lands that were already demarcated, opening up the possibility that they could be disputed by persons who claim the same space. For the organizations acting in defence of the rights of indigenous peoples, the relocations practically wipe out the rights contemplated in Decree 1775/96, published twenty years ago by Ex-President Fernando Henrique Cardoso, insofar as this new decree allows infrastructure and agro-business projects to be conducted on indigenous lands.

Decree 9010/2017. This governmental decree refers to the FUNAI charter and personnel positions. In practice it serves to drastically reduce the institution's capacity to do its job. All levels of that indigenous service body are being affected, and 51 Technical Local Coordination Centres (CTL) will be closed. In Brasilia, the coordination centre that suffered the most cuts was the one for Environmental Licensing, which means that enterprises on indigenous lands will now have free access, in times when a policy is moving forward for the scrapping and extinction of FUNAI.

Weakening of the National Indian Foundation (FUNAI)

For his part, President Michel Temer continued and exacerbated the campaign against FUNAI, while explicitly supporting agro-business and the granting of permits to national and foreign mining and timber companies in indigenous territories as well as in environmental parks and units. His actions seek to lend continuity to the pro-development

approach taken for years by Brazil and neighbouring countries such as Peru, Bolivia, and Paraguay.

FUNAI's approved budget for the year 2017 was the lowest in the past ten years. In fact, its budget was insufficient to ensure the minimum necessary conditions for lending continuity to its institutional tasks: maintaining the working groups for studies on the identification and delimitation of indigenous lands; indemnification of good faith occupants of demarcated lands; protection of indigenous lands against invaders; the presence of civil servants together with indigenous communities attacked by armed militias or abandoned to their fate in the border regions; protection of peoples in isolation and in situations of initial contact; and the potential impacts of investments in demarcated lands. These are just some of the actions impeded by the tightening of the indigenous service agency's budget.

Also in the year 2016, in order to satisfy the financial sectors, the Temer government introduced and the National Congress passed Constitutional Amendment Proposal (PEC) 241/2016, which further exacerbated FUNAI's situation and deepened the tightening of its budget, setting an extremely low level for the next 20 years.

After many disagreements between the government and the indigenous organizations, President Temer appointed an army general of indigenous origin, Franklimberg Ribeiro de Freitas,[4] as president of FUNAI. This shortage of personnel and of funding directly affects the indigenous population. One of the greatest examples is the distrust on the part of the Mundurukus, where FUNAI has just one employee to attend to its entire territory, which has an area of 2.4 million hectares (slightly larger than fifteen municipalities of São Paulo). In the case of Jacaracanga, FUNAI has five post chiefs, distributed in the indigenous territory, including the Tropas River, which is now contaminated by gold mining. In 2010, during the second term of the Lula da Silva (Workers' Party) administration, a restructuring eliminated those positions.

Territorial conflicts

Also, in Mato Grosso do Sul, in an attempt to prevent the Guaraní-Kaiowá from recovering at least a small part of their traditional lands, a group of *latifundistas* acted as militiamen and intensified the lethal effect of extrajudicial evictions. On one of these occasions the Guaraní-Kaiowá

indigenous leader Clodiodi Aquileu Rodrigues de Souza was murdered and other five persons were wounded by firearm projectiles.

In Rondônia, indigenous lands duly regularized and in the peaceful possession of original peoples not only suffered invasions for illegal extraction of natural resources; they were also subjected to parcelling, marketing, and illegal takeovers of lots, as well as deforestation for the production of pastures and crops by the non-indigenous population.

Throughout 2016 and 2017 the judiciary, both at the trial-court level and in the regional federal courts did its best to go along with the logic of the current government, by assuming control for the core of the debates over indigenous rights and demarcation procedures. In order to justify that stance, the judiciary argued the "time framework" theory set forth in the Constitution of 1988. That theory seeks to require that the peoples and communities had to have a presence in possession of the land as of 5 October 1988; otherwise, the rule was imposed on them that they had to already be claiming them judicially or physically disputing them. Any peoples that did not meet those conditions would lose the right to demarcation of the area claimed.

The impact of hydroelectric projects

The construction of major hydroelectric projects once again came under discussion by the federal government. Operation Lava Jato ("Operation Car Wash") has caught large national companies based on a series of investigations by the Federal Police of Brazil to bust corruption schemes involving billions of *reales* (Brazil's currency). Now, the Federal Accounts Court (TCU) and the Executive Branch are supposed to come up with a definitive position regarding five large projects paralyzed in the Amazon region, in order for the government of Brazil to ensure the viability of their future execution. Together, these projects account for a generation potential of 17,508 MW – almost four times the energy assured by the Belo Monte hydroelectric plant.

By March 2018, the Executive Office of the President of Brazil (*Casa Civil*) is scheduled to call a meeting of the Ministry of Mines and Energy (MME) and the Ministry of the Environment. There, a consensus is supposed to be reached on the evaluations needed to decide what must be preserved, from the point of view of indigenous lands, *quilombos* (escaped slave settlements), and conservation units, in addition to including economic, environmental, and social issues. First on the list of

projects to be reviewed is the São Luiz do Tapajós hydroelectric project on the Tapajós River in the State of Pará, whose license was suspended by the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) in August 2016. Next comes the Marabá hydroelectric project, on the Tocantins River, whose viability was already approved by the National Electric Energy Agency (ANEEL), and the Jatobá power plants on the Tapajós River (State of Pará), together with São Simão Alto and Salto Augusto Baixo, both on the Juruena River, between the states of Mato Grosso and Amazonas, which are still undergoing the studies phase.[5]

The most recent hydroelectric megaprojects were the subject of countless court actions precisely due to problems involving their environmental impact on indigenous communities. One of them is Belo Monte, which faced at least 25 legal actions related to issues ranging from failure to assess its environmental impact on the Xingu River basin to indemnification of riverside peoples. On the Teles Pires River, between Mato Grosso and Pará, despite the fact that all the environmental licenses were granted, the power plant is the subject of three public civil actions brought by the government and the Federal Government Attorney's Office, which argue that impact studies were omitted for conservation units, and that conditions were not met related to indigenous areas. Nonetheless, São Manoel commenced its operations this past December, five months earlier than scheduled.

According to an article published by the journal *Science Advances,*[6] the Amazon basin, the world's largest hydrographic basin, is on the verge of suffering a severe fragmentation. The construction of 160 dams is foreseen, intended to address the growing demand for energy. This would provoke the extinction of several species of fish and would jeopardize the food security of some 30 million inhabitants whose subsistence depends on its rivers.

A recent mapping revealed that 142 hydroelectric projects of various sizes are already operating in the region, double the number reported by official channels, and that they are provoking unimaginable impacts on nature. The environmental impact and license protocols submitted by the companies ignore the cumulative effects of constructing multiple dams on a given river network or hydrographic basin. "If the situation continues without control or integrated management, the effects will be devastating to the ecosystem in the years to come," says ecologist Elizabeth Anderson, a researcher from Florida International University, in Miami, the study's lead author.

Among the rivers affected by the lack of connectivity are the Napo, whose headwaters are in Ecuador, which crosses Peru and empties into the left side of the Solimões; the Beni, with headwaters in the Andes mountains, which empties into the Madeira at the border with Brazil; and the Mamoré, a waterway that flows into the Amazon basin, whose source is the confluence of the Chapare and Mamorecillo Rivers in Bolivia.[7]

Mining in indigenous territories

The areas reserved by mining companies for exploration and exploitation in indigenous lands and the surrounding areas comprise 37 million hectares (370,000 km^2), equivalent to 32% of the total indigenous lands of the country. The companies lobby the National Congress to regulate the Mining Act in order to continue promoting large-scale mining.

The company with the largest area granted under an exploration concession is Mineração Silvana, with 6.5 million hectares, almost entirely for gold. It has 734 areas distributed in six states, the majority located in the North and the Centre-West. The Vale SA Company holds second place, with 2.1 million hectares, of which 1.8 million are for gold. In total, Vale has 223 areas in seven states, almost all in Pará (see the list of the companies that have more than 200,000 hectares).[8]

The great concentration of areas in the hands of just a few companies is striking. The five largest account for 1345 areas, out of a total of 5331, covering 12 million hectares. Twenty mining companies account for 19 million hectares. The mining companies named Samarco, Vale, Mineração Caldense, Companhia Siderúrgica Nacional (CSN), Companhia Brasileira de Alumínio (CBA), Kinross, Mineração Usiminas, and V&M Mineração are among Brazil's largest, and are some of those that are a constant subject of public debate over environmental assessment requirements.

Conclusion and outlooks for the future

Noncompliance with the Constitution of 1988 has caused great uncertainty for the future of the indigenous population. Land demarcations, characterized as fundamental rights and on which the other rights are based, continue to be paralyzed due to pressure from the Democratic

Association of Ruralists (UDR). Throughout the past decade, the FUNAI has been marginalized and denigrated. The federal government has placed such severe budget restrictions on it that the local and regional coordination centres do not even have money for fuel.

This leads to growing tensions, generating intense conflicts between the indigenous and non-indigenous populations. It even ends up dividing the indigenous population itself, since they do not see that their rights are secured, and end up convinced that the path laid by the development approach will bring great improvements in the lives of their communities. A lack of information coupled with deceptive data pave the way for the agro-business, mining, hydroelectric, and timber sectors to distort the concept of free, prior, and informed consultation. This creates deep conflicts among the peoples, companies, and the civilian population, which is characterized by being very poorly informed. Conflicts are intensifying, leaving few avenues for negotiation.

The Report on Violence against Indigenous Populations published in 2017[9] records 56 homicides during 2016. There were also 106 cases of suicide, 19 more than the year before, with a significant growth in the Alto Solimões region. Data on infant mortality are alarming, showing an increase from 599 to 735 deaths of children zero to five years old, a large part of them among the Yanomami people. The likely principal causes of the death were: pneumonia; gastroenteritis, presumably of infectious origin; non-specific pneumonia; non-specific septicemia; death due to a lack healthcare; unspecified severe protein-calorie malnutrition; and other poorly defined and unspecified causes of mortality. Despite the lack of information on the deaths of children, the official publication itself recognizes deaths due to lack of healthcare and severe malnutrition.

So long as the development approach in Brazil endeavours to plunge forward without listening to the indigenous populations in the exercise of their right to free, prior, and informed consultation, as well as other rights, these populations will continue to be at the mercy of shady agreements that threaten their survival. The most urgent need is for the indigenous organizations to unite, in order to prevent these practices, which have been going on for decades. Thus, it is important to implement the recommendations made by the United Nations Special Rapporteurs and place pressure on both the government and civil society regarding the importance of this struggle.

Notes and references

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PARAGUAY

BOLIVIA
ALTO PARAGUAY
BRAZIL
PARAGUAY
CHACO PARAGUAYO
PRESIDENTE HAYES
ASUNCIÓN
ALTO PARANA
ARGENTINA
DEPARTAMENTO CENTRAL
Paraná River

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. It should be noted that the census did not record, although it did mention, the Ayoreo people living in voluntary isolation, the forest-dwelling Ayoreo, who live in the north of the Paraguayan Chaco or the Western Region.

Indigenous peoples have constitutionally recognised rights in the Republic of Paraguay, set out in a constitution dating from 1992. Paraguay has also 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, for which reason the fundamental rights of indigenous peoples are constantly violated. In fact, the State has three rulings against it: Yakye Axa (2005); Sawhoyamaxa, (2006) and Xákmok Kásek (2010).

During 2017, we continued to see a systematic denial of indigenous rights coming, paradoxically, from the very institutions and bodies created to guarantee, defend and promote them. The economic "progress" of a minority is being prioritised over the best quality of life for the many, and so indigenous peoples' grievances have become all the more acute, as the harshest consequences fall on them, for example when exploiting their lands and natural resources, and when there is a failure to ensure their consultation and participation, ignoring the principle of a right to development on the part of all the country's inhabitants.

Evictions

The fact that some people take priority over others can be seen in the violent evictions that are taking place, with or without a warrant, all under the protection of a State that shows indifference to issuing a legal response and even, in some cases, has its own officials acting as the authors or co-authors of these actions.

In May 2017, around 40 families from the indigenous Avá Guaraní community in Itakyry District (Alto Paraná Department) were evicted from their land, their school torn down and their houses set on fire. This was perpetrated, according to witnesses, by armed civilians working for the Brazilian company "Industria Paraguaya de Alcoholes SA" (INPASA). Everyone was in severe danger and one child was wounded by a glancing shot from a gun. According to those affected, the INPASA company had negotiated the lands with the community's leader but many of the community members had refused to leave. The State's response to the indigenous peoples, as stated by the head of the Paraguayan Indigenous Institute (INDI), the body responsible for applying the State's indigenist policy, consisted of declaring that the land had superimposed titles. However, the State's role in this case was more than that of simple apathy because documentation obtained by human rights institutions points to an apparent and thorough system of dispossession of the land through extortive accusations made against community leaders by people linked to the company, followed by a "negotiated" resolution to the situation which consisted of forcing the indigenous people into agreeing to leave their plots in exchange for withdrawing the complaints, all this with the backing of public officials. It should be noted that attacks against indigenous Itakyry communities have been ongoing for the last two years. Conflicts caused by non-indigenous outsiders remain unresolved.

Another eviction showed a similar lack of proportionality when, in December, the indigenous community of Jetyty Mirĩ suffered an action instigated by police officers and public prosecutors. They were thrown off land previously acquired by INDI. The highly complex legal documents indicate that the leasing of indigenous lands to individuals, apparently as a consequence of a lack of support for indigenous economic livelihood activities against a backdrop of intensive soya monoculture, was leading these individuals to obtain titles that were superimposed on those of the indigenous population. Consequently, it was

again a few private individuals behind actions that resulted in the expulsion of whole families from their lands and their subsequent displacement to the country's capital, where they ended up living in the most absolute misery and defencelessness.

The State's occasional responses are limited to formalities to appease public opinion and dilute the thematic presence of the event itself over time. This can be seen in cases such as those noted in previous years. Following the forced displacement in 2016 of indigenous Avá Guaraní families from the Tekoha Sauce community, in Alto Paraná, a roundtable dialogue was commenced with the State only to be dissolved a year later when commitments to humanitarian assistance, food and, above all, relocation within their territory, all went unfulfilled. The violations of rights continue.

In response to the lack of accurate information on indigenous lands, the indigenous organisations and human rights institutions have worked to create an interactive online platform to provide sufficient information and maps. The aim of this tool is to provide useful data that could influence territorial recovery processes. The initiative is being coordinated by the Federation for the Self-Determination of Indigenous Peoples (FAPI).

Denial of rights

The deficient application of regulations to protect indigenous peoples has also been noted. This is reflected in persistent discrimination when allocating public resources for indigenous rights, favouring other sectors who gain the benefits.

By way of example, it is inconceivable that the State should refuse to return indigenous lands simply because they are in the hands of private individuals, leaving the enjoyment or not of a right that should indisputably be in the public domain to the arbitrary will of these individuals. The policy, as stated by INDI officials themselves, is to "not buy land". Only those cases that have been referred to international bodies sometimes fare better. The lack of an efficient programme within the Ministry of Public Works and Communications (MOPC), with sufficient resources and plans to build the roads needed to service indigenous communities, also has to be clearly denounced. In many cases, these communities remain cut off, the victims of an indifferent State and a hostile climate.

In December 2016, the NGO Tierraviva published a press release warning that State incompetence was exposing indigenous peoples to tragedy, as no efficient intervention mechanisms had been planned in relation to the climatic disasters affecting them, in addition to which the lack of roads left them unprotected and this had, in the past, cost lives. Assistance following the flooding that affected the indigenous Enxet community of Payseyamexiempa´a – who to this day still remain completely cut off – was only deployed following a constitutional appeal for protection submitted by Tierraviva to the Secretariat for National Emergencies (SEN), the Ministry of Public Health and Social Well-Being (MSPBS) and INDI, thus demonstrating that the wieldy bureaucracy of the State moves only under the coercive measures of specific legal rulings to guarantee fundamental rights when they need immediate attention.

In the case of the Enxet people of the indigenous Yakye Axa community, of the Enxet people, the IACHR ruled in favour of returning their ancestral lands in 2005, although they accepted different lands to those initially claimed as part of their ancestral heritage. In January 2012, 12,312 ha of these lands were purchased. Six years on from that commitment, however, these people continue to live alongside the highway without having been able to settle on the lands for lack of a road to get them there. The construction of an all-weather road approximately 35 km long was a condition for their accepting these lands. The Paraguayan State's inability to construct the road demonstrates the structural discrimination existing against indigenous peoples, who continue to see their economic, social and cultural rights ignored.

Finally, at the end of 2017, a court case was submitted that would enable the entry and construction on private properties of a road providing access to the indigenous lands. Of the three indigenous cases with rulings against Paraguay, that of Yakye Axa continues to fail to be implemented, as noted by the judge of the Inter-American Court, Patricio Pazmiño, during his visit to the community in November 2017, as expanded on below.

Under the international outlook

The international community's gaze is inconvenient for the Paraguayan State, which is keen to issue formal responses that will improve its im-

age abroad. This results in progress in satisfying some of these rights when the human rights bodies demand such information.

The purchase of 7,701 ha for the indigenous Xákmok Kásek community this year was in clear compliance with the 2010 ruling of the Inter-American Court in favour of this community. Following the 2015 land recovery, the State sped up its internal processes and finally enabled the return of a community that had been claiming the land for more than two decades and which the State finally accepted in 2017, even though the land title has still not been issued.

In 2017, Paraguay was also the setting for an "*in loco*" visit from a judge of the Inter-American Court, Patricio Pazmiño, with the aim of verifying fulfilment of the rulings issued in favour of the indigenous Yakye Axa, Sawhoyamaxa and Xákmok Kásek communities. This visit was without parallel in Paraguay. The State rolled out more than 70 officials to support the judicial constitution in the three communities. A hearing was later held in the capital during which the judge expressed his views on what he had seen and heard. Among other things, he highlighted the importance of this kind of monitoring action to be able to hear and experience what has been said so many times on paper, as well as to see in person the status of "subjects of reinforced protection" that the Inter-American Court grants to the victims; this is not in a context of making them priority subjects but as a general rule that should guide human rights protection and in which these standards must prevail rather than forcing subjects to adapt to programmes and policies of which they are very often unaware or in which they are simply ignored to the benefit of others.

The IACHR was also involved with the State in hearings held in May, October and December regarding indigenous cases. The indigenous case of the Ayoreo Totobiegosode people – Payipie Ichadie Totobiegosode organisation (OPIT) in the Western Region of Paraguay, in the context of Petition 850-15 for which precautionary measures have been issued, is undoubtedly worthy of attention. In February 2018, the deadline agreed between the parties for implementation of a series of points will be reached. These are points which, in the main, particularly with regard to land, remain unfulfilled. This case is fundamental not only in terms of this specific case but also in terms of making regulatory and jurisprudential progress for peoples in isolation, and not only in Paraguay, given that the particular situation being suffered by one of the groups in question is now awaiting consideration by the supranational protection bodies.

On other points, however, there is a complete lack of State response, for example in the criminal case lodged against the former president of INDI and two other State officials, who are being prosecuted for embezzlement of funds intended for development projects with the Yakye Axa and Sawhoyamaxa communities. Shamefully, the start date for this trial was postponed for the 10th time in 2017 and, as of February 2018, it had already been suspended twice more.

With regard to the universal system, Paraguay received a visit from the Special Rapporteur on contemporary forms of slavery, Urmila Bhoola, who in her preliminary report of July 2017, and in line with this article and with statements from the Office of the UN High Commissioner for Human Rights,[1] explained that the vulnerability suffered by indigenous peoples in the Paraguayan Chaco region was a consequence of a historic dispossession of their territories, with many of them subjected to forced labour and servitude, working for days without a break and receiving, instead of a salary, coupons to spend with their employers, making it impossible for them to cover their basic needs. In submitting her preliminary report, the Rapporteur highlighted that Paraguay has an economic system that "prioritises foreign investment over the labour rights of its own citizens". She indicated, among other things, that all means of production and consumption are concentrated in private hands, and that there is a failure to comply with the labour laws established in the applicable national and international regulatory frameworks. Indigenous peoples are suffering ever greater lack of protection due to the absence of the State, under conditions of constant economic and social exploitation and discrimination.

Irrational deforestation

According to a report issued in July 2017 by the NGO Guyra Paraguay, the Western Region of the country, the Paraguayan Gran Chaco, is suffering from the highest deforestation rate in the world. To this must be added the change in land use which, in 2017, was based on a dubious legal basis: Decree 7702. This attempts to legitimise the already established activity of livestock farming, which has replaced thousands of hectares of forest with pasture for fattening cattle, in the total absence of any guarantee from the national authorities of a balance between this farming and the preservation of the forest. The decree in question removes the requirement to preserve 25% of the native forest. This has

led, within a one-month period between October and the start of November of this year, to the felling of 2 million trees on the landholding of the President of the Republic, Horacio Cortes, in the Chaco, according to social media reports.

Protest as a means of enforceability

2017 was a year of repeated social protest, led by indigenous peoples both in Asunción and in other cities around the country. These actions were aimed at the enforcement of territorial rights and rights to health, education, food, electrification and so on, highlighting groups in new situations such as "urban indigenous", members of communities displaced to Asunción and those engulfed by other towns in the Central Department as they expanded towards their lands, as is occurring in the Central Chaco.

On 19 April, urban indigenous peoples mobilised for the right to decent housing, guaranteed land and the recognition of communities in urban contexts, among other things. Roadblocks were set up in Presidente Hayes, demanding compliance with the rulings of the IACHR. In May, after a peaceful protest that lasted several days in the district of Tte. 1ro Manuel Irala Fernández, Presidente Hayes Department, leaders from the indigenous Enxet community of El Estribo reached an agreement with the central and departmental governments to provide electricity to nine villages in the community; however, this commitment, made by the president of INDI, has not been fulfilled, resulting in a reinstatement of the protests and the intermittent closure of the Transchaco highway at km 372.

In October, Asunción was the setting for a mass indigenous mobilisation caused by the State's lack of attention to indigenous issues and failure to comply with its duty to respect and ensure respect for the Constitution, current laws and international agreements, to the detriment of Paraguay's indigenous peoples and communities, and resulting in dispossession of their lands, starvation and violations of their fundamental rights. The most recent roadblock in the Lower Chaco was in protest at the State's failure to provide assistance, despite a state of emergency in Presidente Hayes Department, to mitigate the effects of the drought. In response, not only did the State not comply with its commitments, in July 2017 the Public Prosecutor even issued arrest

warrants for indigenous leaders who were supporting such measures, thus criminalising the right to social protest.

With other State actors, however, significant progress has been achieved in the exercise of rights, for example in the context of an Inter-institutional Cooperation Agreement with the Supreme Court of Electoral Justice (TSJE), the Civil Registry and Department for Identification, the Coordinating Body of Indigenous Leaders of the Lower Chaco (Clibch), Diakonia and the NGO Tierraviva in the context of a European Union project being conducted to document and record members of 70 indigenous communities on the electoral register, resulting in documents being issued to more than 21,000 people in a department inhabited by a total of 27,000. Fulfilment of this delayed duty, and satisfaction of prior indigenous demands in this regard has had a positive and empowering effect on the different indigenous communities of the Chaco and the indigenous organisation.

In addition, the formation of the Plurinational Indigenous Political Movement (MPIP) is notable, with official recognition from the Electoral Justice System and which is standing candidates to the collegial bodies that will be elected in April 2018. The MPIP is the product of indigenous reflection across various departments in the country, calling on both indigenous and non-indigenous people to vote for their candidates, and focusing on the need for their own voice and autonomous protagonists.

Nonetheless, there still remain numerous challenges for the State and the TSJE itself in terms of removing the institutional barriers and discriminatory practices – lack of access to polling stations, equal conditions of meeting and being able to be elected as authorities – that affect the indigenous population, so that political rights can be guaranteed that take account, from an intercultural approach, of the specific features of indigenous peoples' political participation, especially women and young people.

Outlook for 2018

The outlook for 2018 is very uncertain. It is an electoral year, and so the government's efforts are focused on promoting the electoral campaign of their candidate to the detriment of undertaking any of the tasks expected of them, reducing the discourse to their own political friends, given most of the affiliations they represent. The opposition is fighting

from a more inclusive platform and with a discourse of strong social content and with progressive people in its ranks.

And yet, we cannot overlook the presence of political reference points that have done little for indigenous peoples when they have had to perform public functions. Even with the interesting creation of the MPIP, this has not managed to unite all the indigenous candidates, who are thus being promoted by different political platforms. It is one indicator, however, along with others, of a greater organisation and protagonism among indigenous peoples within electoral politics and of a desire to direct public processes.

Notes and references

1. OHCHR, 24 July 2017, available at: http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=21903&LangID=S

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ARGENTINA

JUJUY
SALTA
TUCUMÁN
PARAGUAY
BRAZIL
MISIONES
PACIFIC OCEAN
URUGUAY
BUENOS AIRES
CHILE
NEUQUÉN
RIO NEGRO
Bariloche
CHUBUT
ATLANTIC OCEAN
ARGENTINA
Patagonia

Argentina is a federal country made up of 23 provinces, with a total population of nearly 40 million people. The results of the Supplementary Survey on Indigenous Populations, published by the National Institute of Statistics and Census, gave a total of 600,329 people as descended from or belonging to an indigenous 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. They legally hold specific constitutional rights at 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.

Deepening tensions in Patagonia

The tensions and conflicts over indigenous peoples' land claims worsened in 2017. Not only did the State[2] fail in its duty to guarantee and enforce indigenous rights by dragging its heels on the demarcation of indigenous territory (as set out in Emergency Law 26,160 and its latest extension, Law 27,400) but, in some cases, it even criminalised the members of indigenous communities who called it out for this failure, people who were also affected by the violence that was so characteristic of public policy over the last year.

There is confrontation, in this regard, between the State and the Mapuche people[3] in Patagonia, and the resulting acts of violence became some of the most notable events of the year. The initial disappearance and subsequent death of activist, Santiago Maldonado, in the context of the repressive and illegal use of force by the police in the Mapuche community of Pu Lof in Resistencia Cushamen, Chubut Province, and the murder of the young Mapuche, Rafael Nahuel, by the Prefecture as a result of the eviction of the Lafken Winkul Mapu community in

Río Negro Province, heralded an exacerbation of the violence in a territory in which indigenous communities, foreign landowners and national parks coexist on land that is rich in oil, minerals, forests, water, etc.

In the case of the repression against Pu Lof in Resistencia Cushamen, the Inter-American Commission on Human Rights (IACHR) intervened on 22 August 2017 to issue precautionary measures aimed at protecting Santiago Maldonado's rights; these measures were removed on 13 January 2018 once it became clear that his body had been found. However, the IACHR noted in its resolution that the State had a duty to exhaustively investigate the circumstances of his death and establish responsibility for it.

The advance of extractive activities onto indigenous territories

One of the most powerful factors behind these territorial conflicts is the economic interest in extractive activities on the territories claimed by indigenous peoples. Activities to push back the agricultural frontier, hydrocarbon exploitation, the presence of lithium, opencast mega-mining and the general advance of extractive activities have all resulted in a notable weakening of indigenous rights.

Guaranteed enjoyment of their rights, especially territorial rights, is incompatible with the neo-developmentalist economic model that is based precisely on these extractive activities. There is thus a dilemma that is difficult to overcome, and in which the political decision to "exploit natural resources" has already been taken. This also explains the recent violations of the right to consultation, a right which – along with territorial rights – is a central demand of the indigenous organisations and communities.

The right to consultation is virtually ignored in Argentina. Although there are a few examples of indigenous communities drawing up protocols to establish the process for free, prior and informed consultation – such as the consultation protocol of the "Kachi Yupi / Huellas de la Sal" communities in Salinas Grandes and Laguna de Guayatayoc, Salta and Jujuy provinces – this right to consultation is not being implemented. The State has a duty to establish the conditions for this. The lack of a law regulating this right also goes some way to explaining the difficulties in its implementation.

The indigenous communities and organisations of Argentina have made this right one of the fundamental demands of their current struggle. Although aware of the difficulties and challenges, strategically demanding consultation raises awareness of their struggle for territories and puts them in the position of genuine State interlocutors. The case of the fracking of the unconventional oil reserve known as "Vaca Muerta" in Neuquén Province is a good example of how the organised indigenous communities are claiming not only their territorial rights but also respect for their right to be consulted on issues that directly affect them.

A heavy debt: the technical and legal cadastral survey

In 2017, discussions on Law 26,160 of 2006, known as the "emergency law on indigenous community property", were reopened. Its second extension expired in November and a third extension was being heatedly discussed in Parliament, with a poor prognosis. This law basically rules a suspension of the evictions and the conducting of a technical and legal cadastral survey (measuring and demarcation) of the territories claimed by indigenous communities. After a difficult parliamentary discussion, the extension was approved in November 2017 (Law 27,400). This law has now been in place for 11 years but has had a "weak" degree of fulfilment, far removed from its initial targets.

Despite the evictions being legally suspended, they have continued to take place. Noteworthy in the provinces of Chubut and Río Negro were the attempted evictions that ended in violence and two deaths. Evictions of indigenous communities in Tucumán[4] and Misiones[5] provinces merely illustrated the methodology that extends across the whole country, with no legislation of sufficient regulatory force to be able to prevent it.

The survey is a heavy and outstanding debt in terms of the State's public policies, but it also needs to be supplemented with the collective titling of the territories. There is to date no law on indigenous community property (which is the name given to indigenous territories in the Argentine Constitution) regulating the most relevant aspects. There are draft laws that have not been discussed in Parliament but the issue is not on the current political agenda.

In addition, from progress reports issued by the implementing authority of the National Institute for Indigenous Affairs (INAI), it emerges that

"there are currently 1,532 communities identified by the National Indigenous Territorial Survey Programme (RETECI). Of this number, 759 communities have commenced the survey process, i.e., scarcely 49% of the total".[6]

Although INAI has been asked for further progress reports under freedom of information requests, it has once again become necessary to monitor progress in the survey not only because 11 years have already passed since it was first enacted but also because this third extension lasts until November 2021, by when the survey or registration process should be complete. Argentina needs to conduct an in-depth territorial reorganisation and regularise the indigenous territories, granting them a title that gives the indigenous communities legal security.

Spaces for intercultural dialogue

Given the serious events described above, spaces for intercultural dialogue were created in 2017 with the aim of reducing the levels of violence. The peace and intercultural dialogue committee[7] that was created nationally following the murder of Rafael Nahuel has thus brought together representatives of different political spaces, civil society organisations, intellectuals, and so on with the aim of finding a political response to the tensions that would enable the State to set aside the use of force when resolving territorial conflicts, and instead find peaceful and agreed solutions.

Some of the documents that have emerged from this space[8] reflect on the portrayal – emphasised over the last year – of indigenous Mapuche as violent terrorists. This portrayal has justified the repression and only ends up consolidating a vision of "a territory without Indians", a statement that is replicated across the whole geographical area and with other indigenous people who are battling policies of subjugation and eviction.

Furthermore, in the town of Bariloche, Río Negro Province, a multisectoral committee has been established in relation to the latest repression. One of the main protagonists in this regard is the Bishop of Bariloche and the committee's main objective is to find a solution to the dispute caused by the Lafken Winkul Mapu community's recovery of its land. The State representatives (INAI and National Parks) are reluctant to participate in this space, however, and the future of this committee is therefore now uncertain.

Summing up and future outlook

2017 was a year in which State policies hardened in the face of indigenous communities' land recoveries. Indigenous demands for enforcement of their recognised rights are becoming ever more vocal and yet there are difficulties in finding a convergence of views due, fundamentally, to the intransigent positions of governments who are ignoring their rights.

The alliance between environmental sectors and indigenous communities has re-emerged in the face of the presence and advance of extractive activities. Meetings were thus organised between the Union of Patagonian Assemblies and the indigenous Mapuche/Tehuelche communities of the area "in defence of water, territory, self-determination and life, and against the pollution, pillaging and militarisation of Patagonia".[9] This cumulative strength across different sectors all pursuing the same ends augurs well for a sustained resistance in the face of actions that are in violation of their rights.

The Indigenous World 2017[10] noted the creation of the Consultative and Participatory Council of Indigenous Peoples by means of Executive Decree 672/2016, which was envisaged as a body that could act as a liaison between the State and indigenous communities. However, to date, this council has not played the role for which it was created. It has been unable to build the degree of legitimacy that is necessary for an organisation of this kind.

The historic relationship between the State and indigenous peoples continues to be a traumatic one and it has been impossible to move towards a position in which indigenous peoples can enjoy their rights to self-determination and autonomy. The delays in conducting the survey, the deteriorating condition of their territories, and the lack of access to basic needs all increase their situation of vulnerability and lack of protection, and undermine their demands.

State policies, even in terms of human rights protection,[11] do not result in concrete actions of intercultural dialogue with a collective and political subject that is, by means of different strategies, calling constantly on the State in order to preserve its identity, define its life plans and choose its own means of development, retaining control and management of its territories.

Notes and references

1. INDEC. National Census of Population, Households and Housing 2010, https://www.indec.gob.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99
2. In Argentina, the federal organisation of the government decentralises power and the provinces retain undelegated responsibilities. Both the State nationally and the provincial states locally therefore share powers and duties. A lack of compliance is thus the responsibility of both national and provincial governments.
3. This statement needs clarifying. The Mapuche people are not homogeneous, and there are different organisations and multiple communities that adopt different strategies in their relationship with the State. The "Mapuche movement" is a kaleidoscope in which "more" radical positions on State relations co-exist alongside more "pragmatic" ones. In any case, the clashes and conflicts are unambiguous and inescapable.
4. The eviction of the Indio Colalao indigenous community of the Diaguita people.
5. For example, the eviction of the hamlet of Tekoa Kokuere´i of the Mbyá Guaraní people.
6. "Despite this practice having ended, although a 'file' is being produced with all the material, not only is no progress being made in the titling or issuing of titles but, very often, the destiny of these files is not even known." See Amnesty International's report into the extension of the emergency law on indigenous territory (amnistia.org.ar).
7. See mesaparalapazyeldialogo.blogspot.com.ar
8. "Pueblos indígenas y violencia estatal en Argentina: el camino hacia un diálogo intercultural", "La invención de un nuevo enemigo. Los pueblos indígenas no son terroristas", "Comando unificado contra la violencia de la RAM: la nueva embestida del Estado nacional y provincial contra el pueblo mapuche".
9. Statement of the Union of Patagonian Assemblies (UAP) no. 18 in Costa Lepá, Chubut Province, January 2018.
10. See The Indigenous World 2017, pp. 246 – 247, https://www.iwgia.org/images/documentos/mundo-indigena-2017.pdf
11. See National Human Rights Action Plan 2017 – 2020, Secretariat of Human Rights and Cultural Pluralism, Ministry of Justice and Human Rights of the Nation, pp. 46 – 48.

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CHILE

BOLIVIA
BRAZIL
PARAGUAY
CHILE
ARGENTINA
URUGUAY
Santiago
La Araucanía Region
Los Ríos Region
ATLANTIC OCEAN
PACIFIC OCEAN

In Chile, the population belonging to the nine legally recognized indigenous peoples[1] is 1,585,680 persons, that is, 9% of the country's total population. The indigenous population is comprised of the following peoples: Mapuche (1,329,450), Aymara (107,507), Diaguita (63,081), Atacameño (31,800), Quechua (27,260), Colla (16,088), Kawésqar (5,298), Rapanui (5,065), and Yámana or Yagán (131). They principally inhabit urban areas. However, as of the year 2015, 24.7% reside in rural areas. The Metropolitan (30.1%), Araucanía (19.6%) and Los Lagos (13.1%) regions[2] have the largest concentration of indigenous population. The Constitution of 1980 does not recognize indigenous peoples or their rights. For its part, the Constitutional Assembly Process for developing a new Constitution, including a consultation process promoted in 2016, is currently suspended due to a lack of political will both on the part of the executive branch and on the part of the National Congress.

The rights of indigenous peoples are regulated by Law No. 19,253 of 1993 on "indigenous promotion, protection, and development." That law does not meet the standards of international law regarding the indigenous peoples' rights. Also in effect is ILO convention 169, which was ratified by the Chilean State in 2008 and acquired full legal status in September 2009.

2017 was a critical year for the rights of indigenous peoples. On the one hand, indigenous social protest, in particular that of the Mapuche people, continued being criminalized, in some cases through the Antiterrorist Act. This discriminatory treatment towards indigenous peoples generated concern and pronouncements on the part of several international human rights bodies of the United Nations and of the Inter-American System. Far from paving the way to overcome conflict between these peoples and the State, such conflict has actually become accentuated. Dialogue and consultation processes on the part of the State with indigenous peoples have also failed to meet human rights standards. As a result, no significant changes are on the horizon that would make it possible to generate new intercultural and interethnic rela-

tions in the country. At the same time, extractive and infrastructure investment projects still continue to pose a threat to indigenous peoples.

The criminalisation of social protest

During the year 2017, use of the Antiterrorist Act by the State of Chile to persecute members of the Mapuche people intensified. During the course of the year, that law was invoked against 23 Mapuche persons charged with terrorist homicidal arson, terrorist arson, and/or terrorist conspiracy.

The first case involved the death of the married couple Werner Luchsinger and Vivianne Mackay in 2013, in which the Prosecutor's Office requested that 10 of the 11 Mapuches charged, including the Machi (traditional authority) Francisca Linconao, receive a life sentence for the crime of homicidal terrorist arson. The charge was based on the statements of a Mapuche co-defendant who also denounced that he was subjected to torments and unlawful pressure by the Investigations Police. After a long oral trial, the Criminal Court of Temuco, on November 25, acquitted the 11 defendants in the case.[3] The verdict issued found that the evidence presented by the accusers was insufficient to demonstrate the terrorist character of the crime. Nonetheless, on December 29, the Court of Appeals of Temuco granted an appeal for nullification filed by the Prosecutor's Office and by the Ministry of the Interior, among others, against the judgment, and ordered the holding of a new trial.

Another case was that of the prosecution of Alfredo Tralcal and the brothers Ariel, Benito, and Pablo Trangol, all of whom are Mapuche, who were arrested in June 2016 and accused by the Prosecutor's Office and the Government of terrorist arson, in what has been called the "Iglesias Case." Those arrests were the result of an investigation regarding an arson attack on an evangelical church in a place named Padre Las Casas that same month. Since then, the accused have been held in pre-trial detention, in a case that has lasted for more than 20 months. Protesting this situation, the four Mapuche prisoners went on a hunger strike for more than 115 days in order to raise awareness surrounding their case and to demand recognition for their right to a fair trial within a reasonable term. They have also demanded that the law on terrorist conduct not be applied and that witnesses whose identity is protected not be used. On September 30, three of those four prisoners ceased their hunger strike based on the government's commitment, in its role as a

prosecuting body, to reclassify the antiterrorist charge. Now that the government has reclassified the charges, the case is expected to resume in early 2018.

Meanwhile, on September 23, a police and intelligence operation was conducted named "Huracán" [Hurricane]. Eight Mapuche leaders were arrested and charged with terrorist conspiracy and terrorist arson. The investigation utilized the mechanisms under Law No. 19,974 to intercept private communications, upon authorization by an Appellate Court Judge. The arrests were made subsequent to a coordination meeting with the participation of police officers, the Prosecutor's Office, the Ministry of the Interior and its regional representatives, and judges. Moreover, they were conducted based on a verbal order and not a written one. Police squads were used, which engaged in disproportionate violence against those arrested and their families. In three cases, the violence was even directed against children. On October 19, the Supreme Court granted the appeal against the decision handed down by the Appellate Court of Temuco, unanimously granting protection and ordering the release of all the defendants, based on a finding that the decision was illegal and lacking in legal foundation.

In the context of this operation a meeting took place between Chile's Undersecretary of the Interior, Mahmud Aleuy, and the Minister of Security of Argentina, Patricia Bullrich, to jointly address the situation of conflict with the Mapuche people in the south of both countries. At the meeting they shared police intelligence information allegedly linking Mapuche organizations from both sides of the mountains and their involvement in acts of force, into which category they placed strategies such as a joint plan of unauthorized border closings in the southern zone, a major area of conflict.[4] This act is reminiscent of the coordination of the States of Chile and Argentina and their armies in the military occupation of Mapuche territory in the second half of the XIX century, sorrowfully known as the "Desert Campaign" in Argentina and the "Pacification of Araucanía" in Chile.

Frustrated approaches and dialogues

In June 2017, the president announced the Araucanía Recognition and Development Plan as a result of the work of the Araucanía Presidential Advisory Commission. That Commission, led by Monseñor Vargas, de-

spite considering the inclusion of Mapuche representatives, did so based on designating them without respecting the right of the Mapuche people to choose their own representatives. The Araucanía Plan was intended to address "the history of misunderstandings and delays that has affected the La Araucanía region and the Mapuche people for centuries." After announcing this plan, the president apologized to the Mapuche people for the "errors and horrors that the State has committed or tolerated in its relationship with them and their communities."[5] Among the main features announced for the plan was officialization of the use of the Mapuzungun in the La Araucanía Region; the declaration of June 24 (the start of the indigenous new year) as a national holiday: National Original Peoples Day; the processing of legislative bills to create the Ministry of Indigenous Peoples and the Council of Indigenous Peoples; creation of an Inter-Ministerial Committee for updating the cadastre of indigenous lands and waters; and promotion of a Regional Productive Development policy and a policy of protection and support for victims of violence in the region. These proposals, however, do not address the structural issues underlining the conflict between the State and the Mapuche people, such as recognition of their territorial rights; an end to criminalization under the Antiterrorist Act; recognition of their rights to political participation at a national and autonomous level, among others. In addition, some of the proposals are not being immediately implemented. Rather, they have remained suspended and will be defined by other actors, such as the Congress or the next executive branch administration.

Consultation in the indigenous constitutional assembly process

In August 2017 the Ministry of Social Development commenced consultations in the "Indigenous Constitutional Assembly Process," which opened in 2016 and which, according to the Ministry itself, gathered the perspectives of the indigenous peoples regarding the content of a new constitution in matters of concern to them. Upon conclusion of the "Indigenous Constitutional Assembly Process," the indigenous peoples' strongest proposals were the ones involving their legal recognition as nations; the pluri-national State; the right to the self-determination and autonomy; the right to the territory and natural resources; and the right to

special indigenous representation; as well as linguistic and social rights.

Nonetheless, that consultation process failed to take the content that the indigenous peoples had identified as priorities into account. The result only considered recognition of the pre-existence of the indigenous peoples and cultural aspects; the recognition and protection of linguistic rights; the recognition of indigenous territories; and the political participation of indigenous peoples; while clarifying that these two final points would be developed in subsequent laws. That led to pronouncements by indigenous organizations and representatives[6] expressing their dissatisfaction with a content that was "clearly insufficient given the advance on rights recognized by the international community in several international legal instruments."[7]

Another critical aspect of this process was the absence of a climate of trust, which is fundamental for engaging in genuine dialogue. This accentuated the lack of confidence in the State and lessened interest in the consultation process, while also creating obstacles for effective participation in that process. This situation was denounced by the community assemblies of Tarapacá one day after the date scheduled for the end of the dialogue, when the indigenous spokespersons for the various peoples signed an agreement in which they called on the State to suspend the process. They stated that they considered themselves as not in physical, psychological, or spiritual conditions to continue, and that the consultation had a technical complexity that would require them to inform their bases and their technical support in order to make a decision in equality of conditions. The State refused to grant that suspension. Moreover, according to those same organizations, the government's representatives in the process had "threatened" to terminate the consultation, which led some representatives to leave and others to stay.[8]

Along similar lines, it is worth examining whether the government sought to encourage a greater participation and inclusion of indigenous peoples in developing the consultation agreements. Indeed, another questionable point was representativity and effective participation of indigenous peoples in the process itself. Only 26% of the participants signed the final dialogue memorandum (38 of the 145 delegates), without participation of the Yagan, Kawésqar, or Quechua peoples.[9] Those indigenous representatives who participated in the consultation later ended up delegitimized in the eyes of their peoples and communities. Some of them even requested that their signatures be removed from

the dialogue memorandum and announced the filing of a motion for protection before the courts to safeguard their rights.

Persistence of extractivism on indigenous lands

During 2017 a public policy persisted that has resulted in a proliferation of investment and mining projects in the north of the country, forestry projects, salmon farming projects, and hydroelectricity projects in the south. In large measure, these projects are carried out on lands and the territories that legally and/or ancestrally belong to indigenous peoples. Such projects are evaluated by the State through the Environmental Impact Evaluation System (SEIA) under Supreme Decree No. 40, without adequate consultation processes (in accordance with international standards). Unlike what is mandated by international law, no consideration is given to the right to free, prior and informed consent, nor do the indigenous peoples share in the benefits of the economic activity.

In the case of the Mapuche people a report was released, headed up by the International Forestry Stewardship Council (FSC),[10] an entity that certifies 21 forestry companies in Chile covering an approximate area of 1.5 million hectares, which is twice as large as the 863,000 hectares that have been recognized by the State for the Mapuche people. The report concluded that a significant part of the lands on which the activities of these companies are carried out overlap the *Lof Mapu* or traditional lands occupied by the Mapuche, and that these lands, pursuant to ILO Convention 169 on Indigenous and Tribal Peoples, are lands that are indigenous property. The same report substantiated that the forestry plantations were created without prior consultation with the communities, and had major environmental and social impacts that not had been compensated to date, thereby failing to comply with FSC standards in said regard.

In Mapuche territory, the State has always promoted hydroelectric investments, which also have an adverse impact on lands and waters traditionally occupied by the Mapuche people. In the Regions of La Araucanía and Los Ríos there are currently 30 hydroelectric projects approved with an environmental qualification, while two are undergoing the environmental qualification process.[11] Most of these projects are located in territories that form part of the ancestral and current habitat of Mapuche communities. They have various forms of impacts, such as

alteration of ecosystems, while also posing a threat to important sacred places of high religious significance and spirituality for the Mapuche people. They severely contaminate waterways and affect access to them, disregarding these territories' own productive systems and those of their communities, and definitively violating the communities' rights to define their own development priorities, consecrated in Article 7.1 of ILO Convention 169. All this has caused these projects to be opposed by the communities.

Related to the above, the Lower Chamber of Congress just passed a bill intended to reform the Water Code. That bill, backed by the Bachelet Government, seeks to incorporate certain improvements to the Water Code to advance in recognizing the right to water as a human right. It would also limit rights granted based on that Code, and protect the rights of indigenous peoples to water resources. A weakness in said process, nonetheless, has been the lack of indigenous participation, which to date has been very marginal. The incorporation of indigenous peoples into what remains of the process poses a great challenge for the future of this legislative initiative. Given the end of President Bachelet's term in office, the future of the bill is uncertain.

Reactivation of mining activity in indigenous territory

Mining has intensified its impact on the rights of the Aymara, Quechua, Lickanantai, Colla, and Diaguita peoples, due to the reactivation of mining activity in their territories in response to an increase in prices of metals on international markets. The Lickanantay people's communities have denounced that SQM, a Chilean company associated with cases of political corruption, has engaged for nearly three decades in destruction of the ecosystem of the Atacama Salt Flats, which the Lickanantay people have traditionally occupied and used. A recent government decision also authorized expansion of the operations of the U.S. company Albemarle, which operates under the name of Rockwood Lithium in the Salt Flats. In addition, the communities face the threat of a third company coming into the Salt Flats, namely Wealth Minerals, a Canadian company. The communities have demanded the conducting of an environmental impact study of Atacama Salt Flat Basin and of the mining activity's effects in lowering the level of the Salt Flat's waters, as well as its impacts on their agricultural and livestock

activities. So far, the authorities appear to have turned a deaf ear regarding these measures.[12]

In the case of the Diaguita people, the territory of the Agricultural Community of Diaguita Huasco Altinos (CADHA) continues to be affected by reactivation of the mining plans of Barrick Gold for its Pascua Lama project, as well as those of Gold Corp and Teck Resources, with their NuevaUnión project. In the case of Barrick Gold, the project was halted in 2015. The company has announced its plans to reactivate its mining activities, however, this time through an underground mine, with contributions from a Chinese company, Shandong Gold.[13] For its part, the NuevaUnión project is in the phase of developing an environmental impact assessment.[14] Neither of these projects has consulted the Diaguita to date. The project sites are on lands traditionally occupied and legally belonging to the Diaguita, and have had a major negative cultural and environmental impact. Finally, in the case of the Colla people, at least 10 mining exploitation projects in various phases of operation have been identified on their traditionally occupied territory, mostly run by companies of Canadian origin. The most harshly affected community is that of the Pai Ote. That community, which has a total of 60 members, representing families of goat and bovine cattle raisers, to date has not obtained legal recognition of their traditionally occupied lands. They thus find themselves at the mercy of exploratory or extractive activities by the mining companies in the area.

A worrisome future

In late of 2017, the conservative candidate Sebastián Piñera was elected president of the Republic for the period of 2018-2021. The election of Piñera, who had been President of the country between 2010 and 2014, is cause for concern, given his discourse in favour of the business class and hard line repression to put down social protest. In terms of indigenous policy, Piñera does propose the constitutional recognition of these peoples and the creation of mechanisms for participation and consultation. Yet the emphasis of his program banks on curtailing indigenous claims to lands, while opening space for compensation of the lands that their communities have been deprived of in the past. He is also proposing the option of alienating ownership of indigenous lands that, up until now, have been protected by law, as well as partnering their com-

munities with investment projects as a mode for promoting their economic development. With respect to the situation of conflict in Araucanía, he proposes an increased infrastructure and modernization of the police, a new intelligence system, and a joint antiterrorist force, which leads one to predict an escalation in the use of force and repression against the Mapuche people.

The parliamentary elections held in parallel to the presidential election made it possible for indigenous peoples to be elected to the National Congress (one Mapuche woman elected as a representative, one Mapuche man elected as a senator, and one Diaguita woman elected as a senator). This, indeed, is a valuable result, yet there are doubts as to how much influence these congresspersons could have in favour of the rights of indigenous peoples in a 205-member parliament.

In this context, there is an urgent need for promoting dialogue processes to cope with the interethnic conflicts existing in the country today, so as to prevent situations of violence and repression and channel such conflicts within the framework of democratic governance and respect for human rights. It is only through these processes that progress can be made toward establishing a new relationship between the State and the indigenous peoples, in which indigenous institutionality is recognized and the collective rights of the indigenous peoples, recognized in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples, are guaranteed.

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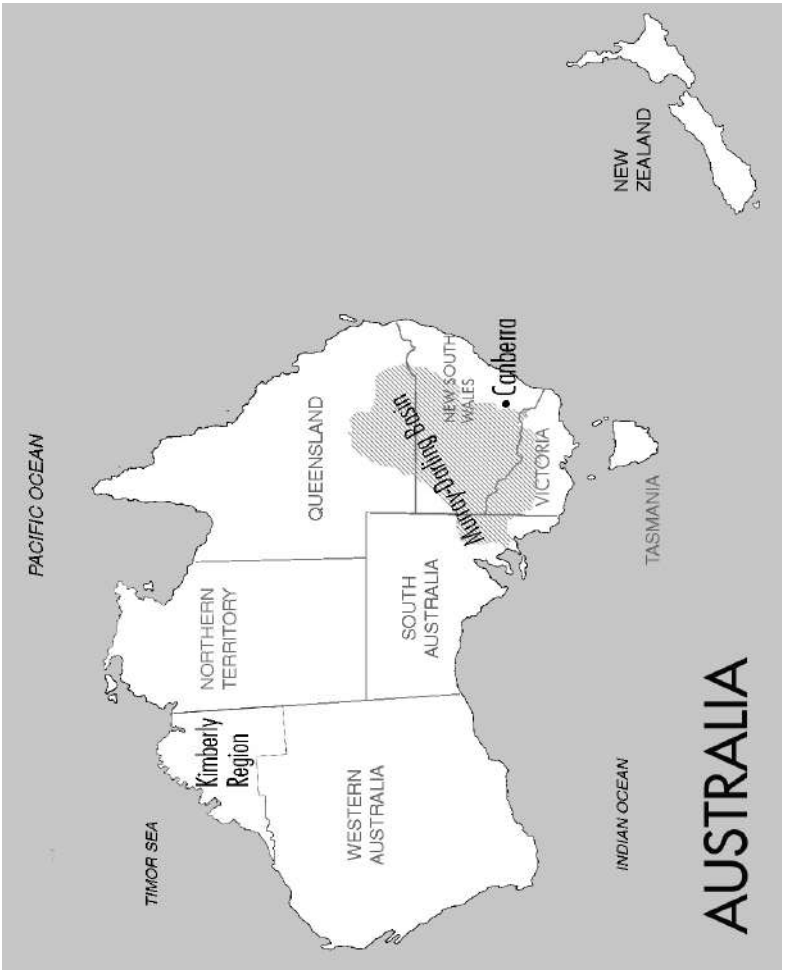
Report prepared by Observatorio Ciudadano (Citizen's Observatory) contributions from ***José Aylwin***, ***Hernando Silva*** *y* ***Karina Vargas***.

The Pacific

AUSTRALIA


PACIFIC OCEAN
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QUEENSLAND
NORTHERN TERRITORY
SOUTH AUSTRALIA
WESTERN AUSTRALIA
NEW SOUTH WALES
VICTORIA
TASMANIA
Canberra
Murray-Darling Basin
Kimberly Region
AUSTRALIA

Indigenous Australians make up 2.8% of the nation's population. The recent release of the 2016 Census data—a mandatory, national collection of population and housing data—shows that of the total Australian Indigenous[1] population, Aboriginal people make up 91%, Torres Strait Islander people account for 5%, and 4% identify as both Aboriginal and Torres Strait Is-lander. Geographically, 65% of the Indigenous population lives outside Australia's capital city areas and, the median age for Aboriginal and Torres Strait Islander people is 23 compared to 38 for the non-Indigenous population. Aboriginal and Torres Strait Islander peoples are vastly overrepresented in the Australian Criminal Justice System, with 2,346 prisoners per 100,000 Indigenous people —13 times greater than for the non-Indigenous population.[2]

Through the support of non-Indigenous allies and Reconciliation Action Plans, we are seeing more Indigenous people employed and visible in the mainstream media, with a recent increase in the prominence of Indigenous media outlets reporting from Aboriginal and Torres Strait Islander perspectives.

As it stands, Indigenous Australia's unceded sovereignty over its lands and waters is not recognised in the Constitution. This year's "Uluru Statement from the Heart"—a call for an In-digenous voice to be enshrined in the Constitution along with discussions around treaty—marked a further step towards recognition and agenda-setting for Indigenous rights.

This article offers insights into two of the key challenges faced in the pursuit of Aboriginal and Torres Strait Islander rights in 2017. These challenges—constitutional recognition and water rights—sit at the heart of Indigenous Australia's grappling with settler-colonialism while asserting sovereignty and calling for respect.

The long walk to recognition

Recognition is fundamental for effective communication: it "entails being able to see and know and to be seen and known".[3] Because the

Australian Constitution shapes governance and policymaking, it has shaped relationships and dialogues between parliament and Indigenous Australians. In 1967, Australia held a referendum which sought to remove sections that intentionally excluded the Indigenous population, and received the highest "yes" vote of any referendum in the history of the country, at 90.77%.[4] While this was seen as a victory for the Indigenous rights movement at the time, the disadvantages of being absent from the nation's founding document have since come to light in discussions of land ownership and the potential for treaty.

The recommendations made by the government-appointed 2012 Expert Panel on Constitutional Recognition of Indigenous Australians and by the 2017 Referendum Council called for substantive changes to the Australian Constitution, which arguably have the potential to improve the wellbeing of many Indigenous Australians so long as any appointed representational body can embody the diversity of Aboriginal and Torres Strait Islander peoples' aspirations.

After lengthy Indigenous-led regional and community consultations, 2017 saw the Referendum Council hand down the *Uluru Statement from the Heart* to the Prime Minister, Malcolm Turnbull, and the Opposition Leader, Bill Shorten. The Statement calls for an Indigenous voice to be enshrined in the Constitution and for treaty discussions to begin. The Statement ends:

"In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future."[5]

In October, Prime Minister Malcolm Turnbull rejected the recommendations for constitutional reform and stated:

"The government does not believe such an addition to our national representative institutions is either desirable or capable of winning acceptance in a referendum."[6]

While this blow has been felt across the country, the Uluru Statement from the Heart has shown that a consensus can be reached through dialogue on a regional scale.

Whether or not the recommendations set out by either the Expert Panel or the Referendum Council are the best approaches to constitutional reform will continue to be debated in Indigenous communities and in the Indigenous policy space but, either way, it is clear that some form of substantive reform is necessary. As Associate Professor Asmi Wood writes, "Today, the two rivers, black and white, run

separately and unequally; perhaps tomorrow their waters will be equal and one. [7]

A decade of chasing water rights in the driest continent on earth

While land rights for Aboriginal and Torres Strait Islander people have improved since the early 1990s,[8] rights to the use and management of fresh water by Indigenous peoples are relatively new on the national policy agenda.[9]

In "People on Country: Vital Landscapes, Indigenous Futures", Jon Altman asserted that the "brutal colonisation and associated economic and political marginalisation of Indigenous Australians can be understood as a conflict over land and resource rights."[10] The scarcity of Indigenous land and water ownership and management in south-eastern Australia, where land-values are high, confirms this sentiment.[11]

Pre-colonial relationships between Indigenous people and water have been crucial to their survival for thousands of years.[12] It is understandable that any human cultures capable of sustaining life over millennia across the harsh, arid, Australian landscapes would value water to the point of worship. However, Aboriginal relationships with water extend beyond survival; they are vital to culture, economies, and inform many of our creation and dreaming stories.[13]

At the national policy scale, Indigenous water rights first appeared in the "2004 Intergovernmental Agreement on a National Water Initiative". There have been many discussions in the 13 years since, but very few Aboriginal and Torres Strait Islander people have seen substantial gains in their access to and management of freshwater resources. To date, the progress seen at the national policy level has solely focused on allocating water to serve "social, spiritual and customary objectives".[14] Thriving economies across pre-colonial Australia based on agriculture[15] and trade[16] have been dismantled through force or through the exhaustion of fertile soil and clean water. Indigenous Australians have been calling for ownership and management of traditional waters out of a cultural obligation to attend to these relationships. But the legacy of "*aqua nullius*"[17] has been exclusion, and calls for Aboriginal development through the revitalisation of the water economy continue to be silenced by the machinations of colonisation.

2017 marked the 10-year anniversary of the *Echuca Declaration on Water Rights*—a joint statement from Aboriginal communities along the Murray River, defining cultural flows as:

"Water entitlements that are legally and beneficially owned by the Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, natural, environmental, social and economic conditions of those Nations."[18]

Significantly, the Declaration asserted the need for the term "economic values" to be added to the 2004 National Water Initiative definition of "social, spiritual and customary". Unfortunately, although the term "cultural flows" is used in the current Murray-Darling Basin Plan, it also includes a clause that redefines Indigenous water values as "social, spiritual and cultural".[19]

It is clear that, at the policy level, there is a divide between the aspirations of Aboriginal people and what the government and water management authorities are willing to accommodate. Calls for the recognition of Indigenous peoples' rights to own and manage freshwater are often met with objections that "water is a shared public resource and should be available to everyone".[20] Objections of this kind, however, do not recognise that the extraction and sale of fresh water—which has largely been driven by agricultural intensification—has already transformed water into a commodity. It follows then, that Australia's First Peoples should be able to pursue opportunities for economic development in the management of this natural resource, just as non-Indigenous irrigators and governments have been doing for more than 200 years.

One opportunity for carving a space for Indigenous water rights would be to allocate water licences based on current native title areas, which are currently predominantly limited to cultural activities.[21] For example, traditional owners of native title lands could be allocated licences to draw on water for the maintenance of culture as well as for irrigation and traditional enterprises such as aquaculture similar to the fish traps in Brewarrina, New South Wales[22] or the chain of ponds fishing systems used in Ngunnawal country, Canberra.[23]

The indoctrination of the legitimacy of colonisation is pervasive. While the 1992 Mabo v Queensland case[24] represented an acknowledgement of the misuse of *terra nullius*, its justification—that Aboriginal Australians were roaming savages without agriculture or infrastructure—persists within the Australian psyche today. The ingenuity and extent of Aboriginal agriculture had until recently been buried by false

histories. Bill Gammage[25] and Bruce Pascoe[26] have each attempted to retell Australian history by asserting that Aboriginal Australian agricultural systems are the oldest and most sustainable in the world. A system for allocating Indigenous water rights could serve as the catalyst for renewing sustainable Aboriginal agriculture in this country, but it would require a shift in thinking from government and the broader non-Indigenous community. Consequently, fostering a revitalisation of Aboriginal agricultural economies through allocating water rights in line with production may be considered an end goal given that access to land, rebuilding of traditional technologies, and the cultural transformation required will take time.

A feasible short-term goal would be to see the water rights Indigenous Australian communities are currently afforded remodelled to facilitate development in line with our needs and aspirations. In south-eastern Australia, the closest we have come to any semblance of water rights is the addition of "cultural flows" to the Murray-Darling Basin Plan.[27] A similar concept to environmental flows—where water is released for the purposes of maintaining environmental stability rather than for domestic or agricultural purposes—cultural flows are intended to strengthen culture and observe Indigenous resource management obligations.

While Indigenous Australian water rights are finally being afforded a seat at the policymaking table, the full spectrum of these rights is often obscured by colonial notions of Aboriginal people's interactions with the landscape. Relegating Indigenous relationships with the natural world to a single dimension—most commonly one of cultural guardianship—is pervasive across settler-colonial states globally. Couching discussions of resource management in terms of social, spiritual and customary objectives distracts from the call for the resources needed to realise Indigenous aspirations for economic development. As more Australian land is handed back to traditional owners through Native Title, we should be looking for examples of where approaches to acknowledging Indigenous water rights have worked[28] and drawing lessons from where they have failed. The inclusion of cultural flows in Australian water management policy can be seen as a step forward, as long as it creates a space for dialogue around revitalising Aboriginal water economies. Our people have a crucial role to play in working towards the sustainable development of our precious natural resources but we cannot be asked to share our knowledge if we feel our voices are not being heard.

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I acknowledge the Ngunnawal/Ngambri country I was born in as well as the Yuin country that calls me home. I acknowledge the traditional owners of these lands and pay respect to all Aboriginal and Torres Strait Islander Peoples as Australia's first peoples.

AOTEAROA (NEW ZEALAND)

Māori, the indigenous people of Aotearoa, represent 15% of the 4.5 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7.3 years less than non-Māori; household income is 78% of the national average; 45% of Māori leave upper secondary school with no qualifications and over 50% of the prison population is Māori.[1] The Treaty of Waitangi (the Treaty) was signed between the British and Māori in 1840. There are two versions of the Treaty, an English-language version and a Māori-language version. The Māori version granted a right of governance to the British, promised that Māori would retain sovereignty over their lands, resources and other treasures and conferred the rights of British citizens on Māori. The Treaty has, however, limited legal status; accordingly, protection of Māori rights is largely dependent upon political will and ad hoc recognition of the Treaty. New Zealand endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010 (UNDRIP). New Zealand has not ratified ILO Convention 169.

National elections bring mixed results

National general elections were held in New Zealand on 23 September 2017. The centre-left Labour Party obtained 46 of the 120 seats and negotiated a coalition agreement with the populist New Zealand First Party and a confidence and supply agreement with the leftist Green Party in order to take power. The arrangement ends nine years of government led by the centre-right National Party. The Labour Party has an explicit Māori Development policy that includes supporting Whanau Ora (a cross-government social programme), providing better homes for Māori, supporting Māori educational achievement and supporting Te Reo Māori (the Māori language) in schools.[2] However, when Labour was last in power it was hostile towards Māori rights, including voting against the UNDRIP and enacting much-criticised legislation removing Māori land rights to the foreshore and seabed (see The Indigenous World 2011 and 2010).

Māori are again well represented proportionally in the House of Representatives, making up 24% of all MPs (holding 29 of the 120 seats), despite comprising only 15% of the population. However, they remain a numerical minority and those with seats are constrained by their respective party's policy positions. In a significant blow, both parties with an explicit Māori *kaupapa* (vision) – the Māori Party and Mana Party – did not secure any seats in the House. The loss of the two seats formerly held by the Māori Party marked the end of 12 years of its representation in the House.

Landmark decision on Crown duties

In February 2017, in its landmark decision in *Wakatū v Attorney General*,[3] New Zealand's Supreme Court held that the Crown owes equitable duties to Māori customary landowners to protect their property rights. This was the first time such duties had been found in New Zealand. The case concerned the purchase of 151,000 acres of land from Māori landowners in Nelson in the late 1830s and early 1840s in which one-tenth of the land purchased was to be set aside and held in trust for the Māori landowners, known as the "Nelson Tenths Reserves". The owners' living areas, burial grounds and cultivations were also to be excluded from the sale and reserved for them. The full "tenth" of the land was never reserved, and nor were the owners' living areas, burial grounds and cultivations. The Crown held the little land that it did reserve in trust from 1845 until 1977, when the land was finally returned to the Māori customary owners (the Wakatū Incorporation).

In bringing the litigation, the customary owners argued that the Crown had a fiduciary duty to the customary owners to fulfil the terms of the purchase. After losing their cases before the High Court and the Court of Appeal, the customary owners were successful in the Supreme Court. In a majority decision of 4 to 1, the Supreme Court held that the Crown had a legally enforceable fiduciary duty to the customary owners to reserve one-tenth of the land purchased for the customary owners and to exclude their living areas, burial grounds and cultivations from the sale. The Crown had failed to do so. Notably, the UNDRIP was cited in the judgment.[4] The case has now been referred to the High Court for a finding on the extent of the breach and on the remedies to be granted.[5]

Treaty settlements forge ahead

Māori and the Crown continued to pursue the settlement of Māori claims regarding historical Treaty breaches by the Crown throughout 2017. Three groups had their mandates recognised, five signed terms of negotiation with the Crown, six signed an agreement in principle, nine agreed that their deeds of settlement were ready for presentation to their members for ratification, one signed a deed of settlement with the Crown, one had a record of understanding signed, four had legislation giving effect to their settlements introduced, and three had the legislation giving effect to their settlements enacted.[6]

Significantly, in December, eight *iwi* (nations) of Taranaki signed a record of understanding with the Crown providing for collective cultural redress in respect of Mount Taranaki, or Taranaki Maunga. As part of the redress package, Taranaki Maunga will have its own legal personality, with local *iwi* and the government sharing joint responsibility for its governance. The agreement to recognise Taranaki Maunga as a legal personality is similar to the legal personality afforded to the Whanganui River (Te Awa Tupua) (see The Indigenous World 2017), which was enacted in legislation in early 2017, and to Te Urewera (a former national park), for which legislation was enacted in 2014.

Further, in December, the government paid settlement top-ups totalling NZ $370 million to the two *iwi* who were first to agree historical Treaty Settlements with the Crown in the mid to late 1990s: Ngāi Tahu and Waikato-Tainui. Provision was made for the payment to ensure that the economic redress provided to the first two *iwi* to settle remained relative to claims settled in the future.[7]

Concerns remain regarding the Treaty settlement process, however. For example, in 2017 the Tribunal reported on the Ngātiwai mandate inquiry, which found that the Crown had breached the principles of the Treaty when it recognised the mandate of the Ngātiwai Trust Board to enter into negotiations with the Crown to settle all historical Treaty claims on behalf of Ngātiwai.[8] The Tribunal's recommendations included that the settlement negotiations be paused to enable the members of Ngātiwai to agree a solution.[9]

International criticism of rights violations

In 2017, the United Nations (UN) Committee on the Elimination of Racial Discrimination (CERD) identified a host of concerns regarding the human rights situation of Māori. In its concluding observations on New Zealand's combined twenty-first and twenty-second periodic reports under the International Convention on the Elimination of All Forms of Racial Discrimination, CERD expressed concern regarding issues including the lack of progress in securing Māori self-determination and constitutional recognition of the Treaty of Waitangi, Māori land issues and the Treaty settlement process, inaction on the recommendations contained in the Waitangi Tribunal's 2011 Wai 262 report on Māori traditional knowledge, the designation of a special housing area on land traditionally owned by Ihumātao (Special Housing Area 62), which had been confiscated and then sold to private owners, the failure to apply the principle of free, prior and informed consent in matters affecting Māori customary marine interests, and the granting of rights to use freshwater resources located on traditional Māori land despite opposition by affected Māori.[10]

CERD's recommendations included that New Zealand issue a timetable for debating, in partnership with Māori, the role of the Treaty of Waitangi within New Zealand's constitutional arrangements, provide information regarding the total land areas covered by the Treaty settlement process, publish a plan for implementing the Wai262 report's recommendations, review the designation of Special Housing Area 62, ensure that the "free and informed consent of Maori" is obtained "before approving any project affecting the use and development of their traditional land and resources", review the Marine and Coastal Area (Takutai Moana) Act 2011, and "ensure full respect for the rights of Māori communities to freshwater and geothermal resources".[11]

Indigenous peoples contributed to CERD's review process. For example, Save Our Unique Landscape (SOUL), which was founded by the *rangatahi* (youth) of Makaurau Marae (the Māori community centre) at Ihumātao, provided a shadow report to CERD on the designation of land at Ihumātao as Special Housing Area 62.[12] Two representatives of SOUL also travelled to Geneva to attend the CERD meeting.

Waitangi Tribunal finds Treaty breaches

The Waitangi Tribunal released its *Horowhenua: The Muaūpoko Priority Report*, which found that the Crown had breached principles of the Treaty in relation to the lands and treasured waters of the Muaūpoko *iwi*, ultimately rendering them landless.[13] The Tribunal's recommendations included that the Treaty settlement with Muaūpoko address the harm suffered.[14]

Additionally, the Tribunal released its pre-publication version of its report on Crown approaches to reducing the disproportionate reoffending rates of Māori.[15] The Tribunal found that the Crown, through the Department of Corrections, had breached the principles of the Treaty in failing to make reduction of Māori reoffending rates a priority. Its recommendations included that the Department, in partnership with Māori, design and implement a Māori-specific strategy to reduce reoffending rates among Māori.[16]

Controversial land Bill may stall

Contentious legislation reforming the Te Ture Whenua Māori Act 1993 (the Māori Land Act) (see The Indigenous World 2016) had been progressing through the House of Representatives in 2017. However, it is unclear whether the Bill will proceed under the newly-elected government.[17]

Overview and looking forward

Progress continues in the recognition of indigenous peoples' rights in Aotearoa, with the ground-breaking *Wakatū* decision and momentum continuing in the settlement of historical Treaty claims. Significant concerns remain, however, including regarding flaws in the Treaty settlement process, insufficient efforts to recognise Māori self-determination, and the continued violation of Māori rights to their lands, territories and natural resources. The new Labour-led coalition government may potentially bring renewed commitment to Māori rights, but the Party has an uneven track record in its respect for Māori.

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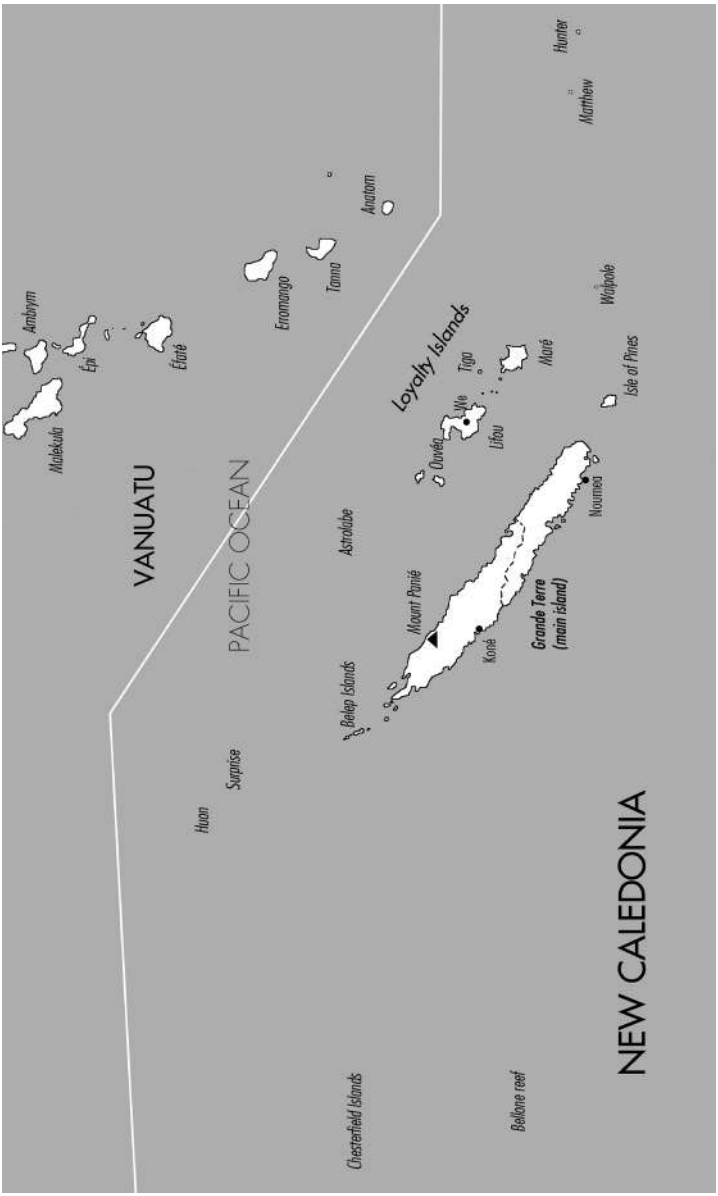
KANAKY (NEW CALEDONIA)



According to the 2014 census, New Caledonia's population totals 268,767 inhabitants broken down into 39% Kanak, 27% Europeans, mainly French, 8% Wallisians and Futunians,[3] and almost 15% residents of other origins (Tahiti, Indonesia, Vanuatu, Vietnam, other Asiatic origin). 32% of the population is under 20 years of age.[4]

Since its take-over in 1853, New Caledonia has been under French rule although a decolonisation process was started in 1988 with the signing of the Matignon-Oudinot Accords, reaffirmed by the signing of the Nouméa Accord in 1998.[5] These agreements provide for a referendum to be organised between 2014 and 2018, which will define the institutional future of the country, and the transfer by the French State of some of its sovereign powers (yet to be defined) to New Caledonia.[6] This decolonisation process is the fruit of a Kanak nationalist struggle for independence that started in the 1970s. This struggle was based on the Kanak people's right to self-determination and independence and its will to free itself from the colonial system imposed by France since 1853. The Matignon-Oudinot Accords divided the country into three provinces (North, South and Islands), created an agency in charge of rural and land development (ADRAF), an agency that would develop the Kanak culture (ADCK), and new institutions based on "la coutume" (custom) such as the Customary Council, later to become the Customary Senate (1998), the customary areas[7] and their respective councils. These were reaffirmed by the Nouméa Accord, the preamble to which furthermore recognises the anteriority of the Kanak people in New Caledonia in these terms: "it is now necessary to create the basis for a Caledonian citizenship that allows the First People and men and women living in New Caledonia to become one single human community embracing a common destiny". This, unfortunately, may well prove difficult to achieve due to the deeply-rooted cultural and socio-economic differences existing between the various communities living in Kanaky/New Caledonia.

New Caledonia is now nearing completion of the Nouméa Accord (1998), which anticipates three consultations on the country's accession to full sovereignty. The first consultation is planned for the end of 2018.

Self-determination and the right to vote

Just as in 2016 (see The Indigenous World 2017), 2017 was marked by fierce controversy over the issue of the right to vote.[8] The main issue of the year for the indigenous and colonised people of New Caledonia, the Kanaks, remained the issue of self-determination and particularly the right to vote in the forthcoming referendum. This consultation on the country's accession to full sovereignty is due to take place on either 28 October or 4 November 2018. The date has not yet been fixed and the political parties, those both for and against independence, have yet to reach agreement on this.

The pro-independence parties, mainly Kanaks, and the parties opposed to independence were also unable to agree on the constitution of the electoral rolls for future elections of significance to the future of New Caledonia. The last census of 2014[9] confirms that the Kanak people have become a minority in their own country. Non-indigenous groups account for 61% of the population while the indigenous population makes up the remaining 39%.

There are three electoral rolls in New Caledonia: 1) the "general" electoral roll for French national elections – presidential and legislative, European and local;[10] 2) the "provincial" electoral roll, more limited, for elections to the provincial assembly and for members of New Caledonia's Congress; 3) the "exit" electoral roll, also limited, for the referendum on the country's accession to full sovereignty.[11]

In relation to the "exit" electoral roll, in 2016 pro-independence political groups denounced the fact that some 25,000 Kanaks were not registered on this special list.[12] As the indigenous people of the country, these Kanaks would thus be unable to exercise their right to self-determination and independence.

This situation, considered unacceptable by the pro-independence political parties, was discussed and negotiated throughout 2017. The pro-independence political parties called on the French government to produce accurate figures of the number of customary-status

Kanaks[13] not registered on the general electoral roll and thus also not on the special electoral roll for the referendum. Alongside this, the non-independence political parties called for the same work to be done to obtain figures of people born in New Caledonia, with common-law status, who were also on neither the general roll nor the special roll for the referendum.

It emerged from this work that around 17,000 customary-status Kanaks were not registered on either electoral roll. To be included on the general electoral roll, they have to be able to prove six months' residency in New Caledonia. After cross-referencing with the social security files, it emerged that only around 7,000 customary-status Kanaks could be found in these. The pro-independence political parties demanded that the 10,000 Kanaks missing from the social security files also be included on the roll and allowed to exercise their right to vote and their right to self-determination during the referendum to take place at the end of 2018.

During the last Committee of Signatories to the Nouméa Accord, held in Paris on 2 November 2017 under the presidency of the Prime Minister Edouard Philippe, the partners to the Nouméa Accord thus agreed that "[t]he partners affirm their desire to resolve the issue of the absence of Caledonians from the electoral roll for the referendum. [...] [They] agree on the political need to proceed, exceptionally and by virtue of the consultation, to automatically register people living in New Caledonia on the general electoral register, as a necessary pre-condition to their being placed on the special electoral register for the referendum."

United Nations missions in New Caledonia

Following lobbying by pro-independence Kanaks with the United Nations, but also with regional institutions such as the Melanesian Spearhead Group (MSG), several missions have been conducted to New Caledonia in recent years, focusing on the issue of the right to vote.

Two missions were repeated in 2017. These were a mission of the UN Electoral Assistance Division and a mission of the MSG.

From March to July 2016, experts mandated by the UN Electoral Assistance Division were deployed to observe the operations of the special administrative commissions responsible for drawing up and re-

vising the electoral registers. This mission was repeated over the same period in 2017.

In 2013, during the MSG Summit in New Caledonia, Member States reaffirmed their support for the Kanak people through the Nouméa Declaration. This states: "We the Leaders of the Melanesian Spearhead Group (MSG) [...] now declare to renew our commitment on the following : (i) pursue and protect the right to self-determination of the indigenous Kanak people of New Caledonia in accordance with the United Nations (UN) Charter and the International Covenant on Economic, Social and Cultural Rights [...]".[14]

The MSG mission to New Caledonia that took place in April 2017 was charged with assessing progress made in the electoral register with a view to the consultation in 2018.

With regard to the 2017 resolution on New Caledonia adopted by the UN Decolonisation Committee and then by the General Assembly, this states that it: "Notes the concerns expressed regarding the challenges encountered in the provincial elections process with respect to the persistent varying interpretations of the restricted electorate provisions and the voter registration appeal process. It encourages the administering Power and the people of New Caledonia to address in an amicable and peaceful manner the concerns of all stakeholders under the existing relevant laws in the Territory and in France, while also respecting and upholding the spirit and letter of the Nouméa Accord.. [...] It considers that appropriate measures for organising future consultations on accession to full sovereignty, including the production of fair, proper and transparent electoral registers, as set out in the Nouméa Accord, are essential to achieving a free and authentic act of self-determination in accordance with the principles and practices of the UN organisation."

During the above meeting of signatories to the Nouméa Accord, it was further decided that a number of UN missions would take place during 2018. The UN Electoral Assistance Division will thus visit again in 2018 with the same mandate as in 2016 and 2017. A mission of the Decolonisation Committee will need to take place in the first half of 2018, as was the case in 2014. However, the pro-independence parties also asked that UN observers be in place to observe the situation before and during the referendum on the country's accession to full sovereignty. They also asked that a decolonisation audit be conducted by experts mandated by the United Nations.

The statement of conclusions of the Committee of Signatories sets out these demands in the following terms: "The committee is pleased with the quality of the relationship established with the UN experts in the procedure to revise the electoral rolls, and it agrees that this work must continue under the same conditions in 2018, and likewise for any additional revision periods. The partners are agreed on the need to implement the recommendations of the UN mission reports of 2016 and 2017 [...] The partners are also agreed that a mission composed of UN experts will be called on during the consultation process. [...] The State informs the Committee of Signatories that the French government will suggest to the Decolonisation Committee, known as the C24, that a further visit be organised in the first quarter of 2018.. [...] The Caledonian Union asks that a decolonisation audit be sought from the UN. [...]".

Notes and references

1. See https://www.croixdusud.info/geo/nc_dim.php
2. The Matthew and Fearn or Hunter islands are at the heart of a dispute between Vanuatu and France. In 2009, the Kanak and Socialist National Liberation Front (FLNKS) officially recognised that Matthew and Hunter are part of Vanuatu (see http://www.tahiti-infos.com/Les-iles-Matthew-et-Hunter-n-en-finissent-pas-d-empoisonner-les-relations-franco-vanuatuanes_a13518.html). At the FLNKS Congress from 3-4 February 2018, the FLNKS adopted a motion reaffirming its political support for the Matthew and Hunter islands as a natural heritage of the Republic of Vanuatu.
3. This minority group originates from Wallis-et-Futuna, a French island community in the South Pacific, located some 1,861 km north of New Caledonia.
4. Insee Census 2014, http://www.isee.nc/population/recensement
5. Those accords were signed by the French State, the FLNKS (the Kanak National Liberation Movement), and the RPCR (Rassemblement Pour la Calédonie dans la France*, a political party opposed to independence).*
6. Those sovereign powers include: justice, defence, external relations, public order, currency and credit.
7. The Nouméa Accord divided New Caledonia into 8 customary areas: Ho*ot Ma Whaap, Paicî-Cèmuhi, Ajië Aro, Xârâcùù, Drubea-Kapumë, Nengone, Drehu, Iaai*.
8. See http://juspoliticum.com/article/La-fraude-a-la-sincerite-du-corps-electoral-en-Nouvelle-Caledonie-964.html, http://la1ere.francetvinfo.fr/nouvellecaledonie/300-400-personnes-menacees-de-radiation-de-la-liste-electorale-des-provinciales-341155.html

9. See http://www.isee.nc/population/recensement/communautes

10. The "general" electoral roll comprises those people listed in the "general" electoral register. This is anyone over the age of 18 having lived in New Caledonia for at least six months.

11. To be on the special "exit" register for the referendum, you first have to be on the general electoral register. As has been noted, particularly by the UN experts, many young Kanak have missed out on this automatic registration due to elements of their files being missing. Many of them further do not care about French national elections and so do not make any effort to get their names on the general register.

12. See http://la1ere.francetvinfo.fr/nouvellecaledonie/corps-electoral-un-quart-des-citoyens-de-droit-coutumier-en-dehors-des-listes-354018.html, http://ustke.org/actualites/actualite-politique/Droit-a-lautodetermination-pour-tous-les-kanak-!-at_767.html

13. There are two different kinds of civil status in New Caledonia: customary, which is the historic civil status of the Kanak majority, and common law civil status.

14. Melanesian Spearhead Group (MSG) Nouméa Declaration on the *Front de Libération Nationale Kanak et Socialiste (FLNKS)* of New Caledonia, approved and signed on 21 June 2013, in Nouméa, New Caledonia.

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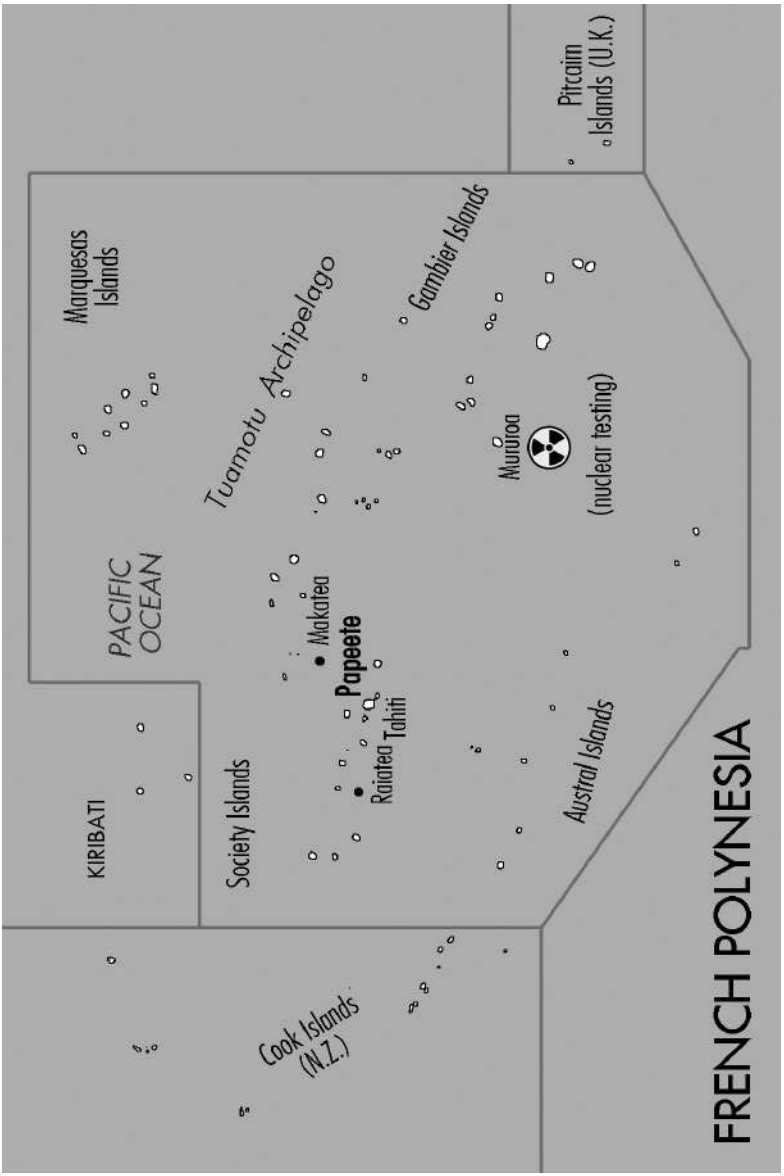
FRENCH POLYNESIA



A former French colony, French Polynesia has since 2004 been an Overseas Collectivity (Collectivité d'Outre-mer) of 275,000 inhabitants (around 80% of whom are 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 French Polynesia has been suffering since the turn of the millennium. As of 2009, one in every five households was living below the poverty line.[2]

Until 2004, political life in French Polynesia was characterized by a political polarization between those in favour of autonomy, represented by Gaston Flosse's party, Tahoeraa Huiraatira, which advocates for French Polynesia to remain within the French Republic, and those in favour of independence, represented by Oscar Temaru's Tavini Huiraatira party. Since then, French Polynesia has suffered a period of serious political instability along with the creation, in February 2016, of a third large political party, Tapura Huiraatira, complicating local political life yet more. This autonomist party was created by Edouard Fritch, President of French Polynesia since September 2014 when he replaced Gaston Flosse who had become ineligible. With a war of succession being waged within the autonomist family, creating this party enabled Edouard Fritch to establish a new majority in the Assembly and hold onto his presidential title.

2017 was marked by presidential and legislative elections in France and French Polynesia, demonstrating the close interconnection between international, national and local issues.

Oscar Temaru, leader of the Independence Party, decided that standing as a presidential candidate in France would give greater visibility to his commitment to national independence and would assert "the people's right to self-determination".[3] He gained the support of elected representatives from the Overseas Collectivities, Corsica, Brittany and the Basque Country but failed to obtain sufficient backing to validate his candidacy (he did, however, receive a majority of nominations from Polynesian representatives). He then called on all voters in French Polynesia

to abstain from voting. Following François Fillon's failure to get through to the second round of the presidential election, Edouard Fritch called on the people to vote for Emmanuel Macron. Gaston Flosse, for his part, advocated voting for Marine Le Pen even though this extreme right party has no presence in French Polynesia. Only in the light of this voting advice – designed to measure the continuing influence of *Tahoera'a* locally – can we understand why French Polynesian electors voted as they did and gain an insight into the complexities of political life.[4]

During the legislative elections of June 2017, Maina Sage and Nicole Sanquer of *Tapura* were (re-)elected as deputies to the National Assembly. And, for the first time in the history of this Assembly, a pro-independence Polynesian deputy from *Tavini* was elected: Moetai Brotherson. He sits with the Democratic and Republic Left group (comprising mainly communists, environmentalists and Overseas deputies) and has joined the foreign affairs committee. Moetai has a number of stated priorities: that Polynesian languages should be recognised as official languages,[5] that French Polynesia should be guaranteed sovereignty over its own (particularly sub-sea) resources and, finally, that France should officially recognise the re-listing of French Polynesia on the UN list of Non-Self-Governing Territories.

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 it as an implicit demand for independence, supporters note that this action should culminate in a referendum on self-determination offering the option of becoming a French department, of gaining independence or of becoming an associated State. The French state considers "the French Polynesia issue" to be an internal matter and has thus far refused to cooperate with the UN General Assembly's Fourth Committee responsible for decolonisation issues.[6] Emmanuel Macron's election has done nothing to change France's "empty chair policy" in this regard. Interviewed during his first few weeks at the National Assembly, Moetai Brotherson stated: "I have met with a number of deputies on different occasions. Most of them are simply not aware that we have been re-listed and nearly all of them are somewhat surprised at France's position thus far."[7]

While the French state has refused to be involved in the work of the

committee, French Polynesia's President has participated since October 2016, thus enabling a voice other than those of the pro-independence movement to be heard at the UN. Pro-independence supporters have criticised his involvement, believing that the country's president "speaks on behalf of France", as have *Tahoera'a*'s pro-autonomy members, who consider that "it is not within the UN that the issue of French-Polynesian relations should be resolved but between the State and French Polynesia".[8] The discussions in October 2017 revolved around French Polynesia's autonomy –real or fictitious– within the French Republic. Edouard Fritch felt that French Polynesia was an autonomous country since: "Our country benefits from wide-ranging autonomy that enables us to govern freely and economically, we have full powers in socio-economic matters, and this is why my people have never been tempted by independence".[9] Pro-independence parliamentarians have highlighted the fact that French Polynesia's statutes do not meet the UN-defined criteria for autonomy given that Polynesian autonomy relies on "a delegation of powers that can be taken back by the administrative authorities" and they lament the fact that France refuses to participate in the meetings of the Special Committee on Decolonisation.

Nuclear tests 20 years on

Twenty years on since nuclear testing finally came to an end (1966-1996), moral and practical recognition of the health and social consequences of these tests and the handling of nuclear waste are still the main concern of Polynesian associations and churches. The *Mā›ohi* Protestant church has been denouncing nuclear testing and its consequences since 1982 and has, since the 1990s, been involved in defending the *Mā›ohi* land (*te fenua*), language (*reo Mā›ohi*) and people. During its synod in August 2017, the church repeated its wish, previously stated in 2016, to prosecute the French state for "crimes against humanity [...] given the French state's refusal to take note of the people's misfortunes". The difficulties encountered by the victims of nuclear testing when trying to obtain the compensation set out in the Morin Law of January 2010 have been perceived as an example of this neglect. By noting that, under certain circumstances, "the risk caused by these nuclear tests can be considered negligible", the Morin Law only rarely enables victims to obtain compensation (seven Polynesian victims have been successful out of 1,043 cases submitted as of

the end of 2016). In February 2017, the National Assembly voted to remove the element of "negligible risk", thus offering some hope of better recognition of and compensation for the victims. For his part, Moetai Brotherson believes that the whole mechanism needs in-depth review since "the Morin Law recognises neither radiation-induced genetic diseases passed on to descendants, nor the environment, nor right holders". [10]

The Catholic church, which has long sat on the sidelines, is now allowing some of its clerics to be (or at least tolerating the fact that they are) active within the "193 Association"[11] established to seek recognition of and reparation for the consequences of nuclear testing. This association launched in 2016 with a petition calling for a local referendum on the nuclear issue (see The Indigenous World 2017). Despite garnering more than 50,000 signatures by the end of 2016, this petition has remained without effect. In January 2017, the association set up a victim support and reparation unit (Carven), raising awareness of the fact that the Morin Law affects more than just those who worked at the nuclear experimentation sites, and helping families to put their case together.

The *Moruroa e Tatou* association, which has also been working to get the victims of nuclear testing recognised since 2001, recently lost two of its three founding members: John Doom, former General Secretary of the *Mā›ohi* Protestant church and Pacific representative to the World Council of Churches, who died in December 2016, and Bruno Barillot, former Catholic priest in the Diocese of Lyon, who passed away in March 2017.[12]

Review of Pouvanaa a Oopa's trial

During the National Assembly's debate on an amendment to remove the element of "negligible risk", Polynesian deputy Maina Sage ended her intervention by paraphrasing Pouvanaa a Oopa, the famous Polynesian politician considered the father of the anti-nuclear struggle: "France is a great nation, I know that one day it will render justice to me".[13] Pouvanaa a Oopa was accused of wanting to burn down the town of Papeete and sentenced to eight years in prison and 15 years in exile on the mainland in October 1958, at a time when the French state was already looking to establish an experimentation centre in Polynesia, as evidenced by the work of historian Jean-Marc Regnault. Pardoned by General de Gaulle in 1968, Pouvanaa a Oopa's conviction was never actually overturned. In 2014, Christine Taubira, then Minister of Justice,

referred the case to the review board. In late December 2017, the Investigation Committee announced its decision to bring the case before the court of revision. A review of Pouvanaa a Oopa's trial, scheduled for 2018, may yet result in his conviction being quashed.

The right to natural resources

The second most significant matter of concern in French Polynesia relates to natural resource exploitation and, particularly, that of sub-aquatic mineral resources – commonly known as "rare earths" – which could eventually form a source of major economic wealth given the size of French Polynesia's Exclusive Economic Zone (EEZ). Despite statements made in 2015 by the Overseas Minister of the time stating that the Overseas Collectivity of French Polynesia was responsible for making its own decisions with regard to mineral resource exploitation, fears that this division of responsibilities may be re-defined to the benefit of the French state still persist (see The Indigenous World 2017*)*. This is why *Tavini* recently stated its concern during a conference held in September 2017 on "the sea, a source of development for the Overseas Collectivities", attended by speakers from mainland France and a representative of the French Armed Forces.

Hotel projects, environmental protection and UNESCO

French Polynesia suffers badly from unemployment (21.8% in 2012, according to the French Polynesian Institute for Statistics/ISPF). Several hotel and mining projects promising the creation of several hundred jobs nevertheless elicited a strong reaction in 2016 (see The Indigenous World 2017) and, in 2017, a reduction in the size of the Papeno'o Valley project (Tahiti) was announced.[14] As for the resumption of phosphate mining in Makatea, the *Mā›ohi* Protestant church synod has stated its opposition and "urges the government not to tempt the people with money. Only love of the land can help it."[15]

In July 2017, the *marae* on Taputapuātea Raiatea Island (Leeward Islands) was placed on UNESCO's World Heritage List. This application was submitted in 1997 by the newly-created Junior [Young] Economic Chamber of French Polynesia (JCE in its French acronym), at the initiative of

Richard Tuheiava, also a member of *Tavini* and former senator (2008-2014). This *marae*, a place of worship during pre-missionary times, lies at the heart of the "Polynesian Triangle", being equidistant from Hawaii, New Zealand and Easter Island, and forms a political, ceremonial and funerary centre. Its listing was justified by the fact that "Taputapuātea bears exceptional witness to 1,000 years of *Mā'ohi civilisation*".[16]

Notes and references

1. The last census that mentioned "ethnic" categories was in 1988: "Polynesians and similar" accounted for 80.58%, "Europeans and similar" 13.28% and "Asians and similar" 5.42%.
2. Institute of Statistics (ISPF), Survey into household living conditions in French Polynesia. 2009.
3. *Médiapart*, 13 February 2017: «Oscar Temaru veut être le candidat de la décolonisation».
4. Emmanuel Macron gained 58.4% of the Polynesian vote as opposed to 41.6% for Marine Le Pen (on a 46.9% turnout).
5. France has not ratified the European Charter for Regional or Minority Languages.
6. "Le Monde», 17 May 2013, "Polynésie: la France dénonce une 'ingérence flagrante' de l'ONU".
7. "La Dépêche de Tahiti», 18 July 2017.
8. Tahoera'a Huiraatira press release, 7 October 2016.
9. UN, "Décolonisation: la situation de Guam et de la Polynésie au cœur des débats de la quatrième commission», 3 October 2017 [https://www.un.org/press/fr/2017/cpsd633.doc.htm]
10. Moetai Brotherson's statement of intent, legislative elections of June 2017.
11. Created in 2014, the association was chaired first by Fr. Auguste Uebe Carlson and then by Br. Maxime.
12. "La Croix", 28 March 2017. The third founder, Roland Oldham, remains president of the association.
13. See http://www.msage-an.fr/loi-morin-suppression-du-risque-negligeable/
14. *Tahiti Infos*, 27 July 2017: "Le projet Ecoparc considérablement réduit".
15. "La Dépêche de Tahiti», 1 August 2017: "Synode de l'église protestante mā›ohi: nucléaire et phosphate en ligne de mire".
16. UNESCO World Heritage Centre [http://whc.unesco.org/fr/list/1529]

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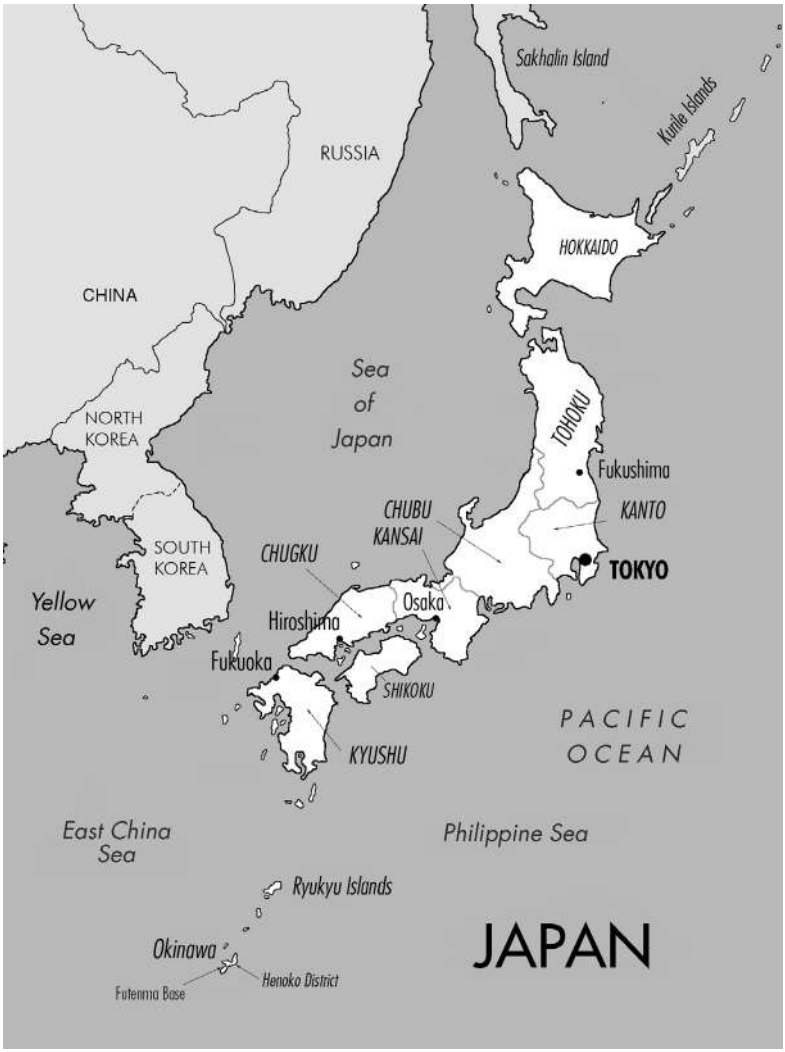
East and South East Asia

JAPAN


Sakhalin Island
Kurile Islands
RUSSIA
HOKKAIDO
CHINA
Sea
of
Japan
TOHOKU
NORTH
KOREA
Fukushima
CHUBU
KANSAI
KANTO
SOUTH
KOREA
CHUGKU
TOKYO
Yellow
Sea
Osaka
Hiroshima
Fukuoka
SHIKOKU
PACIFIC
OCEAN
KYUSHU
East China
Sea
Philippine Sea
Ryukyu Islands
JAPAN
Okinawa
Henoko District
Futenma Base

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. Although there has been some migration of ethnic Japanese to the islands, the population is largely indigenous Ryūkyūans. Japan colonized the Ryūkyūs in 1879 but later relinquished the islands to the US in exchange for its own independence after World War II. In 1972, the islands were reincorporated into the Japanese state and Okinawans became Japanese citizens although the US military base remained. Today, 50,000 US military personnel, their dependents and civilian contractors occupy 34 military installations on Okinawa Island. The island 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.

The Japanese government has adopted the UNDRIP (although it does not recognize the unconditional right to self-determination). It has not ratified ILO Convention 169.

At the center of Okinawans' struggles over land and their future is a campaign that has lasted for 21 years to close the US military's aging and dangerous Futenma Air Station, which the US and Japanese governments tied to the construction of a new US military complex in Okinawa's rural Henoko and Oura Bays (for more background information see *The Indigenous World 2011-2014*). 2017 began in the shadow of the 2016 ruling by Japan's Supreme Court against the current Okinawa government's right to revoke earlier approval for the new base. In February, Japanese Prime Minister Abe and President Trump reaffirmed their commitment to the Henoko-Oura project. Both developments set the stage for construction to begin in April.

However, polls consistently show that the majority of Okinawans oppose the Henoko-Oura project. Because the new base would be the first major installation constructed in Okinawa in 60 years, for Okinawans it portends a future that looks too much like today. The effects of US military presence are always a concern for Okinawans, but they became a particular focal point for anger and protest in 2017 due to the frequency

of serious incidents. This update foregrounds these as context for Okinawans' intense resistance to the new base.

The military's always-ongoing preparation for warfare means that training exercises pose a distinct threat to Okinawans on an everyday basis. In April, stray bullets from a live-fire training range struck water tanks and cars owned by Okinawans working on dam construction inside the Marine Corps' Camp Hansen.[1] Persistent anger over the 2012 deployment of the controversial MV22 Osprey aircraft was fueled this year by multiple emergency landings and, in October, a crash landing and fire on private land in Takae. Futenma-based Ospreys have an 8.3% crash rate, with ten accidents and emergency landings in Okinawa in five years. Their accident rate has doubled since their 2012 deployment.[2] In December, a part of a cargo helicopter hit the roof of a nursery school. One week later, a window from the same type of aircraft crashed into an elementary school sports field, 10 meters from a child.[3] Awareness of such dangers led officials and fishermen in Uruma City to protest when the US Air Force initiated, without warning, "drop training" over coastal waters. This involves the parachuting of personnel and supplies, and vehicles hanging from helicopters.[4]

The frequency and seriousness of incidents that occur during military training and routine operations has led to a rejection of the label "accident" among many Okinawans. In other words, it cannot be merely accidental when an aircraft window falls onto a school sports field, or a helicopter crashes into private land, if the military, as a matter of policy, flies its aircraft over civilian areas. Despite official calls for the suspension of flights over civilian areas and countless resolutions demanding the removal of Ospreys, the military has not changed its flight patterns or training regimes. Moreover, Okinawan officials are excluded from channels of control during incidents. For example, the U.S. military prevented Okinawan government officials from accessing the Takae crash site to test for radiation.

Such concerns about the health effects of military activities are well founded. Officials discovered high concentrations of perfluorooctanesulfonic acid in water from rivers near US military bases.[5] A Naha District court awarded 30 billion yen to 22,048 residents living near Kadena Air Force Base, citing unhealthy levels of aircraft noise. The scale of aircraft activity in Okinawa is staggering: from April-July 2017, there were 5,084 flight operations at Futenma and 18,799 at Kadena (including takeoff, landing, touch-and-go, flying over and circling the

base).[6] Residents near an Osprey takeoff-and-landing training site report increased respiratory problems due to dust created by "hang" training, which involves the aircraft hovering at a low altitude. Intense vibrations from the aircraft also caused part of a nearby concrete building to fall off.[7]

Crime adds to Okinawans' sense of insecurity. In April, an Okinawan woman died after being raped and stabbed by a former US serviceman. In November, a Marine Corps serviceman struck and killed an Okinawan man while driving drunk. However, statistics released in December revealed that the indictment rate for US military-related persons was less than half of that for Japanese citizens.[8]

It is these and other everyday effects of the bases that motivate the campaign that has, so far, prevented any significant construction of the new base for 21 years. Years-long sit-ins and other forms of civil disobedience continue, on land and at sea. Rallies numbering in the hundreds and thousands were held nearly every month, including a gathering of 45,000 in August. The fight over the Henoko-Oura base also returned to the courts this year, both in Japan and the United States.[9] In a demonstration of its deference to US-Japan security arrangements in the Okinawan context, the Japanese government increased its use of force against protesters, including riot police, military vessels to block sea-based protests, arrests and long-term detention.

2017 ended with a shocking revelation that Governor Takeshi Onaga, who has worked to halt the new base, approved permits to move landfill from elsewhere in Okinawa to Oura Bay for seawall construction. Although Onaga maintained he was obligated to treat permit requests fairly under the law, this has fueled skepticism regarding his commitments. To what extent this development facilitates construction, and/or to what extent it marginalizes the role of the Okinawan government in the struggle, remains to be seen. But the strength of the movement remains in grassroots mobilization, in large part because of Okinawans' experiences of US military presence and their desire to set a different course.

Towards a "New Ainu Law"

The Japanese government began considering the implementation of a "New Ainu Law" in May 2016 to support the livelihood of the Ainu (see

The indigenous World 2017). In 2017, it was reported that the government would aim to implement the new law by 2020, and that the law would likely stipulate the Ainu as "indigenous people" for the first time.[10] In preparation for the new law, the government announced in August 2017 it would conduct a nationwide survey within the fiscal year 2017 on the living conditions of the Ainu. The survey will include closed hearings both in and outside of Hokkaido, aiming to cover those of Ainu descent that did not want to openly disclose their heritage. This would be the second nationwide survey by the central government, the first having been conducted in 2010.[11] As there are indications that the law will focus primarily on education or employment, questions remain whether it will at all address the issues of land rights and rights to natural resources, which would give the Ainu fundamental rights to practice Ainu culture as indigenous peoples of Japan.

"Symbolic Space for Ethnic Harmony"

Construction of the "Symbolic Space for Ethnic Harmony" (see The Indigenous World 2016) began in May 2017, and the government announced that it was slated to open to the public three months ahead of schedule on April 24, 2020. The construction costs incorporated into the Hokkaido development budget are thus far a combined 3.6 billion yen (2 billion yen for FY2018 and 1.6 billion yen for FY2017). The project aims to attract one million visitors annually and includes a park, museum, and facilities to memorialize ancestral remains. The government announced in March that as part of the memorialization of ancestral remains, it would build a 30-meter high steel monument designed after a traditional ikupasuy libation stick. While the design of the monument was adopted with the support of the Ainu Association of Hokkaido, it has drawn a mixed reaction from other activists who question its appropriateness. Together with the issue of consolidating ancestral human remains, there is continuing contention within the Ainu community on whether the "Symbolic Space for Ethnic Harmony" is the best use of land and resources that would most effectively benefit the Ainu people. Furthermore, the degree to which this space would be managed or operated by the Ainu, and thus whether this project would contribute to actual Ainu self-determination continues to be an open question.

Return of ancestral human remains

2017 marked some progress over the issue of the return of ancestral human remains.[12] With support from the Japanese government, the Ainu community saw the return, by a Germany research group, of an Ainu skull stolen from a grave in Sapporo in 1879, and an agreement by the Australian government to repatriate Ainu human remains held by Australian museums. Domestically, Hokkaido University agreed to return 63 remains to the Ainu community of Urahoro village to settle a lawsuit, and to return an additional 13 human remains to the community if they were not claimed by family members in a year. The 63 were remains returned to their community after 86 years, and buried with an icarpa commemoration ceremony in August. The university also returned the human remains of four Ainu people to the Ainu community of Monbetsu in September pursuant to a court settlement from November 2016 (see The Indigenous World 2017), and returned an additional four human remains to the Ainu community of Urakawa in October. While this brings the total number of human remains repatriated by Japanese universities to 83 (including 12 in 2016), as of April 2017 the government reported that 1,676 human remains of Ainu people and an additional 382 boxes of human remains continued to be held by 12 universities.[13] In addition to what many see as slow progress, community activists were angered by the revelation in February 2017 that the Ainu Association of Hokkaido had signed a memorandum of understanding with Sapporo Medical University in 2006 to allow DNA testing of Ainu human remains. Community activists lodged a protest with Sapporo Medical University, which holds the second largest number of Ainu human remains at 294. The community also held a ceremony on the campus of the University of Tokyo, the holder of the third largest number of Ainu human remains (201), to demand their return. Finally, activists indicated that they would continue the legal battle with Hokkaido University, the holder of the largest number of human remains (1015)[14], vowing to file lawsuit for the return of an additional 200 human remains.

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10. While the Diet passed a resolution in 2008 recognizing the Ainu as indigenous people, this would be the first time that such a stipulation would be incorporated into law, and function to clarify the government's stance on the Ainu.
11. While the Hokkaido Prefectural Government has previously conducted 7 surveys on the livelihood of Ainu people (approximately once every 7 years, with the last in 2013), it only covers Ainu within Hokkaido.
12. Throughout 19 to 20 centuries, many foreign and Japanese researchers paid attention to Ainu as "a research object" because of a special interest within specific research field such as a physical anthropology. For example, Kodama Sakuzaemon (1929 – 1970), professor in the Faculty of Medicine at Hokkaido University collected more than a thousand Ainu skeletal human remains without any informed consent with community or family members, and some cases, locals were forced into to assist his project. (2014, Hudson, Lewallen, and Watson)
13. Compared to 1,636 remains of Ainu people and 515 boxes of remains in January 2014; the increase in the number of remains and the decrease in number of boxes in part reflects completion of identifying remains kept in boxes to a specific person.
14. As of April 2017, presumably does not reflect the 71 remains returned later in 2017.

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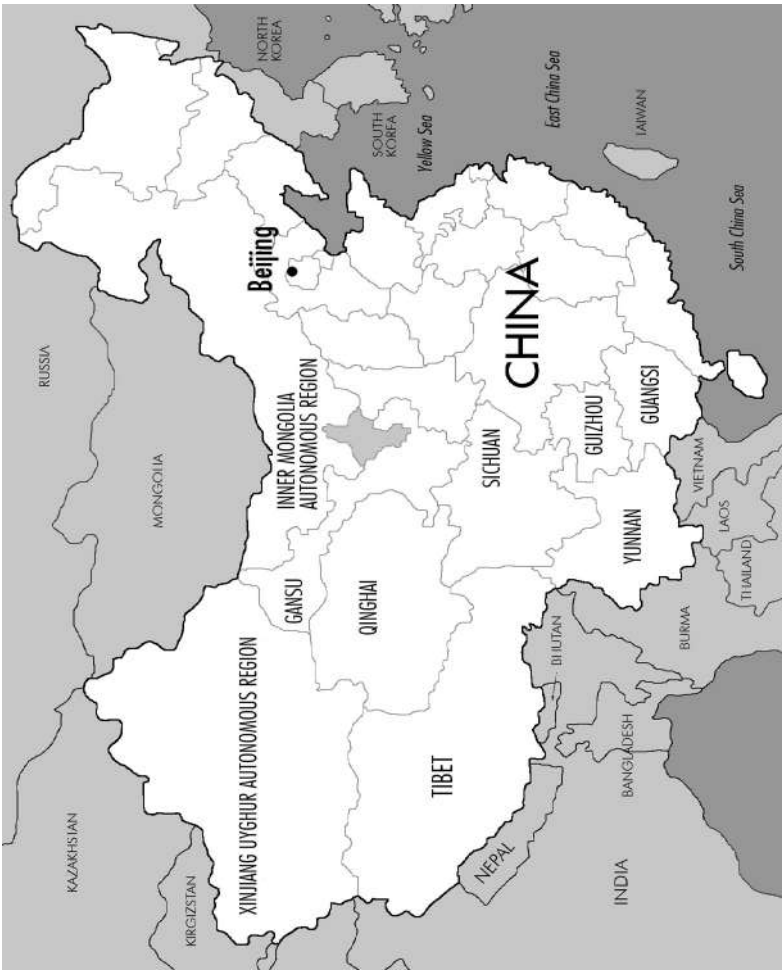
CHINA


NORTH KOREA
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Yellow Sea
East China Sea
TAIWAN
South China Sea
Beijing
CHINA
RUSSIA
MONGOLIA
INNER MONGOLIA AUTONOMOUS REGION
SICHUAN
GUIZHOU
GUANGSI
VIETNAM
LAOS
THAILAND
YUNNAN
GANSU
QINGHAI
BURMA
BHUTAN
BANGLADESH
XINJIANG UYGHUR AUTONOMOUS REGION
TIBET
NEPAL
INDIA
KAZAKHSTAN
KIRGIZSTAN

Officially, China proclaims itself to be a unified country with a diverse ethnic composition, and all ethnic groups are considered equal in the Constitution. Besides the Han Chinese majority, the government recognizes 55 ethnic minority peoples within its borders. According to the latest government data (report published in 2012) compiled from the 2010 national census, the ethnic minority population stands at 111,964,901 persons, or 8.4 % of the country's total population. There are still "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 an important basis for the governance of ethnic minority peoples. It includes establishing ethnic autonomous regions, setting up their own local administrative governance and the right to practice their own language and culture. "Ethnic autonomous regions" make up approximately 60% of China's total land area. The Chinese government does not recognize the term "indigenous peoples," and they rarely participate in international meetings related to indigenous peoples' issues. The Chinese government voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples, but from its attitude towards ethnic minorities, the UNDRIP does not, in its opinion, apply to China.

Political assimilation of indigenous peoples

The rise of China as a power on the world stage has gone hand in hand with the government pushing for an accelerated pace of internal consolidation to promote national unity. This has resulted in the readjustment of policies towards ethnic minority peoples. The doctrine of China as "a multi-ethnic nation" has given way to the politicalized slogan of "The Great Chinese Family." Thereby the government's past approach to bring about the co-existence and economic prosperity of all ethnic groups in China has shifted to become more of a policy for "assimilation of ethnic minority peoples."

The focus of China's government planning and new programs, in regions where ethnic minorities live, prioritises new constructions and infrastructural projects, and less on providing support for the people themselves.

National Five-Year Plan

The Chinese State Council in January released the report on the "13th Five-Year Plan for Promoting Ethnic Minority Development in Ethnic Minorities and Less Population Areas." This is the central government's policy document, with defined goals and guidelines on social and economic development for ethnic minority regions over the next five years. It calls for these regions to comprehensively reach into a prosperous society by 2020, in synchronization with the national levels. The set targets are for ethnic minority areas to achieve the economic index, the average annual growth rate of GDP is at more than 8%, to alleviate poverty of 18.05 million of the rural poor, to maintain arable cultivation land at 319 million mu units (1 mu=100 m square area), among the other key goals.[1]

Then in June, the State Council released the policy document for "developing border regions and improving income of border residents" under the 13th Five Year Plan. The report calls for accelerated investment and development in various sectors across China's border regions, including transportation, energy, water conservation, information technology, and also promotes "cultural services" and "urban construction."

Along with economic development programs to raise income levels, there are promises of state support to improve education, health and social services, while also imposing stronger control against foreign influence, and preserving China's territorial integrity.

The report states, "Ethnic unity should be protected and border defence be enhanced. Service and governance in grassroots authorities should be improved. Illegal behaviours, such as smuggling, drug and gun trafficking, should be strictly cracked down on."[2]

It specified nine regions for the plan to be implemented, all have predominant or significant populations of ethnic minority peoples, including Tibet, Inner Mongolia, Xinjiang Uyghur and Guangxi Zhuang autonomous regions, Yunnan province in the southwest, Gansu province (in northwest bordering Inner Mongolia and Xinjiang), and Heilongjiang, Jilin, and Liaoning provinces (in the northeast, historically the Manchuria region).

Stress on Economic Development

These two documents are the central government's two White Papers for state policy implementation and development programs for ethnic

minority peoples for the next five years. Within the many pages of text are target figures and economic indices, and the mandates to implement policies and programs to reach towards a more prosperous and harmonious society for ethnic minority peoples and border regions.

It is clear that the central focus by the Chinese government is on "economic development." The state leaders and planners believe that the goals of poverty alleviation and improvement of income are the best ways benevolence can be shown to the ethnic minority peoples.

There was no surprise to see stress on economic planning and development programs in these documents. Top government officials have long promoted the "Chinese dream," to become a strong nation with economic prosperity and social harmony, which were accompanied by painting visions of cheerful people enjoying life in happiness with beautiful landscapes in the background.

However, the question has been repeatedly raised: how can the two White Papers achieve those goals, when the government is facing political unrest and ethnic conflicts in Tibet, Xinjiang, Inner Mongolia, and other hinterland regions?

Land grabbing in Central Mongolia

Ethnic Mongolians in China's Inner Mongolia Autonomous Region continued to face land grabbing by groups with political connections and business interests, as most of these are owned by the Han Chinese. The situation has resulted in forcible displacement, loss of traditional pastureland, pollution, and environmental degradation.

Together the Beijing government and the local authorities had failed to deal with the violation of rights and grievances over land expropriation, which has resulted in tension among ethnic groups. In the 2011 in Xilinhot City, a Mongolian herdsman named Mergen was run over and killed by a Han Chinese truck driver working for a Chinese mining company. Mergen tried to stop the truck from passing onto his pastureland, as the mining company was operating in the area, and the incident led to a series of protests by ethnic Mongolians. The expropriation of land has caused serious troubles through the past years, and ethnic Mongolians said the situation has worsened. Their grievances have not been addressed despite numerous demonstrations petitioning the authorities and the filing of complaints for investigations to be conducted.[3]

Land protest incidents

Local Mongolian people from Hanggin Banner, Urad Middle Banner and Otog Banner areas on April 17 went to Hohhot City, capital of Inner Mongolia, to petition the central government's inspection agency. They requested an investigation into the illegal takeover by local authorities of private land belonging to their families, forests and pasturelands in over 30,000 mu units in their area.[4]

A herdsman family in Uxin Banner held a protest on May 10, against the expropriation of their private pastureland by relatives of a local politician.[5] A Mongolian woman from Xilin Gol League area petitioned on May 13 for the return of her family's pastureland, which was expropriated by people in the local village council. She said the land grabbing has deprived her only source of income and created an economic hardship for her family.[6]

In another case, a woman herder from Jarud Banner's Arikundu-leng Town petitioned the government for the return of her family's 2,000 mu units of pastureland on June 14, as she asserted it was taken over by an official of the local village's Communist party.[7]

A sit-in protest at the local government building was by held on August 4, when over 100 local residents of Ewenk Autonomous Banner of Hulunbuir area participated in the event. They objected to the ban imposed by the local government, prohibiting them from herding activities at their traditional pastureland, but permitted commercial use by outsiders. Officials called on the police force to break up the protest, where many were beaten and about a dozen people were arrested. During the same protest, a Mongolian herdsman from Otog Front Banner area told reporters that the local village's Communist party secretary illegally expropriated his family's pastureland at about 2,000 mu units in area.[8]

Pastureland degradation and pollution

Pollution problems and environmental degradation have led to ethnic strife. The expropriated pastureland was in many cases sold by local government officials to business interests for commercial exploitation or through licensing and rental deals. All of these transactions took place without the Free, Prior and Informed Consent of the herders.

A large protest was held in Ongnuid Banner area on April 24, in op-

position to the Chinese state enterprise COFCO (China National Cereals, Oils and Foodstuffs Corp). About 400 locals demanded COFCO to relocate its hog factory farming operation out of their area. They cited the environmental pollution brought on by the hog operation, the contamination of surface rivers and underground water by hog feedlot effluents and denounced the company's practice of throwing out dead hogs on the pastureland used by local herders.[9]

Violence broke out in the Zhasake Town of Ejin Horo Banner on June 26, where the local Mongolian people protested against a company running a coal mining and chemical fertilizer operation in the area. Protesters said over 1,400 mu units of pastureland were forcefully expropriated by government officials in order to build a railway and set up a coal depot station. The protesters pointed out that the land was sold to a mining company at low price, and now the local villagers have to endure very serious pollution problems.

Dumping of waste materials from coal mining polluted their pastureland, and the company also operated a chemical fertilizer factory, which directly pumped the toxic chemical effluent into a local salt lake. At one time, it was a beautiful lake inhabited by many bird species and a good source of water for the villagers, but protesters said the pollution has turned it into a dead lake with most of the wildlife already been killed off.[10]

Numerous demonstrations took place throughout Inner Mongolia in 2017 to protest land grabbing and environmental degradation and to seek justice through petitions presented to local authorities.[11] The root of this injustice is corruption, greed, and abuse of power by government officials and local bureaucrats. These problems show that the goals and good intentions of government White Papers are only empty rhetoric because it is obvious that government officials cannot execute the mandates to improve people's livelihoods and uphold the law against rights violations and illegal conduct.

Guizhou coalmine landslide

An investigation done in China's southwest Guizhou province proves that the coal mining operation was responsible for causing a landslide disaster in the Bijie area's Pusa Village, where the residents are mainly the ethnic Miao people.

An unstable hill slope collapsed and buried a large area of the village on August 28. After days of rescue effort, local authorities tallied 27 deaths, the destruction of 250 houses with about 500 villagers directly affected by the disaster.[12] For several years villagers had been lodging petitions with the local government after a resource company began coal mining in the area a few years ago. The villagers cited the hill's geological make-up of karst topography of limestone and sedimentary rocks as a major hazard, and therefore they insisted the government should not grant the mining license and should halt all operations. Villagers said the local government had contributed to the disaster, because the officials did nothing about the persistent complaints, and allowed the mining to continue.

Qinhai Tibetans protest mining

Mining operations Qinghai, Gansu, and Yunnan provinces have also resulted in environmental degradation and pollution of water sources. The local Tibetan population of Qabqa Township Gasi Village of Qinghai Province has protested for over two decades against a limestone quarry in the area. Under a new government regulation, most of the mining and quarrying operations were temporarily shutdown, pending new approval. However, in the Qabqa area, since the local officials colluded with resource companies, the limestone quarrying has continued unabated, which has destroyed much of the ecosystem and ravaged the wildlife in the area.[13]

The illegal sand and gravel mining in the rivers has also been a long-running source of conflict. Such unregulated activities by companies has caused huge destructive effects on the river systems in China's hinterland regions, and the damage has severely impacted the villagers and ethnic minority peoples who depend on the water and fish for their livelihood. Local officials often ignore the illegal activities and allow the quarrying to go on after receiving bribes and business benefits from the companies.[14]

Harsh repression in Xinjiang

Lawmakers in Xinjiang Uyghur Autonomous Region (also known as East Turkestan) passed an "anti-extremism legislation" and the law went

into effect on April 1. It prohibits behaviour that "promotes extremism," which includes wearing long beards and full-face covering. The law also forbids the use of anything associated with extremism, which is defined as "using radical religious beliefs to interfere with others' lifestyles and comments."[15] This law also prohibits giving babies names that have religious and separatist connotations, thus names including specific words of Islam, Koran, Mecca, and place names in central Asia are banned.[16] International observers have condemned the legislation as a severe encroachment on the lives of the Uyghur people, and the fact that it violates China's obligation to comply with international human rights conventions.

To tighten the control on Uyghur people, Chinese authorities have pushed ahead with a comprehensive campaign to collect and put into computerized files biographical data of all residents in Xinjiang between the age of 12 and 65, including DNA samples, fingerprints, iris scans, and blood types. The legal basis for the biometric collection scheme is detailed in the official government documents, "(Xinjiaing Uyghur Autonomous) Region Working Guidelines on the Accurate Registration and Verification of Population" and "the Population Registration Program." Officials said the two programs are projected for use in scientific decision-making, for promoting poverty alleviation, social stability, and better management of the people.[17]

Chinese assimilation drive

Starting in August, the central government initiated a drive to hire over 30,000 teachers, government workers and law enforcement officers from other Chinese provinces. The new hires are enticed by higher salary and other benefits to attract them to relocate and work in Xinjiang.[18] According to officials, the effort is to "change" the culture and customs of Uyghurs and other ethnic minority peoples to expedite assimilation into the main Chinese society.[19]

On the education front, Xinjiang education board has sent out official notifications in October, to promote the teaching of Chinese Mandarin, the national language, starting with elementary school, and to prohibit all teaching courses and textbooks in Uyghur and Kazakh languages.[20] For ethnic Kazakh people, in the past they were able to visit the neighbouring Kazakhstan with the issued "green card" that facili-

tated their travels. However, under the new restrictions enacted last year, the "green card" will be confiscated upon their return. Therefore, the ethnic Kazakhs have lost the freedom they once enjoyed to freely cross the border, and now applying for a passport for people in Xinjiang has become much more difficult than ever before.[21]

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TAIWAN

There are 16 officially-recognized indigenous groups numbering 559,036 persons (2017), or 2.37% of the national population. However, the figure excludes the ten Pingpu ("lowland plains") indigenous peoples, numbering around 400,000, who are denied official recognition.

Taiwan's indigenous peoples face erosion of traditional cultures and languages under assimilation pressure from main society, and due to the state-imposed policy to use Mandarin Chinese. The government ministry known as the Council of Indigenous Peoples (CIP), set up in 1996, works to protect the rights and welfare of indigenous peoples. The relevant national laws are the Indigenous Peoples Basic Law (2005), the Education Act for Indigenous Peoples (2004), the Status Act for Indigenous Peoples (2001), and Regulations regarding Recognition of Indigenous Peoples (2002). Taiwan's Constitution guarantees political representation for indigenous peoples, with a current eight indigenous legislators out of 113 seats (7 percent) in the national parliament, and there is also guaranteed indigenous representation at local government level for the six major cities and many township councils. Indigenous peoples manage and operate Taiwan Indigenous Television (TITV) and a number of radio stations under the national public media network.

Since Taiwan is not a member of the United Nations, it has not been able to officially ratify ILO Convention 169, nor vote on the UN Declaration on the Rights of Indigenous Peoples.

Law to promote indigenous languages

Among the most important law enactments for indigenous rights in 2017 was the passing of the "Indigenous Language Development Act" by Taiwan's Parliament (Legislative Yuan) in May. This law grants official status to the indigenous languages, promotes the teaching and speaking of mother tongue in indigenous districts, and in those regions with more than 1,500 indigenous inhabitants. It guarantees the use of mother tongue for indigenous peoples in court cases and judicial procedures, and the right to receive court documents and government notifications in their own language, while requiring the judiciary to hire interpreters in indigenous districts.[1]

Mining on Truku land

Taiwan's Parliament addressed the impact of the extractive industries in amending the Mining Act. The law amendment, as proposed by the

ruling party legislators, would require more stringent environmental impact assessments, stricter monitoring, a suspension of the operating license if serious violations are found (no definite rule on suspension before). Moreover, to require any new mining operations to seek the FPIC of the affected IP community on whose traditional territory it is to be located. This became a rallying point for the indigenous Truku community of Hualien County. They have fought for many years against limestone quarrying and cement production by the Asia Cement Corp of Taiwan. The amendment process dragged on without resolution to the end of the year, however, due to disagreements between legislators of various parties, corporate interests, and opposition from indigenous and environmental groups.[2]

The quarrying and cement production, on a 25-hectare site, is located on a mountain slope above Truku community, which activists say is part of the indigenous traditional territory, and which they allege the company obtained through forged documents and other illegal means.

The company is seeking to extend its mining permit for another 20 years but Truku people and environmental groups organized a mass rally in Taipei City in June and a road-block protest in November, to demand the inclusion of "Free Prior and Informed Consent" in the Mining Act, and to terminate the mining permit.[3]

Truku people said the mining operation over the past two decades had generated over NT$50 billion (around US$1.68 billion) of company profit, while resulting in environmental and water pollution, and had destroyed the landscape belonging to indigenous villages and the Taroko National Park. The land protest is still ongoing.

Human rights expert review

International human rights experts were invited by the Taiwanese government to a round of consultations on the "Second National Review Report" of the two Covenants (ICCPR – International Covenant on Civil and Political Rights, and ICESCR – International Covenant on Economic, Social and Cultural Rights), held in Taipei from 16 to 20 January.

Among the experts were Jannie Lasimbang of Malaysia, former independent expert of the UN Expert Mechanism on the Rights of Indigenous Peoples and former Secretary-General of Asia Indigenous Peoples' Pact (AIPP), along with Manfred Nowak of Austria, former UN Special

Rapporteur on Torture, and Eibe Riedel of Germany, former vice chairman of the UN Committee on Economic, Social and Cultural Rights.[4]

Indigenous NGOs and civil society groups participated in the consultation (with interpreting provided) and they made recommendations for new policies and measures, with a special focus on the denial of indigenous status to Pingpu ethnic groups (lowland plains aboriginal peoples), along with violations of land and natural resource rights by commercial, mining, and tourism development.

For the ICESCR report, the experts recommended that the Government of Taiwan "apply the classification of indigenous peoples as identified by themselves, and guarantee them full and equal participation and representation".

Lasimbang wrote, "The recommendations of the Review Committee focus on ensuring that indigenous peoples, in particular also the Pingpu peoples are involved in this identification, and their guarantee of full equal participation and representation."

They recommended the government "develop effective mechanisms to seek the free, prior and informed consent of indigenous peoples on development plans and programmes that are affecting them to ensure that they do not infringe on the right of indigenous peoples, and such mechanisms should comply with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international standards".

The experts praised the government's efforts over the past year: "(We) welcome the historic apology to indigenous peoples by President Tsai Ing-wen in August 2016. The Committee endorses the ongoing identification and recognition of traditional lands and territories by government agencies, to be carried out in consultation with, and with direct participation of, indigenous peoples."[5] The identification and recognition mentioned by the committee refer to the still ongoing efforts by the central government to support the Council of Indigenous Peoples, IP groups and activists in identifying different IP groups' ancestral domains and their traditional territories (including Pingpu groups).

National museum project

Council of Indigenous Peoples Minister Icyang Parod (Amis) announced an "National Indigenous Peoples Museum" in September, with a planned

budget of NT$2.68 billion (around US$90.07 million), which will be located in southern Taiwan's Kaohsiung City Cheng Ching Lake Park area.[6]

It was originally planned for the greater Taipei area but the new site was chosen after assessment by a review committee of indigenous leaders and academics. Construction will start in 2018, and committee member Professor Pasuya Poicuno (Tsou) said, "The Kaohsiung site provides a larger area, and offers advantages in public transportation, highway access, and natural landscape attributes."

Parod said the museum will serve all indigenous peoples of southern Taiwan, including the indigenous communities of Bunun, Rukai, Paiwan, Tsou, Puyuma, and Pingpu groups of Siraya, Makatao, and Tavorlong. The plan calls for the museum to become a tourism and research centre for Austronesian cultures, and to enhance Taiwan's links with the indigenous peoples of Southeast Asia.

Consultation on indigenous transitional justice

Following President Tsai Ing-wen's official apology to indigenous peoples, the "Indigenous Historic Justice and Transitional Justice Committee" was set up for consultation and to present recommendations to the government.[7]

Indigenous leaders and activists endorsed the high-level committee under the Presidential Office, saying that Taiwan had made good progress in protecting indigenous rights and redressing past injustice, and that it was a good model of government practice for Free, Prior and Informed Consent.

The committee members consisted of representatives from the 16 recognized indigenous groups and three representatives from the Pingpu groups, along with experts and members from government agencies, including Council for Indigenous Peoples Minister Icyang Parod, with the work coordinated through five subcommittees focused on "Land Claims", "Culture", "Languages", "History", and "Reconciliation".

Among the committee's tasks are: to check into violations against indigenous peoples throughout history; to formulate measures to provide compensation for deprivation of indigenous rights; to implement UNDRIP and the relevant international rights conventions; to collect and review information regarding indigenous historical justice and transitional justice.

The two pressing issues faced by the committee are: 1. official indigenous recognition for Pingpu ethnic groups, and inclusion of their indigenous rights protection, and 2. land rights and claims on ancestral domain territory.

Demands by Pingpu peoples

Elders and activists of Pingpu groups continued to voice their demands and hold protests because they are still denied their official recognition, excluded from indigenous rights protection, and still not covered by the CIP's mandate.

Despite the promise of official recognition by President Tsai (see The Indigenous World 2016) and approval of the policy by the Executive Yuan, the parliament has not yet legalized it by passing the required amendment to add "Pingpu Indigenous People" in the "Status Act for Indigenous Peoples". This is because it was blocked by legislators who are opposed to granting indigenous status and rights protection to the 10 Pingpu groups.[8]

As a result, the amendment bill is stalled and will await passage in 2018 as legislators have scheduled five public hearings to solicit opinions, while also requiring negotiations between the various political parties. The Pingpu groups are therefore still excluded and not yet recognized as an indigenous people of Taiwan. [9]

Throughout the process, the ruling Democratic Progressive Party (DPP) government gave its support to "restoration of the Pingpu groups' indigenous identity", and President Tsai declared, "The amendment will give the Pingpu ethnic groups formal legal status as indigenous peoples... We all know that the Pingpu ethnic groups do not constitute a single tribe. They belong to many separate tribes. They have rich culture, and their own complex histories. If we are to address the issue of historical justice for indigenous peoples, we cannot ignore Pingpu issues."[10]

Protest on land rights

Some indigenous activists have held a sustained protest focused on land rights and for the return of traditional territories. It started when the CIP in February announced guidelines on the delineation of tradi-

tional indigenous territories, mainly related to government-owned land when people from a local indigenous community apply for restoration of claims to their traditional territory, along with rights of use over the forest and natural resources.[11]

The guidelines came after 12 consultation meetings across the nation, with the participation of over 800 indigenous peoples, public officials, and experts. CIP Minister Parod said, "This is a milestone to achieve land justice for indigenous peoples... CIP will work in the coming years to restore over 800,000 hectares of traditional territory land to indigenous communities."[12]

However, the protesters opposed the CIP's decision to exclude private land, saying that some indigenous traditional territories were privatized in the past, including those seized and privatized by the Japanese colonial government, and by the Kuomintang Chinese Nationalist government in the post-World War II era.[13]

They said the guidelines would exclude land deemed as "private", that held by private citizens, corporations and landowners who have sold the land to farmers or businesses for tourism, agriculture, real estate development and other economic activities.

The "land rights" protest began by camping out in front of the Presidential Office Building. The Taipei City police later cited a "violation of traffic regulations [which] posed a danger to drivers and pedestrians", however, and dismantled the camp on 3 June. The protesters regrouped, however, and continued the campaign at the entrance to a nearby Taipei subway station.[14]

Ancient jade trade

A prominent archaeologist at the Academia Sinica, Prof. Liu Yi-chang, in July said that based on studies of the ancient jade trade, Taiwan was the homeland of Austronesian peoples in the prehistoric times. His research showed that Taiwan's indigenous tribes had built up a seafaring trade network centred on Taitung, on Taiwan's southeast coast, around 4,000 years ago. [15]

He said the indigenous sailors carried Taiwan's jade ornaments, pottery and tools on rafts made of bamboo and wood, as evidence showed the trade had reached Luzon, Hainan Island, Vietnam, Borneo and Indochina.

Carbon dating indicated that Taiwan had the oldest of these artefacts, followed by sites found in other Southeast Asian regions. Liu said the jade ornaments, with a unique chemical signature showing their origin in Taiwan's east coast mountains, were highly valued and extensively traded by the ancient Austronesian trade network.

"The Taiwan jades were mined in the mountains, then crafted into ornaments in Taitung, then transported overseas via the seafaring trade network," said Liu. As Liu has suggested for the Austronesian homeland model, Taitung was its capital city with a bustling population, the ancient trading and cultural hub of the Austronesian people of the Asia Pacific region.[16]

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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.

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.

In 2017, the indigenous peoples of the Philippines faced heightened threats to their land, territories and resources from mining, dam projects and the expansion of commercial monocrop plantations. Indigenous peoples also experienced increasing political repression as the number of victims of human rights violations in the country continued to rise.

Mining in ancestral lands

Large corporate mining operations for gold, copper and nickel continue to wreak havoc in indigenous territories, particularly those of the Lumad in Caraga region, the Igorot in the Cordillera region, and the Ayta in Zambales province. The extensive destruction of watersheds and farmlands, and the silting up of rivers and coastal waters due to mining came to light as a result of a mining audit conducted by the Department of Environment and Natural Resources (DENR) since 2016. This led then-DENR Secretary Gina Lopez to order the closure of 23 mines and suspend six other mining operations on 2 February 2017.[1] Sec. Lopez also cancelled 75 Mineral Production Sharing Agreements (MPSA) located in watershed areas, many of which were in the exploratory stage.[2] Lopez further ordered a ban on open-pit mining in the country on 27 April.[3]

Indigenous peoples, who had long been demanding the closure of the mines and a ban on open-pit mining, lauded the Secretary's decisions.[4] Lopez's orders met with strong opposition from the mining industry sector, however, who lobbied for and gained the rejection of Sec. Lopez's confirmation as DENR Secretary. Appointed to replace her was Sec. Roy Cimatu, a retired general and former chief of the Armed Forces of the Philippines, who has no known track record of environmental defense. Cimatu supported the Mining Industry Coordinating Council's recommendation to lift the open-pit mining ban, although President Duterte decided to keep the ban in place.[5] In his 2017 State of the Nation Address,[6] President Duterte warned "all mining operations and contractors to refrain from unbridled and irresponsible destruction of our watersheds, forests, and aquatic resources". Despite this, the earlier DENR orders for mine closures, mine suspensions and cancellation of mine contracts have yet to be implemented.

In addition to the ongoing mining operations, there are numerous mining applications over huge tracts of indigenous peoples' lands.

These include the Cordillera Exploration Co., Inc. application, covering 108,085 hectares of land in three provinces of the Cordillera and parts of Ilocos Sur province. As of June 2017, there were 229 approved mining applications in ancestral territories, covering more than 540,000 hectares of ancestral lands.[7]

Dam projects affecting indigenous peoples

The current administration plans to construct up to 10 dams by 2022 to provide irrigation to agricultural areas nationwide.[8] The Tumandok indigenous people and other affected communities are staunchly opposing the 11-billion-peso Jalaur River Multipurpose Project II and the 14.8-billion-peso Panay River Basin Integrated Development Project, both located on the island of Panay, due to fraudulent Free Prior and Informed Consent. An International Solidarity Mission from 16-18 July 2017 found that the Jalaur dam threatens to displace 17,000 Tumandok, affecting 16 Tumandok communities and their farmlands. The Jalaur Dam Project is funded by the Export-Import Bank of Korea and is targeted to commence in 2018.[9]

The controversial Balog-Balog Multipurpose Project commenced construction in 2017, more than five decades since its inception. This despite a warning from analysts of the Philippine Institute of Development Studies "that design problems and the adequacy of sustained water supply for the Balog-Balog Dam poses serious challenges to the viability and efficiency of the project for irrigation services, as well as other uses."[10] The 13-billion-peso second-phase project is expected to provide irrigation to 34,410 hectares of farmland in 10 municipalities of Tarlac province. However, it will also displace the Aberlin and Umay subgroups of the Ayta indigenous peoples of Central Luzon.

In the Cordillera, the National Commission on Indigenous Peoples (NCIP) approved the 52 MW Chico River Hydroelectric Dam Project, which will affect several tribes in Kalinga province.[11] In one community alone (Makanyaw village), the dam will inundate 25 hectares of rice fields and coffee plantations as well as a burial site.[12] The affected communities stated their opposition to the project in several mobilizations and dialogues with the NCIP, including a petition. Following this, the NCIP decided to resolve the issues surrounding the project before proceeding.[13]

To address the issue of dam construction, the Katribu National Alliance of Indigenous Peoples, together with other support groups and non-governmental organizations, held a roundtable discussion from 19-21 November 2017 on the Philippine Energy Roadmap from 2017 to 2040. This activity helped indigenous peoples better understand the government's policy on large dams and the viability of micro-hydropower systems in indigenous communities.

Expansion of monocrop plantations

Indigenous peoples, especially the Lumad in Mindanao and the Pelawan in Palawan province, are facing the encroachment of monocrop plantations onto their ancestral lands. They are calling for a halt to the expansion of banana and oil palm plantations, which are threatening their agricultural lands and other sources of livelihood. Dole Philippines, one of the world's largest producers and marketers of fresh fruit and vegetables in over 90 countries, has added 3,000 hectares of land to its plantation facility in South Cotabato and aims to add 5,000 hectares more.[14] In Caraga region, Filipinas Palm Plantations Inc. and Agusan Plantations Inc. are targeting an additional 200,000 hectares for the expansion of oil palm plantations. Meanwhile, more than 24,000 hectares of rice paddy has been converted into banana plantations by Dole Philippines and the Sumifru corporation.[15] In response, Anakpawis Partylist filed House Resolution No. 918 in Congress on 5 April 2017 calling for an investigation, in aid of legislation, into the demand for a nationwide moratorium on plantation expansion by giant companies such as Del Monte, Sumifru and Dole.[16] On 9 May 2017, the House of Representatives referred the resolution to the House Committee on Agriculture and Food.[17] The said committee is yet to report on the progress of its investigation.

Martial law and the Marawi crisis

On 23 May 2017, President Duterte issued Proclamation No. 216 declaring a 60-day martial law in the entire Mindanao Island due to a possible rebellion. This was triggered by a clash between government troops and local terrorist group Maute, in Marawi City during a government offensive to capture Abu Sayyaf's leader, Isnilon Hapilon.[18] The Abu Sayyaf

and Maute groups are believed to be linked to the Islamic State of Iraq and the Levant (ISIL/ISIS). Duterte also suspended the privilege of writ of habeas corpus.[19]

This started the battle in Marawi known as the longest and bloodiest urban fight in the history of the Philippines, lasting for five months until Isnilon Hapilon and Maute leader, Omar Maute, were killed on 16 October.[20] The people of Marawi paid a heavy price in the course of the crisis. The death toll is estimated at 165 government forces, 974 militants and 87 civilians. Data from the Department of Social Welfare and Development pegged the number of displaced persons at 77,170 families.[21] The Marawi crisis left the city of Marawi in total ruins, ravaging the cultural and heritage centre of the Moro people, which is also known to have rich mineral deposits.

On 22 July, the Philippine Congress extended martial law until 31 December "to authorize government forces to enforce continued offensives against the Maute terror group in Marawi City." On 13 December, the Congress further extended the martial law until the end of 2018, including the suspension of the privilege of the writ of habeas corpus "to totally eradicate Islamic State-inspired terror groups."[22]

However, martial law has resulted in increased militarization of Lumad communities and cases of extrajudicial killings and other human rights violations. Under martial law, thousands of Lumad indigenous peoples have been forced to evacuate due to military operations. The massacre of 8 T'boli and Dulangan Manobo indigenous peoples in Lake Sebu, South Cotabato on 3 December is proof of the brutality.[23] The victims of the Lake Sebu massacre staunchly opposed land grabbing by David M. Consunji Inc. (DMCI). They had recently reclaimed 300 hectares of their ancestral land that had been grabbed by DMCI for coffee plantations. They were about to harvest their crops when the massacre happened. Aside from the eight who were killed, six more went missing and have yet to be found.[24]

Militarization and human rights violations

President Duterte has openly attacked human rights advocates and made anti-people pronouncements such as threatening to bomb Lumad community schools[25] and not caring for the plight of the poor.[26] Despite mounting local and international clamor for an end to extrajudicial killings in the

Philippines, the bloodbath in Duterte's war on drugs is continuing, and has reportedly already claimed the lives of an estimated 13,000 people.

A culture of impunity continues to reign in the Philippines. Since February 2017, indigenous peoples have experienced unrelenting human rights violations under the government's *Oplan Kapayapaan* counter-insurgency operations, marked by an all-out-war policy against the New Peoples' Army, martial law in Mindanao, the war on terror, and the threat of a "crackdown" against so-called legal fronts of communist rebels. As of 13 December 2017, KATRIBU had recorded 37 cases of extrajudicial killings of indigenous peoples, 62 illegal arrests, 21 political prisoners, 20 incidents of forced evacuation affecting 21,966 indigenous peoples, more than a hundred people facing trumped-up charges, and the forcible closure of 34 Lumad schools since Duterte assumed the presidency in July 2016. Environmental and human rights defenders actively defending ancestral lands against plunder and encroachment by State and private corporations for various projects are also included.

Indigenous peoples also fear that President Duterte's declaration of the Communist Party of the Philippines (CPP) and the New People's Army (NPA) as terrorists[27] could mean more arrests and extrajudicial killings based on false accusations that they are supporters of the CPP-NPA. Experience shows that many victims of extrajudicial killings, harassment and trumped-up charges are falsely accused of being members of the NPA. Such was the case in a recent series of harassments and trumped-up charges filed against six women members of the Cordillera Peoples' Alliance and other indigenous peoples' organizations.

Peace talks with the National Democratic Front

On 22 November 2017, President Duterte issued Proclamation 360 terminating the peace negotiations between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).[28] The proclamation was made as negotiators from both sides had been making great strides by preparing common drafts of an agreement on socio-economic reforms for the scheduled resumption of the peace talks on 25-27 November in Norway. The Office of the Presidential Adviser on the Peace Process[29] and the multi-sectoral alliance BAYAN[30] both acknowledged that this was the greatest advance in the history of the peace talks between the GRP and NDFP. Indigenous

peoples have called for the continuation of peace talks in order to address the roots of decades-long armed conflict in the country.

Lakbayan 2017 protest caravan

To protest the intensifying development aggression, militarization and human rights violations, 2,600 indigenous and Moro people successfully carried out, under the banner of the *SANDUGO* movement of national minorities for self-determination, the second *Lakbayan* or Protest Caravan of National Minorities for Self-Determination and Just Peace from 31 August to 21 September 2017 in Metro Manila.[31] Once again, the *Lakbayan* served as a platform to inform the public of the current situation of indigenous peoples. The protesters expressed outrage at the Duterte regime's fascist attacks against national minorities, citing cases of continued plunder of ancestral lands and the accompanying human rights violations and militarization of indigenous communities. They called for an end to martial law, corporate mining, other destructive projects and US intervention in the Philippines. They also demanded the withdrawal of State military troops from indigenous communities and the passage of a People's Mining Bill. More importantly, *Lakbayan* strengthened solidarity among national minorities and advocates, and inspired indigenous peoples to continue fighting for self-determination and ancestral land rights.

ASEAN Summit, East Asia Summit, and US President Donald Trump's Visit

The 31st Summit of the Association of South East Asian Nations (ASEAN) and the 12th East Asia Summit were held in Manila on 13-14 November 2017, with the participation of 20 Heads of State and Government representatives, including US President Donald Trump. The summits issued declarations and agreements that included dealing with terrorism in the region and various economic agendas. Trump also announced that the US would be giving US$ 14.3 million for the rehabilitation of Marawi and US$ 2 million to support Duterte's war on drugs.[32] The summits and Trump's visit were met with a series of protests in Manila joined by indigenous peoples from various regions of the country. Indigenous peoples raised concerns over

the ASEAN liberalization of trade and investments, ASEAN and the East Asia Summit's failure to address human rights, and the USA's support for the war on terror and the war on drugs in the Philippines. Indigenous peoples also participated in the ASEAN Civil Society Conference/ASEAN Peoples' Forum from 10 to 13 November and made interventions to include indigenous peoples' concerns in the CSO Statement. A side event was organized by Asia Indigenous Peoples' Pact, Asia Indigenous Peoples' Network on Extractive Industries and Energy (AIPNEE) and other organizations to highlight the surge of extractive industries in ASEAN and its impacts on indigenous peoples. An Indigenous Peoples' Task Force for ASEAN was revived to sustain advocacy for the recognition of indigenous peoples' rights in ASEAN decisions and programs.

UN response

The UN Human Rights Council's (UNHRC) Universal Periodic Review (UPR) of the Philippines was held in May 2017. During the 36th Session of the UNHRC in September, the Philippine government rejected 154 out of 257 recommendations made by the UNHRC with the aim of improving the human rights situation in the country. A joint statement of 40 states on the UPR of the Philippines expressed serious concern over the human rights situation in the country, particularly the "thousands of killings and the climate of impunity". The statement also called on the Philippine government "to work with civil society and the United Nations to promote and protect human rights, including by welcoming a visit from the Special Rapporteur on extrajudicial, summary or arbitrary executions, without preconditions or limitations."[33] In 2016, the government cancelled the visit of Special Rapporteur on extrajudicial killings, Agnes Callamard, to look into the rising death toll in the government's war on drugs. This was because Callamard did not accept the conditions set by the government.[34] Philippine government representatives also denied the existence of a culture of impunity in the country.

On 28 December, UN Special Rapporteur on the rights of indigenous peoples, Vicky Tauli-Corpuz, and Special Rapporteur on internally displaced persons, Cecilia Jimenez-Damary, issued a statement expressing alarm at the widespread human rights abuses and increased militarization, especially in Lumad indigenous peoples' communities, which could intensify with the extension of martial law.[35] Presidential

Spokesperson Harry Roque responded by claiming that the two UN Special Rapporteurs were merely using their position "to embarrass the Philippine government in the international community."[36]

Greater challenges in 2018

With the current state of human rights in the Philippines and recent developments under the Duterte regime, indigenous peoples are bracing themselves for more attacks against the people in the coming year, including the possibility of a nationwide declaration of martial law. Indigenous peoples' organizations are strengthening their ranks by developing their organizations and individual members as human rights defenders.

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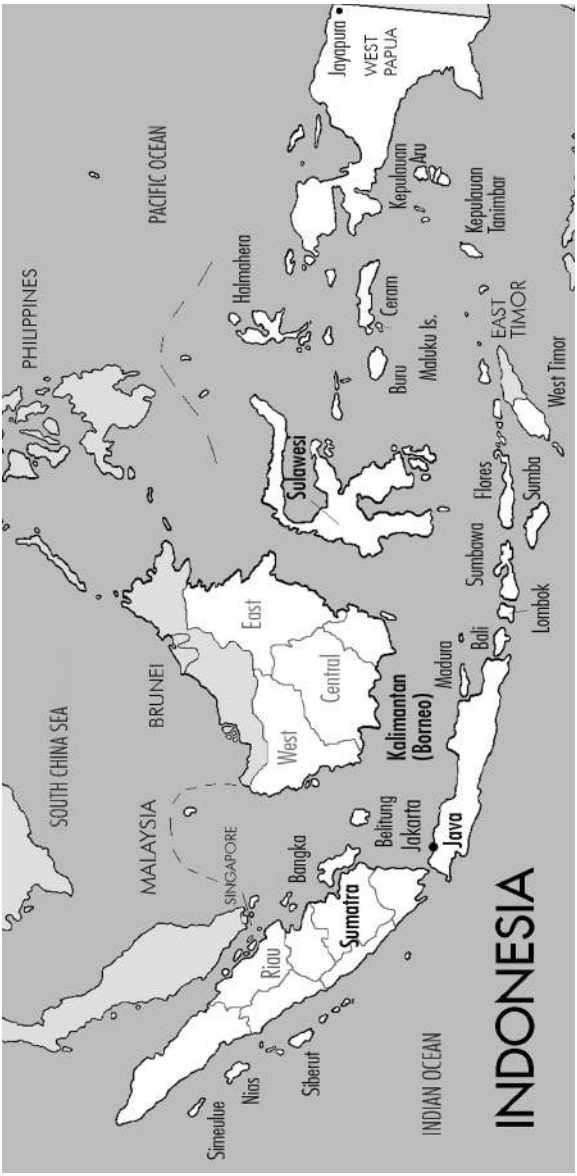
INDONESIA


INDONESIA
PHILIPPINES
PACIFIC OCEAN
SOUTH CHINA SEA
BRUNEI
MALAYSIA
SINGAPORE
INDIAN OCEAN
Jayapura
WEST PAPUA
Halmahera
Ceram
Buru
Maluku Is.
Kepulauan Aru
Kepulauan Tanimbar
EAST TIMOR
West Timor
Sulawesi
Flores
Sumba
Sumbawa
Lombok
Bali
Madura
East
Central
West
Kalimantan (Borneo)
Belitung
Jakarta
Java
Bangka
Sumatra
Riau
Simeulue
Nias
Siberut

Indonesia has a population of approximately 250 million. The government recognizes 1,128 ethnic groups. The Ministry of Social Affairs identifies some indigenous communities as: *komunitas adat terpencil* (geographically-isolated indigenous communities). However, many more peoples self-identify or are considered by others as indigenous. Recent government Acts and Decrees use the term: *masyarakat adat*, to refer to indigenous peoples. The national indigenous peoples' organization, *Aliansi Masyarakat Adat Nusantara* (AMAN), estimates that the number of indigenous peoples in Indonesia is between 50 and 70 million people. The third amendment to the Indonesian Constitution recognizes indigenous peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some rights of peoples referred to as: *masyarakat adat* or *masyarakat hukum adat*, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No. X/2001 on Agrarian Reform. Act No. 27/2007 on Management of Coastal and Small Islands and Act No. 32/2010 on Environment clearly use the term: *Masyarakat Adat* and use the working definition of AMAN. The Constitutional Court affirmed the Constitutional Rights of Indigenous Peoples to their land and territories in May 2013, including their collective rights to customary forests. While Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of indigenous peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs from groups identifying themselves as indigenous. On 10 August 2015, the Ministry of Environment and Forestry agreed to be the trustee of 6.8 million hectares of indigenous maps, for inclusion in the One Map Initiative.

Indigenous peoples in Indonesia are fortunate that the President Joko Widodo and Vice President Jusuf Kalla (Jokowi-JK) when they were running for President and Vice President in 2014, pledged to bring about positive changes at the state level, which would benefit indigenous peoples. The promise is set forth in the Nawacita document, which contains their vision and mission if elected President and Vice President.

The government's commitment to indigenous peoples expressed in the Nawacita document reads as follows:

- Reviewing and adjusting all laws and regulations concerning the recognition, respect, protection and promotion of indigenous peoples' rights. Especially, in relation to the rights concerning agrarian resources.[1]
- Continuing the legislation process of the Draft Law on the Recognition and Protection of Indigenous Peoples' Rights, which is now in the final discussion, until its enactment as Law by incorporating content changes as proposed by the National Parliament, AMAN and other components of civil society.
- Ensuring legislative processes relating to the management of land and natural resources in general, such as the Draft Law on Land, and so on, are conducted according to the norms of recognition of indigenous peoples' rights as mandated in the Constitution Court Decision No. 35 of 2012.
- Encouraging an initiative in the formulation of (draft) law concerning the resolution of on-going agrarian conflicts resulting from the lack of implementation of various sectoral laws and regulations regarding the rights of indigenous peoples.
- Establishing an Independent Commission with a special mandate from the President to work intensively to prepare various policies and institutions that will address matters or affairs related to the recognition, respect, protection and promotion of indigenous peoples' rights in the future.
- Ensuring the implementation of Law No. 6 of 2014 concerning the term Village, especially to prepare provincial and district/city governments to operationalize the recognition of indigenous peoples' rights so that their territories can be inaugurated as customary villages.

Entering the third year of Jokowi-JK administration, there have been several changes in laws and policies concerning indigenous peoples. However, these changes have had no significant impact on the recognition, protection and fulfilment of indigenous peoples' rights to their indigenous territories (land, forest and water).

In March 2017, AMAN conducted the Fifth Congress of the Indigenous Peoples of the Archipelago (KMAN V) in Medan, North Sumatra. KMAN V was attended by thousands of indigenous community representatives from across the archipelago, AMAN Regional Chapters, AMAN Local Chapters, and AMAN Central Governing Body as well as various delegates from central government and local government, media, universities, and other invitees. KMAN V participants realized that the fulfilment of the government's commitment as stated in the Nawacita document is still very minimal. Therefore, KMAN V has urged expediting the implementation of the government's commitment to indigenous peoples, such as the acceleration of the discussion on the following topics: Indigenous Peoples Draft Law, Indigenous Peoples Task Force, conflict settlement, and the establishment of local regulation.

Nawacita spirit hindered by convoluted and overlapping technical and sectoral policies

After a long struggle, by the end of 2017, the Democratic National Faction (Nasdem Faction) formally proposed the inclusion of a Draft Law on Indigenous Peoples into the 2018 National Legislation Program.[2] The years 2018-2019 are the years in which Indonesia will organize a concurrent local election (2018) as well as legislative election and presidential election (2019). It is concerned that such political situation will prolong the discussion and ratification of Draft Law on Indigenous Peoples.

In addition, the Indigenous Peoples Task Force is very unclear.[3] It has been almost four years since AMAN first proposed the draft Presidential Decree on Indigenous Peoples Task Force through the Secretary of Cabinet. The promise to form the task force, which is frequently mentioned by the government in official meetings, is no different from a "soap bubble" that appears, evaporates, bursts and disappears.[4] To date, the Presidential Decree on Indigenous Peoples Task Force has not been issued yet.

The slow implementation of sectoral policies[5]

In 2015, the Minister of Environment and Forestry issued the Ministerial Regulation No. 32 of 2015 on Forest Subject to Rights (MoEF Regulation on Forest Subject to Rights). A year later, the Minister of Agrarian Affairs and Spatial Planning issued the Regulation No. 10 of 2016 on the Procedures for the Establishment of Communal Rights (MoASP Regulation on Communal Rights).

The Government, although slow, has begun implementing the MoEF Regulation on Forest Subject to Rights. President Joko Widodo has handed over 17,000 hectares of customary forest to 18 indigenous communities. The first handover includes nine customary forests and the second handover also includes nine customary forests. The target for the inauguration of customary forests indicated in the 2015-2019 National Medium-Term Development Plan covers 5,080,000 hectares. It means the size of customary forests that has been inaugurated is still far from the specified target. It is quite discouraging since AMAN has submitted to the government a total of 777 indigenous territory maps covering 9,386,842.8 million hectares.

The performance of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (MoASP/NLA) is even more concerning. To date, none of the communal rights of indigenous peoples has been established under the mandate of MoASP Regulation on Communal Rights.

Recognition at the local level

Local governments have an important position within the legal scheme of recognition of indigenous peoples and indigenous territories in Indonesia. In such a legal arrangement, the Regional Government is expected to issue local legislation for the recognition of indigenous peoples and their indigenous territories. The local legislation issued by a region is the "upstream" product of this recognition scheme. The "downstream" product in the form of customary forest inauguration and communal rights establishment can only be made possible if the local government first issues a local legislation for the recognition of indigenous peoples as a legal subject. On the one hand, this legal scheme is not only highly dependent on the political will of the central and local government, but also it is time-consuming. On the other

hand, this scheme provides a way that at least can be used by indigenous peoples to fight for their rights.

To date, the number of enacted local legislation regarding Indigenous Peoples has reached 220 of these 77 were issued after the Constitution Court Decision No. 35 of 2012. Unfortunately, only a few of the aforementioned local legislation can be used to fight for indigenous peoples' rights over their customary territories. Most of the local legislation only regulates indigenous institutions.

The strengthened establishment of local legislation on indigenous peoples has been confronted with some challenges. First, not many local governments see the local legislation on indigenous peoples as a strategic political-legal step. Second, in the midst of inadequate understanding, the arena of this local legislation is prone to be used by groups "claiming" themselves to be indigenous peoples. A clear example of this can be seen in Sumbawa District. Local Parliament of Sumbawa district refused to discuss the draft Local Regulation on Indigenous Peoples. They argued that Sumbawa district has already adopted a local regulation on Samawa Indigenous Institute (LATS). However, LATS does not represent indigenous peoples in Sumbawa. LATS is more of an institution that represents the elites in Sumbawa regency who are strongly affiliated with Sumbawa Sultanate. Third, the budget available in each region is insufficient to encourage a process of recognition of indigenous peoples. Let alone the central government that does not have a specific budget allocation to facilitate the legislative process at the local level. Based on AMAN interaction with more than 30 local governments over the past 3 years, the average budget required for the legislative process of local regulation on indigenous peoples at the local level is approximately three hundred to four hundred million Rupiah (300-400 million Rupiah). There are even regions that spend a larger sum.

Criminalisation against indigenous peoples continues

In the midst of many changes to policies on indigenous peoples, the acts of violence and criminalisation against indigenous peoples and indigenous human rights defenders still continue to happen. The current law enforcement situation in the field does not reflect the changes in the law. As such there is almost no correlation between the commitment to change law and law enforcement in the field. Old policies such

as the Forestry Act, Law on Prevention and Eradication of Forest Degradation are still implemented and remain unstoppable. The same lack of correlation is non-existent in the infrastructure development plan that intersects with indigenous territories. Throughout the year of 2017, AMAN recorded as many as 21 cases faced by indigenous peoples.

The absence of legal recognition led indigenous peoples who defend their rights through various actions of resistance were arrested and brought to trial. Some of the significant cases in 2017 are described as follows:

Violence against Seko indigenous peoples

On 27 March 2017, the judge of Masamba District Court, North Luwu District, South Sulawesi sentenced Amisandi, a member of Seko Community, to seven months of imprisonment.[6] This criminalisation case stems from the Seko Indigenous Peoples' objection to the presence of PT. Seko Power Prima that wants to start a construction project within the territory of Seko Indigenous Peoples. PT. Seko Power Prima is a hydroelectric company. The company covertly entered the territory without going through an open consultation process with the Seko community.

The licenses obtained by the company aroused suspicion, especially because in 2004, the North Luwu District Head issued District Head Decree No. 3000 of 2004. The District Head Decree clearly recognizes Seko Indigenous Peoples and their Indigenous Territories. The decree even explicitly regulates the rights of Seko indigenous peoples to consult and express their position on any investment plans to be conducted in their territories.

In addition, not far from the site of the hydroelectric development plan, the Government has already granted a mining concession to several companies, one of which is PT. Kalla Arebama. These mining companies are currently not in operation.

Criminalisation of Dayak Meratus indigenous peoples

In July 2017, Trisno Susilo, an indigenous peoples' activist and also the board member of AMAN Tana Bumbu Local Chapter, was brought before Tana Bumbu District Court.[7] He was accused of being a provocateur

in various resistance movements by the Dayak Meratus indigenous peoples. A series of actions carried out by indigenous peoples to defend their indigenous territories from the expansion of PT. Kodeco Timber. Lawyers from AMAN Indigenous Peoples Defenders (PPMAN), one of the AMAN wing organizations, defended Trisno. In the end, the judges of Tana Bumbu District Court sentenced Trisno Susilo to four years of imprisonment. Through PPMAN, Trisno Susilo then appealed to the High Court of South Kalimantan.

At the appellate stage, his sentence was increased to five years. Mr. Susilo, with the assistance of PPMAN, then filed a cassation request to the Supreme Court of the Republic of Indonesia. To date, his case is still in the cassation process in the Supreme Court.

Meanwhile, criminalisation and eviction continue to take place in the territory of Dayak Meratus indigenous community, by the company with the help of Police and Army escort. The worse eviction and destruction of indigenous territories happened in Dayak Barulasung community area covering 15.000 Ha, in Dayak Napu/Kamboyan with 4.000 Ha, in Dayak Tuyan about 1.000 Ha and in Dayak Alut area covering 250 Ha.

Lambo Reservoir Construction Plan

Since 1999 the Government has planned to build a reservoir for irrigation in Ngada District. The location for this plan is in the territory of Rendu Indigenous People. After Ngada District expanded into some new districts, the site for this reservoir development plan is included in the administration area of the new district, namely Nagekeo district. Since the beginning of this plan, Rendu Indigenous Peoples and other communities directly affected by the project have conducted a study. In 2002 they formed Lambo Reservoir Rejection Forum as a forum for indigenous peoples to voice their rejection of this development plan. The rejection of indigenous peoples is based on the fact that this development has never been openly consulted with the people. In addition, this reservoir development plan would reduce agricultural land for the community and that the location designated by the government for the reservoir is a sacred place for indigenous rituals.

In 2003, indigenous peoples proposed to move the site of the reservoir construction from Lewose in Rendu Butowe Village to Lowopambu in Labolewa Village. However, the government continues to conduct

activities such as survey Rendubutowe Village, a location unapproved by the community based on the aforementioned reasons.

Over the past years this development plan was not implemented. In 2016, the local government re-activated the development project. In June 2016, Nagekeo District Government deployed a survey team to install border stakes around the indigenous territory. No less than 60 personnel of Ngada District Police and Public Order Enforcers escorted the survey team. The presence of the police officers has aroused fear among the community, especially when they arrogantly paraded up and down the village street while holding a long-barrelled weapon. At night, the police officers visited several houses, intimidating indigenous peoples so that they would not reject the reservoir construction.

On 8 November 2016, the Police and Public Order Enforcers watched over the drilling tools imported by Nagekeo Local Government. The community objected and held a blockade. However, the community could not remain there forever so eventually the drill was placed in the survey location. Once installed, the drill was guarded by Public Order Enforcers and police officers. Later on, the community was shocked to learn from the Head of National Unity and Politics Agency of Nagekeo District that the drilling equipment had been burned down.

The police summoned eight people from the community to provide testimony as witnesses of the burning. In the investigation held on 17 November 2016 conducted by the crime investigator of Ngada District Police, who committed a violent crime against Rintoniur Uku Ara (a 20-year-old man), by beating him twice on the chest and the abdomen with a book. Based on the information given by the victim, the investigator wanted to force him to name the perpetrator. However, it was not until he was beaten that he answered the investigator's questions although he nothing about the burning.

As the months passed, the Rendu indigenous peoples continued to reject the construction. They even sent a complaint letter to the Presidential Staff Office. In February 2017, the Presidential Staff Office had a dialogue with Rendu indigenous peoples. During the dialogue, the representative of Presidential Staff Office said the local government needed to disseminate information about the project. But in general, the Presidential Staff Office left the problem solving up to the local government.

On 4 August 2017, the Rendu indigenous peoples were invited to the Presidential Staff Office (KSP) and the Ministry of Public Works and Hous-

ing (MoPWH) to discuss this matter. At the meeting held in Jakarta, the Rendu Indigenous Peoples expressed their rejection of the reservoir construction at the location in Rendu Butowe Village. A survey is currently being conducted of the location. The Rendu indigenous peoples also proposed an alternative location. The Minister of Public Works and Housing agreed with the alternative location. In addition, the minister stated that a survey would be carried out of the location proposed by the community.

The dialogue held in Jakarta did not filter down to the local level. In December 2017, the Governor of East Nusa Tenggara had a dialogue with Rendu indigenous peoples. Tensions ran high during this dialogue with Governor of Lebu Raya. The community did not approve of his unilateral decision to allow the survey team into the reservoir construction site. To date, the situation remains unclear as the community continues to oppose the construction while the local governments (province and district) continue with the reservoir construction at the unapproved site.

A real threat for the future

On 6 September 2017, President Joko Widodo signed the Presidential Regulation No. 88 of 2017 on Land Tenure Settlements in Forest Areas. The Presidential Regulation affirms that the Government shall implement land tenure settlements in forest areas controlled and used by the community. This presidential regulation leaves a number of questions, among others, about the limitation of land conflict resolution in the "designated" forest areas, while the land conflict resolution in "inaugurated" areas will be done by relocating the community (resettlement) unless they can prove that they have inhabited the area long before its inauguration as a forest area.[8]

By limiting the object of conflict resolution only to "designated" forest areas, then this presidential regulation closes the space for land tenure conflict resolution in the forest area in a broader sense. The government seems to have forgotten that the process of inaugurating the forest area not only consists of administrative aspects but also socio-political aspects in the field, which should be resolved prior to an area being inaugurated as forest area. In addition, Presidential Regulation No. 88 does not allow for conflict resolution due to the mistaken granting of corporate licenses and other plantation concessions in permanent forest areas.

The number of inaugurated forest areas is 87,470,051.08 hectares or 86.80% of the total forest area according to data published by the Directorate for Forest Use Planning and Inauguration in July 2017. It means only less than 14% of the forest area is "designated" and as such conflict resolution is limited to this area under the mechanism set forth in the presidential regulation.

Where are the forest areas that are still in the designation process and what are the stages of the process for inaugurating a forest area? Indigenous peoples currently face many problems while attempting to obtain information and oversee the planning process of a forest area until it is inaugurated. Considering the above situation, the forest areas that have been inaugurated should also be considered as the object of conflict resolution in this particular presidential regulation.

In addition to the restrictions on the object of conflict, another issue is the restriction on the subject or applicant or plaintiff; namely, the social or religious organizations must be registered legally, and the indigenous peoples must be recognized through the local regulation. The recognition of indigenous peoples through local regulation became a matter of concern. This requirement blocks the opportunity to use the legal instruments such as the recognition of Indigenous Peoples through Local Government's decree as mandated by the Regulation of Ministry of Home Affairs No. 52 of 2014 concerning guidance on recognition and protection of Indigenous Peoples' rights, and the Decree on Communal Rights as mandated in MoASP/NLA No.10 of 2016 on Communal Rights.

According to AMAN, the indigenous peoples and their territories could possibly be threatened by resettlement because they inhabit a conservation area that is 1.62 million hectares or 20% of 8.2 million hectares of a customary area that has been registered in the MoEF, MoASP/NLA, Geospatial Information Agency (BIG) and Peat Restoration Agency (BRG). Meanwhile, there are 121 AMAN-member communities that currently are living in conservation areas and could be threatened with resettlement.

Notes and references

1. As mandated by the Resolution of People's Consultative Assembly of the Republic of Indonesia, (TAP MPR RI) No. IX/MPR/2001 on Agrarian Reform and

Natural Resource Management in accordance with the legal norms established under the Constitutional Court Decision No. 35 of 2012.

2. See http://www.dpr.go.id/uu/prolegnas
3. The Indigenous Peoples Task Force is a proposal of AMAN from January 2, 2015 to the President through the Minister of Secretary of the Cabinet. This task force is designed as an institution directly under the President and is tasked with designing and accelerating the achievement of six promises of President Joko Widodo regarding indigenous peoples. Information on the Task Force of Indigenous Peoples can be read at http://gaung.aman.or.id/2016/06/24/satgas-masyarakat-adat-dan-penegakan-ham/;< https://nasional.tempo.co/read/678514/presiden-jokowi-akan-bentuk-satgas-masyarakat-adat and http://www.mongabay.co.id/tag/satgas-masyarakat-adat/.
4. See https://www.cnnindonesia.com/nasional/20170317234231-20-201056/jokowi-tak-penuhi-permintaan-masyarakat-adat-soal-satgas
5. Sectoral policy is a term often used to describe policies produced by individual ministries or state agencies. In the context of indigenous peoples and their rights to land, customary territories and natural resources, the Ministry of Forestry issues policies regulating customary forests. While the Local Government has the authority to draft a Local Regulation on the Recognition of Indigenous Peoples, the Ministry of Agrarian Affairs and Spatial Planning is authorized to develop a policy on communal rights. The implementation of these policies does not run optimally. Very few customary forests have been established because the requirement of customary forest establishment is a Regional Regulation that has recognized the existence of indigenous peoples.
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THAILAND

CHINA
BURMA
VIETNAM
LAOS
MAE HONG SON
CHIANG MAI
THAILAND
Korat plateau
BANGKOK
Gulf of Martaban
KAENG KRACHAN FOREST COMPLEX
CAMBODIA
Andaman Sea
Gulf of Thailand
INDONESIA
MALAYSIA

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 (the Chao-Khao). Nine so-called "hill tribes" are officially recognised: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.[1] According to the Department of Welfare & Social Development, there are 3,429 "hill tribe" villages with a total population of 923.257 people.[2] The indigenous peoples of the south and north-east are not included.

A widespread misconception of indigenous peoples being drug producers and posing a threat to national security and the environment has historically shaped government policies towards indigenous peoples in the northern highlands. Despite positive developments in recent years, it continues to underlie the attitudes and actions of government officials.

Thailand 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.

The current situation of land and forests

Land and resource management in forest areas in Thailand is still an unresolved issue. The situation is getting worse, particularly since the government passed a master plan for resolving problems of deforestation, encroachment onto state-owned lands and sustainable forest

management in 2014. Its main aim is to increase forest cover by 40% or 128 million *rai3* [20.48 million hectares] over a 10-year period by stopping deforestation, reclaiming encroached forest lands, revamping forest resource management systems and rehabilitating forest areas. This was in line with the National Council for Peace and Order [NCPO]'s policy on the protection of natural resources, which was presented to the lower house on 12 September 2014, and NCPO Order No. 64/2557.

To achieve this master plan, the government must increase forest cover by 26 million rai given that current forest cover stands at 102 million *rai* or 31.57% (data from Forestry Department 2015).

To implement such a master plan, and NCPO Order 64/2557, the Internal Security Operational Command (ISOC), the Department of National Parks together with relevant government agencies have joined forces to suppress and arrests people found encroaching on or destroying forest lands. Such operations pose grave concerns to many communities, including indigenous peoples, as it has not explicitly made a distinction between illegal encroachers and indigenous communities who have long been living in these areas. Many poor people and indigenous individuals were thus arrested on charges of forest encroachment, seriously affecting their lives and families.

To address this concern, the NCPO issued another Order No. 66/2557[4] to ensure that such action would not have a negative impact on poor and indigenous communities. It states:

"...carrying out all aspects [of Order No. 64/2557] must ensure that the poor and landless people residing in the designated areas prior to NCPO Order No. 66/2557 are not negatively impacted, excepting those who relocated there after the order."

However, in practice, officials in the field do not differentiate. Poor and indigenous peoples are still being arrested and taken to court. Take, for example, the cases of the Karen people in Kaengkrachan National Park, Nongyaplong District, Petchaburi Province[5]:

"On that day, the Forest Rangers [special task force of the National Parks Department] seized a nearby resort, and some border control officers witnessed me planting mango trees here. They said nothing, but today I was arrested on the grounds of encroaching on 5.75 rai [0.92 hectare] of land; the local police station is now preparing the documentation... the land I was working was passed down to me from my parents and I have farmed it for many years. How can this be considered new encroachment? I even don't know where my 5.75 rai of land is officially located. (Interview with Karen woman on 25 May 2017)."

Karen people in Kaengkrachan Forest Complex

Kaengkhachan Forest Complex – (KKFC) is composed of four protected areas. These include Kaengkhachan National Park, Kuiburi National Park, Thaiprachan National Park and Maenamphachi Wildlife Sanctuary. Its areas cover 2,938,909.84 rai or 482,225 ha. along the Tanaosri mountain range in the west of Thailand, bordering Myanmar.

These areas are the homes and farmlands of the Karen indigenous people, and have been for hundreds of years. They depend on the forests and natural resources for their living, such as gathering forest products, hunting and practising rotational farming, etc. Such practices are based on self-sufficiency but are now under threat, in particular from the conservation policy and laws.

Since the 1960s, four to five Karen communities have been relocated to the lowlands or lower areas under the name of forest conservation and the threat to national security, such as in Kuiburi (Prachuabkirikhan province) and Kaengkrachan (Phetchaburi province). In Kuiburi, Karen from Suan Tu Rian were relocated to Pamak, Huasaphan, Paektrakaw and Padeng. In Kaengkrachan National Park, Karen living at Bangkloy-Bon and Jai Paen Din were relocated to Phurakam (in Suan Pheung district in 1996) and Bangkoly-Lang (in 1996 and 2011). According to the government policy, there are still further plans to relocate more communities residing in the forest areas to lowlands even though the existing cases have not yet been resolved. Up until now, many affected families in Bangkloy-Lang have not received land for farming as promised by the park authorities. Some of them therefore decided to return to their traditional homeland to farm and were later arrested by the park officers. These cases are ongoing. The previous case (see The Indigenous World 2017) has also not been resolved yet and is now with the Court of Appeal.

While the existing problems have not yet been resolved, the Department of National Parks (DNP) has proposed that the Kaengkrachan Forest Complex (KKFC) be inscribed as a World Heritage Site under criterion (x)[6] of the World Heritage Committee (WHC). It embarked on these efforts in 2011. The KKFC was adopted as a tentative listing for nomination on 19 December 2013. In 2015, the DNP nominated KKFC for inscription on the World Heritage list. The WHC referred this nomination, as there were many outstanding problems that had not yet been resolved in the KKFC, in particular the case of the Karen in Bangkloy. In

addition, the participation of villagers living in and near the national parks was lacking or insufficient.

As a result of this, the DNP had prepared a roadmap and conducted a total of five consultations with involved stakeholders by the end of 2015. The DNP then once more put forward the nomination to the WHC for consideration at its 40th session in 2016. The WHC upheld their decision to refer the nomination again for another three years to ensure that there would be enough time for the DNP to resolve the said problems on the basis of recommendations made by the UN OHCHR and National Human Rights Commission.

Problems continue to exist between the communities and the DNP in forest areas. This is largely the result of the enforcement of the current national forest policy and laws and the redefinition of forestland boundaries under a one-map policy. An estimated 10 Karen families have been arrested on charges of forest encroachment, such as the cases in Lin Chang, Salika, Pamak, Pala-Oo, Pakageuyaw village, etc., despite the fact that these lands are lands that they have used and passed down from generation to generation for a long time. Some cases have been resolved. Six cases have continued and are under investigation before sending to the court. Conflicts over land and natural resources are expected to increase and could intensify into violence in the near future.

Special cultural zone

The problems that indigenous peoples in Thailand face vary from sub-region to sub-region, as in the case of the Karen people in the Kaengkrachan areas mentioned above and the situation of Chao Ley in the south. Recently, six Chao Ley were arrested on charges of encroachment onto Sirinart marine national park on 8 January 2018 in Phuket province. This was not the first time Chao Ley have faced such kinds of problem. There have been more than 10 cases over the past few years. Chao Ley traditionally fish around different islands in the Andaman Sea but, due to the creation of marine national parks, they are no longer allowed to fish in those areas. To survive, they have to fish far away in the deep-sea areas where they do not have the necessary skills, particularly deep-sea diving and how to cope with decompression sickness. This has consequently caused death and paralysis among some of them.

Others were later trained by Navy on how to deal with decompression sickness. When one of the Chao Ley fell sick from decompression after coming back from fishing in Phang-Nga province area, they therefore had to stop and treat him urgently a few times on the way back home, letting the sick people get into the water for treatment. The last stopping point was in the area of Sirinart marine national park, where they were arrested.

One of the community leaders stated, "I want to insist again that we didn't break the law or destroy any natural resources. We fish for consumption only and the fight for this case is based on the cabinet resolution which already specifies the types of equipment allowed to fish in national parks such as spears, air compressors and fish buckets."[7]

The arrests affect their daily life and their work. They have also had to find money for bail.

Up to now, there has been no efficient mechanism or measures to protect and safeguard the rights of indigenous peoples. Some indigenous groups, civil society organisations (CSOs) and academics have proposed establishing a special cultural zone for indigenous and ethnic communities. This is in line with the cabinet resolution to restore Chao Ley and Karen traditional livelihoods, which was passed on 2 June and 3 August 2010. It also corresponds to the current constitutional Article 70, which encourages the State to promote and protect the rights of Thai people of different ethnic groups to live voluntarily and peacefully without disturbances in the society according to their culture, custom and traditional ways of life...

Causes of conflicts

Conflicts between the state and villagers over forest land and resources have been ongoing for a very long time, with little indication of a resolution. An analysis of the causes, undertaken by the National Indigenous Peoples' Network (NIPT), reveals the following:

1. The policies and laws governing forest resources are not in line with reality. They focus on forest resources, flora and fauna more than the traditional residents/communities and their forest-dependent livelihoods. The government continues to see the communities as responsible for forest destruction, due to their alleged desire to expand agricultural production for commercial purposes. As a result, laws have

been enacted to guard, protect and suppress persons breaking the four relevant state forestry laws, which make no mention of community rights or rights to establish residence and pursue traditional livelihoods related to natural resources even though those communities were established for a considerably long period prior to the establishment of the reserves and/or conservation forests.

2. There have been no genuine participatory processes involving indigenous and local communities in either policy development/formulation or implementation of natural resource management. This has resulted in many communities being designated as "communities located in reserve or conservation forests", rather than accepted as primary inhabitants in areas handed down by their ancestors over hundreds of years. In addition, the process used by the government for land rights claims (in particular the Cabinet Resolution of 30 June 1998)[8] has not been fair and just for communities. These use, for example, aerial photos and satellite images from 2002 to prove the rights of people living in the forest. This method cannot determine the mix of indigenous peoples' traditional farms. Shifting cultivation or rotational farming areas are left out.[9] In addition, if the villagers can prove that they were living there before the declaration of protected area but their areas were in the so-called vulnerability or biodiversity sensitive areas, they will not be allowed to live there, according to the criteria set out in the resolution.

3. Stereotyping or negative attitudes. The state continues to believe that traditional indigenous land use – e.g. rotational farming – is not sustainable and provides little economic income in comparison with permanent agriculture [in one designated area]. This is not true. Many research findings reveal that such kinds of agricultural practice are sustainable and suitable for the highland areas, such as "Shifting Cultivation Livelihood and Food Security. New and Old challenges for indigenous peoples in Asia" published by FAO, AIPP and IWGIA.[10]

Ways forward

Considering the nature of these problems, indigenous communities feel that the state should change its process of knowledge construction concerning the conservation of natural resources. It should equally emphasise both scientific and traditional knowledge in forest and natural

resource management. The current centralised approach used by the government does not respond to community problems regarding conservation in Thailand. Further, there should be a clear policy and laws to support and mainstream good practice initiatives undertaken by communities in both protected and non-protected forest areas. Finally, there should be sufficient time allotted in the current forest law review for indigenous peoples and CSOs to fully participate, providing their input into a draft revision of the National Park Law, Wildlife Sanctuary Law, and the Draft Community Forestry Law.[11] This is consistent with Article 77 of the 2017 Thai Constitution, which states:

"... prior to the formulation of any law, the state will ensure that all concerned persons can submit their ideas, analyse the potential impact of said law in a comprehensive and systematic manner, and disclose these ideas and analysis to the populations concerned, and consider these in the process of formulating the law at every step..."

In conclusion, access to land and resource management has remained a problematic issue for communities and the state. The struggle of indigenous communities to get their rights recognised is also an ongoing one. This includes but is not limited to consideration of the draft indigenous peoples' law and the interpretation of Article 70 of the current constitution, in terms of whether it covers the notion of indigenous people or not.

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. The figure given is sometimes 1,203,149 people, which includes immigrant Chinese in the north.
3. 1 hectare = 6.25 rai
4. It was issued on 17 June 2014
5. See The Indigenous World 2017, p.365
6. Contains the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of Outstanding Universal Value from the point of view of science or conservation.
7. See https://www.phuketgazette.net/news/progress-sea-gypsy-sirinath-np-fishing-case

8. See http://www.forest.go.th/forestprotect_operation/images/stories/file/001-LAW/007.PDF
9. See http://www.nationmultimedia.com/detail/national/30300792
10. See http://www.fao.org/3/a-i4580e.pdf
11. See http://www.ofm.mof.go.th/index.php/2011-06-18-07-26-30/2011-06-20-03-48-12/2307--732560.html

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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 plateaux and highlands of Northeastern Cambodia, approx. 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 is 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 UNDRIP without reservation, and has ratified the CERD, CEDAW and CRC. It has not assented to ILO C169. During its last 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 is become more precarious.

Continuing deforestation and land insecurity

Indigenous peoples in Cambodia have lived through postcolonial assimilations (as *Khmer Loue*, "highland Khmers, little brothers," Sihanouk era, 1950s-1960s), US air bombardments (Lon Nol era), civil war and genocide (Pol Pot era) and, since the late 1990s, marketized development (Hun Sen era). Some Cambodian Indigenous elders view the current Hun Sen era as worse than that of Pol Pot or Lon Nol. The difference is land. After the bombs and wars, the forests were still there. Life was possible. In 2017, as during 1994-2016, this possibility has again diminished. 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 2017. By the start of the year, there were still only a few Indigenous communities that 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 the use of force and, sometimes, law to displace peoples and log what remains of Cambodia's forests.[6] This brief chapter discusses only two examples. There are many more.

Disregard for the free, prior and informed consent

Despite a reported 100% opposition from affected Indigenous communities, and ongoing protests since it was first approved by the Cambodia Cabinet some ten years ago, the Lower Sesan II Dam development project in Stung Treng province was carried through to near-completion by the CPP state in 2017, in partnership with the Royal Group of Companies (Cambodian), Hydrolancang International Energy Co. Ltd.(Chinese), and the Electricity of Vietnam International Joint Stock Company. On 25 September, Hun Sen officially inaugurated the dam, which will generate an estimated 400 MW of electricity when it becomes fully operational in 2018, the largest hydropower source in the country. During his speech that day, Hun Sen dismissed the concerns of the hundreds of Indigenous families that were displaced by the project, as well as the concerns of environmentalists, on the grounds that the dam will provide energy independence for Cambodia, and that this is more important than what happens to local environments and societies.[7] This was followed up with an announcement by the government, in December, that more than

30,000 hectares around the dam and its reservoir will be converted into economic land concessions (read: more plantations, mines, and logging).[8]

The Bunong, SOCFIN, and the French billionaire

In December 2008, when the price of rubber was up, the Indigenous Bunong Peoples of Bousra Commune awoke one morning to find that some 10,000 hectares of their nearby forest and *miir9* lands had been conceded by the government to a business group led by the old French colonial company, SOCFIN, now a subsidiary venture under the billionaire, Vincent Bolloré.[10] The concession was for SOCFIN to convert the Bunong land into a rubber plantation. In this decision, the Bunong were not informed prior to the arrival of SOCFIN bulldozers, and did not consent to what followed. It delivered no clear benefits to the seven affected village communities but instead triggered "a cultural, ecological, and economic disaster" for the majority of the people in Bousra that continued through 2017.[11] Not surprisingly, as the company proceeded to log the forest and clear the land, the people protested. As the protests grew, both the state and the company ignored their complaints. It reached a point where a large group of Bunong protestors finally descended onto the plantation headquarters and started destroying its machines. This caught the attention of local authorities as well as the company. The

government responded by initiating a Kafkaesque process of CLT recognition while simultaneously granting rapid recognition of individual land titles. The company offered small payouts to individual Bunong households, land swap deals, and the chance to become a "rubber family" while initiating a stacked negotiation mechanism called a "tripartite committee" between state-corporate-community interests, to find "win-win" solutions to the problems created by the company's land-grab. These responses succeeded in generating divisions within the communities which made collective mobilizations difficult; there have been no further large-scale protests. However, these responses overall failed to produce local general satisfaction and out of this dissatisfaction has come two unforeseen developments: an international law suit against SOCFIN, and the germination of an Indigenous Peoples' political party. The Cambodian Indigenous Peoples Democracy Party (CIPDP) grew out of the experience of Bunong people in Bousra. That it has gained traction in many other Indigenous communities is because they have experienced a similar disregard for their free, prior and informed consent to large-scale development projects, and have given up hope that the current government will enforce its own laws. The case against SOCFIN was first brought in the Regional Court of Paris in 2015, and lays charges against its parent company, the Company of Cambodia, in which the largest shareholder is Vincent Bolloré, one of the wealthiest people in the world. The case charges Bolloré and the Company of Cambodia with gross business misconduct and human rights violations via its subsidiary, SOCFIN in Bousra. As remedy it calls for the return of the land and indemnity for damages caused. According to anonymous sources, pre-trial hearings in the case continued through 2016-2017. Some 90 Bunong families are included as the plaintiffs. Should the case go to trial, some or all of the Bunong plaintiffs are expected to testify against Bolloré in Paris. Such testimony would minimally cause public embarrassment for Bolloré, and maximally would entail a significant financial hit to his bottom line. Not surprisingly, back in Bousra, SOCFIN managers are reportedly exerting pressure on the plaintiffs to abandon the case. Indigenous NGOs and other organizations are offering support for the plaintiffs to persist. This is a relatively unusual situation for Cambodian Indigenous Peoples, as they have little recourse to the courts in their own country, and the majority of foreign companies holding land concessions in Cambodia are from countries that do not have such mechanisms of accountability for transnational business conduct

(e.g., China, Vietnam, and Malaysia). SOCFIN brands itself online as providing "responsible tropical agriculture", while many other plantations eschew branding altogether.

Authoritarian bump in the road to Indigenous rights

The CPP state's crackdown on civil society in 2017 assumed several different forms. The CPP-dominated government dissolved the only other substantial political party in Cambodia, the Cambodia National Rescue Party (CNRP), shortly after the CNRP won almost half the vote (44%) in the June 2017 local elections for commune chiefs and councilors. It has imprisoned CNRP leaders, or else driven them into exile.[12] The CPP state has also intensified its monitoring of and foreclosure on civil society actors, including NGOs.[13] The Indigenous Peoples movement in Cambodia is, to a significant degree, reliant on NGOs for its capacity building. Non-state-controlled media have been largely banned, while state-controlled media have expanded. The CPP state has legitimized all these actions on the basis that these organizations are involved in undermining the political unity of the country from within, by fomenting a *color revolution* from without (i.e., via Western foreigners, especially the USA). The rhetorical effect of these claims promotes a unitary feeling that the CPP and the nation state of Cambodia are inextricably intertwined, and that the country will again descend into civil war if Hun Sen is not in charge. Dissenting views, including those of other Cambodian citizens as well as UN bodies, see the CPP as a political party acting to consolidate Hun Sen's hold on power and prevent the growth of multi-party politics. Many Western observers of Cambodia in 2017 concluded that with the CPP dissolving the opposition party, the UN-initiated experiment of importing democracy into the country, which began in the early 1990s, is now effectively over. Through classic "strong-man" power tactics, Hun Sen has returned Cambodia to a single-party state, driven by a now three-decades-old patronage network of elites who extend control over the military, the judiciary and the legislature.[14] For its part, China, which is now by far Cambodia's leading donor country, sees it very differently and supports the recent moves by the CPP, while lavishing the country with large amounts of aid and investment.[15]

That all said, it remains the fact that, during 2007-2017, pluralistic politics slowly gained traction in Cambodia, and by 2017 this included Indigenous Peoples as well as other sectors of society. Despite the onslaught of business-driven land grabbing of Indigenous Peoples' territories during this decade, the capacity of the latter to contest these expropriations increased, even if their ability to physically halt them remained extremely limited. In 2015, Indigenous activists officially registered and launched the CIPDP, one of the primary aims of which is to halt and mitigate these land grabs. In 2017, the CIPDP mustered around 100 different Indigenous candidates for political office during the elections.[16] This in itself is significant, even if most of the candidates lost this time round. By comparison, the CNRP fared much better in the 2017 elections, so much so that had the CPP state not dissolved the CNRP shortly after the elections, the CNRP may well have won the upcoming national election in July 2018. Although neither the CNRP nor the CPP are notable advocates of Indigenous rights, the rise of a viable opposition party such as the CNRP did help create a political space in which the CIPDP became thinkable, alongside several other small grassroots parties. One of the notable contributors to the opening up of such spaces was Kem Ley, a nationally respected political activist-thinker who was assassinated in July 2016.[17] While it is not clear why the CPP allows the CIPDP and other small parties to continue when it dissolved the CNRP, it may be because they do not pose any substantial threat to CPP dominance, and their continued existence can be indicated by the CPP to show the world that Cambodia is still committed to democracy and multiculturalism. On the other hand, the aspirations of Indigenous communities to be able to live as human beings may yet animate Cambodian politics in unforeseen and intersecting ways. The story is not over.

Notes and references

1. There is variation in the estimates of how many peoples there are, because different writers perceive linguistic boundaries differently, c.f., past editions of *Indigenous World*, as well "Indigenous Groups in Cambodia 2014: An Updated Situation" by Frédéric Bourdier (published by the Asia Indigenous Peoples' Pact). The term, Indigenous, is capitalized here to reflect its growing acceptance as a name, a proper noun; rather than as an adjective.

2. These include multiple governmental agencies, CSOs and NGOs. The last assessment of Indigenous Peoples' land rights situation carried out by the Cambodian Center for Human Rights (CCHR, 2016) is one example, c.f., "Access to Collective Land Titles for Indigenous Communities in Cambodia," http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=111&id=5 cf. UN documents A/HRC/26/16 and A/HRC/26/16/Add.1. Cambodia's next UPR is scheduled for January 2019 (https://www.upr-info.org/en/review/Cambodia).
3. A fast and accurate summary of these state actions as of Jan 2018: https://www.hrw.org/news/2018/01/18/cambodia-crackdown-crushes-media-opposition
4. Eleven communities, out of an estimated 500 (CCHR, 2016 (cited above, note 2).
5. 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 (cf. Global Witness 2016). https://www.globalwitness.org/en/reports/hostile-takeover/
6. Cf Baird, I. G. (2009). *Best Practices in Compensation and Resettlement for Large Dams: The Case of the Planned Lower Sesan 2 Hydropower Development in Northeastern Cambodia*. The Rivers Coalition in Cambodia; 3S Rivers Protection Network (http://www.3spn.org/); International Rivers (http://www.internationalrivers.org/resources/3s-rivers-under-threat-7686).
7. See http://www.khmertimeskh.com/5097362/sesan-dam-gets-land-concession/
8. Meanwhile, entire villages are submerged: https://www.internationalrivers.org/resources/press-release-cambodian-village-now-fully-submerged-by-lower-sesan-2-dam-16650
9. *Miir* is the Bunong term for rotational farming or shifting cultivation.
10. SOCFIN's practices have been called out for human rights abuses in Cameroon, Liberia and the Ivory Coast, in addition to Cambodia. Since 2015, corporate shareholders have been subjected to public embarrassment through coordinated protests organized by affected communities and two NGOs, Grain and ReAct. https://news.mongabay.com/2015/06/coordinated-protests-hit-socfin-plantations-in-four-countries/
11. This is how it is described in a court summons by Fiodor Rilov, the French attorney representing the Bunong plaintiff (copy provided to the author by Rilov).
12. It has also dissolved several other much smaller nationally-recognized political parties. Interestingly, the new Cambodia Indigenous Peoples Democracy Party (CIPDP) has not been dissolved.
13. For example, the Cambodia Center for Human Rights (CCHR) is the latest human rights-based NGO to be threatened with foreclosure (Nov. 2017). http://www.phnompenhpost.com/national-politics/breaking-pm-says-prominent-human-rights-ngo-must-close
14. There is a profusion of sources on the authoritarian trend under Hun Sen. Kheang Un framed it as "developmental authoritarianism" in 2013 ("Cambodia in 2012: Towards Developmental Authoritarianism?" *Southeast Asian Affairs*

2013:73-86). Sebastian Strangio has been chronicling it for several years http://www.sebastianstrangio.com.

15. As Western donors increase their criticisms (and threats of reduced funding) of Hun Sen's intensifying authoritarianism, the Cambodian pivot to China continues. Cf., https://www.reuters.com/article/us-cambodia-china-politics/cambodian-pm-leaves-for-china-to-seek-more-aid-idUSKBN1DT0H3

16. As reported by a CIPDP member.

17. Kem Ley was a charismatic Cambodian ally of Indigenous Peoples, small farmers, garment workers and the LGBT communities, who founded one of the new small grassroots political parties, and inspired and helped start others, including the CIPDP. The circumstances of his death strongly suggest his murder was politically motivated. The public procession at his funeral drew tens of thousands of people, https://www.theguardian.com/world/2016/jul/24/cambodians-funeral-procession-kem-ley-murdered-government-critic

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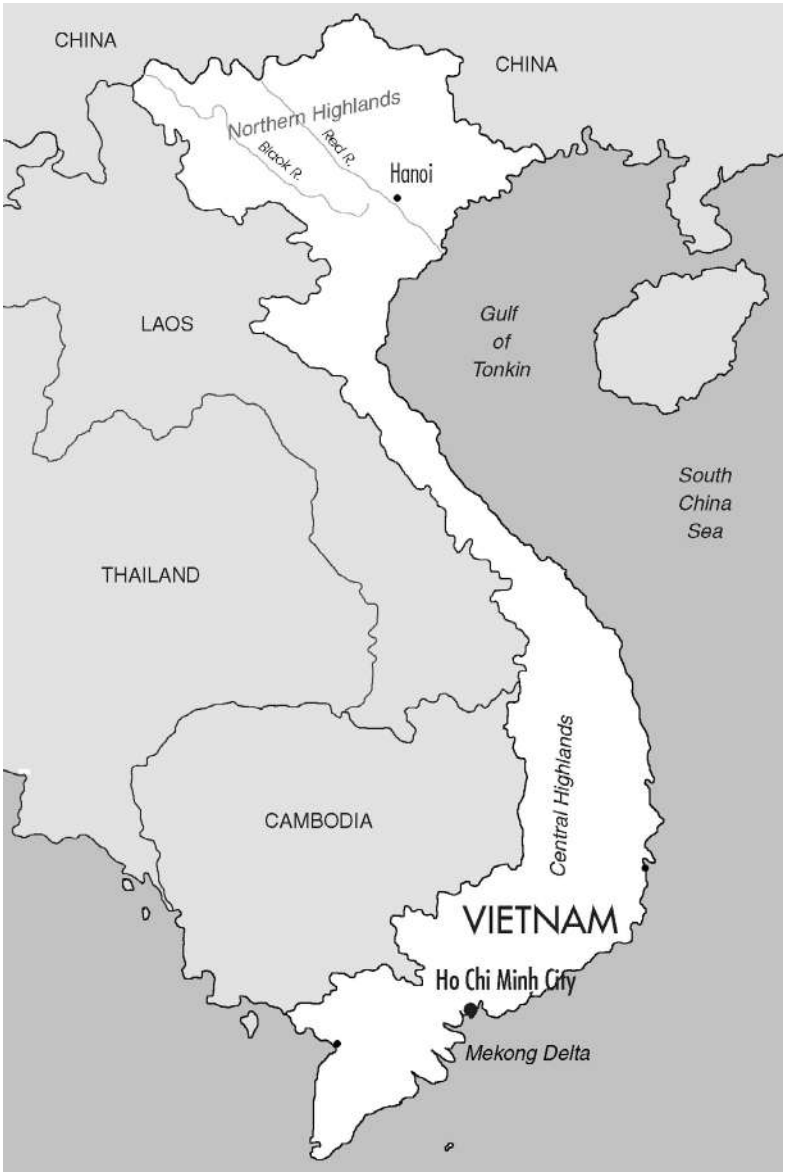
VIETNAM


CHINA
CHINA
Northern Highlands
Red R.
Black R.
Hanoi
LAOS
Gulf
of
Tonkin
South
China
Sea
THAILAND
Central Highlands
CAMBODIA
VIETNAM
Ho Chi Minh City
Mekong Delta

As a multi-ethnic country, Vietnam has 54 recognised ethnic groups, 53 of which are ethnic minority groups, comprising an estimated 13.4 million people or around 14.6 % of the country's total registered population of 95 million by 2018.

Each ethnic minority group has its own distinct culture and traditions. The Vietnamese government does not use the term "indigenous peoples" for any groups but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam's indigenous peoples. The term "ethnic minorities" is thus often used interchangeably with "indigenous peoples" in Vietnam. Poverty is still high among the ethnic minorities. While the national poverty rate is 7% and the poverty rate register for ethnic minorities was 23.1% in 2015. The process of poverty reduction is unstable and there is a high poverty relapse rate.[1] All ethnic minorities have Vietnamese citizenship, and Vietnam's constitution recognizes that all people have equal rights. There is no specific law on ethnic minorities but a ministry-level agency, the Committee on Ethnic Minority Affairs, is in charge of ethnic minority affairs. The Government of Vietnam has ratified CERD, CEDAW and CRC but not ILO Convention 169. Although Vietnam voted in favor of the UNDRIP it does not recognize ethnic minorities as indigenous peoples.

New legislation relevant to ethnic minorities

Of specific interest to ethnic minorities are the Law on Referendum No. 96/2015/ QH13, which took effect on 7 January 2016, and the Law on Religion and Belief, which has been approved and will take effect on 1 January 2018. Most of the new laws have no separate articles targeting ethnic minorities (EM). The National Assembly did not approve the draft proposal on the development of the law on ethnic minorities. This legislative proposal was rejected again, more than 20 years after the first concept note on the development of the Law on EM was initiated.

Indigenous peoples' involvement in REDD

UN-REDD is the first program ever in Vietnam to promote EM participation at all levels. It has been conducted in Vietnam with the technical support of UNEP FAO and UNDP since 2009. An EM Network was established in six UN-REDD pilot provinces in 2015. The members of the EM Network, with the support of the Centre for Sustainable Development in Mountainous Areas (CSDM), have been organized and strengthened to participate in developing, implementing and monitoring the REDD+ processes in these six pilot provinces.

One of the important elements of the REDD-related activities was the piloting of FPIC (free, prior and informed consent) in the six UN-REDD provinces. The consultation process with local communities was limited, however, as the REDD+ program was not providing information to all local people and thus did not obtain the consent of all. At the same time, UN-REDD is speeding up the process of finalizing the safeguard information system with the aim of ensuring the right to participate and gain benefits from forests and share such benefits with EM.

The Prime Minister's decision on a National REDD+ Action Plan (NRAP) for the period 2016-2020 and Vision 2030 included the phrase, "Institutionalize the mechanisms for ethnic minorities, forest-dependent community and women to exercise their rights to participate throughout the REDD+ process, from preparation to implementation" under the part "Measure for the Programme implementation" and "... promote application of traditional knowledge and experiences in resource management, protection, development, exploitation, and use in an environmentally friendly and efficiently manner" and the phrase "ensuring the full and effective participation of stakeholders, including ethnic minorities and women from local communities" under the first part "Points of View."[2]

The recognition and participation of ethnic minorities, and specifically CSDM, has been included in the Report on Self-Participatory Assessment of the REDD+ Readiness Package in Vietnam, submitted to the Forest Carbon Partnership Facility of the World Bank. UN-REDD phase II is coordinating with CSDM to conduct a survey of and select ethnic minorities in the pilot provinces; to elect the representatives of EM people to participate on the REDD+ Programme Executive Board; and to deploy the plan to connect with the EM networks in the pilot provinces. It has developed a set of criteria for selecting the EM repre-

sentatives, identifying the specific tasks of these representatives, and identifying the needs and interests of EM in relation to forest protection and their participation in the REDD+ programme. UN bodies and the Norwegian government have encouraged the Government of Vietnam to effectively engage civil society and EM in formulating and implementing the NRAP investment plan. CERDA is a co-chair of the sub-technical group of Benefit sharing and CERDA and CSDM is the core member of the sub-technical group on REDD+ Safeguard under Vietnam REDD+ network.

Land tenure and forest land allocation

Policies, laws and regulations related to land tenure and forests are not consistent across the country in Vietnam and vary considerably from province to province. Furthermore, the process of Forest Allocation and Forest Land Allocation (FA/FLA) has not been applied consistently. Forest cover and land management contexts differ significantly between provinces as well. A study done in six provinces found that the area of forestland that had been allocated to households and communities was considerably smaller than that allocated to State entities. Referring to the report of the Government submitted to the National Assembly supervision in 2015, the forest area was allocated to 7 types of entities including: 1) State forest management boards: 33%; 2) State forest enterprises: 15%; households: 26%; communities: 2%; people's committees: 16%; other entities: 8%.[3]

The assessment also revealed the impacts of FA/FLA on forest conditions, on the livelihoods of forest-dependent communities, the types and severity of conflicts, and other risks and challenges associated with the FA/FLA process. The summary of key findings is divided into those related to the legal and policy framework, to FA/ FLA processes, and to FA/FLA practices. In 2015, only 26% total forest land area was allocated to households and 2% of that land was allocated to communities for management. However, some communities complained that quality of forests allocated to the households and communities was low, without plant cover, and difficult to create incomes from these forestlands.[4]

Access to land

There is a new policy to include both husband's and wife's names on the land-use certificate, but the results are still minimal. In 2016, most plots continued to be registered with only the name of the head of household (62.2 %), while for 20.7% of plots, both names were registered. Compared to 2014, this is a substantial change. In 2014, 75.8 % were registered with only the head of the household while only 8.6 % of the plots had both names in the Red Book (certificate of land use rights).

This might be explained by the 2013 Land Law (implemented in 2014) and the 2014 Law on Marriage and Family, which strengthened the rights of spouses. For married couples, it is now required that they register both names for jointly owned plot, unless both decide jointly to register only one name.[5]

For agricultural land registered to both wife and husband, this figure is 21% for EM. However, some reports note that even when their name is on the land-use certificate, many EM women still do not make decisions on land use due to their dependence on men and their lack of confidence. Having less land rights limits women's access to credit with which to diversify income sources and recover from loss. Among the EM, the proportion of residential land-use right certificate without both names is 77%.

EM women play an important role in forest protection; they are the ones who keep the cultural attributes of the community alive and transfer indigenous knowledge and values about the forest to the next generation. They protect biodiversity and genetic resources in the forest and rivers and share new knowledge and experiences of protecting and improving the forest. They expand the area of forest area utilized for sustainable livelihoods and plant new seedlings. They are family medical doctors who take care of the health of their family and community using herbal medicines from the forest. And yet the women's role in managing and protecting the forest is becoming less important because of a lack of recognition of indigenous knowledge for decades and the fading away of indigenous knowledge, which is kept and transmitted by EM women. There should be a policy to recognize the role of EM women in maintaining traditional knowledge.

Ethnic minority policies

Between 2011 and 2015, the EM-related legislative system, with a total of 180 legal documents, was institutionalized through Government Decrees and Prime Minister's Decisions. However, this system still has the following shortcomings: the existing legislative system has overlapping content, target groups and valid terms:

- Resources for policy enforcement are insufficient. Implementation also lacks coordination, leading to low effectiveness and very limited impact.
- The inconsistency in coordination is mainly found in the implementation of policies on emigration, production development support and/or policies that require a series of solutions, large-scale application or are of relevance to many sectors.
- The lack of systematic implementation of policies is also reflected at provincial level, where quite a few provinces have not followed the guidelines of the central bodies.
- The legislative system is still focused on supporting well-being, infrastructure and production development but not on social investment, technology transfer or environmental protection.
- The existing legislative system is not yet suitable for the specific features/condition of EM and their living areas.
- Fairness and equality are not assured for all target groups in the same area. Policy implementation is thus heavily subsidized, failing to promote the driving forces and self-reliance of EM.
- The feasibility and efficiency of land policies targeted at EM households with limited land availability and resettlement, as well as land and forest allocation policies targeted at EM households, individuals and communities, remains low. The very limited knowledge on the laws on land and law on forest protection and development is a major barrier to accessing the land use rights and legitimizing the ancestral land and forest.

Sustainable Development Goals

Vietnam has promoted the SDG implementation as committed. Aiming to achieve Goal 5, Target 5A and Target 5B "universal access to reproduc-

tive health in EM areas." Vietnam has developed the proposal "Minimizing child marriage and consanguineous marriage in EM areas for the period 2015 – 2025" approved by the government. The programme aims to raise awareness and change attitudes and behavior towards marriage among ethnic minorities. The project goal is to decrease child marriages by 2-3% per year in EM areas, with a 3-5% decrease in consanguineous marriages per year. Since 2015, and as of July 2016, however, Son La province has witnessed nearly 500 child marriages and two consanguineous marriages. Child marriage is actually showing a tendency to increase, in 2015, the child marriage rate is 26%, and the consanguineous marriage rate is 6.5% among 53 ethnic minority groups.

Indigenous women and youth

Although remarkable progress has been made in Vietnam to close the gender gap in the past years, important gender differences still remain. These differences are reflected in women's and men's contributions to productive and reproductive work, formal and informal employment opportunities, different salary levels, poverty levels, literacy rates, their access to and control over natural resources.

The results of the analysis of data on women and men of ethnic groups in Viet Nam by the Committee for Ethnic Minorities and the United Nations Agency for Gender Equality and Women's Rights (UN Women) have shown that: Gender equality is one of the major problems in ethnic minority areas. Ethnic minority women are experiencing inequality in many areas.

EM women are vulnerable, they suffer a great deal from gender inequality in families and society. The most identifiable inequality is that men are considered to be household heads when 74% of men in the ethnic minority households are independently named for land title or credit. After marriage, men are still given priority in school, while women must stay at home to be a mother and wife. Therefore, ethnic minority men can read and write much higher than women.

Among some ethnic minorities such as Mong, Ha Nhi, La Hu, Lu, only 20-30% women read and write. In addition, violence in ethnic minority families is commonplace, especially among the ethnic minorities. The results indicate that 58.6% of ethnic minority women aged 15-49 believe that husbands have the right to beat their wives if they go out

without permission, argue, refuse sex or burn food. Even a greater cause for concern is that 40/53 ethnic minorities in the country have a child marriage rate of 20% or more, and some ethnic groups have a child marriage rate of up to 50-60%. In the underage group, girls under age 16 were 3.4 times more likely be given in marriage than their male counterpart. Child marriage persists and causes many implications. Pregnant women, under the age of majority, lack knowledge about reproductive health care resulting in maternity mortality in some ethnic minority to be quite high.[6]

Although representation of women in the National Assembly is high by regional standards and there are two female members of the Politburo, there are still signs that women do not have an equal voice in public affairs. In fact, there are some indications that women's political representation has worsened slightly in some areas. For example, women's representation in the National Assembly decreased from 27.3% in 2002-2007 to 24.4% for the 2011-2016 session and 26.8% for the 2016-2021 session.[7]

Many of the barriers that women face in the political sphere are also encountered at grassroots level. Women tend not to be involved in decision-making. Attending village or commune meetings is commonly considered a man's task; the women's voice is always weak at any meeting event in the village. Women's participation in local People's Committee Councils is significant but still limited: 25,17% at the provincial level, 24,62% at the district level and 21,71% at the commune level.[8]

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LAOS

With a population of 6.8 million, Laos is the most ethnically diverse country in mainland Southeast Asia. The ethnic Lao, comprising around half of the population, dominate the country economically and culturally. There are, however, pockets where the number of ethnic groups exceeds that of the Lao and where their culture is prominent. There are four ethnolinguistic families in Laos; Lao-Tai language-speaking groups represent two-thirds of the population. The other third have first languages belonging to the Mon-Khmer, Sino-Tibetan and Hmong-Ew-Hmien families and are considered to be the indigenous peoples of Laos. Officially, all ethnic groups have equal status in Laos, and the concept of indigenous peoples is not recognised by the government, despite the fact that Laos voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples.

The Lao government recognises 160 ethnic sub-groups within 49 ethnic groups. Indigenous peoples are unequivocally the most vulnerable groups in Laos, representing 93% of the country's poor. They face territorial, economic, cultural and political pressures and are experiencing various threats to their livelihoods. Their land and resources are increasingly under pressure from pro-investment government development policies and commercial natural resource exploitation. Laos has ratified ICERD (1974) and ICCPR (2009). The Lao government, however, severely restricts fundamental rights, including freedom of speech (media), association, assembly and religion, and civil society is closely controlled. Organisations openly focused on indigenous peoples or using related terms in the Lao language are not allowed and open discussions about indigenous peoples with the government can be sensitive, especially as the issue is considered as pertaining to special (human) rights. In 2014, the Universal Periodic Review of the Lao People's Democratic Republic (Lao PDR or Laos) made no direct reference to indigenous peoples.

Laos has experienced particularly rapid change from a country that was seen and promoted by its leaders as land-rich and capital-poor, and hence in need of investment in this neoliberal era characterized by increasing reliance on market forces and "turning land into capital." Economic development, along with the introduction of new land tenure systems, are transforming communities and driving land scarcity. Government grants of large land concessions to investors, land speculation, forestry exploitation and internal migration all impact rural communities' access to the land and natural resources vital to their livelihoods.[1]

Land policy, law and land use planning in Laos have been subject to many influences and tensions, reflecting the multitude of interests

within the bureaucracy, between donor and government priorities, and between policy seeking to maximize large-scale foreign investment in land, on the one hand, and security of tenure for smallholders on the other.[2]

Early in 2017 the Prime Minster Thongloun Sisoulith pledged to find solutions to the many land issues that have emerged, and the government formed a taskforce committee to investigate the problems and resolve them.[3]

Legislation on land issues

The Land Issues Working Group (LIWG) is a coalition of some 40 international non-governmental organizations working on land issues in Laos. Land Issues Working Group interacts with government and is involved in policy advocacy and supported consultation over the National Land Use Policy. 2017 saw the annihilation of four years of precious consultation on the land law supported by the LIWG. The four main recommendations of the group for the land policy have been discarded by the new Polybureau resolution.4 Basically, the resolution forbids the use of the term "community" as only the only national "community" is officially recognized. This makes it impossible for the recognition of communal land and collective land is only authorized in the case of cooperative or agricultural production groups.

The vast majority of customary land (forests, agricultural areas, fisheries) held by indigenous people is not formally recognized or titled and the inadequate legal recognition and protection of customary land makes it vulnerable to appropriation by the state and private actors.

The lack of recognition and safeguards of customary tenure practice and rights is one of the most contentious and complex issues. Weak tenure governance is especially detrimental to indigenous people that may have customary tenure rights but lack formal recognition.[5] This lack of recognition of collective land in the national regulatory framework seriously challenges the possible implementation of the Collective Land Registration, Titling and Management (CLRTM) Guidelines prepared with the support of the Mekong Region Land Governance (MRLG).

One positive achievement in 2017 includes the promulgation of the newly-amended Investment Promotion Law has moved to cut by half the maximum investment period for new concession projects to 50

years, down from previous maximum period of 99 years. The amended law comprises 12 parts and 109 articles. It is hoped the new law will improve clarity and ease of doing business in the country.[6] The support given by the declaration of Prime Minister Thongloun Sisoulith in late 2017 stressed that the government's policy on land use should add value to land and benefit everyone in the country and that the Land should benefit everyone.[7]

Land Use Planning at field level

Despite the lack of recognition of collective land in the national regulatory framework, some projects have successfully conducted participatory land use planning (PLUP) in various areas of the country to secure communal land and access to forest, fallow forest and natural resources. This is the case of the Integrated Conservation of Biodiversity and Forests (ICBF) project that conducted land use planning in 166 villages in nine districts in three provinces through the Village Consultation Process (VCP) ratified by the district governor. The Village Forest Management Agreement (VFMA) piloted by the SUFORD[8] in over 30 indigenous villages in Northern Laos also aims to communally and sustainably manage community forest and secure the rights to protect, use and benefit from the management of village forest(s) through harvesting of timber and NTFPs for household and community use in the allowable forest use zones.

Hydropower and large-scale resettlement

Large-scale investment continues to expand in Laos and ensuring that land-based investments are managed in a sustainable way and that their benefits are shared equitably, remains a key challenge. Many investors do not follow internationally recognised standards of responsible business or Corporate Social Responsibility (CSR), which they often view as a "non-mandatory concept."[9]

Laos is on a dam-building spree as they try to harness the power of the Mekong and other rivers. While the Lao government sees power generation as a way to boost the country's economy, the projects are

still controversial for their environmental impacts and financial arrangements. According to International Rivers, the current Lao hydropower development plan includes 72 new large dams, 12 of which are under construction and nearly 25 in advanced planning stages. Hydropower development is directly responsible of the resettlement of indigenous people and despite existing government safeguards to avoid social and environmental impact, indigenous people are often facing forced removal from their ancestral land as in the case of 100 Jhru and Nyaheun families told to leave to make way for construction of two dams—the Xe-Pian and Xe-Namnoy Dam in Champassack province.[10]

New decree on associations

The International Commission of Jurists (ICJ), Amnesty International, Human Rights Watch, the International Federation for Human Rights (FIDH), the Asian Forum for Human Rights and Development (Forum-Asia), ASEAN Parliamentarians for Human Rights (APHR), the International Service for Human Rights (ISHR), the Centre for Civil and Political Rights (CCPR-Centre) and World Organisation Against Torture (OMCT) express deep alarm about the issuing and coming into force of the Decree on Associations (No. 238 of 2017) on 15 November 2017.

The Decree gives government authorities in Lao PDR sweeping powers that enable arbitrary restriction or denial of fundamental rights, including the power to unreasonably control and/or prohibit the formation of associations; arbitrarily broad powers to inspect, monitor and curtail the activities and finances of associations; the power to order the dissolution of associations on arbitrary grounds and without right of appeal; and powers to discipline associations and individual members on arbitrary grounds. The Decree also includes measures to criminalize unregistered associations and allow for prosecution of their members. As a party to the International Covenant on Civil and Political Rights (ICCPR), Lao PDR has a legal obligation to respect, protect and guarantee, among others, the rights to privacy (Article 17), freedom of opinion and expression (Article 19) and freedom of association (Article 22).[11]

International organizations cannot openly support indigenous people issues and must literally bury the concept of indigenous people and address livelihood issues under technical terms or risk being shut down. Despite the fact that Laos has one of the most important per-

centage of indigenous people in Southeast Asia, associations and civil society organizations working on IP issues are voiceless and don't even dare to bring up issues to indigenous people regional forum such as the Asia Indigenous Peoples Pact (AIPP).

Networking and recreating digital ties

The single party state and the reluctance to challenge authority means that international governance principles associated with land and natural resource initiatives such as Free Prior Informed Consent are difficult to implement. Nevertheless, resistance occurs, albeit in quiet "everyday" forms by farmers,[12] and in creative ways including the use of social media.[13]

Less than one-third of the local population in Laos has access to the internet but in 2017 the number of internet users went up an impressive 83% year-on-year versus January 2016[14] with 11,000 new users per months.[15] There were 1.8 million of active Facebook users in January 2017.[16] Indigenous people in Laos are using social media in unique ways to connect or reconnect with members of their group in urban areas or even abroad contributing to maintaining intergenerational connections with elders and provide cultural and family connectivity and access to the diaspora abroad.[17] We also observe the formation of informal groups of Akha youth studying in Vientiane Capital where there are areas, districts or neighborhoods that are dominated by certain groups including Hmong, Khmu, etc.

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

MYANMAR*

CHINA
INDIA
Kachin state
Sagain division
Salween River
Chin state
Mandalay division
Shan state
LAOS
Magwe division
Naypyidaw
Rakhine state
Karenni state
Pegu division
Rangoon division
Irrawaddy division
Karen state
Rangoon
Mon state
THAILAND
ANDAMAN SEA
Tenasserim division
MYANMAR

Myanmar's diversity 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 mainly 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% percent 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 take into account many of the CEDAW and CRC committees' respective recommendations.

Law and policy developments on land

Myanmar staged two National Policy Dialogues on the Rights of Indigenous Peoples in 2017, which brought together a total of 105 participants, including representatives from the Union Ministry of Ethnic Affairs, the state and regional level Ethnic Affairs Ministers, representatives from indigenous peoples' organisations as well as UN representatives.[1] The aim was to bring these diverse stakeholders together for interaction, dialogue and perspectives aimed at a common understanding and devising a participatory by-law for the Ethnic Rights Protection Law 2015, as well as potentially other indigenous rights initiatives, such as a National Action Plan to support UNDRIP implementation. The second draft of the by-law is under scrutiny by the Ethnic Affairs Ministry following the second round of by-law consultations that took place in June 2017. The by-law draft includes and/or expands on provisions directly related to UNDRIP Articles 8, 11, 19, 21, 24 and 32. It is worth noting that Daw Aung San Su Kyi came to the dialogue in February and gave a welcome address, declaring her support for the initiative.[2]

Uncertainty surrounded the progress of the National Land Use Policy (NLUP) during 2017. The Commission for the Assessment of Legal Affairs and Special Issues, headed by former Union Solidarity and Development (USDP) Chairman, Thura Shwe Mann, recommended that key elements of it needed revision, including the protection of ethnic land rights and the formation of a separate land use council.[3] Nonetheless, the formation of the National Use Council aimed at implementing the objectives and guiding principles of the NLUP was imminent as 2018 began. Proposed amendments to the Farmland Law and Virgin Vacant and Fallow Land Law were contested by civil society networks on the basis that the laws offered no social security for small-scale farmers, there had been a lack of consultation in relation to the amendment process, and the proposals undermined provisions within the National Land Use Policy.[4] Revisions of the Forest Law and Land Acquisition Act are also ongoing.

The long-awaited Prevention and Protection of Violence against Women Bill, in draft since 2013, was submitted to Parliament in November. Among the provisions are life sentences for those found guilty of raping girls under the age of 18 or disabled women. Marital rape is also recognised within the draft, punishable by up to five years.[5] The Women's League of Burma, while calling for quick implementation of the Bill, also highlighted the continued impunity that the Burmese military

enjoy under the 2008 Constitution as the major obstacle for democratic transition, peaceful society and development of the life of women.[6]

Land and the peace process

The Second 21st Century Panglong Union Peace Conference (UPC) was held in May 2017 at which 37 principles were agreed between the signatories of the Nationwide Ceasefire Agreement (NCA). Of the 37 principles, 12 focus on the political sector, 11 on the economy, 10 involve land and the environment and 4 deal with social policy. [7]

The ten points specifically related to land and natural resources include the agreement to develop a people-centred land policy based on justice and fairness, under less centralised governance systems. It was also agreed that land policies needed to be brought into line with international standards and for policies to prioritise farmers' interests. Environmental preservation was also addressed and a plan was agreed upon to address issues related to "protecting and maintaining the natural environment and preventing damage and destruction of lands that are social, cultural, historical heritage and treasured by ethnic nationals".[8] In addition, the Republic of the Union of Myanmar Union Peace Dialogue Joint Committee (UPDJC)[9] land and natural resources working group agreed to work towards nine principles for the design of a federal system of land administration.

At the UPC negotiations, representatives from the Burmese military contended that the current legal system complied with international human rights standards, as these were in line with the above nine principles and, on that basis, required no amendments. The next Union Peace Conference is scheduled for late January 2018.[10]

The Central Committee for Re-scrutinizing Confiscated Farmlands and Other Lands continued in its attempts to resolve the 3,980 complaints submitted in relation to military-imposed land confiscations across the country. The Committee, headed by Vice-President Henry Van Thio, reported that 212 cases had been resolved.[11] In relation to the return of confiscated land, when asked by a law-maker in Arakan State about a case from 1994 and whether the army intended to return 100 acres of land to local farmers, Deputy Defence Minister Maj-Gen Myint Nwi responded that the Burma Army was saving more than 75 billion Kyats annually from the State budget by farming on confiscated land and had no intention of returning it.[12]

Ongoing legacies of military rule

Despite the ongoing land reforms in Myanmar, 2017 saw the continuation of competing interests over land, characterised by a lack of free, prior and informed consent, inadequate compensation for relocation and a lack of transparent, judicial remedies. Compounding the problem further, there are 17 different departments[13] related to land governance, not including ethnic armed administrations, meaning that indigenous lands and territories continue to be vulnerable to state-sponsored cronyism, which is as prevalent as ever. According to the Burma Environmental Working Group (BEWG), bilateral ceasefires with ethnic armed groups in resource-rich ethnic areas have released "rampant natural resource exploitation [and] have expanded Naypyitaw's political, economic and military domination".[14] The group called for a nationwide moratorium on large-scale natural resource projects until the Union Peace Accord can provide a platform for federal constitutions.[15]

One example of the kind of "smash and grab" [16] resource theft that BEWG is warning of relates to villagers alleging that mining activities on Nun Lya Mountain, undertaken by the Chit Linn Myaing Toyota company, and owned by the head of the Border Guard Force[17] in the area, had begun in February without the prior consent of the communities from four villages.[18] The mountain, where mining has been ongoing since February 2017, provides year-round clean water from a cave and is also seen as an historically significant site for the local people. Chit Linn Myaing Toyota company has leased its quarry site to China's state-run, China Road and Bridge Corporation, which in turn will use the quarried stone to develop the Asian Development Bank-funded (ADB) Asia Highway linking Myanmar and Thailand, a project which has led to human rights abuses towards local communities in its implementation.[19]

It is worth noting that military-backed land confiscation continues to take place purely in the pursuit of recreational activities. In Shan State, farmers complained that 200 acres of land had been cordoned off by the military to expand the Sin Taung Golf Course in Lashio Township. The land on which the golf course squats is 200 acres that was grabbed from local farmers in 1998 by the Eastern North Division 7005 Battalion, in exchange for no compensation or substitute lands.[20]

Current governance structures present international funding organisations with responsibilities to enforce internally developed safeguards to protect local communities' interests in development projects.

The ADB officer, Shihiru Date, overseeing the Nun Lya mining project above referred to ADB's own safeguard policies when stating that the project was "under review".[21] In a separate example, governance issues and the inability of relevant departments to adhere to social and environmental safeguards resulted in the World Bank withdrawing funding from the USD 60 million Hakha–Kalay Highway rehabilitation project in Chin State. Citing a lack of environmental and social impact observance on the part of the Ministry of Construction, the project's funds, designated to the recovery of Chin State after Cyclone Mora, were withheld due to issues related to uncompensated destruction of houses and poor working conditions, among other things.[22]

Protest and community action

On International Rivers Day, rallies took place in Kachin, Shan, Karen, Karenni and Mon States as indigenous communities staged demonstrations on the right to decide how the natural resources they depend on for their livelihoods are used on traditional lands.[23] Under the Central Level Government Energy Master Plan, 50 dams are planned, largely on the Salween and Irrawaddy rivers. Not only are local communities' and CSOs' concerns firmly premised on the environmental consequences and livelihood destruction, with little to no benefits for the local community; they are also still viewed as Burma Army expansion into contested ethnic areas and, like other infrastructure development projects supported by large crony organisations, are premised on increased militarization and fuel conflict.[24]

In a similar vein, local communities in Kachin State protested against the expansion of Mt. Hkakabo Razi National Park. Citing a loss of land, lack of free prior and informed consent and a general perception that central government's interest in the formation of national parks has been exploitative and non-beneficial to indigenous communities, the Kachin Political Cooperation Committee issued a statement rejecting the UNESCO-backed proposal for expansion of the park.[25]

In some cases, community actions to organise in response to issues that have been deemed as having the potential to become a "land conflict epidemic" [26] if not addressed have been met with arrest and imprisonment under laws designed to suppress freedom of peaceful assembly[27] and, in some instances, intimidation and killing. There were a

reported 13 farmers and one land rights activist in prison[28] with another 105 awaiting trial under demonstration laws in August.[29]

In October, a land rights activist and member of the National Farmers Union, Htay Aung, was beaten up by a mob of 20 people on his way to a meeting organised to discuss a land grabbing case by a village administrator in Iwine Parhe Village of Naungcho Township, northeast of the city of Mandalay. He died two days later as a result of his injuries.[30] Given the circumstances surrounding the case, the Chairwoman of the National Farmers Union wondered whether it was a pre-meditated attack related to the ongoing land dispute case.[31]

Shots were fired to intimidate a group of villagers who had arrived to inspect the Yun La Mountain mining site in Karen State. 900 villagers living around the mountain signed a petition demanding that the state government protect livelihoods and local heritage sites that are threatened by the quarries.[32]

Salween Peace Park (Karen State)

In response to some of the issues touched on above, many CSOs, NGOs and other community groups, together with local governments, are developing their own vision of conservation areas and protecting customary lands. The Salween Peace Park, to give one example, is a grass-roots, people-centred alternative to the centralised national park implementation process that usually results in indigenous peoples' loss of land and livelihoods. The park, which seeks to protect the Salween River Basin from "destructive development" by central government and foreign companies, is due for completion in 2018. [33] 300 representatives from 23 Village Tracts in 3 Townships of Mutraw District in Karen State, together with the District Forest Department and supported by the Karen Environmental and Social Action Network (KESAN), are implementing their vision for a community-controlled conservation area following public referendums, resulting in a draft Charter, memorializing a push towards self-determination, rights to land and territories, and local governance of indigenous Karen over their ancestral land.[34]

The initiative has been developed in line with the indigenous land system, *Kaw,* a physical area and a social institution for sustainable land governance based on customary communal arrangements that include indigenous ecological knowledge, protected wildlife areas, rota-

tional upland fields, the enforcement of rules on not hunting keystone species, and peaceful conflict resolution mechanisms. The Salween Peace Park initiative currently includes 29 *kaw* or a proposed 5,205 km^2 and aims to protect and revitalise the *kaw* system among more communities as a sustainable alternative to mega-projects, as well as a way for refugees and displaced people to re-integrate into Karen State with minimal disruption of the natural environment, making it an attempt at a dynamic, "living vision" rather than a national park.[35]

Naga National Land Policy

The continuation of State-implemented land use policy continued in 2017. The Naga National Land Policy was drafted by the Council of Naga Affairs (CAN) and the Naga Tradition, Literature and Culture Central Committee (NTLCCC), together with civil society organisation SHANAH in 2017. The policy mainly focuses on advancing the Naga customary land management and ownership system under provisions set out in section 8 of the National Land Use Policy, Legislation Schedule Three, Article 12 of Ward and Village Tract Administration Law, and the political negotiation of the 21st Panglong /Union Peace Conference. The policy was adopted by Naga CSOs and customary institutions in December 2017 at the stakeholders' consultation in Khamti and it has been put out for wider consultation at the tribal levels.[36]

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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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South Asia

INDIA

JAMMU & KASHMIR
CHINA
PAKISTAN
HIMACHAL PRADESH
PUNJAB
UTTARANCHAL
HARYANA
DELHI
ARUNACHAL PRADESH
NEPAL
SIKKIM
BHUTAN
RAJASTHAN
UTTAR PRADESH
ASSAM
INDIA
BIHAR
MEGHALAYA
MANIPUR
GUJARAT
JHARKHAND
TRIPURA
MADHYA PRADESH
WEST BENGAL
MIZORAM
CHHATTISGARH
Calcutta
MAHARASHTRA
ORISSA
MYANMAR
Mumbai (Bombay)
BANGLADESH
Bay of Bengal
Arabian Sea
ANDHRA PRADESH
KARNATAKA
GOA
TAMILNADU
LAKSHADWEEP
KERALA
ANDAMAN & NICOBAR ISLANDS

In India, 705 ethnic groups are recognised as "Scheduled Tribes", and these are considered to be India's indigenous peoples by the Adivasis and Tribals of the Country.[1] In central India, the Scheduled Tribes are usually referred to as "Adivasis", which literally means indigenous peoples. 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. 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 favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) with a condition that after independence all Indians are indigenous. However, it does not consider the concept of "indigenous peoples", and thus UNDRIP, applicable to India.

Legal rights and policy developments

A positive development in 2017, the State Government of Jharkhand on 9 August announced withdrawal of two controversial bills relating to the amendment of Chhotanagpur Tenancy (CNT) Act, 1908 and Santhal Pargana Tenancy (SPT) Act, 1948 after the Governor of the State returned the bills on 24 May 2017. The Governor stated that the objectives of the bills were not clear and that they should be reconsidered. The amendment bills, passed by the Jharkhand Assembly in November 2016, pave the way for land owned by indigenous peoples to be acquired for industrial and "welfare" projects. The two laws contain strict

provisions to prevent the alienation of the tribal people from their land. The amendments were criticised and led to widespread protests.[2]

However, the State Government of Jharkhand on 12 August passed amendments to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by waiving off social impact assessment (SIA) for acquisition of land including tribal lands for 10 specific purposes including for schools, hospitals, panchayat buildings, railway projects, irrigation projects, electrification, roads, pipelines, etc.[3] The amendments were opposed and the President of India had not given his assent at the year's end.[4]

Similarly, the indigenous communities continued to be vulnerable to land alienation in other States. On 21 December, the State Government of Chhattisgarh passed the Chhattisgarh Land Revenue Code (Amendment) Bill, 2017 in the State Assembly to facilitate the government to acquire tribal land for various development schemes. Tabling the Bill, the State's Revenue Minister stated that it had become necessary to bring amendment in Section 165 of the Chhattisgarh Land Revenue Code, 1959 to simplify land acquisition process to eliminate hindrances in the path of development. The Bill was criticised by the opposition members and demanded its withdrawal.[5] Chhattisgarh is one of the 10 States having 5th Schedule areas, which protects the interest of indigenous peoples in these areas. The Panchayats (Extension to Scheduled Areas) Act, 1996 provides that land owned by indigenous peoples cannot be transferred to non-indigenous without the consent of the Gram Sabha or the village council.[6]

Human rights violations against indigenous peoples

According to the latest report (*Crime in India 2016*) of the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs, a total of 6,568 cases of crimes against indigenous peoples were reported in the country during 2016 as against 10,914 cases in 2015, thus showing a substantial decrease.[7] But, these were only the reported cases of atrocities committed by non-indigenous on indigenous and do not include cases of human rights violations by the security forces.

Human rights violations by security forces

In 2017, the security forces continued to be responsible for human rights violations against the indigenous. In the areas affected by armed conflicts, indigenous peoples are pinched between the armed opposition groups (AOGs) and the security forces. Cases are numerous and many not reported. Some cases became public and are included here to illustrate the severity of these violations.

On 29 January, two indigenous including a woman were killed by police in an alleged fake encounter near Purungal-Dokapara area in Bastar district, Chhattisgarh. Police claimed that the two were Maoists, but the villagers said that two were innocent and got picked up and killed.[8]

On 4 May, a 60-year-old tribal, who was arrested under the new cow protection law for allegedly slaughtering a bullock, died at Kheroj police station in Sabarkantha district, Gujarat. Family members had alleged custodial torture, while police claimed the deceased died of brain haemorrhage.[9]

On 14 June, a 35-year-old tribal was killed when army personnel opened fire at Khangsa village in Changlang district, Arunachal Pradesh. The Army claimed that the deceased civilian was killed after he was mistakenly taken as a militant.[10]

On 24 September, a 28-year-old tribal was killed by security forces in an alleged fake encounter in Bastar, Chhattisgarh. The security forces claimed that he was a Maoist, which was denied by his family members. Alleging that the deceased was picked up and killed in custody, a petition was filed in Chhattisgarh High Court in October seeking an investigation by an independent agency.[11]

On 27 October, 45-year-old tribal farmer was killed in police firing at Chilakota village in Dahod district, Gujarat. The farmer was killed when police opened fire at a mob protesting the death of a tribal villager due to alleged torture in police custody a day earlier.[12]

Human rights violations by armed opposition groups

Armed opposition groups continued to be responsible for gross violation of international humanitarian law including killings during 2017.

The Maoists continued to kill innocent indigenous peoples on charges of being "police informers", or simply for not obeying their dik-

tats. Majority of the victims were killed in *Jan Adalats*, 'People's Courts' held by the Maoists. The Naxal Division of the Ministry of Home Affairs recorded 21 *Jan Adalats* held by the Maoists during the year.[13] Some of the alleged killings by the Maoists in 2017 took place at Gilibandha village in Visakhapatnam district, Andhra Pradesh 16 October[14]; at Kurub village in Malkangiri district, Odisha on 6 October[15]; at Kandulnar village in Bijapur district, Chhattisgarh on 19 October[16]; at Pedamidisileru village in Kothagudem district, Telangana on 26 November[17]; at Chitrakonda area in Malkangiri district, Odisha on 10 December[18]; at Chitrakonda area in Malkangiri district, Odisha on 19 December[19]; among others.

Non-restoration of alienated tribal land

There are plethora of laws prohibiting sale or transfer of tribal lands to non-indigenous and restoration of alienated lands to the tribal landowners. But, these laws remained ineffective, not invoked or attempts being made to weaken them.

In a positive move, the National Commission for Scheduled Tribes (NCST) on 9 May ordered the District Magistrate in Raigarh, Chhattisgarh to take action under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in cases of unlawful transfer of tribal land to non-indigenous through forgery. The case pertains to transfer of over 300 acres of tribal land unlawfully to non-indigenous at Kunkuni village in Raigarh district between 2009 and 2015.[20] The NCST also instructed the District Magistrate to provide the status of action taken against the government officers and employees found accused in the illegal land transfer cases. The NCST also asked to return the land taken against rules to the original owners and speedy disposal of cases under sections 170(1&2) of Chhattisgarh land revenue manual.[21]

However, there were many cases where the alienated tribal lands acquired through fraudulent means remained to be restored to original land owners. For example, more than 680 acres of land were fraudulently acquired between 2012 and 2017 from over 100 indigenous from Khokhraaoma, Katangdi, Bhengari and Nawapara Tenda villages of Gharghoda tehsil in Raigarh district, Chhattisgarh. Later, they found that their land was now held by two companies – TNM Energy and Mahavir Coal Corporation.[22]

Conditions of the internally displaced tribal peoples

The Government has failed to rehabilitate indigenous peoples displaced due to both conflicts and development projects over the years.

Thousands of Bru (Reang) indigenous continued to live in sub-human conditions in six temporary relief camps in Tripura since their displacement from Mizoram in 1997. The much-hyped repatriation process of the Brus to Mizoram could not take place at the year's end. In November, the State Government of Mizoram had identified 32,857 Brus belonging to 5,413 families as bona fide residents of Mizoram, who were to be repatriated from December. But, Mizoram government rescheduled the proposed repatriation to March 2018, stating that the Central government did not release the fund for expenses to be incurred in the repatriation process.[23]

Similarly, indigenous peoples displaced to various development projects were denied proper compensation, rehabilitation and remained at risk of displacement. On 3 February, the Supreme Court had asked the Central Government to reply on a petition filed seeking fair compensation, resettlement and rehabilitation to thousands of displaced people including tribals due to construction of the Indira Sagar Polavaram Project on river Godavari in Andhra Pradesh. As per the petition, the project will submerge about 600 habitations in Andhra Pradesh, Chhattisgarh, Telangana, and Odisha and also submerge about 8000 acres of forest and 500 acres of the wild life sanctuary.[24] On 7 November, the Supreme Court imposed a fine of Rs. 25,000 on the Central Government for failing to file the reply.[25]

Also, over 259 tribal families, who were evicted in 1999 from Nagarahole National Park in Karnataka, still await complete rehabilitation at the year's end.[26]

Repression under forest laws

A large number of forest dwelling tribals continued to be denied their rights. As per information available with the Ministry of Tribal Affairs, as of 31st October, a total of 41,89,827 claims (40,50,131 individual and 1,39,696 community claims) were filed under the Forest Rights Act. Of these, a total of 36,51,414 (87.15%) claims were disposed of, out of which 18,24,271 titles (17,59,955 individual and 64,316 community claims) were

distributed.[27] The remaining claims were either rejected/pending. Pertinently, the process continued to be progress at a very slow pace. Often, the claims were rejected due to non-availability of documentary evidence with the claimants; non-possession of the land claimed; possession after 13 December 2005; claims on land recorded as revenue land; inability to prove 75 years of residence in that area in case of the Other Traditional Forest Dwellers (OTFDs), lack of awareness campaign and capacity building programmes on FRA implementation, etc.[28]

Since the rights of the forest dwelling tribes were not recognised they remained at risk of evictions although Section 4(5) of the FRA provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from land under his occupation till the recognition and verification procedure for settlement of forest rights is complete.[29]

However, tribals continued to live under threat of eviction in the name of forest/animal conservation. On 4 July, the NCST had ordered the National Tiger Conservation Authority (NTCA) not to evict forest dwelling indigenous peoples from land under their occupation in protected areas and tiger reserves till recognition and transfer of alternate land was provided for them. The direction was passed after the NTCA in a controversial order in March asked States to stop settlement of tribal rights inside tiger reserves.[30] Despite NCST's order and widespread protests from tribals, the NTCA order was not withdrawn at the year's end.[31]

The tribals were even denied rights over minor forest produce (MFP), such as kendu leaves in Odisha, in violations of the Forest Rights Act, 2006. In June, the NCST directed the Odisha government to allow the rights of ownership, collection, sale of kendu leaves to tribal people living in Scheduled areas of the State.[32]

Further, plantations carried out under Compensatory Afforestation Fund Management and Planning Authority (CAMPA) violated the rights of the tribals. On 8 November, the Central Government released guidelines to identify land for compensatory afforestation. However, in most of the notified lands the tribals have traditional rights. On 14 November, the Community Forest Resource-Learning and Advocacy (CFR-LA), a countrywide group of nonprofits and researchers, revealed testimonies of large-scale violations of forest rights through compensatory afforestation.[33]

Situation of tribal women

Tribal women and girls in India are deprived of many of their rights. Both collective and individual rights are violated in private and public spaces. Sexual violence, trafficking, killing/branding as a witch, the militarization or state violence and the impact of development-induced displacement, etc remained major issues. The NCRB in its latest reported stated that 974 tribal women were raped during 2016.[34]

Security forces target tribal women

On 7 January, the National Human Rights Commission (NHRC) confirmed that it found 16 women, prima facie victims of rape, sexual and physical assault by the State police personnel in Chhattisgarh in November 2015. The NHRC also issued a notice to the State government to show cause why it should not recommend interim monetary relief of Rs 37,00,000 to the victims.[35]

On 25 January, four tribal women, belonging to Bhil community, were allegedly gang raped by police personnel during a raid conducted at Holibayda and Bhuthiya villages in Dhar district, Madhya Pradesh. The raid was reportedly conducted to arrest men suspected of involvement in thefts. Police registered an FIR after a delay of five days. The NHRC ordered an on the spot inquiry on 3 February.[36]

On 10 October, a 14-year-old tribal girl was gang raped allegedly by four security personnel in Lanjiguda forest in Koraput district, Odisha. The victim was attacked while she was returning from a market where she had gone to obtain a document and passport size photographs. The victim confirmed that she was gang raped by four security personnel. The incident had sparked massive protests, but justice remained elusive for the victim.[37]

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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 is approximately 1,586,141,[1] which represents 1.8% of the total population of the country. However, indigenous peoples in the country claim that their population stands at about 5 million.[2] The majority of the indigenous population live in the plain land 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 other than the mainstream Bengali population are now mentioned.[4] Still, only cultural aspects are mentioned, whereas 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. But even after 19 years, major issues of the Accord, such as making the CHT Land Commission functional, devolution of power and function to the CHT institutions, preservation of tribal area characteristics of CHT region, demilitarisation, rehabilitation of internally displaced people, etc., remain unsettled.

Land related laws and policies

With the intent to resolve numerous cases of land disputes in the CHT, the CHT Land Dispute Resolution Commission Act was enacted in 2001. However, the issue of resolution of land disputes remained illusory until October 2016 when the Government fi-

nally amended the legislation. Since then the reconstituted land commission held three meetings and received a total of 22,866 complaints.[5] Nevertheless, the commission has not been able to resolve any disputes even at the end of 2017 as it is facing a number challenges including lack of manpower, office equipment and the absence of Rules to supplement the provisions of the Act. Additionally, although under the tutelage of the CHT Accord, the subject "Land and Land Management" is supposed to be transferred to the three Hill District Councils (HDCs),[6] only 17 out of 33 stipulated subjects have been transferred to the HDCs

till 2014.[7] Till now there is no headway in transfer of other important subjects including "Land and Land Management."

East Bengal State Acquisition and Tenancy Act 1950 is the only legislation that provides for certain safeguards for the land rights of indigenous peoples of the plains, especially in terms of transfer of land titles to non-aboriginals (Section 97). But, the safeguards enshrined in this land law are often flouted as a result of lack of consciousness and sensibility among the responsible government officials.[8] As a consequence, despite having this safeguard, indigenous peoples of the plains continue to lose their lands. This, at times, is coupled with arbitrary invocation of the Vested Property Act.[9] This Act led to the loss of thousands of acres of lands belonging to religious minorities including indigenous peoples. Adoption of the Vested Property Return (Amendment) Act 2013 seeks to undo the arbitrary application of the law that resulted in loss of lands of many families belonging to minority origin by restitution of lands provided under a government list – 'Ka' Schedule.[10] However, not much progress in regard to restoration of lands has been observed so far.

Moreover, adoption of the Acquisition and Requisition of Immovable Property Act in September 2017 has intensified the risk of losing lands by indigenous peoples of the plains.[11] Although this legislation increased the amount of monetary compensation of the adversely affected people as a result of acquisition and requisition of lands by the state,[12] there are no safeguards for indigenous peoples.[13]

Land rights situation on the ground

In the CHT, large-scale arson attacks on June 2, 2017 in Rangamati's Longadu Sadar by a mob of Bengali settlers in the presence and alleged collaboration of government forces was one of the most horrendous incidents that happened in the recent years. As a result of these attacks, 250 houses and shops belonging to indigenous Jumma villagers were reduced to ashes after they were looted and vandalised.[14] A 75-year-old Chakma woman burnt to death in her home during the attacks. The promise of Government representatives of compensation and rehabilitation has not been realised as yet.[15] They are still passing their nights and days in fear, anxiety and insecurity.

The year 2017 a disastrous landslide took place in the CHT and neighbouring two districts, claiming over 150 lives, the majority of which

were solely from indigenous inhabited area of Rangamati. Although several hundred surviving families were provided with food, shelter and relief support for about three months following the disaster, support was abruptly stopped, and the victims were ejected from their temporary shelters with the complete absence of any form of rehabilitation. Moreover, a recent report shows that over the recent years Mro and Tripura people have been some of the worst hit victims of widespread land grabbing in the CHT. They have lost several thousand acres of lands by grabbing of private institutions – reportedly by Lama Rubber Industry, Quantum Foundation and Laden Group.[16]

In the plains, 1,200 Santal families of Sahebganj-Bagda Farm area of Gobindaganj in Gaibandha, who faced brutal mob attacks on 6 November 2016, leaving their homes gutted, three Santal men shot dead and dozens injured, are passing their days in uncertainty and insecurity.[17] There has not been any initiative to bring the alleged perpetrators to justice. Moreover, the government is yet to return the lands of original titleholders whose lands were acquired in 1965 by the then Pakistan government to grow sugarcane for a sugar mill as per an agreement signed between the peasants and the government.

Recently, indigenous peoples of Madhupur experienced a rise in the number of trumped-up charges brought against them by the Forest Department (FD). Indigenous peoples believe that the number has risen due to their protest against a declaration of 9,145 acres of land in Madhupur as "reserved forest" by the FD in 2016.[18] This declaration has exposed over 15,000 indigenous and Bengali people to the risk of forced relocation. Despite an uproar at different levels against the declaration, the FD has yet to annul the declaration.

In northeastern part of the country, the long-standing conflict between indigenous Khasi people and tea estate authorities continued throughout 2017. After facing attacks, imprisonments and harassment of different forms in order to evict them from their ancestral lands, the Khasi people of Nahar Punji in Moulvibazar district received an arbitrary eviction notice in February 2016 from Moulvibazar district administration. After much protests, Khasi people managed to win a stay order (No. A Ka – 68/2016) from the Divisional Commissioner of Sylhet division until a resolution of the land dispute could be heard in court. But further aggravating the situation, the Land Ministry leased out land to one Mahi Tea Estate covering 611.03 acres of lands of four Khasi villages including that of Nahar in 2017. In nearby Habiganj district, Bangladesh

Economic Zones Authority (BEZA) decided to set-up a Special Economic Zone of around 512 acres of land in Chandpur area of Chunarughat upazila, threatening life and livelihood of nearly 16,000 tea garden workers belonging to different ethnic communities, who have been dependent on the land for generations. Indigenous peoples and people from all walks of life protested against this move by BEZA.[19] Nevertheless, without paying any heed to their demands, the aforementioned authority is continuing with its plan.

The rights of indigenous children

The government of Bangladesh undertook a number of initiatives in recent years towards fulfilling its responsibility of ensuring primary education for indigenous children, including a praiseworthy move in 2017 to nationalise 210 primary schools in the CHT.[20] This has cleared the way for the education of indigenous communities dependent on those primary schools. By the same token, the Ministry of Primary and Mass Education produced pre-primary textbooks in five indigenous languages and distributed around 25,000 books to indigenous children in 2017. On the flipside, indigenous activists identified a lack of adequate, competent and qualified teachers in indigenous languages as a key challenge to facilitate the mother tongue education in the schools where the textbooks have been distributed.[21] Also, despite having such developments underway, children belonging to many remote indigenous communities still cannot realise their right to education due to lack of educational institutions and other facilities in those areas.[22]

The rights of indigenous women and girls

Violence against indigenous women and girls in Bangladesh has remained an alarming and concerning issue over the recent years. Sexual and physical assaults have become a common means to be used against indigenous women and girls while none of the alleged perpetrators of such cases have been brought to justice. In 2017, at least 56 indigenous women and girls were sexually and physically assaulted.[23] The victims of such cases face enormous challenges while accessing medical treatment and legal justice, particularly in remote areas, such

as barriers to appropriately address the situation, non-cooperation of the local administrations along with other services, such as adequate treatment, compensation and rehabilitation.[24] The measures taken by the government in this regard so far have proven to be inadequate and the government has failed to formulate a law or amend existing laws, policies or provisions that address the specific vulnerability faced by indigenous women and thus serve as a safeguard for their rights. Moreover, the CEDAW Committee's recommendation to the Government of Bangladesh 'to effectively investigate all reports of gender-based violence against indigenous women connected with land grabbing and take measures to bring those responsible to justice'[25] still remains unrealised.

Criminalisation of indigenous peoples' human rights defenders

Indigenous human rights defenders have been criminalised and subjected to arbitrary arrests, detentions, trumped-up charges, arbitrary search operations and imprisonments. Indigenous activists, when appearing in the court for the bail hearing, were arbitrarily held from the court premises by the intelligence and security forces and meted out inhuman torture in custody after which they are sent to jail claiming they have been involved in new cases.[26] In 2017, a total of 141 indigenous human rights defenders and innocent villagers were reportedly arrested or detained while 161 persons were harassed with false charges.[27] In some cases, elected public representatives from the indigenous peoples organisations have also been targeted.[28] These incidents have been happening despite the pledges made by the Government of Bangladesh in the international forum to promote and protect human rights stating "strengthening and consolidating the legal and regulatory regime and institutional structures that promote good governance, democracy, human rights and the rule of law".[29]

Review of the Human Rights Committee

In 2017, Bangladesh underwent a review of the Human Rights Committee, for the first time and received Concluding Observations issued by

the Committee. The Committee addressed discriminatory acts against indigenous peoples' leaders, and activists, and identified that such discriminations are caused by the 'lack of legal recognition of indigenous peoples' and related to 'land rights and the lack of participation in political and decision-making processes' of indigenous peoples.[30] The Committee recommended "to recognise the legal status of indigenous peoples, facilitate the reporting of violations of the rights of indigenous peoples, investigate such cases, prosecute perpetrators and compensate victims, resolve land disputes through the implementation of the Chittagong Hill Tracts Land Dispute Resolution Commission (amended) Act 2016 and through the use of an independent land commission, and include indigenous persons in political and decision-making processes".[31] These recommendations are yet to be implemented by the Government.

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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 caste and ethnic groups, including 59 indigenous peoples, 59 castes, and 3 religious groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal they have been discriminated, marginalized, excluded, subjugated, dominated, exploited and internally colonized 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 [1], in spite of the fact that Nepal has ratified ILO Convention No. 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the WCIP Outcome Document. The implementation of ILO Convention No. 169, UNDRIP and the Outcome Document is still wanting. It is yet to be seen how the amendments in the new Constitution and drafting of new legislation will comply with the provisions of these international human rights standards.

Local, provincial and federal elections

The Nepal government was unable to hold local, provincial or federal elections during 2016 due to rising controversy between, for and against amendments in or rewriting of the Constitution of

Nepal 2015 (see The Indigenous World 2017). When the government, on 20 February, thus stated that the first local elections would shortly be held, indigenous peoples commenced 2017 with less hope than before of amending the racist Constitution to accommodate their aspirations. Violent protests in Terai forced the government to hold the local elections in three phases: the first in Province Numbers 3, 4 and 6 on 14 May, the second in Province Numbers 1, 5 and 7 on 28 June, and the third in Province Number 2 on 28 September.

As part of the requirement for local elections, and in accordance with a request from the Electoral Commission of Nepal, on 24 April the Government of Nepal published a list of 98 minorities to ensure their representation.[2] This included 40 of the 59 indigenous peoples: Kumal, Gharti/Bhujel, Rajbanshi, Sherpa, Dauwar, Majhi, Chepang, Sunuwar, Sattar/Santhal, Jhangad/Dhangar, Gagngai, Thami, Dhimal, Yakkha, Tajpuria, Darai, Pahari, Bhote, Thakali, Chantyal, Hyolmo, Bote, Bragmu-Baramo, Jirel, Dura, Meche, Raji, Dolpi, Byanshi-Sauka, Lepcha, Pattharkatta/Kushbadiya, Kisan, Topkegola, Walung, Hayu, Lhopa, Koche, Lhomi, Raute and Kusunda. It also included 13 yet-to-be-listed indigenous peoples: Kulung, Ghale, Khawas, Nachhiring, Yamfu, Chamling, Aathparya, Bantawa, Thulung, Mewahang Wala, Bahing, Sampang, Khaling, and Loharung.

A Writ Petition (Writ No. 073-WO-1333) was filed in the Supreme Court of Nepal against this government decision to list indigenous peoples as a minority. It was filed on 30 May by the Nepal Federation of Indigenous Nationalities (NEFIN) et. al, with the legal assistance of the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP). Indigenous peoples were listed as a minority in a notice published in a Home Office Gazette on 24 April 2017. This directly contradicts and is inconsistent with ILO Convention No. 169 and the Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002, which recognizes Adivasi Janajatis (Indigenous Nationalities) as distinct peoples with distinct rights. Indirectly, it divides indigenous peoples and jeopardizes the entitlement of their rights as enshrined in ILO Convention 169 and UNDRIP. Justice Dr. Ananda Mohan Bhattarai's Bench issued a Show Cause Order and the case is ongoing at the moment.

Following the successful completion of the local elections, provincial and federal elections were conducted in two phases: the first in 32 districts on 26 November, and the second in 45 districts on 7 December.[3] At year end, a flame of hope remained alive for the indigenous peo-

ples as the Federal Socialist Forum,[4] which has been raising issues around indigenous peoples, Madhesi and other marginalized groups, turned out to be a "Kingmaker" with some bargaining power in national politics and, together with the Rastriya Janata Party, which focuses on Madhesi issues only, in command of the Provincial Parliament in Province No. 2, so there is still hope for indigenous peoples to have a voice in the political sphere in Nepal.[5]

The government had delayed holding local, provincial and federal elections primarily due to strong resistance from the Madhesi and Tharu indigenous peoples' movements to any rewriting or amending of the Constitution to ensure an identity-based federalism. The pressure had waned as the leaders of the indigenous peoples' movement, led by the Nepal Federation of Indigenous Nationalities (NEFIN), became co-opted mainly by the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML), the Nepali Congress, and the Communist Party of Nepal-Maoist Centre (CPN-Maoist). However, indigenous peoples' movements organized by those not associated with NEFIN continued to exert pressure to rewrite or amend the Constitution to ensure an identity-based federalism. CPN-UML, a diehard anti-indigenous political party, the CPN-Maoist Centre, who were apparently diehard pro-indigenous during 10 years of insurgency but abandoned identity-based federalism after the peace process, and the Nepali Congress Party, another anti-indigenous political party, took a bold decision to completely ignore the continuing political pressure from Madhesi and indigenous peoples.

They "successfully" organized the local elections and joint federal and provincial elections before the year was out. Strong resistance from the Madhesi resulted in the local elections being held in three phases and the federal and provincial elections in two.

The indigenous (and Madhesi) voters who went to the polling stations to cast their vote despite disagreeing with the Constitution only gave validity to something they were opposed to. Some indigenous intellectuals did not vote in order to avoid validating a Constitution that robbed them of their collective rights. As the year ended and the results of the federal and provincial elections emerged, it became clear that the CPN-UML had become the largest political party in the federal parliament, followed by the CPN-Maoist Centre, the Nepali Congress, the Federal Socialist Forum and Rastriya Janata Party. Of the seven provinces, CPN-UML had control over six with only Province No. 2 controlled by the Madhesi political parties.

Out of the total of 165 directly elected seats, 45 indigenous peoples had been elected, representing 10 of the 59 indigenous peoples: 10 Tharu, 9 Newar, 6 Khambu ("Rai"), 6 Magar, 5 Yakthunba ("Limbu"), 3 Tamu ("Gurung"), 1 Sunuwar and 1 Thakali, plus 1 Nisyamba ("Manage") yet to be listed.[6] Elected indigenous peoples are in a majority in two provinces (1 and 4). Although the representation of indigenous peoples looks good, in reality they are unable to go against party policy. Raising indigenous peoples' issues will therefore be a Herculean task. The national indigenous peoples' movement, which reached a peak at the end of the first Constituent Assembly, went downhill during 2017 although there is now the possibility of a revival in five of the seven provinces, namely, Province Numbers 1, 3, 4, 5 and 7.

It should be noted that Resham Chaudhary, a young Tharu media professional and leader, stood as a candidate from his position of "self-exile" and won by a large margin in the direct election to the federal parliament from Kailali constituency number 1,[7] where violent confrontations between the Tharu indigenous peoples and government security forces resulted in the deaths of seven people, including the Senior Superintendent of Police and a child, and caused the displacement of more than 10,000 Tharus to India. Prime Minister Sher Bahadur Debua received his certificate through his representative but both the National Electoral Commission and the Supreme Court of Nepal refused to allow Resham to receive his certificate for winning the election through his representative. Resham has been underground since the violent con-

frontation as he is wanted by the police. Many took this incident as a double standard that discriminates against indigenous peoples. Journalist Supriya Manandhar writes in the RECORD that this marks a rift between the Tharus and the Nepali state.[8] The rift between indigenous peoples, not only the Tharus, and the state is indeed widening, making a mockery of ILO C169 and the UNDRIP, to which Nepal is a party.

Indigenous peoples' lands, territories and resources

One of the main themes of both ILO C169 and the UNDRIP is indigenous peoples' ownership, control, use, and management of their lands, territories and resources. Ten years have now past since Nepal's ratification of ILO C169 and adoption of the UNDRIP, both in September 2007, but their full and meaningful implementation is nowhere in sight. As the Constitution of Nepal was produced and promulgated without the Free, Prior and Informed Consent (FPIC) of the indigenous peoples, and completely ignoring two early warnings issued by the CERD Committee,[9] one Directive Order[10] and one Mandamus[11] issued by the Supreme Court of Nepal relating to the representation of indigenous peoples through their own organization and to ensuring their FPIC, one can hardly expect to see new legislation that is compatible with these international human rights standards.

As indigenous peoples' awareness of their rights increases, and the state and private sectors intensify their aggressive developments, indigenous peoples are resisting further loss of their individual and collective control over land, territories and resources. In 2017, LAHURNIP provided legal support to 13 cases of human rights violations and to the resistance movements in different parts of Nepal.[12] Of the 13 cases of violations, two are related to displacement by road expansion projects (one in Kathmandu and one in Dhankutta), two are related to hydropower projects, Padam Khola hydropower project and Uper Trishuli-1 Hydropower Project, two relate to high-tension electricity transmission lines, Kabeli and Bhulbule Marsyanngdi, one is a case of mining of limestone in Palpa, one a case of an animal slaughter house in Gulariya in Bardiya, one a case of pollution by Birat Poultry Farm in Morang, one a case of dignity and identity of the Khadgi in Kathmandu, one a case of forest, water and sacred sites of the Magar in Kailali, one a case against land takeovers by the Nepal Army in Panchthar, and one a continuing case of

gross human rights violation by the state against Tharu indigenous peoples in Kailali. What is common to all these cases is that neither the state nor the private sector have ever sought FPIC or given due compensation to those whose lands and property have been destroyed.

The Government of Nepal is implementing a Road Expansion Project (996 km) that will directly and indirectly affect more than 150,000 people. The primary victims or survivors of this project are the Newar indigenous peoples. They are facing serious human rights violations, including forced eviction, torture, destruction of countless religious, spiritual and sacred sites, and economic dispossession. Women, children and people with disabilities will suffer disproportionately. No alternatives to the road expansion have been considered and no proper compensation given. No impact assessment has been done. With the legal help of LAHURNIP, this action was challenged in the Supreme Court and, in September, the Supreme Court issued a writ against the project.[13] The Court has yet to make the full text of its final verdict public. Two high-tension electricity transmission line projects, one in Lamjung district in Western Nepal and the other in Kabeli in Taplejung district in Eastern Nepal, have agreed to pay 10 percent of the total compensation amount but the community have refused to accept this, and are demanding full compensation. In Morang, the Birat Poultry Farm has agreed to move its facility elsewhere within the next two years as the local indigenous peoples and others are seriously concerned that the pollution is making their daily life difficult.

Two Constitutional Commission Bills passed

Parliament passed the Indigenous Nationalities Commission Bill on 2 August[14] and the Tharu Commission Bill on 19 September.[15] Months after enacting both laws, however, the government has yet to form either commission. Although both commissions are constitutional, they have no judicial or semi-judicial authority.

Indigenous women's economic empowerment

On the evening of 17 March, as a part of the 61st session of the Commission on the Status of Women, there was a High-Level Panel Discussion

on "Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Indigenous Women and Girls", chaired by H. E. Mr. Antonio Patriota de Aguiar, Chair of the CSW 61, in which Ms Lakshmi Puri, Deputy Executive Director of UN Women, Ms Tarcila Rivera Zea, Executive President of FIMI, and the three main speakers representing indigenous women, including Ms Yasso Kanti Bhattachan, National Indigenous Women Forum (NWIF) Nepal, spoke on indigenous women's political participation in decision making. Ms Yasso Kanti Bhattachan said that indigenous women should be visible at all levels of the UN and the Member States, UNIFEM should have a separate unit on and budget for indigenous women's empowerment, disaggregated data should be collected on indigenous women, and indigenous peoples should obtain permanent observer status at the General Assembly. UNDP Nepal, in partnership with the National Indigenous Women's Federation (NIWF), has commenced research into the economic empowerment of indigenous women in Nepal.

Climate change

The main climate change activities in Nepal in 2017 were as follows. The Forest Investment Program (FIP), Investment Plan for Nepal 'Investing in Forests for Prosperity at a Time of Transformation' was approved by the World Bank in December 2017. Together with UNDP, IUCN and FAO, the Ministry of Finance has, as a National Designated Authority (NDA) to the Green Climate Fund (GCF), been developing different concept notes and proposals for the GCF. Climate change programs implemented by the government have yet to establish a mechanism for ensuring the Free, Prior and Informed Consent (FPIC) of indigenous peoples.

Notes and references

1. Sixty-one indigenous peoples were initially officially recognized in Nepal through the ordinance, Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054. Indigenous peoples have been officially and legally recognized 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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3. See http://kathmandupost.ekantipur.com/news/2017-09-01/ec-divides-districts-for-two-phases-of-elections.html
4. A party made by the merger of two parties (Federal Socialist Party and Madhesi Janaadhikar Forum)
5. See https://setopati.com/politics/118441 (text in Khas Nepali)
6. See https://www.onlinekhabar.com/2017/12/645919
7. See http://www.myrepublica.com/news/32464/?categoryId=81
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10. Full text of the decision yet to be uploaded. Case registration date: 2065-11-01 Case No. 065-WO-0475 Date of Verdict: 2070-01-08 http://www.supremecourt.gov.np/cp/#listTable
11. Case registration date: 2070-09-24 Case No. 070-WO-0476 Date of Verdict: 2071-01-29. See full text in Khas Nepali language at: http://www.supremecourt.gov.np/cp/assets/downloads/supreme_126604.pdf
12. Nepalma Adibasi Adhikar Hananka Ghatana ("Incidences of Violation of Indigenous Peoples' Rights in Nepal"). LAHURNIP. 2017, http://www.lahurnip.org/uploads/articles/Adibasi%20Adhikar%20hananka%20ghatana-1.pdf
13. See http://www.lahurnip.org/news-details/86.html
14. See http://www.myrepublica.com/news/24948/
15. See https://kathmandutribune.com/parliament-passes-tharu-muslim-commission-bills/

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The Middle East

ISRAEL

1 AL-ARAQIB
2 UMM-AL-HIRAN
3 AL-FUR'AH VILLAGE

Israel's Arab Bedouin citizens are indigenous to the Negev/Naqab desert, where they have lived for centuries as a semi-nomadic people. Combining herding with agriculture, they are settled in villages linked by kinship systems, and this has largely determined land ownership. Prior to 1948, some 90,000 Bedouin lived in the Negev. After that date, most fled or were expelled to Egypt (Gaza Strip and Sinai) and Jordan, with only 11,000 remaining in the area. In the early 1950s, these Bedouin were concentrated by the Israeli government into a restricted area representing about 10 percent of their former territory. The government's promise of a return to their original lands within six months has yet to be fulfilled.

According to the Central Bureau of Statistics (2016), the current population of the Negev/Naqab is estimated at almost 700,000. Although the Bedouin community—through natural growth—today totals 240,500, the vast majority (415,000 or 65%) are Jewish citizens who have migrated from other parts of Israel and settled in the Negev/Naqab since the 1960s.

Israeli land policy has, since then, focused on concentrating the Bedouin in urban settlements. The majority (165,500) today live either in the city of Rahat and six government-planned townships (65%) or in 11 "recognized" villages (7%). However, these townships and villages do not allow them to follow their traditional rural way of life, and some 65,000 Bedouin (28%) have therefore chosen to remain in their old settlements –the 35 so-called "unrecognized villages"—which the State refuses to recognize or provide with basic infrastructure or services.

The Bedouin are today politically, socially, economically and culturally marginalized and experience many forms of discrimination. Their representatives regularly attend and address UN bodies on indigenous peoples' issues but their indigenous status is not officially recognized by the State of Israel. Israel has not ratified ILO Convention No. 169 and violates many of its provisions. Additionally, Israel did not participate in the vote on the UN Declaration on the Rights of Indigenous Peoples and fails to meet this Declaration's provisions.

In 2017, the Israeli government stepped up its efforts to coerce the Bedouin still living in unrecognized villages to give up their land and move to urban settlements. Besides continuing its policy of demolitions, it also adopted a US$787 million development plan that is contingent on relocating Bedouin from these "unrecognized" villages. In April, these villages were faced with yet another threat when a controversial new law—the *Kaminitz law*—was enacted, *making increased* "enforcement and penalization of planning and building offenses" possible throughout Israel.

House demolitions break records

In 2017, the Negev Coexistence Forum for Civil Equality (NCF)[1] recorded some 130 violent incidents of demolition–a blatant increase on the 77 that occurred in 2016 and the 64 in 2015.[2] Each of these incidents involved large police elements, bulldozers and trucks, and included the demolition of structures such as homes, shacks and animal pens; crop destruction and ploughing of fields already cultivated, as well as the confiscation of vehicles and personal belongings. While the main objective was to harass the residents in the unrecognized villages—where all buildings are considered illegal and subject to demolition—there were also several cases of house demolitions in recognized villages.[3] Some villages were repeatedly targeted: Al-Araqib, for instance, experienced 15 demolitions in 2017 and, in December, recorded its 120th incident since the first demolition took place in 2007 (see The Indigenous World 2015, 2016 & 2017).[4] Many Bedouin whose homes or structures have been slated for destruction are now choosing to self-demolish in order to avoid the fines levied by the government to cover the cost of the demolition. In August, the Be'er Sheva Magistrate Court thus ruled that six Al-Araqib residents would have to pay a total of 350,000 NIS (more than US$100,000) for the first eight demolitions![5]

Reporting from her mission to Israel in 2017, the Special Rapporteur on violence against women (VAW) notes that Bedouin women, in particular, are affected by the risk of forced evictions and express the feeling of being "completely unprotected when their homes are demolished".[6]

Two killed in house demolition clashes

One particularly violent and tragic incident occurred on 18 January in Umm al-Hiran, a village to be destroyed as part of an overall plan to clear the way for the new Jewish town of Hiran to be built on its lands (see The Indigenous World 2017). Arriving before dawn, a large number of police officers stormed the village to start the demolition.[7] Two people died in the process—a resident of the village, 50-year-old maths teacher, Yaqub Musa Abu al-Qi'an, and a police officer, Erez Levy. Abu al-Qi'an was shot and wounded while trying to drive away with some of his personal belongings before his house was demolished. Levy was killed when Abu al-Qi'an's car hit and ran over him. The police and the public security minister did not wait for the facts to be clarified before irresponsibly claiming that Abu al-Qi'an had deliberately attempted to run over the police officer. Several press statements were issued stating that it was a terrorist attack and that Abu al-Qi'an was affiliated with the Islamic movement. These statements were widely reported by the media all over Israel. The Israeli police long persisted in calling Abu al-Qi'an a terrorist, delaying the release of his body and trying to prevent his family from giving him a proper burial. In Be'er Sheva, two Bedouin activists were held by Shin Beth, the Israeli Security Agency, in an apparent attempt to prevent them from attending the funeral.[8]

In the meantime, and according to eyewitnesses and videos released from the scene,[9] it soon transpired that Abu al-Qi'an had been shot several times and had probably lost control of his car or was already dead when it rolled down a hill and accidentally hit and killed Police Officer Levy. A subsequent investigation by the Police Investigation Department also found no evidence of Abu al-Qi'an's intention to kill Levy but highlighted instead failings in the police's handling of the incident.

The Association for Civil Rights in Israel (ACRI) considers the Umm al-Hiran incident to be yet another example of how the police are increasingly taking a trigger-happy approach to interacting with Arab citizens. ACRI links this to the growing use of racist comments by elected officials and institutionalized incitement against Arab citizens of Israel during emergency situations or following serious incidents.[10]

Land grabbing, segregation and poverty

The demolition policy implemented against Bedouin settlements in the Negev/Naqab is all about land and resources.[11] It constitutes an important element of Israeli planning and building policy, the main, if not sole, aim of which is to provide land for new Jewish settlements. Since the early 1960s, more than 126 Jewish settlements have been established and there are a variety of plans for new settlements as well as the expansion of existing ones.[12] There are furthermore 60 dispersed Jewish family farms, focused on agriculture and tourism.

Although the State claims that Jewish settlements are designated for the general population, there exists an almost complete segregation between the two communities,[13] and there is a stark contrast between the Jewish settlements—all well-provided for with solar panels, infrastructure, water supply, government services, etc.,[14] and the Bedouin recognized settlements. The result of years of discrimination, these have become "overcrowded poverty traps", characterized by a distressing housing shortage as building permits are nearly impossible to obtain. Salaries are substantially lower than in Israel in general[15] and a large proportion of the population are not in employment.[16] Eleven of the Bedouin recognized settlements rank among the poorest settlements and regional councils in Israel and they are all placed in the lowest socio-economic category (1 out of 10 possible).

Moving to urban settlements means giving up traditional rural activities. For women, in particular, this means a loss of status since their skills and participation in the daily chores is no longer required. Instead, they find themselves confined to their homes and disempowered. Gender-based violence (GBV) is pervasive and women suffer multiple types of violence, including physical, psychological, economic and sexual.[17]

The Bedouin population's health is affected by the lack of access to and availability of adequate infrastructure and professional staff. Changes in lifestyle and diet have had health consequences in terms of obesity and diabetes which, until the 1970s, were very rare among the Bedouin.[18] Residents of the unrecognized villages depend entirely on the health services available in the recognized settlements. A recent study[19] found that Bedouin children in the unrecognized villages have a higher level of emotional and behavioural problems than independent samples of American, Chinese and Australian children, and that this

can partly be explained by their poverty, dire living conditions and consequent maternal distress.

School education, too, suffers from lack of proper infrastructure and teachers. All the petitions filed by unrecognized villages to the Supreme Court demanding the provision of government services and proper infrastructure have been rejected by the court on the grounds that these demands violate the State's "efforts to regularize Bedouin settlement in the Negev".[20] The proportion of Bedouin aged 15 or above who have studied for eight years or less may be as high as 50% or more and the proportion of women over the age of 15 who have not studied at all is significantly higher than that of men.[21.]

The Bedouin Economic and Social Development Plan

Approved in February 2017, this five-year plan focuses on four main areas of government investment: education, economic activities, infrastructure, and local authority empowerment. The plan will provide some NIS 3 billion (or US$ 787 million) due to be invested over the period 2017-2021.

While seemingly a generous and long overdue investment to the benefit of Israel's most neglected citizens, the plan has been drawn up without consulting the community or its leaders and does not offer any real message of change. On the contrary, it totally disregards the residents of the unrecognized villages—about a third of the Bedouin community—as all the investment will go to the recognized towns and villages. The plan furthermore ties these investments to enhanced "enforcement against illegal construction", i.e., the destruction of the unrecognized villages and the relocation of their residents to the recognized urban settlements.[22]

The "Kaminitz law", passed in April, will help achieve the plan's intention. This law amends the Planning and Building Law from 1965. It expands the use of Israel's administrative powers to implement demolition and eviction orders and increases the severity of financial penalties on homeowners who have built without permits and who refuse to demolish their own homes.[23]

In July, the Bedouin Plan was denounced by NCF's representative at the 10th session of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). The NCF statement urges the State of Israel to ..."draw up an agreed plan in cooperation with the Bedouin community, stop its

ongoing forced urbanization project and allow the Bedouin to pursue their own traditional way of life by recognizing the unrecognized Bedouin villages."[24]

Notes and references

1. The NCF is an Arab Jewish organization established in 1997 to provide a framework for Jewish-Arab collaborative efforts in the struggle for civil equality and the advancement of mutual tolerance and coexistence. It is also known as "Dukium" which means "Co-existence" in Hebrew. http://www.dukium.org
2. See at http://www.dukium.org/house-demolitions/
3. See NCF interactive map showing the 18 recognized and 35 unrecognized Bedouin settlements at www.dukium.org
4. See video at http://www.dukium.org/house-demolitions/ See also the film produced by Forensic Architecture at http://www.forensic-architecture.org/case/ground-truth/
5. NCF International Update August 27, 2017 at www.dukium.org
6. Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Israel. UN Document A/HRC/35/30/Add.1, June 2017, para. 43, at https://www.unwatch.org/wp-content/.../2017/.../SR-VAW-Israel
7. See +972 Magazine, 23 January 2017 at https://972mag.com/photos-this-is-what-it-looks-like-when-your-village-is-demolished/124695/
8. See NCF International Update at http://www.dukium.org/international-update-february-15-2017/ .....
9. See video and report by Forensic Architecture in collaboration with ActiveStills at http://www.forensic-architecture.org/case/umm-al-hiran/
10. ACRI, "Situation Report: The State of Human Rights in Israel and the OPT 2017", December 2017, p.14 ff. at https://www.acri.org.il/en/2017/
11. The village of Al-Fur'ah, faces the threat of demolition to make way for a phosphate mine (Sdeh Barir). http://www.dukium.org/international-update-february-15-2017/
12. See ACRI, "The State of Human Rights 2016" at http://www.acri.org.il/campaigns/report2016en/#item-5
13. A variety of admissions procedures and other mechanisms work to ensure this spatial separation. Only 11 local councils and cities allow, in theory, Bedouin residents. Yet, in some of these settlements, there is a financial barrier that hinders many sectors of the population from living there. Furthermore, none of these 11 localities offer services in Arabic, have Arab schools or functioning mosques. There has nonetheless been a slow move of Bedouin citizens into these municipalities. See NFC, "Discrimination in Numbers. Collection of Statistical Data – The Bedouin Community in the Negev/Naqab", Ben Fargeon

and Michal Rotem, 2017:13 at http://www.dukium.org/reports-and-position-papers

14. See Zafrir Rinat, "Making the Desert Bloom With New Jewish Settlements" Haaretz, 21.12 2013. At: https:/www.haaretz.com/israel-news/.premium-1.564637?=&ts=_1516019287775
15. Average salaries are 50% lower than the national average; half of those employed are only paid the minimum wage or below; and the income support benefit per month is lower than the minimum wage. Ibid., p. 21.
16. 55% of the Bedouin population is under 17 years of age and more than 80% of the women do not form part of the workforce. See NFC, "Discrimination in Numbers", op.cit. p.24.
17. Report of the Special Rapporteur on violence against women, op.cit., para.44.
18. See Richard Horton, "Offline: The Bedouin predicament" The Lancet, Vol.387, 9 April 2017 at www.thelancet.com
19. Ahmad Sheikh Muhammad et al. "A preliminary study of emotional and behavioral problems among Bedouin children living in 'unrecognized villages' in Southern Israel", Mental Health & Prevention, Vol.6, June 2017:12-18. https://www.sciencedirect.com/science/article/pii/S2212657016300162
20. NCF, "Discrimination in Numbers", op.cit. p. 26.
21. Ibid., p. 24.
22. See http://www.dukium.org/international-update-february-15-2017/
23. See 972 Magazine at https://972mag.com/israel-aims-new-nakba-style-weapon-at-arab-citizens/127322/
24. See http://www.dukium.org/ncfs-statement-emrip-session-geneva/

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PALESTINE

Following Israel's declaration of independence in 1948, the Jahalin Bedouin, together with four other tribes from the Negev Desert (al-Ka'abneh, al-Azazmeh, al-Ramadin and al-Rshaida), were forced by the Israeli military into the West Bank, then under Jordanian rule, fleeing in waves of refugees from 1948 until the early 1950s. These tribes are semi-nomadic agro-pastoralists living in the rural desert 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). The Oslo Accords II in 1995 gave Israel interim administrative and security control (until 1999) over "Area C," which represents 60.2% of the West Bank. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only bypass roads, all under Israeli military control.

2017 has been yet another rollercoaster year for the 30,000 indigenous Palestinian Bedouin, most of whom are refugees, and other pastoral herders living in Area C of the OPT. Israeli policies continued to threaten their culture, livelihood and traditional lifestyle. Forcible transfers, accompanied by a coercive environment which makes life almost unbearable, are taking place to enable the expansion of Israeli-only settlements, which are illegal under international humanitarian law.[1] This settler colonial expansionism is a strategic land-grab, intended to stymie the emergence of a viable Palestinian state: it is no coincidence that settlement blocs choose land with access to Jerusalem, or located on the Mountain Aquifer,[2] and on the border with Jordan, thereby prejudicing the sovereignty of a Palestinian State as well as the farmland considered to become its breadbasket.

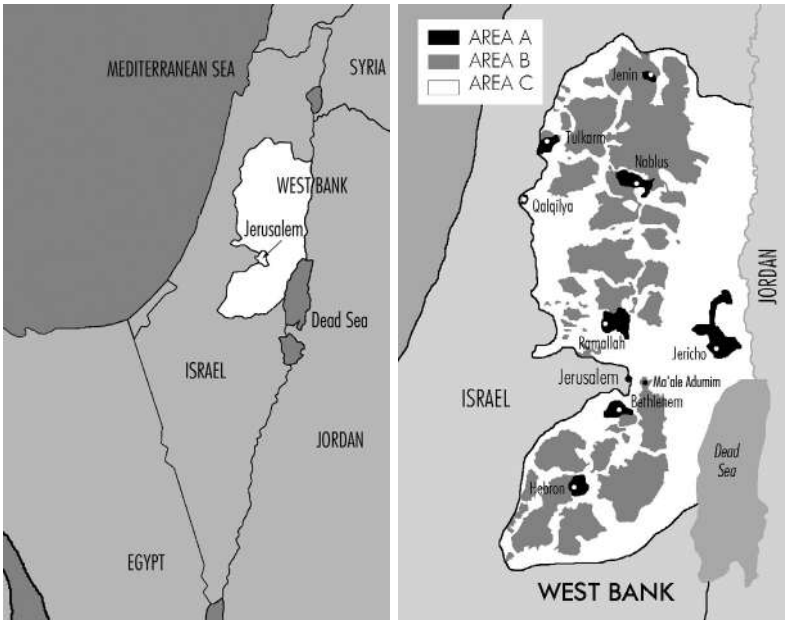
On-going breaches of international law precepts

On 23 October, 2017, Prof. S. Michael Lynk, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, submitted a report[3] to the UN Secretary General. Unable to enter the OPT for fact-finding research purposes,[4] his report is based on oral testimonials, including from Bedouin refugees of the Jahalin tribe who travelled from their Jerusalem periphery villages to Amman to submit to him. The report states: "Israel has been deemed to be in breach of many of the leading precepts of international humanitarian and human rights law. Its settlement enterprise has been characterized as illegal by the United Nations Security Council. [..] Bedouin communities in the West Bank and East Jerusalem are the latest Palestinian communities to be at risk of forcible transfer instigated by the occupying power. And above all, the entrenched and unaccountable occupation – through its denial of territorial integrity, genuine self-governance, a sustainable economy and a viable path to independence – substantively violates, and undermines, the right of the Palestinians to self-determination, the platform right that enables the realization of many other rights."

Bedouin communities have been specifically targeted, especially those in regions with the most strategic and negative impact on the future viability of Palestine, such as the Jahalin tribe living near the illegal settlement city, Ma'ale Adumim, east of Jerusalem. The Bedouin's *sumud* (steadfast) presence on the open lands of the Judaean Desert keeps the eastern corridor into Jerusalem open; this is why late President Yasser Arafat called them the "gatekeepers of Jerusalem" back in the 1990s when forcible transfer was last carried out in a major thrust.[5]

Once forcibly displaced and the land cleared of Palestinians, the Wall route will be finally built in that entire region and Jerusalem—or rather Greater Jerusalem, a huge regional construct stretching from the Old City to the Dead Sea and Jericho—will be *judaised* with the eastern access to the city closed off by settlement units, the Wall, settler-only roads and checkpoints. This will duplicate Israeli facts on the ground north and south of the city, where Ramallah and Bethlehem have been walled off from Jerusalem.[6] Such construction is estimated to threaten 35% of the potential Palestinian economy.

By taking Jerusalem "off the table" Donald Trump has played into the hands of Israeli right-wingers who do not seek peace, do not wish to share Jerusalem and are engaged in a dangerous zero sum game.



The forcible transfers and Israeli settlements are issues that have been subject to ongoing reporting by the United Nations. The UN has repeatedly stated that the imposition of the proposed 'relocation' of communities without their free and informed consent would amount to forcible transfer and eviction, contravening Israel's obligations as an occupying power under international law.[7] In 2014, legal experts on Human Rights and International Humanitarian Law issues, Théo Boutruche and Marco Sassoli, defined forcible transfers as grave breaches of the Geneva Conventions and therefore war crimes.[8]

The UN High Commissioner for Human Rights as to the Human Rights situation in Palestine, specifically Israeli settlements in the OPT, examines in its latest Annual report[9] (March 2017) the implications of the coercive environment affecting Palestinian communities at risk of forcible transfer, stating, *inter alia*:

"Israeli settlement activity is incompatible with Israel's obligations under international law. Settlement activity is a key driver of humanitarian need in the West Bank, including East Jerusalem, and lies at the core of a range of human rights violations…"

The case of Al Khan al Ahmar

Al Khan al Ahmar on the outskirts of East Jerusalem is one of 46 communities in central West Bank that currently faces the most serious challenge for Bedouin refugees in OPT—namely risking a forcible transfer due to Israeli plans to move its members to one of three designated 'relocation' sites in a grave breach of the Fourth Geneva Convention. In February 2017, each of the community's 155 structures was issued with renewed demolition orders, with a tangible threat that legal processes could not provide even temporary protection.[10] The enforcement of these orders would directly impact the homes and livelihoods of 189 Palestine refugees, more than half of them children. In response to this year's first major threat, UN Co-ordinator for Humanitarian Aid & Development Activities for the occupied Palestinian territory, Robert Piper and Director of UNRWA Operations in the West Bank, Scott Anderson, visited the community.[11] On this occasion, Scott Anderson declared that "[Al] Khan al Ahmar is … struggling to maintain a minimum standard of living in the face of intense pressure from the Israeli authorities to move to a planned relocation site" and expressed his deep concern:

The entire existence of this community, the homes, animal sheds and school that we visited today is under threat. I am gravely concerned about Israel's continued pressures to force these Bedouin from their homes, destroying their livelihoods and their distinct culture … Many of these Palestine refugee families have already had their homes demolished several times within the last couple of years. I urge the Israeli authorities to halt all plans and practices that will directly or indirectly lead refugees to be displaced once again.[12]

Moving to urban or semi-urban, ghettoised environments is particularly difficult for Bedouin women, who in the process lose their traditional role and livelihood. Instead of moving freely as shepherds or travelling to market for sale of products, with access to income, they have become increasingly disempowered,[13] dependent on their husbands, often restricted to lives inside unfamiliar, alienating concrete buildings. It is no coincidence that the increased pressure and poverty impact negatively on families; incidences of gender based violence are on the increase in such environments, especially in the Jordan Valley[14] at the hands of settlers or soldiers.

In April 2017, an EU Demarche[15] was issued,[16] calling on Israel to desist from forcibly displacing Al Khan al Ahmar villagers or demolishing the school. Nevertheless, Israeli plans to forcibly transfer indigenous Palestinian Bedouin against their oft-stated will, are making progress. In August, the community was visited by high ranking military officers. Plans for relocation to "Jabal West" (next to the Jerusalem garbage dump, in a semi-urban environment, on land already belonging to Palestinians) were presented. *The Jerusalem Post* reported that "[Al] Khan al Ahmar would not be relocated until the new school was completed, likely in April 2018".[17] Minister of Defence Avigdor Lieberman was quoted[18] by *Haaretz* newspaper, as confirming the relocation.

He said work was being done to implement plans to evacuate the Palestinian villages of Sussia in the South Hebron Hills and [Al] Khan al Ahmar near Maaleh Adumim within a few months.

B'Tselem, Israel's main human rights NGO, responding with an open letter[19] warned him, as well as PM Netanyahu, Justice Minister Shaked and the military authorities:

We caution, yet again, that these actions would constitute a war crime committed at your instruction and under your responsibility, and for which you would bear personal liability.

Despite all such warnings and incontrovertible international law implications—as reported in last year's The Indigenous World 2017, the activities of the State of Israel in Palestine have been under preliminary examination by the ICC since 2015[20]—Israel's December 2017 Response to Al Khan al Ahmar's High Court petitions, nevertheless calls for transfer. The Court is expected to schedule the hearing in early 2018. The Bedouins' lawyer is not optimistic as to its outcome, since Lieberman, Netanyahu and the settler "lobby" are pushing for these war crimes to go ahead, and the *de facto* annexation of Area C to continue (with right-wing politicians openly calling for full-scale annexation of Area C).

At present, only one alternative site, Jabal West, has been engineered for the Jahalin. The High Court previously ruled that demolitions may not take place at random, without alternative solutions provided. This implies that of all threatened Bedouin, those at Al Khan al Ahmar are currently the most vulnerable. While Israel's impunity, its defiance of the international community, its reneged obligations under international humanitarian law, continue.

Campaign *Save Our School*

The Bedouin refugee communities that are currently hardest hit and face forcible displacement and a coercive environment are those that have a school. Educational facilities promote a solid incentive for Bedouin to stay where they are, instead of capitulating to pressures to leave or acceding to alternatives offered by Israel which deny grazing for animals, the possibility of living a traditional desert life or respecting ancient Bedouin culture.

Most Area C Bedouin in the OPT have only minimal access to education. Many communities have no primary school and children must often walk or travel long distances to reach their schools. This exposes them to settler harassment or searches at checkpoints. At least 56 schools in Area C currently have pending demolition or stop-work orders, creating uncertainty for vulnerable school children.[21] One affected structure is Al Khan al Ahmar's iconic mud and car tyres school built in 2009 (see The Indigenous World 2012) that serves around 170 children from Bedouin communities in the area. As stated by UN Co-ordinator for Humanitarian Aid & Development Activities for the occupied Palestinian territory, Robert Piper 'This [situation] is unacceptable and it must stop".[22] Jahalin Solidarity is planning a social media campaign (#SaveOurSchool), in an attempt to save that school.

Shortly before school started in September 2017, three elementary schools or kindergartens were demolished or had their equipment confiscated affecting 132 children.[23]

In a Joint September statement by Save the Children, UNICEF and the Humanitarian Coordinator for the OPT, Robert Piper, the latter stated:[24]

We must all stand up and be counted in defence of the right of Palestinian children to a sound education in a safe environment. International law is unambiguous here – children and classrooms enjoy unique protections that must be respected by all.

In the meantime, Bedouin refugee schoolchildren face an uncertain future—as to their education, their homes, their desert lifestyle and culture. And ultimately as to their identity as Bedouin.

Notes and References

1. See http://www.un.org/webcast/pdfs/SRES2334-2016.pdf
2. The "Mountain Aquifer extends through central Israel and the West Bank". It is the main source of water for Palestinians in the West Bank.
3. See https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/340/02/PDF/N1734002.pdf?OpenElement
4. Israel regularly refuses applications by OHCHR for special rapporteurs to enter the OPT.
5. This was documented by mainstream media at the time, and provided more recently archive footage for the short documentary film: HIGH HOPES at www.jahalin.org
6. Netanyahu has admitted that during his first stint as prime minister in the 1990s he approved construction of the East Jerusalem settlement of Har Homa [whose annexation and building was illegal under the Oslo Accords, and whose name translates as "Mountain Wall"] in order to block contiguity between Palestinian-majority areas and "as a way of stopping Bethlehem from moving toward Jerusalem." See further: https://www.politico.com/story/2015/03/israels-america-united-116203 The article also quotes an American official: "To actually come out and say that this construction is actually driven by efforts to undermine a future Palestinian state is fairly dramatic."
7. See e.g., Committee on the Elimination of Racial Discrimination, "Consideration of Reports Submitted by States Parties Under Article 9 of the Convention, Concluding Observations", CERD/C/ISR/CO/13, 14 June 2007. See also Norwegian Refugee Council (2015),"Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank" at https://www.nrc.no/globalassets/pdf/reports/bedouin-rights-under-occupation.pdf
8. Boutruche and Sassoli, "Expert Opinion on the Displacements of Bedouin Communities from the Central West Bank under international humanitarian law", September 2014. See Summary at: http://www.jlac.ps/userfiles/file/Publications/BOOK_planning_Bedouin_EngR.pdf
9. UN DOC A/HRC/34/39, 16 March 2017,§61 and §63. At https://unispal.un.org/DPA/DPR/unispal.nsf/0/71A1FD027B82B40D852580EA0064468F
10. As elsewhere in the West Bank, these orders were issued on the grounds that the structures lack Israeli-issued building permits; permits which are largely impossible to obtain in most of 'Area C', due to the discriminatory planning and zoning regime imposed by Israel.
11. See UN OCHA Press release, 22.02.2017 at https://www.ochaopt.org/content/un-officials-visit-palestinian-community-under-transfer-threat-call-israel-respect
12. Ibid.
13. See Binkom – Planners for Planning Rights at http://bimkom.org/eng/wp-content/uploads/Bimkom_-_The_effect_of_forced_transfer_on_Bedouin_women.compressed.pdf

14. See Alhaq report "Unpacking Gender in Coercive Environments: The Case of the Jordan Valley" at http://www.alhaq.org/publications/publications-index/item/
15. See https://uk.reuters.com/article/uk-israel-palestinians-eu/eu-ambassador-denounces-israels-west-bank-demolitions-policy-idUKKBN1761CH
16. See https://www.jahalin.org/eu-demarche-march-2017-2/
17. See http://www.jpost.com/Israel-News/State-Relocate-Palestinian-herding-village-in-Area-C-by-April-505867
18. See https://www.haaretz.com/israel-news/israeli-defense-chief-blasts-radical-settler-youth-as-disturbed-idiots-1.5446702
19. See https://www.btselem.org/download/20170904_letter_regarding_susiya_and_khan_al_ahmar_demolition_threat_eng.pdf
20. See 2017 ICC Document at https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_PE_ENG.pdf
21. UN OCHA Press release "Right of education for 1 million Palestinian children at risk" (Sept.2017) at https://www.ochaopt.org/content/right-education-1-million-palestinian-children-risk
22. UN OCHA Press release, 22.02.2017 See above at footnote 12.
23. UN OCHA, Joint statement at https://www.ochaopt.org/content/right-education-1-million-palestinian-children-risk
24. Ibid.

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North and West Africa

MOROCCO

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

The Amazigh people have founded an organisation called the "Amazigh Cultural Movement" (MCA) to 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 the whole of 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 could be a very positive and encouraging step forward for the Amazigh people of Morocco but 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 arsenal with the new Constitution has not, in fact, 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.

Implementing official recognition of Amazigh language

Following the adoption of the 2011 Constitution, Article 5 of which recognises Tamazight as an official language, there was little implementation of this official recognition during the first government's term in office ending in October 2016. The organic law on official recognition of the Amazigh language, which should have been adopted during this first term, was not debated. It was only at the end of its term that the government tabled a draft organic law but this was rejected by the Amazigh Cultural Movement (MCA) as it did not include the standardisation of Tamazight teaching nationally, the Tifinagh alphabet as the official Tamazight alphabet, recognition of the advantages of Tamazight teaching or the optimisation of national legislation to bring it into line with the 2011 Constitution.

Following the results of the 2017 elections, King Mohamed VI appointed a new government on 5 April 2017 under the leadership of Dr. Saad Eddine El Othmani. The MCA welcomed this choice. The new head of government is more flexible than his predecessor and closer to the MCA; he is more open to looking into the draft organic law further. Parliament therefore organised a study day on the organic law on 19 July 2017 with the participation of MCA representatives who proposed amendments to it.[1] These proposals focused on ensuring equality between the two official languages: Tamazight and Arabic, optimising the laws so that they are compatible with official recognition of the Amazigh language, improving the Amazigh television channel, improving television programmes in Tamazight and increasing the budget and applying the requirements for other Arabic-speaking TV broadcasters, in terms of planning for the introduction of Tamazight broadcasts, and improving the teaching of Tamazight at all levels of the education system.

Is important that this draft bill of law is rapidly adopted and takes into account the MCA's demands because, until this happens, Amazigh cultural and linguistic rights will remain virtually non-existent. The MCA is denouncing this situation and calling for vigilance in defending the appropriate implementation of official recognition of the Amazigh language.

The Moroccan Human Rights Organisation (OMDH) has denounced the delays in adopting this draft bill of law on official recognition of Tamazight:

The OMDH wishes to draw attention to the 'extremely slow pace' of effective recognition of the Amazigh language and the National Council

for Moroccan Languages and Culture. This relates to two bills of law that we are waiting for and for which there are worrying delays. For us, it is a question of defending the Moroccan identity and its cultural wealth.[2]

Amazigh language teaching: signs of improvement

Amazigh language teaching has been in retreat since its introduction into the education system in 2003. "This is blamed on the decline in number of pupils and teachers of the Amazigh language. Since 2012, the number of pupils learning Tamazight and the number of teachers offering courses in *tachelhit* or *tarifit* have declined drastically, from 517,000 to 312,000, and inspectors of Amazigh teaching fell from 80 in 2012 to 15 in 2016."[3]

Signs of improvement could be seen this year. In an interview, the Minister for Education highlighted the issue of Tamazight teaching, proposing a change in method in order to be able to roll out the teaching of this language more widely. This method consists of training teachers who will be able to teach both Tamazight, French and Arabic.[4] He proposed training 300 teachers in Amazigh during this year.

Head of government Saad Eddine El Othmani has furthermore called on several higher education establishments to introduce training programmes in the Amazigh language, in coordination with the Royal Institute of Amazigh Culture. According to memo number 05/2017 issued by the head of government, this affects the Higher National School for Administration, the Higher Institute for the Magistracy, the Higher Institute for Information and Communication, the Higher Institute of Theatrical Arts and Cultural Animation, the Institute for Audiovisual and Cinema Professions and the Institute for Archaeological and Heritage Sciences. According to this memo, this decision has been taken while waiting for the adoption of organic laws on the National Council of Moroccan Languages and Culture and the implementation of official recognition of the Amazigh language. These laws are currently going through Parliament and should gradually enable, from 2018 onwards, the introduction of Tamazight into the public administration and into the justice system, the media, arts and culture as a lever by which to preserve the national cultural heritage.[5]

The problem of Amazigh forenames

Despite the commitment Morocco made to the UN bodies to put an end to this problem, it still resurfaces every now and again. And according to an Amazigh organisation:

The parents of 'Massin', born on 8 July last, were refused this forename by the Maarif registry office in Casablanca as it did not appear on the list of names authorised by the Ministry of the Interior. Faced with this refusal on the part of the local authorities, the parents approached the Federation of Amazigh Associations, who contacted said authorities and also sent an official letter to the head of government Saâddeddine El Othmani, the Ministry of the Interior, the Ministry of Justice and the president of the National Human Rights Council (CNDH). The association furthermore deplores the banning of the forename 'Simane',

which a family from Azilal wanted to give to their daughter. In all, the local authorities, and thus the Ministry of Interior, have refused some 40 first names since the adoption of the new Constitution.[6]

Land, a thorny issue

Land remains a complex and thorny issue. Protests take place from time to time against the Water and Forests authorities with regard to lands and forests that indigenous peoples believe have belonged to them since time immemorial but which the Water and Forests authorities consider belong to the State. And, according to the report of an Amazigh international organisation, "the State's action in 2016 resulted in the dispossession of 30,000 hectares of indigenous land in Al-Hoceima alone (see The Indigenous World 2016)".*7*

Socio-economic rights of the Amazigh

Despite the remarkable results of the National Development Initiative (INDH) with regard to the capacity building of rural producers, improvements in access to education and health in remote regions, and the construction of necessary infrastructure such as health centres,[8] poverty is still widespread throughout society, albeit disproportionately so in the mountainous and rural regions where most Amazigh live. Several regions have organised protests to call for access to social rights (schools, health, water, jobs and infrastructure). Several projects that have been planned and signed in the presence of King Mohamed VI have not been followed up by the ministers or those responsible within the administration. This has led to demonstrations, including those in the Rif region which resulted in serious rioting and arrests in September 2017. Following investigations conducted by special committees, several ministers and administrative officials were sacked by the King. The Rif affair was widely covered by the national and international media.

The Amazigh media: integrating Tamazight into the Moroccan audiovisual environment

The Ministry of Communication has published a report on its website which states that:

"The Tamazight channel, which forms part of the SNRT package, was launched in March 2010. The idea of such a channel grew out of the Royal guidance contained in His Majesty the King's speech given on 17 October 2001 in Ajdir. The channel reflects this desire to provide our country with a modern means of communication that is capable of valuing the Amazigh identity through its various linguistic, cultural, artistic and civilisational components. Through this channel, the ministry intends to value and promote the spread of the Amazigh culture and language as an integral part of the culture and civilisation of Morocco. Among its plans are a diversification of the programme schedules, increased hours of broadcasting to achieve 24/24 and programmes reflecting the Amazigh culture. Better still, the ministry intends to improve the presence of this language across all public media by means of new specifications for the audiovisual environment. By strengthening the qualitative and quantitative presence of the Amazigh language in the public media, the Ministry of Communication is strongly contributing to the implementation of Article 5 of the new Constitution, which establishes the official recognition of this language.[9]

Notes and references

1. See http://www.maroc.ma/fr/actualites/le-ministre-de-la-culture-et-de-la-communication-lorganisation-de-la-journee-autour-de-la
2. See http://www.huffpostmaghreb.com/2017/12/08/droits-de-lhomme-2017-a-ete-une-annee-noire-selon-les-associations_n_18760606.html
3. See http://www.portailsudmaroc.com/actualite/10039/au-maroc-lenseignement-de-la-langue-amazigh-est-loin-dtre-un-acquis
4. See https://www.youtube.com/watch?v=pcO1fz12F5A
5. Seehttp://article19.ma/accueil/archives/76117
6. See https://www.bladi.net/prenoms-amazighs-maroc,49009.html
7. See http://www.amazighworld.org/human_rights/index_show.php?id=642371
8. See http://www.cese.ma/Documents/PDF/Rapport-INDH-VF.pdf
9. See http://www.mincom.gov.ma/audiovisuel/

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ALGERIA

The Amazigh are the indigenous people of Algeria, as well as of other countries of North Africa and the Sahara and have been present in these territories since ancient times. However, the Algerian government does not recognise the indigenous status of the Amazigh. Because of this, there are no official statistics concerning their number. On the basis of demographic data relating to the territories in which Tamazight-speaking populations live, associations defending and promoting the Amazigh people estimate the Tamazight-speaking population at around 11 million people, or 1/3 of Algeria's total population. The Amazigh of Algeria are concentrated in five large regions of the country: Kabylia in the north-east (50% of Algeria's Amazigh), 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...) 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 course of 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...). After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national and official language" in the Constitution in 2016. The Constitution does, however, specify that the official nature of the Amazigh language will need to be set out in an organic law and none has yet been adopted. Despite this achievement, 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. However, these texts remain unknown to the vast majority of citizens and thus not applied, which has led to the UN treaty monitoring bodies making numerous observations and recommendations to Algeria in this regard.

The Amazigh language (Tamazight)

On 27 November 2017, an amendment tabled by Amazigh member of parliament, Nadia Chouitem, aimed at standardising the teaching of Tamazight throughout the Algerian education system, was rejected by the National Assembly.[1] Popular protests broke out involving several tens of thousands of people, primarily in the Amazigh regions of Kabylia and Aurès. In response to this popular Amazigh uprising, the Algerian Head of State announced on 27 December 2017, during the final Council of Ministers of the year, that Yennayer, the Amazigh New Year (corresponding to 12 January), would henceforward be a national holiday, a paid day off, and urged "the government to spare no efforts to standardise the teaching and use of Tamazight, in accordance with the letter and the spirit of the Constitution." He also "charged the government with speeding up preparations for the draft bill of law creating an Algerian Academy for the Amazigh Language".[2]

Violations of fundamental rights and repression

Amazigh rights defenders, members of independent sociocultural associations and activists and supporters of the Movement for the Self-Determination of Kabylia (MAK) regularly suffer arbitrary arrests, threats and bans on their public activities and protests by the police and judicial au-

thorities. In 2017, for example, conferences planned in Bouzguène, Iazuguen, Ain-El-Hammam, Cheurfa, at the University of Tizi-Wezzu, and in Vgayet, were all banned. Organisers and facilitators of discussion forums and popular education workshops in these regions have been subjected to intimidation and threats from the police and judicial authorities. In this context, eight conferences/discussions were banned in Kabylia in 2017.

In the region of Mzab, 2017 was marked by the release of Kamel-Eddine Fekhar, a defender of the Mozabite people's rights, along with some 30 Mozabites who had been held in prison since July 2015. An uncertain number of Mozabites remain in prison without legitimate reason. The police presence remains extremely high in this region in order to ban all forms of public expression and protest. Telephone and Internet communications are also closely monitored.

Periodic report to CERD

The Algerian government submitted its periodic report to the Committee on the Elimination of All Forms of Racial Discrimination (CERD), which met from 20 November to 8 December 2017 in Geneva. In its concluding observations,[3] CERD raised numerous violations of Amazigh rights along with discrimination of the Amazigh, which can be summarised as follows:

1. The Committee "regrets the lack of statistical and socio-economic data on ethnic groups existing in the country within the State Party's report" and consequently recommended that the State Party communicate all relevant data on the economic and cultural situation and living conditions of the country's population.

2. The Committee stated its "concern at reports of racist hate speech by public figures, particularly directed at certain Amazigh populations, as well as migrants". It strongly recommended that the Algerian State condemn and distance itself from all hate speech by public figures towards the Amazigh or any vulnerable group or individual. Moreover, the Committee recommended that the State Party take effective action to ensure that any attempted or actual act of racist violence or provocation towards any race or any group of people of another colour or another ethnic origin be investigated, prosecuted and punished.

3. The Committee was concerned that Tamazight was not yet being used in all administrations, courts, social and other State services

and that the organic law stipulated in Article 4 of the Constitution had not yet been adopted. While taking the State Party's commitment to make the necessary efforts for the standardisation of Tamazight into account, the Committee noted that this official language was taught from year 4 of primary school, as an optional language, and that the Algerian Academy for the Amazigh Language had not yet been established. The Committee also remained concerned at the refusal to allow some families to register their children's births with Amazigh forenames. The Committee was further concerned at reports that historic sites of cultural value to the Amazigh had not been preserved. The CERD Committee consequently called on the Algerian State to: a) adopt the organic law set out in Article 4 of the Constitution as soon as possible; b) speed up the introduction and effective use of Tamazight as official language in the administrations, courts, social and other State services; c) establish the academy of the Amazigh language and provide it with the necessary resources for it to function; d) ensure that all registry officials accept Amazigh first names without discrimination; and e) take the necessary measures to protect the State Party's cultural heritage, including

historical and archaeological sites of cultural value to the Amazigh.

4. With regard to the chapter on the socio-economic marginalisation of Amazigh, the Committee regretted that the Algerian government had not provided information on measures taken to reduce the regional disparities that continue to affect areas inhabited by Amazigh, as the Committee had asked in its previous concluding observations. It remains concerned at the ongoing marginalisation suffered by those regions and the information on administrative barriers to private investment in these regions. The Committee recommended that the State Party redouble its efforts to invest in the most marginalised regions, particularly those in which Amazigh populations live. The Committee recommended that the Algerian government envisage adopting special measures aimed at bringing the people in these regions up to the same standard of living as the rest of the population.

5. With regard to the Mzab region, the Committee was concerned at the ongoing violence between the Ibadi Mozabites and the Arab-speaking Sunni Chambas that had taken place particularly between 2013 and 2015 and which resulted in deaths and the destruction of property, in particular among the Mozabite community. The Committee was also concerned at reports of the involvement of the security forces in this violence and the impunity that some groups seem to have enjoyed following these incidents. The Committee recommended that the Algerian State ascertain the underlying causes of the violence in the Mzab region and take the necessary action to prevent its resurgence. It also recommended that the State provide information on the investigations undertaken following this violence, the prosecutions made and the sentences passed against those responsible in order to avoid any sense of impunity on the part of some groups. It further recommended that the State Party require its security forces to fulfil their mission of protection during such clashes in order to avoid stoking tension and hatred between these groups.

6. With regard to institutional racism and discrimination, the Committee noted with regret that the State Party had provided very little information on complaints, prosecutions, sentences and compensation with regard to cases of racial discrimination since 2014 (Arts. 2, 4, 6).

The Committee called on the State Party to: a) facilitate the submission of complaints in a safe environment conducive to preventing reprisals and to provide in its next report statistics on complaints received, proceedings instigated, and sentences passed against the authors of these offences along with the compensation granted to the

victims; b) continue the training of magistrates, judges, prosecutors and police officers on national racial discrimination legislation; c) disseminate this legislation widely among the general public, particularly migrants, refugees, and people living in remote areas so that they know their rights, including all legal recourse as regards racial discrimination.

7. With regard to barriers to freedom of association, the Committee was concerned at reports of administrative barriers to the registration and accreditation of NGOs and associations, particularly those defending Amazigh rights (Art. 5). The Committee recommended that the Algerian government guarantee the effective application of its legislation and ensure that administrative barriers do not prevent NGOs and associations, including those defending Amazigh rights, from being established and registered.

8. The Committee also expressed its concern that human rights defenders were being subjected to intimidation, arrest, detention and, sometimes, the confiscation of their passports. The Committee called on the Algerian government to ensure that human rights defenders are not the victims of discriminatory measures, particularly intimidation, arrest, detention or confiscation of passports.

10. The Committee also recommended that its concluding observations be made available in the official languages of the country and other languages in common use therein.

Notes and references

1. See https://observalgerie.com/actualite-algerie/politique/deputes-votent-contre-promotion-de-tamazight/
2. See the press release on the official site of the Presidency of the Algerian Republic: http://www.el-mouradia.dz/francais/president/activites/PresidentActi.htm
3. See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1139&Lang=en

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TUNISIA

Mediterranean Sea
Tunis
El-Kef
Siliana
Thala
Gafsa
Tozeur
Gabès
Djerba Island
Tataouine
TUNISIA
LIBYA
ALGERIA

As elsewhere in North Africa, the Amazigh form Tunisia's indigenous population. There are no official statistics regarding their number in the country, but Amazigh associations estimate around 1 million speakers of Tamazight (the Amazigh language), being around 10% of the total population.[1] Amazigh have suffered 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 found 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. 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, Ibadite religion practised by the Amazigh of Djerba). Since the fall of the Ben-Ali regime in 2011, numerous Amazigh cultural associations have emerged with the aim of getting the Amazigh language and culture recognised. 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. 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", committing the State to working to strengthen "the Maghreb union as a stage towards achieving Arab unity...". Tunisia voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007. However, these international texts and are not applied in the domestic courts.

No implementation of the recommendations made to the Tunisian government

In October 2016, the UN Committee on Economic, Social and Cultural Rights expressed its concerns and made several recommendations to the Tunisian government of relevance to the Amazigh population of Tunisia (see 2016 Yearbook article on Tunisia). To date, none of the Committee's recommendations have been discussed or implemented.

However, on 20 November 2017, the Ministry for Relations with Constitutional Bodies, Civil Society and Human Rights, organised a national consultation workshop in Tunis on the issue of racial discrimination in Tunisia, aimed at designing and submitting a draft bill of law on this issue to be adopted during the first quarter of 2018.[2] During this workshop, which the Minister for Relations with Constitutional Bodies, Mr. Mehdi Ben Gharbia, attended, along with the UN representative and representative of the Office of the UN High Commissioner for Human Rights (OHCHR) in Tunisia, it was recalled that this draft bill was aimed at following up the recommendations made to the Tunisian government by the Committee on the Elimination of Racial Discrimination (CERD) in 2009 and 2016. Mr. Omar Fassatoui, from the OHCHR in Tunisia, specified that CERD had, in particular, called on the government to produce estimates of the ethnic composition of the Tunisian population and had invited it to reconsider the situation of the Amazigh in the light of international agreements, with a view to guaranteeing members of this community the exercise of their rights, as they were demanding.

It is important to note that the revival of Amazigh cultural expression in Tunisia has sometimes been accompanied by increased intolerance on the part of the Islamist and Arab nationalist movements. On 17 October 2017, Dima Trabelsi, a young Amazigh from Medjez-El-Bab, Béja Governorate (north-west of Tunisia) was violently attacked by four young men who beat him, insulted him and threatened him with death while shouting "Allah Akbar". During public protests by Amazigh, particularly in large towns such as Tunis, Tunisian Arabs insult them and accuse them of "threatening national unity and Islam". The victims of these racist attacks do not dare report them for fear of reprisals. Consequently, the perpetrators of common acts of racism against the Amazigh are never questioned by the police nor brought to justice through the courts.

In this context of hostility, the NGOs and international bodies have a decisive role to play in protecting and promoting Amazigh rights in the country.

Notes and references

1. The number of Amazigh is estimated on the basis of demographic statistics from areas where the Amazigh language and culture are practised.
2. See http://www.lapresse.tn/component/societe/?task=article&id=139750

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MALI

As of 2017, Mali's population stood at close to 19 million inhabitants, a figure that has virtually quadrupled in the last 57 years. The Tuareg Amazighs, the Songhaï, the Fulani (Peul) and the Moors Arabs represent the largest groups in northern Mali. Their political alliances and conflicts have shaped the history of the region where nomadic and non-nomadic peoples were part of a wide network of economical, cultural abd social exchanges. The Tuareg, or Amazigh of the desert, live in the administrative regions of Kidal, Timbuktu and Gao, Taoudenit et Menaka to the north of Mali. This area (known as Azawad by the Tuareg) accounts for two-thirds of the 1.24 million km^2 territory of Mali. Tuareg also live in neighbouring countries (Niger, Algeria, Libya, Burkina Faso).

In 1960, when Mali was created, the Tuareg represented 10% of Mali's population. With no reliable statistics, this percentage has declined in official discourse in line with the conflicts that have pitted the Tuareg against the State, resulting in a scarcely credible figure that now reduces their number to a mere 3% of the overall population.

Mali's official language is French and cultural diversity is recognised in its Constitution. The National Pact (Peace Accord)[1] signed with the Tuareg armed fronts in 1992 recognised the specific nature of the Tuareg-inhabited regions but these provisions were never concretely implemented. Mali voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, the State does not recognise the existence of indigenous peoples on its territory as understood in the UNDRIP and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

A deepening crisis and a stymied Peace Accord

In 2017, Mali sank further into the political, security, economic and social crisis that had been worsening for the past five years. Armed attacks multiplied in the north and began to reach into the centre of the country, under the influence of the jihadi movements recruiting from within deprived Fulani areas. The capital was not spared from Islamist attacks, with the hostage taking in the Radisson Hotel in Bamako in June 2017.

The decentralisation process set out in the 2015 Algiers Peace Accord is also stymied on several levels.[2]

In constitutional terms, the provisions necessary for implementing the Accord have been removed from the draft constitutional review, to

the benefit of measures reinforcing presidential powers. Popular resistance meant that the referendum to validate the constitutional review, due in 2017, has now been postponed indefinitely.

On a social and political level, the strategy of Mali and other countries, aimed at increasing the armed groups on the ground to counter and minimise the pro-Independence movement, has created a chaotic situation in which civilians have become the main victims. Moreover, the compromise reached through dialogue was the result of an imbalance created between the parties in conflict. Faced with the unity of the pro-Azawad movements, grouped together in the CMA (Coordination of Azawad Movements),[3] several pro-government groups subsidised by Bamako were included in the peace negotiations, grouped together from 2014 on under the name of "the Platform".[4] In contrast, despite Algerian pressure in favour of the "local" jihadist group, *Ansar Dine*, this anti-independence Tuareg movement was not admitted to the negotiating table, and nor was MUJAO, the Movement for Unity and Jihad in West Africa. These armed groups, of Salafist inspiration and affiliated to AQMI (Al-Qaïda in the Islamic Maghreb) were redeployed to the centre of Mali and merged, in March 2017, with other jihadi movements under the name of "Nusrat al-Islam wal-Muslimin" (Islamic and Muslim Support Group).

Banking on a deterioration in the situation, the Malian government did little to implement the Algiers Accord, leading the UN Security Council to issue a threat of sanctions.[5] It was only under international pressure that some measures began to take shape, with difficulty, in 2017. The establishment of temporary authorities in the five regions of the north revived the conflicts between signatories to the Accord, more recent movements demanding to be included *a posteriori* and, finally, so-called "terrorist" groups excluded from the negotiations. These latter embarked on destructive attacks against the signatory groups participating in the joint patrols with the Malian Armed Forces.[6]

It should be noted that the International Commission of Inquiry into human rights violations perpetrated by the different actors in the conflict since 2012-2013 has still not been implemented although it was envisaged in the 2015 Accord.

Finally, local and regional elections that should have been held on 17 December 2017 were finally delayed to April 2018, to include some communal elections outstanding in around 50 communes since November 2016. The 2018 deadline for the presidential election is fuelling this contentious vexing of the 2015 agreement (signed by the current

president) by other political parties. Such a manipulation of the northern issue for political ends is not helping the tentative decentralisation measures set out in the agreement.

Insecurity, humanitarian situation and human rights violations

The state of emergency in place in Mali since 2015 was extended twice by the government last year, in April and October 2017. There was no improvement on the security situation from the previous year, with the same trends continuing (see The Indigenous World 2016).

The number of refugees in neighbouring countries (Mauritania, Niger, Burkina Faso, Algeria) at the end of 2017 was estimated at 142,386,[7] 3,000 more than in 2016; 58,594 people were internally displaced; and 498,170 had returned to the country.[8] Many of these were Tuareg, Arabs and Fulani who had lost their cattle, crops or businesses in looting and revenge attacks. Of those returning families, several have since been forced back into the refugee camps due to the insecure environment. Some have testified that they were again attacked and looted of their meagre resources by the Malian military themselves, which was supposed to be protecting them from bandits and "terrorists".[9]

In 2017, jihadi groups summarily executed several local government staff and members of armed groups in Azawad whom they accused of being government informers. Their attacks on the MINUSMA peacekeeping forces resulted in 23 deaths and 103 injuries. Six foreign hostages are still being held by Islamist groups (two were released in 2017). In November, 11 members of the Malian security forces, kidnapped in 2016 and 2017, were unintentionally killed during a French air strike on armed Islamists.

The local population suffered a significant number of human rights violations in 2017 (including several indigenous individuals), in particular in isolated nomadic areas. According to the 2018 report of *Human Rights Watch* (*Mali Events of 2017*), Malian soldiers killed at least 15 suspects, burying them in mass graves, with at least 25 more being unaccounted for. Dozens of other suspects were subjected to serious ill-treatment during interrogations. Numerous people (men and children) suspected of "terrorism" were arrested by the national intelligence agency, in complete disregard for the law.[10] No inquiry has been

initiated by the judicial authorities into the abuse that the security forces continue to commit against civilians. In 2017, the Truth, Justice and Reconciliation Commission (CVJR), established by Presidential Decree in 2014, finally began to consider statements from victims of the atrocities committed during the armed conflict of 2012-2013 (more than 5,000 testimonies received).

In parallel to this chaotic backdrop in the north and centre of the country, where only the authority of the army rules, the provision of basic social services (health, protection, justice, education) – already poorly provided before the 2012 uprising due to widespread corruption – has resumed in only a very limited way.[11] Many schools remained closed throughout 2017 in the regions of Gao, Timbuktu and Kidal.

The unrelenting nature of the armed violence, whether "legitimate" or not,[12] and of the proliferating banditry, has created a climate of terror for civilians deprived of any means of protection. Several have been killed during these armed clashes or even by explosions of the many mines buried along the main highways.

Left to their own devices, the population is suffering from poverty, deprivation, degrading treatment and a fear of going about their day-to-day business. The mere movements necessary to daily survival are perilous (access to pasture for herds, to resources to gather, to wells and markets).

Moreover, pressure from jihadists remains strong in urban areas and is forcing inhabitants to change their social practices (behaviour between men and women, in particular), to drop out of school,[13] to give up their musical and poetic cultural activities, to change their appearance and to adopt new ways of being "Muslim".

The international forces

Since France's military intervention in Mali at the start of 2013 to "destroy the terrorists", the Malian authorities have effectively delegated defence of the State and its territory to foreign or international powers. These latter have established military bases on indigenous territories in Gao, Timbuktu, Kidal and Tessalit, for use by the French Operation Barkhane forces, MINUSMA (the United Nations Multidimensional Integrated Stabilization Mission in Mali) and the EUTM Mali (European Union Training Mission).

In 2017, an African military force began to take shape in the Sahel.

Meeting in Bamako in July 2017, the five Member States of the Sahel G5 (Mauritania, Niger, Mali, Chad and Burkina Faso) officially launched the joint cross-border military force (FC-G5S). The first military operations took place in November 2017, alongside the French army in the cross-border region of Liptako-Gourma where the borders of Mali, Niger and Burkina Faso converge.[14] To finance the G5 Sahel force and ensure its operations, decisive support was committed at the end of 2017 by Saudi Arabia and the United Arab Emirates, to which has been added a promise of aid from the United States.[15]

Conclusion

In conclusion, neither the French military intervention of 2013, nor the establishment of a new "legitimate" government, nor the presence of international military troops, nor even the strengthening of the logistics and training programmes of the Malian army resulted in the removal of the "terrorists" or a re-establishment of peace during 2017. The so-called "inter-ethnic" and "intertribal" violence continues, the jihadists linked to drug trafficking continue their cross-border activities, some with the knowledge of high-placed representatives of the region's States. Only the unstable Malian State (the government of which was overthrown by a coup in April 2012) has been saved from disintegration by the deployment of international military forces and seems, to date, incapable of remaining in power without their support.

Notes and references

1. See https://peaceaccords.nd.edu/sites/default/files/accords/Mali_Peace_Accord-proof.pdf
2. Despite some symbolic measures such as the establishment of temporary authorities, particularly in Kidal in August 2017, and the commencement of training of joint patrols.
3. Coalition formed of the MNLA (National Movement for the Liberation of Azawad), HCUA (High Council for Unity of Azawad) and MAA (Arabic Movement for Azawad).
4. The Platform groups together the following movements: GATIA (Self-defence Group of Imghad Tuareg and Allies; the Coordination of Patriotic Resistance Movements and Fronts – formed of Ganda Koy, a majority Songhay militia

created following the 1992 National Pact and which is noted for its violence against the "reds" (meaning Tuareg and Moors of a light skin colour); Ganda Izo and the Liberation Forces of the northern regions of Mali; the Arab Azawad Movement (part); the Popular Movement for the Salvation of Azawad; the Azawad Popular Front.

5. AFP 25/01/18

6. A suicide attack in Gao in January, claimed by AQMI, killed nearly 80 combatants from the signatory groups meeting in the UN peacekeepers' military base to commence the joint patrols.

7. Mali | Bulletin humanitaire August – November 2017

8. UNHCR, Operational Update Mali October 2017.

9. It should be recalled that, in scarcely the three months following the French Operation Serval intervention in 2013 that enabled the Malian soldiers and militia to re-establish in Azawad, the ARVRA (Association for refugees and victims of the Azawad repression listed "1,585 people identified as victims of abuse, including 295 individuals killed and 123 disappeared along with 1,170 people, including shops, homes and goods pillaged, 1,387 head of cattle stolen, more than 575 million FCFA taken, 50 tonnes of cereal pillaged or destroyed, 27 wells poisoned, etc." (Assessment of 28/03/2013). The international survey called for by the refugees into violence perpetrated by the army and paramilitaries between 2012 and 2013 has only now been forthcoming.

10. "Human Rights Watch 2018" Report

11. UNHCR Operational Update Mali October 2017

12. Whether it relates to fighting between armed groups, army raids, aerial or ground interventions by Operation Barkhane, targeted assassinations of "terrorists" by the French, Algerian or Malian secret services, jihadi attacks or suicide bombings.

13. In the Timbuktu region, for example, the number of schools closed due to Islamist pressure increased from 53 in 2016 to 65 in 2017 (UNHCHR Oct. 2017).

14. 04-11-2017, RFI (Radio France Internationale)

15. AFP (Agence France Presse), 13 December 2017.

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NIGER

Niger's indigenous populations are the Fulani, Tuareg and Toubou. These peoples are all transhumant pastoralists. Niger's total 2009 population was estimated at 14,693,110. 8.5% of the population are Fulani, i.e. 1,248,914 individuals. They are mostly cattle and sheep herders but some of them have converted to agriculture because they lost their livestock during the droughts. They live in all regions of the country. The Fulani can be further sub-divided into a number of groups, namely the Tolèbé, Gorgabé, Djelgobé and Bororo. 8.3% of the population are Tuareg, i.e. 1,219,528 individuals. They are camel and goat herders. They live in the north (Agadez and Tahoua) and west (Tillabery) of the country. 1.5% of the population are Toubou, i.e. 220,397 individuals. They are camel herders and live in the east of the country: Tesker (Zinder), N'guigmi (Diffa) and along the border with Libya (Bilma).

The Constitution of June 2010 does not explicitly mention the existence of indigenous peoples in Niger. The rights of pastoralists are set out in the Pastoral Code, adopted in 2010. The most important rights in the Code include an explicit recognition of mobility as a fundamental right of pastoralists and a ban on the privatisation of pastoral spaces, which poses a threat to pastoral mobility. An additional important element in the Pastoral Code is the recognition of priority use rights in 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.

Intercommunal conflicts

Since the arrival in Niger, in 2014, of Boko Haram and other Islamist groups such as the Movement for Unity and Jihad in West Africa (MUJAO), Niger's pastoralists have experienced the torment of discrimination and stigma. As the terrorist groups have grown in the region, these people have found themselves accused of being complicit in, and even the perpetrators of, a number of terrorist attacks. In some cases, politicians have even publicly named pastoralists as being responsible for the attacks, such as for example during the Minister of the Interior's press conference on the attack against the Koutoukale high security prison. This stigma has resulted in several reprisals from other communities with whom the pastoralists had previously lived in harmony.

2017 was marked by intercommunal conflicts in Niger, particularly conflicts between pastoralists and agricultural farmers which, according to the Survey Report of the Bilital Maroobé Network (2017), resulted in 678 deaths and 1,572 people wounded, including 432 women and children. The year was also tarnished by serious violations of indigenous peoples' rights, particularly those of the Fulani and the Tuareg.

One example of intercommunal conflict occurred in Daraï Dey village (Dosso Region) on the eve of the festival of Tabashi in September 2017, between a Zarma community and a Fulani community. Two Fulani entered a village shop in Daraï Dey the night before the festival, supposedly to purchase goods. One of them was armed and he just stood at the back. Meanwhile an argument broke out over the price of the goods and the armed Fulani then fired on the shopkeeper. On hearing the shots, the shopkeeper's brother, who was nearby, ran to see what had happened. The armed Fulani also fired at him and shot him in the knee. Before anyone else could arrive, the two Fulani had fled. The news soon spread to the neighbouring villages. The Zarma spent the whole night looking for the Fulani without success. The next morning, inhabitants of Falanzadan (Banibangou Region, Tillabery) stated that they had seen them in the area. Short after this episode, a peasant farmer who had gone to fetch millet from his grain store with his mule and cart was stopped by these two same Fulani, who killed him and dismembered his body. The pieces had to be collected up in a bag to enable him to be buried. From that moment on, open war broke out between the two ethnic groups, with a visceral hatred. Three days later, the Zarma attacked a Fulani camp, killed several of their members (the numbers are not of-

ficial but we are talking of around 30 persons killed): women, children, the elderly, and burned down houses[1]. The head of the Banibangou police post was informed of the situation and sent officers to the scene of the events. All Zarma on the scene were arrested and placed in prison.

Rights to land

The pastoralists' right to access land is constantly being violated, as witnessed by the multiple and flagrant violations of their rights, as they are suffering the most extreme and inhuman violence. Such was the case of the tragedy of Bangui (Tahoua Region) where an entire Fulani village was attacked by farmers, supposedly in revenge for damage caused to fields by their livestock in November 2016. Eighteen Fulani were killed, 43 wounded and yet there was no intervention by the security forces.

Another example, drawn from the case submitted by the Departmental Coordinator of the Association for the Revival of Livestock Farming in Niger (AREN) to the President of the High Court of Tillabery, also refers to damage to fields caused by animals in the field of the Public Prosecutor of the Tillabery High Court. The events unfolded on Tuesday 24 October 2017 when the animals were unlawfully impounded, in violation of the provisions of Ruling 2010-029 on pastoralism, par-

ticularly Article 46(2) which states that: "in case of damage to fields, the animals in question must in no case be impounded if the owners have admitted the events before the competent authorities." Article 49 of the same law stipulates that "the safety, feeding and health of the animals must be ensured during their stay in the pound or the community responsible for the pound will be liable."

The mayor refused to release the animals despite the pastoralists' request for their immediate release given that there had already been cases of miscarriage among these small ruminants, who had spent nearly a week in very bad conditions. This was in flagrant violation of national principles and provisions stipulating that conflicts between pastoralists and farmers should first be submitted to a conciliation commission and only if this failed would the dispute be referred to the competent court.

It should be recalled that AREN, through its regional Tillabery coordination, has noted more than 396 cases of collective violations of fundamental rights since 2009 in the Tillabery region alone, some of them pending before different bodies.[2]

The Niger authorities therefore need to take measures to guarantee recognition of the land rights of each community and the pastoral associations need to join forces and put an advocacy strategy in place at both national and international level so that the indigenous peoples of Niger have access to land rights and to social justice on an equal footing with all other communities in Niger.

Some progress in 2017

It is in the face of an increasingly deleterious and dramatic situation, characterised by endless conflicts, that the issue of access to lands and territories for the indigenous peoples of Niger resurfaced, and paved the way for a compendium of texts on pastoralism, in May 2017. The compendium was published by the Republic of Niger through the Ministry of Agriculture and Livestock Farming, in partnership with the Rural Code, and funding from Swiss cooperation and PASEL (Livestock Sector Support Programme). It includes all texts of laws and decrees on pastoralism in Niger. This compendium is relevant as the texts and practices on pastoralism remain little known among the pastoralists and other communities.

Moreover, some progress could be seen in 2017, in the shape of the political will of the highest authorities in Niger to adopt a national policy that takes into account the important and multidimensional land rights of indigenous peoples. Thus, in 2017, the Rural Code was given a mandate to be the political framework that will govern rural land management, in order to ensure more egalitarian and less discriminatory access to land among the communities. This will also enable free access on the part of pastoralists and their animals to bodies of water in the public domain of the State or local authorities. Access routes are also being opened up through cultivated areas for the watering of animals, and any obstruction punished. These major advances in access and rights to land for all clearly form a starting point to achieving a better understanding between communities, for conflict prevention and social cohesion in Niger.

Notes and references

1. The numbers are not official but we are talking of around 30 persons killed.
2. 2017 Provisional Monitoring Report, AREN regional base in Tillabery.

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Central Africa

BURUNDI

The Batwa are the indigenous peoples of Burundi. A census conducted in 2008 by the NGO Uniproba ("Let's unite for the promotion of the Batwa") estimated their number at 78,071 individuals,[1] or around 1% of the population. The rest of the population is made up of Tutsi and Hutu.

There are Batwa in every province of the country and they speak the national language, Kirundi, with an accent that distinguishes them from the other two ethnic groups.

Burundi is a small landlocked country (27,830 km^2) and one of the five poorest countries in the world. It is the second most densely populated country in Africa (around 10.52 million inhabitants and 410 inhabitants per km^2 in 2016, WB report). With nearly 65% of its population living below the poverty line, Burundi lies 180th out of 186 countries on the Human Development Index (HDI). Those most affected by poverty are small farmers living in rural environments. The Burundian economy is largely dependent on agriculture, which employs 90% of the population, even though arable lands are extremely few and far between.[2]

Burundi abstained from voting on the UN Declaration on the Rights of Indigenous Peoples in 2007 but did vote for and ratify the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on Biological Diversity.

Political context

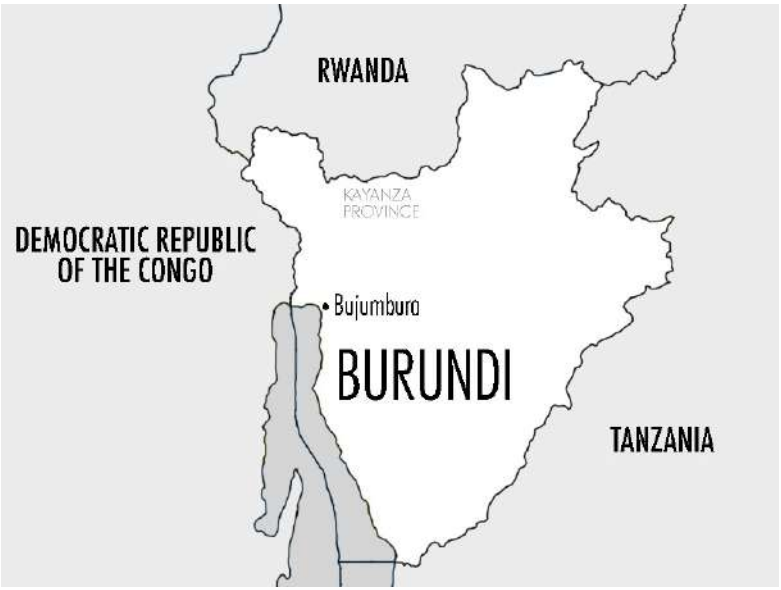
Since gaining independence in 1962, Burundi has experienced great political instability and numerous episodes of violence. Following the Arusha Peace Accords in 2000, which put an end to the civil war that had been raging in Burundi since 1993, the country

experienced a period of relative stability, enabling an economic recovery. In 2015, however, the re-election of Pierre Nkurunziza as President for a third consecutive term triggered a political crisis. The UNHCR has recorded 410,000 refugees and asylum seekers fleeing their country since that date. In 2016, the violence declined significantly throughout the country, including Bujumbura, although targeted assassinations did not stop. Burundi decided to withdraw from the International Criminal Court (ICC) on 27 October 2017. The party in power, the CNDD-FDD (National Council for the Defence of Democracy – Defence Forces for Democracy), has since increased its control over the state apparatus. The government rejected UN Security Council resolution 2303, which anticipated the deployment of 228 police officers in the country to provide security. The authorities then established a commission to review the Constitution (see section on Constitutional Review below). In April 2017, Michel Kafando, former interim president of Burkina Faso, was appointed the new Special Envoy of the UN Secretary-General to Burundi. His first report, presented to the Security Council in July 2017, recommends a more inclusive dialogue and respect for the Arusha Accords, while underlining that the current constitutional review process risks radicalising the positions of the different political actors.

Social context

The vast majority of the Burundian population remain poor, particularly in rural areas. Food insecurity is alarming: Burundi takes last place in the 2013 FAO World Food Index. Nearly one household in every two (around 4.6 million people) suffers from food insecurity, and more than a half of all children demonstrate a delay in their growth (WFP, 2014 and 2016). Access to water and sanitation is very poor and less than 5% of the population is connected to the electricity grid (World Bank, 2016).

Burundi has numerous challenges to overcome if it is to reduce poverty: a weak rural economy, heavy dependence on development aid, an economic policy that prevents equitable resource sharing, vulnerability to environmental shocks, and strong demographic growth, with a birth rate of 6.4 children per woman. The situation of the Batwa is not mentioned in this report but they would appear to be the most vulnerable sector of society. They are regularly overlooked in Burundi's public policies because they do not hold national identity cards, and are there-



fore not listed as being Burundian citizens. In January 2018, the "Espoir pour les Jeunes Batwa" association began a project to distribute identity cards in Kayanza Province. This initiative is supported by the US Embassy in Burundi. The Governor of Kayanza, however, has taken the decision to ban the project as he was not "informed of the US ambassador's participation".[3]

Constitutional review

A constitutional review process commenced in 2013 in Burundi. Over the course of that year, Batwa parliamentarians were active in discussing these reforms, with the aim of ensuring respect for their right to participate in national political life, especially given that this right is enshrined in the new Constitution and Electoral Code. Despite all these efforts, the Burundian president proposed amendments to the National Assembly and Senate without taking into account the concerns raised by the Batwa members of parliament**.**

On 24 October 2017, a new version of the Constitution was adopted by the Council of Ministers. It removes Article 96 of the Constitution,

which limited the presidential mandate to two five-year terms, and provides for the president to be elected for seven years renewable although they cannot "hold more than two successive mandates". This review gives the current president the option (already (re-)elected three times in 2005, 2010 and 2015) of standing in 2020 for a fourth term.

In November 2017, a peace dialogue commenced in Arusha bringing together representatives of the two major ethnic components in the country. The Batwa were sidelined from this process, which led Uniproba's legal representative to raise the issue of this new form of exclusion.[4]

The land issue

The Batwa of Burundi suffer serious inequalities in the distribution of land. Two major reasons would seem to explain the situation: firstly, it should be noted that land is in short supply generally in Burundi. This country of more than 10.52 million inhabitants (World Bank, 2016) is only 27,834 km^2 in size. It is one of the most densely populated countries in Africa (around 410 inhabitants per km^2). Secondly, most of the land that was traditionally owned by the Batwa has been transformed into national parks and forest reserves.

Unable to survive from hunting and gathering alone, the Batwa are demanding land on which to live and grow crops. A survey conducted by Uniproba[5] in 2008 showed that 14.7% of the Batwa had no land at all. Of these landless households, 1,453 were working within a system of "forced labour" ("Ubugererwa") while 1,506 were living on borrowed lands. It should be noted that households that do have land have only very small plots, often no more than an average of 200 m^2.[6] This disparity in the distribution of land goes hand-in-hand with an unequal distribution of resources. In July 2017, following a new regulation on the use of mines and quarries, the Batwa were prohibited from accessing clay, a resource essential to their manufacture of artisanal pottery. This measure, promoted by the Burundian Office for Environmental Protection (OBPE), led to anger among some Batwa families in Zege: these families believe that this measure was intended to directly exacerbate their community's marginalisation.[7]

Right to education

The Batwa are seriously excluded from the Burundian education system. The severe stigma suffered by Batwa children at school, combined with their great economic vulnerability, are both factors that explain the high level of illiteracy in the community. Uniproba estimates that this stood at more than 78% in 2005.[8] The difficulty in producing accurate statistics should, however, be noted: for example, the mission undertaken by the African Commission on Human and Peoples' Rights noted the lack of reliable data on the school enrolment of Batwa children in Burundi.[9] The marginalisation of Batwa students is worse still at university level with only four Batwa having completed university-level studies in the country to date.

Sustainable Development Goals (SDGs) 2016-2030

The National Steering Committee for the Sustainable Development Goals (SDGs), which comprises more than 20 ministers, a dozen Provincial Governors, Members of Parliament, representatives of the main partners and donors in Burundi, as well as accredited diplomats and consular staff in Bujumbura, held a validation workshop from 18 to 19 July 2017 for the National Report for the Prioritisation of the Sustainable Development Goals in Burundi. This report did not, however, mention the Batwa.

Unlike the Millennium Development Goals (2000-2015), the SDGs do expressly refer to indigenous peoples. They are mentioned no less than six times in the SDGs, and in two of the SDG targets, in which stakeholders undertake to double the agricultural productivity of small food producers, in particular indigenous producers (target 2.3) and to ensure equal access to all levels of education for indigenous children (target 4.5).

Universal Periodic Review[10]

Burundi was the subject of a third UPR during the Human Rights Council session of 20 January 2018. The national report presented by Burundi mentions the following information under "Section C: Specific rights. Rights of Batwa": The Constitution of the Republic of Burundi protects all citizens from discrimination by means of Article 22. The Batwa enjoy the same civil and political rights as other citizens Burundi.

Over the last few years, affirmative action has been taken, particularly to ensure the representation of minorities in Parliament through a system of quotas. The constitution thus grants the Batwa three seats in the National Assembly, three seats in the Senate and one seat in the Parliament of the East African Community. One representative of the Batwa community was also recently appointed to the Land and Property Commission of the East African Legislative Assembly (EALA) as a deputy and one representative was appointed to the State General Inspectorate, one to the National Commission for Inter-Burundian Dialogue (CNDI) and one senior staff member to the Minister for Human Rights.

Moreover, through the provision of free primary education, passed by the government in 2009, the number of Batwa children attending primary school has increased. Free healthcare provision has also been granted to poor Batwa families and children. The Batwa are also taken into account in the villagisation policy.

Among the positive actions taken by the government is the distribution of land to Batwa in order to help them better transfer to a sedentary lifestyle. The Stakeholder Report does not mention the Batwa.

Notes and references

1. UNIPROBA, "Rapport sur la situation foncière des Batwa du Burundi", August 2006 January 2008, Bujumbura, p.16.
2. WORLD BANK: Burundi –Vue d'ensemble. 31/10/2017
3. IWACU, Les voix du Burundi, "Kayanza: Distribution de cartes d'identités aux Batwa suspendue", 31/01/2018
4. IWACU, Les voix du Burundi, "Arusha : les Batwa dénoncent une discrimination à leur encontre", 29/11/2017.
5. The Indigenous World 2011
6. The Indigenous World 2012
7. IWACU, Les voix du Burundi, "Gitega/Zege: les Batwa remontés contre l'OBPE", 22/07/2017
8. Report of the Working Group of the African Commission on Indigenous Populations/Communities. Research and Information Visit to the Republic of Burundi, 27 March – 9 April 2005
9. Report of the Working Group of the African Commission on Indigenous Populations/Communities. Research and Information Visit to the Republic of Burundi, 27 March – 9 April 2005

10. Human Rights council. Working Group on the Universal Periodic Review. Twenty-ninth session 15-26 January 2018. National Report presented in accordance with paragraph 5 of the Annex to resolution 16/21 of the Human Rights Council.

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CAMEROON

Lake Chad
CHAD
NIGERIA
FAR NORTH REGION
Mandara Mountain range
Adamawa region
Sabga Mbororo settlement
NORTH-WEST REGION
CAMEROON
WEST REGION
YAOUNDÉ
CENTRAL AFRICAN REPUBLIC
Douala
BIPINDI
Yaoundé
EAST REGION
LOLODORF
Kribi
Gulf of Guinea
AKOM
EQ. GUINEA
GABON
REPUBLIC OF CONGO

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

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 developments in international law, civil society and the government are increasingly using the term indigenous to refer to the above-mentioned groups.

Together, the Pygmies represent around 0.4% of the total population of Cameroon. They can be further divided into three sub-groups, namely the 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 live above all in the eastern and southern regions of Cameroon. The Bakola and Bagyeli live in an area of around 12,000 square kms 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 in 2007 but has not ratified ILO Convention 169.

No major legislative changes took place in 2017. All laws that were reviewed, such as those on the forests and fauna, land tenure and the pastoralist code – to which indigenous peoples and the civil society made important contributions – are still pending.

Programmes and policies

Through their respective organizations, indigenous peoples participated in the activities of CISPAV (*Comité de Suivi des Programmes et Projets Impliquant les Populations Autochtones Vulnérables*). This committee was created by Ministerial Order No. 022/A/MINAS/SG/DSN of 6 August 2013 of the Ministry of Social Affairs, and its objectives are: to identify and centralise indigenous peoples' needs for socio-economic inclusion; to identify and evaluate the human, technical and financial resources available and required to put major development activities in favour of indigenous peoples into action; to coordinate and supervise all programmes within the different sectorial administrative bodies, NGOs and CSOs in favour of indigenous peoples; to make proposals on how to improve all actions that can better serve indigenous peoples.

CISPAV held its 4th session in the form of a workshop from 9 to 10 August 2017 to take stock of what the government and its technical partners had done by way of actions for indigenous peoples and also to make some changes to the functioning of the Committee. The Committee went to work immediately after the official ceremony of the UN International Day of Indigenous Peoples. Indigenous leaders from the forest and pastoralist communities were in high attendance. During the two-day workshop, the technical partners (Plan Cameroon, FEDEC, UN agencies, National Institute for Human Rights, etc.) reported on their promotional and protectional activities for indigenous peoples and, after two days of intense work, the following resolutions were reached. First, the Committee will henceforward meet twice a year instead of once and the sub-Commissions will meet every quarter. Partner organizations will also send in their reports to the Technical Secretariat before each session of the Committee. Finally, the Committee will send its 4th Technical Report to all its technical partners.

REDD+ and climate change

The REDD+ process in Cameroon is in its final phase of national strategy building.[1] With the additional 18 months given by the World Bank, all the important studies that have to feed into the National Strategy have been carried out and validated. Studies and strategies that are important to indigenous peoples are:

- The strategy on communication and its operational plan.
- The strategy on consultation of stakeholders.
- The strategy on the involvement of women in the REDD+ process.
- The strategy on the involvement of indigenous peoples in the REDD+.
- A guide to FPIC in the REDD+.
- A study on benefit sharing and conflict management in the REDD+ projects.
- The strategy on social and environmental impact assessments.

International Day of the World's Indigenous Peoples

In 2008, the Government of Cameroon passed a degree officially recognizing the UN International Day of the World's Indigenous Peoples. Since then, the government and indigenous peoples have carried out many activities during the month of August, culminating in the celebration of the international day.

The celebrations in 2017 were preceded by the inauguration, by the Minister of Social Affairs, of a cultural hall constructed by "Project d'Appui à la Competitivité d›Agriculture» (PACA) for an indigenous community on the outskirts of Edea Litoral Region. The official celebration took place on 9 August in the "Multi-purpose sports complex" in Yaoundé, where administrative authorities, indigenous peoples and international organizations converged amidst drumming and songs by hunter/gatherers and Mbororo.[2]

The official ceremony began with the arrival of the Minister of Social Affairs, Her Excellency Pauline Irene Nguene. The Mayor of Yaoundé City Council welcomed the participants and said that the council was willing to support the Ministry of Social Affairs in its promotional activities for indigenous peoples. His intervention was followed by a word from the representative of the hunter/gatherer communities. She said

that to evolve or to be civilized does not mean throwing away your cultures and traditions. She also said, however, that hunter/gatherers will not refuse what has been provided to them in terms of social services such as schools, clean drinking water and hospitals as they will contribute to giving them a decent life.

The representative of the Mbororo Social and Cultural Development Association (MBOSCUDA) noted that the day coincided with the 10th anniversary of the International Day of Indigenous Peoples in Cameroon and the 10th anniversary of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). She acknowledged that much had been done towards implementing the UNDRIP in terms of sensitization and recognition but a great deal still remained. Indigenous peoples are experiencing so much pressure on their lands and resources from very powerful political elites and agribusiness who grab their lands. They are victims of discrimination and injustice and this need to be addressed urgently.

The country director of Plan Cameroon intervened on behalf of the technical and international partners. He thanked the Ministry of Social Affairs, as the major public actor in promoting indigenous peoples in Cameroon, and acknowledged the efforts of the government and its technical partners in this. He also said that although there had been significant achievements, much still remained to be done in terms of addressing marginalization and inequalities. He called on the technical partners to intensify their actions, redouble their financial support and work in synergy. He added that it was the indigenous peoples themselves who knew best what they needed for their development and that CISPAV (*Comité de Suivi des Programmes et Projets Impliquant les Populations Autochtones Vulnérables*) had to be active throughout the year and not only on the International Day of Indigenous Peoples.

The Minister of Social Affairs said that Cameroon had kept to its tradition of celebrating this day. She acknowledged the presence of public and technical partners who had been doing their best to promote indigenous peoples. She acknowledged the massive presence of indigenous people and said that their presence was not folklore but the manifestation of a social cohesion that was dear to Cameroon. She said that the UNDRIP was the basic instrument for indigenous peoples as it gives them the right to enjoy all human rights just like any other person. These rights, she said, were taken up in the constitution and in the Strategic

Document on Employment and Professional Training. She said that the cultures of indigenous peoples had enriched the cultural diversity of Cameroon and that programmes and policies had been initiated by the public, private and technical partners for the promotion of indigenous peoples' rights in Cameroon. It was in this light that her Department had created the Inter Sectorial Committee for the follow up of programmes/projects involving vulnerable indigenous peoples (CISPAV/*Comité de Suivi des Programmes et Projets Impliquant les Populations Autochtones Vulnérables*). She said that CISPAV would hold a two-day working session immediately after the ceremony at which it would examine the implementation of the recommendations of the three last sessions of the Committee, the effectiveness of the sub "Commissions" of the Committee and also examine the text creating the Committee. The day was also celebrated in all regions of the country by the MBOSCUDA regional offices.

The General Assembly of the *Réseau de Concertation de Pygmées* (RACOPY)

The General Assembly of the RACOPY network was held from 22 to 23October in Yokadouma, in the East Region of Cameroon. The network is made up of local indigenous organizations and national and international NGOs. The following resolutions were agreed at during the General Assembly:

- To build indigenous Baka people's capacities for better involvement with RACOPY. This responsibility was given to two indigenous organizations, OKANI and the "Centre d'Action pour le Development Durable des Autochtone Pygmées" (CADDAP).
- To encourage the focal points of the RACOPY network to organize meetings with member organizations in their areas.
- That the General Assembly should rotate and be hosted by member organizations.
- That the East Region should continue to work towards developing a Memorandum of Understanding with the parks and reserves authorities to train Baka people as forest guards.

The National Engagement Strategy (NES) 2017

The National Engagement Strategy (NES) was conceived as a response to the need for the International Land Coalition (ILC) to engage in selected countries in a focused, coherent and coordinated manner, as has emerged from past experience. The overall aim of the NES is to influence the formulation and implementation of land-related policies and legal frameworks using the ILC's 10 commitments to people-centred land governance as their compass, the Voluntary Guidelines for Land Tenure (VGGTs) and the Framework and Guidelines on Land Policy in Africa as the key benchmarks. NES Cameroon is coordinated by two co-chair persons as the presidents of it steering committee i.e. Mbororo Social and Cultural Development Association (MBOSCUDA) and the Centre for Environment and Development (CED). NES, which is a platform, has over 300 members made up of civil society organizations, parliamentarians, lawyers etc.

In 2017, financial support was provided to all 10 regional hubs in Cameroon to monitor land administration, and five case studies were supported on land grabbing in the regions (North-West =1, West =2, East =1 and Far North =1). Sixteen case studies on land issues were produced by the NES Secretariat and this latter is finalizing a draft policy document on land governance in Cameroon. The NES Secretariat has created a WhatsApp group to share information and hold discussions on land-related matters.

Support for Nigerian refugees fleeing mass killings

A mass killing of Mbororo pastoralists took place from 17to 23 June 2017 in Taraba State, Nigeria, on the Mambilla Plateau, a state that shares borders with Adamawa Region and the North-West Region of Cameroon. This mass killing was well planned by the dominant ethnic group of Taraba State, known as the Mambilla people. They held meetings, went on the state radio to call for people to mobilize, created and armed a militia with fire arms and cutlasses. They were then instructed to attack the Mbororo, killing men, women, children, the elderly and pregnant women, and maiming, rustling, and killing thousands of cattle.

The statistics received about the events were that more than 700 persons were killed in the most violent manner, by cutting and burning,

and hundreds more were seriously wounded. Furthermore, 180 homes were looted and burned, 4,000 cattle were killed and rustled, 10,000 people were displaced, and 6,000 more fled and took refuge in Cameroon. This serious incident of mass killing and human rights violations happened for over a week without the Government of Nigeria talking about it. No national or international media reported the incident. The local government reacted slowly, and the forces of law and order were insufficient, with poor logistics to protect the victims. In short, the intervention came very late. Indigenous peoples' organizations from Cameroon were the first to go to the refugees aid and give humanitarian assistance. The Government of Cameroon and international humanitarian organizations also came to their assistance.

The Mbororo leaders grouped under their various organizations were also given counsel on how to take the matter to the International Criminal Court (ICC) and other regional human rights bodies.

Civil strife and its effects on the Mbororo pastoralists

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 went on strike. Their claims were social, economic and political. This situation has developed into civil strife with a demand for autonomy. This has created an opportunity for those who want secession to hijack the situation. All attempts at negotiation have failed and the situation has drifted into violence, taking the form of abductions, killings, and the burning of schools and public property. The abductions and killings target mainly the military and some government officials in the two regions. The military responses are legitimate because they are the main target of the killings but excessive force in their retaliation has been reported in some localities.

School and economic activities have been paralyzed in these regions. This situation has negatively affected the Mbororo, who depend on the cattle business as their main source of income, and who have not been able to carry out these activities in ghost towns where there has been a total shutdown of all businesses and social activities declared by the secessionists and where there is general insecurity. The Mbororo are worried about their situation as the dominant communities

accuse them of not participating or showing support for their struggle for secession. Another impact on the Mbororo in the two regions will be the drop in the school enrolment rate among Mbororo children, which had otherwise been increasing over the last few decades in the North-West Region. Threats, killings of school administrators and burning of school buildings are all thwarting MBOSCUDA's efforts to promote education over the last two decades

Launch of WGIP/ACHPR report on extractive industries

The African Commission on Human and Peoples' Rights (ACHPR), through its Working Group on Indigenous Populations/Communities in Africa (WGIP) and in collaboration with MBOSCUDA, organized a National Dialogue on the Rights of Indigenous Peoples and Extractive Industries from 7 to 8 September 2017 in Yaoundé, Cameroon. The National Dialogue was attended by 43 participants: the WGIP represented by its Chairperson Commissioner Soyata Maiga, Ms Hawe Bouba and Dr Kanyinke Sena, assisted by Mr. Samuel Tilahun; the Government of Cameroon, including representatives from the Ministry of External Relations, Ministry of Justice, Ministry of Social Affairs, Ministry of Mines, Ministry of Territorial Administration and Decentralization, Ministry of Livestock, Fisheries and Animal Industries, Ministry of Agriculture and Rural Development, and Ministry of Employment and Vocational Training. The National Commission on Human Rights and Freedoms of Cameroon, indigenous organizations and civil society organizations based in Cameroon were also present at the event. Transparency International, the International Union for the Conservation of Nature, and IWGIA, extractive industries and the media also attended.

The opening ceremony was attended by high-ranking officials. Speeches were delivered by the National Chairperson of MBOSCUDA, Mr. Jaji Manu Gidado, the Vice-Chairperson of the ACHPR and Chairperson of the WGIP, Commissioner Soyata Maiga, and the Technical Advisor to the Ministry of External Relations, Mr Bekono Nkoa Georges, who declared the National Dialogue open.

The National Dialogue was aimed at launching, popularizing and widely disseminating the ACHPR/WGIP Study on Extractive Industries, Land Rights and Indigenous Populations'/Communities' Rights;

engaging with relevant stakeholders, particularly state and non-state entities, on the findings of the Study; and finding common ground and deliberating on ways and means of creating mechanisms by which to implement the recommendations of the study.

Outlook for 2018

In 2018, with the creation of the Indigenous Peoples' Platform and the REDD+ process, indigenous peoples will be able to better position themselves and gain stronger negotiating capacity in the process in order to draw benefits for their communities. In partnership with the Ministry of Justice, MBOSCUDA is preparing action plans through which to implement the recommendations of the National Dialogue on Indigenous Peoples and Extractive Industries and of the regional meeting on the outcome document of the World Conference on Indigenous Peoples /WCIP).

Notes and references

1. Now that the Readiness Preparation Plan has been accepted by the World Bank, Cameroon has to produce a National Strategy that will clearly demonstrate how the country intends to carry out the REDD+ process and its execution phase.
2. See https://www.journalducameroun.com/en/world-indigenous-day-govt-determined- create-opportunities/

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East Africa

ERITREA

Eritrea's current population is between 4.4 and 5.9 million inhabitants.[1] There are at least four indigenous peoples: the Afar (2%), Kunama (2%), Saho (4%) and Nara (>1%).[2] These groups have inhabited their traditional territories for approximately 2,000 years. They are distinguished from the two dominant ethnic groups by their language (four different languages), religion (Islam), economy (agro and nomadic pastoral), law (customary), culture and way of life. All four indigenous groups are marginalized and persecuted.[3] A form of Eritrean nationalism emanates from the two large ethnic groups, who control power and resources. It is based on suppressing sub-state identities, which the elites see as a threat 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. Eritrea is a party to the CERD, CEDAW and CRC but not to ILO Convention 169 or the UNDRIP. It is the subject of complaints to the UN Human Rights Council (UNHRC) (which has upheld the allegations) and to the UN Special Rapporteur on indigenous peoples. The complaints allege mass murder, ethnic cleansing, displacement of indigenous peoples from their traditional territories and wilful 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 there were reasonable grounds to believe that Eritrean officials had committed crimes against humanity in a widespread and systematic manner over the past 25

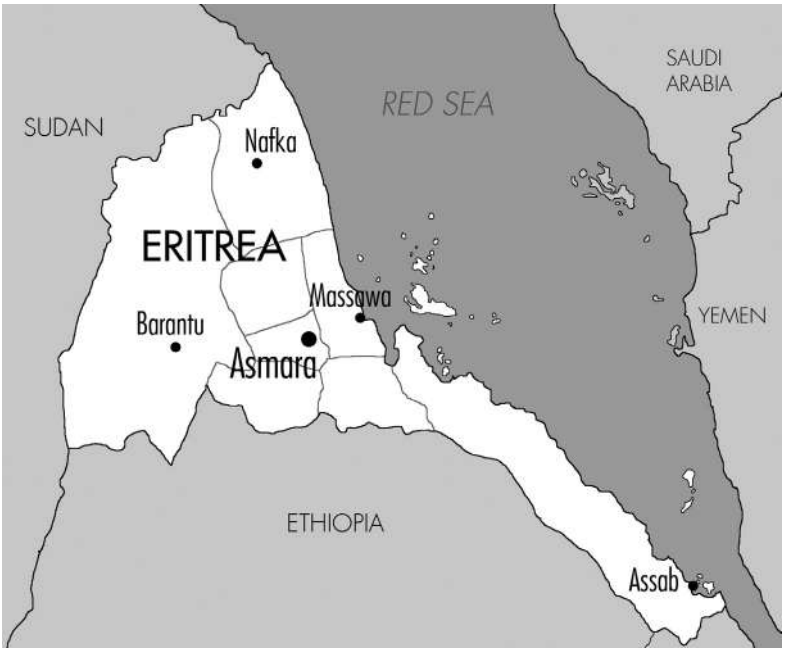
years. The COI provided detailed evidence relating to specific crimes of enslavement, imprisonment, enforced disappearance, torture, reprisals and other inhumane acts, including persecution, rape and murder.[4]

Notably, the COI found that these crimes had been perpetrated against two of Eritrea's four indigenous peoples, the Afar and the Kunama. Eritrea persecuted these groups, the COI concluded,[5] and accordingly the COI recommended that the UN and other entities initiate protective actions to safeguard them.[6] Among the recommended measures are that Eritrea's crimes and human rights violations should be brought to the attention of the relevant special procedures;[7] that the Security Council should determine that the Eritrean situation poses a threat to international peace and security;[8] and, accordingly, that the Security Council should refer the situation in Eritrea to the Prosecutor of the International Criminal Court.[9]

The situation continues

On 23 June 2017, pursuant to a request by the Human Rights Council, the UN Special Rapporteur on the situation of human rights in Eritrea investigated and reported on Eritrea's progress in addressing the concerns noted by the COI. The Special Rapporteur (SR) detailed new crimes against indigenous peoples, including an attack by a helicopter gunship on an Afar fishing boat, which killed one person and injured seven others; [10] and the dire situation of Afar refugees in Yemen who had fled Eritrea to escape the country's severe human rights violations.[11] The SR's general conclusions were stark: "The situation of human rights in Eritrea has not significantly improved."[12] In particular, the SR reported that Eritrea had not made any effort to provide victims of persecution and crimes against humanity with any redress, including the right to truth and reparations, or shown any willingness to deal with the impunity granted to the perpetrators.[13]

Accordingly, the SR recommended additional new measures. Among these are that "an accountability mechanism be established under the aegis of the African Union and supported by the international community, to investigate, prosecute and try individuals reasonably believed to have committed crimes against humanity;"[14] and that "Member States exercise jurisdiction over crimes against humanity when any alleged offender is present on their respective territories," or extradite such person to another state.[15]



Appropriation of indigenous land

Eritrea's crimes against indigenous peoples are especially concerning. In 2013, the UN Special Rapporteur on the situation of human rights in Eritrea reported that Eritrea was engaging in a campaign to force the Afar from their traditional territory and to destroy their traditional means of subsistence and livelihood. The means used were killings, disappearances, torture and rape.[16] The Special Rapporteur reported that Eritrea had also displaced the Kunama from their traditional territory and colonized their land with other peoples from elsewhere in Eritrea, again by means of "killings, death in custody, arbitrary arrests and detention".[17] Eritrea had turned all land into state property, thereby undermining "the clan-based traditional land tenure system of the Kunama people".[18] The First Report of the Commission of Inquiry in 2015 confirmed these findings.[19]

Eritrea's land policies fall particularly hard on nomadic and semi-nomadic indigenous peoples. Eritrean law "does not recognise land rights for pastoralists".[20] The nomadic and semi-nomadic indigenous peoples are thus being deprived of their traditional herding and

grazing lands. Pressure to abandon their traditional territories is intensified by confiscation of their animals and cutting down of the traditionally-used plants, shrubs and trees upon which their herding activities depend.[21] Additionally, where the indigenous people have settled or established businesses, such as salt mining or fishing along the coast, those lands are confiscated without compensation.[22] Reviewing the various evidence received from Kunama and Afar indigenous peoples, the COI concluded that the government's acts "may be construed as an intentional act to dispossess them [the Kunama and Afar] of their ancestral lands, their livelihoods and their cultures".[23]

Waiting for the Special Rapporteur on indigenous peoples

While the United Nations Human Rights Council, the COI and SR-Eritrea have been very active in responding to the crisis situation in Eritrea, the SR on indigenous peoples has been surprisingly silent. The Afar people made a detailed complaint alleging mass murder, rape, torture, disappearances, ethnic cleansing and economic destruction to the SR on indigenous peoples, Professor Anaya, in 2011. The complaint included substantial eyewitness testimony, analysis of 21,000 intake interviews that the Government of Ethiopia had conducted with Afar refugees, corroborating data from other governments, a lengthy legal opinion by a respected international lawyer and Law Dean stating that the Afar were indigenous, and more.[24] The complaint was renewed to Professor Anaya's successor, Ms Victoria Lucia Tauli-Corpuz, and updated with evidence of more recent atrocities, including the locations of mass graves of Afar civilians who were murdered, admittedly by Eritrean officials.[25] Both SRs acknowledged receiving the complaints but neither have followed up in any way or taken any action despite repeated requests to do so from the survivors.

Prospects 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; the country 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 extra-judicially executed."[26] The indigenous people are viewed with suspicion and persecuted to such an extent that important United Nations agencies have now called for the perpetrators to answer for their crimes against humanity.

The present situation is unlikely to last long: there is an unstable surrounding geopolitical environment; the President is 72 years old; there are splits within the ruling regime; there have already been attempted coups.[27] Because of Eritrea's strategic location on the southern Red Sea,[28] there are geopolitical/military interests which likely trump concern for the plight of Eritrea's indigenous peoples in the calculations of certain important powers. Nevertheless, the rights of indigenous peoples as articulated in ILO Convention 169, the UNDRIP, the missions to protect indigenous peoples by the Human Rights Council, special procedures mandate holders, Security Council, ICC and other UN agencies are powerful aspirational and operative counterweights to the Eritrean criminals. All of these agencies need to keep working to achieve justice, security and peace for Eritrea's indigenous peoples, as the Human Rights Council and certain of its mandate holders have done so far. If they do so, the community of civilized nations will be better prepared to act when the day of reckoning – not far off – arrives and releases the indigenous peoples of Eritrea from their persecution.

Notes and references

1. 4.39 million is an estimate by the World Bank, see "World Bank Country Profile: Eritrea", http://databank.worldbank.org/data/Views/Reports/ReportWidgetCustom.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&dd=y&inf=n&zm=n&country=ERI; 5.9 million is an estimate by the CIA, see CIA, World Factbook, https://www.cia.gov/library/publications/the-world-factbook/geos/er.html
2. Id., CIA, World Factbook; 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 (a joint publication of the International Labour Organization,

the African Commission on Human and Peoples' Rights, and the Centre for Human Rights, University of Pretoria, 2009, pp. 5-7. http://www.chr.up.ac.za/chr_old/indigenous/country_reports/Country_reports_Eritrea.pdf

4. "Second Report of the UN Commission of Inquiry on Human Rights in Eritrea", A/HRC/32/47, 8 June 2016, paragraph 60, http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIEritrea/A_HRC_32_CRP.1_read-only.pdf
5. Paras 87-88, 124, 129(b)
6. Para 124 (The COI referred to the Afar and Kunama as "ethnic groups".)
7. Para 129(b)
8. Para 132(a)
9. Para 132(b)
10. Para 11
11. Para 34. In 2016, 21,253 Eritrean refugees arrived in Europe (6% of all refugees). This is the fifth largest group of refugees arriving. It is notable that among the significant refugee-producing countries, Eritrea is the only one that is not experiencing violent conflict, a fact that supports the conclusion that it is the county's human rights violations that are prompting people to leave.
12. "Report of the Special Rapporteur on the situation of human rights in Eritrea", A/HRC/35/39, 23 June 2017, para 54, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/39
13. Para 58
14. Para 65
15. Para 66
16. "Report of the Special Rapporteur on the situation of human rights in Eritrea", A/HRC/23/53, 28 May, 2013, para 77, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.53_ENG.pdf
17. Paras 80-82.
18. Para 80.
19. "...the Afar people have been subjected to extrajudicial killings and enforced disappearance by the Eritrean government since 2000. These killings have also triggered their displacement from their lands within the country and across borders to Ethiopia and Djibouti. This has posed great difficulty to their livelihoods as they depend on their traditional lands for sustenance as an indigenous ethnic group;" Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea, A/HRC/29/CRP.1, 5 June 2015, paras 1121. See also para 1171, http://www.ohchr.org/EN/HRBodies/HRC/CoIEritrea/Pages/ReportCoIEritrea.aspx.
20. Para 1156
21. Paras 1159-61
22. Para 1159
23. Para 1171
24. Communication on Behalf of the Red Sea Afar People, March 2011 (on file with Mr. Ahmed Youssouf Mohamed, President, Eritrean Afar State in Exile, ahmedy.mohamed@gmail.com).

25. Communication on Behalf of the Afar People, June 2015 (on file with Mr. Ahmed Youssouf Mohamed, President, Eritrean Afar State in Exile, ahmedy.mohamed@gmail.com).

26. "Report of the detailed findings of the Commission of Inquiry on Human Rights in Eritrea", A/HRC/29/CRP.1, 5 June 2015, p. 1, http://www.ohchr.org/EN/HRBodies/HRC/ColEritrea/Pages/ReportColEritrea.aspx

27. Jeffrey Gettleman, "Coup Attempt by Rebel Soldiers Is Said to Fail in Eritrea," The New York Times, 21 Jan 2013, http://www.nytimes.com/2013/01/22/world/africa/coup-attempt-fails-in-eritrea.html; In-depth details on the Eritrean Defense forces operation for change (Operation Forto), http://assenna.com/in-depth-details-on-the-eritrean-defense-forces-operation-for-change-operation-forto/

28. Eritrea has a presence on the Bab el-Mandeb Strait – a strategic link between the Mediterranean Sea and the Indian Ocean through which flow 4.8 million barrels of oil 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.

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ETHIOPIA

The indigenous peoples of Ethiopia make up a significant proportion of the country's estimated 95 million population. Around 15% are pastoralists and sedentary farmers who live across Ethiopia, 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 amount of which is concentrated in pastoralist communities living on land that, 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 villagisation has seen many pastoralist communities and small-scale farmers moved off of 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 that protects 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.

Increasing political instability in Ethiopia during 2017 led to a continued deterioration in the human rights situation in the country, including the extension of the six-month-long state of emergency, which first came into operation on 8 October 2016, for a further four months. At the time, this situation was referred to as the "worst political and human rights crisis since the government of the Ethiopian People's Revo-

lutionary Democratic Front came to power in 1991."[1] However, the situation has since continued to intensify, prompting the resignation of the Prime Minister, Hailemariam Desalegn in February 2018 followed by the imposition of a new state of emergency the following day. New laws imposed during the first state of emergency included a ban on the use of social media and on participation in, or organisation of, protests, unless authorised by the government. Such measures were aimed at addressing a developing culture of protest in Ethiopia, including demonstrations organised by Amhara and Oromo people, the two largest ethnic groups. Although the beginning of 2018 saw the release of more than 6,000 prisoners – including the release of a number of prominent politicians and journalists – the new state of emergency has created a highly unpredictable situation that will do nothing to improve the rights of indigenous peoples, which have continued to deteriorate.

There was no improvement during 2017 in any national legislation that could offer protection to indigenous peoples, and Ethiopia's obligations under those international human rights mechanisms that it has ratified and that call for special attention to be paid to indigenous peoples – e.g. the International Convention on the Elimination of All Forms of Racial Discrimination, – continue to be unfulfilled. Human rights

organisations– including the International Work Group for Indigenous Affairs (IWGIA), Human Rights Watch (HRW), Minority Rights Group International (MRGI) and the Oakland Institute – continue to express their significant concerns, and governments including the United States, the United Kingdom and Germany, expressed alarm over the imposition of the new state of emergency in February 2018.

For indigenous peoples, the situation has become acute over the last few years with the arrest in Addis Ababa of seven activists heading to a food security workshop in Nairobi in March 2015. Although only one of the seven activists originally arrested, Pastor Omot Agwa, continues to face the possibility of an extended prison term, his situation, and the situation of Okello Akway Ochalla, a Norwegian citizen and indigenous land rights defender who was kidnapped in South Sudan in March 2014 and subsequently "renditioned" to Ethiopia, continue to cause grave concern amongst human rights defenders both within and outside the country, as well as in a number of leading human rights organisations. However, a former Gambela state governor who was sentenced to nine years imprisonment was released in February 2018 when his sentence was quashed. Alongside this, 31 other Anuak indigenous people had their sentences either discontinued or quashed and six other Anuuak leaders who were imprisoned were acquitted by the high court and released in 2017.

Land grabbing and investments

"Land grabbing", a government policy that leases out vast fertile farmlands to foreign and domestic companies, continues to adversely affect indigenous peoples along the Ethiopian lowlands-Gambela, Benishangul-Gumuz and the Lower Omo Valley. The Ethiopian government, in expectation of a high return in foreign investment, has leased out millions of hectares of land in different parts of the country. The government argues that commercial agricultural investment is important and aimed at improving the food security situation of its roughly 100 million population – in particular seen in the light of the drought that has affected many vulnerable pastoralist communities in remote parts of the country.

The government further sees its land investment policy as important in maximising land utility by developing "under-utilised" land in the lowland areas. Nonetheless, the targeted lands – estimated at more than 11 million hectares – are far from under-utilised but rather are the source of

livelihood of about 15 million indigenous peoples – pastoralist, small-scale farmers and hunter-gathers – whose customary land rights are being constantly violated. Moreover, the way in which the land is used under the new leasing arrangements arguably does little for food security as there is little food produced. Instead, it is chiefly used for an array of non-food products such as flowers, or for growing food products destined for the export market. In the case of the fertile region of Gambela, Anuak farmers have also reported that investors from Addis Ababa have purchased large plots of land using bank loans and then proceeded to leave the plots vacant, using the money for alternative business purposes. Gambela is an obvious target of the government's programme because it is blessed with a large land area suitable for agriculture and with abundant sources of water. Traditionally, the indigenous Anuak people of the area have used these lands for subsistence farming, grazing, and hunting, while the four main rivers that flow into the White Nile provide them with bountiful fishing grounds. However, their continued use of these lands and waters is now under threat due to the agribusiness projects that have been launched in the region, with the support of the Ethiopian government.

The Ethiopian government continues to highlight the employment opportunities of such investment for those living in lowland areas but much of the employment in these areas has gone to "highlanders" from the central and northern areas of Ethiopia who have moved there to find work. This has also increased the possibilities of ethnic tensions, something that has been seen in the Gambela region and in the lower Omo Valley in particular. In the latter case, the building of the Gilgel Gibe III Dam, which was officially opened by Prime Minister Hailemariam Desalegn on 17 December 2016, has significantly impacted on water security in the Omo Valley region. According to publicly available data, water levels are falling in the Omo River, a source that is vital for the 500,000 indigenous people living in that region. This has meant a heightened threat to food security and, in turn, increased conflict over existing resources. Reports from external sources have said that the lives of those indigenous peoples living in the region have been "fundamentally and irreversibly" changed by the building of the dam, making it very difficult for the half a million indigenous people living there to sustain their traditional livelihoods.[2] According to the dam's Public Consultation and Disclosure Plan, only 93 members of four indigenous communities were consulted, a consultation that happened only after construction of the dam had already begun.[3]

Violence in the Gambela region

In the Gambela region, the deteriorating political situation in South Sudan has resulted in an influx of Nuer refugees, further marginalising the Anuak and fundamentally altering the region's demography, as well as causing increased pressure on land and other resources. Violence in the region has increased, with cross-border attacks, including the kidnapping of children and livestock in Anuak and Nuer villages in Ethiopia by attackers from South Sudan. In 2017, people from the Murle ethnic community from South Sudan carried out cross-border attacks on Ethiopian citizens in the Gambela region, including the abduction of an estimated 100 children.[4] It was also reported that 743 individuals were displaced, and humanitarian interventions were required to feed 592 internally displaced persons in the Jor and Gog districts.[5] The regional governor appears, however, to be partisan in his response to the recurrent cross-border attacks on Ethiopian rural communities.

Policy of villagisation and land dispossession

Part of the Ethiopian government's policy on land management includes the pursuit of a policy of villagisation, which aims to resettle those who live in rural areas – often indigenous peoples – in communities with improved access to basic amenities, such as clean water, medical services and schools. In reality, however, such amenities have not been provided, and many of the communities have too little food for the population that now exists there. Many people find that when they try and return to the land they have left in order to resume their previous way of life, it has been leased out and they no longer have access to it. Indigenous communities thus find themselves displaced and deprived of their traditional livelihoods and of access to their natural environment, including access to water, grazing and fishing grounds, arable lands and forest resources.

Moreover, the Ethiopian government's lack of a specific policy or program to address indigenous peoples' special needs and status has further aggravated their situation. Ethiopia is a key political actor in Africa, and the second most populous country in the continent. It is a glaring omission that such a significant political actor has not attempted – in consultation with the country's indigenous peoples and their representa-

tive institutions – to develop policies and programs that are in accordance with guidelines from the UN and other relevant bodies and that would bridge the social and economic gaps that are currently causing such distress. Indeed, the declaration of a state of emergency only served to curtail further any hopes for moving the rights of indigenous peoples in Ethiopia forward. The Ethiopian government is therefore failing to address widely reported concerns regarding the human rights of indigenous people in Gambela, the lower Omo Valley, Benishangul-Gumuz, Afar, Somali, and Oromia regions – all areas that have been part of the government's land lease policy and villagisation programme.

Outlook for 2018

It remains important, when considering the future for indigenous peoples' rights in Ethiopia, that there be a country-wide, inclusive and participatory movement in the country that is able to ensure that pastoralist and agro-pastoral peoples' concerns are considered as part of key government policies and programs. The country's lack of formal mechanisms through which to consider such issues, as well as legal restrictions on freedom of association and speech, appear to preclude this. This is despite the fact that the Ethiopian constitution – though lacking in clear provisions directly related to indigenous peoples – does include a provision for dealing with the development needs of pastoralist communities. However, despite this, the overall outlook for a nationwide indigenous peoples' movement is promising. Consensus is underway amongst various groups that – with the support of international organisations and a more positive government view – could enable the country's marginalised communities to face a more positive future. Different marginalised communities drawn from Gambela, Benishangul-Gumuz and the Lower Omo Valley participated in food security, land rights and human rights issues in Nairobi in 2015, marking the beginning of a realisation of the importance of coordinated efforts in issues affecting them.

Notes and references

1. See http://allafrica.com/stories/201610130912.html
2. See https://www.theguardian.com/environment/2015/sep/03/eu-diplomats-reveal-devastating-impact-of-ethiopia-dam-project-on-remote-tribes

3. See http://firstpeoples.org/wp/a-dam-brings-food-insecurity-to-indigenous-people/#more-1199
4. See http://www.aljazeera.com/news/2016/04/ethiopia-attack-200-people-dead-100-children-missing-160418045025770.html
5. See http://www.gambellacommunity.org/index.php/en/news/latest-news/95-iom-irc-to-distribute-es-nfis-to-displaced-people-in-gog-and-jor-woredas-attacked-by-murle

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KENYA

SUDAN
ETHIOPIA
TURKANA COUNTY
Lake Turkana
MANDERA COUNTY
RIFT VALLEY PROVINCE
KENYA
UGANDA
ELGEYO MARAKWET COUNTY
SAMBURU COUNTY
SOMALIA
LAPSSET CORRIDOR
ISOLO COUNTY
Lake Victoria
Lake Bogoria
LAIKIPIA COUNTY
Mau Forest
Tana R.
NAROK COUNTY
Nairobi
KAJIADO COUNTY
Lamu
INDIAN OCEAN
TANZANIA

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

Kenya's indigenous women are confronted by multifaceted social, cultural, economic and political constraints and challenges. Firstly, they belong to minority and marginalized peoples nationally; and secondly, they experience 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.

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

Implementation of the Community Land Act

The Community Land Act that was enacted in 2016 contains provisions on how communities can collectively use and manage land that is communally owned by forming Community Assemblies and Community Land Management Committees (see *The indigenous World 2017*). In June 2017 the network Pastoralist Development Network of Kenya (PDNK) with support from the Open Society Initiative for Eastern Africa (OSIEA) carried out a participatory analysis of the Community Land Act since it has raised a number of concerns for indigenous peoples.[1]

The participatory analysis concluded that: *Firstly*, indigenous peoples' territories form part of Kenya's unique ecosystems (mainly rangelands, highlands, forests and coastal ecologies) where an intricate interplay between humans and biodiversity has taken place for centuries making them some of the world's ecologies with the richest concentration of living organisms. *Secondly*, indigenous peoples' territories continue to be the main source of livelihoods and production for the largely traditional communities that have continued to rely heavily on their physical environment. *Thirdly*, indigenous peoples' territories have been experiencing the vagaries of climate change, influx of migrant communities, burgeoning populations and subsequent competition for their unique resources thereby affecting the functions of the ecosystems. *Fourthly*, indigenous peoples' territories form the only remaining space that has been targeted for extraction of natural resources such as oil, gas, wind and geothermal power as well as for massive infrastructural projects such as railways, highways and oil pipelines to meet the country's development blue print called Vision 2030.

Indigenous peoples lands are, therefore, at the centre of interest for such government institutions as the National Land Commission

which is mandated to manage, secure and preserve all land in Kenya, the County Land Management Boards and County Ministries of Lands and Housing that are charged with the responsibility of ensuring proper management and utilization of land within Counties, the Ministry of Environment and Natural Resources, the Ministry for Mining, the Ministry of Energy and Petroleum, the Ministry for Devolution and Planning and the Ministry for Transport and Infrastructure among others. All these have a keen interest in indigenous peoples' lands and territories that are currently classified as community lands.

When interrogating the Community Land Act 2016 in the context of enabling indigenous peoples to secure their lands and territories, the participatory analysis carried out by PDNK and other stakeholders indicated a number of glaring gaps and fundamental perils. The participatory analysis of the Community Land Act made the following conclusions: 1) The Community Land Act fails to clearly define "community" as prescribed under article 260 of the Constitution that clearly defines marginalized groups; 2) The Act has no clear provision for demarcation of community land (and its resources) including maps and boundaries, in order to protect community land from encroachment; 3) The Act fails to clearly state the nature of legal protection of areas that are considered communal by communities such as passageways, areas with resources that are utilized communally, shrines and ceremonial sites; 4) It also fails to clearly define the principles of protection of community land i.e. who can transact the community land on behalf of the community and the nature of permissible transactions; 5) The Act also fails to provide guidance on how rights are to be enforced, including rights and entitlements of individual members within communities; 6) Further the Act fails to clearly state how the community land rights are to be delivered i.e. registration of titles, identification of communities etc.; 7) The law does not clearly identify the roles and responsibilities of the citizenry, national government, county governments and the National Land Commission in relation to the management of community lands; 8) The Act has no clear provisions for inclusion of women, youth and persons with disabilities in the community land management committees; 9.) The Act does not capture and make adequate provisions for the bottom up management of community lands; 10) The Community Land Act also fails to recognize the use of traditional dispute resolution mechanisms or structures in addressing land related disputes in light of the existing social and political structures

within various community set ups as prescribed by the Constitution and the National Land Policy.

The participatory analysis concluded that in order to forestall the likelihood of communities such as indigenous peoples suffering the consequences of feeble safeguards, concerted efforts between indigenous peoples, their organizations, their local and external partners, county governments, indigenous peoples legislators and the National Land Commission have to craft strategies that shall ensure the progressive review of the identified lacunas in the Community Lands Act 2016.

The analysis was shared with the National Land Commission, Committees of senate and parliament on land and natural resources, the ministry for lands, county governments and the Pastoralist Parliamentary Group (PPG).

Government agencies shoot Maasai livestock

In November 2017, due to the drought that had been ravaging pastoralist areas in Kenya, pastoralist of Laikipia in northern Kenya opted to move their livestock herds to escape the biting drought, and in the process, they were accused of "illegally" grazing on private lands in an area that is predominantly inhabited by ranchers. The response by the security agencies was to shoot an estimated 300 cows as a deterrent, ostensibly because "the herders were hiding behind the cattle and shooting at police."[2] However, there were no human casualties or arrests of pastoralists pursuant to this blatant destruction of indigenous people's livelihoods and property by state agencies.

Following this incidence, Reto Women Association (a forum that brings together Maasai women from Kajiado, Narok, Laikipia, Samburu and Baringo Counties) planned a demonstration in Nairobi to show their anger and disgust because the government action was tantamount to economic sabotage of the livelihoods of the affected pastoralists. On November 22, 2017, the women in liaison with pastoralist organizations and the Narok Senator Ledama Ole Kina converged in Uhuru Park in downtown Nairobi to stage a demonstration at the office of the Ministry for Interior and Coordination of National Government to deliver a memorandum condemning the shooting of Maasai livestock in Laikipia. However, the police were deployed, and they tear gassed the procession thereby denying indigenous peoples the opportunity to present their

grievances as provided in the law. Three representatives of Maasai indigenous peoples delivered the memorandum on November 23, 2017. No actions have, however, subsequently been taken by the authorities to address the situation in Laikipia.

Forced eviction in the Embobut Forest

The practice of forced evictions against indigenous peoples such as Kenya's Sengwer hunter-gatherers has been widespread.

Although the practice of forced evictions might appear to occur primarily in far flung areas and forests away from the glare of the media and human rights institutions, the case of the Sengwer of North Western Kenya has attracted unprecedented attention globally due to the fact that the evictions were justified by what is often termed as "conservation" by the Government of Kenya through the Kenya Forest Service with funding from global lending institutions. Available figures speak of 50 huts burned, one community elder shot dead and one maimed by forest rangers during the evictions.

According to the Star Daily Newspaper and Reuters media outlets as well as online reports by Kenya National Commission on Human Rights, Amnesty International Kenya Chapter and the Redd Monitor, the Kenya Forest Service has received funding from the European Union to implement the Towers Protection and Climate Change Mitigation and Adaptation Programme, which is seen as the motivation for the eviction of Sengwer indigenous peoples. On December 29, 2017, the organization Forest Peoples Programme put out a statement on the threats to the Sengwe. On the same day, online reports by the Redd Monitor indicated that the Kenya Forest Service forcibly evicted members of the Sengwer community from their homes in Embobut Forest, which was followed by subsequent ejections.

In view of the situation confronting the Sengwer indigenous peoples, it is imperative that the European Union and other funding agencies put measures in place to ensure that the effects of the projects and programmes that they are funding in Embobut forest are in accordance with the UNDRIP. Further, the implementation of these initiatives must take cognisance of Articles 40, 42, 43,60 and 66 (2) of the Constitution of Kenya that guarantee: the protection of marginalized lands and sustainable development, benefits to local communities and their econo-

mies, protection of Kenyans rights to property including land, the rights to a clean and healthy environment, economic and social rights of the people, land management and use of traditional dispute resolution mechanisms and empowerment of traditional systems of land management and livelihoods and as well as Article 8(j) of the Convention on Biological Diversity (CBD).

The Ogiek ruling

On May 26, 2017, the African Court on Human and Peoples' Rights sitting in Arusha, Tanzania made a historic ruling on the rights of the Ogiek indigenous peoples to their ancestral lands. This followed a case by the Ogiek people against the continuous evictions from their forestlands by the government of Kenya. The case was launched by Ogiek Peoples Development Programme (OPDP) and Minority Rights Group (MRG) on behalf of 3,600 Ogiek families.

In the ruling, the Court found that the Kenyan authorities had violated seven articles of the African Charter on Human and Peoples' Rights while dealing with the Ogiek indigenous peoples. Pursuant to the ruling, the Kenyan authorities formed a task force to study the ruling and advise the state on the implementation of the African Court on Human and Peoples' Rights judgement on the Ogiek peoples' rights to their ancestral lands. However, Minority Rights Group (MRG) and the Ogiek Peoples Development Programme (OPDP) raised concerns in November 2017 that the creation of the task force on the implementation of the African Court ruling on the Ogiek peoples' case was undertaken without consultations and inclusion of the Ogiek people, thereby indicating a further alienation of the Ogiek from a process that is meant to address their grievances.

Elections: Indigenous women performed impressively

The Kenyan Constitution that was enacted in 2010 recognises marginalised and special interest groups who have been marginalised for a long time and guarantees empowerment, equity and justice. However, women from such marginal groups as indigenous peoples face multi-faceted odds especially in seeking political positions within their

communities. Indigenous women have for more than 50 years been denied the important opportunity to seek elective positions.

Perhaps buoyed by the indignation of the prevalent *tokenist* trend of giving women political positions just for political benevolence, during the national elections that were held on August 8, 2017 five indigenous women avoided the "ceremonial" women representative position that is specially provided by the Constitution to ensure representation of women from the 47 Counties in the National Assembly, and instead they opted successfully to contest against the men for elective positions. At the conclusion of the elections, five indigenous women were elected namely: Fatuma Dullo (Senator Isiolo County), Naisula Lesuuda (Member of Parliament for Samburu North Constituency), Peris Tobiko (Member of Parliament for Kajiado East Constituency), Sophia Noor (Member of Parliament for Ijara Constituency) and Sarah Korere (Member of Parliament for Laikipia North Constituency). Nationally, in the run up to the 2017 General Elections, scores of indigenous women presented themselves for elective positions across the spectrum from the grassroots Members of the County Assemblies, Members of Parliament and Senators in demonstration of an energised quest to articulate their constitutional entitlements.[3]

While this achievement that has largely been realized at the national level by indigenous women can be celebrated, the fact remains that at the County levels, the number of indigenous women engaging in competitive political elections remains negligible.

The Lake Turkana Wind Power Project (LTWPP)

Approximately US$700 million (LTWPP) was invested in Northern Kenya's Loiyangalani part of Marsabit County, which is touted as the largest wind farm in Africa and is expected to provide 310 Mega Watts (MW) to the country's national power grid upon its completion. The power project is part of the country's transition to green wind and geothermal energy that are considered reliable and non-polluting. The LTWPP 365 wind turbines each with a capacity to produce 850 kilowatts of power are expected to be operational for about 20 years.

This project is considered the best example on utilization of naturally occurring resources for Kenya's sustainable development. However, for the Samburu, Turkana and Rendille indigenous peoples, on whose

lands the project is being implemented, have consistently complained of violations of an array of their rights and entitlements in the whole process of establishing the project. The land in question falls under Community Land category under the constitutional classification of land in Kenya. According to Article 62 of the Constitution of Kenya (1) *Community land* shall vest in and be held by *communities* identified on the basis of ethnicity, culture or similar *community* of interest thereby placing the Samburu, Turkana and Rendille indigenous peoples at the centre of any activity touching on their lands and territories. However, these communities have consistently complained about the approaches adopted in the takeover of their lands and establishment of the Lake Turkana Wind Power Project.

The communities have raised concern over lack of adherence, by state and private companies involved in the project, to constitutional and international principles such as consultation, participation and involvement of the communities from inception and benefit sharing upon completion of the project. Further, the indigenous peoples feel that the approaches adopted by the investors and government of Kenya have gone against the spirit of the Constitution of Kenya that gives powers of self-governance to the people and enhances their participation in the exercise of the powers of the state and in making decisions affecting them [Article 174 (c)] that recognizes the right of communities to manage their own affairs and to further their development [Article 174(d)], and [Article 174(e)] that protects and promotes the interests of minorities and marginalised communities.

In 2014, the communities went to court seeking legal orders to stop the project until the concerns of the communities were addressed. In November 2016, the high court sitting in Meru declined to stop the project and advised the parties to seek an out of court agreement, failure to so would lead the case to a full hearing. In June 2017, the communities took their case to the Court of Appeal challenging the high courts' ruling and its failure to stop the project to allow for adequate consultations, compensation and benefit sharing arrangements.

It will be interesting to see how the Court of Appeal will rule on the need for the participation of the people according to Article 10(2)(a) of the constitution and rights of communities to inclusive and participatory approaches in all projects that shall affect the lives and wellbeing of Kenyan citizens as well as adherence to Chapter 5 of the Constitution of Kenya on land and environmental rights.

Protests against the LAPSSET Mega Project

The US$25.5 billion Lamu Port South Sudan Ethiopia Transport (LAPSSET) project forms part of the ambitious transcontinental land bridge from Lamu on Kenya's Coast to Douala in Cameroon. According to the LAPSSET Corridor Development Authority, this mega infrastructure project includes the Standard Gauge Railway (SGR), an international class highway and an oil pipeline linking Kenya, Ethiopia and South Sudan interiors as well as a new 32 Berth sea port at Lamu and would cover over 2,000 kilometers. Kenya plans to invest an estimated US$24.5 billion for carrying out this ambitious project.

This project that has necessitated the creation of the LAPSSET Corridor Development authority under the Office of the President is part of the Kenya Vision 2030 Strategy, which is the national long-term development policy that aims to transform Kenya into a newly industrializing, middle-income country by the year 2030. The project cuts across indigenous peoples territories from the Coast to Turkana in the North West and Moyale in northern Kenya.

These communities who are largely small-scale farmers, hunter-gathers, fishing and pastoralist communities have consistently raised concerns on the implementation of the project without due regard to tenure and resource rights, participation of the people, consultation, inclusion and important safeguards for their social, economic, ecological, cultural and spiritual rights.

In 2017, coastal fishing communities in Lamu at the Kenya's coast filed a suit in court regarding the LAPSSET destruction of their cultural and ecological lives. They said that Lamu Island, a national and world heritage site according to the United Nations Educational Scientific and Cultural Organisation (UNESCO), faced imminent destruction due to the activities of the LAPSSET project. The communities asked the court to stop the project until all the necessary precautionary processes and safeguards were put in place to ensure that the project is implemented in the highest standards of human rights and integrity.

This scenario is replicated across the areas where LAPSSET plans to construct because the plans and designs of the project were undertaken prior to the enactment of the Community Land Act, which was ratified in 2016 long after the project had been conceptualized and some initial phases such as the Lamu Port and Isiolo Airport had already started. This has led indigenous peoples along the LAPSSET

Corridor to suspect that the delay in the enactment of the community land law was deliberate in order to make them play catch up in seeking their right and fundamental entitlements in the project.

County Governments along the corridor are expected to engage with the implementing agencies, the National Land Commission, Kenya National Commission on Human Rights, National Environment Management Authority and the LAPSSET Corridor Development Authority to ensure that the project responds to the needs and aspirations of the people and that the requisite safeguards are put in place.

Drought causes violent conflicts among pastoralists

Due to the prolonged drought that has been ravaging the Horn of Africa over the past year pastoralists communities that inhabit the drought affected arid and semi-arid lands (ASAL) have experienced violent conflicts as they compete over water and pasture resources in Kenya's *Garissa, Isiolo,* Wajir, Marsabit Tana River, *Garissa,* Turkana and Pokot Counties.

According to the National Drought Management Authority and media outlets, these conflicts that caused scores of deaths were triggered by scarcity of water and fodder, which forced people to move in search of the same. Mobility is a century old resource utilization and management strategy that requires families to move with their herds in pursuit of water and pastures. When drought is prevalent, large herds and people converge in areas where these resources abound and the need to access causes tension and often result in conflicts. The case in Kenya is that drought refuges are limited and the affected areas are vast and therefore the dynamics of supply and demand become the triggers of violence.

Disempowerment of indigenous people's governance and dispute resolution mechanisms is mainly attributable to the current state of affairs because traditionally elders negotiated with neighbouring communities about access and use of resources in hard times and also arbitrated during conflicts. This mechanism has been weakened, which is leading to border and resource conflicts, lack of reciprocity and identification of migratory routes as well as regulatory mechanisms to manage herd numbers and control spread of livestock diseases.

During the conflicts between Isiolo and Garissa Counties, local elders encouraged the warring groups to embrace dialogue and reci-

procity which is central to traditional co-existence through grazing committees and councils of Elders.

In North Rift area, the ravages of drought also forced the Pokot, Marakwet and Turkana to clash over limited water and fodder. These pastoralists also fought over lack over territorial boundaries where accusations of trespassing were made and led to conflicts.

Notes and references

1. PDNK participatory analysis of policies and legal frameworks that impede food security and production in Kenya's Arid and Semi-Arid Lands, June 2017.
2. 14th November, 2017, Reto Women Association Statement to the Minister for Internal Security and Coordination of National Government Dr. Fred Matiang'i on the killing of 300 herds of Laikipia cattle by security forces and historical disenfranchisement of Maa People in Kenya.
3. As stated by the UN WOMEN: "For the upcoming general elections on 8 August, hopes are running high among women candidates. A total of nine women are competing for Governors, 115 as members of the National Assembly, 25 as senators' and 261 as members of the County Assemblies." http://www.unwomen.org/en/news/stories/2017/7/feature-in-kenya-women-gear-up-for-county-elections

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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 recognized 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 and number around 1.025.800.[2] The Basongora numbering 15,897 are a cattle-herding community living in the lowlands adjacent to Mt. Rwenzori in Western Uganda.

They all experienced 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 in consequence, their continued impoverishment, social and political exploitation and marginalization.

The 1995 Constitution offers no express protection for indigenous peoples, but Article 32 places a mandatory duty on the state to take affirmative action in favour of groups that have been historically disadvantaged and discriminated against. This provision, which was initially designed and envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source

of affirmative action in favour of indigenous peoples in Uganda.[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 authorize 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 in 2007.

Violent conflicts in Karamoja

The Karamojong people live in the North Eastern part of Uganda. Karamoja covers 27,596.5km^2 which is 11.4% of the total land area of Uganda. Pastoralism, agro-pastoralism and subsistence arable farming are the main economic activities. The community is well known for its strong ties with cattle and because of frequent droughts they regularly move with their herds from place to place in search of pasture and water.

Karamoja has since the end of the disarmament programme in 2010 enjoyed relative peace. There is now largely a peaceful coexistence within the sub region among the Dodoth, Jie, Tepes, Ik, Matheniko, Bokora people and with neighboring Ugandan communities of Teso, Sebei and Bagisu. However, this is not always the case with external communities such as the Turkana of Kenya and Toposa of South Sudan.

Peace came to Karamoja with both positive and negative aspects. One negative aspect has been the increasing cases of land grabbing. Two such cases (among many) include Kautakou village in Napak district grabbed by Karamojong elites and Napore land in Kaabong district grabbed by the Wildlife Conservation Agency/ Uganda Wildlife Authority (UWA) for creation of a wildlife corridor in Kidepo Game Park.

As if land grabbing was not enough, the community is faced with resurging cases of cattle thefts largely by armed Turkana, Toposa and Didinga people. The long drought in Kenya leading to migration of Turkana pastoralists to Karamoja has led to struggle for existing water points and

grazing areas. These have resulted into incidences of deaths and loss of livestock. According to peace building and security reports made by the Dodoth Agro-Pastoralist Development Organisation (DADO), on 9th November 2017 in Lodiko sub county, two civilians (Lotyang Lolem and Lochiokio Jerimeya) were shot dead by four armed Turkana warriors. The total number of lives lost to Turkana warriors between September and December 2017 was five of whom three were civilians, one Local Defence Unit personnel and one Uganda Peoples Defence Force (UPDF) soldier.

On 11th November 2017, a total of 73 heads of cattle were stolen by Turkana warriors in Kotirae parish in Kakamar sub county. All in all between 7th September and the end of 2017, more than 245 cattle as well as goats, sheep and donkeys were stolen by armed Turkana warriors. However, in the same period, 407 heads of cattle, goats, sheep and

donkeys (including those stolen earlier) had been recovered by the efforts of Kaabong Security Committee and the UPDF.

The Karamoja community is skeptical towards the government stated commitment to protect them against the Turkana and are beginning to ask government to re-arm them, which could be dangerous. Local initiatives like the Loyoro Natural Resource Sharing Agreement between the Dodoth and Turkana signed in early 2017 have sought to build on both international and national policy guidelines such as the AU Policy Framework on Pastoralism in Africa. However, continued violation of the agreement by the Turkana who continue to enter Uganda with illegal arms undermines the essence of the agreement.

Wildlife issue in Karamoja

The influx of wild animals is also common given that 53.8% of Karamoja land is under conservation. Wild animals continue to destroy crops and kill people who dare to go to the wild to gather fruits, vegetables and burn charcoal. Unfortunately, there are no guarantees that loss of crops or lives due to wildlife will be compensated. This approach needs quick rethinking to ensure that all lives and property destroyed is fairly and quickly compensated, otherwise people will not view the wildlife as an important resource and protect it.

Threats posed by pending Land Amendment Bill

The pending Land Amendment Bill, if passed as government is pressing for, is bound to impact very negatively on the traditional lands of the Karamojong pastoralists – maybe more than for other communities. This is because most chunks of land in Karamoja are communally owned and not titled and hence they are very easy and convenient to grab. One of the proposed sections of the bill allows government to compulsorily acquire land for public sector investment from a land owner and negotiate with the latter while development is in progress. This puts the land owner in a very weak situation given that the government valuer who is supposed to determine the value of the land is him/herself an agent of the state which is party to the disagreement. The bill also provides for government to deposit money with a court while protracted negotiations are going on. The

court system in Uganda is very slow and generally justice does not favour the poor which will disadvantage the people of Karamoja even more.

Benet land rights issues

The Benet people (referred to as the Ndorobos by their neighbors) are the original and indigenous inhabitants of the Mt Elgon forest in Eastern Uganda. The community has had a long standing feud with the authorities over its ancestral land, which was declared a protected area in 1926 without their free, prior and informed consent and without compensation. In 2005 the Benet won a land slide victory ruling by the high court in which the government was ordered to return the protected land to the community, but this ruling has to this day not yet implemented.

In June 2017, the office of the Prime Minister and the Ministry of Lands, Housing and Urban Development carried out a survey. This was an attempt to mark the boundary line previously agreed in 1983 that was thought to be a solution to solve the Benet land issues. This, however, awakened fears amongst the community because it was seen as an indirect way by the government to divide the Benet land into natural resource and resettlement areas, yet the Benet did not want to lose any of their land.

In the months of October and November 2017, the Office of the Prime Minister under the Disaster Response Management Unit had planned to allocate a 24 acre portion of land in Kapsekek village to 24 Yatui parish community families with each getting one acre. In the end though, only eight of these families were allocated land while the remaining 16 were told that they would be considered later within the Yatui temporary resettlement area.

Harassment by Uganda Wildlife Authorities

On 7th December 2017, the Benet sent a delegation of seven people headed by Yesho Alex (Chairman of the Mount Elgon Benet Indigenous Ogiek Group) to the Office of the Prime Minister in Kampala. The purpose of the visit was to see how government was going to implement the Benet issues as per a petition submitted to the office of the President and the office of the Prime Minister in April 17th 2014. At that time, Brigadier Stephen Oluka had promised to meet the district leadership,

Uganda Wildlife Authority (UWA) officials and the Benet community. He further informed the delegates that they had discussed the Benet petition with the Prime Minister Rt. Hon. Ruhakana Rugunda and that the latter had been informed that the Benet people had raised serious issues. Brigadier Stephen Oluka further advised the Benet to report human rights abuses meted by the UWA law enforcement officers to the police. He said that this would serve as evidence because impounding cattle and arresting of herdsmen grazing as done by the UWA was illegal and criminal and should be exposed.

To date, however, the UWA is still harassing the people and impounding cattle. For example on 23rd November 2017, Catherine Kokop of Cherangut village was beaten and her cattle impounded. This case was reported to Kwosir Police out post under case file number SD REF 10/23/11/2017. On 19th December 2017, Patrick Ngeywo was arrested and his cattle impounded. He reported this to the Kitawoi Police out post on case file number SD REF 19/12/2017. However, the perpetrators were not sanctioned.

Despite the presence of UWA officers whose prime responsibility is to protect the Mt. Elgon National Park, the Benet community forest is continuously being depleted because endangered tree species are being exchanged for money by people paid to protect it. This is evidenced by several eye witnesses and documentations, which show exactly that this act is being done by UWA officers. For example on 4th December 2017, a Benet man, while grazing, met one person who had cut down a huge tree. It turned out that this man had paid the UWA some money and had thereafter been given permission to harvest trees within the national park.

Again, on 19th November 2017, one Benet community member found a Park Ranger who was part of the team stationed at the Piswa Patrol Hut together with two hunters armed with bows and arrows sharing meat of a wild animal locally called "poonet." The matter was reported to police and to the office of the Prime Minister.

Law enforcement officers often wrongfully accuse people whose livestock is not impounded of poaching in order to fraudulently obtain money from such people. Such accusations and threats force community members to give in to blackmail and pay bribes. For example on 23rd October 2017 a Benet man was found by UWA officers coming from grazing, and on refusing to disclose where in the national park his animals/cattle were, the UWA officers threatened to implicate him as a poacher by using the bush meat that they already had in their possession. Their aim was to force him to pay a bribe to them because of fears

of arrest, but he managed to find his way out of trouble. With many more cases unreported, it is clear that the law enforcement officers are continuously misusing the Benet resources in the names of conservation.

Serious human rights abuses

During 2017, massive human rights abuses were witnessed by the Benet community. For example on 16th July 2017, one Benet man called Masai Chemater in Kortek sub county of Bukwo district was arrested by UWA law enforcement officers. He was arrested and tortured to death while still in detention. Despite the case being reported to police, there has been no arrest of the perpetrators, some of whom have been transferred as a way of protecting offenders, and the case files are just lying with the police.

On 15th July 2017, three boys while looking after their cows in the forest were beaten up by UWA officers and their cows taken to Cheberen hut. These children's case was never reported to the police by the community for fear of retaliation. In another development, a Benet man was assaulted and the case reported to police under case file reference number SD REF 06/14/12/2017, however, the offenders have not been brought to justice. These incidents discourage communities from reporting cases since there is now a general feeling that no sanctions will be meted towards the wrong doers.

In conclusion therefore, the current policies and legislations (on paper and in implementation) bring no hope to the indigenous communities. There is fear for example that the proposed Land Amendment Bill already tabled in parliament, will benefit government but not the indigenous community. If in the present legal and policy set up their land is insecure, the proposed arrangement under which government will be at liberty to take control of land and only compensate after lengthy court procedures will disadvantage the indigenous people even more.

Age Limit Act

The Age Limit Act that was enacted late December 2017 removing the age limit of a President is seen by the indigenous community not to be beneficial but only to be prolonging the same government that has continuously ignored the Benet issues for the last 31 years. That is why

the Woman Member of Parliament for Bukwo district Hon. Evelyn Chemutai – who voted against the Bill – was received as a heroine by the Benet community when she went to her home district in December 2017 and people vowed to continue voting for her.

The situation of the Batwa people

The Batwa indigenous peoples live in the South West Uganda mainly in the districts of Kisoro, Rubanda, Kanungu, Kabale, Ntungamo, Mbarara, Lwengo and Bundibudgyo. Since they were evicted from their ancestral lands (forests) in 1991, the Batwa have remained few in numbers due to a large number of challenges that they face.

With the creation of the Batwa organization United Organisation for Batwa Development in Uganda (UOBDU) in 2000, some of the many challenges faced by the highly marginalized and impoverished Batwa people have been addressed. One of the successes has been to bring Batwa people together from different areas and organize them to have a collective voice about their challenges and situations. Many challenges persist for the Batwa people, however, there were also some good developments in 2017 through the activities of UOBDU, funded by various donors. These developments include:

Batwa children have been provided with food in three schools under the Universal Primary Education (UPE). This was done through a pilot project meant to reduce the high school dropout rate of Batwa children due to inability to have lunch both at home and at school. Furthermore 13 Batwa children were supported to study in boarding schools and two Batwa boys were pursuing their degrees at the Universities. Different trainings and workshops were also conducted for the Batwa to acquire skills such as negotiation methods in order to prepare for the Batwa court case which was lodged in 2013.

UOBDU has also been implementing the project titled "Giving Hopes to Batwa Women and Girls" where two Batwa representatives from 43 Batwa clusters or communities were selected and trained as Women Rights Defenders. These defenders will be equipped with communication gargets to allow them report human rights violations to the relevant authorities. It is hoped that with this project issues of gender based violations among others will be reduced.

UOBDU also implemented an agriculture project whereby eight

Batwa groups benefited from potato harvesting that assisted them in terms of income and food security. Last but not least in 2017 the Batwa from Sanuriro, Rubuguri/ Rushaga, Kitahurira, Kalehe, Mukongoro, Buhoma and Kitariro communities implemented the Batwa livelihood project whereby they gained different skills in crafts making, preserving their culture in terms of music, dance and drama and beekeeping which are helping them to earn an income for their livelihood.

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TANZANIA

KENYA
KAGERA
RWANDA
MARA
Loliondo
ARUSHA
Hai
BURUNDI
GEITA
MWANZA
SIMIYU
SHINYANGA
KILIMANJARO
KIGOMA
Tarangire
National Park
MANYARA
TABORA
TANGA
Dodoma
SINGIDA
DODOMA
KATAVI
Kilosa
Dar Es Salaam
RUKWA
DCR
PWANI
MBEYA
IRINGA
MOROGORO
LINDI
NJOMBE
RUVUMA
ZAMBIA
MTWARA
TANZANIA
MOZAMBIQUE
MALAWI

Tanzania is estimated to have a total of 125-130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify as indigenous peoples, four groups have been organizing themselves and their struggles around the concept and movement of indigenous peoples. The four groups are the hunter-gatherer Akie and Hadzabe, and the pastoralist Barabaig and Maasai. Although accurate figures are hard to arrive at since ethnic groups are not included in the population census, population estimates[1] put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belong at 87,978, the Hadzabe at 1,000[2] and the Akie at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and marginalization. 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 in 2007 but does not recognize 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.

With the current developments in Tanzania in terms of reduced freedom of expression and shrinking civil society space, the situation of indigenous peoples in Tanzania continued to deteriorate. The main and increasing challenges relate to land grabbing, land conflicts, violations of human rights, gender-based violence as well as food insecurity, all observed in different parts of the indigenous peoples' territories.

National Parks invade rangelands in West Kilimanjaro

Land grabbing and land conflicts in Tanzania are often related to the expansion of national parks, and the invasion of the pastoralist rangelands in West Kilimanjaro is one such case in point. Pastoralists were living in West Kilimanjaro well before the Berlin Conference of 1884-85 when Tanganyika was handed over to Germany as its colony. The Germans grabbed the most productive strip of land in West Kilimanjaro and the Maasai pastoralists and their livestock were pushed onto the barren plains. The Maasai objected to what they considered the unlawful occupation of their land – but in vain. When the British took over as colonizers after the First World War, they took the fertile land in the temperate slopes of Mount Kilimanjaro, and the Maasai did not benefit from this change.

In 1968, the President of the United Republic of Tanzania, Julius Nyerere, made an official tour of West Kilimanjaro. The Maasai presented a moving case to Nyerere, and Nyerere realized that the Maasai were landless and that they had been squeezed onto barren land while settlers of European ancestry had occupied the lush hills filled with pastures and water. The President ordered that the Maasai be given a grazing reserve amounting to 5,500 acres in the fertile belt of Mount Kilimanjaro and, on 16 March 1973, the government officially gazetted the area whereby it legally became a grazing reserve for the Maasai.

In 2016, however, the Tanzanian National Parks Authority (TANAPA), a government agency responsible for managing the national parks, invaded the area. It arbitrarily planted boundary beacons, thereby incorporating the area into the Kilimanjaro National Park. By so doing, the Maasai lost their entire territory of 5,500 acres, upon which they and their livestock depended for their survival. The Maasai resisted this alienation and, in 2017, Maasai pastoralists, with the support of civil society organizations, attempted in vain to meet President John Magufuli to present their grievances during his planned visit to Longido District. However, in the end, the President never came. Instead, the Prime Minister of Tanzania represented the President in the Longido District tour but efforts by the community to meet the Prime Minister also bore no fruit. Even the placards with different protest messages shown during a public meeting with the Prime Minister were confiscated by state security agents, leaving the Maasai frustrated.

Expansion of Tarangire National Park and Mkungunero Game Reserve

There were other attempted land grabs in 2017 related to attempts at annexing pastoralist villages into national parks and game reserves, such as the case of Kimotorok village. Kimotorok village is located in Simanjiro District of Manyara Region in northern Tanzania. The village borders the Tarangire National Park (TNP) and Mkungonero Game Reserve (MGR). Kimotorok village has five sub-villages: Aladalu, Oltotoi, Arkasupai, Kisondoko and Mbugani. Residents of the village are predominantly Maasai pastoralists, and there are also some Barabaig pastoralists. Kimotorok is a legally-registered village as per the Village Land Act No. 5 of 1999. Accordingly, no land in Kimotorok can be taken, annexed or transferred for any reason without the free, prior and informed consent (FPIC) of the villagers through their village council, which passes the resolution, and the village general assembly, which approves the resolution. The minutes of these two bodies must be obtained or sought to be able to say that the village land was acquired through the requisite open and legal procedures. Otherwise it just amounts to land grabbing.

Kimotorok village is deeply engrossed in a land-induced conflict with Tarangire National Park. The land conflict started around the year 2000 when boundaries for the Tarangire National Park and Mkungonero Game Reserve were extended onto village land. In 2017, Kimotorok villagers were forcibly removed from their legally-registered village land by the park authorities, alleging that they were inside Tarangire National Park and Mkungunero Game Reserve. This is a conflict that is sure to continue in 2018.

Continued problems for indigenous peoples living in Ngorongoro Conservation Area

The Ngorongoro Conservation Area (NCA) is another case in point relating to indigenous peoples and conservation areas. The NCA in northern Tanzania covers an area of 8,292 km^2 and was established in 1959. The objective of the NCA is to conserve the natural resources of the NCA, promote tourism and safeguard and promote the interests of the resident Maasai population. The aspect of promoting the interests of the Maasai has been grossly neglected over the years, contrary to the spirit

in which the NCA was established. In December 2016, the Prime Minister of the United Republic of Tanzania, Kassim Majaliwa, visited the NCA. Following this visit, the Prime Minister banned livestock from entering the three vital craters in the NCA namely Ngorongoro, Olmoti and Embakaai. This prohibition has far reaching implications for pastoralism in the area since the craters are prime grazing areas for the livestock of the Maasai pastoralists, and the livestock have – since the creation of the NCA – been using the craters for pasture, water and salt licks.

Although the NCA is supposedly a multiple land-use area it is increasingly becoming another national park. Wild animals and tourists roam the area at will while, on the other hand, the Maasai and their livestock are severely restricted from using many parts of the area. Many assume that the bans, the restrictions and the gross violations of human rights of the Maasai, Barabaig and the Hadzabe in the area are probably done in the hope that the resident community will ultimately vacate the area out of frustration.

An important issue in 2017 was the discussion on the development of the new General Management Plan (GMP) for the NCA. The GMP is a very important instrument for management of the area, and it is important for the Maasai pastoralists to be properly represented in the bodies developing the GMP. This has turned out to be a major challenge but the Maasai are determined to advocate for proper representation and to have an influence on the process.

The situation in Loliondo in 2017

Another serious case of attempted land grabbing that took place in 2017 in the name of conservation was the Loliondo issue. Attempts to forcibly evict the indigenous Maasai peoples from Loliondo in northern Tanzania took place from August to October 2017. The eviction attempts were veiled within the broad justification of "wildlife conservation" of the Serengeti ecosystem, an excuse that has long been used to undermine pastoral livelihoods in the Loliondo area. All of the affected areas are legally registered to eight villages. The forced evictions from August to October 2017 occurred after other similar attempts had taken place over the years, especially since July 2009.

The August 2017 incidents arose after a series of statements and orders from the then Minister of Natural Resources and Tourism, Prof.

Jumanne Maghembe. The Minister wanted an alienation of at least 1,500 km^2 of the Loliondo land, which has been occupied by the pastoral Maasai community since time immemorial. The said land, which is about 40% of the Loliondo area, is village land and legally demarcated and sanctioned for human use as well.

On 5 August 2017 the Ngorongoro District Commissioner (DC), Mr. Rashid M. Taka, issued an order through a letter with reference number *AB.108/241/01/81* to all ward councillors, ward executive officers (WEO) and village executive officers (VEO) of Piyaya, Arash, Maaloni, Oloipiri, Soitsambu, Olorien and Ololosokwan villages. The order said that all livestock should be removed from the so-called Serengeti National Park buffer zones. Large parts of these so-called buffer zones are, however, legally-registered village lands. In his letter, the DC made an ultimatum that his order should be implemented within five days, and failure to do so would result in forcible eviction through law enforcers, special guards from SENAPA and the NCAA. Following on from this, the forcible evictions started on 10 August 2017, leaving 350 people homeless after their houses (*Boma*) had been set on fire and many people exposed to very vulnerable situations, including food insecurity, resulting in other forms of human rights abuses such as harassment, mistreatment, beating, rape and arbitrary arrest.

With public outcry and pressure from civil society organizations, including IWGIA, and support through international advocacy, the government halted the evictions in November 2017 and the new Minister of Natural Resources and Tourism said they had been illegally designed, without properly following the procedures. There is, however, currently no clear way forward to permanently resolve the issues. It is not as yet clear how long the people of Loliondo will remain in a peaceful situation, and their future is uncertain.

Ndarakwai Ranch conflict

A conflict between Maasai pastoralists in the Endarakwa area in West Kilimanjaro and a photographic tour company called Tanganyika Films and Safari Outfitters (TAFISO) owned by the British national Peter Jones continued in 2017. The area is called Ndarakwai Ranch and is owned by TAFISO. Ndarakwai Ranch consists of three farms with a total of 9,662 acres. Peter Jones and TAFISO moved into the area in 1995 where

apparently, he leased the land from a state parastatal called Tanzania Breweries Limited (TBL) and, according to Peter Jones, his company bought the land in 1996. The Maasai people of the area regard it as their ancestral land, and there have been serious conflicts ever since TAFISO and Peter Jones moved into the area.

Attempt to eliminate indigenous Parakuyo community

Serious conflicts over land and attempts to dispossess the indigenous peoples of their land continued in Morogoro Region in the central/southern part of Tanzania in 2017. One of the most serious cases related to Mabwegere village in Kilosa District. Mabwegere is one of the villages which Parakuyo Maasai pastoralists consider their ancestral land. The government allegedly set aside the Mabwegere area for pastoralists in 1966, and Mabwegere became a village in 1989. Mabwegere village elected its governing body in 1990 and, on 5 January 1990, the village obtained a title deed for 99 years covering an area of 10,234 hectares. Mabwegere village was officially registered on 16 June 1999.[3]

Pastoralists and farmers (supported by the Kilosa District authorities) have had a very poor relationship in the area ever since, and farmers have tried, time and again, to invade Mabwegere village to cultivate. Mabwegere Village Council therefore filed Case Number 23 of 2006 against 33 farmers who had established farms on its land. The village lost in the High Court but appealed. In 2012, the Court of Appeal of Tanzania ruled in favour of Mabwegere Village Council and ordered the restoration of the boundaries and that the boundaries should be respected.

With the passage of time, the situation has turned from bad to worse and politicians have been going out of their way to try and flush out the pastoralists from Mabwegere village. The state has refused categorically since 2012, and for very unconvincing reasons, to implement the judgement of the Court of Appeal.

On 28 December 2017, representatives of Mabwegere Village Council met with Morogoro Regional Commissioner, Dr. Steven Kebwe. The council wanted to revoke the traditional boundaries of the village, which have also been recognized by the Court of Appeal. On 4 January 2018, Kebwe called the leaders of Mabwegere Village Council to his office. The police force, acting on the instructions of Kebwe, arrested the Mabwegere Village Council leaders and took them into custody for over

48 hours until 7 January 2018. The Morogoro Regional Police Commander said that the leaders were arrested because of disobeying the Regional Commissioner' order to vacate their land. The arrested council leaders argue that the arrest was meant to intimidate them into submission so that their village land could be grabbed.

Attempts to evict indigenous Parakuyo Maasai

Another serious issue of attempted land dispossession of indigenous peoples in Morogoro Region took place in Kambala village, which is situated in Mvomero District in Morogoro Region. The actions of the state against Kambala village date back some time. The village was registered under the Villages and Ujamaa Village (Registration Designation and Administration) Act No. 21 of 1975. Later, the registrar of villages registered the village as a corporate body under the Local Government (District Authorities) Act No. 7 of 1982. The 48,005.56 hectares of land are designated as village land under the Land Tenure Act No. 27 (Village Settlements) Act of 1965. Under Section 9 of the then Land Ordinance (Cap.113 of 1923), the government issued Kambala Village Council with Title Number 35068 for 99 years on 6 March 1989 with Survey Plan number 22697 clearly showing the village boundaries. The government subsequently issued Kambala with Village Certificate Number 006MVDC as required under Section 7(7) of the Village Land Act No. 5 of 1999. Maasai pastoralists argue that they have been in the area since 1954.

The inhabitants of Kambala village are mainly pastoralists, and they have been anxious to live and cooperate with the farmers subject to both sides complying with the required procedures and standards necessary for the maintenance of peace and harmony. In pursuance thereof, Kambala village has been directing peasants to apply for land-use permits so that they would be allowed to cultivate in areas that are not open livestock routes in order to avoid land-use conflicts. To ensure this is done, Kambala village has passed resolutions at its various General Assemblies to terminate all the permits and grants that were previously issued, and informed the public (including farmers) that they should apply for new farming permits subject to the conditions being imposed by Kambala village, which would cater for the interests of both farmers and pastoralists in planning and sustainable land use.[4] However, no farmer applied, and farmers reject the very existence of Kambala.

Nearly 75% of the farmers involved in the conflict are from Morogoro Municipality, which is outside Mvomero District, with the rest coming from neighbouring villages. Time and again, farmers are mobilizing through a mob known as *muano* in the Kaguru language. This mob consists of locally-armed youths who attack and harass pastoralists. Sometimes the group seizes cattle and, when the owners of the animals show up, they are forced to pay unlawful fines. At other times, the mobs steal and sell off the animals, which are slaughtered. In revenge, pastoralists mobilize 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.

On 5 February 2018, *muano* invaded Kambala village once again setting fire to three *bomas* of Maasai pastoralists. Miraculously, no life was lost in the attack. One source, who asked to remain anonymous, said that nobody had been arrested in connection with the attack.

Land-induced conflict between maasai pastoralists in Hai district and Kilimanjaro International Airport (KIA)

Infrastructure development also causes land dispossession for indigenous peoples in Tanzania. One of the most serious cases is the conflict in Hai District in northern Tanzania between seven villages of mainly Maasai pastoralists, on the one hand, and Kilimanjaro Airport, on the other. The seven villages are Sanya Station, Chemka, Mtakuja, Majengo, Samaria, Malula and Maroroni.

Maasai have been in the area beyond recorded memory. The government did not seek, far less obtain, the *free, prior and informed consent5* of the Maasai pastoralists to construct the airport on their ancestral land in the 1970s, and the Maasai resisted the land grab. At that time, President Julius Nyerere appealed to a Maasai healer called Ndoros Mbatiany from Monduli. Ndoros was highly respected by the community and the community therefore allowed the present day fenced area covering 460 hectares to be used for the airport. The Land Acquisition Act No. 47 of 1967 laid down procedures for land acquisition. Article 11 (1) stipulates that adequate compensation be paid. *No compensation was paid to the Maasai.* Article 11 (2) insists that alternative land of the same value and size be allotted. *No such land was given to the Maasai.* In

short, the law was ignored when the airport was constructed. As if this was not bad enough, in the mid-1980s, through the Ministry of Land Affairs, the government arbitrarily set aside an additional 110 km^2 surrounding the airport in the name of development. A joint clandestine meeting between Arusha and Kilimanjaro Regions approved this plan on 1 August 1985.[6] By so doing, the government enlarged the original 460 hectares to instead cover 11,447 hectares by invading villages *without conforming to* the Land Acquisition Act No. 47 of 1967. The Maasai doubt, in all seriousness, the reasons behind this large-scale land grab. And they have a point since, in comparison, the site of the busiest airport in the world, Hartsfield–Jackson, is scarcely 1,902 hectares.

Since 2014, the organization PINGO's Forum has been supporting the victim villages in various ways to resist the land grabbing by the airport. The conflict turned worse than ever towards the end of 2015. On 8 June 2016, the Kilimanjaro Regional Security Committee visited Kilimanjaro Airport and toured the contested area accompanied by staff of Kilimanjaro Airport. The delegation did not include a single village representative. A few days later, a Kilimanjaro Airport protest delegation made up of representatives from all the villages that are victims of the invasion visited the Kilimanjaro Regional Commissioner to deliver a letter complaining about the invasion of their land and the recent arbitrary visit to the contested area by the Security Committee. The delegation did not meet the Regional Commissioner but was told to return in one month.

On 21 June 2016, the Hai District Commissioner wrote a letter to the village executive officers of all villages bordering Kilimanjaro Airport.[7] The letter warned the residents of those villages to stop all human activity in the area and sternly warned defaulters. On 14 September 2016, a 25-people Maasai protest delegation met the Prime Minister in Dodoma. The Prime Minister promised that he was taking the matter seriously and that a committee of four ministers would visit the area to resolve the conflict.

Between 12 October 2016 and March 2017, the government began mapping the contested area using drones fitted with cameras. It warned the community against any protests against the mapping. Some handpicked community representatives, together with the Member of Parliament for Hai, were present throughout the mapping. In 2017, the Maasai in the villages bordering the airport continued their struggle to defend their land rights.

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. Registration No. MG/KIJ.552
4. See a letter from the Kambala Village Chairman to the District Commissioner dated 4 December 2000; minutes of Kambala Village General Assembly dated 18 December 2000 as well as the District Commissioner's letter dated 24 October 2005.
5. Article 19 of UNDRIP requires States "to consult and cooperate in good faith with the indigenous people concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them".
6. Minutes of the joint meeting between Arusha and Kilimanjaro Regions dated 1985.

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Southern Africa

NAMIBIA

The indigenous peoples of Namibia include the San, the Nama, the Ovahimba, the Ovazemba, the Ovatjimba, and the Ovatue (Ovatwa). Taken together, the indigenous peoples of Namibia represent some 8% of the total population of the country, which was 2,484,780 in 2017. The San (Bushmen) number between 27,000 and 34,000 and represent between 1.3% and 1.6% of the national population. They include the Khwe, the Hai||om, the Ju|'hoansi, the!Kung, the!Xun, the Kao||Aesi, the Naro, and the!Xóõ. 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 marginalised peoples in the country.

The Ovahimba number some 25,000. They are pastoral peoples and reside mainly in the semi-arid north-west (Kunene Region). The Ovazemba, Ovatjimba, and Ovatue reside in close proximity to the Ovahimba in the mountains and savannas of north-western Namibia. The Nama, a Khoe-speaking group, number over 100,000 and live mainly in central and southern Namibia. Related to the Nama are the Topnaars (!Aonin) who number approximately 2,500 and who reside in the Kuiseb River Valley and the area around Walvis Bay in the Erongo Region.

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. The Namibian government prefers to use the term "marginalised communities" when referring to such groups. Namibia voted in favour of the UN Declaration on the

Rights of Indigenous Peoples (UNDRIP) when it was adopted in 2007 but it 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)

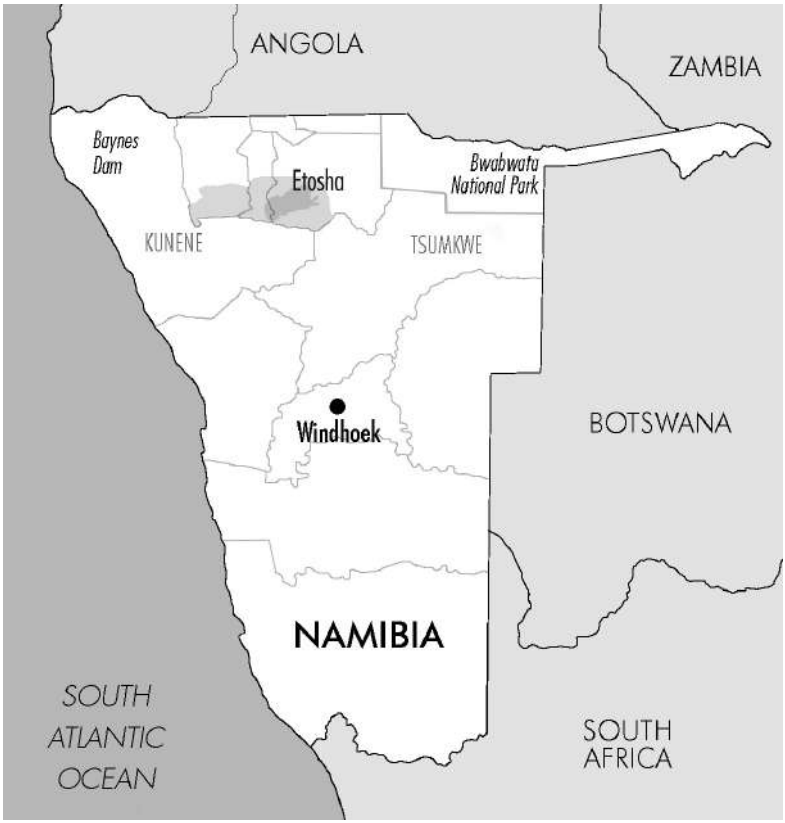
The Namibia government office responsible for indigenous peoples and minorities is the Division for Marginalised Communities (DMC), now under the Office of the President.[1] The office considers its main objective to be integrating marginalised communities into the mainstream national economy and improving their livelihoods.

Land and natural resource issues

There were a number of important developments for Namibia's indigenous peoples in 2017. The crucial issue of land reform continued to be debated but the planned second National Land Conference[2] was postponed to 2018.

In 2017, the Hai||om, the largest San community in Namibia, with a population of some 16,000 people, pursued a collective action lawsuit against the Government of Namibia for dispossession of their ancestral land in Etosha and Mangetti West.[3] The total land area for the Etosha claim was 23,150 km^2, and in the case of Mangetti West the total was 0.433 km^2. The lawsuit seeks compensation for losses, both in cash and in kind, and it is aimed at ensuring that the Hai//om can obtain benefits from both Etosha and Mangetti West. The total cash compensation sought for the two areas is over N$3.9 billion, not to mention development and court costs. In November, the Namibia High Court postponed the initial hearings on whether it was lawful to have a collective action lawsuit under the Namibian Constitution until May 2018.[4]

In a High Court legal challenge, the N+a Jaqna Conservancy succeeded in removing fencing illegally erected by farmers who had settled



in their conservancy in September 2016.[5] In 2017, the terms of the High Court's decision were only partially enforced by the Namibia Police (NAMPOL), who required some farmers involved to remove their fences and cattle posts from N+a Jaqna. Others, however, refused to move and additional new fences were reportedly erected. The questionable role of some members of the!Kung Traditional Authority (KTA) in granting permission for people to settle in the area continues to cause divisions between the TA and some N+a Jaqna community members.[6]

Efforts have continued in the neighbouring Nyae Nyae Conservancy (which is made up predominantly of Ju|'hoansi) to prosecute illegal grazers in the Tsumkwe area. Unfortunately, the investigations and the prosecution of the Nyae Nyae cases have been extensively delayed. It is now hoped the cases will be heard during 2018.

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 2017. The Nyae Nyae Conservancy, for example, generated over N$5 million through its activities in 2017, while the N+a Jaqna Conservancy generated over N$1 million.[7] Some of the Ovahimba conservancies in Kunene Region also generated significant economic returns.

A topic which has received relatively little attention from government and non-government organisations is the large number of families residing on commercial farms in Namibia, which is a particular issue for the San, only some of whom are employed and receive benefits from the farm owners. Government has relatively little policy impact on freehold farms.[8]

The Khwe in Bwabwata National Park face strict restrictions in terms of accessing natural resources. In December 2016, the Namibian Defence Force (NDF) deployed soldiers on anti-poaching patrols in response to reportedly increased levels of wildlife crime. In 2017, both tourists and Khwe people were shot by NDF soldiers, game scouts, and police in cases of mistaken identity, including a three-year old child in March 2017.[9]

Restrictions on the gathering of bush food and harvesting of Devil's Claw (a root with pharmaceutical application for arthritis and headaches) were put in place. Initially, the Ministry of Environment and Tourism (MET) ordered the Khwe residents not to travel further than five kilometres from their villages, purportedly to control the risk of poaching. In June 2017, MET told people not to leave their villages for any gathering activities. MET also stopped supporting local community game guards and resource monitors, depriving them of employment. In addition, MET cancelled the annual Devil's Claw (*Harpagophytum procumbens*) harvesting permits. Severe hunger followed, as people were afraid to go to the bush. The subsistence and income situation was exacerbated by the cessation of government drought relief feeding at the beginning of 2017. The Division of Marginalised Communities stepped in to help with maize distribution, which took place twice between March and December.[10]

Policy developments on indigenous peoples' issues

Kxao Royal Ui|o|oo, the Deputy Minister for Marginalised Communities and the only San in national government, and Gerson Kamatuka, the Director of the Marginalised Communities Division, attended the 16th

annual meeting of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York from 24 April – 6 May 2017. Both of them made public statements to the UNPFII on issues in Namibia.

During 2017, substantial progress was made on a white paper concerning the rights of indigenous peoples in Namibia, initially drafted in 2014. The Division of Marginalised Communities held workshops with line ministries and indigenous peoples' representatives in March 2017, with the support of the UN Department of Economic and Social Affairs (UNDESA). These meetings were followed by regional community consultations in September 2017. The white paper is now being redrafted for approval by the Cabinet in 2018.

Discrimination

There were cases of apparent discrimination against San, Topnaar, and other marginalised communities in 2017. Hai||om in Swakopmund charged the Swakopmund Town Council with discriminatory treatment for its failure to give 78 Hai||om applicants residential plots in Swakopmund.[11] Topnaars in the Erongo Region complained of being underpaid for labour contracts for which they were hired in 2017.[12] Among the Hai||om, hopes for a successful tourism operation involving the Gobaub Concession in Etosha National Park continued to be elusive because of the inability to purchase a nearby freehold farm and the absence of a willing tourism operator to facilitate the process.[13] The Hai||om's plans for expanded tourism and a successful resettlement program of Hai||om from Etosha also met with difficulties.[14]

In search of reparations over colonial genocide

A lawsuit was filed against Germany in January 2017 by Ovaherero and Nama representatives of the Ovaherero-Nama Genocide Committee and advocate Vekuii Rukoro, regarding reparations for the Nama-Herero genocide of 1904-1907. The suit was brought in a New York federal court under the Alien Tort Claims Act (ATCA).[15]

While the Government of Namibia initially opposed the collective action legal case, documents released by the government demonstrated its desire for a financial settlement beyond development aid packages.[16]

Meetings were held on the genocide case in Windhoek, Berlin, and New York in 2017. In late 2017, it was discovered that the American Museum of Natural History in New York City possessed human remains of Ovaherero, Hai//om and Nama that were obtained from Namibia during the period of the genocide; the Herero and Nama are seeking the repatriation of these remains.[17]

Political representation

In 2017, there were 46 government-recognised Traditional Authorities (TAs) in Namibia, five of which are San.[18] The Khwe in Zambezi Region still do not have a recognised Traditional Authority, in part because of opposition from other groups residing in the area and ongoing internal disagreements about whom to appoint as chief. Some other San groups, notably those in the north-central regions, fall under the jurisdiction of non-San TAs, limiting indigenous representation. A similar situation exists for some Ovatue, Ovatjimba and Ovazemba.

Education

In 2017, the Division of Marginalised Communities in the Office of the President issued Guidelines for the San, Ovatue, Ovazemba and Ovatjima Education Support Program.[19] According to the report to the UNPFII, substantial numbers of San, Ovatue, Ovazemba and Ovatjima were attending primary school in 2017.[20] With the support of several international organisations, the Government of Namibia undertook a participatory rapid assessment of Integrated Early Childhood Development Programs among San communities in Namibia in 2017.[21] Problems identified were high drop-out rates of students, lack of sufficient qualified teachers in remote areas, and the need for additional funding support for education. The report will be available in early 2018.

The Namibian San Council, the ||Ana-Jeh San Trust (the Namibia San youth organisation) and the Legal Assistance Centre met several times during 2017 to discuss issues involving San men, women and youth. Some of the issues they highlighted included the low levels of participation of San in the socioeconomic life of the country, high rates of unemployment, and a lack of training and educational opportunities.

International treaty bodies and activities

President Hage Geingob addressed various international and domestic issues in his State of the Nation address presented in Parliament in Windhoek on 12 April 2017. The president discussed international treaties to which Namibia is a party and underscored how important they were. Namibia is preparing for its next presentation to the Universal Periodic Review (UPR) of the United Nations Human Rights Council in 2018. The country continues to be recognised for its commitment to freedom of expression, as noted in the Freedom House report for 2017.[22] It is considered by Transparency International to be one of the least corrupt nations on the African continent. The World Bank and the United Nations have designated Namibia as a middle-income country, which has had some negative impacts on its ability to obtain international grants and loans at low to moderate interest rates and has limited international donor investment in its civil society programs.

Outlook for 2018

The Division of Marginalised Communities and the Government of Namibia both expressed their willingness to address the complex issues facing San, Ovatue, Ovatjimba, Ovazemba and other marginalised rural communities in 2018. Women Members of Parliament raised particular concerns about gender-based violence (GBV) affecting women and girls in Namibia, and also noted that the increase in HIV prevalence between 2014 and 2017 affected young women disproportionately.[23] Some of the efforts to address GBV were aimed specifically at young women, the government said, and will be done through the Harambee Prosperity Plan (HPP), the country's action plan for development which was promulgated in 2016 and will be implemented over the next five years.[24] This plan, which is aimed at "Prosperity for all", is geared towards enhancing effective government, economic advancement, social progress, infrastructure development, and international relations and cooperation. A specific goal of both the Harambee Prosperity Plan and National Development Plan (NDP) 5 is the reduction of poverty, estimated at 18% in 2015-2016 and 17% in 2017; the goal is to reduce national poverty to 12% by 2020.[25] The marginalised communities of Namibia pressed for greater attention to their problems, espe-

cially poverty, unemployment and discrimination during community discussions held in 2017.[26]

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BOTSWANA

Botswana is a country of 2.2 million inhabitants which celebrated its 50th year of independence in 2016. Its government does not recognize any specific ethnic groups as indigenous, maintaining instead that all citizens of the country are such. 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 (1,850), and the Nama (2,300), a Khoekhoe-speaking people.[1] The San were in the past traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle-post workers, or people with mixed economies. They belong to a large number of sub-groups, most with their own languages, including the Ju/'hoansi, Bugakhwe, Khwe-||Ani, Ts'ixa, +X'ao-||'aen,!Xóõ, ´+Hoan, ‡Khomani, 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 favor of the United Nations Declaration on the Rights of Indigenous Peoples. However, it has not signed ILO Convention No. 169 on Indigenous and Tribal Peoples. 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 2017, indigenous peoples in Botswana continued to face difficulties in their efforts to remain on their land and to access to sufficient natural resources to sustain themselves. Freedom House noted in 2017 that the San continue to face discrimination and mistreatment.[2] While communities in the Central Kalahari Game Reserve (CKGR) made some apparent progress in regaining their rights, San groups in other parts of Botswana were told by government or district councils that they had to leave their land and move to other places. The Minister of Local Government and Rural Development, Slumber Tsogwane, has reaffirmed the Botswana government's position that it does not recognize any specific ethnic group as indigenous to the country.[3]

Conservation, hunting and anti-poaching issues

Debates about the impacts of the no-hunting and anti-poaching policies in Botswana intensified in 2017.[4] In February, Tshekedi Khama, Minister for Environment, Natural Resources, Conservation and Tourism, said that the government was in the process of reviewing the 2014 countrywide hunting ban[5] but, as of the end of 2017, the ban was still in place and people were still being arrested for engaging in hunting and possession of wildlife products. On 3 April, Survival International reported Botswana to the Special Rapporteur on extrajudicial, summary or arbitrary executions for its engagement in extrajudicial killings.[6] These killings have occurred in the context of anti-poaching operations, and people have been killed and wounded by wildlife officers, police and Botswana Defense Force members, some of them inadvertently.

In 2017, the Botswana government raised new questions about the ways in which the community trusts were operating under the Community-Based Natural Resource Management program. As it turns out, due in part to the hunting ban, most of these trusts have stopped working. In some cases, private companies have taken over their operations, channeling the money to themselves instead of community trust members.[7]

The Central Kalahari Game Reserve (CKGR) issue

There were approximately 350-400 people living in five communities in the Central Kalahari in 2017: Metsiamonong, Mothomelo, Gope, Molapo and Gugamma. During the previous year, the government began implementing programs with the stated purpose of benefiting CKGR residents; however, they were administered without consulting residents, which caused frustration and resentment. Some water was restored but the government delivered it in trucks rather than permitting communities to repair their own boreholes. In the spring of 2017, government began delivering food rations, but only to the families of individuals on the original applicant list in the first CKGR legal case of 2004-2006.[8] It was still difficult for people who had lived in the CKGR in the past to obtain permits to enter the reserve if they were not on the official applicants list of the 2006 court case.

Economic insecurity was exacerbated by the closing of the Ghaghoo (Gope) diamond mine in the eastern part of the CKGR in February

2017. Two hundred and fifty jobs were lost, including those of San workers, and Gem Diamonds ceased the development activities it had been sponsoring for the Gope community.[9]

The Department of Wildlife and National Parks (DWNP) held discussions with CKGR residents in early 2017, promising that each of the existing communities would be able to develop its own community trust to oversee tourism activities.[10] At the same time, however, the government was developing a different plan for a community trust: one that would encompass all five of the communities in the CKGR. No effort was made to inform residents of the plan, which (it was later learned) called for each village to elect two representatives to the trust. Instead, government appointed its own representatives from the villages, who were brought to a meeting in Serowe in June 2017. There, they were told verbally by government spokespersons about a community trust document that government had developed, and which covered the entire CKGR and all of the communities – but they were not given a copy of it.[11] This document had still not been made available to the people in the CKGR or to the public of Botswana as of 31 December 2017.

Threats to indigenous peoples outside the CKGR

Displacement from their ancestral lands was a serious issue faced by several indigenous communities in 2017. In Ngamiland (North West District) the Nokaneng Sub-Land Board gave the rights to!Harin//axo (Qarinxago), a traditional Ju/'hoan territory north of the village of Dobe, to an individual who was not San, thus displacing the Ju/'hoansi who had developed the area. There was no response to appeals to the sub-land board or the Ministry of Local Government and Rural Development.

In Central District, the people of Khumaga and nearby villages in the Boteti River region are being displaced for conservation and tourism purposes.[12] In another case, three San communities, including Marola, which had already been relocated in the past because of the Orapa and Letlhakane diamond mines, were told by government in late 2017 that they had to move again, to the town of Letlhakane. As it turned out, however, there were no residential plots made available for them[13] and food rations that had been provided by government were reportedly withheld. In western Central District community water points were shut down by government in violation of the UN's Human Right to Water and Sanitation (HRWS).

Another area of concern to the San, Nama and Balala in 2017 related to the appointment of their own leaders. For example, Botswana Khwedom Council (BKC)[14] has been working closely with the Zutshwa San people in the Kgalagadi District to reclaim their chieftainship, which was taken from them and given to Bakgalagadi. Fortunately, towards the end of November, the Minister of Local Government and Rural Development visited and determined that the San of Zutshwa should resume their chieftainship, telling them to elect a leader. By December, however, there were still tensions in the community, and people were afraid to attend *kgotla* (council) meetings to discuss the chieftainship issue. Similar events have occurred in at least half a dozen other communities in Botswana in 2017.

Botswana and international human rights

The 16th Session of the UN Permanent Forum on Indigenous Issues (UNPFII), held in New York from 24 April to 5 May 2017, focused on the extent to which the Forum's recommendations and requirements have been implemented in member countries. Xukuri Xukuri, a member of the Botswana San delegation, commended the UNPFII for unifying indigenous peoples and working towards the implementation of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). He went on to express his strong regret that indigenous peoples are still inadequately represented in national and regional, and even international, arenas.

Regarding Botswana, Xukuri said, "Our state continues to undermine the Right to Self Determination of the Indigenous Peoples "A particularly egregious example, he said, was the failure of the state to ensure the "right to Free, Prior and Informed Consent (FPIC)".[15] Although Botswana voted in favor of the UNDRIP in 2007, it has consistently denied the validity of the concept of indigeneity.

Since 2013, the UN has conducted a High Level Political Forum (HLPF) in pursuit of a set of Sustainable Development Goals (SDGs), under the auspices of the UN Economic and Social Council. In relation to this, Botswana's Voluntary National Review (VNR) report stated that its process had begun with "a strong campaign to ensure ownership of SDGs at all levels" through awareness campaigns directed at local authorities, civil society and development partners.[16]

However, the Botswana report contained no mention of indigenous peoples, their needs or their organizations. Members of San NGOs said

that there was no effort to contact, inform or involve local communities or the organizations representing indigenous peoples. Some San individuals who had attended the UNPFII learned of the SDGs and have been attempting to incorporate them into their programs.[17]

A member of the Botswana Khwedom Council (BKC) presented a statement to the HLPF on behalf of the Indigenous Peoples' Major Group (organized as part of the HLPF). The BKC called on participating states to (1) legally recognize customary land tenure of indigenous peoples through specific policies backed up by data disaggregated by ethnicity, (2) ensure protection of indigenous peoples' human rights, requiring Free Prior and Informed Consent for actions affecting them; and (3) ensure the effective participation of indigenous peoples in the formulation of government policies and projects affecting them, from design to execution.

The report by the President of the UN Economic and Social Council reflected some of the major concerns expressed by indigenous peoples, especially the need for states to develop "coherent policies that respect tenure rights"; to strengthen "multi-stakeholder partnerships"; and to produce "data disaggregated by income, sex, age, ethnicity..."[18]

Universal Periodic Review

Preparations for Botswana's participation in the 29th Session of the Universal Periodic Review (UPR), to be held in Geneva in early 2018, began in the summer of 2017. Botswana's UPR NGO Working Group was chaired by Ditshwanelo, the Botswana Centre of Human Rights and included the Kuru Family of Organizations (San), the Botswana Council of NGOs (BOCONGO),[19] and several other human rights organizations. Ditshwanelo submitted the group's stakeholder report to the UPR in June 2017, in preparation for the UPR pre-session to be held in Geneva on 12 December 2017.[20]

The report made recommendations on a variety of human rights issues, including the death penalty, migrants' and prisoners' rights, and children's and women's rights. Those concerning indigenous peoples were as follows: (1) "Recognize the indigenous knowledge systems of the Basarwa/San...including traditional hunting and gathering practices"; (2) "Adopt the National Resources Management Plans based on... engagement with the CKGR communities who are working constructively with civil society"; (3) "Strengthen constructive dialogue with the

CKGR NGO Coalition…and with the CKGR communities"; (4) "Review the hunting ban with a view to its removal as hunting is important for the livelihood of the Basarwa/San community." These recommendations, along with others, were presented to the UPR pre-session held in Geneva on 12 December 2017 by Alice Mogwe, the director of Ditshwanelo.

World Heritage Sites and national monuments

Tsodilo Hills and Gcwihaba Caves, both located in Botswana's northwest, received new staircases and other amenities to improve tourist access in 2017. In October, President Ian Khama inaugurated the facilities in Tsodilo Hills – a World Heritage Site famed for its 4,500 rock paintings by ancient San artists. Improvements at Gcwihaba, which has been proposed as a World Heritage Site, were inaugurated by the president in November.[21]

The Tsodilo community consists primarily of members of the Hambukushu, who have learned San skills in jewelry making and other crafts from a few Ju/'hoansi San artists who remained in the area after the San were removed from the site in 1994-95.[22] The Ju/'hoansi have complained that the Hambukushu are capturing the benefits from tourists visiting Tsodilo through dance performances and sales of crafts.

The nearby Okavango Delta is also a World Heritage Site, having been listed in 2014. The San who once populated this area were relocated over many decades as the area became a wildlife preserve. In 2017, at least three San majority communities were told by the North West District Council that they had to relocate outside the boundaries of the World Heritage Site; they were also told to cease their grazing and plant collecting activities inside the Delta.[23]

The three sites are often advertised together by safari companies, who emphasize the opportunity for tourists to learn about the San culture and employ San guides to the attractions, even though the government has made efforts to minimize the actual San presence around two of the sites. In the case of Gcwihaba, residents of nearby /Xai/Xai were concerned about the government's decision in November 2017 to grant private rights to a safari company in an area that was one of their traditional territories (*n!oresi*), according to members of the Cgae Cgae Thlabololo Trust.

Education

On 6 November 2017, President Ian Khama announced in his State of the Nation address that the Remote Area Development Program (RADP) and the Affirmative Action Framework for Remote Area Communities were achieving their goals.[24] In education, a high percentage of remote area children were in primary school (90%).[25] The president declared that 1,659 RADP beneficiaries were in various tertiary educational institutions in Botswana. In addition, 21,058 remote area dwellers had engaged in formal or temporary employment, while 2,949 people in the RADP had benefitted directly from the government's Poverty Eradication Program.[26]

Outlook for 2018

On 1 June 2017, in a surprise appointment, President Ian Khama designated his Vice-President Mokgweetsi Masisi as his successor. Mr. Masisi will take over from President Ian Khama on 1 April 2018. Mr. Masisi himself is a member of a minority ethnic group but it remains to be seen what his policies towards San and other minorities will be. One issue which will doubtless come up in 2018 is the adoption of a San Code of Ethics for Research for Botswana San and other indigenous peoples in the country.[27]

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ZIMBABWE

While the Government of Zimbabwe does not recognize any specific groups as indigenous to the country, two peoples self-identify as such: the Tshwa (Tjwa, Tsoa, Cuaa) San found in western Zimbabwe, and the Doma (Vadema, Tebomvura) of Mbire District in north-central Zimbabwe. Population estimates there are 2,800 Tshwa and 1,300 Doma.

Most of the Tshwa and Doma live below the poverty line. Detailed socioeconomic data are limited for both groups although baseline data were collected for the Tshwa in late 2013 and revisited in 2017. 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 enterprises. Remittances from relatives and friends working in towns, commercial farms or the mines, both inside and outside of the country, make up a small proportion of their total incomes. Some Tshwa and Doma have emigrated to other countries, including Botswana, South Africa, Mozambique and Zambia, in search of income-generating opportunities and greater social security. Though somewhat improved in recent years, realization 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 have been efforts in 2017 by the government to meet some of the requirements that have been set. 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 in November 2016. Zimbabwe has not signed the only international human rights convention addressing indigenous peoples, ILO Convention 169 on Indigenous and Tribal Peoples of 1989.

Sizable numbers of Tshwa, Doma and other Zimbabweans were seriously affected by the continuing decline in the country's economic situation in 2017. Yet there was hope on the part of indigenous and other Zimbabweans that President Robert Mugabe's stepping down in November 2017 would lead to improvements in their conditions.

In 2017, both the Doma and the Tshwa San faced ongoing discrimination, social insecurity, low employment levels, limited political participation, and lack of broad access to social services, land, development capital, and natural resources.

Tshwa villages and households in Wards 6, 7, and 8 of Tsholotsho District in Matabeleland North Province were badly affected by severe flooding due to Tropical Storm Dineo, which hit western Zimbabwe on 15 and 16 February 2017. Government efforts to alleviate suffering and provide assistance to those who were displaced were reportedly late in coming and inadequate, leading to calls for improvement in the operations of the Civil Protection Unity Service (CPUS) and changes in the *Civil Protection Act of 1989*.[1] The Doma in Ward 1 of Mbire District in Mashonaland Central Province also suffered from flooding in 2017.

Indigenous self-organization

The only San organization in Zimbabwe, the Tsoro-o-tso San Development Trust, (TSDT) was active in 2017, especially in disseminating information among Tshwa communities and promoting the Tjwao language.[2]

On Monday 23 October 2017, the Tsoro-o-tso San Development Trust held a book launch of the volume entitled *The San in Zimbabwe: Livelihoods, Land, and Human Rights*, co-published by the University of Zimbabwe, the International Work Group for Indigenous Affairs and the Open Society Iniciative for Southern Africa (OSISA).[3] On Thursday 2 November, the director of the Tsoro-o-tso San Development Trust was summoned to a government office in Bulawayo to answer questions pertaining to the San volume. Questions were raised about who had done the work, who had funded the research, and whether or not the Zimbabwe Research Council had given permission for the work to be carried out, which in fact it had. Issues raised by the government officials were that the authors of the book at the Tsoro-o-tso San Development Trust were confusing the San, because, in their opinions, "the San do not want to change," and, "they prefer to hunt and gather rather than have development".

Reasons given for the questions revolved around whether or not the book portrayed the San as wanting rights to land and resources and additional development assistance, or whether it was arguing that they were "resistant to change" and wanted to continue to hunt and gather.

The launch of the volume, which was covered by the national media, had an impact in Zimbabwe, especially the information regarding the figures in the report on low levels of education and employment and high rates of illiteracy among the San community in Tsholotsho.[4]

Policy and legislation

There were no new policies issued or legislation passed regarding indigenous peoples and minorities in Zimbabwe in 2017. The Zimbabwe Human Rights Commission, which paid a visit to San communities in Tsholotsho District in June 2016, had still not produced a report on the visit to the San as of the end of 2017.

Land, conservation and livelihoods

Relations between the Tshwa and their Bantu-speaking neighbors, the Kalanga, and Ndebele and government officials continued to be complex in 2017. Tshwa were often blamed for involvement in illegal wildlife-related activities even though there was no evidence to support this. The tensions between the Tshwa in Tsholotsho District and members of the staff of the Zimbabwe Department of National Parks and Wildlife Management (ZDNPWLM) (Zimparks) increased in 2017.

In mid-June 2017, ten elephants were found to have been poisoned by either cyanide or paraquat in Hwange National Park.[5] This was the latest in a series of similar incidents that have given rise to a severe anti-poaching policy in Zimbabwe, sometimes resulting in excessive force being used. According to a spokesperson for the Bhejane Trust, a non-profit conservation organization that monitors poaching activities in the northern sector of Hwange, Zimbabwe game rangers there "have been given a clear shoot-to-kill policy from the government for any poachers they find within a national park."[6] Dozens of Tshwa, along with Shona, Nambya, Ndebele, and Kalanga, were detained in 2017 on suspicion of being involved in poaching. Some of the suspects were beaten severely. According to the Zimbabwe Human Rights Commission (ZHRC) and Human Rights Watch, torture is common practice among the security forces in Zimbabwe.[7]

Hwange is Zimbabwe's largest protected area and a prime tourism site. Hwange was in the past a core part of the Tshwa territory until they were required to leave the protected area in 1927-28.[8] Covering an area of 14,651 km^2, Hwange contains the largest and most diverse population of wild animals, reptiles, amphibians and birds in the country. Human-wildlife conflict (HWC) is a major issue in many parts of Zimbabwe, and local people feel that the government should do a much better job of problem animal control (PAC) on the margins of protected areas. Some observers are convinced that Zimparks game rangers, Zimbabwe Police Service officers, and high government and private company officials are involved in the poisoning activities, though there is no clear evidence to support this argument.[9]

Doma rights to resources were restricted by the imposition of new conservation areas and safari hunting areas in the Zambezi Valley.[10] Their livelihoods were also affected by the fact that they now have to pay license fees as high as Z$800 (US$800) for the right to hunt or fish.[11]

Attention in 2017 continued to focus on the Fast-Track Land Reform Programme in Zimbabwe, especially after the installation of President Emmerson Mnangagwa in November 2017. One of President Mnangagwa's first promises was to lay the groundwork for the return of land that had been confiscated during the Mugabe era. He also promised that efforts would be made to establish a new, more equitable electoral system in Zimbabwe.[12] The Tshwa wrote a letter to President Mnangagwa in late November seeking formal recognition and integration into the mainstream development agenda.[13]

Education

Tshwa and Doma men, women and children stated in community meetings that they continued to be concerned about issues of their children being exposed to physical abuse and discrimination in school. Several Doma said that they were worried about the lack of education for their children, long distances to the few schools that do exist in their area, such as Chapoto Primary school which is 8 km away from Kanyemba, and the dangers that children and their parents face from wild animals in their area.[14]

The Tshwa and Doma are hopeful that the rights of minorities and indigenous peoples in Zimbabwe will receive significantly greater attention in the future. They were encouraged by the decision of the new government to allow people who had been dispossessed of their land to regain rights over that land in December 2017. And they were convinced that the new government would have greater influence with the international community, thus opening up the Zimbabwean economy, which they hoped would have positive impacts for rural as well as urban Zimbabweans.

From the perspective of the Tshwa and Doma, the outlook for 2018 is encouraging. The Tsoro-o-tso San Development Trust is planning a workshop for February 2018 entitled "Land, Language, and Identity: The story of San people in Zimbabwe", which Tshwa and Doma will attend. Topics to be addressed include land and resource rights, mother-tongue language promotion, and the participation of indigenous people in constitutional discussions.

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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 the San and the Khoekhoe. The main San groups include the Khomani San who reside mainly in the Kalahari region, and the Khwe and Xun, who reside mainly in Platfontein, Kimberley. The Khoekhoe consist of the Nama who reside mainly in the Northern Cape Province; the Koranna mainly in 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, Khoe-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 Khoekhoe or Khoe-San. African indigenous San and Khoekhoe peoples are not formally recognized in terms of national legislation as a customary community; however, this is shifting with the pending Traditional and Khoisan Leadership Bill 2015. It is however unclear when this Bill will be passed. South Africa has voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention No. 169.

Khomani San in the Kalahari elect their new leader

During November 2017, under the watchful eye of the South African Independent Electoral Commission, the Khomani San community members, mostly residing in the southern Kalahari, each cast a secret vote for their new leader. *Petrus!Uxe Vaalbooi* was elected and is the new San traditional leader of the Khomani San.

In his opening speech, Petrus!Uxe Vaalbooi, reminded the Khomani community of the road of Elsie Vaalbooi, Dawid Kruiper and many others who were part of the journey, saying: "My people, don't walk behind me, as I might not lead you. Don't walk in front of me, as I may not follow you. Walk beside me and let us walk this road together."

Mr. Vaalbooi has played a heroic role in fighting for his community's land and related concerns for well over 20 years. Together with Dawid Kruiper, he symbolically received the first historic land claim of the Kalahari in 1999, the San community's ancestral land.[1] This historic court judgement saw some 38 000 ha of land being returned to the San community. Unfortunately, the land has since been administered by a court-appointed official due to land and governance challenges. This court administration has resulted in the San community being unable to have self-governance over their land and resources unless the court decides otherwise. Amidst these challenges, Petrus Vaalbooi was involved in the Access and Benefit Sharing case around the Hoodia plant, used as an appetite suppressant, which was patented without the community consent. As an elder, he continues to fight for his community's land and related concerns.

The appointment of Mr. Vaalbooi as their leader comes in the wake of the Khoi and San customary communities and leaders still not being officially recognized in South Africa.[2] The law recognizing customary communities and leaders, known as the Traditional and Khoisan Leadership Bill 2015, was tabled before the South African parliament during 2017. In early 2018, the Bill was referred to the National Council of Provinces. According to parliamentary officials, it is unclear when this process will be completed.

On land restitution

The South African post-apartheid land reform policy sought to enforce a constitutionally sanctioned three-pronged programme of (i) restitu-

tion, (ii), tenure reform, and (iii) redistribution. The limitations of the post-1994 restitution programme are explicitly acknowledged by the 2011 Green Paper on Land Reform,[3] which refers to a "problematic restitution model and its support system" as one of the primary challenges hindering South Africa's programme of land and agrarian reform.

During 2017, the South African Ministry of Rural Development & Land Affairs developed the Exception to the 1913 Natives Land Act Cut-Off Date Policy Framework (Draft Exceptions Policy) that codifies exceptions to the 1913 Natives Land Act cut-off date for land claims to accommodate: (1) the descendants of the Khoe and San, (2) heritage sites, and (3) historical landmarks. The policy acknowledges that the Khoe and San were excluded from the 1996 restitution process as a result of the 1913 cut-off date, resulting in neither their economic nor their cultural heritage losses being restored through restitution. By 19 June 1913, the majority of Khoe and San had already lost their land, livestock, identity, culture, language, and way of life.

The Draft Exceptions policy continues to acknowledge that the loss of land by indigenous communities also meant the loss of physical

cultural properties, which led to the loss of access to the attached tangible and intangible forms of heritage. The land where heritage sites and historic landmarks are currently located is owned by private individuals, mostly commercial farmers. These ownership rights are defined by the property clause of the constitution. At this stage, it is unclear how the Department of Rural Development and Land Affairs will proceed with the implementation of this policy. It also remains unclear how the Department of Rural and Land Affairs is consulting communities and their governing structures in the development and implementation of this Draft Exceptions Policy.

Communal Property Association Bill 2017 and Communal Tenure Bill 2017[4]

South Africa's ongoing post-apartheid land reform program included publishing two key pieces of draft legislation aimed at supporting communities to acquire, hold and manage their communal lands, as well as to have greater security of tenure. The Communal Tenure Bill 2017, in particular, sets out to provide for the transfer of communal land to its communities; 'to provide land rights over communal land for the communities that own or occupy it' ; and to transfer ownership to communities and community members of land acquired by the State to enable access to land on an equitable basis. Some feedback that parliament received on these proposed laws (Communal Property Association Bill 2017 & Communal Tenure Bill 2017) through the public participation process noted that the ownership of the properties belonged to the beneficiaries but, in the course of the post-apartheid era, the communal property association had assumed ownership and sold land without the knowledge of the beneficiaries. The requirement for a 60% majority consent before the sale of land, and the consent of the Minister, had been introduced to protect the beneficiaries and to reduce the ease with which properties could be disposed of. If there was a need to dispose of a property, it gave the State the first opportunity to purchase it through the provision of the "Right of Refusal" clause in the Communal Property Association Bill. It was emphasized that the amendment as proposed in the current Communal Property Association Bill 2017 did not take right of ownership away from the beneficiaries. There are several key Khoe & San communities currently affected by these pro-

posed legislative drafts. However, the indigenous communities in South Africa are suffering other challenges, for example the fact that most of their land is under court administration due to alleged maladministration.

In some cases, the Khoisan communities are suffering greatly because of this communal property association model due to it conflicting with their indigenous governance systems. Such is the case of the Griqua community from Bethany Farm in Bloemfontein. This Griqua community is serving on the communal property association with other communities as beneficiaries of a land restitution case. They (Griqua) find themselves in a minority, however, and are thus not able to exert meaningful authority over their ancestral lands. They are also continuing to struggle to get the Land Ministry to give them the necessary support for their concerns. [5]

Outlook for 2018

Indigenous communities affected by the above proposed bills are experiencing several challenges as noted above. There is a general expectation that the South African government will look at fast-tracking land claims processes and that they will get the necessary support through their communal property associations. This remains a problem, however, for the Khoi and San communities.

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PART 2

INTERNATIONAL PROCESSES

UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHTS OF INDIGENOUS PEOPLES

The Special Rapporteur on the rights of indigenous peoples is one of the 57 "special procedures" of the UN 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 on the rights of indigenous peoples has a mandate to gather information and communications from all relevant sources on violations of the human rights of indigenous peoples; to formulate recommendations and proposals on measures and activities to prevent and remedy violations of the rights of indigenous peoples; and to work in coordination with other special procedures and subsidiary organs of the Human Rights Council, relevant UN bodies and regional human rights organizations.

In accordance with this mandate, the Special Rapporteur can receive and investigate complaints from indigenous individuals, groups or communities, undertake country visits and make recommendations to governments on the steps needed to remedy possible violations or to prevent future violations. The Special Rapporteur works in collaboration with other UN mechanisms dealing with indigenous peoples.

The first Special Rapporteur, Mr. 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, Professor James Anaya, was appointed by the Human Rights Council in 2008, and 2014 marked the final year of his mandate as Special Rapporteur. Ms Victoria Tauli-Corpuz from the Philippines was appointed the new Special Rapporteur by the Human Rights Council and she assumed her position in June 2014. She is the first woman and the first person from the Asia region to assume the position.

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; country assessments; and thematic studies.

Thematic studies

Each year, the Special Rapporteur presents two thematic reports, one to the HRC and one to the General Assembly (UNGA). The thematic report submitted to the HRC in 2017 linked two ongoing issues of interest to the Special Rapporteur: the impact of international investments and of climate change on the rights of indigenous peoples. To produce her report on climate finance, she issued a questionnaire to UN Member States and indigenous peoples' organizations and participated in several meetings related to the topic.

In her report,[1] Ms Tauli-Corpuz analyses the different finance mechanisms linked to climate change mitigation and adaption and the safeguards they incorporate with regard to the rights of indigenous peoples. The Special Rapporteur comments on the interconnection between the issues of climate change and human rights and examines examples of mitigation projects which have had negative human rights impacts on indigenous peoples, such as the Barro Blanco (Panama) and Agua Zarca (Honduras) hydroelectric projects, as well as the EU-funded WaTER Programme in Kenya. In her conclusions and recommendations, she underlines the need to incorporate a human rights-based approach into any action and activity related to climate change, including their financing.

In October 2017, the Special Rapporteur presented her report to the 72nd session of the Third Committee of the UNGA.[2] The report focuses on the status of implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the context of the 10th anniversary of its adoption, assessing the advances made to date and the remaining challenges and areas of concern. The Special Rapporteur concludes that, in spite of the commitment to the UNDRIP, reiterated by UN Member States in the Outcome Document of the 2014 World Conference on Indigenous Peoples, the implementation situation of UNDRIP is one of limited progress. She stresses that decisive

steps should be taken, including through the necessary legal reforms to incorporate indigenous peoples' rights into domestic legislation, the adoption of adequate public policies, and the establishment of the necessary institutional framework. Main areas of concern in which indigenous peoples' rights remain unfulfilled are: rights to land, territories and natural resources; access to justice and recognition of indigenous justice systems; and adequate implementation of the State's duty to consult and seek the free, prior ad informed consent of indigenous peoples before any action is taken that affects them. She also stressed the increasing criminalization and violence suffered by indigenous peoples in all regions of the world. The Special Rapporteur has decided to devote her thematic work in 2018 to these worrying issues.

Country visits

The Special Rapporteur undertook three country visits during 2017: to the United States of America (USA), Australia and Mexico. She submitted reports on the first two countries to the 36th session of the HRC in September 2017. The report of her visit to Mexico will be submitted in September 2018.

The Special Rapporteur conducted her visit to the USA from 22 February to 3 March.[3] The mission focused on the situation of the rights of indigenous peoples in the country, in particular with regard to energy development projects, and on following up the key recommendations made by her predecessor, James Anaya.

From 20 March to 3 April 2017, the Special Rapporteur conducted a follow-up visit to Australia.[4] In the report, the Special Rapporteur observes that the government's policies do not duly respect rights to self-determination and effective participation; contribute to the failure to deliver targets in the areas of health, education and employment; and fuel the escalating and critical incarceration and child removal rates of Aboriginal and Torres Strait Islanders.

The Special Rapporteur visited Mexico from 8 to 17 November 2017. In her end-of-mission statement,[5] she expressed her deep concern at the human rights situation of indigenous peoples in Mexico, particularly in the areas of land rights, access to justice, self-identification, self-determination, autonomy and political participation, and consultation and consent. She also underlined the recurrence of gross human rights

violations, including murders, forced disappearances and displacements and the serious situation with regard to the economic, social and cultural rights of indigenous peoples in the country, including indigenous women and children.

The Special Rapporteur has received official invitations to visit Cameroon, Guatemala, Chile and Malaysia. She is making special efforts to receive 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 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 2017, the mandate issued 29 communications to 15 different countries as well as to other entities, such as the World Bank and private corporations.

During 2017, the Special Rapporteur also issued 17 press releases[7] on topics such as: the need for constitutional reforms in Guatemala; the impact of energy development projects on the rights of indigenous peoples in the USA, including the Dakota Access Pipeline; the disproportionately high rates of imprisonment of Australian Aboriginal and Torres Strait Islanders; the attacks on indigenous rights in Brazil; oil pollution on indigenous lands in Peru; the lack of implementtion of UNDRIP; the use of anti-terrorism laws in Chile; discrimination against indigenous peoples in Mexico; the need to realize the right to development; road building affecting isolated indigenous peoples in the Peruvian Amazon; and the massive impact of military operations on indigenous peoples in Mindanao, Philippines.

Collaboration with other specialized UN bodies and regional HR 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 pursued the established practice of holding meetings with indigenous representatives and interested governments to discuss issues within the scope of her mandate. She further participated in a joint meeting of the mechanisms, which took place in Lima in August, and submitted a presentation to the Expert Seminar of the EMRIP on consultation and free, prior and informed consent in December.[8]

The Special Rapporteur was also invited to deliver a keynote speech[9] at the meeting of the Latin American Network on Genocide and Atrocity Prevention, which took place in New York on 16 and 17 October. She focused her presentation on the risks posed to the physical and cultural survival of indigenous peoples by the lack of land security, violence and armed conflicts and the lack of respect for the rights of indigenous peoples in isolation and recent contact.

The Special Rapporteur considers it important to strengthen the coordination with regional human rights bodies. In 2017, she increased her collaboration with the Inter-American Commission on Human Rights (IACHR) through joint press releases and a shared concern for indigenous peoples in isolation and recent contact. Together with the Regional OHCHR Office for South America, the IACHR and IWGIA, a meeting was jointly organized on the issue in Lima, attended by indigenous and State representatives. The meeting outcome report, with recommendations, will be presented to the HRC in September 2018. The Special Rapporteur delivered an intervention in the thematic hearing on this topic during the 165th session of the IACHR (Montevideo, 23 October). In her intervention, she called for special protection for these groups and submitted some preliminary observations and recommendations from the Lima meeting.

The Special Rapporteur has also pursued her engagement with UN agencies and funds in order to promote respect for the rights of indigenous peoples in their areas of work. She thus participated in the 3rd meeting of the Indigenous Peoples' Forum at IFAD in Rome in February, and in a meeting convened by UNESCO on the forthcoming International Year of Indigenous Languages, in December.

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

in a Global Workshop on Indigenous Women and SDGs, organized by UNICEF in the Philippines, and she was invited as a panellist to the 61st session of the Commission on the Status of Women, held in March in New York.

Other activities

2017 marked the 10th anniversary of the adoption of UNDRIP by the UNGA. The Special Rapporteur participated in a series of activities related to promoting this fundamental instrument for the rights of indigenous peoples, including a UNPFII Expert Meeting in January,[10] a high-level event of the General Assembly in April,[11] and a special panel discussion organized during the 2017 EMRIP session.[12] Her press release on UN Indigenous Peoples' Day in August was also dedicated to this issue.[13]

With a view to promoting good practices, the Special Rapporteur has devoted attention to the State's obligation to consult and obtain the consent of indigenous peoples prior to any measure that affects their rights. In April, she conducted a working visit to Honduras to maintain a dialogue with all interested parties on a proposed law on consultation that is being developed in the country. The Special Rapporteur has provided detailed written observations to the government on this process.[14] She also delivered a statement on this topic in a hearing at the European Parliament in February.

In November, the Special Rapporteur undertook a working visit to Malaysia. She was invited by Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM) and Pusat KOMAS to give a keynote speech on the occasion of the 9th Orang Asli National Land Conference. The purpose of her visit was expanded, with the active help of SUHAKAM (NHRI of Malaysia), in order to meet with government officials to discuss their programs on indigenous peoples in Malaysia, raise the issues brought to her by the Orang Asli, and advocate for an invitation to conduct a country visit.

The SR has established a website where, in addition to the page on her mandate from the OHCHR,[15] her reports, statements and other activities can be accessed: www.unsrvtaulicorpuz.org Updates of her mandate can be followed through her social media accounts.[16]

Notes and references

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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). It provides advice on indigenous issues to the Council and through ECOSOC, to the UN agencies, funds and programmes, raises awareness on indigenous peoples' issues and promotes 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 term of three years. 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.

2017 was an exciting year for the UN Permanent Forum on Indigenous Issues. It marked the tenth anniversary of the UN Declaration on the Rights of Indigenous Peoples, an opportunity to assess the achievements so far, and identify concrete actions to bridge the implementation gap between the Declaration and the reality for indigenous peoples around the world.

In 2017, twelve new experts joined the Permanent Forum: Mr. Phoolman Chaudhary (Nepal), Mr. Jens Dahl (Denmark), Mr. Jesus Guadalupe Fuentes Blanco (México), Ms. Terri Henry (United States of America) Mr. Brian Keane (United States of America), Mr. Elifuraha Laltaika (United Republic of Tanzania), Les Malezer (Australia), Mr. Seyed Moshen Emadi (Iran), Ms. Anne Nuorgam (Finland), Mr. Ms. Tarcila Rivera Zea (Peru), Ms. Lourdes Tibán Guala (Ecuador), Ms Zhang Xiaoan (China) and Mr. Dimitri Zaitcev (Russian Federation). Ms. Aisa Mukabenova (Russian Federation), Gervais Nzoa (Cameroon) and Ms. Mariam Wallet Aboubakrine (Mali) continued for a second term.

International Expert Group on UNDRIP

In January 2017, UN DESA organized a three-day international expert group meeting on the theme "Implementation of the United Nations Declaration on the Rights of Indigenous Peoples: the role of the Permanent Forum on Indigenous Issues and other indigenous-specific mechanisms (article 42)", as recommended by UNPFII at its 2016 session. The meeting served as an opportunity to assess the impact of the three indigenous mechanisms' work on implementing the Declaration to date and the challenges ahead, and how they can work together more effectively to operationalize the Declaration. Several proposals were made during the discussions, including to develop overarching strategies for implementation of the Declaration, coordinated communication on indigenous peoples' rights, promotion partnerships and capacity-building, development-based and pragmatic arguments for indigenous peoples' rights and data and indicators to measure gaps, compliance and the well-being of indigenous peoples. The meeting was attended by PFII members, the Special Rapporteur on the Rights of Indigenous Peoples and the Chair of the Expert Mechanism, as well as experts from the seven indigenous socio-cultural regions, academics and NGOs. The report of the meeting informed the discussions at the 2017 session of the Permanent Forum.

Pre-sessional meeting (Canada)

Each year, a pre-sessional meeting of the UN PFII is hosted by a Member State. At the invitation of the Government of Canada, the Permanent Forum members met from 27 February to 3 March 2017 in Ottawa, Canada. This pre-sessional was significant as it was the first meeting of the 2017-19 membership of the Forum, and Forum members could prepare for the upcoming session, and identify their priorities. The Forum members met with representatives of indigenous peoples' organisations, members of Parliament, Government officials and civil society to be better informed on the situation facing indigenous peoples in Canada and discuss efforts and initiatives of the Government to implement the UN Declaration on the Rights of Indigenous Peoples.

The 16th session of the Permanent Forum

The Permanent Forum held its 16th session from 24 April-5 May 2017 at United Nations Headquarters in New York. The main theme of the 16th Session was "Tenth Anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: measures taken to implement the Declaration", which was discussed through interactive panels. Considerable challenges to the full implementation of the Declaration remain, most notably the need to translate the Declaration into national legislation for concrete progress for indigenous peoples' rights on the ground. For the United Nations and its indigenous-specific mechanisms, this means working through the agencies, funds and programmes of the United Nations to ensure that this implementation gap is addressed at the country level.

In addition, the Permanent Forum facilitated dialogue around topics related to the follow-up to the 2014 World Conference on Indigenous Peoples, including the implementation of the United Nations system-wide action plan on the rights of indigenous peoples, SDGs as well as indigenous human rights defenders.

Based on feedback from earlier sessions, the Permanent Forum members continued the practice of interactive policy dialogues with Member States, UN agencies and Indigenous Peoples' Organisations to follow-up on the efforts undertaken or planned to implement the UN Declaration on the Rights of Indigenous Peoples. Approximately 950 in-

digenous peoples' representatives from 295 organisations attended the session as well as high level representatives from 85 Members States, as well as the UN system, National Human Rights Institutions and other stakeholders.

During the PFII session, there were press conferences and in-depth interviews with indigenous representatives and UN experts, expert members. In addition, for the first time, an Indigenous Media Zone was organized during the 2017 session, in close cooperation with the Department of Public Information and indigenous journalists.

Tenth anniversary of the UNDRIP

2017 marked the Tenth Anniversary of the Declaration on the Rights of Indigenous Peoples, adopted in September 2007 by the UN General Assembly. The Declaration currently embodies global consensus on the rights of indigenous peoples, and is the benchmark for measuring achievements as well as the gaps that remain. On Tuesday 25 April 2017, the President of the 71st session of the General Assembly organized a high-level event to mark the Tenth Anniversary. The level event took stock of achievements made since the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, to identify ongoing persistent challenges and obstacles and to consider good practices. There were presentations by high level representatives of Member States, indigenous representatives of the seven socio-cultural regions, and the UN system. Many of the presentations made the point that despite the immense challenges, there has undeniably been some progress in the implementation of the United Nations Declaration at the international, regional and national levels. Participants made concrete commitments to further increase their efforts to implement the provisions of the United Nations Declaration on the Rights of Indigenous Peoples[1].

The University of Colorado Law School and SPFII co-hosted a two-day event on 13-14 September 2017 to commemorate the Tenth Anniversary of the UN Declaration, in Boulder, Colorado. The event reflected on the advocacy that resulted in the passage of the UN Declaration, discussed its present-day usage, and looked ahead towards its implementation and future[2].

Agenda 2030

The Permanent Forum on Indigenous Issues as an expert body of the Economic and Social Council, has a key role in ensuring the rights and priorities of indigenous peoples are considered in the review and implementation of the Sustainable Development Goals and Agenda 2030. Drawing on the key issues emerging from panel discussions and dialogues on the 2030 Agenda at its annual session, in its report to ECOSOC, the Permanent Forum emphasized that the recognition, protection and promotion of indigenous peoples' rights to lands, territories and resources will make a significant contribution to achieving not only Goals 1 and 2, but also all the Sustainable Development Goals. In this regard, the Forum urged Governments to take all measures necessary to protect indigenous peoples' rights to their territories and resources in the framework of the 2030 Agenda. The Permanent Forum called upon Governments to establish permanent, open and inclusive mechanisms for consultation, participation and representation of indigenous peoples in local, regional, national and international processes and bodies relating to the Sustainable Development Goals. It also called upon Governments to allocate adequate resources towards implementation of plans that include indigenous peoples, as well as to ensure data disaggregation based on indigenous identifiers. The Permanent Forum also encouraged countries undergoing voluntary national reviews at the high-level political forum in 2017 to include indigenous peoples in their reviews, reports and delegations. The Forum invites Member States to report on good practices of including indigenous peoples' indicators in the voluntary national reviews to the Forum at its 2018 session.

System-wide Action Plan

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" 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. The Inter-Agency Support Group reported on their first achievements at the 2017 Forum Session. 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 strengthen the implementation of the SWAP.

Indigenous women at the Commission on the Status of Women

The Commission on the Status of Women, decided in its multi-year programme of work to identify "empowerment of indigenous women" as a focus area/emerging issue for its 2017 Session (Resolution E/RES/2016/3). This was in response to the invitation made at the 2014 World Conference on Indigenous Peoples, and reiterated by the Permanent Forum at is 2015, 2016 and 2017 sessions. As a result, at the 2017 session of the Commission on the Status of Women there was an interactive dialogue on the focus area of Empowerment of Indigenous Women[3]. The Chairperson of the Forum, and indigenous women leaders participated at this discussion. In addition, there was also a panel discussion entitled *Challenges and Opportunities in achieving gender equality and the empowerment of Indigenous Women* was co-organized by the International Indigenous Women›s Forum (FIMI) and SPFII, in cooperation with UN Women, as well as other side events. There is increasing engagement and participation of indigenous women at CSW, an indication of the urgent need to continue to focus on the rights of indigenous women.

International Day of the World's Indigenous Peoples

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 2017 International Day was of particular importance, as it was the Tenth Anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples, which was the theme of the event. The event included interventions from UN officials and the Chairperson of the Permanent Forum on Indigenous Issues, as well as a panel discussion on the successes and challenges faced on implementation of the UNDRIP over the past decade, with the participation of guest panelists

ranging from government representatives to indigenous experts representing different regions of the world. More information can be found at the International Day dedicated website[4].

State of the World's Indigenous Peoples III: Education

Recognizing the gaps in analytical research about indigenous peoples, the Permanent Forum on Indigenous Issues called for a report on the state of the world's indigenous peoples. The aim was to help dispel the myths and inconsistencies about indigenous peoples, demonstrate their unique identity and traditions, and share their contributions to the world's bio-cultural diversity.

The third edition[5] the State of the World's Indigenous Peoples was prepared by the UN's Department of Economic and Social Affairs/DESA with the contributions of experts on indigenous education.

This edition describes the different contextual backgrounds and policy impacts on indigenous peoples, faced with the challenge of embracing mainstream education, while at the same time revitalizing their own languages and cultures.

The 2030 Agenda on Sustainable Development includes explicit consideration of indigenous peoples, and pays particular attention to education. Sustainable Development Goal 4 focuses on ensuring inclusive and quality education for all and promote lifelong learning. If we want to achieve this goal is necessary to ensure equal access to education for indigenous children, including children with disabilities. This edition of the State of the World's indigenous peoples emphasizes the contributions and challenges of indigenous peoples in achieving this goal, within the framework of the UN Declaration on the Rights of Indigenous Peoples.

Notes and references

1. For more information see: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples/high-level-commemoration-of-the-declaration-on-the-rights-of-indigenous-peoples.html
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This article was elaborated by the ***Secretariat of the Permanent Forum****.*

UN EXPERT MECHANISM ON THE RIGHTS OF INDIGENOUS PEOPLES

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was established by Human Rights Council Resolution 6/36 in 2007, the very same year the General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which took over 20 years of negotiations, mostly between Member States and indigenous peoples' representatives. 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.

According to resolution 33/25, adopted by the Human Rights Council in 2016, EMRIP's amended mandate includes providing advice to the Human Rights Council on indigenous issues, offering technical assistance to States and other national stakeholders as requested, and also upon request, facilitating dialogue at national level. 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 Declaration, carries out country engagement missions, responds to requests and brings expertise to any relevant national initiative on indigenous peoples' rights.

Implementation of a new mandate

For the Expert Mechanism, 2017 was mostly characterised by a start to the implementation of its new mandate, including the following activities: an annual session with new agenda items; an annual study on the status of the rights of indigenous peoples, focusing on indigenous peoples' businesses, and a report on good practices and lessons learned regarding the implementation of the Declaration; posting online forms for country engagement requests; receipt of first requests for technical assistance and dialogue facilitation; choosing for the first time the theme of its annual study, which will be free, prior and informed consent; engagement with National Huma Rights Institutions (NHRIs) and a first formal inter-sessional meeting in Chile.

EMRIP's first annual session under the new mandate

From 10-15 July 2017, the Expert Mechanism held its 10th Session in Geneva, which coincided with the 10th anniversary of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This was also the first session of the Expert Mechanism under its new mandate. With over 300 participants representing States, indigenous peoples' organisations and communities, academic institutions, UN agencies and multilateral organisations, this well-attended session was also characterised by new agenda items, most notably a "dialogue with regional and national human rights institutions" that enabled a sharing of experiences, good practices and challenges as well as discussions on ways of collaborating between these human rights institutions and the Expert Mechanism. EMRIP's agenda also included a new segment on exchange with UN treaty bodies, including the Human Rights Committee and the Committee on the Elimination of all Forms of Discriminations against Women. One of the key objectives of these new agenda items, which are likely to become permanent, is to enable indigenous peoples' representatives and member States to directly exchange views and perspectives with these bodies. There has never been a platform within the United Nations to enable such direct interactions or dialogue between indigenous peoples and these national, regional and UN-based bodies, which play a frontline role in promoting and protecting indigenous peoples' rights.

In the follow–up to its collaboration with treaty bodies, the Expert Mechanism contributed with written comments on the Human Rights Committee's draft General Comment concerning the right to life.[1]

Thematic study and UNDRIP implementation report

The Expert Mechanism submitted two reports to the Human Rights Council in 2017, as called for under its new mandate.[2] The first was a thematic study on indigenous peoples' businesses and access to financial services, understood as vehicles for promoting and protecting their rights. This 10th study by EMRIP,[3] and the last for which the Human Rights Council had to decide on the theme, grounded the analysis in the United Nations Declaration on the Rights of Indigenous Peoples, article 3 of which provides for the right of indigenous peoples to pursue their own economic priorities. Article 23 of the Declaration goes further to enshrine the right of indigenous peoples to development, including the right to determine and develop economic priorities, strategies and programmes. Like all peoples, indigenous communities are also entitled to provide for themselves, generating income and revenues from their assets, with a view to living in dignity free from economic marginalisation or poverty.

The study indeed reveals that indigenous peoples' businesses are not only for generating revenues but also, and perhaps more importantly, for safeguarding their lands, resources, cultural identity and other rights enshrined in the Declaration. Indigenous peoples' businesses constitute elements of their right to self-determination. Indigenous businesses also offer compelling evidence against prejudiced views that consider resources and lands owned and managed by indigenous peoples as wasted.

The study focuses on the challenges faced by indigenous women, youth and persons with disabilities in accessing markets and financial services, looking at both external and internal factors that disproportionately burden these social groups' access and enjoyment of their rights to self-determined development.

Like all of EMRIP's thematic studies, this report concludes with a set of recommendations to States, indigenous peoples and other stakeholders regarding the right of indigenous peoples to develop their economic means. For instance, the study advises States to:

"adopt legal and policy frameworks that recognize, promote and protect rights that allow indigenous peoples, if they so wish, to operate businesses on their lands safely and viably. Such measures should be developed with the effective participation of indigenous peoples, as provided for in the United Nations Declaration on the Rights of Indigenous Peoples."

In implementing its new mandate, the Expert Mechanism also presented a Report on implementation of the United Nations Declaration on the Rights of Indigenous Peoples to the Human Rights Council, 10 years after its adoption in 2007 by the General Assembly, capturing the work on indigenous peoples' rights by: (1) treaty bodies and special procedures, (2) the UPR, (3) regional human rights mechanisms, (4) United Nations agencies and multilateral actors, (5) domestic courts and national bodies. This report reveals how the UNDRIP continues to shape legal and policy landscapes across the world, but it also highlights persisting implementation gaps that should be addressed.[4] On the impact of the UPR, for instance, the Report shows that

"a total of 991 recommendations on indigenous peoples were made during the first two cycles of the universal periodic review. In its third cycle, initiated in May 2017, a considerable number of recommendations were made by the Working Group on the Universal Periodic Review regarding indigenous peoples' rights.... Those recommendations cover a broad spectrum of rights under the Declaration, including in support of the rights of indigenous peoples to: preserve their languages, lands and culture; reduce the negative impact on them from mining; adopt laws prohibiting discrimination against them; and guarantee the right to life and safety of human rights defenders."

Online forms for country engagement

Under the new mandate of the Expert Mechanism, States, indigenous peoples and other stakeholders, including the private sector, can request technical assistance or facilitation of dialogue from the Mechanism. To that end, the Expert Mechanism has devised and made public a short online form for country engagement requests.[5] So far, the Expert Mechanism has received and agreed to work on several country engagement requests from indigenous peoples and State institutions from Europe, Latin America and Africa. The first country missions relating to these

requests are under preparation. It should be reiterated that the Expert Mechanism is not a monitoring body and that its new mandate focuses on building capacities and facilitating dialogue between stakeholders with a view to easing tensions, building trust and thereby contributing to a conducive environment for the Declaration's implementation.

Engagement with National Human Rights Intitutions

EMRIP's new mandate provides for specific and enhanced collaboration with National Human Rights Institutions (NHRIs). This is rightly so because these institutions are generally mandated not only to monitor States' compliance with relevant international standards but also to advise and guide States on the transposition of human rights standards into national legal, policy and development frameworks. EMRIP considers NHRIs as natural partners for its work at country level under its new mandate. In this regard, EMRIP has engaged with the global coalition of NHRIs (GANRI) and its regional component with a view to developing guidelines for their collaboration and possible joint activities, including training of government officials and other stakeholders at country level.

INTER-SESSIONAL MEETINGS AND PARTICIPATION IN OTHER UN PROCESSES

Inter-sessional meetings

The Expert Mechanism held three inter-sessional meetings in Canada, the Russian Federation and Chile respectively. The inter-sessional meeting in Canada in February 2017 was supported by the Government of Canada and held at the same time as that of the UNPFII. The second inter-sessional meeting held in March 2017 followed an official invitation by the Government of the Russian Federation and it enabled the Mechanism to finalise the methods relevant to its new mandate. The third inter-sessional meeting held in Santiago, Chile was an institutional one provided for under the new mandate of the Expert Mechanism. It enabled the Mechanism to review its program of work, including planning for various country engagements.

Expert seminars

In preparation for its study on indigenous peoples' businesses, the Expert Mechanism held an expert seminar on indigenous peoples' entrepreneurship in Boulder, USA in collaboration with the University of Colorado Law School in March 2017. Over 25 participants contributed to discussions that enabled the Expert Mechanism to finalise and submit its report to the Human Rights Council in 2017.

The Expert Mechanism's inter-sessional meeting in Chile was combined with an expert seminar on free, prior and informed consent (FPIC), as the theme of its next thematic study under the new mandate. It should be noted that this study on FPIC is the first for which the Expert Mechanism has itself chosen the theme. This choice responds to many requests from indigenous peoples, member States and other stakeholders, who have argued for a UN-sanctioned understanding of FPIC, a norm that has attracted interests from various sides. The seminar was co-organised with the Human Rights Centre of Diego Portales University, from 4 to 5 December. It brought together over 25 experts who provided insights, expertise, reflections and perspectives that will inform the Expert Mechanism's report on FPIC, to be presented to the Human Rights Council in 2018.

Celebrating UNDRIP's 10th anniversary

The Expert Mechanism participated in the UNPFII's expert seminar and events organised with a view to taking stock of the Declaration's implementation over its first 10 years. On one of these occasions, the Chair of the Mechanism gave a briefing session on indigenous peoples' contribution to peace-building and security to senior staff of the United Nations Department of Political Affairs. Also in celebration of the 10th anniversary of the UNDRIP, the Expert Mechanism's Chair participated as keynote speaker in the High-Level event organised by the President of the UN General Assembly in New York on 25 April 2017. The Expert Mechanism further participated in a similar event organised jointly by the UNPFII and the University of Colorado in September 2017.

EMRIP's contribution to other relevant initiatives

The Expert Mechanism and its members have always been on stand-by to provide assistance when possible at international, regional and local levels. For instance, the Expert Mechanism continued its engagement with UNESCO on standard-setting processes regarding indigenous peoples' cultural rights and heritage, including taking active part in negotiation meetings in Paris, France. In their respective regions, EMRIP members have participated in and contributed to numerous processes and initiatives by States, indigenous peoples and other stakeholders. In December 2017, for instance, the Chair of the Mechanism contributed as expert trainer to a workshop on indigenous peoples' rights held by the Danish Institute for Human Rights and African National Human Rights Institutions (NHRIs) in Nairobi, Kenya.

Prospects for EMRIP's future and continuing work

The rising tensions between States and indigenous peoples are simply not sustainable and are reaching a tipping point across the world. The Standing Rock situation, cases of violence against indigenous human rights defenders in Latin America, brutal expulsions of indigenous peoples from their ancestral lands in many African countries or the continuing life on the margins of societies for a majority of indigenous peoples in Asia are illustrations of a global pattern of rising tensions that are simply not conducive to UNDRIP implementation. It is therefore of critical importance to work on reducing tensions, rebuilding bridges of dialogue, partnership and trust between States and indigenous peoples. This is the niche area of work that the Expert Mechanism seeks to focus on under its new mandate, which is devised in such a way as to complement the work of the UN Special Rapporteur and other UN mechanisms on indigenous peoples.

Notes and references

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2. All EMRIP's reports and documents can be found online: http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/ExpertMechanismDocumentation.aspx

3. See the full report: http://www.undocs.org/a/hrc/36/53
4. See the full report: http://www.undocs.org/a/hrc/36/56
5. See the country engagement request form: http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/RequestsUnderNewMandate.aspx

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THE WORK OF THE TREATY BODIES

The treaty bodies are the committees of independent experts in charge of monitoring the implementation by States parties of the rights protected in international human rights treaties. There are nine core international human rights treaties, dealing 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 States parties, adopt concluding observations and examine complaints. Concluding observations contain a review of both positive and negative aspects of a State's implementation of the treaty and recommendations for improvement.

Treaty bodies also adopt general comments which are interpretations of the provisions of the treaties. A large number of general comments contain reference to indigenous 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 rights.

This article contains a summary of the developments that took place in relation to the recognition of indigenous rights in the concluding observations and general comments of six treaty bodies during 2017. The treaty bodies did not consider any complaint addressing indigenous rights in 2017.

The treaty bodies and indigenous peoples' rights

Over the years, the treaty bodies have contributed to the development of a comprehensive and solid body of jurisprudence on indigenous rights. Unfortunately, they continue to be known and used by a limited number of indigenous peoples and organisations.

The Committee on the Elimination of Racial Discrimination (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), the Committee on the Rights of the Child (CRC) and the Committee on the Rights of Persons with Disabilities (CRPD) continued to make a large number of observations on indigenous peoples' rights during 2017. The Committees notably made recommendations related to the rights to equality and non-discrimination, self-determination, consultation and free and prior informed consent (FPIC), participation and representation, control and ownership of lands, natural resources and territories as well as access to education, justice, employment and healthcare services.

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) continued to underline the multiple violations and forms of discrimination faced by indigenous peoples in particular in relation to the rights to: self-determination (Australia,[1] New Zealand[2]), self-identification (Russian Federation[3]), FPIC (Australia, Canada,[4] Ecuador,[5] Finland,[6] Kenya,[7] New Zealand, Russian Federation), ownership and protection of lands and natural resources (Australia, Canada, Finland, Russian Federation) as well as representation and participation (New Zealand, Ecuador). The Committee also underlined violations related to access to: education (Australia, Canada, Ecuador, Kenya), bilingual education (Ecuador, Finland, New Zealand), employment and healthcare services (Australia, New Zealand), adequate housing (Australia) and justice (Kenya). The CERD finally expressed concerns in relation to acts of violence (Ecuador, Kenya, Russian Federation), gender-based violence (Australia, Canada) overrepresentation in prisons (Australia, Canada, New Zealand), forced evictions (Kenya, Russian Federation) and environmental damage (Ecuador, Australia, Canada).

Drawing on its General Recommendation No. 23 on the rights of indigenous peoples,[8] the CERD made extensive recommendations addressing indigenous rights. The Committee notably called upon States parties to recognize indigenous peoples' rights to: self-determination (Australia, Finland, New Zealand), nationality, and self-identification (Russian Federation) and ensure access to: healthcare services (Ecuador, New Zealand), education (Canada, Ecuador and Kenya), bilingual intercultural education (Ecuador) and indigenous languages (Australia, Finland, New Zealand). Algeria[9] was notably invited to adopt its pending legislation on the Tamazight language. The Committee called upon Algeria and New Zealand to ensure the protection of sites and places of cultural value or significance. Australia was requested to establish a mechanism enabling the political participation of indigenous peoples and New Zealand to increase indigenous representation in governance and management.

Australia, Canada and New Zealand were advised to address or reduce the overrepresentation of indigenous peoples in prisons and Kenya to improve access to justice, including by building the capacity of alternative justice systems. Australia was recommended to launch investigation into the abuses that have occurred in places of detention for juveniles and New Zealand to set up a commission of inquiry into past abuse of children and adults with disabilities in State care. The Committee further encouraged Australia and Canada to adopt action plans to end violence against indigenous women and Ecuador, Kenya and the Russian Federation to investigate acts of violence, and sanction or prosecute perpetrators.

With respect to land rights, the CERD called upon New Zealand to review its 2011 Marine and Coastal Area Act, Finland to revise legislation on Sami land rights and Australia to amend its 1993 Native Title Act. The Committee also recommended that Ecuador adopt measures to guarantee the survival of the indigenous peoples living in voluntary isolation, that Kenya ensure legal acknowledgement of the collective rights of indigenous peoples to own their lands and that the Russian Federation establish federally protected indigenous territories. The Committee also recommended that Ecuador and Finland conduct impact studies or assessments prior to project development and Canada prohibit environmentally destructive development and ensure access to justice for violations by transnational corporations registered in Canada and operating abroad. Ecuador and the Russian Federation were invited to pro-

vide compensation. Australia and Canada were urged to incorporate the FPIC into the Native Title Act 1993 and the Canadian regulatory system respectively. The Committee finally recommended that Australia, Canada, Ecuador, Finland, Kenya, New Zealand and the Russian Federation ensure, secure or obtain the FPIC of indigenous peoples before the approval of any project affecting their lands.

Under its *Urgent Action Early Warning procedure*,[10] the CERD considered a number of indigenous rights-related cases in Canada,[11] Guatemala,[12] Ethiopia,[13] Indonesia,[14] the Russian Federation,[15] New Zealand,[16] Thailand[17] and West Papua.[18]

Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights (CESCR) continued to make extensive reference to the violations of indigenous rights and notably expressed concerns about the absence of constitutional recognition in Australia,[19] the use or preservation of indigenous languages (Australia, Colombia, Russian Federation[20]) as well as access to: education and adequate standards of living (Australia, Colombia), healthcare and employment (Australia). The CESCR also underlined violations related to domestic violence (Australia), harassment and persecution (Colombia, Russian Federation), the impact of climate change (Australia, Russian Federation), land titling (Australia), land restitution (Colombia), protection of indigenous territories (Russian Federation), as well as rights to consultation and FPIC (Australia, Colombia, Russian Federation).

The Committee formulated a number of recommendations covering the economic, social and cultural rights of indigenous peoples and notably called upon Colombia to adopt protection plans for indigenous peoples at risk of extinction, Australia to introduce constitutional recognition of indigenous peoples and Colombia and the Russian Federation to prevent and eliminate discrimination against indigenous peoples. The CESCR further recommended that Australia and Colombia ensure access to healthcare and bilingual education, Australia combat domestic violence and Colombia and the Russian Federation investigate acts of violence and threats faced by indigenous rights defenders.

In relation to land rights, the CESCR called upon the Russian Federation to establish federally protected indigenous territories, Australia

to proceed with the reform of the Native Title Act 1993 and Colombia to operationalize the mechanisms and registers established for land restitution. Colombia and the Russian Federation were recommended to conduct impact assessments or studies prior to land exploitation and to provide adequate remedies, reparation or compensation. The Netherlands was invited to remove the obstacles to companies domiciled under its jurisdiction being held accountable for violations of rights resulting from their operations abroad. Both Australia and the Russian Federation were advised to address and monitor the impact of climate change on indigenous rights. The Committee further recommended that Australia, Colombia and the Russian Federation ensure compliance with or obtain the FPIC of affected communities when developing projects. Australia was notably recommended to incorporate the principle of FPIC into the Native Title Act 1993 and Colombia to ensure compliance of the draft statutory act on prior consultation with international standards.

The CESCR adopted General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities[21] and this contains extensive reference to indigenous rights.

Human Rights Committee

The Human Rights Committee (HRC) generally highlighted violations faced by indigenous peoples in relation to Articles 2, 25, 26 and 27 of the International Covenant on Civil and Political Rights.

The Committee underlined the absence of legal recognition of indigenous peoples in Bangladesh[22] and of constitutional protection in Thailand[23] and expressed concern at violations related to: discrimination (Cameroon,[24] Honduras), rights to participation and representation (Bangladesh, Honduras,[25] Thailand) and access to basic services (DRC,[26] Thailand). The HRC underlined patterns of trafficking for labour exploitation (Honduras and Thailand), overrepresentation in prisons (Australia[27]) and acts of violence (Bangladesh, Cameroon, DRC, Honduras, Thailand). The Committee finally noted restrictions on indigenous land rights (Bangladesh) and challenges related to land titling and compensation (Australia), land confiscation (Cameroon) as well as forced evictions and displacements (DRC, Honduras, Thailand).

The Committee formulated a number of recommendations related to the civil and political rights of indigenous peoples and notably called upon DRC, Honduras and Thailand to ensure protection from discrimination, Australia and Bangladesh to combat gender-based violence and Honduras and Bangladesh to increase indigenous representation and participation in political life and decision-making processes. Australia was recommended to address the overrepresentation of indigenous peoples in prisons and to establish a national reparations mechanism for victims of the "stolen generation", DRC and Honduras to ensure the protection of indigenous persons from acts of violence and Bangladesh, Cameroon, DRC to investigate acts of violence and prosecute perpetrators.

The Committee further recommended that the DRC adopt legislation protecting indigenous rights, Australia, Bangladesh and DRC recognize the legal status of indigenous peoples and Australia revise the Constitution and amend the Native Title Act 1993 to take international standards into account. Cameroon was requested to ensure the legal protection of indigenous lands while Bangladesh was urged to resolve land disputes in the Chittagong Hill Tracts. Honduras was invited to adopt the draft framework law on FPIC and ensure compliance with international standards. The Committee finally recommended that the DRC and Thailand consult indigenous peoples with a view to obtaining their FPIC before taking any measures or decisions affecting them.

Committee on the Rights of the Child

The Committee on the Rights of the Child (CRC) continued to express concerns regarding multiple violations faced by indigenous children (Cameroon,[28] Central African Republic/CAR,[29] Democratic Republic of Congo/DRC,[30] Mongolia[31]) in particular in relation to access to: education (Cameroon, CAR), bilingual education (Ecuador[32]), healthcare services (CAR), birth registration and civil registries (Cameroon, CAR). The CRC also underlined environmental degradation and other negative impacts of extractive industries on the rights of indigenous children (Cameroon, DRC, Ecuador) including forced displacement (Cameroon, DRC) and child exploitation (DRC). The CRC also mentioned issues of child neglect and abuse in Greenland-Denmark[33] and Ecuador as well incidences of sexual exploitation in CAR and Greenland-Denmark.

Drawing on its General Comment No. 11 on indigenous children, the CRC made a number of recommendations addressing the rights of indigenous children. The Committee notably recommended that Cameroon, DRC, Ecuador and Mongolia adopt, strengthen or implement legislation to eliminate discrimination against indigenous children, CAR adopt the draft law implementing ILO Convention 169 on Indigenous and Tribal Peoples insofar as it relates to indigenous children, and Ecuador ensure that public policies address the rights of indigenous children.

The CRC also recommended that CAR and Ecuador ensure access to healthcare services, Ecuador set up a strategy to combat suicide and take measures to prevent and eliminate violence, Denmark address mental health problems among Greenlandic children and Cameroon and CAR ensure access to birth certificates. Cameroon, CAR, Ecuador and Mongolia were invited to guarantee access to education or school enrolment for indigenous children, including via the implementation of bilingual intercultural education (Ecuador) or online classes and travelling schools (Mongolia). CAR and DRC were recommended to investigate and prosecute cases of child trafficking (CAR) and labour exploitation in extractive industries (DRC). Denmark was urged to combat sexual exploitation in Greenland (Denmark).

The Committee also called upon Cameroon, Ecuador and DRC to establish a regulatory framework to deal with the impact of the extractive industries on children's rights, notably ensuring implementation of international standards, undertaking consultations and sharing of information about the impact of planned operations. Mongolia was advised to adopt a child-focused approach to coping with and adapting to climate change. CAR and Ecuador were finally recommended to seek or obtain the FPIC of indigenous peoples and children in relation to all measures that impact their lives.

Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women (CEDAW) made a large number of references to human rights violations faced by indigenous women, such as systemic discrimination (Costa Rica,[34] Israel,[35] Paraguay,[36] Rwanda[37]), particularly in relation to access to: employment (Paraguay, Israel, Thailand[38]), basic social services and

healthcare (Paraguay, Thailand), social protection (Costa Rica, Thailand), education (Israel, Guatemala,[39] Paraguay, Rwanda, Thailand), justice (Costa Rica, Guatemala, Israel, Thailand), and participation and representation (Israel, Guatemala, Rwanda, Thailand). The Committee highlighted cases of intimidation and acts of violence (Guatemala, Kenya,[40] Thailand, Paraguay), sexual exploitation and forced labour (Guatemala), gender-based violence (Kenya, Norway,[41] Rwanda) and obstetric violence in the context of childbirth (Costa Rica). The CEDAW finally noted violations related to forced evictions and land dispossession (Costa Rica, Israel, Thailand) as well as to rights to FPIC and consultation (Kenya, Thailand, Paraguay), access to traditional lands (Kenya) and land titles (Paraguay).

The CEDAW elaborated a large number of recommendations aimed at promoting and protecting the rights of indigenous women and notably called upon Israel to adopt a strategy to eliminate discrimination, Costa Rica and Guatemala to adopt or ensure that legislation and legislative measures cover all intersecting forms of discrimination, Rwanda to adopt the Law on Indigenous Peoples and El Salvador to ensure a gender perspective in the National Plan for Indigenous Peoples. Costa Rica, Guatemala and Paraguay were further invited to adopt or expand the use of special measures to indigenous women facing intersecting forms of discrimination.

The CEDAW also called upon States parties to adopt measures to address poverty (Guatemala) and improve access to: education, (Israel, Guatemala, Thailand, Paraguay), bilingual or culturally appropriate education (Costa Rica, Guatemala), literacy programmes (Rwanda, Paraguay), employment or the labour market (Israel, Guatemala, Thailand, Paraguay), social services (Guatemala, Rwanda, Norway, Thailand) and healthcare services (Israel, Norway, Paraguay, Thailand). The Committee further recommended ensuring access to civil registry services (Thailand, Guatemala and Paraguay) and increasing the representation and participation of indigenous women in political life and decision-making positions (Guatemala, Israel, El Salvador,[42] Thailand) as well as in senior positions (Rwanda). Costa Rica, Guatemala, Israel and Rwanda were encouraged to improve or guarantee access to justice, by notably addressing linguistic barriers (Costa Rica, Guatemala). Guatemala, Kenya, Thailand and Paraguay were recommended to protect, investigate and prosecute all cases of violence, attacks or harassments and Guatemala and Norway to devise or implement national plans for

the prevention of violence against indigenous women.

In relation to land rights, the CEDAW recommended that Paraguay ensure access to land titles, Kenya recognize the Endorois people's rights to their ancestral land and Guatemala ensure land ownership. The CEDAW further recommended that Paraguay establish a legal framework to ensure that development projects are implemented after gender impact assessments and prior consultation and that Costa Rica and Guatemala take actions and measures to prevent land dispossession and forced evictions. The Committee further advised Paraguay to undertake a study into the cause of the misuse of agro-toxic products in agriculture and Guatemala to guarantee the investigation of complaints concerning the harmful use of pesticides and fertilizers. Costa Rica, Guatemala and Thailand were requested to secure the FPIC of affected indigenous women as well as providing compensation or benefit sharing.

The CEDAW adopted General Recommendation No. 35 on gender-based violence against women[43] as well as General Recommendation No. 36 on girls' and women's right to education,[44] which both contain reference to the rights of indigenous women.

Committee on the Rights of Persons with Disabilities

Drawing on article 5 of the Convention on the Rights of Persons with Disabilities, the Committee on the Rights of Persons with Disabilities (CRPD) underlined the multiple forms of intersectional discrimination faced by indigenous persons with disabilities. The Committee notably expressed concerns about the lack of legislation (Honduras[45]) and the lack of policies (Panama[46]) to combat multiple and intersectional discrimination as well as barriers to accessing: mental healthcare services (Canada[47]), mainstream healthcare services (Honduras) and justice (Canada, Honduras). The CRPD also highlighted the overrepresentation of indigenous persons with disabilities in Canadian prisons, the underrepresentation of indigenous persons with disabilities in political and public life in Honduras as well as incidences of gender-based violence (Canada, Honduras), exploitation, violence and abuse (Canada, Honduras, Panama).

The CRPD made a number of recommendations addressing the rights of indigenous persons with disabilities and notably recommended that Panama ensure that its legislation covers multiple and intersectional discrimination, that Canada set up criteria aimed at addressing

intersecting forms of discrimination through affirmative action programmes and that Morocco[48] adopt specific measures to protect Amazigh persons with disabilities. The Committee also invited Canada, Honduras and Panama to guarantee an adequate standard of living and ensure accessible healthcare services and Canada and Honduras to promote the enrolment or inclusion of indigenous persons with disabilities in education. The Committee further recommended that Honduras ensure an accessible legal system, and that Canada address the situation of indigenous persons with disabilities in prison and the overrepresentation of indigenous children in welfare services. The Committee further recommended that Honduras and Panama take measures to prevent exploitation, violence and abuse.

Collaboration with other indigenous-related mechanisms

The Vice Chairperson of the HRC, Mr. Yuval Shany, and a member of CEDAW, Ms Gladys Acosta Vargas, attended a panel discussion on ''Ten years of implementation of the UNDRIP'' organised within the framework of the 10th session of the Expert Mechanism on the Rights of Indigenous Peoples. Both members indicated that they would welcome more information on country-specific situations regarding indigenous peoples' rights. Mr. Shany underlined that the HRC would consider the UNDRIP more in its future work while Ms Acosta Vargas mentioned that the CEDAW was considering developing a general recommendation on the rights of indigenous women (A/HRC/36/57).

Notes and references

1. CERD/C/AUS/CO/18-20
2. CERD/C/NZL/CO/21-22
3. CERD/C/RUS/CO/23-24
4. CERD/C/CAN/CO/21-23
5. CERD/C/ECU/CO/23-24
6. CERD/C/FIN/CO/23
7. CERD/C/KEN/CO/5-7
8. Contained in document A/52/18, annex V.
9. CERD/C/DZA/CO/20-21
10. In 1994, the CERD decided to establish early warning and urgent procedures as

part of its regular agenda. Early warning measures are to be 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.

11. The Committee considered allegations of rapes and attempted forced evictions of indigenous women in Lote Ocho by personnel from a Canadian mining company, the land claims of the Lubikon Lake Nation, the threat of extinguishment of the land rights of the Secwepemc and the St'at'imc nations: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8030_E.pdf, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8131_E.pdf http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_8092_E.pdf

12. The Committee considered allegations of rape and attempted forced evictions of indigenous women in Lote Ocho: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_ALE_GTM_8031_E.pdf, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GTM/INT_CERD_ALE_GTM_8133_E.pdf

13. The Committee considered allegations of arrests, mass killings and enforced disappearances in Oromia and Amhara: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ETH/INT_CERD_ALE_ETH_8132_E.pdf

14. The Committee considered allegations of enforced disappearances, extrajudicial killings and tortures of Papuan people in West Papua and Papua: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_8093_E.pdf, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_8134_E.pdf

15. The Committee considered allegations of destruction of Shor villages by mining activities: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/RUS/INT_CERD_ALE_RUS_7906_E.pdf

16. The Committee considered allegations of violence, ill treatment and threat of forced evictions of Maasai in the Ngorongoro: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/TZA/INT_CERD_ALE_TZA_8095_E.pdf

17. The Committee considered allegations of threats and forced eviction of the Karen people in the Kaeng Krachan National Park: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/THA/INT_CERD_ALE_THA_8094_E.pdf

18. The Committee considered allegations of alienation of indigenous lands through the issuance of "Special Agricultural and Business Leases": http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PNG/INT_CERD_ALE_PNG_7926_E.pdf

19. E/C.12/AUS/CO/5

20. E/C.12/RUS/CO/6

21. Para 12 of the General comment, Para 17, Para 24 and Para 52 (E/C.12/GC/24).

22. HRC/C/BGD/CO/1

23. HRC/C/THA/CO/2

24. HRC/C/CMR/CO/ 5
25. HRC/C/HND/CO/2
26. HRC/C/COD/CO/4
27. HRC/C/AUS/CO/6
28. CRC/C/CMR/CO/3-5
29. CRC/C/CAF/CO/2
30. CRC/C/COD/CO/3-5
31. CRC/C/MNG/CO/5
32. CRC/C/ECU/CO/5-6
33. CRC/C/DNK/CO/5
34. CEDAW/C/CRI/CO/7
35. CEDAW/C/ISR/CO/6
36. CEDAW/C/PRY/CO/7
37. CEDAW/C/RWA/CO/7-9
38. CEDAW/C/THA/CO/6-7
39. CEDAW/C/GTM/CO/8-9
40. CEDAW/C/KEN/CO/8
41. CEDAW/C/NOR/CO/9
42. CEDAW/C/SLV/CO/8-9
43. Para 29 c), No. 35 (CEDAW/C/GC/35).
44. Para 41 of the General Recommendation No. 36 (CEDAW/C/GC/36).
45. CRPD/C/HND/CO/1
46. CRPD/C/PAN/CO/1
47. CRPD/C/CAN/CO/1
48. CRPD/C/MAR/CO/1

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The views expressed herein are those of the author and do not necessarily reflect the views of the United Nations.

INDIGENOUS PEOPLES' ENGAGEMENT IN THE SDGs

Indigenous peoples have been engaging in the global processes relating to sustainable development since the Rio Summit on Development and during the process of negotiations for the 2030 Agenda for Sustainable Development, known as the Sustainable Development Goals, which was adopted in 2015. This global agreement, which calls for "leaving no one behind" is for implementation at the local and national levels, and there are national, regional and global review processes to track progress and challenges in its implementation.

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 have been significant advances in the inclusion of indigenous peoples within the related global Declarations and regional and national reports, although much is yet to be done to ensure the respect, recognition and realization of the rights of indigenous peoples, their contributions and aspirations and self-determined development.

Strengthening the Indigenous Peoples' Major Group

The co-facilitators of the Indigenous Peoples' Major Group (IPMG), as organization accredited by UNDESA for engagement in SDG processes, are the Tebtebba Foundation and the International Indian Treaty Council (IITC), which formally established the Global Coordinating Committee (GCC) of the IPMG in April 2017. The GCC is composed of representatives of indigenous organizations and networks from all seven regions, and from the global indigenous youth caucus and the global indigenous women's network. Based on its Terms of Ref-

erence, the main function of the GCC is to coordinate the engagement of indigenous peoples in the SDG processes and provide their inputs to reports of the IPMG.

The IPMG has also established its affiliate members, which are currently 63 organizations, including regional networks, across the globe. The IPMG has also set up its secretariat (3 x part time) to assist in sharing information and provide technical and logistical support to the co-facilitators, the GCC and affiliate members as appropriate. For global visibility, the IPMG has set up its website and social media accounts,[1] which contain all information about the IPMG, its reports, statements and regular updates on indigenous peoples and related issues of sustainable development on a global, regional and global.

These efforts by the IPMG's co-facilitators have resulted in improved cooperation, collaboration and participation of indigenous peoples in the High Level Political Forum (HLPF), along with sustained information dissemination, awareness-raising and visibility of indigenous peoples in SDG processes and related issues. The GCC of the IPMG developed its strategic plan in its meeting during the HLPF.

Indigenous peoples' participation in HLPF

The annual High Level Political Forum (HLPF) is the global Follow Up and Review (FUR) process to the 2030 Agenda for Sustainable Development Goals (SDGs) adopted in 2015. The 2017 HLPF was held in July at the UN headquarters in New York with the theme of "Eradicating poverty and promoting prosperity in a changing world" and the focused Goals for discussion were: *Goal 1* End poverty in all its forms everywhere; *Goal 2.* End hunger, achieve food security and improved nutrition and promote sustainable agriculture; *Goal 3.* Ensure healthy lives and promote well-being for all at all ages; *Goal 5.* Achieve gender equality and empower all women and girls; *Goal 9.* Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation and *Goal 14.* Conserve and sustainably use the oceans, seas and marine resources for sustainable development.[2]

The HLPF also held the Voluntary National Review (VNR) of 43 countries, 24 of which are home to indigenous peoples, largely in Latin America and Asia. The VNR is a process whereby member states present their progress report on implementation of the SDGs.

The HLPF was attended by 24 indigenous peoples' representatives from 18 countries, which is a dramatic increase on the previous year. During the thematic sessions of the HLPF, the panel on the theme of the HLPF included a speaker from the IPMG (Africa representative), there was an IPMG speaker (Pacific representative) on the theme of Goal 14 (conservation of oceans) and four statements from the IPMG were presented as interventions on different thematic discussions. This active participation of the IPMG in the thematic sessions and the VNR increased the visibility of indigenous peoples and highlighted their key concerns and recommendations in relation to the SDGs, stressing the need to recognize the rights of indigenous peoples and include their contributions and aspirations, as well as establish institutionalized mechanisms for their participation, particularly at the local and national levels.

Dialogues with states for the Voluntary National Review

Indigenous peoples' representatives held dialogues with their respective governments during the HLPF on the VNR, namely representatives from Peru, Malaysia, India, Bangladesh, Guatemala, Indonesia, Nepal and Kenya. They also joined the discussion of Major Groups at the country level on questions to member states during the sessions of the Voluntary National Review (VNR). Two indigenous representatives were designated to ask questions during the VNR sessions (Nepal and Guatemala).

In the synthesis report of the 2017 Voluntary National Review during the HLPF,[3] countries expressed concerns regarding health equity, including regional or urban/rural differences, and healthcare for the elderly, migrants, and indigenous peoples among others (Goal 2 on Ending hunger). At the country level, the following references were made to indigenous peoples:

- Chile made clear reference to indigenous peoples in terms of prioritizing the voice and participation of indigenous peoples, along with other marginalized groups, and identified the specific challenges facing indigenous peoples, including high multidimensional poverty rates. They also reported having included draft legislation for a Ministry of Indigenous Peoples and Council of Indigenous Peoples.

- Guatemala reported that it aims to contribute to the integral well-being of rural, peasant, indigenous and *ladino* families, who are highly vulnerable to food insecurity and poverty, under its Family Agriculture Programme aimed at strengthening the Peasant Economy and achieving Goal 2 (Ending hunger).
- Nepal noted that progress should be tracked at a highly disaggregated level to show disparities by age, sex, location, ethnicity, disability, income groups, and other categories. It also reported that the amended Civil Service Act reserves a percentage of public service positions for women and marginalized groups, including *dalits*, indigenous peoples, and persons with disabilities.
- Malaysia reported one of its future aims as being to leverage indigenous and local communities in the management of natural resources, as well as empowering them to give or withhold consent to proposed projects that may affect their lands, in order to achieve Goal 15.

Noting that 24 of the 43 countries for VNR have indigenous peoples, the above indicates that indigenous peoples are still largely invisible in the national action plans/strategies for implementation of the SDGs. However, as states are still finalizing their plans, there are still opportunities of indigenous peoples to be included although this will depend on various factors, including the political will of states to be more inclusive and the capacities of indigenous peoples to engage at the local and national levels.

The Indigenous Voices at the HLPF

The Indigenous Voices at the HLPF was a one-day media event arranged by the Secretariat of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in collaboration with the IPMG, IWGIA and NOTIMIA. There were five SDG reflection sessions run by indigenous peoples on the six focused SDGs for the HLPF; four panel discussions run by indigenous peoples, UN agencies and national human rights institutions, and individual interviews/conversations between indigenous and government representatives on the Voluntary National Review (VNR). There were more than 30 participants at these events.

This was the first time that key government officials had agreed to have a one-on-one conversation with indigenous representative from certain countries, with media coverage at the UN. These were Finland, Guatemala, Peru and Kenya, which have committed to engage with indigenous peoples in the implementation of the SDGs at the local and national levels. The Indigenous Voices events were live streamed through Facebook and viewed by more than 20,000 people; this had increased to more than 40,000 viewers within a week of broadcast.

The UNPFII Secretariat also facilitated the holding of a press conference at the UN for the UN Permanent Forum and the IPMG. This was well attended by journalists and lasted for more than 30 minutes due to questions from the media. In addition, the IPMG also participated in the UNTV Talk on the SDGs in the panel for marginalized groups. Both events were on the UNTV webcast. Some members of the IPMG were also interviewed by the media during the HLPF.

Collaboration with key institutions, side events and inter-learning session

A side event on Overcoming Poverty: Indigenous Concepts of Well-being and Development was conducted as a collaborative event of the Secretariat of the UN Permanent Forum on Indigenous Issues, the IPMG, IFAD and UN Women. This event had speakers from the Government of Norway, an expert member of the UNPFII, the co-convenor of the IPMG and a representative of IFAD. The event was well attended, and the speakers highlighted the contributions to and aspirations of indigenous peoples for sustainable development, as well as the challenges.

Another collaborative event was the successful holding of a learning session for three hours on "A Human Rights Based Approach to Eradicating Poverty and Promoting Prosperity in a Changing World" in partnership with the Danish Institute for Human Rights, the Global Alliance of National Human Rights Institutions, Asia Indigenous Peoples' Pact (AIPP), Forest Peoples' Programme, UN OHCHR, the Permanent Mission of Denmark to the UN, the Ministry of Economy, Development, and Tourism – Government of Chile, IWGIA, and the ILO. This event was very informative on the interlinkages between the SDGs and human rights, and the need to ensure recognition and protection of human rights, including indigenous peoples' rights, in the implemen-

tation of the SDGs in order to achieve the aim of "no one left behind". This event was one of the most attended inter-learning sessions during the HLPF, with an overflow of participants beyond the seating capacity of 80.

A side event on food security organized by civil society organizations also included indigenous representatives as speakers and this also broadened the understanding of the contributions and challenges faced by indigenous peoples on food security and related issues.

Ministerial Declaration includes indigenous peoples

A Ministerial Declaration is one of the main outcomes of the annual High Level Political Forum (HLPF), as part of the global Follow Up and Review (FUR) process for the 2030 Agenda for Sustainable Development Goals (SDGs), adopted in 2015. This negotiated agreement by UN Member States aims to provide further guidance and actions in the implementation of the SDGs.

The Ministerial Declaration of the HLPF 2017[4] made four (4) references to indigenous peoples, compared to only one in 2016. These references were: 1) the need to empower indigenous peoples, which is a reiteration of the Political Declaration of the 2030 Agenda; 2) the inclusion of indigenous peoples in appropriate national plans and measures to implement social protection systems, including social protection floors, 3) the acknowledgement of their extreme vulnerability to climate change and land degradation, and last but not the least, 4) the inclusion of indigenous peoples and the need to reach out to them in the context of the "need to take actions towards localizing and communicating the Sustainable Development Goals". Additionally, the Ministerial Declaration also repeated the need for data disaggregation by ethnicity, which is critical for indigenous peoples to be visible in monitoring the achievements and gaps in the implementation of the SDGs.

The references to indigenous peoples in the Ministerial Declaration were the result of the active engagement of the IPMG in the drafting process, through its submission of concrete recommendations and participation in the consultations held for this. The proposal made by the indigenous peoples and their allies for inclusion in the Ministerial Declaration, related to securing the land rights of indigenous peoples and local communities in order to end poverty and achieve food

security, among others, in the context of "no one left behind", was not fully included, demonstrating the lack of political will in many states on this critical issue for achieving the SDGs.

Nevertheless, the inclusion of indigenous peoples in the 2017 Ministerial Declaration significantly contributes to their further visibility and places more attention on them in the implementation of the SDGs. Furthermore, indigenous peoples can use the Ministerial Declaration to follow up and advocate for its immediate implementation by governments and other key development actors at all levels, such as those engaged in social protection, climate change and awareness-raising outreach on the SDGs. While indigenous peoples made significant advances in the 2017 Ministerial Declaration, it is important to emphasize that much more work still needs to be done at the national and local levels, where positive and transformational changes are urgently needed if indigenous peoples are to realize their self-determined development and achieve sustainable development for all.

Indigenous peoples were also mentioned in the President's Summary of the 2017 HLPF,[5] particularly in relation to conflicts that increase their vulnerability, prioritizing an end to discrimination against vulnerable groups, including indigenous peoples, highlighting the use of and respect for indigenous, local knowledge as one of the best ways to ensure the integrity of implementation of actions, full engagement of local communities and the notion of stewardship and responsibility for future generations, among others, under Goal 14 (conservation of forest and biodiversity).

The Report of the 4th Asia Pacific Forum for Sustainable Development, which was a regional preparatory meeting for the HLPF, stated: "The Forum noted that national efforts to localize the SDG targets and indicators through an inclusive and participatory process were improving the rule of law and promoting gender equality and women's empowerment, peace and governance, and the inclusion of persons with disabilities and indigenous peoples." The IPMG members have engaged in this regional process as well as in some national SDG processes (Nepal, Malaysia, Philippines, Bangladesh, India) albeit still at a limited level due to different factors, including a lack of capacities and resources.

Thematic reports and briefing papers

As a key contribution to the HLPF, the IPMG prepared a report based on

the theme of the HLPF as an official submission to UNDESA, which was posted on the HLPF website prior to the HLPF meeting.[6] This report highlighted the issues and recommendations of indigenous peoples in relation to the focus SDGs of the HLPF. Three briefing papers on "Eradicating poverty and promoting prosperity of Indigenous Peoples in a changing world (Goal 1)", "Ending hunger and achieving food security for Indigenous Peoples (Goal 2)" and "the Empowerment of Indigenous Women (Goal 5) were also published in collaboration with IWGIA.[7]

Outreach and other engagement of the IPMG

Throughout the year, the IPMG has, largely through its convenors, sustained its outreach and engagement around promoting the rights, contributions and aspirations of – as well the challenges faced by – indigenous peoples in relation to sustainable development.

At the global level, these included their continuing participation in the steering committee of the SDG Major Groups and Stakeholders (MGoS), participation in the World Data Forum on the SDGs, the Science and Technology Forum, the Expert Group Meeting on Goal 2 (Ending Hunger), the session of the UN Permanent Forum on Indigenous Issues, the UNFCC-COP, the UN Assembly on Environment, and the Global Landscape Forum, among others. The IPMG signed a Memorandum of Understanding (MOU) with CIFOR in December 2017 for the sustained participation of indigenous peoples in the activities of the Global Landscape Forum (GLF) from 2018-2022.

The activities of the GLF include thematic workshops, regional and national forums, in which the IPMG will be able to participate in order to increase awareness of and attention to indigenous peoples and their contributions to achieving the SDGs. This partnership will also ensure the mainstreaming of indigenous peoples' rights and traditional knowledge practices on sustainable resource management, among others; and facilitate greater networking and collaboration plus potential partnerships with research institutions, environmental organizations, and potential donors, to name but a few.

At the regional and national levels, the convenors, the technical secretariat, members of the GCC and affiliate members have facilitated information dissemination, capacity building activities and engagement of indigenous peoples. These were however limited due to resource constraints, and there is an urgent need to step up efforts for awareness-rais-

ing and capacity building at the local and national levels.

Notes and references

1. See https://www.indigenouspeoples-sdg.org
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4. See http://www.un.org/ga/search/view_doc.asp?symbol=E/HLS/2017/1&Lang=E
5. See https://sustainabledevelopment.un.org/content/documents/16673HLPF_2017_Presidents_summary.pdf
6. See https://indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications/ipmg-reports/48-ips-in-the-hlpf-2017-ministerial-declaration/file
7. See Briefing Notes: Eradicating Poverty and Promoting Prosperity of Indigenous Peoples in a Changing World, Goal 1, https://issuu.com/iwgia/docs/poverty_sdgs and Ending Hunger and Achieving Food Security for Indigenous Peoples (Goal 2), https://issuu.com/iwgia/docs/briefing_note. All position papers and publications produced by the IPMG can be found at https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/ipmg-position-papers-and-publications

*Article prepared by **Joan Carling**, Co-convenor, Indigenous Peoples' Major Group on the SDGs.*

THE INDIGENOUS PEOPLES' FORUM AT IFAD

Indigenous peoples around the world have repeatedly asked for a more systematic dialogue with United Nations (UN) agencies. In response, the International Fund for Agricultural Development (IFAD) has taken a series of initiatives and developed key instruments to actively engage with them. This includes the IFAD Policy on Engagement with Indigenous Peoples, approved by the Executive Board of IFAD in 2009.

As a key instrument to implement the IFAD Policy, the Indigenous Peoples' Forum was established at IFAD in 2011 as a permanent process of consultation and dialogue between representatives from indigenous peoples' institutions and organizations, IFAD and governments. The Forum enables participants to assess IFAD's engagement with indigenous peoples, consult on rural development and poverty reduction, and promote the participation of indigenous peoples' organizations in IFAD's activities at a regional, national, and international level. Overall, these activities help IFAD to implement its policy and translate its principles into action.

The global meeting of the Indigenous Peoples' Forum convenes every other year in conjunction with IFAD's Governing Council, IFAD's main decision-making body. In preparation for each global meeting, regional consultation workshops are organized to ensure that the Forum reflects different perspectives and the diversity of recommendations gathered from indigenous peoples in the various regions where IFAD operates.

A unique process within the UN system, the Forum institutionalizes IFAD's consultation and dialogue with indigenous peoples' representatives at all levels and provides an opportunity for indigenous peoples and IFAD to further strengthen their collaboration for rural transformation.[1]

Through the two previous global meetings of the Indigenous Peoples' Forum, indigenous peoples' representatives called on IFAD to support initiatives to recognize and protect their rights, value their knowledge, strengthen their participation throughout IFAD's project cycles, and ensure that free, prior and informed consent (FPIC) is sought in the context of IFAD-funded projects.

2017 global meeting of the Forum

In late 2016, regional consultation workshops were held in Africa, Asia, Latin America and the Pacific in preparation for the Indigenous Peoples' Forum. Ninety-seven representatives of indigenous peoples' organizations and institutions attended these meetings.

During the workshops, participants assessed the implementation progress of the IFAD Policy on Engagement with Indigenous Peoples and reviewed the implementation status of the recommendations proposed during the second global meeting, and the regional action plans agreed upon with IFAD regional divisions in 2015.

The participants also had an opportunity to exchange knowledge and experiences in regard to good practices for indigenous peoples' economic empowerment that build on their distinctive cultures, traditional knowledge and natural resources. They further identified challenges and opportunities for indigenous peoples to pursue economic empowerment, as well as key elements to enhance IFAD's strategies and support at a regional level.

Based on these discussions, the regional workshops provided suggestions and action-oriented recommendations on the economic empowerment of indigenous peoples with a focus on women and youth, which framed the agenda and nurtured the discussions at the global meeting in Rome.

Highlights of the Forum's third global meeting

The third global meeting of the Indigenous Peoples' Forum took place on 10 and 13 February 2017 in conjunction with the 40th session of IFAD's Governing Council. The meeting brought together 43 indigenous peoples' representatives belonging to 33 indigenous peoples, coming from

32 different countries in Africa, Asia, Latin America, the Caribbean and the Pacific, to exchange views on the evolution of the partnership with IFAD. This meeting of the Forum witnessed a large presence of indigenous women (61 percent) and increased participation of indigenous youth (21 percent). With 2017 marking the 10th anniversary of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Forum also provided an opportunity to highlight IFAD's evolution in its engagement with indigenous peoples during the past decade within the framework of the UNDRIP implementation, and brainstorm on future opportunities to improve IFAD's work within the 2030 Development Agenda.

The Forum was officially opened by IFAD's President who highlighted the Forum's achievements, and reflected on the stones still left unturned. In her keynote address, Ms Victoria Tauli-Corpuz, United Nations Special Rapporteur on the rights of indigenous peoples, pointed out IFAD's significant achievements in ensuring the implementation of the UNDRIP, including the adoption of the Policy on Engagement with Indigenous Peoples, the establishment of the Forum as a mechanism for sustained dialogue, and the establishment of the Indigenous Peoples' Assistance Facility (IPAF). She further stated that this was made possible thanks to three main factors: the strength of the indigenous peoples' movements, IFAD's efforts to consciously involve indigenous peoples' representatives to actively participate in shaping the work with IFAD on indigenous peoples, and the presence of individuals within IFAD who are committed to strengthening the partnership.

The UN Special Rapporteur emphasized that the overall aim of the partnership with IFAD is to ensure that indigenous peoples will be able to pursue their self-determined development and continue to live in and sustainably use their lands, territories and resources. Furthermore, the partnership also wants to ensure the right of indigenous peoples to continue practicing and further developing their cultural heritage, values, traditional knowledge and governance, as well as justice systems, and that all these will be transmitted to the next generations.

Interventions from the members of the Steering Committee emphasized the results achieved with the partnership and expressed deep appreciation for IFAD's commitment and support over the past years. Several speakers highlighted the opportunities offered by key global agreements to enhance the partnership between indigenous peoples and IFAD, namely, the adoption of the 2030 Agenda for sustainable

development and the Paris Agreement on Climate Change, which offer important opportunities to engage in developing projects and programs with clear targets and indicators for the sustainable development of indigenous peoples, contributing to strengthening the resilience and adaption of indigenous peoples' capacities to use their traditional knowledge.

IFAD's engagement with indigenous peoples

As is tradition in the global meetings of the Indigenous Peoples' Forum, IFAD presented the findings of the *Progress in Partnership* report, which analyses the evolution of the partnership over the previous two years (2015-2017) and takes stock of IFAD's different experiences in supporting indigenous peoples, investigating the modalities of the ongoing collaboration, highlighting achievements and identifying the challenges ahead.

The following key advances were mentioned with regard to IFAD's engagement with indigenous peoples: (i) IFAD's role in facilitating policy engagement at the national level in six countries, (ii) the ongoing revision of core IFAD indicators with the inclusion of data disaggregation for indigenous peoples and specific indicators on the well-being of indigenous peoples, (iii) IFAD advocacy actions and partnership building at the international level (e.g. within the context of the sessions of the UNPFII and the meetings of the Inter-Agency Support Group (IASG) on Indigenous Issues); (iv) IFAD efforts in fostering knowledge generation and sharing of good practices.

Sharing experiences at a national level

The Forum also provided an opportunity for participants to share experiences on key issues and processes relating to the theme of the Forum: economic empowerment of indigenous peoples with a focus on women and youth, and to policy engagement. This peer-learning and capacity-building dimension was considered by the participants as a positive experience to be maintained and further expanded in the context of the Forum. The Forum also enabled participants to learn about successful policy engagement at a national level by sharing six specific cases (Democratic Republic of the Congo, El Salvador, Myanmar, Nepal, Paraguay and Tanzania), organized in cooperation with IWGIA.

The main challenge for the future will be to ensure that the national action plans and/or policies are implemented and that a monitoring system and evaluation are set up. For this to be possible, the availability of financial support, as well as the continued engagement of UN agencies and other organizations was considered key.

Representatives of indigenous peoples' organizations and institutions from different regions, and staff of IFAD's regional divisions, jointly discussed and agreed upon regional action plans for the 2017-2019 period.

Synthesis of Deliberations

Based on the discussions and contributions from the debates, the Synthesis of Deliberations of the 2017 global meeting of the Indigenous Peoples' Forum at IFAD was adopted. The Synthesis was read and discussed during the last Plenary Session of the Forum and in the presence of indigenous peoples' delegates, IFAD management and representatives of IFAD Member States from Argentina, Bolivia, Brazil, Chile, Cuba, the European Union, Guatemala, Hungary, Italy, Malawi, Morocco, the Netherlands, Switzerland and Venezuela.

IFAD's management welcomed the concise and substantive Synthesis of Deliberations and emphasized that the recommendations to IFAD provide concrete directions and steps for sustaining and strengthening the partnership. The Vice-President of IFAD stated that the organization is ready to engage more actively with indigenous peoples in order to facilitate better access to markets and to establish innovative and inclusive collaboration with the private sector.

Closing of the Forum

The Forum was closed by the Vice-President of IFAD, who stated that "the voice, knowledge and identity of the indigenous peoples must be properly recognized and listened to, if the international community is to achieve the Sustainable Development Goals by 2030". He reaffirmed the shared principle of free, prior and informed consent and added that "IFAD will continue to focus on empowering indigenous peoples and the most marginalized, promoting community-based and self-driven

development approaches". In fact, "for development to be effective, inclusive and sustainable, it must also be self-driven".

Other key events around the Forum

Reading of Synthesis of Deliberation to the 40th session of the Governing Council. On 14 February, the Synthesis of Deliberations was delivered to the 40th session of IFAD's Governing Council.

Indigenous Peoples' Panel at the Governing Council. The panel entitled "A decade of IFAD's Partnership with indigenous peoples. Approaching the 10th anniversary of the UN Declaration on the Rights of Indigenous Peoples" took place during IFAD's Governing Council on 15 February. Indigenous panelists[2] discussed the results achieved in implementing the IFAD Policy on Engagement with Indigenous Peoples, and highlighted the best practices and lessons learnt in the partnership with IFAD, particularly in terms of the design of IFAD-funded strategies and projects, and policy dialogue. They also emphasized the relevance of the IPAF, with special mention of how it contributed to the economic empowerment of indigenous peoples (particularly women and youth) by building on indigenous communities' self-driven development. Challenges, opportunities and solutions to be advanced for the future to contribute to the 2030 Agenda for Sustainable Development, and to the IFAD Strategic Framework 2016-2025, were also shared.

Papal audience. On 15 February, a delegation composed of 35 representatives from indigenous peoples was received in the Vatican's Paul VI Hall for a Private Audience with Pope Francis, joined by IFAD staff.

In his brief address to indigenous representatives, Pope Francis discussed key aspects of the economic empowerment of indigenous peoples and called on governments to recognize that indigenous communities are a part of the population to be appreciated and consulted, and whose full participation should be promoted at the local and national level.

Notes and references

1. More information available at: https://www.ifad.org/web/guest/indigenous-peoples-forum
2. The panel was moderated by Ms Mirna Cunningham, and consisted of the following participants: Ms Joan Carling, indigenous activist from the Cordillera (Philippines) working on indigenous issues for more than 20 years, appointed by the UN Economic and Social Council as an indigenous expert of UNPFII (2014 – 2016); Mr. Elifuraha Laltaika, attorney and Executive Director of the Association for Law and Advocacy for Pastoralists, and recently nominated Member of the UN Permanent Forum on Indigenous Issues; Ms Maria Teresa Zapeta Mendoza, indigenous leader from Guatemala and programme manager of the International Indigenous Women Forum; Mr. Jorge Alberto Jiménez, General Director from the Ministry for Foreign Affairs of El Salvador. Ms Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous peoples, also participated in the panel as a special guest.

This article is a short summary of the Report and Proceedings of the Third Global Meeting of the Indigenous Peoples' Forum at International Fund for Agricultural Development (IFAD) *prepared by* ***Lola García-Alix,*** *Team Coordinator and Senior Advisor on Global Governance at IWGIA.*

THE GLOBAL INDIGENOUS YOUTH CAUCUS

It is estimated that there are more than 370 million indigenous peoples in the world, approximately 45% of whom are between 15 and 30 years of age. This group of indigenous peoples faces numerous challenges, including marginalization, migration and early motherhood. Despite these problems, indigenous youth continue to organize to promote their rights. The Global Indigenous Youth Caucus (GIYC) is a global network of numerous indigenous youth from the seven socio-cultural indigenous regions. Since the first session of the United Nations Permanent Forum on Indigenous Issues UNPFII, young indigenous participants have gathered together to develop statements voicing their concerns. The GIYC was formally inaugurated in 2006 and has since then convened every day during the annual session of UNPFII. In 2008, UNPFII recognized the GIYC as a working caucus. The GIYC has two or three co-chairs who share the responsibility of organizing, coordinating and communicating with the members of the GIYC. The GIYC has two to three Regional Focal Points from each of the seven socio-cultural regions and these reach out to the indigenous youth in their region. The GIYC aims to connect indigenous youth across borders and continents to contribute to the struggle for indigenous peoples' rights and to build their capacity to carry on the indigenous cultural heritage.

Inter-connected challenges of indigenous youth

As a segment of the general indigenous population, indigenous youth are the targets of discrimination, marginalization and assimilation. They face additional problems such as urban migration, discrimination, a lack of protection of their territories and traditional knowledge, suicide, and self-harm.

These challenges are connected. The lack of opportunities in indigenous territories pushes indigenous youth to migrate to urban areas looking for better educational and employment opportunities. Once they have migrated to urban areas, they face harsh discrimination. Urban areas are often hostile to indigenous peoples' culture and ways of life. Indigenous migrant youths rarely have access to education or employment opportunities.[1] In addition, although physically and psychologically separated from their culture and territories, they inherit a responsibility to protect their traditional lands and culture, including their traditional knowledge and traditional cultural expressions, from misappropriation.[2] The trauma of colonialism, discrimination, and the difficulties they face in trying to protect their territories and traditional knowledge, forces indigenous youth into unsustainable and desperate situations in which, lamentably, they engage in self-harming behavior and/or commit suicide.[3]

Despite the challenging situations indigenous youth face, they have organized at the local, national, regional and international levels. This article introduces the work of the Global Indigenous Youth Caucus (GIYC), as a global network of indigenous youth aimed at promoting indigenous youth voices in the UN System.

Who are indigenous youth?

Much attention was given to the development of an international definition and age framework for youth. The Ibero-American Youth Convention defines youth as an individual person between 15 and 24 years of age.[4] International law has not yet established a universal definition of or age criterion for "youth".[5] Similarly, during the negotiation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the UN System did not adopt an international definition of "indigenous peoples".[6] Instead, based on indigenous peoples' right to self-determi-

nation, it recognized two significant rights to develop an understanding of who indigenous peoples are: the right to self-determination[7] and the right to "determine their own membership".[8]

The indigenous youth movement has repeatedly demonstrated its commitment to the indigenous rights movement. Indigenous youth do not aspire to replace the current indigenous leaders; on the contrary, they are working together with those current leaders and honor the struggle of past generations.[9] Despite this commitment, indigenous youth still face several challenges to participating in the international arena.[10] As part of the indigenous rights movement, indigenous youth promote the right to self-determination and self-identification of indigenous peoples as one of their core aspirations. For many indigenous peoples, the transition from youth to adulthood is marked by a transitional ritual, finding a partner or marrying, mastering a hunting, fishing or agricultural technique, etc. Once an individual reaches adulthood, she or he is ready to fulfill obligations in the community, and so the stage of youth is important because it is when an individual learns how to fulfill those responsibilities. The definition of the term "youth" should not be based on age criteria but on indigenous peoples' traditions and customary law.

For practical purposes, the GIYC has proposed a three-step test to determine who should be considered indigenous youth: (i) self-identifying as an indigenous person, (ii) self-identifying as a "youth", and (iii) being recognized by the indigenous peoples/nation/community as "indigenous youth" as established in their customary law.

Indigenous youth's participation at the UN

The GIYC was born out of the context of the United Nations Permanent Forum on Indigenous Issues (UNPFII). The main focus of its advocacy is to influence the work of the UNPFII. The GIYC helps organize meetings of Latin American indigenous youth in preparation for the UNPFII with the aim of reaching agreements and consolidating positions on the local, national and Latin American level. The outcomes of these regional meetings serve as mandates for the youth representatives who attend the UNPFII session.[11]

The GIYC organizes a half-day workshop and a half-day preparatory meeting on the Sunday before the UNPFII session.[12] These meetings

introduce the mandate of the UNPFII and its method of work, as well as the GIYC's method of work during the UNPFII session. During the following weeks, the youth caucus meets prior to the official session. In the GIYC's daily sessions, it agrees on comprehensive positions that are presented to the UNPFII as statements during the plenary.

The GIYC also organizes several meetings with relevant offices and organizations such as IFAD, ILC, Slow Food,[13] FAO,[14] and WIPO,[15] as well as the Inter-Agency Support Group (IASG).[16] After the GIYC and IASG met in New York during UNPFII's 16th session, the GIYC was invited to participate in the IASG annual meeting in Quito in June 2017[17] focused on the national implementation of the System-Wide Action Plan.[18]

In its 16th session report, UNPFII devoted a specific section to the situation of indigenous youth. It recommended increased indigenous youth participation in the IASG, the United Nations Inter-Agency Network on Youth,[19] HLPF, CSW, and other UN forums,[20] as well as the provision of state financial support to the UN Voluntary Fund for Indigenous Peoples.[21] The UNPFII noted, as a positive development, the GIYC's preparatory meeting hosted by FAO,[22] and the PAHO/WHO health plan for indigenous youth in Latin America.[23]

The GIYC has expanded its scope of work to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the Special Rapporteur on the rights of indigenous peoples (UNSR), thus covering the three UN bodies with specific mandates on indigenous peoples' rights. During the 10th session of EMRIP in 2017, the GIYC was able to organize a preparatory meeting the day before the session, as well as daily meetings during the session to consolidate political positions. As is common practice in the UNPFII sessions, the GIYC presented its positions in statements during the plenary. While the GIYC contributed to the discussion during the EMRIP session, it also organized a side event with WHO/PAHO on indigenous youth health.[24] The GIYC is currently exploring ways of working with EMRIP's new mandate of engaging with individual countries on the implementation of UNDRIP.

The GIYC also offers a platform to promote dialogue with the UNSR, within its mandate, in order to direct its attention to the conditions of indigenous youth.[25] During the UNPFII session in 2017, the GIYC met with the UNSR to present several cases of human rights violations from different regions. It also organized a direct dialogue between the UNSR and a delegation of indigenous Mexican youth in the context of the official country visit of the UNSR to Mexico in November 2017. This

meeting was designed to ensure that the UNSR met with indigenous youth during the Mexico country visit and provided the UNSR with some preliminary information. In coordination with the GIYC, the *Red de Jóvenes Indígenas de America Latina* (Latin American Indigenous Youth Network) presented a national report on the situation of indigenous youth in Mexico prior to the visit of the UNSR and also participated during the country visit.

Despite the coordinated and vigorous work of the GIYC, indigenous youth still face a number of challenges to their participation in the UN. To being with, the lack of funding is a serious challenge to participating in international forums. In spite of the GIYC's strong governance structure and its decision-making process, it has no administrative or secretarial body to support its goals. Despite the GIYC's efforts to engage in international forums, its participation is still limited.

Indigenous youth preparatory meeting

In April 2017, with the support of the UN Food and Agriculture Organization (FAO), the GIYC held a global preparatory meeting.[26] The outcome of this dialogue is reflected in the Rome Statement on the Contribution of Indigenous Youth Towards a World Without Hunger (Rome Statement).[27] This Statement makes several recommendations; two are currently progressing towards their implementation: the creation of an internship program, and establishment of a Consultative Indigenous Youth Forum (Youth Forum).

The GIYC has emphasized the importance of ensuring capacity building programs within the UN System. In August 2017, the FAO launched an indigenous internship program in several national offices and at the FAO headquarters, for a minimum of three months.[28] This program allowed the FAO to benefit from the experience of indigenous youth and, at the same time, for the youth to gain international and professional experience. The GIYC recognizes the value of the FAO internship program and invites other UN agencies to establish similar programs.[29] The GIYC recommends that such programs should last a minimum of six months and have an intercultural approach, giving the indigenous beneficiaries sufficient time to contribute effectively within the UN agency, and producing future indigenous professionals who can be part of the UN machinery.

The GIYC is working to establish a Global Indigenous Youth Consultative Forum to Eliminate Hunger within the FAO (Youth Forum)[30] to guarantee the role of indigenous youth in the implementation of Sustainable Development Goal 2.[31] The FAO and the GIYC have initiated a negotiation process on the concept, structure and method of work of the Youth Forum. The GIYC has conducted regional consultations to establish regional positions towards the Youth Forum in the FAO.[32]. A GIYC delegation, composed of one regional focal point and one co-chair, participated in the 44th session of the Committee on World Food Security (CFS) to promote the Youth Forum among the FAO Member States and the Civil Society Mechanism. The GIYC delegation also co-organized a side event on the inter-generational transmission of traditional knowledge with the FAO, and the governments of Norway and Panama.[33] During the CSF, the GIYC had the opportunity to have an honest discussion on the formation and scope of the Youth Forum. At the time of writing, the FAO and GIYC are involved in discussions on the Youth Forum. It is felt that the Youth Forum within the FAO should take place every two years, commencing in 2018. It will bring together indigenous youth from the seven socio-cultural regions. It will probably have an advisory committee composed of indigenous elders from the seven geo-cultural regions.

Sustainable Development Goals

The GIYC has developed positions on the implementation of the SDGs from an indigenous youth perspective. On SDG 4: inclusive and quality education, the indigenous youth propose an intercultural approach to avoid unwanted assimilation policies and, at the same time, ensuring access to quality education for indigenous children and youth. On SDG 2: an end to hunger, the GIYC promotes the value of traditional knowledge, its inter-generational transmission, and indigenous food systems. On SGD 3: health and well-being, the GIYC encourages developing indicators for indigenous peoples, particularly indigenous children and youth, and an intercultural approach to sexual and reproductive health. The GIYC was invited by the Indigenous Peoples Major Group[34] to participate in the High-level Political Forum on Sustainable Development in July 2017. The GIYC was also invited to join the indigenous delegation to the Global Landscapes Forum in Bonn, December 2017,[35] in which the GIYC promoted the use of traditional knowledge in forest conservation.[36]

Regional initiatives

The year 2017 commemorated the 10th anniversary of UNDRIP and, with the support of the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean (FILAC),[37] the *Red de Jóvenes Indígenas de Latino America* drafted a regional report on the 10 years of UNDRIP implementation from their perspective.[38] This report was the result of an intensive dialogue among indigenous youth in Latin America.[39] It presents the situation of eight issues: discrimination, land and territories, culture, education, health, participation, work, and communication. It also highlights the main problems identified by indigenous youth: migration to urban areas[40] and early motherhood in indigenous girls.[41] It is a regional effort to promote their voices, and was presented during the 16th session of the UNPFII. The GIYC is currently encouraging other regions to develop this kind of report on the situation of indigenous youth.

Indigenous youth in Latin America have also developed a Health Plan for the Indigenous Youth of Latin America and the Caribbean[42] with the support of PAHO. This plan has six areas of action: generation of evidence, intercultural proficiency, political action, socio-cultural participation, traditional medicine, and sexual and reproductive rights. In the first area of action, PAHO and ECLAC organized a Discussion Workshop on Inputs for the Design, Implementation and Monitoring of Health Policies and Plans for Indigenous Youth, 30-31 October, in Santiago, Chile.[43]

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8. International Labour Organization, Convention concerning Indigenous and Tribal Peoples in Independent Countries, No. 169, Article 1(2). Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.
9. Dali Angel (interview) Indigenous youth: activism for equal rights, UN DESA Voice VOL 20, No. 05 (May 2016), available at: https://www.un.org/development/desa/undesavoice/expert-voices/2016/05#26615
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11. The regional focal points, with the support of the co-chairs, organize regional preparatory meeting. Examples of these are the Regional Preparatory Meeting toward the 16th session of the UNPFII in Brazil, 10 to 12 April 2017. (See: Red de Jóvenes Indígenas de America Latina: https://www.facebook.com/reddejovenesindigenasamericalatina/ photo / a.1485343205102388.1073741825.1485343161769059/1666204853682888/ ?type=3&theater also see: REJUIND: https://www.facebook.com/rejuind/ photos/ a.2097770263783110.107374187914655611270040 30/ 2100295173530619/ ?type=3&theater), Regional preparatory meeting for all UN bodies in Asia region, and the preparatory meeting of the Pacific region. However, not all regions organize these types of meetings.
12. GIYC: Preparatory Meeting for the 15th session of the UNPFII: https://www.facebook.com/pg/GlobalIndigenousYouthCaucus/photos/?tab=album&album_id=984566461658477
13. The International Fund for Agricultural Development – IFAD, and International Land Coalition – ILC. Side event: Achievements and challenges for the empowerment of indigenous youth: https://www.facebook.com/GlobalIndigenousYouthCaucus / photos / a.374670915981371.1073741828.372363052878824/ 1296987663749687/ ?type=3&theater, https://www.facebook.com/GlobalIndigenousYouthCaucus /photos/ a.374670915981371.1073741828.372363052878824/ 1288716537910133/?type=3&theater
14. The Food and Agriculture Organization – FAO. Side event: Indigenous youth's perspective in the tenth anniversary of the United Nations Declaration on the Rights of Indigenous Peoples: https://www.facebook.com/GlobalIndigenousYouthCaucus / photos / a.1294594027322384.1073741842.37

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15. The World Intellectual Property Organization – WIPO. Side event: WIPO launches Draft TK Documentation Tool-Kit at UNPFII in New York: http://naturaljustice.org/wipo-launches-draft-tk-documentation-tool-kit-at-unpfii-in-new-york/
16. Inter-Agency Support Group on Indigenous Issues: https://www.un.org/development/desa/indigenouspeoples/about-us/inter-agency-support-group.html
17. UN News – Ecuador, Reunión anual del Grupo Inter-Agencial de Apoyo a los Temas Indígenas de la ONU (3 June 2017), available at: http://www.un.org.ec/?p=11896
18. System-Wide Action Plan – SWAP: https://www.un.org/development/desa/indigenouspeoples/about-us/system-wide-action-plan.html
19. UNPFII Report on the 16th session (2017) UN Doc. E/2017/43 -E/C.19/2017/11, para. 56.
20. Supra note 57
21. Supra note .58
22. Supra note 59
23. Supra note 60
24. Side event on the 10th anniversary of UNDRIP: indigenous youth and health.
25. GIYC: Meeting with the Special Rapporteur, Ms. Victoria Tauli-Corpus:
26. The UNPFII has welcomed the GIYC preparatory meeting hosted by FAO. The UNPFII encourages this practice to be scaled up in 2018. UNPFII Report on the 16th session (2017) UN Doc. E/2017/43 -E/C.19/2017/11, para. 59. See: A statement by FAO Director-General José Graziano da Silva in his meeting with the GIYC: http://www.fao.org/about/who-we-are/director-gen/faodg-statements/detail/en/c/878902/, FAO and indigenous youth working together for Zero Hunger: http://www.fao.org/indigenous-peoples/our-pillars/focus-areas-youth/en/
27. Rome Statement on the Contribution of Indigenous Youth Towards a World Without Hunger, available at: http://www.fao.org/indigenous-peoples/our-pillars/focus-areas-youth/rome-statement/en/. The Rome Statement was presented to the UNPFII at its 16th session.
28. New internship program for indigenous youth at FAO: http://www.fao.org/indigenous-peoples/news-article/en/c/1029966/
29. The OHCHR established a fellowship program in 1997, and a senior fellowship program: http://www.ohchr.org/EN/Issues/IPeoples/Pages/Fellowship.aspx. The WIPO established its fellowship program in 2009: http://www.wipo.int/tk/en/indigenous/fellowship/
30. The creation of the Youth Forum is a recommendation of the Rome Statement, Part C, paragraph 1. See: http://www.fao.org/indigenous-peoples/our-pillars/focus-areas-youth/rome-statement/en/
31. Sustainable Development Goals 2: End hunger, achieve food security and improve nutrition and promote sustainable agriculture. See: https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals
32. Taller de discusión sobre insumos para el diseño, implementación y

seguimiento de políticas y planes de salud para la juventud indígena, en sede CEPAL and PAHO en Chile: https://www.facebook.com/reddejovenesindigenasamericalatina/posts/1736980796605293

33. GIYC side-event: An intergenerational knowledge exchange: indigenous forest management and food security in the context of climate change: http://www.fao.org/cfs/home/plenary/side-events/36/en/
34. Indigenous Peoples Major Group: https://indigenouspeoples-sdg.org/index.php/english/
35. Indigenous peoples confirm involvement in GLF to 2022: https://www.cifor.org/press-releases/indigenous-peoples-confirm-involvement-in-glf-to-2022/
36. Traditional knowledge and shifting cultivation: https://www.facebook.com/reddejovenesindigenasamericalatina/photos/ a.1486246518345390.1073741829.1485343161769059/ 1755371294766243/?type=3&theater
37. FILAC http://www.filac.org/wp/
38. Conde, supra note 1
39. This report is the result of a collective effort of indigenous youth in the Latin American region, which includes the "Latin American Assembly of Indigenous Youth" in El Faisán, Oaxaca, Mexico, 6 and 7 August 2016; the Virtual Seminar "Regional Perspective of Indigenous Youth to 10 years of the Declaration of the United Nations on the Rights of Indigenous Peoples", 27 March 2017; and the Latin American Meeting of Indigenous Youth with PAHO, 11 and 12 April 2017, in Brasilia, Brazil.
40. Conde, supra note 1, pa. 39ss
41. Conde, supra note 1, pa. 23
42. Plan de salud para la juventud indígena de América Latina y el Caribe, available at: http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=40874&Itemid=270%20&lang=en
43. Discussion Workshop on Inputs for the Design, Implementation and Monitoring of Health Policies and Plans for the Indigenous Youth, 30 and 31 October, Santiago, Chile https://www.cepal.org/es/eventos/taller-discusion-insumos-diseno-implementacion-seguimientos-politicas-planes-salud-la-1

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INDIGENOUS WOMEN IN THE UNITED NATIONS COMMISSION ON THE STATUS OF WOMEN

The United Nations Commission on the Status of Women is the main international body devoted exclusively to promoting gender equality and women's empowerment. It is an organic commission under the Economic and Social Council created pursuant to resolution 11 (II) of the Council, dated 21 June 1946.

The United Nations Commission on the Status of Women conducts crucial work on promoting the rights of women, documenting the reality experienced by women around the world, and drafting international standards on gender equality and women's empowerment. It plays a leading role in monitoring and reviewing the progress and difficulties encountered in implementing the Declaration and Beijing Platform for Action, as well as incorporating a gender perspective into all of the UN's activities.

During the Commission's annual period of sessions, representatives of the UN Member States, civil society organisations and UN entities meet for two weeks at the UN's offices in New York to debate the progress and implementation gaps in the Declaration and 1995 Beijing Platform for Action, the main international policy document on gender equality, as well as emerging issues affecting gender equality and women's empowerment. The Member States agree actions to speed up progress in this area and to promote the enjoyment of women's rights in political, economic and social spheres. The conclusions and recommendations of each period of sessions are sent to the Economic and Social Council for follow-up.

Over the years, indigenous women's participation and lobbying strategies have evolved. They have been able to "take the floor" and position their perspectives in spaces of seriously limited access to civil society through the support of friendly states, the Secretariat of the Permanent Forum on Indigenous Issues and through the formation of alliances with feminist activists committed to breaking the current paradigms. Significant progress has been made in recognising indigenous women's contributions to society aimed at creating a sustainable world.

Indigenous women participated in the Fourth World Conference on Women in Beijing in September 1995, which achieved unprecedented attendance: 17,000 participants and 30,000 activists went to Beijing, representing a key moment for the women's movement. The dream shared at that time was one of gender equality and the empowerment of all women everywhere, in accordance with the Beijing Declaration and Platform for Action,[1] which is considered a source of guidance and inspiration.

The indigenous women who participated in this space organised strategically to ensure their influence, thus marking a turning point in the indigenous women's movement for the defence of their individual and collective rights.

The UN Commission on the Status of Women

The first resolution adopted on indigenous women by the Commission on the Status of Women (CSW) was in 2005 through resolution 49/7, entitled "Indigenous women: beyond the ten-year review of the Beijing Declaration and Platform for Action".[2] This urged governments, intergovernmental bodies, the private sector and civil society to adopt measures that would guarantee the full and effective participation of indigenous women in all aspects of society.

Subsequently, in 2012, the CSW adopted resolution 56/4,[3] entitled "Indigenous women: key actors in poverty and hunger eradication", a milestone in recognising the role of indigenous women and our traditional knowledge in eradicating poverty and hunger. In addition, it reaffirmed that indigenous women are often affected by multiple forms of discrimination and poverty, which increase our vulnerability to all forms of violence, and it highlighted the need to take decisive measures to confront violence against indigenous women and children.

Indigenous women: steps, voices and collective

The World Conference of Indigenous Women, "*Progress and challenges regarding the future we want*", held in Lima in October 2013, resulted in a policy position and action plan that formed a framework for eradicating the violence, discrimination, racism and poverty suffered by indigenous women the world over. This space enabled global coordination of indigenous women's demands and offered a unique opportunity to prepare for the Plenary High-level Meeting of the General Assembly, known as the World Conference on Indigenous Peoples (September 2014). In the Final Document emerging from this Conference, adopted unanimously by the General Assembly,[4] different organs of the UN system, including in particular the Commission on the Status of Women, were expressly invited to consider the issue of indigenous women's empowerment at a future period of sessions (paragraph 19).

Through the lobbying work undertaken by indigenous women, the report of the 14th session of the Permanent Forum on Indigenous Issues[5] recommended that "the Commission on the Status of Women consider the empowerment of indigenous women as a priority theme of its 61st session, in 2017, on the occasion of the 10th anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples".

In 2016, the Commission on the Status of Women thus decided to consider the issue of indigenous women's empowerment at its 2017 session (61st period of sessions). This decision was particularly important as it coincided with the 10th anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples in 2017, which called for attention to the rights and needs of indigenous women, effective measures to ensure continuing improvements in their economic and social rights and full protection and guarantees from all forms of violence and discrimination (see articles 21 and 22).[6]

The current situation is thus aimed at fulfilling the 2030 Agenda for Sustainable Development, which undertakes to leave no one behind and provides additional impetus for tackling the situation of indigenous women.

Indigenous women's empowerment as a right

Indigenous women undoubtedly appreciate the fact that the CSW has enabled them to speak with their own voice within the global forum of

the women's movement and they welcomed the fact that its 61st period of sessions would consider indigenous women's empowerment as a new priority theme.

During discussions in the CSW, the contributions indigenous women make on the basis of their ancestral knowledge have been particularly highlighted, as this knowledge is key to boosting different local economies with the aim of eradicating poverty, ensuring food sovereignty and security, and bringing about the sustainable development of their territories.

The concept of "empowerment" has also been analysed, reaching the constructive conclusion that each culture has its own concept of empowerment and indigenous cultures are in constant transformation.

For indigenous women, empowerment is closely linked to full exercise of their indigenous and collective rights, in accordance with their world vision. It forms part of their philosophy of "good living" or "living well", their collective responsibility to protect and live in harmony with Mother Earth. This also includes the right of each people to freely choose their economic, social and cultural development and to have control over their territories and resources, which is very often ignored by large companies, with the backing of the state.

The world is changing in ways that mean that expressions of indigenous women's empowerment are now becoming more visible through innovative experiences of artistic ventures, traditional foods, community tourism, design and weaving, activism combined with political empowerment, food sovereignty and security, and even the implementation of economic instruments of empowerment such as the Indigenous Women's Fund (a YN), the only fund led by and for indigenous women.

It is important to emphasise that indigenous ventures are guided by principles of complementarity and reciprocity and that, within the communities, these revolve around collective and holistic well-being.

One of the outstanding demands of the indigenous women's agenda is the need to ensure their full and effective participation in decision-making processes at all levels, along with the elimination of violence against indigenous women and children, economic opportunities for indigenous women and the impact of climate change on indigenous women's empowerment and their responses. The solutions will only be sustainable if free, prior and informed consent is ensured.

Challenges and lessons learnt

Migration is pressuring indigenous peoples to become involved in the formal economic system, generally under conditions of inequality, particularly for indigenous women and youth. The constant struggle to access opportunities is never-ending and the greatest challenge is to overcome structural violence and discrimination in all spheres.

There is much talk of empowerment but, for this to be real for indigenous women, it requires political will and also an intersectionality between culturally-relevant training processes, political participation in decision-making spaces and access to economic and technical resources that can boost the progress made so far.

"There can be no economic empowerment, there can be no food security and sovereignty, without territory, without land, without self-determination. This means that indigenous women must be included in decision-making on public policies, with a ring-fenced budget for indigenous peoples and women." Teresa Zapeta, Executive Director of IIWF.

The Commission and the conclusions reached at CSW61

Regardless of whether they are few or many, indigenous women are citizens, subjects of law, key actors in guaranteeing a decent life for their peoples, and so recent progress in the international regulatory framework must be taken into account. This framework needs to be linked to the Sustainable Development Goals (SDGs) and their targets; this is necessary for indigenous women but also as a tool for defending their rights within spaces they have already won and those yet to be won.

Indigenous women go far beyond mere rural contexts; they are the guardians of knowledge since time immemorial. The next step is therefore to implement this regulatory framework and for indigenous women to be considered nationally as agents of change: from recognition of their existence through to data disaggregated by ethnic group and gender through to implementation of states' commitments in the context of international laws, and policies and programmes with specific budgets allocated to indigenous women.

The following are the conclusions on indigenous women that were agreed during the CSW61.[7]

The Commission recognises that economic empowerment, inclu-

sion and development of indigenous women, including through the establishment of indigenous-owned companies, enables them to improve their social, cultural and civil/political involvement, to achieve greater economic independence and to build a more sustainable community, as well as more resilient communities, also bearing in mind the contribution of indigenous peoples to the economy more generally.

The Commission also urges governments at all levels, and as appropriate, along with the relevant bodies of the UN system and international and regional organisations, within their respective mandates and bearing in mind national priorities, to invite civil society, private sector, organisations and unions, as appropriate, to take the following measures: with regard to implementing socio-economic policies for the economic empowerment of women, the Commission concluded that measures should be adopted to promote the economic empowerment of indigenous women, in particular, guaranteeing their access to an inclusive and quality education and their significant participation in the economy; addressing the multiple and intersecting forms of discrimination they face, including violence; and promoting their participation in relevant decision-making processes at all levels and in all areas, respecting and protecting their traditional and ancestral knowledge and taking note of the importance of the UN Declaration on the Rights of Indigenous Peoples for indigenous women and children.

Improving lobbying

Indigenous women are committed to continuing to monitor the decisions and recommendations of the Commission, as well as to continuing to strengthen their lobbying and to developing strategic alliances with other relevant actors in order to increase the visibility of indigenous women's aspirations as subjects of law during the next session of the Commission (CSW62) to be held in New York in March 2018.

Notes and references

1. See http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20S.pdf
2. See https://undocs.org/E/CN.6/2005/11
3. See https://undocs.org/E/CN.6/2012/16

4. See http://www.un.org/es/comun/docs/?symbol=A/RES/69/2
5. See http://www.acnur.org/t3/fileadmin/Documentos/BDL/2015/10087.pdf?view=1
6. See Declaración de la ONU sobre los Derechos de los Pueblos Indígenas: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_es.pdf
7. See E/2017/27: http://www.unwomen.org/en/csw/csw61-2017

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UN FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty created 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, such as more frequent droughts, storms and hurricanes, melting ice, rising sea levels, flooding, forest fires, etc. The UNFCCC entered into force on 21 March 1994, and has near universal membership, with 197 countries as ratifying parties. In 2015, the UNFCCC adopted the Paris Agreement, a universal legally binding agreement to reduce GHG emissions. By March 2018, 174 out of 197 parties to the UNFCCC had ratified the Paris Agreement.

Indigenous Peoples that are following the UNFCCC are organised in the International Indigenous Peoples' Forum on Climate Change (IIPFCC), which serves as a mechanism for developing the united positions/statements of Indigenous Peoples and continuing effective lobbying and advocacy work in the UNFCCC meetings/sessions. In 2012, the IIPFCC established the Global Steering Committee (GSC) with two representatives from each of the seven Indigenous Peoples' regions (Africa, Asia, Arctic, North America, Latin America and Caribbean, Pacific, Eastern Europe and Russia) and 2-3 co-chairs. The GSC has a mandate to facilitate better coordination of the Indigenous Peoples' major group between official meetings.

Indigenous Peoples' rights and issues cut across almost all areas of negotiation but have been highlighted most significantly within the REDD+ (Reducing Emissions from Deforestation and Forest Degradation, Conservation, Enhancement of Carbon Stocks and Sustainable Management of Forests), one of the mitigation measures negotiated under the AWG-LCA and SBSTA and the so-called "Local Communities and Indigenous Peoples' Knowledge-sharing Platform" (LCIP Platform) which was established by a COP21 decision in Paris in 2015.

The Local Communities and Indigenous Peoples' Knowledge-sharing Platform

After the establishment of the LCIP Platform at COP21 in 2015 in Paris (see The Indigenous World 2016), a decision to operationalise the platform was adopted at COP22 in Marrakesh in 2016 (see The Indigenous World 2017). This operationalisation process therefore took off in 2017 and was the main focus for most Indigenous Peoples' representatives during this year.

Two informal meetings took place, in Belgium in February 2017 and in Canada in September, organised by the respective governments, outside of the official UNFCCC process. Parties to the UNFCCC and members of the Global Steering Committee under the IIPFCC from the seven global indigenous regions, as well as technical advisers, participated in these meetings.

A multi-stakeholder dialogue took place during the UNFCCC session in Bonn in May, according to the COP22 decision. Approximately 14 states participated in the dialogue from both developed and developing countries. The dialogue was facilitated by the SBSTA Chair and an indigenous co-moderator who had been nominated by the International Indigenous Peoples' Forum on Climate Change (IIPFCC). Based on this dialogue and prior submissions by Parties and observers, the UNFCCC Secretariat published a report in August with a proposal for how the operationalisation of the LCIP Platform could be advanced.

At COP 23, Parties and Indigenous Peoples met throughout the negotiations in both formal and informal sessions to discuss the LCIP Platform. By the end of COP 23, Parties had adopted a decision to operationalise the LCIP Platform, and the purpose and function of the Platform was agreed upon. The decision includes a reference to the UNDRIP and states that:

"The overall purpose of the platform will be to strengthen the knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, to facilitate the exchange of experience and sharing of best practices on mitigation and adaptation in a holistic and integrated manner and to enhance the engagement of local communities and indigenous peoples in the UNFCCC process". (Decision 2/CP23)[1].

It was also decided that "the platform will deliver the functions of exchange of knowledge, capacity for engagement and integration with climate change policies and actions."

Initial steps to set up the structure through a facilitative working group were furthermore agreed upon. However, the structure of the LCIP Platform was and continues to be the most contentious issue among Parties and the Indigenous Peoples.

This is also reflected in the text of the decision, where four out of five of the principles presented by the Indigenous Peoples were included in the text. There is reference to 1) the full and effective participation of Indigenous Peoples, 2) equal status and representation of Indigenous Peoples and Parties, including in leadership roles, 3) self-selection of indigenous representatives in accordance with Indigenous Peoples' own procedures; and 4) adequate funding from the UNFCCC Secretariat and voluntary contributions to enable the aforementioned functions. However, the Indigenous Peoples' fifth principle, related to the structure and demanding that "the platform must be within the UNFCCC framework, allowing it to inform decision-making and actions at national, regional, and international levels" is not part of the decision.

The key issue related to structure is how to create a space for dialogue under the Convention with equal status between local communities, Indigenous Peoples and Parties that does not "trigger" the UNFCCC's rules of procedure whereby only Parties can speak and participate in a negotiating body, while also ensuring that Indigenous Peoples can inform decision-making under the UNFCCC. This requires innovative thinking and drawing on past precedents. The compromise at COP23 was to define the first activity of the LCIP Platform, which will be a multi-stakeholder workshop at the UNFCCC meeting in Bonn in May 2018, at which a facilitative working group (which will not be a negotiating body under the Convention) should be established. Furthermore, the COP23 decision requests that the workshop establish the modalities for developing a work plan for full implementation of the platform's functions and providing recommendations for COP24 in December 2018.

The outcome of COP23 with regard to the LCIP Platform has caused mixed reactions among Indigenous Peoples. Some argue that the decision text is a small but important step for enhancing Indigenous Peoples' engagement in the UNFCCC processes, while others find that the language on Indigenous Peoples' rights is weak, and that Indigenous Peoples, through this decision, will not be able to negotiate or inform decision-making under the UNFCCC, which is disappointing.

Regardless of the view on the current COP23 decision, the major part of the work still lies ahead. It will be important to keep Parties

accountable to the promises made in the decision, whereby full and effective participation of Indigenous Peoples are ensured in the implementation and operationalisation of the LCIP Platform, including ensuring that funding is available for Indigenous Peoples to be able to participate in the negotiations. There is also a need to monitor and follow the further developments of the Platform closely in order to ensure that the perspectives, rights and knowledge of Indigenous Peoples actually inform decision-making under the UNFCCC and the implementation of the Paris Agreement.[2]

A global Indigenous Peoples' Day

For the first time in its history, the UNFCCC recognised the contribution of Indigenous Peoples to climate change actions by celebrating Indigenous Peoples' Day on 7 November. During the day, Indigenous Peoples' events took place encompassing various activities, including a high-level opening attended by Ms Patricia Espinosa, General Secretary of the UNFCCC, His Excellency Mr. Salahedine Mezour, President of COP22, Minister of Foreign Affairs of the Kingdom of Morocco, and His Excellency Ambassador Deo Saran, Ambassador of Climate of the COP23, Fiji. The day was also honoured by a special ritual opening, with Indigenous Peoples' music and dance. The day helped to highlight the expectations Indigenous Peoples had for the COP23 through the Local Communities and Indigenous Peoples' platform.

COP 23 adopts a Gender Action Plan

A new roadmap was adopted at COP23 to incorporate gender equality and women's empowerment in climate change discourse and actions. The creation of the so-called Gender Action Plan (GAP) was agreed upon at COP22 in Marrakech among the parties, building on the work of the Lima Work Programme on Gender established at COP20 in Peru. The Gender Action Plan was developed at the 47th session of the SBI and consequently adopted at COP23 as part of the Lima Work Programme on Gender.[3]

The aim of the Gender Action Plan is to ensure that women can influence climate change decisions, and that women and men are

equally represented in all aspects of the UNFCCC, to increase its effectiveness. The Gender Action Plan is a key step towards recognizing and acknowledging the important role of women in climate action and integrating the gender aspect into all work on climate policy.

The GAP consists of five thematic priority areas under which activities will be carried out to achieve its objective. Indigenous women are particularly mentioned under the priority area related to participation and gender equality, which states that travel funds for women to participate in national delegations to the UNFCCC, including indigenous women, should be made available. As part of monitoring and reporting to the GAP, information on the differentiated impacts of climate change on women and men is called for, with special attention paid to local communities and indigenous peoples.

Indigenous Peoples and the Green Climate Fund

The Green Climate Fund (GCF) was established under the UNFCCC in 2010 and constitutes one of the main funding mechanisms for climate action globally in support of implementation of the Paris Agreement. The GCF was created to support and promote a paradigm shift in climate change-related interventions, which should be both sustainable and transformative.

The development of an Indigenous Peoples' Policy (IP Policy) was one of the key areas related to Indigenous Peoples in the GCF in 2017. The GCF is increasingly approving and considering project proposals within indigenous territories, highlighting the urgency and need for an Indigenous Peoples' Policy that also includes adequate safeguards and a specific consultation policy. Indigenous Peoples' representatives have long argued that the GCF will not be fully compliant with emerging international good practice in terms of recognition, respect and promotion of IP rights, until it has adopted a stand-alone comprehensive IP Policy that contains provisions and criteria for implementing the highest international human rights standards and obligations, including ILO 169 and UNDRIP.

At the last board meeting of 2016, the IP Policy was included in the work plan of the GCF for 2017. This provided a good opportunity for Indigenous Peoples to push for the policy to be adopted in 2017 in order to ensure that future project proposals and other actions and policies of

the GCF align with the IP Policy. Indigenous Peoples have insisted on some key principles that need to be included in the policy:

Do no harm – climate change policies and programs should not cause harm to Indigenous Peoples. A system of safeguards and subsequent compliance and an accountability and monitoring framework should therefore be put in place;

Do good – the positive role and contribution of Indigenous Peoples as key actors in climate mitigation and adaptation, and historical stewards of ecological balance and fragile ecosystems should be recognised formally and practically, by envisaging ways of directly accessing finance to design, develop and implement projects based on traditional livelihoods and traditional knowledge;

The full and effective participation of Indigenous Peoples, including indigenous women, youth and elders at all levels, within the entire GCF delivery chain (board, secretariat, NDAs, accredited entities and projects) grounded in the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other applicable international instruments, enabled through robust Free, Prior and Informed Consent (FPIC).

Throughout 2017, several consultation processes and calls for submissions were undertaken by the GCF Secretariat. Indigenous Peoples, led by a team of indigenous individuals that have followed the GCF since 2015, made a submission, which was endorsed by 105 organisations, both indigenous and non-indigenous. While the policy was not adopted at a board meeting in 2017 as initially hoped for, the third IP Policy draft was prepared in December 2017 based on the consultation of and inputs from Indigenous Peoples and GCF Board members. The IP Policy was adopted at the 19th Board meeting in February 2018 in Songdo, South Korea.[4]

REDD+ and the Green Climate Fund

At its 14th meeting in 2016, the GCF Secretariat was instructed to develop "a request for proposals (RFP) for REDD+ results-based payments (RBP), including guidance consistent with the Warsaw Framework for REDD+ and other REDD+ decisions under the United Nations Framework Convention on Climate Change (UNFCCC)". In September 2017, at its 18th Board Meeting in Cairo, the REDD+ Request for Proposals for Re-

sults-Based Payment was adopted.[5] It can be seen as a great achievement that the decision makes reference to the IP Policy, which at that point had not yet been adopted. Some of the key aspects of this decision include the allocation of USD 500 million to REDD+ RBP projects over the 2013 – 2019 period (meaning you can ask for payments for results achieved within that period). No more than 30% of this total amount can go to one country. The IP Policy must be fully applied. Due diligence needs to be undertaken on safeguards.

Notes and references

1. See http://unfccc.int/resource/docs/2017/cop23/eng/11a01.pdf#page=11
2. See http://unfccc.int/adaptation/items/10475.php
3. See http://unfccc.int/gender_and_climate_change/items/7516.php
4. See https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042
5. See https://www.greenclimate.fund/documents/20182/820027/GCF_B.18_23_-_Decisions_of_the_Board___eighteenth_meeting_of_the_Board__30_September___2_October_2017.pdf/b55d8183-005c-4518-91dc-152113506766

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ASSOCIATION OF SOUTHEAST ASIAN NATIONS (ASEAN)

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 with the signing of the ASEAN Declaration (Bangkok Declaration) by Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei, Cambodia, Lao PDR, Vietnam and Myanmar later joined, making ASEAN a 10-member state organisation. Following World War II and the Cold War, ASEAN's primary aim was regional peace and stability. It has gone on to include in its purpose the acceleration of economic growth, social progress and cultural development through its so-called ASEAN Way, i.e. non-interference, respect for sovereignty and decision-making by consensus.

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.

On 18 November 2012, the ASEAN Human Rights Declaration (AHRD) was adopted to provide a framework for human rights cooperation in ASEAN. The ASEAN Intergovernmental Commission on Human Rights (AICHR) is the core human rights mechanism of ASEAN that was mandated to develop and oversee the adoption of the AHRD. Created in 2009, AICHR is also mandated to interpret the provisions of AHRD and ensure its implementation in the region.

AHRD, does not make any direct reference to "indigenous peoples" despite the estimated population of 100 million people identifying as indigenous in Southeast Asia.[1] However, through AICHR's consultative status,[2] which it granted to Asia Indigenous Peoples' Pact (AIPP) in December 2016, it is hoped that indigenous peoples' issues and rights will have more visibility in AICHR's work.[3]

ASEAN's Human Rights Declaration and Intergovernmental Commission on Human Rights

On 28 November 2017, AICHR convened a roundtable discussion (RTD) on AHRD. The RTD provided an opportunity for civil society organisations (CSOs) in a consultative relationship with AICHR, including the Asia Indigenous Peoples' Pact (AIPP), to interface with the AICHR representatives. In the joint CSO statement that was presented and submitted during the RTD, they expressed their appreciation of AICHR in organising the interface and laid down their recommendations.[4] Among the key recommendations forwarded to AICHR were: a strengthening of communication mechanisms between CSOs, including indigenous peoples and the AICHR, through the institutionalisation of an annual meeting; and the accreditation of additional CSOs by AICHR. They also included joint efforts within ASEAN to document key human rights concerns at the national and regional level for the protection and promotion of human rights, and supporting CSOs to ensure that ASEAN Member States consistently uphold human rights principles, with particular emphasis on implementation of the Sustainable Development Goals (SDGs).

AICHR has yet to release its official report regarding the RTD, which will hopefully provide a clearer response to the CSOs' statement and recommendations. The issues of protecting and promoting human rights and AICHR's need to strengthen its mandate on both aspects were not among the points highlighted in their press statement on the RTD.[5] These issues have been among the long-standing criticisms of AICHR made not only by indigenous peoples' organisations in the region but also by many other CSOs—both from organisations accredited and non-accredited with AICHR. The AICHR press statement merely reiterated the fact that the event was primarily a commemoration of the 50th and 5th anniversaries of ASEAN and the AHRD

respectively. It was neither a review of AICHR's mandate nor the AHRD.

It is notable, however, that in their press statement AICHR recognised the complementarity between the AHRD and the Sustainable Development Goals (SDGs), including a particular emphasis on the "newly-recognised collective rights to a sustainable environment, to development, and to peace". This is very significant and urgent for indigenous peoples of ASEAN as they are stewards of the environment yet are being criminalised for their practices of sustainable forest management, among other things. Moreover, conflicts are on the rise due to wide-scale land grabbing in many ASEAN Member States such as the Philippines, Cambodia and Malaysia, among others, in the name of national development or economic growth.

The statement also mentioned the importance of exploring possible collaboration between CSOs and AICHR through more effective engagement, using the AHRD as the region's reference point. In this context, indigenous peoples' engagement should be maintained to push for the inclusion of indigenous peoples' rights as affirmed by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) within the scope of AICHR's work. Some ASEAN Member States, such as the Philippines and Cambodia, have given indigenous peoples legal recognition. However, the difference between respecting and recognising indigenous peoples and their rights continues to be a major challenge in most ASEAN Member States, including difficulties in acquiring citizenship on the part of many indigenous peoples in Thailand and Malaysia, which is a fundamental right of every citizen, as provided by the UN Covenant on Civil and Political Rights, one of the framework texts of the AHRD. Furthermore, AHRD's General Principle No. four (4) makes reference to marginalised and vulnerable groups.[6] The majority of indigenous peoples in the region fall under these categories, in part because of their systematic discrimination, exclusion and violations of their collective rights.

ASEAN Community Vision 2025 and the SDGs

ASEAN Member States adopted the *Declaration on the Gender-Responsive Implementation of the ASEAN Community Blueprint of 2025 and SDGs*[7] on 13 November 2017. The Declaration is a framework "to ensure the realisation of a people-oriented and people-centred ASEAN

where all women and girls are able to reach the fullest of their potentials." Among the specific actions in the Declaration of particular concern to indigenous peoples is the provision regarding "collect[ing], manag[ing], analyz[ing], disseminat[ing] and ensur[ing] access to high-quality, reliable and timely data disaggregated by sex, age, and socio-cultural and economic characteristics relevant in national contexts, to the extent permitted by their respective domestic laws and policies." Disaggregation of data is one of the specific demands of indigenous peoples in monitoring the implementation of the SDGs.[8] This is crucial to understand the situation of indigenous peoples and provide better knowledge of their specific needs that should be addressed and responded to according to the specific contexts of particular indigenous communities.

Indigenous women and girls are more marginalised and vulnerable than the overall indigenous population. ASEAN's reiteration of its recognition of the socio-cultural and economic characteristics of women and girls with regard to SDG implementation in the region is therefore a significant step indeed. The Declaration provides indigenous peoples' organisations with an auxiliary document when calling out accountability in ASEAN and its Member States in their implementation and monitoring of the SDGs. The Declaration's implementation is to be monitored and reviewed by the ASEAN Ministerial Meeting on Women, with support from the ASEAN Committee on Women.

Adopted in November 2015, ASEAN Community Vision 2025[9] has three pillars namely: Socio-Cultural Community (ASCC), Political-Security Community (APSC) and Economic Community (AEC).[10] Each of the pillars has a blueprint that serves as a guideline in realising the ASEAN Community Vision 2025. One criticism that has been made, however, is that ASEAN Community Vision 2025 has "significant implications to indigenous peoples in relation to protection of their collective rights, particularly to their lands, territories and resources" (see The Indigenous World 2017). The "development" that ASEAN envisions does not have strong regard for human rights. The AEC Blueprint[11] is focused on economic progress, with no explicit concern regarding respect for human rights and accountability for redress in cases of human rights violations. This is troubling for indigenous peoples, whose collective rights to lands are mostly affected in ASEAN's development aggression.[12] Unlike the AEC, AICHR falls under APSC and its APSC Blueprint[13] indicates concern for human rights. With the support of AICHR, the APSC Blue-

print includes in its vision a mainstreaming of human rights across all three pillars. As for the ASCC Blueprint, it posits enhanced social protection for vulnerable and marginalised groups, including ethnic minorities. It highlights "ensur[ing] inclusive, participatory and representative decision making at all levels with special attention to the needs of those in disadvantaged situations..." Indigenous peoples with their specific needs and rights fall under this purview. Furthermore, the ASCC Blueprint explicitly acknowledges the significance of "indigenous and traditional knowledge as strategic measures in responding and adapting to climate change."

Despite the issue of ASEAN as a state-centric institution, there are various documents that provide entry points of engagement for indigenous peoples. They are, however, coupled with restrictions and challenges that are associated with the enduring issue of the diverse approaches of ASEAN Member States as regards full and explicit recognition of indigenous peoples as distinct peoples with specific rights, particularly their collective rights to lands, territories and resources.

ASEAN Civil Society Conference ASEAN Peoples' Forum and the Indigenous Peoples' Task Force for ASEAN

From 10 – 14 November 2017, AIPP participated[14] in the annual ASEAN Civil Society Conference / ASEAN Peoples' Forum (ACSC/APF), which is considered to be the largest platform for CSOs in the region to engage with ASEAN.[15] Among the outputs of ACSC/APF 2017 was the usual statement and the formation of Convergence Spaces,[16] which is a new initiative of ACSC/APF to encourage thematic collaboration between various CSOs in the region that are working on particular issues. The convergence spaces are intended to function as a loose network of CSOs that will advocate according to their themes beyond the ACSC/APF 2017. This was in response to both the criticism and self-reflection of long-time active participants of ACSC/APF that it was a mere "talking shop" with no specific or concrete action/s.

AIPP is part of "Corporate Greed and Power", which is one of the five (5) convergence spaces. The other Convergence Spaces are: Labour Mobility and Mixed Migration, Life with Dignity, Peace and Human Security, and Human Rights and Access to Justice. Primarily working on issues of business and human rights, the Corporate Greed and Power

Convergence Space led discussions on energy and extractive industries, trade agreements and the ASEAN Economic Blueprint, transnational corporations, food sovereignty, climate change and climate financing. In all the workshops, indigenous peoples' issues and rights, particularly their right to free, prior and informed consent (FPIC) vis-à-vis decision-making and meaningful participation, and to lands, territories and resources (LTR) were raised, discussed and considered. The discussions in these workshops and the partnerships formed under Corporate Greed and Power, including with the other convergence spaces, have yet to yield any concrete advocacy initiatives in the region.

The ACSC/APF 2017 statement is a 14-page document that reiterates the various social, political and economic issues in the region.[17] It generally highlights ASEAN's need for "any substantive improvements in the state of our peoples' lives and the environment." It mentions the lack of meaningful dialogue, such as opportunities for interface with officials, inaction over the draft terms of reference on government/non-government relations, and evidence of shrinking democratic space for civil society to effectively shape the agenda and policies of ASEAN and their respective governments. It also reiterates indigenous peoples' rights to FPIC and LTR, including a call to end the harassment, and justice for the victims of killings of indigenous human rights defenders (IPHRD). The recommendation also specifically called on the representatives of AICHR's and ASEAN's Commission on the Promotion and Protection of Women and Children (ACWC)[18] to increase their awareness of indigenous peoples, particularly in Indonesia and Laos and other ASEAN Member States that continue to deny the existence of indigenous peoples; and not to consider all their constituencies as indigenous peoples, which is synonymous to dismissing the recognition of indigenous peoples that have lived and thrived within their jurisdiction.

In addition, during the ACSC/APF, AIPP reconvened the Indigenous Peoples' Task Force for ASEAN (IPTF) on 11 November 2017. Created in 2009, the IPTF is currently composed of indigenous representatives from different ASEAN Member States, including Timor-Leste. It has served as a platform for solidarity and unity among indigenous peoples when engaging with the ASEAN Member States. It had previously mainly interacted with AICHR and was particularly active during the drafting of the AHRD. The IPTF members' interest in engaging with ASEAN has waned due to the disappointment with the AHRD and lack of a proper mechanism for the sincere participation of CSOs during that period.

However, aware that ASEAN's development aggressions have grave impacts on indigenous peoples' natural resources and livelihoods and further affect the vulnerability of indigenous women and children, the revival of IPTF, which was the main objective of the meeting on 11 November, has been deemed necessary. The IPTF is aimed at complementing AIPP's consultative status with AICHR, influencing AICHR's work and increasing the visibility of indigenous peoples' issues and rights in ASEAN.

Notes and references

1. This figure is not accurate since only a few states in the region recognise indigenous peoples and their rights and, as a result, indigenous peoples are not taken into account when conducting the national census.
2. See http://aichr.org/news/meaningful-and-constructive-engagement-and-interaction-between-aichr-and-csos/)
3. ASEAN in IWGIA Yearbook 2017, pp. 633-36. https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2017.pdf).
4. See https://www.forum-asia.org/?p=25216
5. See http://aichr.org/press-release/aichr-reviews-aseans-implementation-of-the-ahrd-with-partners-soms-and-csos/
6. See http://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf
7. See http://asean.org/storage/2017/11/7.-ADOPTION_ASEAN-Declaration-on-the-GR-Implementation_CLEAN_Sept.8-2017_for-31st-Summit_CLEAN.pdf
8. See http://indigenousnavigator.org/index.php/en/news/120-indigenous-peoples-disaggregated-data-needed-for-monitoring-sdgs
9. See http://asean.org/asean-community-vision-2025-2/
10. See http://asean.org/asean-2025-at-a-glance/
11. See http://asean.org/wp-content/uploads/archive/5187-18.pdf
12. See https://business-humanrights.org/sites/default/files/documents/Victims%20of%20development%20aggression.pdf
13. See http://asean.org/storage/2016/01/ASCC-Blueprint-2025.pdf
14. With support from the International Work Group for Indigenous Affairs (IWGIA) and Oxfam, AIPP facilitated the participation of ten (10) indigenous representatives, of which five (5) are women, from seven (7) countries in the Southeast Asian region namely, Indonesia, Malaysia, Philippines, Cambodia, Laos, Thailand and Vietnam.
15. See http://acsc-apf.org/PDF/What%20is%20ACSC_APF.pdf
16. See http://acsc-apf.org/PDF/CONVERGENCE%20SPACE%20NARRATIVES.pdf
17. See http://acsc-apf.org/pages/fulll_statement%20ACSC_AFP_2017.html
18. See https://acwc.asean.org/about/

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (the African Commission) was established in accordance with Article 30 of the African Charter on Human and Peoples' Rights with a mandate to promote and protect human and peoples' rights on the continent. It was officially inaugurated on 2 November 1987 and is the premier human rights monitoring body of the African Union (AU). In 2001, the African Commission established a Working Group on Indigenous Populations/Communities in Africa (the Working Group), 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 African Commission in 2003 and was subsequently endorsed by the AU in 2005. The report, therefore, represents the official position of the African Commission 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 African Commission 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 African Commission as well as in the various activities of the Working Group, which include sensitization seminars, country visits, information activities and research, also plays a crucial role in ensuring and maintaining this vital engagement and dialogue.

Sessions of the African Commission: forum for dialogue

The 60th and 61st Ordinary Sessions of the African Commission were held in May and November 2017 in Niamey, Niger and Banjul, The Gambia, respectively. At the 61st Ordinary Session, indigenous peoples' representatives from Ethiopia, Kenya, South Africa and Tanzania were present and made statements highlighting the situation of indigenous communities in their respective countries. These indigenous representatives also had the opportunity to engage with members of the Working Group during the latter's pre-session meeting held from 30 to 31 October 2017.

At the same session, the Study on Extractive Industries, Land Rights and Indigenous Peoples in Africa that was adopted in 2016 was officially launched. During the launch ceremony, brief presentations of the study were made by the Chairperson of the Working Group, Commissioner Soyata Maiga, Dr Melakou Tegegn and Mr Samuel Tilahun, followed by an open discussion with participants of the session.

As part of its mandate, the African Commission also considers state periodic reports. In 2017, the periodic reports of Mauritania, Niger, Rwanda and the Democratic Republic of Congo were considered and one of the issues that was discussed was the situation and rights of indigenous communities in each of these countries.

Launch of the Study on Extractive Industries in Cameroon

Since the adoption by the African Commission of the Study on Extractive Industries, Land Rights and Indigenous Peoples in Africa, the Working Group has embarked on the task of popularizing the study through launch activities and wide dissemination. As part of this effort, the Working Group organized a National Dialogue on the Rights of Indigenous Populations and the Impact of Extractive Industries in Cameroon, from 7 to 8 September 2017. The National Dialogue was organized in collaboration with one of the focal points of the Working Group in Cameroon, the Mbororo Social and Cultural Development Association (MBOSCUDA).

The National Dialogue brought together 43 participants representing various government ministries, private sector companies involved in logging and food production, non-governmental organizations, the National Commission on Human Rights and Freedoms of Cameroon,

indigenous communities living in areas affected by extractive industries and the media.

The National Dialogue was aimed at launching, popularizing and widely disseminating the study; engaging with relevant stakeholders particularly state and non-state entities on the findings of the study; and finding common ground and ways and means of creating mechanisms for the implementation of the recommendations made by the study. In view of this objective, presentations on the findings, conclusions and recommendations of the study as well as the perspectives of the government, the private sector and indigenous communities on the same were made and constructive discussion with participants ensued. At the end of the National Dialogue, participants made concrete recommendations to the Government of Cameroon, civil society organizations, business enterprises and indigenous communities for the implementation of the recommendations of the study. The Working Group plans to organize similar launch and popularization workshops in Uganda in 2018.

The study was also launched during a session at the 6th Forum on Business and Human Rights in Geneva on 26 November 2017. The session was held jointly with the Inter-American Commission on Human Rights and the United Nations Expert Mechanism on the Rights of Indigenous Peoples.

Strategic engagement with relevant stakeholders

During 2017, the Working Group continued to identify and strategically engage with stakeholders at regional and international levels. In this regard, the Chairperson of the Working Group, with the support of IWGIA, participated in and made a presentation on "Progress made and Challenges faced by the African Commission in Implementing the UNDRIP" at the 10th Session of the UN Expert Mechanism on the Rights of Indigenous Peoples, held in July 2017 in Geneva, Switzerland.

The Chairperson took the opportunity of her presence in Geneva to meet with African ambassadors. The meeting was attended by over 40 African ambassadors and focused mainly on issues relating to the concept and situation of indigenous communities in Africa and the work of the Working Group. The Chairperson of EMRIP, Dr. Albert Barume, who is also a member of the Working Group, participated in the meeting.

From 10 to 13 February 2017, the Chairperson also participated in the 3rd Global Meeting of the Indigenous Peoples' Forum at the International Fund for Agricultural Development (IFAD) in Rome, Italy. At the Forum, the Chairperson gave a presentation on the "Situation of Indigenous Peoples in Africa and the Work of the WGIP" wherein she highlighted, among other things, progress made and challenges faced on the continent with regard to the promotion and protection of indigenous peoples' rights, especially since the 2014 World Conference on Indigenous Peoples held in New York, United States of America.

At the 16th Session of the United Nations Permanent Forum on Indigenous Issues, held from 24 April to 5 May 2017 in New York, U.S.A, the Working Group was represented by Madam Hawe Bouba, who gave a presentation on "Implementation of the UNDRIP in Africa".

Monitoring the rights of indigenous communities

Pursuant to its mandate and well-established practice, the Working Group has written several letters bringing to the attention of the concerned authorities situations that adversely affect the recognition, promotion and protection of indigenous peoples' rights on the continent. In this regard, the Chairperson of the Working Group wrote letters of appeal to the President of the United Republic of Tanzania, bringing to his attention the alleged unlawful eviction and other serious human rights violations of indigenous communities in the Morogoro and Ngrororo regions. The Chairperson has reported that she has received no response from the Government of the United Republic of Tanzania, despite several reminders.

The Chairperson also sent several reminders to the President of the World Bank Group regarding the waiver of the Bank's Operational Policy 4.10 in the SAGCOT Corridor Project of Tanzania. The Bank finally took heed and gave a detailed response in June 2017. According to the Chairperson's report to the 61st Ordinary Session of the Commission, in the letter, the Bank indicated that:

the Government of Tanzania requested a waiver of OP 4.10 on the gr''ounds that certain aspects of the policy requirements conflict with the Tanzanian Constitution and that the World Bank's Board of Executive Directors approved the request to waive OP 4.10 for SAGCOT in full compliance with the Bank's Policy on Operational Policy Waivers, and in

full consideration of the safeguard and mitigation measures, including the Vulnerable Groups Planning Framework, covenanted in the project legal documents. The Director further indicated that this decision will remain in effect until the end of the project."

In July 2017, the Chairperson also wrote to the Government of the Federal Republic of Nigeria concerning the alleged premeditated attack on Fulani villages in Taraba State by some members of the Mambilla community. The government is yet to respond to the allegations.

Capacity building and sensitization

Since 2011, in collaboration with the Centre for Human Rights of the University of Pretoria and IWGIA, the Working Group has been running an Advanced Short Course on Indigenous Peoples' Rights in Africa. The course was run for the 7th time from 25 to 29 September 2017 at the Centre for Human Rights of the University of Pretoria, South Africa. It was attended by around 30 participants coming from 14 different African countries and one European.

Dr. Melakou Tegegn, Dr Kanyinke Sena, Ms Lesle Jansen and Mr Samuel Tilahun participated as guest lecturers from the Working Group. Other guest lecturers included Prof. Alexandra Xanthanki of the University of Brunel and Dr. Elifuraha Laltaika, African member of the United Nations Permanent Forum on Indigenous Issues.

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THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The Inter-American system of human rights (IAHRS) comprises two human rights bodies, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACourt). Both bodies work to promote and protect human rights in the Americas. Whereas the IACHR is composed of seven independent members and two independent special rapporteurs, and has its headquarters in Washington, D.C.; the Court is composed of seven judges, and is based in San José, Costa Rica. In 1990, reaffirming the fact that their protection is a fundamental obligation of States, the IACHR created an Office of the Special Rapporteur on the Rights of Indigenous Peoples whose mission is to devote special attention to the indigenous peoples of the Americas, and to strengthen, promote, and consolidate the Commission's work in this area.

The work of the IACHR, through its different mechanisms, aims to make a difference on the ground in the lives of indigenous peoples and their members. To this effect, the IACHR, and in particular its Rapporteurship on the Rights of Indigenous Peoples, resort to a range of different instruments, including in-depth thematic studies and reports on topics dealing with indigenous peoples' rights; petitions and cases, including friendly settlements; precautionary measures; thematic hearings; confidential requests for information to States; and press releases. It also participates in conferences and seminars with States, academia, and civil society, in order to raise awareness about indigenous peoples' human rights, and has conducted trainings and workshops with indigenous peoples, in order to increase their knowledge of the IAHRS. For its part, the Court issues precautionary measures, judgments, as well as advisory opinions.

The following pages are a brief summary of the main activities of the Inter-American system of Human Rights in relation to indigenous peoples' rights over the course of 2017, with a specific focus on the work of the Inter-American Commission on Human Rights.

Indigenous Women and Their Human Rights in the Americas

In 2017, the IACHR published its report *Indigenous Women and Their Human Rights in the Americas,1* in which it establishes a series of guiding principles that must orient State action as it relates to indigenous women. These guiding principles call on States to acknowledge indigenous women's empowerment and agency, and their active participation; to take into consideration the individual and collective nature of indigenous women's rights; and the need for States to adopt a holistic approach to address issues faced by indigenous women. It reaffirms that all State action must consider the intersectional discrimination that they face, based on their sex, gender, ethnic origin, age, socio-economic circumstances, the structural and institutional inequalities stemming from them, and the effects of colonialization and enduring racism that remain embedded in society, as well as in current laws and policies.

Further, the report examined the different dimensions of violence against indigenous women, perpetrated by State and non-state actors, by indigenous and non-indigenous individuals, and its diverse forms. Indigenous women face not only physical, psychological, and sexual violence, but also obstetric and spiritual violence, two types of violence that the Commission interpreted as also being prohibited by the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (also known as the *Belém do Para Convention*).[2] They most often face violence during armed conflicts; the implementation of development, investment, and extractive projects; the militarization of their territories; deprivation of liberty; within the domestic sphere; and during the defense of their human rights.

The Commission also elaborated on how persistent discrimination has elevated barriers for indigenous women's access to their economic, social and cultural rights, limiting their opportunities to enter the labor market; to access to health or educational services; and to access social programs and services. Furthermore, the Commission detailed the vari-

ous geographical, socioeconomic, cultural, and linguistic barriers faced by indigenous women when they try to access justice, as well as the failure of States to address the situation. The report concludes with a series of recommendations to Member States, to guide them as they set in place policies and programs aimed at indigenous women and their rights.

In addition to its usual communication tools, the Commission has taken the initiative to launch an innovative media campaign for this report, to make the content of the report more accessible to all, in particular, to indigenous peoples living in remote areas. The campaign has begun with the launch of its micro-website[3] and will continue with a brochure summarizing the main findings of the report, as well as a community radio diffusion campaign.

Dissemination of the Report on Extractive Industries

Given the impacts of extraction, exploitation and development activities on indigenous peoples' lands and natural resources, as well as on their rights to life and to personal integrity, the Commission also invested a lot of time and effort over the course of 2017 to disseminate the content of the report "Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities".[4] It organized promotional events during periods of sessions, academic events, and participated at high-level events, such as the 16th session of the Permanent Forum on Indigenous Issues, the 10th session of the Expert Mechanism on the Rights of Indigenous Peoples, and the Business and Human Rights Forum. On two occasions, the Commission promoted its report alongside the African Commission on Human and People's Rights, who also recently launched a report on the impact of extractive industries on indigenous peoples, thereby consolidating a South-South collaboration to create a more powerful voice to defend indigenous peoples' rights.

Indigenous Peoples in Voluntary Isolation and Initial Contact

The Commission has also been working closely with the UN Special Rapporteur on the rights of indigenous peoples (hereinafter, "the

UNSR") and the OHCHR Regional Office for South America (hereinafter, "the OHCR") and IWGIA on assessing the level of implementation of the international instruments that recognize the special protection that must be guaranteed to indigenous peoples in voluntary isolation and initial contact.[5] Together, they co-organized an expert meeting on June 8-9, 2017 with the objective of identifying concrete examples of policies and measures that constitute good practices, main challenges for implementation, and potential gaps and consideration of emerging issues. The participants at the event were: the UNSR, the OHCHR, the IACHR Rapporteur on the rights of indigenous peoples, members of the UN Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples, State representatives, Indigenous representatives, national human rights institutions representatives, as well as experts on the rights of these indigenous groups.

The findings and conclusions of the event evidenced the need for States in the region to increase efforts to protect the territories of these indigenous groups against the presence and actions of state agents and third parties; to improve national level and inter-State coordination to address cross-border issues; and to improve the design and implementation of health and contingency protocols, early warning systems and conflict prevention measures, with the participation of neighboring indigenous and other communities.

As a follow-up to the expert meeting, the Commission held a regional thematic hearing on the "Situation of Human Rights of indigenous peoples in voluntary isolation and initial contact in the Amazon and the Gran Chaco", on October 23, 2017.[6] The Special Rapporteur Victoria Tauli-Corpuz participated in the hearing, and called for an increased collaboration between her mandate, the IACHR, and that of the UN Office on Genocide Prevention and the Responsibility to Protect. A report containing the conclusions and recommendations of the expert meeting will be published during 2018.

As part of the continued collaboration between the United Nations bodies and their regional counterpart, the Commission and the OHCHR published a joint press release expressing preoccupation in relation to increasingly frequent incursions and acts of violence perpetrated by outsiders against peoples in isolation in the Javari valley, in Brazil, and in particular with information regarding two alleged massacres of indigenous peoples in isolation in this same region.[7] The IACHR and the OHCHR Regional Office for South America reminded the State of its

obligation to guarantee indigenous peoples' rights to land and territories, as well as their obligation to protect them from incursions or acts of violence by third parties, given that the latter have irreversible health and physical impacts on indigenous peoples in voluntary isolation and may lead to their eventual extinction.

Hearings

Throughout the six periods of sessions that took place in 2017, the Commission held 17 thematic hearings,[8] which related to indigenous peoples' rights. The topics most addressed were: impacts of extractive industries on indigenous peoples' rights, analyzed through the lens of the human rights obligations of both the host and the foreign State; violence against indigenous peoples; criminalization and attacks against indigenous human rights defenders, and women in particular; and regressions in the legal framework protecting indigenous people's human rights in specific countries.

The Commission also received information with regards to specific situations affecting indigenous communities, such as the situation of the Rapa Nui people in Chile, the situation of the urban indigenous community of Cantagallo in Peru, the persistence of sexual discrimination in the *Indian Act* in Canada, and the impact of executive orders on human rights of indigenous peoples in the United States. Finally, the Commission was also alerted to the situation of indigenous peoples' right to land in the Amazon region, to the situation of indigenous peoples in voluntary isolation and initial contact in the Amazon and Gran Chaco.

Moreover, the Commission held a public hearing on the merits in the case related to the rights of indigenous peoples, Case 12.918 – Amafer Guzmán Cruz and others, Mexico.

Precautionary measures

The IACHR also has the ability, at its own initiative or upon request of a party, to request that a State adopt precautionary measures in serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the Inter-American system. Of the 50 requests for precautionary meas-

ures that were granted and extended by the IACHR throughout 2017,12 were in favor of indigenous peoples or communities.[9]

On two separate occasions in 2017, the IACHR extended the precautionary measures it had previously granted in December 2015, for the protection of Wayúu children and adolescents in the Department of La Guajira in Colombia. In this respect, in January 2017, the IACHR extended the scope of its precautionary measures to benefit approximately 9,000 indigenous Wayúu pregnant and nursing women from Manaure, Riohacha, and Uribía, to guarantee the satisfaction of their pregnancy-related nutritional, hydration and health care needs.[10] Subsequently, in December 2017, the Commission further extended the scope of the measures to approximately 3,000 older persons, due to their lack of access to medical attention, their high rates of malnutrition, and lack of clean drinking water.[11] In both of these extensions, the Commission requested that the State ensure the availability, accessibility, and quality of culturally appropriate health services for the beneficiaries, and guarantee them access to clean drinking water and food in sufficient quantity and quality to meet their nutritional needs.

The Commission granted precautionary measures in relation to the right to health and personal integrity on three occasions, two of which were related to the lack of provision of effective, comprehensive, and ongoing medical attention for health affectations caused by environmental contamination. In September 2017, the Commission granted measures to the members of the "Tres Islas" Native Community of Madre de Dios, in Peru, as a result of the presence of mercury in their bodies, their sources of water and in the soil, due to mining activities in their territory.[12] In December 2017, the Commission also adopted measures for the population of the Cuninico and San Pedro communities, in Peru's Amazon region, whose blood, hair and urine tests revealed levels of cadmium and mercury above permissible levels, due to multiple oil spills of the Norperuano pipeline.[13] In both these cases, in addition to providing medical attention, the Commission asked Peru to guarantee all members of the communities have access to water and culturally adequate food, free from contamination agents; and that it take steps to investigate, mitigate, reduce, and eliminate the sources of these health issues. The Commission also requested the adoption of measures by the State of Guatemala for Paulina Mateo Chic, who faced a situation of risk because of the lack of treatment for various health ailments.[14]

The Commission sought to address the consequences of forced internal displacement through its precautionary measures mechanism. Indeed, in September 2017, the IACHR granted a precautionary measure to protect the lives and personal integrity of 111 Maya Q'eqchi, Maya Chuj, campesino and mestizo families, totaling 450 people, from Laguna Larga, a community in Petén, Guatemala. The beneficiaries of the precautionary measures lost their houses, their crops and harvests, and belongings, when they were forced to leave their community and move to an area near the Guatemala-Mexico border, where they have been left to live in tents and shacks, directly exposed to the weather.[15]

In addition, the Commission granted precautionary measures to protect the life and personal integrity, as well as ability to pursue human rights defense activities, of indigenous human rights defenders on many occasions this year. In this regard, in February 2017, the IACHR granted measures for Víctor Vásquez, in Honduras, who was facing a situation of risk because of his actions as President of the indigenous council of the community of Simpinula, in the defense of territories that are part of the Lenca indigenous people's ancestral lands.[16] The Commission also extended measures to protect Lottie Cunningham, in Nicaragua, who was harassed and received death threats as a result of her work as the President CEJUDHCAN, in representation of the Miskitu indigenous community, affected by the territorial conflict in the Autonomous Region of the Northern Caribbean Coast.[17]

Measures were also granted to bring the State to identify the fate and whereabouts of disappeared indigenous peoples or their defenders, to protect their lives and personal integrity. For instance, in June, the Commission extended measures it had granted to the Wiwa Indigenous peoples of the Sierra Nevada of Santa Marta, Colombia to identify the fate and whereabouts of Manuel Enrique Vega Sarmiento, disappeared since December 25, 2016.[18] In August 2017, the IACHR granted measures to identify the fate and whereabouts of Santiago Maldonado, a non-indigenous man who disappeared following a police operation in an area being occupied by the Mapuche community of "Vuelta del Río Pu-Lof," and their supporters, in Argentina.[19] Later that month, the IACHR granted measures for Julio César Vélez Restrepo, Luis Adrián Vélez Restrepo, and two adolescents, B.V.R. and L.S.N., in Colombia, all members of the Embera Chamí indigenous community, as they had disappeared for months.[20]

Finally, the Commission also requested the State of Argentina to adopt measures to protect Milagro Sala, leader of the "Organización Barrial Túpac Amaru," who found herself deprived of her liberty in the Penitentiary known as the "Penal del Alto Comedero," in Jujuy, Argentina, and was allegedly exposed to harassment, a death threat and other aggressions.[21] The Commission, reiterating that preventive detention must be an exceptional measure, requested that the State adopt alternative measures to preventive detention, such as house arrest. On November 3, 2017, the Commission requested provisional measures to the Inter-American Court of Human Rights, as it found the State failed to comply with its precautionary measures, which exacerbated the risk to her life and personal integrity.[22] On November 23, 2017, the Court granted provisional measures to Milagro Sala.[23]

Petitions and cases

On March 18, 2017, the Commission issued Admissibility Report No. 30/17 in the case of the Maya Q'eqchí' Agua Caliente Community,[24] in which the petitioners allege that Guatemala violated the collective property rights to land and natural resources, the right to self-determination and to self-governance of the community due to the lack of a special law recognizing these rights, and despite the community having paid the National Institute for Agrarian Transformation the requested amounts to receive official title for their lands. They argue that the domestic framework fails to recognize these rights, and to guarantee the right to consultation of indigenous peoples in relation to the adjudication of their lands, mineral exploitation on their territories, and the approval of environmental impact studies.

In March 2017, two more Admissibility Reports were approved with regards to the State of Mexico, Report No. 167/17 in the matter of *Alberto Patishtán Gómez* and Report No.165/17 in the matter of "Dionicio Cervantes Nolasco y Armando Aguilar Reyes", both of which generally relate to the right to a fair trial, to due process guarantees and to judicial protection of indigenous defendants.[25]

One merits report was approved regarding the murder of an indigenous adolescent, although it is in transition and therefore remains confidential. There were no cases submitted to the Court with regards to indigenous peoples' rights over the course of the year.

Judgment rendered by the IACHR

The Court issued a decision in the *Case of Acosta et al. v. Nicaragua*[26], in which it found the State internationally responsible for the violation of the rights to access to justice, truth, and to judicial protection of Maria Luisa Acosta, a well-known defender of the human rights of indigenous communities in the Caribbean Coast Region of Nicaragua, following the murder of her husband Francisco Garcia Valle, in Bluefields, Nicaragua. The Court found the State had failed to investigate with due diligence the material and intellectual authors of the murder and failed to consider that the murder may have been carried out in retaliation for Mrs. Acosta's human rights defense work. The Court ordered the State to set in place a protection mechanism and investigation protocols for the protection of human rights defenders, especially given the levels of risk faced by defenders working on issues related to land and territory in Nicaragua.

Advisory Opinions of the Inter-American Court of Human Rights

On November 15, 2017, the Inter-American Court of Human Rights issued advisory opinion OC-23/17 which emphasized both that the right to a healthy environment is an autonomous human right, and that the adverse effects of environmental degradation and climate change affect other human rights, supporting for the first time the obligations contained in the *American Declaration on the Rights of Indigenous Peoples*, among other instruments.[27] OC-23/17 elaborated on the obligations of States in the face of significant environmental damage within and beyond their borders, in relation to their obligations to protect and guarantee the rights to life and personal integrity. This advisory opinion may broaden the scope of action of indigenous communities within the IAHRS, creating an opening for findings of liability related to related to climate change-related harms and extraterritorial State obligations.

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ARCTIC COUNCIL

The Arctic Council is a high-level intergovernmental forum of the Arctic States (Canada, Kingdom of Denmark, Finland, Iceland, Norway, Russia, Sweden, USA), established in 1996 at a meeting in Ottawa, Canada. It expanded the mandate of the then Arctic Environmental Protection Strategy (AEPS) from purely environmental cooperation to accommodate sustainable development and a focus on the lives and well-being of the peoples of the Arctic. The eight Member States in turn hold the chairmanship for two years. From 2015-2017, it was held by the USA. Finland inherited the gavel from the United States in 2017.

A unique feature of the Council is that six Arctic Indigenous Peoples are represented as Permanent Participants at the table along with the Arctic governments. Permanent Participants represent the Arctic Athabaskan Council, Aleut International Association, Gwich'in Council International, Inuit Circumpolar Council, Russian Association of Indigenous Peoples of the North and the Saami Council.

The Arctic Council has an extensive list of observers, including non-Arctic states, intergovernmental organizations and NGOs. The Arctic Council's core activities relate to interaction among Arctic States, and coordinating, promoting and publishing scientific research on climate, environmental and biodiversity issues, linked with Arctic shipping and marine safety, health and mental well-being.

The Arctic Council is undergoing a significant evolution as the effects of climate change in the polar regions become increasingly apparent, and action to deal with the disintegrating sea ice cover, glacier loss, melting permafrost and changes in species range and behaviour become ever more urgent.

Increased attention on the region by some of the world's most populous and economically powerful countries has increased as the sea ice has retreated. In 2013, China, Singapore, South Korea and India became observers at the Council, bringing the number of observer states to 12 and outnumbering the Member States. Each nation has different strategic reasons for being there – but it comes down to an understanding that the Arctic will soon be open to transcontinental shipping and the changing climate will allow exploration of vast mineral resources and the 30% of the world's oil and gas that has been projected to be found there.

As the Arctic Council heads into its third decade, the role Indigenous Peoples play continues to be central to the operation of this political, consensus-based body. When the Arctic Council turned 20 in 2016, the six Indigenous Peoples' organizations at the table produced an internet-based story map[1] that used a series of interviews to tell the story of the crucial role they have played in the development of Arctic environmental politics since the end of the Cold War.

The Arctic Council is not a treaty-based organization and was not designed to create legal agreements between its members. Rather, it is an example of "soft law" that is evolving[2] and, under the U.S. Chairmanship, the Council signed its third agreement on "Enhancing International Arctic Scientific Cooperation"[3] in 2017. It recognizes "the excellent existing scientific cooperation already under way in many organizations and initiatives", including "indigenous knowledge institutions".

While the agreement makes only one reference to indigenous knowledge, its inclusion is significant. The Permanent Participants have fought long and hard to have their knowledge recognized and valued in the work of the Arctic Council. This effort mirrors a similar struggle going on in other parts of the world where indigenous knowledge is still seen as "anecdotal" or as "simply a story".

Knowledge and education are major concerns of the Permanent Participants. Education was on the agenda at the first Arctic Council meeting chaired by Finland, which took up the chair in 2017.

Education will be a major priority for the Finnish term, along with pollution prevention and efforts to "strengthen Arctic cooperation by looking into the possibility of setting commonly agreed long-term goals".[4]

"Over its first 20 years, the Arctic Council has evolved into a recognized international forum. The active involvement of indigenous peoples'

organizations and a deep-rooted connection with the scientific community makes it unique." – Finland's Chairmanship Programme for the Arctic Council 2017-2019.

Education, traditional knowledge, health and well-being are long-standing priorities of the Permanent Participants, and the Fairbanks Declaration released at the end of the US chairmanship in 2017 recognized the importance of a Sustainable Development Working Group: "initiative concerning preschool education practices aiming to raise the living standards of Arctic indigenous peoples while maintaining their cultures and languages and encourage the establishment of a program for training indigenous youth in the documentation of traditional knowledge related to food, food entrepreneurship and innovation".

This initiative touches on two long-standing concerns of the Permanent Participants: the need for capacity building and enough stable financing to ensure that they can effectively carry out their responsibilities at the Council and in its six working groups. While Arctic Council countries have resources to support their work on pollution issues, biodiversity and sustainable development (three major areas of focus for the Council's working groups), Indigenous Peoples have always had to rely on financial support from countries in order to participate.

In order to secure long-term financial stability, the Permanent Participants have set up the Áglu Fund, an independent foundation based in Sweden, to raise funds to secure their participation in the Arctic Council in its third decade and beyond.

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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 50 years, IWGIA has supported the fight for indigenous peoples' rights. We work through a global network of indigenous peoples' organisations and international human rights bodies. We promote the recognition, respect and implementation of indigenous peoples' rights to land, cultural integrity and development on their own terms.

Our mission

We 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 avocating 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/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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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 share their valuable insights and analysis. We thank them and celebrate the bonds, strengths and sense of community that emerge from making this one-of-a kind documentation tool available.

For 32 consecutive years the purpose of *The Indigenous World* has been to give a comprehensive yearly overview of the developments indigenous peoples have experienced. Rising tensions between States and indigenous peoples are reaching a tipping point and *The Indigenous World 2018* adds to the documented records, highlighting the increase in attacks and killings of indigenous peoples while defending their lands. The 56 country reports and 13 reports on international processes in this edition underscore this trend, which is noted across the continents.

IWGIA hopes that the book will be used as a documentation tool and as an inspiration to raise global awareness of the rights of indigenous peoples, their struggles, their worldviews and their resilience.

IWGIA

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