

# THE INDIGENOUS WORLD 2022



# The Indigenous World 2022

36<sup>th</sup> Edition .....

**General Editor:** Dwayne Mamo

**Regional editors:**

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

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

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**English translation:** Elaine Bolton

**Proofreading:** Elaine Bolton, Kåthe Jepsen and Dwayne Mamo

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**Executive Director:** Kathrin Wessendorf

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

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# Editorial

As the world grappled with the COVID-19 pandemic throughout 2021, Indigenous Peoples continued to respond to the virus in their traditional and innovative ways while also contending with the daily discrimination they continuously face.

In fact, the pandemic has exposed and aggravated the many pre-existing inequalities Indigenous Peoples come up against, as noted by the UN Permanent Forum on Indigenous Issues in its 20th session in April 2021. The Forum went further to note that this inequality was especially significant for Indigenous women and girls who, already left behind before the pandemic, are now even further behind.

Indigenous women play crucial roles in their communities as breadwinners, caretakers, knowledge keepers, leaders and human rights defenders. While Indigenous women have made small but significant progress in being part of decision-making processes in some communities, have risen to leadership in communal and national roles and stood on the frontline of protests to defend their lands and biodiversity, the reality remains that they are massively under-represented, disproportionately negatively affected by the decisions made on their behalf without their valuable input, and all too frequently the victims of violence and sexual assault.

Indigenous women continue to disproportionately face intersectional discrimination and multiple expressions of violence<sup>1</sup> – in a world where one in three women experiences violence – and are often excluded from decision-making processes and leadership positions. Violence against Indigenous women triggers other negative effects pertaining to their mental and physical health and lowers their self-worth, thus lessening their possibilities of earning an income and weakening their level of participation and decision-making powers.

What the analysis and reporting in this year's edition of *The Indigenous World* shows is that the picture for Indigenous women across the globe remains unacceptably much the same. Reflected across nearly every continent is the observation that Indigenous women hold a respected position within their communities, acknowledged as being the glue that keeps communities together, the repository that holds their

knowledge and the activist that will stand up to protect their lands and the survival of their peoples. And yet it can also be seen that such a position rarely comes with legal rights and formal power.

In Laos, for example, only around a quarter of Indigenous women are literate, which contributes to their lack of confidence in being able to speak Lao and thus hinders their ability to participate in public meetings, over and above the fact that they are already burdened with household, child and community work. Conversely, however, it is because of that work that they are the ones who spend most time in the forests and have the most Indigenous knowledge of food, nutrition and the status of forest resources. And yet, despite that deep knowledge and huge responsibility, they are under-represented in government and as staff of international and local non-governmental and civil society organisations.

IWGIA collects data through the Indigenous Navigator, an online portal providing access to a set of tools developed for and by Indigenous Peoples with resources based on community-generated data. Through the community surveys and advocacy processes of the Indigenous Navigator, Indigenous women across all regions have reported that they face multiple forms of discrimination, unequal pay, violence and harassment, both inside and outside their communities, limited access to health services, lack of recognition of their land rights, and limited participation in the decision-making that affects their lives.

## **Roles of Indigenous women**

Indigenous Peoples all over the world face systemic discrimination rooted in persistent racism as well as past and present colonialism. Indigenous Peoples are forced to live in countries created and ruled by the descendants of settler colonialists from overseas, or in countries created after the colonisers had left and which are now ruled by the dominant society's elites, resulting in their experience of discrimination, dispossession and disempowerment.

In a majority of cases reported in this year's edition, the systemic racism and discrimination they face means that women are often simply described as being the ones caring for families and communities as their major social role. However, in some places, those roles are slowly

shifting and women have been successful in increasing their presence in the political space, despite continuing to have to contend with various challenges.

In Nagalim, where communities and customs are generally patriarchal, some Naga women are now able to hold positions of political power in village councils. They have also established seed banks and are preserving their culture through certified woven materials and cultural attire that is a major identifier of their peoples. And yet they still cannot inherit land. In Cambodia, the dominant Khmer consider Indigenous women to be on the lowest echelon of society and yet they are important environmental actors and rights defenders actively engaged in protest and activism. At the same time, however, they are victims of high levels of violence, harassment, threats and arrests at the hands of state authorities and companies. They are also integral to resolving land disputes within their communities but, though highly valued in their communities, they still need their husband's permission and support to be involved in community matters. There are, however, in limited but growing circumstances, instances where women are rising to leadership positions and more are now seeking a university education and work as lawyers and teachers.

In Uganda, where Indigenous women struggle to get elected for a variety of reasons – they are the minority in their community, they do not have the ability to raise money for campaigning or have had limited access to education – many are still able to hold important political positions in local government, including as local and district councillors, as well as technical positions within a community's political structures. At the national level, four Indigenous women hold positions in Parliament and the President's Office.

And, in the USA, Deb Haaland was appointed as the country's first Native American Secretary of the Interior, working to improve relations with Native nations.

Indigenous women in Colombia continued to exert their influence in communities and territories, increasing their participation, including on the national scene where two Indigenous women have become candidates for the Presidential elections scheduled in 2022.

Māori women are increasingly being recognised in various fields and are holding decision-making positions. Ten percent of Members of Parliament self-identify as Māori women, two out of 20 cabinet members are Māori women and Māori women also co-lead two of the five



parties in Parliament. Despite this progress and respect, discrimination still exists. Māori women have one of the highest rates of incarceration globally, accounting for 63% of the female prison population in the country. Rates of violence against Māori women are considerably higher than that of non-indigenous women, their life expectancy is significantly lower, their unemployment rate significantly higher and they are severely underpaid for their work.

Indigenous women in Chile are politically active in their territories, communities and in national politics, defending their lands and resources. Nine of the 17 seats reserved for Indigenous Peoples in the Constitutional Assembly are held by Indigenous women and a Mapuche woman was elected to preside over the assembly. Again, however, Indigenous women face the widest inequalities and gender gaps in the country, because they are women and because they are Indigenous – coming up against barriers to accessing justice, education and proper health care, and facing greater rates of discrimination, poverty and violence.

Indigenous women in Argentina organised a huge nationwide march in 2021, culminating in Buenos Aires, to raise awareness of their struggle for self-determination as a people, for their lands and their bodies. These women and children continue to be the demographic that is most affected by COVID-19, the health crisis, lack of water, inadequate food and the deterioration of the environment. Benet women in Uganda also used their power of protest to call attention to the brutal attacks their people have suffered at the hands of the Uganda Wildlife Authority. In the Philippines, where large infrastructure projects continue apace, Indigenous women protested against dam constructions and non-compliance with free, prior and informed consent protocols (FPIC).

## **Violence against Indigenous women**

Due to the historic discrimination, marginalisation and exclusion that Indigenous Peoples face in the countries where they live, the likelihood of them suffering violence with impunity increases, and much of this is expressed as violence against Indigenous women. The countless murdered and missing Indigenous women in Canada<sup>2</sup> or the countless unreported and unrecorded rape cases against Indigenous women by settlers, military, police, workers from outside, or tourists, are brutal examples of this. Indeed, Indigenous women and girls are significantly

more likely to be victims of different forms of sexual violence and more likely to experience rape than non-indigenous women and girls.<sup>3</sup>

Too many of the reports in this edition note that violence against Indigenous women and girls is continuing at a disturbing rate. Where possible, these cases have been documented, but many go unreported, thus only showing us a partial reality. In India, for example, an October 2021 report noted that there were 3,676 cases of violence against tribal women and girls in 2020, nearly a third of which were cases of rape.<sup>4</sup>

Further, of the cases of violence documented, few result in any legal or criminal action. In Bangladesh, for example, 42 cases of violence against Indigenous women and girls were documented in 2021 by a human rights organisation. Some 60% of the alleged perpetrators were never arrested.

In some cases, reports have shown that such violence increased in 2021 during the pandemic. In Botswana, Cambodia and Zimbabwe, cases of rape and domestic abuse increased, causing several NGOs to call for greater attention to women's rights.

## **Multi-faceted impacts of COVID-19 on Indigenous Peoples**

Just as in 2020, equipped with their knowledge and experience of having faced contagious illnesses and other pandemics across generations, Indigenous Peoples continued to respond to COVID-19 with traditional and new methods for protection and prevention throughout 2021. They did this in the face of the disproportionate discrimination and marginalisation they continually come up against. Some national governments continued to lack adequate emergency relief programmes, policies and implementation targeted at Indigenous Peoples, offering little to no social, health, education or economic help.

In Nepal, for example, Indigenous communities actively used their advocacy skills. They held constructive dialogues with local and provincial governments and their national human rights commission regarding access to public funds, social services and protection. They have also been monitoring the recovery from the pandemic as well as the implementation of the Sustainable Development Goals. In Namibia, the government did provide COVID-19 materials in Indigenous languages but, in other countries such as Botswana, organisations had to step in to provide information in local languages.

Across Africa, Indigenous Peoples were seriously economically affected by the severe downturn in tourism. In Botswana, there was an 80% decline in tourism, affecting the lives of Indigenous Peoples in wildlife management areas, as the profits linked to tourism make up 46% of their income. In Zimbabwe, tourism fell by as much as 60%, not only affecting the economy of those Indigenous Peoples who provide tourism-related services but also the women, who saw a decline in the number of crafts sold. In Namibia, tourism dropped by 40%, thus affecting the economies of many Indigenous Peoples. In Kenya, where mitigation measures and loans were put in place to help businesses, Indigenous Peoples were not able to take advantage of these government schemes as they do not have any collateral.

In many cases, the rate of infection was also higher for Indigenous Peoples than for the non-indigenous population. Indigenous women in Botswana, for instance, contracted the virus at higher rates than men. In Aotearoa, Māori started off being the ethnic group least affected by the virus but, between September and December 2021, they became the group with the highest infection rates, increasing from 5.7% of all cases to 48.3%. In Paraguay, the mortality rate for Indigenous Peoples due to the virus was 12.71%, significantly higher than that of non-indigenous peoples at 3.4%. French Polynesia, a country that is 80% Indigenous, experienced one of the highest per capita mortality rates in the world with 460 deaths reported in one month alone.

Governments continued to use COVID-19 as an excuse to implement laws and practices that were harmful to both Indigenous and non-indigenous communities. According to the 2021 thematic study of the UN Special Rapporteur on the Rights of Indigenous Peoples, Mr. Francisco Calí Tzay, submitted to the UN Human Rights Council, State recovery measures have negatively impacted Indigenous Peoples, instead focusing on managing the economic crisis caused by the virus and expanding business operations at the expense of Indigenous Peoples, their land and the environment.<sup>5</sup>

In the Philippines, the government lifted its moratorium on mining projects in 2021 in order to boost the pandemic-hit economy. This led to the re-opening of a gold mine, which now has permission to operate until 2044, plus the four-year ban on open-pit mining has been lifted. In Malaysia, Indigenous Peoples were disproportionately affected by high infection rates and a loss of livelihoods due to businesses and industries shutting down, leaving them dependent on food aid to survive. The

logging industry nevertheless continued unabated, recording profits higher in 2021 than in 2020.

COVID-19 also had specific effects on Indigenous women. In the Philippines, the government banned home births, a traditional practice among Indigenous communities in the country, thus criminalising their custom despite it being financially difficult for Indigenous women to first reach hospitals and then pay for the hospital birth. In Kenya, due to the disrupted economy, Indigenous women had to move to urban centres to find work where they were often mistreated, paid low salaries and sometimes forced to engage in commercial sex.

## **Attacks on Indigenous Peoples' human rights defenders**

Indigenous Peoples continued to be targeted in 2021 for defending their human, land and environmental rights, in many cases facilitated by and under the cover of pandemic-related measures and realities.

At least 358 human rights defenders were killed in 2021. A staggering 59% of those were defenders working on Indigenous Peoples' rights, land rights and environmental rights. Over a quarter (26%) of those killed were Indigenous persons and 18% identified as women. As in previous years, the majority of these killings occurred in the Americas, Asia and the Pacific regions,<sup>6</sup> although this is hardly a full, global picture and many more cases go unreported.

In Peru, Indigenous communities are constantly having to protect their territories from encroachment due to illicit activities, including coca leaf production, illegal logging and drug trafficking. Four Indigenous Amazonian leaders were killed in 2021 in incidents related to protecting their lands and communities from such activities.

These killings are obviously tragic but so is the impunity with which these actors operate. Many attacks and threats are often not investigated unless attention is brought to them through mass protest or activism.

The authorities in Paraguay only officially charged a group of armed civilians once their brutal attacks had become public. In March 2021, these armed civilians carried out a forced eviction of nine Indigenous persons, including women, children and elderly persons, assault-

ing them, threatening them with death and burning down the houses and belongings of 10 families.

Not much has changed in the final year of President Duterte's term in the Philippines. Laws targeting "communists"/ "terrorists" are still in place, which in actual fact target Indigenous Peoples, human rights defenders and civil society workers. Police raids and attacks have continued against Indigenous leaders. In one example, three Indigenous leaders in the Southern Tagalog region were killed and six more arrested in a police raid.

It would be remiss to talk about attacks on Indigenous Peoples, human rights defenders and people in general in 2021 without talking about Myanmar. Since the military (Tatmadaw) coup on 1 February, more than 1,500 people have lost their lives; over 11,000 have been arbitrarily detained, with arrest warrants out for nearly 2,000 more; and close to 300,000 people have been displaced, with at least two million people in need of humanitarian assistance.

While it could be said that, prior to the coup, it was Indigenous, ethnic and minority groups that largely bore the brunt of the Tatmadaw's brutality for decades, since the coup, there are few people living in the country that have not suffered under the military junta's power grab and witnessed its violence. People across the world are now witnessing the Tatmadaw's flagrant disregard for international law in its willingness to kill, injure, abuse and/or detain its own people indiscriminately.<sup>7</sup>

## **Land grabbing and large-scale projects continue**

Indigenous Peoples continue to experience injustice as large companies appear to be allowed to freely continue their activities, encroaching on Indigenous lands, with governments using COVID-19 economic recovery as a justification to start or reinvigorate infrastructure and development projects. Rather than slowing down, even during the second year of the pandemic, activities only increased. Part of this escalation can be attributed to the increase in convoluted investment agreements designed to protect the interests and rights of investors and which have encouraged transnational corporations to pursue projects in areas that particularly affect Indigenous Peoples.

Plans for the development of tourist destinations are ongoing

throughout Asia and Africa. In Monduliri province, Cambodia's largest and most sparsely populated province, the Bunong Indigenous people remain under intense pressure as land encroachment and land speculation has increased considerably in 2021. The province has been earmarked as a future tourist destination complete with airport, casinos, hotels and shopping malls. Indigenous communities are being coerced, bribed and manipulated to sell their land at a cheap price to a variety of different actors, including real estate developers, government officials and businesses, both local and international. In one case, an entire mountain was sold off without the consent of all community members. Many of the sales have taken place in violation of Cambodian law, and many land disputes have thus been filed and are tied up in courts.

The same has been happening in India in the midst of the second wave of COVID-19. The Indian government's main policy think tank, the National Institution for Transforming India, is continuing its large-scale development project to develop the Great Nicobar Island in Andaman and Nicobar Islands, potentially endangering the Nicobarese and Shompen peoples. The project, which would develop a considerable amount of Indigenous land to the detriment of the daily life of numerous villages, aims to build a large sea terminal and airport, among other facilities, to encourage visitors to experience the natural environment of the area.

In Botswana, the Office of President Masisi has ordered the acquisition of a large tract of land within Moremi Game Reserve which, until the 1970s, was Khwe San land. The government's intention is to turn this now-detribalised land into a government-run facility. This is just one of many land grabbing projects that Indigenous Peoples are struggling against in the country. In 2021, the government also seized several major land parcels in the Okavango Delta, where oil was discovered in late 2020. The area is now being opened up for exploration by both the governments of Botswana and neighbouring Namibia.

Several such land issues are also happening in Tanzania, often without the say of Indigenous Peoples. In June 2021, the Minister of Natural Resources and Tourism announced that Essimangor Forest was going to be expanded and would become a forest reserve, meaning that it will become a State-owned and managed forest. This was done without any knowledge of the people who have lived in and used the forest undisturbed up until that point. Meanwhile, Indigenous Peoples in Loliondo and the Ngorongoro Conservation Area continue to be under constant threat of eviction.

## Positive developments

Nonetheless, despite the adverse situation facing Indigenous Peoples, 2021 was also filled with positive developments and victories in the struggle for Indigenous Peoples' rights and their recognition.

In a historic judgement by the Kenyan Environment and Land Court in Meru, the title deeds to the land on which the Lake Turkana Wind Power project (LTWP) sits have been declared "irregular and unlawful". The case, which began in October 2014 and finally ended on 19 October 2021, found that the title deeds were acquired irregularly. Indigenous Peoples in the area have long complained that this large wind energy project, among other issues, never followed proper FPIC protocols or proper compensation when the land leases were acquired, in addition to violating current and former land acts.<sup>8</sup>

In a similar case, also in October, Norway's Supreme Court ruled that the rights of Sámi reindeer herders were being violated by two wind farms in the western part of the country as the turbines have illegally encroached onto grazing lands and have had significant negative consequences on the reindeers' ability to graze. The permits for their operation were thus deemed illegal as they interfered with the herders' cultural rights. As judges noted, green and renewable energy projects are necessary and important but there are less intrusive ways to construct and operate them. Indigenous Peoples and IWGIA have been speaking out in this regard for several years. Not only are there less intrusive ways but there are also more respectful, inclusive and legal ways to plan for and implement them.<sup>9</sup>

In a rare European human rights victory in March 2021, Indigenous Peoples and local communities in Nepal won a hard-fought victory against the European Investment Bank (EIB). The case revolved around a complaint raised through the EIB Complaints Mechanism that their funding of a hydropower project with a powerline rerouted through a densely populated Indigenous area had followed inadequate FPIC protocols. The EIB must now ensure that lenders and business partners in the energy sector coordinate and ensure that "tailor-made" approaches to FPIC requirements are created and implemented.

Despite a tough year of polarising politics in Peru, the new government has become more amenable towards Indigenous Peoples and

open to dialogue since making changes to its ministerial cabinet in late 2021. Additionally, the emergence of another autonomous Indigenous government was solidified in 2021 in Peru, when the Awajún Autonomous Territorial Government (GTAA) held a large assembly in December to elect its first leader, Gil Inoach Shawit. The Awajún government represents a people of approximately 70,000 members with its roots in four departments: Amazonas, San Martín, Loreto and Cajamarca.

As Chile continues to come back from the October 2019 social uprising, Indigenous people have been coordinating and advocating for the country to become a plurinational and intercultural state that recognises their collective rights. In a historic milestone, in March 2021, Indigenous people were able to obtain 17 of the 155 Constitutional Assembly seats, meaning that for the first time they have been able to sit alongside the rest of the Chilean people in drafting a charter to establish a new framework for interethnic and intercultural coexistence.

In the United States, President Joe Biden is working on strengthening the relationship between government agencies and tribal nations, with 17 federal agencies signing up to protect tribal treaty rights and five signing up to better protect sacred sites. Additionally, almost immediately after taking office, Biden placed a moratorium on oil and gas activities in the Arctic National Wildlife Refuge, revoked the permit for the Keystone XL Pipeline and temporarily revoked the permit for the Dakota Access Pipeline, calling for a new environmental study.

There have been other steps in many places which, if implemented and acted upon, will go a long way in addressing Indigenous Peoples' rights. In Nepal, a promising new National Human Rights Action Plan was approved in December 2021 aimed at reviewing, reforming and implementing existing laws to protect and promote Indigenous Peoples' rights, and protecting their history, language, script, culture, heritage, music, and historical and sacred sites.

After 10 years, land tenure reform in the Democratic Republic of the Congo has finally been validated by ministers. The national reform finally addressed deviations from land tenure laws and rights that had precipitated numerous land conflicts, including land grabbing and evictions. Further, a national law on the protection and promotion of Indigenous Peoples' rights has been adopted by the country's National Assembly.



## **Indigenous Peoples make gains in international and regional processes and mechanisms**

As the pandemic continued in 2021, international and regional mechanisms and agencies continued to adapt to the new reality of not being able to hold face-to-face meetings. The increased use of online tools and virtual spaces, which represented a learning curve in 2020, was accepted more enthusiastically in 2021, allowing for even greater participation in events, as well as a greater number of side events and online meetings.

However, the lack of physical meetings continued to affect Indigenous Peoples in their proactive engagement with States to promote their views and demands. Towards the end of the year, however, some meetings started to adopt a hybrid model of virtual and physical engagement. This new model has yet to prove its effectiveness.

Despite the changing circumstances of the global pandemic, Indigenous Peoples made progress in advancing their issues in various places. At COP26, for instance, the advocacy, communications and growing presence of Indigenous Peoples has started to make its mark. The climate leadership of Indigenous Peoples is increasingly being recognised as they advance rights-based solutions grounded in their knowledge systems.

The UN Human Rights Council also adopted a resolution recognising a safe, clean, healthy and sustainable environment as a human right, calling on States to work alongside Indigenous Peoples on its implementation. Further, the Council also decided to appoint a new UN Special Rapporteur on the promotion and protection of human rights in the context of climate change, to be named in 2022.

Apart from the thematic study on the impacts of COVID-19 mentioned earlier, UN Special Rapporteur Mr. Francisco Calí Tzay also submitted a study on the challenges faced by Indigenous Peoples living in urban areas, who commonly live in marginalised urban areas in which their rights and cultural needs are not effectively addressed by public policies or urban planning. Further, Indigenous women and girls in urban areas are at increased risk of human trafficking, forced labour, prostitution, sexual exploitation and gender-based violence.

The European Union passed five resolutions that include Indigenous Peoples' rights and issues, calling for better rights protection,

greater inclusion in decision-making procedures, and corporate due diligence and accountability. The resolutions also covered the impacts of climate change and the role Indigenous Peoples can and should play.

On 30 December 2021, the Inter-American Commission on Human Rights (IACHR) adopted its thematic report on the *Right to Self-Determination of Indigenous and Tribal Peoples*.<sup>10</sup> This is the first time that the IACHR has comprehensively addressed the scope and content of this right, which is fundamental to Indigenous Peoples' enjoyment of their other human rights, both collectively and individually. Despite the virtual meetings imposed by the pandemic, the dialogues with representatives of Indigenous and tribal peoples across the continent enriched the content of the report and provided a better understanding of their situation and their own aspirations and visions regarding this right.

Looking forward, it will be necessary to continue to strengthen and use these instruments to hold States accountable to their human rights obligations and to prioritise the well-being and safety of Indigenous Peoples over and above economic recovery. Further, for the meetings of these mechanisms and agencies, as digital solutions to participation are becoming a new standard, it will be necessary to continue to learn from and take advantage of such opportunities without sacrificing the voice of Indigenous Peoples and other groups. Additionally, as hybrid meetings start becoming the norm, including virtual and face-to-face experiences, everything must be done to ensure they are carried out in an equitable and safe manner.

## **Avoiding a new normal**

Indigenous Peoples continue to contend with inequalities that have become more evident and more pronounced due to the pandemic. As the world opens up in 2022, it is important that Indigenous Peoples are not forgotten or side-lined and that their disproportionate treatment, the intensified encroachment onto their lands, the increased extraction of resources, and the blatant disregard for safe and inclusive health policies and lack of inclusion do not become a new normal.

To ensure this does not happen, specific action needs to be taken by national, regional and international bodies and mechanisms to en-

sure the participation and consultation of Indigenous Peoples, whether digital or physical, in any discourse and decision-making process. Further, with the advent and growing facility and comfort of Indigenous and non-indigenous people using digital solutions for participation and communication, States and other bodies need to ensure that Indigenous Peoples have the equipment, access and connectivity to be able to pursue such participation.

Further, the voice and consultation of Indigenous women and girls needs to be amplified and taken into consideration in every facet of society. Indigenous women are often seen and lauded as being the very fabric of a family, society and people but, in many cases, this can be interpreted as lip service as they do not enjoy a commensurate level of political responsibility and authority. Instead, they often bear the brunt of decisions that negatively affect them. States and other bodies must make sure these steps backward, exacerbated during the pandemic, were only temporary and that opportunities are created and pathways are opened for their necessary contributions.

To avoid a new normal, Indigenous Peoples' rights, now more than ever, need to be recognised, protected and defended. The land they traditionally own and protect, the knowledge and history they hold, and the methods they employ to live sustainably are necessary for the preservation and enjoyment of the planet's remaining biodiversity. Indigenous Peoples' very existence and contributions, valuable in themselves, are also intrinsic to how we as humanity responsibly move forward. Just as a society cannot fully exist without the full participation, acknowledgement and respect of its women and girls, neither can humanity fully exist without respect for Indigenous Peoples' rights and their full participation in any decisions that affect their lives and future.

**Dwayne Mamo**

General Editor

**Signe Leth**

IWGIA Gender Focal Point

**Kathrin Wessendorf**

Executive Director

Copenhagen, March 2022

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## About the Indigenous World

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

For 36 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. This yearly overview serves to document and report on the developments Indigenous Peoples have experienced throughout 2021. *The Indigenous World 2022* adds not only documentation, but also includes a special focus on the contribution and situation of Indigenous women and their rights around the world.

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

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

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

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



# PART 1

Region and country reports



Africa

# Algeria





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

The Indigenous populations can primarily be distinguished from Arab inhabitants by their language (Tamazight) but also by their way of life and their culture (clothes, food, songs and dances, beliefs, etc.). After decades of demands and popular struggles, the Amazigh language was finally recognised as a "national and official language" in Algeria's Constitution in 2016. But, in practice, the Amazigh identity continues to be marginalised and folklorised by State institutions. Officially, Algeria is still presented as an "Arab country" and "land of Islam", and anti-Amazigh laws are still in force (such as the 1992 Law on 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 re-

main 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 urging it to meet its international commitments.

## New administrative and legislative measures threaten rights and freedoms

**O**n 25 April 2021, the Algerian Ministry of National Defence issued a statement<sup>1</sup> in which it noted that its security services had “dis-mantled a criminal cell composed of supporters of the ‘MAK’ separatist movement, involved in planning attacks and criminal acts.” The statement added that the Algerian army had proceeded to “seize weapons of war and explosives intended for the execution of criminal plans” and unveiled “a dangerous conspiracy targeting the country, fomented by said movement”, some of whose members were likely to have “benefited from combat training abroad with the funding and support of foreign countries.”

As proof of its allegations, the Algerian ministry presented a young man on television who claimed, without any evidence, to be a supplier of weapons to the Movement for the Self-Determination of Kabylia (MAK).<sup>2</sup> Reacting to these serious accusations from the Algerian Ministry of Defence, MAK’s President declared on 26 April 2021<sup>3</sup> that it was an “outright lie”, specifying that his movement “is of a peaceful nature” and that it is based “on the right of peoples to self-determination and not on any recourse to violence.”

In fact, since its creation in 2001, MAK has never committed any act of violence and has always used peaceful means. No member of this movement has been arrested for possession of weapons of war and no-one has been prosecuted through the Algerian courts for this reason.

On 18 May 2021, the High Security Council (HCS), chaired by the Algerian Head of State, decided to place both the Rachad and MAK movements on the list of terrorist organisations and treat them as such. The HCS does not, however, have the authority to take such a decision because it is purely an advisory body (Article 197 of the Constitution).

Moreover, the Movement for the Self-Determination of Kabylia, which has existed for more than 20 years, has always carried out its activities in a democratic and peaceful manner and condemns all use of violence.

On 30 May 2021, the President of the Algerian Republic, Mr. Abdelmadjid Tebboune, adopted Ordinance No. 21-08 in the Council of Ministers, amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Criminal Code. The amendments relate to the suppression of terrorist acts. This Ordinance came into effect on 9 June 2021.<sup>4</sup> This text has not been subjected to any parliamentary debate given that the President dissolved the National Assembly on 1 March 2021.

The amendments to the Criminal Code broaden the definition of the crime of terrorism, allowing the authorities to label any citizen critical of government action a “terrorist”. Indeed, Article 2 of Ordinance No. 21-08 introduces two additional paragraphs to Article 87(a) of the Criminal Code, which state that:

- *the following shall be considered a terrorist act or act of sabotage: any act aimed at the security of the State, national unity or the stability and normal functioning of institutions that is:*
- *working for or inciting, by any means, access to power or to a change in the system of governance through non-constitutional means;*
- *undermining or threatening the integrity of the national territory by any means.*

In 2018, and therefore well before this reform of the Criminal Code, the Human Rights Committee pointed out that this definition of “terrorism” could allow for the “prosecution of behaviour that falls under the exercise of freedom of expression or peaceful assembly.” In fact, in both 2019 and 2020, the Algerian authorities arrested and sentenced Amazigh to both fines and imprisonment for bearing the Amazigh flag, accusing them of “undermining national unity”. It is for the same reason that Lounès Hamzi, a defender of Kabylia’s right to self-determination, has been held in pre-trial custody since 7 October 2020.

Although the Criminal Code was already vague in its definition of terrorism, the new provisions introduced in 2021 only exacerbate this

further, giving the authorities the right to curtail freedom of expression and peaceful action.

Legislative elections took place in Algeria on 12 June 2021. Due to the repression, the participation rate was 23% nationwide and less than 1% in Amazigh territories such as Kabylia.<sup>5</sup> Political parties, associations and international organisations have all denounced the serious deterioration in human rights and the attacks on democratic principles in Algeria. Amnesty International has noted that: “Since April 2021, the Algerian authorities have increasingly used accusations of ‘terrorism’ or ‘plotting against the state’ to prosecute human rights defenders. Algeria has labelled two organisations that express dissenting views as ‘terrorist’ organisations: the opposition movement Rachad and the Movement for the Self-Determination of Kabylia (MAK).”<sup>6</sup> MENA Rights Group believes that “the provisions of Ordinance No. 21-08 of 8 June 2021, amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Criminal Code, are incompatible with several articles of the International Covenant on Civil and Political Rights, in particular Article 14 concerning the right to be presumed innocent.”<sup>7</sup> This NGO has called on the Algerian authorities “to review criminal legislation so that measures to combat terrorism are in line with the principles of legality, necessity and proportionality.” In June 2021, on the occasion of the 47th session of the UN Human Rights Council (HRC), 82 Algerian and international associations and NGOs called on this body’s Member States to act against the repression being exercised by the Algerian authorities against civil society organisations and democratic forces in Algeria. These associations and NGOs urged the members of the HRC to “Condemn the escalating crackdown on peaceful protesters, journalists and human rights defenders, including the excessive use of force, the forced dispersal and intimidation of protesters and the continued arbitrary prosecutions, including on bogus terrorism-related charges.”<sup>8</sup> They also urged the Algerian authorities to put an end to all arbitrary arrests and prosecutions and to release all those arbitrarily detained.

## **Cracking down on the Amazigh**

Human rights defenders and members of the Movement for the Self-Determination of Kabylia are being particularly targeted by this

crackdown. On the morning of 22 May, the Algerian police were present in large numbers in Aqvu, Kabylia, where they proceeded to arrest several people who were intending to go to the village of Tifrit to participate in the ceremony of tribute to Masin Uharun, a poet and activist of the Amazigh cause. The following people were arrested on the street, at the train station and in cafes: Massinissa Abache, Mourad Bensalahdine, Achour Iken, Younes Kaced, Djamel Djoudi, Mastinas At Weghli, Nabil Moussaoui, Menad Maouche, Zahir Ait Mansour, Boudjemaa Bousse-lam, Karim Fateh, Faouzi Chakri, Marzouk Laoubi, and Takfarinas Hitach.

Yuva Meridja, member of the Federal Council of the World Amazigh Congress (CMA), and Wissem Nasri, were also arrested in Tifrit where they too had come to celebrate the memory of Masin Uharun.

The next day, the Aqvu judged placed most of those arrested in custody. Some were released under judicial supervision.

All were prosecuted for reasons such as: “attacks on the security services, aggression against the forces of order, undermining national unity and armed assembly”, with reference to Articles 79, 97, 99, 146, 148 of the Criminal Code, which provides for various fines and prison sentences of up to 10 years.

Since the reform of the Criminal Code was enacting and MAK classified as a terrorist organisation, a large wave of arrests has taken place not only of members and supporters of this organisation but also of leaders of political movements, human rights defenders, journalists, lawyers and writers.

As of the end of December 2021, there were 340 political prisoners in Algeria,<sup>9</sup> some 90% of whom were Amazigh from Kabylia. Kamira Nait Sid, co-president of the World Amazigh Congress (CMA) was abducted on 24 August 2021 and held incommunicado for 8 days. Her case was reviewed on 1 September 2021 at the Sidi M'hamed Court of Algiers, which resolved that she would be held in pre-trial detention at Koléa Prison in the Wilaya (Province) of Tipaza. She is being prosecuted for four crimes: membership of and participation in a terrorist organisation; incitement to and advocating for subversive acts and terrorism; crime with the help of information and communication technologies; and conspiracy with the purpose of crime, plus a further four misdemeanours: receipt of funds to carry out or incite to carry out acts likely to undermine the security of the State, the stability and normal functioning of its institutions; conspiracy and attack against the authority of the State and the integrity of the national territory; incitement to assembly; and

discrimination and hate speech. She faces a sentence ranging from 10 years to life in prison.

Kamira Nait Sid was placed in pre-trial detention in Koléa Prison by the investigating judge on 1 September 2021. Insofar as the defendant is accused of belonging to a terrorist organisation, her pre-trial detention can last up to four months, renewable five (5) times.

Jugurtha Benadjaoud, a member of the Federal Council of the CMA, was arrested on 28 September 2021 and remanded in custody. All Algerian members of the World Amazigh Congress are either in prison or wanted and therefore in hiding, or have fled the country.

Slimane Bouhafis, who spent two years in prison in Algeria for “offending Islam”, had been living in Tunisia since 2018 with political refugee status. The Tunisian authorities handed him over to the Algerian police on 25 August 2021, in violation of the Geneva Convention on the protection of refugees. The investigating judge of Sidi M'hamed Court in Algiers immediately placed him in pre-trial detention.

Rabah Karèche, correspondent for the newspaper *Liberté* in Tamarrasset (Tuareg territory in southern Algeria) was arrested on 19 April 2021 and sentenced to one year in prison, to serve a minimum of eight months, for publishing an article about the marginalisation of the Kel-Tamasheq (Tuareg) and their expulsion from their lands. The Algerian justice system accused him of spreading “false information” and “undermining public order and national unity.”<sup>10</sup> This is in violation of Article 54 of the Algerian Constitution on freedom of the press. The NGO Reporters Without Borders ranks Algeria 146<sup>th</sup> out of 180 countries in terms of press freedom.<sup>11</sup>

## COVID and arson

Algeria experienced an acute health crisis due to COVID-19, particularly during the months of June and July 2021. The number of victims<sup>12</sup> was high, especially in the Amazigh territories, due to the inadequacy of the health infrastructure, exacerbated by their lack of equipment.

The Amazigh diaspora then mobilised strongly and was able to raise the necessary funds to buy oxygen and oxygen production equipment. Against all the odds, however, this traditional popular mutual aid

movement was abruptly disrupted by the Algerian authorities, who established administrative obstacles such as “authorisation to transport donations” or an obligation to “hand over donations to the Algerian Ministry of Health for distribution nationally.” Once again, the Algerian government thus prevented the Amazigh from implementing their traditional “Tiwizi” or solidarity, one of the fundamental values of their culture.

Since 9 August 2021, the inhabitants of several regions of Kabylia, particularly Vgayet and Tizi-Wezzu, have woken up to dozens of fires blazing. Houses, entire villages, orchards and hundreds of hectares of forest have been reduced to ashes. Casualties vary between 90 to 200, according to the source. Their attempts to fight the fires were severely hampered by poor capacity although they could have been supported by the men and equipment (civil engineering and helicopters in particular) of the Algerian army. Several offers of international aid, particularly from neighbouring countries, were even refused by the Algerian government. This is obviously a strategy on the part of the Algerian regime not to provide assistance to people in danger of death in Kabylia.

Algerian Interior Minister Kamel Beldjoud said in Tizi-Wezzu on 10 August that the fires in Kabylia were “of criminal origin.” On 12 August, Aymen Benabderrahmane, Prime Minister, declared that “Algeria has the scientific and technological evidence to demonstrate that these were criminal acts.”<sup>13</sup> And yet, to date, no investigation has been instigated by the government to uncover the perpetrators of the arson attacks in Kabylia.

## **Exploitation of Amazigh natural resources without their consent**

In 2021, the Algerian government granted the Western Mediterranean Zinc (WMZ) company, a subsidiary of Terramin-Australia, a permit to exploit a deposit rich in zinc, lead and other rare minerals at a site located at Tala-Hemza in Kabylia. This area is densely populated and includes several villages. WMZ has not yet started mining but has already established the first technical facilities. And yet the local population have not had their voices heard, nor have they received any information on the content of this project, its economic, social, health and environmental

impacts. This is in violation of the principle of free, prior and informed consent of Indigenous Peoples (Articles 10, 29 and 32 of the UN Declaration on the Rights of Indigenous Peoples). The local population have mobilised to defend their rights.

## **Violations of the freedom of belief and religious observance**

As is the case every year, non-Muslim or non-practising citizens were arrested and sentenced during the month of Ramadan (a month of fast for Muslims). On 14 April 2021, two non-fasters and the owner of a cafeteria in Aqvu, Kabylia were arrested by the police and taken to the police station. Several other arrests took place in Tizi-Wezzu and Jazoual for not respecting Ramadan.

On the eve of the celebration of Yennayer, the Amazigh New Year, which falls on January 12 each year, the Islamist movements unleashed a hate campaign against the Amazigh, calling them “Kouffar” or godless people. On 10 January 2021, Mohamed Ali Ferkous, an Islamist leader, called on Algerians not to celebrate Yennayer and declaring this celebration “haram” or forbidden. He recommended that this holiday be “banned from Algerian customs and traditions” and that Algerians should be satisfied with “purely Muslim” holidays.<sup>14</sup> The Algerian authorities have not reacted to these intolerant and racist remarks, which are in violation of the law on combatting and preventing all forms of discrimination and hate speech.

## **The situation of Amazigh women**

Amazigh women in Algeria suffer from discrimination both as Algerian women and as Amazigh women.

As Algerian women, they are subject to the Family Code,<sup>15</sup> the provisions of which are in line with Islamic Shari'a law (Islamic precepts). This code provides that men have the status of “wali”, i.e. guardians of the women. In addition, women are discriminated against in many areas, including marriage, divorce, inheritance and other civil rights.



Algeria ratified the International Convention on the Elimination of All Forms of Discrimination Against Women in 1996. However, it expressed reservations on Articles 2, 15, 16, and 29 of the Convention because they would be “in contradiction with the provisions of the Algerian Family Code.”<sup>16</sup> In its concluding observations following its consideration of Algeria’s periodic report, the Committee on the Elimination of Discrimination against Women expressed “concern that many provisions remain, in laws such as the Family Code and the Criminal Code, that are contrary to the State party’s obligations under the Convention and other relevant international human rights instruments.”<sup>17</sup>

The Amazigh customary law of “Azref” recognises equality between men and women and respects the individual freedoms of each person.<sup>18</sup> Algerian law ignores traditional Amazigh law and therefore contains no specific provisions relating to Amazigh women. Algerian law not only infringes upon the rights of Amazigh women but also on their culture and Amazigh institutions. Moreover, since the Amazigh live in the most marginalised and poorest areas (mountains and deserts), their social situation is more difficult compared to urban women (poor access to education, health, professional activity, etc.). Respecting the rights of Amazigh women necessarily involves respecting the Amazigh as an Indigenous people of Algeria.

## **International bodies react to human rights violations in Algeria**

On 11 May 2021, the Office of the United Nations High Commissioner for Human Rights (OHCHR) reacted to human rights violations in Algeria. “We are increasingly concerned about the situation in Algeria where the rights to freedom of opinion and expression, peaceful assembly and participation in public affairs continue to be threatened,” said Rupert Colville, spokesperson for the UN High Commissioner for Human Rights at a press briefing in Geneva.<sup>19</sup>

On 27 September 2021, the African Commission on Human and Peoples’ Rights and the Commissioner-Rapporteur on the human rights situation in Algeria sent a joint Letter of Appeal to the Algerian government.<sup>20</sup> The letter addressed allegations received by the African Commission in May, June, July and August 2021, respectively:

- According to reports, in May 2021, the Algerian government classified an Amazigh political Movement for the self-determination of Kabylia (which has been in existence for 20 years) in the region of Kabylia, and all political movements calling for an autonomous status for Kabylia, as “terrorist movements”. Reports alleged that the police has been arresting all members of these movements and that at least 160 Kabyls are currently imprisoned without trial.
- In June and July 2021, it is also alleged that after the government forbade village communities in Kabylia from organising their own lockdown and controlling the entry of outsiders to their villages, the number of infections due to the COVID-19 Delta variant increased significantly. Reportedly, the lack of respirators in health structures and the insufficient production of oxygen resulted in thousands of deaths, and the Algerian foreign affairs administration is reported to have blocked the delivery of respirators sent by the Kabyl diaspora in Europe.
- Furthermore, it is alleged that, on 9 August 2021, civil protection structures counted more than 70 fires in the densely-populated and wooded mountain areas of Kabylia. According to reports, these fires were deadly (140 to 250 deaths) and devastating (destruction of entire villages, crops, livestock, orchards and thousands of hectares of forest) because the means with which to fight the flames were derisory. It is alleged that the government has not opened any investigation to find the arsonists.
- The letter also notes that, on 24 August 2021, Kamira Nait Sid, co-chair of the World Amazigh Congress, was allegedly kidnapped from her home in Tizi-Wezzu, in the Kabylia region, and her family was reportedly not informed. According to reports, Kamira Nait Sid was unlawfully held in detention for eight days, without trial and with no contact with the outside world. It is alleged that Kamira Nait Sid was put in pre-trial detention pending her trial, which will take place at an unknown date. The letter informs the Algerian government that, if these allegations were correct, it (the government) would be in violation of Article 4 on the right to life, Article 6 on the right to personal liberty and pro-

tection from arbitrary arrest, Article 7 on the right to fair trial, Article 9 on the right to receive information and free expression, Article 10 on the right to freedom of association, Article 14 on the right to property, Article 16 on the right to health, Article 19 on the right of all peoples to equality and rights, and Article 20 on the right to self-determination.

- The Letter of Appeal urges the Algerian government to provide clarification to the Commission regarding the referenced allegations; conduct prompt and impartial investigations into the allegations and hold the perpetrators of the fires accountable; ensure full and effective reparations to address the harm suffered by victims, on the loss of property and life; ensure fair trial to those detained without trial; adhere to the provisions of General Comment No. 3 on the right to life, in particular as it relates to the requirement for accountability; and, generally, comply with the letter and the spirit of the African Charter, General Comment No. 3 on the right to life, as well as other relevant human rights instruments to which Algeria is a Party.

On 15 December 2021, concerned about the abusive incarceration of Kamira Nait Sid, the UN Working Group on Arbitrary Detention sent a communication to the Algerian government, asking for an explanation. The Algerian government has two months to respond.

On 27 December 2021, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Working Group on Arbitrary Detention, sent a joint letter to the Algerian government (OL DZA 12/2021) in which they expressed their concerns regarding certain recently approved laws relating to security and counter-terrorism, in particular Ordinance No. 21-08 amending and supplementing Ordinance No. 66-156 of 8/06/1966 on the Criminal Code and Law No. 20-06 of 22/04/2020 also amending the Criminal Code. In this communication, the UN experts express their concern that “the adoption and implementation of these laws may lead to significant

violations of human rights and fundamental freedoms, including the right to freedom of expression, association and peaceful assembly, the right to security of the person and to a fair trial, as established in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) ratified by Algeria.”<sup>21</sup>

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**Belkacem Lounes** is a doctor of Economics and Social Sciences, university professor (Grenoble Alpes University), expert member of the Working Group on Indigenous Populations/Communities and Minorities in Africa of the African Commission on Human and Peoples' Rights, member of the UN Expert Mechanism on the Rights of Indigenous Peoples, and author of numerous reports and articles on Amazigh and Indigenous Peoples' rights.



# Botswana



Botswana is a country of 2,350,667 inhabitants that celebrated its 50<sup>th</sup> year of independence in 2016. Its government does not recognise any specific ethnic groups as Indigenous, maintaining instead that this applies to all citizens of the country. However, 3.2% of the population identifies as belonging to an Indigenous group. These include: the San (known in Botswana as the Basarwa) who number around 70,040; the Balala (2,420); and the Nama (2,830), a Khoekhoe-speaking people. The San were in the past traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle post workers, or people with mixed economies. They belong to a large number of sub-groups, most with their own languages, including the Ju/'hoansi, Bugakhwe, Khwe-!Ani, Ts'ixa, #X'ao-!aen, !Xóǎ, #Hoan, ‡Khomani, Naro, G/ui, G//ana, Tsasi, Deti, Shua, Tshwa, Cuaa, Kua, Danisi and /Xaise. The San, Balala and Nama are among the most underprivileged people in Botswana, with a high percentage living below the poverty line. Of the San, only an estimated 300 people are full-time hunter-gatherers.

Botswana is a signatory to the Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW), on the Rights of the Child (CRC) and on the Elimination of All Forms of Racial Discrimination (CERD), and it voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, it has not signed the Indigenous and Tribal Peoples Convention No. 169 (ILO 169). There are no specific laws on Indigenous Peoples' rights in the country, nor is the concept of Indigenous Peoples included in the Botswana Constitution. Botswana took part in the 20th Session of the UN Permanent Forum on Indigenous Issues (UNPFII) held (largely virtually) in New York from 19-30 April 2021.

## COVID-19 and its impact on Botswana

**A**s is the case for people throughout the world, the lives of Botswana's Indigenous people have been deeply affected by the COVID-19 pandemic. Botswana has now lifted the most recent



total lockdown, although vaccination rates in the country are only at 40%. There are high rates of coronavirus infection in some San communities, including Ghanzi, D’Kar and Mababe, although the mortality rates for San in Botswana appear to be relatively minimal. The Sir Ketumile Masire Foundation provided soap and other protective materials to Remote Area Communities (RACs) and information on COVID-19 was provided in mother-tongue languages by the Kalahari Peoples Fund and other organisations.

In 2021, COVID-19 and the Omicron variant caused an 80% decline in tourism, resulting in a drastic decrease in incomes and subsistence for members of RACs. In normal times, communities located in wildlife management areas benefit by subleasing their areas to tour operators through the Community-Based Natural Resource Management and Hunting Licence systems which, until the pandemic, provided an income for 46% of the rural population in general.<sup>1</sup> In contrast, income from diamonds, which dominates the Botswana economy, jumped 73% in 2021 according to the Botswana government and the Debswana Diamond Company economic figures.<sup>2</sup>

## **Land and language issues**

After many years of discussion, it was announced in July 2021 that mother-tongue San languages would be taught in Botswana schools beginning in February 2022. Naro and possibly Ts’ixa will be included. For years, only English and Setswana, the national languages, have been taught in schools.

There were no changes in legislation affecting Indigenous people in Botswana in 2021. The land tenure situation of RACs in Botswana is still very precarious,<sup>3</sup> and new legislation may be needed to ensure that the rights of these communities are protected.

## **Hunting and wildlife issues**

President Mokgweetsi Masisi and the Department of Wildlife and National Parks held auctions for elephant hunting licences in March 2021 for the season that closed in September of that year. A few San com-

munities made bids but most were not allocated any elephants. In the North-West, Chobe and Central districts, there were no specifications for distributing benefits to the communities where elephants are shot so community members were not able to benefit from the meat or other elephant products. Some community members did, however, accompany the safari companies and their clients and were able to generate some income in that way.

One of the mysteries in Botswana in 2021 was the continued deaths of elephants in and around the Okavango Delta, which recorded a total of 450 elephant deaths. After months of testing the potential cause was determined, most probably cyanobacteria or toxic algae.<sup>4</sup>

## **Central Kalahari Game Reserve issues**

Residents of the Central Kalahari Game Reserve, both San and Bakgalagadi, continue to suffer neglect from the government, which has not provided the water infrastructure that it promised. Thirst is a major problem for residents of the reserve.

Field work in the Central Kalahari in 2021 revealed that communities in the reserve have not received any benefits since the Memoghamoga Community Trust (MCD) –designed and put in place by the government in 2018– was established there. The five Central Kalahari communities are seeking the right to individual trusts for each community, giving them more flexibility and greater control over their own activities. At present they do not have access to any of the benefits of tourism and tourists are discouraged from going to the communities. Instead, they go to government-sponsored camps or private safari lodges, such as Tau Lodge in the western part of the reserve, and Kalahari Plains Camp in the north-eastern Central Kalahari.<sup>5</sup>

## **Ranyane (Ghanzi District)**

The threat of resettlement still hangs over many San communities, including Ranyane in southern Ghanzi District, where the government has been systematically evicting residents for many years. The Botswana Khwedom Council, a national San non-government organisation, visit-

ed the settlement in May 2021<sup>6</sup> with information on COVID-19 and masks for the community. They reported that 165 people were now living there, the majority of them Naro San, along with a dozen Bakgalagadi. Some of the community members were staying temporarily in Matsimantsho (39 km from Ranyane) where they are working in the programme known as Ipelegeng, a cash- and food-for-work programme that was not made available to Ranyane, unlike other communities in Ghanzi District.

Ranyane community has a borehole but the government does not maintain it as it does for other settlements. Residents contribute funds for its maintenance and fuel, including the Chief of Ranyane, Qlarake Pule, who sold some of his cattle for this purpose. No government representatives have visited the settlement since 2013 and the people of Ranyane feel abandoned and neglected. In the words of Kgosi Pule: “Only God cares about us.” Residents feel that the government is punishing them for standing up for their rights and taking their case to court to stop the evictions. There are no health posts or schools in or near Ranyane and the Village Development Committee is not operational.

The people of Ranyane have asked the Khwedom Council to organise some training on human rights-related matters for the community. The chief (*kgosi*) of Ranyane, Qlarake Pule, and other community members have said they want their village to be recognised and services made available to them. They also want to have access to livelihood projects under the Botswana government and UNDP “Kgalagadi – Ghanzi Drylands Ecosystem Project” (KGDEP) and to have equal treatment from the Remote Area Development Programme of the Ghanzi District Council and central government.

## **Botswana seizes land in the Okavango Delta without consulting residents**

Several major pieces of land in the Okavango Delta area were seized by the Botswana government in 2021. Botswana has three kinds of land: tribal, State (including protected areas) and freehold, which is owned by individuals. On 9 April, the Office of President Masisi ordered the acquisition of a large parcel of land in the Moremi game reserve which, until the 1960s and 1970s, was Khwe San land. The government plans to use

this detribalised land as a government-run tourist facility. The North-West District Council (NWDC) voted against the government's plan in July, only to be informed that they had no voice in the decision because it was the sole responsibility of the Tawana Land Board.<sup>7</sup> The Minister of Land Management, Kefentse Mzwinila, justified bypassing the council on the basis of the Tribal Land Act, saying: "We've done it before where we detribalised land to make it State land."<sup>8</sup> Some observers were reminded of the expulsion of Indigenous people from the Central Kalahari Game Reserve in the 1990s.<sup>9</sup> The loss of this land will mean a reduction in incomes and employment for local San such as those at Khwai who work for tourism companies operating in the northern part of Moremi and who have a community trust.

In May, the government announced that it had purchased a functioning tourist facility, the Tautona Lodge in Ghanzi, along with a nearby wildlife area, for use as a training facility by the Directorate of Intelligence and Security Services (DISS).<sup>10</sup> Ghanzi Councillor Kealeboga Gaebase said, "It is shocking that the government has unanimously decided to buy [Tautona] despite its pronouncement that the country is in the middle of an economic crisis." Jumanda Gakelebhone, a San delegate to the council, questioned why the lodge was purchased without consulting the community. He said, "Of course we will not rest until we find answers because for any purchase made by government, especially in our jurisdiction, there has to be consultation..."<sup>11</sup> Naro San in the area had ancestral rights to Tautona, and some of them were employed at the lodge, which will no longer be the case.

These acquisitions by the government have taken place at a time when the Okavango and Ghanzi communities have lost thousands of jobs due to the impact of COVID-19 on the country's tourism industry. Community members have lost their employment in the Okavango as chefs, professional guides, canoe polers, entertainers and craftspeople, increasing their already severe food insecurity and poverty.

## **Oil prospecting in the Okavango Delta area**

Late in 2020, the Canadian oil company ReconAfrica announced that it had discovered oil in the Okavango Delta area, and that it had obtained

licensing agreements from the governments of both Botswana and Namibia to begin exploration, as noted in last year's report. The licences approved exploration over vast, contiguous areas of North-West Botswana and North-East Namibia, covering a total of 13,200 square miles.<sup>12</sup>

Lefoko Moagi, Botswana's Minister of Mineral Resources, Green Technology and Energy Security, stated in February 2021 that the Botswana phase of the exploration would be carried out with careful consideration for the area's environment and its people's well-being, and that no fracking would be permitted. The first three years of the Botswana licensing agreement would be used for planning and would not involve any physical activities on the ground. Two UN world heritage sites in the area –the Tsodilo Hills and the Okavango Delta itself– were excluded from the licensing agreement in response to UN concerns.<sup>13</sup> This did not prevent ReconAfrica from sending a representative to the Tsodilo Hills in September 2021 to tell the Ju/'hoansi San and Mbukukushu living there that they would have to resettle away from the hills.<sup>14</sup>

Citizens and environmentalists raised concerns immediately. An international "Save the Okavango" movement began soon after the plans were unveiled. Early in 2021, Gakemotho Khwebe Satau, the Regional Chair of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) began consulting with community leaders in the affected area of Botswana and called on President Masisi to meet with them. Kgosi Boitumelo Kopano of Dobe settlement said ReconAfrica had not been in touch with community leaders, and he added that: "As a community we need to be thoroughly consulted on the matter."<sup>15</sup> Failure to obtain free, prior, and informed consent goes against Botswana's environmental laws.

In October, Prince Harry, Duke of Sussex, Leonardo di Caprio, Forest Whitaker and other celebrities joined local Indigenous and environmental activists in calling for an immediate moratorium on oil and gas drilling in the Okavango River Basin. Prince Harry and Reinhold Mangundu, a Namibian activist, wrote in an article published in the Washington Post: "Drilling is an outdated gamble that reaps disastrous consequences for many, and incredible riches for the powerful few." They asked readers to join them in resisting the drilling in the Okavango.<sup>16</sup>

## Women's and youth issues in Botswana

Rape and domestic abuse increased in Botswana during the COVID-19 pandemic in 2021. The Gender-Based Violence Prevention and Support Centre and several San NGOs called for greater attention to women's rights in the country, especially those relating to domestic abuse. Data collected by the Red Cross and UNICEF in 2021 indicated that minority women in remote areas were suffering higher coronavirus infection rates than men, and that their incomes were much reduced due to the decline in tourism. Organisations such as the Tane Ko Teemahane Women's Foundation and the Kuru Family of Organisations worked with women in craft production, along with individual artists based in Maun, D'Kar and Ghanzi. Palesa Molefe, Miss Botswana in the Miss World contest, met with Ju/'hoan healers in December when they demonstrated their healing powers and provided her with traditional craft items to be worn during her international events.<sup>17</sup>

Indigenous women also reported having more difficulty than men in obtaining legal tenure rights over land for residential, arable or business purposes. This was especially the case in North-West, Ghanzi, Central, Kgalagadi and Kgatleng districts.<sup>18</sup>

A study of 367 San women and their children in Ghanzi District uncovered high rates of anaemia among the women and even higher rates, 50%, among their children, who also tended to be undernourished and stunted. Many of the women lived in households of eight people or more. Two-thirds of the households had no access to toilet facilities, not even pit latrines. A majority of the women were living on less than USD 200 a month and, although most were employed, over two-thirds of them were making less than USD 175 per month.<sup>19</sup> As has been the case in previous years, female-headed households tend to be the poorest in the country, an issue that continues to be a focus of concern for the Botswana government and NGOs.

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**Robert K. Hitchcock** is a Professor of Anthropology at the University of New Mexico, Albuquerque, New Mexico USA, [rkhitchcock@gmail.com](mailto:rkhitchcock@gmail.com)

**Judith Frost** is a freelance consultant who has done extensive work on San issues in Southern Africa, [frostjja@gmail.com](mailto:frostjja@gmail.com)



# Burundi





Burundi is a small landlocked country (27,830 km<sup>2</sup>). It is the second most densely populated country in Africa (around 11.2 million inhabitants and 470 inhabitants per km<sup>2</sup> in 2016).<sup>1</sup> With nearly 65% of its population living below the poverty line, Burundi lies 223<sup>rd</sup> out of 228 countries on the Human Development Index (HDI).<sup>2</sup> 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.

The Indigenous people of Burundi are the Twa (also known as Batwa), who are considered to be one of three components of the population (Hutu, Tutsi and Twa). They are estimated at between 100,000 and 200,000 individuals although it is difficult to establish a precise figure. There has, in fact, been no official ethnic census since the 1930s and, in any case, particularly in the case of Burundi, such figures are inaccurate (mixed race marriages, porous boundaries between the different population groups...). Moreover, most Twa do not have a national identity card and are thus not included when drawing up the census. 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,<sup>3</sup> or around 1% of the population. The rest of the population is made up of Tutsi and Hutu.

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

During the first part of the 20<sup>th</sup> century, emerging industrialisation in Burundi, the gradual opening up of the country to international trade and greater access to clay products resulted in a considerable weakening of their pottery trade. The main

economic activity of the Twa was thus again undermined, turning them into some of the most vulnerable people in Burundi.

The term indigeneity takes on a particular dimension in the Burundian context given that identity-based claims among the different population components have resulted in numerous conflicts and massacres over the last decades. These conflicts, all too often analysed as ethnic divisions, in fact arise more from a reconstruction of identities and political tensions. In this context, recognition of Twa indigeneity has been the subject of discussion, even controversy, particularly in the early 2000s. Burundi abstained, for example, from adopting the UN Declaration on the Rights of Indigenous Peoples in September 2007.

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

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

## Access to land and secure land rights for women and vulnerable groups

**A**s part of the implementation of the *Burundi Landscape Restoration and Resilience Project* (PRRB), the IGNFI/GEOFIT<sup>4</sup> - LADEC (Land and Development Expertise Centre) Group held a workshop on 27 July 2021 on access to land and securing land rights for women and vulnerable groups.

The results of a study conducted by the group in Buhinyuza and Isare communes during the first half of 2021 were presented. This study

highlighted the challenges relating to the land rights situation for women and other vulnerable groups.

Indeed, as noted by Mr. Vital Bambanze, President of UNIPROBA, an organisation for the defence and promotion of the rights of Indigenous Peoples, i.e. (in Burundi) the Twa, land is intrinsically linked to the Burundian identity. Burundians proudly identify with the land of their ancestors, "*Itongo rya ba sogokuru*" (with, according to popular custom, a duty to safeguard it from all predation and alienation). This is why land certification is so important and necessary to securing land rights.<sup>5</sup>

During the workshop, multiple recommendations emerged from the various interventions. Some related to revising the legal framework, for example:

- effectively implementing the constitutional provisions regarding the principle of equality;
- promulgating the law on succession, matrimonial regimes and gifts;
- reviving Decree-Law No.1/19 of 30 June 1977 abolishing the institution of *Ubugererwa*,<sup>6</sup> and Decree No. 100/65 of 30 June 1977 on the composition and functioning of the *Ubugererwa* liquidation commission, in order to finally abolish *Ubugererwa* for the Twa;
- general communication and awareness-raising efforts towards women and vulnerable groups to encourage them to register their land holdings and thus secure their rights, and publicising parents who promote the equitable sharing of land between girls and boys.

Finally, recommendations were made specifically for the Batwa, whose land situation is of particular concern. These recommendations related, for example, to identifying Batwa in advance of land certification operations and adopting strict administrative measures prohibiting the purchase, sale or transfer of land once it has been allocated to the Twa.

At the end of the workshop, it was recalled that encouraging the certification of women's land rights was an issue that affected all women regardless of their status: married women, co-habiting women, single mothers, divorced women. By the end of the PRRB project, more than 7,000 land certificates (of the 14,080 expected under the project) will need to bear the name of a woman.

## Violations of the rights of the Twa in Burundi: Request for urgent intervention

Several human rights organisations issued the following appeal<sup>7</sup> on 19 August 2021:

*We, the undersigned organisations, express our extreme concern at the human rights violations, including arbitrary detentions, torture and extrajudicial killings, perpetrated against the Batwa Indigenous people in Burundi since 2015.*

- On 2 April 2021 Sylvestre Bazirinyakamwe, founder and vice-president of the Batwa organisation UNIPROBA was arrested by Burundi's national intelligence service. These police officers later arrested seven further staff members of the organisation, who were released after five hours. After being held in an unknown location for four months, on 18 August 2021, Mr. Bazirinyakamwe was suddenly transferred to the central prison of Bujumbura.
- At the end of July 2021, Innocent Mahwikizi, Founder and National Coordinator of the Batwa organisation *L'Union Chrétienne pour l'Éducation et le Développement des Déshérités* (UCEDD-Burundi) was incarcerated in the central prison of Gitega.
- In 2018, Jacques Ndayizeye, founder and Deputy Legal Representative of *Union des Jeunes Batwa pour le Développement Communautaire* (UJEDECO) was unjustly incarcerated in Bujumbura's central prison. He was arrested in the same way as Sylvestre Bazirinyakamwe. Since 2018, no-one in the Batwa community has been able to get justice for this Indigenous leader.
- Many more cases of killing, torture, and unjust imprisonment of Batwa leaders and members of the Batwa community have been documented since 2015, with no way to obtain justice for these victims of State-sponsored and extrajudicial actions. Documentation was provided to human rights agencies.

The co-signatories of the letter concluded their message by saying:

*We hereby call for the immediate release of all Batwa who have been detained in Burundi for political reasons, includ-*

*ing Sylvestre BAZIRINYAKAMWE, Innocent MAHWIKIZI and Jacques NDAYIZEYE; and we call on the human rights bodies of the international community, including the Office of the UN High Commissioner for Human Rights, the Human Rights Council, the UN Commission of Inquiry on Burundi, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), the UN Permanent Forum on Indigenous Issues, the Special Rapporteur on extrajudicial executions, summary or arbitrary executions, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples, as well as international NGOs such as the World Organisation Against Torture, Amnesty International, Human Rights Watch and Trial International, to launch an immediate investigation into the acts listed above, and to follow up those that are ongoing with an urgent response.*

## **The United Nations Human Rights Council appoints a Special Rapporteur to monitor the situation of human rights in Burundi<sup>8</sup>**

With a vote adopted by 21 votes to 15 with 11 abstentions, the Human Rights Council has decided to appoint a Special Rapporteur to monitor the situation of human rights in Burundi, to advise the Government of Burundi on the implementation of its human rights obligations, and to provide advice and assistance to civil society and the Independent National Commission on Human Rights. The Council has requested that the mandate holder present an oral update on the human rights situation in Burundi at its 50<sup>th</sup> session (June 2022) and submit a comprehensive written report at its 51<sup>st</sup> session.

Through this resolution, the Council is calling on the Government of Burundi to implement the recommendations made (*inter alia*) in the reports of the Commission of Inquiry on Burundi<sup>9</sup> and the recommendations it accepted at the end of the 2018 Universal Periodic Review.

The Council recognises the progress made in the areas of human rights, good governance and the rule of law since the inauguration of President Evariste Ndayishimiye. It condemns the human rights viola-

tions and abuses committed in Burundi, including extrajudicial killings, enforced disappearances, arbitrary arrests and detentions, torture and other cruel, inhuman or degrading treatment or punishment, and acts of violence, sexual and gender-based violence, and intimidation and harassment of members of opposition political parties, civil society representatives, peaceful demonstrators, human rights defenders, journalists, bloggers, and other media professionals, and expresses its deep concern that the exercise of their human rights is criminalised.

Nonetheless, the Government of Burundi communicated that it would not welcome the new Special Rapporteur in its country, thus preventing any new Rapporteur from carrying out their mandate.<sup>10</sup> The Rapporteur is expected to be appointed in March 2022.

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**Patrick Kulesza** is the Executive chairman/director of GITPA, Groupe International de Travail pour les Peuples Autochtones - France ([www.gitpa.org](http://www.gitpa.org)). He co-authored, with Marine Robillard, the book: *Quel avenir pour les Pygmées à l'orée du XXIème siècle?* [What future for the Pygmies at the turn of the 21st century?] published in 2019 in the Collection "Questions Autochtones" du GITPA, L'Harmattan.



# Cameroon





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

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

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

The Mbororo people living in Cameroon are estimated to number over one million and they make up approx. 12% of the population. They live primarily along the borders with Nigeria, Chad and the Central African Republic. Three major 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 and North 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 favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 but has not ratified ILO Convention 169.

## Legislative changes

**T**here was no news in 2021 about laws that have undergone reforms for the past decade or two, to which Indigenous Peoples and civil society organizations have contributed and which are of interest to them, such as the Law on Forestry and Wildlife, the Law on Land Tenure, and the Pastoral Code.

In November 2021, a capacity-building workshop was held for staff of the Ministry of Housing and Urban Development on promoting human rights in the area of the ministry's laws, policies, programs and practices with particular regard to women's and other vulnerable groups' access to land. The workshop was conducted in partnership with the National Commission for Human Rights and Liberties of Cameroon. During the discussions, when questioned by participants on the fate of the reform of the land tenure law, in which all sectors of society –including Indigenous Peoples– had participated actively through the National Engagement Strategy on Land Engagement (NES), the ministry informed them that it had received the draft law recently from the Presidency of the Republic. The ministry stated that as the Presidency had incorporated comments and observations into the draft law, the policy experts in the field of land tenure at the ministry were currently working on the relevant amendments as instructed. The Cameroon Human Rights Commission expressed interest in being given the opportunity to provide their observations and inputs to the final draft in a bid to ensure that the law respects the basic human rights of all stakeholders.

## Programmes

The Livestock Development Project (PRODEL), funded by the World Bank, had a special component for the Baka people of the East Region of Cameroon to encourage them in small animal breeding.

A call for proposals for the selection of an NGO to implement the project was launched but, due to the complexity of the criteria, many Indigenous organizations did not apply.

The project team implemented the project in many villages, such as Njibot and Missoume in AbongMbang district. The project supported the rearing of poultry, pigs and goats, and the criterion for support was

that the person benefiting from the project should have experience in raising animals such as chickens, pigs, goats or bees. Unfortunately, the project was neither very successful nor sustainable and all the animals provided by the project to the Baka people died within a very short period. The project coordinator for the East Region acknowledged their failure at the first attempt and hoped to improve in the future.

## **The 9<sup>th</sup> session of the Inter-ministerial Committee on Oversight of Indigenous People’s Projects (CISPAV)**

The 9<sup>th</sup> session of CISPAV<sup>1</sup> took place on 3 August 2021. This was a prelude to the 27<sup>th</sup> iteration of International Day of the World’s Indigenous Peoples. The main themes of the session were:

- Ownership, by those concerned, of the National Plan for the Development of Vulnerable Indigenous Peoples in Cameroon in order to streamline all actions/programmes/projects involving Indigenous Peoples at the national level.
- Evaluation of the actions taken by various stakeholders.

Participants included government ministries, international organizations, NGOs and Indigenous organizations. The session was presided over by the Minister of Social Affairs, Mrs Pauline Nguene, whose department is in charge of Indigenous Peoples. She is also the President of the Committee. In her opening remarks, she thanked the committee members for their engagement in supporting Indigenous Peoples in their quest for development. She said an evaluation of the situation of Indigenous Peoples in Cameroon was one of the major goals to be achieved through the activities that would follow the launch of the International Day of the World’s Indigenous Peoples. Minister Pauline Nguene was quoted telling the Indigenous Peoples that “you are the principal actors in your development.” The day continued with an evaluation of actions by major stakeholders. The actions implemented in 2021 focused on agriculture, animal rearing, education, income-generating activities, health care services, COVID-19 awareness raising, potable water and obtaining civil registry documents such as birth certificates.

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

The 27<sup>th</sup> International Day of the World's Indigenous Peoples, the 13<sup>th</sup> time it had been celebrated in Cameroon, was held on 9 August 2021 and presided over by the Minister with responsibility for Indigenous Peoples, Mrs Pauline Nguene, under the theme "A call to revitalize, preserve and promote Indigenous languages around the world."

Government officials, international development agencies, diplomatic missions and Indigenous Peoples were in attendance. The official ceremony commenced with a welcome speech by the Mayor of Yaounde City, followed by a speech from the Director of UNESCO who spoke about the theme of "Leaving no one behind: Indigenous Peoples and a call for a new social contract." Minister Pauline Nguene declared the ceremony open after which the most important activity of the day, launched by the minister, was the training of Indigenous youths as ambassadors for peace.

Celebrations for Indigenous Peoples' day continued in the Adama-wa, East, Far North, Centre, West and South-West regions under the theme: "A call to revitalize, preserve and promote Indigenous languages around the world." These celebrations were organized by MBOSCUDA and the forest peoples celebrated in their localities as well. International Day of the World's Indigenous Peoples has taken root in Cameroon, and Indigenous Peoples –both the forest peoples and the pastoralists– identify with the day and also use it to showcase their traditions and cultures.

## **The signing of a MOU between the Ministry of Forestry and Wildlife and the Association Sanguia Baka Buma'a Kpode (ASBABUK)**

In 2021, a Memorandum of Understanding (MOU) was signed between the Ministry of Forestry and Wildlife and the Baka organization, Association Sanguia Baka Buma'a Kpode (ASBABUK). The MOU will allow the Baka communities around Lobéké National Park to access the park and carry out traditional activities for their sustenance. The access given

to these particular communities is an exceptional concession made by the Ministry of Forestry and Wildlife and it is noteworthy, especially at a time when increased restrictions may have been expected due to the rise in wildlife poaching, for example the killing of eight forest elephants on 9 December 2021 in the Park.

For some years now, the world's biggest conservation organization, the World Wildlife Fund (WWF), has been working with the Cameroon Human Rights Commission (CHRC) to humanize their conservation activities as they have come in for virulent criticism from human rights organizations for expropriating and depriving Indigenous Peoples and local communities of the basis of their livelihoods.

## **Benefit-sharing from the revenues of the communal forests**

In Cameroon, the Law on Forestry and Wildlife recognizes three forms of forests: community forests, communal forests and large forest concessions for industries.<sup>3</sup>

The communal forests and community forests require a participatory management approach in addition to a forest management plan, which has to be submitted by the management (Mayors) of the localities where these forests are located and who are responsible for the management of these forests. The mayors are elected every five years and most definitely need the votes of the local communities and Indigenous Peoples to win or remain in office.

After many years of advocacy by human rights organizations, as well as national and international development organizations, for the inclusion of the Indigenous forest peoples in the benefit-sharing of revenues derived from the communal forests and community forests, some advances were observed in 2021 in terms of involving the Indigenous forest peoples in decision-making and benefit-sharing. This is as a direct result of the 2020 municipal elections, which saw the Baka peoples of the East Region gain deputy mayors and advisers in the local councils at the very least. These elected persons are now advocating at their respective council decision-making levels for their rights to the revenues deriving from the community forests as well as other rights. The Baka of

Missoume village now have a Baka councillor who is a woman.

Nevertheless, the impact of such actions is not yet particularly visible when you visit the communities. There is hence a need to build the capacity of the elected councillors and the elites who advocate for the rights of Indigenous Peoples and communities so that they can negotiate for more consistent projects that could impact positively on the lives of the community as a whole.

## **Human rights violations in 2021**

Human rights violations continued to be rampant in Indigenous communities in 2021. In AbongMbang district, where the African Indigenous Women's Organization (AIWO) is working in partnership with the Cameroon Human Rights Commission, human right abuses were noted in terms of the Bantu village of Madouma dominating and imposing restrictions of movement on all the Baka villages south of the Bantu village. The Bantu village has established an illegal control point at which every person from the Baka villages or even visitors are stopped, identified and searched by the chief of the Bantu village and his notables. This illegal checkpoint starts operating at 5am and remains until dusk while the authorities look on. During a sensitization meeting in the Baka village of Missoume Nkouamb, community members said that they felt like dead people because of what they undergo in the form of domination and subjugation by the Madouma chieftaincy.

There are a great deal of natural resources such as wood and white sand in Missoume village but the Baka have no right to exploit them. The people from the dominant Bantu village are those who benefit from the natural resources.

Another human rights violation reported was the murder, in April 2021, of a Baka man from Njibot village by a Bantu man from Ntimbe II, a neighboring village, on the road to the town of Lomie. The Baka man, named Ambouleme, was allegedly beaten to death because he refused to help carry the goods of his murderer. The case was reported to the security forces by the chief and other notables from Njibot, while the corpse was put in the mortuary of the district hospital. The inhabitants of both Njibot and Ntimbe II know the alleged culprit, who had enough

time to escape to another nearby locality called Lomié. Nevertheless, the security forces refused to carry out an investigation into the matter and arrest him.

The brother of the deceased thought the corpse had been retained by the judicial authorities but when AIWO and the Cameroon Human Rights Commission visited the District Attorney General, he was surprised that the security services had never reported a murder case to him. He called the commander of the security services, in the presence of AIWO and the Cameroon Human Rights Commission, ordered a full investigation into the murder and asked for an autopsy to be carried out. Through the intervention of the Cameroon Human Right Commission, the corpse was handed over to the family and the illegal control point has now been dismantled. Acting to resolve this matter through several letters written to the administrative authorities (Divisional officers, Governors, etc.) of the region where this incident occurred, the Chair of the Cameroon Human Rights Commission raised the issue of the autonomy of Baka villages such as Njibot and Missoume Nkouamb.

During the course of 2021, a Baka lady from Njibot community by the name of Efandjo Sabine was killed by a timber truck in a hit-and-run incident. The truck was identified as belonging to a timber transportation company known as Jino et Fils. She was killed near Ndibot village, on the highway to nearby Lomié district. The driver did not stop but fled the scene and the case has been left pending ever since with no progress made in terms of investigations or prosecutions.

In a bid to eliminate the abusive domination of the Baka by the surrounding Bantu communities, AIWO and the Cameroon Human Rights Commission were informed after their visit to these communities that the Divisional Officer would be carrying out regular working visits to the villages concerned with a view to demarcating the villages of the Baka peoples so as to limit any form of territorial ambiguity and intrusion by the Bantu.

The above action can be said to be a direct result of advocacy by the Pygmies Concerted Action Research Network [Réseau Recherches Actions Concertées Pygmées] (RACOPY) network of hunter-gatherers and the Baka Gbabanj Association, through their joint projects in 2021 for the effective participation of forest peoples in decision-making, especially in affairs that concern them. Through these concerted actions,

they have advocated for the creation of Baka villages with recognized traditional chieftaincies and secondary civil status registration centers whose role is to facilitate the registration of births, deaths and marriages in the communities.

The Baka in the South and East Regions now have some four officially-recognized villages whose chieftaincies are recognized by the administration as third class chieftaincies.<sup>4</sup>

## **Insecurity in the North-West, South-West and East regions and in the three Northern regions of Cameroon**

Insecurity remained a preoccupation in the North-West, South-West and East regions and in the three Northern regions of Cameroon throughout 2021.

In the North-West and South-West regions, there were serious confrontations between the defense and security forces and the different factions of armed groups claiming secession, and the costs were high in terms of lives lost, especially among the defense and security forces and government officials, particularly teachers.

School children were not spared as could be seen from the barbaric shooting of children in the Mother Francisca International Bilingual Academy Secondary School in Kumba in October 2021, where seven children were left dead and many more injured, shocking the country to its roots.

Schools in the two regions remained closed in 2021 in many rural localities. Although schools are open in the major cities of the regions, the smooth running of the academic year has nevertheless still been negatively impacted much of the time by long curfews, often imposed by both of the opposing parties involved in the armed conflict.

Movements are highly limited in the two regions, particularly because of the declaration by the secessionists of days known as “Ghost town days”. This means that the population is warned and ordered to stay indoors on those days. Disobeying these orders has led to people losing their lives and is used by the secessionists as one of their main methods of operation in the ongoing conflict.



In 2021, Mbororo children continued to be the victims of school closures, especially in remote, isolated areas with difficult access. Cattle markets were likewise affected (closed) because of the imposed “Ghost town days”. In addition to the closure of the cattle markets on such days, cattle owned in particular by the Indigenous Mbororo peoples are also regularly seized on their way to market.

The story is much the same in the Northern regions. The pastoralists are losing their livelihood base, i.e. their cattle, through kidnapping, ransom taking and killings. The media and the authorities talk little about these very serious problems.

The ransoms demanded of Mbororo pastoralists by the kidnappers (who are difficult to identify or categorize particularly due to the porous borders with Chad and the Central African Republic) range from 15 million to 60 million francs cfa (FCFA). A cattle owner will need to sell some 100 to 150 cows to pay the ransom, and this happens on a daily basis. These heavy sums are impoverishing the Mbororo pastoralists and they are often losing their lives. The question that must be asked is: where are the people with responsibility for keeping their citizens and their property safe?

## **Indigenous Peoples and the COVID-19 pandemic**

In terms of the COVID-19 pandemic, although not officially declared at an end, there was a remarkable reduction in the number of recorded infections and deaths related to COVID-19 in the country and across all communities in 2021.

With this current trend, and in a bid to assess the impact of the COVID-19 pandemic in Indigenous communities, a workshop involving representatives from different Indigenous communities was organized in August 2021 by AIWO, and the following conclusions were reached:

- The restrictive measures such as curfews put in place by the government caused major problems for the lifestyle of the Indigenous Peoples.
- The pandemic and the restrictive measures led to a noted increase in the level of abuse in Indigenous communities on the part of the local administrative authorities who sometimes

imposed unofficial curfews and exaggeratedly fined Indigenous individuals - even physically attacking those who were not wearing their masks or respecting the government measures in place.

- The Indigenous communities were unable to bury their dead in accordance with their cultural, religious and traditional rites, which is very important to them.
- The pandemic led to an increased interest in traditional Indigenous medicine.
- COVID-19 support did not reach all the Indigenous communities, especially those living in remote areas, as many Indigenous people do. It was mainly those in urban areas and in easily accessible rural areas with a considerable population that benefited from the support provided.

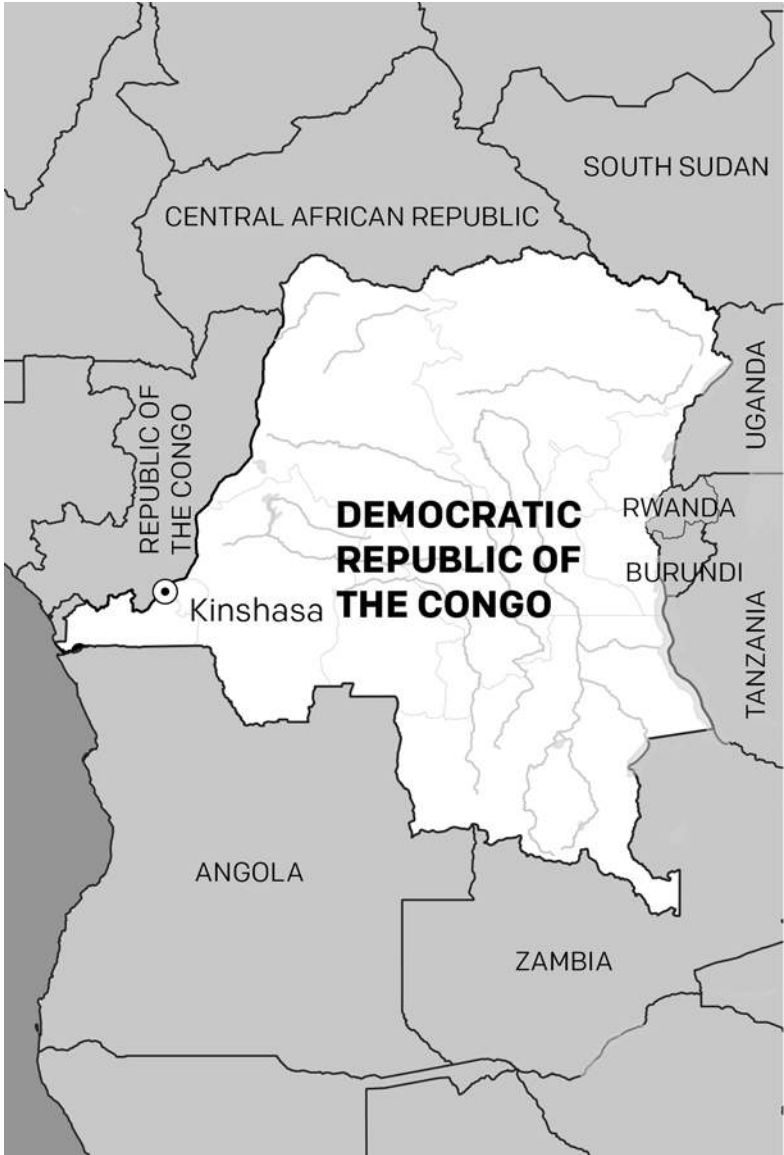
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**Hawe Hamman Bouba** is Commissioner for Human Rights at the Cameroon Human Rights Commission. She is an expert member of the Working Group on Indigenous Populations/Communities and Minorities in Africa of the African Commission on Human and Peoples' Rights, and she is Executive President of the African Indigenous Woman Organisation Central African Network (AIWO-CAN).



# Democratic Republic of the Congo (DRC)



The Democratic Republic of the Congo (DRC) is inhabited by four major ethnic groups: the Bantu, the Nilotic, the Sudanese and the Pygmy. The concept of “Indigenous Pygmy people” is accepted and approved by the government and civil society organisations (CSOs) in the DRC. In the DRC, the term refers to the Mbuti, Baka and Batwa peoples.

The exact number of Indigenous Pygmy people in the DRC is unknown. The government estimates it at around 750,000 (1% of the Congolese population)<sup>1</sup> but CSOs give a figure of up to 2,000,000 (3% of the population). They are widely acknowledged as the first inhabitants of the national rainforests.<sup>2</sup> They live in nomadic and semi-nomadic groups throughout virtually all of the country’s provinces. Indigenous Peoples’ lives are closely linked to the forest and its resources: they practise hunting, gathering and fishing and treat their illnesses through the use of their own pharmacopoeia and medicinal plants. The forest lies at the heart of their culture and living environment.<sup>3</sup>

However, it is little recognised that their traditional knowledge and practices have significantly contributed to preserving the Congolese forests. Worse, Indigenous Pygmy people’s customary rights are blatantly ignored, and Indigenous groups are often evicted from their traditional territories with neither consent nor compensation. This tenure insecurity has dramatic socioeconomic consequences – from loss of ethnic identity to lethal conflicts, as recently occurred in Tanganyika and around the Kahuzi-Biega National Park.

Nevertheless, there is hope. In 2020, the DRC showed the world its commitment to protecting and promoting the rights of Indigenous people through several breakthroughs, including some major progress on the proposed Law on the promotion and protection of Indigenous Pygmy people’s rights.

## Current situation of Indigenous Pygmy women in the DRC

Of the estimated 750,000 Indigenous Pygmy people, which represents around 1% of the national population, 57.3% are women and 99% of these women are illiterate. The Constitution of the DRC guarantees free education; however, the school program established by the government does not correspond to the Indigenous Pygmy people's culture, nor to the socioeconomic realities of their lifestyle, accounting for this high rate of illiteracy.<sup>4</sup> For Indigenous Pygmy women, in particular, this high rate is exacerbated by the vulnerability of their position – including social denigration, risk of sexual exploitation, fear of rape, and lack of access to educational infrastructure due to their remoteness.

The Congolese government runs a healthcare program as well as several special programs to support healthcare institutions. In Nord-Kivu, of the 11,651 women established in 164 villages or sites, 4,217 across 67 villages/sites have access to these healthcare services, accounting for 36% of the female Indigenous Pygmy population. It is also worth noting that, of 19,719 children, only 4,761 (24%) have access to the government's vaccination program.<sup>5</sup>

Healthcare institutions established by Indigenous Pygmy people within their environment often do not benefit from the government's support, however, and most Indigenous Pygmy women have little or no access to maternal healthcare or antenatal check-ups, give birth at home, and suffer the consequences of this, including high maternal and child mortality, puerperal infections, postpartum haemorrhage and obstetric fistula.

It should be also noted that this issue of access is directly linked to a lack of access to information – for example, in 2021, in three territories of Nord-Kivu, 53% of Indigenous Pygmy people were unaware of the health education sessions organized at healthcare centres.<sup>6</sup>

In the DRC, Indigenous women produce 80% of the harvest yet own an infinitesimally small proportion of the land as most of them merely have usufruct rights. This is due to the aforementioned issues of illiteracy, backwards cultural context, and due to the lack of female landowners. This situation has a considerable impact on their access

to bank credit and agricultural cooperative membership, both of which would enable them to benefit from agricultural inputs and services, often given as a condition of land ownership.

Nonetheless, progress has been observed among the authorities, as can be seen in the adoption of the law on the protection and promotion of Indigenous Pygmy people's rights by the National Assembly and its current review by the Senate.

Furthermore, the document on national land tenure policy<sup>7</sup> recently validated in November 2021 takes Indigenous Pygmy people's rights and concerns into account, and also has a specific focus on women.<sup>8</sup>

## **Indigenous Pygmy people's rights in the DRC's national land tenure policy**

The DRC has at last developed a nationwide land tenure program and this was validated by ministers on 25 January 2022 in the Steering Committee of the National Commission for Land Reform (CONAREF) following national validation on 17 November 2021. Ten years after launching the land tenure reform in the DRC (July 2012), the issues raised in the alarming assessment published at the start of the millennium on deviations from land tenure laws and rights, and on multiplying land conflicts, have been largely addressed.

The hunter-gatherers referred to as Pygmy, first inhabitants benefiting from customary rights to their land and territories, have been the victims of land grabbing and evictions from their rightful lands for decades. This situation contributes to their vulnerability and mostly stems from an absence of measures to guarantee their land and environmental rights and accommodate their lifestyle. Furthermore, while local communities' customary rights to rural land have some legal recognition, Indigenous Pygmy people's rights do not – these are downright denied in multiple areas of the country, particularly in rainforest areas.

Their expectations and advocacy in the face of the social injustice inherited from previous land tenure policies were acknowledged and considered when developing the strategic themes of this new national policy. These include a component to improve the legal aspects of land ownership systems by focusing on recognizing, securing and transfer-

ring land rights; a component on social safeguarding to correct social injustices and harmonize the transition from traditional to modern land tenure systems; and a component to reinforce cross-sectoral coordination and develop an inclusive and holistic land governance system. Each of these areas entails recommended priority actions to facilitate its implementation and secure the corresponding expected changes in policy and practice.

Civil society organizations working to defend Indigenous Pygmy people's rights should thus celebrate these important achievements in recognizing Indigenous Pygmy people's land rights and henceforward focus on achieving a number of actions that lie at the heart of their advocacy work, such as:

- Adopting land laws appropriate to local sociocultural contexts, clarifying all forms of social ownership, and improving the recognition and scope of Indigenous Pygmy people's land rights to the extent necessary to ensure fair access to the land and proper benefit of their land rights. In cases of extreme vulnerability due to loss or denial of Indigenous Pygmy people's land rights, the State should commit to compensating them in kind.
- Certifying local communities' collective land rights as they see fit by means of cartography and any accessible and available technology.
- Restoring equitable access to land and organizing a legal review of past property titles to rural lands. The recovered lands could be subject to positive discrimination benefitting vulnerable or marginalized groups during the local implementation of land management policies.
- Improving rates of public participation by legally defining the terms of free, prior and informed consent (FPIC), which is a right recognized to any individual or entity to give or refuse their consent in a context free from all pressure or intimidation.

These priority actions, among many others, are included in the National Land Management Plan, which forms a framework for implementing National Land Management Policy aimed at ensuring appropriate planning through different thematic programmes. These in turn will allocate roles and responsibilities to official, unofficial, governmental, and

non-governmental actors representing relevant anchor points for the continuation of civil society organizations' advocacy work.

## **Validation of the law on the protection and promotion of the Indigenous Pygmy people's rights in the National Assembly**

In addition to validation of the aforementioned national land tenure policy, the law on the protection and promotion of Indigenous Pygmy people's rights was definitively adopted by the National Assembly on 7 April 2021 after validation by the Sociocultural, Human Rights and Legal and Administrative Policies Joint Commission. It is currently being reviewed by the Senate.

Once adopted by the Senate, it will be transferred to the President of the Republic for promulgation and publication in the Official Journal of the Republic. It will enter into force six months after publication.

Its implementing texts will then be developed and, together with the law itself, will represent the very pinnacle of protection and promotion of Indigenous Pygmy people's rights.

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**Diel Mochire** is an Indigenous activist and Provincial Director of the Programme Intégré pour le Développement du Peuple Pygmée (PIDP), a very vocal Indigenous organisation based in North Kivu.

**Chouchouna Losale** is the co-founder and program officer of the Coalition of Female Leaders for the Environment and Sustainable Development (CFLEDD) in the Democratic Republic of Congo. Passionate about the rights of girls and women, she focuses primarily on gender issues related to land rights and natural resource management.

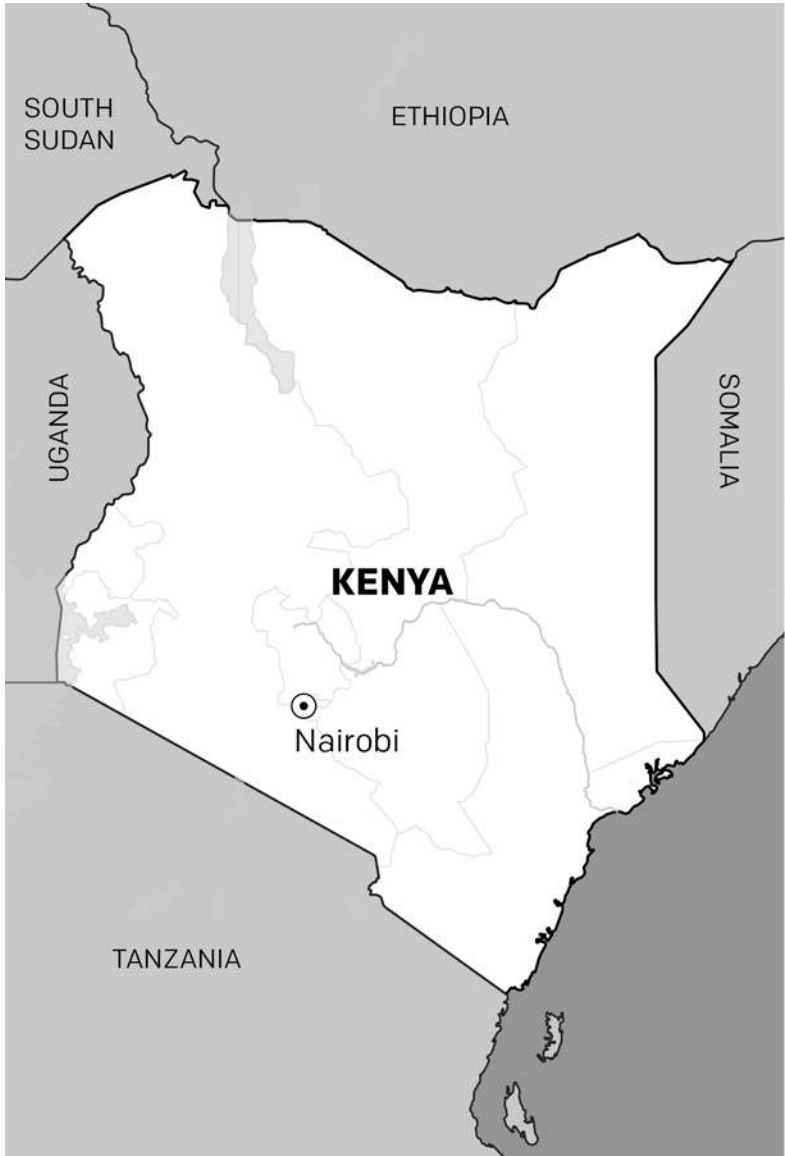
**Angélique Mbelu** joined the Rainforest Foundation Norway in Kinshasa in 2019 as the Head of Advocacy and Communication.

**Felana Rakotovao** joined the Rainforest Foundation Norway in Kinshasa in 2019 as the coordinator of RFN's Indigenous People's programme.

**Joel Ilunga** joined the Rainforest Foundation Norway in Kinshasa in 2020 as the Junior Coordinator Advocacy & Communication.



# Kenya



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

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

Kenya has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) but not the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) or ILO Convention 169.

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 challenge for Indigenous Peoples in Kenya although the Constitution does guarantee the participation of the people.

## Community land protection

With the promulgation of the Community Land Act (CLA) of 2016, Indigenous communities gained momentum by making use of this current land tenure framework to self-organise in order to secure and own their community land. 2021 was thus a year that Indigenous Peoples and minorities in Kenya can celebrate for having 10 communities transitioning their lands into community lands as per the Community Land Act and obtaining their land titles.<sup>1</sup> The hallmark for this was the Memorandum of Understanding (MoU) between the Indigenous organisation, Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT), and the National Land Commission, which culminated in the National Land Summit that was held from 24-26 November 2021 bringing together community delegates from 24 counties (with over 200 participants), county government representatives, County Executive Committee Members (CECM), County Community Land Registrars, the national government (Ministry of Lands and Physical Planning, Ministry of Interior and Coordination of National Government), the National Land Commission, Civil Society Organisations (CSOs) and other stakeholders interested in matters of securing community land.

Legal empowerment has played a crucial role in scaling up the implementation of the Community Land Act. Community paralegals have worked with communities to meet all the requirements of the Act, such as mapping the land, creating boundary agreements, and establishing rules for land governance.<sup>2</sup> They have also supported communities to submit their registration applications to the national government, one of the final steps in registering the land. Indigenous women have been involved in the process and in the development of the land by-laws. They are members of the Community Land Management Committees and they also participate in the community assemblies, updating the community land registers.

## **Formation of the Community Land Owners Association of Kenya (CLOAK)**

The Community Land Owners Association of Kenya (CLOAK) was founded and established in September 2021 by communities in Laikipia that have already acquired land titles. It is a non-political and non-profit national legal umbrella entity representing all community landowners in Kenya. Its registration document has been submitted to the registrar of societies within the Office of the Attorney General (AG) of Kenya. CLOAK has a well-defined management structure through which to undertake its mandate as defined in its by-laws and strategy development document. The association's overall goal is to amplify, strengthen and consolidate the voices and rights of community land owners in the management of their natural resources. The formation of CLOAK will underpin and strengthen the collective land and natural resource rights of Indigenous Peoples and minorities against current and emerging threats from both the government and private investment projects that are proposed on the lands and territories of Indigenous Peoples and minorities.

## **Elders make historic declaration to end Female Genital Mutilation in Kenya**

The *Act on Protection Against Female Genital Mutilation* (FGM) was enacted in 2011 and revised in 2012. The Act did not get the buy-in and political goodwill of the elite from communities that predominantly perpetuate the practice, however. Records from World Vision suggest an estimated 94% and 95% prevalence of the practice respectively among the Pokot and Samburu<sup>3</sup> with the Somali communities at 98%. FGM is also practised among Maa speakers other than the Samburu, although this is happening and practised in secret. It is only when the victim dies through heavy bleeding that a case is identified. The presidential decree on the enforcement of the FGM Act and the elders' declaration, when the representatives of the Anti-FGM board went to six hills in Samburu and Marsabit to create awareness of the negative impacts of the practice, led to the Kisima Declaration, which was witnessed in March 2021 by the President of Kenya.<sup>4</sup> Through this declaration, the elders gave a nod to the Act and shared ownership of the process of advocating for the eradication of FGM as a practice.

It was unfortunate that prior to the elders' resolve, 79 Kenya Certificate of Primary Education girls from Samburu were unable to sit for the 2021 examination due to the cultural prevalence of FGM. Criminalising FGMs practices – for instance by arresting or threatening elders and governments chiefs – has not been effective. The practice is undertaken undercover (at night) by some communities, making it even more dangerous.

## **Free, Prior and Informed Consent campaigns**

Free, Prior and Informed Consent (FPIC) is a specific right that pertains to Indigenous Peoples and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). It enables them to give or withhold consent to a project that may affect them or their territories. Once they have given their consent, they can withdraw it at any stage.<sup>5</sup> Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored and evaluated. This is also embedded within the universal right to self-determination.

Indigenous Peoples and minorities in Kenya have taken strides in advocating for the recognition of FPIC at all spheres of development in 2021. IMPACT and the PARAN Alliance, which is made up of a mix of Indigenous Peoples and minorities (pastoralists, hunter-gatherers, fisher-folks, forest communities and agro-pastoralists) developed an FPIC tool kit via a participatory process in 2021 that can be used by the communities in negotiations with government, investments, and the private sector – and even internally to enter into agreements. The FPIC tool is yet to be finalised and piloted, and this will be done by engaging communities that are involved in serious issues around lack of FPIC. Communities at the Lake Turkana Wind Power project in Marsabit county and Kipeto and Ingwesi Conservancies in Nakuru and Laikipia counties respectively will therefore be a starting point in 2022.

## **National County Climate Change Act**

The Climate Change Act of 2016<sup>6</sup> paved the way for the counties to develop their county climate change legislation. The Laikipia County Cli-

mate Change Bill of 2021 was developed to create a mechanism that would improve, sustain and finance climate change activities, programmes and projects in the county by mainstreaming climate change in different sectors, coordinating the collection and public dissemination of climate change information to create awareness and preparedness, and facilitating community-initiated climate change adaptation and mitigation projects and activities. The Act is giving the county a mandate to create a climate change fund to help communities directly implement climate-related projects and activities in a bid to create a just society. Other counties that have enacted such an Act include Isiolo, where 2% of the county budget is set aside for climate change actions. The fund will also open up an avenue for civil society organisations to work together with the government to facilitate and implement some projects within their working areas.

In line with the National Climate Change Strategy, and through the directive of the president, the national government allocated two billion Kenya Shillings to supporting pastoralists in 2021, cushioning them against the drought that has claimed their productive assets. Water became scarce, and natural resource-based conflicts intensified among the Indigenous pastoralist peoples during 2021, with loss of life and increased tension. The damage to and loss of the assets of the Indigenous Peoples has left many households poorer than before. In responding to their plight, the government provided the pastoralists with hay, supplementary pellets and multi-vitamins for the pastoralists' livestock.

## **Post COVID-19 economic recovery strategy and vaccination 2020 - 2022**

The roll-out of the 2020-2022 Government of Kenya COVID-19 recovery strategy paved the way for a relaxation of some of the taxes on business and a grace period on loans and interest as a result of the closure of some enterprises. In addition, it established a fund for entrepreneurs and businesses so that they could build back. This did not apply to pastoralists and minorities, however, who have no collateral with which to access funding from the financing institutions.

Women bore the brunt of the pandemic as they moved to urban



centres to work as domestic servants in an environment they are not familiar with, and where they are mistreated and paid very low salaries. Some of the women opted to engage in commercial sex, which is not acceptable to Indigenous Peoples and minorities and their traditional practices. They had to do this for lack of alternatives, however, exposing themselves to exploitation and the risk of contracting a sexually transmitted infection (STI).

The government's country-wide mandatory COVID-19 vaccination programme has started and all county governments have their own strategy. There has been some opposition to the mass vaccination. The Ministry of Health issued a statement that government services would not be accessible without a vaccination certificate. The Catholic Church and some CSOs consider this to be an infringement of the Bill of Rights, and one that will deny millions access to essential services. Human Rights Watch filed a case before a Kenyan High Court judge and the court has suspended this decision.<sup>7</sup> Accessing the vaccines is a challenge for communities living in remote areas far from the government and private hospitals, where the COVID-19 vaccine will be administered.

One of the biggest impacts of COVID-19 globally was the loss of decent income and livelihoods disruption. According to a study undertaken by UN Women, more than half of the women surveyed indicated that they had experienced physical and verbal abuse since the onset of COVID-19. Teenagers who could not continue in school ended up engaging in commercial and illicit sex, one of the worst forms of child labour, and drug and substance abuse, exposing themselves to harassment from their clients or employers. Gender-based violence at home became rife, as did forced early marriages, teenage pregnancies and high drop-outs rates in school.

## **Competency-based curriculum education system**

While good on paper, the new school CompetencyBased Curriculum (CBC) system of education that was introduced by the Ministry of Education, Science and Technology to replace or phase out the Kenyan 8-4-4 system began its implementation on the wrong footing. The authoritative nature of the Ministry of Education, Science and Technology's approach under the education Cabinet Secretary met with resistance from parents

and the private sector. The education sector has already been negatively impacted by COVID-19 and the transition is proving very expensive for parents. There was no time to undertake in-depth consultations to enable stakeholders to look at the requirements needed to facilitate a smooth transition. The new Competency Based Curriculum was based on a blanket consideration that all children come from equal backgrounds in terms of socio-economic, technological and infrastructural development. The roll-out of digital learning, which was planned before the COVID-19 pandemic erupted and which included providing each child with a tablet, was not achieved.<sup>8</sup> With COVID-19, the situation became even worse for Indigenous Peoples' and minorities' areas, whose infrastructure is not well-suited to digital learning because they live in poor and remote areas without connectivity to Internet or electricity.

## **The cost of ignoring human rights and Indigenous Peoples**

In an historic judgement by the Kenyan Environment and Land Court in Meru, the title deeds of the land on which the Lake Turkana Wind Power project (LTWP) sits have been declared "irregular and unlawful". The case, which began in October 2014 and finally ended on 19 October 2021, found that the title deeds were acquired irregularly.

Indigenous Peoples in the area have long complained that this project, among other issues, never followed proper free, prior and informed consent (FPIC) protocols or proper compensation when the land leases (99 years) were acquired and that this violated current and former land acts.

On 19 October 2021, after seven years of waiting, a three-judge bench (Hon PM, Njoroge (presiding Judge), J. G. Kemei (Judge) and Y. M. Angima (Judge)) made the judgement that the land awarded to the LTWP project (amounting to 150,000 acres) was acquired in an irregular, illegal and unconstitutional manner and that the title deeds should be cancelled. Nevertheless, the Court gave the Marsabit County Government, the Chief Land Registrar, the Attorney General and the National Land Commission one year to comply with existing laws in setting apart the land on which LTWP has been established.

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**Mali Ole Kaunga** is a Laikipiak Maasai and is an Indigenous Peoples' expert with a key interest in land rights, the impact of investments/business on Indigenous Peoples, and collective action/movement building and capacity building around natural resources. He is the founder and Director of IMPACT (Indigenous Movement for Peace Advancement and Conflict Transformation – [www.impactkenya.org](http://www.impactkenya.org)) and Convenor of PARAN Alliance (Pastoralists Alliance for Resilience in Northern Rangelands). He is Senior adviser to the research team for Shared Lands. Contact: [Olekaunga@gmail.com](mailto:Olekaunga@gmail.com).

**David N. Silakan**, Coordinator of the PARAN Alliance, and IMPACT team members contributed to parts of this article.



# Libya



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

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

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

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

Following the 2011 "revolution", a Provisional Constitutional Council submitted a draft new constitution in 2017 that in no way changed the country's identity foundations. Article Two still provides that "Libya forms part of the Arab nation" and that

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

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

## Indigenous women's rights

Islamic Sharia, which is the source of law in Libya, places women in a situation of inferiority to men. “The Libyan Criminal Code allows for a reduced sentence for men who kill or injure their wives or other female relatives. Libyan law inadequately prohibits domestic violence, and laws on personal status continue to discriminate against women, particularly in the areas of marriage, divorce, and inheritance.”<sup>1</sup> Due in part to the dominance of Islamism, both in parliament and in the politico-military movements that have controlled the country since 2011, women are discriminated against both in law and in practice. According to Amnesty International, “Women in Libya face ongoing gender-based discrimination. Libyan marriage, divorce and inheritance laws include provisions that discriminate against women. Women also continue to be discriminated against when they want to pass on their nationality to their spouses or children.”<sup>2</sup>

The particular situation of Indigenous women or women belonging to ethnic minorities in Libya (Toubou, Amazigh) is worse than that of Arab women because they also suffer the effects of a negation of their communities and a marginalisation of their territories.

## A year of calm albeit precarious

After a decade of civil war, with no winners and no losers but with much human damage (thousands of dead, wounded and displaced) and destruction of infrastructure (public buildings, homes, roads...), the noise of the weapons abated and Libya returned to calm in 2021. Negotiations between the two main blocs, one controlling the west of the country (based in Tripoli) and the other the east (based in Benghazi), resulted in an agreement that scheduled parliamentary and presidential elections for December 2021. At the last moment, however, these elections did not take place because of deep disagreements over the electoral law and the list of eligible candidates.

In addition, the two governing bodies, on the one hand the parliament elected in 2014, based in Benghazi and, on the other, the Supreme Council of the Libyan State (transformed in March 2021 into an interim government based in Tripoli), had agreed in January 2021 to draw up a draft constitution and have it adopted by referendum on 24 September of that year. This referendum could not be held, however. The reason was that the authorities in Benghazi were proposing a new constitution prepared by a committee of parliamentarians and experts while the authorities in Tripoli want to adopt the draft constitution produced in 2017 but which could not be adopted. The constitutional project is thus another subject of discord between the two main Libyan stakeholders.<sup>3</sup>

As a result, Libya is still very much divided and the spectre of civil war is ever present. According to observers of the situation in Libya, "The fear of a new armed conflict remains high. The tense political situation has already begun to cause stirrings in Tripoli. As with every major political event, the militias are on the march. Misrati battalions were called in as reinforcements by the Turkish-backed camp of Abdulhamid Dabaiba (Prime Minister of the interim government). In response, several Tripoli-based armed groups, including the powerful Ghnewa katiba and the Al-Zawiya militias, have joined forces to block the routes south of Tripoli."<sup>4</sup>

The failure of political initiatives, such as the holding of elections for the adoption of the constitution, the designation of the future parliament or the President of the Republic, is mainly due to the lack of reconciliation between the parties, who have been at war with each other for 10 years. The country is still divided and dominated by two major camps

(one controlling the east and the other the west of the country), each with its own government, parliament and army. Under these conditions, it is not possible in the short-term to envisage setting up institutions that would be recognised and respected by all. In November 2021, Abdullah Al-Lafi, member of the Libyan Presidential Council, stressed the need to “continue on the path of inclusive national reconciliation, in which all Libyans must participate, without exclusion or exclusivity, and to demand accountability in order to build a lasting reconciliation and stability. Truth, forgiveness, trust and a conviction of the need to live together, in a spirit of tolerance and coexistence, are necessary conditions for a return to peace and stability in the country but these conditions are not currently met in Libya.”<sup>5</sup>

## **Libya's Indigenous people reject draft constitution**

The Amazigh and Toubou have regularly and publicly expressed their rejection of Libya's draft constitution since it was made public in 2017. On 28 January 2021, the municipal leaders, the Supreme Council of Amazigh and the leaders of the civil society organisations in Libya's Amazigh territories met in the city of Jadu (150 km south-west of Tripoli) to express their rejection of the draft constitution once more and to announce a boycott of any constitutional referendum if the draft constitution remained unchanged.<sup>6</sup> The Amazigh and Toubou are firstly criticising the Libyan authorities for not involving them in the drafting of the constitutional text and secondly rejecting the text because it bases Libya's identity on the supremacy of the Arab-Islamic language and culture and relegates the Amazigh and Toubou components to an inferior position. It is therefore a project based on racial discrimination, in flagrant violation of international law and democratic principles. Article 2 recognises that “The Arabic, Amazigh and Toubou languages are part of the cultural and linguistic heritage of all Libyans” but specifies that “Libya forms part of the Arab nation” and that “Arabic is the State language”. The text adds that “the law shall organise the integration of other Libyan languages into the fields of general life at the local and national levels.” It is therefore clear that the position of the Arabic language and culture is privileged to the detriment of the Amazigh and Toubou languages and cultures. Moreover, Article 6 notes that “Islam



is the religion of the State and Islamic Shari'a is the source of law." This is followed by other discriminatory articles that prohibit a non-Muslim Libyan from running for the House of Representatives (Article 69) or the Presidency of the Republic (Article 101) and which decree that justice is dispensed "in the name of Allah" (Article 189). These articles are clearly intended to impose an Islamic republic, in defiance of the diversity of cultures and beliefs in Libya.

## **Discrimination with no prospect of a solution**

In the south of the country, the Kel-Tamasheq (Tuareg) suffer specific discrimination dating back to the time of Gaddafi, when the administration refused to grant Libyan nationality to more than 20,000 families from this region. After the 2011 "revolution", the government introduced a national identity number for all Libyans;<sup>7</sup> however, more than 80,000 people from the Kel-Tamasheq (Tuareg) community never received one. As a result, these "undocumented" people cannot obtain an identity document and thus clearly cannot access school, public health services or any other public service, nor can they be employed. The demands they have regularly made to the Libyan administration since 2011 have not been successful.

The Fezzan region (south and south-west of Libya), traditional territory of the Kel-Tamasheq, is rich in mineral resources, particularly oil. And yet the local people are the poorest in the country because they are deprived of the income that is generated from these resources, which are exploited with the help of foreign companies. The only "job" offers available to young Kel-Tamasheq are to sign up as a soldier in one of the armed groups that control the country.

The Kel-Tamasheq community that lives near the border with Algeria has also suffered the closure of this border by Algeria, citing security reasons. This seriously deprives the local population of the traditional exchanges they have always had with each other. The consequences can be dramatic when people cannot obtain medicine or food from across the border.

Non-Arab communities in Libya have been excluded from all political meetings within the context of the national peace dialogue. This

remained the case for the most recent meetings held during 2021, both in Europe and in the Middle East (Qatar, Oman and Hurghada in Egypt). As a result, these communities are increasingly expressing their desire for a federal state in which their territories would enjoy an autonomy that would allow them to preserve their specific features. This could be an alternative that would preserve the diversity and freedoms of each component of the country. This wish was clearly expressed at the conference of Amazigh municipalities on 28 January 2021 in the city of Jadu. The president of this conference and leader of Jadu municipality said that: "The decision has been taken to create a fourth administrative region" covering the Amazigh territories.<sup>8</sup> The next few years will tell whether this decision can be implemented.

Meanwhile, with two governments and at least two armies, no constitution and no legitimate legislative bodies, Libya is still in chaos and its future a cause for concern.

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**Belkacem Lounes** holds a PhD in Economics and Social Sciences, is a university professor (Grenoble Alpes University), expert member of the Working Group on Indigenous Populations/Communities and Minorities in Africa of the African Commission on Human and Peoples' Rights, member of the UN Expert Mechanism on the Rights of Indigenous Peoples, and author of numerous reports and articles on Amazigh and Indigenous Peoples' rights.



# Morocco



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

The Amazigh (Berber) peoples are the Indigenous Peoples of North Africa. The last census in Morocco (2016) estimated the number of Tamazight speakers at 28% of the population. However, Amazigh associations strongly contest this and instead claim a rate of 65 to 70%. This means that the Amazigh-speaking population could well number around 20 million in Morocco and around 30 million throughout North Africa and the Sahel as a whole. The results of the “Genographic Project”, based on DNA analysis, conducted by National Geographic since 2005 in the North African region, reveal a predominance of the “Berber genome” among the North African population, and specifically in Morocco.<sup>1</sup> This is a thesis strongly supported by the archaeological discoveries of Tafoughalt and Mount / Adrar Ighoud,<sup>2</sup> as well as that of Temara.<sup>3</sup>

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

The administrative and legal system of Morocco has been strongly Arabized, 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 centralized authority, a single religion, a single language and systematic marginalization of all aspects of the Amazigh identity. The 2011 Constitution officially recognizes the Amazigh identity and language. This could be a very positive and encouraging step for the Amazigh people of Morocco. Parliament finally adopted the Organic Law for the implementation of Article 5 of the Constitution in 2019, after several years of waiting. Work to harmonize the legal arsenal with the new Constitution should begin. This constitutional recognition is still hypothetical 10 years on, however, since its teaching is still not effectively applied and it does not appear either on the National Identity Card or on the currency. In addition, there are no more than 1,000 teachers whereas there should be 25,000 and the national media does not comply with the required specifications.

Morocco has not ratified ILO Convention 169 and abstained from voting for the United Nations Declaration on the Rights of Indigenous Peoples. Morocco does not recognize the Amazigh as an Indigenous people because such recognition would require it to recognize their rights to their lands, territories and natural resources. In addition, it prefers to knowingly confuse self-determination with separatism in the name of the National Union's preservation.

## Amazigh women

**A**mazigh women form the inescapable pillar of the family and the Amazigh community. They are the guardians of ancestral knowledge and expertise, which they convey through their mother tongue, a vector of values and identity. The word "Tamazight" designates both language, territory and woman: a highly symbolic term which summarizes the Amazigh holy trinity of "Awal, Acal, Afgan" (Word, Earth, Human Being). Heirs to a long matriarchal tradition, Amazigh women continue to fulfil their role and preside over the education of their children, manage their households and preserve their heritage in terms of traditional knowledge (e.g. traditional medicine, education and crafts).

The rise of Islamism since the 1980s has, however, been detrimental to the status of Amazigh women. The pro-Wahhabi party's two successive terms in government up until the end of 2021 were a threat to freedom and to women in more ways than one.<sup>4</sup>

Although Amazigh women are capable of occupying positions and roles of representation,<sup>5</sup> their possibilities remain limited by discriminatory practices against women in general and Amazigh women in particular. For example, in the 2021 legislative elections, women won only 96 of the 395 seats in the House of Representatives, or 24.3%.<sup>6</sup>

## Rights to land and resources

The phenomenon of land and natural resource grabbing in Morocco is national, with no region or community spared, although several cases

have affected Amazigh communities in particular in recent years.<sup>7</sup> The main difficulty today lies in the absence of a database that could list all cases of actual dispossession in order to establish an exhaustive mapping of the extent of the problem.

As for Amazigh women, they are struggling to access their rights in the context of collective lands, renamed “*soulaliyates*”.<sup>8</sup> In fact, the *dahir* (law) of 27 April 1919 on collective lands and ethnic communities was replaced in 2019 by Law No. 62.17 on the administrative guardianship of *soulaliyate* communities and management of their property. Although the new law provides for equality between women and men, its effects are slow to be felt by Amazigh women.

The reclassification of collective lands as *soulaliyate* lands (an Arabic word meaning “descendant”) has put women in a position of direct conflict with men, who view this feminization of land rights negatively. Many Moroccan men wrongly believe they are being de facto excluded in favour of women, who “are taking over”.<sup>9</sup> To date, only the Jamaa Soulaliya of Ouled Ahmed Souk Laarbae has elected a woman as its leader.<sup>10</sup> And throughout the Kingdom of Morocco, only women belonging to communities in the Kenitra region have gained the right to plots of land.

Moreover, the 2019 law only strengthened the Ministry of the Interior’s control over collective lands. This guardianship was established by *dahir* of 1919, during the colonial period. The Ministry of the Interior now has full authority to freely dispose of collective lands without the constraint of inalienability. It can carry out “legal” acts of dispossession, sale or leasing, as decided and applied by the Central or Regional Councils of Trustees, whether or not there is opposition and without the Free, Prior and Informed Consent of the communities. Circulars issued in 2021 go further by imposing the criterion of residence on all rightful claimants aged 18 years or more. This clearly threatens all students and members who work and reside outside the community with both a loss of their rights and their community membership at the same time.<sup>11</sup>

The proliferation of fraudulent acts and illegal activities is such that there is what is commonly referred to as a “Land Mafia” rampant in all regions of Morocco aimed at monopolizing land to the detriment of the rightful owners. This plundering finds fertile ground in legislation, impunity, power games, the fragility of communities, the inefficiency of the courts, the connivance of magistrates, and agricultural policy,<sup>12</sup> all

of which mean that law and justice no longer have a place, especially in matters of land, either for communities or for women, the last link in a weakened chain.

The neoliberal agricultural policy adopted by Morocco<sup>13</sup> has contributed greatly to the increased commodification and privatization of land and the new government led by Aziz Akhannouch (former Minister of Agriculture, Fisheries, Rural Development, Water and Forest) is continuing to work in this direction despite the tragic effects on small farmers and agricultural workers, especially women, who form the first link in the agricultural food chain. The agro-industrial sector thinks big and favours large farms by putting all necessary means at their disposal, starting with the lands of the impoverished communities, for which they are never compensated.

## **Working conditions**

Without land, vulnerability sets in and forced displacements occur, with all the burden of their consequences on the community, the family and the women, who are confronted with new realities and new living conditions. Many of them end up as farm labourers, working in unbearable conditions.

Other women find themselves living on the outskirts of large cities looking for poorly paid work in clandestine factories, exploited, harassed and with no social security cover. The accident at the textile factory in Tangier, where 28 people drowned and were electrocuted in a dead-end cellar in February 2021, is an example of the daily tragedies experienced by Amazigh women and girls who are forced to survive because they cannot live with dignity and because their rights are being violated. One mother lost four daughters in that accident.<sup>14</sup>

## **Gender-based violence**

Since the start of 2021, 62,383 women have suffered violence in Morocco. According to the General Directorate of National Security, 7% of those cases were minors. Forty-one percent (41%) involved cases of



physical violence, 27% economic violence, 26% psychological violence, 4% sexual violence and 2% violence via new technologies.<sup>15</sup>

This is certainly a significant increase but even this needs to be revised upwards because of the crimes and abuses that are not declared for fear of reprisals, what people would think, the socio-economic repercussions (stigmatization, discrimination...) and taboos, given that more than 90% of the violence takes place within the woman's close circle.

It is obvious that almost five years after the entry into force of Law 103-13<sup>16</sup> on combatting violence against women, the situation is only getting worse. This is because the problem does not lie in the enactment of laws but in their enforcement and in a change in mentality by returning to Amazigh values of equality and respect between the sexes.

## **Access to health and education**

In the Atlas regions, commonly known as "useless Morocco", access to health care remains a real problem due to the lack of sufficient hospital infrastructure, qualified personnel, ambulances, and also practicable roads to access them. The winter of 2021 was no exception, and women in labour and their babies yet again died in Amazigh communities in the Imilchil area. The pandemic has shone a light on these regional disparities, on difficulties related to the right to health and the effects of a public policy of privatizing the two vital sectors of health and education without taking into consideration the instability and paltry means of the majority of Moroccans and, particularly, the Amazigh.

In the city as well as in the countryside, the socio-economic situation of women is a major barrier to accessing health and education. Due to lack of resources, many girls continue to be forced to leave school and marry while still children. As exemptions can always be found to any law, child marriage is still on the rise because it is tolerated by religious leaders and legitimized by the poverty of families who see their daughters as a way of earning money. Early motherhood, socio-economic insecurity and ignorance are all elements that throw women into a spiral of vulnerability and make them the perfect victims. It is also important to note that this situation worsened during the pandemic when social isolation was even greater.

Apart from the psychological effects of the pandemic, the repeated lockdowns and state of health emergency have dealt a blow to the fundamental rights and freedoms of everyone, although more specifically women, whose burdens have increased and whose quality of life has decreased. Unfortunately, there is virtually no assistance provided to women. The isolation of women today is such that even when they try to take control of their lives and ask for a divorce, they very rarely have the right to the reparations provided for by law because the patriarchal justice system believes that a man has the right to rebuild his life and does not have to provide for his children and that the mother should not file for divorce but should instead continue to suffer.

## Aid and organizations

The situation today is such that even the associations and organizations that claim to be focused on supporting women are, for the most part, more interested in funds and grants than in the fate of Amazigh women and their condition. This practice has spread since the arrival of the Islamists to power and has been encouraged by aid and funding programmes that pay insufficient attention to the content and ideologies of these organizations. The Amazigh women's associations that do defend their Amazighness are *de facto* excluded, do not receive grants and are better known as forming part of the Amazigh Movement (e.g., AZUL).

Amazigh women understand their context and reality better than anyone and are quite capable of proposing their own solutions: viable solutions for the preservation of knowledge, expertise and skills, and for protecting the ecosystems and ensuring sustainability of resources, hence the need for an inclusive, participatory and bottom-up approach.

Despite these constraints, the women of the Amazigh Movement, the Amazigh associations and the Amazigh activists are fighting, in their fields, with their own resources, day after day, on a local, national, regional and global level, to prove that they exist and that they are capable of bringing about change: change that is specific to them and in line with their values, culture, identity and, above all, their Indigeneness, and which will allow them to effectively engage in global objectives while being themselves.

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**Amina Amharech** was born in El Hajeb, in the Moroccan Middle Atlas. She is a teacher, artist and poet, and a committed Amazigh activist. A 2018 OHCHR Indigenous Representatives Program Fellow, she advocates for the land, cultural, identity and linguistic rights of the Amazigh and Indigenous people more generally. She is a founder member of the ACALI Association (Action Culturelle Amazighe Laïque) since 2014, a founder member of the Amazigh community network AZUL (since 2013, and which she represented on the Global Council of the International Land Coalition from 2018 to 2021) and a founder member of the Feminist Land Platform since 2019. Contact: [aminaamharech@gmail.com](mailto:aminaamharech@gmail.com)



# Namibia



The Indigenous Peoples of Namibia include the San, the Ovatie and Ovatjimba, and potentially a number of other peoples including the Damara and Nama. Taken together, the Indigenous Peoples of Namibia represent some 8% of the total population of the country, which was 2,678,191 in 2021. The San (Bushmen) number between 28,000 and 35,000 and account for between 1.045% and 1.33% of the national population. They include the Khwe, the Hai||om, the Ju|'hoansi, the !Kung, the !Xun, the Khwe, the Naro, and the !Xóǀ. Each of the San groups speaks its own language and has distinct customs, traditions, and histories. The San were mainly hunter-gatherers in the past but, today, many have diversified livelihoods. Over 80% of the San have been dispossessed of their ancestral lands and resources, and they are now some of the poorest and most marginalised peoples in the country. The Ovatjimba and Ovatie (Ovatuwa) are largely pastoral people, formerly also relying on hunting and gathering, and who reside in the semi-arid and mountainous north-west of Namibia (Kunene Region). Together, they number some 27,810, representing 1.03% of Namibia's total population.

The Namibian government prefers to use the term “marginalised communities” when referring to the San, Otavie and Ovatjimba, support for whom falls under the Office of the President in the Division of Marginalised Communities (DMC). The Constitution of Namibia prohibits discrimination on the grounds of ethnic or tribal affiliation but does not specifically recognise the rights of Indigenous Peoples. Namibia voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) when it was adopted in 2007 but has not ratified ILO Convention No. 169. Namibia is a signatory to several other binding international agreements that affirm the norms represented in UNDRIP, such as the African Charter on Human and Peoples' Rights (ACHPR), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Covenant on Civil and Political Rights (ICCPR). Namibia provided a mid-term report to the Human Rights Council's Universal Periodic Review of Namibia in 2021.

## COVID-19 and Indigenous Peoples in Namibia

There were a number of important events affecting Indigenous and marginalised peoples in Namibia in 2021. The most important of these was the COVID-19 pandemic. COVID-19 led to a series of lockdowns in the country in 2021 that reduced the spread of the disease but which also affected livelihoods, employment, incomes, and tourism in Namibia. It led to a decline in income and employment and a reduction in well-being for Namibians, including those who self-identify as Indigenous Peoples. Indigenous women, in particular, were affected by COVID-19 since they are the main caregivers for people who are ill, and their livelihoods were affected by the downturn in tourism. The Government of Namibia and NGOs mounted food and water assistance efforts for marginalised communities affected by COVID-19. Information was provided in mother-tongue languages on strategies for coping with the coronavirus, including mask-wearing, social distancing, and hand washing, as seen, for example among Ju/'hoansi in Nyae Nyae, !Kung in NꞤa Jaqna, Khwe in Bwabwata National Park and in the Kunene Region among Ovahimba, Ovatjimba, Ovazemba and Ovatue communities.<sup>1</sup> The Ministry of Health and Social Services (MoHSS) offered vaccine outreach, testing and, where required, quarantine facilities to Indigenous Peoples.

The budget speeches of the Minister of Finance, Ipumbu Shiimi, on 17 March 2021 and 3 November 2021 contained revised figures for Namibia's annual budget, showing new and sizeable expenditure related to the coronavirus pandemic.<sup>2</sup> The numbers of tourists visiting Namibia in 2021 declined by approximately 40% in comparison to the previous year due to the COVID-19 pandemic, and this had a direct impact on community tourism revenues and an indirect impact due to the large drop in income across the sector.

## Challenges facing Indigenous women and youth

Various women's organisations in Namibia, including the Namibian Women's Association (NAWA) and the Ministry of Gender Equality, Pov-

erty Eradication and Social Welfare (MGEPEWSW) have been pressing for greater recognition of women's rights, including the rights of women to land and to protection from exploitation and domestic abuse. Since the start of the COVID-19 pandemic, rape, domestic abuse, and child abuse have increased substantially. The Legal Assistance Centre (LAC) and other organisations, including the Division of Marginalised Communities in the Office of the Vice-President, are calling for greater attention to be paid to the issues faced by Indigenous and minority women and children, including issues surrounding abuse and discrimination. Indigenous and minority women –and women in general– had difficulties in gaining access to land in Namibia in 2021.<sup>3</sup>

Women and youth are playing increasingly important roles in the Indigenous movement in Namibia, as can be seen in the make-up of organisations seeking to promote Indigenous and minority rights.

Significant attention was paid in the country to gender mainstreaming in government policies and programmes in 2021, including those related to refugees and immigrants. These are especially important given the high percentage of women that make up refugee populations, as can be seen for example in the Osire Refugee Camp south of Otjiwarongo.

Namibia has also made particular efforts to ensure gender mainstreaming for the Green Climate Fund and to ensure that gender issues are incorporated into international conventions and legislation on climate change.<sup>4</sup>

The Red Cross and Red Crescent Society, UNICEF, the Kalahari Peoples Fund (KPF) and other agencies in Namibia continued to push to ensure availability of information on COVID-19 throughout 2021, together with masks, soap, and vaccinations for Indigenous and minority communities and others in Namibia. Some of this information was targeted specifically at Indigenous women. Indigenous women and youth in Namibia were pleased to have information available to them on the experiences of Indigenous communities in other parts of the world with COVID-19 from whom they could learn lessons.<sup>5</sup> This was also true for ≠Aonin (Topnaar) Nama pastoralists who have inhabited the Kuiseb River and Gobabeb region for generations.<sup>6</sup> There was particular interest in the impacts, risk factors, and mortality rate of COVID-19 among Native Americans<sup>7</sup> as compared to the San and ≠Aonin, who appear to have



lower mortality rates than Native Americans.

An Amnesty International report in October 2021<sup>8</sup> accused Namibian healthcare provision for Ju/'hoan and !Kung women San, particularly with regard to tuberculosis, of being discriminatory. It appears that San women are seeking health assistance for TB at lower rates than men. While the government was initially critical of the report's findings, the Executive Director of the MoHSS attended the report's virtual launch and said the ministry would engage with Amnesty and the report's findings.<sup>9</sup>

Overall, Indigenous women and children were worse off in 2021 than they had been in previous years but they were hoping that 2022 would see trends toward more positive change in their well-being.

## Policy and economy issues

The land reform issues raised at Namibia's Second National Conference on Land Reform held in October 2018 were examined at the national and local levels in 2021, some of which involved Indigenous and minority peoples ancestral land claims.<sup>10</sup> These discussions revolved around the rights of Indigenous, minority, and marginalised communities to land, particularly in areas that belonged traditionally to specific groups.

Namibia participated in the Universal Periodic Review (UPR) meetings of the Human Rights Council in 2021.<sup>11</sup> Some of the issues raised at the UPR meetings included efforts by the Government of Namibia to address poverty, marginalisation, and the political participation of Indigenous People and marginalised communities. Namibian government representatives and NGOs attended the 20th annual meeting of the Permanent Forum on Indigenous Issues (PFII) in April 2021 during which statements were made about problems facing Indigenous Peoples in Namibia and the government's efforts to address them.<sup>12</sup>

The main legislation drawn up in relation to marginalised communities, a White Paper written originally in 2018, had not been approved by the Namibian Cabinet as of the end of 2021. There is currently no roadmap or timeline as to when this paper may be approved.

Namibia made progress in the development of policies regarding access and benefit-sharing agreements involving genetic resources related to the Nagoya Protocol in 2021.<sup>13</sup> Indigenous plant products such as Devil's Claw (*Harpagophytum procumbens*) were exploited by

Indigenous and minority communities, generating as much as N\$1 million per communal conservancy, a significant portion of those funds going to Indigenous and minority women.<sup>14</sup> The presence of fenced-off communal land was seen as a major problem by Indigenous and minority women since it limited their access to high-value plant resources.

The gardening projects of Khwe in Bwabwata National Park contributed to the food self-sufficiency of local community members.<sup>15</sup>

Local attitudes to the benefits of trophy hunting in Bwabwata varied but, in general, Khwe and Mbukushu living in the park wanted to see more benefit sharing by the companies operating in Namibia.<sup>16</sup>

## **Namibia's legal cases involving Indigenous communities**

In terms of the various legal cases filed by San communities, the appeal of the Hai//om collective action case<sup>17</sup> was heard by the High Court in November 2021, although no ruling had been made by the end of the year. The appeal in the Nyae Nyae illegal grazing civil case continued to await hearing as of the end of 2021, and no ruling has as yet been made in the long-standing parallel criminal case in the Tsumkwe magistrate court.

Illegal grazing and fencing continued in the Nꞛa Jaqna Conservancy (NJC) in 2021 despite a previous successful ruling in the High Court, much to the chagrin of local residents.<sup>18</sup> Fencing off of communal land in Namibia continued to be a major issue in 2021.<sup>19</sup> One impact of the fences is that they designate areas that are off-limits to Indigenous women hoping to obtain wild plants, firewood, and other resources within the enclosed areas. Indigenous women are at risk of mistreatment if they enter the fenced-off areas in search of wild resources. Specific complaints were made by !Kung and Vasekele San women who wrote to the Nꞛa Jaqna Conservancy Management Committee.<sup>20</sup>

In May 2021, Germany acknowledged and apologised for the 1904-1908 genocide in what was then German South West Africa (now the Republic of Namibia). The German colonial government killed 80,000 Herero and Nama people during the 1904-1908 genocide, the first in the 20th century. Some representatives of the Herero and Nama peo-

ple argued that they were not consulted sufficiently in the negotiations between Germany and the Namibia government. They also argued that the US\$1.34 billion that Germany has committed for social development projects in Namibia is not the same as paying reparations directly to the families of those killed.<sup>21</sup>

## **Oil exploration and its implications in Namibia**

Particular concerns over oil and gas exploration by a Canadian oil company, Reconnaissance Energy Africa (ReconAfrica), were raised in 2021. The company was employing fracking (hydraulic fracturing) techniques in the region north of Khaudum National Park in the Kavango West and East Regions.<sup>22</sup> Indigenous and other local people in the area expressed their worries about potential declines in the water table and loss of valuable wildlife and wild plant products as a result of the oil drilling operations. The company argued that its operations would benefit local people but the employment figures for local community members, especially Indigenous women, revealed that it was mainly men who were being employed, and that the numbers were far fewer than had been promised.<sup>23</sup> While many Indigenous Peoples and local communities in Namibia and within the drilling area voiced their concerns, some community representatives publicly supported the project.

Meanwhile, exploration activities were proceeding in the East Kavango Region of Namibia: two test wells were drilled and public consultations were undertaken, although they were roundly criticised.<sup>24</sup> ReconAfrica has engaged in an enthusiastic advertising campaign to stockholders with slogans calling it “an opportunity worth millions.”<sup>25</sup>

In May 2021, an anonymous whistle-blower sent a report to the US Securities and Exchange Commission and to the British Columbia Security Commission alleging that “to drive up stock prices, ReconAfrica has violated securities laws by failing to disclose crucial information about its plans to look for oil and gas deposits.”<sup>26</sup> The whistle-blower shared the report with National Geographic, which published a detailed article in its May 21<sup>st</sup> issue, receiving international publicity and social media campaigns to resist the Okavango drilling programme.<sup>27</sup> This was followed by the announcement that a class action suit had been

lodged with the US Attorney’s Office for the Eastern District in the United States.

In October 2021, Prince Harry, Duke of Sussex, Leonardo di Caprio, Forest Whitaker and other celebrities joined local Indigenous and environmental activists in calling for an immediate moratorium on oil and gas drilling in the Okavango River Basin. Prince Harry and Reinhold Mangundu, a Namibian activist, wrote in an article published in the Washington Post: “Drilling is an outdated gamble that reaps disastrous consequences for many, and incredible riches for the powerful few”, asking readers to join them in resisting the drilling in the Okavango River Basin.<sup>28</sup>

In November 2021, the Namibian parliamentary standing committee on natural resources criticised the Kavango East communal land board and ReconAfrica for its lack of a leasehold permit in the area of drilling.<sup>29</sup> Questions over the extent of any oil reserves and the possible use of fracking if extraction moves forward remained unanswered as of the end of 2021.

Indigenous and marginalised communities’ activism increased in 2021, particularly in the face of the challenges posed by the COVID-19 pandemic and the questions raised about Indigenous Peoples’ land and resource rights in the discussions on the impacts of the land reform and resettlement efforts in various parts of the country.

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**Robert K. Hitchcock** is a Professor of Anthropology at the University of New Mexico, Albuquerque, New Mexico, USA, [rkhitchcock@gmail.com](mailto:rkhitchcock@gmail.com). He is also a member of the Board of the Kalahari Peoples Fund.

**Ben Begbie-Clench** is a freelance consultant who has done extensive work on San issues in Southern Africa, [benbegbie@gmail.com](mailto:benbegbie@gmail.com)



# Republic of the Congo



Situated in Central Africa, in the heart of the world's second largest forest and straddling the equator, the Republic of Congo covers 341,821 km<sup>2</sup>. The Congolese population stood at 5.5 million in 2020 with an annual growth rate of 3.68%.<sup>1</sup>

The population comprises two distinct groups: the Pygmies and the Bantu. Pygmies are nomadic or semi-nomadic hunter/gatherers although some have now settled on the land and are working on agricultural or livestock farms, in commercial hunting or as trackers, prospectors or labourers for the logging companies.

The last national census, conducted in 2007, estimated the number of Pygmies at 1.2% of the population, or 43,378 individuals. A UN study dating from 2013 has a figure of 2%, or approximately 100,000 individuals. The government itself gives a much wider possible range, between 1.4 and 10% of the population. In actual fact, we do not know precisely how many Pygmies there are in Congo. The government has never made any effort to find out. It justifies this lack of action by warning of the possible consequences of an ethnic census.

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

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

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



- the Law on Wildlife and Protected Areas (28 November 2008)<sup>3</sup>
- the Law governing the Forest Code (20 November 2000)<sup>4</sup>
- the Law on Environmental Protection (23 April 1991)<sup>5</sup>
- the Law setting out the general principles applicable to private and State-owned land regimes (26 March 2004)<sup>6</sup>
- the Law establishing the agricultural land regime (22 September 2008)<sup>7</sup>
- the Decree establishing forest management and use conditions (31 December 2002)<sup>8</sup>

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

## Indigenous women's rights

On 11 November 2021, the United Nations agencies launched a social welfare programme in the southern department of Lékoumou entitled the "Joint SDG Fund" aimed at improving the quality of life of Indigenous populations in this part of the country. Implemented jointly by the Ministry of Social Affairs, the World Food Programme (WFP), the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF), this programme will contribute to achieving the Sustainable Development Goals (SDGs). It is aimed, among other things, at improving Indigenous women's access to health care services by implementing a package of services (counselling, care, etc.). It also intends to help remove the barriers that prevent Indigenous women from owning land and to involve them more in income-generating activities. The programme has a total budget of USD 4,714,966.

Some of the activities are worthy of note, particularly in terms of empowerment and rights awareness. These include one project be-

ing implemented jointly by the Association for the Protection of the Rights of Indigenous Peoples and Vulnerable Persons (APDPA-PV), the Association of Agricultural and Livestock Farmers of Congo (ARAEC), the Nkayi Indigenous Women's Group (GFANK) and the Departmental Directorate for the Promotion of Indigenous Peoples (DDPA). It was initiated by the Empowerment and Human Rights Project (ADH) and is aimed at consolidating the emancipation and improving the conditions of Indigenous women and girls. It is being implemented in the village of Tsiaki, in Bouenza department (in the south of the country) and comprises several components. In addition to enabling the beneficiaries to learn about their rights (through awareness-raising) and to follow literacy classes, the Indigenous women in the group are being trained in soap making and marketing. A total of 100 women are targeted by the project. Thirty-four women have been trained as trainers and they, in turn, have trained their peers.

All these initiatives are certainly commendable but they remain vastly insufficient given the immensity of the task. The protection of Indigenous women's rights continues to face many challenges: stereotypes and discrimination; implementation of the second generation national gender policy and the action plan for its implementation (2017-2021); the low rate of prosecutions and convictions, as well as mechanisms, for identifying victims of contemporary forms of slavery; the enrolment and retention of Indigenous girls in school; improved access to health care services for Indigenous women, whether pregnant or not (75% of Indigenous women give birth at home, compared to 85% of women nationally who give birth in a health centre; 50% of Indigenous girls have their first sexual encounter by the age of 13, compared to 31% among the general population); and the empowerment of Indigenous women.

## Protected areas

The European Union (EU) has decided to suspend part of its funding to the World Wide Fund for Nature (WWF) due to human rights violations in the project to create the Messok Dja protected area in Congo-Brazzaville. This is specifically because WWF-funded park rangers have been reported for acts of violence against Baka Pygmies.<sup>9</sup> This sanction, which came into effect on 17 April 2021, did not form the object of

a press release. The decision is a stark warning to the world's largest conservation organisation, however, and the first time that Indigenous communities in the Congo Basin have won a case against being evicted by a conservation project. Asked about its monitoring of the funds it grants, the EU has said it will review all contracts that are financing protected areas in the region. More than 300 million euros have been granted under the European budget ending this year (2014 -2020).

## **COVID-19: a lack of information reaching Indigenous communities in Congo<sup>10</sup>**

Indigenous Peoples account for some 10% of the population, according to the Government of Congo-Brazzaville. Many still live in the heart of the forest, far from modern information systems. The president of the National Network of Indigenous Peoples of Congo (RENAPAC), Jean Nganga, took advantage of International Day of the World's Indigenous Peoples, celebrated on 9 August 2021, to call on the Congolese authorities to involve Pygmy leaders in the anti-COVID-19 vaccination campaign. "If those in the city don't believe it, how much worse is it in the villages! Many have never heard of this disease," said Nganga, who is calling for RENAPAC to be involved in raising awareness among the Indigenous people. "When it fails, they'll blame the Indigenous Peoples, when we should have been working together," he said angrily.

In the village of Peke, 5 km from Ouesso, in northern Congo, a community of Pygmies lives in confusion about the coronavirus. According to testimonies from members of this community, many do not understand the pandemic. The police are forcing them to wear masks without really explaining why. Some of them do understand, however. "We were informed about this disease by the police officers who were stopping people. But there are others who don't know the disease exists," says Paul Assan, a Pygmy leader from Peke.

## **Fight against statelessness<sup>11</sup>**

As of 25 August 2021, the Congolese Ministry of Justice had issued 5,000 birth certificates to the Indigenous Pygmy peoples of the departments of Sangha, Cuvette-Ouest and Plateaux.

It should be recalled that, in Congo-Brazzaville, a solid legal framework has been adopted to allow these Indigenous populations to assert their rights.

After the 2011 law –the first in Africa devoted to Indigenous Peoples– an article was introduced into the Constitution in 2015 to enact this recognition. It was not until July 2019, however, that six out of the nine implementing decrees were adopted.

On 28 and 29 December, the Office of the UN High Commissioner for Refugees (UNHCR) organised a workshop in Brazzaville to raise awareness among civil society actors of the fight against statelessness and the problem of internally displaced persons in the Republic of Congo.

This meeting came in the wake of the public services having identified more than 155,000 Congolese without birth certificates. Indigenous Peoples are also particularly affected by this issue. Jacques Essissongo, Prefect and Director General of the territory's administration said:

*We are in the midst of a major reform to modernise the civil registry system in Congo. There are people who have never been declared at the registry office... We must have zero children without a birth certificate by 2022.*<sup>12</sup>

In the same vein, a draft law on internally displaced persons is in the process of being adopted by parliament.

In addition to ministerial texts and international agreements aimed at strengthening the legal framework to combat statelessness, Congo needs to ratify the Kampala Convention. According to Godefroid Quentin Banga, UNHCR's National Protection Officer:

*The phenomenon of statelessness is new to some. It is only natural that awareness needs to be raised among civil society organisations so that they can become familiar with the details of this issue. The various conventions already adopted by Congo provide a protective framework and the country will be able to play its role in identifying and reducing statelessness.*<sup>13</sup>

During this workshop, participants learned about the situation of internally displaced persons in Congo, the role of the Ministry of Social Af-

fairs in the birth registration system, the civil registry system in Congo and the legal child protection system in relation to civil registration.

Several factors lie at the origin of the phenomenon of statelessness in Congo. These include socio-political crises, disasters and floods. Without nationality, stateless people live on the margins of society. Internally displaced persons are most affected by this situation because they often lose their documents during their displacement.

## **Right to food: nearly half of Indigenous Peoples are food insecure**

In July 2021, publication of a WFP study entitled *Analyse de la situation alimentaire et nutritionnelle des peuples autochtones de la République du Congo*,<sup>14</sup> in which Emmanuel Bayeni was involved, revealed that three out of four households surveyed in the departments of Kouilou, Lékoumou, La Likouala, Plateaux and Sangha have a poor food consumption score. The dietary diversity of all households surveyed was poor. The situation was even more pronounced for households surveyed in urban areas. In addition, the average Indigenous household eats 1.57 meals per day.

Individuals living in rural areas have high energy intakes of 2,005.01 Kcal compared to 1,385.53 Kcal and 1,694.94 Kcal for people living in semi-urban and urban areas respectively. Individuals living in urban areas have slightly higher intakes than those in semi-urban areas.

Food security (measured as the percentage of individuals in the population who experienced moderate to severe food insecurity during the reference period) remains a major challenge among Indigenous Peoples given that 45.9% of Indigenous households surveyed were classified as food insecure.

Only 17.8% of households are therefore food secure, meaning that they are able to meet their food and non-food needs without engaging in atypical coping strategies, while 40.3% are moderately food insecure. This means that Indigenous people in this category have significant food consumption gaps or are only marginally able to meet their minimum food requirements without engaging in irreversible coping strategies. Finally, 5.6% are severely food insecure. Indigenous people

in this latter category have extreme gaps in food consumption or have experienced a drastic loss of livelihood.

Faced with these constraints, Indigenous Peoples have shown resilience in attempting to meet their food needs, with mixed success. They have adopted the following strategies:

- Use less expensive and/or less preferred foods;
- Borrow food or ask a friend/relative for help;
- Reduce the amount of food consumed;
- Reduce the adult share of meals to allow children to have more food; and
- Reduce the number of meals eaten per day.

The factors underlying this gloomy picture lie in the field of legislation (difficulty in transposing international legal instruments). Their socio-demographic profile —predominantly young population, high school dropout rates among children/illiteracy among adults; at least one neglected or non-neglected tropical disease: malaria, leprosy, yaws, filariasis, schistosomiasis, monkeypox, tapeworms, among 98.6% of those surveyed, etc.— makes it difficult for these people to enjoy their right to food and nutrition; as well as their socio-economic profile —monetary poverty rate among Indigenous families is more than twice that of the rest of the population given that nearly nine in every ten Indigenous individuals are poor; Indigenous Peoples' practise of agriculture in Congo is hindered by difficulties in accessing land, etc. In addition to this, there is a lack of public policies, discriminatory social norms that perpetuate inequalities, difficulties for Indigenous people to carry out income-generating activities (IGAs), as well as difficulties on the part of all stakeholders to improve the food consumption and food security indicators of these peoples.

## **Right to land: implementation of a Sustainable Land Use Programme (SLUP)<sup>15</sup>**

Implementation of this programme follows the signing, on 3 September 2019, of a Letter of Intent between the President of the Republic of Congo and his counterpart in the French Republic, on behalf of the Cen-

tral African Forest Initiative (CAFI). This will act as a framework in which to provide support to the Republic of Congo's economic diversification policy aimed at fighting poverty and climate change. One of the main ambitions of the Letter of Intent is to "define and implement a land-use policy for the sustainable allocation and use of land and natural resources".

To this end, CAFI's Board of Directors requested, through a Decision Note of 5 October 2020, that the French Development Agency (AFD): (i) prepare a Sustainable Land Use Programme (SLUP) aimed at achieving 22 of the 52 milestones set out in the Letter of Intent [hereinafter SLUP Phase 1]; and (ii) develop a portfolio of activities for the implementation of operational investments in the agricultural and forestry sectors. These investments will support pilot projects aimed at operationalising a sustainable land-use process, including the development of climate-smart and zero-deforestation agriculture, the implementation of sustainable energy supply schemes and the sustainable management of High Carbon Stock/High Conservation Value (HCS/HCV) areas. This portfolio of activities will focus on mobilising public and private investments and piloting innovative financing (private sector engagement (PSE) etc.) [hereafter SLUP Phase 2].

Among the activities already implemented can be mentioned the organisation, on 19 May 2021 in Brazzaville, of a feedback workshop on the SLUP's feasibility study by ONFI (in consortium with Kinomé and SalvaTerra). This was in order to present progress in the study and the first major directions of the programme. This workshop was attended by representatives of civil society organisations, including those of RENAPAC. However, RENAPAC, embroiled in an institutional crisis, was unable to communicate with its members (either before or after the workshop) to reach a consensus, given the importance of the issue.

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**Patrick Kulesza** is the Executive chairman/director of GITPA, Groupe International de Travail pour les Peuples Autochtones - France ([www.gitpa.org](http://www.gitpa.org)). He has co-edited, with Marine Robillard, the book: *Quel avenir pour les Pygmées à l'orée du XXIème siècle? [What Future for the Pygmies at the turn of the 21st Century?]* published in 2019 in the Collection "Questions autochtones du GITPA", L'Harmattan.

**Emmanuel Bayeni** is an expert in the protection of Indigenous Peoples' rights with international organisations (United Nations agencies, European Union, etc.) and non-governmental organisations. He holds degrees in International and European Law on Fundamental Rights (University of Nantes), Political Science and International Relations (Jean Moulin University, Lyon III) and Human Rights and Humanitarian Action (Catholic University of Central Africa, Yaoundé), as well as History and Journalism (Marien Ngouabi University of Brazzaville). He is the Director of the Centre for Human Rights and Development (CDHD). In the Republic of Congo, he coordinated the drafting of Law No. 5-2011 of 25 February 2011 on promoting and protecting the rights of Indigenous Peoples and facilitated the various drafts of the successive Plans for the improvement of the quality of life of Indigenous Peoples (2009-2013; 2014-2017), as well as those for the creation of the National Network of Indigenous Peoples of the Congo (RENAPAC).



# South Africa



South Africa's total population is around 59 million, of which Indigenous groups are estimated to comprise approximately 1%. Collectively, the various African Indigenous communities in South Africa are known as Khoisan, comprising the San and the Khoikhoi. The main San groups include the ǀKhomani San, who reside mainly in the Kalahari region, and the Khwe and!Xun, who reside mainly in Platfontein, Kimberley. The Khoikhoi include the Nama, who reside mainly in the Northern Cape Province; the Koranna mainly in Kimberley and the Free State province; 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, Khoikhoi and San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially-determined apartheid social categories such as "Coloureds". Many previously "Coloured" people are now exercising their right to self-identification and are identifying as San and Khoikhoi. African Indigenous San and Khoikhoi peoples are not formally recognised in terms of national legislation; however, this is shifting with the Traditional and Khoisan Leadership Act enacted in 2021. South Africa voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention No. 169.

## One woman's mission to save an Indigenous language

**T**he Khoikhoi and San (together the Khoisan) people were dispossessed of their land and prevented from continuing their traditional ways of life during the early colonisation of South Africa and, later, under apartheid laws. To survive, they worked on white-owned farms as labourers or domestic servants. Besides the physical hard-

ships suffered during this time, the traditions, culture and language of these Indigenous groups were threatened. While working on the farms, Khoisan people were forbidden from speaking their mother tongue.

The N|uu language of the San people was therefore thought to be extinct by the end of apartheid rule in the mid-1990s. Yet a few older people remained who could still speak N|uu, and they were identified after an appeal via radio from Elsie Vaalbooi, a N|uu speaker. Since then, most of these N|uu speakers have passed away, leaving only one woman as the last known fluent N|uu speaker – Katrina Esau (known as Ouma (grandmother) Katrina).<sup>1</sup>

Now in her late eighties, Ouma Katrina has played a leading role in rescuing her language from extinction by teaching the language to young people aged 3-19 using songs, play and images. Alongside two professional linguists, she created the first written educational materials in the N|uu language, including a trilingual reader and a children's storybook. She has achieved this without having had the opportunity to learn to read or write herself. Ouma Katrina's granddaughter has assisted her in developing these materials and her teachings have been recorded for posterity. In July 2021, the Premier of the Northern Cape honoured her commitment, recognising her as a living human treasure as well as a recipient of the Order of Baobab, by handing over a vehicle to the Royal house of N//n!e under which her school of language, †Aqe ||X'oqe – meaning "Gaze at the Stars" operates.

## **Conflict over development of an Indigenous heritage site**

The African headquarters of Amazon is being constructed<sup>2</sup> on a site of historical and cultural significance for the Khoisan people in Cape Town; this site is also of environmental significance as a river floodplain. Although the project includes a cultural, heritage and media centre that will recognise the importance of this site to the Khoisan, Indigenous groups are divided as to whether or not this development should go ahead.

The Western Cape First Nations Collective (WCFNC),<sup>3</sup> which represents several Khoikhoi and San peoples connected to the historical

five groups (Gorinhaiqua, Gorachouqua, Cochoqua, Korana, Griqua Royal House, San Royal House of N|ǀnǀe), are in favour of the development. They confirmed this development to have been participatory and inclusive of their collective voices, and they stated that all affected stakeholders had had an opportunity to participate. The WCFNC will run the heritage centre at the site, which they hail as a major milestone in their decades-long struggle for recognition of their culture and heritage. In a media interview, Chief Garu Zenzile Khoisan<sup>4</sup> stated that the First Nations Collective supports this development in the interests of their people, and views this new heritage centre as a place of anchorage for the Khoisan people where they can reclaim the story of their own history and traditions.

Other First Nations organisations,<sup>5</sup> however, have joined activist groups in opposing the development and, in August 2021, they filed a court case aimed at halting construction at the site. They argue that developing the site will destroy its intangible cultural significance to Khoesan people. Some activists argue<sup>6</sup> that this site is being considered for declaration as a national and world heritage site, and that this would be compromised by the development. The court case is ongoing.

## **Khoisan communities reclaiming land in the Western Cape**

The process of land reform in South Africa is meant to bring justice, restore dignity and foster equity after the systemic land dispossessions that took place under apartheid. However, this process has been delayed and has largely excluded the Khoisan people, who were dispossessed of their land prior to the apartheid era.<sup>7</sup> This has resulted in some Khoisan communities taking action themselves by reclaiming ancestral lands throughout the Western Cape, thus forming settlements that are considered illegal by the government.

The Cochoqua Tribal Council, with the Chainouqua, Hessequa and Outeniqua!Xam groups, has attempted to occupy land at 67 different sites across the Western Cape province.<sup>8</sup> The government has blocked the settlement of many of these areas by obtaining court orders and arresting settlers. Communities are hoping that their settlements will finally result in the government acting on its promises of returning land

to historically displaced Indigenous groups.

One of these disputed areas is near the town of Grabouw in the Western Cape, where a community of Khoikhoi people is settling on land that is currently owned by the Department of Public Works and Infrastructure.<sup>9</sup> Their community leader states that there is evidence that their ancestors occupied this land prior to colonisation. Despite not having access to basic amenities such as water and electricity due to their lack of formal tenure over the land, the community is determined to reclaim this land from the government.

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**Leslé Jansen** is CEO at Resource Africa Southern Africa based in Cape Town. She is also an Indigenous lawyer serving on the African Commission's Working Group on Indigenous Populations/Communities and Minorities in Africa.

**Gail Potgieter** is a conservation communication consultant who works closely with rural communities and conservation organisations in southern Africa. She has worked in Botswana and Namibia for 10 years in wildlife management areas. At Resource Africa Southern Africa she works as a communications consultant to amplify the voices of rural communities.



# Tanzania





Tanzania is estimated to have a total of between 125 and 130 ethnic groups, falling mainly into the four categories of Bantu, Cushite, Nilo-Hamite and San. While there may be more ethnic groups that identify themselves as Indigenous Peoples, four groups have been organizing themselves and their struggles around this concept and movement. 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<sup>1</sup> put the Maasai in Tanzania at 430,000, the Datoga group to which the Barabaig belongs at 87,978, the Hadzabe at 1,000<sup>2</sup> and the Akie at 5,268. While the livelihoods of these groups are diverse, they all share a strong attachment to the land, distinct identities, vulnerability and 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.

## New President

**T**he former President of the United Republic of Tanzania, John Pombe Magufuli, died on 17 March 2021. This opened a new era for the citizens of Tanzania given that his six-year reign had been characterized by repression and serious human rights abuses. John Magufuli was also one of the most prominent coronavirus sceptics. Following his death, there is an opportunity for Tanzania to reverse its

downward human rights trajectory and ensure accountability for past human rights violations committed. There are slow signs of reduced fear within civil society, of reduced threats towards civilians and of an opening up of civic space.

On 19 March 2021, in Dar es Salaam, the Vice President, Samia Suluhu Hassan, was sworn in as the 6th President of Tanzania in accordance with article 37 (5) of the Tanzanian constitution.

## **Situation in Ngorongoro**

On 12 April 2021, the Ngorongoro Conservation Area Authority (NCAA), the state corporation responsible for protecting and managing the Ngorongoro Conservation Area (NCA), issued a 30-day eviction notice to 45 Indigenous pastoralists living in the NCA. However, on the 20 April 2021, this eviction was temporarily put on hold. This was triggered by the protests of pastoralists living in the NCA, who held a press conference in Arusha on 19 April 2021. The resulting news items attracted a public outcry, forcing the NCAA to withdraw from its original stance and issue a letter saying that the eviction was halted until further notice.<sup>3</sup>

The eviction notice is part of a bigger plan on the part of NCAA and the Ministry of Natural Resources and Tourism (MNRT) to evict a total of 73,000 pastoralists from the NCA.

Prior to the eviction notice that would have affected 45 Indigenous pastoralists, the President of Tanzania, Samia Suluhu Hassan, spoke at a ceremony implying that she was dissatisfied with NCA's current state of affairs. She mentioned that certain steps should be taken to preserve the area's ecology and wildlife. She did not explicitly set out her steps for preservation. Nevertheless, the Indigenous human rights defenders and the Indigenous pastoralist communities in NCA do not believe that NCAA's and MNRT's current strategies are what the President was referring to in her speech on 6 April 2021.

The NCAA is known to hold the view that the Indigenous pastoralist communities living in NCA are illegal immigrants. The NCAA has been spreading baseless rumours that Indigenous Peoples and their pastoralist way of life are endangering the ecological balance of the NCA. This is further disseminated by the mainstream media's biased coverage of the issue.

The threat of eviction of Indigenous Peoples from the NCA re-appeared once more some five months later. On 17 October 2021, speaking to the public in Sheik Amri Abeid Memorial Stadium in Arusha, the President of the United Republic of Tanzania raised a serious issue and threat to the peoples of Ngorongoro. Among other things, she stated that Ngorongoro was a place of national importance for tourism and revenue for the country. She categorically stated that the government could not allow the wishes of a few people to prevail and allow Ngorongoro to perish. By that she meant that Ngorongoro should not be for the Maasai peoples alone but for the whole nation. She clearly stated that the government was ready to ensure that it could offer alternative land to the people outside the NCA. She therefore urged Ilaigwanak<sup>4</sup> to convince the Maasai to vacate the area and help resolve the conflict peacefully. This was followed by much discussion of the rights of the Maasai people in Ngorongoro and different media reports.

## **Loliondo case in the East Africa Court of Justice**

Although there have not been any physical attacks on Indigenous Peoples in the villages of Loliondo in Ngorongoro District, the situation remains tense since the government has continued to put pressure on the community representatives. On 9 September 2021, the Village Chairpersons were summoned by the District Executive Director for Ngorongoro and told that it was wrong for the village authorities to take the government to court as they formed part of the government. He insisted that it was like a child taking a parent to court, and he insisted that they withdraw East African Court of Justice Reference Case No 10 of 2017 and instead dialogue with the government. He told them to go to their respective village authorities and bring back an agreement that they had agreed to withdraw the case. He told them that all the villages should come with a letter agreeing that they no longer needed to be part of the case. The villages refused to withdraw the case, informing him that about it affected all community members and that he should go to convince the community. They also insisted that the case be handled by their lawyers and that the lawyers should be involved in everything to do with the case.

In terms of progress in the case, there has not been much activity. Both parties have made their final submissions, however, and are waiting for the final judgement in the first quarter of 2022.

## **Prospect of ending the conflict between Kimotorok village and Mkungunero Game Reserve**

Kimotorok village is located in Simanjiro District of Manyara Region. The village borders Tarangire National Park (TNP) and Mkungunero Game Reserve (MGR), and it has five sub-villages.

Residents of the village are predominantly Maasai pastoralists, and Barabaig pastoralists are in a minority. Kimotorok village is deeply engrossed in a land-induced conflict with Mkungunero Game Reserve. The conflict started around the year 2000 when the boundaries of Tarangire National Park and Mkungunero Game Reserve were extended on the village's land without consultation, thereby illegally seizing 6,400 km<sup>2</sup> of village land.

Kimotorok is a legally-registered village which, in accordance with the Village Land Act No. 5 of 1999, is entrusted to control and manage its village land. 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 has to pass a resolution which the village general assembly then needs to approve. The minutes of these two bodies must be obtained or sought before anyone can say they have acquired the village land through open and legal procedures. Any other way is tantamount to land grabbing.

On 4 July 2021, armed wardens from Mkungunero Game Reserve captured 135 cattle belonging to the Maasai and drove them deeper into the preserved area. They did this deliberately so that the Maasai people would have to bribe them or pay huge fines. Around 30 motorbikes belonging to Maasai pastoralists were also destroyed in the process.

On 9 October 2021, the Minister for Lands, Housing and Human Settlements Developments visited the area in conflict. He said that nearly 4,400 km<sup>2</sup> would be returned to Kimotorok village. The remaining 2000 km<sup>2</sup> would have to wait until there was a resolution between the villages and Mkungunero Game Reserve. He further stated that all evictions and possible harassments had to end.<sup>5</sup>

## **Kilimanjaro National Park in row with the Maasai pastoralists of Enduimet**

Several villages in Enduimet Division of Longido District, West of Kilimanjaro in the district of Hai and Siha, are locked in a land-induced conflict with Kilimanjaro National Park.

Kitenden, Irkaswa, Lerangwa and Kamwanga villages, located on the slopes of the highest free-standing mountain on Earth, are predominantly inhabited by Maasai pastoralists squeezed onto small parcels of marginal land. On 16 March 1973, the Maasai pastoralists had an area of 5,500 acres officially gazetted through Government Notice No. 59 whereby the area legally became a grazing reserve for the Maasai. In 2016, however, the Tanzanian National Parks Authority, a government agency responsible for managing and protecting the national parks, invaded the area. It arbitrarily planted boundary beacons, thereby including the area within Kilimanjaro National Park. By so doing, the Maasai lost a huge territory, the entire 5,500 acres, on which they and their livestock were almost entirely dependent.

Since then, the pastoralists have been struggling to keep using the annexed land for grazing. Many of them have ended up in serious problems with the national park administration. In November 2021, the park authorities seized thousands of livestock from the contested area and sold off some of the animals at throw-away prices. Other animals were released after the owners paid heavy fines.<sup>6</sup>

## **Essimngor Forest Reserve and threats to 14 villages**

Essimngor Forest in Monduli District, Arusha Region was established in 1954 through Government Gazette No. 187 of 1954. On 4 June 2021, while submitting the Ministry Budget for 2021/2022, the Minister of Natural Resources and Tourism announced in the National Assembly at Dodoma that Essimngor Forest was to be upgraded to a Nature Forest and expanded to a Forest Reserve. This was done without the knowledge of the people living in the forest. The upgrading of the forest to a Nature Forest means that it will be a state-owned forest managed by the Tanzania Forest Service Agency (TFS). This implies restrictions on

the extraction of woody or animal species and that no human activities are generally allowed. It furthermore means that the forest will be restricted to research, education and nature-based tourism.

The upgrading and expansion of Essimingor Forest to a natural forest reserve was not a participatory decision and the people who use the forest for various uses were not aware of the change in the forest's status, which they had up until then been using without any disturbance. The impact of the expansion and upgrading is enormous. The forest is used by the people of Makuyuni, Esilalei, Lepurko and Selela Wards, and the pastoralist communities of these areas have used the forest for various activities, including worship, traditional medicine, pasture, water and settlement.

By establishing the Forest Reserve, the government has expanded the size of the forest from 4,649 to 6,070 hectares, and many established villages have been included. This has been done without obtaining the free, prior and informed consent of the Indigenous Peoples of the area/villages. There seem to be different issues that are not clear with regard to the legal status and processes that were followed prior to designating the forest as a Nature Forest.

The Forest Reserve forms part of the largest mountain range of the Essimingor Mountains. The reserve comprises tall luxurious sub-montane forests and deciduous to semi-deciduous lowland forests. The reserve has exceptional conservation values that include biological diversity, endangered and threatened flora and fauna.

The upgrading of the forest threatens the existence of eight villages in the Makuyuni, Esilalei, Lepurko and Selela Wards, which border the Essimingor Forest Reserve. These villages are Lössimingor, Makuyuni, Esilalei, Baraka, Mungere, Mbaashi, Silalei and Losirwa. All these villages, with the exception of Makuyuni, are legally-registered villages with Registration Certificates. On top of that, all villages have obtained Certificates of Village Land and have carried out thorough Village Land-Use Plans.

## **Isawima Wildlife Management Area conflict**

Isawima Wildlife Management Area (WMA) was established in 2000 by several legally-registered villages as a community-based wildlife man-

agement area with the aim of earning an income from the tourism industry that could benefit the community. The area is considered one of the sources of the Malagarasi River, a tributary of the Tanganyika River in Kigoma Region.

On 24 January 2021, through the Regional Commissioner, the government announced that it had decided to hand Isawima WMA to the Tanzania Wildlife Management Authority (TAWA). The Commissioner stated that the decision was due to the mismanagement of the WMA by the local community and the failure of the villagers to manage the area. Pastoralists were ordered to move out of the area. The pastoralists in Isawima protested on the grounds that their villages, which are their ancestral land, had unlawfully been included in the WMA. TAWA then executed the Kaliua District Commissioner's announcement to evict the pastoralists from the Isawima WMA.

On 16 June 2021, in Songambebe sub-village, Kombe village, in Kaliua District of Tabora Region, a girl named Nyanzobe Mwandu, aged four, was burnt to death inside her family house by game wardens from Isawima WMA.<sup>7</sup> The house where the child was sleeping was allegedly torched by the wildlife wardens of Tanzania Wildlife Management Authority (TAWA), in collaboration with police from Igagala Namba 5 police station. Speaking to local radio station CG FM, Tabora Regional Police Commander, Assistant Commissioner Safia Jongo, confirmed the incident. She said that a thorough search had been conducted in broad daylight before demolishing and torching the houses and that even the house owner had said she had fled with all her children. "So who burnt the child, when, and why?" she asked. She even added that it was possible that bad people had burnt the child to weaken the operation.<sup>8</sup>

A few months prior to the eviction, the military conducted seven days of armed training in the villages within Isawima WMA. This was, according to pastoralists, an act of intimidation as they kept telling the villagers that they were preparing to evict them.

## **Incidents related to human rights violations**

On 11 January 2021, the pastoralist Pawa Kandago, aged 22, from Mapogoro village in Mbarali District, Mbeya Region, committed suicide. Prior

to this, the state had captured and auctioned his more than 50 head of cattle near Ruaha National Park.<sup>9</sup> His death is said to be directly related to the capture of all his family's livestock following the ultimatum by Mbeya Regional Commissioner Albert Chalamila, for all pastoralists to vacate the region because of what he termed environmental destruction. This is allegedly an initiative to preserve wildlife protected areas. "I will make sure that this order is observed to the brim to save our protected areas and commercial farms owned by investors," said Chalamila.<sup>10</sup>

## **The East African Crude Oil Pipeline (EACOP)**

Indigenous Peoples and Indigenous Peoples' organizations engaged with the EACOP throughout 2021. This engagement was regarding implementation of the EACOP Framework for Vulnerable Ethnic Groups and Indigenous Peoples. Traditional leaders from the Maasai, Akie and Barabaig communities in Kiteto, Simanjiro, Kilindi and Hanang districts and the CSOs PINGO's Forum, Parakuiyo Pastoralists Indigenous Community Development Organization (PAICODEO) and Ujamaa Community Resource Team (UCRT) have all been involved in the development and review of this framework. This engagement ended in a draft Memorandum of Understanding (MOU) between the community and EACOP whereby EACOP expressed its commitment to foster respect for the human rights, dignity and culture of Vulnerable Ethnic Groups and Indigenous Peoples. The process is an ongoing one aimed at engaging with Indigenous Peoples to bring about a conclusive MOU and clearly shows EACOP's commitment to ensuring that Indigenous Peoples are not affected by the implementation of the pipeline project.

## **The situation of Hadzabe hunter-gatherers**

Indigenous Hadzabe hunter-gatherers from Mongo wa mono village and the Yaeda Valley continued to face different challenges throughout the year, such as encroachment onto their Natural Forest by Indigenous pastoralists (the Barabaig and Iraq communities). This has created some conflicts but no reports of actual fighting occurring. Increased fishing activities have also been reported by the Hadzabe as a new challenge



that has increased human population around their ancestral land at Lake Eyasi and which affects the forests in the area and threatens the existence of the wild animals on which the Hadzabe people depend.

The Hadzabe have also reported a lack of basic infrastructure on their land as being a challenge, especially a lack of health facilities, roads and transport to meet their basic needs.

## The situation of Indigenous women

Indigenous women continued to face challenges in Tanzania in 2021. Increased drought and natural resource conflicts have been a major burden for them and their children. In Ngorongoro, many women are impoverished and forced to do manual work in the neighbouring district of Karatu. This is the same for women in Longido where the rain has not been sufficient to feed the livestock and provide enough milk for the families. The many conflicts over different Indigenous Peoples' lands bordering protected areas in 2021 have resulted in insecurity for women and children.

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



# Tunisia



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

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

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

towards achieving Arab unity [...]”. Article 1 goes on to reaffirm that “Tunisia is a free state, [...], Islam is its religion, Arabic its language” while Article 5 confirms that “the Tunisian Republic forms part of the Arab Maghreb.” For the Tunisian state, therefore, the Amazigh do not exist in this country.

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

## The rights of Amazigh women in Tunisia

**T**he Tunisian Constitution, adopted in 2014, does make some democratic advances.<sup>1</sup> Article 21 stipulates with regard to women that: “Citizens are equal in rights and duties. They are equal before the law without any discrimination.” However, given that both government and Parliament have been dominated by conservative Islamist parties since the 2011 “revolution”, no new laws have been passed to abolish the old laws that still discriminate against women, especially in the areas of marriage and inheritance. Moreover, under the influence of Islamist movements, Tunisian society has become more Islamised, and this has weakened the democratic and women’s rights movements.

With regard to the specific situation of Amazigh women, the Amazigh culture and its traditions of freedom and secularism have always been opposed by Arab-Muslim governments and Amazigh women are therefore subject solely to the rules of the dominant society. Worse, they are among the most marginalised of women. Living in poor areas, they have little access to education and their jobs are limited to manual work such as handicrafts or agriculture, activities that are not highly valued in Tunisia. Official recognition of and respect for the Amazigh component of Tunisian society and consideration of Amazigh customary law as one of the sources of the country’s legislation would be the solution to ensure progress in the rights of Amazigh women in Tunisia.

## General political situation

Tunisia has not known political stability since the 2011 “revolution”. The Constitutional Court has not yet been established because of deep differences within Parliament. 2021 was marked largely by the fact that the President of the Republic, Kais Saied, elected in 2019, decided on 25 July 2021 to suspend Parliament and dissolve the government, dominated by the Islamist party Ennahda and its allies. The Head of State justified this decision by invoking Article 80 of the Constitution, which authorises him to take “all necessary measures” in case of “imminent danger threatening the nation or the security and independence of the country”. And, according to him, the mismanagement of the health crisis, the political blockage and corruption represent imminent danger. The President of the Republic’s opponents, as well as some analysts, see this as a “coup d’état”, enabling the Head of State to seize power.<sup>2</sup> On 13 December 2021, the President of the Republic announced that a referendum would be held on 25 July 2022 to adopt the draft reform to the Constitution, and that new legislative elections would take place on 17 December 2022.<sup>3</sup>

Article 128 of the 2014 Constitution also created the National Human Rights Institution but, to date, this institution has not been established due to political differences within the Tunisian Parliament.

This chaotic backdrop prevented any significant legislative progress from being made in Tunisia in 2021. There was even a regression, albeit symbolic, with the disappearance of the Ministry of Human Rights during a ministerial reshuffle in January 2021.

## Amazigh of Tunisia still the victims of forced assimilation and discrimination

Organic Law No. 2018-50 of 23 October 2018 on the elimination of all forms of racial discrimination was intended to protect the Amazigh from racism and discrimination and promote respect for their rights as an Indigenous community distinct from the dominant Arab society. And yet the Amazigh are not legally recognised as an Indigenous community and nor are they protected by any law or regulation. The Amazigh

of Tunisia are hidden, they have no visibility in public spaces, it is as if they did not exist. The Tunisian Constitution defines the country as an ethnically homogeneous, one and indivisible Republic whose identity is “Arab-Muslim”, formed of a single category of citizens: Arab and Muslim Tunisians.<sup>4</sup> The Amazigh of Tunisia are thus considered to be like any other Tunisian citizen, i.e. Arab-Muslim citizens and thus with no right to claim their own identity. Their historical, social, linguistic and cultural differences are not legally recognised and cannot be used to claim specific rights or to denounce any discriminatory treatment based on race, ancestry, ethnic origin, language or culture. This official denial of the existence of Amazigh in Tunisia allows the Tunisian authorities to claim that there is no discrimination against this Indigenous community in the country.

And the voice of Amazigh citizens and associations has no public space in which to express itself. Amazigh are rarely invited to speak in the public or private media (TV and newspapers), nor even to use their right of reply when they are insulted.<sup>5</sup> They censor themselves on social media for fear of stigmatisation, threats, insults and serious difficulties in their family and professional life.

For similar reasons, but also because of the cost of legal proceedings and a lack of confidence in the process, no complaints have been filed against perpetrators of racist or discriminatory acts against Amazigh. This is enough for the Tunisian government to be able to claim that the Amazigh are not discriminated against and that they are treated equally alongside other Tunisians.

In its periodic report to the United Nations Committee on the Elimination of Racial Discrimination, the Tunisian government stated that “there is no ‘Berber issue’ in Tunisia. Tunisia is a homogeneous country in terms of language, religion and culture. In Tunisia, the Berbers are completely integrated and do not suffer any form of discrimination.”<sup>6</sup>

In fact, many mayors and municipal officials continue to refuse to register Amazigh first names in the civil registry because they are not Arabic, despite the repeal in July 2020 of Circular No. 85 of 12/12/1965, which prohibited the registration of non-Arabic first names for newborns. This situation was denounced in 2021 by the NGO Minority Rights Group and a group of Tunisian associations,<sup>7</sup> who noted in their report to the Committee on the Rights of the Child that:

*On 16 July 2020, the Ministry of Local Affairs announced the abrogation of Circular No. 85 from 1965 prohibiting the registration of new-borns under an Amazigh name or other any non-Arabic name in civil registration books. Several cases of refusal were documented [...] where decisions were being made on an ad hoc basis, at the discretion of the public servant in charge of the registration.*

During the session of the Committee on the Rights of the Child devoted to examining Tunisia's periodic report in May 2021, the head of the Tunisian delegation stated that his government's report "was produced with the participation of civil society organisations." However, according to the NGO World Amazigh Congress, "no Amazigh organisation was invited to participate in the preparation of Tunisia's report." There is therefore clear discrimination and exclusion of Amazigh organisations in Tunisia.

## **Violation of international refugee law**

Slimane Bouhafs, a citizen of Algerian origin living in Tunisia since 2018 and holding political refugee status, disappeared from his home on 25 August 2021. He reappeared on 1 September 2021 before the judge of the court of Sidi M'hamed in Algiers, who ordered his detention. The Tunisian authorities had therefore extradited Slimane Bouhafs to his country of origin where he has been persecuted, in violation of the Convention Relating to the Status of Refugees. Amnesty International and some 40 Tunisian associations expressed their indignation at this serious breach of human rights. On 3 September 2021, the Tunisian Head of State announced the opening of an investigation to determine "the circumstances" of Slimane Bouhafs' "departure from Tunisian territory."<sup>8</sup> To date, the results of this investigation are unknown.

## **Treaty body recommendations not followed up with action**

2021 saw no significant decision or action from government or the public institutions aimed at favourably following up the recommendations



of the UN Committee on Economic, Social and Cultural Rights of 2016 (E/C.12/TUN/CO/3) with regard to Tunisia's Amazigh, nor those of the Human Rights Committee of 2020 (CCPR/C/TUN/CO/6). However, during the sessions of the Committee on the Rights of the Child devoted to Tunisia on 26, 27, 28 May 2021, Ms Sana Bouzaouache, representative of the Ministry for Relations with Constitutional Bodies, Civil Society and Human Rights said that: "The Tunisian Ministry of Education plans to implement the teaching of the Amazigh language as an optional language in the coming years."<sup>9</sup> And yet no consultation with stakeholders nor any project has been implemented to date aimed at teaching the Amazigh language in Tunisia.

As for the recommendations of the Committee on the Rights of the Child, adopted in June 2021 (CRC/C/TUN/CO/4-6), these are too recent to have been implemented. The main ones concerning Amazigh children are the following:

In the area of civil rights and freedoms, the Committee:

*welcomes the repeal in 2020 of Circular No. 85 of 1965, which had prohibited the civil registration of new-borns with an Amazigh or other non-Arabic name, but it is concerned about the administrative and judicial barriers faced by parents who do not register their children within 10 days of birth. [...] The Committee recommends that the State party: (a) remove all administrative and financial barriers faced by children in gaining access to birth registration and receiving birth certificates; and (b) ensure that all children, including migrant children, children with non-Arabic names and children who were born prior to the repeal of Circular No. 85 of 1965 have access to birth registration and identity documents.*

In the area of freedom of thought, conscience and religion, the Committee "recommends that the State party continue its efforts to promote religious tolerance and ensure the right of the child to freedom of thought, conscience and religion." In terms of child health and welfare, the Committee recommends the government address "regional disparities in access to health care and services and increase its allocation of resources for primary health care to make it both accessible and affordable, especially in rural areas." With regard to special pro-

tection measures for Amazigh children, the Committee on the Rights of the Child “recommends that the State party: (a) ensure the right of Amazigh children to intercultural and bilingual education that respects their culture and traditions, including by integrating Amazigh as a second language in schools; and (b) develop initiatives, in cooperation with Amazigh cultural associations, to reconnect Amazigh children with their cultural practices.”

Finally, the Committee asked the Tunisian government to take all measures to ensure that the recommendations made are fully implemented and that a child-friendly version is disseminated to children. It also recommended that these concluding observations be widely disseminated in the languages of the country.

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**Belkacem Lounes** holds a PhD in Economics and Social Sciences, is a university professor (Grenoble Alpes University), expert member of the Working Group on Indigenous Populations/Communities and Minorities in Africa of the African Commission on Human and Peoples' Rights, member of the UN Expert Mechanism on the Rights of Indigenous Peoples and author of numerous reports and articles on Amazigh rights.



# Uganda



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

The Benet, whose number is slightly over 8,500, live in the north-eastern part of Uganda. The 6,700 or so Batwa live primarily in the south-western region and were dispossessed of their ancestral land when Bwindi and Mgahinga forests were gazetted as national parks in 1991.<sup>1</sup> The Ik number some 13,939 and live on the edge of the Karamoja/Turkana region along the Uganda/Kenya border. The Karamojong people – whose economy is traditionally based on livestock – live in the north-east of the country (mainly drylands) and have an estimated population of 1,094,100<sup>2</sup> according to a mid-2018 estimate by the Uganda Bureau of Statistics. The Basongora number around 15,000 people and are a cattle-herding community living in the lowlands adjacent to Mt. Rwenzori in Western Uganda.

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

The 1995 Constitution offers no express protection for Indigenous Peoples but Article 32 places a mandatory duty on the State to take affirmative action in favour of groups that have been historically disadvantaged and discriminated against. This provision, which was initially designed and en-

visaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of Indigenous Peoples in Uganda.<sup>3</sup> The *Land Act* of 1998 and the *National Environment Statute* of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected area, thus nullifying the customary land rights of Indigenous Peoples.<sup>4</sup>

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

## **The situation of pastoralists and minority groups in Karamoja**

**K**aramoja pastoralists experienced a harsh situation throughout most of 2021. The challenges included a resurgence of armed cattle rustling and raids, forced evictions from extractive sites in Loyoro sub-county of Kaabong district, the abduction and rape of women and girls, early girl child marriages and COVID-19. A combination of these factors impacted on the broad social structure, including on food and market systems. There were a number of interventions by civil society, government and experts as regards conflict management and insecurity as well as the situation of women and girls at community level.

### **Conflict and insecurity in Karamoja**

Cattle raids and thefts continued in Karamoja in 2021. This left many women and households vulnerable to loss of livelihood, life, rape and abduction by armed warriors from Turkana (Kenya), Dodoth from Kaabong district and Jie from Kotido (Ugandan side).

This was particularly the case when community members were

engaged in daily survival activities such as fetching firewood for sale, gathering wild foods, herding livestock and working on community artisanal gold mining. As a result of men dying while protecting livestock or others dying in the raids, the number of women- or child-headed families and orphans has increased substantially in Karamoja. For example, during the month of August 2021, more than 11 people were murdered in Kaabong town. Most of the murders took place at night. Some of the murders were accompanied by robberies targeting businesses and village savings groups. One example is the robbery and murder of the woman who served as treasurer of Toyera Kapei Village Savings and Loan Association (VSLA) in Kaabong East sub-county by unknown armed warriors who got away with UGX 12 million (equivalent to USD 3,300).<sup>5</sup> Another victim was Lokol Zam Zam, a business woman. She was murdered by armed warriors after robbing her of money in Lodiko sub-county some six kilometres out of Kaabong town.<sup>6</sup> It is alleged that she was suspected of sharing intelligence information with the security forces. Another person murdered in cold blood in August was Aboka Magur who served as chairman of the Payangara Sub-County Peace Committee in Kotido district. His death was attributed to armed Jie warriors who alleged that the Peace Committee was talking peace and sharing reports with security agencies. Many more innocent persons were murdered in August and September either by armed warriors or security officers.

Activists demanding peace and the reinstatement of security in Karamoja became targets for armed warriors and elements within the authorities, including the security forces. Civil society workers have been warned not to report government security operations in the region. One of them, Loupa Pius, has been frequently harassed and victimized. In October 2021, he was summoned by the National Resistance Movement<sup>7</sup> (NRM) chairperson for Kaabong district to the office of the District Police Commander, to explain why he (Loupa Pius) had shared information with the public regarding the arrest of said NRM chairperson, who was in possession of an illegal gun.

A number of events and meetings were held to find solutions to the security concerns. In mid-2021, Members of Parliament (MPs) from Karamoja boycotted the Presidential State of the Nation Address on Security. They used the occasion to travel to Karamoja to gather infor-

mation on security developments. They found that the insecurity situation was worsening day by day.<sup>8</sup> The MPs gathered information and they presented it to the Parliament of Uganda for members to understand the security situation in the Karamoja sub-region. As a follow-up, the office of the first lady met with all top leaders and security agencies in Karamoja in September 2021 ahead of President Museveni's visit to the sub-region. A number of security strategies were agreed and submitted by the chairperson of the Karamoja Parliamentary Group (KPG) to the first lady for onward transmission to the President.<sup>9</sup> President Museveni subsequently held two rounds of meetings with Karamoja leaders and pledged increased security deployment to curb the issues of raids and cattle rustling. Unfortunately, however, even after the President's visit, the raids continued to take place every day in all districts of Karamoja. Some two to three raids took place in each district daily, translating into around 25 to 30 raids weekly.

On 7 December 2021, Members of Parliament from Karamoja held a security meeting with the Ministry of Defence and Veteran Affairs over the escalating insecurity. They also called for a review of the security strategy following the increased insecurity characterized by raids and theft of cattle and killings of travellers by armed warriors.<sup>10</sup>

## **Karamojong women's participation in local and national leadership arena**

Karamojong women of various backgrounds have been able to stand for elected leadership positions. Others have taken up technical positions. Women from the minority tribes of Karamoja, such as Ik in Kaabong district and Tepeth in Moroto district, however, are still struggling to get elected as their chances are limited by their being minorities in their communities. On a positive note, a young Ik woman local councillor was appointed Secretary for Production and Natural Resources - a well-funded and important department in local government.

At the national level, Karamojong women Members of Parliament have made progress. Hon. Ayakuny Esther Davina was appointed Minister of State for Disaster Preparedness under the Prime Minister's Office, Hon. Akello Rose Lilly was appointed Minister of State for Ethics and In-



tegrity under the President's Office, and Hon. Faith Nakut was appointed Chairperson of the Parliament of Uganda COVID-19 Taskforce. Faith is also the NRM Caucus Treasurer. Finally, Hon. Nakwang Christine is the Vice Chairperson of Karamoja Parliamentary Group and also a member of the National Security Committee.

## **Basongora women's involvement in politics**

Indigenous communities as a whole face challenges of exclusion, alienation and non-representation in positions of leadership. Women and girls from those communities, however, face double marginalization<sup>11</sup> and this is also true in the context of women's involvement in leadership roles among the Basongora community in Kasese district. With limited access to education at the various levels, the number of girls dropping out of school is always higher than that of boys within the same community and this further limit girls' participation in community affairs, including politics.

During the 2021 general elections, a number of Basongora women were elected to various local government positions for the 2021-2026 political term. The highest was that of Ms Kamama Annet - a Musongora woman married in Ankole who was elected District Vice Chairperson for Isingiro district. The other women are Ms Beth Karokowho, who was elected Kasese district Councillor for Nyakatonzi and Kinyamaseke sub-counties, and Ms Evayora Kokuzanisa who was elected to represent the elderly of Nyakatonzi sub-county.

Notwithstanding these local government achievements in 2021, Basongora women still find it very difficult to contest political positions at national level. The key challenges include limited numerical strength as well as an inability to raise funding with which to sustain political campaigns to contest a parliamentary seat.

## **The situation of the Batwa people**

Uganda as a country went into the second COVID-19 lockdown in June 2021, and the entire economy was largely closed. This situation affected

everyone, including the Batwa. They completely lost all hope once again as poverty increased, standards of living deteriorated, young children got married, employment opportunities were lost and, worse still, some lives were lost.

Despite all these challenges, however, and amidst the COVID-19 pandemic, the Batwa were victorious in winning their case against the Government of Uganda for illegally evicting them from their ancestral lands. This victory was the result of a petition filed by the Batwa way back in 2013 in the Ugandan Constitutional Court. The judgement was delivered on 19 August 2021. Unfortunately, however, the Batwa were not permitted to reoccupy their land even though the court acknowledged that: "The Batwa owned the whole or part of the area on which forest is located in accordance with their customs and/or practices. They inhabited the forest for many generations, since before the beginning of colonial rule in Uganda."<sup>12</sup> The court further found that the Ugandan government had not adequately compensated the affected community, which left them "a landless, destitute people... and left them a disadvantaged and marginalized people." The court instead ordered the Batwa to seek remedies of affirmative action through the High Court.

## **The situation of the Benet people**

The Benet continued to suffer injustices in 2021, with 30 people arrested and two shot and severely injured by the Uganda Wildlife Authorities in land-related disputes. Unfortunately, many of those arrested were transferred to Butaleja prison some 130 kms from their home area. This was in an effort to deny them access to bail since guarantors would find it expensive to travel to a court that far away. The incarceration of the men also negatively affected the women, who found themselves doubling as fathers and mothers in the home.

On 18 May 2021, Benet women led a demonstration against the brutal acts of the Uganda Wildlife Authority (UWA). Similarly, in May 2021, the women staged a protest by sitting in a UWA outpost demanding the release of their cattle and men, an action that drew the attraction of the media. The NGO Solidarity Uganda came to film the demonstrations.

## Land rights of the Benet

On the long running issue of resettlement, the government has used the excuse that this could not be achieved right now due to the COVID-19 pandemic and lockdown. As a result, more than 10 families face evictions from a temporary resettlement. It is alleged that they encroached onto land, but this was allocated to them in 2008 on a temporary basis. In November 2021, Amnesty International released a report about the eviction of the Benet people from their ancestral land 13 years ago, and the deplorable conditions they still live under in ramshackle resettlement camps. The report documents the numerous impacts of forced evictions on the community of some 18,000 people, including their right to health, adequate housing and education. It concludes that “the Benet are still reeling from the disruption to their way of life and remain at risk of physical harm from the forest rangers despite repeated promises by the government – including President Museveni – to remedy their plight”.<sup>13</sup>

## Health and education among the Benet

The health care system of the Benet community remains a major challenge. Although there are some efforts by government to establish health centres within the Benet resettlement area, like Terenboi and Kwosir, the facilities lack drugs and are not fully staffed. In places where the Benet were temporarily settled, they have to travel for kilometres to access one. As a result, many pregnant mothers use traditional birth attendants or give birth by the road side as they struggle to reach a health centre.

COVID-19 caused a great deal of suffering among the Benet as they were restricted from accessing justice. With government imposing a total lockdown, the Uganda Wildlife Authority went on the rampage, arresting whoever was found in the forest despite the fact that people were choosing to go to the forest to isolate and contain the spread of the disease.

With schools remaining closed in Uganda for nearly two years now, many children are not likely to return when they eventually reopen. Quite a number of girls got pregnant and are now mothers, some boys are on

drugs, addicted to betting and all forms of alcohol.

While the government encouraged online studies, children from Indigenous communities like the Benet, where there is lack of facilities including electricity, televisions, radios and the Internet, were unable to benefit. This is coupled with the fact that schools in Indigenous communities are inadequate. There is only one girls' school at Kwsir (Kwsir girls' senior secondary school) and a yet to be operational at Terenboi in Kitowoi sub-county.<sup>14</sup> The boys thus continue to find it hard to reach the schools, which explains the high dropout numbers.

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

**Chebet Mungech** is the Coordinator of the Benet Lobby Group, a local non-governmental organization that works with all Benet/Mosopishek, other Sabiny-speaking people and stakeholders to see a Benet community that is socially, politically and economically sustainable and empowered. Contact information: +256 779-233-078, Email: Mungech@gmail.com

**Yesho Alex** is the Chairperson of MEBIO. Contact information: arapsamsonyeshoalex@gmail.com

**Loupa Pius** is currently Project Coordinator of the DINU and TRAIL projects in Dynamic Agropastoralist Development Organization (DADO).

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

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



# Zimbabwe



While the Government of Zimbabwe does not recognise any specific groups as Indigenous to the country, two peoples self-identify as such: the Tshwa (Tjwa, Cua) San found in western Zimbabwe, and the Doma (Vadema, Tembomvura) of Mbire District in north-central Zimbabwe. Population estimates indicate that there are 3,038 Tshwa and 1,495 Doma in Zimbabwe, representing approximately 0.031% of the country's population of 14,829,988 in 2021. The government uses the term “marginalised communities” when referring to such groups.

Many of the Tshwa and Doma live below the poverty line in Zimbabwe and together they comprise some of the poorest people in the country. Socio-economic data is limited for both groups, although a survey was done of the Doma in 2021. Both the Tshwa and Doma have histories of hunting and gathering, and their households now have diversified economies, including informal agricultural work for other groups, pastoralism, mining, small-scale business enterprises, and working in the tourism industry. Remittances from relatives and friends both inside and outside the country make up a small proportion of the total incomes of Tshwa and Doma. As is the case with other Zimbabweans, some Tshwa and Doma have emigrated to other countries in search of income-generating opportunities, employment, and greater social security.

The realisation of core human rights in Zimbabwe continues to be challenging. Zimbabwe is party to the CERD, CRC, CEDAW, ICCPR and ICESCR. Reporting on these conventions is largely overdue but there were efforts in 2021 to meet some of the conventions' requirements. Zimbabwe also voted for the adoption of the UNDRIP in 2007. Zimbabwe has not signed the only international human rights convention addressing Indigenous Peoples: ILO Convention 169 on Indigenous and Tribal Peoples of 1989. The government has indicated its wish to expand its programmes and service delivery to marginalised communities but there are no specific laws on Indigenous Peoples' rights in Zimbabwe. However, the “Koisian” language is included in Zimbabwe's 2013 revised Constitution as one of the 16 languages recognised in the country, and there is some awareness within government of the need for more information and improved approaches to poverty alleviation and improvement of well-being among minorities and marginalised communities.

## COVID-19 in Zimbabwe

Zimbabwe, like other countries in southern Africa, had to cope with the impacts of COVID-19 in 2021. Lockdowns helped prevent the spread of the virus, as did the wearing of masks, social distancing, and hand washing. The vaccination rate by the end of 2021 was 50.3% but some areas, notably remote ones, had much lower rates. The spread of the Omicron variant toward the end of 2021 resulted in high hospitalisation rates in the country and the lack of access to safe and clean drinking water across the country has contributed to the negative impacts of COVID-19.

The pandemic had significant impacts on the economies and livelihoods of Indigenous and minority communities in the country. While final statistics are not available, it appears that tourism declined by as much as 60% in 2021.<sup>1</sup> Data from the country's protected areas, including Hwange, Victoria Falls, and Gonarezhou, revealed a significant drop in tourist visits, which affected park employees as well as people living in the periphery of parks and who engage in tourism and sell crafts. The lack of craft sales had a particular impact on women. The COVID-19 pandemic has had both direct and indirect impacts on wildlife in protected areas, with increased numbers of animals dying from a variety of diseases because of a lack of protection by wildlife officials as well as a lack of funding.

The Zimbabwe Human Rights Commission (ZHRC) continued to provide human rights awareness seminars in the country, including in areas where Tshwa San and Doma (Vadema) are located. The ZHRC also provided COVID-19-related materials to prisons in Zimbabwe, which had high rates of COVID-19. There were small numbers of Tshwa and Doma in these prisons, mostly there due to wildlife related offences.

## The economic and security situations in Zimbabwe

The economic situation in Zimbabwe continued to deteriorate in 2021 with high inflation, rapidly rising prices, mounting unemployment, and less access to basic commodities for the poor. On the positive side, the amendment of the Education Act in 2021 resulted in lower rates of corporal punishment of children in schools, and fewer pregnant girls required



to leave school. The changes in the Education Act had a bearing on Tshwa and Doma children, whose school attendance was variable in 2021.

The security situation in Zimbabwe continued to be problematic in 2021, as State-sponsored security forces dealt harshly with demonstrators, sizeable numbers of whom were beaten, arrested and jailed, sometimes for extensive periods of time. At least 70 anti-government demonstrators and journalists were arrested in 2021. The number of Indigenous people arrested for illegal exploitation of wildlife declined in 2021, in part because there were fewer Department of National Parks and Wildlife Management personnel on patrol due to budget restrictions.<sup>2</sup>

In Tsholotsho District in Matabeleland North Province, where the largest population of Tshwa resides, Zimbabwe police launched an investigation into elephant sales by councillors and other regional government representatives, who were allegedly under-pricing elephant licence sales and, as a result, depriving the Tsholotsho community of tens of thousands of Zimbabwean dollars.<sup>3</sup> Under Zimbabwe's CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) Programme, Tshwa and other community members were supposed to receive some of the funds from the sale of elephant licences in 2021.

## Community activities

The Tsoro-o-tso San Development Trust (TSDT) met with Tshwa community members in Tsholotsho and Bulalima Mangwe Districts in 2021 regarding issues involving education, mother-tongue language documentation, health, leadership, and land access.<sup>4</sup> TSDT continued to work with international and local non-government organisations and research institutions on educational and language documentation issues. While some analysts see the Tsholotsho San as having failed to make the transition to modernisation,<sup>5</sup> the Tsoro-o-tso San Development Trust argues that modernisation has affected Tshwa livelihoods in a variety of ways. Dozens of Tshwa had jobs in the modern industrial economy, and several Tshwa youth were attending university, in 2021.

A government delegation visited Tsholotsho in July 2021, on behalf of the Cabinet. This high-level mission aimed to examine the right to equality and non-discrimination, particularly with regard to the Tshwa. The delegation noted a lack of identity documents, high levels of teenage

pregnancies, poor education rates and food insecurity among the San.

The Cabinet instructed that every Ministry should identify and take up a developmental role in areas inhabited by the Tshwa and that two or three more primary and secondary schools be established in the area, along with health clinics, access to informal and formal employment, and improvements to the CAMPFIRE programme<sup>6</sup> and local land trust, plus greater access to birth and identity documents. The Cabinet also instructed that San headmen and chiefs be appointed. This has been followed up on, and implementation has started.

Until 2021, the Tshwa had no formally recognised leaders of their own. On 2 November 2021, the Tshwa thus finally had the opportunity to select their own chief and headman. This was due to the above-mentioned directive from the Cabinet. Christopher Dube is now the Chief designate and Zeckius Tshuma the Headman designate for all of the Tshwa in Zimbabwe. It was hoped that their appointments would be confirmed officially by the Zimbabwe government by the end of December 2021. The Doma in the Zambezi Valley have yet to go through the process of electing their own chief and other local authorities.

Cross-border interactions between Tshwa in western Zimbabwe and north-eastern Botswana continued to take place. There was some out-migration from Tsholotsho to other areas, including to Bulawayo, with a small number of Tshwa seeking employment in Botswana, South Africa and Zambia. At least half a dozen Tshwa were involved in informal mining activities in western Zimbabwe in 2021.

## **Role of Indigenous women and youth**

Zimbabwean women's organisations and the Tsoro-o-tso San Development Trust noted that the rates of rape and spouse and child abuse increased in 2021, possibly linked to the COVID-19 pandemic. The number of Indigenous girls going to school increased to a limited extent, although some of them dropped out in order to help their parents cope with the economic pressures brought about by COVID-19. Unemployment rates for Indigenous women in the tourism industry increased considerably but Tshwa and Doma women were able to cope in part through greater dependence on food handouts from the Zimbabwe government and NGOs. Some moved into towns to seek work or sell crafts to urban

customers. There were indications that Indigenous women’s health declined during 2021, partly due to COVID-19. Tshwa and Doma women were experimenting more with traditional medicines and seeking assistance from traditional healers in order to cope with the illnesses they and their families were suffering from. Calls were made by Indigenous people in Zimbabwe for more emphasis to be placed on their health and well-being, echoing calls from the Women’s Coalition of Zimbabwe and Women’s Action Group. COVID-19, while a huge threat to Zimbabwe, at least brought greater attention to the serious complex social, economic and political issues faced by Indigenous, minority and vulnerable members of Zimbabwe’s population.

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**Davy Ndlovu** is the Director of the Tsoro-o-tso San Development Trust in Bulawayo. [mdavadavy@gmail.com](mailto:mdavadavy@gmail.com)

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

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



# Asia



# Bangladesh



Bangladesh is a country of cultural and ethnic diversity, with over 54 Indigenous Peoples speaking at least 35 languages, along with the majority Bengali population. According to the 2011 census, the country's Indigenous population numbers approximately 1,586,141,<sup>1</sup> which represents 1.8% of the total population. Indigenous Peoples in the country, however, claim that their population stands at some 5 million.<sup>2</sup> The majority of the Indigenous population live in the plains districts of the country,<sup>3</sup> and the rest in the Chittagong Hill Tracts (CHT).

The state does not recognise Indigenous Peoples as “Indigenous”. Nevertheless, since the 15th amendment of the constitution, adopted in 2011, people with distinct ethnic identities beyond the Bengali population are now mentioned.<sup>4</sup> Yet only cultural aspects are mentioned, whereas major issues related to Indigenous Peoples' economic and political rights, not least their land rights, remain ignored.

The CHT Accord of 1997 was a constructive agreement between Indigenous Peoples and the Government of Bangladesh intended to resolve key issues and points of contention. It set up a special administrative system in the region. Twenty-four years on, the major issues of the accord, including making the CHT Land Commission functional, orchestrating a devolution of power and function to the CHT's institutions, preserving “tribal” area characteristics of the CHT region, demilitarisation and the rehabilitation of internally displaced people, remain unsettled.

## Indigenous women in Bangladesh

Indigenous women and girls continue to remain in a subordinate position in the socio-economic-political spaces of Bangladesh when compared to Indigenous males as well as their other national counterparts. Their disadvantaged position is characterised by multiple forms of violence, discrimination and marginalisation attributed to the multiple burdens of their gender, ethnicity, and poor socio-economic conditions. While patriarchal norms prevalent in society limit their everyday spac-

es for freedom, they face systematic discrimination within the national legal framework.<sup>5</sup> Indigenous women and girls have thus been pushed into a suffocating atmosphere in which discrimination and violence are routine and systemic. Over recent decades, Indigenous women have proved their strong resilience through their vehement struggle to break the barriers imposed by society and the state. A growing number of Indigenous women have taken up leadership roles in different activist and civil society platforms (both Indigenous and non-Indigenous), including Indigenous customary institutions, and they have been increasingly active as politicians and bureaucrats. Although these developments are far from enough to change the overall situation facing them, these shifts have been critical in creating greater awareness about the harsh lived experiences of the country's Indigenous women and girls.

## **Violence against Indigenous women and girls**

Violence against Indigenous women and girls has remained a sustained issue of concern in the plains as well as in the Chittagong Hill Tracts (CHT). Despite laws and policies such as the Women and Children Repression Prevention Act (2000) (commonly known as *Nari O Shishu Nirjatan Daman Ain*), Domestic Violence (Prevention and Protection) Act 2010, and National Action Plan to Prevent Violence Against Women and Children (2013-2025), which have been in place for years, 42 cases of violence against Indigenous women and girls were documented by Kapaeng Foundation, a human rights organisation based in Bangladesh, in 2021.<sup>6</sup> While the actual number of cases may be even higher, 46 Indigenous women and girls were sexually or physically assaulted in the aforementioned cases. Of these reported cases, 4 of the victims were killed or killed after rape, 22 were raped, 12 survived attempted rape, and 8 were abducted or experienced physical/sexual harassment. What is especially alarming is that around half of those facing such violence were minors and physically and mentally challenged. While all the alleged perpetrators were men from different backgrounds, the response from the state authorities towards these cases was mixed. Some 60% of the alleged perpetrators were never arrested, while the rest were prosecuted through the justice system. The role of the state authorities in providing justice to Indigenous women and girl survivors of abuse was thus far from satisfactory.

## Leave to Appeal against CHT Regulation 1900

A few individuals of unknown background have filed two Civil Review Petitions in the Appellate Division of the Supreme Court of Bangladesh, with ulterior motives and in a conspiratorial manner referring to two cases – *Wagachara Tea Estate Ltd. v. Abu Taher & Others*, 36 BLD (AD) (2016), 36, and *Government of Bangladesh v. Rangamati Food Products Ltd. & Others*, CLR (AD) (2017), 197 – and they have sought a review of the decisions of the Appellate Division.

Like other special regulations enacted by the colonial British government that apply to Indigenous and tribal areas in Pakistan, India and Burma (Myanmar), such as the Chin Hills Regulation – 1896 and the Inner Line Regulation – 1897, the CHT Regulation – 1900 provides, among other things, for limited self-rule through traditional Indigenous institutions and a form of legal pluralism in which customary laws, conventions, usages and practices enjoy a special and high status. On 7 January 1900, the then British government enacted this regulation for the CHT region. Once Bangladesh became independent in 1971, like numerous other pre-independence laws, the validity of the CHT Regulation 1900 continued to be upheld by the government and by the superior courts of law, until 2003.

In 2003, during the regime of the right-of-centre Bangladesh Nationalist Party (BNP), and in response to the supplications of the then Attorney General for Bangladesh, the High Court Division declared the CHT Regulation 1900 a “dead law” in the case of *Rangamati Food Products Ltd. v. Commissioner of Customs and Others*, BLC (2005), 525. However, in 2016, when the centrist Awami League-led government was in power, the then Attorney General appealed against the “dead law” decision to the Appellate Division. The Appellate Division of the Bangladesh Supreme Court accordingly declared the CHT Regulation 1900 valid and effective.<sup>7</sup> Further, the special legal system of the CHT, along with the region’s Indigenous Peoples’ customary laws, was strongly upheld by the Appellate Division.

On 24 November 2021, 27 civil society leaders of Bangladesh made a strong call to the government to defend the CHT Regulation 1900 in the Supreme Court of Bangladesh through a public statement.<sup>8</sup> In the statement, they said that to have the CHT Regulation 1900 declared a “dead law”, or to have it repealed, was fundamentally inconsistent with



the letter and spirit of the CHT Accord of 1997. They also referred to ILO Convention No. 107 on Indigenous and Tribal Populations, ratified by Bangladesh in 1972, in support of their contention.

If the country's apex court rules against the validity of the CHT Regulation 1900, in whole or in a substantive manner, this will further marginalise the Indigenous Peoples of the CHT and bring instability to this region. It will also weaken the secular, non-communal and multicultural character of the national ethos.

## **Directive of the Armed Forces Division to stop turmeric/ginger cultivation in the hills**

The Armed Forces Division of the Prime Minister's Office has directed immediate steps to be taken to increase strict surveillance and discourage the cultivation of turmeric and ginger in the hilly areas of the Chittagong Hill Tracts (CHT).

The directive was issued on 29 August 2021, on behalf of the Principal Staff Officer of the Armed Forces Division and entitled "the issue of destruction of biodiversity and natural balance in the hill areas through arson for commercial cultivation of Jum (turmeric / ginger)". The Secretaries of the Ministry of Chittagong Hill Tracts Affairs and the Ministry of Environment, Forests and Climate Change were told to take such action.<sup>9</sup>

The directive says that:

*People of the hill communities living in the hills traditionally prepare land by setting fire to the hills for 'Jum' cultivation in the dry season every year for their traditional way of life, which is a casual matter. But with the introduction of large-scale Jum farming on a commercial basis, there is an extreme and far-reaching adverse effect on biodiversity and nature in the hilly areas.*

Four descriptions of the subject and four opinions / recommendations were included in the directive.

The directive was highly criticised by the Indigenous leaders and civil society organisations. The community leaders think the directive

is against the public interest, racist and hateful to the Jumma people of the CHT. The hill people have been blamed for the extreme and far-reaching adverse effects on biodiversity and nature in the hilly areas, ignoring all other root causes. The directive is a threat to Indigenous Peoples practising their traditional occupation – *Jhum cultivation* – in the hills where they grow turmeric and ginger, among other crops. The government agency that issued the directive should have opened a constructive dialogue with the Indigenous leaders and institutions representing Indigenous and local people before issuing the controversial directive. They should also have consulted with experts and academics to ascertain whether there is any scientific evidences in favour of their claim. None of this took place.

The implementation of this directive will affect Indigenous women seriously as much of the labour required for farming such crops is generally supplied by them. The role of Indigenous women in agricultural reproduction in the CHT is critical because, aside from tending their own farms, many Indigenous women work for neighbouring (richer) farmers as wage labourers to augment their family income. Moreover, Indigenous women are active in the sale of agricultural crops in local bazaars (marketplaces) on weekly or bi-weekly bazaar days. Implementation of this directive will therefore represent a threat to the role of Indigenous women as key economic actors, a common feature of the CHT's Indigenous economies.

## **Protest against digging of artificial lake by occupying the land of Indigenous Peoples in Madhupur**

The Forest Department plans to establish a tourist attraction by creating a lake on the Garo people's land in Madhupur forest under Tangail district. The Indigenous people living in Madhupur found out through reliable sources that the Forest Department had decided to dig an artificial lake on the three areas of cropland of the Indigenous Peoples, at the place called Amtali of Pirgacha Mouza of No. 11 Sholakuri Union near Chunia, Pegamari, Pirgacha, Sainamari, Bhutia and Thanarbaid villages inhabited by the Indigenous Garo, Koch and Barman, for the purpose

of entertaining tourists. A Minister and Member of Parliament from the local area subsequently declared as much at a public gathering.<sup>10</sup>

Local Indigenous Peoples' organisations have protested at the plan to dig the artificial lake by occupying the croplands of the Indigenous Peoples in Madhupur of Tangail. They said that they do not want the so-called development in the name of tourism as it will destroy the life and livelihood of Indigenous Peoples and the natural environment. They believe that, if the project is implemented, it will have negative impacts on the natural forest and environment and adverse effects on the social and economic life of the Indigenous Peoples living alongside the planned lake area.<sup>11</sup>

## **UN Working Group concerned at the situation of enforced disappearances**

Through a report (A/HRC/WGEID/125/1) updated on 6 December 2021, the Working Group on Enforced or Involuntary Disappearances of the UN Human Rights Council expressed its concern at the situation of enforced disappearances in Bangladesh.<sup>12</sup> This report was prepared following the 125<sup>th</sup> session of the Working Group held from 20-29 September 2021. At its session, the Working Group reviewed and adopted two general allegations against Bangladesh and Honduras. In the allegation against Bangladesh, the Working Group alleges that law enforcement agencies and security and intelligence forces make frequent and ongoing use of enforced disappearances as a tool for targeting political opponents and other dissidents of the government. The Working Group had received information concerning alleged violations and obstacles concerning implementation of the Declaration on the Protection of All Persons from Enforced Disappearance in Bangladesh, including the enforced disappearance of nearly 600 people by the security forces since 2009. The report claims that different surveillance tools are used by the state to commit these enforced disappearances, while the relatives of the forcibly disappeared persons are threatened not to pursue investigations and police officers allegedly refuse to register complaints concerning such cases.

It is notable that enforced disappearances have remained a matter

of concern in Bangladesh for the past few years. Although there is no disaggregated data or specific mention of Indigenous Peoples, this report of the Working Group is of particular relevance for Indigenous Peoples' rights activists in the CHT of Bangladesh. Hundreds of activists and supporters of PCJSS and UPDF have reportedly been on the run due to the fear of enforced disappearances, arbitrary killings, and detention, particularly since 2017. While there have been allegations several cases of enforced disappearances of PCJSS and UPDF activists during this period, the case of Michael Chakma, a UPDF leader, is notable in this regard. He was reportedly forcibly disappeared on 9 April 2019 by state forces and his whereabouts are currently unknown.<sup>13</sup> A PCJSS spokesperson claimed that 50 Indigenous persons, including activists, were arbitrarily arrested while 49 were detained for a short duration by the state forces in 2020. The PCJSS spokesperson also claims that 503 Indigenous people were victims of human rights violations committed by the state forces in 2021. Among them, 55 of the victims were arbitrarily arrested, while false charges were filed against another 60 people. UPDF's documentation offers a slightly different number, claiming that 148 Indigenous persons were arbitrarily arrested. Thirty-four of the victims were PCJSS and UPDF activists/supporters.

## **Five-star hotel on the land of the Mro: update**

Villagers from eight Mro villages of Chimbuk Range in Bandarban district passed the year amid fear, despair, and uncertainty, as their ancestral land remained fenced-off. The land of the Mro people, amounting to 20 acres, was announced as the site for construction of a luxury five-star Marriot resort in September 2020, violating existing laws and without obtaining any free, prior and informed consent from these Indigenous villagers. This land, which is inextricably linked to the livelihood and identity of the Mro villagers, has become off-limits since then as the declared area has been cordoned-off due to routine army patrols in the area. The affected villagers fear that the resort project would particularly affect Mro women in carrying out their day-to-day livelihood activities and household chores. They fear that the risk of sexual violence from outsiders would increase as a result of the planned resort: "Lots of people will come from outside and they will not respect our women, they

will sometimes do bad things. We do not have the authorities to help us with this. I mean, they do not do anything... So they [the women] decide to remain silent.”<sup>14</sup> The announcement of this planned luxury resort project by the officials of the Army Welfare Trust and corporate giant Sikder Group’s R&R Holdings Ltd. sparked protests nationally and internationally. However, this “issue” soon became nearly oblivious amid other burning matters. A recent report from IWGIA notes that the Mro villagers currently have neither access to this land nor any information about what is happening inside its boundary.<sup>15</sup> This report also mentions that the Mro people are dismayed and despairing amid such uncertainty, while there is serious censorship of the media concerning this project. Young Mro activists feel a dire need to draw further attention of this land grab to the different stakeholders.

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**Pallab Chakma**, Executive Director, Kapaeeng Foundation. Email: [Pal-lab.juju@gmail.com](mailto:Pal-lab.juju@gmail.com)

**Bablu Chakma** is a human rights defender. Email: [bablu.du2004@yahoo.com](mailto:bablu.du2004@yahoo.com)



# Cambodia



Cambodia is home to 24 different Indigenous Peoples who speak at least 19 Indigenous languages.<sup>1,2</sup> With an estimated population of 250,000 to 400,000, they make up approx. 3% of the national population. The Indigenous territories include the forested plateaux and highlands of north-eastern Cambodia, where the majority live in the provinces Ratanakiri, Mondulkiri, Kratie, Stung Treng, Kampong Thom, and Preah Vihear.

Cambodia's Indigenous Peoples continue to face discrimination and forced displacement from their lands, which is extinguishing them as distinct groups.<sup>3</sup> These patterns are driven by ongoing State and transnational corporate ventures for resource extraction (mainly mining, timber and agribusiness) coupled with growing in-migration from other parts of the country. Cambodia voted to adopt the UN Declaration on the Rights of Indigenous Peoples without reservation in 2007, and has ratified the CERD and CRC but has still not ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.<sup>4,5</sup> Cambodia became a party to the CEDAW in 1992 and its ratification was reaffirmed in 2007 when the Constitutional Council, the body created to safeguard the Constitution, reaffirmed the application of international human rights treaties in Cambodian domestic law.<sup>6</sup> However, implementation has remained slow<sup>7</sup> and, despite Cambodia's public pledges to support gender equality, Cambodia ranks 144th out of 195 countries on the Gender Development Index,<sup>8</sup> which measures inequality in achievement between women and men in e.g. reproductive health, empowerment and the labour market.

During its last Universal Periodic Review in 2019, Cambodia accepted a recommendation to "Step up efforts in land matters, including through the effective and transparent implementation of measures to tackle land evictions and provide with fair compensation the victims of land grabbing, particularly indigenous people" and "Implement a coherent resettlement policy and simplified process for granting communal land titles, consulting communities, civil society and indigenous groups". However, this has so far not led to actual remedy of the



discrimination and land insecurity Indigenous Peoples continued to face in 2021. The Indigenous Peoples' rights movement has continued to fight for their human rights; however, with deteriorating democratic freedoms and serious human rights violations, the ground on which the Indigenous rights movement exists has become more precarious. The repressive authoritarian regime of Hun Sen and the Cambodian People's Party, which has ruled the country since 1985, has persisted on a path of corruption, human rights abuses, and non-democratic rule. In 2021, during the COVID-19 pandemic, the regime continued to repress civil and political rights by targeting the independent media, civic organizations, Indigenous networks, NGOs, individuals, as well as the opposition, the Cambodia National Rescue Party (CNRP), which was banned in 2017.

## Introduction

In October, UN experts called on the government to take immediate steps to safeguard Cambodia's civic and democratic space by implementing the recommendations they had accepted in the 2019 Universal Periodic Review. Among these was a pledge to create conditions where "civil society, including human rights defenders, can freely conduct their work without interference or hindrance".<sup>9</sup> During 2021, conflicts over land remained an immense challenge to human rights issues in Cambodia,<sup>10</sup> particularly for Indigenous Peoples, as economic land concessions (ELC), mining, hydropower dams, land encroachments, deforestation, and illegal logging continued to severely impact on them.<sup>11</sup> The widespread threats to Indigenous Peoples were exacerbated by authoritarian restrictions on the part of the government. Both the Law on Associations and NGOs (LANGO) and the State of Emergency Law were systematically used to restrict and repress freedom of speech, and the rights to assembly and freedom of movement.<sup>12, 13</sup>

On a positive note, a national report on the demographic and socioeconomic status of Indigenous Peoples in Cambodia was produced and publicly launched in 2021. The report was drafted by a working

group from the Ministry of Planning, the Ministry of Rural Development, and the Cambodian Indigenous Peoples Alliance (CIPA), with technical support from the Cambodian Indigenous Peoples Organization (CIPO). The report contains information on housing, land, collective land ownership, levels of education and employment, and data on gender and the marriage status of Indigenous Peoples in comparison to the Khmer. According to the report, almost half of Cambodia's Indigenous children do not attend school. Approximately 24% complete primary school, 10% secondary education, and 4% high school. The report also includes data on the rate of active economic engagement of Indigenous Peoples, which is high both for men (87.7%) and for women (85.5%). The majority work in agriculture, with 90.6% of men and 95.9% of women engaged in farming. The report is the first of its kind, using official disaggregated data on Indigenous Peoples from the period 2008 to 2013.<sup>14</sup>

## Indigenous women of Cambodia

Within a racialized and gendered social hierarchy that recasts women as below men, and Indigenous women as below Indigenous men and all Khmer,<sup>15</sup> Indigenous women in Cambodia share an intersectional burden of marginalization and discrimination based on gender, ethnicity, age and socioeconomic status.<sup>16, 17</sup>

The lives of most Indigenous women are inherently bound to their ancestral land; their livelihoods and culture are therefore threatened when land grabs, mining and ELC encroach onto their customary lands.<sup>18, 19</sup> The reduction in common natural resources caused by these damaging trends severely affects their access to wild foods, firewood, game, water, and grazing areas. This consequently jeopardizes the food security of many Indigenous households.<sup>20</sup> Secure land tenure is thus one of the most basic human rights for Indigenous Peoples, particularly Indigenous women.<sup>21</sup>

In rural areas, Indigenous women hold various roles in addition to their traditional household responsibilities. Among others, Indigenous women work as farmers, labourers, plantation workers, weavers, and handicraft producers. They practice rotational cultivation and animal husbandry and they harvest forest resources such as rattan, resin, cardamom and honey. A growing but limited number of Indigenous women

study at university and work, for example, as lawyers and teachers.<sup>22,23</sup> In several provinces, Indigenous women are important environmental actors and engage in collective activities to protect their communal land and cultural heritage. Kui Indigenous women are important actors in defending their forests and culture from destruction caused by ELC.<sup>24</sup> In the Prey Lang forests, Kui women are part of the Prey Lang Community Network (PLCN) that patrols the Prey Lang Wildlife Sanctuary;<sup>25</sup> Bunong women also patrol their ancestral forests in Mondulkiri.<sup>26</sup> In Kampong Speu and Ratanakiri provinces, too, Indigenous women have been actively engaged in protests and different forms of resistance, including roadblocks and trespassing. Several women state that, when confronted with threats to their livelihood and their natural resources, they felt compelled to join the fight.<sup>27</sup> Moreover, Indigenous women are active in resolving land disputes in their communities. Women's engagement as land activists has, in some cases, led to women taking leadership roles within their communities, actively engaging in the economic and political life of their community. They are held up as role models because of their work and achievements, which contribute significantly to community welfare.<sup>28</sup> And yet women's involvement requires juggling multiple household responsibilities and women must often gain their husbands' consent and support to be able to be active in the communities.<sup>29</sup> According to the Cambodian Indigenous Women's Working Group (CIW-WG), because the protection of Indigenous land and natural resources is often in conflict with State or company interests, Indigenous women rights defenders face high levels of violence, harassment, threats and arrests at the hands of the State and companies.

In general, CIWWG explains, representation and participation in decision-making processes is still limited for Indigenous women, both in formal authorities and in commune councils. As a result, there is little insight into the specific issues Indigenous women face and limited promotion of these.<sup>30</sup> When women are represented, their role frequently appears to be symbolic, with limited decision-making power and with roles that are limited to gender issues.<sup>31, 32</sup>

The presence of formal equality guarantees within national, regional, and international laws, policies and institutions is far from sufficient to guarantee women's rights to food and land<sup>33</sup> and human rights in general.<sup>34</sup> According to the OHCHR, the National Policy on Indigenous Peoples sets ambitious goals and targets in different sectors; however,

there is a clear absence of a gender approach through which to analyse and measure women's social, economic and political situation. To understand the particular situation of Indigenous women and the discrimination they face within their own communities and in society at large, OHCHR has recommended that the Ministry of Rural Development, in collaboration with the Ministry of Women's Affairs, develop a rights-based action plan that addresses the needs of Indigenous women.<sup>35</sup>

Indigenous women in Cambodia have a higher illiteracy rate and fewer educational opportunities than either their male counterparts or the Khmer.<sup>36</sup> The problem is amplified because bilingual education is not supported by the Regional Governing Council and so Indigenous Peoples who speak their own language face greater challenges. Moreover, Indigenous women have inadequate access to healthcare, lack reproductive rights, and many of them suffer domestic violence and sexual assault. Tragically, a sharp increase in rape cases was observed in 2021. Sexual assault cases are rarely investigated or brought to justice,<sup>37</sup> partly because of a lack of support for survivors and their families, who are unable to pursue a criminal case without external assistance, both financial and in terms of legal aid. To make matters worse, survivors of sexual assault and gender-based violence are often stigmatized and marginalized. Even the preventive measures proposed by the authorities appear to blame the victim by suggesting changes in women's behaviour rather than a change in the systemic patriarchy or that the perpetrators be held accountable for their actions. There is a serious need to improve the support provided to survivors of gender-based violence. Indigenous women's organizations are encouraging the police to receive specific training so that they can better handle cases of gender-based violence and further assist sexual assault survivors. The legal and policy framework that addresses gender-based violence also needs to be amended to ensure compliance with Cambodia's international human rights obligations.<sup>38</sup>

Many Cambodian Indigenous women are mobilizing in the Cambodia Indigenous Women's Association (CIWA) and in CIWWG. The organizations are working to promote awareness of Indigenous women's issues and to enhance their participation in decision-making and leadership. Moreover, they are working to maintain their Indigenous identity and to build women's capacities to be able to understand the law, participate in dialogue, and raise awareness of the importance of protect-

ing natural resources and Indigenous culture.<sup>39</sup>

Several Indigenous customary institutions are playing a part in strengthening the position of women, e.g. among the Indigenous Kreung in Ratanakiri, where newly married couples remain in the bride's community for several years, providing the young women with some safety in their family and community.<sup>40</sup> In other Indigenous communities, existing customs favour women's status as land holders with a traditional practice of matrilineal land inheritance.<sup>41</sup>

## Mondulkiri

Throughout 2021, Mondulkiri province, the mountainous home of the Bunong Indigenous people, remained under immense pressure due to large-scale development plans. Massive increases in land encroachment and land speculation have been reported throughout most of the province, as Mondulkiri is intended to be a future tourist destination with an airport, casinos, hotels, and shopping malls.<sup>42, 43, 44</sup> According to CIPO, Bunong communities are being coerced, bribed and manipulated to sell their land to real estate developers, tycoons, government officials and Chinese companies at a low price. CIPO explains that many government officials are eager to facilitate sales of land titles, despite individuals or communities not being allowed to sell communal land according to Cambodian law. In one district, a whole mountain has been bought from an Indigenous community, and this has caused internal conflicts as many community members did not give their consent to sell their ancestral lands to a development project. As a result, many land disputes are now being processed through the courts.

Land measurement by the authorities did not, in some cases, follow the 2001 Land Law or sub-decree No. 83 on the procedure for Indigenous community land registration.<sup>45</sup> As a result, spirit forests, farmland, ancestral land and burial grounds are being bulldozed, while land titles are handed over to brokers who speculate in profit from sales. According to CIPO, land sales and encroachment are occurring in communal lands, in protected areas, and on land officially registered with the authorities. A pattern of failure by the authorities to support the collective land registration processes and a failure to crack down on crimes such as illegal logging and land encroachment continues to culminate

in land disputes, impacting economic and social development. On occasion, village chiefs, community members, officials and the police all collude in the crime of land grabbing. The consequences for government officials involved in land encroachments are limited, with no legal action taken by the judicial system. In the worst cases, the government officials involved are demoted from their positions, but only then if the case achieves a high level of attention. Land appropriations surged as pandemic restrictions were imposed in remote areas. The State of Emergency Law has frequently been used by the authorities as an excuse to systematically repress protests, forest patrols and assemblies, as well as to undermine free speech.<sup>46</sup>

## **Update on communal land titles**

Cambodia's Land Law 2001 recognizes collective land ownership of Indigenous lands but the long and complicated process still hinders Indigenous communities from obtaining communal land titles (CLT). Only 14 out of several hundred Indigenous communities have acquired a collective title to their lands and this only several years after applying.<sup>47</sup> In 2021, the Land Allocation for Social and Economic Development Project (LASED), financed by the World Bank (see 2021 issue), did not result in any CLT for Indigenous Peoples. Negotiations between the Ministry of Environment (MoE) and Indigenous communities are still ongoing but it is a time-consuming process that has been further slowed by the pandemic. Indigenous Peoples are continuously advocating for CLT to respect all customary land. However, the size of Indigenous Peoples' land claims remains very different from what the government wants to grant the communities. The CLT categorizes five different types of land (e.g., burial sites); however, Indigenous Peoples have additional categories that are being disregarded by the government.<sup>48, 49</sup>

## **Update on negotiations in Ratanakiri**

Negotiations resumed in 2021 between representatives of 12 Indigenous villagers from Ratanakiri and the Vietnamese rubber firm Hoang Anh

Gia Lai (HAGL), mediated by the Compliance Advisor Ombudsperson. In an official letter, HAGL agreed to “halt reclamation, burning, planting and encroachment” of the 742-ha land, which it was promised would be returned to the community. What will emerge from the process is yet to be revealed. For the Indigenous communities, the process has been painful and exhausting, with marginal progress.<sup>50</sup>

## **Prey Lang Community Network still banned from entering the forest**

Once again, in February, the annual tree-blessing ceremony celebrated by the Kui, monks, students and environmental activists within the Prey Lang Wildlife Sanctuary was banned by the MoE.<sup>51</sup> The ceremony was to be held across Prey Lang to promote conservation efforts against deforestation and to pray for the forest. Not long after this, five members of the PLCN, a network consisting of mainly Kui Indigenous people who patrol the Prey Lang forests, were arrested and arbitrarily detained by MoE rangers. The arrests happened after the activists had peacefully wrapped trees with blessed saffron robes and hung up signs stating “No Chainsaw” and “Help preserve our ancestral heritage forest”. The activists were released three days later after they had been forced to thumb-print documents forbidding them from further investigating illegal logging in Prey Lang.<sup>52</sup> Since PLCN has been blocked from entering the forests, deforestation rates have surged with reckless velocity. According to PLCN members, the authorities have on several occasions forced them to sign contracts to formally end their activities in the forest.<sup>53</sup> The ban seriously suppresses and undermines environmental efforts to protect Indigenous Peoples’ rights and the forests of Prey Lang.<sup>54</sup>

PLCN recently learned that the proposed route of a 200 km transmission line connecting Phnom Penh with the Cambodia-Lao border would go through the Prey Lang Wildlife Sanctuary. The community network is alarmed at this devastating news, as further forest degradation and deforestation will have a terrible impact on the wildlife, biodiversity, and livelihood and cultures of the Prey Lang. There is an urgent need for an Environmental Impact Assessment (EIA) and a subsequent

dialogue, including Free, Prior and Informed consent, with the communities that live in the vicinity of Prey Lang Wildlife Sanctuary prior to the initiation of such work.<sup>55</sup>

A common consequence of accelerating land encroachment for Indigenous Peoples in Cambodia is a deterioration in their cultural heritage and livelihoods.<sup>56</sup> Many are forced to take out loans to sustain their families when they lose their land, and male members of the family often have to migrate for work.<sup>57</sup> When land is appropriated from Indigenous Peoples, they not only lose their homes but they are also deprived of their connection to their ancestors, their culture and traditions. Land conflicts are consequently one of the most pressing issues for Indigenous Peoples in Cambodia.

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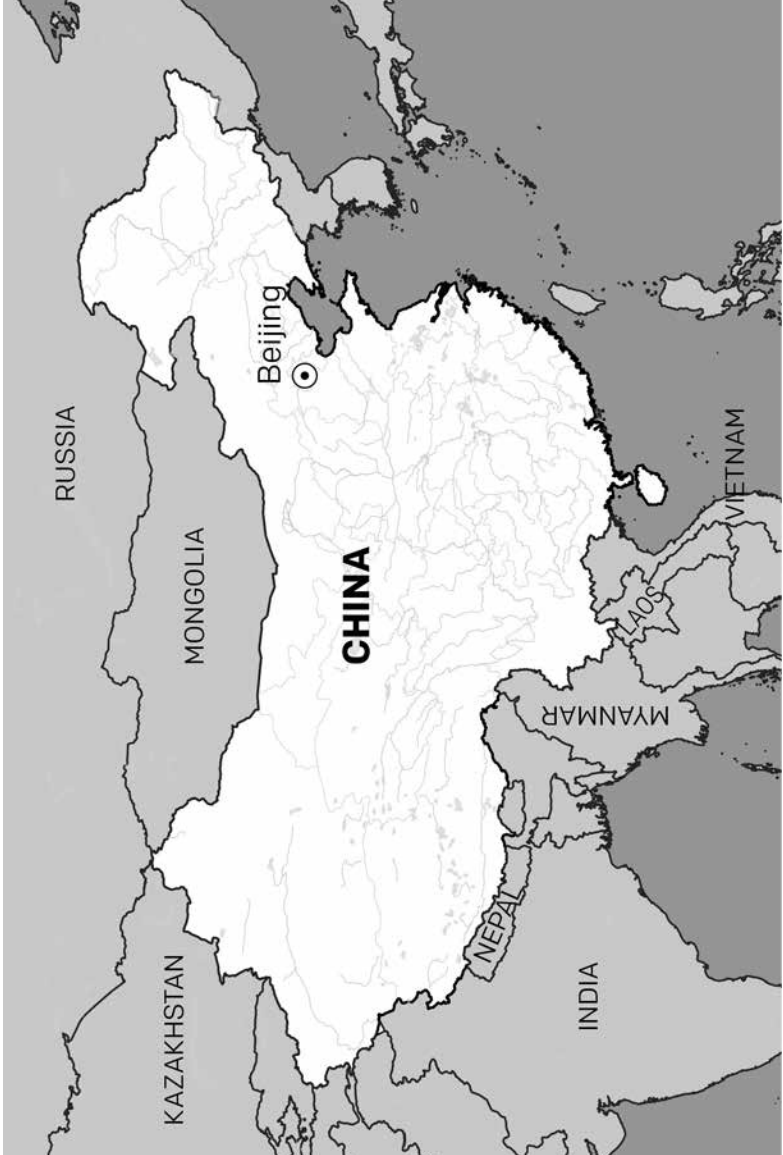
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**Katrine Gro Friberg** is a researcher working on Indigenous knowledge, deforestation, food security and ethnobotanical relations.



# China



The People's Republic of China (PRC or China) officially proclaims itself to be a unified country with a diverse ethnic make-up and all nationalities equal in the Constitution. Besides the Han Chinese majority, the government recognizes 55 *minority nationalities* within its borders. According to the latest national census in 2020,<sup>1</sup> the combined minority nationalities' population stands at 125,332,335 or 8.89% of the country's total population. The "unidentified ethnic groups" in China are included in the "minority nationalities" population, numbering 836,488 persons. Minority nationalities are culturally distinctive and socially marginalized in the Chinese context.

*The Law of the People's Republic of China on Regional National Autonomy* is a basic law for the governance of minority nationalities in China. It includes establishing autonomous areas for nationalities, setting up their own local governance and giving them the right to practice their own language and culture. These regional national autonomous areas make up approximately 64% of China's total territory and include, among others, vast territories of Tibet Autonomous Region, Inner Mongolia Autonomous Region and Xinjiang Uyghur Autonomous Region.

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

**T**he *Outline of the People's Republic of China 14<sup>th</sup> Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035*, adopted by the National People's Congress in March 2021, has a special section on "promoting equality between men and women and the comprehensive development of women".<sup>2</sup> The State Council published the *Outline for Women's Development in China (2021-2030)* in August, setting out further objectives, measures and requirements for the coming 10 years to implement the State policy of gender equality in education, employment, entrepreneurship, participation in decision-making, etc. The outline policies require full imple-

mentation of equal remuneration for men and women for work of equal value, increases in public services for the comprehensive development of women, improved social security for women's special needs, and a refined legal system for protecting women's lawful rights and interests.<sup>3</sup>

*The Human Rights Action Plan of China (2021-2025)* adopted in September confirms implementation of the basic national policy of gender equality, and enforcement of the Outline for the Development of Women in China (2021-2030) by improving the environment for women's development, facilitating the exercise of their rights, increasing their participation in socio-economic development, and ensuring their share of development benefits.<sup>4</sup>

The results of the fourth *Survey on Social Status of Women in China*, which is organized by the All-China Women's Federation (ACWF) and the National Bureau of Statistics, were revealed on 28 December and concluded that China has created a better social environment for women's individual overall development and achieved wider recognition of gender equality over the past decade.<sup>5</sup>

The above policies, action plans and survey data are meant to have a significant impact on the Indigenous Peoples and minority nationalities in China. However, upon closer scrutiny, the following can be observed:

1. The policy outlines and 2021 survey lack relevant concerns regarding the issues and special needs or rights of minority nationalities. The survey fails to present the general situation or the specific issues of minority nationalities and unidentified ethnic groups. This noticeably differs from the first similar survey undertaken four decades ago, which contained relevant data on minority nationalities. Together with the policy outlines, which do not address minority groups, it is a sign of a trend towards eliminating differences in the social reality of multiple nationalities to consolidate Chinese Nation-building.
2. While the documents claim that their objective is to improve legal protection for women, there is no attention to the rights of women with a minority or Indigenous background. For example, among the 10 annually selected leading cases on women's rights promoted by the ACWF together with the Supreme Court

and other agencies, there is not one case related to the specific rights of minority or Indigenous peoples.

3. The documents completely ignore the situation of Turkic women in detention in Xinjiang. There are disturbing reports of sexual violence against Turkic Muslim women in detention in Xinjiang.<sup>6</sup> The Uyghur Tribunal, an independent people's tribunal to investigate ongoing atrocities and possible genocide against the Turkic Muslim populations in China confirmed that women in Xinjiang are subjected to systematic involuntary birth control measures, sexual harassment and non-consensual sex, along with interference in many of their cultural and religious habits and customs.<sup>7</sup> The New EU-China strategy (2021/2037(INI)) adopted by the European Parliament describes human rights violations against Turkic Muslim women in detention in Xinjiang in similar terms.<sup>8</sup> There were also initiatives to investigate the systematic violation of human rights as crimes against humanity or genocide based on these cases by legislators of several countries including USA, Canada, Belgium, the Netherlands and the UK.<sup>9</sup> However, China denies these claims and has even stated that discussions on the repression of Uyghur Muslims and other minorities in Xinjiang through the platform of the United Nations was an insult to the institution.<sup>10</sup>

## **Legislation and administrative measures to “foster a strong sense of community for the Chinese nation”**

The Fifth Central Conference on Ethnic Affairs held on 27 and 28 August formulated the guiding principles, strategic goals, major tasks, as well as policies and measures of the Chinese Communist Party's work on ethnic affairs, focusing on “fostering a strong sense of community for the Chinese nation.”<sup>11</sup> It is clear that the CCP is urging efforts to forge a stronger sense of national identity and a deeper bond of attachment among people of all ethnic groups in China to ensure the enduring stability of the Party and a strategic perspective of national rejuvenation.<sup>12</sup> The significant impacts of this focus could be seen in the following legislations and administrative measures:



## Legislation on ethnic unity

On 30 January, the People’s Congress of Inner Mongolia Autonomous Region adopted Regulations on Promoting Ethnic Unity and Progress.<sup>13</sup> Since there is no legal definition of “ethnic unity” in the document, its application may lead to arbitrariness in its application and consequent violations of the freedom of expression of individuals.

There are similar regulations being adopted or under revision in other minority areas. For example, Xinjiang Uyghur Autonomous Region passed Regulations on Creating a Model Region of Ethnic Unity and Progress on 5 February.<sup>14</sup> Diqing Tibetan Autonomous Prefecture in Yunnan Province has been undertaking a legislative review of their regulations and plans to adopt the new revised local regulations in 2022.<sup>15</sup>

## Policies and laws on minority languages

The State Council issued the Outline of Child Development in China (2021-2030) in September. This outline sets out the measures by which to strengthen the work of promoting the national commonly-used language (Mandarin) and education on ethnic unity, including in particular pushing pre-school children to learn Mandarin before they enter primary school.<sup>16</sup> There are substantial changes in rules and wording in the relevant part compared to the previous outline (2011-2020). The newly-released outline no longer invites people “to respect and protect the rights of minority children of minority nationalities to use their own language for education, to strengthen bilingual education for pre-school children”, as was stated in the previous version of the outline, but fully promotes the national commonly-used language.<sup>17</sup> This change is in line with several measures taken by central and local authorities.

In July, the Ministry of Education issued a notice on implementation on the plan of Mandarin education for pre-school children during the 14<sup>th</sup> Five-Year Plan period (2021-2025). It focuses on kindergartens in minority and rural areas, and requires them all to use Mandarin in their nursery and educational activities as from the autumn of 2021.<sup>18</sup>

The National Languages Commission and the Ministry of Education held a press conference to publicize the *Instructions on Fully*

*Strengthening Language Work in the New Era* from the State Council, the highest administrative body in China, in December.<sup>19</sup> It is the first document on language from the State Council since 1949. It sets concrete aims and measures aimed at promoting Mandarin in minority areas, which will substantially impact the rights of minority nationalities in the use and development of their own languages.

On 29 September, the Standing Committee of the People's Congress of Inner Mongolia Autonomous Region revised the *Methods for Implementing the National Commonly-Used Language Law (2007)*.<sup>20</sup> The document expresses its aim of consolidating a sense of community for the Chinese Nation, and maintaining the dominant status of Mandarin. While Article 1 of the document makes references to the state law, it avoids noting that the Constitution of the PRC states that minority nationalities have the freedom to use and develop their own languages (Article 4). Meanwhile, the former version of the law – *Regulations on Mongolia Language Work* (adopted in 2004) – and which was based on said Constitutional principle in the region, was abolished in 2021.

## **Policies and measures on minority religions**

The National Conference on Religious Affairs was held on 3 and 4 December in Beijing. The objective of the conference was to uphold CCP's leading role in the adaptation of religions to socialist society. Based on the new policies approved in the CCP's conferences on ethnic and religious affairs in 2021, ACWF took decisions regarding its work arrangements in Tibet and Xinjiang in December under the "pairing assistance" system.<sup>21</sup> The main purpose of these measures is to serve to consolidate a sense of community around the Chinese Nation. The pairing assistance is set out in the Regional National Autonomy Law (Article 64). The practices and results of this system are, however controversial.<sup>22</sup>

There are some essential contradictory aims and measures within the above legislation, policies and administrative measures. While the Chinese Constitution and the new Human Rights Action Plan (2021-2025)<sup>23</sup> enshrine minority rights protection, there are in practice challenges in respecting this constitutional freedom of religious belief and minority language use while at the same time applying a policy of being

guided by the “religious theory of socialism with Chinese characteristics” and Chinese Nation-building. It will be important to monitor the implementation of these normative rules and administrative measures based on the principle of the rule of law.

## **Important inputs to/outcomes from international processes**

In 2021, there were global concerns regarding the human rights situations in Xinjiang Uyghur Autonomous Region. There are reports and opinions from various sources on the systematic human rights violations, including:

- The Essex Court Chambers Opinion (January): International criminal responsibility for crimes against humanity and genocide against the Uyghur population in the Xinjiang Uyghur Autonomous Region<sup>24</sup>
- Newlines Institute for Strategy and Policy report (March): The Uyghur Genocide – An Examination of China’s Breaches of the 1948 Genocide Convention<sup>25</sup>
- Human Rights Watch (HRW) report (April): Break Their Lineage Break Their Roots<sup>26</sup>
- Amnesty International report (June): Like we were Enemies in a War - China’s mass internment, torture and persecution of Muslims in Xinjiang<sup>27</sup>
- Australian Strategic Policy Institute’s International Cyber Policy Centre (October): The Architecture of Repression Unpacking Xinjiang’s governance<sup>28</sup>
- United States Holocaust Memorial Museum report (November): To Make Us Slowly Disappeared<sup>29</sup>

These reports reveal a range of widespread and systematic human rights violations in Xinjiang, including arbitrary detention, torture, forced sterilization, sexual and gender-based violence, forced separation of children, severe restrictions on freedom of religion or belief and the freedoms of movement, association and expression as well as on practicing Uyghur culture. Some reports reached the same conclusion

as that of the Uyghur Tribunal on 9 December when it stated that China “has committed genocide, crimes against humanity and torture” against Uyghurs and other Turkic peoples.<sup>30</sup>

On 29 March 2021, 16 UN human rights experts raised serious concerns about the alleged detention and forced labor of Muslim Uyghurs in China, calling for unhindered access to the country to conduct fact-finding missions and urging global and domestic companies to closely scrutinize their supply chains.<sup>31</sup>

A joint statement of 43 countries at the UN General Assembly’s Third Committee expressed particular concerns about the situation in Xinjiang. It called on China to allow immediate, meaningful and unfettered access to Xinjiang for independent observers, including the Office of the UN High Commissioner for Human Rights and relevant special procedure mandate holders, as well as to urgently implement CERD’s eight recommendations related to Xinjiang.<sup>32</sup>

There are a few countries, including the United States, Australia, UK, Canada, Estonia, Latvia, Sweden, the Netherlands and Denmark, that announced diplomatic boycotts of the 2022 Beijing Winter Olympics because of human rights violation in China, especially in Xinjiang. China has denied all allegations and sanctioned related politicians, officials, scholars in various countries. On 26 March 2021, China announced its sanction of nine individuals and four entities in the UK, including the Uyghur Tribunal and its Chair for their “maliciously spreading lies and disinformation.”<sup>33</sup>

## General outlook for 2022

It is crucial that the UN High Commissioner for Human Rights undertakes a fact-finding mission to Xinjiang, which will act as an indicator of the effectiveness of collaborative multilateralism through the UN human rights mechanism. An OHCHR spokesperson noted that it had made its own assessment and identified “patterns of arbitrary detention and ill-treatment in institutions, coercive labor practices and erosion of social and cultural rights” in Xinjiang.<sup>34</sup> The assessment report will be published in early 2022.<sup>35</sup> Negotiations regarding a field visit to China by the High Commissioner, Michelle Bachelet, and members of the OHCHR have been going on.

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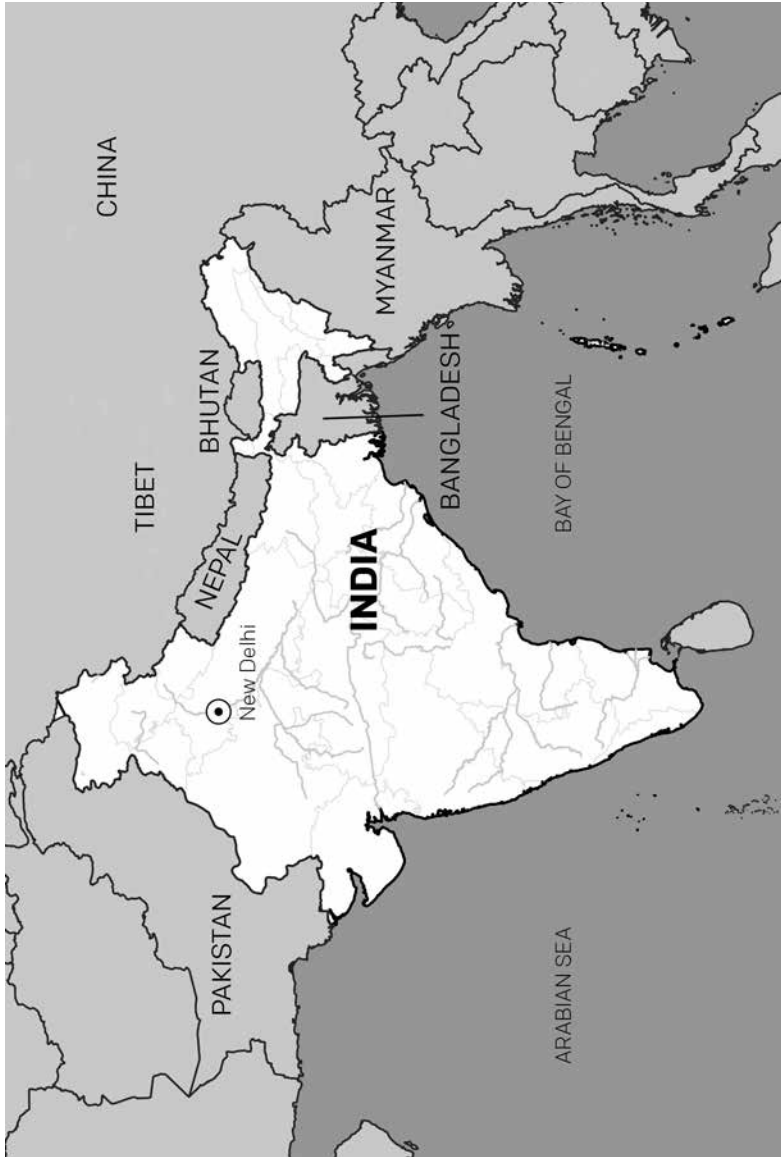
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*Due to the sensitivity of some of the issues covered in this article, the author prefers to remain anonymous.*



# India





In India, 705 ethnic groups are recognised as Scheduled Tribes. In central India, the Scheduled Tribes are usually referred to as *Adivasis*, which literally means Indigenous Peoples.<sup>1</sup> With an estimated population of 104 million, they comprise 8.6% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but are not officially recognised and consequently, the total populations of the Scheduled Tribes are higher than the official figure.

The largest concentrations of Indigenous Peoples are found in the seven states of north-east India, and the so-called “central tribal belt” stretching from Rajasthan to West Bengal. India has several laws and constitutional provisions, such as the *Fifth Schedule* for central India and the *Sixth Schedule* for certain areas of north-east India, which recognise Indigenous Peoples’ rights to land and self-governance. The laws aimed at protecting Indigenous Peoples have numerous shortcomings and their implementation is far from satisfactory.

The Indian government voted in favour of the UNDRIP with a condition that, since independence, all Indians are considered Indigenous. The Government of India has increasingly been using the term “Indigenous populations” in official notifications such as the establishment of a High-Level Committee to look into the “social, economic, cultural and linguistic issues of the Indigenous population in the State of Tripura”<sup>2</sup> or in its justification for the Citizenship Amendment Bill. The State government of Jharkhand declared the International Day of the World’s Indigenous Peoples celebrated on August 9 every year worldwide as a state holiday.<sup>3</sup>

## Situation of Indigenous women

**T**he individual and collective rights of Indigenous women and girls are regularly denied or violated in private and public spaces. Sexual violence, trafficking, killing/branding as a witch, militarisation or State violence and the impact of development-induced displace-

ment, etc. remain major issues. In its latest report “Crime in India 2020”, published in October 2021, the National Crime Records Bureau (NCRB) of the Government of India recorded a total of 3,676 cases of violence against tribal women and girls in 2020. Of these, 1,137 were rape cases.<sup>4</sup>

Indigenous women face sexual assault from both civilians and the security forces. The trend continued in 2021 with several reported cases. On 7 March, a 17-year-old Indigenous girl was gangraped in Sukinda Chromite valley area in Jajpur district of Odisha by four assailants, including a cook with the Odisha Industrial Security Force.<sup>5</sup> On 30 May, Chhattisgarh police personnel from the District Reserve Guards picked up an 18-year-old Indigenous girl from her home at Chingi village in Bijapur district of Chhattisgarh, raped and tortured her before shooting her dead inside the forest.<sup>6</sup>

Other emblematic cases of systematic discrimination and violence against Indigenous women are given below.

### **Case 1: Discrimination against Indigenous women in Jharkhand**

A dual system of statutory and customary law in India has resulted in a complex and oppressive environment for tribal women’s rights. A 2021 study entitled “‘This is not your home’ - An assessment of land rights of tribal women in Jharkhand”<sup>7</sup> stated that Indigenous women face pervasive violence and oppression in Jharkhand due to the informal norms, customs and practices that run deep in society and undermine women’s claims to land.

The Chotanagpur Tenancy Act of 1908 and the Santhal Pargana Tenancy Act of 1949 governing the land rights of Indigenous Peoples do not recognise women as independent individuals and subsume their interests to the arbitrary action of men. The rights of a single woman, whether a widow, unmarried or a divorcee, are not defined in these two laws and are subject to the customary laws of various tribes. Ownership rights to land pass from men to men only.<sup>8</sup>

The inheritance matters of Indigenous women are governed by their tribe’s customary laws, which have never been codified formally. Indigenous women are not permitted to inherit land but custom requires that they receive maintenance, which primarily means food, clothing and shelter, as long as they are alive.<sup>9</sup>

The study concluded that Indigenous women in Jharkhand face a vicious circle of violence – physical, emotional, verbal, sexual and eco-

nomic. Social norms and practices support the idea that men are superior to women, that men have a natural right to own land; that men have a right to physically discipline women; and that women and girls should tolerate violence within a relationship. It says:

*Economic vulnerability of tribal women, which gets exacerbated by the landlessness and propertylessness, plays an important role in exposing them to the risks of trafficking and forcing them to stay in abusive relationships at the same time. The laws – both statutory and customary – reinforce the norm of women’s dependence on male partners and relatives to benefit from land programmes and agricultural schemes, among other things. Surrounded by the patriarchal relations of dominations from all sides, even the slightest acts of transgressing the norms inflict increased violence on women and hold up the status quo.<sup>10</sup>*

### **Case 2: Witch hunting: brutal violence against Indigenous women**

Witch hunting is a wicked practice whereby women alleged of causing detrimental influences are branded as witches by Ojhas (witch doctors/ tantriks) or community people and are thereafter hounded, banished, flogged, raped, paraded naked through the village, forced to eat human excreta, have their head shaved, thrashed etc. A women branded a witch is called by various names such as dayan, tonahi, beta khauki (son eater), adam khauki (man eater), bhaikhauki (brother eater), maradmuhi, kheldi (characterless), bisahin (poisonous woman), bhootni, Dakan etc. Witch hunting thus involves both physical and verbal abuse.<sup>11</sup>

According to the Annual Reports of the National Crime Records Bureau, the brutal practice of witch branding and witch hunting is mostly prevalent in Jharkhand, Madhya Pradesh, Odisha, Chhattisgarh, Gujarat, Telangana, Karnataka, Assam, Haryana, Tamil Nadu, Bihar etc. Over the last seven years, from 2015 to 2020, Jharkhand topped the list with 126 cases of “witchcraft”-motivated murders, followed by Madhya Pradesh with 95; Odisha with 91, Chhattisgarh with 79, Gujarat with 43 and Telangana with 32 cases.<sup>12</sup>

Bihar was the first state to enact a law, the Prevention of Witch (Daain) Practices Act in 1999, followed by Chhattisgarh, Jharkhand, Odisha, Rajasthan, Assam, Maharashtra and Karnataka.<sup>13</sup> Nevertheless,

continuing cases of witchcraft-motivated murder and torture demonstrate a lack of implementation of these laws.

## Legal rights and policy developments

India continues to grab the lands of Indigenous Peoples, in clear violation of the national laws protecting land rights. In the midst of the second wave of COVID-19, the National Institution for Transforming India (NITI Aayog), the premier policy think-tank of the Government of India, continued with its Rs 750,000 million (around EUR 8,920 million) vision for the “Holistic Development of Great Nicobar Island in Andaman and Nicobar Islands.” The project has the potential to endanger the Nicobarese and the Shompen tribes.<sup>14</sup>

In March 2021, Aecom India Private Limited, a consulting agency, prepared a pre-feasibility report that recognises only seven revenue villages on Great Nicobar and not the Indigenous villages.<sup>15</sup> The project seeks to de-notify 7.73 sq. km. of the Onge Tribal Reserve<sup>16</sup> and, on 4 February 2021, the Directorate of Tribal Welfare of the Andaman and Nicobar Islands organised a meeting to finalise the extent of de-notification.<sup>17</sup> If implemented, the project will wipe out Indigenous Peoples who are listed as Particularly Vulnerable Tribal Groups because of their declining or stagnant population, low level of literacy, pre-agricultural level of technology and economic backwardness. According to the 2011 census, there are some 101 Onge tribes.<sup>18</sup>

On 25 August 2021, the UN CERD Committee issued an early warning for the “Draft Lakshadweep Development Authority Regulation 2021”, issued by the Administration of the Union Territory of Lakshadweep without duly informing or consulting the Scheduled Tribes of Lakshadweep in clear violation of the “Laccadive Islands and Minicoy Regulation I” of 1912 and the “Lakshadweep (Protection of Scheduled Tribes) Regulation” of 1964, which prohibit the alienation of tribal lands in the Union Territory of Lakshadweep.<sup>19</sup> If approved, the Draft Regulation in its current format will permit alienation of Indigenous/tribal lands to non-tribals as well as the settlement of outsiders. There have been massive protests within the country and the Draft Lakshadweep Development Authority Regulation 2021 currently remains in suspended.

In October 2021, the Government of India called for public comments on the proposed amendment to the Forest Conservation Act, 1980. In its submission of 30 October, the Indigenous Lawyers Association of India (ILAI) stated that the proposed amendments to the Forest Conservation Act were nothing but a desperate attempt to:

- override, amend or alter “non-obstante” provisions in the Forest Rights Act, 2006 and the Panchayat (Extension to the Scheduled Areas) Act, 1996 (PESA Act) relating to forest and the powers of the Gram Sabhas over the forests under its jurisdiction;
- free the Ministry of Environment, Forest and Climate Change (MoEFCC) from any scrutiny and accountability and allow it to be a law unto itself on the grounds that project approval “takes a lot of time”, without any attempt to address the causes of the delay; and
- exacerbate the system wherein the forest is destroyed first and compensatory afforestation then undertaken after, which has become a scam in itself as noted by the Comptroller and Auditor General (CAG) following an audit. The proposed amendment is being delayed as the Ministry of Tribal Affairs and many State governments objected to the amendments on the very contentions raised by the ILAI.<sup>20</sup>

## **Violations of the rights of Indigenous Peoples by the security forces**

The security forces continued to be involved in human rights violations in 2021, including custodial death and torture of Indigenous persons. Those who died due to alleged torture in police custody included four Indigenous men who died at Chikhli police station in Dang district of Gujarat on 20 July; at Bistan police station in Khargone district of Madhya Pradesh on 6 September;<sup>21</sup> and at Vijapur Naka police station in Solapur district of Maharashtra on 3 October.<sup>22</sup>

A number of Indigenous Peoples in the North-Eastern region and the Naxalite affected areas in the “tribal belt” were victims of extrajudicial killings by the security forces. The incidents included the killing of three Adivasis by the Central Reserve Police Force (CRPF) personnel

while peacefully protesting against the establishment of a new camp by the force at Silger village in Sukma district of Chhattisgarh on 17 May.<sup>23</sup>

## **Violations of the rights of Indigenous Peoples by armed opposition groups**

Armed opposition groups, in northeast and central India, continued to be responsible for gross violations of international humanitarian law, in particular killings of Indigenous persons on charges of being “police informers”, or simply for not obeying their diktats. Those killed included two tribals, one a woman, by suspected members of the Dimasa National Liberation Army at Kharnaidisha village in Karbi Anglong district of Assam on 27 January;<sup>24</sup> a tribal by Maoists on 5 March at G.K. Veedhi in Visakhapatnam in Andhra Pradesh;<sup>25</sup> and three tribals including a child in indiscriminate firing by suspected militants on a group of people attending a condolence service at B Gamnom village in Kangpokpi district of Manipur on 12 October.<sup>26</sup>

## **Non-restoration of alienated tribal land**

Loss of land remains the single biggest cause of denial of the livelihoods, lives and homelands of the Indigenous Peoples. There are a plethora of laws prohibiting the sale or transfer of Indigenous Peoples’ lands to non-indigenous persons and restoring alienated lands to Indigenous landowners. These laws remain ineffective, however, and seldom invoked to either protect Indigenous lands or restore alienated ones. Alienation of Indigenous Peoples’ lands through fraudulent means or by force continued to occur during 2021. Reports from the Integrated Tribal Development Agency (ITDA), which governs the schedule areas spread over Srikakulam, Vizianagaram, Visakhapatnam and Godavari districts of Andhra Pradesh, show that as of May 2021 only 44% of cases (12,664 out of total of 28,716 cases concluded) and covering 39% of the total area of the land (56,921 acres) were decided in favour of Indigenous Peoples and, of these, only 90% of the land (51,253 acres) was actually successfully repossessed by Indigenous farmers. The rest is still in the illegal possession of non-tribals.<sup>27</sup>

## Conditions of the internally-displaced Indigenous Peoples

The Government of India does not have any data on the number of Indigenous Peoples displaced by projects or armed conflicts.<sup>28</sup> Approximately 56,504 tribal families are already displaced or set to be displaced once the Polavaram dam project becomes operational in April 2022. On 27 March, some 72 tribal families were forcibly moved from their homes in Agraharam village, East Godavari district, to a rehabilitation colony.<sup>29</sup> In September, after visiting the affected areas of Polavaram Project, Ananta Nayak – a member of the National Commission for Scheduled Tribes – observed serious violations of Indigenous Peoples’ rights and expressed anguish over the delaying tactics of the government authorities and the failure to rehabilitate them.<sup>30</sup> Equally pathetic is the condition of the 17 tribal families displaced by the Rukuda irrigation project in Bonai sub-division of Sundergarh district, Odisha as they were displaced for a second time because of submergence of their newly-established village by the backwaters of the dam.<sup>31</sup> Meanwhile the process of permanent resettlement of thousands of displaced Bru (Reangs) tribals continued in Tripura amidst protests over the choice of resettlement areas. The Tripura government had selected 12 places spread over four districts in the State to permanently settle Brus who were given shelter in makeshift camps in north Tripura in 1997.<sup>32</sup> Displaced Indigenous women are particularly vulnerable to the risk of trafficking, physical attack and sexual violence as well as being deprived of adequate shelter, food and health services.

## Repression under forest laws

A large number of forest-dwelling Indigenous Peoples (IPs) continued to be denied their rights in 2021. According to information available from the Ministry of Tribal Affairs, as of 31 August, a total of 4,264,959 claims had been filed across the country under the Forest Rights Act 2006, of which 1,783,708 (42%) were rejected.<sup>33</sup> An overwhelming number of applications are rejected because of the claimants’ inability to even fill in the application forms, and the subdivisional-level committees and the district-level committees are overwhelmingly dominated by gov-

ernment officials, especially forest department officials, who refuse to recognise rights under the Forest Rights Act. The appeals process is not accessible to the claimants and the state-level monitoring committees chaired by the chief secretary of the State are not operational.

Section 4(5) of the Forest Rights Act specifically states that no member of a forest-dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from the forest land under their occupation until the recognition and verification procedure has been completed. And yet the IPs were evicted despite their claims under the Forest Rights Act being under adjudication. The government continued to evict IPs even during the second wave of COVID-19, when ordinary people were struggling for basic needs such as housing, food, education, and medical facilities etc. Forcible evictions by the forest officials included the eviction of 40 tribal families belonging to the marginalised Bhil and Barela Indigenous community residing in Jamniya area of Khandwa district in Madhya Pradesh in July;<sup>34</sup> the eviction of over 300 tribals belonging to Chakma and Garo communities from two villages in Hojai district of Assam in November;<sup>35</sup> and the demolition of huts of the Kadar tribes at Theppakulamedu in Anamalai Tiger Reserve on 3 December despite being constructed in patta<sup>36</sup> land allotted by the government in November.<sup>37</sup>

## **NAGALIM**

The Nagas inhabit a territory known as Nagalim, which is situated between China, India and Myanmar. They occupy an area of approximately 120,000 km<sup>2</sup>. The Nagas form several tribes, primarily in the north-eastern region of India and north-western Myanmar.

### **Indigenous Naga women - role and contribution in society**

Naga women are the backbone of the family and economy, from running the household to parenting and entrepreneurship. They also act as custodians and play a crucial role in preserving culture and tradition. There are many women who have come a long way in leadership positions in various sectors.<sup>38</sup>



Naga women assume a pivotal role in protecting, promoting and preserving the culture and identity of the Naga people. Their cultural attire, which is one of their primary markers of identity, is woven by women. There are women's groups from different tribes working to preserve their cultural heritage through modern/state mechanisms. Such organisations are preserving and protecting their culture and identity through documentation, patenting and the registering of Geographical Indications (GI). The Chakhesang women's group is leading the way in this effort: 18 shawls and three sarongs/wrap-arounds have obtained the GI tag through the initiatives of the Chakhesang Women Welfare Society (CWWS). These women's groups also monitor the various misappropriations of Naga cultural attire by the fashion industry.<sup>39</sup> They have taken on the role of custodianship of their cultural heritage. Watsü Mungdang, the apex women's organisation of the Ao people, is actively checking and regulating the use or appropriation of cultural attire. The Indigenous Sisters Heirloom Heritage is also an organisation in South Nagalim that is working actively to raise awareness of the importance of cultural heritage, and it is assisting the different Naga tribes to register and patent their Indigenous textiles and designs.

Women play a huge role in the practice and propagation of Indigenous farming and agricultural practices. The traditional knowledge of cultivation has been mostly passed down through women for generations. Aside from traditional knowledge and practice, every mother in the family acts as a seed keeper for the community. Women's groups are slowly realising this contribution and, through the initiatives of NGOs such as North East Network (NEN), community seed banks have started to develop. Eight villages in the Phek District of Nagaland currently have a community-based seed bank established.<sup>40</sup> The seed banks are now storing 226 varieties of seed, including 35 types of paddy and seven types of millet.

## **Women in governance and decision-making**

Despite the progress made in their professional and personal lives, women's participation in governance and decision-making processes remains minimal. The traditional institutions governed by Naga cus-

tomary law do not permit women to be involved in village administration and governance. Naga society is patriarchal and it continues to be governed by these traditional institutions from village level through to tribe representation, composed only of men.

Although men and women are considered fairly equal in Naga society, Nagas traditionally have specific gender roles in the community.<sup>41</sup> There is, however, growing discourse around and advocacy for women's representation in decision-making bodies. The movement is slow and there is stiff opposition from both men and women but some villages are beginning to induct women onto the village councils. Mention can be made of the pioneering change brought about by Chizami village in Phek District,<sup>42</sup> Tongou (Ringui) village<sup>43</sup> and Talui village in Ukhrul District, and Cheengkhu village in Chandel where women were inducted into the village council. In another landmark development, a retired woman Naga civil servant was made president of a tribal body in January 2021 in Dimapur.<sup>44</sup> In Wangti Village, Mon District, too, women were elected to the Village Development Board for the first time.<sup>45</sup> This indicates a gradual change that is happening in the area of decision-making.

Naga women continue to be denied the benefit of one-third or 33% of seats being reserved for women, as envisaged by Article 243T(3) of the Constitution of India, because the male-dominated Naga tribal bodies vehemently oppose this, despite its provision in the Nagaland Municipal and Town Council Act 2001. Nagaland witnessed violent protests against the Urban Local Bodies (ULB) elections in 2017, which provided for said 33% reservation. The protest claimed two lives, and several government properties were vandalised. Several organisations opposed the ULB elections on the grounds that they infringed the special provisions granted to Nagaland under Article 371(A) of the Constitution.<sup>46</sup> Due to the protest and upheaval the elections were canceled.<sup>47</sup>

There have been no elections to Urban Local Bodies in Nagaland for over a decade now. On 26 October, the Nagaland government formed a committee headed up by the Nagaland chief secretary to review the Municipality Act and the reservation policy.<sup>48</sup> Meanwhile, as a stop-gap measure, the Nagaland government decided that members would be nominated on a 70:30 (male-female) ratio to run the municipalities until such elections could be conducted.<sup>49</sup>

Thirteen legislative assembly elections have been held over the last

57 years, starting with the first one in 1964. However, none of the elections has returned a woman member of the legislative assembly. Nagaland is perhaps one of the exceptions in that not a single woman member has ever been elected to the highest law-making body in the state.<sup>50</sup>

The absence of women is thus not only within the traditional governance system but within the State system too.

The property rights of women have also been widely discussed and debated given that women traditionally have no right to inherit property, especially ancestral land. Different tribes have different practices but, over the years, women from well-off families are now beginning to inherit property. The possibility of enabling women's access to property rights while protecting the land and identity of the Nagas has been a continuing effort and discussion among organisations such as the Naga Women's Union (NWU).

Naga women participate in the social and political sphere through the formation of women's leagues or unions. Every village and tribe has a women's union that looks into women issues and other social concerns. Women raise their voices and opinions through these platforms. Naga women are noted for their significance and contribution in social movements, and in the fight against human rights violations.<sup>51</sup>

While Naga society is considered safer in terms of crimes against women,<sup>52</sup> there are growing cases of reported and unreported domestic violence. Women have little access to justice either traditional or the state legal system because of lengthy and burdensome procedural requirements. The states have set up several agencies such as "one-stop centres", national and state-level women's commissions, and now a mandatory provision to set up district units.

Women have come a long way from the traditional roles of balancing domestic and agricultural roles to being educated, qualified leaders in different fields. However, with rising cases of domestic violence,<sup>53</sup> decades of militarisation and political instability in the Naga region, together with deep patriarchy permeating decision-making bodies and agencies, Naga women still have more battles to win.

## **Developments in the Indo-Naga Peace Process**

The Indo-Naga talks that began after the signing of the ceasefire in 1997 reached a milestone with the signing of the Framework Agreement on

3 August 2015. Thereafter, contrary to expectation, the Indian government adopted a non-committal attitude in their engagement, and also displayed rigidity in their approach to working out the finer implementation details of the agreement,<sup>54</sup> thereby obstructed further progress in the negotiations. This resulted in complete a impasse in the negotiations in 2021, the chief bone of contention being a Naga Flag and a Naga Constitution.

R.N. Ravi, an interlocutor since 2014, was appointed the Governor of Nagaland State in July 2019. The dual role of Ravi as head of the state and also interlocutor in the political dialogue was not clear. This duality was opposed and a demand to remove Ravi as the interlocutor was made by the NSCN (IM) and by Naga civil society, resulting in another deadlock. The Naga group also raised the manipulation of the Framework Agreement. It was alleged that R.N. Ravi had doctored and misinterpreted the document, and this compelled the NSCN (IM) to make the Framework Agreement public.<sup>55</sup>

On 9 September 2021, Ravi was transferred from Nagaland and was made Governor of the State of Tamil Nadu. He was concurrently released from the position of interlocutor in the Indo-Naga Peace talks. He was replaced by Akshay Kumar Mishra, former Special Director of the Intelligence Bureau who had been engaging with the NSCN (IM) unofficially since 2020.<sup>56</sup> The sixth interlocutor in the Indo-Naga talks, A.K. Mishra had held an advisory position to the Union Home Minister Amit Shah and was also instrumental in the signing the Karbi Accord and a ceasefire agreement with the NSCN (K) Nikki group. Although resumption of the talks with the new interlocutor is a positive step, the issue of flag and constitution continue to block the negotiations and the 24-year-long political talk continue to be suspended.

## **Militarisation: The Oting Massacre**

The Armed Forces Special Powers Act, 1958 that has been imposed on Naga areas empowers the armed forces to act with impunity. There are hundreds of both documented and undocumented cases of death, rape, torture and other severe forms of barbarity against the Naga people. In the latest case of brutality, 14 civilians were massacred at Oting village in Mon District of Nagaland on 4 and 5 December 2021. The inci-

dent took place at Longkhao/Yatong of Oting village when the 21st Para Special Forces opened fire at a pick-up truck carrying eight coal miners returning home from the mining site. Six of them were killed then and there, and the other two were severely injured. Eight more civilians were killed in indiscriminate firing by the army when the villagers protested at the spot. Twenty people were injured.<sup>57</sup>

The incident was termed as failed intelligence on the part of the security force, which mistook the group of innocent civilians for insurgents in the army's counter-Naga insurgency operation. The Union Home Minister of India, Amit Shah, gave a statement in parliament stating that it was a case of "mistaken identity" and that the people were shot because they refused to stop. This was, however, contradicted by survivors of the incident.

There was widespread condemnation by several organisations, groups and people from various states and countries. Candlelight vigils were held in different states and people took to the street to protest the killing and demand the repeal of AFSPA and a political solution to the Naga issue.<sup>58</sup>

The Nagaland government announced an *ex gratia* payment of five lakhs of rupees to each of the families of the deceased, and also bore the medical expenditure of the injured persons. The state government also set up a Special Investigating Team, which was to furnish its report within one month. The state government also cancelled its 22<sup>nd</sup> State Festival, known as the Hornbill Festival, after many tribes called off their participation in protest, solidarity and mourning at the killing.<sup>59</sup>

## **Disturbed Area Status**

Following the Oting massacre, the Nagaland Chief Minister, Neiphu Rio called for a state cabinet meeting on 7 December and resolved to appeal to central government for an immediate repeal of the Armed Forces Special Powers Act, 1958 in the state of Nagaland.<sup>60</sup> Several petitions and memoranda from different civil society and human rights organisations were submitted to the Prime Minister calling for a repeal the AFSPA. However, on 30 December 2021, the Union Home Ministry declared the area to be disturbed, as per Section 3 of the Act,<sup>61</sup> a condition necessary to extend the Act for another six months. This is a periodic extension that has been continuing for the last 63 years in Nagaland.

## Legislative developments - Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021

In India, the Nagas are spread across four states, i.e. Arunachal, Assam, Manipur and Nagaland. The Nagas in Arunachal were listed in serial no.10 of Part 13 of the Constitution (Scheduled Tribes) Order, 1950<sup>62</sup> as “Any Naga Tribes” in the state of Arunachal. On 2 August 2021, on the recommendation of the Arunachal State government, the tribal ministry introduced a bill in the Upper House of Parliament to modify the list of tribes in Arunachal. The bill was passed and the President of India gave assent on 13 August 2021.<sup>63</sup> The bill, known as the Constitution (Scheduled Tribes) Order (Amendment) Bill, 2021, made five changes to the nomenclature and identification of tribes in Part VIII of the Constitution (Scheduled Tribes) Order, 1950. The Naga tribes, previously grouped together as “Any Naga Tribes”, were replaced with the names of four tribes namely Nocte, Tangsa, Tutsa, and Wancho, and were given individual identity. The word Naga was removed. The Director of Arunachal Institute of Tribal Studies, Professor Jumyir Basar stated that the words “Any Naga Tribes” had been borrowed directly from the colonial records and that these tribes were in reality culturally diverse.<sup>64</sup> These new identities are seen by the Nagas as a step towards denying the existence of Nagas in Arunachal. The Nagas’ struggle for self-determination includes consolidation of Naga homeland, which was divided and put under the administration of two countries, India and Myanmar, and further segregated into separate states within them, thus dismantling and deconstructing the Naga identity.

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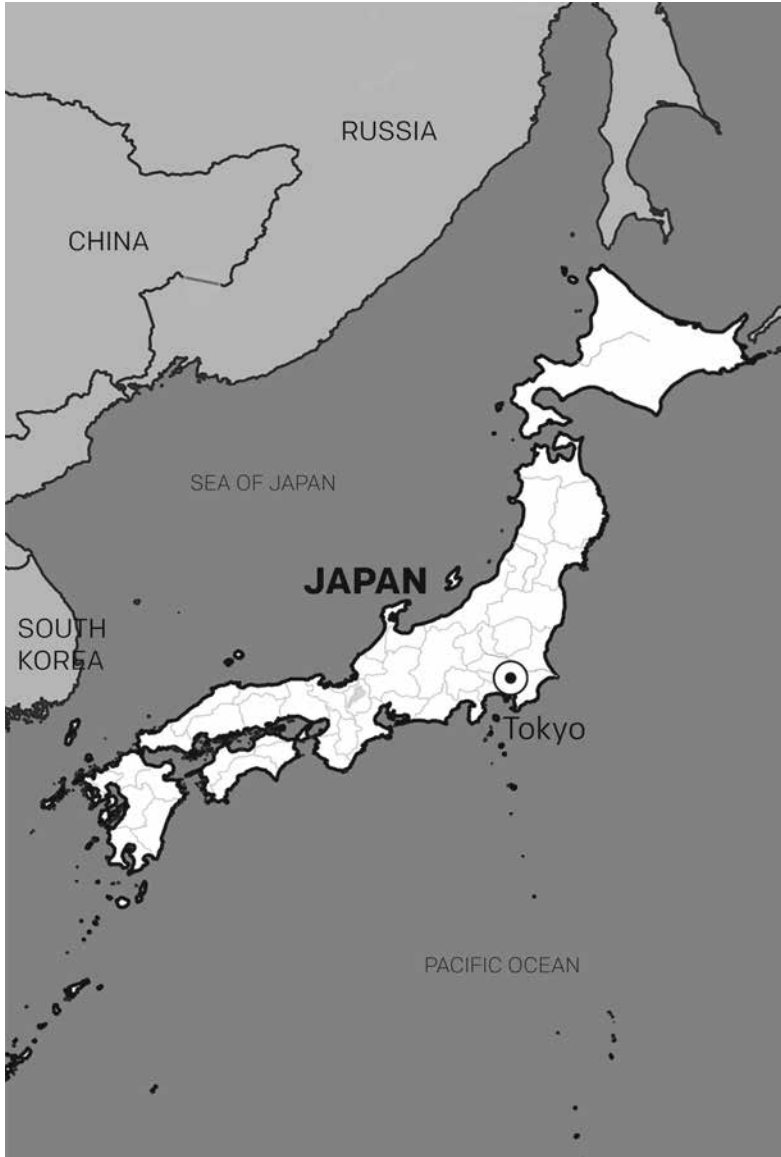
**Mr Santosh Chakma** is an advocate and Director of the Indigenous Lawyers Association of India (ILAI).

**Ningreichon Tungshang** is from the majestic foothills of Shirui Kashong, Ukhrul and she currently lives in Delhi. She is a mother of three and writes occasionally on the Naga journey, an issue close to her heart. She works with the Naga Peoples Movement for Human Rights.

**Chingri Vashum** is a legal research scholar and a member of the Naga Peoples Movement for Human Rights.



# Japan



The two Indigenous Peoples of Japan, the Ainu and the Okinawans, live on the northernmost and southernmost islands of the country's archipelago. The Ainu territory stretches from Sakhalin and the Kuril Islands (now both Russian territories) to the northern part of present-day Japan, including the entire island of Hokkaido. Hokkaido was unilaterally incorporated into the Japanese state in 1869. Although most Ainu still live in Hokkaido, over the second half of the 20th century, tens of thousands migrated to Japan's urban centres for work and to escape the more prevalent discrimination on Hokkaido. Since June 2008, the Ainu have been officially recognised as Indigenous people of Japan. The most recent government surveys put the Ainu population in Hokkaido at 13,118 (2017) and in the rest of Japan at 210 (2011), though experts estimate the actual population to be much higher.<sup>1</sup>

Ryūkyūans, or Okinawans, live in the Ryūkyū Islands, which make up Japan's present-day Okinawa prefecture. They comprise several Indigenous language groups with distinct cultural traits. Japan annexed the Ryūkyū Islands into its territory and established Okinawa prefecture in 1879 but later relinquished the islands to the United States in exchange for independence after World War II. In 1972, the islands were re-incorporated into the Japanese state. Okinawa Island is home to some 1.3 million of the 1.45 million people living throughout Okinawa. The Japanese government does not recognise Okinawans as Indigenous Peoples.

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

Following implementation of the New Ainu Law in 2019<sup>2</sup> and the opening of an Ainu National Museum and Park in 2020,<sup>3</sup> in 2021 the Ainu again drew international attention through their participation in the ceremonies of the 2020 Tokyo Olympic Games. However,

numerous issues remain in terms of the need to eradicate discrimination and enforce the right to self-determination.

## **Ainu participation in the opening ceremonies of the Race Walking and Marathon events at the Sapporo venue of the Tokyo Olympics**

The matter of Ainu participation in the Olympic ceremonies has left lingering ambivalence regarding the issue of the Ainu's voice in their own representation at international level. To begin with, a February 2020 Tokyo Olympic Games Organising Committee decision to drop the Ainu dance performance from the programme of the opening ceremonies drew criticism that Japan was not honouring its commitment to support the culture of its Indigenous minority.<sup>4</sup>

Eventually, persistent negotiations on the part of the Ainu Association of Hokkaido (AAH) representatives culminated in an Ainu dance being performed in the opening ceremonies of the Race Walking and Marathon events at the Sapporo venue of the Tokyo Olympics, with Japan's Cabinet Minister delivering an opening greeting and footage of the performances being recognised as an official programme of the 2020 Tokyo Olympic Games.<sup>5, 6</sup>

The debate over the participation of Indigenous Peoples in the Ceremonies of the Olympic Games as a problem of appropriation and political showmanship<sup>7</sup> is likely to continue, elements of both sides of this argument having been present in regard to Ainu participation in the 2020 Tokyo Olympics. On the one hand, there was criticism that the planned Ainu participation in the Tokyo Olympics might be merely an element of show to boost Japan's international image as a place of "harmony".<sup>8</sup> Other people who were in favour of Ainu participation, including the Ainu Association of Hokkaido, expressed consternation at the Tokyo Olympic Committee's decision to drop the Ainu participation.<sup>9</sup> Amidst criticism of the quality of the opening ceremonies, likely due in part to overall problems of funding and the controversy involved in holding the Olympic Games during the COVID-19 pandemic,<sup>10</sup> the question of the extent to which the February 2020 decision by the Tokyo Olympic Games Organising Committee to drop Ainu participation was a reflection of how much power the Government of Japan has to support its

Indigenous citizens in such situations may be a debatable one. However, one thing is certain, and that is that this time the push by AAH representatives to include the Ainu in the Olympic Ceremonies, albeit ultimately only in the opening of certain local events in Ainu country, is reflective of the fact that the Ainu people themselves are centrally involved in this debate.<sup>11</sup>

## **Ainu women in the public sphere and discrimination in the media**

Ainu women have recently become increasingly visible in the public sphere. In 2021 alone, Ainu women were active in an Ainu museum exhibition<sup>12</sup> abroad, a professional musical performance, creating avant-garde theatre, launching an NGO,<sup>13</sup> appearing on TV, and creating their own video channels, as well as participating, along with their cultural preservation societies, in the Opening Ceremony of the Race Walk and Marathon for the Tokyo Olympics.

The flip side of greater visibility is increased exposure to discrimination. Discriminatory remarks continue to characterise Internet discourse and Japanese media coverage of the Ainu. The word *Ainu* itself drew much attention in the Japanese media in 2021, with a racial slur by a Japanese comedian on the Nippon Television Network Corp morning show *Sukkiri*<sup>14</sup> raising intense discussion.<sup>15</sup> In the show, a comment was made by the comedian about the short documentary film *Ainu My Voice* which focuses on Ainu women's empowerment in contemporary Japanese society. The word *Ainu* was used in a play on words, "ah inu" which implies identification of Ainu with animals through use of "inu", the Japanese word for dog. This has an historical significance with deep roots, as the phrase has continually been used discriminatorily towards the Ainu to degrade their culture and identify them as an inferior race.

The incident triggered extensive coverage in the media and drew an official statement from the AAH in coalition with Hokkaido Governor Suzuki Naomichi,<sup>16</sup> Japan Television responded with an official apology to the AAH expressing deep regret for the inappropriate expression, and has recently commenced airing a series of awareness-raising programmes on the Ainu.

## **Lack of self-determination and free, prior and informed consent**

More issues came to light in 2021 regarding the problem of the lack of legislative structures governing the Ainu's right to self-determination and free, prior, and informed consent.<sup>18</sup> Firstly, despite implementation of the New Ainu Law in 2019,<sup>19</sup> purported to support Ainu cultural transmission and economic advancement, there are reports that local Ainu have been refused assistance to use the law as a mean to achieve their local cultural aspirations.<sup>20</sup> For instance, the town council of Honbetsu in central Hokkaido denied a request from the Honbetsu Ainu Association to build a traditional *cise* dwelling in which to conduct Ainu ceremonies on the grounds that the law stipulates that applications for financial subsidies made available by the law must be made by local municipalities and that they cannot be made by private organisations. The town government claimed that it first needed to "(hear) the opinions of local residents".<sup>21</sup>

Meanwhile, against a backdrop of ongoing denial of Ainu collective voice and rights, Ainu activist groups and individuals have joined forces with Japanese citizens' activist groups to raise awareness through vocal criticism. In opposition to what is essentially a denial of Ainu FPIC,<sup>22</sup> approximately a dozen Ainu individuals took to the stage to voice their dissent at a 16 November gathering of the Hokkaido Alliance on the Nuclear Waste Problem,<sup>23</sup> in advance of an anticipated 18 November approval by the Japanese Minister of Economy, Trade and Industry for the Nuclear Waste Management Organization of Japan (NUMO) to commence documentary research to determine the suitability of two Hokkaido municipalities, Suttsu Town and Kamoenai Mura, for the disposal of high-level radioactive waste.<sup>24</sup> Additionally, faced with the continuing denial of Ainu legal rights by the Japanese State and the Hokkaido government in four 2021 court hearings<sup>25</sup> held to recognise their collective salmon harvesting rights,<sup>26</sup> the Raporo Ainu Nation collaborated with a citizens' support group to publish a book<sup>27</sup> and launch a public lecture series to raise awareness and disseminate information on Indigenous Peoples' rights.<sup>28</sup>



## Women in Okinawa

Women in Okinawa were historically excluded from the public realm due to the male-centric view of Confucianism, which has long influenced cultural and social aspects in Okinawa, and patriarchal thinking still persists today.<sup>29</sup> While there has been gradual improvement, there is still much room for more. On the one hand, for example, in the political field during 2021, the first female member in 32 years was elected to Kadena Town Council in January<sup>30</sup> and, in April, two female candidates simultaneously became councillors for the first time in Yonabaru town.<sup>31</sup> After the election in July, female members came to constitute 32.5% of Naha City (the capital of Okinawa prefecture) Assembly, thus achieving the highest female representation of all municipalities in Okinawa.<sup>32</sup>

However, the draft sixth prefectural plan for gender equality prepared by Okinawa Prefectural Gender Equality Council in October described the current situation as being quite below the international standard.<sup>33</sup> According to an investigation by the Ministry of Internal Affairs and Communications in 2019, the percentage of female members of Okinawa Prefectural Assembly was 10.9%, and that of city assemblies and that of town and village assemblies in Okinawa were 11.5% and 8.2% respectively.<sup>34</sup> As local news also reported in February 2021, 12 out of 41 municipal governments in Okinawa have no female members, and five of them never have.<sup>35</sup> Female candidates in Okinawa at the elections for the lower house of the National Diet (parliament) so far have also constituted only 5%.<sup>36</sup>

To struggle against such remaining gender inequality, women in Okinawa, their perspectives and work remained important in 2021, as seen in various efforts relating to the topics discussed below, as well as multiple moves, including an appeal for female empowerment, for example by introducing a quota system for women in assemblies, made at a gathering for International Women's Day in March by the Federation of Okinawa Prefectural Women's Organisation.<sup>37</sup>

## US military bases

One of the ongoing issues in Okinawa relates to the huge burden of US military bases, which can be seen as an extension of Japan's histor-

ical colonialism. Notably, sexual violence against women is a serious issue, as seen in incidents in 2021, such as a guilty verdict against a US soldier for his indecent assault in January<sup>38</sup> and the arrest of a military employee for his attempted sexual assault in July.<sup>39</sup> These cases are only the tip of the iceberg, however, and although such incidents may be happening almost daily, many of them are not reported to the police, according to Suzuyo Takasato, co-chair of Okinawa Women Act Against Military Violence, who reported more than 350 sexual violence cases committed by US military personnel in the 12<sup>th</sup> edition of the report on “Sexual Assault by US Soldiers in Okinawa”.<sup>40</sup>

Another urgent issue is water pollution. As reported by the All Okinawa Council for Human Rights in its written submission to the UN Committee on the Elimination of Discrimination Against Women in June, the rivers and wells around US bases that local residents use for their everyday lives “have been found to be contaminated by toxic substances” but “sufficient investigation, verification, and information disclosure on the causes of the contamination are left to the discretion of the US military”.<sup>41</sup>

Additionally, a continuing controversial issue is a new base to be constructed in Henoko, a non-commercial area with a small population in the northern part of Okinawa Island. Following previous cabinets, newly-elected Prime Minister Kishida held onto this construction plan in his general policy speech in December<sup>42</sup> despite multiple objections to it, including criticism from the Governor of Okinawa<sup>43</sup> and statements requesting the reconsideration or suspension of the plan by bar associations in Japan.<sup>44</sup> Legal battles have been ongoing in relation to issues such as the landfill work for the base.<sup>45</sup> Problems on the landfill work also include a government plan to use sand from the southern part of Okinawa Island, where human remains from the Second World War are buried and this has received particular objections, as seen in statements from more than 130 municipalities across Japan,<sup>46</sup> an online petition from abroad,<sup>47</sup> and email submissions to the UN Secretary-General and others on the part of 37 university students in Okinawa.<sup>48</sup>

Related to the struggles over US military bases, an article by Mark Ramseyer, published in 2020, was flagged up as problematic in 2021. He wrote, particularly that: “Okinawan elites protest the bases in part to raise the price they receive for taking” the bases.<sup>49</sup> His article was

strongly criticised as including discriminatory, false, and baseless descriptions.<sup>50</sup>

In addition, concern regarding secondary COVID infection through military personnel remained, as seen in an outbreak in the military facilities in December followed by a rapid increase in positive cases in Okinawa.<sup>51</sup> The concentration of military facilities has thus resulted in a heightened risk of COVID infection among people in Okinawa.

## **Disputes over Indigeneity**

Disputes over the Indigeneity of Okinawans continued, as this year also saw various positions either in support of or against the recommendations being made by UN human rights bodies since 2008 to recognise Okinawans as Indigenous Peoples. In particular, eight municipal politicians in Okinawa organised a group in November, arguing that Okinawans were not Indigenous Peoples and seeking reconsideration of the UN recommendation.<sup>52</sup> In contrast, there were various protests, notably seen in the establishment of and statement by Ryūkyū Indigenous Peoples Mabui Gumi nu Kai in December, which consisted of Okinawan women asserting that they were “Ryūkyūans” and Indigenous Peoples.<sup>53</sup> Additionally, in order to discuss and clarify a generic or geographical scope of the term Indigenous Peoples in the context of Okinawa and other relevant matters, Ryūkyū Indigenous Peoples Network Council was established in May by Okinawans who have been engaged in or associated with the struggle for rights as Indigenous Peoples.

## **Repatriation of human remains**

The repatriation of Okinawan human remains is another ongoing issue. Notably, the 8th to 11<sup>th</sup> hearings at the district court were held this year in the case against Kyoto University, which has held human remains taken from Okinawa Island since the 1920s. In May, an Okinawan female scholar Shoko Oshiro also contributed her report to Fabián Salvioli, the UN Special Rapporteur on the promotion of truth, justice, reparation

and guarantees of non-recurrence, in which she touched upon multiple topics, including the repatriation of human remains.<sup>54</sup> In his report to the UN General Assembly, Salvioli mentioned Okinawans' repatriation work and highlighted the state's obligation to repatriate.<sup>55</sup> The last date for the hearing at the district court is in January 2022, and a decision is expected in April.

Alongside this court battle, the Okinawa Prefectural Board of Education has kept 63 bodies of Okinawan human remains transferred from National Taiwan University in 2019. The bereaved families and members of Nirai Kanai nu Kai<sup>56</sup> filed two inspection requests to the prefectural audit committee in January and July concerning the repatriation, aerial reburial and compensation for these remains<sup>57</sup> but both requests were dismissed.<sup>58</sup>

These ongoing struggles for the human rights of people in Okinawa will continue into 2022. As 2022 is symbolic, being the 50<sup>th</sup> year of the reincorporation of Okinawa into Japan in 1972, the issue of how to develop the work of protecting their human rights will remain significant.

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**Dr. Kanako Uzawa** is an Ainu researcher, Ainu rights advocate and member of the Association of Rera in Tokyo. She recently completed her PhD at the The University of Tromsø – Arctic University of Norway on urban Ainu experiences within a framework of diasporic Indigeneity, raising the question of what it means to be Indigenous in a city. Kanako is also an editorial board member of *AlterNative: An International Journal of Indigenous Peoples in Aotearoa New Zealand*.

**Jeff Gayman** is a full Professor in the School of Education and Research Faculty of Media and Communication at Hokkaido University where his research focuses on issues of empowerment of the Ainu in educational arenas. He has been engaged in support of Ainu rights advocacy for over a decade.

**Fumiya Nagai** is Vice-President of Shimin Gaikou Centre, an international human rights NGO that works with Indigenous representatives in Japan and supports their human rights advocacy.



# Laos



With a population of just over 7 million,<sup>1</sup> Laos is the most ethnically diverse country in mainland Southeast Asia.<sup>2</sup> The ethnic Lao, comprising around half of the population, dominate the country economically and culturally. There are, however, some provinces and districts where the number of Indigenous people exceeds that of the Lao and where their culture is prominent. There are four ethnolinguistic families in Laos: Lao-Tai language-speaking groups represent two-thirds of the population. The other third speaks languages belonging to the Mon-Khmer, Sino-Tibetan and Hmong-Ew-Hmien families and are considered to be the Indigenous Peoples of Laos. Officially, all ethnic groups have equal status in Laos, and the concept of Indigenous Peoples is not recognised by the government, despite the fact that Laos voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples. The Lao government uses the term ethnic group to refer to Indigenous Peoples.

The Lao government currently recognises 160 ethnic sub-groups within 50 ethnic groups. Indigenous Peoples, especially those who speak Hmong-Ew-Hmien languages, are unequivocally the most vulnerable groups in Laos. They face territorial, economic, cultural and political pressures and are experiencing various threats to their livelihoods. Their land and resources are increasingly under pressure from pro-investment government development policies and commercial natural resource exploitation. Indigenous people lag behind the majority Lao-Tai on all economic levels. They have more limited access to healthcare, lower rates of education, and less access to clean water and sanitation. The proportion of Indigenous people relying on unimproved or surface water ranges from 20% to 32.5% compared to just 8.5% of Lao-Tai, and while only 13.9% of Lao-Tai practise open defecation, this rises to between 30.3% and 46.3% among Indigenous people.<sup>3</sup>

Laos has ratified ICERD (1974), CEDAW (2018) 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 con-

trolled. Organisations openly focusing on Indigenous Peoples or using related terms in the Lao language are thus not allowed, while open discussions about Indigenous Peoples with the government can be sensitive, especially since the issue is seen as pertaining to special (human) rights. During the 2015–2019 period, the Lao PDR submitted four national reports, including to the ICCPR.

## The situation of Indigenous women

Indigenous women remain the most socially-disadvantaged group in Laos. Few are engaged in the formal economy and, as was revealed in a 2021 study, only a quarter are literate.<sup>4</sup> They are less likely to speak the Lao language and are therefore less able to engage in markets, participate in public meetings and access information critical to their livelihoods. Their lower education status directly plagues Indigenous women’s low levels of confidence, which strongly affects their willingness to aim for leading positions in their communities and be active change-makers in their families and villages.

Indigenous women are over-burdened with work: they are responsible for production, reproduction and community works; they are responsible for household water supply and energy for cooking, etc. This mental and emotional stress leads to their poor health condition and limits the time they can devote to performing leadership roles in the community.

In Lao PDR, Indigenous women usually spend more time in the forests than men and have a more detailed knowledge of the status of the forest resources. Indigenous women’s knowledge tends to be linked more directly to household food and nutrition needs, as well as to health and culture, compared to men’s knowledge. In Akha, Lahu and Tarieng communities, Indigenous women are also the most knowledgeable about traditional medicine.<sup>5</sup>

Although Indigenous women play significant roles in agriculture and forestry, they have less access to and control of land, farming and forestry-based inputs and outputs.

Indigenous women's rights are closely linked to customary gender-based power systems in their culture. Their rights and prerogatives are determined mainly by whether a village is matrilineal or patrilineal in social structure.<sup>6</sup> In patrilineal villages, men have more power and women only have access to land through marriage. In matrilineal villages, women have a higher status and more power and can therefore negotiate their customary and formal rights, including making final decisions. These social norms and cultural practices influence women's visibility, mobility and behaviour, even when they are members of informal or formal groups.

Indigenous women also face cultural barriers or harmful practices, including polygamy, the ban on delivering children inside the village perimeter, or inside the house in Brou communities in the Annam Range, etc.<sup>7</sup>

Violence against Indigenous women and girls is prevalent and under-reported.<sup>8</sup> Indigenous women are also extremely vulnerable to human trafficking, which occurs in many forms including exploitation in domestic servitude, the sale of women as brides, and children being sent to work in the sex industry within and across borders into neighbouring countries including Thailand and China.<sup>9</sup>

## **National legal framework, international and regional commitments**

Lao PDR has a strong legal framework for promoting gender equality and is equipped with three solid women's institutions that complement each other: the National Commission for the Advancement of Women (NCAW), which supports the government in researching policies and strategies for women's advancement, the Lao Women's Union (LWU) and the National Assembly Standing Committee, the Women's Caucus.

Indigenous people and Indigenous women are politically represented at the highest level since the introduction of the Peoples' Provincial Assemblies (PPAs) in 2016. In the elections that took place in March 2021, 492 of the 789 assembly members were newly elected, and 150 of them are women. Indigenous women elected include 10 Khmu, 6 Hmong, 3 Phounoi, 8 Talieng, 5 Brue, 1 Akha, 1 Brao, 1 Krieng, 1 Katang, 1

Katou and 2 Pako.<sup>10</sup> However, women are still under-represented in senior government positions.<sup>11</sup>

The legal foundation for promoting gender mainstreaming into policies and regulations in Laos is strong. The country has demonstrated a clear interest in adhering to international agreements relevant to gender mainstreaming and has ratified and attempted to operationalise several international and regional conventions and treaties on gender, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

On 21 May 2021, the government officially agreed to endorse the Second National Plan of Action on Preventing and Elimination of Violence Against Women and Violence against Children (2021-2025) (NPA-VAWVAC) and the Fourth National Plan of Action on Gender Equality (2021-2025) (NPAGE).<sup>12</sup>

However, despite having a very advanced legal framework for gender equality, there is only very limited implementation of these laws due to lack of capacity, knowledge and budget. Because policies often do not consider gender or use data disaggregated by sex, the impacts of policies can at times differ from their intention: in reality, men and women do not enjoy equality.

## **National development and the intersection of gender and ethnicity**

The 9<sup>th</sup> Five-Year National Socio-Economic Development Plan 2021-2025 (NSEDP) was approved by the inaugural session of the Ninth National Assembly held from 22-26 March 2021 in accordance with Resolution No. 20/NA dated 26 March 2021. It aims to implement the Resolution of the 11th Party Congress as well as continue the implementation of the National Strategy on Socio-Economic Development 2016-2025 and Vision 2030 of the Lao PDR. The NSEDP commits to poverty reduction for all ethnic groups and to ensuring that people of all ethnic groups, ages and genders have access to quality education and health services. On the other hand, however, the unique culture of the nation – referring to the Lao-Tai Buddhist majority – is protected and consolidated.<sup>13</sup>

Lao PDR's rapid growth provides an opportunity to integrate principles of sustainability and gender equality into its development process and international actors have made strong efforts to ensure projects are ethnicity- and gender-sensitive. Many multilateral institutions are supporting the Lao government to mainstream gender equality upstream in their development plans.<sup>14</sup>

During July and August 2021, the Department of Ethnic and Religious Affairs (DOERA) conducted a series of workshops in eight provinces to disseminate the Decree on Ethnic Affairs, which aims to support ethnic people and, more specifically, women and children living in remote areas nationwide to fully participate, protect their rights and draw benefits from development schemes. Five hundred and thirty-eight (538) people participated in the workshops. Indigenous people (including customary leaders and village chiefs) accounted for 40% of the participants and Indigenous women 13%. The second objective of the workshops was to raise awareness of Indigenous Peoples among civil servants from various departments, offices and mass organisations working in ethnic areas and develop their facilitation skills and capacities in a participatory approach to empower Indigenous people and women in the development process.<sup>15</sup>

Lao PDR is in the very early stages of developing its social protection system and 2021 witnessed progress in the implementation of the new National Social Protection Strategy benefiting Indigenous people and women. Laos is committed to Leaving No One Behind.<sup>16</sup> For instance, in Bokeo province, all Chinese-owned banana, watermelon and soybean plantations, which hire mostly Indigenous people, agreed to increase the daily wage, reduce standard working hours, provide safety equipment and undertake to pay wages on time and support women's welfare during illness and childbirth.<sup>17</sup>

Overall, international aid agencies and civil society organisations (CSOs) have made good progress in employing women over the last decades. However, despite a commitment to support Indigenous women from some INGOs and CSOs, they remain under-represented among these actors. Of the 561 staff included in a study assessing aid agencies and hiring policies conducted in 2014, Indigenous women accounted for just 16.4% of the women working for INGOs (half of them belong to Mon-Khmer speaking groups). Among the local Non-Profit Associations (NPAs), the situation was even worse: Indigenous women accounted

for 8.6% of the women staff and 4.8% of total CSO staff. There were no women from the Sino-Tibetan ethno-linguistic family<sup>18</sup> working for any of the CSOs surveyed.<sup>19</sup>

In July 2021, the Lao Civil Society Coordination Committee (LCCC) upgraded its structure and the Gender Development Association (GDA), a leading CSO in Laos promoting gender has been nominated as leader of the Good Governance Working Group focusing on gender, law, etc. The GDA has been active in conducting research on Indigenous women,<sup>20</sup> presenting policy briefs and advocating to improve ethnic and gender awareness because the intersection of gender and ethnicity is the cornerstone of ensuring sustainability and that Indigenous women are not left behind in the development process.

## COVID situation update

Lao People's Democratic Republic was faced with a second wave of COVID-19 in April 2021. According to PMO 15/ PM on the Prevention and Control of COVID-19, a nationwide lockdown was put in place in place on 21 April and citizens living in red-zone villages were prohibited from leaving their homes except for essential purposes and tasks authorised by the government.<sup>21</sup> The highest number of COVID cases per day occurred on 11 December, with 1,898 cases reported nationwide.<sup>22</sup>

In terms of restrictions, as of December 2021, all forms of entertainment venues, as well as massage parlours, spas, beauty salons, barbershops, cinemas, restaurant gardens and tourist attractions, remained closed. A traffic curfew for private vehicles remained in place between 11:30 p.m. and 05:00 a.m. The COVID pandemic has had an impact on women's livelihoods, health, food security, access to edible forest products, income, etc. A survey conducted in Houayxay district of Bokeo province in December 2021 also revealed that Khmu women were reporting a noticeable increase in gender disparities compared to the beginning of the pandemic.<sup>23</sup>

Indigenous women also faced increased risks of being lured into sex work and trafficking in 2021 as police observed that the closure of the Laos-Thai border had created a local demand for commercial sex in close proximity to national borders, casinos and Special Economic Zones SEZs.<sup>24</sup>



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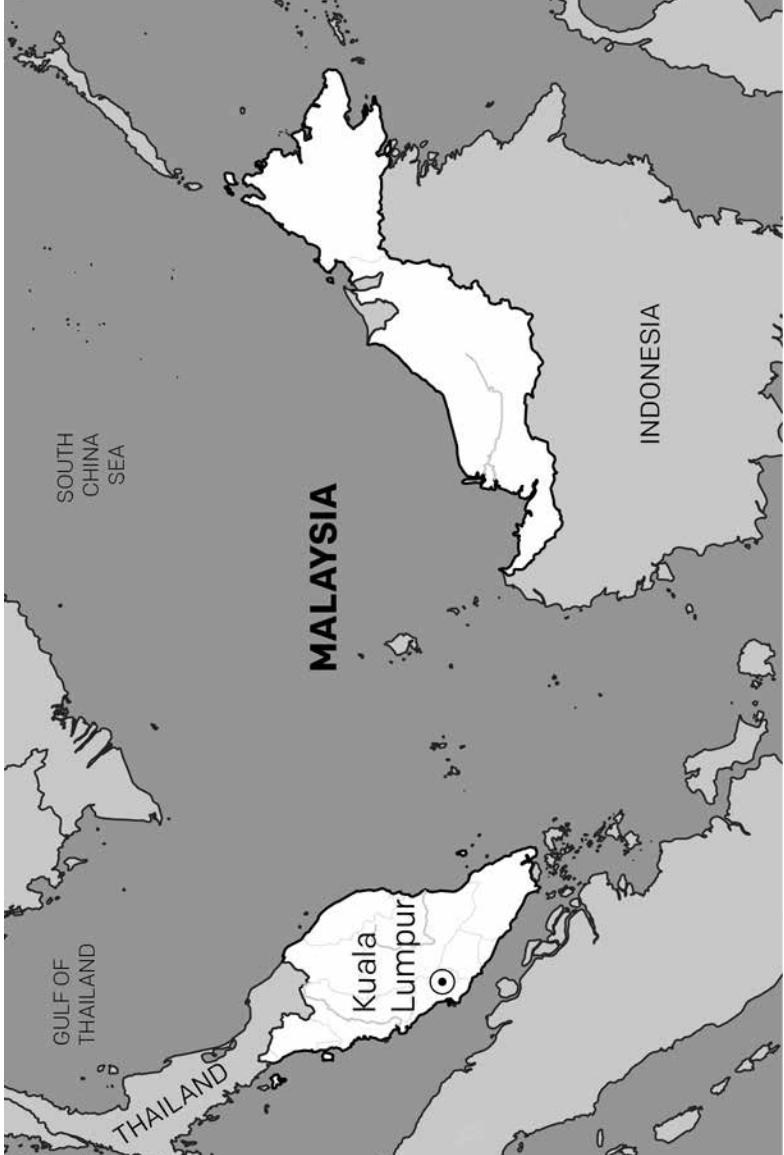
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**Steeve Daviau**, anthropologist, has been working on Indigenous Peoples' issues in Laos for over 20 years. [daviausteeve@gmail.com](mailto:daviausteeve@gmail.com)



# Malaysia



As of 2019, the Indigenous Peoples of Malaysia were estimated to account for around 14% of the 33.45 million national population. They are collectively known as Orang Asli. The Orang Asli are the Indigenous Peoples of Peninsular Malaysia and they numbered 210,611 in 2019. The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 0.7% of the population of Peninsular Malaysia. In Sarawak, the Indigenous Peoples are collectively known as Natives (Dayak and/or Orang Ulu). They include the Iban, Bidayuh, Kenyah, Kayan, Kedayan, Lunbawang, Punan, Bisayah, Kelabit, Berawan, Kejaman, Ukit, Sekapan, Melanau and Penan. They constitute around 1,932,600 or 70.5% of Sarawak's population of 2,707,600 people. In Sabah, the 39 different Indigenous ethnic groups are known as natives or Anak Negeri and make up some 2,233,100 or 58.6% of Sabah's population of 3,813,200. The main groups are the Dusun, Murut, Paitan and Bajau groups.

While the Malays are also Indigenous to Malaysia, they are not categorised as Indigenous Peoples because they constitute the majority and are politically, economically and socially dominant.

In Sarawak and Sabah, laws introduced by the British during their colonial rule recognising the customary land rights and customary law of the Indigenous Peoples are still in place. However, they are not properly implemented, and are often ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and state agencies over the rights and interests of the Indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the National Land Code, Orang Asli customary tenure is recognised under common law. The principal act that governs Orang Asli administration, including occupation of the land, is the Aboriginal Peoples Act 1954.

Malaysia has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and endorsed the Outcome Document of the World Conference on Indigenous Peoples but has not ratified ILO Convention 169.

## Further marginalisation under pandemic restrictions

The second year of the COVID-19 pandemic resulted in a greater toll on the Orang Asal communities of Malaysia. In the span of just one month, for example, the number of Covid cases among the Orang Asli of Peninsular Malaysia climbed more than 10-fold, from 287 on 20 July 2021 to 3,293 on 20 August 2021.<sup>1</sup> In Sabah, the number of Covid cases had reached 238,357 by the end of 2021, with most of them being Native peoples.<sup>2</sup> The coronavirus also began to sweep across Sarawak, especially through the northern countryside that is mainly populated by Native groups.<sup>3</sup>

The economic disruption caused by the pandemic also resulted in dire food security situations for many Orang Asal communities. This placed additional responsibility on the women as they sought to meet the nutrition and health needs of their families. It was particularly challenging for those dependent on the cash economy as they had to resort to traditional sources of subsistence and livelihood – a realm that was generally seen as the domain of Orang Asal women.

As in the previous year, many restrictions were put in place to manage the pandemic, including the closure of industries, businesses and other activities considered “non-essential”. This brought much hardship to the people and severely affected Indigenous livelihoods, with many communities having to seek food aid from outside. These restrictions did not, however, affect certain “essential” activities – logging in particular – that are destructive of the environment and ignore the rights of the Orang Asal, especially with regard to their customary lands. In fact, the revenue from timber exports in 2021 (RM 23 billion or USD 5.6 billion) was more than that of 2020 (RM 22.01 billion or USD 5.4 billion).<sup>4</sup>

The pandemic was also used politically. At the federal level, the fragile *Perikatan Nasional* (National Alliance) government was able to thwart a change of government by imposing a State of Emergency early in the year, thereby suspending parliament and giving itself extraordinary powers to govern without parliamentary oversight.<sup>5</sup>

In Sarawak, state elections were held on 18 December 2021. The incumbent *Gabungan Parti Sarawak* (GPS, Sarawak Parties Alliance) used the Covid restrictions and lockdowns to secure an overwhelming

victory.<sup>6</sup> It did this by maximising state resources, including its control of the media, to the full while the (disunited) opposition candidates, a significant number of whom were Indigenous activist-types, were put at a great disadvantage in terms of their movement and access to the electorate.

The fact that the Chief Minister has now given himself the (additional) portfolios of Finance and New Economy Minister, and Natural Resources and Urban Development Minister, as well as Energy and Environmental Sustainability Minister, does not bode well for the Natives of Sarawak as to the direction the state government plans to take with regard to exploitation of the environment and recognition of Native Customary Rights.<sup>7</sup>

## Pitting Natives against big companies

As it is, it is already playing out in the courts that the Natives of Sarawak do not have rights to their *pemakai menoa* (territorial domain) and *pulau galau* (communal forest reserves). This was the precedent set by the apex court in the TR Sandah case (as discussed in *The Indigenous World 2020*). This position was recently reinforced in the case of *TR Ramba Bungkong v Asco Green Sdn Bhd*, where it was ruled that the Iban community's right to their 3,500 hectares did not have the "force of law".<sup>8</sup> Rather, the land now belonged to the company as it had been given a lease by the state government – a lease that is indefeasible and where the land could not be returned to the Native appellants even if it was found to be Native Customary Rights (NCR) land.<sup>9</sup>

It is this kind of unilateral administrative action that is pitting several Native communities in Sarawak against companies asserting the right to log or develop lands which Indigenous Peoples are claiming as their customary lands. A case in point is that of the Penan in the Upper Baram region who are protesting against a logging company – Samling – which says it has received consent from the 56 heads of households and that it has been awarded a "Permit to Enter Coupe" by the Sarawak Forestry Department to extract timber from the area. However, local Penan leaders say that the company never negotiated with them before commencing activities in the area. They therefore put up blockades to stop encroachment onto their claimed lands and submitted police reports.

The Penan have the support of the local environmental group Save Rivers, which published online articles regarding the certification of timber logged by Samling in the Baram region.<sup>10</sup> Samling was not happy with the articles and is suing Save Rivers for RM 5 million (USD 1.25m) for defamation. This is big money for a local NGO but loose change for a company like Samling – which, in just one of its subsidiaries, holds more than RM 500 million (USD 125 million) in assets in offshore holdings in the British Virgin Islands.<sup>11</sup>

## **Selling carbon credits on the quiet**

Clearly, the customary lands of the Orang Asal –lands which they play a key part in keeping forested– are being targeted because of the potential abnormal profits they can yield. In Sabah, on 30 October 2021, the state government secretly signed a 100-year Nature Conservation Agreement with a Singapore-registered company, Hoch Standard Pte Ltd, to set up a carbon trading deal over an area of more than 2 million hectares for at least 100 years. The Singapore-registered company, with just USD 1,000 in paid-up capital, stood to rake in some RM 960 million (USD 240 million) annually just by trading in carbon credits from the state’s protected forests. Indigenous communities in Sabah knew nothing about the deal until it was exposed in an article in *Mongabay*.<sup>12</sup>

The deal is supposed to be worth around RM 3.2 billion (USD 800 million) a year, of which the company is to receive 30% in gross revenues and the state 70%. It had the active involvement of two individuals who, in a 1994 study by Price Waterhouse at the request of the then Prime Minister, found that USD 1.6 billion in Timber Rent (Stumpage Value) had disappeared from the Sabah Foundation.<sup>13</sup> One of the two individuals involved in this deal was the then director of Sabah Foundation and the other was the Group General Manager of a holding company for the foundation’s commercial assets.<sup>14</sup>

Adrian Lasimbang, an Indigenous leader in Sabah, filed a lawsuit in December 2021 to gain more transparency and to assert the Native communities’ right to free, prior and informed consent over forests for which they claim sovereign control.<sup>15</sup>

## Still no land rights, no FPIC

This appropriation of the forested customary lands of the Orang Asal was not restricted to the Bornean states of Sabah and Sarawak in 2021. In Peninsular Malaysia, the Orang Asli realised that, when it comes to recognising Orang Asli rights to their customary lands, it makes little difference what (coalition of) political parties is in power at the state or federal level.

For example, in the case of the Kuala Langat North Forest Reserve, in 2020 the Selangor State Government – a *Pakatan Harapan* (Coalition of Hope) government that forms the opposition at the federal level – had intended to degazette<sup>16</sup> 932 hectares (or 94%) of the 992 hectares of peat swamp forest for a mixed development project. The forest was close to three Temuan-Orang Asli villages which considered it part of their traditional territory, as recognised by the British Colonial Government in 1927.<sup>17</sup>

The forest was more than just a resource base for the community's subsistence, medicinal and building material needs. As 70-year-old Bonet Baba revealed, the forest was also the source of her Indigenous identity and helped give her emotional peace and stability. She valued the time she spent in the forest with her grandchildren and feared that she would no longer be able to pass on her knowledge.<sup>18</sup>

Opposition to the planned degazetting was widespread and across the board. Not only were there 45,423 written petitions from the public and unanimous objection from numerous stakeholders at a public hearing, there were also objections from the Federal Forestry Department, the Department of Orang Asli Development, and other government agencies. The majority of the elected representatives of the State Legislative Assembly, both from the government and opposition benches, also voted to keep the forests. And yet, in August 2021, the Chief Minister announced that the state government had already gone ahead with the degazetting – albeit for a smaller 537 hectares – three months *earlier* in May 2021!<sup>19</sup> A massive, widely-represented and very public remonstrations ensued which eventually forced the Chief Minister to withdraw the degazetting. This he promised to do but he has yet to act on it.<sup>20</sup>

In the case of the Nenggiri Dam, however, the Kelantan State Government – a member of the *Perikatan Nasional* (National Alliance) that



was in government at the federal level – made it clear that it did not recognise Orang Asli claims to their customary lands. In March 2021, more than 3,000 Temiars from the Network of Orang Asli Villages in Kelantan (JKOAK) had signed a petition against the construction of the Nenggiri Dam in Gua Musang. Apart from losing much of their traditional territories, they were also concerned that the dam would flood sites of cultural and religious significance to them.

Commenting on the petition, the state's Deputy Chief Minister alleged that the protest was "invalid" because the state was planning to relocate the affected Orang Asli communities.<sup>21</sup> Besides, he added, "We've told them that we can't engage with them because they are not an official group representing the Orang Asli. To us, the JAKOA<sup>22</sup> is the official representative of the Orang Asli."<sup>23</sup> Thus, not only are the land rights of the Orang Asli not being recognised, their right to free, prior and informed consent is also being denied.

## Progressing forward?

It is evident that the pandemic and its associated lockdowns, restrictions and legislation has allowed the federal and state governments and opportunists to further control and exploit the Orang Asal and their lands, territories and resources. Recognition of Indigenous Peoples' rights has also taken a step backward, aided by court rulings and the rise of politicians unsympathetic to Indigenous Peoples' rights and needs.

And yet Malaysia is said to be performing well in achieving the SDG goals.<sup>24</sup> This may be so for the country as a whole but, when the data is disaggregated, the difference is glaring. For example, in 2019 the national poverty rate stood at 5.6%.<sup>25</sup> The poverty rate among the Orang Asli, however was 89.4%.<sup>26</sup> This speaks volumes about the marginalisation of the Indigenous Orang Asal of Malaysia.

Nevertheless, one notable progress, at least for the Orang Asli community, has been the appointment of a Semai-Orang Asli woman to head the Department of Orang Asli Development as its Director-General.<sup>27</sup> Young Orang Asal women have also taken to social media, including through their own YouTube channels, to inform and advocate about

their situation, their aspirations and their rights.<sup>28</sup> And, with more Orang Asal women now in leadership roles, the endeavours of the Orang Asal for recognition and self-determination can only be expected to progress.

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**Colin Nicholas** is the Founder and Coordinator of the Center for Orang Asli Concerns (COAC), which is an associate member of the Jaringan Orang Asal SeMalaysia (JOAS), the Indigenous Peoples Network of Malaysia. [colin.coac@gmail.com](mailto:colin.coac@gmail.com)



# Myanmar



There is no accurate information on the number of Indigenous Peoples in Myanmar, partly due to a lack of understanding in the country of the internationally recognized concept of Indigenous Peoples. The government claims that all citizens of Myanmar are “*Indigenous*” (*taing-yin-tha*) and, on that basis, dismisses the applicability of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to Myanmar. Indigenous Peoples' rights activists use the Burmese language term *hta-nay-tain-yin-tha* to describe Indigenous Peoples, based on international principles that use the criteria of non-dominance in the national context, historical continuity, ancestral territories and self-identification.<sup>1</sup>

The government recognizes eight ethnic groups as national races or *taung-yin-tha*: Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan and Shan. According to the 1982 *Citizenship Law*, ethnic groups who have been present in the current geographical area of Myanmar since before 1823 (the beginning of the first British annexation) are considered *taung-yin-tha*.<sup>2</sup> However, there are a number of ethnic groups that are considered or see themselves as Indigenous Peoples, such as the Naga, that would not identify with any of those groups.

While the democratic transition from quasi-military government to quasi-civilian took place peacefully in 2016, and early signs of progression took place with ministerial developments focussed on Indigenous rights and development via the newly-established Ministry of Ethnic Affairs, the overwhelming feeling held by Indigenous rights activists was that the governing National League for Democracy party (NLD) did not honour pre-election manifesto promises to eradicate harmful policies that restricted fundamental freedoms such as the right to assembly and peaceful expression. Furthermore, the stated aim of the NLD of “national reconciliation” via the 21st Century Panglong forums stalled, with conflict escalating in many ethnic states and regions.

On 1 February 2021, the Myanmar Military (Tatmadaw) attempted a *coup d'état* by deposing the elected government, the

National League for Democracy (NLD), and detaining Aung San Su Kyi and members of both Union and State level Parliaments. Since then, large parts of Myanmar have descended into civil war as the Tatmadaw violently suppresses dissent across the country.

Myanmar voted in favour of the 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) but voted against a bill to ratify the International Covenant on Civil and Political Rights under the rationale that it was a threat to national sovereignty. In 2017, Myanmar became the 165th State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR).

## Military coup

**O**n 1 February 2021, the Burmese Military – known as the Tatmadaw – staged a *coup d'état*, arresting the elected government and imposing a national state of emergency, all through powers allegedly granted under the 2008 Constitution. The rationale was that mass voter fraud, to the tune of 8 million illegal votes, had taken place during the landslide election win for the National League for Democracy (NLD). This has never been substantiated.

Acting President Myint Swe transferred legislative, executive and judicial power to the Commander in Chief. The state of emergency has since been extended to 2023.<sup>3</sup>

Aung San Su Kyi, the ousted leader of the NLD and former State Counsellor, has to date been held at an undisclosed location, only having been seen in court as she faces a slew of spurious charges ranging from breaking the official secrets act to corruption, inciting unrest and violating COVID-19 regulations.<sup>4</sup> Her lawyer Khin Maung Zaw was issued

a gagging order which prevents communication to the media, international organizations or foreign governments.<sup>5</sup>

The coup triggered mass protests and an ongoing civil disobedience movement (CDM), with the majority of the public sector remaining on strike.<sup>6</sup> The military cracked down on the peaceful protest movement with lethal force, killing hundreds of people. This eventually provoked an armed uprising against its rule in the form of localized peoples' defence forces (PDFs). Many of these were trained by established Ethnic Armed Organizations (EAOs) and remain linked either by ethnic ties, for example to the numerous Chinland Defence Forces (CDFs) operating across Chin State, or as part of the developing framework under the exiled National Unity Government's (NUG) long-term plan for a "Federal Union Army".<sup>7</sup>

On 7 September, the NUG declared a "peoples' defensive war". Duwa Lashi La, the acting president of the NUG issued a call for a nationwide uprising, which was delivered with a military Code of Conduct aimed at keeping the multiple PDF factions accountable to international human rights and humanitarian laws, and the Geneva Conventions.<sup>8</sup>

## **"Parallel" government-in-exile**

In March, the Committee Representing Pyidaungsu Hluttaw (CRPH), established by ousted lawmakers in the wake of the military coup in February, formed a National Unity Government (NUG) based on the mandate bestowed on it by the people in the 2020 general election, which the NLD won by a landslide. Despite being outlawed by the SAC junta, the NUG enjoys popular support in Myanmar and growing recognition abroad as the legitimate government.<sup>9</sup>

The NUG, which functions in exile, has purported to build a Union State with the following values as their guiding principles:

1. Democracy Rights, Gender Equality and basic Human Rights;
2. Equality and Self-Determination;
3. Collective Leadership;
4. Diversity, Social Harmony, Solidarity and Non-Discrimination;  
and
5. Protection of Minority Rights.<sup>10</sup>



In a move designed to gain the support of Western democratic nations, some initiatives spearheaded by the NUG's Ministry of Human Rights distanced the government-in-exile from previous controversial stances taken by the NLD. For example, in July, the NUG lodged a declaration under Article 12(3) of the Rome Statute delegating jurisdiction to the International Criminal Court (ICC)—an important step towards improved accountability for atrocities committed in Myanmar or by Myanmar nationals.<sup>11</sup>

Similarly in June, the NUG released a new policy which, using the term "Rohingya", committed to ending human rights abuses against this group and promised to grant them equal citizenship rights, thus signalling a marked departure from the previous administration's stance.<sup>12</sup> The NUG also suggested that once a new constitution could be drafted they would repeal laws used to repress the Rohingya and other ethnic groups deemed to be outside of the "national races" groupings.<sup>13</sup> National news outlets suggested this was a premature initiative and potentially opposed in Rakhine State.<sup>14</sup>

The establishment of the NUG was set out in Part II of the Federal Democracy Charter (FDC), which provides a framework for interim governance. This includes a National Unity Coordination Council (NUCC) as a platform for negotiating the FDC's strategic development.<sup>15</sup> The NUCC members include the CRPH, currently serving as the interim legislature, the NUG as the executive, EAOs and ethnic political parties, CDM groups, general strike councils, and civil society organizations from across the country.

Interim councils have been established in some states, largely made up of ethnic political figureheads that report through the NUCC.<sup>16</sup> At the local level, various "Peoples' Administrations" have also been established. For example, the Mindat Peoples' Administration announced in February that it would govern the Southern Chin Township under the 1948 Chin Special Division Act.<sup>17</sup> In some cases, peoples' administrations stretch further down than the township level and administer specific ethnic groups, such as the Yaw People's Administration in Magway Region.

## **War crimes and crimes against humanity**

The SAC's violence became increasingly more brutal throughout the year as PDF combatants, members of the civil disobedience move-

ment, aid workers and the civilian population at large were targeted with extreme and arbitrary violence. Multiple independent United Nations experts have stated that the Myanmar junta's systematic and widespread attacks on the civilian population since February 2021 amount to crimes against humanity and war crimes.<sup>18</sup>

Widespread instances of murder, torture, sexual violence, rape, enforced disappearances and the destruction of property have taken place.<sup>19</sup> As of 31 December, the SAC has killed more than 1,300 civilians, arbitrarily detained over 11,000 and a further 1,964 civilians have had arrest warrants issued against them.<sup>20</sup> The UN reported in early December that there were 284,700 people newly displaced since the coup and at least two million newly in need of humanitarian assistance in 2021, while projecting that humanitarian needs would further escalate in 2022.<sup>21</sup>

In early December, 11 unarmed people, including teenagers and a disabled person, were captured and massacred by junta soldiers in a village in Sagaing Region. Photos of the incident seemed to infer that the victims had been set on fire while still alive.<sup>22</sup> In similar circumstances, on Christmas Eve, 35 people including women and children were killed and burned by the military in Hpruso township, Kayah State.<sup>23</sup> Save the Children later confirmed that two of its staff were among those killed in the massacre.<sup>24</sup>

The Tatmadaw has also been accused of instances of rape and other forms of gender-based violence. On 11 November, SAC troops entered the village of Aklui in Teddim township, Chin State, and entered the home of a 27-year-old woman who had given birth less than one month earlier and raped her. Reports suggest that the soldiers held her husband at gunpoint and forced him to watch the crime taking place. On the same night, soldiers raped the woman's 30-year-old sister-in-law, who was seven months pregnant.<sup>25</sup> On 7 November, a junta soldier raped a 62-year-old woman in Kutkai township, Shan State.<sup>26</sup>

Torture has also been systematically used across the country with reports of widespread and systematic mistreatment in detention.<sup>27</sup> Civilians arrested after being shot by security forces are often denied medical treatment and subsequently die from their injuries. There are multiple instances of mutilated bodies being returned to families. Some bear the marks of organ removal.<sup>28</sup> Others have been returned to their families alive, only to die a few hours later from their injuries.<sup>29</sup>

## **A return to the “Four Cuts” doctrine**

Since May, in places such as Chin, Kayah and Karen states, the SAC have been undertaking a well-known response to armed dissent by initiating a policy commonly known as the “four cuts”, i.e. restricting access to food, funds, intelligence and recruits to ethnic armed groups.<sup>30</sup> In implementing this strategy, local populations are treated as a central resource in the conflict area and exposed to extreme violence and livelihood destruction.

For example, in Chin State, the Tatmadaw have been implementing this policy since May, when the community of Mindat were violently suppressed for peacefully protesting against the coup. Meanwhile humanitarian access to the area has been arbitrarily restricted, medical supplies impounded or destroyed en route to IDP camps and those attempting to deliver stated items arbitrarily arrested and sometimes tortured.<sup>31</sup> Similar practices have been documented in Kayah<sup>32</sup> and Karen states.<sup>33</sup>

## **Operation Anawrahta**

During October, in the midst of an overwhelmingly supported CDM movement and in response to heavy losses inflicted by the CDF,<sup>34</sup> the SAC launched “Operation Anawrahta” in the Northwest.<sup>35</sup>

The symbolic operation – named after the warrior-founder of the Burmese nation – was overseen by the Tatmadaw’s hard-line, newly placed commanders, Lieutenant General Than Hlaing, deputy interior minister and head of Myanmar’s militarized police force and Lieutenant General Tayza Kyaw, head of Bureau of Special Operations No 1.<sup>36</sup>

The operation thus far has led to the destruction and burning of a large portion of Thantlang town and multiple villages across Chin State that military convoys and battalions pass through in clearance operations. Almost all of the town’s shops and businesses have been destroyed.<sup>37</sup>

## **Targeting of churches and religious infrastructure**

A prevailing pattern amongst the Tatmadaw’s military operations across the country has been the targeting of religious leaders and the

wilful destruction of church buildings and other religious infrastructure in ethnic states and regions where the population form a Christian minority.

As crackdowns on protests and protestors grew, the military began actively pursuing religious leaders and religious institutions.

On 13 March, the Kachin Theological College and Seminary in the Kachin state capital, Myitkina, were raided when 15 military trucks surrounded the school and began to search the grounds and property. The school has since remained closed. Other Kachin churches were also subjected to targeted searches.<sup>38</sup>

Searches sometimes resulted in the arrests of pastors. On 14 June, three pastors in Kachin State's Nawngmun township were detained on charges of incitement for allegedly using the phrase "ending military dictatorship" during a prayer for peace.<sup>39</sup> On 23 September, Pastor Ngai Kung was arrested in Ngaleng village in Chin State along with four others. The four other civilians were released but Pastor Ngai Kung remains detained by the military.<sup>40</sup>

Between February and July, 14 churches were bombed in Kayah State, places where civilians were seeking shelter from the ongoing conflict across the state. In one such instance, on 24 May, the Tatmadaw bombed the Sacred Heart Church in Kayan Tharyar that was housing 300 people from Loikaw township, killing four and injuring eight more. White flags were raised around the religious infrastructure and soldiers had previously entered the premises and warned the people sheltering not to leave the church as a search took place.<sup>41</sup> The day after, Cardinal Charles Bo, the Archbishop of Yangon, released a statement calling on the junta to refrain from targeting churches.<sup>42</sup> Father Celso Ba Shwe from Demosa stated that churches were now unsafe to house IDPs due to their active targeting.<sup>43</sup>

In Thantlang, the Assembly of God Church and a church belonging to the Thantlang Association of Baptist Churches were burned down by government soldiers.<sup>44</sup> Meanwhile, across Chin State, the Tatmadaw began implementing a policy whereby soldiers were ordered to use churches as bases on the rationale that they would be less likely to be attacked by local defence forces.<sup>45</sup> This inevitably led to looting and desecration of church belongings and infrastructure in Kanpetlet, Mindat, Falam and Hakha townships.

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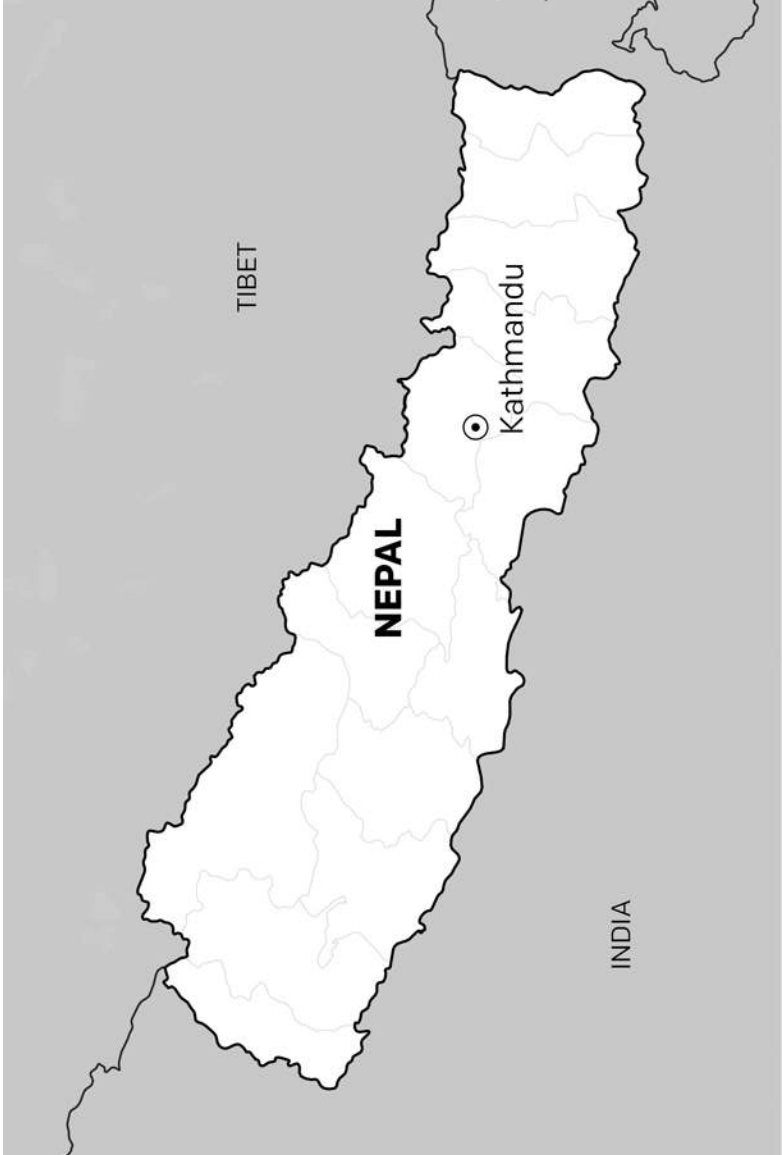
*The author and publisher of this article are well aware of the existing Myanmar/Burma name dispute; however, Myanmar is used consistently in this article to avoid confusion.*

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# Nepal



According to the 2011 census, the Indigenous Nationalities (Indigenous Peoples) of Nepal comprise 36% of the total population of 30.2 million,<sup>1</sup> although Indigenous Peoples' organizations claim a larger proportion of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 Indigenous Peoples; 59 castes, including 15 Dalit castes;<sup>2</sup> and three religious groups, including Muslims. The recently completed census of 2021 is yet to be made public and it may reveal some changes in demographic composition.

Even though Indigenous Peoples constitute a significant proportion of the population, throughout the history of Nepal, Indigenous Peoples have been systematically 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 recognizes Khas Arya<sup>3</sup> supremacy but denies the collective rights and aspirations of Indigenous Peoples,<sup>4</sup> despite the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and approved the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Conference on Indigenous Peoples (WCIP) Outcome Document. Their implementation is still lacking. Laws, draft bills, ordinance and policies are not in line with UNDRIP and ILO Convention 169. The Nepalese government has shown no sign of implementing any of the recommendations, including to amend the Constitution in order to explicitly recognize the right to self-determination and all the rights of Indigenous women in line with the UNDRIP, made by the UN Committee on the Elimination of Discrimination against Women (CEDAW).

## Indigenous women

Indigenous women in Nepal are relatively empowered in the private sphere but less so in the public sphere. In contrast, Hindu women belonging to the dominant caste group are dominated by their male counterparts at the family level but are relatively strong in the public sphere. Indigenous women, whose families are not much influenced by the dominant Hindu values, make decisions, engage in economic activities, and have mobility. They are the guardians of biodiversity, mother tongues, traditional dresses, customary knowledge, skills and technology. In the public sphere, Indigenous women are barely represented in executive positions within political parties (e.g. in the central committee, only 2 of the 80 members in the Nepali Congress are Indigenous women, and 11 of the 202 members in the Communist Party of Nepal (Unified Marxist–Leninist), abbreviated CPN (UML) are Indigenous women);<sup>5</sup> of the total of 82,778 people working in the civil service only 3,619 (4.38%) are Indigenous women<sup>6</sup> and if, somehow, a few are represented then they have no role in decision-making as they have been co-opted by the main political parties. Indigenous women do not hold decision-making positions, not even in the “mainstream” women’s movement. The handful of Indigenous women who are represented in village or local government or in provincial and federal or national bodies and international processes have to speak the language of the dominant caste group and are prohibited from raising Indigenous Peoples’ issues because they have to be loyal to their party policy, which is against Indigenous Peoples. In the Indigenous Peoples’ movement, Indigenous men dominate and Indigenous women are side-lined. Indigenous women are therefore excluded from the government, political parties, non-governmental organizations, the women’s movement, and the Indigenous Peoples’ movement.

The main reasons for such exclusion are a colonial mindset and behaviour towards Indigenous Peoples by the colonizing Bahun–Chhetri caste groups, Hindu patriarchy and Brahmanism. In addition, those Indigenous men who are close to the Bahun–Chhetri rulers, and those who are socialized into or have adopted Hindu patriarchal values, Brahmanization, and Hinduization, also exclude Indigenous women. Loss of collective ownership and control over ancestral lands, territories and re-

sources has resulted in poverty, unemployment and displacement and these are also factors that exclude Indigenous women from the public sphere, especially from leadership and decision-making positions. It is against this backdrop that the National Indigenous Women's Federation (NIWF), an umbrella organization of 43 of the 59 Indigenous Peoples formally recognized by the government, has been fighting since its establishment in 1999.

The current situation of Indigenous women in Nepal is that "Indigenous women suffer multiple discriminations based on their racial/caste/ethnic, gender identity and disability"; and are "disproportionately excluded from social services provided by the State".<sup>7</sup> Further, with regard to their differences from other women in general, "mainstream" women are recognized as a legal entity under the constitution, laws and policies; in contrast, Indigenous women are not recognized and "are invisible and are victims of historical injustice and structural violence; in contrast, 'mainstream' women, who belong to the ruling Hindu caste and dominant group, are visible."<sup>8</sup> In brief, "Indigenous women are victims of triple discrimination: (a) stateless and colonization due to denial of right to self-determination, (b) dispossession of lands, territories and resources, and (c) loss of identity due to state-led process of assimilation", and a patriarchy sponsored by the state and assimilated by some Indigenous men.<sup>9</sup> Hence, Indigenous women "continue to be one of the most marginalized groups in society who are rendered vulnerable by the lack of our political voice and lack of attention to our specific needs and rights- which are causes and consequences of each other."<sup>10</sup>

According to a CEDAW shadow report, "seven girls, out of every ten victims of trafficking in person, are from Indigenous Peoples. 60 percent of the rescued were from Indigenous Peoples." Concerning Indigenous women with disabilities (IWWDs) experiencing violence and harmful practices, the shadow report states, "the discrimination that IWWDs face are subtle and invisible. We are exposed to the violent and harmful practices, such as, rape, forced sterilization and neglect."<sup>11</sup> Although data on Indigenous women forcibly evicted by development aggression, including hydropower, highways, road expansion, national parks and other conservation areas, are not available, these evictions are multiplying exponentially.

There are no reprisal mechanisms (access to justice) or assistance to Indigenous and non-Indigenous women survivors of violence in Nepal.

Drawing inspiration from IWGIA's annual edition of *The Indigenous World*, the National Indigenous Women's Federation (NIWF) started documenting the situation of Indigenous women in Nepal. In its first volume, 31 of the 43 Indigenous women organization members provided information covering the period of September 2015 to December 2019.<sup>12</sup> This clearly shows that Nepal has not implemented any of the recommendations made by the CEDAW, nor those of the Committee on the Rights of Persons with Disabilities (CRPD). No Free, Prior and Informed Consent has ever been obtained by the government or private business companies from Indigenous Peoples, including Indigenous women. Land grabbing by the government continues unabated.

The NIWF's field research report on Indigenous Women's Land Rights in the Community Forests concludes, "Nepal government's laws, policies and practices related to CFs and its management through Community Forest User Groups are highly problematic for enjoyment of human rights by Indigenous Peoples, specially Indigenous Women"; "existing laws, policies and practices violate rights to collective way of life, self-determination, autonomy, customary self-government systems, FPIC, Indigenous knowledge, skills, technology and practices, and direct participation at all levels of decision making."<sup>13</sup> It recommends to the government that: "Community Forest User Groups (and also Collaborative Forest Management) should be scrapped, and ownership and control over and access to and management of lands, territories and resources, including community and collaborative forests given to Indigenous Peoples who are its right holders."<sup>14</sup>

## **The 5<sup>th</sup> National Human Rights Action Plan**

The Human Rights and International Treaty Agreement Division of the Office of the Prime Minister and Council of Ministers released the 5<sup>th</sup> National Human Rights Action Plan (FY 2021/22-2024/25) on 2 December 2021.<sup>15</sup> Activities aimed at assisting Indigenous Nationalities relate to their protection, empowerment and development. The plan states two objectives and four activities to be accomplished within three years.

The first objective is to review, reform and implement existing laws protecting and promoting the rights of Indigenous Peoples. This will be achieved by the Ministry of Federal Affairs and General Administration and local bodies carrying out two activities with assistance from the Ministry of Law, Justice and Parliamentary Affairs, the Indigenous Nationalities Commission, the National Foundation for Development of Indigenous Nationalities, the Provincial Internal Affairs and Law Ministry, the Provincial Social Development Ministry and civil society. The activities are to review or reform existing laws, draft new laws as needed relating to Indigenous Nationalities, and to implement conventions to which Nepal is a party when they protect the rights of Indigenous Nationalities.

The second objective, to protect the history, language, script, culture, heritage, music, historical and religious sites of Indigenous Nationalities, will be achieved through two activities. These are to establish and expand museums of Indigenous Nationalities, and to provide soft loans to promote businesses that use the traditional technology, skills and crafts of Indigenous Nationalities. If the government sincerely implements these plans then Indigenous Peoples could enjoy collective rights, especially self-determination, autonomy and lands rights, and it would help stop genocide, including cultural genocide, and other gross human rights violations and, ultimately, prevent future violent conflicts and internal wars.

## **Community-led steps towards achieving self-determination initiated**

Bottom-up steps towards achieving self-determination with autonomy and self-rule in a meaningful way have been initiated at the community level. These are as follows:

### **Formal recognition of customary self-government system**

Barbardiya Municipality has made an historic decision by formally recognizing Barghar, the customary self-government system of the Tharu. The municipality published “Working guidelines for the management of Barghar custom in Thakurbaba Municipality, 2021” in the Local Ga-

zette of Thakurbaba Municipality on 20 July. It listed the customary process of *Jutyala (KhojniBojni)* (“Assemble (SearchKnow)”) and customary self-selection of its customary leaders, including its chief *BadkaBargharya*, assistant *Bargahr* (the Chief), *Likhandara* (Documentation official), Guruba (spiritual leader), *Kesuaka* (assistant of the spiritual leader), *Chirakya* (helper to the spiritual leader), *Chaukidar* (security guard), and household representatives together with their roles and responsibilities, rights and duties. Barbardiya Municipality has shown the way and it should be expected that other rural municipalities, and the Metropolitan City, will follow suit and provide legal recognition to the customary self-government systems of the Indigenous Peoples. It is of immense significance that Indigenous Peoples’ customary self-government systems are made visible to non-indigenous people and to the government both at the federal and provincial levels.

### **Declaration of cultural autonomy**

Kirtipur Municipality has enacted the Act for Management of the Kirtipur City Cultural Protected Area, 2021, which was published on 7 July in the Local Gazette.<sup>16</sup> According to its preamble, the law is based on ILO Convention No. 169, the UNDRIP and the constitutional and legal rights of the local government, as well as the community members’ aspirations for protection of their cultural heritage, *Guthi* (customary self-government system), *Nepal Bhasa* mother tongue, ancient old settlements, and lands relating to culture, and development of cultural life. The law has recognized five cultural protection area sub-councils to discuss, study, research, collect data, coordinate and make recommendations to the council. It is their strategic move towards realizing Newa autonomous state that was declared in 2009<sup>17</sup> and, ultimately, Newa territorial autonomous state.

### **Bottom-up land rights movements**

In 2021, the Yakthung (Limbu) Indigenous Peoples organized a two-day conference and meeting of 320 representatives from the 115 *Sayang* (clans) at Chakalitar in Terhathum in the eastern Hills, the historic place where their elders met 43 years ago to protest at the land grabbing by the government of the time without their consent.<sup>18</sup> The conference

agreed that the Yakthung nation and Gorkhali state had a treaty to respect their autonomy and self-rule with continuation of their collective ways of life and full control over their lands, territories and resources from generation to generation, and that they had permanent sovereignty thereof. They agreed, most importantly, to collect further evidence of their land rights and file a case at the international court for restitution of their lands, territories and resources, and to begin a community level land rights movement by documenting changes made to the original names of places, rivers, mountains, cultural heritage, sacred graveyards, etc., and reclaiming them. They also agreed to revive their customary self-government systems and institutions.

## **European Investment Bank (EIB) on Free, Prior and Informed Consent (FPIC) and other Indigenous Peoples' rights in its development loans and assistance**

The EIB made its conclusion report public on 16 March 2021.<sup>19</sup> In a press release of 23 March entitled “Nepal Indigenous communities vindicated in rare European human rights victory”,<sup>20</sup> the FPIC & Rights Forum, LAHURNIP, and Accountability Counsel stated that: “Indigenous Peoples and local communities in Nepal are celebrating a hard-fought victory following a landmark investigation<sup>21</sup> [...], which found that the European Investment Bank (EIB) must take urgent steps to uphold their right to Free, Prior, and Informed Consent (FPIC) in its funding of the hydro-power sector.” It further stated that: “The EIB Complaints Mechanism has recommended that ‘major lenders and development partners in the energy sector coordinate efforts and –with the help of experts– work closely [...] to develop a tailor-made approach for meeting FPIC requirements in energy projects in Nepal.’” The Indigenous Peoples affected take it as a positive sign but no adequate steps have been taken by the international investors or the government to obtain their FPIC. They are highly appreciative of the support they have received from IWGIA, AIPP, the Accountability Counsel and LAHURNIP in these efforts.



## **World Bank considering a case regarding the Nepal-India electricity transmission and trade project and its additional financing**

The Inspection Panel of the World Bank received a letter on 17 November 2021 signed by 51 community members designating an advocate from the LAHURNIP to represent them. The Panel registered the Request on 30 November 2021. The Bank's management must respond to the Panel by 14 January 2022 and will then "make a recommendation to the Board of Executive Directors on whether the matter should be investigated".<sup>22</sup> Both the affected Indigenous Peoples and LAHURNIP expect the Panel to recommend that the Nepalese government obtain Indigenous Peoples' FPIC and comply with their rights in line with the UNDRIP and ILO Convention No. 169.

## **Majhi protest against the Sunkoshi-2 Hydropower Project**

Indigenous Majhi communities from Ramechhap and Sindhuli districts have demanded the cancellation of Sunkoshi-2 Hydropower Project because their right to Free, Prior and Informed Consent (FPIC) has been violated, and because the project stands in the way of the creation of an autonomous Majhi protected region. "The Project will reportedly cause inundation up to at least 53 kms from the dam in an area of 4,500 hectares, submerge majority of settlements along the banks of Sunkoshi and Tamakoshi rivers in the two districts, and displace around 6,000 households and impact 400,000 people."<sup>23</sup> The Joint Struggle Committee, representing Majhis from various villages of Ramechhap and Sindhuli districts, organized a protest rally on 30 September in Munthali, Ramechhap. The government had arranged a public hearing on the environmental impact assessment in Munthali for 1 August but it was cancelled after a huge protest organized by the affected Majhi community.

## **"Violations in the Name of Conservation"**

Amnesty International (AI) and the Community Self Reliance Centre (CSRC) jointly published a research report entitled 'Violations in the

Name of Conservation: “What Crime Had I Committed by Putting My Feet on the Land that I Own?” on 21 August.<sup>24</sup> AI and the CSRC debunk the myth of Nepal’s international fame for its “success story” in protecting the wildlife and natural environment for decades. They made it clear with evidence collected from the Indigenous communities affected by the Chitwan National Park (CNP) and Bardiya National Park (BNP) that such success has only been possible at the cost of violating the human rights of forest-dependent Indigenous Peoples. The report documents human rights violations that include: “forced evictions; denial of rights to their ancestral lands; unjustified restrictions on the access to the forests and natural resources on which they traditionally rely, amounting to denial of access to food; arbitrary arrests, unlawful killings, detention and torture or other ill-treatment by the Nepal Army and the National Park personnel protecting the conservation areas, and the state’s failure to provide effective remedies to the Indigenous peoples for the many rights violations against them.”<sup>25</sup>

## Congressional hearing

In a written testimony during the US Congressional Hearing on 26 October for the House Committee on Natural Resources Subcommittee on Water, Oceans and Wildlife of the US House of Representatives, Ginette Hemley, Senior Vice-President of Wildlife Conservation World Wildlife Fund - US said:

*WWF’s recent actions in Nepal also demonstrate its determination to leverage its influence with governments to achieve better human rights outcomes. In response to media reports in July 2020 of incidents involving alleged abuses of Chepang Indigenous People by government personnel in the area of Nepal’s Chitwan National Park area, WWF-Nepal (which is overseen by WWF-US) immediately urged senior government officials to investigate. ...WWF-Nepal placed a hold on funding for conservation law enforcement support activities across Chitwan National Park pending evidence of substantial progress in the government investigation. Since then, the Department of Parks and Nepal Army have transferred or suspended the duties of implicated personnel while investigations have been underway.<sup>26</sup>*

## Nepal at COP 26

In a statement at COP 26 in Glasgow, the Prime Minister of Nepal said, “We are engaging with all stakeholders including private sector, indigenous people, disadvantaged communities, women and youth in all our climate actions.”<sup>27</sup> Indigenous experts and activists, however, do not expect Indigenous Peoples to gain any benefit or climate justice from any of the climate actions planned and implemented by the government unless they obtaining Indigenous Peoples’ FPIC and their meaningful participation and representation at all levels of decision-making, in line with the UNDRIP and ILO Convention No. 169.

## Notes and references

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2. Hindu cosmology divides the population into hereditary caste groups ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system and are highly marginalized to this day. (Ed. note)
3. According to the constitution, Bahun, Chetri, Thakuri, Sanyasi and Dasnami caste groups belongs to the Khas Arya caste group.
4. 61 Indigenous Peoples were initially officially recognized in Nepal through 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. Of the initial 61 IPs listed, Manange was dropped, Thinatan, Syangtan and Chitan were merged as Tin Gaunle Thakali and Yakkha was added making it a list of 59 IPs.
5. Women’s Resource Network (Bangladesh); The Center for Indigenous People’s Research and Development, National Indigenous Women’s Federation and National Indigenous Women Forum (Nepal); Alma Grace Barla, Monjib Mochahari and Dr. Khumtiya Debbarma (India) UNHEARD AND UNSEEN: Indigenous Women’s Path to Empowerment and Sustainable Development—Bangladesh, India and Nepal (Volume 1), Baguio City, Philippines: Tebtebba Foundation, 2021, 56 (Table 11). <https://www.tebtebba.org/index.php/resources-menu/publications-menu/books/148-unheard-and-unseen-indigenous-women-s-path-to-empowerment-and-sustainable-development-volume-1>
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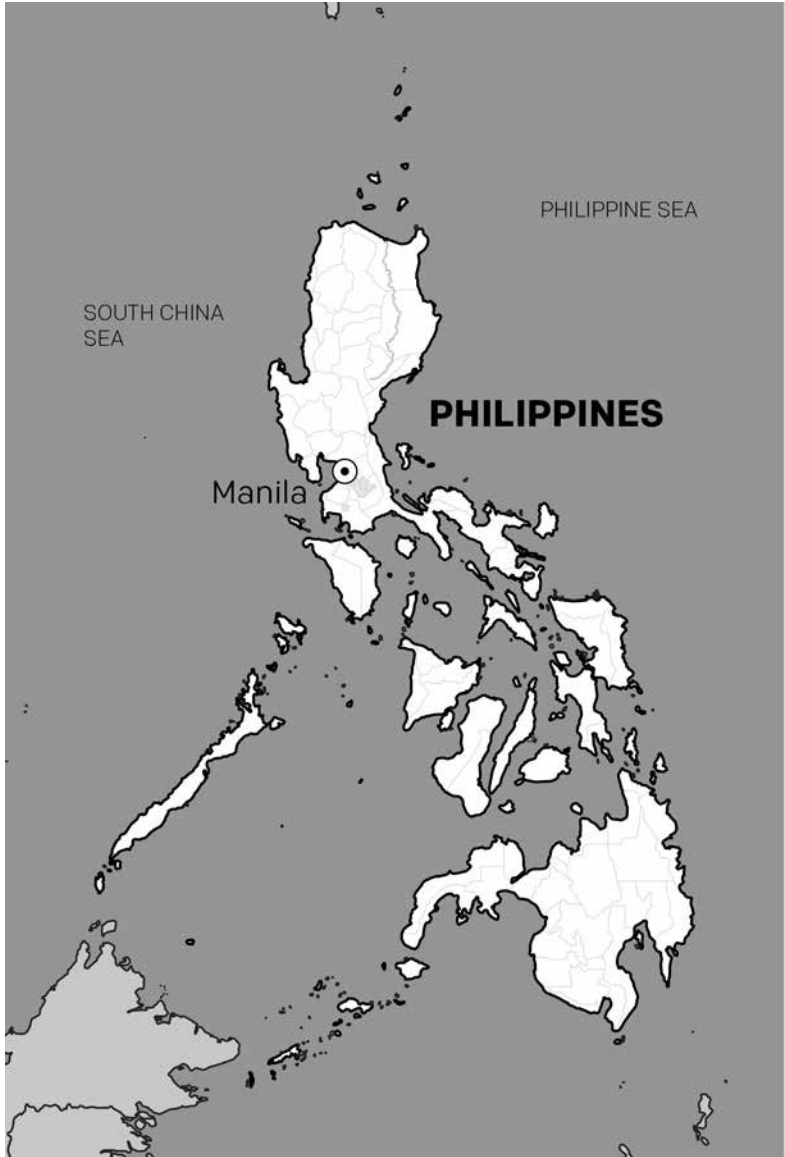
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**Krishna B. Bhattachan** belongs to the Thakali Indigenous Nation. He is one of the founding faculty members and former Head of and recently retired from the Central Department of Sociology and Anthropology at Tribhuvan University in Nepal. He is associated with the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) as an advisor and Indigenous expert. He has published several books and articles on Indigenous issues.



# Philippines



The population census conducted in the Philippines in 2010 for the first time included an ethnicity variable but no official figure for Indigenous Peoples has been released yet. The country's Indigenous population thus continues to be estimated at between 10% and 20% of the national population of 100,981,437, based on the 2015 population census.

The Indigenous groups in the northern mountains of Luzon (Cordillera) are collectively known as Igorot while the groups on the southern island of Mindanao are collectively called Lumad. There are smaller groups collectively known as Mangyan in the island of Mindoro as well as smaller, scattered groups in the Visayas islands and Luzon, including several groups of hunter-gatherers in transition.

Indigenous Peoples in the Philippines have retained much of their traditional, pre-colonial culture, social institutions and livelihood practices. They generally live in geographically isolated areas with a lack of access to basic social services and few opportunities for mainstream economic activities, education or political participation. In contrast, commercially valuable natural resources such as minerals, forests and rivers can be found primarily in their areas, making them continuously vulnerable to development aggression and land grabbing.

The Republic Act 8371, known as the Indigenous Peoples' Rights Act (IPRA), was promulgated in 1997. The law has been lauded for its support for respect of Indigenous Peoples' cultural integrity, right to their lands and right to self-directed development of those lands. More substantial implementation of the law is still being sought, however, apart from there being fundamental criticism of the law itself. The Philippines voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), but the government has not yet ratified ILO Convention 169.



In the final year of President Duterte’s current administration (his term ends in June 2022), substantial change is yet to be seen in terms of Indigenous Peoples’ rights in the Philippines. As reported in *The Indigenous World 2020*<sup>1</sup> and *2021*,<sup>2</sup> attacks against Indigenous human rights defenders and Indigenous Peoples’ organizations escalated over the period, as did the increasing presence of development aggression on Indigenous territories in spite of the pandemic. Similar trends in human rights violations were documented and reported by Indigenous Peoples’ organizations and advocates in 2021. Executive Order No. 70 (December 2018) creating the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC)<sup>3</sup> remains the main driver of these violations.

The situation of Indigenous women in the Philippines in 2021 must be seen within the overall plight of Indigenous Peoples in the country. One major development in Philippine legislation affecting Indigenous Peoples in 2021 was the passage of Executive Order No. 130,<sup>4</sup> which lifts the moratorium on new mining agreements in the country with the aim of bolstering the pandemic-hit economy. With many mineral-rich areas located on Indigenous Peoples’ territories, EO 130 could potentially usher in more human rights disasters alongside environmental ones. A few months after EO 130 was signed, the Philippine government allowed Australian-Canadian mining company OceanaGold to resume gold mining operations in Nueva Vizcaya until 2044, with financial terms and conditions unchanged in spite of reported environmental violations and non-recognition of Indigenous Peoples’ rights.<sup>5</sup> Aside from EO 130, in December 2021 Department of Environment and Natural Resources (DENR) Secretary Roy Cimatu signed Departmental Administrative Order 202140 lifting the 4-year ban on open pit mining for copper, gold, silver and other complex ores.<sup>6</sup>

In December 2021, Indigenous Peoples in the Cordillera faced yet another railroaded Free, Prior and Informed Consent (FPIC) process in the Gened Dam application of the Pan Pacific Renewable Power Philippines Corporation (PPRPPC), where elders opposed to this dam were prevented by local police from participating in the process.<sup>7</sup> In Benguet province, Indigenous Peoples in Mankayan municipality rejected the mineral exploration of Nickel Asia Corporation (NAC) subsidiary Cordillera Exploration Inc. (CEXI) during the consensus-building for the project’s FPIC.<sup>8</sup> And, according to announcements from the Metropolitan Waterworks and Sewerage System (MWSS), excavations for the Kaliwa

Dam were set to commence in December 2021<sup>9</sup> with potentially devastating consequences for the Indigenous communities in the area.

## Increasing attacks on Indigenous Peoples

The infamous “Bloody Sunday” event took place in Southern Tagalog region in the first quarter of 2021, in which at least three progressive leaders were killed and six more arrested in “*tokhang-style*”<sup>10</sup> police raids.<sup>11</sup> These executions are extrajudicial killings under the pretext of “resisting arrest” or “*nanlaban*” (fighting back).<sup>12</sup>

Among the victims killed were two Indigenous Dumagat from Rizal who were members of a Dumagat organization that had been opposing the Laiban Dam for almost two decades as well as, more recently, the Kaliwa Dam. Bloody Sunday and the earlier Tumanduk Massacre<sup>13</sup> were the result of Synchronized Enhanced Managing Police Operations (SEMPO), usually conducted in pursuit of drug-related suspects.<sup>14</sup> Another massacre took place in Surigao del Sur in July when three Indigenous Manobo were massacred by troops from the Philippine Army’s 3rd Special Forces Battalion. Two of the victims were women: Lenie Rivas and 12-year-old Angel Rivas. Karapatan, an organization working for the protection and promotion of human rights in the Philippines, reported that the military had claimed the three were armed rebels who engaged in a firefight with them. Family members and villagers refuted this, however, saying that the three were farmers who had been harvesting abaca hemp when they were killed.<sup>15</sup> Angel was a Grade 6 student of the Lumad school’s Tribal Filipino Program of Surigao del Sur (TRIFPSS) while Rodriguez and Lenie were members of the Lumad organization Malahutayong Pakigbisog Alang sa Sumusunod (MAPASU). The Save our Schools (SOS) Network denied claims made by the soldiers that the three had “fought back”/*nanlaban*. Karapatan-CARAGA region reported that soldiers brought their remains to the military brigade in Lianga where they were presented as members of the armed opposition of the New People’s Army (NPA).<sup>16</sup>

In the same month, Manobo leader Julieta Gomez from CARAGA region was arrested along with development worker Niezelle Velasco.<sup>17</sup> Gomez is the secretary general of KASALO, the regional Indigenous

Peoples' organization in CARAGA region. They were later falsely represented in a press conference as New People's Army leaders.<sup>18</sup>

A total of 24 individuals (including the eight mentioned above) were illegally arrested in 2021, 17 of whom were Tumanduk.

One victory for the Philippine Indigenous Peoples' movement in 2021 was the case of Cordillera Peoples Alliance (CPA) chairperson Windel Bolinget, who was earlier arrested on fabricated murder charges. On 8 March 2021, the Regional Trial Court in Tagum City, Davao del Norte, granted Bolinget's motion for reinvestigation of the fabricated charges. The same court order also granted a recall or withdrawal of the arrest warrant issued against him.<sup>19</sup>

## **Increased attacks on Indigenous women**

Among those arrested was a woman human rights defender, Renalyn Tejero, a Manobo and a paralegal for Karapatan, which is an alliance of individuals, groups and organizations working for the promotion and protection of human rights in the Philippines.<sup>20</sup> Renalyn was a student of Alternative Learning Center for Agricultural and Livelihood Development (ALCADEV), a Lumad school located in Surigao del Sur that is also under constant attack from security agents. Lumad schools have been under attack for allegedly serving as "training centers for New People's Army communist rebels".<sup>21</sup> There were also 15 incidents of forced or fake surrenders in 2021 alone, where the victims are usually residents of a community purported to be a stronghold of the NPA, and who are then forced to clear their names.<sup>22</sup> In an interview, BAI Indigenous Women's Network Spokesperson, Kakay Tolentino, stated that the Indigenous women in prison were in a highly vulnerable situation, especially those in the provincial jails as these are more cramped and have less segregation of male and female detainees.<sup>23</sup>

Staunch Manobo woman chieftain Bai Bibyaon Ligkayan Bigkay decried the harassment and coercion of her relatives, who were allegedly forced to sign affidavits claiming that the tribal leader needed to be rescued from her sanctuary in Manila. The military alleged that Bai Bibyaon had been kidnapped and was being held against her will.<sup>24</sup>

Resolutions passed by the Regional Law Enforcement Coordinat-

ing Committee (RLECC) in the Cordillera were also a cause for alarm, with their direct breaches of human rights.<sup>25</sup> In February this year, advocates and human rights activists sounded the alarm with the RLECC's passage of a resolution encouraging the conduct of *Oplan Tokhang* against "leftist personalities." The measure urges law enforcers, local government and civil society groups to visit the homes of "known members of communist front organizations or CFOs." CFOs (Communist Front Organizations) are almost always legal activist organizations. A few months later, the Cordillera Regional Peace and Order Council (CRPOC) adopted the "*dumanon makitongtong*" (visit and talk) strategy, patterned essentially on the *tokhang*.<sup>26</sup> Many of those who received letters from the local police for a "talk" were Indigenous women activists from Baguio, and even journalists were sounding the alarm over the potential impact of this resolution on press freedom.<sup>27</sup> Previously, the former RLECC chief had sued CPA Secretary General Sarah Dekdeken for libel and, a month later, asked the RLECC to support his plan to file libel charges against CPA Deputy Secretary General Aisah Mariano, although fortunately these did not materialize.<sup>28</sup> He also filed libel charges against staff of the Northern Dispatch, an online alternative media, in 2020.<sup>29</sup> Hearings are ongoing in all libel cases against Dekdeken and the Northern Dispatch staff.

In the first quarter of 2021, community leader Beatrice Belen from the Cordillera was released from prison, having previously been arrested in October 2020.<sup>30</sup> While in jail, Belen was held in the same cell as male detainees until she was moved to a separate space following action by her legal counsel.<sup>31</sup> Belen's community of Ag-agama remains militarized, posing both a risk and threat to the local community itself and to women and children in particular. In November 2021, reports from local Innabuyog members stated that army personnel had been going around Belen's village trying to convince local women to sign documents that would allegedly clear them from activities organized by Innabuyog and CPA.

In an interview, BAI spokesperson Kakay Tolentino stated that the human rights violations against Indigenous women amounted to State-perpetrated violence against women (VAW) as they were the result of development aggression and militarization. "It is because of development aggression and militarization that Indigenous women's

rights to their ancestral land is violated,” she said, adding that many Indigenous women are not only breadwinners alongside their husbands but also perform a major role in the education of their children and in community leadership. Their absence from the community due to State VAW thus deprives not only their families but also their organizations and the communities they serve. “They are not your typical women in the house. Marivic was even a barangay captain and Aileen a barangay councilor,” she continued, referring to Tumanduk leaders Marivic Aguirre and Aileen Catamin who were among those arrested in 2020.<sup>32</sup>

## **Indigenous women, children and COVID-19**

COVID-19 has exacerbated the marginalized situation of Indigenous Peoples in the Philippines, Indigenous women included. As most communities are situated in geographically isolated and disadvantaged areas, access to adequate health services became more difficult during the pandemic, as did access to the correct information needed by Indigenous communities with regard to COVID-19 and vaccination.

Even before the pandemic, Indigenous women were bearing the brunt of maternal healthcare due to the inaccessibility of health services. This situation did not improve during the pandemic, given the restrictions and testing requirements the women needed to pay for. The government’s ban on home-birthing only exacerbated this, with the burden resting on poor women because it is expensive and punitive. Failure to comply with the no-homebirthing policy results in penalties that can be levied on the mother, the traditional birth attendant, the companion during childbirth and the midwife. The child can also be denied registration.<sup>33</sup> For Indigenous women, such a policy is culturally inappropriate. Unfortunately, the policy was not suspended or lifted during the period of the pandemic, during which mobility and access to health services became more problematic. In 2021, Innabuyog and CWEARC (Cordillera Women’s Education Action, Research Center) interviewed a number of women who had given birth during the pandemic in the provinces of Ifugao and Abra. The women admitted that going to hospital for ante-natal checks was expensive, worrisome and made them very anxious for fear of contracting COVID-19. A mother from Ifugao decided to give birth in a provincial hospital in a neighboring province of Quirino where COVID-19

cases were low to minimize her risk of infection. Post-natal vaccination for newborn babies was again anxiety-inducing for the mothers since this required venturing out of the home and into the health centers, putting both mother and child at risk of infection.

Distance learning online was the new method of schooling during the pandemic with mothers, willingly or not, taking on the role of teacher to their children—an additional load when many were already suffering distress due to loss of income and food insecurity.

Tolentino recounted the experience of a Dumagat teacher using online and modular learning who crossed mountains and rivers just to bring the modules to the children. Teaching challenges doubled as the modules needed to be appropriated or translated into the local dialect to facilitate easier learning. “It has been hardest on the children,” said Tolentino, adding that the low literacy level in some Indigenous communities is a serious concern. Tolentino disclosed that one cell phone was donated to a local school in her province, for the shared use of nine pupils, but that they needed to go further up the mountain in the swidden farm to get a stable signal. Under the Save Our Schools (SOS) Network, Tolentino noted that only a few of the displaced Lumad students had moved up to high school in 2021 because of the difficult education set-up, which is also inappropriate for them. SOS is a network of NGOs advocating for children’s right to education.

The Philippine Task Force for Indigenous Peoples’ Rights (TFIP) has reported that Indigenous youth in Southern Tagalog are experiencing bouts of mental health problems because of their inability to cope with modular learning, while unverified reports of suicide have also been noted.<sup>34</sup> The same may be true in other Indigenous areas of the country and access to mental health services is another problem altogether, for both Indigenous women and children.

In the Cordillera region, where many Indigenous women work on the economic frontline as rice and vegetable farmers, they too experienced massive losses due to the COVID-19 response measures of lockdowns and quarantines, without any safety nets. This was exacerbated by the smuggling of cheap but unsafe vegetables from China, resulting in a sudden drop in both price and demand. When prices are depressed, local farmers are forced to dispose of their produce at a loss because they cannot store it for long. Their vegetables have a limited shelf life.

And this shelf life is much shorter than that of the vegetables imported from China. Local carrots, for example, start to wilt after only three days while those from China last up to a month – indicating that these imports have been treated with some kind of preservative such as formalin.<sup>35</sup>

## Rising above the barriers

Tolentino stated that, in spite of the political situation in the Philippines, Indigenous women are persisting in their demands and not backing down. They are active in local dam struggles, particularly regarding the FPIC processes in applications for the construction of the Kaliwa-Kanan Dam in Southern Tagalog and the Gened Dam in the Cordillera. They are able to mobilize and participate in the meetings as long as there are no lockdowns or the meetings are online. Young Indigenous women are at the forefront of the multisectoral network the Lapat Apayao: Movement Against Apayao Dams,<sup>36</sup> alongside their elders, contributing their energy and skills to the campaign against the Gened Dam. Lapat forms part of the Indigenous knowledge systems of the Isnag Indigenous people aimed at protecting and conserving natural resources in the ancestral domain.

With most activities shifting online due to COVID-19, Tolentino said that the use of online applications and Android phones was a barrier to the women's effective participation. "If they did have their children to assist them with the use of phones, their next concern would be to get to a place with stable signal." Tolentino went on to share how BAI had maximized the use of online applications and phone calls to keep in touch with its members during the pandemic and to raise awareness of the plight of Indigenous women. "The students taught their mothers the basics of Zoom so that they can participate in our activities. Phone calls were frequent and scheduled to have enough time to keep in touch with local BAI leaders," she said. An exchange of learning on dams was even possible online among Indigenous Peoples affected by the Gened and Kaliwa dams, organized by the Philippine TFIP.

In Palawan, Indigenous Cuyunon and Tagbanua women managed to continue their rehabilitation efforts to restore the mangrove forests as a natural barrier to typhoons. Busuanga was among the communi-

ties severely hit by Typhoon Haiyan eight years ago. The local Indigenous women function as citizen scientists, involved in the entire process of mangrove rehabilitation with the support of advocates.<sup>37</sup>

Indigenous women were able to participate in national and international engagements despite the challenges. BAI itself organized a series of webinars with local leaders as the speakers, while the Cordillera chapter of Innabuyog was able to co-organize and speak in a dialogue with the office of the UN Special Rapporteur. “We encouraged each other so that we can participate effectively in the different events,” Tolentino said. BAI leaders were also able to participate in the Second World Conference of Indigenous Women (2WCIW). International redress mechanisms were continually optimized, with some Indigenous women leaders participating in UN mechanisms such as the United Nations Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In particular, a written submission of general recommendations on Indigenous women and girls was submitted to the CEDAW by the Asia Indigenous Peoples Pact (AIPP) and the Network of Indigenous Women in Asia (NIWA) in June 2021.<sup>38</sup>

Many online events ranging from webinars to photo opportunities were organized by various women’s and Indigenous women’s organizations and networks for the 16 Days of Activism against Gender-Based Violence in November 2021, leading up to the International Human Rights Day on 10 December. In the Cordillera, women’s groups CWEARC and JaPNet (Women Working for Justice and Peace Network in the Cordillera) organized a tribute to Indigenous women human rights defenders in the region to honor their steadfast commitment to Indigenous Peoples’ rights and social justice, the awardees being mostly women elders and pioneers in the Indigenous women’s movement in the Philippines. At a time of several challenges to the human rights situation in the Philippines, the organizers deemed it vital to highlight the role of Indigenous women in nurturing and defending Indigenous Peoples’ and women’s rights.<sup>39</sup>

All these efforts for and by Indigenous women are safe spaces they create for themselves and which also serve as a mechanism by which to contribute to improving their general state of well-being as women.



It is remarkable that, while experiencing further marginalization during the COVID-19 pandemic as well as State attacks, Indigenous women and their organizations have mobilized together with NGOs and church-based institutions in the distribution of relief, in community pantries and community education on COVID-19.<sup>40</sup>

## Conclusions

The situation of Indigenous women in 2021 is reflective of the State policies that are violating Indigenous Peoples' rights to ancestral lands and their right to defend these. Ever more Indigenous women leaders' human rights are being violated because of development aggression, militarization and State policies that allow this to happen. State-perpetrated VAW is continuing and, while there are several domestic laws for the protection of women and children, there is no separate law or mechanism by which Indigenous women can have their grievances heard. Republic Act 8371 or the Indigenous Peoples' Rights Act of 1997 remains the sole legislative measure for the protection of Indigenous Peoples, and there remain several FPIC issues outstanding in relation to large dam applications on Indigenous territories in Luzon and Southern Tagalog. There is, however, Republic Act 9710 or the Magna Carta of Women, which has specific provisions<sup>41</sup> for the protection of Indigenous women from State-perpetrated VAW and gender-based violence, although this is not adhered to. Overall, Indigenous women in the Philippines are bearing the brunt of COVID-19, being on the economic front-line as food producers, as mothers and, in terms of their general state of well-being, as women.

And yet, despite these challenges, Indigenous women continue to draw strength from each other, their organizations and their communities. This reciprocity is rooted in Indigenous values of collectivity, which have enabled them to survive as Indigenous Peoples and land rights defenders despite the political climate in the country and COVID-19. National elections are looming in the Philippines in 2022—yet another opportunity, hopefully, for Indigenous women to make their voices heard for meaningful change in governance. International mechanisms will remain an important channel for Indigenous Peoples' issues to be heard and for Member States and businesses to comply with their obligations.

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**Abigail Bengwayan-Anongos** is a Bontok-Ibaloi Igorot from the Cordillera, Philippines. She currently coordinates the Indigenous Knowledge Systems and Research Program for the Cordillera Women’s Education Action, Research Center (CWEARC) Inc. and is a member of the Executive Committee of the Cordillera Peoples Alliance (CPA).



# Taiwan



The officially recognized Indigenous population of Taiwan numbers 580,758 people, or 2.48% of the total population.

Sixteen distinct Indigenous Peoples are officially recognized: the Amis (also Pangcah), Atayal (also Tayal), Bunun, Kavalan, Paiwan, Puyuma, Rukai, Saisiyat, Sakizaya, Sediq, Thao, Truku, Tsou, and Tao (also Yamei). In 2014, the Kanakanavu, and Hla'alua were added.

Ten lowland Indigenous Peoples' groups (Pingpu) are not recognized as such by the government and hence are not extended the same rights as the 16 recognized groups and excluded from the Council of Indigenous Peoples (CIP) policies and programmes. The ten unrecognized peoples are: the Babuza, Hoanya, Kaxabu, Ketagalan, Makatao, Papora, Pazeh, Siraya, Taokas and Tavorlong.

The 16 recognized groups enjoy representation at all levels of government, from the parliament to central government's CIP and municipal governments, city and county councillors, and local district and township representatives.

Most of Taiwan's Indigenous Peoples originally lived in the central mountains, along the east coast and in the south. However, nowadays over half of the Indigenous population lives in urban areas of the country.

The main challenges facing Indigenous Peoples in Taiwan are their rapidly disappearing cultures and languages, encroachment onto their traditional land, the denial of Indigenous Peoples' rights, and the exclusion of the ten lowland (Pingpu) Indigenous Peoples.

The Council of Indigenous Peoples is the State agency responsible for Indigenous Peoples. Taiwan has adopted a number of laws designed to protect Indigenous Peoples' rights, including the Constitutional Amendments on Indigenous representation in the Legislative Assembly, protection of language and culture and political participation (2000); the Indigenous Peoples' Basic Act (2005); the Education Act for Indigenous Peoples (2004); the Status Act for Indigenous Peoples (2001); the Regulations regarding Recognition of Indigenous Peoples

(2002); the Name Act (2003), which allows Indigenous Peoples to register their original names in Chinese characters and to annotate them in Romanized script, and the Indigenous Languages Development Act (2017).

Unfortunately, serious discrepancies and contradictions in the legislation, coupled with only partial implementation of these laws, have stymied progress towards self-governance for the Indigenous Peoples of Taiwan.

Since Taiwan is not a member of the United Nations it is not party to UN human rights instruments.

## The impact of climate change

The effects of climate change had a major impact on Taiwan's Indigenous communities in 2020-2021. The dry spell persisted from the latter part of 2020, continuing a lack of rainfall into 2021. The spring rainy season did not bring much precipitation and this resulted in depleted water supply for most of the country apart from the east coast region.

By the start of the planting season for farmers in the spring, most water reservoirs and dams had either dried up or their storage capacity was down to less than 10%. According to the weather bureau officials, it was Taiwan's worst drought in over five decades<sup>1</sup> and had a serious effect on Indigenous farmers in both lowland and mountainous regions during the spring and summer planting seasons. Water supply and irrigation for Indigenous communities was greatly reduced during the first half of the year, and many farmers resorted to diverting water from rivers whose flow was already diminished.<sup>2</sup>

The drought caused the soil to dry up leading to heat stress for plants, hampering the normal growth of crops and resulting in much reduced farming productivity. Indigenous communities had to put in more labour, spend more on bringing in water supplies and increase their use of fertilizers.<sup>3</sup>

These resulted in more economic hardship for Indigenous farmers, degradation of the traditional food production system and reduced ag-

gricultural output, with some farmers leaving their fields fallow under the government's subsidy programme.

Fortunately, the seasonal rainfall pattern had returned by the start of May with substantial rainfall in the following months filling up the reservoirs and dams, and restoring water flow to rivers and streams.<sup>4</sup> The summer typhoons in the Western Pacific also brought more heavy rainfall to replenish the water storage systems and, with a resumption of normal water supply in early August, the government authorities declared the "2021 Drought" over.<sup>5</sup>

## **COVID-19 outbreak in summer**

Throughout most of the past two years, Taiwan has been successful in keeping COVID-19 at bay. However, the country experienced a spike of local infection in the summer of 2021.

Local cluster infections surged to hundreds in May, with the highest level at over 500 testing positive per day in the later part of the month. Health authorities imposed stricter measures, including the wearing of masks outdoors, banning indoor dining, and shutting down entertainment premises.<sup>6</sup>

During a period that lasted for about two months, many businesses were temporarily closed and people were encouraged to work from home, while all religious services were cancelled. The imposed measures were effective as the figures in Taiwan began to gradually decline, to under 100 positive cases per day in late June. The government loosened some restrictions in July, when the daily number of recorded cases had fallen to less than 30.<sup>7</sup>

In December, after a long stretch with no reports of domestic infection, the health authorities announced that Taiwan had achieved "zero COVID-19 status" as all new cases were imported.<sup>8</sup>

As in most other countries, Taiwan's Indigenous people were hit hard by the pandemic. Almost all Indigenous festivals, local gatherings and tourist promotions were suspended during the summer months. This resulted in reduced income, and a shutting down of restaurants and shopping markets in many Indigenous communities.

The changing situation can be illustrated by the east coast region of Hualien County, where Fata'an, Tabalong, Fakong and other Indige-



nous Amis communities are famous for their summer harvest festivals, attracting many domestic and international tourists in past years.

In June, Amis tribal councils and chiefs held emergency meetings because of the COVID-19 outbreak, resulting in the suspension of the harvest festivals scheduled for dates in July and August. Some communities decided to put them off until next year, and others to postpone them to later in the year.<sup>9</sup> One of the largest annual events, the Joint Indigenous Harvest Festival, usually held in August, was deferred and finally held at a sports venue in Hualien City from 19 to 21 November 2021.

Fortunately, Taiwan's success in containing the infection later in the year helped domestic tourism to flourish once again, with economic benefits returning to Indigenous communities.<sup>10</sup>

## Taiwan denies Pingpu Indigenous rights

Taiwan's lowland Indigenous Peoples, known as Pingpu peoples, held a protest rally in front of the Constitutional Court in November. Led by the Indigenous Siraya people of southern Taiwan, they were demanding that the Taiwan government and the justice system restore their original Indigenous status<sup>12</sup> and protect their Indigenous rights.<sup>13</sup>

The large crowd of Siraya people came from over 12 Siraya communities of southern Taiwan, and held banners stating: "Recognize our Indigenous status", "Comply with UN covenants, Restore our Indigenous Rights." They demanded that court judges restore justice and recognize them as Indigenous Peoples.

Tainan Siraya Culture Association chairwoman Uma Talavan (萬淑娟) and other Siraya community leaders were joined by the deputy mayor of Tainan City and other local government officials who were supporting the Pingpu peoples activist movement in their demand to get their official status as Indigenous Peoples restored and for protection of their rights as Indigenous Peoples, similar to those of the other 16 IP groups currently recognized by Taiwan's government.<sup>14</sup>

In the past, Talavan has participated in Taiwan's Indigenous Historical Justice and Transitional Justice Committee<sup>15</sup> where she has talked of the many barriers erected by the CIP and other government agencies that have violated the UN covenants and Indigenous Peoples' rights by removing IP status from the Pingpu peoples. Officials still look down on

the Pingpu peoples with the colonial era's discriminatory attitudes. (*For more information on Pingpu and Kavalan groups' struggle for recognition, see The Indigenous World 2020*).

## Court ruling on hunting and firearm use

In May, the Constitutional Court ruled to lift some hunting restrictions for Indigenous communities but did not overhaul the current legal framework, leaving many of the existing restraints in place.

In the hearing, various stakeholders made their presentations on the case, in which Taiwan's law-enforcement authority, the National Police Agency (NPA), had argued to keep the existing restrictions on firearms and hunting of wildlife.

NPA officials opposed any lifting of restrictions for the general public or for Indigenous communities, apparently due to consideration for public safety, and law and order measures. They cited the dangers that using firearms for hunting could pose to fellow Indigenous community members, as well as to people engaged in hiking and recreational activities in forest and mountain settings.<sup>16</sup>

Indigenous Peoples who are advocating for their right to hunt wildlife and want to loosen most restrictions said they were disappointed with the court decision. However, their defence team did acknowledge one positive outcome – the fact that it was the first time a Taiwanese court had recognized that Indigenous hunting was “a cultural right that should be respected and protected by the state.”<sup>17</sup>

This development is directly linked to the Supreme Court's 2015 ruling on hunting of protected wildlife by Indigenous Bunun man Tama Talum, who was handed a 3.5-year prison term for killing barking deer and the Formosan serow.<sup>18</sup> The case had since then been challenged and had led to debates over the Indigenous right to hunt wild animals. Talum and Indigenous activists have been striving to uphold their Indigenous rights by filing for a constitutional interpretation to review the hunting regulations, resulting in the ruling in May.

In May, Tama Talum received a presidential pardon, thereby voiding the earlier guilty conviction and lifting the rest of his sentence. The presidential pardon carried significant weight and sent a strong message to society that the Taiwan government has made progress in promoting

historical and transitional justice for Indigenous Peoples, according to Presidential Office spokeswoman Kolas Yokata, an Amis journalist who had previously served as an Indigenous legislator.<sup>19</sup>

“The Constitution clearly supports the values of a multiethnic and multicultural society, guaranteeing Indigenous Peoples the right to express their culture in the form of hunting,” she said.

## **Austronesian Forum**

In December, Indigenous delegates from ten countries, including former Palau President Tommy E. Remengesau, gathered for the “Austronesian Forum”, held in Taipei City. Two other member nations joined the sessions through videoconferencing links. For the first time, top officials of the AIT (American Institute in Taiwan, the official US diplomatic presence in Taiwan), participated in the Forum to demonstrate US support, with talks of becoming an observer member in the future.

Launched by the then Democratic Progressive Party (DPP) government in 2002, the Austronesian Forum is an important platform for international cooperation between Taiwan’s Indigenous Peoples and the CIP and other Austronesian peoples.

The event was hosted by the CIP, with its main themes on reconciling traditional Austronesian systems of leadership with contemporary politics, and on how to promote international peace while facilitating exchanges and cooperation between Austronesian peoples in the Indo-Pacific region.<sup>20</sup>

CIP Minister Icyang Parod acted as the host for the Forum, and also for the Executive Council Meeting, under which Canada, Australia and Papua New Guinea had representatives taking part for the first time.

Taiwan President Tsai Ing-wen welcomed the delegates with her opening address, affirming that Taiwan will work with fellow Austronesians and other countries in the Indo-Pacific region to utilize the Austronesian Forum as a platform to facilitate meaningful exchanges and cooperation, and to maintain the dynamism of Austronesian communities in order to spur on sustainable development across the region.<sup>21</sup>

The next Austronesian Forum is scheduled to be held in the Marshall Islands, while the “Austronesian young talent cultivation programme” will take place in Palau in March 2022.

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**Jason Pan Adawai** is a journalist and director of the Indigenous rights activist organization, TARA-Ping Pu, and former executive council member of the Asia Indigenous Peoples Pact (AIPP). Jason is an Indigenous Pazeh (one of the lowland Pingpu groups) from Liyutan village, Miaoli County.



# Thailand



The Indigenous Peoples of Thailand live mainly in three geographical regions of the country: Indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south (Mani people); small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country (previously known by the derogatory term “Chao-Khao,” or “hill tribes”). Nine so-called “hill tribes” are officially recognized: the Hmong, Karen, Lisu, Mien, Akha, Lahu, Lua, Thin and Khamu.<sup>1</sup>

The estimated Indigenous population in Thailand is around 6.1 million people, which accounts for 9.68% of the total population.<sup>2</sup> According to the Department of Social Development and Welfare (2002), the total officially recognized population “hill-tribe” numbers 925,825 distributed across 20 provinces in the north and west of the country. There are still no figures available for the Indigenous groups in the south and north-east. When national boundaries in South-East Asia were drawn during the colonial era and in the wake of decolonization, many Indigenous Peoples living in remote highlands and forests were divided. For example, you can find Lua and Karen people in both Thailand and Myanmar, and Akha people in Laos, Myanmar, south-west China and Thailand.

Thailand is a 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 (UDHR). It voted in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but does not officially recognize the existence of Indigenous Peoples in the country. The 2016 Constitution section 70 refers to “Ethnic groups.”

In 2010, the Thai government passed two cabinet resolutions to restore the traditional livelihoods of the Chao Ley<sup>3</sup> and Karen, on 2 June and 3 August respectively.

## The role and situation of Indigenous women

Indigenous women have different roles and responsibilities in Indigenous communities. They are recognized as family caregivers, traditional seed keepers, and transmitters of traditional knowledge to young people. They nonetheless do not have equal rights with men in some respects, including in decision-making according to customary law. Traditional governance systems are typically for men. The traditional patriarchal system and mentality still prevail in the relationship between Indigenous men and women.

Over the years, perceptions as to who holds power have been changing significantly. Many Indigenous women are becoming community leaders, for example Naw-er-ri Thung Muangthong and Mue-naw Preuksaphan. Naw-er-ri Thung Muangthong is Karen. She is from Huay E-kang, Mae Win sub-district, Mae Wang district, Chiang Mai province. In 1996, she was the leader of her village women's group, which trained women on family savings, teamwork building, and group management. Her work was recognized and accepted in the community. She then moved out and joined the Assembly of the Poor demanding land and community forest rights to the national park. She later decided to participate in local politics and became a representative of the Local Administrative Organization (LAO). She is now a village headman, a prominent leader and actively engaged member of the Indigenous Women's Network in Thailand (IWNT).<sup>4</sup>

Mue-naw or Pinnapha Preuksaphan is also Karen. She was born in a small village in Kaeng Krachan, Phetchaburi province. Her family later moved to Padeng, Phetchaburi province. She then married Phorachee Rakchongcharoen, or "Billy" who has been missing since 17 April 2014 after being detained by a national park officer. The officer claims he released Billy later that same day but no one has seen him since.<sup>5</sup> With support from the Lawyer Association, Mue-naw took a legal case against the national park officers, demanding justice for her husband and advocating for a law to prevent further cases of forced disappearance and torture by State officers. Billy was declared dead after the police found a piece of his bone in an oil drum dumped in the reservoir under the suspension bridge in Kaeng Krachan. The case has not yet been resolved as there is not enough evidence to bring the perpetrators to justice.



### **The Indigenous Women’s Network in Thailand**

IWNT was founded in 1996 to provide a gender perspective to development activities affecting Indigenous Peoples in Thailand. In 2011, it became established as an independent organization working towards improving the lives of Indigenous women in the country. It has worked with groups or members from the Karen, Lisu, Hmong, Lahu, Akha, Dara’ang, Taiyai, Lua, Kachin, and Mien Indigenous groups. Its main aims are to:

- Advance Indigenous women’s rights as women and Indigenous Peoples;
- Promote national and international instruments for women’s protection;
- Strengthen Indigenous women’s participation in local government, the natural resource management sector and other decision-making bodies; and
- Acknowledge and support Indigenous women’s traditional knowledge.

IWNT and its partner organization, Manushya Foundation, released a report entitled “Raising Our Voices to Save Our Future” on the human rights situation of Indigenous women in Thailand. The report presents some key challenges facing the human rights of Indigenous women in Thailand in the form of case studies.<sup>6</sup> The challenges still remain in 2021, and they include:

1. Indigenous women’s difficulties in accessing citizenship, a basic human right everyone deserves. Without citizenship, they cannot access government welfare programmes and are restricted from freely moving or travelling outside a designated area. Although the Thai government has made a few improvements aimed at changing this in the form of relevant policy and legal changes, it is not enough. There are around 756,907 people who have not yet received their citizenship.<sup>7</sup> Of these, around 2-300,000 people are Indigenous people.
2. Discrimination faced by Indigenous women in accessing healthcare services: Indigenous women face challenges in relation to the right to health in terms of its availability, acces-

sibility, acceptability, and quality. There is a lack of medical facilities in Indigenous communities and travel costs to reach healthcare facilities are excessive, plus there is a lack of information on healthcare services, and they suffer discrimination due to their language and ethnicity at the hands of medical staff. There is also a failure to acknowledge Indigenous Peoples' customary medicines and health systems. Lastly, the quality of services and resources is poor for the particular health challenges Indigenous women face.

3. Indigenous women have always been on the frontline defending their ancestral lands. The study highlights a case from the south of Thailand. Indigenous women face challenges to their rights to consultation and Free, Prior and Informed Consent in decisions affecting them. Chao Lay Indigenous communities are facing troubling concerns at the hands of land buyers, specifically due to real estate and tourism. Indigenous communities are denied the right to inhabit and use their own lands, take care of their resources, or participate in decision-making on matters that directly affect them. Due to the lack of any official title to their lands, which come from the belief that land cannot be possessed or controlled by individuals, Indigenous communities have been exploited and have not only lost their lands and resources but also face prohibitive access to constructive solutions that might resolve the suffering they have had to endure.<sup>8</sup>

## **Kaeng Krachan Forest Complex (KKFC) listed as a new Natural World Heritage site**

KKFC was listed as a new Natural World Heritage site by the World Heritage Committee (WHC) on 26 July 2021<sup>9</sup> after six years of efforts to obtain this recognition.

The government tried to convince the WHC members that significant progress has been made to preserve the human rights of a Karen community that calls the forest complex its home.

The majority of WHC members voted to support the Kaeng Krachan Forest Complex nomination for world heritage listing,<sup>10</sup> despite strong opposition from Indigenous Peoples and human rights organiza-

tions. The International Union for Conservation of Nature (IUCN), as the WHC’s advisory body, also concluded in its evaluation of the KKFC nomination for 2020-2021 that there was some overall progress. However, concerns raised by local communities regarding human rights issues within the site had still not been resolved. IUCN therefore recommended that inscription of the site be deferred until, among other issues, the Indigenous Karen communities had provided their consent and had their concerns resolved.<sup>11</sup>

Prior to its adoption, the Special Rapporteur on the rights of indigenous peoples, Francisco Calí Tzay, expressed concern that: “We have raised concerns repeatedly with the Government of Thailand and the UNESCO World Heritage Committee since 2019 and now it is really time to ensure that they step up to their obligations to protect Indigenous Peoples.”

“We are particularly concerned that the UNESCO World Heritage Committee has adopted commitments towards Indigenous Peoples on paper but, in practice, does not have working methods that allow Indigenous Peoples to participate effectively and have their voices heard in the nomination process.”

“We call on all 21 States that form part of the World Heritage Committee to assume their responsibility to respect and protect the rights of Indigenous Peoples in nominations for heritage status. The decision on Kaeng Krachan must be deferred until the concerns have been fully addressed by the Thai government and independent monitors have been given access to the park.” He also reiterated his willingness to undertake an official country visit to Thailand and visit the national park to assess the situation.<sup>12</sup>

This issue is of concern for Indigenous people in Thailand, and the Network of Indigenous Peoples of Thailand (NIPT) noted in a statement (on 27 July 2021)<sup>13</sup> that:

*The registration of the Kaeng Krachan Forest Complex of Thailand as a World Heritage site is a source of pride by all residents of the Thai nation. However, the Network of Indigenous Peoples of Thailand is unable to join in celebration for several reasons: first, the process of consideration failed to follow the UNESCO Operational Guidelines for such consideration in their entirety, especially paragraph 123, which specifies that if there are Indigenous or other communities resident there,*

*those inhabitants must be consulted through means of “Free, Prior and Informed Consent” prior to registration. Second, this neglect of the recommendation of the International Union for Conservation of Nature [IUCN] and the UN Special Rapporteur on the Rights of Indigenous Peoples who raised the problem of abuse of human rights and the fate of the Karen communities living in the Kaeng Krachan Forest area.*

The Network of Indigenous Peoples of Thailand requested the following:

1. Proceed with sincerity to enact solutions to the problems faced by our Karen brothers and sisters in the Kaeng Krachan Forest area, particularly the issue of farmlands, using a genuine participatory process in line with the lifestyle and customs of the Karen, and existing mechanisms of sub-committees or new mechanisms in an efficient and timely manner. These methods should respond to the needs of the local residents currently impacted in accordance with the resolution of the World Heritage Committee.
2. Dismiss the court cases against the Bang Kloi villagers citing encroachment and forest destruction, because the Karen only farmed the land to provide for their livelihood according to their traditional lifestyle and customs on the lands of their ancestors.
3. Stop all forms of intimidation of the human rights defenders assisting the villagers in the Kaeng Krachan Forest area.
4. Heed the voices of the villagers and create space for their joint participation in the management of the World Heritage site located on the lands and spirits of their Karen ancestors at both policy and practice levels.

## **Progress in draft laws promoting and protecting the rights of Indigenous Peoples**

Five draft laws promoting and protecting the rights of ethnic groups and Indigenous Peoples were finalized in 2021. Their status is as follows:

- The draft law on the Council of Indigenous Peoples in Thailand B.E.<sup>14</sup> was submitted to the House of Representatives for consideration. This was carried out under Section 133 (3) of the 2017 Thai Constitution which states that “persons having the right to vote of not less than ten thousand in number [can] submit a petition to introduce a bill under Chapter III Rights and Liberties of the Thai People or Chapter V Duties of the State and in accordance with the law on the public submission of a bill.” This marks the first time that Indigenous Peoples have had the opportunity to draft and present a law by themselves. The draft law was officially tabled on the agenda of the first meeting of the House of Representatives in 2022.
- The draft law on the Promotion and Protection of Ethnic Groups prepared by the Kaokrai party and the Parliamentary Standing Committee was finalized and submitted to Parliament for consideration. This draft is considered to be a law that requires a government budget for implementation. It therefore requires the Prime Minister’s endorsement before it can be included on the official agenda for consideration by the House of Representatives.
- The draft law on the Promotion and Preservation of Ethnic Groups’ Livelihoods prepared by the Sirindhorn Anthropology Centre (SAC) was finalized and submitted to the Ministry of Culture for review before sending to the cabinet for consideration. This draft is considered a government draft and is scheduled for implementation by 2023.
- Finally, a draft law on the promotion and preservation of ethnic groups and Indigenous Peoples’ livelihoods. This was submitted to Parliament for consideration. It is also a draft law that requires a government budget for implementation, as well as prior endorsement from the Prime Minister before being tabled to the cabinet for consideration.

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**Kittisak Rattanakrajangsri** is a Mien from the north of Thailand. He has worked with Indigenous communities and organizations since 1989. He is currently Executive Director of the Indigenous Peoples' Foundation for Education and Environment (IPF) based in Chiang Mai, Thailand.



# Vietnam



As a multi-ethnic country, Vietnam has 54 recognised ethnic groups, 53 of which are ethnic minorities (EMs). These groups comprise an estimated 14.1 million people or around 14.7% of the country's total population of some 96 million. Each EM group has its own distinct language, culture and traditions. The term "ethnic minorities" is often used interchangeably with "Indigenous Peoples" by international agencies working in Vietnam.

All EMs have Vietnamese citizenship and Vietnam's constitution recognises that all people have equal rights. There is a higher proportion of peoples living in poverty among EM communities. Multidimensional poverty rates in the Northern Mountains and Central Highlands regions, where the majority of EMs live, is more than double the national average. The proportion of people without education certificates in EM groups is twice that of the Kinh and Hoa (Chinese-Vietnamese) peoples. In addition, the gaps in income and expenditure between the EMs and Kinh and Hoa people have widened over recent years.<sup>1</sup>

Vietnam is a member of seven of the nine core international human rights instruments and continues to consider the possibility of acceding to the International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). Vietnam has not ratified ILO Convention 169 and, although Vietnam voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), it does not recognise EMs as Indigenous Peoples.

## The situation of ethnic minority women in Vietnam

**2**021 saw the release of two key reports highlighting the situation of women in Vietnam, including one with a special focus on the situation of Indigenous women.

In August, in collaboration with the Institute of Labour Science and Social Affairs (ILSSA) and the Committee on Ethnic Minority Affairs



(CEMA), UN Women published a report entitled *Figures on Ethnic Minority Women and Men in Viet Nam 2015-2019*.<sup>2</sup>

The book presents gender statistics by topic: (i) Population; (ii) Access to infrastructure and assets; (iii) Employment and income; (iv) Education and training; (v) Culture and society; (vi) Health and sanitation; and (vii) Ethnic minority cadres and civil servants. It aggregates and analyses data from the findings of the *Survey on the 53 ethnic Minorities in 2015 and 2019, the 2019 Viet Nam Population and Housing Census*,<sup>3</sup> the *Viet Nam Household Living Standards Survey 2018*<sup>4</sup> (VHLSS 2018) and the *Labour Force Survey 2019*<sup>5</sup> (LFS 2019).

The report shows outstanding achievements in gender equality in EM areas and mountainous areas. Among these achievements is an overall decrease in child marriage rate among EMs, a massive increase in the proportion of households with Internet connection, an almost doubling of Indigenous households' incomes between 2014 and 2018, increased school attendance and 93.5% of EMs benefitting from health insurance, with no difference between men and women.

At the same time, the data presented in the publication highlights persistent gender disparities within and between EM groups and the Kinh people in almost all socio-economic domains. It shows that, in ethnic minority communities, women and girls are often the most disadvantaged in terms of their access to opportunities and resources because social norms assign them an inferior status, which is primarily confined to childbirth and unpaid household activities and duties. Multiple and intersecting forms of discrimination on the basis of both gender and ethnicity exert a massive influence.

While the rate of child marriage and inbreeding has decreased in some groups, there has been a worrying increase in others. And while the proportion of EM women aged 10-49 giving birth at a medical facility reached an all-time high of 86.4%, it is still significantly lower than that among Kinh women, for whom it is 99%.

The work situation of EM female workers is less stable than that of EM male workers and Kinh female workers; they are more likely to be engaged in illegal jobs abroad and they are more likely to fall victim to human trafficking. EM women are more disadvantaged than EM men in terms of accessing official credits to develop livelihoods and production-business-service activities.

Organisations behind the publication hope that it will serve to inform the decision-makers as they design intervention policies and programmes to ensure EM women are not left behind in the country's sustainable development process.

A more generic and comprehensive first *Country Gender Equality Profile- Viet Nam* was released in October.<sup>6</sup> The report concludes that, despite progress in narrowing the gender gap, Vietnam still faces multiple challenges due to deep-rooted gender stereotypes and a “gendered” economy.

The report highlights persistent gaps including, among others, a widening sex ratio at birth due to the preference for sons; stereotypes regarding gender-appropriate fields of study and occupations; unprotected and low paid employment among women; bias against women in leadership; domestic violence; and insufficient support services. The report also highlights lower school enrolment rates among EM girls compared to the Kinh (majority), that EM women are more likely to be the victims of human trafficking to China, and that they are especially marginalised in decision-making processes when it comes to agricultural production.

Among the emerging concerns identified by the report are women's rebound and recovery from COVID-19 with regard to workforce participation and business; women's access to skills, qualifications and jobs in an increasingly digitalised economy; gender wage and pension gaps; managing the restructuring of the agricultural sector and transition to new income opportunities for women; and the poor involvement of women in planning and decision-making in relation to climate change resilience. The report is also urging policymakers and practitioners to consider how greater inequalities persist for certain groups of women and girls, including ethnic minority groups, and suggests that analysis of the needs and barriers faced by these groups must be integrated into policy and programme responses.

## **National Strategy on Gender Equality**

In March, the government adopted the National Strategy on Gender Equality for the 2021-2030 period.<sup>7</sup> The new strategy replaced the 2010-2020 version which, the government concluded, had achieved its goals.

The strategy aims to foster Vietnam's gender equality, including raising the population's awareness of gender and gender equality issues, for example through incorporating these topics into the school curriculum. Special priority is given to encouraging women's entrepreneurship. The strategy also sets specific goals to address the issue of domestic and gender-based violence, the hugely gendered sex ratio differential at birth, the time spent by women doing unpaid domestic work, and the lower literacy rate among ethnic minority women compared to the rest of the population, etc.

Since the strategy's approval in March, the government has been executing new policies and initiatives to foster its implementation. For example, in a drive to make national laws and law enforcement gender sensitive, Prime Minister Pham Minh Chinh decreed that, by 2030, all village codes and conventions – the code of ethics developed by the community, which has long played an important role in managing social relations in at community level in Vietnam – would have to be amended to reflect principles of gender equality.<sup>8</sup>

## **Target programme on socio-economic development for the mountainous and ethnic minority areas**

In October, Deputy Prime Minister Pham Binh Minh signed a decision approving the national target programme on socio-economic development for the mountainous and EM areas for the 2021-2030 period. The overall objective is to "exploit the potential and advantages of ethnic minority and mountainous areas, promote economic development, ensure social security, and put in place rapid and sustainable poverty reduction."<sup>9</sup> For the first time, the programme includes a special allocation for EM women.

In 2021, the Committee on Ethnic Minority Affairs drew up a capital allocation plan for the Target Programme for 2021-2030.<sup>10</sup> For the 2021-2025 period, the allocation will be over 2.38 trillion VND (104 million USD) and for the 2026-2030 period over 1.35 trillion VND (59 million USD).

Also in 2021, the Prime Minister approved a list of EMs facing multiple and specific difficulties for the period 2021-2025. The list includes

32 minorities facing many difficulties and 14 with specific difficulties.<sup>11</sup> EMs facing many difficulties are ethnic groups meeting one of the following criteria: a poverty rate at least 1.5 times than the average poverty rate among the 53 EMs; a proportion of people aged 15 years and older and unable to read or write in Vietnamese that is 1.5 times higher than the average rate among the 53 EMs; or a mortality rate among children under 1 year old that is 1.5 times higher than the general average among the 53 EMs.

EMs with specific difficulties are those who live stably in communities in area III communes and villages with special difficulties in EM areas and mountainous areas according to the provisions of Decision No. 33/2020/QĐ-TTg dated 12 November 2020<sup>12</sup> of the Prime Minister, and whose population is less than 10,000 people.

Inclusion on the list allows EMs to enjoy preferential treatment when it comes to accessing development programmes and public services.

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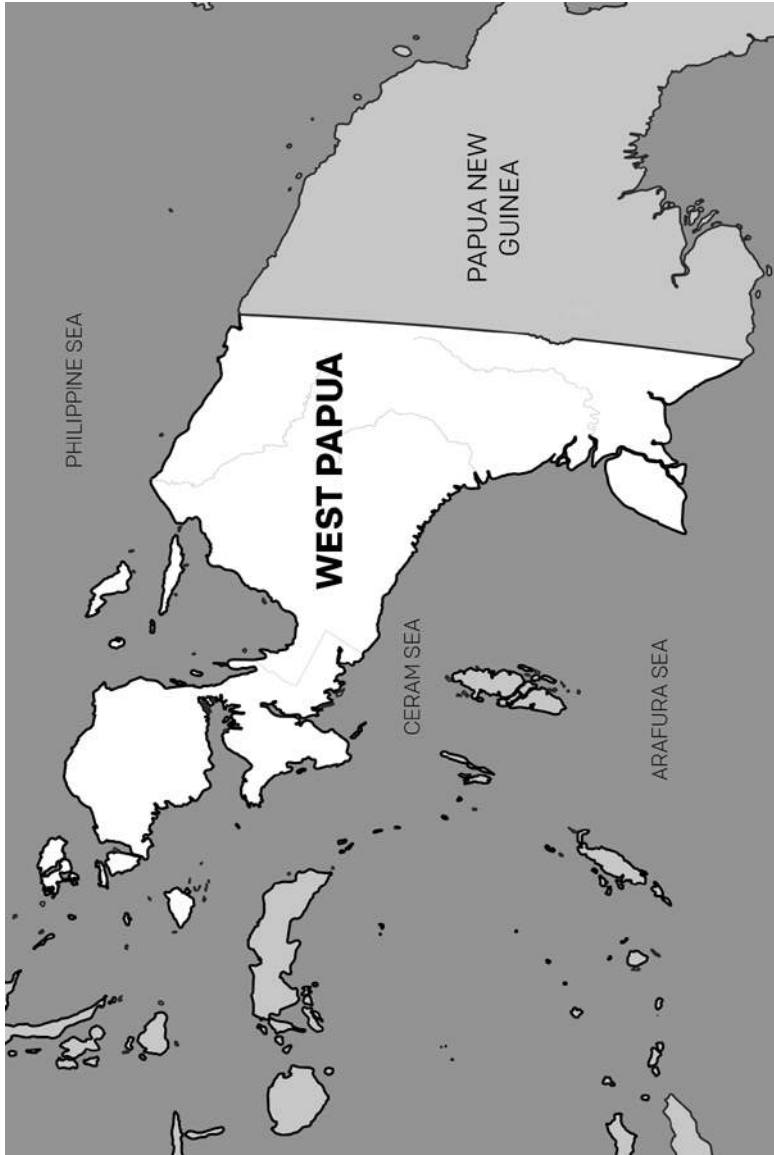
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**Lương Thị Trường** is the director of the Vietnamese NGO Centre for Sustainable Development in Mountainous Areas (CSDM) and Coordinator of the Vietnam Indigenous Knowledge Network (VTIK). She belongs to the Thai ethnic minority in Vietnam.



# West Papua



West Papua covers the western part of the island of New Guinea and comprises the two Indonesian provinces of Papua and West Papua (Papua Barat). It has a population of 4.378 million people split across two provinces, with 3.5 million in Papua province and 878,000 in West Papua province. More than 50% of the population in both provinces are migrants who came from other parts of Indonesia through the government-sponsored transmigration program between the 1970s and early 2000s.

West Papua has the most diverse range of cultures and languages in Indonesia. While Bahasa Indonesia is the official language spoken now, there are more than 250 tribal languages spoken by Indigenous Papuans today. West Papua is divided into seven distinct customary territories: Mamberamo Tabi (Mamta), Saireri, Mee Pago, La Pago and Ha Anim in Papua province and Domberai and Bomberai in West Papua province.

Since Indonesia took over control of the region from the Netherlands in 1969, West Papuans have continued to seek independence from Indonesia. In 2001, the Indonesian government issued a Special Autonomy Law for Papua, formerly called Irian Jaya, after which the government forcibly divided the Indonesian-controlled part of the island into Papua and West Papua provinces.

## West Papuan women

**A** patriarchal culture is strong among the Indigenous communities of West Papua and Indigenous women's rights are limited. In most Indigenous communities in Papua, women are seen as subordinate to men.<sup>1</sup> Men are dominant in decision-making, while women's role is mostly limited to taking care of the household, raising children, maintaining gardens and harvesting products, as well as collecting firewood.<sup>2</sup>

Although this situation is found in both the lowlands and mountains, there are some variations among the communities in terms of the subordination of women.

In some villages in Yahukimo regency, women are not allowed to speak in community forums. Even when worshipping in church, they are prohibited from playing a role and are separated from men.<sup>3</sup> At the same time, however, in the coastal part of north Papua, women can become heads of households and even community or religious leaders, or judges.<sup>4</sup>

The limited participation of Papuan women in local politics and administration is due to this patriarchal structure. While the Indonesian constitution stipulates that women's representation in legislatures should aim to be 30%, this has never been achieved in Papua. For example, of the 55 elected members of the Papuan provincial legislature, currently only eight are women.<sup>5</sup> In West Papua province the figure is seven women out of 45 elected members.<sup>6</sup>

A much better situation can be observed in the Papuan People's Assembly (MRP), a culturally representative body of Indigenous Papuans formed as a part of the Special Autonomy process, where women's participation and representation is guaranteed by the Special Autonomy Law.<sup>7</sup>

## **Economic marginalization of Indigenous Papuan women**

Papuan women are passing down Indigenous knowledge of resource management, forest conservation, agriculture and livelihoods from generation to generation. Despite this important role, however, recognition of their vital economic contribution is limited.<sup>8</sup>

In recent years, women in various parts of West Papua, especially in the Central Highlands, have been reporting reduced access to natural resources and land, gardens and forests.<sup>9</sup> Loss of access to land occurs as a result of violent conflict, State land-use policies, adverse social norms experienced by women after violent incidents, or a combination of these.<sup>10</sup>

Women play a key role in Papuan traditional markets. Unlike migrant women, however, who normally sell a variety of products, including processed food, Papuan women tend to specialize in small-scale trading, selling bitter nut, vegetables and tubers for example. Their involvement in and adaptation to the cash economy often presents chal-



lenges, not least due to their low level of formal education: they have difficulty accessing established markets and competing with traders selling processed food<sup>11</sup> as these have often been monopolized by non-Papuans,<sup>12</sup> and face challenges accessing cheap credit and using the banking system;<sup>13</sup> thus barely being able to compete with traders.

## **Violence against Indigenous women**

A comprehensive study of the situation of Indigenous women in Papua revealed that more than 26% of respondents had experienced a state of violence.<sup>14</sup> Most of the violations occurred during military operations against the Free Papua Movement (OPM) in the central mountains. However, there has still not been a single case of such violence against women perpetrated by the security forces brought to justice through the courts.

In the past few years, the protracted armed conflict between the Indonesian security forces and the West Papua National Liberation Army (TPNPB) in Nduga and Intan Jaya has caused displacements. Sexual violence is one of the methods used by the Indonesian security forces to terrorize Indigenous people and force them to leave their homes and lands.<sup>15</sup>

In Nduga and Intan Jaya regencies, 206 mothers and children died between October 2015 and February 2021 as a result of the conflict between the government security forces and the TPNPB.<sup>16</sup>

Meanwhile in another region –Wamena–, as of May 2021, 620 IDPs, including women and children in Wamena had died of hunger and other diseases.<sup>17</sup>

Away from their land and gardens, internally displaced persons (IDPs) struggle to meet their basic needs, including access to health, access to livelihoods and freedom from fear.<sup>18</sup>

Sexual violence perpetrated against Indigenous women in Papua was reported on a number of occasions throughout the year, including cases involving minors.<sup>19</sup> Among the perpetrators were one police instructor and five local government officials. In all cases the victims' families reported the crime to the police and Komnas Perempuan Indonesia (National Commission on Violence Against Women). While some of the victims' families and lawyers have been receiving threats,<sup>20</sup> justice has yet to be served.

Intrusion of privacy is another form of harassment experienced by Indigenous women in Papua. On a number of occasions in 2021, MW, a human rights defender from the Association of Human Rights Lawyers for Papua (PAHAM Papua) was photographed and videoed by unknown persons both inside and outside the courtroom.<sup>21</sup>

Meanwhile, in September, Papuan women participating in a peaceful demonstration to demand the annulment of the 1962 New York Agreement that paved the way for Papua's integration into Indonesia were subjected to sexual intimidation and harassment.<sup>22, 23</sup> Several women were arrested and are now in the middle of judicial process.

Domestic violence is also a common phenomenon in Papua. In 2021 alone, 262 cases of domestic violence involving 238 female victims were registered in Papua province,<sup>24</sup> while in West Papua province, there were 228 cases with 119 female victims.<sup>25</sup>

Victims of domestic violence report difficulties in accessing justice. In Papua, cases of intimate partner violence are most often handled through a customary process with outcomes that do not usually favor the women.<sup>26</sup>

The marriage system practiced in some of Papua's Indigenous cultures also has a negative impact on women and girls. For example, in Keerom, in the north-eastern corner of Papua province, a "marriage exchange" is still practiced. This practice allows the brother of the bride to marry a woman from the groom's family and is used to avoid the payment of dowries between the two families.<sup>27</sup>

## **Access to women and child health services**

Health care facilities in Papua are mainly located in and around cities, leaving Indigenous women living in rural areas with few options. In November, it was reported that residents of Kampung Miami in Jayawijaya regency had to rent a helicopter themselves to transport critical patients<sup>28</sup> but, in most cases, Indigenous people would not be able to afford to pay for such transport to hospital. Even basic health care is a challenge, and this is despite the existence of national and local health schemes.<sup>29</sup> And many of those who do have a government health facility nearby often cannot obtain health services because they do not have an Identity Card or cannot pay for transportation costs, or because of a shortage of healthcare staff in the facilities.<sup>30</sup>

HIV/AIDS is a major problem in Papua. Papuan women are twice as likely to contract HIV/AIDS than the rest of the population. The HIV prevalence rate is 2.9% among Indigenous Papuans, which is significantly higher than the 0.4% among non-Papuans.<sup>31</sup> According to the Chair of the Papua Province Aids Prevention Commission (KPA), Dr. Anton Tony Mote, as of 1 December 2021 there were a total of 46,967 HIV/AIDS cases in Papua province.<sup>32</sup>

## COVID-19

The policy response to the COVID-19 pandemic in Papua has been influenced by the military, its reliance on security approaches, and the ongoing violence in Papua.<sup>33</sup> This explains the slow roll-out of the COVID-19 vaccination campaign in Papua in 2021. Without meaningful consultation with local residents or outreach regarding COVID-19 vaccination options and individual rights regarding vaccination, rumors quickly spread alleging the involuntary nature of the vaccination program.<sup>34</sup>

This high level of public distrust did not prevent the authorities from introducing proof of vaccination as a requirement to access certain public services in Papua in 2021, for example obtaining residence documents at the Civil Registry offices. And, in December, there were reports of Papuan women being denied access to Manokwari market on the basis that they did not have documentation confirming their vaccination status.<sup>35</sup>

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**Victor Mambor** is a senior journalist from Papua and founder of the leading Papua online media: *jubi.co.id*. As a journalist, his work covers more than 20 countries, mainly in the Pacific region. His articles on Papua can be found in *The Jakarta Post*, *BenarNews*, *The Internationalist*, *The Guardian*, *Radio New Zealand*, *ABC News* and *Al-Jazeera*. Together with several journalists in the Melanesian region, he formed the *Melanesian Media Freedom Forum* in 2019. As a journalist, his work has won the 2020 Best of Investigation Reporting award from the Indonesian Union of Print Media Companies (SPS) for his report on the riots in Wamena, Papua. He was also awarded the Freedom Fighter of the Press award from the International Federation of Journalists (IFJ) in 2015 with Gao Yu (a Chinese journalist), Andrea Nicodemo Idris (an Eritrean journalist).





**Central and  
South America  
and the  
Caribbean**



# Argentina



The most recent national census from 2010 gives a total of 955,032 people self-identifying as descendants of or belonging to Indigenous Peoples, out of a total of 45 million inhabitants. There are 35 officially recognised Indigenous Peoples, although given the dynamic of processes for recovering their identity, this number may change. Legally, they have specific constitutional rights at the federal level and in several provincial states. In addition, a set of human rights contemplated in various international instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are of constitutional force in the country. ILO Convention 169 is of supra-legal hierarchy (i.e. it does not form part of the body of constitutional rules and regulations) and was ratified in 2000. The United Nations and American Declarations on the Rights of Indigenous Peoples are also of regulatory effect.

## Increased territorial conflicts

In the midst of the pandemic, territorial conflicts intensified in 2021 for multiple reasons, including a lack of recognition of Indigenous Peoples' rights. There are a number of different reasons behind these conflicts. Firstly, there has been a continuing advance of extractive industries onto Indigenous territories. The case of Chubut Province is typical. Although it has been a pioneer in prohibiting open-pit mining (as a result of a 2003 referendum that flatly rejected the possibility of promoting this kind of operation), in December 2021 the legislature approved a zoning law that would have permitted mining in certain areas, some of them inhabited by Indigenous communities. The people's rejection came swiftly in the form of protests, roadblocks, assemblies and strikes, and the very same legislature repealed the law only a few days later.

Secondly, the Emergency Indigenous Communal Property Law (Law 26,160 plus three successive extensions) expired on 23 November 2021. A fourth extension was to be granted through a parliamentary de-

bate, pending an essential and delayed Indigenous Community Property Law. It should be recalled that this emergency law –brief and to the point– orders the technical/legal cadastral survey of territories claimed by the Indigenous communities and suspends evictions until these tasks have been carried out. Although it was approved by the Senate, it was not discussed in the Chamber of Deputies, however. An extension was therefore granted by the Executive in the form of an urgent and necessary decree. Although this decree has regulatory force and is “similar” to a law issued by Congress, the impossibility of obtaining an extension by means of a parliamentary debate has undermined its legitimacy and represents a setback in the regulatory status quo. It is both desirable and to be expected that the extension will be discussed again in 2022 and be granted by decision of the representatives. Better still, perhaps discussions could commence on the Indigenous Communal Property Law itself.

Thirdly, the criminalisation and harassment of Indigenous communities, precisely because of their territorial demands, once again led to the death of a Mapuche community member, Elías Garay, murdered by two plain clothes individuals. A second community member was also seriously injured, in a context in which the community was surrounded by provincial security forces. This relates to a case of territorial recovery in the Cuesta del Ternero area of Lof Quemquemtrey in Río Negro Province. These are State lands for which the government granted a concession to an individual for forestry purposes, despite these lands being claimed by the community. An eviction order is currently pending and the community members are being prosecuted as usurpers.

In Jujuy Province, resolution 2261/2021 of the Public Prosecutor's Office established a *Protocol for addressing land conflicts and Indigenous communities* but there have been constant complaints of failures to comply with this. The National Institute for Indigenous Affairs (INAI), for example, has denounced intrusions into the Tusca Pacha Los Alisos community, belonging to the Kolla people, in Palpalá department. The territorial rights of the community continue to be compromised regardless of the provincial regulations in force.

Finally, and briefly, there are clear tensions between some court decisions protecting Indigenous Peoples' rights and others that clearly disregard them. The emblematic case of a territorial conflict in Río Ne-

gro, between the Indigenous Mapuche community of Lof Che Buenuleo and a private individual, for example, throws up examples of judicial decisions that reflect such contradictions. On the one hand, at the federal level, and given that INAI intervened to approve the set of files accrediting the technical/legal cadastral survey ordered by Law 26,160 (above), one court has recognised the administrative act requiring "(...) the National Institute for Indigenous Affairs to carry out the measurement of the plots georeferenced in administrative file 2020-61169031-APN-INAI#MJ within 90 days of the date of this becoming final and that, once concluded, it executes actions aimed at establishing the community property in favour of the *claimant* community (...)"<sup>1</sup> Another court, however, ignored INAI's resolution, considering it null and void.<sup>2</sup> Moreover, in criminal proceedings, based on accusations that the community members are usurpers, the Provincial Court of Appeal decided to dismiss the case definitively stating that the substantive issue had nothing to do with the criminal matter and should be resolved in civil proceedings. At the same time, it urged resolution of the conflict through dialogue and mediation.

Territorial conflicts remain at the heart of disputes between the State and Indigenous Peoples. The State continues to demonstrate ambivalence in its actions. On the one hand, it has used a number of INAI policies to approve technical files recognising their territorial ownership or denouncing their persecution and criminalisation. On the other, however, it uses the security forces or legal resolutions to harass and criminalise Indigenous communities who are demanding their rights.

## **The role of Indigenous women in the fight for rights**

Indigenous women are increasingly the protagonists in actions related to caring for their territories and the environment. In March 2021, they organised a huge march from all parts of the country that culminated in Buenos Aires on 25 May (the day commemorating the struggle for independence). It had a clear slogan: "Enough of terricide". Women and children have been, and remain, most affected by the pandemic, the health crisis generally, evictions, a lack of water, inadequate food, environmental deterioration, and wider structural problems.

In this march to raise awareness among all citizens, Indigenous women conveyed a message of struggle for the self-determination of their territories, their bodies and, in short, their peoples. Another of the main objectives of the march was “(...) so that Indigenous women, as citizens and inhabitants of the Argentine territory, can have a space in which to influence the production of public policies and decisions, so that their voices can be heard and valued in the construction of a fair habitat in harmony with their worldview”.<sup>3</sup>

Indigenous women pass on their identity by teaching their language, culture and knowledge to future generations. And yet those representing them warn that they are also the victims of discrimination, racism and machismo. It is worth noting the Indigenous women’s construction of a community feminism –as distinct from white feminism– that reinforces their strength. They emphasise that neither society nor the State treat the femicide of a white woman on a par with that of an Indigenous woman.<sup>4</sup> The intersectional violence suffered by Indigenous women is becoming increasingly visible, and the structures that are sustaining this need to be overcome by radical means, something that the *Movimiento de Mujeres por “el Buen Vivir”* (Women’s Movement for “Good Living”) are attempting to do.

One emblematic case in the struggle for Indigenous territory is that of Isabel Catrimán in Chubut Province, in a place known as Laguna Larga situated in the mountains. Although the dispute is over alleged State territories “ceded to private individuals”, she and her family have been living there for two decades, with the verbal agreement of the previous owner. They have made numerous improvements and have built a house, they tend their animals and have a vegetable garden there. In the midst of the pandemic, Isabel is now facing the arrival of “new buyers” who, with real estate interests (the territory is adjacent to a National Park and in a priority location for tourism), are trying to get her to abandon it. Isabel –almost 80 years old– continues to be harassed and, with the conflict now going through the courts, she faces an uncertain future. And yet she is resisting and is an example of the struggle for territory. In September 2020, a *trawn* (meeting) was held on the land, with the participation of Indigenous communities from the region that support Isabel’s claim, and provincial and national government institutions (Ombudsman’s Office of Chubut Province, National Public Defender’s

Office, Directorate for the Promotion and Strengthening of Access to Justice under the Ministry of Justice and Human Rights, National Institute for Indigenous Affairs) to outline actions to defend the territory throughout the region.

## **Increased disregard for Indigenous Peoples' rights and the emergence of "hate speech"**

Certain events took place in 2021 that were worrying and serious when taken in isolation but which, when considered together, paint a scenario of serious setbacks to Indigenous Peoples' rights, enshrining racist, stigmatising and discriminatory "hate speech". This discourse represents a clear sign that barriers that were thought to have been overcome in argument and in practice are still rooted in the thinking of a social sector that insists on the consolidation of a hegemonic, monocultural and exclusive State.

By way of example, it is worth noting what happened in November 2021, when Olga Curipan –leader of the Lof Kuripan Kayuman community and member of the Indigenous Participation Council– was attacked with a Molotov cocktail by a group identified as *Comando de Restauración Nacional* (National Restoration Command Unit), in the city of Bahía Blanca, Buenos Aires Province. This has been publicly denounced by INAI.

It is also worth noting that a public meeting was held called the "1st Bariloche Consensus Forum. For a sustainable and peaceful Patagonia", which defines itself as a multisectoral space for dialogue<sup>5</sup> in which to address the issue of public and State land and environmental impacts, among other issues. This space brings together participants from different fields: lawyers, journalists, legislators, neighbours, the tourism sector, etc. Although, on the surface, this type of space would appear to be welcome given the current situation of permanent conflict over land, the truth is that the range of people involved in it is one-sided, and its ideological position is clearly contrary to one of respect for the rights of Indigenous Peoples.

And it is not only in the south of the country that the issue is being discussed in these terms. Quite the contrary, Indigenous Peoples' rights are being rejected right across Argentina's geopolitical space. While this meeting was being organised in Bariloche, a similar space was be-

ing convened in Tucumán Province. This “1st Tucumán Consensus Forum on Rural Security” was organised by PRODECO (Civil Association for the Protection, Development and Cooperation of Private Property) with the object of raising awareness of land conflicts related to private property and Indigenous communal property and to analyse the scope of Law 26,160.<sup>6</sup>

In short, these “supposed spaces for dialogue” simply instil in society an ignorance of Indigenous territorial rights. They interpret all community claims to the land –which translates into recoveries– as a crime of usurpation, and promote the association of agricultural and livestock producers with the aim of repelling any “intrusion” onto what they consider to be their lands.

## Conclusions

The year 2021 was even worse than previous years –if that were possible, given the adverse circumstances of the last few years– with regard to territorial conflicts. In addition to disputes with private companies and the national and provincial governments granting company concessions over Indigenous territories, there has been a weakening of the regulatory framework. This remains robust at the international level but limited in domestic legislation. This is due to the fact that, in recent years, it has been virtually impossible to discuss a substantive law to regulate territorial rights in Parliament, and the emergency law has had to be extended –given its expiry– by an urgent and necessary decree of the Executive.

Disputes over territory, due to recovery actions that have met with a violent response from the provincial State security forces, became more complex with the pandemic, and there are also structural difficulties that are resulting in the violation of multiple other rights, such as the right to clean water, to health, to food and to education, in addition to an endless list of unfulfilled State obligations.

Not only have violations of rights become recurrent but a landscape is being created that is conducive to a generalised view that these rights “do not exist”, or are relative, or do not correspond to the subject claiming them. So questions are once again being raised, for example, as to whether the Mapuche are Argentinians (or simply Chileans), and whether or not the Indigenous territories should be Indige-

nous, inciting a rhetoric that only deepens the already present discrimination and racism.

In this adverse context, Indigenous women are demonstrating an unequivocal connection to their territory. Environment and nature are inextricably intertwined in these disputes, turning women into the protagonists of territorial struggles –which, in the end, are the struggles of all living beings– and they are taking on the role of “caretakers” of the entire habitat. Indigenous women are collectively building other feminisms, closer to their relationship with Mother Earth and their worldviews.

It is still very difficult to build a State matrix of genuine respect for Indigenous Peoples’ rights. Although progress has been made in the public debate, and Indigenous organisations and communities are aware of their rights and are strengthening their demands, there remains a core of resistance within all State agencies aimed at preventing their effective enjoyment. Mechanisms are being developed that hinder the exercise of these rights and which, in short, expose a monocultural State model that continues to reject differences, simply consolidating its colonial origins.

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**Silvina Ramírez** is a lawyer and Doctor of Law. She is a postgraduate lecturer at the School of Law in the University of Buenos Aires and the University of Palermo as well as other universities in Latin America. She is a member of the Indigenous Lawyers Association, academic adviser to the Legal Group on Access to Land of the Centre for Public Policy for Socialism, and Director of the Indigenous Law Programme of the Institute of Comparative Studies in Criminal and Social Sciences, INECIP. Contact: [silvina.ramirez@gmail.com](mailto:silvina.ramirez@gmail.com)



# Bolivia



According to the 2012 National Census, 41% of the Bolivian population aged 15 or over is of Indigenous origin. Projections from the National Institute of Statistics (INE) in 2017 indicated that this percentage is now likely to have increased to 48%.<sup>1</sup> Of the 36 recognised peoples in the country, the largest groups live in the Andes and are either Quechua-speaking (49.5%) or Aymara-speaking (40.6%); they self-identify as 16 different nationalities. The peoples living in the lowlands are largely Chiquitano (3.6%), Guaraní (2.5%) or Moxeño (1.4%) and these groups, together with the remaining 2.4%, make up the 36 recognised Indigenous Peoples. To date, Indigenous Peoples have consolidated their collective ownership of 23 million hectares in the form of *Tierras Comunitarias de Origen* (Community Lands of Origin / TCO), covering 21 percent of the country's total area. With the approval of Decree N° 727/10, these TCOs acquired the constitutional status of *Territorio Indígena Originario Campesino* (Native Indigenous Peasant Territory / TIOC). Bolivia has ratified the main international human rights conventions and has been a signatory to ILO Convention No. 169 since 1991. The United Nations Declaration on the Rights of Indigenous Peoples has been in force since the enactment of Law No. 3760 on 7 November 2007. With the new State Political Constitution in 2009, Bolivia adopted the name of Plurinational State.

## Sub-national and Indigenous representative elections

**E**lections were held on 7 March for all sub-national authorities in the country —governors, mayors, assembly members and councillors— including Indigenous representatives to these deliberative bodies, where they have reserved spaces under the Electoral Law, departmental statutes and municipal organic charters. Fifty-one (51) Indigenous representatives —including full and alternate members— were elected to eight of the nine departmental assemblies and to three municipal councils.

There is a very significant Indigenous presence in each of Bolivia's organs of power but, to date, there has been no comprehensive evaluation of their role. The vast majority of these representatives are decided by the regional or village organisations. Although some of them become useful tools for achieving demands, many end up demonstrating that the political system simply suffocates the reserved quota through well-known tactics of pressure and blackmail, which are difficult for an individual to avoid. What's more, in more than a few cases, these representatives have actually become dangerous agents of foreign interests within the organisations and territories that originally elected them.

This broad Indigenous presence likely has little real impact on the decisions adopted by the bodies on which they sit. These are issues that are rarely debated within the organisations, which have gradually turned into spaces focused on legitimising candidates for public or party office. The same argument can be applied to the Indigenous presence on other bodies such as the judiciary or the electoral commission where, when they have been called upon to act, they have played a seriously questionable role.<sup>2</sup>

In these elections, the regional opposition to the governing party (the Movement Towards Socialism or MAS) once again made important gains. These gains were seen most clearly in the departmental capitals along the La Paz-El Alto<sup>3</sup>-Cochabamba-Santa Cruz axis, which is home to some 75% of the nation's population. The results were largely the result of the government's increasingly aggressive stance towards the political opposition. Its initial rhetoric of conciliation and unity, particularly that of the Indigenous vice-president David Choquehuanca, was soon forgotten. This aggression became expressed in the pursuit of a "terrorism" case against former president Jeanine Añez and several of her staff, as well as against the leaders of the protest that resulted in Evo Morales' resignation in 2019, which the current government believes was a "coup" due to the decisive intervention of the police and military forces.<sup>4</sup>

## **The conflict over land in the east**

Since 2014-2015 (shortly after the end of the major period of titling of Indigenous territories under Evo Morales' government), the territories

have once more become a focal point of concern, no longer in relation to demanding legal recognition and establishment but now defending them from State decisions to dispose of their natural resources, or from the implementation of “development” plans and projects on their land without any consultation. Over the period, this defence has been expressed in Indigenous opposition to the development of operations headed up by the national oil company, the State mining corporation and transnational companies.

During the transitional government of Jeanine Añez, however, and with greater force since the inauguration of President Luis Arce, another actor has begun to loom in this developmentalist onslaught: the Andean migrant peasantry from the lowlands, a former ally of the Indigenous Peoples through the so-called Unity Pact.<sup>5</sup> The regulatory context has favoured them with agreements adopted between the government and the Santa Cruz agribusiness sector over the 2014-2019 period, and with an administrative process of distributing State lands to the peasantry as a priority, the only other potential beneficiaries being Indigenous Peoples, in line with the prerogative established in the National Constitution.

At the time, environmentalists denounced the large package of “incendiary” regulations that resulted in fires in the region following the relaxation of restrictions on forest clearing, a relaxation that favoured both medium and large sectors disguised as peasant communities. And yet the supervisory authorities have done little if anything to prevent the region’s forests from again being affected by fires this year.<sup>6</sup>

The MAS’s main political adversary in the Santa Cruz governorship, Luis Fernando Camacho, was successfully elected and he immediately embarked on a widespread media campaign aimed at fostering regional support that could prevent the MAS’s judicial onslaught against opposition leaders from affecting him. The campaign focused on the tried and tested resource of unresolved land issues and highlighted real problems such as the settlements authorised to peasants by previous administrations of the National Institute of Agrarian Reform (INRA)<sup>7</sup> in State areas with environmental restrictions on the development of production activities. A kind of “defence of the Indigenous ancestral territories of Santa Cruz” was thus activated, even going as far as to organise a Land Congress, which attracted great media support and amplified the conflict albeit not among the peoples it was claiming to represent.

Against this backdrop, and immersed in their own crises, the Indigenous organisations remained, at best, spectators to these conflicts.

In addition, INRA's new management was having troubles of its own due to many of its officials coming down with COVID-19, not to mention the difficulties in running a shambolic institution in need of re-organisation and which was furthermore underfunded and accused of validating a strategy that was suppressing the Andean peasantry. Its actions showed little correlation with what was being observed on the ground: an empowered peasantry taking control of national protected area and environmental authorities and exerting pressure on multiple fronts to force decisions in support of a land distribution policy that would favour them in areas of high social and environmental sensitivity.

INRA's strategy of sectoral dialogue aimed at depoliticising the agrarian issue did not deliver the intended results<sup>8</sup> given that the State's endorsement of settlements in forested areas and the subsequent forest fires left little room for belief that the conflict was purely a defensive tactic on the part of the opposition. On top of which, flagrant cases of corruption were emerging, such as that of the Minister for Rural Development and Lands who was arrested in public for receiving a USD 20,000 bribe.<sup>9</sup> In October, one land grab took a dramatic turn with the kidnapping of journalists and INRA officials by peasants who were seizing the Las Londras property. The court case has made little progress since due to the dubious position of the kidnapped officials and the land trafficking in which both the kidnapped businessmen and the kidnapping peasants were mired.<sup>10</sup>

## **Indigenous mobilisation in the lowlands**

Indigenous organisations and autonomous governments are fighting their own battles on their territories. They are suffering similar problems but seeking solutions which, while in some cases are de facto, also include legal proposals and actions. Such is the case of the Northern and Southern Amazon, where a regional event resulted in a platform of demands being drawn up that is now forming a basis on which to challenge the State, demanding the reconstitution of the historical Indigenous agenda.<sup>11</sup> The direct action that accompanied this agenda

saw a road block set up by groups of the Mojeño people on the road between San Ignacio de Moxos and San Borja (Beni) in the last week of August 2021. As a result, several agreements were signed relating to the Constitutional Court's final pronouncement on the autonomy statute of the Multiethnic Indigenous Territory, the conclusion of the land titling processes, amendments to the Autonomy Law and other local issues.<sup>12</sup>

At the same time, the Guaraní people of the Charagua Iyambae autonomy in Santa Cruz were suffering an onslaught from multiple peasant settlements in the Ñembi Guasu protected area, under the protection of INRA administrative resolutions. The Indigenous government called for dialogue with the relevant authorities, achieving a number of undertakings to review these resolutions. In anticipation of the authorities' possible failure to comply with these agreements, the Indigenous government obtained a precautionary measure to halt all activity across the entire protected area where it could endanger Indigenous rights or the environmental stability of the zone, which is also inhabited by families of the Ayoreo people living in voluntary isolation.

On 24 August, four days after agreements had been reached in San Ignacio de Moxos between various State agencies and the area's organisations, a hundred Indigenous people left Trinidad-Beni for the city of Santa Cruz de la Sierra demanding an end to the encroachment of peasants and settlers onto their territories, plus respect for their dignity as Indigenous Peoples and for their culture, since they are being subjugated not only territorially but also culturally in the country. The march attracted more media attention than ever before, gaining the support and solidarity of a majority of the urban population. On its arrival in Santa Cruz, the march was used to support the demands being made of the central government by the city governor. While urban support was a constant, however, the rest of the country's Indigenous organisations remained silent.

During the march, its leaders—which also included the former president of CIDOB and current secretary of international relations for COICA, Adolfo Chávez, who has distanced himself from the MAS government for some years—proposed creating an “Indigenous Parliament” as a space for dialogue, construction of proposals and questioning of the State. The national government poured scorn on the mobilisation, its representatives and even the “Parliament”, however,

accusing it of being unrelated to any part of the Indigenous movement. The “Parliament” sat in the René Moreno University sports hall, where the march spent almost three months. It drew up a general document of 15 demands, which included several from the organised Indigenous movement such as the abolition of all legislation permitting new settlers, a decree allocating them a percentage of the dividends from oil and gas operations, and the cancellation of all hydroelectric projects on their lands.<sup>13</sup> The current leadership of the lowland organisation, CIDOB, invited the Parliament to coordinate these demands with those of the organisations but these initiatives were rejected on the grounds that the current leadership of CIDOB is very close to MAS.

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3. The specific case of El Alto should perhaps be interpreted in a particular way since the mayoralty was won by Eva Copa, former president of the Senate during the transitional government of Jeanine Añez and who presented herself as a dissident from the MAS although far from standing with those in opposition to the government.
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**Leonardo Tamburini** is the Executive Director of ORÉ (Organisation for Legal and Social Support), a lawyer from the Università degli Studi di Macerata (Italy), former Director of the Centre for Legal Studies and Social Research (CEJIS) in Bolivia, and legal adviser to the Guaraní Autonomy of Charagua Iyambae.



# Brazil



According to data from the Demographic Census conducted by the Brazilian Institute of Geography and Statistics in 2010, the Indigenous population in the country stands at 896,900, distributed among 305 ethnic groups. There are 274 languages spoken, with 37.4% of Indigenous people over the age of five speaking an Indigenous language at home. In turn, the census revealed that 17.5% of Indigenous people do not speak Portuguese while 76.9% do. The largest ethnic group is the Tikúna, accounting for 6.8% of the Indigenous population. Indigenous Peoples are present across all five regions of Brazil but the northern region is home to the largest proportion (342,800), with the smallest number (78,800) living in the south. Of the total number of Indigenous people in Brazil, 502,783 live in rural and 315,180 in urban areas.<sup>1</sup>

## Concern over numerous legislative proposals affecting Indigenous Peoples

**T**he Articulation of Indigenous Peoples of Brazil (APIB)<sup>2</sup> has filed an international complaint regarding the legislative proposals that are passing through the National Congress, and the danger their approval represents for Indigenous Peoples.

**Bill 191/2020** seeks to authorise the exploitation of Indigenous Lands for large infrastructure and mining projects while at the same time establishing compensation for restricted usufruct thereof.

**Bills 2,633/2020 and 510/2021** propose legalising large areas of State land that have been illegally occupied in the Amazon. These illegal occupations could be regularised simply by filing an application with the Rural Environmental Registry exempting the properties from restoring native vegetation. In other words, these bills are actually encouraging further invasions and more deforestation. The bills have been approved by the Chamber of Deputies and now await the Senate's approval.<sup>3</sup>

**Bill 3,729/2004** virtually extinguishes the need for environmental licencing of works throughout the country. If approved, it will allow the

vast majority of companies to self-licence, overriding the national parameters in which states decide on the process. This is likely to increase the judicialisation of licences along with threats to Indigenous and traditional communities affected by the works, paving the way for deforestation and other impacts both inside and outside protected areas.

**Bill 6,299/2002**, known as the “Poison Package”, facilitates the approval and use of pesticides in the country. The proposal intends to change the term “agrochemicals” to “pesticides”, thus seeking to disguise the dangers and reduce the link between these substances and their impacts on environmental and human health. If approved, environmental and health agencies would be almost completely alienated from decisions regarding the use of poisons in agriculture. Responsibility would be centralised within the Ministry of Agriculture. In turn, these measures will make it possible to use chemicals that have been banned in other countries due to their implication in numerous diseases. This bill is pending consideration by the full House.

Finally, **Bill 5,544/2020** allows the “hunting for sport” of any wild animal in the country, claiming to thus promote the “conservation of endangered species”. Permits would be available to anyone over the age of 21 with no prior criminal record and a collector's, shooter's or hunter's licence. The project does not address how species and quantities hunted in the national territory will be monitored given that the power of the environmental agencies has been curtailed. At the moment, hunting is only allowed in the country to control populations of exotic wild boar. The bill is pending consideration by the Environment and Sustainable Development Committee of the Chamber of Deputies.<sup>4</sup>

## COVID-19 and the Brazilian State's absence

The Indigenous organisation APIB launched a COVID-19 prevention campaign in 2021 with the messages “Mask up, Bro!” and “Get jabbed, Bestie!”<sup>5</sup> thus taking into its own hands an important role that should be the Brazilian State's responsibility, namely that of the integral protection of Indigenous Peoples as established in the 1988 Constitutional Charter. Most of the campaigns and measures for COVID-19 prevention and awareness were implemented by the Indigenous Peoples' union. Funds for vaccination campaigns, sanitary cordons and the purchase of personal protective equipment came largely from donations.

The inclusion of Indigenous Peoples as a priority group in the first phase of the national vaccination plan was also a result of the struggle of the Indigenous movement, mainly through the action of APIB in the Federal Supreme Court (ADPF 709), since the mortality rate for COVID-19 is much higher among Indigenous Peoples than the rest of the population.

While Indigenous Peoples were fighting and struggling to combat the disease and trying to obtain medicines other than the chloroquine kits that were being distributed by the government, the Ministry of Health –in which the Special Secretariat of Indigenous Health (SESAI), forms one of the subsystems of the Unified Health System (SUS)– was continuing through its blind denialism to distribute chloroquine, a medicine that has been condemned in relation to its use in this pandemic.

There have been four changes in the Ministry of Health since the start of the pandemic as a result of ministers refusing to deny COVID-19. In addition, the State has been taking other decisions that destabilise public opinion: blocking access to pandemic data; distributing chloroquine kits to combat the pandemic; and widely disseminating fake news. When a vaccine did emerge, the President stated his opposition to it. In addition, there was an intentional cover-up: Brazil suffered 412,880 COVID-19 deaths during 2021. The country has registered a total of 619,056 deaths due to the disease since the start of the epidemic. Last year's records exceed those of 2020, when the total number of deaths was 194,949 people. This makes 2021 the deadliest year for the pandemic.<sup>6</sup>

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The month that recorded the most deaths in 2021 was April, when the country had 82,266 COVID-19 victims. This figure amounts to 19.92% of all deaths from the virus recorded during the year. With progress in the vaccination, December recorded the lowest number of deaths: 4,375. In all, 177 million Brazilians over the age of 12 have now been immunised, of which more than 143 million have completed the vaccination cycle.<sup>9</sup>

The pandemic situation of Indigenous communities is, however, being exacerbated by developmentalist policies that are targeting Indigenous Lands for mining, agribusiness and cattle ranching activities, timber extraction and hydroelectric plants, all of which represent Brazil's largest exports of raw materials.

The invasion of Indigenous territories is being “permitted” through the dismantling of agencies intended to inspect both these territories and the conservation units. The lack of officials to carry out surveillance tasks thus becomes a justification for the federal government's deafness to the calls of the riverine Indigenous and Quilombola populations.

In what has been virtually a whole pandemic year, data from APIB's National Committee for Indigenous Life and Memory shows that 46,508 Indigenous people became infected and 929 died as a result of COVID-19, directly affecting 161 of the country's peoples.

## The Brazilian Amazon and the extractive industries

Against the grain of the United Nations Climate Change Conference in Glasgow (COP26) and the urgency of making commitments to slow down climate change, President Bolsonaro continues to insist on his form of development through destruction. According to the *Instituto de Pesquisa Ambiental da Amazônia* (Amazon Environmental Research Institute), deforestation in Brazil's biome was 56.6% higher between August 2018 and July 2021 than over the same period between 2015 and 2018.

It appears today that more than half of all deforestation (51%) in the last three years has taken place on public lands, mainly in areas controlled by the federal government (83%). In absolute terms, Non-Designated Public Forests have been the most affected: the deforested area here increased by 85%, from 1,743 km<sup>2</sup> logged annually to more than 3,228 km<sup>2</sup>. Over the last year, this category of public forest accounted for one-third of all deforestation in the biome.

In proportion to the surface area of the territories, Indigenous Lands showed an average 153% increase in deforestation compared to the previous three years: from 496 km<sup>2</sup> to 1,255 km<sup>2</sup>. Deforestation in conservation units showed a proportional increase of 63.7%, with 3,595 km<sup>2</sup> logged in the last three years versus 2,195 km<sup>2</sup> in the previous three years.<sup>10</sup> The areas most affected are Amazonas, Acre and Rondônia, characterised as the new deforestation frontier in the biome. Amazonas, in fact, moved from third- to second-placed state in terms of deforestation level. It is only surpassed by Pará, the state where the most critical areas of forest loss are located, and which has taken first place since 2017.

These rampant increases in deforestation find their origin in different development proposals: agriculture, cattle ranching, mineral and vegetable extraction. In turn, they generate large migrations into these regions, opening up the space to the entry of various diseases, including COVID-19.

## Mining<sup>11</sup>

According to estimates from the Brazilian Mining Association (IBRAM), the country's mining production in 2021 grew by about 7% compared to 2020, from 1,073 million tonnes to an estimated 1,150 million tonnes.

The variation in raw material prices on the international market in 2021 boosted the sector's revenue by 62% compared to 2020, rising from R\$ 209 billion to R\$ 339 billion.<sup>12</sup>

Iron provided the highest revenue in 2021 (80% more than in 2020); gold 16% more; copper 29%; bauxite 16%; granite 32% and dolomitic limestone 47% more. Iron ore accounted for 74% of mining industry revenues in 2021 (up from 66% in 2020), followed by gold (8%) and copper (5%).

In the first four months of 2021 alone, the number of applications registered with IBRAM to obtain mining permits in Indigenous areas totalled 4,300 km<sup>2</sup>, more than the whole of the first year of Bolsonaro's presidency.

The push to adopt the mining law in Indigenous Lands is based on several narratives that the President is supporting through his national development plan: the need to legalise illegal mining in order to ensure the entry of non-Indigenous people into Indigenous areas. According to

data from the Mineral Resources Research Company, the largest mineral reserves are located on Indigenous Lands.<sup>13</sup>

This same narrative of Bolsonaro claims that the Indigenous population is eager for their economic emancipation (a highly questionable assertion) and has stated that “the Indigenous people themselves are in favour of mining so that they can participate in their economic emancipation”.<sup>14</sup>

Emphasis has been placed on gold mining, as this is the second most exported mineral after iron. “Almost 30% of the gold exported by Brazil between 2019 and 2020 –48.9 tonnes– comes from areas of illegal mining; this is due to a combination of inspection failures, unlawful actions on the part of companies and false documentation used to launder gold extracted from protected areas.”<sup>15</sup>

Illegal mining is generally found on Indigenous territories or in environmental conservation areas, mainly in the Amazon. There are believed to be 321 active and inactive illegal mines, Pará being the area in which most requests for legalisation of mining activities are received. This is a process that has been gaining pace, nefariously, since the first year of Bolsonaro's government, in the Kayapó Indigenous Lands particularly and then in the Mundurukú's Sawré Muybu Land. Sawré is where the largest proportion of mining applications are concentrated: 14%.<sup>16</sup>

In total, there are 97 mining activities there aimed largely at gold, copper and diamond deposits and, to a lesser extent, cassiterite and gravel mining. After Pará come the states of Mato Grosso and Roraima, where the activities are concentrated on Indigenous Lands, including those of uncontacted Indigenous Peoples.

According to Márcio Santilli, from the Socio-Environmental Institute, mining is “repeatedly encouraged by the President himself, through videos, interviews and bills aimed at legalising activities that are prohibited by the Constitution. In the case of the Mundurukú, Kayapó and Yanomami Indigenous Lands, corporate mining has expanded by more than 300% compared to the previous period, taking advantage of impunity, the high price of minerals and the ease, in times of misery, of recruiting people who are willing (...) to wallow in the mud to enrich the gangs.”<sup>17</sup>

Data indicate that mining exploration activities on Amazonian territories have grown 91% since the start of 2019. This was the first time since 2013 that demands had increased: previously they had been fall-



ing year on year.<sup>18</sup> The Yanomami Indigenous Land, located in the states of Roraima and Amazonas, on the border with Venezuela, has seen an alarming increase in the number of applications to extract 40 different minerals. An estimated 21,000 miners are present on their territory, operating illegally.

Even once they are demarcated, these territories are not completely free from threats. Despite having been approved in 1998, the Karipuna Indigenous Land in Rondônia has had more than 10,000 hectares of forest destroyed as a result of illegal logging and land grabbing.<sup>19</sup>

## **Agrochemicals or pesticides**

In the face of this mining and agricultural expansion, the need for products used in extraction and in the planting of soybeans and other agricultural products for export is resulting in the contamination of rivers, workers, and the people living in the surrounding area. The Ministry of Agriculture approved 723 pesticides for use between 2020 and 2021. There are some 3,000 such products authorised for marketing in all and one-third of these were registered in the first two years of Bolsonaro's government.<sup>20</sup> Around 10 pesticides a week were launched in 2020, making a total of almost 500 new substances. Approximately one-third of the pesticides approved in Brazil are banned in the European Union, some of them for decades. According to the United Nations, pesticides are responsible for 200,000 deaths from acute poisoning every year and more than 90% of these deaths occur in developing countries, including Brazil.

In addition, mercury is extensively used in alluvial gold mining. This is a highly toxic heavy metal that causes devastating and permanent damage. The data are shocking: the Tapajós River is completely polluted, as is the Mundurukú Indigenous population, according to the Oswaldo Cruz Foundation (Fiocruz). This contamination is not restricted only to the Mundurukú, however; it is also present in the following ethnic groups: the Papiú, Waikas, Araças, with 93.3% contamination.

Although this is a major public health problem, there are no public policies in place to ban the use and import of so many chemical products. Quite the contrary, the “Poison Package” has been under discussion in the Chamber of Deputies since 2002. Bill 6299/2002 was intro-

duced almost 20 years ago and approved by a special committee in 2018. With or without majority approval, however, the proposal to expedite the authorisation of new pesticides in the country is already in full swing, only pending consideration by the full House, as detailed above.

## **National Congress urgently called upon in process to speed up development: pending legislation**

According to the Federal Prosecution Service, there are 4,073 applications for mining licences pending on Indigenous Lands in the Legal Amazon and 3,114 have been “blocked”. Prosecutors report that the most affected Indigenous Lands in the region are those of Alto Río Negro, where applications exceed 174,000 hectares, and the Medio Río Negro I land, with requests accounting for in excess of 100,000 hectares.<sup>21</sup>

The pressure from national and international mining companies together with the agricultural lobby in Parliament tallies entirely with President Bolsonaro's political will to expand the export frontier for raw materials.

National Congress is proceeding with debates related to this issue by means of 17 Constitutional Amendment Projects (PECs) in the Chamber of Deputies and three in the Senate. In both the Chamber of Deputies and the Senate, 148 matters were detected relating to mining in November 2019. This reveals the extent to which parliamentarians have mobilised around this issue in the National Congress. In turn, it should be noted that 14% of this total corresponds to mining operations on Indigenous Lands. Within the Executive Branch, there are proposals from the Ministry of Mines and Energy and the Ministry of Economy that target Indigenous Lands as a priority. The result of these pressures is Bill 191-2020, sent by the Executive Branch to National Congress, regulating mining, oil and gas production, and electrical power generation on Indigenous Lands.

The demarcation of Indigenous territories is an extensive and complex problem, marked by different disputes. The laws that inaugurated their regulation date back to the 1960s and 1970s, namely the Mining Code of 1967 and the Indian Statute of 1973. While parts of both laws are still in force, the 1988 Federal Constitution set new parameters for these issues.

The 1973 Indian Statute permits certain forms of subsoil exploitation on Indigenous Lands in cases of “great national interest”, defined as cases involving lands that contain “subsoil wealth of significant interest to national security and development”. Only 10 years later, Decree 88,985 established that subsoil exploration in these areas could only be conducted using mechanised mining, in accordance with the requirements established by FUNAI (National Indian Foundation) to protect the interests of Indigenous heritage.

The Federal Constitution recognises collective rights and breaks with the principle of integration. According to Article 231 of the 1988 Federal Constitution, Indigenous reserves are “lands traditionally occupied by Indigenous people, inhabited by them on a permanent basis, used for their productive activities, essential for the conservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction.” Indigenous populations do not, however, have a formal power of veto, despite the fact that this right is provided for in ILO Convention 169, ratified by Brazil, and which establishes the State's obligation to consult Indigenous populations in advance, in a free and informed manner, prior to decisions being made that may affect their property or rights.

April has historically been marked by political protests on the part of the Indigenous communities. For 17 years they have been converging on Brasilia to claim their acquired rights. Despite April 2021 being a turbulent month, with increased COVID-19 rates, Indigenous people went to Brasilia to fight for their right to survive with dignity. In the face of a racist government with clearly anti-democratic positions, the movement had the following slogans: “Our right to exist”, “Indigenous lives matter”, “Indigenous emergency” and “We choose not to die”.

For two weeks, Indigenous Peoples from different ethnic groups around the country protested in front of the Chamber of Deputies in Brasilia against the approval of Bill 490 of 2007<sup>22</sup> and the lack of assistance in relation to COVID-19.

## **The Indigenous struggle in the face of climate change**

The Indigenous presence at COP26 was extremely important as it presented to the world the debacle of the Indigenous situation: in addition

to being affected by the pandemic without any protection from the federal government, their complaints were silenced, those who denounced the uncontrolled entry of miners/farmers or the intense deforestation were sanctioned, and access was given freely to Indigenous Lands, threatening the existence of peoples who account for only 0.49% of the Brazilian population.

Bolsonaro did not attend COP26 but there was an extensive Indigenous agenda and a strong presence on the part of Brazilian Indigenous leaders who, in turn, passed on the message of the *Tarumá Charter: Declaration of the Indigenous Peoples of the Brazilian Amazon in the face of the climate crisis*, drafted days before COP26.<sup>23</sup>

The climate crisis is directly related to the greed over Indigenous Lands, combined with the legal erosion of Indigenous and environmental rights, that is taking place in Brazil. The time we are living in, in which a virus has stopped the world and affected the routine of billions of people from all social classes and different cultures, is fundamental to thinking seriously about the need to respect the socio-biodiversity of our territories. In Brazil, however, the current government's anti-environmental, anti-climate and anti-Indigenous policies are lethal. Our territories, which rightfully belong to us, are being invaded by prospectors and loggers; villages are being surrounded by cattle and soybean farms; rivers are being polluted with pesticides and mercury; the Amazon rainforest is on fire, turning everything to ashes; and governments and economic funds continue to financially support this unbridled greed, an economy of destruction that is killing and destroying both life and the planet.

The constant bills and PECs being drafted by political/economic lobbyists with the approval of, or created by, the President of Brazil (in the case of the PECs) are endangering the survival not only of Indigenous Peoples but of an entire expanse of flora, fauna and rivers that can never be restored. The plotline and agreements have been designed together so that there is no dissonance in the applicability of the developmentalist project, marked by its flat earthism, and its global warming and pandemic denialism.

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**Maria de Lourdes Beldi de Alcântara** is a medical anthropologist from the School of Medicine of the University of São Paulo. She is also the coordinator of AJI/GAPK Indigenous Youth Action.



# Chile



Despite steadily increasing since the 1990s, Chile's Indigenous population has not seen any major variations since the 2017 census. 2,185,792 people self-identify as Indigenous, which is equivalent to 12.8% of the country's total population (17,076,076). The Mapuche are the most numerous (almost 1,800,000 individuals), followed by the Aymara (156,000) and the Diaguita (88,000).<sup>1</sup> Trends highlight the sustained increase in the urban Indigenous population, with 87.8% of Indigenous people now living in towns and cities compared to 12.2% in rural areas.<sup>2</sup>

Law 19,253 of 1993 on the Promotion, Protection and Development of Indigenous Peoples, or "Indigenous Law", has not been amended despite urgent reform needed to bring it into line with current international standards on the rights of Indigenous Peoples, such as ILO Convention 169, ratified by Chile in 2008. Chile has also adopted the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the 2016 American Declaration on the Rights of Indigenous Peoples.

Social protests broke out in the country in October 2019 demanding far-reaching institutional reform and this led to a referendum in October 2020 that approved the drafting of a new constitution. A new constitutional text is currently being debated by a Constitutional Assembly which includes the representation, by means of reserved seats, of all legally recognised peoples in Chile.

## The role and contribution of Indigenous women

Indigenous women in Chile play a fundamental role in the social, political and cultural development of their peoples and nations, whether through their role in transmitting their traditional knowledge, through the revival of their language, their contribution to food sovereignty and care of seeds, or their fight to combat climate change through their traditional knowledge of the management and conservation of common property. This is in addition to the role they have been playing in the cur-



rent pandemic where they are contributing their knowledge of health and use of medicinal plants, and also helping to activate networks for bartering and solidarity exchanges of their products.

They also play an important role as defenders of the territory and environment. Ercilia Araya, for example, a Colla leader who has been criminalised and harassed for defending the rights of her community against the environmental damage caused by several Canadian mining companies in the Atacama region,<sup>3</sup> managed to get an auction for a lithium concession suspended in January 2022 by means of judicial appeal, citing that it was affecting her community's territory and had been conducted without a consultation process.<sup>4</sup> And also Machi Millaray, a Mapuche spiritual leader who has been fighting to protect the Pilmaiquén River, closely linked to the Ngen Mapu Kintuante Natural Ceremonial Complex located in the rural sector of Maihue-Caramallín, Los Lagos and Los Ríos regions, which is threatened with the construction of two hydroelectric projects (Osorno and Los Lagos) authorised without a consultation process and without obtaining the consent of the affected communities.<sup>5</sup> In December 2021, Millaray was instrumental in getting the Supreme Court to order the National Monuments Council to conduct an Indigenous consultation process for the installation of the Statkraft hydroelectric plant<sup>6</sup> and, in January 2022, by means of another judicial appeal, to order National Cooperation for Indigenous Development (CONADI) to resolve the land claim on the Natural Ceremonial Complex filed by the affected communities.<sup>7</sup>

Indigenous women are also actively participating in the political lives of their territories, communities, organisations and in national politics, where they are increasingly present denouncing the dispossession of their territories, defending water and common goods, and denouncing the extractive, neoliberal and patriarchal policies of the State. One example of this was their significant presence in the social protests following the social outburst of 18 October 2019 and the subsequent debate around the drafting of a new constitution through a Constitutional Assembly, where they pointed out that the government's extractive policies are also a form of violence that they are forced to endure on a daily basis. These policies affect not only their territories but also their ways of life as they are the ones responsible for transmitting culture and traditions to new generations, such as caring for nature, protecting medicinal plants, food sovereignty and sites of cultural significance.<sup>8</sup>

In this context, the role of Indigenous women is beginning to take on real importance, not only because of the historic fact that out of the 17 seats reserved for Indigenous representatives in the Constitutional Assembly nine are held by Indigenous women but also because a Mapuche woman, Dr. Elisa Loncón, was elected to preside over the Assembly. The participation and contributions of Indigenous women are continuing to be fundamental to the work of the Constitutional Assembly, as can be seen from the various “draft norms on Indigenous Peoples” that have been submitted by different Indigenous women's collectives seeking to guarantee their rights in the new fundamental charter. These include: the right to live a life free from violence, requiring that the State prevent, punish, repair and eradicate all types of violence against Indigenous women, especially those that are the product of structural inequality; guarantees of an Indigenous education with an anti-racist approach, which will allow for education in a free, healthy and violence-free space; Indigenous women's right to participation, guaranteeing criteria of representativeness and parity to ensure the effective participation of Indigenous women in political positions and within their communities; the creation of Indigenous courts with a gender perspective; guarantees of the sexual and reproductive rights of Indigenous persons in accordance with the customs of each people; recognition and promotion of food production, along with food distribution and consumption, etc.

Despite these vital contributions, however, Indigenous women face the greatest social inequalities and gender gaps in the country, largely due to the intersection of their being women and Indigenous. This can be seen, for example, in their greater barriers to accessing justice, education and quality health care. They also face greater discrimination and violence, manifested (among other ways) in income and multidimensional poverty rates that are close to 18% and 30%, respectively, compared to 11% and 20% for non-Indigenous women.<sup>9</sup> And this is not to mention the vulnerability of Indigenous women: the high percentage of Indigenous female-headed households is close to 44%.<sup>10</sup> In many cases this is due to the migration of their partners, who are forced to leave the family home to find work elsewhere, with the consequent overload of responsibilities for the women who are left alone in charge of the house, the children, the farm and the animals.

This situation is exacerbated by gender inequalities that affect both Indigenous and non-Indigenous women, such as low labour par-

ticipation rates. In rural areas, the employment rate is only 32.1% for women, compared to a 64.7% for men.<sup>11</sup> Furthermore, when rural Indigenous women are able to access work, there is a far greater likelihood that it will be informal, unstable or low paid, given that their main income derives from activities related to agriculture and trade. In addition, violence against women still exists and affects relationships of a complementary nature between the genders. Finally, they are the ones who take on most of the caregiving and parenting tasks.

This is why Indigenous women are increasingly raising their voices and making known their contributions, problems and realities. The current process of constitution drafting is an opportunity to overcome the gaps they face and guarantee their rights and the rights of their peoples, as well as to contribute more generally to the construction of a new country because progress towards a good life for all is inconceivable without the well-being of all women.

## **Indigenous Peoples in the constitutional process**

The social uprising of October 2019, along with challenges to the persistence of the dictatorship's constitutional institutions and the exclusions and inequities to which they gave rise, called into question the model of the State's historical relationship with the native peoples. The peoples thus demanded the reconfiguration of Chile as a plurinational and intercultural State, including recognition of the collective rights of native peoples, especially the right to territory and self-determination.

As a result of the native peoples' coordination, they managed to get 17 of the 155 Constitutional Assembly seats elected in May 2021 reserved for Indigenous Peoples: seven for the Mapuche, two for the Aymara, and one for each of the other peoples recognised by law. The application of gender parity rules meant that the Indigenous Peoples were represented by nine women and eight men. Although this is an under-representation of the Indigenous demographic (12.8% of the total population), in addition to which the Afro-descendant people – recognised by law in 2020 – were not included, it was still an historic milestone: it will be the first time that the country's Indigenous Peoples have participated, alongside the rest of the Chilean population, in the drafting of a fundamental charter to establish new bases for interethnic and

intercultural coexistence.

The Constitutional Assembly was established on 4 July and a Mapuche Assembly member, Elisa Loncón, was elected from among her peers to be president of this body, demonstrating the leading role of the Indigenous Peoples in the constitutional process.

Since the start of the Constitutional Assembly's work, issues related to the rights of Indigenous Peoples have gained great relevance, both in the formal and the substantive spheres. In the former, a Provisional Committee on Indigenous Participation and Consultation was set up to produce regulatory proposals for the participation and consultation of Indigenous Peoples in the process.<sup>12</sup> This resulted in the production of a Regulation on the subject,<sup>13</sup> Article 2 of which aims to "establish relevant, permanent, binding and continuous mechanisms for Indigenous participation and consultation, allowing Indigenous Peoples and nations pre-existing the State to submit proposals, recommendations and establish agreements to be discussed in the deliberative stage of the constitutional process." The Regulation explicitly includes the Indigenous Peoples' own or customary law as normative sources for this task, along with the United Nations Declaration on the Rights of Indigenous Peoples, ILO Convention No. 169 and other international instruments. It also incorporates the jurisprudence of the Inter-American Court of Human Rights, the observations and recommendations of the Human Rights Treaty Committees and the UN Special Rapporteurs on human rights, and the recommendations of the Inter-American Commission on Human Rights (Article 7).

This same Regulation envisages holding an Indigenous constitutional consultation, along with various participative bodies such as the "initiative for native peoples' norms", in order to allow Indigenous organisations to generate proposals for constitutional texts to be debated by the Constitutional Assembly. To ensure implementation of this participation and consultation process, a Committee on the Rights of Indigenous Peoples and Plurinationality has been established. One of the main problems facing this Committee in terms of implementing the Indigenous consultation process is the limited timeframe in which the Constitutional Assembly is operating generally, which allows only two months in which to conduct this. This is in addition to the limited budget envisaged for this purpose.

In terms of substance, it is worth noting the inclusion of Indige-

nous Peoples and their rights in the General Rules of Procedure of the Constitutional Assembly. Article 1 thus defines the Assembly as “a representative, parity and plurinational assembly, autonomous by nature, convened by the people of Chile to exercise original constitutional power”. In addition, the rights of autonomy, territory, common property and legal pluralism of Indigenous Peoples, among others, are included in the proposals for norms being drafted by the thematic commissions of the Constitutional Assembly, each of which includes at least two representatives from Indigenous reserved seats. These representatives have also tabled a series of constitutional initiatives related to the rights of Indigenous Peoples, and 248 initiatives have been presented to the Constitutional Assembly by the Indigenous Peoples themselves, all of which will form part of the constitutional debate.<sup>14</sup> All this suggests that these rights, as well as plurinationality, will be envisaged in the constitutional text drafted by the Constitutional Assembly and to be put to a referendum in 2022.

## **Mining and Indigenous Peoples of the north**

In April 2020, the State Defence Council sued Minera Escondida Ltd (operated by BHP Billiton) for environmental damage caused to the Punta Negra Salt Flat, Antofagasta Region, due to its 27-year-long extraction of freshwater for use in its copper production operations. The parties involved –the company, the State, the Council of Atacameño Peoples and the Atacameño Community of Peine– reached a settlement for USD 81 million, an amount intended solely to finance the 19 measures established. The agreement was approved by the First Environmental Court, putting an end to the litigation; it also established the creation of a Socio-environmental Governance Board for the Salar Sub-basin and surrounding sectors –which will be made up of all the stakeholders involved– and an environmental plan for the recovery of the ecosystem. Despite being an unprecedented agreement, some criticism has arisen regarding the feasibility and timeliness of the measures, given the severe damage already caused to aquifers and the loss of their ecosystem services.<sup>15</sup>

Minera Escondida Ltd suffered another setback in 2021: the First and Second Environmental Courts resolved to put a complete ban on

the extraction of fresh water despite permits previously granted for the development of the Cerro Colorado project, due to the continuing deterioration of the Huantija lagoon system and the Lagunillas wetlands (Tarapacá Region), as claimed by the affected Indigenous communities, in particular the San Isidro de Quipisca Indigenous Agricultural Association and the Aymara Indigenous Community of Cancosa.<sup>16</sup>

The lithium industry in Chile, along with the extraction of other minerals and natural resources in the north of the country, did not come to a halt because of the COVID-19 pandemic and its severe restrictions on freedom of movement, meaning that numerous infections were transmitted both within its operations and in neighbouring Indigenous communities. Moreover, some companies linked to the metal and non-metal mining sectors maintained or increased their production during the last tax year (2020-2021), on a par with pre-pandemic times. This industry has also been favoured by rising global prices (particularly for copper), and China's exponentially increasing demand for raw materials for the development of new technologies.<sup>17</sup> During October 2021, the government of President Piñera formally initiated a bidding process for the exploration and exploitation of lithium in the country's northern salt flats for a total of 400,000 tonnes. This decision generated a debate between the business sector, the government of the day, academia and Indigenous communities. It seems totally counterproductive to continue with such bids while the constitutional process is ongoing since new bases for environmental institutions, ownership of natural assets, and recovery of the lands and territories of Indigenous Peoples are being debated. The bidding process was also taking place just a few months before the inauguration of Gabriel Boric's new government. He has included the creation of a national lithium company in his programme and intends to implement public policies in this area that deviate from those promoted by previous administrations, which were aimed at exploitation by private and foreign entities. Finally, and despite such considerations, and the staunch opposition of the affected peoples and communities, in January 2022, just two months before leaving office, the Piñera government awarded two tenders to BYD Co. Ltd. ("Build Your Dreams") (Chinese) and Servicios y Operaciones Mineras del Norte (Chilean) for 80,000 tonnes each. The process has, however, been suspended while the courts review the appeals filed.<sup>18</sup>

## The salmon industry and its impact on the rights of Indigenous Peoples

The salmon industry began to develop in Chile in 1969, under a cooperation agreement with the Government of Japan. After more than 50 years of growth, and with State support, this industry has today achieved significant importance within the national economy and worldwide, representing some 30% of global production and occupying second place in world salmon production after Norway. Production is concentrated largely in Patagonia, between the regions of Los Lagos, Aysén and Magallanes, where the conditions for its development are optimal. This also happens to be an area of great biodiversity, however, both terrestrial and marine, and a territory of traditional use and occupation of the Mapuche (Lafkenche and Williche), Kawésqar and Yagán peoples. As a result, the expansion of this industry and its practices has generated a growing number of socio-environmental concerns regarding its impact on human rights.

In this context, the *Informe Industria Salmonera en Chile y Derechos Humanos* [Report on the Salmon Industry in Chile and Human Rights]<sup>19</sup> was published at the end of 2021, presenting the results of a study carried out by the National Institute of Human Rights and the Danish Institute for Human Rights. From a human rights perspective, and based on the UN Guiding Principles on Business and Human Rights, the study analyses and documents the impacts of salmon farming on the environment, local communities and workers.

Among the impacts on the rights of Indigenous Peoples, the main findings show that a series of rights enshrined in the UNDRIP and ILO Convention 169 are being violated. It notes that “there is a perception that the State and companies understand development in a very different way from Indigenous Peoples –and impose that way of understanding it– which puts Indigenous Peoples’ right to self-determination of at risk as well as their right to freely pursue their economic, social and cultural development”. In sum, the violations relate particularly to lands, territories and natural resources, with the destruction of sites of cultural and spiritual significance, a lack of consultation and participation in matters that may affect them, occupation of their territories by the salmon industry, and contamination of their resources, among other things.

In spite of the demonstrable impacts outlined in this study and the innumerable efforts of civil society organisations and the affected Indigenous Peoples to halt the advance of this industry,<sup>20</sup> just a few weeks before leaving office President Piñera expedited the processing of an initiative that will create “sustainable aquaculture concessions”<sup>21</sup> and which has the “purpose of addressing the problem of interaction between aquaculture and protected areas”. If approved, it will affect Kawésqar communities in particular since, as stated in the text, in the Magallanes region: “(...) the only free space for aquaculture development is the Kawésqar National Reserve”, a protected area located on the ancestral territory of the Kawésqar people. It remains to be seen how the new government will address this issue.

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**Lorena Arce, José Aylwin, Marcel Didier, Hernando Silva and Karina Vargas**, members of the Observatorio Ciudadano ([www.observatorio.cl](http://www.observatorio.cl)).



# Colombia



Colombia is a country noted for its geographical, biological and cultural diversity. Vast coastal and Andean regions, tropical rainforests on the Pacific and in the north-western Amazon, the Orinoco plains, vast desert areas and islands are all home to 115 Indigenous Peoples and Afro-descendant communities, recognised as the collective subjects of rights by the Constitution and law.

According to the 2018 national census, the ethnic populations account for some 13.6% of the country's total population (of 48,258,494 people), there being 1,905,617 individuals who self-identify as belonging to one of the different native Indigenous Peoples. In addition, there are 4,671,160 Afro-descendant, Raizal, Palenquero and Roma people. Approximately 58.3% of the Indigenous population lives in 717 collectively-owned reserves, while 7.3% of the people belonging to Afro-descendant communities live in 178 collectively-owned territories, organised into Community Councils. Other than in the Amazon region, however, lands legalised as ethnic collective territories are few and far between, and while administrative and legal processes for the formation, expansion, regulation and return of ethnic territories slowed during the Alvaro Uribe administration, they have come to a standstill under the current presidency of Iván Duque.

## Indigenous Peoples on the front line of social protest

**2** 8 April 2021 marked the beginning of a memorable period in Colombia's recent history. For more than two months, the country witnessed a series of mass mobilisations and social protests unprecedented in the country's history.

This social outburst, coming in the wake of smaller demonstrations in 2020, was triggered by the draconian tax measures that Iván Duque's government intended to impose under the excuse of the COVID-19 crisis. Although these measures threatened to exacerbate poverty and widen the enormous inequalities from which the country has long been suffering, these protests were actually the result of an accumulation of economic, social, political and humanitarian difficulties that have been

affecting most of Colombian society for decades, against a backdrop of drug trafficking and the internal armed conflict.

In 2021, town and city centres formed the main backdrop to the protests, and the severity of State repression and paramilitarism that has historically affected the most disadvantaged and vulnerable sectors in rural areas was thus revealed. This violence had previously been filtered out before reaching public opinion and the international community, under the banner of an endless heroic war on bandits, guerrillas and coca growers. This time, with the cities the direct scene of the State security forces' disproportionate actions,<sup>1</sup> city dwellers themselves were able to witness live via social, community and academic media what was the main cause of massive human rights violations and the criminalisation of social protest. In this climate of State hostility towards those who took to the streets peacefully, there were dozens of murders, eye mutilations, sexual abuses, injuries, illegal detentions, hundreds of missing persons and even covert vandalism. In the space of just two months, more than 3,000 acts of aggression were recorded,<sup>2</sup> most of them attributed to the security forces and armed civilians who were supporting the repressive police actions against youth and communities mobilised in the different cities.

This social uprising was undoubtedly the most significant event of 2021 and, indeed, in the country's recent history, and the ethnic communities and organisations –this time leaving their own territories to join the great demonstration– played an active role. Members of different Indigenous Peoples travelled from all corners of the country to cities such as Bogotá, Cali, Medellín, Pasto, Quibdó and Popayán to join the protest, demonstrating new forms of dialogue and interaction with the population. Indigenous guards offered their protection to protesters at rallies and during marches; shamans and wise men organised and carried out healing ceremonies and cultural celebrations; Indigenous women took the lead in community canteens to feed the protesters; and some Indigenous youth were at the forefront of tearing down statues and symbols of the colonisation, dispossession and plunder of the Colombian people while also participating in the erection of new representations of popular resistance and emancipation. In the words of the Regional Indigenous Council of Cauca (CRIC):

*During this time, the minga [collective act of protest] set out to water and fertilise the seeds of struggle that were sown here.*

*It did this by accompanying as many points of resistance as possible, to the sound of dance, flutes and drums. Distributing food in poor neighbourhoods, unmasking and revealing civilians and military who were infiltrating and vandalising the national strike. Opening humanitarian corridors for the supply of medicines, food and fuel. Teaching what the minga is all about and the ancestral forms of organisation and struggle.<sup>3</sup>*

The Indigenous movement's capacity for mass peaceful mobilisation and its forms of resistance permeated the protests, generating new forms of mutual recognition, questioning secular forms of discrimination and exclusion, and establishing the Indigenous and Afro-descendant movement as a vital player in the processes of social, economic and political transformation and in the construction of peace as demanded by a majority of the country's population.

Unfortunately, the renewed empathy between Indigenous sectors and the general protesting population began to be painted in the regime's media as a threat against the "good people" of the cities, going so far as to offer justifications for the security forces' and urban paramilitaries' armed attacks against the mobilised Indigenous Peoples, especially in the cities of Cali, Popayán and Bogotá.<sup>4</sup> This aggression continued over time despite appeals from various international human rights organisations such as the Inter-American Commission on Human Rights (IACHR):

*The Inter-American Commission rejects that several public statements were made over this period to stigmatise social protest and, especially, demonstrators from indigenous peoples and members of the social uprising known as Minga Indígena. In particular, the IACHR has been informed that groups of armed civilians indiscriminately shot against a demonstration of indigenous persons on May 9 in Cali. The IACHR deems the participation of armed civilians in acts of repression and attacks with firearms against demonstrators extremely serious.<sup>5</sup>*

The consequence of these accusations from government officials and their allies<sup>6</sup> was an open stigmatisation that was echoed in the most pro-war social sectors and media, resulting in an as yet unknown number of Indigenous people being attacked during the climax of the protests in different parts of the country. What is clear is that the joint at-

tack by the security forces and armed civilians against the Indigenous Minga in the city of Cali was amply documented. The CRIC states:

*More than 10 men and women from the minga suffered physical attacks at the hands of the police and their friends; some were dressed in black and others in white but both had pistols in their hands. We bore the brunt of the departmental and local media monopolies, which did nothing but point fingers, discriminate and stigmatise us.<sup>7</sup>*

For most of Colombia's Indigenous Peoples and ethnic communities, the 2021 protests against inequality, poverty, corruption, war and the cartelisation of political and economic power were merely a continuation of their historical struggles. However, their participation in them undoubtedly strengthened their relationships with urban populations, workers, students, traders, environmentalists, and others. Moreover, it contributed decisively to breaking the symbols and representations on which the elites and power groups have relied for centuries. The country thus entered an unprecedented period of transformation, and the Indigenous Peoples and ethnic communities became front-line protagonists, opening paths in the midst of diversity, setting an example in their forms of organisation, and positioning the changes that were coming in the collective imagination.

## **Prolongation of war and humanitarian crises**

Most of the 24 early warnings issued by the Colombian Ombudsman's Office in 2021 to alert the authorities to the likely occurrence of acts of violence<sup>8</sup> focused on threats to regions inhabited by Indigenous and Afro-descendant peoples and communities, especially the departments of Chocó, Antioquia, Cauca, Valle del Cauca, Nariño, Putumayo, Casanare and Vichada.

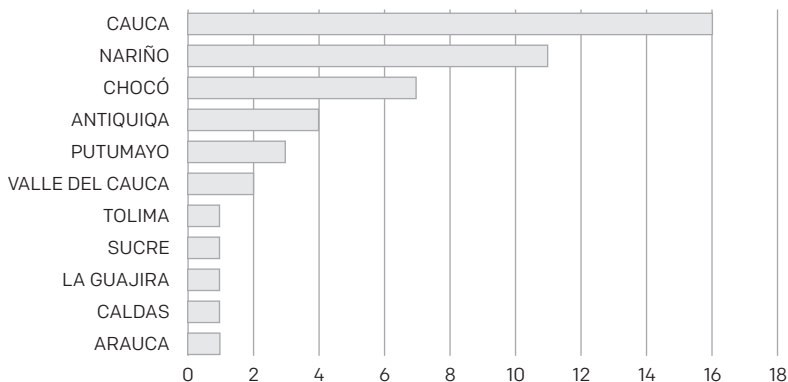
The analysis underlying the early warnings issued by the Ombudsman's Office generally indicates a reconfiguration of the risk scenarios created by illegal armed groups, who have never ceased operating in these regions and who remain in permanent dispute over control of territories, drug trafficking routes, trafficking of fuel and supplies for coca processing, illegal mining, arms trafficking, and support from corrupt politicians and governments, etc. The actors involved in this perpetual

dispute are the so-called GAOMIL (Armed Groups Organised Outside of the Law), specifically guerrilla and narco-paramilitary factions.<sup>9</sup>

For its part, in its Third Report on the Human and Territorial Rights of Colombia's Indigenous Peoples,<sup>10</sup> the National Indigenous Organisation of Colombia (ONIC) also indicated that the actions of illegal armed groups and the security forces entered a new spiral of violence and mass violations of individual and collective rights in 2021 in the form of territorial lockdowns of populations; mass forced displacements; harassment; and the forced recruitment of minors (with a significant 134 Indigenous recruits recorded). To these figures must be added the Indepaz report which states that, in 2021, 48 Indigenous people were murdered, most of them in the departments of Cauca, Nariño and Chocó, in other words, the western fringes of the country on the Pacific coast, disproportionately affecting the Embera, Wounaan, Nasa and Awá peoples and the traditional Afro-descendant communities living in their collective territories.

The Colombian government has given absolutely no response to the increasing violence in these territories. Despite the imminent risk alerts issued by the Ombudsman's Office, the communities have been completely abandoned to the aggression of these armed groups.

### Homicides of Indigenous people in Colombia



Source: Prepared by the author on the basis of Indepaz, 2021<sup>11</sup>

Finally, it should be emphasised that many of the ethnic territories with the highest rates of human rights violations and increased armed actions are located in the Pacific region of Chocó, in areas where large extractive and infrastructure projects are expected to be developed:



(In addition to the Tribugá Port) *There is also talk of a series of unsustainable development projects that will affect life in this region. The Cupica Port in Solano Bay, the privatisation of the Atrato River, hydroelectric projects on the San Juan and Baudó rivers, and the construction of an inter-oceanic dry canal that would connect the Pacific and Caribbean by train, affecting the ecosystem and the communities that have defended the Darién territory for years. This plan is composed of a series of subprojects (...). In addition, palm monoculture linked to land dispossession, legal and illegal mega-mining, drug trafficking, arms trafficking, illegal logging and human trafficking.* (Redepaz)<sup>12</sup>

## **Indigenous women in the spotlight**

Following the lockdown and their withdrawal from organisational dynamics as a result of the COVID-19 pandemic, women from most of Colombia's ethnic peoples continued to consolidate their influence in community and territorial organisation and governance throughout 2021. The participation of Indigenous and Afro-descendant women continued to increase over the year, not only within the leadership of their own governments and regional and national organisations (governorship of municipalities, chiefdoms, councils, administrative positions) but also in the design and direct management of life plans and development projects in their territories.

Unfortunately, women's entry into the political and administrative spheres of their communities –many of them victims of war, drug trafficking, extractivism and environmental degradation– has left them exposed to threats to their lives and integrity. April 2021, for example, saw the tragic assassination of Sandra Liliana Peña, a Nasa Indigenous woman and governor of her reserve in Cauca department.<sup>13</sup> The cause of the murder was directly related to her people's decision to enforce its own law, protect its territory from environmental damage, and combat coca crops and drug trafficking corridors. Similar cases of threats against and murders of women defenders of ethnic territories have occurred in other parts of the country, highlighting the greater vulnerabil-

ity of women who are involved in processes of self-government and in protecting their rights, territories and natural assets.

Another notable fact that corroborates the rise of women in social and political life, not only within their communities but in the country as a whole, was the appearance onto the national political scene of Francis Márquez and María Uriana Guariyú, the former a native of the ethnic territories of the northern department of Cauca and the latter an Indigenous Wayúu from La Guajira department.

These women, human and environmental rights activists in their territories, have opened up a political space of national importance and launched themselves as candidates for the Presidency of the Republic in the 2022 elections. The fact that these women are aspiring to power under equal conditions and capacities as other candidates is undoubtedly another sign of the profound political changes that are taking place within ethnic communities; however, it also represents a real challenge to the dominant and stagnant powers that are trying to maintain the status quo and their privilege by destroying the foundations of democracy.

## **The Raizal of San Andrés and Providencia in the eye of the hurricane**

The archipelago of San Andrés, Providencia and Santa Catalina in the Colombian Caribbean is the farthest island territory from the mainland. Most of its inhabitants are members of an Afro-Caribbean people that have their own language, culture and traditions, which is why they have been recognised by the Constitution and the law as the collective subjects of rights.

It is evident that the enormous geographical distance between the archipelago and the mainland has formed a protective barrier for the Raizal people and their culture but it has also resulted in their isolation and abandonment by the State, and this became starkly clear following the devastation caused by Hurricane Lota in November 2020.

This category 5 hurricane left 98% of the island destroyed, which is why President Iván Duque promised its reconstruction within 100 days. Throughout 2021, however, the Raizal people continued to suffer the effects of the disaster without any effective response, to the point that

they decided to file for constitutional protection in order to put a halt to the massive violation of their rights to which the national government had condemned them, and to bring about the return to the islands of a large number of Raizal families who had been forced to migrate after the hurricane.

*In this painful crisis for the archipelago, in which the disaster caused by the hurricane has added to the devastating impacts of a fall in tourism caused by the pandemic, the State must take urgent humanitarian measures to overcome the most vital challenges such as the provision of shelter, food, medicine and drinking water. (Dejusticia)<sup>14</sup>*

Unfortunately, the rulings of the courts of first and second instance refused to protect the collective rights of the Raizal people, who are now awaiting a review by the Constitutional Court. Meanwhile, the Raizal people have a well-founded fear that the government's lack of attention and its intention to "relocate" the families affected by the hurricane to the mainland may be merely the continuation of a sinister plan of "Colombianisation" and exploitation of the islands without the uncomfortable presence of the Raizal people.

*At that time, in the mid-20th century, there were plans on the part of the Colombian government to "move" the entire population of the islands to the coast near Barranquilla and recolonise the remote islands with population groups from the interior. This was to have concluded a complete Colombianisation and would have put an end forever to all arguments over the cultural and political independence of San Andrés and Providencia. The feared protests and the impracticality of such a move led them to abandon the plan in favour of a more subtle one.<sup>15</sup>*

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  6. The government of Iván Duque managed to bring about a concentration of the different branches of public power and the oversight agencies, with the complicity of his party, the Centro Democrático, whose leader is Álvaro Uribe Vélez, and other allied parties of the moderate, radical and Christian right, such as the Conservative Party, Cambio Radical, Mira and Colombia Justa Libres. Representatives of these parties form the majority in the Congress of the Republic and occupy most of the high and medium-level public positions.
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***Diana Alexandra Mendoza*** is a Colombian anthropologist with a Master's in Human Rights, Democracy and the Rule of Law. She is also a specialist in cultural management. She works with Indepaz and IWGIA as an independent researcher and has extensive experience in individual and collective rights, environment and culture.



# Costa Rica



Eight Indigenous Peoples live in Costa Rica: the Huetar, Maleku, Bribri, Cabécar, Brunka, Ngäbe, Bröran, and Chorotega, where they constitute 2.4% of the population. According to the 2010 National Census, a little over 100,000 people recognise themselves as Indigenous.

Although almost 7% of the national territory (3,344 km<sup>2</sup>) is formally covered by 24 Indigenous territories, this area actually only appears in the decrees establishing them and a large proportion has been invaded by non-indigenous occupants. In a country where nearly 20% of the population lives below the poverty line, this percentage reaches alarming figures in the case of Indigenous Peoples: Cabécar 94.3%; Ngäbe 87%; Bröran 85.0%; Bribri 70.8%; Brunka 60.7%; Maleku 44.3%; Chorotega 35.5% and Huetar 34.2%.

Costa Rica ratified ILO Convention 169 in 1993 and added recognition of its multicultural nature to the Political Constitution of the Republic in 2015. Even so, in his preliminary report of 2021, the Special Rapporteur on the rights of indigenous peoples indicated that “Indigenous peoples and their collective rights are still not explicitly recognized in the Constitution”.<sup>1</sup>

Indigenous Law 6172 of 1977, in turn, recognised traditional Indigenous organisations. However, a subsequent regulation imposed a status that was completely alien to their traditional power structures: the Indigenous Integral Development Associations (ADII), under the supervision of the National Directorate of Community Development, an entity that has no capacity to understand cultural diversity, Indigenous rights or an intercultural approach.

Among the Indigenous organisations that enjoy national and regional legitimacy and act in defence of their rights are the *Mesa Nacional Indígena de Costa Rica*, the *Frente Nacional de Pueblos Indígenas* (FRENAPI), the *Red Indígena Bribri-Cabécar*, the *Asociación Ngäbe del Pacífico*, the *Asociación Regional Aborigen del Dikes*, the *Foro Nacional de Mujeres Indígenas* and the *Movimiento Indígena Interuniversitario*.

## Women reclaiming land

Indigenous women played a leading role in the land recovery movement in Costa Rica in 2021. Faced with the State's disinterest and inaction in this regard, the movement has been evicting illegal settlers from within the boundaries of Indigenous land titles since 2010. Women have been particularly involved in this internal regularisation in the Salitre, Térraba, Cabagra, China Kichá and Guatuso territories, including some recoveries undertaken solely by women. The violent response from these illegal occupants, farmers and their supporters, including government authorities, was more intense this year than previous ones.

In this regard, those recovering the land have received death threats, and threats against their children and their property. In China Kichá, farmers and their armed assassins blocked the entrances to the Indigenous territory and directly threatened the women and their daughters with sexual violence. The police and government responded by advising the Indigenous community members not to provoke the armed farmers and to respect their position in the interest of democratic coexistence.

Organisations of Indigenous women reclaiming territories, from Térraba, Salitre, Cabagra and China Kichá, have joined forces and shared their experiences of struggle to produce –with the support of the United Nations Population Fund– the “Agenda of Indigenous Women in Defence of Southern Territories”,<sup>2</sup> which “forms a consultation tool for authorities and public officials from various institutions who are responsible for ensuring compliance with the human rights of Indigenous women, through institutional actions and public policies”. This document highlights women’s involvement in the land recovery process and the fact that, for them, land rights and food security lie at the heart of Indigenous demands.

The UN Special Rapporteur's report on Costa Rica<sup>3</sup> indicates his concern at the approach of the *Patronato Nacional de la Infancia* (National Child Welfare Agency / PANI) with regard to “indigenous children involved in land reclamation processes”, who are being removed from their families.



## Abduction of Indigenous children continues

The Indigenous World 2019<sup>4</sup> cited the Cabécar women's denunciation of PANI's policy of violently removing Indigenous children from their families amidst allegations of alcoholism and domestic violence, and then placing them in foster care without any foresight or strategy aimed at respecting their culture. As the complaint established, the Cabécar children were sent to non-indigenous homes where they were mocked for not speaking Spanish, for their skin colour, and for their different customs generally.

The Executive President of PANI responded to the complaint a few months later by offering to request the technical assistance of the National Directorate of Community Development (DINADECO) on intercultural issues. This institution is known specifically for its lack of sensitivity to cultural diversity and for the conflicts it frequently creates with the communities by intervening in their internal affairs without showing any respect for Indigenous legislation or rights.

According to leaders from Alto Chirripó, whose names have not been cited to avoid reprisals, the kidnappings continued in 2021, PANI's aggression against the Cabécar families intensified and no intercultural capacity was created within this institution.

In the Indigenous territory of Duchí (Alto Chirripó by its official name), a group of women leaders have, with the support of a lawyer who offered his services *pro bono*, and after several years of numerous administrative and legal proceedings, obtained legal status for their organisation, the Kajala Batca Association of Indigenous Women, with the aim of strengthening their identity and worldview. This organisation has repeated its position of denouncing PANI for its constant aggression and lack of understanding of Indigenous parenting. The ethnocidal desires of this institution are notorious: this is an institution which, in the 21<sup>st</sup> century, is continuing to implement actions similar to those of the Indigenous boarding schools of previous centuries in Canada and Australia.

The barriers faced by the women of Duchí in obtaining legal recognition demonstrates the resistance that is encountered when attempting to form organisations to defend the culture and rights of women, a resistance that can only be explained by discrimination against Indig-

enous Peoples. Legal status is facilitated to production organisations but when the application is for the purpose of defending self-determination and rights, they face endless paperwork and rejection.

## **New challenges in the face of diversity**

Ethnic and cultural diversity has increased in the country since the 1980s due to in-migration, notably from Nicaragua, and particularly the Miskito region, which also encompasses a significant part of the department of Gracias a Dios in Honduras. Members of the Miskito people have settled in Costa Rica, most of them in a neighbourhood in Pavas district, to the west of the capital, which is the centre of reference for them in relation to the rest of the country and a channel of communication with their communities of origin, both in Nicaragua and Honduras.

Unofficial sources estimate the Miskito population to number more than 2,000 individuals, of which some 1,500 are concentrated in Pavas, in a neighbourhood already identified by other urban dwellers as Miskito. The number is likely to be higher, in part because the 2011 national census records more than 8,000 Indigenous foreigners.

The Miskito people have organised themselves into the International Multiethnic Indigenous Miskito Association of Costa Rica and their current presence, identity and demand for rights is a challenge to a country that has only ever recognised rural Indigenous Peoples with territories that public institutions insist on calling “reserves”.<sup>5</sup>

## **Further delay in the Law on the Autonomous Development of Indigenous Peoples**

The draft Law on the Autonomous Development of Indigenous Peoples was published in the Official Gazette in 1994.<sup>6</sup> 2021 therefore marked 27 years of Parliament’s refusal to discuss this bill. Nor has the Executive Branch prioritised it even though its enactment has been promised during several electoral campaigns. There is still strong racist resistance among congressmen and women and fierce opposition from the private sector and conservative political parties who believe it is risky for extractive investments and who furthermore do not accept a concept of territory that does not consider land to be a commodity.

### **Continuing imposition of organisational forms alien to Indigenous systems**

As mentioned in previous years, the State continues to violate Indigenous Law 6172 of 1977 and Convention 169 by imposing a particular form of organisation on Indigenous territories. In 2021, the Special Rapporteur stated in his preliminary report: As they “are imposed state institutions [they are] not suitable to guarantee the representation of indigenous peoples’ communities, which are governed by their own system of governance. This is leading to a weakening of the traditional structures of representation (...)”.<sup>7</sup>

### **The struggle for land: more violence and impunity against Indigenous Peoples**

Indigenous lands in Costa Rica were titled without prior regularisation (*saneamiento*) or physical demarcation. Twenty-four territories have been established through various executive decrees since the 1950s. The Indigenous Law of 1977 allocated an annual budget for the purchase of non-indigenous lands within the boundaries of those territories. However, as of 2021, the State had not fulfilled this commitment and, in contrast, was tolerating the invasion and dispossession of Indigenous lands by landowners and local politicians.

The land regularisation process initiated in 2016 made no significant progress in 2021. This is largely due to the insufficient resources allocated to this work and partly due to the limited capacities of the Rural Development Institute, which has not yet understood that land regularisation processes and associated conflicts go beyond the topographical and legal dimensions and have historical, social, cultural and political complexities that require an interdisciplinary approach and an intercultural and intersectional approach that are outside of its area of expertise.

The budget allocated for payment of compensation to eligible settlers is insufficient and eviction orders for illegal occupants are being halted by judges who are tolerant of the violence being meted out by landowners and their thugs against those recovering the land. During 2021, in China Kichá, an Indigenous territory of the Cabécar people, farmers and their henchmen, all armed, blocked the entrances to the territory demanding that the reclaimed lands be returned to them and

threatening the Indigenous people with death. The government's response was to advise the Indigenous people not to create conflict and not to attack the armed thugs. No action was taken to stop the racist demonstration.

The precautionary measures issued by the Inter-American Commission on Human Rights in April 2015 have not yet been implemented six years on and leaders and residents involved in land recoveries continue to be threatened. The murder of Sergio Rojas, Bribri Indigenous leader of the Salitre territory and one of the founders of FRENAPI, was archived in 2020 and reopened in early 2021 due to several appeals filed by Indigenous organisations. It has not yet been investigated, however, and the murder remains unpunished. In 2020, Jerhy Rivera Rivera, a Bröran Indigenous leader, was also murdered. His murderers remained at large by decision of the Criminal Court of Buenos Aires de Puntarenas<sup>8</sup> and the trial, as of 31 December 2021, had not yet taken place.

There was no progress in the resolution of land conflicts in 2021, and regularisation was characterised by its sluggishness and institutional misunderstanding of the complexity of the issue. According to FRENAPI, some territories such as Térraba are 70% occupied by non-indigenous invaders while in China Kichá, for example, it is 95%. At the same time, the Indigenous land recovery movement is being attacked with impunity by farmers, and judges have halted all evictions of illegal occupants from Indigenous territories such that the plundering continues.

It is particularly important to note that Indigenous leaders such as Pablo Síbar Síbar, president of FRENAPI, continued to receive death threats throughout the year. In Pablo's case, his home and land suffered arson attacks that were never investigated by the State.

## **Future prospects**

2021 was a year of significant setbacks with regard to Indigenous rights in Costa Rica. As indicated above, apart from the provision of infrastructure, the State made no progress in resolving structural issues, largely land and territorial rights and the autonomous management of natural resources. The right to self-determination continued to be violated on a daily basis through the imposition of organisational structures alien to

Indigenous cultures and their supervision by an institution with no intercultural approach and discriminatory practices towards Indigenous forms of decision-making.

As indicated last year, land grabbers continue to act with impunity, threatening and killing without the State taking any action to put an end to the problem.

In 2021, with funds from the Inter-American Development Bank, the State began the participatory formulation of a public policy for Indigenous Peoples. To coordinate the process, it hired a professional cooperative that soon demonstrated its lack of knowledge of Indigenous issues and rights. It ended with its contract being terminated. It is unclear what will happen now in this regard.

There will be a change of government in 2022 and only one of the candidates has expressed any concern for the structural aspects of Indigenous rights; the rest have limited themselves to proposing welfare strategies. The candidate with the highest voting intentions at the end of 2021, former President José María Figueres, violated the principle of consultation during his term of office (1994-1998) when he reduced the Bribri de Kéköldi Indigenous territory, even though Convention 169 was already in force. In 2020, a court ruling forced the State to return the land taken in 1996 and to compensate the Kéköldi people. There was no progress in complying with this ruling in 2021.

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**Carlos Camacho-Nassar** is an anthropologist and geographer. He has conducted studies on Indigenous rights, particularly on territorial issues and their associated conflicts in South America, Mexico, Central America and the Caribbean. He has published several texts on the subject. Contact: [carloscnassar@gmail.com](mailto:carloscnassar@gmail.com)

**Bettina Durocher** PhD is an agricultural engineer, intercultural mediator and researcher. She has conducted and published studies on women's and Indigenous knowledge of food security and inclusive climate resilience. She works as a consultant specialising in gender equality and women's rights in humanitarian and international development programmes in Latin America, Africa and Asia. Contact: [durocher.bettina@gmail.com](mailto:durocher.bettina@gmail.com)



# Ecuador



According to the National Institute of Statistics and Census (INEC, February 2022), Ecuador's current population stands at 17,895,131 inhabitants.<sup>1</sup> There are 14 Indigenous nationalities in the country totalling more than one million people and they are organised in local, regional and national organisations. Indigenous nationalities and peoples live mainly in the highlands (68.20%), followed by the Amazon (24.06%), with only 7.56% found on the coast. The following Indigenous nationalities were included in the 2010 Census for self-identification purposes: Tsáchila, Chachi, Epera, Awa, Kichwa, Shuar, Achuar, Shiwiar, Cofán, Siona, Secoya, Zápara, Andoa and Waorani.<sup>2</sup> The Kichwa form the largest group (85.87%) with nearly 800,000 members. Despite the low numbers of most nationalities, however, all are of equal importance within the context of a Plurinational State. The highland province with the largest rural Indigenous population is Chimborazo, with 161,190 Indigenous inhabitants in 2010. Other provinces with high numbers of Indigenous people are Imbabura and Cotopaxi, with an average of 84,500 individuals each. There are also a significant percentage of Indigenous people living in rural areas of the highland provinces of Tungurahua and Pichincha, and in the Amazonian provinces of Napo and Morona Santiago, ranging from between 50,000 to 80,000 inhabitants. After more than 13 years of the new Constitution and more than two decades of ratification of ILO Convention 169, there are still no specific or clear public policies to prevent or neutralise the risk of these peoples disappearing from the country.

**T**hroughout 2021, a number of events directly affected the living conditions and economic and social rights of Ecuador's Indigenous Peoples and nationalities: the impact of and recovery from the COVID-19 pandemic; the change in government; and government agreements and disagreements with Indigenous Peoples' organisations, marked by a scaling up of neoliberal policies.



## Impact of and recovery from the COVID-19 pandemic

COVID-19 again had negative effects on the country's economic and social environment in 2021. The economic downturn had an impact in terms of increased poverty and extreme poverty. Even prior to the pandemic, Ecuador was already facing complex economic, social and political challenges. As of December 2019, poverty had reached 25% nationally, and was up to 41.8% in rural areas, affecting some 4.4 million people. By mid-2021, that figure had increased to 32.2% of the population, equivalent to 5.7 million people living in poverty, of which 2.6 million or 14.7% are in extreme poverty, according to the latest INEC report.<sup>3</sup>

The pandemic also affected unemployment and informal employment rates, which have increased 0.4 percentage points year-on-year. This means that more than 107,000 people fell into underemployment between November 2020 and November 2021. Put another way, the average income recorded was USD 290 per month, a drop of USD 114 between January and June 2021. This increase in unemployment had a particularly negative impact on the female labour force and on the economies of Indigenous Peoples, judging by INEC's data. According to ECLAC, this context exposes Indigenous Peoples to a scenario in which "the risk of losing sight of Indigenous Peoples, both in the area of mitigation and post-COVID-19 recovery, including the particular situations of Indigenous women, children and the elderly, is growing exponentially".<sup>4</sup>

In the context of the pandemic, Indigenous communities, peoples and nationalities are particularly sensitive to and at high risk from an exponential spread of COVID-19 at the community level, which can lead to significant complications such as high mortality and a local health crisis, due to the difficulty of accessing timely care. In many cases, the communities present structural conditions that may be decisive for hygiene and health, such as access to basic services, an insecure economic situation, environmental pollution, geographical accessibility problems, communication difficulties, and so on.

Such is the case of the communities of Chimborazo in the central Ecuadorian highlands. Professor Luis Alberto Tuaza notes: "The arrival of COVID-19 in the country caught everyone off guard. Neither the government nor the authorities of the decentralised autonomous governments nor the Indigenous movement were prepared for the disaster the

pandemic would cause.”<sup>5</sup> Tuaza explains that the strong migratory link between communities in this central highland province and cities such as Guayaquil is a structural factor that makes for easy spread of the virus. The Indigenous people of Chimborazo live in Guayaquil and are involved in the fruit and vegetable, car accessories and cyber services sectors. They are organised around churches and credit institutions for small businesses. “In the pandemic, the largest number of infected people were Indigenous because they work in the markets, they share a house with several families. You don't know who is healthy and who is sick,”<sup>6</sup> says Professor Luis Alberto Tuaza.

“We never leave the sick to fend for themselves. We would not turn our backs on our parents, relatives or neighbours, so we became infected too (...). The sick were not admitted into hospital, they told us there were no beds and that they should go home,” explains Augusto Maji, a member of the Confederation of Indigenous Nationalities and Peoples of the Ecuadorian Coast (CONAICE).<sup>7</sup> But the pandemic not only caused deaths but unemployment too. Many people lost their job and were unable to meet their debts with banks and credit unions.

For the Confederation of Indigenous Nationalities of Ecuador (CONAIE): “The lack of work and the government's policy of labour insecurity generated a migratory wave (...) Despite legal reforms such as the Humanitarian Support Law, employment did not improve. Families desperate because of the economic crisis need to be prevented from continuing to fuel the wave of migration in search of income to pay off their loans. Recovery requires debt relief.”<sup>8</sup>

Following the change in government in May 2021, the new president, Guillermo Lasso, promoted mass vaccination through the so-called 9/100 Vaccination Plan with the aim of reducing disease mortality and morbidity. In a joint strategy between the Ministry of Public Health, the Secretariat of Human Rights, Indigenous organisations and some local governments in cantons with the largest Indigenous population, health brigades were able to immunise anyone over the age of 16. According to the records of the Ministry of Public Health, as of October 2021, almost 80,000 people had been vaccinated nationwide from among 15 Indigenous nationalities and 18 Kichwa Indigenous Peoples. For this campaign they applied a Protocol with *Intercultural Relevance for the Prevention and Care of COVID-19 in the Indigenous, Afro-Ecuado-*

*rian and Montubio Peoples and Nationalities of Ecuador*; however, there were complaints that the vaccination plan had not reached everyone.<sup>9</sup>

In Cayambe, in coordination with Cayambe municipality, the Confederation of Kichwa People of Kayambi promoted a massive Regional Vaccination Plan among its member communities “which has been managed in a responsible and appropriate way, following the resolutions issued by the National Risks and Emergencies Service, and this has enabled the rate of infection to be controlled and mortality rates to remain low (...)”. In spite of this, both the Confederation and the municipality continued their plans, which included conducting training and monitoring workshops.<sup>10</sup> “We also invested close to 200,000 dollars in equipping and adapting a COVID-19 room at the Raúl Maldonado Mejía Basic Hospital; we have supported the Health District to purchase and use rapid tests and PCRs. The emphasis has been on the most vulnerable population: the elderly, people with disabilities, single mothers, and children. With a loan from the State Bank, and solidarity contributions from private enterprise, associations, neighbourhoods, traders, stationery companies and bakeries, we have delivered more than 14,000 food baskets, 1,218 tablets and expanded wi-fi coverage throughout the canton,” explained Mayor Guillermo Churuchumbi.<sup>11</sup>

Meanwhile, the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE) continued to support and monitor the pandemic. According to the latest reports from December 2021, the total number of cases of COVID-19 among the different Amazonian nationalities has reached 3,257 positive cases, 665 suspected cases and a total of 5,734 negative cases. The number of deaths is 50 verified plus 54 with symptoms.

One of the most outstanding cases was the attention provided to 126 members of Waorani family groups who have maintained family ties with the Tagaeri and Taromenane Indigenous Peoples living in voluntary isolation around the Yasuní National Park, in the north-eastern Amazon.<sup>12</sup>

Together with the Ministry of Public Health, a campaign was launched to vaccinate the Waorani population living in the Tambococha Tiputini Intangible Zone. According to the health authorities, dozens of Waorani families were vaccinated during this campaign; they were informed of the importance of receiving the jab and asked to give their consent.

## **New neoliberal government: agreements and disagreements with the Indigenous movement**

The country's political-electoral situation was marked by the end of Lenín Moreno's government and the presidential elections. A majority of Indigenous Peoples expressed their support for the candidates of the Pachakutik Plurinational Movement, although some small groups chose to support other options. This process was not free from internal disagreements and ruptures, however: the nomination of lawyer Carlos Pérez, who changed his name to Yaku, former prefect of Azuay, former activist in the Maoist Popular Democratic Movement and who, over the last decade, has become an anti-mining activist and defender of the wetlands in his province, produced a negative reaction from figures with a longer organisational career.<sup>13</sup>

During the presidential campaign, Pérez won broad support for his strong anti-Correista discourse, and his agenda focused on defending nature. This engendered sympathy among the urban youth, especially in the highlands, to the point that he was very close to reaching the second round in a close-run race with the right-wing candidate, banker Guillermo Lasso, despite several failed attempts to challenge the results through the Electoral Disputes Tribunal. Pérez and his candidates alleged the existence of fraud on the part of the neoliberal candidate.

In the end, the runoff was between Andrés Arauz of Revolución Ciudadana (progressive tendency close to former President Rafael Correa) and Guillermo Lasso, sponsored by a right-wing coalition that included his own party *Creo*, the Social Christian Party and other groups such as the Democratic Left. Faced with this dilemma, Pachakutik and Pérez decided to reject both candidates and promote a spoilt ballot campaign; there were, however, divisions internally: Virna Cedeño, who was Pérez' vice-presidential running mate, announced her support for Guillermo Lasso and said that her decision should above all be seen as opposition to the Correista political movement.<sup>14</sup> At the other extreme, Jaime Vargas, then president of CONAIE, announced his support – as well as that of several other leaders– for Arauz's candidacy, although a CONAIE assembly in the end decided to support the “ideological spoilt ballot”. Both Cedeño and Vargas were expelled from Pachakutik and CONAIE respectively.<sup>15</sup>

The Pachakutik Movement gained its best results in any election since 1996: it won 27 of the 137 seats in the National Assembly. “We had to publicise the spoilt ballot, as a social protest, indignant at all the fraud that this electoral process has been blighted by,” said Cecilia Velásquez, deputy national coordinator of Pachakutik.<sup>16</sup>

Guillermo Lasso finally won the Presidency of the Republic, although his movement *Creo* won only 12 seats, his allies from the Social Christian Party 19 and the Democratic Left 18. The new government's relationship with the Indigenous movement since then has been marked by an ambiguity that can be illustrated with two scenarios. On the one hand, the parliamentary one, in which the government has promoted alliances around its policies that have included Pachakutik. This organisation has repeatedly lent its support to government positions in exchange for a share of the power through such posts as the presidency of parliament and other public offices. On the other hand, the socio-territorial one, in which CONAIE and its grassroots organisations have expressed disagreement with and distanced themselves from the government's actions, particularly those derived from the negative impacts of adjustment policies such as the elimination of fuel subsidies, the increase in public transport costs, and the lack of response to the economic crisis, which is having a particular impact on the peasant and agricultural sectors on which Indigenous families still predominantly depend.

In the first scenario, Pachakutik supported the impeachment and removal of the Ombudsman, Freddy Carrión, when he promoted the prosecution of former President Lenín Moreno (and senior officials from his government), pinpointed as the key figure responsible for human rights violations during the crisis and social protest of October 2019.<sup>17</sup> Carrión had set up a Truth Commission of jurists from different ideological persuasions, including those close to President Lasso, who concluded in their report that deaths, torture and arbitrary detentions were the norm. In the case of the deaths, they established that there were extrajudicial executions carried out by law enforcement officers that would qualify as “crimes against humanity”.<sup>18</sup>

Ambiguous positions were also evident within Pachakutik regarding the approval of an urgent economic law entitled the Organic Law for the Creation of Opportunities, Economic Development and Fiscal

Sustainability which, by its nature, had to be considered by the National Assembly within a month otherwise it would automatically enter into force by means of “operation of the law”.<sup>19</sup>

This project became the cornerstone of the government's programme, in the authoritarian neoliberal tradition of the 1990s and the Washington Consensus, seeking to modify broad areas of State regulation with the stroke of a pen. The proposal included four books containing 335 articles and more than 20 provisions that sought to create a more flexible employment system and impose tax hikes on the middle classes, among other things.<sup>20</sup>

Despite an intense media campaign in favour of the government, and shocked at the prison crisis that shook the country and left hundreds dead, the National Assembly finally rejected the initiative, arguing that it did not comply with Article 136 of the Constitution, which requires that urgent economic bills focus on just one topic.<sup>21</sup> Two months later, however, in November, the government succeeded in passing the so-called Tax Law, which forms part of the agreements with the International Monetary Fund.<sup>22</sup>

In response, CONAIE's President Leonidas Iza, said: “The Economic Development Law weakens control over tax havens and tax evaders (...) this law harms the popular majority and the middle class, affects producers, promotes extractivism and privatisation. It benefits only the banks and the IMF.”<sup>23</sup>

On 17 November, CONAIE issued a press release arguing that the law was an attempt at financial deregulation aimed at weakening controls on capital flight, offshore companies, corruption and tax evasion. It said it was a regressive tax reform that puts the burden of the crisis on the shoulders of the common taxpayer and the middle class. “The publication of the Pandora Papers links President Guillermo Lasso to shell companies: tax evasion and global organised crime operate through trusts and limited liability companies in tax havens; Lasso's law proposes nothing in this regard,” it noted.<sup>24</sup>

## **Social protest and defence of the territories**

The first of the rice farmers' protests took place shortly after Lasso took office. These occurred along the coast, in particular, where they

were demanding a solution to increasing fuel prices and the low market price for rice. The removal of the fuel subsidy increased transport costs for several months of the year and provoked a reaction in other social sectors, too, including the Indigenous communities of the highlands. CONAIE and other provincial organisations in Chimborazo and Cotopaxi organised various protest actions in this regard.<sup>25</sup>

Between August and October, some of CONFENIAE's provincial grassroots organisations in the Amazon and some of the Confederation of the Kichwa Nationality Peoples of Ecuador's organisations in the highlands demonstrated to demand fulfilment of electoral promises, especially the freezing of fuel prices. "We have been participating in assemblies and taking part in protests in several provinces but we must take into account the fact that the problem is an economic one and it is affecting a majority of Ecuadorians; we are asking for a solution to the increase in fuel prices but we have had no response," said Leonidas Iza of CONAIE.<sup>26</sup>

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**Pablo Ortiz-T.** is a sociologist. He holds a Dr. in Cultural Studies and a Master’s in Political Science. He is a lecturer/researcher at the Universidad Politécnica Salesiana de Ecuador (UPS), Quito. He is Coordinator of the State and Development Research Group GIEDE. Contact: portiz@ups.edu.ec



# Guatemala



Guatemala has a population of 14.9 million inhabitants, of which 6.5 million (43.75%) belong to one of the 22 Maya peoples (Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil and Uspanteko), or to the Garifuna, Xinca and Creole or Afrodescendant peoples.

Indigenous Peoples continue to lag behind Guatemalan society as a whole in terms of health, education, employment and income, a situation that is even worse for Indigenous women. Structural racism lies at the root of this inequality, social exclusion, and violations of the fundamental rights of Indigenous Peoples. Although the Political Constitution of the Republic of Guatemala recognises the existence of Indigenous Peoples, calls itself a multicultural society and has ratified international agreements on the rights of Indigenous Peoples, in practice the social, economic and political gap between Indigenous Peoples and the non-indigenous population remains wide. The State invests USD 0.4 per day in each Indigenous person, for example, but USD 0.9 per day in each non-indigenous person;<sup>1</sup> poverty affects 75% of Indigenous people and 36% of non-indigenous people;<sup>2</sup> chronic malnutrition affects 58% of Indigenous people compared to 38% of non-indigenous people.<sup>3</sup> As for political participation, Indigenous people account for no more than 15% of parliamentarians or high-ranking public officials.

Guatemala has also ratified ILO Convention 169 (the Constitutional Court elevated it to constitutional status in 2010, which obliges the country to recognise the rights of Indigenous Peoples), the United Nations Declaration on the Rights of Indigenous Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination, and the United Nations Food and Agriculture Organisation's Policy on Indigenous and Tribal Peoples. Even with this framework, exclusion, discrimination and structural racism prevail.

## **The continuing struggle for the return of communal lands**

**T**hroughout 2021, the *Mesa de Tierras Comunales*, a body that brings together ancestral Indigenous authorities fighting for the return of their dispossessed lands, continued to file injunctions against mining licences and to recover lands dispossessed by the State, municipalities and large landowners.<sup>4</sup> The Indigenous authorities of the Maya K'iche people embarked on the process to recover the communal lands anomalously held by Quetzaltenango municipality, home to the country's second largest city. The Maya Ixil people of Nebaj filed an injunction against the official regulation that requires land on which public works are being built with government funds to be transferred into the State's name, which they consider tantamount to dispossession. For their part, the Tz'utujil, Q'eqchi, Ch'orti' and Xinca peoples continued to make progress in legal processes to recover their lands despite encountering many difficulties in the courts.

## **Indigenous Peoples' vulnerability to climate change**

2021 began with a worsening of the COVID-19 pandemic and also with the impacts of tropical storms Eta and Iota, mainly in the Maya Q'eqchi territory of Alta Verapaz. This situation has rekindled the debate on the lack of government climate action to address the country's high vulnerability to climate change which, according to expert studies, places it among the most exposed countries in the world.

## **Bicentennial of Independence: nothing to celebrate**

Despite the COVID-19 pandemic, the government planned to commemorate the 200th anniversary of Central American independence with major events highlighting the benefits of this achievement for Guatemalan society. Indigenous Peoples have nothing to celebrate, however, since independence simply represented a transfer of colonial power to the European elite, perpetuating practices of discrimination, exploitation and dispossession that remain prevalent today and which form the

structural bases on which the dominant economic model that causes poverty and exclusion is built. Faced with protests from Indigenous Peoples and various social organisations, the government suspended the scheduled festivities but continued with the construction of commemorative parks and other investments that lacked transparency and were challenged due to evident signs of corruption.

For their part, the Indigenous Peoples organised various activities to denounce the fact that independence had merely legitimised a form of colonialism that is still in force today. In return, some organisations commemorated the 50<sup>th</sup> anniversary of the Barbados Declaration which, in 1971, denounced colonialism and laid the foundations for a new deal with Indigenous Peoples. This included the events that were held to launch the book *Towards the Conquest of Self-Determination*, sponsored by IWGIA.<sup>5</sup>

## **Co-optation, a state of emergency and criminalisation**

In 2021, the so-called Pact of the Corrupt, a group of people with significant political and economic power who are all suspected of corruption, managed to complete its co-optation of the State by gaining control of the Congress of the Republic, the Supreme Court of Justice, the Public Prosecutor's Office, the Constitutional Court and the Executive. As a result, investigations into and prosecutions of high-impact corruption cases ground to a halt, the public institutionality created in the context of the Peace Agreements was reduced, and human rights defenders, judges and prosecutors who are fighting corruption were criminalised. This included the dismissal of Juan Francisco Sandoval, Special Prosecutor against Corruption, and an attempt to remove Judge Érika Aifán from her post.<sup>6</sup>

Indigenous Peoples used different forms of protest to express their opposition to government decisions that they consider to be an attack on their rights, such as the authorisation of licences for mining and hydroelectric projects without any consultation. In response, the government suppressed social protest by imposing a state of emergency which, among other things, meant restricting people's right to move around as they please, organise and express themselves freely.

## Judgements of the Inter-American Court of Human Rights against the State of Guatemala

In 2021, the Inter-American Court of Human Rights issued two judgements in cases that have implications for the country's Indigenous Peoples. The first, known as the *Massacre at Los Josefinos Village Petén Department*<sup>7</sup> established that the State of Guatemala was responsible for the disappearance and forced displacement of the survivors of that massacre, which occurred between 29 and 30 April 1982 in the context of the internal armed conflict. Despite reaching a friendly settlement in 2009, the State has failed to comply with its commitments, resulting in the case being brought before the Court. The judgement requires the State to compensate the victims for material and non-material damages and requires it to remove all *de facto* and *de jure* obstacles that are perpetuating impunity in the case. It also requires it to investigate, identify, prosecute and punish those responsible for the human rights violations.

In the second case, *Community Radio, Sumpango Indigenous Peoples et al. v Guatemala*, the Court determined that the State had failed to respect and protect the right of Indigenous Peoples to establish their own means of communication in their own languages. The case was brought before the Court after the State, under pressure from the large business consortia that control the country's radio waves, raided the headquarters of four community radio stations of the Kaqchiquel from Sumpango, Sacatepéquez; the Achi from San Miguel Chicaj, Baja Verapaz; the Mam from Cajolá, Quetzaltenango and the Mam from Todos Santos Cuchumatán, Huehuetenango, confiscating equipment and criminalising them for allegedly stealing frequencies.<sup>8</sup>

The Court found that Guatemala had violated Indigenous Peoples' right to freedom of expression, to equality before the law and to participation in cultural life. Broadcasting is regulated in such a way in Guatemala that there is a *de facto*, almost absolute, prohibition of the right to freedom of expression. The Court's judgement requires Guatemala to adopt the necessary measures to allow the Indigenous communities identified as victims to freely operate their community radio stations. It also requires it to adapt domestic legislation in order to recognise community radio stations (particularly Indigenous community

radio stations) as a distinct means of communication, to immediately refrain from prosecuting individuals who operate Indigenous radio stations, raiding their offices or seizing their transmission equipment, and to quash the convictions of (and any of the consequences related to) individuals from Indigenous communities convicted for using the radio spectrum.

The United Nations Special Rapporteur on Indigenous Peoples, Francisco Calí Tzay, joined the demand, pointing out that these rights are set out in the Framework Law on the Peace Accords and that the country has legal obligations because it has ratified international instruments relating to Indigenous Peoples.<sup>9</sup>

## **Justice for Indigenous Maya Achi women victims of sexual violence**

In September, High Risk Court “A” agreed to send five men to trial, all members of the paramilitary group known as the Civil Self-Defence Patrols (PAC), an entity created by the National Army to contribute to counterinsurgency tasks during the internal armed conflict.

The court considered that there was sufficient evidence linking them to serious human rights violations, in particular the rape, torture and sexual slavery of 36 women of the Maya Ixil Indigenous people in the municipality of Rabinal, Baja Verapaz, committed between 1981 and 1983.<sup>10</sup> It should be recalled that this municipality was one of the hardest hit during the internal war (1960-1996): at least 20 massacres were committed against Indigenous communities such as those of Río Negro, Plan de Sánchez and Chichipac, all resulting from the peoples’ resistance to the evictions caused by the construction of the Chixoy dam. The Army labelled the situation as support for the guerrillas.

## **Coup de grâce for the Peace Accords**

The 25th anniversary of the Peace Accords was commemorated on 29 December 2021 and was expected to be a great event highlighting the country’s achievements in peace building and reconciliation, an event

that would contribute to consolidating these processes. It turned out to be a subdued event, however, attended by not one of the presidents of the three State bodies, demonstrating the current government's determination to continue to dismantle the peace process. This government has abolished a number of the institutions created for this purpose, including the Secretariat for Agrarian Affairs, the National Reconciliation Programme and the Peace Secretariat, thereby suspending the commitments made by the State and contained in the Framework Law on the Peace Agreements approved in 2005.<sup>11</sup>

In addition, the social and economic problems that gave rise to the conflict in the first place, such as poverty, exclusion, racism and a lack of access to land, will all remain unaddressed. This includes the slow recognition of Indigenous communities' right to communal land due to the lack of legal certainty and the limited legal scope of administrative procedures and processes.<sup>12</sup>

## **Migration crisis and tragedy for Indigenous villagers**

Faced with a lack of job opportunities, a lack of income and violent harassment, migration to the United States increased in 2021, with massive caravans of Central Americans making their way to the border. Migratory flows have also increased through the system of "*coyotaje*", a system of illegal human trafficking that exposes people to the risk of violence and accidents along the way. On 9 December, a group of 160 migrants of differing nationalities, men, women and children, including several Indigenous Guatemalans, were involved in a road traffic accident in Mexico when the truck that was surreptitiously transporting them overturned. This situation reflects the risks people expose themselves to when trying to escape poverty due to the lack of opportunities in their respective countries.<sup>13</sup>

## **Indigenous communities excluded from COVID-19 vaccination**

In addition to the administrative and logistical difficulties the government has faced in rolling out COVID-19 vaccines, a number of media



channels have denounced the lack of culturally relevant communications aimed at the Indigenous population. Despite the fact that Indigenous people make up half the country's population, they have so far received only 15% of the total number of vaccines administered,<sup>14</sup> once again demonstrating the structural racism and exclusion that exists in the country. To this must be added the absence of specialised medical care, the lack and insecurity of public hospitals and the lack of reliable statistics on the impact of the pandemic on the Indigenous population.

Indigenous authorities from several Indigenous communities have filed a criminal complaint against the President of the Republic, Alejandro Giammattei, who they hold responsible for mismanaging the pandemic, arguing that they are being discriminated against.<sup>15</sup>

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**Silvel Elías** is Maya K’iche, a lecturer and coordinator of the Rural and Territorial Studies Programme (PERT) at the Faculty of Agronomy of the San Carlos de Guatemala University.



# Guyana



Indigenous Peoples – or Amerindians as they are identified both collectively and in legislation – number some 78,500 in the Co-operative Republic of Guyana, or approximately 10.5% of the total population of 746,955 (2012 census).<sup>1</sup> They are the fourth largest ethnic group, East Indians being the largest (40%), followed by African Guyanese (29%) and self-identified “Mixed” (20%). The Chinese, Portuguese and Whites constitute tiny minorities. Amerindians refer to these non-Indigenous people as “coastlanders” since most of them are settled on the coast.

The Amerindians are grouped into nine Indigenous Nations, based on language. The Warao, the Arawak and the Carib (Kariña) live on the coast. The Wapichan, the Arekuna, the Makushi, the Wai Wai, the Patamona and the Akawaio live in villages scattered throughout the interior. Amerindians constitute the majority of the population of the interior, in some regions constituting as much as 86% of the population. The forest resources/timber on government-titled Indigenous lands (Amerindian Village Lands) are fully under the managerial authority of the Amerindian title holders, while minerals under the same lands remain under ultimate national government authority. The poorly regulated exploitation of these resources by multinationals, illegal miners and loggers is one of the challenges faced by Indigenous Peoples. Their primary concern is therefore to achieve full recognition of Indigenous land rights so they can defend their ancestral territories from this exploitation.

The Independence Agreement from the United Kingdom (1965) included a land titling process. Recommendations regarding this process from the Amerindian Lands Commission (1967-1969) have never been fully taken up by successive governments. Requests made for collective district titles have been dismissed, resulting in the fragmentation of traditional territories into small areas under individual village titles. The Constitution of Guyana in its Preamble recognises “the special place in our nation of the indigenous peoples” and recognises “their right as citizens to land and security and to their prom-

uligation of policies for their communities”.<sup>2</sup> Guyana endorsed the UNDRIP in 2007. The Ministry of Indigenous Peoples’ Affairs reverted to its previous name of “Amerindian Affairs” (MoAA) following the change in ruling party in August 2020.

## The increasingly visible role of Indigenous women in community decision-making

Indigenous women can and do lead and participate increasingly at all levels of village and community government, in spite of the problems of poor electricity supply, low bandwidth, and intermittent Internet service. Where Internet connections are available in the hinterland, Indigenous women have been quick to adopt social media (WhatsApp, Zoom and Facebook) for intra-family and inter-village communication. The government restrictions on travel and physical meetings, imposed to combat the continuing COVID-19 pandemic, have accidentally empowered Indigenous (Amerindian) women as they are reported to be more comfortable with the information technology (which they can use at home) than are the men. The technology helps Indigenous women to exercise their constitutional rights, which include provisions against discrimination.<sup>3</sup>

To give examples of their success in representation, Indigenous women were more prominent in elections for Village Councils in 2021 than in previous years. In elections held in 159 villages in April/May 2021, nine female Tashaos and 11 female Senior Councillors (together with 103 male Tashaos and 36 male Senior Councillors) were elected; a Tashao is the elected head of an Amerindian Village Council while a Senior Councillor is the head of a satellite village or smaller community that is not large enough or has not existed for long enough to be recognised under the Amerindian Act 2006 as an Amerindian village.

Nationally, two Lokono Arawak women were returned to the National Assembly (parliament), one for her second term as Minister of Amerindian Affairs (MoAA, Pauline Sukhai), the other Yvonne Fredericks-Pearson. Both are appointees by the President from the applicants’ list of the Peoples Progressive Party/Civic (PPP/C). The two other

female Indigenous parliamentarians are Juretha Fernandes and Dawn Hastings-Williams of the APNU+AFC Coalition. The Deputy Speaker of the National Assembly is Lenox Shuman, an Indigenous male.

## **Violence within and around mining areas**

Traditionally, Indigenous Amerindian families have a matrilineal residency rule,<sup>4</sup> which means that married males are always under the watchful eyes of their wives' relatives.

However, away from Indigenous communities, violence is frequently reported in the gold and diamond mining camps, fuelled by raw alcohol and opiates. This affects both men and women, some of whom are Indigenous. The violence also often stems from disputes over the physical ownership of the gold and diamonds. People-trafficking is also present and affects both sexes.<sup>5</sup> Indigenous Amerindians, who work in the mines and associated services such as shops and brothels often witness, are affected by, or fall victim to this violence.

There is very limited spatial and intermittent temporal presence of government agencies in these areas –due to only some 11 mines officers (inspectors) being in the field at any one time to monitor over 12,000 small-scale and medium-scale mining blocks in over 1,000 concessions<sup>6</sup> – and both legal and illegal mining operations occur alongside each other. Even when a murder occurs, the police response is often late and superficial and, in the occasional police reports that do get filed, the presence of Amerindians is often absent, which does not mean that no Indigenous Amerindians were affected or victimised.

Government action is essentially cosmetic, a reflection of the general neglect of hinterland areas except every five years for national elections.

## **The perennial struggle for Indigenous control over customary land resources**

Customary land tenure is communal so the continuing struggle to obtain legal recognition of Native Title involves both men and women. The Amerindian Peoples Association (APA), supported by Rainforest Foundation US and Forest Peoples Programme UK, continues to be the most

organised of the Amerindian NGOs. The APA's perennial campaign for recognition of resource rights and its alliance with the South Rupununi District Council (SRDC) gained much press coverage in November-December 2021, as noted in the Marudi Mountain section below.

The current political administration took office in August 2020 with a one-seat majority in the National Assembly after a prolonged constitutional crisis caused by attempted vote-rigging by the outgoing coalition government. The PPP/C's traditional preference for a paternalistic, almost feudal, style of government is especially marked in the Indigenous hinterlands. Anti-COVID restrictions have made usual inter-community contacts less physical and government communications and outright propaganda more obvious. Miners and traders in gold and diamonds are conspicuous supporters of the PPP/C and are benefitting financially through contracts awarded for construction projects, including hinterland schools and roads.

## **Artisanal mining at Marudi Mountain**

Marudi Mountain (known as Marutu Taawa in the Wapichan language) is locally sacred but has been subject to artisanal mining by Amerindians, by other Guyanese and by Brazilians since the early 1940s.<sup>7</sup> It was also covered by a formal mining prospecting licence issued to Canadian-owned Romanex over the 1990-1999 period and sporadically operated. The government agency Guyana Geology and Mines Commission (GGMC) does not have a monitoring post in the area. Wapichan communities have expressed concerns about sedimentation and water pollution from the mining, and about the use of metallic mercury to form amalgam and help recover gold flakes and particles from hydraulic mining. Heating of the amalgam vaporises the mercury, which then methylates and contaminates the environment, causing dangerously high levels of mercury to be detectable in human hair in the downstream Indigenous communities.<sup>8</sup> The Government of Guyana ratified the Minamata Convention in September 2014 aimed at phasing out the use of mercury in mining but has done very little to promote other methods for recovering gold particles or to explain the implications on human health to the affected communities.<sup>9</sup> The Ministry of Health has no laboratory

to test for mercury poisoning; one commercial laboratory has the capability but tests are expensive and thus little used.

The Wapichan community of Aishalton has had a pending claim for title to its customary lands, which include the Marudi Mountains, since the Amerindian Lands Commission inquiry in 1967, a claim which has been completely ignored by successive governments. The continued destruction of the sacred mountain by miners led to a brokered agreement in late 2016 involving the SRDC, Romanex, GGMC and the association of artisanal miners (Rupununi Mines Association Cooperative Society Ltd.). The agreement included a ban on mercury in the mines. The government finally cancelled the Romanex holding on 01 November 2021. The Ministry of Natural Resources announced a new agreement between the current holder of the prospecting licence (Canadian company Aurous Mining Inc.), GGMC and the artisanal association on its Facebook page on 17 November (not via the Official Gazette or the government Department of Public Information).<sup>10</sup> No evaluation has been conducted of the 2016 agreement. In spite of the government's claim to apply the UNDRIP principle of Free, Prior and Informed Consent, the SRDC was not consulted about or informed of the new agreement, and had been unable to obtain a copy by the end of 2021, or a copy of the Special Mining Permit issued for artisanal mining covering 405 hectares for use by 40 miners.

Mounting a series of protests, the SRDC also called on human rights lawyer Malene Alleyne (Freedom Imaginaries, Jamaica) to draw on the December 2018 report of the Committee on the Elimination of Racial Discrimination (UN-CERD) and compile an international protest.<sup>11</sup> In a counter-move, three government ministers (Home Affairs – Robeson Benn, Natural Resources – Vickram Bharrat, and Amerindian Affairs – Pauline Sukhai) flew to Aishalton on 29 November and convened meetings in Wapichan villages. Following the usual party practice, the ministers gave an hour-long presentation but did not allow enough time for the villagers' questions.<sup>12</sup> Bussed-in PPP/C staff and supporters employed at the Region 9 Regional Democratic Council went from house to house at night persuading villagers to sign a government-drafted petition in support of the undisclosed agreement and to say that they wanted artisanal mining to continue as a main source of local income (Figure 1). The SRDC was not informed or of



the village meetings and canvassing before this visit. Protesters calling for the suspension of the agreement pending proper application of FPIC included influential Chief Koko<sup>13</sup> and the APA's Governance and Rights Coordinator Laura George,<sup>14</sup> Wapichan elder Chief Tony James<sup>15</sup> as well as SRDC's Communications Officer Immaculata Casimero. Minister Vickram Bharrat alleged that opposition to the destructive mining was by a "handful of people who have political objectives and a political agenda"<sup>16</sup> although he did not explain what these objectives or agenda were. Minister Bharrat also claimed that he had personally visited the area five times to speak with Marudi miners, shopkeepers and miners in the Wapichan villages who had requested that the artisanal mining re-start. However, no records of such meetings are in the public domain.<sup>17</sup>

## **Replacement of the Hinterland Employment and Youth Service (HEYS) programme, return of the CSOs**

The two political parties have sponsored various programmes to aid the development of the Indigenous communities in the hinterland, including Community Service Officers (CSOs) and the Hinterland Employment and Youth Service (HEYS) as noted in IWGIA's Yearbooks for 2019,<sup>18</sup> 2020,<sup>19</sup> and 2021.<sup>20</sup> On re-taking office in August 2020, the PPP/C government immediately closed the HEYS scheme along with all other coalition initiatives. Minister Pauline Sukhai of MoAA claimed in March 2021 that the HEYS scheme had run out of money in 2019 and that it had not been re-financed. Moreover, Minister Sukhai said that she was not able to locate any of the new businesses.<sup>21</sup> Instead, the PPP/C government has re-instated its scheme for CSOs but has now allocated budgets for training components alongside capital investments. In expectation of future investments in hinterland Internet connections, 174 Indigenous youth have received training in information and communications technology. If they are willing to migrate out of the hinterland they may be able to pick up jobs in the more developed coastland area. Eighty youths were trained to install solar panels for household-level electrical power.<sup>22</sup>

## Mismatched government support to Amerindian communities

There is a gift-based, patron-client relationship between the government and Amerindians that is unhelpful to sustainable development and fails to take into account the agency and needs of the Amerindians themselves. Rather than asking Amerindians how the government can help, they simply ask if they would like a specific good or piece of equipment, such as a tractor. Once that product is promised, actual delivery is often delayed, or the full promise goes unfulfilled. The government also does very little to ensure spare parts are available or provide training in non-destructive use, maintenance or repairs. Further, this top-down, non-consultative relationship fuels corruption through illegal, single-source government procurement with costs far above market prices. Examples of this were rife in 2021.

The previous coalition government preferred to hand out bicycles, boats and (mini-)buses to hinterland communities while the PPP/C government has reverted to outboard engines, agricultural tractors and sewing machines. Fifteen of these outboard engines were purchased by MoAA but six months after delivery the engines were still in their boxes at the MoAA office. Furthermore, 3,000 agricultural tools were purchased at a cost of USD 135,000 but only 59 were distributed.<sup>23</sup> A tender notice was issued for 112 4-WD agricultural tractor sets, seven bids were received, none was accepted, and a single-source purchase agreement was signed with a supplier in India (contrary to government procurement law). Subsequently, 103 tractors were delivered to the MoAA by September, of which 49 were supposed to have been sent on to Amerindian villages. However, the Auditor General could find only 20 receipts and 30 registered with the Revenue Authority, while certificates for a further 11 tractors and 39 trailers were left with the authority. Some of this apparent wastage was caused by prolonged heavy rainfall in 2021, which made access trails to the hinterland villages effectively impassable for many weeks. However, the Auditor General notes repeated poor administration and accounting practices at the MoAA in his annual reports, regardless of which political party is in government.<sup>24</sup> Fifty-four tractors remain unused in a government warehouse.<sup>25</sup>

There is good news, however. Sixty Indigenous youths active in the revived Community Service Officers programme have been trained in tractor driving and routine maintenance. The bad news, however, is that yet again the government has failed to purchase spare parts or to ensure that there is training in or facilities for repair of agricultural equipment, or to teach communities about business planning for efficient and effective use of these tools and equipment for the benefit of the community rather than simply the families of the Toshias or Senior Councillors.

## **National coordination between Amerindian communities**

The widely dispersed hinterland Indigenous communities (an ecological consequence of low natural soil fertility) naturally have more difficulty in communicating and coordinating than do the relatively close-packed coastal communities. All Toshias of legally-titled Amerindian villages and Senior Councillors of satellite communities are members of the National Toshias Council (NTC), some 114 people in total, with an elected Executive Committee of 20. COVID-19 has prevented meetings of the NTC and its Executive over the past year. The more natural groupings of villages into districts are not part of the legal structure and are opposed by the coastlander government. A meeting in September 2021 of 34 Toshias and Senior Councillors for Administrative Region 9, convened by the government, resulted in three Toshias elected to the next Executive Committee.<sup>26</sup> The government then abandoned these Regional Meetings ostensibly because of COVID-19 infections.

Why is this politically important? The national electoral system has currently delivered a one-seat majority in the unicameral National Assembly to the ruling party, which is either the African-Guyanese-supported PNC or the East-Indian-supported PPP/C. Both PNC/R and PPP/C try to buy off the Amerindian votes because far fewer votes deliver each geographical parliamentary seat in hinterland areas than in the urbanised coastland. Coordination among the Amerindian communities, to form a swing vote, is strongly opposed by the coastlander governments.<sup>27</sup>

After years of complaints, Toshias have at last received an increase in their stipends from USD 1,800/year to USD 3,000/year. This meagre reward for an often onerous and thankless task is in stark contrast with ministerial annual salaries of USD 55,800 and the presidential salary of USD 108,000, plus a raft of allowances and supplements.<sup>28</sup>

## Outlook for 2022/3

Materially, Indigenous communities may expect to receive more “gifts” in the patronising style from the ruling PPP/C Party, funded by revenues from offshore oil fields. Through 2021 and into January 2022, the PPP/C has shown an increasing desire to be the sole decision-making body in the country, and to disparage civil society comments and queries. There has been a rapid increase in the cost of living, induced by the effect of the pandemic on global trade (Guyana traditionally has a high propensity to import basic goods) and by the inflationary effects of the petroleum sector. There is a scramble for jobs in this sector, even at the lowest levels, as a source of relatively secure incomes and a way of escaping the partisan dominance of ordinary Guyanese life. Indigenous communities may benefit from small-scale ecotourism for oilfield workers, and the new training programme in ICT for Indigenous youths offers a ladder out of poverty.

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in social, political and cultural activity. The main Article 149 includes clauses against discrimination by race. Thus, in legal principle, Indigenous (Amerindian) women face no barriers and can take on any role. In practice, Indigenous women often do face obstacles by virtue of family obligations and level of education. In the lower levels of coastlander society, the numerically dominant African and East Indian Guyanese may raise barriers through traditional racial slurs, not understanding the enormous skills of the Amerindians in their hinterland communities and in the national economy. The Ethnic Relations and the Women & Gender Equality Commissions were created by the National Constitution and likewise provide some measure of legal defence against discrimination. However, the political parties are slow to appoint people to these Commissions, their Secretariats are under-resourced, and court cases may be bogged down for trivial reasons for years.

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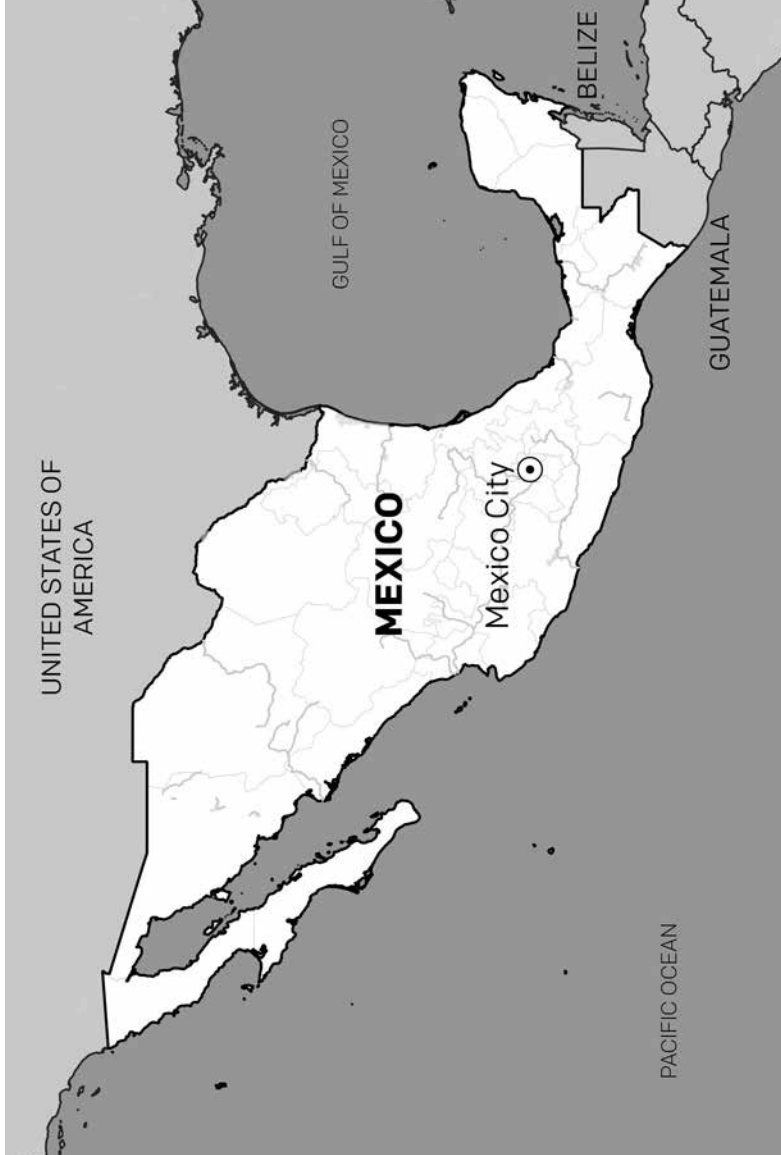
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**Janette Bulkan** is an Associate Professor in the Faculty of Forestry, University of British Columbia, Canada. She was previously Coordinator of the Amerindian Research Unit, University of Guyana (1985 to 2000) and Senior Social Scientist at the Iwokrama International Centre for Rain-forest Conservation and Development, Guyana (2000 to 2003). Janette carries out long-term collaborative research with Indigenous Peoples and local communities in Guyana. Her research interests are forest governance, Indigenous natural resource management systems, forest concession systems and third-party forest certification systems.

**John Palmer** is a senior associate in tropical and international forestry with the Forest Management Trust, an ENGO based in Montana, USA. His experience of Guyana dates back to 1974, including UK-funded consultancies on forest finance and Iwokrama in the 1990s, and studies from 2006 onwards on the history and many illegalities in the forest and mining sectors. Guyana also figures in his current work on certification standards for quality of forest management.



# Mexico





Mexico is home to 68 Indigenous Peoples, each speaking their own native language and together comprising 364 different variants. According to the 2020 Census, 6.1% of the population aged over three was recorded as speaking an Indigenous language, or some 7.36 million people. The equivalent figure in the 2010 Census was 6.6%. The 2020 Census furthermore indicated that 11.8 million people were living in Indigenous households, 5.7 million of them men and 6.1 million of them women.

In terms of Indigenous languages, Nahuatl continues to be the most widely spoken, accounting for 22.5% of Indigenous language speakers or 1.65 million people, followed by Mayan with 774,000 speakers (10.6%).<sup>1</sup> In addition, 2.0% of the national population indicate that they belong to an Afro-descendant people, of which 7.4% confirm speaking an Indigenous language.<sup>2</sup> It is, however, important to note that issues of under-reporting of the Indigenous population were exacerbated by the early suspension of census data collection due to the COVID-19 pandemic. In addition to the census data, the National Institute of Indigenous Languages suggests that 25 million people identify as belonging to an Indigenous people.<sup>3</sup>

Due to factors such as marginalisation, discrimination, violence, land grabbing and lack of access to decent housing and public health services, the Indigenous population in Mexico has been particularly vulnerable to the pandemic. To respond to this, Indigenous communities decided to design and implement their own methods and protocols to combat COVID-19, such as disseminating information through their community communication channels and in their native languages, restricting people from entering or leaving their territories, and strengthening their sense of solidarity and community, among other things.

## Indigenous women in Mexico

According to data from the National Institute of Statistics and Geography (INEGI), there were 3,783,447 women speakers of an Indigenous language in Mexico in 2020. This figure increases if we take into account all those women who self-identify as belonging to an Indigenous people, as they number 11,949,189, or 51.4% of this population.

The current situation of Indigenous women in Mexico is blighted by the most serious forms of discrimination, racialisation and structural violence. They suffer from educational, health and economic difficulties that result in real barriers to their development and well-being. Despite this, however, they play a fundamental role as key agents in the production, dissemination and reproduction of their peoples' and communities' culture, promoting actions aimed at addressing the problems they face. Zapotec women, for example, are promoting "resilience, self-care, collective health, and strengthened community identity and roots".<sup>4</sup> The Oaxaca State Institute of Public Education has also highlighted their role as poets, writers, academics, researchers, singer-songwriters, traditional midwives, healers, cooks, artisans and athletes.<sup>5</sup>

Alongside this, however, statistics show that they have the poorest rates of education in relation to men in terms of illiteracy (64.6%)<sup>6</sup> and lesser school attendance between the ages of 12 and 14.<sup>7</sup> This has an impact on their employment opportunities as well as their employment rate, which is even lower than that of non-Indigenous women (17.7% vs. 22.9%).<sup>8</sup> They also frequently suffer domestic violence: 59% have experienced emotional, physical, sexual, economic or asset-related violence.<sup>9</sup> Risks during pregnancy have resulted in a maternal death rate of 11.2% among this population.<sup>10</sup> This is coupled with a high level of fertility that is reflected globally: an average of 2.85 children per woman was recorded in 2019.<sup>11</sup> The National Institute of Public Health has emphasised in this regard that: "Living conditions (...) make it difficult for them to enjoy good food or timely access to health services, (...) frequent pregnancies and heavy workloads result in a series of illnesses and diseases".<sup>12</sup>

In addition to the above, some Indigenous women have experienced obstetric violence in health centres where they suffer "disrespectful, abusive, neglectful treatment or denial thereof [...] during

the pregnancy, childbirth or postpartum period”.<sup>13</sup> These situations are aggravated by the fact that they are not provided with an intercultural-ly-appropriate service so the attention they receive is limited by: “lack of qualified interpreters; lack of adequate infrastructure and access to information”.<sup>14</sup> Social stigma has meant that some women are subjected to discrimination and mistreatment because of their culture: “When they do attend to us, they mistreat us for practising our traditional medicine and discriminate against us because of our mother tongue and traditional dress,” explains Esperanza Pérez Ruiz, representative of the group *Nosotras no olvidamos nuestras tradiciones* (“We’ll never forget our traditions”).<sup>15</sup> Their vulnerable health status can also be seen in the greater prevalence of problems affecting their sexual and reproductive rights such as cases of forced sterilisation,<sup>16</sup> rape and sexual exploitation,<sup>17</sup> unwanted pregnancies, sexually-transmitted infections, including HIV/AIDS, and prostitution “as a means of labour integration or death”.<sup>18</sup>

The problems they experience are exacerbated yet further when they migrate and have also tended to be complicated by the pandemic. Their economy has been undermined due to the impossibility of working: “The production and sale of handicrafts, which accounts for more than a third of the sector’s jobs, is practically paralyzed”. They are also employed on insecure terms: “part-time and contract workers or services, [...] have no access [...] to social protection and public health mechanisms”.<sup>19</sup> These are nonetheless the sources of livelihood they have to rely on.

This situation reflects the multiple forms of discrimination that affect Indigenous women both inside Mexico on the basis of gender, generation, ethnicity and social class, and outside of the country where they are undocumented migrants. It does not reflect the progress made in the human rights of Indigenous Peoples (and, in particular, of women) as enshrined in various legal instruments.<sup>20</sup> In fact, the Council for the Prevention and Elimination of Discrimination in Mexico City has recognised that women’s access to their rights is limited by the gender gap.<sup>21</sup>

Despite the above, women are using different means to seek access to their rights, economic, political and educational, and receiving support from organisations such as the UN Permanent Forum on Indigenous Issues, the Technological Institute of Oaxaca, the Centre for

Scientific and Higher Research of Ensenada, and so on. Their participation in the leadership of multiple organisations such as the Alliance of Indigenous Women of Central America and Mexico, the Network of Indigenous Women for Peace, Indigenous Women, Migrants and Day Labourers (Sinaloa), the Assembly of Indigenous Women of Oaxaca, the *Tatei yurianaka* Wixaritari Women Artisans Collective, among others, is likewise noteworthy.

They are also seeking greater political participation: “118 women were registered in recent electoral processes [in Mexico City], 7.98% of whom were Indigenous”.<sup>22</sup> This is still limited, however, and needs further encouragement, as pointed out by the president of the Human Rights Commission of Mexico City, “so that their political proposals can permeate the legislative agenda”.<sup>23</sup> This has, in fact, been one of their demands, as stated by the National Coordinating Committee of Indigenous Women, which “called upon the National Electoral Institute to guarantee [...] [their] free and non-violent participation in the political life of the country”.<sup>24</sup> It is worth noting that 13 Indigenous candidates were nominated for a place in the Congress of the Union in 2018, only three of these being women.<sup>25</sup> By 2021 this had increased to 13.<sup>26</sup>

In sum, Indigenous women’s access to justice and exercise of their rights has not yet been achieved in Mexico due to major barriers. In addition to those mentioned above, women also face other cultural problems: “Their lack of knowledge of the judicial system and of their own rights, institutional discrimination and insufficient public policies aimed at addressing their particular problems”.<sup>27</sup> The State and society therefore need to establish a new relationship with Indigenous women in order to guarantee gender equity and access to and exercise of their rights.

## The EZLN's Journey for Life

To mark the 20<sup>th</sup> anniversary of their historic tour through Mexico called “The March of the Colour of the Earth” (2001), in 2021 a delegation of the Zapatista National Liberation Army (EZLN), Squadron 421, crossed the Atlantic aboard the boat *La montaña*, to commence their tour known

as “Journey for Life”. They visited several European cities<sup>28</sup> in Germany, Belgium, Denmark, Spain, Finland, France, Greece, Holland, Italy, Norway, the United Kingdom and Russia, among others, with the aim of reaching out to other movements, groups and collectives involved in the continent’s anti-capitalist struggle. This was seen as a reverse journey to that taken 500 years ago by the Conquistadors, and one aimed at challenging the European movements to wake up and organise together to struggle for life.

We Zapatista communities have named the one thing that is responsible for all these evils and it is ‘capitalism’. And only with the total destruction of this system will it be possible for everyone, each in their own way, with their own calendar and their own geography, to create something new. Not perfect, but better. And whatever is built, these new relationships between humans and between humanity and nature, will be given whatever name we want to give it.<sup>29</sup>

During the Zapatista delegation’s travels around Europe, different press releases were published aimed at providing information about the organisation and the objectives of the trip, pointing out a number of specific problems with the capitalist system, and highlighting the importance of resistance and rebellion, striving across the world to fight these problems (summarised in the phrase “a struggle for life”), and the Zapatistas’ intention to seek and listen to other voices that share their same concerns.<sup>30</sup>

The press releases followed the journey of Squadron 421 (composed of four women, two men and *unoa otroa* [“another”], which is the name given to a non-binary person) from its departure from Mexican ports on 2 May 2021 through to its arrival on European soil on 21 June. They also followed the organisation of *La Extemporánea*, the Zapatista group that arrived in Europe by air comprising 28 teams that would cover 28 European countries at the same time, a group composed of Zapatista girls and boys and a coordinator, up to and including the return of all EZLN delegations to their respective towns and places of origin in December 2021.<sup>31</sup>

## Forgiveness asked of the Yaqui people for State crimes

On behalf of the Mexican State, President Andrés Manuel López Obrador apologised to the Yaqui people for the marginalisation, abuses and injustices committed during the Porfiriato era (1876 - 1910).<sup>32</sup> He maintained that this regime was now behind us and that reparations would as far as possible be provided for the harm caused, on the basis of a comprehensive programme that includes the return of up to 20,000 hectares, a guaranteed right to water and a social welfare plan. The ceremony took place on 28 September 2021 in the town of Vícam, Sonora.

The request for forgiveness was made in the context of violence against members of the group when, on 21 July 2021, the location of a mass grave was reported containing the bodies of five people who had been missing since 15 July 2021. In May 2021, the disappearance and murder of activist Tomás Rojo Valencia, one of the driving forces behind the defence of the water of the Yaqui River, was also reported.<sup>33</sup> This context has highlighted the problems faced by the Yaqui peoples, ranging from the presence of organised crime on their lands and territories to changing water use and exploitation policies on the part of local and federal governments, who have handed over water for industrial use to various corporations and thus exacerbated the situation of these communities.<sup>34</sup>

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**José del Val** is director of the University Programme for the Study of Cultural Diversity and Interculturality (PUIC-UNAM); **Carolina Sánchez García** is academic secretary of PUIC-UNAM; and **Juan Mario Pérez Martínez** is technical secretary of PUIC-UNAM.



# Nicaragua



Nicaragua has seven Indigenous Peoples. The Chorotega (221,000), Cacaopera or Matagalpa (97,500), Ocanxiu or Sutiaba (49,000) and Nahoia or Nahuatl (20,000) live in the Pacific, centre and north of the country. The Caribbean (or Atlantic) coast is inhabited by the Miskitu (150,000), Sumu or Mayangna (27,000) and Rama (2,000) peoples. In addition, Afro-descendant populations (known as “ethnic communities” in national legislation) also enjoy collective rights according to the Political Constitution of Nicaragua (1987). These include the Creole or Kriol (43,000) and Garífuna (2,500). In 1979, the Sandinista National Liberation Front (FSLN) took power in Nicaragua and were later opposed by the US-funded “Contras”. Peasants from the Pacific and Indigenous Peoples from the Caribbean Coast participated in the Contras. In 1987, following the friendly settlement of the conflict through the Inter-American Commission on Human Rights (IACHR) and with the aim of bringing the Indigenous resistance to an end, the FSLN created the Autonomous Regions of the Northern Caribbean Coast (RACCN) and Southern Caribbean Coast (RACCS), based on a Statute of Autonomy (Law No. 28). The Inter-American Court of Human Rights’ (IA Court) judgement in the case of the *Mayangna (Sumo) Community of Awas Tingni v Nicaragua* in 2001 led to the enactment of Law No. 445 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, among others. This law recognises the communities’ right to self-government and creates a procedure for the titling of territories. In 2005, the State began the titling process for the 23 Indigenous and Afro-descendant territories in the RACCN and RACCS, culminating in the issuing of property titles. In 2007, Nicaragua voted in favour of the UN Declaration on the Rights of Indigenous Peoples and in 2010 ratified ILO Convention 169. The Alliance of Indigenous and Afro-descendant Peoples of Nicaragua was formed in 2015.

## Indigenous women in the crisis in Nicaragua

Indigenous women undoubtedly play a decisive role in their families and villages and, together with the elders, are responsible for transmitting their spiritual and cultural values as well as their language. In addition, Indigenous women have traditionally been involved in voluntary work through the churches and their children's schools in their communities.

Many Indigenous women are monolingual, which limits their actions outside of the communities to which they belong. However, they have set up groups in their communities where they meet to share and learn about health and nutrition issues, or to produce services or goods and thus generate an income.<sup>1</sup> The current situation of insecurity in the Indigenous communities has, nonetheless, limited these activities.

Some communities have also elected women to their structures of authority and we have seen them take a lead in defending their communities in times of crisis. Many women continue to be discriminated against, however, because of their Indigenous and Afro-descendant status: they are victims of structural violence and racism due to their language, culture, poverty and because they live in remote areas where public services are scarce, placing them at a disadvantage compared to other citizens.

And, because they are women, the resistance, accusations and aggression they face (and which is not investigated by the authorities) becomes even more evident when they take up community leadership positions generally, or when they fight to defend and preserve their lands, territories and access to natural resources in their communities.<sup>2</sup>

This situation has worsened in Nicaragua since 2018 due to the profound human rights crisis. The report of the International Group of Independent Experts of the IACHR recommended in this regard that the Nicaraguan government: "Cease harassment of human rights defenders, journalists and other social leaders, and guarantee the conditions for them to fully develop their work and exercise their rights, in particular, freedom of expression, assembly and association."<sup>3</sup> Three years on, this has still not happened. This can be seen from the IACHR's report published in October 2021 entitled *Nicaragua: Concentration of power and the undermining of the Rule of Law*, which states:

*(...) A police state was also established to quell dissidence and close democratic forums through of [sic] arbitrary arrest and deprivation of liberty of those deemed dissidents, making public demonstrations illegal, and raiding and seizing the facilities of human rights organizations and independent media outlets, among others (...) primarily through violence and criminalisation of dissidence, manipulation of criminal law, lack of guarantees of judiciary independence and impartiality, and the impunity surrounding human rights violations.<sup>4</sup>*

The State has also failed to comply with the IA Court judgement issued in 2017 in the case of *Acosta et al. v Nicaragua* regarding the creation of protection mechanisms and investigation protocols to be used in cases of threats and danger to human rights defenders and their families.<sup>5</sup>

## **Women human rights defenders**

2021 got off to a violent start for human rights defender, Dolene Miller. On 8 January, she found members of the National Police stationed outside her house preventing her from entering or leaving. Dolene told the media:

*The national police decided to make my home a jail for five hours. Without a word, they restricted my movements and, the worst thing was, no one could help me to buy food. This kind of restriction indicates the escalating repression of citizens, with police officers being used by politicians to repress citizens, as if they were a criminal with a firm sentence against them. The police did not explain the reason for the action and it would therefore seem that it was simply intended to provoke and create a conflict so that they would have an excuse to beat up or imprison people.<sup>6</sup>*

Human rights defenders in Nicaragua, and Dolene Miller is no exception, are on tenterhooks in the face of the implementation of a series of restrictive laws passed between 2018 and 2021. They believe these will

institutionalise the police state under which the country currently lives. Such laws are a clear expression of the current regime's intolerance of any natural or legal person, peasant or Indigenous community, social group, human rights defender, or anyone who opposes public policies that violate the human rights of citizens.<sup>7</sup>

Dolene Miller is an Afro-descendant woman and community leader and has been advocating for the rights of the Black Creole Indigenous Community of Bluefields for several decades. She has been a representative of the Afro-descendant peoples to the National Commission for Demarcation and Titling and has, together with other Indigenous and Afro-descendant leaders, led the struggle against encroachment of the Nicaraguan Grand Interoceanic Canal megaproject onto their traditional lands.<sup>8</sup> This case is currently before the IA Court.

Because of State repression, any complaint filed at the national or international level is considered to be an attack on the State – on its sovereignty and self-determination. And, meanwhile, attacks against land and environmental defenders have soared in recent years.<sup>9</sup>

The vast majority of Indigenous people are defenders of their way of life, spirituality, culture and worldview. According to the Observatory of the World Organisation Against Torture, "Latin America accounted for more than half of the land and environmental defenders killed around the world" in 2018.<sup>10</sup>

## **Indigenous women and girls and land encroachment**

The State of Nicaragua has promoted the internal migration of non-indigenous people, mainly into the RACCN,<sup>11</sup> leaving Indigenous Peoples a minority on their own territories. The State is thus facilitating the advance of the agricultural frontier and extensive cattle raising,<sup>12</sup> promoting an unacceptable policy of internal colonisation. In addition, there has been increased violence against Indigenous Peoples over the last decade, and experts point to the presence of organised crime and drug trafficking in the area.<sup>13</sup>

An extractivist natural resource policy is furthermore being promoted, degrading the livelihoods and territories of Indigenous Peoples through logging generally (and that carried out by the Alba Forestal company in particular),<sup>14</sup> the expansion of monocultures such as Af-

rican Palm (*Elaeis guineensis*),<sup>15</sup> the increased mining activity by the State-owned *Empresa Nicaragüense de Minas* [Nicaraguan Mining Company],<sup>16</sup> and the mere announcement of the concession of the Grand Interoceanic Canal through Nicaragua.

The worst conditions are being suffered by the Miskitu and Mayangna Indigenous communities in the RACCN, however. Since 2015, these communities have been the victims of systematic attacks perpetrated by non-indigenous men –referred to as settlers– bearing weapons in order to take over the Indigenous lands. The attacks intensified throughout 2020 and 2021 and have focused on the Mayangna Sauni As territory, located in the heart of the Bosawás Biosphere Reserve.

Women and children, who are responsible for collecting water and firewood, are increasingly exposed during these tasks since the territories are shrinking due to encroachment onto the land by armed settlers. The settlers have been encroaching onto land ever closer to the Indigenous hamlets or villages, repelling them by means of threats, kidnappings and gunfire.

The attacks leave homes burned, livestock killed, people wounded, raped, kidnapped and killed. Such was the attack on the Mayangna community of Alal the previous year.<sup>17</sup> This situation has resulted in forced internal displacements due to the physical and food insecurity that this encroachment onto their territory is causing. The women say: “We cannot sleep peacefully in our homes, every day we are afraid that the armed men might kill us.”<sup>18</sup>

The women are also burdened by their responsibility to care for children, disabled family members and the elderly, with whom they often have to flee and sleep in the forest in the face of settler threats to their communities. Moreover: “When they are displaced, the women bear the greater burden and lack of protection, many are even forced into prostitution to ensure some income with which to buy food.”<sup>19</sup>

## **Mining, Indigenous women and the Kiwakumbaih massacre**

Mining has increased hugely in Nicaragua recently, to the detriment of the self-determination of Indigenous Peoples since most of them have not been consulted before this activity commences on their territories,

as denounced by the Indigenous women of the community of La Laguna, in San Ramón, Matagalpa.<sup>20</sup>

On 23 August 2021, the Kiwakumbaih massacre occurred at a gold mine on Kiwakumbaih Hill (Devil's Rock in the Mayangna language), an historic hill considered sacred, as well as a traditional hunting and fishing ground in the Mayangna Sauni As territory.<sup>21</sup>

This was the fourth attack in 2021 in the Mayangna Sauni As territory. There is no certainty as to the number of victims as different sources give different figures. Most agree that between 13 and 18 Indigenous people were killed – including a child of around six years of age and a teenager, plus two Miskitu women, one of whom was mutilated. A Mayangna woman and her 14-year-old daughter, the wife and daughter of the man who operated the mine, were sexually assaulted by several of the attackers.

A statement from the Government of Mayangna Women of Nicaragua recalls the events as follows:

*(...) at around 9 p.m., when the unsuspecting victims were at their mining work, they were surrounded by more than 100 well-armed mestizo encroachers who, with aggressive verbal language, started to kill the victims, some with guns, others with knives. Others took the local Mayangna woman who was working in the mine with her husband, and violently forced themselves upon her while others took the husband to witness the heinous crime of rape against his wife. The Mayangna wife was raped by more than 20 men and then they murdered her husband. Another group entered inside where the gold was being extracted and set off explosives, with people still inside the tunnel, resulting so far in a count of eighteen (18) dead (...). We strongly demand the fair administration of justice, including a thorough investigation into the massacre and we condemn all those responsible and who were involved in the detailed planning of such a massacre in which the lives of innocent people were lost, and we also demand JUSTICE for our young Mayangna brothers murdered so atrociously and for the rape of our Mayangna sister, in relation to the murderers, usurpers, landowners or illegal sellers of Mayangna land.<sup>22</sup>*



The Kiwakumbaih massacre is a landmark case in several respects, above all in the number of women brutally murdered and sexually assaulted. Rape is a form of torture for women and a means to break the resistance of the Mayangna people because such abuses symbolise a form of power over the Indigenous people. The massacre also demonstrated a higher level of brutality than in previous attacks. The viciousness shown against the families of the Indigenous people who were operating the mine, in particular, was designed to send a clear message to scare the Mayangna away and take control of the mine.<sup>23</sup>

Contrary to witnesses' and survivors' versions of the attack, the police authorities –on the only occasion they published the results of their investigations– criminalised the human rights defender who spread the news on social media<sup>24</sup> and formally blamed the crime on 14 Mayangna,<sup>25</sup> some of them community forest rangers defending the territory.<sup>26</sup> The Indigenous people, meanwhile, have pointed the finger of blame at settlers who were evicted from Kiwakumbaih on 19 September 2020 by community members.

In view of this situation, one community leader said: "When we complain, they prosecute us, so I'm keeping my head down; I don't want my name to come up because there is enormous danger. The Mayangna are suffering death or condemnation for defending our Mother Earth".<sup>27</sup>

In addition, the Indigenous people warned that the National Police had failed to point out that the massacre took place in a context of land invasion and encroachment that began several years ago with total impunity.<sup>28</sup>

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members of indigenous and Afro-descendant peoples in Nicaragua's North Caribbean region. On June 26, the IACHR was informed of an attack perpetrated by government supporters against defender Marcela Foster—a member of the Kamla community in the Twi Yahbra territory—and two other members of that community. The IACHR observes that some difficulties—including lack of geographical access and, in some cases, lack of financial resources—make these groups particularly vulnerable to complain about persisting violence, threats, and arbitrary arrests in various departments, and also to access adequate legal counsel. [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/172.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/172.asp)

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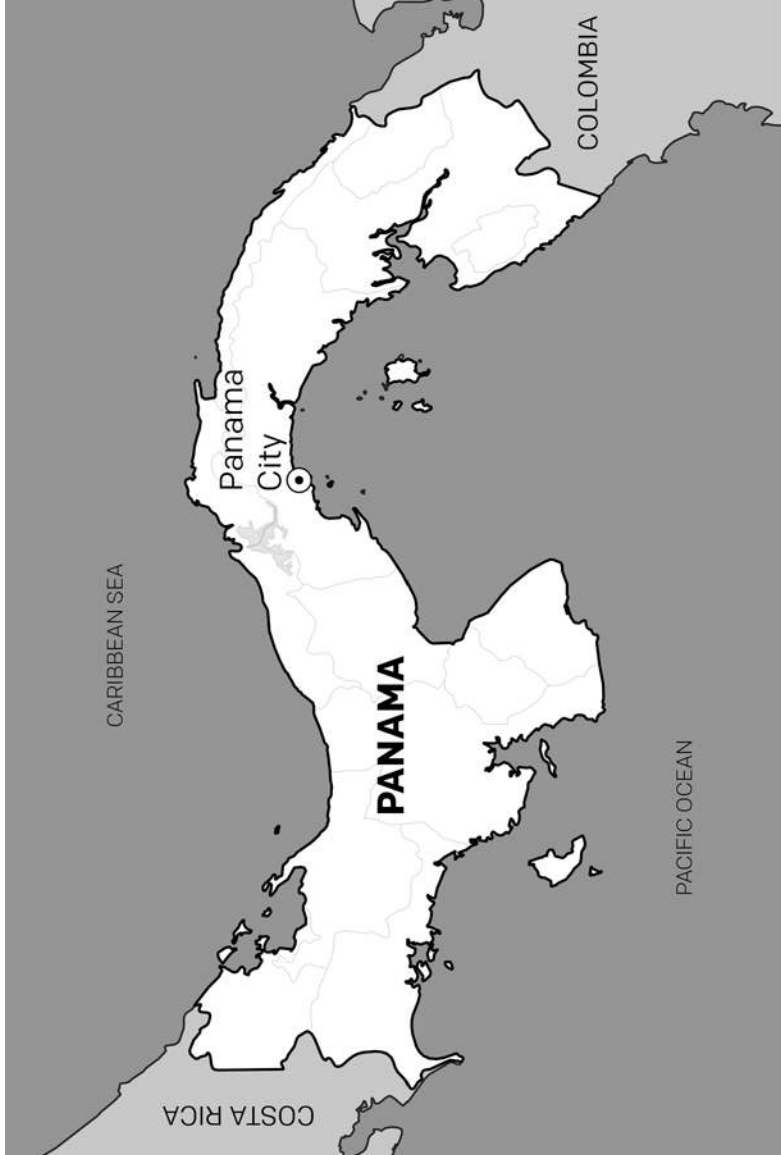
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***Dra. María Luisa Acosta***, Associate Professor, Faculty of Humanities and Department of Legal Sciences, Central American University (UCA), Managua, Nicaragua. President of the Academy of Sciences of Nicaragua and coordinator of the Centre for Legal Assistance to Indigenous Peoples (CALPI). Contact: [calpi2014@gmail.com](mailto:calpi2014@gmail.com) <http://calpi-nicaragua.com>



# Panama



The National Institute of Statistics and Census (INEC) has confirmed that a new census will be conducted in the last quarter of 2022.<sup>1</sup> According to the 2010 census, there are 417,559<sup>2</sup> Indigenous individuals in the Republic of Panama, equivalent to 12% of the population. Panama is a multicultural and multilingual country, in particular represented by the Bribri, Naso Tjër Di, Ngäbe, Bugle, Gunadule, Embera and Wounaan Indigenous Peoples.

The 2010 census identified that there were fewer Indigenous women<sup>3</sup> than Indigenous men in the country although this ratio had improved from 93 in the 2000 census to 95 women for every 100 men in the 2010 census.

In terms of female Indigenous migration in Panama, i.e., the proportion of Indigenous men and women that live in the *comarcas* or collective lands or in the different provinces, there is a slight difference by sex, according to the 2010 census. It was found that 76.7% (160,704) of men live in the *comarcas* and collective territories and 23.3% (48,730) in the provinces. In the case of women, 77% (156,037) reside in the *comarcas* and collective territories and 23% (46,115) in the provinces.

For both the traditional authorities (*sagladummagan*, *bulu*, kings, chiefs) and the national government, it is essential that Indigenous women receive special attention since, as in other countries of the region, they face triple discrimination: because they are poor, because they are Indigenous and because they are women.

Panama has not yet ratified ILO Convention 169 but did vote in favour of the United Nations Declaration on the Rights of Indigenous Peoples.

## The role of Indigenous women in Panama

**A**ccording to the United Nations Declaration on the Rights of Indigenous Peoples: “Indigenous Peoples have the right to conserve and reinforce their own political, judicial, economic, social, and cultural institutions while at the same time maintaining their right

to fully participate, if they wish to do so, in the political, economic, social, and cultural decisions of the State.”<sup>4</sup>

In 2021, Indigenous women’s voices were raised via a process of institutionalising their culture, spirituality, worldview and, hence, their participation in political, economic and social life. The General Congress of the Guna Culture<sup>5</sup> formally recognised and instituted BUNDORGAN (which in Dulegaya language means “women”) and *Bundorgan* here refers to the Women’s Organisation of Gunayala *Comarca*. BUNDORGAN<sup>6</sup> is a space in which women from the 49 communities of Gunayala *Comarca* can participate.

Among the Embera people, the lawyer Sara Omi, who has become a reference point for the defence of Indigenous Peoples’ rights among Panamanian young women and girls, is also an emblematic example. “We have an enormous task to strengthen the capacities of other women so that they believe in themselves,”<sup>7</sup> said Sara.

Meanwhile, during 2021, two Naso Tjër Di women ran a family farming organisation that enabled them to feed their families. It became a source of income through door-to-door sales of organic produce in the midst of the pandemic.<sup>8</sup> Leticia Martínez and Rosabel Quintero formed part of the team, both women who have promoted women’s leadership since childhood and adolescence. This refocusing of productive activity was and remains a part of their livelihood.

## Indigenous women’s participation in decision-making processes

How much progress has been made in Indigenous Peoples’ right to self-determination in Panama?<sup>9</sup> Evaluating women’s participation in political decision-making processes helps to identify and strengthen autonomy and self-governance. Self-determination for Indigenous Peoples must be understood as the point of arrival in a process of recovering their existence as peoples and nations. Over the July 2021 to June 2022 period, the only woman and Indigenous Member of Parliament for the Democratic Revolutionary Party (PRD), Petita Ayarza, who serves as secretary of the Indigenous Affairs Commission of the National Assembly of Deputies, committed –together with the chair of the



Committee– to working with Indigenous Peoples to ensure that their right to participate in decisions<sup>10</sup> concerning them was recognised and respected. A precedent was set by the participation of Indigenous people within the Assembly in their colourful attire, such as the *mola* and other accessories.

Panama's Indigenous Peoples do not, however, have their own political party. Citizens participate as individuals within the existing political parties. How can the Indigenous right to self-determination as expressed in the United Nations Declaration on the Rights of Indigenous Peoples be understood in this context? According to Claus Kjaerby,<sup>11</sup> Indigenous Peoples should dream of an intercultural autonomy in which, recognising the historical processes of each people, a new concept of a political-administrative system would be established with special administrative jurisdiction (*comarcas* and collective territories), in which their customary rights would be recognised and applied. Indigenous autonomy would be the maximum feasible political expression of the right to self-determination as set out in the United Nations Declaration.

The Panamanian judiciary has been setting up courts<sup>12</sup> in the *comarcas*, with women in key positions. The Gunayala *Comarca* Court is headed up by attorney Dialys Nedelka Ehrman López. There are also two female municipal judges in the Ngäbe-Bugle *Comarca*. These judges encourage good practices such as the use of interpreters, respect for culture and reparations for victims. They also help ensure access to justice for Indigenous communities.

In terms of community aspects, under the jurisdiction of the Indigenous Peoples, women's participation has improved in Gunayala in relation to the administrative authorities' decision-making, usually called *Saglatura*,<sup>13</sup> especially with regard to community justice. In the Ngäbe-Bugle *Comarca* there is still a woman in charge of political-administrative matters. Likewise, in the Embera-Wounaan *Comarca*, participation is open to women.

## **Indigenous women's positions and representative roles**

Lawyer Sara Omi of the Embera People is also the president of the *Coordinadora de Mujeres Líderes Territoriales de Mesoamérica* (Coordinat-

ing Committee of Women Territorial Leaders of Mesoamerica). On Indigenous Women's Day, 5 September 2021, she gave this message: "We are protectors and guardians of traditional knowledge (...) we are raising our voices as women in the face of the effects of climate change."<sup>14</sup> The Coordinating Committee was born out of the local leadership training process within the context of the territorial agenda.

Similarly, in 2021, Briseida Iglesias of the Gunadule people consolidated her position as women's representative at the international level. She has furthermore done great work to nurture the leadership training and empowerment of Guna women under BUNDORGAN and the General Congress of the Guna Culture.

## Organisation of Indigenous women

The *Coordinadora Nacional de las Mujeres Indígenas de Panamá* (National Coordinating Committee of Indigenous Women of Panama),<sup>15</sup> which is the highest profile women's organisation in the country, comprises women from the seven Indigenous Peoples. The coordinator, Sonia Henríquez, is a leader from the Gunadule people. This organisation addresses cross-cutting issues such as individual and collective rights, women's effective participation, leadership, gender, violence and politics. During 2021, the organisation worked to empower women via digital platforms. Sonia Henríquez emphasises that financial support is required for development projects in order to visit Indigenous communities for training.

Other Indigenous Peoples are in the process of coordinating and forming women's organisations, as in the case of the Wounaan national people.

During 2021, Ngäbe and Bugle women had not a moment's peace or tranquillity for their sons and daughters. In September, the September 22nd Movement, led by Clementina Perez, returned to the entrance of the hydroelectric plant in Barro Blanco, Chiriqui, specifically in the area of the Tabasará Sacred Site Territory, which belongs to the Ngäbe-Bugle *Comarca*.<sup>16</sup> The women were calling on the President of the Republic of Panama, Laurentino Cortizo Cohen, to address their eviction problems, as homes and schools were being destroyed.

## Changes in legislation that affect Indigenous Peoples

On 8 February 2021, Panama's Legislative Body approved the Special Regime for the Establishment of Operators and Developers of Agroparks, Law 196,<sup>17</sup> with the following justification presented in the draft initiative:

*Due to the imminent economic impact of COVID-19, it is urgent to reactivate the economy in those sectors that have proven to have the capacity to reinvent themselves in the face of the challenges arising. Through this new model of Agroparks - via a strategy of formation and development of clusters formed of economic agents (agribusiness and agroindustrial), involving local government agencies, existing competent offices and entities, private initiatives, and agribusinessmen who will form the associations - the productive processes of the poles of agricultural and agroindustrial development, and related activities such as forestry, extraction of marine products and raw materials for the pharmaceutical industry will be boosted.<sup>18</sup>*

The law is applicable right across the national territory and there is no mention in its articles of excluding fragile ecosystems, important biological habitats or Indigenous territories, legally recognised or not, nor is there any reference to the need for environmental impact studies or Indigenous representation in its application. Despite having a potential impact on Indigenous territories, a free, prior and informed consultation process has not been implemented. Law 196, imposed in the name of COVID-19, appears highly disproportionate to the health crisis, benefiting primarily strong economic actors at the expense of Indigenous Peoples' land rights, tropical forests, small-scale sustainable production livelihoods and biodiversity. This new law represents a real threat.

Despite not having ratified ILO Convention 169, Panama has National Law 37 on the right of Indigenous Peoples to free, prior and informed consultation when it comes to activities on their territories. Article 8 establishes the right of Indigenous Peoples to be consulted when new legislative processes take place, which has not occurred with Law 196.

In addition, Indigenous Peoples in Panama have the right to self-determination in accordance with the UN and OAS declarations on the rights of Indigenous Peoples. According to Article 4 of the country's National Constitution, all international legislation on rights forms part of domestic law. Law 72 establishes the special administrative procedure for legally granting the collective ownership of Indigenous Peoples' land.

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**Heraclio López Hernández** is known by his Gundadule name of Surub. He is an adviser to Indigenous Peoples at the community, national and international levels. Contact: [heracliolopez1960@gmail.com](mailto:heracliolopez1960@gmail.com) // [heraclio@geoversity.org](mailto:heraclio@geoversity.org)



# Paraguay



Five linguistic families and 19 Indigenous Peoples self-identify as such in Paraguay: the Guaraní (Aché, Avá Guaraní, Mbya, Paĩ Tavyterã, Guaraní Ñandeva, Guaraní Occidental), Maskoy (Toba Maskoy, Enlhet North, Enxet South, Sanapaná, Angaité, Guaná), Mataco Mataguayo (Nivaclé, Maká, Manjui), Zamuco (Ayoreo, Yvytoso, Tomáraho) and Guaicurú (Qom). According to 2017 statistics, the country's Indigenous population stands at 122,461 individuals.

Chapter V of the 1992 Constitution acknowledges Indigenous Peoples as cultural groups dating back to before the formation and organisation of the Paraguayan State, recognising them rights such as ethnic identity, communal property, participation and education, and taking into account their specific cultural features, among other things.

Paraguay has a legal framework that guarantees and recognises a wide range of rights to Indigenous Peoples, having ratified the main instruments of international human rights law, both in the universal and Inter-American systems.

Disproportionately hit by the COVID-19 pandemic due to the structural denial of their rights, Paraguay's Indigenous communities were forced to endure the State's sluggishness and lack of foresight in emergency situations. The pandemic also resulted in cuts to the meagre public budget allocated to Indigenous communities. In contrast to the above, a regulation was enacted in record time that is open to being used as a tool by which to criminalise their claims to traditional territories. Meanwhile, several forced evictions of Indigenous communities also took place throughout the year, often violently, in open contradiction with constitutional norms.

## **Lack of foresight in emergency situations**

**E**mergencies were again declared in 2021 due to climatic phenomena and the impacts of global climate change, which led to floods

affecting Indigenous communities in the Chaco, causing road closures, isolation and the destruction of family vegetable gardens.<sup>1</sup> In addition, forest fires affected areas such as the sacred territory of the Paĩ Tav-  
yterã people, Jasuka Venda, Paraguay's Natural and Cultural Heritage  
and Indigenous Conservation Territory.<sup>2</sup> Such events call for the State  
to take action given its constitutional obligations towards Indigenous  
Peoples, particularly since many of these climatic phenomena are now  
recurring events. And yet the State has neither emergency nor contain-  
ment plans in place for what have become completely foreseeable sit-  
uations.

## **Indigenous Peoples and COVID-19**

Since the first confirmed case in an Indigenous community on 30 Sep-  
tember 2021, there have been 75 deaths out of the 590 confirmed cas-  
es of COVID-19 in 147 Indigenous communities. Of the total number of  
infections, 50.3% were women and 49.7% were men.<sup>3</sup> The mortality rate  
among the Indigenous population currently stands at 12.71%, as op-  
posed to 3.4% among the non-indigenous population of Paraguay. This  
highlights the impact of this disease on Indigenous communities and  
the vulnerability in which they find themselves, being one of the most  
impoverished sectors, with less access to education, health, basic ser-  
vices (drinking water and sanitation), and adequate food, among other  
things.

## **Indigenous territory under attack**

The State's liability, whether due to the action or omission of its offi-  
cials, can be identified in different aspects of this problem, for example  
judicial inaction with regard to threats and forced evictions carried out  
by private individuals, as well as a lack of foresight and implementation  
of the budget allocated to land purchases and the sanctioning of regu-  
lations that could affect Indigenous communities in the context of their  
territorial recovery. The framework of impunity, fostered largely by judi-  
cial inaction as well as the absence of legal security and the lack of reg-  
ularisation of property/ownership, results in violations of the physical



integrity of members of Indigenous communities. Such was the case of the Loma Piro'y community of the Mbya Guaraní people. After denouncing eviction attempts by armed civilians, and in the absence of State officials or any of the forces of law and order, nine Indigenous people were injured on 17 March 2021 in a brutal attack by armed civilians, who even assaulted women, children and the elderly, threatening them with death and burning the houses and belongings of 10 families.<sup>4</sup> It was not until a month after this incident, once it had become public knowledge, that those accused were charged with responsibility for this violent and unlawful eviction. Members of the Yvy Ku'i Jovái community in Vaquería district, Caaguazú department, who have recognised legal status and have occupied their traditional territory for more than 60 years, were also threatened by a soybean farmer. The man –brandishing a firearm and threatening to send in another 30 gunmen– gave the community of 50 families 24 hours to leave their land.

In addition, in the middle of 2021, seven forced evictions of Indigenous people were carried out over a period of less than two months. Between 13 May and 11 July, nearly 500 families from the Cerrito, Yvypora, Acaraymí, Ka'a Poty'i, Cristo Rey and Tekoha Ka'avusu communities were violently expelled from their territory.<sup>5</sup>

## **Anti-invasion regulations**

The approval and prompt enactment of Law No. 6830/2021, amending Article 142 of the Criminal Code and its amendment, Law No. 3440/2008, has increased the sentences for trespassing, stiffening the penalties by establishing that whoever “individually or in concert with other persons, violently or clandestinely enters another's property shall be punished with imprisonment of up to six years.” In the event that the person is occupying private property in order to “settle” or to “cause damage to assets existing on the property of others”, this sentence can be extended up to 10 years. Although conservative sectors claim that the law will benefit both Indigenous and non-Indigenous people, its entry into force will negatively and disproportionately affect Indigenous communities since, in the aforementioned situation, soybean growers and cattle ranchers could invoke it to the detriment of land recovery or expansion claims.

## **Draft laws**

On 26 August 2021, a bill was introduced seeking to regulate Article 64 of the Constitution on Indigenous Peoples' rights to communal property and its protection, as well as banning their removal or transfer without their express consent and establishing sanctions for violations of the territorial rights of Indigenous Peoples. A virtual public hearing was also held to discuss the scope of the bill on Suspending Collective Rural or Urban Evictions in the Face of Pandemics, which was tabled by CODE-HUPYy and other civil society organisations.<sup>6</sup>

## **Public budget for Indigenous Peoples in decline**

Since the start of the pandemic, the negative impact of COVID-19 on the national economy has led the Ministry of Finance to call for cuts to the budgets of public institutions. These cuts have resulted in inaction in the face of inequalities that have widened abysmally during the pandemic. The already small budget of the Paraguayan Indigenous Institute (INDI) covers only the institution's running costs and some specific assistance programmes, and has been clearly insufficient to promote the minimum conditions of well-being and dignity for Indigenous Peoples. Unlike the previous government, there are no plans to directly address the problem of land and territory for peasants and Indigenous people, and the National Institute of Rural and Land Development (INDERT)'s budget has thus been reduced by 25.84% and that of INDI by 16.38%.

## **International human rights protection systems**

On 12 October 2021, the United Nations Human Rights Committee notified its decision to condemn the Paraguayan State for violation of the rights contained in Articles 17, 27 and 2(3) of the International Covenant on Civil and Political Rights, to the detriment of members of the Campo Agua'ë Indigenous community of the Avá Guaraní people.<sup>7</sup> Their habitat was seriously affected by the contamination of its water courses and the destruction of crops and deaths of animals due to spraying, in violation of environmental regulations that set out impact mitigation measures such as protective barriers and buffer strips.

The following are some of the measures the Committee has required the State to implement: effectively and exhaustively investigate the facts, keeping the community informed of the course of the proceedings; continue the criminal and administrative proceedings against those responsible and, if their responsibility is established, impose the corresponding sanctions; fully compensate the victims for the damage suffered, including adequate compensation and reimbursement of legal costs; take all necessary measures to repair the environmental degradation, in close consultation with the community; take all measures to prevent the violations suffered by the community of Campo Aguaẽ from recurring in the future; publish the decision in a newspaper of wide circulation and circulate it widely in the Guaraní language and in the department of Canindeyú; and, finally, submit the first report on compliance with the above measures within 180 days. Prior to this, on 5 May 2021, the State had been reviewed under the Human Rights Council's Universal Periodic Review.<sup>8</sup> Of the extensive series of recommendations made, there were a dozen on Indigenous issues (land, participation, health care, strengthening of INDI, among others), all of which were accepted.

Within the scope of the Inter-American System of Human Rights Protection (IASPHR), on 14 July 2021, the registration procedure was completed for 7,701 hectares located in the Irala Fernández district, Presidente Hayes Department, which were acquired by the State and titled in the name of the Xákmok Kásek community, of the Sanapaná people.<sup>9</sup> The legalisation and titling of the lands in the name of the community forms partial compliance with the reparations ordered by the Inter-American Court of Human Rights in its 2010 ruling, with 2,999 hectares still outstanding.

## Emerging players and visibility

Since 2020, the *Articulación Nacional Indígena por una Vida Digna* (National Indigenous Coordination for a Dignified Life), formed of 18 Indigenous organisations from the Eastern region and the Chaco, has been advocating on issues such as land and territory, education, health and the integral development for their communities. This Coordination presented a budget proposal to the National Congress and, through its actions, made it possible for INDI to avoid the cuts initially proposed by the Executive. In 2021, they again submitted proposals to the State and held a march through Asunción with the participation of around 2,500 people.

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**Mario J. Barrios Cáceres** is an attorney and independent consultant. He is a university lecturer and a member of the *Asamblea de Tierraviva a los Pueblos Indígenas del Chaco*.



# Peru



According to the 2007 Census, there are more than 4 million Indigenous people in Peru: 83.11% are Quechua, 10.92% Aymara, 1.67% Asháninka and 4.31% belong to other Amazonian Indigenous Peoples. The Indigenous or Native Peoples Database (BDPI) reports the existence of 55 Indigenous Peoples in the country, speaking 47 Indigenous languages. On the other hand, 21% of the national territory is covered by mining concessions, and these overlap with 47.8% of the territory of peasant communities.

Furthermore, 75% of the Peruvian Amazon is covered by hydrocarbon concessions. The overlapping of rights to communal territories, the enormous pressure from the extractive industries, the absence of land-use planning and the lack of any effective implementation of prior consultation are all exacerbating territorial and socio-environmental conflicts in Peru, a country that has signed and ratified ILO Convention 169 and which voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

**2**021 was a year marked by presidential elections and a sharp political polarisation that has continued into 2022. On the one hand, under the leadership of Keiko Fujimori, recalcitrant right-wing forces attempted to take over the government, rolling out a multi-million-dollar campaign with wide support from the business and media sectors. One of Fujimori's reasons for attempting to gain control of the government was her desire to avoid imprisonment as she is currently facing trial in a court of law.

In the run-off election, Pedro Castillo Terrones, a rural teacher and farmer from Cajamarca, one of Peru's poorest departments, garnered the popular vote and was elected president by a narrow margin of 44,263 votes.

The right-wing sectors and concentrated media power in Peru subsequently unleashed a massive campaign claiming electoral fraud and seeking, by various means, to ignore the results and even challenge the electoral institutions.<sup>1</sup> The accusations against Pedro Castillo focused

— without any evidence — on his being a communist, a terrorist and an instrument of the outlawed terrorist group, Shining Path. In this context, far right groups linked to ex-military personnel appeared, organising violent demonstrations and even threatening and assaulting public figures supportive of Castillo.<sup>2</sup>

Since taking office, Pedro Castillo's government has not known a day of peace. During the first cabinet session, chaired by Guido Bellido, a member of parliament from Cusco, ministers were subjected to harsh challenging under the pretext of "fighting terrorism" in the cabinet. One significant case was that of Héctor Béjar Rivera, a sociologist, university lecturer and former guerrilla fighter in the 1960s who had to quit his post as Minister of Foreign Affairs after only two weeks because of accusations based on media misrepresentations of his statements.<sup>3</sup>

As part of this ongoing confrontation, the right-wing parliamentary benches then submitted a demand for the president's impeachment. Although this measure was unsuccessful in Congress, various organisations such as the Inter-American Commission on Human Rights expressed their concern at the indiscriminate use of this legal concept.<sup>4</sup>

As of October, the government's performance had been strengthened by a change in the ministerial cabinet. More conciliatory and open to dialogue, the new president of the Council of Ministers, Mirtha Vásquez Chuquilín (former congresswoman and human rights lawyer) has developed a policy focused on health, rights and the environment. She has promoted coordinated work with the various ministries and government agencies aimed at resolving the social conflicts and demands of Indigenous Peoples that arose during the first months of the administration.

Responding to the rights of the Amazonian peoples, the Vásquez cabinet has adopted concrete measures by which to continue the titling of more than 50 communities in the regions of Ucayali, Huanuco and Junín. It has also agreed to make progress in addressing the health, education and environmental demands of the communities in the Pastaza, Tigre, Corriente and Marañón river basins in Loreto, where oil exploitation is resulting in constant spills.

In addition, agreements have been promoted and fulfilled in the areas with mining conflicts in the Andes. In Chumbivilcas, Cusco department, mechanisms have been established by which to resume dialogue

with the area's communities, whose territories are crossed by the so-called "Mining Corridor". Coordination has also continued with the aim of resolving the conflict in the community of Aquia, in Ancash. These agreements have been reached without resorting to repression and despite the fact that the mining companies have adopted new mechanisms for applying indirect pressure in the form of a total stoppage of their work, a decision that resulted in substantial economic losses for the country due to the size of the extractive projects and its economic dependence on these raw materials.

Bearing in mind the fact that the demands of the peoples of the Andes and the Peruvian Amazon date back to previous governments, the ministerial team's action to establish a policy of dialogue has been significant. "We won't bring about a return to the rule of law by repressing and killing people. We will bring about a return to the rule of law by channelling these conflicts, institutionalising solutions and engaging in dialogue with the actors," the Prime Minister said in November, in the midst of renewed conflicts.

## **Situation on the Andean Coast**

### **Las Bambas mining conflict, Apurimac, Peru**

One of the main conflicts of 2021 involved the Chinese mining company, MMG, its copper mine at Las Bambas in Apurimac, and the communities of Chumbivilcas commune in Cusco due to the impacts of transporting the mineral overland.

The conflict re-emerged with force in September with the communities' blockading of roads in the Southern Mining Corridor. This blockade was lifted in early October when an agreement was reached between the company and the communities. It was proposed that the communities should become suppliers and provide transport and maintenance services to the company, in addition to resuming discussions to address the communities' other main demands and prevent future conflicts.

The discussions between the parties nevertheless broke down again in mid-November due to a lack of consensus in the negotiations as regards the amounts and number of contracts for which the communities would act as suppliers, and this led the latter to resume their



blockade on 19<sup>th</sup> of that month. In response, the Chinese mining company announced that, as of 18 December, it would shut down production at its mine, something the communities described as “blackmail”. They continued the blockade until 22 December when the protest was lifted pending a meeting with company representatives, national, regional and local government officials. Finally, on 30 December, the meeting took place and it was agreed to resume a peaceful dialogue. The next meeting was scheduled for 18 January. While talks are ongoing, the communities have agreed not to blockade the corridor and the mining company announced the recommencement of its activities on 31 December. Tensions continue, however, as these and other communities are affected by the transport of minerals but are not considered to be in the direct impact zone despite the noise and dust caused by the movement of large vehicles through their territories.

### **People affected by toxic metals in the Andes and Amazonia**

The struggle to receive care for those affected by toxic metals also featured highly in 2021. In January, they succeeded in getting the government to establish a Temporary Multisectoral Commission for a Comprehensive and Integrated Approach to the Population Exposed to Heavy Metals, Metalloids and Other Toxic Chemical Substances, with the intention that it would sit until 30 June 2021. This was a change to the regulation that created this commission in July 2020, which had restricted its scope to only those exposed to heavy metals.

This working group, under the responsibility of the Presidency of the Council of Ministers and made up of 14 vice-ministries, regional representatives and civil society, drew up a technical report that included a proposal for a Special Multisectoral Plan for Comprehensive Intervention for the Population Exposed to Heavy Metals, Metalloids and Other Toxic Chemical Substances. This was finally approved on 23 December and will prioritise the care of people affected by heavy metals in the territories of Cuninico (Loreto), Cerro de Pasco, Espinar (Cusco), the Coata basin (Puno) and La Oroya (Junín).<sup>5</sup>

To meet the needs of the plan, and to guarantee the exposed population’s their right to health, the Public Sector Budget Law for 2022 also approved the financing of actions related to the care of people affected by heavy metal contamination, to an amount in excess of 50 million soles.

### **Forced sterilisations**

The forced sterilisations that took place in Peru are a prominent example of how the sexual and reproductive rights of one of the most vulnerable sectors in the country have been violated. Occurring between 1996 and 2000, during the second government of Alberto Fujimori, the so-called National Reproductive Health and Family Planning Plan sought to reduce poverty by bringing the birth rate down and was aimed primarily at low-income women whose only language was Quechua.

In 2021, the International Work Group for Indigenous Affairs (IWGIA) published *Peru: Las Esterilizaciones en la década del terror* [Peru: Sterilisations in the Decade of Terror], a 184-page text edited by anthropologist Alberto Chirif that brought together eight contributions from women on the subject.<sup>6</sup> For former congresswoman and human rights defender, Rocío Silva Santisteban, it was an aggressive policy of patriarchal and colonial control over the racialised bodies of economically depressed sectors, a form of biopolitical domination.

More than 270,000 women are recorded as having been sterilised to date although the Association of Peruvian Women Affected by Forced Sterilisations (Ampaef) believes the real figure is likely to be in excess of 300,000. Twenty-two thousand (22,000) men also suffered the consequences of this policy, promoted by former health ministers Alejandro Aguinaga, Marino Costa Bauer and Eduardo Yong Motta, with the approval of former President Fujimori.

In 2021, amidst constant rescheduling of the preparatory hearings, the case caught the media's eye once more during the second round of the presidential elections. While candidate Keiko Fujimori was announcing a possible pardon for her father, she also referred to the forced sterilisations as "isolated events". This stance is contradicted by the more than 180 pieces of evidence collated by the prosecutor in the case. In the context of the electoral campaign, the women received the support of –and a commitment from– the candidate Pedro Castillo, now president of the country.<sup>7</sup>

After 25 years of struggle, the trial of the defendants in this case finally commenced in December 2021, a milestone in the victims' struggle. Ampaef has cautioned, however, that there remains a long judicial road ahead and that there are still outstanding commitments, such as full reparations.<sup>8</sup>

## Situation in Amazonia

### Deforestation and major threats

Towards the end of the year, it was revealed that Peru's deforestation level in 2020 was the highest in the last two decades, with 203,272 hectares of forest lost, a figure that exceeded the previous year's by 54,846 hectares. This figure is the result of satellite monitoring conducted by the Ministry of Environment through its National Forest Conservation Programme for Climate Change Mitigation.<sup>9</sup>

This trend seemed to continue throughout 2021, judging by various reports such as that published in late September by the Andean Amazon Monitoring Project, which recorded the loss of more than 860,000 hectares of primary forest in the central Peruvian Amazon between January and October 2021, specifically in the regions of Ucayali, Huánuco and southern Loreto.<sup>10</sup>

This increased deforestation is caused by illegal mining, drug trafficking and monocropping. Other recent examples include a new Menonite colony in the rainforest which has deforested nearly 300 hectares, and a large-scale rice plantation of nearly 400 hectares on the right bank of the Aguaytía River, near the municipality of Nueva Requena in Ucayali. There are also pockets of deforestation in the Madre de Dios region linked to illegal alluvial mining, especially in the vicinity of La Pampa.

In relation to Peru's participation in the United Nations Climate Change Conference in 2021 (COP26), it was one of the countries to sign up to the Glasgow Leaders' Declaration on Forests and Land Use. The declaration commits more than 100 world leaders to join forces in bringing a halt to deforestation and to promote the restoration, conservation and sustainable management of natural ecosystems.

### Murders of environmental defenders

At least 10 environmental defenders and Indigenous leaders were killed in Peru during the pandemic (2020 and 2021), according to the records of various institutions reviewed by Servindi: six in 2020 and four in 2021.

The murders in 2021 took the lives of Amazonian leaders Herasmo García, Yenes Ríos, Mario López and Lucio Pascual. The deaths of these leaders are linked to the encroachment of illicit activities into the na-

tive communities, such as coca leaf cultivation, illegal logging and drug trafficking.<sup>11</sup>

In June, 86 Indigenous organisations and institutions from Peru and around the world urged the Peruvian State to implement concrete measures to protect Indigenous human rights defenders.

### **Peoples in isolation and initial contact**

In February 2021, the Regional Organisation of Indigenous Peoples of the East (ORPIO) requested precautionary measures from the Inter-American Commission on Human Rights aimed at requiring the Peruvian State to adopt effective measures to protect Indigenous Peoples Living in Isolation and Initial Contact (PIACI).<sup>12</sup>

The Ministry of Culture is the lead agency for the protection of peoples living in isolation and initial contact in Peru, as laid down in Law 28736 (the PIACI Law), in force since 2006. Despite this law approving the creation of a Special Trans-Sectoral System to coordinate and supervise actions to protect peoples in isolation and initial contact, the Indigenous organisations are denouncing that there are thus far no mechanisms in place to fully implement it.<sup>13</sup>

The demands and sustained work of the organisations to defend these peoples nonetheless showed concrete results in 2021. Proof of this can be seen in the creation of the North and South Kakataibo Indigenous Reserve and the Yavarí Tapiche Indigenous Reserve,<sup>14</sup> which took around 20 years to obtain the State's approval. In addition, Yavarí Tapiche's protection plan was approved.

In turn, as part of the actions to coordinate the organisations' efforts, the initiative of the Yavarí Tapiche Territorial Corridor for Indigenous Peoples in Isolation and Initial Contact and Continuous Forests was submitted jointly by Peru's and Brazil's Indigenous organisations. Unlike biological corridors, territorial corridors include an approach focused on the human rights of peoples living in isolation and initial contact, as well as conservation of the biodiversity of their territories, as this is key to addressing the climate emergency.<sup>15</sup>

In the midst of these achievements, however, the Indigenous organisations continue to be subjected to intimidation, and this is not limited to criminal organisations. Extractive companies have found the courts an effective way to silence the demands of Indigenous Peoples.

Such is the case of a ruling against the Native Federation of the Madre de Dios River and its Tributaries (FENAMAD), which limits its ability to defend peoples in isolation.<sup>16</sup>

“The situation facing these peoples is very sensitive. Greater conviction, commitment and effectiveness is required from the State to ensure the peoples in isolation are protected, and Indigenous organisations are offering their full support,” said PIACI anthropologist Beatriz Huertas.

### **Biodiversity and species trafficking**

The movement aimed at creating Territories of Life became a visible strategy with which to address the climate crisis and avoid the depredation of biodiversity in 2021. This strategy seeks to recognise and strengthen Indigenous territorial governance over protected areas, which are conserved by peoples and communities without State intervention.

The Autonomous Territorial Government of the Wampis Nation has been recognised as a Territory of Life by the United Nations, and the U.N. has included the Wampis territory in the registry of Territories and Areas Conserved by Indigenous Peoples and Local Communities, as well as in the World Database of Protected Areas. The registry is produced by the UN Environment Programme’s World Conservation Monitoring Centre. The territory of the Autonomous Territorial Government of the Wampis Nation covers 1.3 million hectares of forests and water sources in the northern Peruvian Amazon, across Amazonas and Loreto regions.

Among the crimes that are threatening the country’s biodiversity, however, is the illegal trafficking of wild animals, which is still not recognised as an organised crime despite its global seriousness and the five legislative initiatives aimed at obtaining this recognition in Peru since 2019.<sup>17</sup> This illicit activity came to the public’s attention in 2021 through a media story that went viral of a small Andean fox that had been sold as a dog in the Comas district of Lima, and which was later transferred to a zoo following its rescue.<sup>18</sup>

Specialists indicate that one of the reasons preventing the eradication of this crime in Peru is the lack of controls at borders, highways and identified points of sale, as well as the beliefs of some communities that lead them to use animal parts as amulets or for consumption.<sup>19</sup>

## Outlook for 2022

### Autonomous governments emerging

2021 was a fruitful year as regards the emergence of autonomous governments. In December, a large assembly was held to form the Awajún Autonomous Territorial Government (GTAA), the result of a several-year-long coordination process between the organisations, who agreed their statute in 2019 and 2020. The Awajún government represents a people of approximately 70,000 members with roots in four departments: Amazonas, San Martín, Loreto and Cajamarca.

The Awajún government elected Gil Inoach Shawit as its first leader, a well-known leader and lawyer with a long history in the Peruvian Indigenous movement and who served two terms as president of the Interethnic Association for the Development of the Peruvian Rainforest (AIDSEP). One of the highlights of the year was the launch of the book *Siempre Awajún* [Forever Awajún], a collection of Gil Inoach's memoirs. The Awajún government received recognition and greetings from the Autonomous Territorial Government of the Wampis Nation, thus expanding and strengthening the experiences of other peoples such as the Kandozi, Chapra and Shawi, who have also embarked on their autonomous organisational processes.

### Fledgling government and the right-wing on the prowl

2021 culminated in the failure of the far right, who had been determined to declare Pedro Castillo's impeachment before the end of the year, in collusion with a media dedicated to sabotaging and delegitimising the president's image and fostering a climate of political instability that is likely to become the norm in 2022.

Weakened by his own mistakes and limitations, by the absence of a united and strengthened parliamentary grouping of his own, with a recalcitrant right-wing and powerful media ready to pounce, Castillo's government is an enigma amid what many consider to be a lost opportunity.

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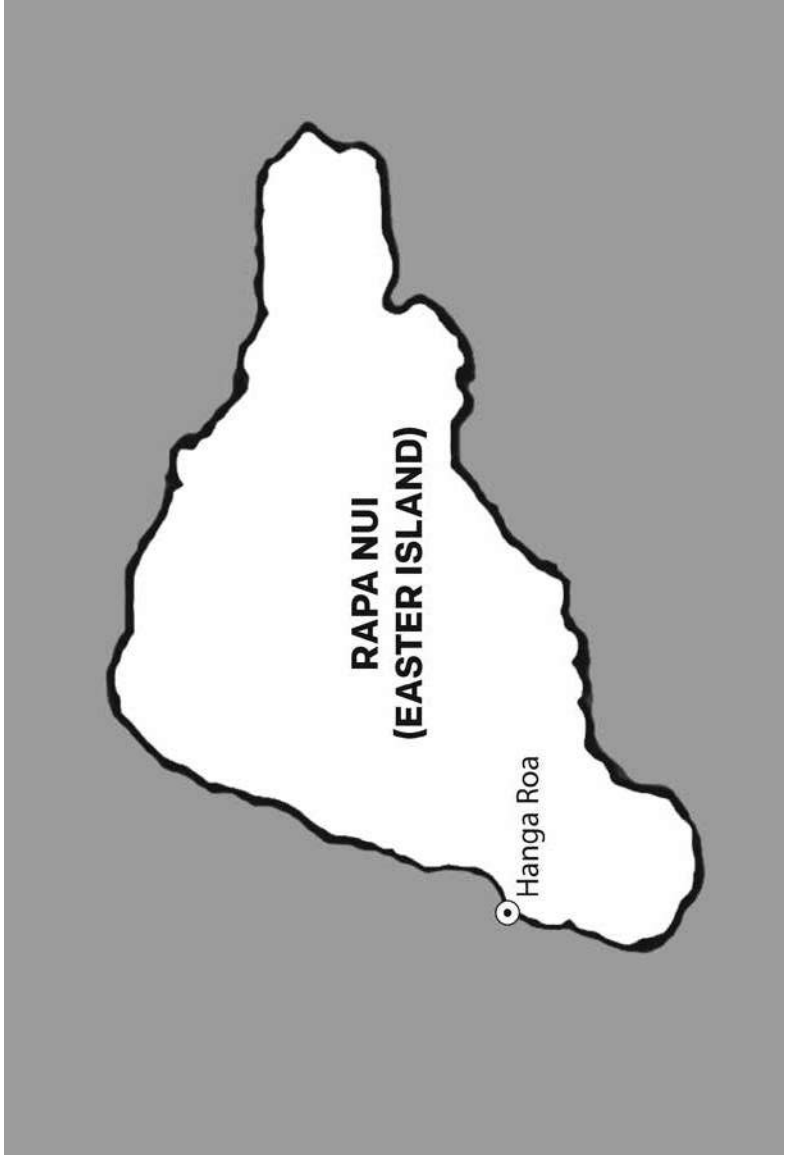
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This report was produced by **Renzo Anselmo, Ian Bravo** and **Camila Alomía**, members of the *Servindi* journalism team, coordinated by Jorge Agurto.





# Rapa Nui (Easter Island)



**D**uring 2021, the Rapa Nui people continued to face the same pandemic situation that has affected the rest of the world. Through prudence and use of their traditional knowledge, they have managed to keep their island free from COVID-19, thanks to the decision of their authorities to close the airport (the only way onto the island) to all commercial flights.

In February, mainly through a self-organised movement of Rapa Nui women, the people made a series of demands aimed at preventing the national authorities from allowing tourists to enter their territory.

The decision to prioritise the health of the local population had the inevitable consequence of creating an economic crisis due to a lack of tourism, the main activity of the island, which in pre-pandemic times used to account for a flow of more than 120,000 people to the island every year.

This situation has been a particularly difficult one for the Indigenous community of Ma'u Henua, the Rapa Nui community responsible for running the Rapa Nui National Park, as this work provides a source of income for hundreds of its members.

To overcome these difficulties and the resulting mass unemployment, the Rapa Nui municipality once more (as in 2020) implemented a successful programme of emergency job creation and territorial conservation based on five key areas: boosting food security; renovating and maintaining public spaces; safeguarding and promoting cultural values; supporting entrepreneurs, mentors and local contractors; and strengthening the Information, Security and Social Protection System. This programme has helped more than 800 families who lost their income as a result of the crisis.

The socio-economic crisis has been seriously exacerbated by the hike in the cost of air cargo transport on the part of the only airline operating into Rapa Nui and thus, since the second half of the year, the island has been limited to just one cargo flight per week. This has resulted in tremendously high consumer prices which, coupled with the lack of income, has badly affected much of the community. It should be noted that the Chilean government has refused to send food or donations to the Rapa Nui people, despite several requests from local leaders.

In this context, the State of Chile has also been requested to provide air force planes to transport people who need to travel to the continent and return to the territory, mainly for health reasons, but no posi-

tive response has been received.

For its part, during July 2021, Chile began an unprecedented process of drafting a new Constitution, the work of which has been entrusted to a Constitutional Assembly, a body that has nine months in which to complete its work, extendable for a further three months (one year in total). The new Constitution will need to be ratified by a nationwide referendum.

The main feature of this 155-member body is that it has been established on a parity basis and has 17 seats reserved for representatives of the 10 Indigenous Peoples recognised in Chile. One of these is an elected representative of the Rapa Nui people.

Under Chile's current Constitution, the territory of Rapa Nui (Easter Island) is protected by a special provision in Article 126(a). Faced with the imminent possibility that this regulation will disappear during the second half of the year, the Rapa Nui people have –through the participation of their leaders and main traditional bodies– initiated work to reach a consensus on a regulatory proposal. The objective is to submit an article to the Constitutional Assembly that sets out the foundations for the State's fulfilment of the Rapa Nui's historic demands, based primarily on Chile's recognition and fulfilment of the international treaty known as the Agreement of Wills. The agreement was signed by the Rapa Nui nation and the State of Chile on 9 September 1888, marking the start of the Rapa Nui's relationship with Chile. The agreement represents the legal basis of the bond existing between the two.

The content of the Agreement of Wills relates to four fundamental issues: the Rapa Nui people's cession of sovereignty over the island; in exchange, an obligation on the part of the State of Chile to respect the investitures enjoyed by the ancestral chiefs, meaning respect for their self-government and autonomy over the island; a right of collective ownership of all the land reserved for the Rapa Nui people; and, finally, an undertaking on the part of Chile to protect and provide for the welfare and development of the inhabitants of Rapa Nui, acting as a "Friend of the place" (Repahoa).

In turn, the Rapa Nui people demand recognition of their status as a Non-Self-Governing Territory, under the terms of Chapter XI of the United Nations Charter, and resolutions 1514 and 1541 of its General Assembly, which grants them the right to embark on a decolonisation process and to fully exercise their self-determination.

**Benjamin Ilabaca D.** is a Rapa Nui lawyer, member of the Technical Secretariat for Indigenous Participation and Consultation of the Constitutional Assembly of Chile, legal director of the Rapa Nui municipality and legal adviser to the Rapa Nui Parliament.



# Suriname



The Indigenous Peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638<sup>1</sup> (census 2012). The four most numerous Indigenous Peoples are the Kaliña (Carib), Lokono (Arawak), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian Indigenous Peoples in the south of Suriname, including the Akoerio, Warao, Apalai, Wai-Wai, Okomoyana, Mawayana, Katuena, Tunayana, Pireuyana, Sikiiyana, Alamayana, Maraso, Awayakule, Sirewu, Upuruy, Sarayana, Kasjoeyana, Murumuruyo, Kukuyana, Piyanakoto and Sakëta. The Kaliña and Lokono live mainly in the northern part of the country and are sometimes referred to as “lowland” Indigenous Peoples, whereas the Trio, Wayana and other Amazonian peoples live in the south and are referred to as “highland” peoples.

The legislative system of Suriname, based on colonial legislation, does not recognise Indigenous or Tribal peoples, and Suriname has no legislation governing Indigenous and Tribal peoples’ land or other rights. This forms a major threat to the survival and well-being of Indigenous and tribal peoples, particularly given the strong focus that is being placed on Suriname’s many natural resources (including oil, bauxite, gold, water, forests and biodiversity). Suriname is one of the few countries in South America that has not ratified ILO Convention 169. It did vote in favour of adopting the UN Declaration on the Rights of Indigenous Peoples in 2007.

## Legislative developments

Legislative developments on the rights of Indigenous and Tribal peoples have become rather mainstream in policy and political discussions in Suriname thanks to strong media communication on the part of Indigenous traditional authorities, united in VIDS (the Association of Indigenous Village Leaders in Suriname) and several protests, demonstrations and petitions to the National Assembly (the unicameral Parliament). A presidential committee, installed by President

Chandrikapersad Santokhi in November 2020, delivered a draft law on the Collective Rights of Indigenous Peoples and Tribal Peoples in Suriname, which was subsequently approved by the government and submitted to the National Assembly in June 2021. The National Assembly appointed an internal “commission of rapporteurs” which held a first consultative workshop in August 2021 and started “consultations” with the traditional authorities in December 2021. These consultations have not been extensive and have taken the form of introductory sessions with tribal leaders, requesting them to submit further input in writing. A reason for this approach, according to the commission, is that the current draft law builds on a previous draft that was put out to wide consultation during the previous administration.

VIDS, as well as various Maroon leaders, has stressed that the draft is far from perfect or sufficient but that legal recognition of the existence, and of the basic collective rights, of the Indigenous and Tribal peoples, in accordance with international standards, can be delayed no longer. The draft law is considered a framework law only, without operative details, and has umbrella provisions on the legal recognition of Indigenous Peoples and Tribal peoples, including the right to self-determination, to recognition of land rights and to traditionally used natural resources, to traditional authorities, free, prior and informed consent (FPIC) and benefit-sharing, culture and cultural integrity, effective participation and traditional knowledge, among others. Public discussions on the draft law are expected to start in February 2022. Although the political parties represented in Parliament have expressed their general support for legislation on the land and other rights of Indigenous and Tribal peoples (which is still lacking in Surinamese legislation), there is much debate to be expected on issues such as rights over natural resources, pre-existing third-party rights and outstanding demarcation of traditional lands.

Another much debated legislative issue is a draft amendment to the existing Law on the Principles of Domain Land Policy, which would make it possible for land leaseholders to convert their title to a full property title. This would make the return of such lands within traditional Indigenous or Tribal peoples’ territories even harder. VIDS issued a strong statement and petition to Parliament to suspend discussions on the draft amendment until after the (land) rights of the Indigenous Peoples had been secured. The draft amendment was also met with resistance

from political parties (including within the coalition government) and other groups in light of their fear that it would enable large landowners, including foreigners, to take over thousands if not millions of hectares.

Female Indigenous Chiefs have been at the forefront of opposition to the aforementioned draft law on Land Conversion, which would allow the government to convert leasehold titles into property titles, even within Indigenous territories. The chiefs delivered a petition to Parliament in August expressing their concern at the draft law and the continued non-recognition of the rights of Indigenous Peoples.<sup>2</sup> The discussions in Parliament were delayed but resumed in early 2022, spurring renewed resistance.

Indigenous village leaders from all over the country gathered in December 2021 to discuss these and other burning issues, during a VIDS “mini-conference” held in the village of Powakka. A resolution was adopted in which, aside from the abovementioned land rights’ issues, concerns were also expressed about a US\$ 50m carbon offset deal between the government and Total Oil, which was not even mentioned to the traditional authorities even though the deal says it will benefit local communities. The non-transparent activities of well-known multinational environmental NGOs were also criticised, and strong concerns were again expressed regarding the ongoing mercury pollution of land and rivers by gold mining, legal and illegal deforestation, road construction and illegal airstrips in the interior. The traditional leaders also reiterated –for the umpteenth time– their demand for full implementation of the Kaliña & Lokono judgement of the Inter-American Court of Human Rights dating back to 2015 and still unfulfilled.<sup>3</sup> The resolution was submitted to government and discussed during a high-level meeting with the President, Vice-President and others, resulting in some vague responses.

The human rights’ situation in the State of Suriname was reviewed by the Human Rights’ Council during its third Universal Periodic Review (UPR), held in November 2021.<sup>4</sup> Numerous remarks and recommendations were made on (the lack of recognition of) the rights of Indigenous and Tribal peoples, including a joint submission by VIDS with Mulokot and Cultural Survival,<sup>5</sup> which was answered with no more than a few general comments by the State superficially describing ongoing processes.



## COVID-19

Suriname was hard hit by the COVID-19 pandemic in 2021, particularly due to the widespread circulation of the Delta variant, reaching a regrettable position within the top 40 countries by highest deaths-per-million due to COVID-19.<sup>6</sup> Indigenous Peoples were not spared and, as in the previous year, the incidence and also the fatality rate among Indigenous persons was significantly higher than among other ethnic groups. Among the deaths due to COVID-19 was the chairperson of VIDS, Chief Theo Jubitana.<sup>7</sup> The Government of Suriname has meanwhile included VIDS in its deliberations on health and COVID-19 issues, and the head of a special convoy, sent by The Netherlands to Suriname in 2021 for COVID-19 assistance, met with VIDS to discuss more effective strategies, especially in relation to communications and vaccination.<sup>8</sup> The COVID-19 vaccination rate is low generally in Suriname, and even more so among Indigenous Peoples, due among other things to limited information, mistrust and a strong belief in traditional medicine.<sup>9</sup>

Various Indigenous women and their organisations have started making face masks in an effort to limit the further spread of COVID-19 and create an alternative source of income at the same time.<sup>10</sup> Training in manufacturing the face masks in accordance with hygiene standards started in late 2021 although various villages had already been making masks through an earlier VIDS initiative.

Indigenous women and girls will also be the main actors in another initiative that has recently started. Together with the civil society organisation, Stichting Projekta, VIDS will be implementing a UN Trust Fund to End Violence against Women-sponsored project aimed at strengthening local communities' support mechanisms for Indigenous women and girls in the interior.<sup>11</sup>

## Other developments

The Paramount Chief of the Trio people in Suriname, granman Ashongo Alalaparoe, passed away in November 2021. Shortly before, he passed on his role to his successor, Jimmy Toeroemang.<sup>12</sup>

Indigenous villages in Suriname, under the coordination and support of VIDS, will be developing regional FPIC protocols simultaneously with the Maroon organisation, KAMPOS. Although this initiative is part

of a UNDP-coordinated REDD+ Readiness Project, it will serve many other and broader purposes, including in light of the expected new legislation on the collective rights of Indigenous and Tribal peoples in Suriname. The draft protocols will be subject to verification by the Indigenous communities in 2022.

The agricultural research institute CELOSs has signed a “TK-FPIC” agreement with Indigenous and Maroon villages that sets out the objectives and conditions for documenting and potentially publishing research on traditional food crops and their associated traditional knowledge (TK).<sup>13</sup>

The International Monetary Fund (IMF) has approved a support package under its Extended Fund Facility (EFF) to the amount of USD 688 million over three years (with an immediate disbursement of USD 55.1m)<sup>14</sup> in support of the recovery and growth plan of the Surinamese government. The Indigenous traditional authority body VIDS expressed its concern that the economic adjustment measures would be felt hardest in the interior communities and requested special attention from the government to mitigate the impacts.<sup>15</sup>

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**Max Ooft** is Policy Officer at the Bureau of the Association of Indigenous Village Leaders in Suriname (*Vereniging van Inheemse Dorpshoofden in Suriname, VIDS*).



# Venezuela



For more than two decades now, Venezuela's Constitution has recognised the country as multi-ethnic and pluricultural. It has also established that Indigenous languages can be officially used in the country. Indigenous Peoples make up approximately 2.8% of the country's 32 million population. According to the 2011 Indigenous Census, some 51 different Indigenous Peoples live in Zulia, Amazonas, Bolivar, Delta Amacuro, Anzoátegui, Sucre, Apure, Nueva Esparta, Lara, Falcón and Mérida states. This same census highlights a resurgence in peoples once considered extinct and in others coming from different countries in the region.

The current legal framework governing Indigenous Peoples' rights is fairly complete. The Constitution recognises Indigenous Peoples' rights in a broad sense, in a complete chapter commencing at Article 119, expressly recognising their existence, social, political and economic organisation, cultures, habits and customs, languages and religions, as well as their habitats and original rights to the lands they ancestrally and traditionally occupy, including a guaranteed right to property. The legal system thus establishes a set of legal and regulatory provisions that tend towards providing broad protection of Indigenous Peoples' rights, such as the Law approving ILO Convention 169, the Organic Law on Indigenous Peoples and Communities, the Law on Indigenous Languages and the Law on the Cultural Heritage of Indigenous Peoples and Communities.

## Extractivism and Indigenous Peoples' rights

**T**he main threat to Indigenous Peoples' rights in the country in 2021 was the continued scaling up of Venezuela's extractive industry. This was noted by the United Nations Human Rights Council at its 34th session following approval of Venezuela's last Universal Periodic Review in 2017.

This scaling up of the extractive industry has taken place alongside a paralysis in and lack of demarcation and titling of Indigenous

habitats and lands. Of the aspects highlighted by the Venezuelan State in its National Report to the UN Human Rights Council, mining activity continued to be the main focus of the government over the current period, with no correspondence whatsoever between the demarcation of Indigenous lands and this ramping up of extractivism in the country. To date, there has been no assessment of the impacts of extractive activities south of the Orinoco, specifically those related to the so-called Orinoco Mining Arc.

2021 continued to show a marked deterioration in the enjoyment of economic, social, cultural and environmental rights in the country, a situation that continues to result in the migration of some vulnerable sectors, including Indigenous Peoples from south of the Orinoco to Brazil and Colombia. This migration, one of the origins of which lies in the lack of titling, is due to hydrocarbon projects and the invasion of Indigenous territories by miners. It has also been noted that the migrant population is made up primarily of women and children.

## **Extractivism and violence against Indigenous girls, adolescents and women**

The multidimensional crisis (economic, social, political and humanitarian) being suffered in the country has led men, women and children to seek sources of income at the different mining sites that have proliferated throughout the Amazon region comprising the states of Amazonas, Bolívar and Delta Amacuro. Over the last decade, Indigenous girls, adolescents and women in the territory south of the Orinoco have suffered physical abuse and psychological and sexual violence due to illegal activities. Such violence results in damage and consequences that place them in a situation of extreme vulnerability. This is on top of their poverty and Indigenousness, which already constitute risk factors.

Although there have been no studies produced on this situation, it can be seen in practice that there is a direct relationship between the presence of women in mining areas and the violence exercised against them at different levels. The lack of official research and data on Venezuelan victims of trafficking and sexual exploitation in the context of mining operations in the south of the country, especially women of Indigenous origin, is only exacerbating this serious problem.

## **Migrations, forced displacements and refugees: the case of cross-border Indigenous Peoples**

Cross-border Indigenous migration out of Venezuela increased from 2020 onwards in the context of a complex situation marked by the country's crisis, with different causes linked to problems of health and accessing food. On occasions, forced displacements have occurred due to violent situations that compromise the physical integrity of the Indigenous Peoples. Food poverty is usually associated with displacement from their ancestral territories due to the fact that they are no longer able to practise their traditional subsistence activities.

This situation has caused a substantial exodus of members of the Warao Indigenous Peoples from Delta Amacuro and Monagas states; E'ñepa from Amazonas and Bolivar states; Pemón from Bolivar state; Jiwi, Uwotüja, Arawako from Amazonas state; and Wayuu and Yukpa from Zulia state, and these today make up the majority of cross-border Indigenous Peoples.

The national crisis has particularly affected the Warao communities of the Orinoco Delta and Monagas, as well as members of the E'ñepa Indigenous people of Bolivar. They have been forced to seek economic relief in distant regions such as Boa Vista and Manaus in Brazil.

## **Indigenous Peoples in voluntary isolation and initial contact in Venezuela**

There are three Indigenous Peoples in Venezuela that have population groups living in initial contact or voluntary isolation. Such is the case of the Hodï (Jödi), Yanomami and Uwottüja (Piaroa) peoples, who live south of the Orinoco in Bolivar and Amazonas states.

There is still no formal recognition of these peoples' ways of life, despite the enormous efforts made to protect and safeguard them both internationally and regionally. This highlights the problems the Venezuelan State has had in implementing protection policies for these groups. However, in 2020 and 2021, in the context of the pandemic, the Ministry of Health published a guide to addressing the health emergency among Indigenous Peoples and communities, including some provisions related to disease prevention and care in territories where there is

the presence of isolated groups, indicating that they should be protected by means of sanitary cordons to prevent the spread of the disease. This reveals an initial recognition and development of a comprehensive health policy.

## **Indigenous rights in times of pandemic**

According to the Pan-American Health Organization, 63% of COVID-19 cases among Venezuela's Indigenous population are concentrated in the state of Bolivar. Bolivar also appears to be the state with the highest number of deaths, 96 in all. Indigenous Peoples usually live in remote and inaccessible areas, making it all the more difficult to gain an accurate understanding of their social and health reality as well as of the deficiencies they suffer in the midst of severe shortages such as lack of medical care and food.

## **Difficulties in coordinating with the Special Indigenous Jurisdictions**

The Special Indigenous Jurisdictions are traditional institutions that have emerged in Venezuela among the Indigenous Peoples and communities over the last decade. They take decisions in accordance with the habits and customs of the communities and are a way of resolving intra-community conflicts and exercising territorial governance. They have also demonstrated how resistance and legal dissent can occur within the diversity of normative systems and Indigenous justice itself. Special jurisdictions are recognised in the strict sense (*strictu sensu*) in Article 260 of the Constitution and, more broadly speaking, in Article 119.

Such is the case of the Sanema Indigenous people, who have historically shared territory with the Ye'kwana Indigenous people, even though their methods of conflict resolution are different.

Other cases abound in the varied regulatory background of the country's own justice systems.

Special mention should be made of the case of Héctor Solano, Indigenous Uwottüja from the Cataniapo Basin, Amazonas state, sen-



tenced through the ordinary justice system for an alleged crime of rape without sufficient evidence. Having previously been declared innocent in a community trial under the Jurisdiction of the Uwottüja Indigenous People of Las Pavas, he ended up receiving precautionary measures in his favour by decision of the Judicial Reform Commission of Amazonas State.

In this regard, the Venezuelan State expressly recognises the right to special jurisdictions in its report to the 40th session of the United Nations Human Rights Council, establishing that: “The Bolivarian Republic of Venezuela recognises the existence of the original right of Indigenous Peoples contained in the Special Indigenous Jurisdiction. The Supreme Court of Justice has adopted several rulings to recognise the traditional systems of justice of Indigenous Peoples, in accordance with international standards”.

## Notes and references

1. See the report prepared by the Wataniba Socio-environmental Working Group of the Amazon and the Indigenous Affairs Working Group of the Universidad de Los Andes for the United Nations Human Rights Council, to be held in the first quarter of 2022, p.10. Also see 2021 reports of the Platform against the Orinoco Mining Arc and the Centre for Reflection and Social Action (CERLAS) for items 9, 10 and 11.
2. The Venezuelan crisis is permeated by a much more complex social, economic, political and cultural reality, the humanitarian nature of which can only be understood if we place it in a structural, historical, cultural and civilizational context. See Aguilar Castro, Vladimir in this regard. *Lógicas territoriales, de poder y déficit de la política en Venezuela. Desvaríos de una construcción democrática* [Territorial logics, power and political deficit in Venezuela. Deviations from a democratic construction]. CETAI-GTAI (forthcoming).
3. One of the causes of Indigenous cross-border migration, one that has been little studied, is the lack of recognition, titling and demarcation of Indigenous territories, which gives a *sui generis* character to Indigenous migrants, refugees or displaced persons abroad. This would merit a special category under international humanitarian law since a possible return of these peoples to their habitats would be created by the titling of these lands. In the absence of a suitable category, we have preferred to call them cross-border Indigenous Peoples, with the understanding also that many of them are also binational Indigenous Peoples.
4. The main cause of the first exodus of the Warao people from their territories was the development of the hydrocarbon extraction project north of the Orinoco, called Plataforma Deltana. Subsequently, there was a second wave coinciding with the current complex humanitarian crisis and due, among other things, to the Arco Minero del Orinoco mining project, this time south of the Orinoco.

5. See Bello, Luis and Gregorio Mirabal. n/d. "Los PIACI en Venezuela" [Indigenous Peoples in Isolation or Initial Contact in Venezuela]. *Pueblos indígenas en aislamiento. Territorios y desarrollo en la Amazonía y Gran Chaco. Informe Regional* [Indigenous Peoples in isolation. Territories and development in the Amazon and Gran Chaco. Regional Report]. Ecuador: Land is Life, pp.433-459. <https://landislife.org/wp-content/uploads/2019/10/Land-is-life-25-septiembre-2019.pdf>
6. Radio Fe y Alegría. Programa con Todas las Voces. 10 October 2021.
7. *Ibíd.*
8. *Ibíd.*
9. See the Report prepared by the Indigenous Affairs Working Group of the Universidad de Los Andes, and the Wataniba Socio-Environmental Working Group of the Amazon for the United Nations Human Rights Council, to be held in the first quarter of 2022, as well as the 2021 reports of the Platform against the Orinoco Mining Arc and the Centre for Reflection and Social Action (CERLAS).
10. Although the ancestral, traditional and legitimate Indigenous authorities have been resolving conflicts in their communities since time immemorial, the case of the Yukpa chief Sabino Romero is symbolic of the tension that arises between special Indigenous jurisdictions (their own justice systems) –which as we have already noted are recognised in Article 260 of the Constitution of the Bolivarian Republic of Venezuela– and the lack of demarcation of Indigenous territories (Article 119). This case marked a turning point for the Venezuelan State as a guarantor of Indigenous rights, revealing its neocolonial character.
11. There are four Special Indigenous Jurisdictions formally constituted under positive Indigenous law in the country, namely: Jurisdiction of the Wotjuja Indigenous People of San Pablo de Cataniapo, Jurisdiction of the Wotjuja Indigenous People of Las Pavas and Jurisdiction of the Ye'kwana Tuduma Saka Indigenous People, all in the Indigenous state of Amazonas, plus the Pemón Kanaimö Indigenous Jurisdiction in the state of Bolívar. Their existence does not exclude other jurisdictions that operate according to the customs and traditions of the country's Indigenous Peoples, based on their own Indigenous law, but these have not yet been inventoried or positivized. See Aguilar Castro, Vladimir, Marciales Rodríguez, Guillermo and Mejías, Vercilio (Waayama). *La jurisdicción especial indígena en Venezuela como derecho propio* [The special Indigenous jurisdiction in Venezuela as own right]. Collaborative effort between the Universidad de Los Andes through the Archaeological Museum, Editorial Dabatana, the Indigenous Affairs Working Group (IAWG), the Regional Organisation of Indigenous Peoples of Amazonas (ORPIA), the Coordinator of Indigenous Organisations of the Amazon Basin (COICA) and the Wataniba Socio-environmental Working Group of the Amazon, 2021.
12. His final acquittal is still pending.
13. See A/HRC/WG.6/40/1. Op.cit.

**Luis Jesús Bello** is the operational director of the Wataniba Socio-environmental Working Group and **Vladimir Aguilar Castro** is a member of the Indigenous Affairs Working Group of the Universidad de Los Andes.





# The Arctic

# Kalaallit Nunaat (Greenland)



Kalaallit Nunaat (Greenland) has been a self-governing country within the Danish Realm since 1979. The population is 88.9% Greenlandic Inuit out of a total of 56,523 inhabitants (October 2021).<sup>1</sup> The majority of Greenlandic Inuit refer to themselves as Kalaallit.

Ethnographically, they consist of three major groups: the Kalaallit of West Greenland, who speak Kalaallisut; the Iivit of Kangerlussuaq (East Greenland), who speak Iivoriarsuaq (East Greenlandic); and the Inughuit/Avanersuarmit near Thule, who speak Inuktitut. The majority of the people of Greenland speak the Inuit language, Kalaallisut, which is the official language, while the second official language of the country is Danish. Greenland's diverse economy includes subsistence hunting, commercial fisheries, tourism, and emerging efforts to develop the oil and mining industries. Approximately 50% of the national budget is financed by Denmark through a block grant. In 2009, Greenland entered a new era with the inauguration of its Act on Self-Government, which gave the country further self-determination within the Kingdom of Denmark. Together with the Danish Constitution, the Self-Government Act articulates Greenland's constitutional position in the Kingdom of Denmark. The Self-Government Act recognises the Greenlandic people as a people under international law with the right to self-determination. Greenland has a public government, and it aims to establish a sustainable economy in order to achieve greater independence. Greenland's self-government consists of the Inatsisartut (Parliament), which is the elected legislature, and the Naalakkersuisut (Government), which is responsible for overall public administration, thereby forming the executive branch. The Inatsisartut has 31 elected members. The Government of Greenland adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) upon its ratification in 2007 and subsequent governments have committed to its implementation. Greenland and Denmark jointly prepare reports regarding good practice on implementation of Indigenous Peoples' rights, as described in the UNDRIP and other international

human rights instruments. The Government of Greenland had a decisive influence over the Kingdom of Denmark's ratification of ILO Convention 169 in 1996, as Greenland has prioritised actions to establish the Indigenous Peoples' collective rights to land and resources in their territories.

Only one-third of the population of Kalaallit Nunaat are women.<sup>2</sup> This gender imbalance is caused in part by higher levels of female emigration compared to men but also by a higher rate of male immigration.<sup>3</sup> The Self-Government Act recognises the Greenlandic people as a people under international law with the right to self-determination and, as such, Indigenous and non-indigenous women have equal rights and can participate in all decision-making processes.

General and municipal elections were held on 6 April 2021 in a snap election. These elections were held after a very public internal struggle within the Siumut party, which led to waning trust in Prime Minister Kim Kielsen, and public outcry from the Greenlandic people and the opposition party Inuit Ataqatigiit regarding the rare earth mineral mining project in Kuannersuit in South Greenland, where uranium was planned to be mined.

The new Government of Greenland, led by Inuit Ataqatigiit with Múte B. Egede as the new Prime Minister, later announced an enforcement of the zero-tolerance policy regarding uranium,<sup>4</sup> as well as an end to oil exploration in Greenland,<sup>5</sup> thus setting their sights on climate and sustainability.

A concerning low number of women ran for public office. Only some 30% of the candidates were women and this was also reflected in the election results.

In terms of tertiary education, Greenlandic women are much more likely to go on to higher education than their male counterparts.<sup>6</sup> According to Statistics Greenland, women attain an education above lower-secondary level more often than men. One in every 10 men chooses to commence higher education while for women this is 1 in every 5.<sup>7</sup> Despite women's higher level of education, there is a need to further focus on gender equality, prevention of sexism and harassment in pub-

lic office, and the political environment. Formally, legislative measures have been taken to promote gender equality but legislation alone is not enough to change the predominant attitudes.<sup>8</sup>

On 1 January 2021, Greenland adopted the Danish maternity equalisation scheme for maternity, paternity, and parental leave for self-employed persons, aimed at promoting women’s entrepreneurship, and extending the period of maternity leave during pregnancy from two to four weeks and the shared parental leave quota from 17 to 21 weeks, thus reducing the gender gap.<sup>9</sup>

There is a shortage of housing in Greenland and people sometimes have to wait for accommodation for many years. Four groups of homeless people have been identified in Greenland, some of which are gender-based. One consists of women who are single, who may have lost custody of their children and who are victims of abuse or domestic violence. Women are an especially neglected group in Greenlandic social policies and services. This can be seen in the level of emigration among women, in particular, who migrate to Denmark to access support services that are lacking in Greenland.<sup>10</sup>

A Westernised gender ideology has emerged, a paternalistic and patriarchal remnant of the colonial era, and one of the key issues dominating discourse on gender equality in modern Greenland is that of gender-based violence. The level of violence in Greenland is significantly higher than that in Denmark or the Faroe Islands, as 24.7 out of every 1,000 citizens were exposed to violence in 2020, according to the incidents reported to the Greenland Police. The figures are not disaggregated by gender, however.<sup>11</sup> According to a report from 2019, women aged 25-34 accounted for the largest proportion of adult survivors of violence in the previous year (11%).<sup>12</sup>

Reports also show that domestic violence against children and sexual abuse in childhood is a substantial problem. According to reports, 28% of the youngest group of children have been exposed to domestic violence, and 24% of 15 to 29-year-olds have experienced “forced or attempted forced sexual activity before they turned 18”.<sup>13</sup> The National Advocacy for Children’s Rights, MIO, issued a press release in March 2021 regarding alcohol abuse and its strong correlation with violence and abuse of children. The government banned the sale of alcohol in some municipalities to combat the spread of COVID-19 during parts of 2021.<sup>14</sup>

According to the Greenland Police, 13.3 out of every 1,000 citizens

were sexually assaulted in 2020. The equivalent number was 1.1 for the Faroe Islands and 1.1 for Denmark.<sup>15</sup> These figures are not disaggregated by gender, however.

The Council of Gender Equality in Greenland was established in 2013,<sup>16</sup> and has the task of promoting equality between men and women in Greenlandic society. The Gender Equality Council must:

- Monitor the application of the law and how it is implemented in society.
- Give statements at the request of the Naalakkersuisut, cf. sections 16-17 of the Gender Equality Act. The opinions must be publicly available.
- Initiate activities of an informative and debate-creating nature.
- Act as an advisory body for the public administration and its institutions, private companies, and individuals in society.<sup>17</sup>

Throughout 2021, the Council participated in the public gender equality debate on sexism and sexual harassment in public office<sup>18</sup> and conducted information campaigns on equality and sexism.

The Human Rights Council of Greenland and the Danish Institute for Human Rights made recommendations on the topic for the Committee on the Elimination of Discrimination against Women (CEDAW) in the summer of 2021, and made the following recommendations regarding Kalaallit Nunaat:

- Strengthen initiatives against violence and repercussions of violence and coordinate with initiatives against substance abuse;
- Take initiatives to introduce legislative measures on general protection from discrimination on all generally recognised grounds, including gender, race or ethnic origin, disability, age, sexual orientation and religion, both inside and outside the labour market, including by establishing an independent appeals board;
- Ensure data collection and analysis of violence against children and women in close relationships, including persons with disabilities. <sup>19</sup>

In CEDAW's Concluding observations to Denmark, Greenland and the Faroe Islands, the CEDAW Committee made similar recommendations, and added these specific recommendations on legal frameworks:



- "...introduce the consent-based definition of rape in Greenland..."
- "...extend the application of the Istanbul Convention to Greenland..."<sup>20</sup>

The Committee's Concluding observations on the ninth periodic report of Denmark regarding women in Greenland were as following: that awareness should be raised among Greenlandic women of their rights under the Convention and of the legal remedies available to them to claim those rights.

The Committee was also concerned at the lack of incorporation of the Convention into national law, which may have adverse effects on women and girls in Kalaallit Nunaat.<sup>21</sup>

The Committee recommended that a study on the gender-specific impact of climate change on women in Greenland, in particular women dependent on traditional Inuit livelihoods, should be conducted and included in future reports to the UN.<sup>22</sup>

*From the Human Rights Council of Greenland, we call for a strong focus on gender equality among Indigenous Peoples, a strong focus on women's participation and gender diversity in leadership and for sharing knowledge of human rights approaches to deal with these issues among Indigenous Peoples around the world. We express our support to all Indigenous women and human rights defenders around the world that live under threats and violence.*

*We stand with you in solidarity.*

*Qujanaq.*

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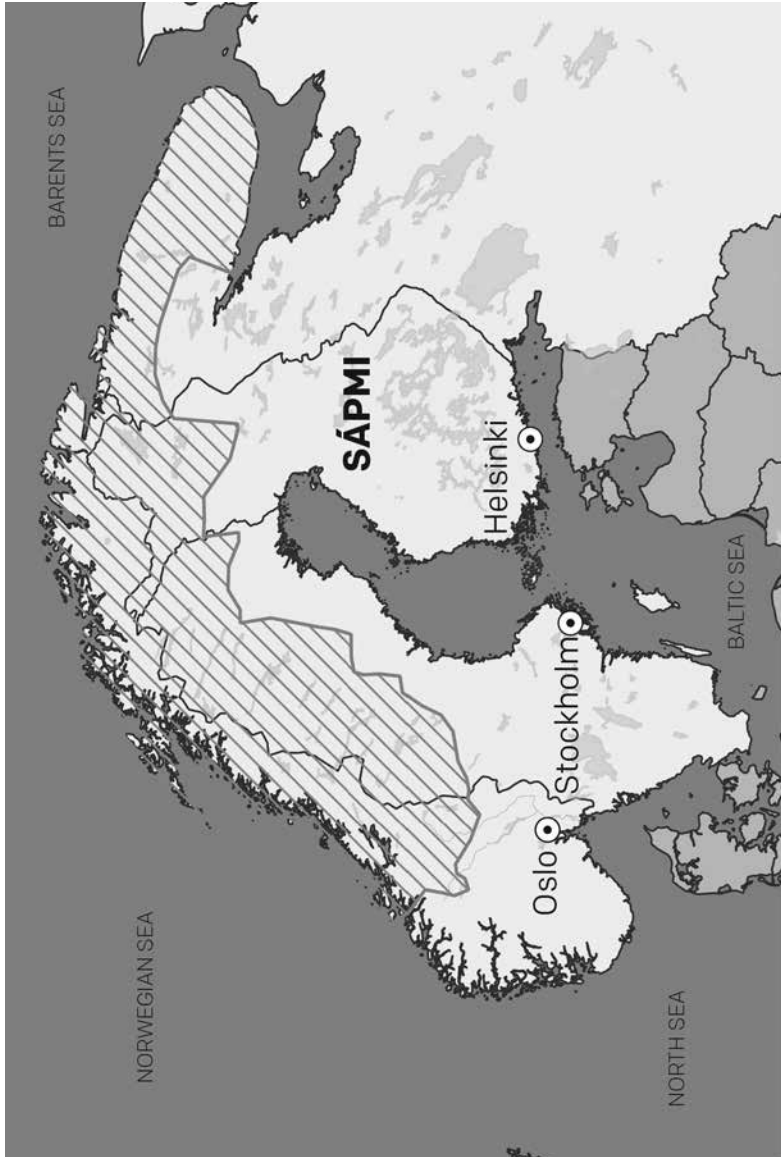
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**Qivioq Løvstrøm** is the Chair of the Human Rights Council of Greenland, and lectures at the University of Greenland as an assistant professor. She has a Master's in Cultural & Social History from Ilisimatusarfik, the University of Greenland (<https://uk.uni.gl/>). She has experience in working for the Human Rights Council of Greenland and the Ministry of Foreign Affairs of Greenland as a Head of Section in the areas: Asia, Climate, Trade, Human Rights, and Indigenous Peoples' Rights. She is also a former Focal Point and later Co-chair of the Global Indigenous Youth Caucus (GIYC) under the UN. For further information on the Human Rights Council of Greenland see: [www.humanrights.gl](http://www.humanrights.gl).



# Sápmi



Sápmi<sup>1</sup> 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 they live in Sweden, Norway, Finland and Russia. There is no reliable information on the population of the Sámi people; they are, however, estimated to number between 50,000-100,000.

Around 20,000 live in Sweden, which is approximately 0.22% of Sweden's total population of some nine million. The north-western part of the Swedish territory is the Sámi people's traditional territory. The Sámi reindeer herders, small farmers, hunters, gatherers and fishers traditionally use these lands. Around 50-65,000 live in Norway, between 1.06% and 1.38% of the total Norwegian population of approximately 4.7 million. Around 8,000 live in Finland, which is approximately 0.16% of the total Finnish population of around five million. And some 2,000 live in Russia, which is a very small proportion of the total population of Russia.

Politically, the Sámi people are represented by three Sámi parliaments, one in Sweden, one in Norway and one in Finland, while on the Russian side they are organized into non-governmental organizations (NGOs). In 2000, the three Sámi parliaments established a joint council of representatives called the Sámi Parliamentary Council. The Sámi Parliamentary Council is not to be confused with the Sámi Council, which is a central Sámi NGO representing large national Sámi associations (NGOs) in all four countries. There are also other important Sámi institutions, both regional and local, *inter alia*, the Sámi University of Applied Sciences, which is a research and higher education institution dedicated to the Sámi society's needs and where the Sámi language is mainly used throughout the academic system. Sweden, Norway and Finland voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in September 2007, while Russia abstained.

## Developments in Nordic Sámi truth and reconciliation processes

**T**ruth commissions or truth and reconciliation commissions (TRCs) refer to processes of investigating collective injustices that have taken place in history. One of the primary objectives of uncovering the truth, i.e. what has happened, is to prevent such injustices from occurring again. As reported in *The Indigenous World 2020 and 2021*, there are ongoing processes in Finland, Norway and Sweden aimed at addressing and assessing the historical and present-day colonial policies and discrimination experienced by the Sámi people in these three countries.<sup>2</sup> There are currently three separate truth commissions working in parallel in each country although the mandates of these commissions all state that their work should take into account the Nordic Sámi perspective and work to build links with other Nordic processes. Given that the Sámi are a nation living in four countries and that similar truth and reconciliation processes are underway in three of these, Nordic co-ordination is much needed in this respect.

On 3 November 2021, the Swedish government, in consultation with the Sámi Parliament in Sweden, decided to establish a Truth Commission with a mandate to investigate the abuses of the Sámi people by the Swedish State.<sup>3</sup> The Truth Commission in Sweden will identify, make visible, analyse and highlight the consequences of the policies the Sámi people were subjected to. The Commission will also spread knowledge and raise a general awareness of Sámi history and how historical abuses affect the conditions for the Sámi people today and participate in the general debate and in different education and information activities. The Commission will further bring to light and spread knowledge of the experiences of the Sámi and the Commission's conclusions as well as propose actions that can contribute to making amends and promoting reconciliation. The Sámi Parliament in Sweden and Sámi organizations were actively involved in the process of deciding to establish a Commission, and they have *inter alia* also established their own steering group for a Truth Commission.<sup>4</sup> The report of the Truth Commission will be presented at the latest on 1 December 2025. The members of the Commission in Sweden are yet to be appointed.

The Church of Sweden (CoS) delivered a public apology on 24 No-

member for its role in the repression and centuries of mistreatment of the Sámi people. The apology to Sámi representatives took place in the Cathedral of Uppsala. During the service, five Sámi delivered testimonies on the history of abuse that the Church of Sweden had committed. The apology is the first of two outlined in a statement released this June by the CoS declaring eight commitments toward ongoing reconciliation with the Sámi people. The second public apology is planned during the Sámi church conference in Luleå in October 2022.

The Truth and Reconciliation Commission in Norway, which is a joint Commission for the Sámi people and the Finnish/Kven national minorities, will complete its work by 1 June 2023 and deliver its report to the Presidium of the Storting (Norwegian Parliament).<sup>5</sup> So far the Commission has received some 500 oral testimonies.

On 28 October 2021, the Finnish government appointed the members of a Truth and Reconciliation Commission Concerning the Sámi People in Finland.<sup>6</sup> The Commission was established by the government in close cooperation with the Sámi Parliament and the Skolt Village Assembly, the traditional representative body of the Skolt Sámi minority. The Commission is an independent mechanism whose objective is to identify and assess the historical and present-day discrimination experienced by the Sámi people.<sup>7</sup> Another aim of the Commission's work is to promote awareness of the Sámi people and Sámi culture among the majority population.<sup>8</sup>

The members of the Commission are experts who, according to their mandate, should enjoy widespread trust among the Sámi and in Finnish society. Two of the five commissioners were elected by proposal of the government, two by proposal of the Sámi Parliament and one by proposal of the Skolt Village Assembly. The Commission's report will be submitted to the government, the Sámi Parliament and the Skolt Village Assembly by 30 November 2022.

## **Pressure from the extractive industry: the Gállok/Kallak case in Johkamohkki/Jokkmokk, Sweden**

The establishment of mines on lands where the Sámi people have enjoyed rights since time immemorial, without the free, prior and informed consent of the Sámi people, continues to be one of the main threats to

sustainable Sámi traditional livelihoods. Common to all these cases is a lack of implementation of Indigenous Peoples' rights when issuing permits to the extractive industry.<sup>9</sup> One major project that will negatively affect both the environment and Sámi livelihoods is the iron ore mine of the British company Beowulf Mining in Gállok (Kallak in Swedish). Protests have taken place since 2013 on the part of international and national environmental activists, the Sámi Parliament,<sup>10</sup> Sámi reindeer herders and Sámi organizations, who are all opposing the planned mine just outside the Sámi village of Johkamohkki in Norrbotten County. According to human rights organizations, the planned iron ore mine will violate the rights of the Sámi people who live in the area and who have long used the lands for reindeer husbandry and other traditional cultural activities.<sup>11</sup> According to UNESCO, the mine would also affect Europe's largest wilderness area, Lapponia, which this organization has classified as a World Heritage Site.<sup>12</sup> In its submission to the Swedish authorities, Beowulf claimed that the mine would not have any direct effect on Lapponia, and that Sámi reindeer herding and mining would be able to coexist.<sup>13</sup> If the mine is built, however, it will be located on land that traditionally belongs to the Indigenous Sámi people, where the mountain Sámi villages of Jåhkågasska and Sirges keep winter pastures for their reindeer. The Swedish government will decide on this matter in 2022.

## Consultations between Sámi and State authorities

On 30 September 2021, the Swedish Ministry of Culture tabled a proposal for a new Consultation Act.<sup>14</sup> Unlike Norway, Sweden has not ratified the Indigenous and Tribal Peoples Convention of 1989 (ILO169), Article 6 of which states that Indigenous people must be consulted in all matters that directly affect them. The Swedish Consultation Act has been inspired by the Norwegian Sámi consultation procedures found in chapter 4 of Norway's Sámi Act (Lov om Sametinget og andre samiske rettsforhold (sameloven), LOV-1987-06-12-56). However, there are also some differences between the two Nordic countries' approaches to the Sámi. For example, the Norwegian law does not require that the issue be of significant importance to the Sámi for a consultation to be needed, only that the issue or measures directly affect the Sámi people, and that they affect the Sámi differently than the rest of society. (4-1 § Norwegian Sami Act.)<sup>15</sup>



The Swedish government originally table its proposal before the Swedish parliament in 2020 but the government withdrew the proposal in 2021 and referred it to the Committee on the Constitution for further preparations, comments and review. The Committee on the Constitution recommended the legislation for adoption in January 2022. The national government requirement to consult with Sámi representatives will take effect on 1 March 2022, whereas the local government requirement to consult will not take effect until 1 March 2024.

## **The South Sámi win legal battle over grazing lands**

In 2021, the Norwegian Supreme Court found that the establishment of the wind industry in the South Sámi community on Fosen was in violation of the human rights of the reindeer herding Sámi in the area.<sup>16</sup> The case concerned the construction of Storheia and Roan windfarms on Fovsen (Norwegian: Fosen) peninsula and whether these amounted to a violation of Sámi reindeer herders' right to enjoy their own culture under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). A grand chamber of the Supreme Court unanimously found a violation and ruled the licence and expropriation decisions invalid.

The Supreme Court decision is a landmark case as the court unanimously decided that the wind turbines established on Fovsen peninsula in Norway were in violation of the human rights of the South Sámi families, who have rights to reindeer herding in the area since time immemorial. The Roan and Storheia wind farms in western Norway form part of Europe's largest onshore wind energy project. Construction at the two sites was completed in 2020 within the Fovsen Njaarke reindeer grazing district in the South Sámi region. The Sámi claimed that the construction interfered with their right to enjoy their own culture but this was rejected by the Norwegian Ministry of Petroleum and Energy in 2013. Despite the fact that the case was still progressing through the legal system, the government decided not to stop the construction of the wind park.

Based on the Court of Appeal's findings of the facts, the Supreme Court established that the wind power development would have a significant adverse effect on the reindeer herders' possibility of practising their culture in Fovsen. In its ruling, the Court of Appeal stipulated

significant compensation for the winter feeding of fenced-in reindeer, thus finding no violation of Article 27. In the Supreme Court's view, such a solution is burdened with so much uncertainty that, at present, it cannot be significant in determining whether Article 27 ICCPR has been violated. The Supreme Court also found that the courts could not, in any case, rely on such a measure as a part of the reindeer herders' duty to adapt. Pointing in particular to statements from the UN Human Rights Committee, the Supreme Court found that it would amount to a violation of Article 27 if the interference had significant adverse effects on the possibility of cultural enjoyment. Although the interference of itself may have no serious consequences that amount to a violation, this must also be considered in the context of other projects, both previous and planned, the court said. The total cumulative effect of the development would determine whether a violation had taken place. As a starting point, there is no room for a proportionality assessment balancing the minority's interests against other interests of society.

The practical consequences of the ruling are, however, still pending. The Sámi families who won the case have demanded that the wind turbines be removed as they continue to violate their human rights.<sup>17</sup> The government has stated that the rights of the Sámi under international law will be secured but have still not concluded what will happen to the illegal constructions on the reindeer herding lands.<sup>18</sup>

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**Laila Susanne Vars** is the Chair of EMRIP and its member from the Arctic. She is an Indigenous Sámi lawyer with a PhD in international law and is a former member and Vice President of the Sámi Parliament in Norway. She is currently the President of the Sámi University of Applied Sciences – Sámi allaskuvla.



A grayscale map of the region covering Central and Eastern Europe, the Russian Federation, Central Asia, and Transcaucasia. The map shows national borders and is overlaid with a large white text box. The text box contains the following text:

**Central and  
Eastern Europe,  
Russian  
Federation,  
Central Asia and  
Transcaucasia**

# Israel



Israel's Arab Bedouin citizens are indigenous to the Negev (Naqab, in Arabic) desert, where they have lived for centuries as a semi-nomadic people, long before the establishment of the State of Israel in 1948. Members of the Bedouin community are an integral part of the Arab Palestinian minority, as well as citizens of the State of Israel. Combining herding with agriculture, they are settled in villages linked by kinship (tribes) systems, and this has largely determined land ownership. Prior to 1948, some 65-100,000 Bedouin lived in the Naqab. After 1948, most were expelled or fled to Gaza, Egypt, the West Bank and Jordan, with only approx. 11,000 remaining in the area.

During the early 1950s and until 1966, Israel concentrated the Bedouin in a restricted area, known by the name of "al-Siyāj", under military administration, representing only around 10% of their original ancestral land. During this period, entire villages were displaced from their locations in the western and northern Naqab and their people were transferred to the Siyāj area.<sup>1</sup>

Today, some 300,000 Bedouin citizens of Israel live in the Naqab, in three types of location: government-planned townships, recognised villages, and villages that Israel refuses to recognise (unrecognised villages).<sup>2</sup> There are 35 unrecognised Bedouin villages in the Naqab that Israel refers to either as the "dispersion" or as "illegal villages", calling their inhabitants "trespassers" on State land and "criminals".<sup>3</sup>

Most of the Bedouin population lost their land when Israel declared it as *Mawat* ("dead", uncultivated agricultural lands) and reclaimed it as State land.<sup>4</sup> The land that belonged to those Bedouin who became refugees, as well as much of the land owned by the Bedouin who remained in Israel, was appropriated and nationalised by way of a number of laws, including the Absentee Property Law (1950)<sup>5</sup> and the Land Acquisition Act (1953).<sup>6</sup>

There was no exception made for the Naqab Bedouin, who were forcefully evicted from their ancestral lands by the very same Israeli government that went on to become the "rightful" guardian of those homesteads. The *Planning and Building Law*

enacted in 1965 led to the classification of most of the Siyāj area as agricultural land. From the moment the law came into effect, every house built in this area was defined as illegal and all the houses and structures already standing in the area were retroactively declared illegal.<sup>7</sup>

Since the beginning of the 1970s, Israel has been conducting an ongoing non-consensual and non-participatory urbanisation process. The State documents that 72.9% of the Naqab's Bedouin residents are poor and 79.6% of Bedouin children live below the poverty line.<sup>8</sup> However, Bedouin residents from unrecognised villages are not included in these national poverty indicators.<sup>9</sup> In addition to the seven townships, the State recognised 11 Bedouin villages from 1999 onwards,<sup>10</sup> hailing their recognition as a fundamental shift in government policy, which had previously focused exclusively on forced urbanisation. Two decades later, however, there is no significant difference between these villages and the unrecognised ones. The residents of most recognised villages continue to be denied access to basic services and are under constant threat of house demolitions.<sup>11</sup> The remaining 28% of the Bedouin population (around 100,000 people) live in unrecognised villages<sup>12</sup> that do not appear on any official map and most of which contain no health or educational facilities or basic infrastructure. Their residents have no formal local government bodies and are represented only in the Regional Council for the Unrecognised Villages (RCUV), an informal community body.

## **Mechanisms of forced displacement during the Covid-19 crisis and wartime**

Israel's use of demolitions, land uprooting and "development" projects as mechanisms for the forced displacement of the Bedouin population in the Negev/Naqab has continued despite the pandemic and the escalation of violence during May 2021, violating the right to ade-



quate housing, the right to liberty and to security of person recognised in the Universal Declaration of Human Rights in 1948,<sup>13</sup> the International Covenant on Civil and Political Rights (ICCPR) in 1966<sup>14</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966.<sup>15</sup> Tens of thousands of Bedouin in the Negev/Naqab currently live in homes that are subject to demolition orders due to the lack of approved building schemes for their villages, both recognised and unrecognised. In the case of the dozens of Bedouin villages in the Negev/Naqab that are unrecognised, they remain without approved building schemes, and without the possibility of applying for or receiving building permits, as long as the Israeli government continues to define them as illegal villages.

### **Development-induced displacement**

In 2021, Israel continued to promote its policy of dispossession through its national “development” projects.<sup>16</sup> These include:

- the expansion of Ramat Beka Special Industrial Zone, resulting in severe construction restrictions that will lead to the forcible transfer of around 1,200 families and result in health risks to the remaining Bedouin residents;<sup>17</sup>
- the extension of Road 6, expected to result in the demolition of around 600 Bedouin structures across at least nine unrecognised villages;<sup>18</sup>
- the establishment of a phosphate mine in Sdeh-Barir (that is expected to result in the demolition of more than 1,995 buildings and endanger the health of approximately 11,000 Bedouin residents) is expected to take place under the responsibility of planning authorities. On 11 October 2021, the Supreme Court ruled that construction of the phosphate mine should continue and contented itself with an amendment to the building plan asking for the examination of the health consequences at the detailed planning level. In other words, a detailed programme will be produced that includes a health assessment although this was already stated in the original National Outline Plan; and
- the creation of two new railway lines, planned to cut through

several Bedouin villages –including the two Bedouin townships of Ksīfih and Ar'arah an-Nagab, as well as several unrecognised villages including az-Za'arūrah, al-Fur'ah, al-Bhīrah, al-Gatāmā, al-Ġazzah and Rakhamah, which will be cut in half – causing significant upheaval and land seizures, and affecting approximately 50,000 residents.<sup>19</sup>

Dispossession through land uprooting continued during the year. On 22 February, the State ploughed up 2,800 dunams (280 hectares) of cultivated land in the villages of al-Ġarraḥ, Al-Ru`ays and Sa`wah.<sup>20</sup> Residents of nearby villages and supporters participated in demonstrations and called for recognition of their villages, requesting the State stop its demolitions and ploughing up of lands. The State's response was to send a large police operation that violently arrested those who tried to prevent the tractors from ploughing their land and from cutting off a pipe that provides drinking water for the residents. During and after the demonstration, 15 people, including a minor, were arrested and detained in a police vehicle from the early hours until the evening without any food or water.<sup>21</sup>

### **May escalation of violence**

In May 2021, an escalation of violence began, promoted by right-wing extremists and the police in Sheikh Jarrah, at Damascus Gate, and at the Al-Aqsa Mosque. Those events led to escalations in clashes between Hamas and the Israeli Defence Forces (IDF) and had an impact on the Arab Bedouin residents of the Naqab.<sup>22</sup> As a result of these escalations, large Palestinian-led protests began to form all around the country to protest at the police violence directed at the Arab community. In the Negev/Naqab, such demonstrations came in the form of mass protests along main highways.<sup>23</sup> Starting on 10 May, over 300 people, including Arab Bedouin residents of the recognised and unrecognised Bedouin villages and townships were detained in southern Israel. According to Bedouin testimonies, due to the repression and violence used by police officers, residents have since conducted fewer demonstrations.<sup>24, 25</sup> The violence exercised by the police in the Negev/Naqab consisted of hitting people with bats or with their fists and using tear gas.<sup>26</sup>

### **The Negev-Naqab as an unprotected area for its Bedouin citizens during wartime**

During May 2021, Hamas fired thousands of missiles into Israel from Gaza, endangering the lives of millions of civilians.<sup>27</sup> As a result of the State's discriminatory policies, and compared to the Jewish community in Israel, the Bedouin community disproportionately bears the brunt of conflict with Hamas. For most Israelis, the Iron Dome system and the IDF's early-warning alarms provide protection and alert the citizens to enter shelters and designated safe spaces. In the unrecognised villages of the Negev/Naqab, however, most houses are built from light materials with no foundations so there are no shelters, above or below ground, and most construction lacks any protective architecture such as safe rooms, unlike many newly-constructed apartments and homes in Israel.<sup>28</sup> The Iron Dome system does not provide coverage for many of the Bedouin villages since the State considers them to be "open spaces". Even in recognised villages, there are hardly any public shelters. In other words, the lives of almost 100,000 Bedouin citizens living in the unrecognised villages and many others are not taken into consideration by the State when it assesses citizens' security during war. In previous operations, the IDF provided portable shelters to Jewish localities that lacked alternatives, such as in southern Israel, and even in settlements in the West Bank.<sup>29</sup> During the last violent escalation, rockets fell in two Bedouin villages, Abu Grīnāt and Awajān, injuring residents.<sup>30</sup> The residents received no warning of the impending attack. Two rockets also fell in the unrecognised village of Wādi an-Na'am. Most homes in the seven townships do not have safe rooms and the public shelters are insufficient for the needs of the growing population.<sup>31</sup>

### **The rising trend in demolitions**

Throughout 2020 and 2021, enforcement authorities continued to distribute demolition warrants, carry out demolitions, interrogate livestock farmers, and issue fines to herders. These enforcement measures cause extreme duress and self-demolition by the owners of the houses, which in 2020 numbered 94% of the total demolitions.<sup>32</sup> Adult heads of household, who on average support a family of approximately seven people, experience additional stress and mental health issues due to the house demolitions and housing insecurity, all of which were com-

pounded during the pandemic.<sup>33</sup> Further, enforcement authorities disregarded the health and sanitation recommendations of such a state of emergency: residents of the villages informed the Negev Coexistence Forum for Civil Equality (NCF) that many of the inspectors and police officers patrolled the villages and interacted with the population without taking any precautions to prevent the spread of the virus.<sup>34</sup>

## **UN treaty bodies in relation to the Bedouins' Indigenous rights in 2021**

NCF, Sidreh Association, Alhuquq Centre, the Arab Medical Association in the Negev and the Human Rights Defenders Fund have all submitted an NGO report to the UN Human Rights Committee describing the violations of the ICCPR by the State of Israel in relation to the Indigenous Arab Bedouin population in the Southern Negev/Naqab Desert.<sup>35</sup> The report makes specific reference to the previous Concluding Observations (COs) issued by the Committee in 2014, the Fifth Periodic Report submitted by Israel in October 2019, as well as observations and recommendations made by the Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), and UN Special Rapporteurs during the years of 2019, 2020 and 2021, in which they expressed serious concerns about Israel's conduct towards its Bedouin citizens. The main issues brought before the Committee were forced evictions and displacement; exclusion of the Bedouin population from decision-making processes relating to their condition; discrimination in planning and zoning policies; voting intimidation and inaccessibility of polling stations; excessive use of force; harassment and criminalisation of Bedouin human rights defenders; and limited access to basic services. In addition, the report refers to the human rights situation of the Bedouin population amid the COVID-19 pandemic, and the escalation of violence in May 2021.

The UN Commissioners for the Commission of Inquiry on the Occupied Palestinian Territory,<sup>36</sup> including East Jerusalem, and Israel (Office of the United Nations High Commissioner for Human Rights) requested a meeting with NCF's Executive Directors to hear about alleged viola-

tions and abuses of international human rights law leading up to and since 13 April 2021, for the purpose of investigating all underlying root causes of recurrent tensions, instability and protraction of the conflict, including systematic discrimination and repression based on national, ethnic, racial or religious identity.<sup>37</sup> The informative session included a presentation of developments in the Naqab during 2021 and was followed up by delivery of NCF's 2021 Human Rights Report.<sup>38</sup>

## General outlook for 2022

Arab Bedouin students from unrecognised villages and townships were harshly affected by the pandemic as remote learning was the only alternative offered by the government to continue their education during the lockdown.<sup>39</sup> There remains an enormous problem of equity since students who live in unrecognised villages in the Naqab are at a severe disadvantage in remote learning. Lacking Internet connection, computer devices and electricity demonstrated that while the pandemic exacerbated this inequality, it was not the cause and the government needs to solve the equity problem permanently, not just during the pandemic. The opportunity to mitigate this damage could entail massive logistical issues in distributing and connecting the Naqab's villages to the Internet, which the Government of Israel has not yet even begun to plan.

The coalition agreement signed in June 2021 by Mansour Abbas, Head of the United Arab List and representative of the party in the Knesset, Yair Lapid, Deputy Prime Minister and Minister of Foreign Affairs and Prime Minister Naftali Bennet included recognition of the unrecognised Bedouin villages of Khašim Zannah, Rakhamah and 'Abdih within the first 90 days of the government.<sup>40</sup> As part of the process to advance this commitment, the Cabinet approved the decision in November; however, it was with the requirement that at least 70% of the Bedouin residents' consent to leave their lands and move to the new established villages before the recognition process is finalised. This condition is unprecedented when compared to Jewish localities and hardly feasible given its requirement of moving the residents into the boundaries of a village that has yet to be properly recognised. This condition is problematic, affects the trust building process between the Bedouin residents and

the authorities, and may have far-reaching implications for future recognition processes.

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**The Negev Coexistence Forum for Civil Equality (NCF)** was established in 1997 to provide a space for Arab-Jewish shared society in the struggle for civil equality and the advancement of mutual tolerance and coexistence in the Negev/Naqab. NCF is unique in being the only Arab-Jewish organisation that remains focused solely on the problems confronting the Negev/Naqab area. NCF considers that the State of Israel is failing to respect, protect and fulfil its human rights obligations, without discrimination, towards the Arab Bedouin Indigenous communities in the Negev/Naqab. As a result, NCF has set one of its goals as the achievement of full civil rights and equality for all people who make the Negev/Naqab their home.

**Elianne Kremer** is a Uruguayan-Israeli development expert with experience in field research, analysis and M&E in humanitarian aid and social development. She directs the Research and International Relations department of NCF, working closely with community activists.





# Palestine



Following Israel's declaration of independence in 1948, the Jahalin Bedouin, together with four other tribes from the Negev Desert (al-Kaabneh, al-Azazmeh, al-Ramadin and al-Rshaida), took refuge in the West Bank, then under Jordanian rule. These tribes are traditionally semi-nomadic agro-pastoralists living in the rural areas around Hebron, Bethlehem, Jerusalem, Jericho and the Jordan Valley.

These areas are today part of the so-called "Area C" of the Occupied Palestinian Territory (OPT), representing 61% of the West Bank. Under the 1995 Oslo Accords, Israel was granted temporary administrative and security control of Area C, which was due to be gradually returned to the Palestinian Authority by 1999.<sup>1,2</sup> This never happened and, today, 27 years after the Oslo Accords were signed, Israel retains near exclusive control of Area C, including over law enforcement, planning and construction. It is home to all West Bank Israeli settlements, industrial estates, military bases, firing ranges, nature reserves and settler-only by-pass roads, all under Israeli military control. Over the years, Israel has dispossessed Palestinians of roughly 200,000 hectares of land, including farmland and pastureland, which it then generously allocated to settlements or declared as closed military zones and nature reserves. Some 640,000 Israeli settlers currently live throughout the West Bank (including East Jerusalem) in over 280 settlements, enjoying nearly all the rights and privileges accorded to Israeli citizens living in Israel proper, inside the Green Line.<sup>3</sup> The short-lived Trump "Deal of the Century" recognised permanent Israeli possession of those settlements, in contravention of the landmark UN Security Council Resolution 2334 of 23 December 2016 which reaffirmed the illegality of Israeli settlements in the West Bank, including East Jerusalem, under international law.

The situation of the Indigenous Palestinian Bedouin refugees of 1948, some 27,000 pastoral herders living under full Israeli military control in Area C, is currently a major humanitarian issue. Greatly at risk are 8,000 Bedouin (60% of whom are children) living in 46 small communities in the Jerusalem Pe-

riphery and some 4,500 pastoral herders in the Jordan Valley. Donor-funded humanitarian structures (shelters, goat pens, water tanks, schools, solar panels, toilets) continue to be deliberately targeted for demolition and confiscation: for example, in 2021, the UN Education Cluster reported that 46 Palestinian schools<sup>4</sup> in Area C were under demolition orders or stop work orders, a five-year high,<sup>5</sup> and the war crime of forced displacement by Israeli authorities remains a constant threat.

## Increased violence

Israeli settler violence against Indigenous Palestinians<sup>6</sup> drew much attention over the past year, particularly when such terror attacks also targeted Israeli solidarity activists.<sup>7, 8, 9, 10, 11, 12</sup> This settler violence was even referenced by US Under-Secretary for Political Affairs, Victoria Nuland, in discussions with Israeli Public Security Minister, Omer Bar Lev, arousing Prime Minister Bennett’s displeasure.<sup>13</sup>

UN Special Rapporteurs have reported that: “Settler violence has always been an extremely disturbing feature of the Israeli occupation. But in 2021, we are witnessing the highest recorded levels of violence in recent years and more severe incidents.”<sup>14, 15, 16, 17</sup> Yesh Din, an Israeli NGO monitoring such violence, reported:<sup>18</sup>

*The data expose law enforcement authorities’ discrimination in the occupied territories. When an Israeli commits a crime against a non-Palestinian, meaning Israeli security forces personnel or others, it is often followed by effective investigations by police and indictments filed. In contrast, when violence is directed at Palestinians, Israeli law enforcement agencies are negligent at best in their treatment and fail to prosecute offenders.*

Yesh Din’s legal opinion on Israeli apartheid<sup>19, 20</sup> also refers to settler violence:

*Palestinians are dispossessed of their land both through official expropriations [...] and through Israeli settler violence. While this violence is not perpetrated by the regime directly, the consistent wilful blindness to it, lack of law enforcement on the perpetrators and retroactive legitimization of settler presence on land seized through criminal acts leave no choice but to consider the regime responsible.*

International media attention<sup>21</sup> even brought extreme cases of violence – unusually – to the attention of Israelis,<sup>22, 23</sup> with Haaretz stating that 416 anti-Palestinian incidents had been reported in the first half of 2021, more than double the figure for the first half of 2020 and more than in the whole of 2019. Referring to violent Israeli offenders as “sub-humans”, in a case that gained media traction, a Meretz deputy minister and ex-Deputy Chief of Staff, Yair Golan, stirred up a viral frenzy of outrage that became a distraction from the actual behaviour critiqued.<sup>24</sup> Haaretz also reported that “back in a meeting last December, [Minister of Defence and ex-Chief of Staff] Gantz had already said that he expected IDF commanders to demand that their troops intervene in cases in which Jewish civilians attack Palestinians”.<sup>25, 26</sup> This is because the phenomenon of settler violence often takes place with IDF soldiers standing by as spectators<sup>27, 28, 29, 30</sup> or even allowing the settlers to use their weapons.<sup>31, 32</sup> It must be noted that, in 2021, six Palestinian human rights NGOs, including Al Haq (the leading Palestinian human rights NGO, founded in 1979 by Palestinian lawyers), were themselves under massive attack from Defence Minister Gantz in an attempt to silence the messenger.<sup>33, 34</sup>

Human Rights Watch published its landmark report “A Threshold Crossed” in 2021, the title referring to its analysis of Israeli policies and apartheid practices.<sup>35</sup> “Settlers, meanwhile, enjoy virtual impunity for criminal acts against Palestinians. Between 2005 and 2019, police closed 91% of the complaints of reported settler violence against Palestinian persons and property being tracked by the Israeli human rights group Yesh Din without indicting anyone.”<sup>36</sup>

Yet most daily incidents of ongoing violence by Israeli settlers against some 5,000 Indigenous Bedouin or other Palestinian pastoralists in the Jordan Valley<sup>37</sup> go virtually unnoticed and are rarely reported

in the mainstream Israeli media. This invisibility permits right-wing politicians and settler leaders to deny its existence.<sup>38</sup>

"Israeli Deputy Foreign Minister Idan Roll last week denied there is lawlessness and government complicity with settler violence in the occupied West Bank. 'Israel is carrying out its obligation to protect [Palestinian civilians] and definitely respects the law. The one thing we look at is the law. Anyone on either side should be accountable; there is a judicial process,' he said."<sup>39</sup>

However, away from that culture of Israeli denial of violence, a handful of dedicated Israeli human rights activists continue to patrol the most dangerous grazing areas, where attacks on Indigenous Palestinian herders and Israeli apartheid policies are at their worst. One such daily volunteer, Daphne Banai, provided evidence for a submission to the UN Commission on the Status of Women (CSW) on 21 December 2021 by Israeli human rights lawyer, Adv. Eitay Mack.<sup>40</sup>

The letter starkly reveals the lack of protection faced by all Indigenous Palestinian Bedouin living under the military control of Israeli occupation forces and armed settlers who are working relentlessly to take over (or 'Judaize') Palestinian herders' lands. Below are some excerpts:

*Palestinian women in the shepherds' communities in the Jordan Valley suffer from the severe impact of the ongoing illegal Israeli occupation, and the systematic and widespread violations of their rights. [...]*

*The impact of the Israeli occupation on the status of women's rights in the Jordan Valley has local characteristics, resulting from the severe poverty of the shepherds' communities and their isolation, [which is] aggravated by the policy of ethnic cleansing and apartheid of the State of Israel. The ethnic cleansing is being done by using force and intimidation to encourage the shepherds' communities' residents to leave the Jordan Valley, including [...] home demolitions, arbitrary detention and imprisonment, creating shortage of water and land, together with the daily violence of the Army and the settlers, as well as the settlers' takeover of the grazing and agricultural areas. All of these prevent the shepherds' communities from developing economic resilience, and intensify poverty and despair. [...]*

*These small shepherds' communities are imprisoned in shrinking enclaves, between military firing zones, areas of declared nature reserves and Israeli outposts and settlements, making most of the Jordan Valley forbidden for Palestinian entry. [...]*

*In the Jordan Valley, the shepherds' communities have no ability to survive other than by grazing their herds. Grazing is the centre of the culture and tradition of these indigenous communities. [...]*

*The situation of the shepherds' communities in the Jordan Valley has deteriorated in the last five years, after the Israeli government and its settlers started their project of 'settlers' farms.' Each such farm is home to one couple with children, and among the workers are usually hooligans called 'Hilltop Youth' who commit hate crimes and terrorize the local Palestinian population.*

## **Settlement expansion**

The UN Secretary General's report of 23 September 2021 on "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan" noted:<sup>41</sup> "On 11 February, the former Israeli Minister of Settlement Affairs stated to Israeli media that in 'Area C we aspire to apply Israeli sovereignty. The purpose of the agricultural farms is to keep that option open for us.'"<sup>42</sup>

Israel's leading human rights NGO, B'Tselem, explains: "The rationale behind the establishment of these farms, which necessitates minimal resources, was encapsulated by the Minister of Settlement Affairs, Tzachi Hanegbi, who described the process of establishing them: How did the Jews manage to reinforce their hold on the land from 1967 to this day? Not with speeches and not in international courts. We simply went up on those hills, set up a generator and dug a path. We are against the establishment of a Palestinian state, but we don't want to control Area A, while over Area C we aspire to apply Israeli sovereignty. The purpose of the agricultural farms is to keep that option open for

us. He added that these farms 'are meant to help us keep our finger on the pulse throughout the area. That Jewish shepherd won't be able to prevent Palestinian construction, but he can report it. His flock roams across massive swathes of land and he notices what's going on in his area. He's basically a human drone.'"<sup>43</sup>

Indeed, in October 2021, the Israeli public learned that Minister for Construction and Housing, Zeev Elkin, planned to double the number of settlers in the Jordan Valley.<sup>44</sup> Israel Hayom newspaper reported, in Hebrew, that Elkin, the plan's initiator, estimated that it would not cause political or diplomatic difficulties since there is a broad national consensus on the strategic importance of the Jordan Valley. He noted that promotion of this programme required no approval from the political echelons (a coalition that involves some partners who definitely do object to settlement expansion) because it is implementing programmes previously approved and yet to be implemented.

In his UN submission to the CSW, Adv. Mack explained:

*Indeed, the new settler farms through violence and the help of the Israeli Army and police take control of the last grazing and agricultural areas in the Jordan Valley available for the shepherds' communities, and may be a death blow to them. All shepherds' communities suffer from high rates of poverty, food insecurity, inadequate water supply and unsafe drinking water, shortage of electricity or fuel and violence.*<sup>45</sup>

## **The case of Najia Bisharat<sup>46</sup>**

One particularly egregious case of violence against a member of a shepherding community was that of the detention of Najia Bisharat, a resident of the shepherding community of Khirbet Makhoul in in Area C of the Jordan Valley, and mother of nine. On 18 October 2021 she was detained by Israeli police due to a false complaint by settlers that she had thrown rocks at an Israeli vehicle.

Najia and her three-month-old daughter were taken to the Sha'ar Binyamin police station alongside Hagar Geffen, an Israeli human rights activist who insisted on accompanying them. At the station, police officers shackled Najia's feet, took her baby away from her and prevented

her from breastfeeding her daughter for over four hours, claiming they had to wait for the Arabic interpreter to arrive.

Najia's husband, Yousef, and several Israeli activists came to the station and, upon hearing cries from the baby, asked the officers to allow Najia to breastfeed her daughter. The officers instead told the activists they were "causing provocation" and should buy baby formula at a nearby supermarket. When an attempt was made to bottlefeed the baby, she vomited.<sup>47</sup>

Four hours after her arrest, and only after Israeli media and members of the Knesset (parliament) had been alerted to the arrest and contacted the police, was Najia reunited with her daughter, although she remained in detention. Four hours later, her interrogation finally began. Promised a woman investigator, Najia was interrogated by a man instead. After her interrogation, Najia, as an Area C resident, was handed over to the Palestinian Authority police, despite the fact that it has no jurisdiction in Area C, which is under full Israeli control.

According to Haaretz:

*The decision to detain Najia for 8 hours, handcuff her legs and prevent her from breastfeeding her baby seems to have been designed to put illegal pressure on her to give a false confession that she threw a stone, and also to please the settlers who wanted to punish her because of her and her family's refusal to stop grazing and leave the area. The decision to release Najia without restrictions indicates the police knew the complaint against her was false.*

## **Weaponising services<sup>48</sup>**

In his UN submission to the CSW, Adv. Mack detailed another troubling tactic implemented through Israeli policies: the "weaponising"<sup>49</sup> of water. These policies prevent access to the water grid and demolish rainwater collecting cisterns (rainwater being "legally" owned by the State), creating problems for Indigenous Bedouin when buying water and transporting it in tankers.

*Because of the State of Israel's policy to create a deliberate shortage of water in the shepherds' communities in the Jor-*



*dan Valley, water expenses are huge and exacerbate communities' poverty. Many families become entrapped in a vicious circle of debts and loans just to satisfy their human need to drink water and their herds' needs. [...]*

*The lack of access to water, and the cost of its transportation, are especially harmful to the health and personal hygiene of women. The water in the tanks and wells [is] unmonitored and sometimes at risk of pesticides or rust or [has] stood for long days in the heat.*

## **Forbidding the use of tools; frequent demolitions**

The authorities furthermore forbid these Indigenous communities from building permanent or semi-permanent structures that involve the use of concrete or tools, according to Adv. Mack's UN submission.

Frequent demolitions not only cause anxiety and other emotional trauma but also remove the support network gained in building a community. This is especially significant for the women and children, who are at home most of the day while the men are out shepherding or doing other work.

"In 2013, Israel demolished all the buildings and expelled the families. About five families returned. Since then, the Army have come and destroyed the homes in the community about five more times. Later one more family left and today there are three families and an older shepherd over the age of 80,"<sup>50</sup> reported Adv. Mack, referring to the village of Khirbet al-Makhoul.<sup>51</sup>

In another example, the residents of Khirbet Humsah, who engage in livestock grazing and agriculture, mostly live in temporary buildings. The community has been evacuated six times since 2012.

*Ayesha and Leila, from Khirbet Humsah, suffered repeated demolitions of their homes, the last time at 43 degrees. The Army confiscated their small tents and all their belongings, including their drinking water and water tanks, their clothes and those of their children. Without a roof, Leila stood under the burning sun and continued to make cheese for her family livelihood.*

Adv. Mack's submission described the trauma of such experiences, especially on women and children. Military closures in, for example, the area of Al-Hadidia, prevent access to education and medical services, or indeed water and food for residents and their flocks.

*Roi settlement blocked access from Al-Hadidia to the main road, north and south of Roi, by building locked gates that could not be bypassed. A 12-year-old, Sumoud, studies at Ein El Bida. The locked gates prevent her school bus from reaching her home in Al-Hadidia, so her father must drive her twice daily on a tractor to the main road. In winter, if the tractor is unavailable, the water-logged dirt road is impassable by foot and the girl, an outstanding student, just stay at home (like other students).*

Such isolation distresses the women shepherds, who depend on men for their every need outside the encampment, with no access to a pharmacy, clinic, community centre or neighbouring communities. There are no kindergartens and no Internet. Children who reach the age of five are forced to disconnect from their mothers and live in towns with an uncle or aunt so they can attend compulsory kindergarten or school, returning home only during the vacation. The women are unable to visit their children because they have a major role in caring for the herds and making the cheese, the family livelihood.

As noted above, Israeli peace activists who are working to protect the shepherds report that the settlers and their "Hilltop Youth" are using violence to expel the shepherds and their herds from pastures on an almost daily basis, throwing stones at the herds, driving vehicles or riding horses inside the flocks, provoking dog attacks on the shepherds and their herds, whipping the herds with sticks or whips, burning the pasture, beating and pushing the shepherds and threatening to shoot them with pistols or stab them.

In his UN submission, Adv. Mack explained:

*Israeli soldiers and police participate in and permit the settler's violence. Often soldiers and police are present during settler violence against the shepherds, and do not lift a finger to stop it. In many incidents, soldiers and police arrest the Palestinian shepherds who dare to lay complaints against the*

*settlers. Many times, Israeli soldiers and police, when detaining the shepherds, leave their herds abandoned. While Palestinian shepherds are expelled from the pasture, settlers are permitted to stay. [...]*

*The women are the backbone of the shepherds' communities in the Jordan Valley, and particularly suffer from the illegal and racist policies of Israeli governments. It is time for the CSW to pay special attention to these women in the Jordan Valley, their human rights' violations, and their resilience.*

## **A dangerous trend**

This model of behaviour resonates with that in the South Hebron Hills and elsewhere in Area C of the OPT.<sup>52</sup> In Al Khan al-Ahmar, the subject of previous yearbook reports, the community is still under imminent threat of forcible displacement<sup>53</sup> at the instigation of settler NGO Regavim, including an ongoing High Court case, while any offer to move these Bedouin elsewhere in Area C or inside "Green Line Israel" is immediately opposed by radical settler members of the Knesset such as Bezalel Smotrich or Itamar Ben-Gvir.<sup>54</sup> While there is some civil society support for the Bedouin of Al Khan al-Ahmar,<sup>55</sup> during the March 2021 elections, Open Democracy's Jalal Abukhater reported:

*Palestinians are literally a backdrop in this election. Nothing could be more symbolic of this than TV news channel 21 holding a live broadcast,<sup>56</sup> hosting leaders of major right-wing parties in a studio overlooking the Khan Al-Ahmar community, north-east of Jerusalem. The candidates lined up<sup>57</sup> pledging the forcible transfer of the Palestinians living in that community, taking turns in attacking Netanyahu for so far failing to demolish the community. We are a backdrop, denied basic rights and at the receiving end of hateful and violent policies, while Israelis cherish the process as a democratic achievement. The candidates present in that interview – Gideon Sa'ar of New Hope, Bezalel Smotrich of Religious Zionism, and Naf-*

*tali Bennett of Yamina – have accumulated nearly 20 seats in the upcoming Knesset, and are all expected to be part of the next right-wing government forming coalition.*

Israel's current government touts the "status quo" (i.e. "no change") as its policy of non-negotiation with the Palestinians yet, in order to torpedo any future negotiations, settlements continue to expand, land continues to be grabbed relentlessly, Bedouin continue to be forcibly displaced<sup>58</sup> and violence is meted out daily on the weakest. This is hardly "no change" when intensive land-grabbing policies of creeping, *de facto* annexation deliberately and systematically aim to stymie any future negotiations of a viable Palestinian state. Hence, rather than "status quo" a medical diagnosis seems more apt: "No change = worse". And the Indigenous Bedouin living in Area C, especially their women, suffer the most.

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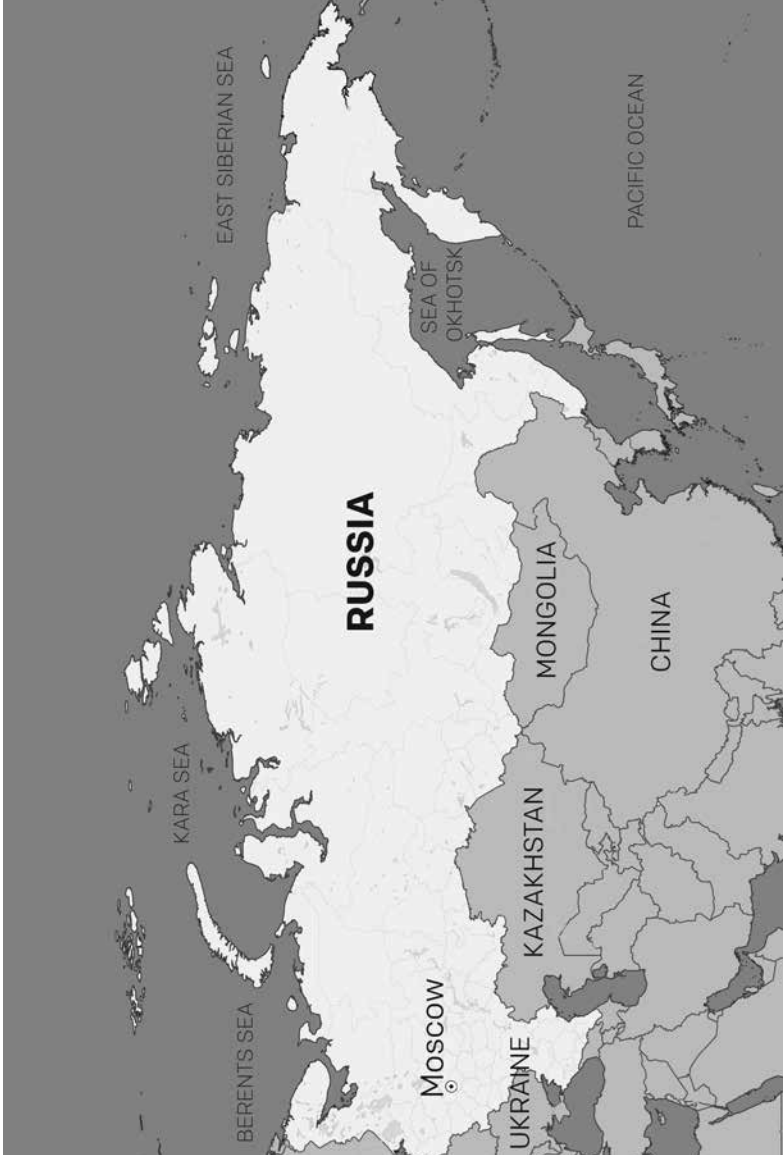
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**Angela Godfrey-Goldstein** is Director of *Jahalin Solidarity*, a Palestinian organisation she founded to support *Jahalin Bedouin* with capacity building and advocacy, especially in relation to their forcible displacement and against the Israeli Occupation. She was for many years Advocacy Officer with ICAHD – The Israeli Committee Against House Demolitions, having previously been an environmental activist in Sinai, Egypt, where she lived for four years. She was a *Rebuilding Alliance* Peacemaker awardee 2018. A chapter she wrote about her work for the past 20 years with *Bedouin* was published in 2018 by *Veritas* in "Defending Hope". In 2021, she was awarded the Human Rights and Child Education category winner in the [www.blueprints.org](http://www.blueprints.org) Hall of Fame, as part of their World Indigenous Forum event, where she serves on The Council of 90.





# Russia



Indigenous Peoples are not recognised by Russian legislation as such; however, Art. 67 of the current constitution guarantees the rights of “indigenous minority peoples”, (literally: “indigenous small-numbered peoples”). The 1999 Federal Act “On Guarantees of the Rights of the Indigenous Minority Peoples of the Russian Federation” specifies that Indigenous minority peoples are groups comprising less than 50,000 members who are perpetuating some aspects of their traditional ways of life. According to this and two other framework laws that were enacted during the late Yeltsin era, Indigenous minority peoples have rights to consultation and participation in specific cases. There is, however, no such concept as “Free, Prior and Informed Consent” enshrined in legislation. The last two decades have seen a steady erosion of this legal framework and a heavy re-centralisation of Russia, including the abolition of several Indigenous autonomous territories.

Of the more than 160 peoples inhabiting the territory of contemporary Russia, 40 are officially recognised as “indigenous minority peoples of the North, Siberia and the Far East.” One more group, the Izhma Komi or Izvatas is actively pursuing recognition, which it continues to be denied, and at least one other, the Kerek, is already extinct. Together, they number about 260,000, less than 0.2% of Russia’s total population, of which ethnic Russians account for 80%. Other peoples, such as, for example, the five million Volga Tatars, and many groups populating North Caucasus, are not officially considered Indigenous Peoples, and their self-identification varies. Since the Russian annexation of Crimea, several ethnic groups have come under Russia’s control who self-identify as Indigenous, even though Russia has not recognised this self-identification: the Crimean Tatars, the Krymchaks and the Karaim.

The latest official population figures from the 2010 national census do not provide disaggregated data on the socio-economic status of Indigenous Peoples. The results of the 2021 census have not yet been made public. Two-thirds of Indigenous Peoples are rural and depend on traditional subsistence

strategies such as fishing, hunting and reindeer herding whereas Russia, on the whole, is a highly urbanised country.

Civil society is affected by continually shrinking spaces as the country's intelligence service, the FSB, has continually been consolidating power. Since 2013, NGOs that receive foreign funding have been liable to be officially classified as "foreign agents", leading many of them to close down in order to minimise their exposure to legal risk. Since 2018, the same practice has also been extended to individuals. Many foreign NGOs have been banned as "undesirable organisations".

Russia's export revenues are largely generated from the sale of fossil fuels and other minerals, often extracted from territories traditionally inhabited or used by Indigenous Peoples. The country's development strategy is largely geared towards further increasing the exploitation of the Arctic's natural resources. Like many resource-rich countries, Russia is heavily affected by the "resource curse", fuelling authoritarianism, corruption and bad governance. This in many ways impacts negatively on the status of Indigenous Peoples' human rights and limits opportunities for their effective protection.

Russia has not ratified ILO Convention 169 and nor has it 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 has also ratified the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM).

## Access to adequate food

**A**n issue resurfaced in 2021 that had basically been unresolved since the collapse of the Soviet Union: a continuing lack of understanding on the part of the Russian authorities of access to adequate food as a fundamental right of Indigenous Peoples.

During 2021, the Russian Federation continued to impose undue restrictions on Indigenous Peoples' access to fish resources, while af-

fording preferential treatment to commercial fishing enterprises.

In spring, Indigenous Peoples in the Far East were outraged at the impact of new fishing regulations affecting several Far Eastern regions from Chukotka peninsula to Primorsky Krai, which had been adopted by the Ministry of Agriculture in 2020. Indigenous Peoples' and *obshchinas*<sup>1</sup> applications for fishing quotas submitted under the old rules were rejected, as the new rules were applied retroactively. Even those Indigenous persons whose applications were not rejected had to wait for the authorities' decision until the fish migration season was almost over. At the same time, commercial enterprises received their permits on time, as always.

The new rules adopted by the Ministry<sup>2</sup> foresee a highly bureaucratic procedure for Indigenous Peoples when applying for quotas for traditional fishing. Alexander Asmolov of the Russian Academy of Sciences referred to the new rules as an act of "cultural genocide" against the Indigenous Peoples.<sup>3</sup>

The new rules limit eligibility to Indigenous Peoples living in officially recognised "places of traditional residence and traditional economic activities of small indigenous minorities of the Russian Federation." The list of such places adopted in 2009,<sup>4</sup> as well as similar lists compiled on the regional level, are criticised for being incomplete and outdated. In many regions, only some of the Indigenous Peoples were listed, while others were often left out and thus rendered ineligible for fishing quotas under the new rules.

In Magadan region, residents from certain settlements, as well as all members of the Chukchi, Eskimo, Kamchadal, Orochi and Aleut peoples, were denied their fishing rights as they were not included on the regional list of Indigenous people.<sup>5</sup>

In order to partly mitigate the impact of these policies, the Magadan administration promised to provide one-off subsidies that would enable Indigenous Peoples to buy three paid recreational fishing licences per Indigenous fisherman.<sup>6</sup>

Similar situations where commercial fishing was prioritised over recognition of the fishing rights of Indigenous Peoples were also observed in Yamal-Nenets Autonomous Region,<sup>7</sup> Khabarovsk region<sup>8</sup> and Sakhalin.<sup>9</sup>

Responding to the new rules introduced by the Ministry of Agricul-

ture, the Indigenous Peoples of Khabarovsk region held an online rally decrying the decision to delay the start of the traditional fishing season in 2021 and to grant negligible fishing quotas to them, while the quotas granted to commercial, recreational and sport fisheries were, as always, considerable and on schedule.<sup>10</sup>

Overall, the Russian authorities' approach to the fishing rights of Indigenous Peoples can be summarised by the following quote, from the speech by a representative of the Rosrybolovstvo (Federal Agency for Fishery under the Ministry of Agriculture): "... We have completed the overarching task of reducing the number of users of aquatic biological resources among indigenous peoples of the North, Siberia and the Far East. Our next step should be to determine who among the remaining ones should, in our opinion, ultimately be granted the right to conduct fishery in order to lead a traditional way of life."<sup>11</sup>

Meanwhile, a new registration system for persons belonging to Indigenous minority peoples is to come into force by 7 February 2022 and is expected to greatly reduce the number of Indigenous Peoples eligible for fishing and hunting rights as well as other prerogatives (See Yearbook 2021). The Rosrybolovstvo appears to have taken matters into its own hands instead of waiting for the list to be finalised, in itself a source of grave concern to Indigenous Peoples.<sup>12</sup>

Migrating fish species, as well as sea coastal and sea mammalian meat, are key components of the traditional diet of most Indigenous Peoples in the Arctic and a lack thereof seriously affects Indigenous Peoples' health. These actions therefore constitute severe violations of Indigenous Peoples' right to adequate food and have been fiercely opposed. In the words of Yakutia Republic's MP, Elena Golomaryova: "By protecting fish too zealously, we are destroying our indigenous people."

## **Development without participation**

On 26 October, President Putin approved a Strategy for the Development of the Russian Arctic Zone and Ensuring National Security for the period to 2035. This document *inter alia* stipulates the establishment of mechanisms to foster the economic and social development of the Indigenous Peoples in the Arctic zone. Pursuant to this stipulation, ac-

According to Alexey Chekunov, Russia's minister in charge of the country's Far East, Russia has allocated an annual spending of 500 million roubles (approximately EUR 6 million, 21 euro per capita) to support Indigenous Peoples in the draft federal budget for 2022-2024. According to the minister, investment projects relating to Indigenous Peoples will allow the Russian Federation, during its chairmanship of the Arctic Council (2021-2023), to demonstrate a balanced approach to preserving the environment, improving the quality of life of the population and developing the economy in the Arctic.<sup>13</sup> However, currently, only cultural activities appear to be receiving any funding.

The "Programme of State Support for Traditional Economic Activities of Indigenous Peoples of the Russian Federation", approved on 15 April 2021, makes it clear that most of the modest funds (approximately 21 euro per capita) allocated will not go to Indigenous organisations.<sup>14</sup> While the document states that its objective is "the establishment of a sustainable basis for the development of indigenous minority peoples", the recipients of the funding will be intermediate structures such as commercial enterprises, who inter alia employ members of Indigenous Peoples. The document repeatedly states that certain actions should happen "*with the participation of indigenous minority peoples*" rather than be carried out and owned by Indigenous Peoples themselves.

The role of Indigenous Peoples themselves in this programme is limited. They are expected to produce traditional crafts for external and internal markets, make themselves ready to receive tourists and be able to meet "professional standards for the category of workers engaged in traditional economic activities."

The programme makes no mention of the role of Indigenous Peoples' institutions of self-governance and the concept of "Indigenous communities" is not mentioned at all. Further, the programme fails to address the key problem facing traditional nature use: the conditions for access to territories and resources, especially the government's failure to implement the Federal Act on Territories of Traditional Nature Use of 2001 (see below), and commercialisation of fishing and hunting areas.

Once again, the right of Russia's Indigenous Peoples to adequate food, development and culture continues to be violated as many communities have no land on which to graze their reindeer and other live-

stock, nor have they places to fish and hunt because their land is occupied by commercial entities. How the legal and environmental damage accumulated over past decades to the “ancestral territories and traditional ways of life” of Indigenous Peoples will be dealt with is not reflected in the programme.

## **Indigenous Peoples confront mining giant Nornickel**

Nornickel is Russia’s largest mining company, owned by oligarch Vladimir Potanin. The company’s main operations are based in the north of Krasnoyarsk region, around the city of Norilsk, with major impacts on the Dolgan and Nenets communities on Taimyr peninsula, as well as Murmansk region near the Norwegian border, where its operations affect the Sámi people. The city of Norilsk has a reputation of being one of the world’s most polluted cities and in 2020 was the site of a major diesel fuel spill (see Indigenous World 2021) that robbed downstream Indigenous communities of fish as their most important source of nutrition. Since the mining giant has refused to directly negotiate adequate compensation with the affected communities, Indigenous activists have turned to international allies, first targeting Elon Musk’s Tesla, which was considering purchasing from Nornickel, with a campaign under the hashtag #AnswerUsElonMusk,<sup>15</sup> after which Tesla did not pursue its intent to purchase metals from Nornickel any further.

The coalition of Indigenous Peoples and support organisations later addressed the German chemical corporation BASF, one of Nornickel’s major European customers. BASF responded to an initial joint open letter by rejecting responsibility and deferring the coalition to Nornickel itself but later agreed to hold talks.<sup>16</sup> At a later point, Nornickel itself became part of the talks.

While the company thus displayed some willingness to talk to the international coalition, the situation on the ground remains concerning. The company has been pursuing a divide and rule strategy, on one hand exerting pressure on local Indigenous communities<sup>17</sup> while on the other creating its own “Indigenous Council” on Taimyr, luring Indigenous communities to it with monetary incentives. Meanwhile, leading activ-

ists have been the target of legal threats from the regional administration.<sup>18</sup>

Nornickel eventually announced its intention to join the IRMA (Initiative for Responsible Mining Assurance),<sup>19</sup> a leading multistakeholder initiative in the extractive sector with regard to respect for Indigenous Peoples' rights; however, this process may take a long time to complete. Towards the end of the year, Nornickel embarked on the piloting of a FPIC procedure with an Indigenous community that was due to be resettled. However, in doing so, it imposed its own protocols on the community rather than allowing the Indigenous side to develop their own.<sup>20</sup>

## **Land rights in limbo: “Territories of Traditional Nature Use” dysfunctional and weakened further**

“Territories of Traditional Nature Use” (TTNU) are, within the Russian legal system, what come closest to recognising and delineating Indigenous Peoples' territories. However, since enactment of the Federal Law on Territories of Traditional Nature Use<sup>21</sup> in 2001, the government has failed to establish any Territory of Traditional Nature Use (TTNU) with federal status, while the legal situation of TTNU with local or regional status is extremely unstable.

The most recent refusal to establish a federal-status TTNU was issued in December 2021 by the Federal Agency for Ethnic Affairs (FAEA) to an organisation of the Sámi people of Murmansk region.<sup>22</sup> The refusal was justified by the notion that draft amendments to the Federal Law are currently being discussed within the FAEA.

2020 and 2021 demonstrated anew that TTNUs must have federal status in order to be properly protected, as federal government bodies in charge of issuing concessions to extractive industries do not take into account the existence of regional-status TTNUs.

The most recent example of such a situation is a regional TTNU in the Republic of Khakasia inhabited by Indigenous Shors. In 2020, the Shors learned that some 30 concessions had been issued for gold extraction on their TTNU. When confronted, Khakasia's regional administration explained that while their TTNUs had regional status, the concessions were awarded by federal agencies, hence there was nothing



that the regional authorities could do to resolve the situation. The Federal Ministry of Natural Resources, for its part, informed Shor activists that since it had no information on the boundaries of regional TTNUs in Khakasia, the concessions had been issued legally. The Shor communities demanded revocation of the concessions and a moratorium on new ones. In response, the gold mining company, Artel Starateley Khakasia, supported by the local authorities, began coercing the Shors into signing “cooperation agreements”. In December 2021, the authorities organised village gatherings in the settlements where Shors constitute a minority, thus rubber-stamping the agreements.<sup>23, 24</sup>

The other weakness of the TTNUs with regional status is the danger of being dissolved because much of the territories that Indigenous Peoples rely on is classified as federal land. This is what happened in Yakutia where, in December, the Ust-Maisky municipal council voted to liquidate the municipal Territory of Traditional Nature Use following a request from the local Public Prosecutor's office.<sup>25</sup> According to this office, this step was necessary because it included forest lands which, according to Russian legislation, are the property of the federal government.

## **International human rights and remedy mechanisms**

Due to COVID-19, none of the periodic reports submitted by Russia to UN treaty bodies were considered in 2021. Instead, their analysis has now been moved to 2022 and beyond.

In April 2021, with two years' delay, Russia submitted its 5<sup>th</sup> periodic report under the European Council's Framework Convention for the Protection of National Minorities (FCNM).<sup>26</sup> The report mentions Indigenous Peoples but fails to provide disaggregated data on their socio-economic status and gives an evasive statement regarding the issue of Indigenous Peoples' right to FPIC.<sup>27</sup>

In February, the Centre for Support of the Indigenous Peoples of the North, one of the leading independent organisations working on the promotion of Indigenous Peoples' rights in Russia, submitted a complaint to the European Court of Human Rights, appealing its forced closure in 2020 by the Russian Ministry of Justice. In April, the court regis-

tered the complaint. The court also registered a complaint by German Indigenous rights defender Johannes Rohr, appealing his 50-year travel ban to Russia, handed down in retaliation for speaking out in 2018 at the UN Forum on Business and Human Rights on the situation of Indigenous Peoples in Russia.<sup>28</sup>

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**Olga Murashko** is a Russian anthropologist and one of the co-founders of the former IWGIA Moscow office. She has been working to support Indigenous Peoples' rights in Russia since the early perestroika years. She works as a consultant for the Centre for Support of Indigenous Peoples of the North (CSIPN).

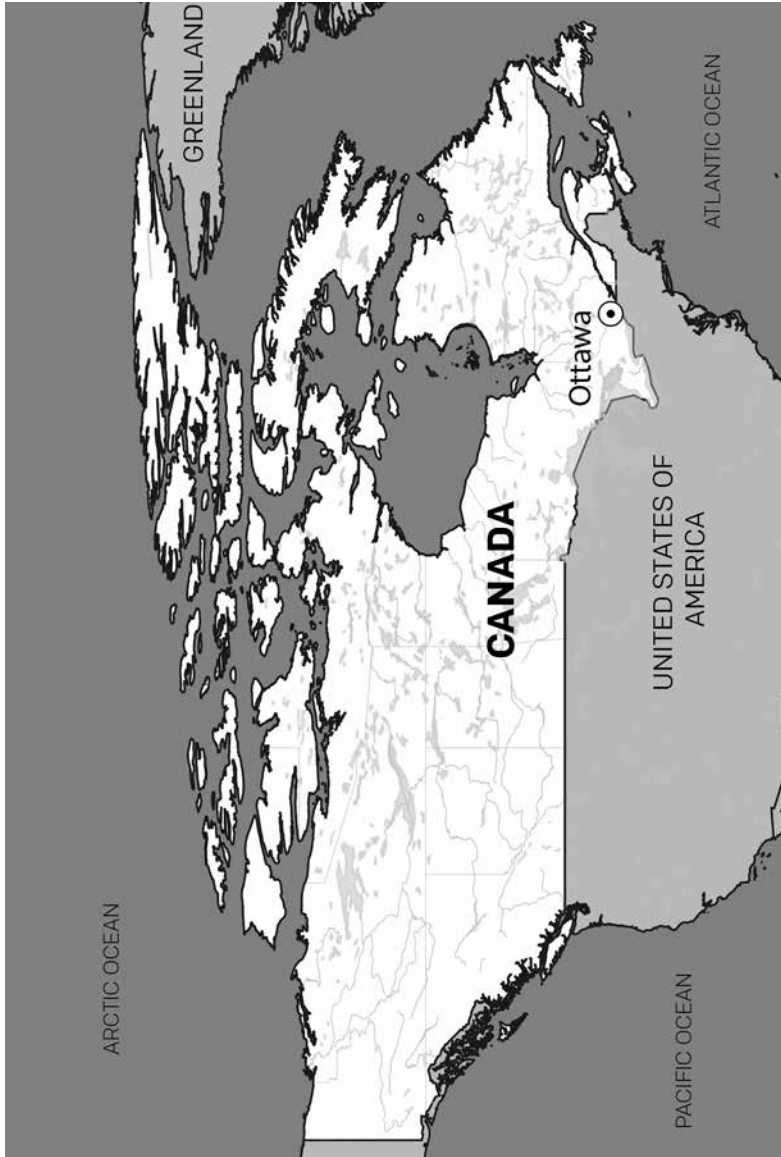
**Johannes Rohr** is a German historian who has been working with Indigenous Peoples' organisations in Russia since 1995, focusing on their economic, social and cultural rights. He is currently working as a consultant for IWGIA and INFOE. In 2018, the Russian Federal Security Service (FSB), banned him from the country for 50 years.





**North  
America**

# Canada



Indigenous Peoples in Canada are collectively referred to as “Aboriginal Peoples”. The Constitution Act of 1982 recognizes three groups of Aboriginal Peoples: Indians, Inuit and Métis. According to the 2016 Canadian Census, there were 1,673,785 Aboriginal Peoples in Canada, accounting for 4.9% of the total population. 977,230 people identified as a First Nations person. First Nations (defined as “Indians” in the Indian Act (R.S.C., 1985., 1985, c. I-5) and the Constitution Act (1982), are diverse Nations and peoples, representing more than 600 distinct First Nations and encompassing more than 60 languages. The Métis constitute a distinct Aboriginal nation, numbering 587,545 in 2016, many of whom live in urban centres. The Inuit represent an Indigenous people who have occupied Inuit Nunangat in Canada’s north and numbered 65,025 in 2016.

Indigenous Peoples in Canada are represented by a number of representative organizations regionally, provincially and nationally. National Indigenous representative organizations include, but are not limited to, the Assembly of First Nations, the Congress of Aboriginal Peoples, the Inuit Tapiriit Kanatami, the Métis National Council and the Native Women’s Association of Canada (NWAC). Canada’s Constitution Act recognizes and affirms the existing Aboriginal and treaty rights of Aboriginal Peoples. The Supreme Court has called the protection of these rights “an important underlying constitutional value” and “a national commitment”.

In 2007, Canada was one of four states that voted against the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2010, the Canadian government announced its endorsement of the UNDRIP and, in 2016, Canada re-affirmed its support “without qualification”. Canada has not ratified ILO Convention 169. The Aboriginal Peoples Television Network serves Canada’s Indigenous Peoples as an independent television network and news broadcaster, broadcasting programs made by, for and about Indigenous Peoples, with government support.

In 2021, Indigenous women continued to lead many of the calls for progress, justice, and recognition of Indigenous Peoples' rights and title in Canada. These Indigenous women leaders include: Kukpi7 (Chief) Judy Wilson, who joined an Indigenous delegation to COP26 calling for significant action on climate change amidst the devastating impacts of the climate emergency on Indigenous Peoples in Canada; Mary-Elle Turpel-Lafond, whose 2020 report on systemic racism within British Columbia's (BC) public health care system led to a significant change to meet the needs of Indigenous patients; Cindy Blackstock, who continues to draw attention to Canada's discriminatory treatment of Indigenous children in Canada's Child and Family Services; Molly Wickham, an Indigenous land defender who continues to defend her clan's traditional territory from the encroachment of the Coastal GasLink LNG project; and Kukpi7 Rosanne Casimir, who announced the confirmation of 200 unmarked graves of Indigenous children and infants at the site of a previous Indian Residential School.

## **Murdered and missing Indigenous women and girls**

In June 2021, in response to the ongoing crisis of Canada's murdered and missing Indigenous women, Canada released the *Federal Pathway to Address Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ People*,<sup>1</sup> and the *2021 Missing and Murdered Indigenous Women, Girls, and 2SLGBTQQIA+ People National Action Plan*.

The action plan was co-developed with the federal, provincial and territorial governments alongside Indigenous leaders, families and women's groups as a follow-up to the 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls and its 231 recommendations. The COVID-19 pandemic has been cited as a delaying factor in the release of this plan and the community engagements required to inform it.

Indigenous leaders have criticized the action plan as an inadequate response to the crisis identified in the 2019 inquiry.<sup>2</sup>

The NWAC Sisters in Spirit Initiatives (SIS) have confirmed that, between 2005 and 2010, there were 582 cases of missing and/or murdered Indigenous women and girls over a span of 20 years. Further, they



found that only 53% of murder cases in NWAC’s SIS database had been solved, compared to 84% of all murder cases across the country.<sup>3</sup>

Confirming these findings, the Royal Canadian Mounted Police released a report in 2013 revealing 1,181 cases of missing and/or murdered Indigenous women and girls.<sup>4</sup>

## UNDRIP

### Bill C-41

In November 2019, British Columbia became the first province in Canada to enshrine the human rights of Indigenous Peoples into law by unanimously passing Bill 41, the Declaration on the Rights of Indigenous Peoples Act.<sup>5</sup> The Act establishes a process by which to align BC’s laws with the UNDRIP. The Act was developed in partnership with provincial Indigenous representative organizations (the BC Assembly of First Nations, the First Nations Summit, and the Union of BC Indian Chiefs). This legislation requires the co-development of an action plan to achieve provincial alignment with the Declaration over time, with appropriate transparency and accountability mechanisms.

In addition, the legislation allows the flexibility for the province to enter into agreements with a broader range of Indigenous governments. Further, it provides a framework for decision-making between Indigenous governments and the province on areas of joint concern. The Act will be far reaching, covering a range of policy areas including Children and Families, Fisheries and Aquaculture, Agriculture and Ranching, Forestry, Environmental Assessment, Mining and more.

2021 mirrored 2020 in its lack of progress in implementing the Declaration on the Rights of Indigenous Peoples Act. By way of example, there has been no action by the province to reform any of its mining laws to bring them into line with the Declaration.

This lack of action spurred the Gitxaala Nation to file a court case in the BC Supreme Court in October 2021 challenging the province’s “free entry” mineral staking regime.<sup>6</sup>

In an attempt to rectify the situation, the BC First Nations Energy and Mining Council published *Indigenous Sovereignty: Implementing Consent for Mining on Indigenous Lands*,<sup>7</sup> a new report setting out

25 recommendations to compel mining companies and prospectors to secure the approval of First Nations governments and obtain consent-based access to First Nations' lands.

Indigenous leaders have criticized the province for not having yet transformed the legislative process to ensure new and existing laws are consistent with the UNDRIP.<sup>8</sup> The province has not made substantial progress in shared decision-making agreements with title- and rights-holders and has not concluded an action plan for the Declaration's implementation.<sup>9</sup>

### **Bill C-15**

In the summer of 2021, the federal government of Canada adopted Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples*.<sup>10</sup>

Bill C-15, collaboratively developed with Indigenous organizations and leaders following decades of Indigenous advocacy, affirms the Declaration as a universal international human rights instrument with application in Canadian law and provides a framework for the Government of Canada's implementation of the Declaration. The bill further seeks to bring Canada's laws into alignment with the Declaration. To achieve these objectives, in consultation and cooperation with Indigenous Peoples, the Federal government will develop and implement an action plan that will include measures to address injustice, prejudice, violence and discrimination against Indigenous Peoples and promote mutual respect and understanding as well as good relations. Measures will also include specific mechanisms to monitor, provide oversight, resource or remedy, or other accountability measures with regard to implementation of the Declaration. The Bill provides a three-year timeline for the collaborative development of the action plan.

Although the bill has received wide support from Indigenous groups and leaders, there are some that remain sceptical of Canada's political will to act on its obligations.<sup>11</sup> This mistrust has been fuelled by Canada's response to ongoing conflicts surrounding its promotion of the resource sector and the assertion of Indigenous rights by Indigenous land defenders.

## Residential schools

2021 bore witness to the confirmation of hundreds of unmarked graves of Indigenous children and infants at the sites of Canada’s Indian Residential Schools and the recognition of the first National Day of Truth and Reconciliation.

The Canadian Indian Residential School System was a concentrated effort by the Canadian government to remove Indigenous children from their families and destroy Indigenous cultures and families. The Indian Residential Schools operated for well over 100 years, with at least 150,000 First Nations, Métis and Inuit students subjected to the system, and the last school only closed in 1996.

Created by the settlement of a class action lawsuit, survivors of the Indian Residential School system established the Truth and Reconciliation Commission (TRC) of Canada in 2008. The TRC spent six years meeting with survivors across Canada and collecting their stories, hearing from over 6,000 witnesses. The TRC published its findings in 2015, including 94 Calls to Action necessary to redress the residential school legacy and advance the process of Canadian reconciliation (see also *The Indigenous World 2016*).

The TRC found that the intentions and actions of Canada and those that operated the residential schools met the definition of cultural genocide, or the purposeful destruction of those structures and practices that allow a group to continue as a group, including languages, spiritual practices and the transmission of cultural values and identity. The truth gathering processes also revealed stories of extreme violence, sexual abuse, torture and criminal negligence, resulting in severe intergenerational trauma and death.

Starting in the spring of 2021, ground penetrating radar surveys have confirmed hundreds of sites of unmarked graves in the grounds of former residential schools. As of January 2022, more than 1,800 confirmed or suspected unmarked graves have been identified, with many more locations yet to be searched.<sup>12</sup>

The confirmation of these grave has led to renewed calls for Canada to implement the now nearly seven-year-old Calls to Action of the TRC. A December 2021 study by the Yellowhead Institute<sup>13</sup> found that only 11 of the 94 calls to action have been fully implemented. Critically,

the Yellowhead scholars also distinguish between symbolic and significant systemic actions. They found that Canada had been quick to move on symbolic gestures while reticent to implement the systemic changes the TRC called for.

One of the more symbolic calls to actions was the recognition of a National Day of Truth and Reconciliation, which was held for the first time on 30 September 2021.

## **Coastal GasLink**

Canada observed renewed conflict between the RCMP and Indigenous land defenders opposed to the Coastal GasLink LNG project (CGL) in 2021. The Province of BC authorized a military style raid on peaceful land defenders resulting in at least 15 supporters being arrested, amidst an ongoing climate crisis.

These actions were but the most recent events in a longstanding conflict revolving around plans to build a 670-kilometre pipeline to transport natural gas from north-eastern BC to LNG Canada's export terminal in Kitimat on BC's coast. Despite having been reviewed by the BC Environmental Assessment process and obtaining the approval and required permits from the provincial and federal governments, a large portion of the pipeline crosses the territory of the Wet'suwet'en Nation, a route rejected by most of the Nation's hereditary chiefs who remain fiercely opposed to the project and the potential impacts it will have on their lands and way of life. This is further complicated by the five elected Indian Act band councils that constitute the Wet'suwet'en Nation having signed benefit agreements with both Coastal GasLink and the BC Government.

In 1997, hereditary Wetsuwet'en and Gitxsan chiefs won a landmark ruling in the Supreme Court of Canada when all nine judges affirmed the existence of Aboriginal title post-Confederation. The Wet'suwet'en, like most First Nations in the province of British Columbia, have not signed treaties with the Crown nor ceded their respective territories through sale or loss of territories due to warfare.

In an expression of their Indigenous and sovereign rights, Wet'suwet'en hereditary chiefs, members and supporters have reoccupied their territory and established several checkpoints and healing camps.

These checkpoints and camps have formed the epicenter of the conflict. On 14 November 2021, members of the Gidimt'en clan enforced the eviction of CGL workers from their lands, giving them an eight-hour period to peacefully evacuate. The RCMP responded on 20 November by arresting 29 of the Indigenous land defenders over two days of action.<sup>14</sup>

## **COVID-19**

Despite the nationwide lifting of many restrictions, some Indigenous communities have opted to keep strict health protocols in place as they continue to deal with the significant health impacts of the Omicron variant of the ongoing COVID-19 pandemic.<sup>15</sup>

As of 22 February 2022, over 87% of individuals aged 12 and older in First Nations, Inuit and territorial communities have received a second dose of an approved COVID-19 vaccine, and over 25% have received a third/booster dose. Over 49% of individuals aged 5 to 11 have received at least one dose.<sup>16</sup>

## **Children and families**

In December 2021, Canada announced a historic Agreement in Principle on long-term reform of the First Nations Child and Family Services Program and Jordan's Principle. Under the terms of the Agreement in Principle, Canada will provide C\$20 billion to children on reserve and in the Yukon who were unnecessarily removed from their homes between 1 April 1991, and 31 March 2022, with another C\$20 billion being allocated to help reform the First Nations Child and Family Services Program.

Alongside other Indigenous child welfare advocates, Cindy Blackstock, Executive Director of the First Nations Child & Family Caring Society of Canada, has been leading the calls for Canada to reform and address the country's longstanding discrimination in First Nations child welfare and inequitable public services.

The Canadian Human Rights Tribunal (CHRT) issued a landmark decision in 2016, finding that Canada was discriminating against First Nations children, families and communities through inequitable funding formulas for First Nations child and family services. Since the 2016

ruling, the CHRT has issued over 30 non-compliance orders, which Canada has repeatedly repealed.

On 29 September, Justice Favel of Canada's Federal Court, dismissed two of Canada's appeals while confirming Canada's obligations of reconciliation. In October, Canada appealed this decision, continuing to fight Indigenous children in court, while in December announcing that the Agreement in Principle critically highlighted by Blackstock is not binding and awaits concrete action.

## Health care

In November 2020, Mary-Ellen Turpel-Lafond released her report: *In Plain Sight: Addressing Indigenous-specific Racism and Discrimination in B.C. Health Care*.<sup>17</sup>

This report was a direct response to reports of systemic racism in BC hospital emergency departments. The report found that, of the more than 2,700 Indigenous Peoples surveyed, 84% had reported experiencing discrimination within the health care system. The report made a number of findings which bely "a major problem of Indigenous-specific racism in the BC health care system. This problem has significant impacts on Indigenous patients, women and health care workers. It contributes to inequitable health outcomes, including in the context of the public health emergencies of COVID-19 and the overdose crisis."<sup>18</sup> The report makes 24 recommendations aimed at advancing structural and comprehensive change.

In the year since the report's launch, significant progress has been noted, including amendments to the *BC Human Rights Code*, appointment of BC First Nations people into leadership roles across the health system, and efforts to renew First Nations health plans and governance structures.<sup>19</sup>

## Climate change – COP26

Throughout 2021, Indigenous communities experienced devastating climate emergencies and ecological disasters, including devastating

forest fires that destroyed the entire town of Lytton, atmospheric rivers resulting in extreme rain, winds, landslides and floods, widespread evacuations, and a deadly heatwave.

Considering the disproportionate impacts of climate change on Indigenous communities, First Nations leaders continue to call on Canada to advance meaningful government-to-government relations that recognize First Nation jurisdiction in all areas, including emergency management.

In addition, Indigenous delegates, including Kukpi7 (Chief) Judy Wilson, Secretary-Treasurer of the Union of BC Indian Chiefs and Chief of the Neskonlith Indian Band, travelled to Glasgow to attend the COP26 to raise awareness of Indigenous Peoples' vulnerabilities to the climate emergency and to urge world leaders to expedite a just transition away from old-growth logging, oil and gas expansion and to halt the ongoing environmental degradation, biodiversity loss and climate-related environmental catastrophes.<sup>20</sup>

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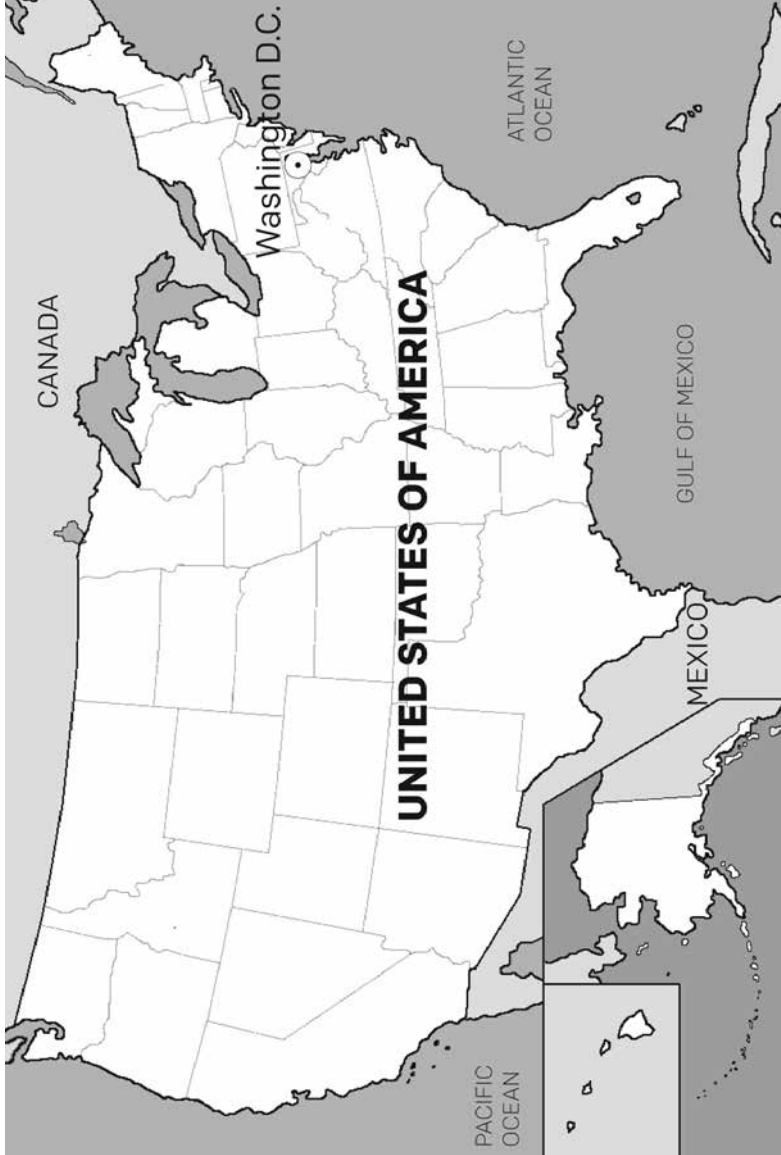


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**Matthew Norris** is a member of the Lac La Ronge First Nation in Northern Saskatchewan, Canada. He is a PhD student in the University of British Columbia’s Department of Political Science and is researching issues pertaining to international Indigenous rights frameworks. He is the President of the Urban Native Youth Association in BC and, prior to enrolling in school, was a Policy Analyst for the Union of BC Indian Chiefs.



# United States of America



The number of Indigenous people in the United States of America is estimated at between 4 and 7 million,<sup>1</sup> of which around 20% live in American Indian areas or Alaska Native villages. Indigenous Peoples in the United States are more commonly referred to as Native groups. The state with the largest Native population is California; the place with the largest Native population is New York City.

With some exceptions, official status of being American Indian or Alaska Native is conferred on members of federally-recognised tribes. Five hundred and seventy-four Native American tribal entities were recognised as American Indian or Alaska Native tribes by the United States in January 2021,<sup>2</sup> and most of these have recognised national homelands. Federally recognised Native nations are inherently sovereign nations but their sovereignty is legally curbed by being unilaterally defined as wards of the federal government. The federal government mandates tribal consultation for many issues but has plenary authority over Indigenous nations. Many Native nations have specific treaty rights and the federal government has assumed responsibility for Native peoples through its guardianship, although those responsibilities are often underfunded.

There are also State-recognised and non-recognised American Indian tribes but these are not officially Native nations in the eyes of the federal government. While socio-economic indicators vary widely across different regions, the poverty rate for those who identify as American Indian or Alaska Native is around 25%.

The United States announced in 2010 that it would support the UNDRIP as moral guidance after voting against it in 2007. The United States has not ratified ILO Convention No. 169. While American Indians born within the territory claimed by the United States are American citizens, they are also citizens of their own nations.

2021 marked the first year of the Biden administration. President Joe Biden (Democrat (D)) and Secretary of the Interior Deb Haaland (D; Laguna Pueblo) have tried to improve relations with Native nations. Biden reinstated the White House Council on Native American Affairs and the White House Tribal Nations Summit in November, where he announced several initiatives and released a “progress report”.<sup>3</sup> He also issued a memorandum to strengthen consultation between federal agencies and tribal nations.<sup>4</sup> Seventeen federal agencies signed a memorandum of understanding (MOU) to protect tribal treaty rights,<sup>5</sup> five agencies signed a MOU to better protect sacred sites,<sup>6</sup> and the boundaries of the Bears Ears and Grand Staircase-Escalante National Monuments were restored (see *The Indigenous World 2018* and *2020*). The state of Utah is planning to appeal this decision before the Supreme Court.

## Native women

It has long been clear that Native women in the U.S. are exposed to increased violence (see *The Indigenous World 2012, 2013, 2014, 2015, and 2020*). Reinvigorating previously underfunded and somewhat disjointed attempts to bring a solution to this violence, Secretary of the Interior Haaland announced a new Missing and Murdered Unit within the Bureau of Indian Affairs’ (BIA) Office of Justice Services (BIA-OJS) in April.<sup>7</sup> Haaland and Attorney General Garland also announced a new commission to study the issue and make recommendations on how to address it, including tribal, state, and federal representatives. The Government Accountability Office (GAO) released a report in October.<sup>8</sup> It found that the number of missing or murdered Indigenous women was not definitely known because while there are four national databases each collecting some relevant data, there is no comprehensive database. The GAO also points out that many of the initiatives and laws in existence have not been implemented and that, from a tribal perspective, the federal agencies often appear to be underfunded, disinterested and uncommunicative. In November, President Biden issued an Executive Order for federal agencies to collaborate with tribal communities and boost their law enforcement capacities. These are all valid attempts; they are not

new, however. Whether a new commission with another plan can bring about a solution is questionable without adequate funding and political and legislative support for sovereign nations. Several states have also formed their own task forces. Based on a December 2020 report from its own state-level task force on missing and murdered Native women,<sup>9</sup> Minnesota created a state Office of Missing and Murdered Indigenous Relatives; Utah and New Mexico, among others, are also taking a deeper look at the disproportionate violence against Native women, Minnesota used its work for Native women to launch a commission on violence against Black women in November.

## **Child Welfare Act**

The U.S. Fifth Circuit Court of Appeals issued a ruling in the long-running Brackeen case in April. The case, now *Brackeen v Haaland*, asks whether the Indian Child Welfare Act (ICWA) is unconstitutional (see *The Indigenous World* 2016, 2019, and 2020). ICWA governs adoptive processes if they involve children that are eligible to be enrolled in tribes. The ruling in April<sup>10</sup> holds that ICWA is constitutional. However, it leaves standing a lower court ruling that ICWA's preference for Native adoptive parents or Native foster homes goes against equal protection laws. These provisions do, nonetheless, form the core and purpose of ICWA. It has been long-standing practice that these clauses do not apply to American Indian / Alaska Native groups because they are sovereign nations. Being Native is a legal, not an ethnic or racial classification. The case has been brought to the Supreme Court but the Court has yet to decide whether it will hear it.

## **Natural resources**

The Biden administration has had an impact on several natural resource projects favored by the Trump administration and opposed by tribes.

Almost immediately after being inaugurated, President Biden placed a moratorium on oil and gas activities in the Arctic National Wildlife Refuge (ANWR). In June, he froze all leasing in the ANWR until a

new environmental impact study can be finished. These actions at least temporarily undo the hasty sale of oil leases in the ANWR by the Trump administration two weeks before Biden took office (see *The Indigenous World 2021*). Attempts to halt the activity permanently by law have so far not been successful.

On his first day in office, Biden also revoked the permit for the Keystone XL pipeline (see *The Indigenous World 2021*). In February, a largely symbolic attempt to write the pipeline into the federal budget ultimately failed in the Senate. In June, TC Energy, the company behind the pipeline, officially ended the project. However, in November, the company filed for US\$15 billion in damages from the federal government.

Another large pipeline project, the Dakota Access Pipeline (DAPL) was allowed to continue to operate in May despite the fact that it does so without a valid permit (see *The Indigenous World 2021*). The permit was revoked and a new environmental study ordered. In September, the pipeline company asked the Supreme Court to void the new requirement. Both the Standing Rock Sioux Tribe and the Army Corps of Engineers, which is in the midst of conducting the new review, asked the Supreme Court to not revoke the requirement in December. The new study should be done in February 2022.

In Minnesota, the Line 3 pipeline (see *The Indigenous World 2021*) opened operations in October after the Biden administration argued for the validity of its permits. Over 600 people were arrested during protests against the pipeline. In March, a request for early warning measures and urgent action procedures was submitted to the United Nations Committee on the Elimination of Racial Discrimination (CERD) citing concerns over the rights to free and informed consent, health, culture, and security. CERD asked the United States to respond to the allegations of rights abuses in August.

In Arizona, the Tonto National Forest released the Final Environmental Impact Statement (EIS) on the planned Resolution Copper Project and Land Exchange in January, under the Trump administration. With the EIS, the government is obligated by law to exchange lands currently in the National Forest for others, enabling Rio Tinto to dig a mine under sites of cultural importance to the Apache (see *The Indigenous World 2012, 2014, and 2021*). In March, the U.S. Department of Agriculture directed the National Forest Service to rescind the EIS and conduct

a new review. This put the land transfer, and therefore the mine project, on hold. However, if the law is not changed, the completion of the next EIS will set the land transfer and the mine project in motion once again.

In November, the Fort Belknap Indian Community and the Confederated Salish and Kootenai Tribes in Montana filed a lawsuit in coalition with environmental organisations to prevent Hecla Mining Company from opening copper and silver mines until the company reimburses the state for the cleanup of acid and cyanide pollution that is affecting Fort Belknap's water. In July, a new Department of Environmental Quality director under Governor Greg Gianforte (Republican (R)) had dropped the state's efforts to seek reimbursement for more than 80 million dollars and cleared the way for the mines.

## Health

In August, the Eighth Circuit Court of Appeals ruled on *Rosebud Sioux Tribe v United States*. The tribe argued that the Treaty of Fort Laramie of 1868 imposed an obligation on the federal government to provide “competent, physician-led healthcare” to the Lakota.<sup>11</sup> The court ruled in favor of the tribe and, in December, the Biden administration decided not to appeal this ruling further. This means that quality healthcare is confirmed as a treaty right for the Lakota. Healthcare on Lakota reservations has been a long-standing issue (see *The Indigenous World 2010, 2011*). Emergency room wait times on the Cheyenne River Sioux Reservation reached 36 hours this year. In the light of chronic underfunding of the Indian Health Service, whether this treaty right can be enforced is a different question.

In the second year of the COVID-19 pandemic, the impact on Native communities was exacerbated by an increase in drug addiction and overdoses that spread from mostly White communities to others. COVID-19 itself continued to impact rural Native communities disproportionately, and new data analyses showed its impact in 2020. For example, Montana saw a 36% increase in deaths of Native people, and 25% of all deaths were attributed to COVID-19. In Montana, the mortality rate from the virus was four times higher for Native people than in the non-Native population while, nationwide, that disparity was about three

and a half times higher.<sup>12</sup> The higher mortality rate is paradoxical at first glance, as Native people also show the highest vaccination rate of any population in the United States.<sup>13</sup> While the Indian Health Service continues to be underfunded in terms of clinics, hospitals and personnel, which leads to a high number of pre-existing conditions and a high mortality rate, the federal government and tribes were able to very quickly bring vaccinations to people.

## Jurisdiction

In June, the Supreme Court ruled unanimously on *United States v Cooley*, a case with wide implications for tribal jurisdiction and sovereignty.<sup>14</sup> Jurisdiction on American Indian reservations is notoriously complex. This case stems back to 2016 when a tribal police officer of the Crow Nation in Montana stopped a driver on a U.S. highway going through the Crow reservation. He noticed that the man was on drugs, had a young child in the back of the car, and had two semiautomatic rifles on the front seat. The driver was taken to the Crow Police Department, and the tribal officer searched the car and confiscated drugs and drug paraphernalia. On appealing the federal drug and gun conviction, the District Court and the Ninth Circuit Court of Appeals argued that the drug evidence was inadmissible to the case because the tribal police officer had no jurisdiction in a case involving a non-Native person on a public right-of-way and could not investigate. Such limitations on tribal law enforcement have been assumed for a long time, in part contributing to the high rates of violence against women.

The anonymous decision by the Supreme Court to overturn the appeals court decision sends a strong signal. The Ninth Circuit decided that tribal police officers have to determine first if a person is Native or non-Native, and could hold a non-Native person only if it was apparent that a crime had been committed. The Supreme Court held that this was not workable. It noted that the majority of people living within reservation boundaries are non-Native and that tribes have civil authority over non-Indians within reservation boundaries if their actions threaten or directly affect tribal security, health or welfare. The court thus decided that tribal law enforcement can stop and search non-Native drivers



on public rights-of-way crossing reservations if there is a suspicion that state or federal laws have been broken, that they can conduct a search, and that they can detain the person until a non-tribal police officer arrives. Together with the Tribal Law and Order Act (see *The Indigenous World* 2011) and the still not reauthorized Violence Against Women Act (see *Indigenous World* 2014, 2015, and 2020), which allowed tribal courts to exercise jurisdiction over non-Native people in specific, limited circumstances, the decision means a small but extremely important expansion of tribal jurisdiction and a validation of tribal sovereignty.

## Rights of nature

Another case explores connected issues. Over the summer, the White Earth Nation sued the state of Minnesota through a tribal court in a case related to the Line 3 pipeline. White Earth has codified the rights of wild rice in its tribal laws, and the pipeline, off-reservation yet on treaty territory, crosses wild rice beds. Minnesota appealed to the federal court but, in September, the U.S. District Court decided that it could not intervene in the tribal lawsuit as the tribe holds sovereign immunity. Minnesota filed appeals to the Eighth Circuit Court of Appeals and to the White Earth Tribal Appeals Court. The fact that a federal court is allowing a tribal court to hear a case against a state over off-reservation matters creates a new precedent; the assumption so far has been that tribal courts only have jurisdiction over non-tribal entities if they engage in activities on tribal lands. This case is all the more important because, in the United States, natural entities have not been seen as legal persons. Depending on the outcome of this case, rights for natural entities could be introduced to U.S. laws through tribal laws and tribal jurisdiction. Even if this development were restricted to treaty territories, it would carry significant consequences.

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**Dr. Sebastian Braun** is Associate Professor of Anthropology and Director of the American Indian Studies Program at Iowa State University. [sfbraun@iastate.edu](mailto:sfbraun@iastate.edu)



# The Pacific



# Aotearoa (New Zealand)



Māori, the Indigenous people of Aotearoa, represent 16.5% of the 4.7 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7 to 7.4 years less than non-Māori; the median income for Māori is 71% that of Pākehā (New Zealand Europeans); 25.5% of Māori leave upper secondary school with no qualifications and over 50% of the prison population is Māori.<sup>1</sup>

*Te Tiriti o Waitangi* (the Treaty of Waitangi) was signed between the British Crown and Māori in 1840. There is a Māori-language version (*Te Tiriti*), which most Māori signed, and an English-language version. *Te Tiriti* granted a right of governance to the British over their subjects, promised that Māori would retain *tinō rangatiratanga* (self-determination or full authority) over their lands, resources and other treasures and conferred the rights of British citizens on Māori. *Te Tiriti* has limited legal status, however; accordingly, protection of Māori rights is largely dependent upon political will and *ad hoc* recognition of *Te Tiriti*.

Aotearoa endorsed the UN Declaration on the Rights of Indigenous Peoples in 2010 (UNDRIP). Aotearoa has not ratified ILO Convention 169.

## Wāhine pillars despite marginalisation

**W**āhine Māori (Māori women) are the pillars of *te ao Māori* (Māori society) and contribute in many positive ways to their communities, to Aotearoa and on the world stage. They have led key national movements such as the creation of *kōhanga reo* (Māori language preschools) and *kura kaupapa* Māori (Māori language primary schools), which have revitalised *te reo Māori* (the Māori language), as well as movements to prevent the loss of further Māori land. Wāhine Māori are often at the centre of their *whānau* (extended families) and many community initiatives.<sup>2</sup> A number of them head the representative organisations of their *iwi* (nations). They are recognised internationally for their leadership in fields as diverse as academia, business, en-

vironmental advocacy, justice and Indigenous rights.<sup>3</sup> They increasingly hold decision-making roles in the public sector.<sup>4</sup> They are now well represented in government. Following the 2020 general election, 12 (10%) Members of Parliament self-identify as wāhine Māori,<sup>5</sup> which is higher than the proportion of wāhine Māori (8.5%) in the population. Two out of 20 cabinet members are wāhine Māori. Wāhine Māori also co-lead two of the five parties represented in Parliament: the Green Party and Te Paati Māori. In recent years, the representation of wāhine Māori in local government has improved.<sup>6</sup>

Yet, these notable achievements occur against a backdrop of significant ongoing marginalisation rooted in colonialism. As Ripeka Evans has observed:

*the colonial frame in which the colonising culture ... looked to men as leaders and chiefs — this caused the negation of wāhine Māori mana motuhake and rangatiratanga (authority, autonomy and self-determination) over their whenua (land), taonga (treasures), mātauranga (knowledge), hearts, bodies, minds and beliefs.<sup>7</sup>*

This has resulted in marked inequities for wāhine Māori that continue into the present day and the underrepresentation of wāhine Māori in positions of leadership for much of New Zealand's history, despite the successes noted above.

Some current statistics on the position of wāhine Māori paint a stark picture. Wāhine Māori are one of the most incarcerated women in the world, making up 63% of the female prison population in Aotearoa.<sup>8</sup> Wāhine Māori experience high rates of violence: up to 80% of wāhine Māori will experience family violence in their lifetime and they are “three times more likely to be killed by a partner than non-Māori” women.<sup>9</sup> The life expectancy of wāhine Māori is 77.1 years, compared with 84.4 years for non-Māori women,<sup>10</sup> with wāhine Māori facing multiple barriers to accessing adequate healthcare.<sup>11</sup> The unemployment rate for wāhine Māori is 12%, dramatically higher than the national unemployment rate of 4.9%.<sup>12</sup> Wāhine Māori are significantly underpaid for their work: the wāhine Māori gender pay gap is 7.7% with Māori men, and 15.1% with all men in Aotearoa.<sup>13</sup> Unpaid roles in households and the community

continue to go unrecognised and under-valued. Wāhine Māori experience high rates of discrimination and bias, including in the workplace.<sup>14</sup> In many instances, these disparities continue despite a raft of government and other initiatives.

In response to longstanding concerns regarding the position of wāhine Māori, the Waitangi Tribunal began its Mana Wāhine Kaupapa Inquiry hearings in 2021.<sup>15</sup> The inquiry will consider claims alleging prejudice to wāhine Māori as a result of breaches of Te Tiriti by the Crown. Three contextual hearings were completed in 2021.

## COVID-19 impact worsens for Māori

The COVID-19 pandemic once again dominated in 2021. Aotearoa continues to record comparatively fewer deaths from COVID-19 and its economy is expected to bounce back from the 2021 Delta COVID-19 outbreak that, for example, saw Aotearoa's largest city, Auckland, in lockdown for 107 days from August to December 2021.

For Māori, however, rates of infection, hospitalisation and death from COVID-19 have dramatically worsened with the 2021 Delta outbreak. For the first 18 months of the arrival of COVID-19 in Aotearoa in 2020, Māori were the ethnic group with the lowest rates of infection. But since early October 2021 this has reversed, and they have been the ethnicity with the highest rates.<sup>16</sup> For example, Māori jumped from comprising 5.7% of all Delta cases in the country on 1 September 2021 to 48.3% by 5 December 2021.<sup>17</sup> Rawiri Taonui has identified that “a Māori person is 3.7 times more likely to catch Delta, 2.3 times more likely to suffer severe sickness and be hospitalised, and 3.1 times more likely to die from Delta”.<sup>18</sup>

Māori continue to bear the brunt of shortcomings in the government's handling of the outbreak. In December, the Waitangi Tribunal found that the government had breached Te Tiriti for “political convenience” — including the guarantee of *tino rangatiratanga* and the principles of active protection, equity and protection — in its response to the pandemic.<sup>19</sup> The Tribunal's recommendations included that the government urgently provide additional funding and other support to Māori providers and communities responding to the pandemic.



Māori demonstrated strong leadership throughout the year. This included spearheading vaccination efforts in their communities, which saw previously low Māori vaccination rates dramatically increase late in 2021.

## Supreme Court advances rights

The Supreme Court, Aotearoa's highest court, issued a decision advancing understanding of the principles of Te Tiriti and the place of *tikanga* (Māori law and custom) in state law. In *Trans-Tasman Resources Limited v The Taranaki-Whanganui Conservation Board*,<sup>20</sup> the Supreme Court upheld a decision to reject approval of Trans-Tasman Resources Limited's application to mine for iron sands offshore in the South Taranaki Bight and remitted the application back to the decision-making body for reconsideration. It held that the approval of the application had not appropriately considered the effect of the proposal on affected iwi and their concerns in relation to the exercise of their *kaitiakitanga* (guardianship obligations) to protect the mauri (life force) of the marine environment.<sup>21</sup> The decision makes it clear that statutory provisions that provide specific direction to decision-makers regarding the principles of Te Tiriti "must be given a broad and generous construction".<sup>22</sup> The Court also emphasised that the guarantee of *tino rangatiratanga* in Te Tiriti governed Māori customary interests rather than the more abstract Tiriti principles of partnership or active protection. Additionally, the Court affirmed that "Māori custom according to tikanga is... part of the values of the New Zealand common law"<sup>23</sup> but did not address more challenging questions regarding the status of *tikanga* in state law.

## Crown failing Māori children

Three notable developments occurred regarding the disproportionate rates at which Māori children are taken into care and their experiences of abuse while in care (see The Indigenous World 2019 and 2020). First, the Waitangi Tribunal released a critical report on its urgent inquiry into Oranga Tamariki, the government department responsible for children in care.<sup>24</sup> The Tribunal found multiple breaches of Te Tiriti and its princi-

ples by the Crown, including of the guarantee of Māori *rangatiratanga* over their *kāinga* (homes and homelands) in Article 2. It recommended that Māori lead the transformation of care arrangements for Māori children, with the Crown's support, through the establishment of an independent Māori transition authority.

Secondly, the government accepted some weaker recommendations for reform of Oranga Tamariki made by a Ministerial Advisory Board. The recommendations included that "collective Māori and community responsibility and authority must be strengthened and restored" in order that Māori may "lead prevention of harm to tamariki (children) and their whānau" and the establishment of a national Oranga Tamariki Governance Board.<sup>25</sup>

Finally, the Royal Commission into abuse in care's interim redress report was released and accepted by the government.<sup>26</sup> The report recommended a new *puretumu torowhānui*, or holistic redress scheme be established to respond to abuse, founded on Māori values and to reflect Te Tiriti and the UNDRIP. It recommended that an independent, government-funded, Māori collective should lead the design of the scheme, together with survivors. The report left open the possibility of a separate scheme for Māori.

## Additional developments

Additional developments of note include: the release of the UN Special Rapporteur on the right to adequate housing, Leilani Farha's, full report on her country mission to Aotearoa, which was critical of Māori experiences of inadequate housing and homelessness;<sup>27</sup> Cabinet approval of a two-stage process for the development of a plan to implement the UNDRIP;<sup>28</sup> critical Waitangi Tribunal reports, including on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership;<sup>29</sup> enactment of the Local Government (Rating of Whenua Māori) Amendment Act 2021, which makes improvements to the way Māori land is rated; the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021, which removed barriers to the creation of Māori wards in local government; plans to repeal and replace the Resource Management Act 1991, including to give better effect to Te Tiriti,<sup>30</sup> and the roll-out of a new Māori-informed model for the District Courts.<sup>31</sup>

## Future outlook

2022 looks set to be marred by COVID-19, alongside exciting developments including progress on the UNDRIP action plan and a much-anticipated judgment from the Supreme Court on the place of *tikanga* in state law.

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**Fleur Te Aho** (Ngāti Mutunga) is a Senior Lecturer in the Auckland Law School at the University of Auckland, email her at: [f.teaho@auckland.ac.nz](mailto:f.teaho@auckland.ac.nz)



# Australia



Aboriginal and Torres Strait Islander people make up 3.3% of the nation's population. Based on the Australian Bureau of Statistics (ABS) projections, the number of Indigenous Australians in 2021 was estimated to be 881,600. Based on projections for 2021, 38% (337,400) of Indigenous Australians live in Major cities, and 18% (154,900) live in Remote and Very Remote areas combined.

The median age for Aboriginal and Torres Strait Islander people is 23 compared to 38 for the non-indigenous population. In 2021, a projected 32% of Indigenous Australians are aged under 15 (compared with 18% of non-Indigenous Australians), and only 5.4% of Indigenous Australians are aged 65 and over (compared with 17% of non-Indigenous Australians). Aboriginal and Torres Strait Islander peoples are vastly over-represented in the Australian criminal justice system, with 2,481 prisoners per 100,000 Indigenous people—15 times greater than for the non-indigenous population.

The National Agreement on Closing the Gap (the National Agreement) has 17 national socio-economic targets across areas that have an impact on life outcomes for Aboriginal and Torres Strait Islander people. In 2021, three of these targets were on track to be met, four were not on track, and 10 had not recorded any additional data since their baseline years.

There are approximately 3,000 Aboriginal and Torres Strait Islander corporations registered under the federal Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act), including 186 registered native title land-holding bodies. This does not include a large number of businesses run by Aboriginal and Torres Strait Islanders, of which there are around 12,000-16,000.<sup>1</sup>

There is currently no reference to Aboriginal and Torres Strait Islander peoples in the national Constitution.

**A** boriginal and Torres Strait Islander women play significant roles within their communities at all levels: they are mothers, sisters, grandmothers, aunts, elders, teachers and nurturers. There are specific roles within each community that women are responsible for, and these roles cover what is called Women’s Business. Aboriginal and Torres Strait Islander women are vital in all communities and are influential. The women nurture the spiritual, emotional and physical well-being of the communities. The role of Aboriginal and Torres Strait Islander women evolves since younger girls and women learn these skills and responsibilities as they grow and develop. This evolving role and knowledge is then passed on to the younger generation.<sup>2</sup>

Whilst many Aboriginal and Torres Strait Islander women are strong in culture and self, they continue to experience varying amounts of trauma through the continued colonizing practices of the Western world. Indigenous women in the Northern Territory experience the highest rates of violence victimization in the world and are hospitalized for assault at 40 times the rate of non-indigenous women. Nevertheless, many are able to navigate the Aboriginal and Torres Strait Islander world as well as the Western world in a way that creates change and keeps their vibrant culture strong and alive.

## **Wiyi Yani U Thangani (Women’s Voices)**

In late 2020, the Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report was published. The report’s author, June Oscar AO, is a proud Bunuba woman from the remote town of Fitzroy Crossing in Western Australia. June is a strong advocate for Aboriginal language revival and preservation, social justice and women’s issues and rights. She is the first woman appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner.

The Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report 2020 builds upon the legacy of the 1986 Women’s Business Report, and it is critically important to acknowledge that this report is the first time in history that Aboriginal and Torres Strait Islander women have been consulted across Australia.<sup>3</sup>

This report has supported the self-determination of Aboriginal and Torres Strait Islander women and will continue to do so for many years to come in order to foster change across Australia.

## **The Kimberley Women’s Roundtable**

As an outcome of the Wiyi Yani U Thangani report, in May 2021, the Kimberley Women’s Roundtable was held in Broome, Western Australia over three days. Over 85 Aboriginal women from across the Kimberley region came together with women from NSW and the APY lands in the Northern Territory to commit to the co-design of a First Nations-led action plan and council. The continued work to progress the action plan will include regional engagement and the findings will be presented to the West Australian government and Commonwealth government. The Roundtable has the support of WA Minister for Aboriginal Affairs and the Social Justice Commissioner.<sup>4</sup>

## **Ashleigh Barty wins at Wimbledon**

In July 2021, Ashleigh Barty won the women’s singles title at Wimbledon, defeating Karolína Plíšková in three sets. Barty, who is a Ngaragu woman, was the first Aboriginal woman to win at Wimbledon since 1980. This was the year that Wiradjuri woman and tennis legend, Evonne Goolagong Cawley, won at Wimbledon for the second time, having previously won there in 1971.

Appropriately, the win also coincided with the end of NAIDOC Week in Australia, a time to celebrate the culture and achievements of Aboriginal and Torres Strait Islander Australians.<sup>5</sup> Ash Barty is currently No. 1 in the world women’s singles rankings and is a Tennis Australia Indigenous ambassador. She is extremely proud of her Aboriginal heritage and continues to undertake community work supporting Aboriginal children in sport.<sup>6</sup>

## **Dr Miriam-Rose Ungunmerr Baumann AM awarded Senior Australian of the Year**

Renowned artist, activist, writer, public speaker, and member of the Ngan’gityemerri language group, Dr Miriam-Rose Ungunmerr Baumann AM was awarded 2021 Senior Australian of the Year. The Aboriginal Elder



became the Northern Territory's first fully-qualified Aboriginal teacher in 1975. As an art consultant for the Department of Education, she visited schools through the Top End, advocating for the inclusion of visual art as part of every child's education.<sup>7</sup>

She later became the principal of the Catholic school in her home community before being appointed to the Federal Government's advisory body, the National Indigenous Council. Dr Ungunmerr Baumann has previously stated that,

*Training our local people to be educators in our communities is important, because they know best...they know the families and the children...we can do the western education and we can also teach our way of educating our kids in a cultural sense, and our languages, dances, ceremonies, you name it.<sup>8</sup>*

## **Aboriginal women at risk in the workplace**

Research undertaken as part of the ground-breaking *Gari Yala* (Speak the Truth) project examined the experiences of Aboriginal and Torres Strait Islander women inside Australian workplaces for the first time. Sadly, the report has revealed that Aboriginal and Torres Strait Islander women with caring responsibilities are a particularly vulnerable group in the workplace, being more likely to be in culturally unsafe and unsupported employment and have higher cultural loads.<sup>9</sup> As part of these findings, the report made a number of recommendations to and for employers in order to centre Indigenous Australians' voices and to create workplace inclusion for Aboriginal and Torres Strait Islander women. The report is a collaboration between the UTS Jumbunna Institute for Indigenous Education and Research, the Diversity Council Australia (DCA) and the Workplace Gender Equality Agency (WGEA).<sup>10</sup>

## **Plan for Indigenous Voice to Parliament revealed**

In December 2021, the Australian Federal Government released its final proposal for an Indigenous Voice to Parliament, aimed at establishing

two levels of advisory bodies to weigh in on legislation and policies affecting Aboriginal and Torres Strait Islander people. The plan was developed after an 18-month consultation process led by Aboriginal leaders, Professors Marcia Langton AO and Tom Calma AO. The system will comprise “Local and Regional Voices” and an overarching “National Voice” that will provide advice to both the Australian Federal Parliament and government. It also sets out an obligation for the Federal Government and Parliament to consult the National Voice on proposed laws that “overwhelmingly” relate to Aboriginal and Torres Strait Islander people.

However, the final report recommends a decision to legislate an Aboriginal advisory body rather than enshrine it in the Constitution, as called for in the Uluru Statement from the Heart. This is despite the senior co-design advisory group noting that support for the enshrinement of the Indigenous Voice in the Constitution was particularly visible through the submissions made to it, where 88% expressly supported the move.<sup>11</sup>

## Update on Rio Tinto

The 2021 edition of *The Indigenous World* reported that the mining company Rio Tinto had destroyed Aboriginal heritage sites at Juukan Gorge, including two rock shelters of great cultural, ethnographic and archaeological significance. One of these shelters had provided evidence of continuous occupation by Aboriginal people dating back some 46,000 years.<sup>12</sup>

Following the destruction of the sites, the Australian Senate referred an inquiry to the Joint Standing Committee on Northern Australia for a report by 30 September 2020. The inquiry had to be extended, and it published its final report on 18 October 2021. The final report of the inquiry found that Rio Tinto's actions were “inexcusable and an affront, not only to the Puutu Kunti Kurrama and Pinikura (PKKP) but to all Australians”. Further, the report found that the disaster could happen again because legislation designed to protect cultural heritage has often “directly contributed to damage and destruction”.<sup>13</sup>

The report made eight recommendations. These included that the Australian government should legislate a new framework for cultural

heritage protection at the national level, consistent with the United Nations Declaration on the Rights of Indigenous Peoples. At the time of writing, the Australian government had not tabled a formal response to the inquiry.<sup>14</sup>

## Closing the Gap

Closing the Gap is an Australian government initiative that acknowledges the ongoing strength and resilience of Aboriginal and Torres Strait Islander people in sustaining the world's oldest living cultures. It is underpinned by the belief that when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of policies, programs and services that affect them, better life outcomes are achieved. The 2021 edition of *The Indigenous World* discussed the decision to refresh Australia's Closing the Gap targets, and the establishment of new targets.<sup>15</sup>

The Closing the Gap National Agreement was developed in genuine partnership between the Australian governments and Aboriginal and Torres Strait Islander peak organisations. It sets out ambitious targets<sup>16</sup> and new Priority Reforms<sup>17</sup> that will change the way governments work to improve life outcomes experienced by Indigenous Australians. Government is committed to working in partnership with Indigenous Australians, recognizing that the only way to close the gap is by Indigenous Australians owning, committing to and driving the outcomes sought, alongside all governments.

On 5 August 2021, led by the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, the Commonwealth government released its first Closing the Gap Implementation Plan. It sets a foundation for the Commonwealth's efforts to achieve the targets in the National Agreement over the coming decade. This is a whole-of-government plan, developed across the Commonwealth in consultation with Aboriginal and Torres Strait Islander partners, in particular the Coalition of Peaks.<sup>18</sup>

As noted above, the National Agreement on Closing the Gap (the National Agreement) has 17 national socio-economic targets across areas that have an impact on life outcomes for Aboriginal and Torres Strait Islander people. In 2021, three of these targets were on track to be

met, four were not on track, and 10 had not recorded any additional data since their baseline years.<sup>19</sup>

Walking alongside Aboriginal and Torres Strait Islander people is key to implementation and to improving outcomes.

## **Update on Aboriginal people in custody**

Aboriginal and Torres Strait Islander people are significantly over-represented in the adult and youth justice system in Australia, as both offenders and victims. Sadly, deaths in custody continue to rise and impact families, communities and the whole nation. The problematic systems within Australia, for example the child protection system, are well acknowledged and should not be accepted in a first world country.<sup>20</sup> Implementing culturally-safe practices for healing and collaboration to reduce the number of Indigenous people in incarceration will support a decrease in deaths in custody.

Women remain over-represented in the criminal justice system in 2021. Whilst the number of Indigenous men incarcerated remains high, there has been a slight decrease in incarceration. The imprisonment rate among Indigenous women was 449 per 100,000. The Northern Territory and Western Australia have the highest Aboriginal and Torres Strait Islander imprisonment rates in the country.<sup>21</sup>

## **Public drunkenness decriminalized in Victoria**

On 19 February 2021, the Victorian Parliament passed legislation to decriminalize public drunkenness in the state of Victoria. Under the legislation, being drunk in a public place will henceforward be treated as a medical issue and not a criminal offence. It will come into effect on 7 November 2022. The legislation was triggered by the death of a 55-year-old Yorta Yorta woman, Tanya Day, who was asleep on a V/Line train before being arrested and taken to the Castlemaine Police Station in 2017. Ms Day was left unattended in a holding cell where she fell and hit her head at least five times, causing traumatic brain injuries that later ended her life. The Coroner found that Tanya's death was preventable

and, had the checks been conducted by the police in accordance with the relevant requirements, Tanya's deterioration may well have been identified and treated appropriately earlier.<sup>22</sup>

Data shows that the criminalization of public drunkenness discriminates against vulnerable people, especially Aboriginal and Torres Strait Islander peoples. The passing of the legislation is in line with a key recommendation of the Australian Royal Commission into Aboriginal Deaths in Custody, which took place almost 30 years ago. Prior to the passage of the legislation, Victoria had been one of only two states in Australia that had not implemented the recommendation.<sup>23</sup>

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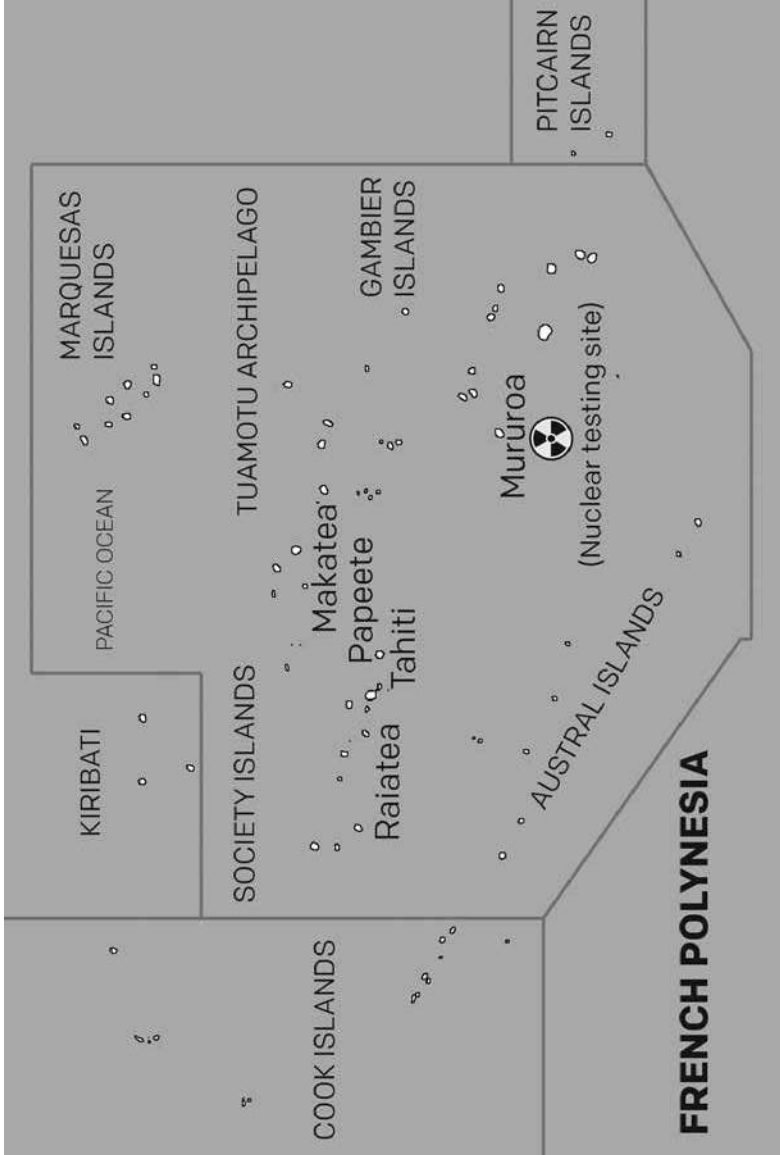
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**Iain Gately** trained as an archaeologist and worked with traditional owners in the Pilbara to protect and record their cultural heritage before transferring to the public sector to work in Aboriginal and Torres Strait Islander policy. He has been involved in a number of audits and evaluations of significant government programs that target Aboriginal and Torres Strait Islander people. Iain is a strong believer in the importance of Aboriginal and Torres Strait Islander culture as an integral part of the Australian story. Iain currently works at the United Nations Economic and Social Commission for Western Asia.

**Belinda Kendall** is a Worimi, Barkindji, Wailwan and Wiradjuri woman from NSW and is a Director of Aboriginal enterprise Curijo Pty Ltd. Belinda's studies and employment have primarily been in the human and community services, and the child, family and adult education sector, with her passion being to improve the lives of and outcomes for Aboriginal and Torres Strait Islander peoples and all Australians through leadership and healing.



# French Polynesia





A former French colony, French Polynesia has been a French Overseas Collectivity since 2004. It enjoys relative political autonomy within the French Republic through its own local institutions: the Government and the Assembly of French Polynesia. French Polynesia currently has a population of 278,000, of which some 80% are Polynesian.<sup>1</sup> The demographic balance for 2020 illustrates a slowdown in population growth due to emigration, a decline in the birth rate – the fertility rate for 2020 stood at 1.7 children per woman – and an ageing population.<sup>2</sup> French Polynesia is characterised by increasing social inequality, as highlighted by the Institute of Statistics of French Polynesia (ISPF). Its surveys – in particular the 2015 family budget survey – show that income inequalities are higher in French Polynesia than in metropolitan France. This situation can be explained in large part “by the very poor redistribution efforts of the Polynesian tax system,”<sup>3</sup> i.e. the absence of income tax. One-fifth of the Polynesian population were living below the poverty line.<sup>4</sup>

French Polynesia has long been characterised by a polarised political life with, on the one hand, the *Tavini Huiraatira* pro-independence party led by Oscar Temaru and, on the other, the *Tahoera'a Huiraatira* autonomist party of Gaston Flosse – which advocates maintaining French Polynesia within the French Republic. In 2016, a crisis of succession within *Tahoera'a*, following Gaston Flosse's ineligibility to stand,<sup>5</sup> led to the creation of a third political party, the *Tapura Huiraatira*. This autonomist party was created in 2016 by Édouard Fritch, President of French Polynesia since September 2014 and re-elected in the regional elections of April-May 2018. These electoral results are regularly held up by the elected representatives of *Tapura* to remind the French representatives or the UN that, even though these elections do not have the weight of a referendum on self-determination, they do emphasise the low voting numbers of those in favour of independence. *Tapura* – which in October 2021 came out in support of Emmanuel Macron in the 2022 presidential elections – has nevertheless been blighted by resignations of its politicians for some months now, revealing the strong internal tensions within this new political party.<sup>6</sup>

## The UN and the right to self-determination

French Polynesia has been on the UN list of Non-Self-Governing Territories (NSGT) since May 2013. While opponents of re-registration see it as an implicit way of demanding independence, its supporters point out that re-registration should lead to the organisation of a referendum on self-determination, giving the possibility of choosing between departmentalisation, independence or association (associated state). The French State, which considers “the French Polynesian issue” to be a domestic matter, had not, until 2019, been cooperating with the UN General Assembly’s Fourth Committee, responsible for decolonisation issues, leaving it to Édouard Fritch to solemnly request the removal of French Polynesia from the list of Non-Self-Governing Territories in both October 2019 and October 2020. At the October 2020 meeting, the Permanent Representative of France to the United Nations did, however, intervene in this committee for the first time to ask that this registration be reviewed. This intervention of the French State was interpreted by *Tavini* as a diplomatic advance after seven years of its “empty chair” policy, given that this was the first time a representative of France had spoken officially on the Polynesian issue.<sup>7</sup>

In October 2021, in the absence of State representatives, Édouard Fritch did not renew his request for de-registration, the process being too difficult to stop.<sup>8</sup> He defended the status of French Polynesia, which enjoys “broad autonomy, including financial autonomy (and) holds the reins of its own socio-economic development.” French Polynesia “does not live in a situation of oppression, nor of predation of its wealth;” it “is not a ‘colony’ that needs to decolonise and nor is independence the only way or the ‘miracle’ that will bring about people’s happiness; the dignity of a people is not necessarily built on independence.”<sup>9</sup> Édouard Fritch also emphasised the French State’s support during the COVID-19 pandemic in terms of medical staff, vaccines and financial support. Members of *Tavini*, however, noted that joint management of the pandemic by the French State and French Polynesia had illustrated the imbalance in relations between the two and the limits of the territory’s autonomy, as Chantal Galenon pointed out: “Every week a press conference is organised by the French High Commissioner, who decides to close the borders or reopen them, or to implement health restrictions, while our local pres-

ident is nothing but a mouthpiece.”<sup>10</sup> Finally, Carlyle Corbin, Independent Expert to the U.N. Special Committee on Decolonisation, recalled that French Polynesia’s statutory situation does not meet the criterion for a self-governing territory according to the United Nations Charter:

*Only a true decolonisation process with follow-up by the United Nations will enable the territory to move towards true autonomy (...). The General Assembly has passed nine resolutions on French Polynesia since 2013. Yet throughout 2021, no information has been forthcoming from the administering power to the Secretary-General, as required by the UN Charter. This lack of cooperation may hinder the decolonisation process.*<sup>11</sup>

## **The consequences of nuclear testing**

Recognition of the consequences of nuclear testing and the difficult compensation of victims of that testing, was once again the top political news.<sup>12</sup> The book *Toxique. Enquête sur les essais nucléaires français en Polynésie* [Toxic: Survey of French nuclear testing in Polynesia], published in March 2021, recalls the dangers of nuclear testing, particularly the atmospheric tests conducted between 1966 and 1974. The two authors, Sébastien Philippe –a researcher specialising in military nuclear energy at Princeton University– and Tomas Stadius –a journalist with the investigative media outlet Disclose– in particular concluded, from an analysis of 2,000 pages of documents declassified by the Ministry of Defence in 2013, that the extent of the contamination had been minimised: “Our conclusions point to significant omissions in the CEA’s (French Atomic Energy Commission) calculations (...) particularly in the meteorological reports, aimed at reducing the range or direction of the fallout.” In 1974, the Centaur test reached Tahiti, affecting 110,000 inhabitants.<sup>13</sup> Alongside this, people suffering from radiation-induced illnesses are having difficulty in establishing a causal link between their illness and the nuclear tests and thus receiving compensation.

In June 2021, the pro-independence deputy Moetai Brotherson tabled a bill before the National Assembly aimed at improving the compensation process for victims of nuclear testing –currently governed

by the Morin law– and increasing the monitoring of the contaminated atolls of Hao, Moruroa and Fangataufa. It was not adopted. Instead, the French government preferred to organise a round table at the Élysée Palace at the end of June 2021 on the health consequences of nuclear testing. This conference, *Reko Toka*, was organised with the attendance of the Minister of Health, Olivier Véran, and the Minister of the Overseas, Sébastien Lebranchu, but without the elected pro-independence representatives and the two main associations of victims of nuclear testing *Moruroa e Tatou and Association 193*, who boycotted the conference. No important announcements were forthcoming from this conference, as the Minister Delegate for Remembrance and Veterans Affairs “refused to acknowledge the State’s lies and rejected any idea of a pardon from France.”<sup>14</sup> Despite the failure of this conference, which did not result in any significant progress, Édouard Fritch nonetheless drew two important conclusions: the Director of the CEA’s confirmation that people were irradiated not only on the Tuamotu Islands but also on the Windward Islands, and that the French government was now considering reimbursing the CPS –the local social security organisation– for sums incurred in treating people suffering from radiation-induced illnesses.<sup>15</sup>

The visit of the President of the Republic, Emmanuel Macron, to French Polynesia from 24 to 28 July 2021 was preceded by two large anti-nuclear protests attracting between 2,000 and 4,000 people in Papeete on 2 and 17 July 2021. These demonstrations, organised at the initiative of *Tavini*, the associations supporting victims of nuclear testing and the Protestant Church of Mā’ohi, highlighted the distress of families who are struggling to obtain reparations when victims have died, and the fact that the trans-generational nature of radiation-induced illnesses now seems to be an issue (meaning they might be transmitted to their children). Long awaited on the issue of nuclear testing, Emmanuel Macron made no apology or request for forgiveness but “took on board” this nuclear past and recognised that: “The Nation owes a debt to French Polynesia. This debt is for having hosted these tests, in particular between 1966 and 1974, which cannot be said to have been clean.”<sup>16</sup> He declared that he wanted the “truth” and “transparency” on the nuclear tests and hoped that the victims would be better compensated, without specifying the practical actions that would be taken. The President’s speech focused on the role that France intends to play in the Pacific in fighting against China’s influence.<sup>17</sup>

## A year marked by the pandemic

The year 2021 was marked, as elsewhere in the world, by the COVID-19 pandemic, which severely affected the economic, political, cultural and social life of French Polynesia. There were 43,374 COVID-19-related infections and 636 deaths in 2021. Most of the deaths occurred in August of that year, during which French Polynesia recorded 460 additional<sup>18</sup> deaths and experienced one of the highest rates in the world (2,800 cases per 100,000 population). The explosion of the pandemic can be explained, on the one hand, by the low proportion of people vaccinated –25% of Polynesians had been vaccinated by the start of July 2021– linked in part to a mistrust of institutions and the State. Among the arguments frequently put forward during the anti-vaccine demonstrations is the idea that vaccines are at an “experimental stage”, comparable to nuclear testing, and that the people to be vaccinated are “guinea pigs;” some politicians also share this mistrust.<sup>19</sup> The second reason for the explosion of the pandemic in August 2021 was the delay in implementing further containment measures and the technical difficulties in setting up controls similar to the health pass. Although the epidemic began to worsen from the end of July 2021, the start of the school year was not postponed and no containment measures were brought in until 23 August 2021 (for one month). The explosion of the pandemic led to Taaone Hospital in Tahiti being overwhelmed, forcing health workers onto a “war footing,”<sup>20</sup> with the government of Polynesia requesting human and material reinforcements. The pandemic also had a profound impact on bereaved Polynesian families who were forced to organise hurried and limited funeral ceremonies.<sup>21</sup>

The lockdown and the halting of international flights had considerable economic repercussions, particularly on the tourism sector, which is one of the most important sectors of the Polynesian economy: between July 2020 and June 2021, French Polynesia welcomed only 57,000 tourists, i.e. 65% fewer than over the same period in the previous year.<sup>22</sup> During his visit in July 2021, Emmanuel Macron announced that a CFP 28 billion State-guaranteed loan – via the French Development Agency– would be granted to French Polynesia to help support struggling companies, including the airline *Air Tahiti Nui*. The health crisis has, in fact, resulted in increased dependence on the French State and greater social inequalities in French Polynesia.<sup>23</sup>

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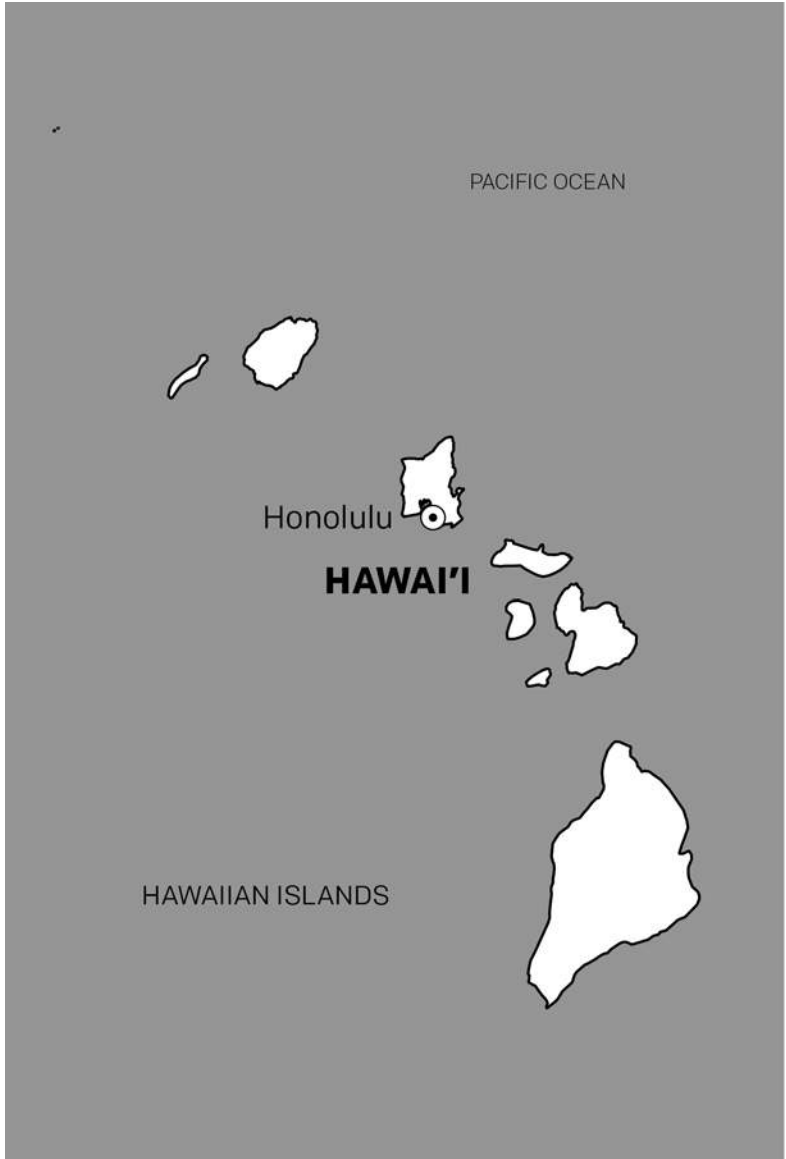
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**Gwendoline Malogne-Fer** is a sociologist-researcher with the Centre Maurice Halbwachs, (CNRS/EHESS/ENS) in Paris. In 2007, she published a book based on her sociology thesis entitled "Les femmes dans l'Eglise protestante mā'ohi. Religion, genre et pouvoir en Polynésie française" [Women in the Mā'ohi Protestant Church. Religion, gender and power in French Polynesia]. (Karthala). Her work lies at the intersection between gender studies, the sociology of Protestantism and the anthropology of migration. With Yannick Fer, she has also directed two documentary films on cultural demands in the Mā'ohi Protestant Church "Pain ou coco. Moorea et les deux traditions" [Bread or Coconut. Moorea and the two traditions] (<https://www.youtube.com/watch?v=T8XXwyda74vo&t=27s>) and on the challenges of cultural transmission in French Polynesia "Si je t'oublie Opunohu. Les chemins de la culture à Moorea" [If I forget you, Opunohu. Paths of Culture in Moorea] (<https://www.youtube.com/watch?v=J9xp8JY5kml>)



# Hawai'i





Ka Pae Aina (the Hawai'ian Archipelago) is made up of 137 islands, reefs and ledges stretching 2,451 kilometres southeast / northwest in the Pacific Ocean and covering a total of 16,640 square kilometres.

The Kanaka Maoli, the Indigenous Peoples of Ka Pae Aina or Hawai'i, make up around 20% of the total population of 1.2 million.

In 1893, the Government of Hawai'i, led by Queen Lili'uokalani, was illegally overthrown and a provisional government established without the consent of the Kanaka Maoli and in violation of international treaties and law. It was officially annexed by the United States and became the Territory of Hawaii in 1898. Hawaii acquired statehood in 1959 and became a part of the United States of America. The Kanaka Maoli continue to fight for self-determination and self-government and continue to suffer from past injustices and ongoing violations of their rights. Some members are involved in the Hawai'ian sovereignty movement, which considers the overthrow of the Kingdom of Hawai'i in 1893 illegal, along with the subsequent annexation of Hawai'i by the United States. Among other things, the movement seeks free association with and/or independence from the United States.

There have been formal requests for reparations from the United States for the overthrow of Queen Lili'uokalani in 1893 and for what has been described as a prolonged military occupation, starting with the 1898 annexation. The so-called "Apology Resolution" passed by the U.S. Congress in 1993 is cited as a major boost by the Hawai'ian sovereignty movement.

The United States announced in 2010 that it would endorse the U.N. Declaration on the Rights of Indigenous Peoples (UNDRIP) as a moral guide after voting against it in 2007. The United States has not ratified ILO Convention No. 169. Indigenous people who are born within the United States of America are generally U.S. citizens; however they are also citizens of their own nations. The UNDRIP guides the actions and aspirations of Hawai'i's Indigenous Peoples, as do local declarations such as the Palapala Paoakalani.

## Conflict over the TMT atop *Mauna Kea continues*

Construction of the Thirty-Metre Telescope (TMT) on the top of Mauna Kea (at 4,050 metres), a dormant volcano already home to 21 telescopes, including the Canada-France-Hawaii Observatory, began in 2014. Protests forced the closure of the construction site the following year although legal challenges by opponents of the TMT proved unsuccessful. Construction was scheduled to resume in the summer of 2019 but the access road to the summit was completely blocked by Indigenous activists.<sup>1</sup>

The conflict continued in 2021 and Uahikea Maile, a University of Toronto political scientist who is a Kanaka Maoli, stated that:

*We Kanaka Maoli have decided in our thousands to no longer respect a political and legal process that systematically ignores our voice. (...) The TMT is different from Mauna Kea's existing 21 telescopes because it would be located on a plateau that is currently completely undeveloped. In addition to the sacred nature of the entire summit, this plateau is a valuable ecosystem that must be preserved.*<sup>2</sup>

The protest against this new telescope has redoubled in intensity since 2019. Kanaka Maoli Indigenous activists want all telescopes removed from the archipelago's mountains, which they consider to be sacred. Canada is involved in the project, having pledged CAD 250 million for the Thirty-Metre Telescope.

Four of the nine directorships on the Office of Hawaiian Affairs' (OHA) Council of Representatives were up for election on 3 November 2020. The TMT remained a critical talking point, with many of the candidates campaigning on the basis of their opposition to the TMT. Following the election results, these candidates have continued to call for the dismantling of the original *Mauna Kea* telescopes. Uahikea Maile, a Kanaka Maoli Professor of Indigenous Politics at the University of Toronto, has stated that: "The only people who should be able to decide what gets built on public land are the Kanaka Maoli. I agree that they should stay until the end of their useful life but then they should not be renewed."<sup>3</sup>

## Progress in decommissioning

On 3 June 2021, the OHA decided to dismantle the Caltech Submillimetre Observatory, the first of five observatories on the summit to be decommissioned in exchange for the planned construction of the TMT at Mauna Kea. It ceased operations in 2015.<sup>4, 5</sup>

On 7 August 2021, four native Hawaiian elders arrested in 2019 while protesting the construction of the giant telescope on Hawaii's highest peak were found not guilty of obstructing the mountain's access road.<sup>6</sup>

On 21 September 2021, the University of Hawaii and the California Institute of Technology jointly decided to decommission a second telescope, the UH Hoku Kea teaching telescope.<sup>7</sup> A much smaller teaching telescope is likely to be installed at the Hale Pohaku site at the base of the summit.<sup>8</sup>

## The death of Haunani-Kay Trask

2021 also saw the passing of Haunani-Kay Trask, who was an activist best known for promoting the rights of native Hawaiians, the *Kanaka Maoli*, and Hawaiian sovereignty. She passed away at the age of 71. Trask began her teaching career in 1981 when she started as an assistant lecturer at Manoa University. She was the first Indigenous woman to be hired as a lecturer at this university. She worked in the Department of American Studies, with expertise in feminist theory and Native Studies.<sup>9, 10</sup> She created a significant opening for thousands of Hawaiian scholars and also helped build bridges with allies outside the state so that the island's plight could be heard on the international stage. For many, she was also a voice for the oppressed. She was remarkable for the stance she took against American imperialism and the island's colonisation.

Trask denounced the harmful effects of America's military occupation of the territory and the impact of tourism on the Indigenous people. She also rallied against a certain concept of tourism that could be perceived as a form of colonial oppression.<sup>11</sup> Upon Trask's passing, Maile Arvin, a native Hawaiian, noted that "through her work, she was able to

demonstrate to other nations that native Hawaiians can create a different future for themselves”.

According to Senator Mazie Hirono: “Haunani-Kay was an outspoken and inspiring educator and ardent advocate who played an undeniable role in highlighting the most painful parts of Hawaii's past, inspiring countless people with the same demands.”<sup>12</sup>

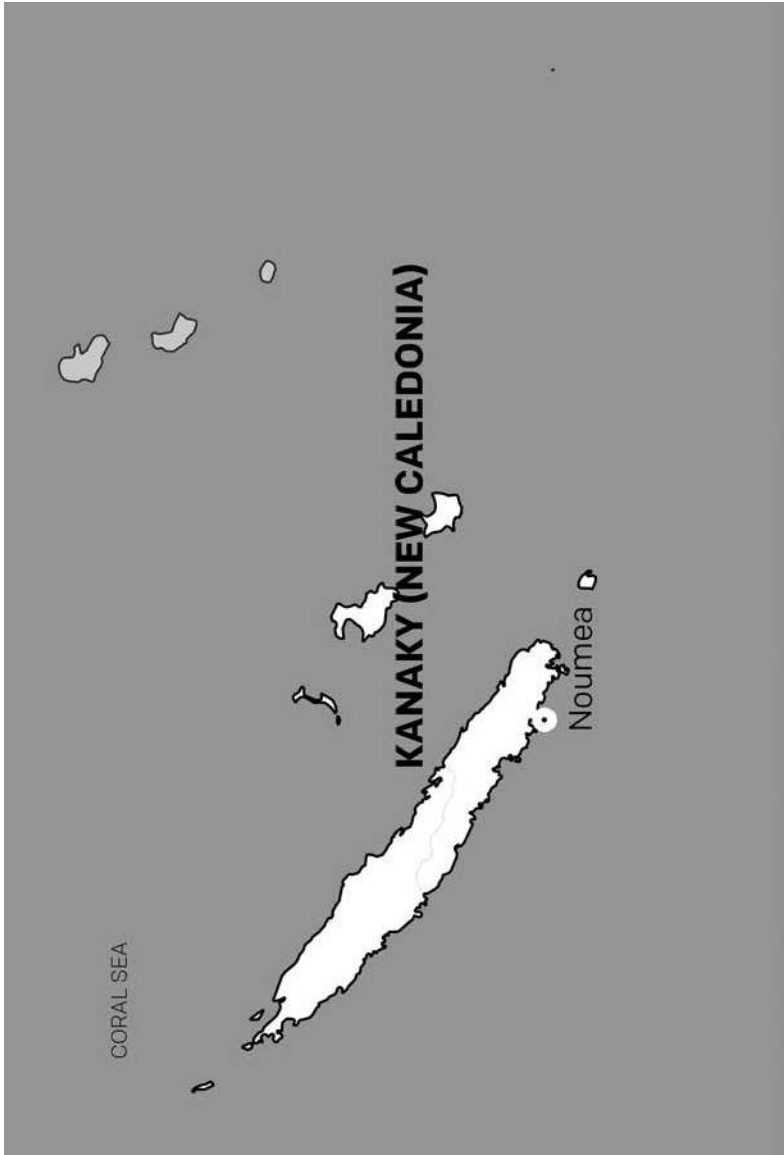
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**Patrick Kulesza** is the Executive chairman/director of GITPA, Groupe International de Travail pour les Peuples Autochtones - France ([www.gitpa.org](http://www.gitpa.org)).



# Kanaky (New Caledonia)



New Caledonia is an overseas country and territory of the French Republic. Together with French Polynesia and Wallis and Futuna, it is one of three French collectivities in the Pacific. New Caledonia is a member of the *Groupe Fer de lance mélanésien* [Melanesian Spearhead Group], an alliance of Melanesian countries comprising the Solomon Islands, Papua New Guinea, Vanuatu, Fiji, Indonesia (associate member) and the Kanak and Socialist National Liberation Front (FLNKS), officially created in March 1988 in Port Vila.<sup>1</sup>

Located 2,000 km off the north-east coast of Australia, the New Caledonia Office of Statistics reported in its 2019 census that the population of New Caledonia stood at 271,407.<sup>2</sup>

In 1946, the Kanak, former Indigenous subjects of the French Empire, were granted French citizenship. As French citizens, they are able to participate in political elections including municipal, territorial and also provincial, legislative, presidential and European elections. The first Indigenous intellectuals of the 1960s-70s reversed the stigma of the word “*Canaque*”, making it a symbol of identity and political pride under the initial English spelling of Kanak. The 1998 Nouméa Accord<sup>3</sup> officially recognised this terminology.

At the turn of the 1970s, an influx of new groups turned the Indigenous population into a demographic minority (41% of the population). According to the 2019 census, 41.2% of the archipelago's inhabitants identify as Kanak, 24.1% as European and 8.3% as Wallisians and Futunians. The rest of the population is divided between Tahitian, Indonesian, Vietnamese, *Ni-vanuatu*, other Asian, and other “communities”.

Most New Caledonian administrations do not disaggregate data by ethnicity, making it difficult to obtain reliable socio-economic indicators on the situation of the Kanak in New Caledonian society. However, the Kanak are disproportionately represented in the prison system,<sup>4</sup> and account for approximately 80% of the inmates of the country's only prison, with Oceanians as a whole (Kanak, Wallisians and Futunians, Polynesians, Ni-Vanuatu) making up 90% despite accounting for less than 50% of the population.

The wealth gap is much more pronounced than in France: in the Nouméa metropolitan area, the poorest 10% of households earn, on average, 13 times less than the richest 10%, whereas this ratio is 5 to 1 in metropolitan France.<sup>5</sup> According to a recent study conducted in the Northern Province, Kanak people in a similar situation (same age, sex and qualifications) earn an average 32% less than non-Kanak people.<sup>6</sup>

## The mining sector in difficulty

The mining sector is a pillar of the New Caledonian economy. The island is home to an estimated 10% of the world's nickel, with the nickel industry estimated to account for 7% of GDP in 2018 and 90% of exports. This industry is responsible for one job in every five in New Caledonia.

The sector has nevertheless undergone significant upheaval in the last two years. On 22 January 2021, in an article entitled The nickel industry is in dire straits in New Caledonia, *Le Monde* made the following observation:

*New Caledonia's economic lung, the nickel industry, is at the end of its tether. Two of its three metallurgical plants are on the brink of collapse and the third is on borrowed time, raising the spectre of a general collapse of the activity, which is highly dependent on "green gold".<sup>7</sup>*

Three nickel plants are currently operating in New Caledonia:

- The Koniambo Nickel plant, owned by *Société Minière du Sud Pacifique SA* (SMSP) Northern Province) and Glencore (Anglo-Swiss company).
- The Doniambo plant of *Société Le Nickel* (SLN), the oldest on the island.
- The Vale plant on the Goro site, which is responsible for 3,000 direct and indirect jobs. Until 2020 it was majority owned by the Brazilian multinational Vale. However, it was sold in 2021.

## The Northern plant

The mining issue has been at the heart of New Caledonia's demands for independence since the 1990s. In 1998, these demands were imposed as a prerequisite by the FLNKS during discussions on the end of the Matignon-Oudinot Agreements.

Kanak access to their own nickel resources, and the "stolen wealth" of the mining industry, is critical to obtaining a political solution and peace in New Caledonia.

*[The position taken by] the pro-independence movement is one of economic independence before political independence, and this means controlling the country's mineral resources and investing the profits from mining in sustainable economic sectors such as tourism or aquaculture.<sup>8</sup>*

The Bercy Agreement saw the northern mine sold to SMSP, a mining company owned by the pro-independence movement. A final demand, that the ore had to be produced in New Caledonia, resulted in the construction of a new plant. Following this construction, the Nouméa Agreement was signed, setting New Caledonia on the path to a "negotiated decolonisation" with at its heart a referendum on independence by 2014-2018.

The Northern plant, fed by the Koniambo Massif, was intended to contribute to an economic rebalancing of the territory between the Southern and Northern provinces. The economic model put forward by the Northern Province, relying on the mining sector to finance other sectors of the economy, has however not proven sustainable.

On 18 May 2021, the New Caledonian nickel mine known as the "Northern plant" was placed under a safeguard procedure by the Nouméa Commercial Court.

SMSP announced in a press release:

*This procedure enables the assets of a company in difficulty to be protected, with all debts prior to the opening judgement in the case "frozen" and a "debt settlement plan" to be established over the coming six months (renewable once).<sup>9</sup>*



“This is not the end of SMSP because it should not be confused with a liquidation procedure,” said Karl Therby, SMSP’s General Manager, quoted in the release. Without specifying the extent of the debt, he believed the company would “have the time necessary to implement its repayment plan” ... “We are aware of the efforts this will require from the group and its subsidiaries. The market is a highly competitive and increasingly complex one but we remain confident in the group’s future and in all the employees of our subsidiaries,” he concluded.<sup>10</sup>

A recent report dated 2 May from the Regional and Territorial Chambers of Accounts (RTCAs) of New Caledonia criticised the independence movement’s management of nickel in the Northern Province and their “nickel doctrine”, which includes halting exports of raw ore except to offshore New Caledonian companies.<sup>11</sup> In their ruling, the Nouméa Commercial Court noted that “the economic model on which part of the ‘nickel doctrine’ is based –the return of dividends to the public authority– has not been seen in practice, with the Northern Province’s holdings in the industrial nickel sector resulting in an appropriation of profits by Sofinor and the socialisation of losses by the Northern Province.”<sup>12</sup>

## The Southern plant (Vale)

The Southern project was contested from its inception in the 2000s, until Vale and the local population reached an agreement in 2009.

In December 2019, after accumulating nearly USD2 billion in losses since 2014, the Brazilian group Vale acted to concentrate its profitable activities and began plans to sell its shares in the Southern plant, re-structuring its industrial strategy and commercial positioning. Negotiations were ongoing throughout 2019 and 2020. Finally, the Australian junior mining company New Century Resources (NCR) was selected,<sup>13</sup> being the only candidate to present the necessary financial guarantees expected by Vale.

In September 2020, against a backdrop of strong opposition to the takeover by NCR from some of the local political class and Kanak customary leaders, one of NCR’s shareholders (IGO) sold its 18.4% stake. At the end of the exclusive negotiation period with Vale, NCR finally withdrew its offer.<sup>14</sup> Vale therefore announced its intention to close opera-

tions and place the plant under care and maintenance.<sup>15</sup> The site was finally shut down in December 2020.

In the months following NCR's withdrawal, Vale declined the takeover offer made by the Sofinor and Korea Zinc consortium, citing the consortium's uncertainties and economic aspects. Pro-independence and customary leaders subsequently mobilised within the "*Usine du Sud = usine pays*" [Southern plant = country plant] collective, supported in particular by the *Instance Coutumière Autochtone de Négociation (ICAN)* [Customary Indigenous Negotiating Body / ICAN], the FLNKS, the *Parti Travailleiste* [Workers Party] and the *Union syndicale des travailleurs Kanak et des exploités* [Union of Kanak and Exploited Workers]. Violence took place, including at the factory site, where a fire was declared on 10 December following which the site was evacuated and placed under police protection. Some 50 people were arrested and, in February 2021, Vale NC denounced the "unbearable violence that was continuing to target the infrastructure and employees".<sup>16</sup> The autonomous port of Nouméa was also blocked, only a few containers carrying basic goods being allowed to leave.

In 2020, another offer was submitted to Vale, comprising 50% Caledonian interests, 25% from the Swiss trader Trafigura, and the remainder from a multi-party company. This project, backed by the Southern Province, owner of the subsoil, and by the French State, was criticised by the FLNKS and also by the *Collectif Usine du Sud = Usine Pays* collective and the ICAN. They denounced the presence of the commodities trader Trafigura within the consortium, not wanting to abandon the wealth of New Caledonia to "*a Swiss multinational company plagued by scandal.*"<sup>17</sup>

Nevertheless, on 4 March 2021, an agreement was finally reached between the independence movement and the loyalists for the transfer of the nickel plant, with the provinces retaining control of the mining sector. The announcement of an "industrial partnership" with Tesla secured the project.<sup>18</sup> The American car manufacturer will enter into a "technical and industrial partnership" with the Goro plant, producing nickel for batteries in their electric cars. New Caledonian nickel should be "*permanently integrated into the supply chain for the production of batteries for electric cars in Asia, the United States and Europe,*" according to the political agreement signed by the Caledonian parties.<sup>19</sup>

The new consortium, called Prony Resources New Caledonia, comprises the SPMSC, representing the three provinces (30%), the employees and local populations (21%) and Trafigura (19%).

Navigating this crisis around the mine and processing plant also led to a government crisis. In February 2021, pro-independence members of the government resigned.<sup>20</sup> A new government was then elected and, for the first time, the pro-independence parties are in the majority thanks to an alliance with a new party, *L'Éveil Océanien*, representing the island's Polynesian communities.<sup>21</sup>

## COVID-19 reaches the nation

New Caledonia initially escaped the devastating effects of the global COVID-19 pandemic in 2020. As soon as the first cases were identified, the country closed its borders until the virus had been completely eradicated from the territory, and instituted drastic controls on people arriving on the island. Nevertheless, in September 2021, the Delta variant did enter New Caledonia and spread extremely rapidly. Despite further restrictive measures, 12,400 people became infected and 280 people have now died since the start of September.<sup>22</sup>

## Continuing the referendum process for independence

The first two referendums were held in 2018 and 2020. The “no” vote won with 56% of the vote in 2018 and 53% in 2020, with participation rising from 81% to 86%. A third referendum was held on 12 December 2021.

On 3 June 2021, the results of negotiations between pro-independence and loyalist parties were presented to the Council of Ministers, resulting in an agreement to hold a third referendum “before the end of 2021”.<sup>23</sup>

On 20 October 2021, the FLNKS requested a postponement of the election until September 2022 for “*health and social reasons related to COVID-19.*” However, the High Commissioner of the Republic confirmed the date of 12 December 2021. As a result of this decision, the pro-independence parties called on people not to participate in the referendum.

They specified that, under these conditions, they would not respect the result if the referendum went ahead.<sup>24</sup>

On 8 November 2021, private sector interests called for the referendum to go ahead on 12 December 2021. “The economic and social situation of the territory has deteriorated sharply over the past three years, which has led economic players to take a stand to ‘turn the page on the Nouméa agreement’,” stated *Le Monde*.<sup>25</sup> “The public accounts show a deficit of 400 million euros, the social accounts are structurally in agony,” stated the president of the local Medef.<sup>26</sup>

The third referendum on self-determination, provided for in the 1998 Nouméa Accords, took place on 12 December 2021, following two successive victories for the “no” vote. As with the first two referendums, the question asked was: “*Do you want New Caledonia to achieve full sovereignty and independence?*”

The outcome of the vote came the next day. The “yes” vote obtained 3.5% of the votes cast (with 2,747 voters) and the “no” vote won for a third time, with 96.50% (with 75,720 voters).

## Death of Alban Bensa

On 10 October 2021, the ethnologist and Director of Studies at the *École des Hautes Études en Sciences Sociales* [School of Higher Social Science Studies / EHESS], a recognised specialist in Kanak society, died in Paris at the age of 73. Alban Bensa devoted nearly 50 years of his life to the study of Kanak culture, mythologies and sociopolitical systems. His work commenced in 1973 when he arrived in a territory marked by the violence of colonial domination.<sup>27</sup>

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

**Claire Levacher** is an anthropologist by training. She worked most notably on relations between Indigenous populations and mining companies in New Caledonia and Quebec from 2011 to 2019. She completed her thesis at the EHESS and IRD and then two post-doctorates at the New Caledonian Institute of Agronomy and Laval University. She worked for GITPA from 2011 to 2012 and continues to contribute to the organisation's work on an ad hoc basis.



# Papua New Guinea



Papua New Guinea (PNG), formally the Independent State of Papua New Guinea, is a country in Oceania that covers an area of 462,840 km<sup>2</sup> and encompasses the eastern half of the island of New Guinea.<sup>1</sup> The country's name comes from "Papou" which, according to the naturalist Alfred Wallace, originates in the Malaysian *puwah-puwah* or *papuwah* meaning "frizzy".<sup>2</sup> New Guinea was the name given to the area by a 16th-century Spanish explorer due to the assumed resemblance of its inhabitants to those of Equatorial Guinea in Africa. The country gained independence in 1975 and is now a member of the Commonwealth of Nations.<sup>3</sup>

Almost symbolically a federal structure, PNG comprises 20 administrative provinces: Bougainville, Central, Chimbu, Eastern Highlands, East New Britain, East Sepik, Enga, Gulf, Madang, Manus, Milne Bay, Morobe, National Capital, New Ireland, Northern, Sandaun, Southern Highlands, Western, Western Highlands and West New Britain.

The island of Bougainville, which geographically forms part of the Solomon Islands but politically and administratively falls under PNG, became a self-governing region in 2004. The inhabitants of PNG are known as Papua New Guineans or Papuans. It is the most multilingual country in the world, with 830 languages spoken among a population of 8.4 million, i.e., an average of 9,100 speakers per language.<sup>4</sup>

PNG was absent from the vote on the UN Declaration on the Rights of Indigenous Peoples in September 2007.

## Events in 2021

**A**fter the first outbreak of COVID-19 in March 2021, the fragile Papuan hospital system was overwhelmed by a record number of new cases in the autumn, following the arrival of the Delta variant. While other countries in the region were able to regain control of the health situation with vaccinations, less than 1% of the inhabitants of the archipelago had received two doses by the end of October 2021. One



critical challenge in providing vaccinations has been the continued isolation of many regions, compounded by a severe lack of infrastructure. Furthermore, rampant disinformation regarding access to services, vaccination and the pandemic generally has resulted in poor adherence to public health protocols. Across Papua New Guinea, violence remains endemic, and it is estimated that a third of the population lives below the poverty line. Melanesia's largest economy, which is teeming with natural resources and benefits financially from geostrategic competition between China and Australia, has asked for help from the international community.<sup>5</sup>

## **Bougainville – independence referendum**

On 7 July 2021, Bougainville's leaders set a deadline of 2027 for obtaining full independence and leaving Papua New Guinea. Talks continued throughout 2021 on the future of the Melanesian island, which has been torn apart for ten years by armed conflict.<sup>6</sup> Bougainville residents voted 97.7% for independence in 2019 in a referendum under the 2001 peace agreement that set out a roadmap, including the creation of an autonomous government or a referendum by 2020.<sup>7</sup>

The PNG government has so far accepted the results of this consultation despite concerns that Bougainville's departure will fracture the country. A rejection of independence would risk reviving separatist tensions to the detriment of peace.

Former rebel leader, Ishmael Toroama, elected president of Bougainville in September 2020,<sup>8</sup> and PNG Prime Minister James Marape, met in the town of Wabag to try and agree on the way forward.

"The message is clear – this long journey must end and the sooner the better," Toroama said, adding that independence must be achieved "no later than 2027". He asked the central government not to try to thwart the process. For his part, Marape said an agreement on an "outcome" should be worked out by 2030, leaving the door open to some sort of independence. "The process cannot be rushed. The future of our country is at stake," he said as talks continued. "My job is to ensure that the rest of the country remains united." "There is nothing to fear from an independent Bougainville," Toroama told them on Tuesday. Bougainville will have new national symbols and a new international border, but Bougainville will remain a Melanesian brother."<sup>9</sup>

## Panguna Mine, Bougainville

On 21 July 2021, Rio Tinto agreed to look into the environmental and human legacy of its gigantic Panguna mine.<sup>10</sup> After 32 years, Rio Tinto has agreed to assess the impact of its former mine, following an agreement with Bougainville community members, represented by the Human Rights Law Centre. As reported by Business & Human Rights Resource Centre: “This follows several months of constructive discussions facilitated by the Australian National Contact Point (AusNCP) for the OECD Guidelines.”<sup>11</sup> Chief among the concerns is the accusation that Rio Tinto evaded its responsibilities in cleaning up toxic waste from the Panguna site, which was once the largest open-pit copper mine in the world and alone accounted for up to 40% of Papua New Guinea's exports. The mine was in full operation from 1972 to 1989, when Rio Tinto closed the mine as Papua New Guinea descended into Civil war.

“This is an important first step towards opening a dialogue with those who have been impacted by the legacy of the Panguna mine,” said Group CEO Jakob Stausholm. “We take this topic very seriously and are determined to identify and assess the role we may have had in any negative impact.”<sup>12</sup>

As a first step, Rio Tinto will fund an independent panel of international experts to assess this impact. While it is expected that this announcement should galvanize organizations campaigning for the creation of a compensation fund for victims and for environmental restoration, it is clear that the agreed assessment is only the first step in addressing the conflict and legacy surrounding the mine.

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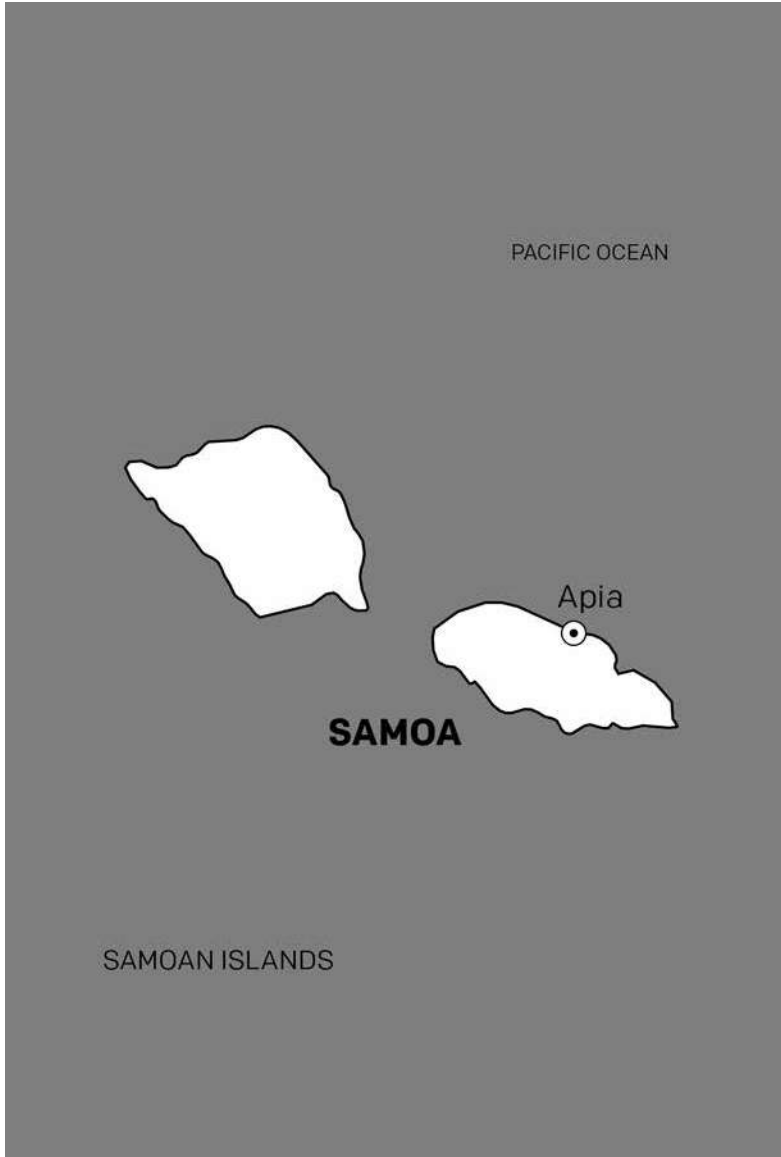
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**Patrick Kulesza** is the Executive chairman/director of GITPA, Groupe International de Travail pour les Peuples Autochtones - France ([www.gitpa.org](http://www.gitpa.org)). He conducted a fact-finding mission to Papua from November 2018 to June 2019. This mission resulted in the construction of a documentary website that can be found at: <http://gitpa.org/People%20GITPA%20500/GITPA%20500-9WEBDOCPAPOUSENTREE.htm>



# Samoa



Samoa was the first Pacific Island State to secure the right to self-determination and independence in Oceania during the 20th century (1962).<sup>1</sup> Samoa's population is estimated at 198,414 people.<sup>2</sup> The demographics of Samoa are: Samoan 96%, Euronesians 2% (persons of European and Polynesian ancestry), and other 1.9%.<sup>3</sup> Through decades of direct action in non-violent protest via the Mau movement, combined with repeated delegations to the League of Nations and later the United Nations, and in the face of violent oppression, the Indigenous Peoples of Samoa secured a seat at the United Nations as a full member in 1976.<sup>4</sup> Samoa originally abstained in the vote to adopt the UNDRIP in 2007; however, they have since expressed their support.<sup>5</sup>

When Samoa achieved its independence, it created a modern nation state upholding the rule of law. However, Samoa retained the *fa'a Samoa* (traditional culture) in political structures and in its Constitution. *Matai* (traditional chiefs) are able to stand for election to the *Fono* (unicameral parliament). The Human Rights Protection Party (HRPP) has been in power since 1982 and has supported specific steps towards universal values of equality. Universal suffrage was introduced in 1990, granting women the right to vote for the first time. In 2013, the Constitution was amended guaranteeing women five seats in the *Fono*. The *Komesina o Sulufaiga (Ombudsman) Act 2013* expanded the mandate of the Komesina o Sulufaiga Act from 1989 onwards to include the National Human Rights Institution of Samoa (NHRI). The independent institution was given three main functions: good governance, human rights and a special investigation unit.

## Elections and conflict over transfer of power

**2** 021 saw elections and a non-violent transfer of power, despite challenges had to be resolved through the nation's Supreme Court. General elections were held in Samoa on 9 April 2021. Pre-

liminary results showed a tie between the ruling Human Rights Protection Party (HRPP) and Fa'atuatua i le Atua Samoa ua Tasi (FAST), each winning 25 seats in the Legislative Assembly.<sup>6</sup> However, the Samoan Electoral Commission subsequently determined that, with women comprising 9.8% of elected members, the results did not meet the constitutional provision that required at least 10% of seats be held by women.<sup>7</sup> As a result, an additional female candidate was declared elected, increasing the parliament's membership to 52 and the HRPP's seat total to 26. This ruling and the procedure were contested in Samoa's courts, ending in the Supreme Court where a decision was issued on 23 July that confirmed FAST as the winning party. The HRPP then conceded the election. This resulted in Samoa's election of its first female prime minister, Hon Fiame Naomi Mata'afa,<sup>8</sup> who has represented Samoa with a focus on the Samoan Constitution and Samoa's responsibilities to the Pacific.

Mata'afa became the 7<sup>th</sup> Prime Minister of Samoa and the first woman to serve as Samoa's O le Ao o le Malo (Head of State), second in the Pacific after the Marshall Islands. Mata'afa also holds the traditional *matai* title, Fiame, after her father's passing when she agreed to be successor to one of his chiefly titles in Lotofaga village. She has held numerous leadership positions in previous cabinets as Minister of Education, of Women and of Justice, as well as acting as the first female deputy prime minister.

Mata'afa's victory ended the HRPP's 39-year rule. The defeated Prime Minister, who had served for 22 years as Head of State, declined to recognize the will of the people in the vote, creating a Samoan constitutional crisis. The HRPP government refused to convene parliament and enable a peaceful transfer of power. While the HRPP refused to concede power and created a coup environment in Apia by locking the doors of parliament, Mata'afa and her elected parliamentarians were not able to enter Fono (Samoa's parliament) and had to be sworn in in a tent in the garden. The HRPP leader declared the swearing-in "treason and the highest form of illegal conduct", creating tense conditions and perpetuating a constitutional crisis in one of the first nations to declare independence in the Pacific. On 23 July, The Court of Appeal ruled the swearing-in ceremony constitutional and binding, and the months-long constitutional crisis was averted three days later when the former Prime Minister conceded.

Laaulialemalietoa Polataivao Schmidt, founder of FAST and an MP, declared: “The road we have walked has been filled with obstacles... Despite the obstacles in our pathway, this is our moment, let us move forward from here.”<sup>9</sup>

### **3<sup>rd</sup> Cycle of Universal Periodic Review (UPR)**

Samoa continued its participation and input into the third cycle of the UN Human Rights Council UPR process in 2021. Across Samoa, this process has been one of the global highlights for human rights promotion and protection, opening up channels through to document and transmit key challenges for Indigenous Peoples in the national political space. Further, the UPR process has enabled dialogues between Indigenous Peoples and the highest national government offices. Despite the ongoing challenges,<sup>10</sup> the national governance structures that respect and acknowledge Indigenous Peoples’ rights have remained resilient.

Samoa appeared before the UN Human Rights Council UPR Working Group at the Palais des Nations, in the Alliance of Civilizations Room XX, in Geneva on 2 November.<sup>11</sup>

To prepare for the global review, Samoa hosted a mock session the week prior on the ground in Apia, Samoa. The Office of the Ombudsman, Samoa’s National Human Rights Institution, hosted a series of capacity-building workshops for NGOs in the months prior.<sup>12</sup> Civil society was also mobilized, ensuring its voice was represented in the submissions to the third cycle. As a result, the submission of stakeholder reports on a broad range of key issues was ensured. Of particular note were those focusing on LGBTQIA rights and a continued call for action and review of violence against women.

Samoa illustrated the importance of the UPR with the Prime Minister heading the national delegation. Brazil, Uzbekistan and Denmark served as the troika rapporteurs during the UPR. H.E. Fiame Naomi Mata’afa opened the 3.5-hour review of the human rights record. Samoa saw an increase in recommendations from its second and third cycle from 129 to 143 recommendations. Samoa supported 119 of these recommendations in 2021 and noted 33 more.

Samoa increased its follow-up efforts following the recommendations from the UN human rights processes, creating a National Mecha-

nism for Implementation, Reporting and Follow-Up (NMIRF) chaired by the Ministry of Foreign Affairs and Trade. The web-based human rights tracking tool, SADATA, is also an important instrument for implementing the recommendations of all the global human rights machinery. SADATA is Samoa's Implementation Plan for Human Rights & Development. SADATA was launched between the two UPR cycles and is available for all Samoans to gain access to the recommendations and state of implementation regarding their Indigenous rights.<sup>13</sup>

## **Samoa at COP26**

Samoaan representatives brought their expertise, experience and knowledge, centred around Moananuieka (the Pacific Ocean), to their engagement at the international level. Samoaan representatives actively participated in the UNFCCC COP26 in Glasgow, including through the submission of a High-level segment statement<sup>14</sup> and direct presentations and calls to action to address the impact of climate change from the newly-elected Prime Minister.<sup>15</sup>

## **The Pacific protecting the Paris Agreement's commitments**

Samoa served as chair of the Pacific Islands Small Islands Developing States at COP26 in Glasgow, sending H.E Fatumanava Pa'o Luteru, Ambassador and Permanent Representative of the Independent State of Samoa to the United Nations, New York to represent Samoa at the global gathering.<sup>16</sup>

Brianna Fruean, a climate youth activist with 350.org in the Pacific, presented at COP26. Her intervention highlighted the potential loss of sovereignty and way of life for Samoa and the people of the Pacific if the climate crisis is not addressed. Fruean, now a University of Auckland student and environmental advocate for Samoa, declared on behalf of all people of the Pacific: "We are not drowning - we are fighting."<sup>17</sup>

Fruean took on the responsibility as an ambassador for Samoan women and the Pacific region:



*It felt great to be heard. The words I shared didn't just belong to me - they belong to my community, they belong to every single Pacific island. [...] I think that was really important for me to tell the world leaders that they don't need my tears and my pain - and quite frankly, they don't deserve it.*<sup>18</sup>

Samoa's Prime Minister Mata'afa addressed COP26 via a video statement.<sup>19</sup> The Prime Minister cited priorities for the self-determination of Indigenous Peoples in the Pacific: "We must ensure that we continue to uphold the principle of environmental integrity and keep the Paris Agreement promise. This is critical when finalizing COP26 outcomes." In her statements, and joining with Indigenous representatives from around the globe, the Prime Minister also highlighted Paris Agreement Article 6 noting: "Loss and Damage needs dedicated funding. COP26 must address the long-term and permanent consequences of insufficient climate action."

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**Joshua Cooper** is a lecturer at the University of Hawai'i's Kamakakūokalani Center for Hawaiian Studies and the UH West O'ahu Political Science Department. He also teaches at the Global Leadership Academy for Human Rights Advocacy and acts as the Executive Director of Oceania Human Rights.



# PART 2

International Processes and Initiatives

# African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights (ACHPR) was established in accordance with Article 30 of the African Charter on Human and Peoples' Rights, with a mandate to promote and protect human and peoples' rights on the continent. It was officially inaugurated on 2 November 1987 and is the premier human rights monitoring body of the African Union (AU). In 2001, the ACHPR established a Working Group on Indigenous Populations/Communities in Africa (WGIP), marking a milestone in the promotion and protection of the rights of Indigenous Peoples in Africa.

In 2003, the WGIP produced a comprehensive report on Indigenous Peoples in Africa which, among other things, sets out common characteristics that can be used to identify Indigenous communities in Africa. The report was adopted by the ACHPR in 2003 and was subsequently endorsed by the AU in 2005. The report therefore represents the official position of the ACHPR, as well as that of the AU, on the concept and rights of Indigenous Peoples in Africa. The 2003 report serves as the basis for constructive engagement between the ACHPR and various stakeholders based inside and outside the continent, including states, national human rights institutions, NGOs, Indigenous communities and their organizations.

The continued participation of Indigenous Peoples' representatives in the sessions of the ACHPR as well as in the various activities of the WGIP, which include sensitization seminars, country visits, information activities and research, also plays a crucial role in ensuring and maintaining this vital engagement and dialogue.

In 2020, at the 66<sup>th</sup> Ordinary Session, the mandate of the WGIP was also renewed and expanded to include the rights of minorities, with the following amended title: “Working Group on Indigenous Populations/Communities and Minorities in Africa”.<sup>1</sup>

## Continued monitoring of the situation of Indigenous Peoples’ rights

The ACHPR continued to closely monitor the situation of Indigenous Peoples on the African continent in 2021. All ACHPR sessions were held online due to COVID-19. The rights of Indigenous Peoples were on the ACHPR agenda during its 68<sup>th</sup> Ordinary Session held in April-May 2021 and 69<sup>th</sup> Ordinary Session held in November-December 2021. As part of this monitoring exercise, the Chairperson of the WGIP gave updates on the status of Indigenous Peoples in Africa in her activity reports to the 68<sup>th</sup> and 69<sup>th</sup> Ordinary Sessions.

In the report at the 68<sup>th</sup> Ordinary Session,<sup>2</sup> Commissioner Amesbury, Chairperson of the WGIP, highlighted both positive developments and areas of concern regarding the recognition and protection of the rights of Indigenous Peoples on the continent. Among other things, she expressed her concern at several attacks in Niger. It is alleged that massacres were perpetrated by armed men on motorbikes in January and March 2021 in the Tillabery region close to the border with Mali, killing more than 300 civilians, including Indigenous Peoples. The attacks were reportedly carried out by members of the Islamic State group.

In her report to the 69<sup>th</sup> Ordinary Session,<sup>3</sup> Commissioner Amesbury noted with satisfaction that, on 7 April 2021, the National Assembly of the Democratic Republic of Congo (DRC) passed a bill on the protection and promotion of the rights of Indigenous Peoples. The text of the law provides for free health care, primary and secondary education and assistance before the courts. It also recognizes the rights of Indigenous Peoples to land and natural resources. Nevertheless, she also noted that the law fails to provide redress for the dispossession of ancestral territories that were taken prior to the law’s enactment, which represents a serious shortcoming. The law still needs to be reviewed by the

Constitutional Court and approved by the Senate before being enacted into law by the President of the Republic. The Working Group is of the view that the law's effectiveness will depend on the mechanisms and resources deployed for sensitization, implementation and monitoring.

The Commissioner also commended Kenya on the process providing an opportunity for Indigenous Peoples and historically marginalized minority groups who have been dispossessed of their ancestral lands to file claims for redress through the National Land Commission. She did, however, emphasize that the National Land Commission needs to take concrete steps to ensure that the rights of Indigenous Peoples and historically marginalized communities in Kenya are upheld in the process, in accordance with international standards. A first step towards providing redress for historical land injustices would entail fully implementing successful court judgments and human rights rulings obtained by Indigenous Peoples in Kenya (including the Endorois decision rendered by the Commission in 2010 and the African Court judgment in the Ogiek case rendered in 2017).

The Commissioner also welcomed the judgment of the Constitutional Court of Uganda rendered on 19 August 2021 directing the government to provide redress and compensation to the Indigenous Batwa people for the unlawful evictions that have taken place to create forest reserves and protected areas on their ancestral lands. Two of the three respondents in the case, the Attorney General and the Uganda Wildlife Authority (UWA), have appealed the judgment at the Supreme Court. These are the same respondents that have failed to uphold a 2005 consent judgment recognizing the Indigenous Benet people's rights to their ancestral lands in Mt. Elgon. The continued non-compliance of the 2005 consent judgment has resulted in ongoing serious violations of the Benet people's rights and threatens their very survival as an Indigenous Peoples. In March 2021, the local government of Kween district of Uganda began negotiating the terms of a Memorandum of Understanding (MoU) with UWA to grant the Benet access to Mt. Elgon National Park in compliance with the 2005 consent judgment. The Working Group regrets that, in the end, the MoU was not signed because a disagreement arose between the UWA and the Benet on some of the terms of the agreement. This effectively means that the 2005 consent judgment remains unimplemented and that the attendant human rights violations remain ongoing.

In 2021, the WGIP sent letters of appeal to the DRC (March & August) and Algeria (September). The first letter to the DRC addressed allegations received regarding 46 members of the Batwa/Bambutu community who were killed by an unidentified armed group in the village of Masini, Ituri province, Eastern DRC. It was alleged that among the victims of the massacre were 10 men and 36 women, 15 of whom were children aged between three months and 16 years. It was further alleged that more than 180 households (Indigenous Batwa/Bambutu and other local communities) from the villages of Abembi, Masini, Musango, Zunguluka 4 and Maitatus were affected by this attack, leading to the displacement of over 100 people. In the Letter of Appeal, the WGIP informed His Excellency that if the allegations were correct, the Government of the DRC would be in violation of Article 4 on the right to life as enshrined in the African Charter, and Article 5 (Survival and Development) of the African Charter on the Rights and Welfare of the Child. The Letter of Appeal urged the Government of the DRC to *inter alia*: provide clarification to the Commission regarding the above-stated allegations; conduct prompt and impartial investigations into the allegations, without delay, and hold the perpetrators accountable; and ensure full and effective reparations to address the harm suffered by victims, including their families and dependents. Such reparations should comprise the implementation of guarantees of non-repetition.

The second letter to the DRC addressed reports alleging that two members of the Indigenous Batwa community and six militia were killed in an army operation aimed at dislodging Batwa from the Kahuzi-Biega National Park, a habitat of lowland gorillas, in the east of the DRC. According to information, this occurred as a result of a joint operation of the Armed Forces of the DRC and eco-guards in Muyange. It was reported that at least 87 mostly straw huts were burned during the operation. In the Joint Letter of Appeal, the Government of the DRC was informed that, if the allegations were correct, the DRC would be in violation of Article 4 on the right to life and Article 14, which states that the right to property shall be guaranteed and may only be violated in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws. The Joint Letter of Appeal urged the Government of the DRC to: provide clarification to the Commission regarding the allegations; conduct prompt and

impartial investigations into the allegations and hold the perpetrators accountable; ensure full and effective reparations to address the harm suffered by victims; adhere to the provisions of General Comment No. 3 on the Right to Life; and, generally, comply with the letter and spirit of the African Charter, General Comment No. 3 on the Right to Life, as well as other relevant human rights instruments to which the DRC is a party.

Finally the letter to Algeria addressed reports alleging that, in May 2021, the government classified an Amazigh political movement for the self-determination of Kabylia (which has been in existence for 20 years) in the region of Kabylia, and all political movements calling for an autonomous status for Kabylia, as “terrorist movements”. Reports alleged that the police have been arresting all members of these movements and that at least 160 Kabyl are currently imprisoned without trial. In June and July 2021, it is also alleged that, after the government forbade village communities in Kabylia from organizing their own lockdown measures and controlling the entry of outsiders to their villages, the number of Delta variant COVID-19 cases increased dramatically. A lack of respirators in the health structures and the insufficient production of oxygen reportedly resulted in thousands of deaths, and the Algerian foreign affairs administration is reported to have blocked the delivery of respirators sent by the Kabyl diaspora in Europe. Furthermore, it is alleged that, on 9 August 2021, civil protection structures counted more than 70 fires in densely populated and wooded mountain areas of Kabylia. According to reports, the fires were deadly (from 140 to 250 deaths) and devastating (destruction of entire villages, crops, livestock, fruit trees and thousands of hectares of forest) because the means with which to fight the flames were derisory. It is alleged that the government has not opened any investigation aimed at finding the arsonists. Additionally, on 24 August 2021, Kamira Nait Sid, co-president of the World Amazigh Congress (CMA), was allegedly kidnapped from her home in Tizi-Wezzu, in Kabylia region, and her family was reportedly not informed. According to reports, Kamira Nait Sid was unlawfully held in detention for eight days, without trial and with no contact with the outside world. Consequently, it is alleged that Kamira Nait Sid was put in pre-trial detention pending her trial, which will take place at an unknown date. In the Joint Letter of Appeal, the Government of Algeria was informed that, if the allegations were correct, the Government of Algeria would be in violation of Article 4 on the right to life; Article 6 on



the right to Personal Liberty and Protection from Arbitrary Arrest; Article 7 on the right to Fair Trial; Article 9 on the right to receive information and free expression; Article 10 on the right to Freedom of Association; Article 14, on the right to property; Article 16 on the right to health; Article 19 on the right of all peoples to equality and rights; and Article 20 on the right to self-determination. The Joint Letter of Appeal urged the Government of Algeria to *inter alia*: provide clarification to the Commission regarding the stated allegations; conduct prompt and impartial investigations into the allegations, without delay, and hold the perpetrators of the fires accountable; ensure full and effective reparations to address the harm suffered by victims, in terms of loss of property and life; ensure fair trials for those detained without trial; adhere to the provisions of General Comment No. 3 on the Right to Life, in particular as it relates to the requirement for accountability; and generally, comply with the letter and spirit of the African Charter, General Comment No. 3 on the Right to Life, as well as other relevant human rights instruments to which Algeria is a party.

## **ACHPR study on the impact of COVID-19 on Indigenous Peoples in Africa**

At its 68<sup>th</sup> Ordinary session in May 2021, the ACHPR adopted Resolution 476 on Conducting a Study on the Impact of COVID-19 on Indigenous Populations/Communities in Africa.<sup>4</sup> The resolution noted that the COVID-19 pandemic has had an adverse impact on various human rights guaranteed by the African Charter, and that Indigenous populations and communities have also experienced variant effects of the pandemic. It highlighted the fact that Indigenous populations/communities do not have access to health services due to lack of resources and the distant location of health centres, as well as the inappropriateness of national health policies to the Indigenous way of life. It therefore tasked the WGIP with conducting a study on “the impact of COVID-19 on Indigenous Populations/Communities in Africa” and to present it to the Commission for its consideration and adoption within two years. It is anticipated that the study will be useful for the global and regional mechanisms as it will fill the knowledge gap in this area and improve the situation of the rights of Indigenous populations/communities in Africa.

## **New resolutions to ensure Indigenous Peoples' land rights**

The ACHPR adopted two key resolutions relevant to Indigenous Peoples' rights to land in 2021: Resolution 489 on Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa<sup>5</sup> and Resolution 490 on Extractive Industries and the Protection of Land Rights of Indigenous Populations/Communities in Africa.

Resolution 489 notes the increasing rural poverty, loss of wildlife and habitat, lack of inclusion of communities in decision-making, and lack of respect for the specific rights of Indigenous and local peoples in Africa. It acknowledges that a key component of Africa's economic potential lies in its biodiversity and wildlife economy, and that the use of Community-Based Resource Management, a community conservation effort, offers a unique competitive advantage with which to fight poverty and build resilient Indigenous and local communities. It recognizes Indigenous populations' and local communities' right to participation in, and governance and use of, natural resources as share-holders and not mere stakeholders. The ACHPR, among other things, calls on African states to recognize the rights of Indigenous populations and communities to the conservation, control, management and sustainable use of their natural resources, including wildlife. It urges African states to take the necessary measures to strengthen community governance and institutions. It finally strongly encourages governments, Indigenous and local populations, intergovernmental organizations, national human rights institutions, civil society organizations and academic institutions to support the Working Group on Indigenous Populations/Communities and Minorities in Africa in building and enhancing the local capacity of communities to govern, manage, and sustainably use and benefit from their natural resources.

In Resolution 490, the ACHPR refers to the Report of the African Commission's Working Group on Indigenous Populations/Communities. Extractive Industries, Land Rights and Indigenous Populations/Communities' Rights. East, Central and Southern Africa, adopted by the Commission in 2017, which recognizes among other things the right of Indigenous populations to consultation and negotiation in decision-making processes in ways that are consistent with the princi-

ples underlying the right to Free, Prior and Informed Consent (FPIC). The ACHPR urges State Parties to, among other things:

- Adopt policies and laws that safeguard Indigenous populations'/communities' rights to customary ownership and control over their lands, and recognize the lifestyle of the Indigenous populations, especially hunting and pastoralism;
- Ensure that the legislation governing the granting of concessions includes provisions on consultation and FPIC, consistent with international human rights standards;
- Together with the extractive industries, develop and implement national public participation models for the sector, taking into account all citizens of the country, including full participation of Indigenous populations/communities;
- Ensure that, in addition to an environmental assessment, a participatory social, cultural, economic and human rights impact assessment is conducted prior to the implementation of any extractive activities within Indigenous community lands. Social impact assessments should be required by law and undertaken prior to any phase of an extractive industry project. Assessments should be monitored to ensure full compliance;
- Recognize Indigenous populations'/communities' customary laws and traditional mechanisms of conflict resolution, and undertake capacity-building within these communities to develop their own representative structures and ensure effective participation in key decision-making processes;
- Put grievance mechanisms in place that are accessible to Indigenous populations/communities in the event that their rights are violated.

## **Advanced course on the rights of Indigenous Peoples in Africa**

The 11<sup>th</sup> Advanced Course on the Rights of Indigenous Peoples in Africa was held online from 1-5 November 2021 by the Centre for Human Rights of the University of Pretoria in South Africa, in collaboration with the WGIP and the International Work Group for Indigenous Affairs (IW-

GIA). The course was attended by around 30 participants from various African countries. Participants included postgraduate students, human rights activists, academics, consultants, judicial officers and policy-makers.

Themes explored during the course included the definition and conceptualization of indigeneity, Indigenous Peoples' rights within the African regional human rights system, Indigenous knowledge systems, Indigenous women, Indigenous Peoples' land rights, Indigenous Peoples and conservation, the impact of COVID-19 on Indigenous Peoples' rights, Indigenous Peoples *vis-a-vis* the Convention on Biological Diversity, UNESCO's World Heritage Convention and the Nagoya Protocol. Course participants made country presentations on the issues discussed throughout the week. Selected experts working on the issue of Indigenous Peoples as well as Working Group members served as resources to course participants.

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**Geneviève Rose** is senior advisor for IWGIA. She is the programme coordinator of the African Commission on Human and Peoples' Rights project. She has a Master's degree in conflict resolution from the University of Bradford in the UK. For the last 10 years, she has been working mainly with the African continent and Indigenous Peoples' rights on various themes including, among others, business and human rights, gender, land rights and participation in regional processes.



# Arctic Council

*Disclaimer: From 3 March 2022 the Arctic Council has been pausing all official meetings of the Council and its subsidiary bodies until further notice. The pause is in effect at the time of publication of this article in April 2022.*

The Arctic Council, established in 1996, is the leading intergovernmental forum promoting cooperation in the Arctic among the Arctic States, Arctic Indigenous Peoples and other Arctic inhabitants. The category of Permanent Participants (PP) is a unique feature of the Arctic Council. Six organizations that represent Arctic Indigenous Peoples are designated as Permanent Participants and these include: the Arctic Athabaskan Council, the Aleut International Association, the Gwich'in Council International, the Inuit Circumpolar Council, the Russian Association of Indigenous Peoples of the North (RAIPON) and the Saami Council. The category of PP was declared in the Ottawa Declaration (1996) "On the Establishment of the Arctic Council" and was created to provide a means for active participation and full consultation of the Arctic Indigenous Peoples within the Arctic Council, and to ensure participation in all levels of the Arctic Council, including co-leading projects that affect Arctic inhabitants, and contributing to the Arctic Council's expert work and political proceedings.

To facilitate Permanent Participants' work in Arctic cooperation, the Indigenous Peoples' Secretariat was established in 1994 under the auspices of the Arctic Environmental Protection Strategy (AEPS), which was the forerunner to the Arctic Council. The Secretariat is an institution recognized in the Ottawa Declaration and its role has been to facilitate PPs' active participation and full consultation in the Council.

Indigenous Peoples' Traditional Knowledge holds significant value in the Arctic Council. The Ottawa Declaration recognized "the traditional knowledge of the [I]ndigenous [P]eoples of the Arctic and their communities" and took note "of its im-

portance and that of Arctic science and research to the collective understanding of the circumpolar Arctic.” The Permanent Participants jointly created the Ottawa Traditional Knowledge Principles (2015) to provide guidance in the use of the Traditional Knowledge of Indigenous Peoples.

Over 500,000 Indigenous people live in the Arctic, which spans three continents and 30 million square kilometres. The Indigenous Peoples represent approximately 10% of the total population of the Arctic.<sup>1</sup> Indigenous Peoples have lived on their Arctic homelands for millennia and adapted and evolved over many centuries, turning specialist knowledge of their lands into a deep appreciation of all living beings within their unique environment. Each of the Arctic Indigenous societies understands the meaning of the land as imbedded with special meaning; and every feature is relished, named and linked to history, lived experience and spiritual lives. Such actions show their deep connection and commitment to the Arctic. The land, the rivers and seas of the Arctic anchor Indigenous societies and provide resources upon which the cultures continue to thrive and change. The diversity of the Arctic Indigenous Peoples is reflected in many ways – in culture, music, dress, and in how each group relates to the land and environment. The cultural groups are very different in terms of political, cultural, institutional and economic backgrounds, and each has legal and constitutional status with political participation in national or regional governance<sup>2</sup> although, arguably, common traditional practices, cultural heritage, value systems and spiritual beliefs are shared. Among these are continued social, economic and spiritual ties to the land and water. Climate change and the increased presence of extractive and new energy industries in the region are among the most pressing challenges for Arctic Indigenous Peoples, significantly affecting Indigenous women and, in recent years,<sup>3</sup> climate change has played a significant role in affecting Indigenous traditional roles. Here, it is appropriate to say that Indigenous women hold essential knowledge regarding climate mitigation and adaptation and yet they continue to be excluded or under-represented in environmental policymaking.<sup>4</sup>

## **The Arctic Council in 2021: Reykjavik Ministerial meeting, Arctic Council Strategic Plan 2021 - 2030 and the Russian Chairmanship**

**T**he Arctic Council adopted its first strategic plan at the Reykjavik Ministerial meeting in 2021. The Strategic Plan 2021 - 2030 lays down a framework for the Council's work over the next decade and a vision of the Arctic to 2030. It referred to the topic of gender as follows: "4.5. Promote gender equality and non-discrimination in the Arctic with the aim of contributing to sustainability and balanced participation in leadership and decision-making both in the public and private sectors." The Arctic Council Reykjavik Declaration 2021 emphasizes the importance of gender equality and respect for diversity and sustainable development in the Arctic and encourages the mainstreaming of gender-based analysis into the work of the Arctic Council, calling for further action to advance gender equality in the Arctic.

The Arctic Council is committed to Indigenous Peoples' rights. The 2021 Reykjavik Declaration<sup>5</sup> and Strategic Plan<sup>6</sup> both take due note of the most comprehensive international instrument on the rights of Indigenous Peoples – the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In 2021, the Russian Federation took over the Chairmanship of the Arctic Council (2021- 2023) from Iceland. A cross-cutting priority of the Russian Chairmanship in the Arctic Council is "Responsible Governance for a Sustainable Arctic" and promoting collective approaches to sustainable development in a way that takes an environmentally, socially and economically-balanced approach, enhancing synergy, cooperation and coordination with other regional structures while implementing the Council's Strategic Plan. One of the four priority areas of the Russian chairmanship's comprehensive program is "People of the Arctic, including Indigenous Peoples."

### **Gender and women in the Arctic Council framework**

The Arctic Council's 2002 Inari Declaration recognized the importance of women in developing Arctic communities by urging "the integration



of gender equality and women and youth perspectives in all efforts to enhance human living conditions in the Arctic.”<sup>7</sup>

The Arctic Council has hosted two conferences on Arctic gender equality: the first, called the “Taking Wing – Conference on Gender Equality and Women in the Arctic”, was organized in 2002<sup>8</sup> by the Gender Equality Unit of the Ministry of Social Affairs and Health of Finland, in collaboration with the Arctic Council and the Nordic Council of Ministers, while the second, entitled “Gender Equality in the Arctic: Current Realities - Future Challenges” took place in 2014 in Akureyri, Iceland.<sup>9</sup>

Both conferences invited Indigenous women to attend and addressed specific issues such as political participation, participation in climate change discussions, resilience and access to and control over resources. The recommendations of the Arctic Council’s Taking Wing Conference note the implementation of “...a project to analyse and document the involvement and role of women and Indigenous Peoples in natural resource management in the Arctic”. As a result of this, a project entitled “Women’s Participation in Decision-Making Processes in Arctic Fisheries Resource Management” was established.<sup>10</sup> As a continuation of this project, “Women and Natural Resource Management in the Rural North” was developed, focusing on women and gender equality.<sup>11</sup> Both projects were specifically aimed at analysing women’s participation in fisheries and other natural resource industries. However, a regional study on Arctic Indigenous women conducted by the International Indigenous Women’s Forum (FIMI) (2020)<sup>12</sup> claims that these projects lacked an in-depth analysis of the situation of Indigenous women.

The Arctic Human Development Report from 2004<sup>13</sup> has one chapter devoted to gender issues, and the report reflects the impact of social, economic and cultural change on Arctic communities. The second conference on gender equality, held in 2014, laid the foundations for a formal cooperation network of stakeholders focused on gender equality in the Arctic. Gender Equality in the Arctic (GEA) is a Sustainable Development Working Group (SDWG) project. This project builds on the earlier gender work mentioned above and is further described below.

## **The Gender Equality in the Arctic report**

The Gender Equality in the Arctic (GEA) project highlights the importance of recognizing and appreciating diversity of discourse, gender,

Indigenous and non-indigenous peoples, governance, education, economies, social realities, sustainability and balanced participation in leadership and decision-making both in the public and private sectors. The purpose and objective of the project is to promote and expand the dialogue on gender equality in the Arctic region. To strengthen social well-being and sustainable development in the Arctic, the SDWG set a goal to make gender equality an integral part of Arctic policy through the GEA project.

The 2021 GEA report<sup>14</sup> includes six thematic chapters relating to gender equality, from law and governance to security and the environment. According to the report, some issues related to gender equality are felt more strongly in the Arctic, such as mobility and migration in the North, Arctic brain drain, and gendered violence across the Arctic. The GEA report highlights that women outnumber men in terms of out-migration and, in most Arctic regions, there are more men than women. The GEA report also emphasizes that gendered violence continues to be a serious issue across the Arctic. Indigenous women and girls face disproportionate and violent victimization in the context of ongoing settler colonial relations.

The GEA report includes two main recommendations specifically for the Arctic Council. One of these is related to gender mainstreaming. According to the report, this could be achieved by the Arctic Council systematically engaging with and mainstreaming gender across its work. Another GEA recommendation is to improve gendered and intersectional data, including specific data on Indigenous populations. The collaboration of national agencies on developing indicators to facilitate future research and policy development will be a critical component.

Furthermore, the earlier mentioned FIMI regional study on Indigenous women in the Arctic<sup>15</sup> notes that Indigenous women widely highlight the need for disaggregated data in order to capture socio-economic and cultural inequalities that may affect Indigenous women and to develop effective public policies aimed at Indigenous women. This issue encompasses education, health, economic empowerment, political participation and violence. The report notes that such data is generally lacking with regard to the human rights situation of Indigenous women, which prevents an accurate understanding of their needs and realities and is a barrier to crafting policies and programs to adequately address them. The FIMI study reports that violence is one of the

most compelling issues affecting Indigenous women in all states in the Arctic region but that the availability of data on violence varies greatly from one country to another. The report also outlines that comparative studies on issues related to Indigenous women of the Arctic region are very limited and mostly never consider all the states in which Indigenous Peoples live.

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**Hjalmar Dahl** is President of ICC Greenland and Vice Chair of ICC International. Currently he's also Chair of the Board of the Arctic Council Indigenous Peoples' Secretariat. Dahl, from Greenland, has worked in the ICC around 40 years and has specialized on the rights of Indigenous Peoples. He has been directly involved in the creation of the UN Permanent Forum on Indigenous Issues and has been part of the negotiation team of the ICC towards the adoption of the UNDRIP in 2007.

**Dr. Karla Jessen Williamson** is an Assistant Professor of Educational Foundations at the University of Saskatchewan, Canada. Her areas of specialization cover discourses on epistemologies, world views – especially Inuit, gender relations, and Arctic peoples, resilience and governance. She was born and grew up in Maniitsoq, Greenland and uses her culture and language as a platform for conducting and publishing research. She is also an accomplished poet.

**Tonje Margrete Winsnes Johansen** is the Saami Council's Head of Delegation to the Arctic Council Sustainable Development Working Group and works at the Saami Council's Arctic and Environmental Unit. Johansen works closely with socio-economic issues and sustainable community development in the Arctic. She is from a coastal Sámi community in Gussanjárga/Kunes in Lágessvuotna/Laksefjord, Norwegian side of Sápmi, and holds a Master's degree in Political Science from the Norwegian University of Science and Technology. Through her studies she has focused on social development and gender issues.

**Rosa-Máren Magga** works as advisor at the Arctic Council Indigenous Peoples' Secretariat. She holds a Master's degree in Sámi Cultural Studies from University of Oulu, Finland and has studied Indigenous Studies at the University of Saskatchewan, Canada. She's from a traditional Sámi reindeer herding family from Eanodat/Enontekiö, Finnish side of Sápmi.



# 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 its founding Member States. The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

The ASEAN Charter was adopted in November 2007 and came into force in December 2008. It is the legally binding agreement among the Member States that provides ASEAN with a legal status and institutional framework.

ASEAN's fundamental principles, more commonly known as the "ASEAN Way", are founded on non-interference, respect for sovereignty and decision-making by consensus. Although lauded by the ASEAN Member States, this principle has been considered a major challenge in moving things forward in ASEAN, particularly within the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Despite having around 100 million people identifying as Indigenous in Southeast Asia,<sup>1</sup> Indigenous Peoples and human rights are "sensitive" topics in ASEAN, especially within the AICHR. As such, issues involving Indigenous Peoples' human rights defenders (IPHRDs) rarely make it to the discussion table.

## Indigenous women's participation in the decision-making of ASEAN mechanisms

In ASEAN, there is a specific commission that addresses the rights of women - the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). Its decision-making is based on consultation and consensus, in accordance with the ASEAN Charter. The commission is the intergovernmental body within ASEAN's mechanisms designed specifically for women's and children's rights. It was established and created in 2010 in order to develop policies and programmes to benefit women and children in the countries that make up ASEAN. Under the ASEAN Political Security Community's 1st Pillar,<sup>2</sup> the Joint Statement on Promoting Women, Peace, and Security in ASEAN was adopted by ASEAN Leaders at the 31st ASEAN Summit in 2017, drawing up three important milestones through multi-sectoral efforts and partnership. These milestones include:

1. Establishment of the ASEAN Women for Peace Registry in 2018 as a creative initiative to mobilise resources and consolidate knowledge for capacity building and advocacy on a gendered approach to peace and conflict in the region.
2. Alignment of the efforts of the ASEAN Committee on Women, the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children and the ASEAN Institute for Peace and Reconciliation, which have been pivotal to ASEAN's collective action in mainstreaming women's rights and gender equality in peace and security.
3. ASEAN women military and law enforcement officers have also had a positive impact globally through their active participation in UN peacekeeping operations.

There are still limitations in terms of Indigenous women's participation in ASEAN top-level decision-making, however, for example in the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC). This is because each ASEAN Member State can only send two representatives to the ACWC,<sup>4</sup> one on wom-

en's rights and one on children's rights. The representatives serve for three years and can serve two terms. The representatives meet twice a year.<sup>5</sup> The selection process for the commission thus goes through the internal processes of the ASEAN Member States and is supposed to be transparent, participatory and inclusive; however, there is no specific quota allocated to Indigenous women for this role. Indigenous women and civil society can nonetheless approach the representatives prior to meetings with issues they wish them to raise.

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) is committed to ensuring and safeguarding the well-being of women and children in "the new normal",<sup>6</sup> which is a commitment made by the ACWC during its 23rd meeting, conducted virtually on 12 October 2021 with representation from all ten Member States to discuss harnessing the efforts of ASEAN amidst the coronavirus pandemic recovery process and promoting and protecting the rights of women and children. In order to achieve this commitment, it is vital that Indigenous women are included in the ACWC Work Plan 2021 – 2025.<sup>7</sup> Unfortunately, however, there is no mention of Indigenous women in the work plan. By the end of 2025, the ACWC should be more open to the participation of Indigenous women, even beyond organisations with consultative status or more than two participants attending their events.

On 14 September 2021, Indigenous women, women activists, community members, practitioners, and journalists from the Mekong<sup>8</sup> region and Asia region participated online in the Global South Women's Forum 2021.<sup>9</sup> The Forum was convened by the Asia Indigenous Peoples Pact (AIPP), Oxfam, the Network of Indigenous Women in Asia, GreenID Vietnam, Indigenous Women's Network of Thailand (IWNT), Gender Development Association, Weaving Bonds Across Borders and Cambodia Indigenous Women's Association. Important discussions took place on the global health crisis, such as the coronavirus pandemic, where great opportunities for a joint agenda were present, and discussions on using a feminist approach to mitigate the destruction of ecosystems for a better planet and human life. Given local and Indigenous communities' contribution to safeguarding their land, territories and resources, it was crucial to promote and protect recognition of their long struggles. The forum therefore urged achievement of the participation and



representation of Indigenous women in decision-making by allocating quotas and giving them free choice to identify their representatives.

## **Important updates on Indigenous Women with a view to 2022**

In 2022, Cambodia will be chairing ASEAN for the third time since it joined the organisation on 30 April 1999.<sup>10</sup> There will therefore be opportunities for civil society organisations, Indigenous Peoples' organisations and peoples' movements to gather through the ASEAN Civil Society Conference / ASEAN Peoples' Forum 2022 and include the participation of Indigenous Peoples' human rights defenders, Indigenous women, Indigenous youth, and so on.

In around September 2022, Oxfam US may organise cross-learning sessions globally on the rights of Indigenous Peoples' human rights defenders - specifically for the Indigenous Women Defenders, to strengthen their connections or networks globally. This is to create more experts on Indigenous women's issues from different regions.

In the meantime, opportunities still remain to engage with the five-year work plan<sup>11</sup> of the ASEAN Intergovernmental Commission on Human Rights (AICHR) 2021 – 2025 in their commitment to show responsiveness to the rights of the ASEAN people and promote regional cooperation around human rights promotion, contributing to the realisation of the ASEAN Community Vision 2025. This initiative will be linked to the ACWC initiative.

## **ASEAN Civil Society Conference (ACSC) / ASEAN Peoples' Forum (APF) 2021**

From 15 to 17 October 2021, civil society groups, Indigenous Peoples and individuals convened the annual ASEAN Civil Society Conference (ACSC) / ASEAN Peoples' Forum (APF) online. More than 400 participants attended via Zoom and it was watched by more than 50,000 participants via Facebook live. The annual ACSC / APF initiative is aimed at sustaining an intersectional and cross-boundary community building

among civil society organisations in South-East Asian countries, including Timor-Leste and at formulating and submitting recommendations to respective ASEAN Member States, ASEAN as a regional body, and the government of Timor-Leste in order to better address human rights issues during the COVID-19 pandemic and to support peoples, particularly vulnerable and marginalised groups, in the context of the pandemic.

Interventions from the Asia Indigenous Peoples Pact (AIPP), and particularly from their partner Indigenous Peoples' organisations in Myanmar, in collaboration with other CSOs from Timor-Leste and Lao PDR focused on the theme of "Environmental Justice, Land Rights and Climate Change". A woman Indigenous human rights defender from Myanmar noted at the October 2021 ASEAN Civil Society Conference that:

*Indigenous peoples (IPs) are agents of change in the face of climate change. They have rich ancestral knowledge in conservation and how to adapt to a changing environment. Moreover, IPs are also monitoring illegal logging and deforestation. Indigenous communities are nurturing a close relationship with their natural environment, which is intimately tied to their livelihoods.*

The close relationship Indigenous Peoples nurture with the natural environment makes them particularly vulnerable to climate change. And yet they also represent key agents of change in the struggle against that global phenomenon. This has to be acknowledged and better documentation of Indigenous knowledge be produced. Women, youth, as well as persons with disabilities must particularly be included in the response to climate change.

Many countries within ASEAN are heavily economically reliant on small farmers, who have been particularly badly hit by the COVID-19 pandemic. This latter has highlighted the dysfunctional nature of our global capitalist economic system. Solidarity economies that benefit the common good and revolve around small peasants should be strengthened or revived. All issues (food security, climate change, land rights, etc) are connected. The conversation about food security cannot take place without examining agricultural systems. Priority response mechanisms to COVID-19 include social security mechanisms for the

unemployed as well as controls on the prices of agricultural products and essential goods to make sure that they do not depend solely on the market.

In the longer run, ASEAN and its Member States must strive to put in place resilient farming systems. They should develop sustainable food systems that place small farmers at their very heart and are inspired, *inter alia*, by agroecology. More attention should be drawn to how IPs are acting against climate change and greater acknowledgement should be given to their good practices in dealing with this phenomenon. Emphasis should be placed on diversifying food sources. IPs believe that technologies should be developed and used to increase and protect biodiversity rather than destroy it. In addition, COVID-19 and the associated restrictions on movement have made it difficult for IPs to travel.

Lastly, food security systems and mechanisms should be put in place to monitor and evaluate the commitments of ASEAN and its member countries to tackling climate change.

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**Frederic Wilson** is an Indigenous Dusun Putih from Sabah, Malaysia. He has worked for over 10 years with Indigenous Peoples in Malaysia, especially with his own community and at the Sabah State level. He spent 12 months working with the Assistant Minister for Law and Native Affairs of Sabah State. Frederic is currently serving Indigenous Peoples in Asia in the capacity of Human Rights Campaign and Policy Advocacy Programme Officer for Asia Indigenous Peoples Pact (AIPP) based in Thailand, since joining the organisation in 2019. Frederic’s main focus is Indigenous Peoples’ human rights defenders and being the focal person in AIPP’s engagement with ASEAN mechanisms. Contact email: [frederP ic@aippnet.org](mailto:frederP ic@aippnet.org) or [frederic.wilson4@gmail.com](mailto:frederic.wilson4@gmail.com)



# Business and Indigenous Peoples' Rights

2021 marked a decade since the UN Guiding Principles on Business and Human Rights (GPs)<sup>1</sup> were approved by the Human Rights Council. The GPs set out the obligations of states under international human rights law, including that applicable to Indigenous Peoples, and the responsibilities of business enterprises with regard to the same rights, in the context of economic activity. Ten years on from adopting the GPs, the UN Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (WG) initiated a process of dialogue by gathering input from states, businesses, civil society and Indigenous Peoples with which to analyse the implications of the GPs for the protection of human rights in the context of business activity. The objective of the requested inputs was to define a roadmap for their direction and implementation over the coming 10 years (UNGPs 10+ Roadmap). It was in this context that IWGIA commissioned an analysis on the implications of the GPs for Indigenous Peoples over the last 10 years in the context of business activity, which was submitted to the WG in 2021. This analysis, entitled *The UN Guiding Principles on Business and Human Rights and Indigenous Peoples. Progress achieved, the implementation gap and challenges for the next decade*<sup>2</sup> drew on interviews with Indigenous Peoples' representatives from different geographical regions and on documentary materials.<sup>3</sup> This section presents a summary of the main findings of the report, its conclusions and recommendations, as submitted to the WG for consideration. A critical analysis is also made of the WG's proposal for implementing the GPs over the next decade.

## Progress achieved

**A**lthough Indigenous Peoples' human rights continue to be severely affected by business activities, particularly those of an extractive nature, it is possible to see that 10 years of the GPs has resulted in some notable progress. Over the last decade, 13 of the 24 states that have developed National Action Plans on human rights and business have thus referenced Indigenous Peoples and their rights. Indigenous Peoples' participation in their production and implementation has, however (with some exceptions such as Peru), been deficient.

Progress has also been made in state legislation in different regions (Kenya in Africa, Nepal in Asia and Peru in Latin America) enabling peoples to register their territories and regulating consultation on development plans that affect their communities.

Some countries, such as France, Germany and the Netherlands, have introduced legislation on mandatory human rights due diligence, or are in the process of doing so, which could result in the protection of Indigenous Peoples' rights. A similar process is underway in the European Union to establish mechanisms that will provide access to remedy for corporate impacts on human and Indigenous rights. The states of Latin America and the Caribbean have signed and ratified the Escazú Agreement,<sup>4</sup> the first of its kind to recognise the right to access environmental information, participation in environmental decisions and access to justice in environmental matters, with specific reference to Indigenous Peoples.

With regard to mechanisms for redressing the damage caused by businesses, while court rulings in countries such as Colombia and Canada have recognised the right of Indigenous Peoples to free, prior and informed consent (FPIC) with regard to business activity, and although Indigenous Peoples' right to be consulted on projects that affect them has been reaffirmed in Nepal and India, it is clear that the rights of these peoples continue to be severely limited. The role of national human rights institutions (NHRIs) as extrajudicial mechanisms for redressing corporate abuses of Indigenous rights through their research, documentation and litigation work is also noteworthy.

As for businesses, we identified multi-stakeholder initiatives which, at least formally, have taken on board their responsibility to pro-

protect the rights of Indigenous Peoples in accordance with the GPs. Such is the case of the large food and drinks companies, many of which have adopted important policy changes such as no tolerance for land grabbing and a requirement to obtain FPIC in specific circumstances. In the case of the extractive industries, the Initiative for Responsible Mining Assurance (IRMA), which proposes only certifying new mines if they have Indigenous Peoples' FPIC, is notable as is the International Council on Mining and Metals (ICMM), which has committed its members to the principle of FPIC for Indigenous Peoples. There is also the initiative of the Forest Stewardship Council (FSC), a multi-stakeholder forest sector initiative that has incorporated protection of customary land rights and Indigenous Peoples' FPIC into its new standards. Implementation in practice, however, has been insufficient.

The GPs have also had a significant impact on international organisations. In the UN system, this impact can be seen in declarations, general comments and observations and jurisprudence on business and human rights. The work of Special Procedures, including the Special Rapporteur on the rights of indigenous peoples, and specialised agencies such as the FAO, with the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012), are noteworthy in this regard.<sup>5</sup> The Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights have also made specific reference to the protection of Indigenous rights in the context of economic activity in their general comments and observations.

Of particular importance for the protection of Indigenous rights over the last decade is the creation within the UN system of the Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights with the aim of drafting an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises. In the second revised draft produced by the Intergovernmental Working Group in 2020,<sup>6</sup> Indigenous Peoples are mentioned five times with explicit reference to the UNDRIP. They are mentioned three times in the context of other vulnerable groups. The fifth mention, however, is a major improvement compared to the previous version of Article 6 (Prevention) as it now specifically notes FPIC. Nevertheless, it calls it a "standard" and not a right, and includes it as a requirement that companies must comply with during consultation with Indigenous Peoples.

A similar impact of the GPs is visible in the Inter-American Human Rights System, whose Commission adopted a resolution in 2014 on the Promotion and Protection of Human Rights in Business, recognising the value of the GPs and urging member states to follow and disseminate their principles. In addition, in 2015 it published a report on Indigenous Peoples, Afro-descendant communities, and protection of their human rights in the context of natural resource extraction, exploitation and development.<sup>7</sup>

With regard to international development banks, the International Finance Corporation is notable, as its Performance Standards include the requirement for FPIC under those circumstances provided for by the UNDRIP. In particular, it prohibits the involuntary relocation of Indigenous Peoples.

As for Indigenous Peoples themselves, the creation of their own protocols on FPIC is noteworthy, of which there are around 50 across all continents, many of them in Latin America and several of which have been recognised by courts of justice in Latin America and Asia: these reaffirm the State's duty to consult Indigenous Peoples and their right to grant or withhold their FPIC in the face of corporate projects.

Civil society organisations, both at the international and domestic level, have also been instrumental in implementing the GPs and in identifying gaps and challenges in the relationship between business and human rights. Without their involvement in monitoring the implementation of the GPs, developing and monitoring National Action Plans and documenting human rights violations, the impact of business activity on human rights would have been far more severe. The following are particularly notable: the documentation and monitoring work undertaken by the Business & Human Rights Resource Centre; the International Federation for Human Rights (FIDH) for promoting the responsibility of companies when human rights are affected; and the Zero Tolerance Initiative (ZTI) for denouncing the violence companies exert against Indigenous and environmental defenders.

## Gaps and challenges

Despite this progress, it can still be seen that Indigenous Peoples continue to be one of the groups whose rights are most affected by corpo-



rate activities in almost all regions of the world. Far from diminishing over the last decade, the impact of business activities –particularly the extractive industry– on Indigenous Peoples’ lands, territories and resources has only increased. This is partly due to a proliferation of international, regional and bilateral investment agreements that protect the interests and rights of investors. Such agreements have encouraged investments by transnational corporations from the Global North (including China and Russia) into the countries of the Global South, severely affecting Indigenous Peoples. Despite the inclusion of human rights clauses in agreements concluded by the European Union, Canada and the United States, the investments generated by these agreements continue to seriously affect the rights of Indigenous Peoples. As the former Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpus, said, there are “an alarming number of cases where foreign investment projects in the mining, oil and gas sectors have resulted in serious violations of land, Indigenous Peoples’ self-governance and cultural rights”.<sup>8</sup> The lack of legal recognition or enforcement of Indigenous groups’ rights, especially land rights, enables the expropriation of land to facilitate investments in their territories.

As the WG has noted in its reports, Indigenous Peoples are disproportionately affected by large-scale projects, with significant negative impacts on their environment, on their right to health, and on their livelihoods and cultural ways of life.<sup>9</sup> This also reveals a lack of meaningful consultation with these peoples and the failure of companies to comply with the requirement of FPIC on their lands.<sup>10</sup> In other cases, consultations are not carried out prior to decisions that may affect Indigenous Peoples’ rights or prior to the granting of concessions for potential mining activities on Indigenous lands.<sup>11</sup> Finally, Indigenous rights defenders are at serious risk of being attacked, killed, criminalised, abused and subjected to smear campaigns because of their work to promote and protect human rights in the context of development and investment projects.<sup>12</sup>

This helps to explain the growing number of conflicts being created by current or proposed business projects on Indigenous lands or territories. Such conflicts can be found in almost every region of the world. A recent report focusing on Indigenous Peoples and the Sustainable Development Goals (SDGs) in Latin America identified 1,223 conflicts affecting Indigenous land rights triggered by the imposition of devel-

opment or investment projects in 13 countries in the region between 2015 and 2019. Forty-three percent involved mining activities, 20% hydrocarbon projects, and 19% power plants. As noted, disputes are often accompanied by acts of violence against defenders of Indigenous Peoples' rights. In addition, the report identified 232 Indigenous land rights defenders in nine Latin American countries who had been killed over the same five-year period (ECLAC, 2020).<sup>13</sup>

This data was backed up by Global Witness in its 2020 report, which identifies a total of 212 environmental and land rights defenders –two-thirds of them from Latin America– murdered in 2019. While Indigenous Peoples account for 5% of the world's population, they represent 40% of its murder victims. Similarly, over the last five years, more than a third of the victims were from Indigenous Peoples. The same report states that, of the killings last year, 50 were committed in the context of mining, followed by 34 in agribusiness (Global Witness, 2020).<sup>14</sup> Alongside the killings we find death threats, beatings, acts of torture and cruel treatment, all generally committed in collusion with the State and businesses. We also find cases of criminalisation of Indigenous rights defenders through the application of special legislation such as anti-terrorist laws. It should be noted that the vast majority of human rights violations committed against Indigenous rights defenders go unpunished.

All of the above demonstrates that, despite their universal acceptance, the GPs are far from effective in ensuring respect for and protection of the human rights of Indigenous Peoples around the world in the context of business activity. This is, in part, because their interpretation and operationalisation are not firmly based on the rights enshrined in the UNDRIP and ILO Convention 169. Nor are they grounded in the interpretation of these rights provided by the jurisprudence of relevant UN and regional mechanisms, such as the recent recommendations of the Committee on the Elimination of Racial Discrimination made to several states in which transnational corporations are operating.

Most companies have taken insufficient measures to meet their independent responsibility to avoid affecting Indigenous Peoples' rights either directly or indirectly. Neither states nor companies have ensured sufficient access to effective remedy to prevent violations of the rights of Indigenous communities or to promote remedy when those rights have been violated in the context of corporate activities, whether or not they persist over time.

Consequently, to ensure that Indigenous Peoples' rights are adequately protected and respected, the next 10 years will require far greater commitment on the part of states, companies, international organisations, civil society and Indigenous Peoples themselves, who have so far driven the implementation of the GPs, and to whom a series of specific recommendations are made. At the core of this effort must be consideration of (among other internationally recognised rights of Indigenous Peoples) self-determination, participation, consultation and FPIC, and the right to redress and effective compensation for Indigenous rights affected. Finally, everything seems to indicate that, in order to ensure the rights of Indigenous Peoples in the context of business activities, it is essential to go further than just the GPs. The approval of the Legally Binding Instrument regulating the activities of transnational corporations and other business enterprises and human rights, which is currently being drafted within the UN system, will be of particular relevance in this regard.

### **The stocktaking report published by the UN Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises Corporations (22 April 2021)<sup>15</sup>**

Being only 22 pages long, this report lacks the level of detail able to address specific issues facing Indigenous Peoples. It does mention Indigenous Peoples in four places, however, each time lumped together with other groups such as children, women and LGBTI+, human rights defenders, religious and ethnic minorities. Specific issues such as Free, Prior and Informed Consent, land rights, criminalisation, land grabbing or extractive industries are not mentioned.

The report considers there is insufficient integration of human rights due diligence into multilateral development banks and in the UN system.<sup>16</sup> It highlights the dynamic that is aimed at adopting mandatory due diligence legislation in several European countries.<sup>17</sup> It is in this context that it makes fleeting mention of the Legally Binding Instrument on business and human rights, which has been under development since 2014, and it also notes that many states are still wary of introducing

binding regulations regarding human rights due diligence, as this would put their domestic businesses at a perceived comparative disadvantage.<sup>18</sup>

Both the quality and quantity of national action plans on business and human rights are described as insufficient.<sup>19</sup> The embedding of the Guiding Principles in the international economic policies of states or in State-controlled economic sectors (“State-business nexus”) “has not seen much progress”.<sup>20</sup> Likewise, the Guiding Principle’s uptake by international development institutions and in multilateral processes such as the global policy processes related to climate change is still “concerningly little”. In the section on pillar II, the report gives a relatively positive appraisal of the level of corporate self-commitment to human rights. It notes harassment and persecution of human rights defenders but also points out that many companies have “clarified their position” in this regard, which it obviously sees as a meaningful step.<sup>21</sup> It is more critical of corporate abuse of the judicial system to curb civil participation through strategic lawsuits. In the financial sector, it sees

*a wide margin for improvement to reach the potential of investment institutions and Environmental and Social Corporate Governance (ESG) data providers to leverage better human rights performance by companies. [...] A key challenge is that most financial actors fail to connect human rights standards and processes with ESG criteria and investment practices because of a prevailing lack of understanding in the sector that social criteria, and many environmental and governance indicators, reflect human rights issues.*<sup>22</sup>

This is further compounded by a lack of common standards, a gap which the EU “taxonomy regulation” is supposed to close by providing a framework in which to facilitate sustainable investment. Overall, movement is slow. Four out of five banks have met less than half of the requirements of the Guiding Principles. Private equity and venture capital firms generally lag far behind banks. The report bemoans a lack of data that would enable the actual human rights performance of companies to be measured, as the outcomes and results of ESG are not properly monitored in general.<sup>23</sup> Companies need to move “from measuring what is done to measuring what is achieved”.

Looking at the remedies pillar of the Guiding Principles, the report identifies the strongest uptake by the judicial system in Latin America, specifically citing Colombia and Peru, while their impact on the courts remains generally very limited. It cites a number of landmark court rulings i.e. in the Netherlands and Canada, which indicate a growing willingness to hold large enterprises accountable. The deliberations on the remedies pillar conclude that there is “a wide range of options for remedies but not enough actual remedy”.<sup>24</sup>

What the report largely fails to do is to look at whether there has been any measurable impact on the human rights situation on the ground; it explicitly states that “quantifying the ‘success’ of the Guiding Principles is fundamentally a futile exercise”.<sup>25</sup> It does not therefore present any disaggregated data on the human rights situation around the world. It does, however, identify the rise of mandatory measures in some states as a success that “will undoubtedly accelerate both uptake and progress”.

On the basis of this report, on 29 November, the Working Group launched its roadmap for the next decade.<sup>26</sup>

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**José Aylwin**, *Citizen Observatory, Chile* and **Johannes Rohr**, *Institute for Ecology and Action Anthropology (INFOE, Germany)*



# Convention on Biological Diversity (CBD)

The Convention on Biological Diversity is an international treaty under the United Nations (UN), adopted in 1992. The Convention has three objectives: to conserve biodiversity, to promote its sustainable use, and to ensure the equitable sharing of the benefits arising from its utilisation (Art. 1).<sup>1</sup>

The Convention has developed programmes of work on thematic issues such as marine, agricultural and forest biodiversity, and on cross-cutting issues such as traditional knowledge, access to genetic resources and protected areas. All the programmes of work have a direct impact on Indigenous Peoples' rights and territories. The Convention recognises the importance of traditional knowledge (Art. 8j) and customary sustainable use of biological resources (Art. 10c) for the achievement of its objectives.

In 2010, the 10<sup>th</sup> meeting of the Conference of the Parties (also referred to as COP 10) adopted the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation and the Strategic Plan for Biodiversity 2011-2020, including 20 Aichi Biodiversity Targets. The UN Decade on Biodiversity 2011-2020 thus commenced.

The International Indigenous Forum on Biodiversity (IIFB) was established in 1996, during COP 3, as the Indigenous Peoples' caucus in the Convention processes. Since then, the IIFB has worked as a coordination mechanism to facilitate Indigenous participation in, and advocacy at, the Convention through preparatory meetings, capacity-building activities and other activities. The IIFB has managed to get many of the Convention's programmes of work to consider the traditional knowledge of Indigenous Peoples, their customary use of biodiversity



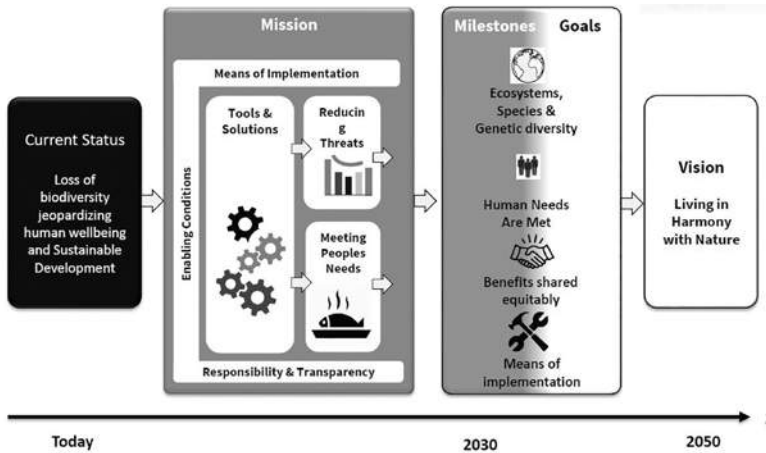
and their effective participation. The IIFB has also been active in the negotiations regarding access to genetic resources in order to defend the fundamental rights of Indigenous Peoples that should be included therein.

**C**ontinuing concerns around the global COVID-19 pandemic in 2021 caused a further delay in the much-anticipated 15th Conference of the Parties to the Convention on Biological Diversity (CBD COP 15) to be held in Kunming, China. A formal High-Level Opening Session took place virtually in October 2021 but the in-person meeting for the adoption of a new biodiversity strategy up to 2050 is now scheduled to take place during the first half of 2022. Instead, a round of online meetings of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA 24) and its Subsidiary Body on Implementation (SBI-3) took place, as well as a series of consultations and preparatory workshops on the many thematic issues covered in the First Draft of the Post-2020 Global Biodiversity Framework (GBF).<sup>2</sup> This document was released in July 2021 by the Co-Chairs of the Open-Ended Working Group charged with facilitating this process: Basile van Havre (Canada) and Francis Ogwal (Uganda).

Highly informative thematic consultations and workshops were also organised around the themes of monitoring, reporting and indicators; resource mobilisations; human rights and biodiversity; and non-State actors.

## **First Draft of the Post-2020 Global Biodiversity Framework (GBF)**

The Post-2020 GBF theory of change covers a 2050 vision with goals and milestones towards meeting this vision, as well as a 2030 mission with 21 action targets.



Source: UN Environment Programme. Convention on Biological Diversity. First Draft of the Post-2020 Global Biodiversity Framework. CBD/WG2020/3/3. July 5, 2021. <https://www.cbd.int/doc/c/abb5/591f/2e46096d3f0330b08ce87a45/wg2020-03-03-en.pdf>

The vision of the framework is a world “*Living in harmony with nature*” where “*By 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people.*” The framework has four long-term goals with corresponding milestones to assess, in 2030, progress towards the 2050 vision:

**GOAL A** – The integrity of all ecosystems is enhanced, with an increase of at least 15 per cent in the area, connectivity and integrity of natural ecosystems, supporting healthy and resilient populations of all species, the rate of extinctions has been reduced at least tenfold, and the risk of species extinctions across all taxonomic and functional groups, is halved, and genetic diversity of wild and domesticated species is safeguarded, with at least 90 per cent of genetic diversity within all species maintained.

**GOAL B** – Nature’s contributions to people are valued, maintained or enhanced through conservation and sustainable use supporting the global development agenda for the benefit of all.

**GOAL C** - The benefits from the utilization of genetic resources are shared fairly and equitably, with a substantial increase in both monetary and non-monetary benefits shared, including for the conservation and sustainable use of biodiversity.

**GOAL D** - The gap between available financial and other means of implementation, and those necessary to achieve the 2050 Vision, is closed.

The mission of the post-2020 GBF for the period up to 2030 towards the 2050 vision is: *“To take urgent action across society to conserve and sustainably use biodiversity and ensure the fair and equitable sharing of benefits from the use of genetics resources, to put biodiversity on a path to recovery by 2030 for the benefit of planet and people”.*

The following 21 action targets have been identified:

### **1. Reducing threats to biodiversity**

Target 1. Ensure that all land and sea areas globally are under integrated biodiversity-inclusive spatial planning addressing land- and sea-use change, retaining existing intact and wilderness areas.

Target 2. Ensure that at least 20 per cent of degraded fresh-water, marine and terrestrial ecosystems are under restoration, ensuring connectivity among them and focusing on priority ecosystems.

Target 3. Ensure that at least 30 per cent globally of land areas and of sea areas, especially areas of particular importance for biodiversity and its contributions to people, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.

Target 4. Ensure active management actions to enable the recovery and conservation of species and the genetic diversity of wild and domesticated species, including through ex situ conservation, and effectively manage human-wildlife interactions to avoid or reduce human-wildlife conflict.

Target 5. Ensure that the harvesting, trade and use of wild species is sustainable, legal, and safe for human health.

Target 6. Manage pathways for the introduction of invasive alien species, preventing, or reducing their rate of introduction and establishment by at least 50 per cent, and control or eradicate invasive alien species to eliminate or reduce their impacts, focusing on priority species and priority sites.

Target 7. Reduce pollution from all sources to levels that are not harmful to biodiversity and ecosystem functions and human health, including by reducing nutrients lost to the environment by at least half, and pesticides by at least two thirds and eliminating the discharge of plastic waste.

Target 8. Minimize the impact of climate change on biodiversity, contribute to mitigation and adaptation through ecosystem-based approaches, contributing at least 10 Gt CO<sub>2</sub>e per year to global mitigation efforts, and ensure that all mitigation and adaptation efforts avoid negative impacts on biodiversity.

## **2. Meeting people's needs through sustainable use and benefit-sharing**

Target 9. Ensure benefits, including nutrition, food security, medicines, and livelihoods for people especially for the most vulnerable through sustainable management of wild terrestrial, freshwater and marine species and protecting customary sustainable use by indigenous peoples and local communities.

Target 10. Ensure all areas under agriculture, aquaculture and forestry are managed sustainably, in particular through the

conservation and sustainable use of biodiversity, increasing the productivity and resilience of these production systems.

Target 11. Maintain and enhance nature's contributions to regulation of air quality, quality and quantity of water, and protection from hazards and extreme events for all people.

Target 12. Increase the area of, access to, and benefits from green and blue spaces, for human health and well-being in urban areas and other densely populated areas.

Target 13. Implement measures at global level and in all countries to facilitate access to genetic resources and to ensure the fair and equitable sharing of benefits arising from the use of genetic resources, and as relevant, of associated traditional knowledge, including through mutually agreed terms and prior and informed consent.

### **3. Tools and solutions for implementation and mainstreaming**

Target 14. Fully integrate biodiversity values into policies, regulations, planning, development processes, poverty reduction strategies, accounts, and assessments of environmental impacts at all levels of government and across all sectors of the economy, ensuring that all activities and financial flows are aligned with biodiversity values.

Target 15. All businesses (public and private, large, medium and small) assess and report on their dependencies and impacts on biodiversity, from local to global, and progressively reduce negative impacts, by at least half and increase positive impacts, reducing biodiversity-related risks to businesses and moving towards the full sustainability of extraction and production practices, sourcing and supply chains, and use and disposal.

Target 16. Ensure that people are encouraged and enabled to make responsible choices and have access to relevant information and alternatives, taking into account cultural prefer-

ences, to reduce by at least half the waste and, where relevant the overconsumption, of food and other materials.

Target 17. Establish, strengthen capacity for, and implement measures in all countries to prevent, manage or control potential adverse impacts of biotechnology on biodiversity and human health, reducing the risk of these impacts.

Target 18. Redirect, repurpose, reform or eliminate incentives harmful for biodiversity, in a just and equitable way, reducing them by at least US\$ 500 billion per year, including all of the most harmful subsidies, and ensure that incentives, including public and private economic and regulatory incentives, are either positive or neutral for biodiversity.

Target 19. Increase financial resources from all sources to at least US\$ 200 billion per year, including new, additional and effective financial resources, increasing by at least US\$ 10 billion per year international financial flows to developing countries, leveraging private finance, and increasing domestic resource mobilization, taking into account national biodiversity finance planning, and strengthen capacity-building and technology transfer and scientific cooperation, to meet the needs for implementation, commensurate with the ambition of the goals and targets of the framework.

Target 20. Ensure that relevant knowledge, including the traditional knowledge, innovations and practices of indigenous peoples and local communities with their free, prior, and informed consent, guides decision-making for the effective management of biodiversity, enabling monitoring, and by promoting awareness, education and research.

Target 21. Ensure equitable and effective participation in decision-making related to biodiversity by indigenous peoples and local communities, and respect their rights over lands, territories and resources, as well as by women and girls, and youth.

## **Indigenous Peoples respond to the First Draft of the Post-2020 GBF**

A Global Thematic Dialogue for Indigenous Peoples and Local Communities on the Post-2020 Global Biodiversity Framework was organised by the Secretariat of the CBD, jointly with the International Indigenous Forum on Biodiversity (IIFB), to provide an opportunity for representatives of Indigenous Peoples, local communities, CBD Parties and other governments to exchange views on the First Draft, with a focus on the following matters:

- Identifying and discussing key legal, policy, and institutional issues related to traditional knowledge, customary sustainable use, and matters affecting Indigenous Peoples and local communities;
- Enabling the development of concrete and constructive inputs for the consideration of the Working Group on the Post-2020 Global Biodiversity Framework at its third meeting;
- Promoting dialogue and building bridges among Indigenous Peoples and local communities, Party representatives, and the Co-Chairs of the Working Group on the Post-2020 Global Biodiversity Framework.

The Dialogue was the third of its kind and was held online in two parts. The first part, held on 2 and 3 August 2021, was open only to Indigenous Peoples and local communities and provided an opportunity to develop their key messages and proposals. The second part, held on 5 and 6 August 2021, was open to Indigenous Peoples and local communities as well as to Parties and government representatives and observer organisations, and was aimed at enabling participants to discuss these messages and proposals from Indigenous Peoples and local communities. The Dialogue had over 275 registered participants, representing 27 organisations of Indigenous Peoples and local communities, 13 non-governmental organisations, 21 governments, 10 United Nations organisations, and observers.

A report<sup>3</sup> on the consultation constitutes an information document for the 3<sup>rd</sup> meeting of the Working Group on the post-2020 GBF, including text proposals made by IIFB on priority targets.

### **Targets 1-8 on reducing threats to biodiversity**

Targets 1-3 focusing on conservation of biological diversity are of critical importance for Indigenous Peoples and local communities because most of the world's remaining biodiversity is found on ancestral lands and waters managed by them. "Fortress conservation" continues to be the norm in many countries with a lasting legacy of dispossession and gross human rights violations in protected areas managed by States and large conservation organisations.

Spatial planning should include demarcation of Indigenous Peoples' territories and legal recognition of customary tenure and governance systems, including respect for community conserved areas. Indigenous Peoples and local communities are central actors in any decision-making with respect to expansion and management of conservation areas. Their free, prior and informed consent on matters affecting their lands, waters, traditional knowledge, rights and well-being must be ensured.

The restoration initiatives of Indigenous Peoples and local communities, including *in situ* conservation of species (Target 4), have been underlined as important local priorities, as has respecting customary law in the harvesting and trade of wildlife (Target 5).

The IIFB highlighted inter-linkages between climate change and biodiversity on a local to global scale, and the need for equitable sharing of benefits and burdens with respect to climate change mitigation and adaptation efforts (Target 8).

### **Targets 9-13 on meeting peoples' needs through sustainable use and benefit-sharing**

Target 9 is closely related to CBD Article 10c on customary sustainable use. IIFB proposed strengthening the text by explicitly mentioning implementation of the Global Plan of Action on Customary Sustainable Use adopted at COP 12, thus ensuring benefits for those most dependent on biodiversity. "*Status and trends in the practice of traditional occupations*" was previously adopted as an indicator to monitor progress on traditional knowledge under the Convention

Target 13 pertaining to access to genetic resources and benefit-sharing from its utilisation, already covers associated traditional knowledge under the Nagoya Protocol. However, traditional knowledge is also useful in relation to biological resources and bio-trade, payment



for ecosystem services, derivatives, and emerging areas such digital sequence information (DSI). The scope of this target needs to be broadened to deliver additional benefits to Indigenous Peoples and local communities.

### **Targets 14-21 on tools and solutions for implementation and mainstreaming**

Target 20 recognises traditional knowledge alongside science and other knowledge systems in decision-making and management of biodiversity, applying the principle of free, prior and informed consent. This target should enable community-based monitoring and information systems (CBMIS) and reporting by Indigenous Peoples and local communities such as *Local Biodiversity Outlooks*.

Target 21 calls for an assurance of equitable and effective participation in decision-making related to biodiversity on the part of Indigenous Peoples and local communities, including women, girls and youth, and respecting their rights over lands, territories and resources.

Both are cross-cutting targets, highly relevant for all action targets under the Post-2020 Global Biodiversity Framework. To overcome the weaknesses of a siloed approach to traditional knowledge under previous biodiversity strategies, it is important that explicit language on Indigenous Peoples and local communities is also included in the other priority targets mentioned above, in keeping with a “whole society” approach in the implementation of the new framework.

These messages on the First Draft of the post-2020 GBF were presented through IIFB statements during the 3<sup>rd</sup> meeting of the Working Group held from August – September 2021, and have been captured in the reports of the virtual meeting.<sup>4</sup> In November, the Co-Chairs released their reflections on the positions offered by Parties, governments, Indigenous Peoples, local communities and other observers during the 2021 meetings, with a view to moving to face-to-face negotiations in 2022.

The adoption of the new framework – the 2050 Vision for Biodiversity strategy – in 2022, could well prove to be an important milestone in the advancement of the rights of Indigenous Peoples, considering the heightened global awareness of their vital contributions in rebalancing human-nature relationships that are at the core of biodiversity loss, climate change and socio-ecological crises. Indigenous Peoples are of-

fering culture-based solutions as central to transformational change in the coming decade.

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**Joji Cariño** (*Ibaloi-Igorot, from the Cordillera region of the Philippines*) is an active advocate for Indigenous Peoples' human rights at the community, national and international levels. She is currently a Senior Policy Adviser with the Forest Peoples Programme (UK). She is co-lead author of *Local Biodiversity Outlooks: Contributions of Indigenous Peoples and Local Communities to the Strategic Plan for Biodiversity (2011-2020)* and to *Renewing Nature and Cultures*. Contact: [joji@forestpeoples.org](mailto:joji@forestpeoples.org)



# Defending the Rights of Indigenous Women

With their wisdom, energy and empowerment, Indigenous women are agents of change both in their own lives, as Indigenous women, and in the lives of their peoples, as members of their communities. They plant the seeds with which to defend and demand full exercise of their individual and collective rights. Some have flourished, for example, in the recognition of their diverse identities and ancestral roots, in the daily vindication of their rights as women, and in the constant struggle for the defence of their territories. They remain united in the struggle and are continuing to strengthen collective leaderships, from the local to the global level.

In 2021, in the context of the 25<sup>th</sup> Anniversary of the Beijing Declaration and Platform for Action, networks of Indigenous women's organisations worked together to prepare The Global Study on the Situation of Indigenous Women and Girls, which guided their participation and contribution to the Generation and Equality Forum.

They also walked side by side, sharing strategies and key points in order to encourage the Committee on the Elimination of Discrimination against Women to issue a general recommendation on Indigenous women and girls.

Over the past 25 years, Indigenous women's capacity to promote crucial issues on the international development and human rights agendas has been remarkable. Through the Global Political Declaration of Indigenous Women, the Second World Conference of Indigenous Women, held in August-September 2021, will act as a key focus for the work of the coming years.

They therefore form both the warp and the weft of the strategy for good living, from local leadership all the way up to global spaces.

## The Global Study on the Situation of Indigenous Women and Girls<sup>1</sup>

According to the Global Study on the Situation of Indigenous Women and Girls, there are an estimated 476,600,000 Indigenous people in the world, of whom 238,400,000 are women. Overall, they represent 6.2% of the world's population<sup>2</sup> but account for 15% of the world's poorest people. In all regions, poverty is identified as a multidimensional problem affecting Indigenous women, one that represents a serious barrier to equality and full enjoyment of human rights. Poverty is, moreover, a consequence of discriminatory policies caused by a capitalist economic model and new forms of colonialism related to the dispossession of lands and territories, the loss of activities or livelihoods, armed conflicts and the effects of climate change.

The report also noted that heavy reliance on informal labour and its concentration in areas threatened by climate change places Indigenous women at a disadvantage compared to their non-Indigenous counterparts and Indigenous men.<sup>3</sup> Moreover, they are prone to many other problems: macroeconomic adjustment policies that disproportionately affect them; discriminatory laws related to land rights, natural resources, loans and credit; and aggressive development projects, such as mining and agribusiness.

To address the sinking that is being caused by climate change in the South Pacific Islands, Indigenous women have joined the Outer Islands Food and Water Project, through which they ensure household food security, nutrition and access to clean water.

In the Mau Forest, near Kenya's Ewaso Nyiro River, more than 900 Paran women living in the foothills have begun to experience water shortages due to climate change. Their answer to this challenge, and to guarantee an income with which to feed themselves, has been to plant trees and cultivate nurseries of native species, produce charcoal from forest waste and clay stoves, collect seeds from medicinal plants, produce honey and raise chickens. Now, all over Narok County, there are women implementing and spreading the teachings of the Paran women.

Moñeka De Oro, an Indigenous woman from the Chamoru people, was selected by the U.S. State Department as a Pacific Young Leader for her contribution to community work on climate change. The or-

ganisation in which she participates is also implementing programmes aimed at economically empowering women through training in glass-work and traditional recipes. As a result, Indigenous women's political involvement in promoting Indigenous Peoples' rights, including food sovereignty, has increased.

Despite the reality that is threatening Indigenous women on a daily basis, both individually and collectively, they have demonstrated their resilience and contributions, putting their knowledge to the service of their peoples and humanity. In turn, they are challenging the extremely adverse situations in which they find themselves, namely poverty, the violence to which they are subjected and the COVID-19 health crisis.

## **Indigenous women's leadership**

From Indigenous women's point of view, leadership involves being a guide, walking with, accompanying, being a bridge that connects with and guides others without imposing, in the search for the common good of all women and their peoples. They create solidarity networks and promote equality, taking on commitments from the individual through to the collective level. Indigenous women's leadership promotes an open, clear and respectful dialogue, making it possible to identify solutions to historical and structural problems with the aim of achieving balance and harmony in their communities.

One notable example of Indigenous women's leadership is that of the Aguaruna Huambisa Council (CAH). The organisation was created in 1977 to bring together the Awajún and Wampis peoples of the Peruvian Amazon around the same goal: defence of their land and territory. Raquel Caicat has been one of the CAH women promoting a more feminine view of territorial defence. At the age of 22, she set up a sewing workshop exclusively for women. It was in this space, without the presence of men, that she began to talk to the women about their rights. These teachings were thus passed on to the rest of her people and they gained popularity even among the male leaders. In 1999, Raquel was appointed Vice-President of the organisation and, in 2017, 40 years after its founding, CAH appointed an Indigenous woman as its President.

Developing and strengthening leadership from the perspective

of Indigenous women means recognising that they have broken paradigms by confronting a patriarchal and racist system that has historically excluded them. It has involved opening paths, raising collective voices, demanding rights and justice. But, above all, it has facilitated the creation of networks for coordination and joint work with their peoples and other leaders in order to position their demands, negotiate proposals and turn them into individual and collective actions that stretch from the community to the global level.

## The road travelled

Over the past 25 years, Indigenous women's ability to place crucial development and human rights issues on the international agenda has been remarkable. Significant progress has been made at the national level. Most countries in the Americas, the Arctic and some in Africa, Asia and the Pacific, have improved women's participation in politics, promoted poverty reduction policies, and increased women's and girls' access to health services, education and training. In addition, they have supported women's empowerment and economic autonomy, as well as the fight against violence and human rights violations.

These positive changes have been activated and driven by organised Indigenous women's initiatives at the local, national, regional and global levels, drawing on the resources and experiences of key stakeholders, all united around the goal of promoting the human rights and fundamental freedoms of Indigenous women in all spheres.<sup>4</sup>

In Cameroon, for example, Ogiek women describe their level of participation in national decision-making processes as still very low. The traditional patriarchal aspects of Indigenous Peoples' cultural systems, a lack of education and high illiteracy rates prevent them from participating in decision-making and power processes.

And yet in countries considered "developed", too, such as Canada, Indigenous women are under-represented in positions of democratic and political leadership, including Indigenous authorities. According to data from the Canadian Centre for Policy Alternatives,<sup>5</sup> in 2019 only 94 of the 545 existing chiefs were women.

In describing the persistent challenges, the above-mentioned

global study also highlights the fact that the situation of Indigenous women cannot be adequately described and understood without simultaneous reference to both individual and collective rights. Violations of collective land rights and self-determination have concrete impacts on the individual rights of Indigenous women. For Indigenous women, most of the critical areas of concern in the Beijing Platform for Action are deeply intertwined with their experience of self-determination and their relationship with the land, which shapes their status as women and as Indigenous people.

As part of the global position of Indigenous women prepared for the Generation Equality Forum,<sup>6</sup> they therefore highlighted their contributions to sustainable development, conservation and preservation of biodiversity and natural resources, and the resilience they have achieved in the face of a global crisis such as that of COVID-19, based on their worldview, wisdom, spirituality, knowledge, innovations and practices as agents of change. They also value what has been achieved in terms of legal and political recognition, both at the international and national levels, in relation to their individual and collective rights, as well as organisational advances in the development of common agendas set in motion to achieve gender equality and good living.<sup>7</sup>

Another international mechanism in which the impact of Indigenous women has been decisive is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In a world where women, in all our diversities, experience profound inequality, this instrument has special relevance for the life and protection of women's rights, including those of Indigenous women. This international treaty does not, however, specifically recognise Indigenous women and girls as subjects of individual and collective rights. This means that the Convention does not provide adequate protection from the multiple discriminations and violence they face.

In cooperation with regional Indigenous women's networks, the International Indigenous Women's Forum (IIWF) therefore organised a virtual dialogue: *Walking Together on the Path of Change*, in which they shared strategies and key points so that their voices, perspectives and demands would be reflected in a CEDAW General Recommendation on the rights of Indigenous women and girls. The recommendation affirmed the importance of maintaining a diversity of voices, including

women and girls with disabilities and the LGBTQI community. In addition, it ensured that a collective interpretation of rights was made and that they were integrated in a holistic manner, from an inclusive and intersectional perspective.

“Nothing About Us Without Us” has been an historical demand and one that was present for Indigenous women’s organisations and networks in the annual implementation review of the 2030 Agenda and the Sustainable Development Goals. Over the past four years, Indigenous women have actively participated in and contributed to the voluntary reviews undertaken by States within the UN system regarding implementation of the Sustainable Development Goals.

From their organisational work, Indigenous women have contributed to achieving these objectives, implementing actions aimed at ending poverty, moving towards more equitable health, continuing to work for the protection of ecosystems, advancing education with equality, their own empowerment and moving towards an economy for good living. At the same time, they are continuing to demand that States take up their responsibility and role as guarantors of the rights of Indigenous women and their peoples.

## **The Second World Conference of Indigenous Women. From words to action**

In the midst of significant advances and outstanding challenges, it was invaluable that the Second World Conference of Indigenous Women was held in 2021 with the theme of “Together for wellbeing and Mother Earth”.<sup>8</sup> This was a space in which the voices, views, experiences, good practices, dreams, knowledge, proposals and values of Indigenous women were brought to life and recognised. But, above all, it allowed them to weave their spirituality collectively, even when faced with the challenge of using virtual spaces and the technology gap.

This global conference, organised by IIFW, the *Enlace Continental de Mujeres Indígenas de las Américas*, the *Alianza de Mujeres Indígenas de Centroamérica y México*, African Indigenous Women’s Organisation, Sámi Women’s Forum, Network of Indigenous Women in Asia, Asian Indigenous Women’s Network, and Pacific Network through I Hagan



Famalão'an Guãhan, strengthened the local, regional and global Indigenous women's movement. A global and diverse agenda was agreed by which to advance the recognition and realisation of their collective and individual rights. More than 500 Indigenous women from all around the world (North America, Latin America, the Caribbean, Africa, Asia, the Pacific and the Arctic), elders, youth, urban and rural dwellers, Indigenous women with disabilities, women leaders, activists, artists, women from the LGBTQI community, women working in governments and in United Nations agencies all participated.

During the working sessions, they shared their concerns and realities, recognising that some progress had been made in the participation of Indigenous women, including Indigenous women with disabilities, in political processes at the local, national and international levels. However, achievement of “full and effective participation” and inclusion in decision-making spaces and mechanisms in all matters that affect them is still a long way off.

They reaffirmed their capacity for resistance and their spirit of resilience, sharing the affirmative actions and good practices they have accumulated, which have been key to continuing their path without seeing themselves as victims but rather assuming their light, knowledge and strength. Weaving together recommendations which, rather than wait for their fulfilment, they will demand and make a reality.

They also called for a transformation of power whereby the paternalistic and racist approach is replaced by an equitable collaboration between States, UN bodies, mechanisms and agencies, other relevant actors and donors to Indigenous women's organisations, mixed organisations and the self-governance structures of our Indigenous Peoples. These need to be converted into funding programmes based on the needs expressed by the communities themselves in order to ensure the advancement of the social, cultural and economic development of Indigenous women and girls.<sup>9</sup>

States also need to adopt specific, inclusive and accessible measures such as targeted affirmative actions and programmes to address the condition of Indigenous women, from a global understanding that the discrimination and violence experienced by Indigenous women is multidimensional, and that this understanding is closely linked to their worldview, the rights of nature, and their role as defenders of the environment and ancestral guardians of Mother Earth.

States need to amend and revise existing laws, policies and rules, or establish new provisions to bring them fully in line with their commitments and obligations under international instruments and to recognise and protect the rights of Indigenous women. They further need to ensure that appropriate mechanisms are established which reflect collective dimensions of the right to equality, non-discrimination, self-determination and freedom from all forms of violence.<sup>10</sup>

## Final reflections on an urgent call for fulfilment of Indigenous women's demands

By recognising and respecting the existence, knowledge and actions of Indigenous women, in both their concurring and their dissenting views and voices, they will continue to advance with firm steps towards achieving full and effective enjoyment of their well-being, affirmed in their spirituality, identities and world visions as the basis that sustains their leadership.

The advocacy route has involved deep internal organisational processes whereby demands and proposals have been redefined, making use of the human rights framework and without losing sight of the path along which their ancestors walked.

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The **International Indigenous Women's Forum (IIFI)** is a global network that brings together Indigenous women from seven socio-cultural regions. IIFI is focused on advocacy, capacity building, economic empowerment and leadership development.



# European Union Engagement with Indigenous Issues

The European Union (EU) is a political and economic union of 27 Member States. Its legislative and executive powers are divided between the EU main institutions: the European Parliament (co-legislative authority), the Council of the European Union (co-legislative and executive authority) and the European Commission (executive authority). In addition, the EU has its own diplomatic service, the European External Action Service (with EU Delegations throughout the world).

The EU maintains trade relations with the whole world and is the biggest donor of development aid. Aside from the influence within the territory of its Member States and its influence in international organisations, the EU also has a global impact as an international key player in the area of human rights, development, and control of corporate and environmental issues.

The EU is part of the international process of promoting and protecting the rights of Indigenous Peoples. Four EU Member States have ratified ILO Convention No 169<sup>1</sup> and the EU supported the adoption of the UNDRIP in 2007 as well as the Outcome Document of the World Conference on Indigenous Peoples in 2014.

In recent years, the EU has moved from a relatively passive position on recognition of Indigenous Peoples' rights to a much more active involvement in ensuring the effectiveness of these rights in its policies.

Long reserved only for European actors involved in defending human rights, the issue of the protection of the rights of Indigenous Peoples has an increasingly cross-cutting influence

within the European system and is involving an ever-greater diversity of actors. This transposition of the rights of Indigenous Peoples into the European system as a cross-cutting aspect of human empowerment and development cooperation is particularly significant at the level of the European Parliament and is generating a rapid evolution in the production of European legislation.

During 2021, the European Parliament voted through five resolutions that include Indigenous Peoples' rights and issues. These resolutions call for better protection of the rights of Indigenous Peoples and demand greater inclusion of Indigenous Peoples' representatives in decision-making procedures. These resolutions cover such crucial issues for Indigenous Peoples as: corporate due diligence and corporate accountability, the effects of climate change on human rights and the role of environmental defenders in this regard, the state of human rights in the world in 2020, Arctic protection, and the impacts of climate change on vulnerable populations in developing countries. A focus on the specific impact on women and girls was integrated into the resolutions, in line with Parliament's desire to promote a transformative and intersectional approach, and to call for gender mainstreaming in all its policies and actions. These resolutions originated and saw the light of day thanks to the collaboration of seven of the European Parliament's committees working on subjects as diverse as human rights, development and the environment but also, and this is significant: agriculture, international trade and legal affairs.

## **Evolution of European legislation and recommendations relating to Indigenous Peoples<sup>2</sup>**

On 19 May 2021, the European Parliament adopted a resolution prepared by the Subcommittee on Human Rights (DROI) working with the Committee on Development (DEVE), the Committee on Environment, Public Health and Food Safety (ENVI) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE), on : "The effects of climate change on human rights and the role of environmental defenders on this matter".<sup>3</sup> The Rapporteur for this resolution, Mrs. María Soraya Rodríguez Ramos, organised many meetings with Indigenous representatives and invited them to hearings. With this resolution, Parliament:

*Strongly condemns the increase in the number of murders, defamatory attacks, acts of persecution, criminalization, imprisonment, harassment and intimidation against indigenous people and environmental human rights activists and land defenders worldwide and calls for those responsible to be held accountable.<sup>4</sup>*

Parliament also:

*Recalls the obligation of states to protect environmental defenders and their families against harassment, intimidation and violence and their obligation to recognise the rights of indigenous peoples and local communities and to acknowledge the contribution of their experience and knowledge to the fight against biodiversity loss and environmental degradation.<sup>5</sup>*

It further underlines their:

*Specific role and expertise in land management and preservation and calls for increased cooperation with and inclusion of indigenous peoples as well as for efforts to strengthen their democratic participation in relevant decision-making processes, including those related to international climate diplomacy.<sup>6</sup>*

Parliament welcomed the Commission's efforts to support Indigenous Peoples' participation through its specific support for several projects and encouraged the Commission to continue to promote dialogue and collaboration between Indigenous Peoples and the European Union as well as with international forums, notably in relation to climate change.

On 6 October 2021, the Committee on Development submitted to a vote its resolution on: "The role of development policy in the response to biodiversity loss in developing countries, in the context of the achievement of the 2030 Agenda".<sup>7</sup> Members of the Committee on Development chose Ms Michèle Rivasi as Rapporteur because of her long-standing involvement on behalf of Indigenous Peoples. The Rapporteur organised several meetings and conferences with Indigenous representatives and passed a very strong resolution recalling

the importance for Indigenous Peoples of the Union adopting strong legislation in terms of human rights and environmental corporate due diligence for companies throughout their supply chains. The resolution also stresses the importance of preserving Indigenous knowledge to address climate change and future health crises and calls on the EU and its Member States to enhance the scrutiny of EU-funded projects and trade agreements in order to prevent and detect human rights abuses and enable action against such abuses.

On 7 October 2021, less than a month before the high-level EU Arctic Forum and the Annual Arctic Indigenous Peoples' Dialogue organised by the European Commission and the European External Action Service was to be held, Parliament voted through a resolution on: "The Arctic: opportunities, concerns and security challenges"<sup>8</sup> prepared by the Committee on Civil Liberties, Justice and Home Affairs (LIBE). Parliament reiterated its call to include Indigenous Peoples in decision-making processes and recommended that the EU pursue policies to ensure that measures addressing environmental concerns take into account the interests of the Indigenous Peoples of the Arctic region. Parliament recalled "*the need to obtain indigenous peoples' free, prior and informed consent before adopting and implementing legislative or administrative measures or launching development projects that may affect them*".<sup>9</sup>

Furthermore, Article 46 of the Resolution:

*Stresses the need to ensure the preservation of indigenous peoples' cultures, traditions and languages by establishing capacity building programmes to increase awareness about the diversity, history and the rights of indigenous peoples, not only for indigenous youths but also for non-indigenous populations across the region; calls on EU delegations in the Arctic states to engage in a genuine and inclusive dialogue with indigenous peoples at national and regional levels and to serve as focal points on indigenous peoples' issues; highlights the need for the staff of these EU delegations to be versed in indigenous peoples' rights, as affirmed under UNDRIP; welcomes the growing acknowledgement of the rights of indigenous peoples in the EU's external policies; calls for enhanced coherence between the EU's internal and external Arctic policies in this area.*<sup>10</sup>

## The legislative proposal on corporate due diligence and corporate accountability<sup>11</sup>

The European Commission conducted a public consultation on sustainable corporate governance from 30 July 2020 to 8 October 2020. More than 70 Indigenous organisations participated in this consultation. On 10 March 2021, the European Parliament adopted a resolution recommending that the Commission initiate a legislative proposal on corporate due diligence and corporate accountability. This resolution was spearheaded by the Committee on Legal Affairs (JURI), working with the Committee on International Trade (INTA), the Subcommittee on Human Rights (DROI) and the Committee on Development (DEVE). The purpose of the resolution is to influence the legislative procedure launched by the Commission on sustainable corporate governance, which is in the preparatory phase.

In its resolution, Parliament supports the adoption of binding legislation considering that *“voluntary due diligence standards have not achieved significant progress in preventing human rights and environmental harm and in enabling access to justice”*.<sup>12</sup> Parliament considered that any future mandatory Union due diligence framework should apply to all large undertakings governed by the law of a Member State, established in the territory of the Union or operating in the internal market, as well as to small- and medium-sized companies if they are publicly listed. In order to ensure that products placed on the internal market are in conformity with the environmental and human rights criteria set out in the future due diligence legislation, this should be complemented by other measures such as a prohibition of the import of products related to severe human rights violations. Furthermore, the Parliament stipulated in Article 39 of the resolution that:

*Undertakings should ensure that where the stakeholders are indigenous peoples such discussions are conducted in accordance with international human rights standards, such as the United Nations Declaration on the Rights of Indigenous Peoples, including free, prior and informed consent and indigenous peoples' right to self-determination.*<sup>13</sup>



The launch by the Commission of the legislative procedure on sustainable corporate governance, initially expected to be published in the second quarter of 2021, was subsequently postponed to December 2021, and then postponed again to March 2022. This delay has been met with criticism from civil society and many MEPs.

## **Deforestation regulation proposal of 17 November 2021<sup>14</sup>**

This proposal from the European Commission aims to minimise the consumption of products coming from supply chains associated with deforestation or forest degradation, and is the most ambitious legislative initiative on deforestation to date. It will be the first legislation to regulate not only illegal deforestation but any deforestation linked to the production of forest-risk commodities. When it comes into effect, commercial actors will need to demonstrate that such commodities were not grown or raised on land that was deforested or degraded after 31 December 2020 prior to being sold on the EU market.

Unfortunately, the proposed regulation does not require compliance with international human rights law standards, preferring to rely on the “*relevant legislation of the country of production*”.<sup>15</sup> This is a significant limitation to the rights of Indigenous Peoples and forest communities, in particular respect for customary tenure rights and the principle of free, prior and informed consent, whose rights are often inadequately protected by national laws.

As our colleagues Anouska Perram and Antoine Gibert from the Forest Peoples Programme concluded:

*While the deforestation regulation is a welcome and long overdue proposal, the failure to incorporate human rights is a major shortcoming that is likely to limit its effectiveness and generate perverse outcomes. Deforestation and human rights violations are highly correlated, and indigenous and forest peoples are recognised as some of the best guardians of the forest. Not dealing with deforestation and human rights due diligence in an integrated way is a missed opportunity for a more effective and comprehensive regulation and out of step with global sustainability standards.<sup>16</sup>*

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*The author of this article, **Mathias Wuidar**, is a human rights lawyer. He works as a representative to the EU for the Indigenous Peoples Centre for Documentation, Research and Information (Docip).*



# Indigenous Data Sovereignty

Indigenous Peoples have always been “data warriors”.<sup>1</sup> Their ancient traditions recorded and protected information and knowledge through art, carving, song, chants and other practices. Deliberate efforts to expunge these knowledge systems were part and parcel of colonisation, along with State-imposed practices of counting and classifying Indigenous populations. As a result, Indigenous Peoples often encounter severe data deficits when trying to access high-quality, culturally relevant data with which to pursue our goals. Meanwhile there is an abundance of data that reflects and serves government interests on Indigenous Peoples and their lands.

The concept of Indigenous Data Sovereignty is a relatively recent one, with the first major publication on the topic only appearing in 2016.<sup>2</sup> Indigenous Data Sovereignty is defined as the right of Indigenous Peoples to own, control, access and possess data that derive from them, and which pertain to Nation membership, knowledge systems, customs or territories.<sup>3, 4, 5</sup> Indigenous Data Sovereignty is supported by Indigenous Peoples’ inherent rights to self-determination and governance over Indigenous Peoples, territories and resources as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as in domestic treaties. Indigenous Data Sovereignty recognises that data is a strategic resource and provides a framework for the ethical use of data to advance collective Indigenous well-being and self-determination.<sup>6, 7</sup>

In practice, Indigenous Data Sovereignty means that Indigenous Peoples need to be the decision-makers in how data about them are used. Given that most Indigenous data is not in the possession of Indigenous Peoples, Indigenous data governance is seen as a key lever for addressing Indigenous Data Sov-

ereignty. Indigenous data governance harnesses Indigenous Peoples' values, rights and interests to guide decision-making about how their data are collected, accessed, stored and used.<sup>8</sup> Enacting Indigenous data governance results in Indigenous control of Indigenous data through both internal Indigenous community data governance policies and practices, and external stewardship of Indigenous data via mechanisms and frameworks that reflect Indigenous values. The COVID-19 pandemic shows that there are still no robust governance systems, ethical frameworks or regulatory mechanisms in place to protect Indigenous people and their data.

*My Great Grandmother once wrote a poem called 'Trust not the river'. In it she speaks of how a river 'beguilingly tranquil, glossily calm' can mask its dark undertows beneath a seemingly serene surface. She urges that we 'be wary and watch the way that it flows, It can burst through its banks and rampaging goes'. As an Indigenous woman working in the field of data sovereignty, it can sometimes feel like I am being pulled around by the violent undertow of a serene looking river. Rivers of information, overflowing pulling me under and spitting me back out, every time slightly more dishevelled, more disoriented, with less firm ground to find my feet. At the surface level though, there is increasing enthusiasm from research institutions and policy sectors to align their data practices with Indigenous Data Sovereignty - whatever that looks like. COVID-19 has exacerbated these issues – creating a current so strong, the riverbed is being pulled away – where I could once touch the ground, now there is nothing.<sup>9</sup>*

## Introduction

**T**he Indigenous Data Sovereignty movement continues to make exponential waves in data spaces around the globe as people pause to reflect on the many historic (and ongoing) misuses of

Indigenous-derived information.<sup>10</sup> The [re]telling of stories across generations has powerful transformative potential<sup>11</sup> and is, in itself, an act of Indigenous Data Sovereignty. For instance, a poem about a river offers insight into the ways that Indigenous Data Sovereignty scholars, advocates and activists are increasingly pulled in different, often conflicting, directions – some of which support the advancement of Indigenous Data Sovereignty and others which keep them in a continual space of responding to colonial structures.<sup>12</sup>

Through our grandmothers' wisdom, Indigenous women can reflect on the goals and politics of the past, present and future of the data space while remembering that "Indigenous Peoples have always been 'data warriors,'"<sup>13, 14, 15, 16</sup> The spirit of shared goals and the value of Indigenous women's collective knowledge<sup>17</sup> is aimed at disrupting colonial thinking. During the continuing global pandemic, throughout 2021, sharing a mutual understanding of the challenges that come with navigating the added responsibilities of our interconnected social, political, cultural and moral ethics and realities as Indigenous, women and mothers has been critical.<sup>18</sup>

The Global Indigenous Data Alliance or GIDA<sup>19</sup> brings together international organisations and individuals who share similar, overarching goals of advancing Indigenous-led data rights and interests in line with equity, justice and decolonisation, which are integral to achieving Indigenous Data Sovereignty. Indigenous data consist of any information in any format that affects Indigenous lives at the individual or collective level, including data that are born digital and traditional knowledges and information that can be or have been digitised.<sup>20, 21</sup> The ways in which all data are collected, stored, used, connected and analysed are driving policy change and innovation.<sup>22, 23</sup> International human rights documents such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) reflect the inherent rights of Indigenous Peoples and Nations to sovereignty over information, and are used as a tool to advance Indigenous-led data priorities.<sup>24, 25, 26</sup>

## Ongoing impact of COVID-19

COVID-19 continues to illuminate how the lived health experiences of Indigenous Peoples, and particularly Indigenous women, are rooted in

racism, oppression,<sup>27, 28</sup> land dispossession and displacement.<sup>29</sup> In the 2021 Indigenous World update on Indigenous Data Sovereignty, COVID-19 was described as having an exacerbating impact on existing inequities and inequalities experienced by Indigenous communities.<sup>30</sup> Limited access to quality healthcare, higher infection, and fatality rates,<sup>31</sup> as well as the differential impacts of economic and social upheaval continue to be key issues for racialised people,<sup>32, 33, 34</sup> including Indigenous Peoples during the pandemic.<sup>35, 36, 37</sup> The call remains strong from Indigenous communities for better, more reliable, and disaggregated data to be made available.<sup>38, 39, 40</sup> Importantly, there is a rapidly expanding data-glut whereby information continues to be collected but the quality of the data is ineffective for Indigenous Nations, and there is still no significant shift in making useful data available at the community level.<sup>41, 42</sup>

Indigenous women are respected and highly regarded within Nations as leaders, educators, healers, and keepers of traditional knowledges, languages, cultures and history.<sup>43</sup> Colonialism works to suppress and control the innate strength of our Nations by targeting Indigenous women and gender-diverse people, including two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual plus people (2SLGBTQIA+).<sup>44</sup> Indigenous women and gender-diverse people are key users of health systems and large creators of health data, and yet they continue to be met with gender-biased, racist and culturally insensitive policies and systems.<sup>45, 46, 47</sup> Data that are collected and analysed on systemically marginalised and racialised groups share the same messages of oppression so consistently that it reshapes our realities and weakens our abilities to overcome hardships.<sup>48</sup> The pandemic is fuelling systemic marginalisation and increasing disruption of Indigenous social, economic, political, cultural, linguistic and geographical experiences, all of which impact how well we stave off illness.<sup>49, 50</sup>

Of significant concern is that COVID-19 is a disease that has expanded and mutated at an accelerated pace, requiring governments globally to make decisions in rapid response, based on the information they have at hand. The pandemic has continued to burden and overwhelm health systems and this is having major impacts on the quality and accuracy of data that is being collected.<sup>51</sup> As a result, Indigenous

Nations and government responses to the pandemic have the potential to exacerbate harm and may fail to respond to the unique needs of individual people and Nations.

In situations of crisis, generally accepted legal conventions such as the sanctity of individual privacy are often side-lined in favour of public health and safety.<sup>52, 53</sup> For Indigenous Peoples though, even under ordinary circumstances, the sanctity of individual privacy is often a fallacy. Any models developed under conditions of “scandal and response” have historically not served systemically marginalised populations. Consider for example, the development of institutional ethics, where the processes that have been developed to protect people from harm in research have not always protected people equally or equitably. While COVID-19 is not a “scandal” per se, it is a crisis that has necessitated a prompt response. Unfortunately, what the pandemic has highlighted is that there are still no robust governance systems, ethical frameworks or regulatory mechanisms in place to protect Indigenous Peoples and their data.<sup>54</sup>

## **Indigenous-led data governance movements**

The ability to meet in person in 2021 to discuss and advance Indigenous Data Sovereignty movements was severely limited as the COVID-19 pandemic continued. Despite a lack of in-place connection, there has been a growing global recognition of Indigenous data governance and its role as a contributor to informing equitable and inclusive data governance. Ongoing pandemic-related data injustices have been a major contributor to this awareness. Increasingly, an awareness of the experiences of Indigenous women during the pandemic has also contributed to the growth of the movement both socially and politically.<sup>55</sup>

Importantly, Indigenous Peoples, scholars, journalists and activists have used this time to re-assess progress made up until this point. Despite the progress in recognition of Indigenous rights and interests, racialised and gender-biased data continue to be collected and used at unprecedented (and growing) rates “without sufficiently considering how the different structures of inequality intersect”.<sup>56</sup> Capital-driven

technological advancements in healthcare are leading to an increase in automation and algorithm usage that claims to improve and predict population health. However, health systems are not immune to the use of artificial intelligence for the purposes of racist surveillance which, as a result of the data and social contexts in which machines are taught, are inherently wrought with racial and gender bias.<sup>57, 58, 59</sup> While Indigenous Peoples are among those who receive greater exposure within data (arguably due to surveillance), they also continue to receive less effective care and are disproportionately represented in COVID-19 mortality rates on a global scale.<sup>60, 61, 62</sup>

## Ongoing limitations to Indigenous equity

There is a global movement aimed at equity<sup>63</sup> and yet there remains an apparent failure to acknowledge the limitations of true and genuine equity in a world designed exclusively for the benefit of some and not all. Over the course of 2021, the data continued to highlight that Indigenous women and gender-diverse people are dying from hunger, disease and COVID-19. Indigenous women and girls continue to go missing and are being murdered,<sup>64</sup> and mass burials of children are being uncovered in Canada and the United States at the sites of old residential schools. 2021 saw a continued rise in activist movements and calls for justice, with Indigenous women and People of Colour leading much of this awareness raising.<sup>65, 66</sup> 2021 has confirmed the need for intersectional approaches to data collection, analyses and reporting in order to design effective policy responses “that mitigate, instead of increase, the potential unequal effect of this pandemic”.<sup>67</sup>

## Indigenous Data Sovereignty and open data

The full implementation of Indigenous Data Sovereignty is hampered when larger organisations have agendas that contradict Indigenous-led data science. For instance, data spaces that hold Indigenous data should include protections that limit the misuse of Indigenous-derived



information by non-indigenous individuals. As a result, big data, open data and open science remain objectives of many data organisations and governments while continuing to challenge Indigenous Data Sovereignty in action.<sup>68, 69</sup> Too often missing from the open science-driven discussion about big data is a deeper understanding that data are not objective nor are they equitable. This is what Maggie Walter refers to as the *Indigenous data paradox*, “lots of data about us that are not useful to us (or anybody else), and little or no data for us or by us”.<sup>70</sup> The pandemic has further exacerbated this data paradox. Increasingly, genomic data are also being discussed in the open data science space, which is cause for concern for many.<sup>71, 72</sup>

## Challenges and mechanisms for change

Indigenous Peoples have been calling for equity, and fighting discrimination, harassment and exploitation for centuries. Complex and rapidly expanding digital ecosystems are having far-reaching ethical, legal, medical and policy implications.<sup>73, 74, 75</sup> Indigenous Peoples and advocacy groups continue to guide data-driven policy development and increasing awareness for Indigenous-led data governance approaches.

Government-initiated COVID-19 responses have led to the expansion of systems of surveillance and algorithmic profiling in health.<sup>76</sup> While the world moves towards models aimed at equity, there is a growing need to recognise the unique and distinct experiences of Indigenous women and gender-diverse people, including 2SLGBTQIA+ people. There is an even more growing need to explore and understand the implications of equity in a world designed exclusively for the benefit of some and not all. This idea extends to spaces where data is being yielded as a tool for equity. Reflecting on the wisdom of Indigenous women, Elders, grandmothers and ancestors, and on the role of stories and ceremony, it is increasingly clear that deeper considerations for the advancement of Indigenous-led data sovereignty are needed. 2021 has again raised the question of whether increased health data, hastily gathered without respect for Indigenous Data Sovereignty and Governance under the shadow of COVID-19, have the potential to mitigate harm, improve Nation governance, or lead to equity, and at what cost?

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**Robyn K. Rowe** (*Anishinaabe of Teme Augama Anishnabai | Deep Water by the Shore People*) is the chair of the Indigenous Data Team at Health Data Research Network, Canada, a staff scientist at ICES Centre (previously the Institute for Clinical Evaluative Sciences), and an Executive Member of the Global Indigenous Data Alliance. Email: [robyn.rowe@ices.on.ca](mailto:robyn.rowe@ices.on.ca)

**Kiri West** (*Ngāti Marutūahu*) is a lecturer in Indigenous Communications at Waipapa Taumata Rau (University of Auckland) and a member of Te Pokapu in the Te Mana Raraunga Māori Data Sovereignty Network.

**Stephanie Russo Carroll** (*Ahtna-Native Village of Kluti-Kaah*) is an Assistant Professor at the University of Arizona, USA, Chair of the Global Indigenous Data Alliance, and a co-founder of the United States Indigenous Data Sovereignty Network.



# Indigenous Peoples at the International Fund for Agricultural Development (IFAD)

The Indigenous Peoples' Forum at IFAD was established in 2011 as a permanent process of consultation and dialogue between representatives of Indigenous Peoples' institutions and organizations, IFAD and governments. The global meeting of the Forum convenes every second February in conjunction with IFAD's Governing Council, the Fund's main decision-making body. A series of regional consultations lead up to each global meeting, ensuring that the Forum reflects the diversity of perspectives and recommendations gathered from Indigenous Peoples around the world.

The overall process is guided by a steering committee (SC) composed of representatives of Indigenous Peoples' organizations from the different regions, representatives of Indigenous youth, the Indigenous Peoples Assistance Facility (IPAF) Board, the United Nations Permanent Forum on Indigenous Issues (UN-PFII) and IFAD. A unique process within the United Nations (UN) system, the Forum aims to improve IFAD's accountability, enhancing its development effectiveness for Indigenous Peoples.

The Global Forum process, including its preparatory processes, enables participants to assess IFAD's engagement with Indigenous Peoples, consult on rural development and poverty reduction, and promote the direct and effective participation of Indigenous Peoples' organizations in IFAD's operations at the country, regional and international levels. These activities help IFAD to implement its Policy on Engagement with Indigenous Peoples and translate the policy's principles into action on the ground.<sup>1</sup>

In late 2020, in preparation for the Fifth Global Meeting of the Indigenous Peoples' Forum at IFAD, regional and subregional Indigenous consultation meetings were held in Africa, Asia, Latin America and the Caribbean, and the Pacific.<sup>2</sup>

The Fifth Global Meeting of the Indigenous Peoples' Forum at IFAD took place virtually on 2, 3, 4 and 15 February 2021,<sup>3</sup> in conjunction with the 44<sup>th</sup> session of the IFAD Governing Council. The meeting brought together 150 Indigenous Peoples' representatives from Africa, Asia and the Pacific, and Latin America and the Caribbean, to exchange views on developments in their partnership with IFAD. Representatives from partner organizations such as NGOs, foundations, international organizations, UN agencies, research institutes and universities joined the meeting as observers or speakers during side events and Indigenous Peoples' Week. Overall, the Forum saw the participation of 700 attendees, including over 370 live viewers through YouTube.

## The Forum's opening

The global meeting was officially opened by IFAD's President, Mr Gilbert Houngbo. The President highlighted the fact that the fifth global meeting represented a milestone in the partnership between IFAD and Indigenous Peoples as it marked 10 years since the first meeting of the Forum. He stressed IFAD's commitment to contribute to a world without poverty and hunger by joining forces with Indigenous Peoples, who are partners in development and stewards of nature and of a vast reservoir of traditional knowledge around the world. At the same time, IFAD's President recognized that working with Indigenous Peoples requires a commitment to social justice and to leaving no-one behind.

While the COVID-19 pandemic has devastated the lives of millions of people across the globe, "It also drives us to find ways to live more harmoniously with nature," he said. Bringing Indigenous knowledge and practices into global food systems "can spur new and creative solutions to the challenges we face, especially climate change. And it can help put an end to bad practices that harm Indigenous Peoples and nature." He concluded by emphasizing that the ideas and insights to be shared during the global meeting were extremely relevant to shaping the part-



nership with IFAD over the next two years, making a valuable contribution to the Food Systems Summit (FSS), and delivering the 2030 agenda.

In their opening speeches, members of the Steering Committee of the Indigenous Peoples' Forum at IFAD (SC) further focused on the results achieved in the partnership between Indigenous Peoples and IFAD, and on expressing deep appreciation for IFAD's commitment and support over the years.

## **Partnership in progress**

As is the practice at the global meetings of the Indigenous Peoples' Forum, IFAD presented a report analyzing the trends and developments in IFAD's partnership with Indigenous Peoples over the biennium (2019-2020) and taking stock of IFAD's various experiences in collaborating with Indigenous Peoples, while investigating the forms of ongoing collaboration and highlighting success stories and achievements.<sup>4</sup>

Results achieved so far in the implementation of projects under the Indigenous Peoples Assistance Facility (IPAF) in Latin America and the Caribbean, Africa, and Asia and the Pacific respectively were presented. The added value of the Facility was emphasized by all speakers as a unique instrument for supporting Indigenous Peoples' self-driven development, empowering Indigenous women and youth, and promoting the systematization and dissemination of Indigenous knowledge and practices.<sup>5</sup>

## **The theme of the Forum: the value of indigenous food systems – resilience in the context of the COVID-19 pandemic**

Many interventions and presentations by Indigenous Peoples' representatives, IFAD staff, and partners enriched the discussion and enabled participants in the Forum to engage in dialogue on issues of relevance to the Forum's theme, strengthen mutual knowledge, and assess opportunities for developing synergies and partnerships.

Ms Myrna Cunningham introduced the theme of the Forum and

provided context to guide the discussion. She emphasized the relevance of Indigenous food systems and knowledge and urged IFAD and development partners to consider Indigenous Peoples as “game changers” for healthier and more inclusive, sustainable, and equitable food systems. She reminded participants of the 2021 UN Food Systems Summit (FSS) as a unique opportunity for transforming food systems and she welcomed the presence of Dr Agnes Kalibata (UN Special Envoy for the FSS) at the global meeting.

The reports from the regional consultation meetings held in preparation for the Indigenous Peoples’ Forum strongly emphasized the linkages between promoting Indigenous Peoples’ food systems and Indigenous Peoples’ food security and sovereignty. They reiterated how Indigenous Peoples’ livelihoods – small-scale farming, pastoralism, shifting cultivation, fishing, hunting and gathering – have ensured the food sovereignty and health and well-being of Indigenous communities for generations and contributed to biodiversity conservation and sustainable development benefiting all humankind. They emphasized that their livelihoods and traditional practices should be adequately valued and supported. Speakers unanimously emphasized that ensuring the exercise and protection of the rights of Indigenous Peoples, including access to and management of land, territories and natural resources for Indigenous Peoples, is necessary to ensure the existence of Indigenous Peoples themselves and their self-determined development.

Another aspect considered vital was related to the need to value Indigenous Peoples’ knowledge and cultural heritage and to promote knowledge generation and sharing on Indigenous food systems and traditional practices, with a particular focus on intergenerational learning and transmission.

Indigenous representatives highlighted the importance of recovering and strengthening the production of traditional medicines, seeds, crops and Indigenous food with high nutritional potential, and of supporting access to markets for Indigenous products through community-based social enterprises and economic initiatives of Indigenous Peoples, the recognition of Participatory Guarantee Systems, and improved access to market information and infrastructure facilities for Indigenous communities. Strong emphasis was also placed on improving youth and women’s participation and capacity-building and the need to enhance and ensure access to and use of information and communication technology by Indigenous Peoples.

Finally, all the speakers underlined the need for Indigenous Peoples to meaningfully engage in the FSS process and ensure that their voice is heard and integrated in global commitments. They urged that the recommendations of the Forum be integrated into the Summit's final deliberations and brought to the highest level of decision-making to ensure achievement of the SDGs.

## The 2021 Indigenous Peoples Awards Ceremony<sup>6</sup>

For the first time in the Forum's history, IFAD launched the Indigenous Peoples Awards, which aim to recognize the achievements of development projects that have effectively engaged with Indigenous Peoples. The three winners among the candidate proposals were announced. The project *"Rural development: Public services improvement for sustainable territorial development in the Apurímac, Ene and Mantaro river basins,"* implemented in Peru, received the award as Best-Performing IFAD-Funded Project. The award as Best Performing IPAF-Funded Project was given to the project *"Gender and climate change community-based adaptation, through conservation of the environment and drilling of a borehole equipped with a solar-powered pump."* This project is being implemented in Cameroon by the African Indigenous Women Organization Central African Network (AIWO-CAN). The Best Performing Non-IFAD-Funded Project was given to a project in India, *"No-one shall be left behind initiative: Biodiversity for food, nutrition and energy security for 3,000 households in Meghalaya and Nagaland,"* which is being implemented by the North East Slow Food & Agrobiodiversity Society (NESFAS).

## Synthesis of deliberations

Based on the discussions and contributions from the debates, the *Synthesis of Deliberations* of the 2021 global meeting of the Indigenous Peoples' Forum at IFAD was adopted.<sup>7</sup>

In the synthesis of deliberations, Indigenous Peoples stated that:

- The COVID-19 pandemic has increased existing vulnerabilities

and exacerbated underlying structural inequalities, socio-economic marginalization, and pervasive discrimination of Indigenous Peoples.

- The pandemic is disproportionately affecting and impacting Indigenous communities and posing enormous risks to their physical and cultural existence. The situation of Indigenous women, who are often the main providers of food and nutrition to Indigenous families, is even more serious.
- Indigenous Peoples called on IFAD, governments, development partners and the private sector – including investors – to help change the narrative and to recognize that Indigenous food systems hold a wealth of knowledge, experience, values, traditions and development concepts which – if adequately supported – can contribute to the well-being and health of all humankind.
- They also urged IFAD, United Nations agencies, governments and development partners to look at Indigenous Peoples as game changers for healthier and more inclusive, sustainable and equitable food systems that offer sustainable solutions for developing a more caring and equitable post-pandemic world, while preserving and safeguarding the health of the planet.

The synthesis of deliberations concluded with 28 recommendations addressed to the United Nations Food Systems Summit, IFAD, governments, and Indigenous Peoples.<sup>8</sup>

## Closing of the Forum

In his closing remarks, Mr Dominik Ziller (Vice-President of IFAD) stated that IFAD was not blind to the situation of Indigenous Peoples and was aware that Indigenous communities are more than twice as likely as the non-indigenous population to live in extreme poverty. He noted that many face an additional threat from the mechanisms developed to help the world recover from the COVID-19 crisis, and which may further deprive them of access to land and natural resources. He underlined that, as a UN specialized agency, "IFAD is aware that the exclusion and marginalization of Indigenous communities threatens the central tenet of the 2030 Agenda to leave no one behind."

He concluded by affirming IFAD's commitment to keep the momentum going, to make every effort to translate the Forum's deliberations into meaningful, timely and concrete actions, to ensure that the key messages of the Forum are brought to the FSS, and to actively support the implementation of the regional action plans and the enhancement of the IPAF.

## **Indigenous Week 2021**

The Indigenous Week took place from 8-12 February 2021.<sup>9</sup> It hosted thematic and cultural events to enrich the dialogue between Indigenous Peoples, IFAD and development partners on a wide range of themes, including Indigenous food systems, languages and cultural diversity; Indigenous Peoples' rights to land, territories and resources; best practices in the application of FPIC; and biodiversity conservation and agroecology.

The International Land Coalition (ILC) and IWGIA organized a virtual event on Advancing Indigenous Peoples' land and territorial rights, which was attended by more than 90 participants. During the event, Indigenous representatives from different parts of the world shared and discussed strategies to advance support to Indigenous Peoples in their struggle to defend their lands, territories and resources. The session was particularly oriented towards understanding current trends and what needs to be done to scale up political and financial support for this cause.

The Indigenous Week was accompanied and complemented by the Indigenous Peoples' Film Festival,<sup>10</sup> where documentaries and films on Indigenous Peoples were made available to the public during the week.

## **Indigenous Peoples at IFAD's Governing Council**

On 17 February 2021, the Synthesis of Deliberations of the Indigenous Peoples' Forum was delivered to the 44<sup>th</sup> session of the IFAD Governing Council by Ms Rayanne Franca from the Global Indigenous Youth Caucus (Brazil). Following the reading, the President of IFAD took the floor to recognize all the Indigenous representatives who had brought

the voices of their peoples to the Forum and to reiterate IFAD's commitment to further strengthen the partnership with Indigenous Peoples and to support the effective participation of Indigenous Peoples in the planning and organization of the Food Systems Summit.

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**Lola García-Alix** is IWGIA's Senior Adviser on Global Governance.



# Indigenous Peoples' Engagement in the United Nations Food Systems Summit

Under the leadership of UN Secretary-General António Guterres, the UN Food Systems Summit took place on Thursday 23 September 2021. It was a completely virtual event during the UN General Assembly High-Level Week.

The UN Food Systems Summit (FSS) was intended to provide an historic opportunity to empower all people to leverage the power of food systems to drive the world's recovery from the COVID-19 pandemic and get us back on track to achieve all 17 Sustainable Development Goals (SDGs) by 2030. Over 18 months, the Summit brought together all UN Member States and stakeholders around the world – including thousands of youth, food producers, Indigenous Peoples, civil society, researchers, private sector, and the UN system – to bring about tangible, positive changes in the world's food systems. The Summit was the culmination of this global process, offering a catalytic moment for public mobilization and action-oriented commitments by heads of state, government and other constituency leaders to take this agenda forward.

In 2020, Indigenous Peoples decided to actively engage in the process towards the Food Systems Summit, to publicize the values of their food systems and advocate for their recognition and protection.

In June and July 2021, Indigenous Peoples organized global and regional independent dialogues that were intended to ensure that the Food Systems Summit's outcomes included input from Indigenous Peoples. These independent dialogues

were led by Indigenous Peoples themselves and provided a unique opportunity to consolidate their positions and articulate their recommendations in order to formally engage with the Summit process through an official mechanism.

The recommendations that resulted from the Indigenous Peoples Independent Dialogues were presented at the Pre-Summit for the FSS that was held in Rome from 26-28 July 2021.

Throughout the Food Systems Summit process, Indigenous Peoples clearly expressed their commitment to being part of the solution, if their contributions were respected and were fully and meaningfully included in decision-making processes at all levels.

**T**he world's dominant food systems are major contributors to the current social, environmental and economic crises that are affecting the entire planet: food insecurity, climate change, biodiversity loss, topsoil erosion, deforestation and conflict. In contrast, Indigenous Peoples' food and knowledge systems are ecologically sustainable, resilient, nutritious, equitable and self-determined. Indigenous Peoples have been, and continue to be, vital to agricultural innovation, biodiversity, global food security and the health and well-being of diverse and resilient societies.

Indigenous Peoples' food systems are the basis of their identities and of their life systems. Their resilience is intrinsic to their ecosystems and biodiversity. Their food systems are based on their Indigenous knowledge and practices, passed down between generations. Given the high level of self-sufficiency, ensuring and preserving Indigenous Peoples' food systems is essential to guarantee the food security of the 476 million Indigenous people in the world.<sup>1</sup>

Indigenous Peoples decided to engage in the preparations for the Food Systems Summit as they believed that their food systems could crucially contribute to this global event. They also saw the Summit as an opportunity to acknowledge the importance of protecting their territorial management, knowledge, governance, value systems, spirituality



and collective rights, which is the basis for enhancing and promoting Indigenous Peoples' food systems.

As stated in the Indigenous Peoples' joint statement submitted at the Pre-Summit of the FSS held in Rome from 26 to 28 July 2021:

*Indigenous Peoples have decided to participate in this journey towards the Food Systems Summit to publicize the values of our food systems. Systems that are based on our traditional value of having a sacred and caring relationship with Mother Earth. This sacred relationship with nature has allowed us to develop values of consensus building, gender equity and participation in collective territories.<sup>2</sup>*

## **The White/Wiphala Paper on Indigenous Peoples' Food Systems<sup>3</sup>**

As an evidence-based contribution to promote the incorporation of the principles and values of Indigenous Peoples' food systems into the Food Systems Summit's agenda, and into the policy discussions and programs beyond the Summit, the Global-Hub on Indigenous Peoples' Food Systems at FAO<sup>4</sup> produced the White/Wiphala Paper on Indigenous Peoples' Food Systems. The paper was the result of collective work by Indigenous and non-Indigenous experts, scientists and researchers.

The White/Wiphala Paper articulates the importance of respecting Indigenous Peoples' right to ensure the protection and preservation of their food systems, and the value this can add to tackling emerging global challenges. Furthermore, it advocates for the fact that Indigenous Peoples' approach to food will contribute to the resilience and sustainability of other food systems worldwide. The paper provides evidence of the sustainability of Indigenous Peoples' food systems, including the ways in which they have proven resilient over time. It highlights the risks of not taking on board the time-tested contributions that Indigenous Peoples have made and continue to make for sustainability and territorial management, among other dimensions. It also addresses the ongoing policy contradictions and limitations in meeting the Sustainable Development Goals (SDGs), Conference of the Parties

(COP) to the United Nations Framework Convention on Climate Change (UNFCCC) debates and international agreements on sustainability.

To support the process leading up to the UN Food Systems Summit, the White/Wiphala Paper included specific proposals under each of the five Action Tracks pursued by the UN Food Systems Summit.<sup>5</sup> In addition, FAO coordinated knowledge exchanges with the Scientific Group and Action Track Technical Committees of the FSS aimed at putting Indigenous Peoples at the forefront of the UN Food Systems Pre-Summit.<sup>6</sup> The combined efforts undertaken by FAO and Indigenous Peoples in publishing the White/Wiphala paper and presenting it through knowledge exchanges resulted in a significant recognition of Indigenous Peoples' food systems in the work and publications<sup>7</sup> of the Scientific Group of the UN Food Systems Summit.

## **Indigenous Peoples' Engagement: the Indigenous Peoples' Independent Dialogues**

Between May and July 2021, 26 independent regional dialogues and three global dialogues led by Indigenous Peoples were organized, with the participation of 1,455 people representing 219 Indigenous organizations from the seven sociocultural regions of the world. The dialogues were organized with the support of the FSS Secretariat through IFAD, IWGIA, FAO and FILAC.

The results of the dialogues were action-oriented recommendations developed by Indigenous Peoples with regard to recognizing and protecting their food systems, and these were submitted to the Food Systems Summit Secretariat, UN Member States and other stakeholders and presented at the Pre-Summit held in Rome (26-28 July 2021) and at the Summit itself held in New York on 23 September.

## **Challenges encountered**

During the independent dialogues, many participants considered Indigenous Peoples' engagement in the Summit preparations to be insufficient and with too short notice. They reiterated the importance of early and meaningful participation in all Summit planning, including

participation in the Scientific Group. Indigenous Peoples' political participation in the FSS must not be limited to spiritual ceremonies but they must be given policy space and be respected in the game-changing solutions. Ensuring meaningful engagement of Indigenous Youth and Indigenous Women was considered a key step towards an inclusive Summit.

Another challenge identified by Indigenous Peoples with regard to their effective engagement and meaningful contribution to the process was the many different categories of initiatives seeking attention and input: "Action Tracks, clusters, game-changing solutions, coalitions," etc. They did, however, stress that their engagement in the Summit was an opportunity to improve the understanding of UN Member States, the UN system, and Scientific Communities and other stakeholders with regard to Indigenous Peoples' historic and necessary relationships with their land, territories and natural resources.

## **Some highlights from the Indigenous Peoples Independent Dialogues**

All Indigenous Peoples' independent dialogues organized to prepare for the FSS stated that the immediate security and long-term sustainability of Indigenous Peoples' food systems depend on the recognition and protection of their distinct collective and individual rights. They emphasized that Indigenous Rights are independent, indivisible, interrelated and interconnected.

They also affirmed Indigenous Peoples' right to self-determination, the importance of addressing the vulnerabilities resulting from their many forms of marginalization and exclusion, and the significance of recognizing that Indigenous Peoples' food systems and related knowledge and belief systems have been developed to be sustainable over thousands of years. Evidence supports the ability of Indigenous Peoples' approaches to food production to preserve biodiversity, provide diverse and nutritious diets, and be resilient and adaptive to external shocks, including climate change.

All independent dialogues emphasized that a lack of respect for and recognition of Indigenous Peoples' right to self-determination, to the management and co-management of their resources in order to en-

sure their productive capacity, as well as impediments to recognizing their knowledge, were resulting in adverse impacts on their livelihoods, their ability to sustain themselves and their food production.

During the dialogues, Indigenous Peoples' representatives described the great diversity of traditional food systems and their context-specific challenges to food security. The contributions presented demonstrated that Indigenous Peoples' food systems are resilient and regenerative and are in themselves a game-changing proposition for the achievement of healthy, sustainable food and all the Sustainable Development Goals (SDGs). They stressed that Indigenous Peoples' engagement in the transformation of food systems was fundamental to nature-positive solutions that can address biodiversity loss and climate change.

Indigenous Peoples stated that food sovereignty is necessary for sustainable food security. For them, food sovereignty means being able to manage their own cultivated or wild harvests in a way that meets their cultural, spiritual, economic and nutritional needs. Food sovereignty includes the ability to influence decisions that have an impact on the conditions for self-sufficiency in traditional food generation, including from non-agricultural means. They also identified the fact that violations of Indigenous Peoples' right to access and protect the integrity of their lands and ecosystems was a systematic barrier to their food sovereignty.

Several reports and declarations resulting from the independent dialogues asked governments and funders to commit to investing in infrastructure and capacity building for and by Indigenous Peoples' communities in order to build processing centers for foods and community gardens/growing areas for traditional foods, and to connect to composting, recycling systems and networks to reduce waste.

## **The demands made by Indigenous Peoples in their joint statement during the Pre-Summit for the FSS**

- Full realization of the rights of Indigenous Peoples, as outlined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), for all avenues of action, and beyond the Food Systems Summit. The right of Indigenous Peoples to land, territories and natural resources, and their right to self-determination, are preconditions for the full and effective realization

of all the other rights set out in the 2007 United Nations Declaration of Indigenous Peoples.

- The creation of a trust fund dedicated to promoting the Indigenous Peoples' food systems, led and administered by Indigenous Peoples.
- In following up the post-summit commitments, Indigenous Peoples will create a food systems platform, with the participation of governments and UN agencies, to meet once a year in order to follow-up and support the implementation of the Summit's recommendations.
- In order to move towards healthier, more sustainable and inclusive food systems, Indigenous Peoples called for their knowledge systems to be respected and valued with equal consideration within the interface and dialogues between science and policy.

## **The FSS: success or failure**

There is no doubt that the Food Systems Summit convened under the UN General Assembly on 23 September 2021 helped to raise the profile of global food challenges. Preparations for the Summit, and the event itself, were however overshadowed by disagreements and public criticism from many scientists, human rights experts, civil society and grassroots organizations with regard to the Summit process being captured by corporate interests.

After the Summit, many stakeholders, particularly civil society organizations, reiterated their criticism and particularly noted that the Summit had not addressed the main issues around the food challenges of today's world; how COVID-19 is worsening hunger and malnutrition; how existing power structures are causing marginalized groups and Indigenous Peoples to be disproportionately affected by food insecurity; and how to rein in the emissions associated with food production. Many assessed that it was a failed summit that had failed the people, the planet and the real needs of the world's people today.

Indigenous Peoples who had been actively engaged in the Summit's preparation process and in the General Assembly event had also hoped for much more from such a global event. They were clearly dis-

appointed with the Summit's failure to properly address the need for a rights-based approach to combating the food crisis, and that Indigenous Peoples' food systems were not clearly recognized as a key game-changing proposition for achieving healthy, sustainable food and all the Sustainable Development Goals (SDGs). Disappointment was also expressed about the Summit not calling for bolder actions and commitments.

However, they also acknowledged that the Secretary-General's Chair Summary and Statement of Action on the UN Food Systems Summit,<sup>8</sup> which was the outcome document of the event, recognized the need to engage Indigenous Peoples and other marginalized sectors of society and the Secretary-General asked for food to be viewed not just as a commodity but as a right.

## **The creation of the Coalition on Indigenous Peoples' Food Systems**

One of the main outcomes of Indigenous Peoples' intensive advocacy during the FSS process was the creation of a Coalition on Indigenous Peoples' Food Systems by Indigenous Peoples and seven Member States.<sup>9</sup> The coalition was created as a collective space of work that could bring together countries, Indigenous organizations and UN agencies to work together on issues related to Indigenous Peoples' food systems. It aims to further ensure the understanding, respect, recognition, inclusion and protection of Indigenous Peoples' food systems while providing knowledge-based evidence on their "game-changing and systemic" aspects. The coalition will be led by Indigenous Peoples and supported by member states and other stakeholders who join the coalition. It will be assisted by the Global Hub on Indigenous Peoples' Food Systems hosted by FAO.

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**Lola García-Alix** is IWGIA's Senior Adviser on Global Governance.



# Indigenous Persons with Disabilities Global Network (IPWDGN)

Over 1 billion people, or approximately 15% of the world's population, are persons with disabilities.<sup>1</sup> Applying this percentage to the estimated 476 million Indigenous Peoples globally, the number of Indigenous persons with disabilities stands at approximately 71 million.<sup>2</sup> Similarly, if this percentage of 15% of the population with disabilities were applied to the estimated 185 million Indigenous women worldwide, it would come to 28 million Indigenous women with disabilities globally.<sup>3</sup> The Indigenous Persons with Disabilities Global Network (IPWDGN) estimates that 45 million of these Indigenous people with disabilities live in the Asia Pacific region, in developing and under-developed countries.<sup>4</sup>

Several studies have reflected the higher prevalence of disabilities among Indigenous Peoples because of a high level of poverty, increased exposure to environmental degradation, malnutrition, the impact of large projects such as dams or mining activities and the higher risk of being victims of violence.<sup>5</sup> Indigenous people with disabilities face exclusion, marginalization, and multiple layers of discrimination, and face barriers to the full enjoyment of their rights, based on their disability, ethnic origin and gender. And yet despite higher rates of disability in Indigenous communities, in most cases little or no attention is given to their situation, and they have no access to the services and support they need to participate fully in wider society and their own communities.<sup>6</sup>

The IPWDGN works to protect, promote and advance the rights of Indigenous persons with disabilities, including respect for their unique identity to live dignified lives in their communities. It is representative of the diverse geopolitical region from local to global levels from seven regions.



PWDGN's major focus in 2021 was to ensure the effective participation of Indigenous people, and especially Indigenous women, with disabilities on the global platform of the 2<sup>nd</sup> World Conference of Indigenous Women. Its aim was to address the structural and historical gap within Indigenous women by ensuring the voices, issues and active engagement of Indigenous women with disabilities in the global forum/debate. This year has been an historic milestone in terms of bringing the realities and challenges experienced by Indigenous women with disabilities to the 2<sup>nd</sup> World Conference for the first time and has paved the way for moving collectively forward in an organized manner. In collaboration with IPWDGN, the Foro Internacional de Mujeres Indígenas (FIMI) and other regional organizers, the National Indigenous Disabled Women Association Nepal (NIDWAN) team was able to set a benchmark for disability inclusion and collaboration this year and hopes this will be a continued effort carried forward by everyone in order to move one step closer to reaching the most marginalized groups as enshrined in the Articles 21 and 22 of the UNDRIP and ensuring that no-one is left behind.

## **Indigenous women with disabilities: a path towards inclusion and collaboration in 2021**

The different forms of millennial historical, structural, systematic and direct discrimination of 54 million Indigenous persons with disabilities globally<sup>7</sup> are a contributing factor in the regular violation of their human rights. Moreover, the COVID-19 pandemic has unfolded against the backdrop of several important milestones for equality and the human rights of various marginalized groups, including Indigenous Peoples, women and persons with disabilities and their intersections.<sup>8</sup> This discrimination is evident not only in terms of stigma, social norms and values but also in the national laws and policies, both in the private and public sphere, including within and beyond the movement. For Indigenous girls and women with disabilities, who number 28 million<sup>9</sup> globally, they face multiple and intersecting forms of disadvantage that combine, interact and intensify in a compounded form, placing them at a unique disadvantage and on the lowest level of the social hierarchy. The voices of Indigenous girls and women with disabilities are so often invisible, unheard, unseen and unaddressed.

There are two prominent reasons for this. First, like other disabled people, Indigenous persons with disabilities are seen as “non-contributors” and “disability-related stigma and stereotypes” exist within us. Issues around basic rights such as education, food, health, employment, accessibility, access to information and participation, including matters such as water, sanitation and hygiene (WASH), marriage, motherhood, violence, abuse, forced sterilization, institutionalization, increased vulnerability due to disasters and climate change, have been not widely debated nor garnered much attention. Second, due to multiple identities, diverse impairment and social barriers, Indigenous people/women with disabilities themselves are not able to be self- and institutionally-organized to claim their rights either in the private or public spheres.

Nonetheless, the data, facts and evidence from the ground show that the prevalence of disability among Indigenous Peoples is higher in most countries across the world due to high levels of poverty, increased exposure to environmental degradation, malnutrition, the impact of large projects such as dams or mining activities and the higher risk of being victims of violence. Realizing this fact, the IPWDGN has been advocating on disability issues with meaningful participation at all levels in order to discuss the issues that affect these people’s daily lives. However, there is a need for disability inclusion, accessibility, support and an enabling environment to enhance the necessary work and advocacy. During the ongoing COVID pandemic, this year’s work addressed some of the achievements of Indigenous girls and women with disabilities through the NIDWAN, as described below.

## **Historic landmark in the 2<sup>nd</sup> World Conference of Indigenous Women (2WCIW)**

The 2<sup>nd</sup> World Conference of Indigenous Women (2WCIW), held from 12 August to 2 September, was organized and took place in 2021 with the attendance of more than 1,200 Indigenous women from the seven different geopolitical regions of the world. Indigenous elders, leaders, women experts, delegates, member states, media and others gathered to discuss the Indigenous women's agenda for the coming years. The conference ensured the inclusion of Indigenous women with disabilities from the start of the process. The 2WCIW set a landmark by providing

an outstanding opportunity to raise and amplify the voices of Indigenous women with disabilities through various side events, official and unofficial meetings, consultations, etc. aimed at ensuring the maximum participation. The participation of Indigenous women with disabilities was ensured at NIDWAN's initiative, in collaboration with IPWDGN.

Ms Pratima Gurung, the General Secretary of IPWDGN, spoke in the opening plenary session of the 2WCIW. During the session, she presented Indigenous women with disabilities as “contributors” to the family and society, she stressed the importance of meaningful participation of Indigenous women with disabilities at all levels and emphasized the need for a better and more accessible space for disability inclusion. She reiterated the urgent need to clearly outline the issues faced by Indigenous women with disabilities in all documents, policies and implementation on the ground in order to safeguard their rights to live in a dignified way.

Apart from this intervention, NIDWAN held four major virtual side events during the 2WCIW. All events had sign language interpreters (SLI) and Nepali translation to ensure that the virtual sessions were inclusive. The first side event was on Access, Identity and Representation of Indigenous Women of Nepal at all levels, held on 12 August 2021 with the collaboration of four Indigenous Women's organizations from Nepal. The second event focused on Effective and Meaningful Participation of Indigenous Women with Disabilities and took place on 13 August 2021. The third virtual event was on UNDRIP, UNPFII Recommendations and the Outcome Document from the World Conference, held on 20 August 2021. The fourth and last virtual event was on the issue of Intersectionality - A Look at Women with Disabilities, held on 26 August 2021, in collaboration with the International Forum on Indigenous Women (FIMI). The speakers for these sessions included the Vice-Chair of the Committee on the Elimination of Discrimination against Women (CEDAW), Nepali government representatives, the Network of Indigenous Women in Asia (NIWA), EMRIP, IPWDGN members, representatives of Indigenous Peoples from the seven geopolitical regions and development partners. These sessions framed a comprehensive and deeper understanding of the issues facing Indigenous women with disabilities and framed a collective approach to moving forward through an intersectional approach that prioritizes their realities on the ground.

At the end of the 2WCIW, the landmark success for Indigenous Women with disabilities was that their issues were incorporated into

the Global Political Declaration of Indigenous Women,<sup>10</sup> which acknowledged Indigenous women's diversity and expressed a strong commitment to continue the collective journey for a collective cause.

## **Reaching unreached voices nationally and regionally**

Understanding that the cycle of exclusion of Indigenous women with disabilities cannot be broken by the efforts of a few people and/or a few years of advocacy, NIDWAN has been instrumental in coordinating with national, regional and global organizations to strengthen the network of Indigenous peoples/women with disabilities across the seven provinces of Nepal. In addition, during the 2WCIW, NIDWAN facilitated the formation of the Indigenous Women with Disabilities Network in Asia and continued looking for support to enhance the network. This network will identify, unite and advocate for Indigenous women with disabilities across Asia. In 2021, NIDWAN commenced the first assessment of Indigenous people with disabilities in Asia.

With the support of FIMI and AIPP, NIDWAN was able to publish the Political Outcomes Document for Indigenous Women and Women with Disabilities<sup>11</sup> in different accessible formats, such as in Nepali plain language (for all), braille (visually impaired), Easy-to-Read Version (for autism, psychosocial disability and other disabilities) and video with Sign Language Interpreter, captioning and pictures (for deaf people)). These documents address the diverse needs of Indigenous people with disabilities and will be used for wider advocacy initiatives at national, regional and global level. In addition, NIDWAN published "Indigenous Women and Girls in Nepal: A Brief Overview,"<sup>12</sup> which is a compilation of existing data, facts, findings, and information on Indigenous people/women with disabilities.

## **Research and documentation on Indigenous people and women with disabilities**

A lack of data, information and research on Indigenous persons, including Indigenous women with disabilities, has always been one of

the most challenging realities and so, with this in mind, NIDWAN has carried out research on various topics such as the impact of climate change, COVID-19, intersectional issues and violence. NIDWAN successfully published an “Interim Impact Assessment of COVID-19 to Underrepresented (Indigenous, Dalit, and Madhesi) Peoples with Disabilities in Nepal.”<sup>13</sup> It also published reports on 1) Violence Against Indigenous Women and Indigenous Women with Disabilities; 2) Aspiration and realities to imagine violencefree lives for Indigenous Women and Indigenous Women with Disabilities: An initial step towards it ; 3) Intersectionality and Marginalization: A study of Indigenous women with Disabilities in Nepal; and 4) Impacts of Climate Change on Indigenous Women with Disabilities.

In 2021, the World Food Program Nepal conducted a Study on Access to Food of Indigenous Peoples with Disabilities in Nepal, which was the first time that such a report had focused on Indigenous women with disabilities. This was a remarkable achievement that opened a debate around the nexus of gender, disability, indigeneity and intersectionality. As a result of the advocacy efforts undertaken, global media attention and coverage was given to the issues facing Indigenous women with disabilities, for example through the UN Office for Disaster Risk Reduction (UNDRR),<sup>14</sup> the Global Alliance for Green and Gender Action (GAGGA),<sup>15</sup> the Equality Fund,<sup>16</sup> and the QUT University.<sup>17</sup>

## **Celebrating the International Day of the World’s Indigenous Peoples with a call for action from global experts and leaders**

In the context of celebrating the International Day of the World’s Indigenous Peoples, NIDWAN held a virtual session entitled “Global Dialogue on COVID-19 Impact on Indigenous Peoples with Disabilities, their inclusion and meaningful participation at all levels”, which was held on 2 August 2021. The event was organized in collaboration with the Minority Rights Group International (MRG), UN Development Programme (UNDP) in Nepal and other co-organizers such as the Nepal Federation of Indigenous Nationalities (NEFIN), National Indigenous Women’s Federation (NIWF) of Nepal and others. The speakers for this session were Mr Fransico Calí Tzay, UN Special Rapporteur on the rights of indigenous

peoples, Mr Vladimir Cuk, Executive Director of the International Disability Alliance (IDA), Mr Gam Shimray, Secretary General of the Asia Indigenous Peoples Pact, Ms Binda Thapa, Gender Policy Adviser to UNDP in Nepal and Ms Pratima Gurung. The session was moderated by Ms Sushila Thapa Magar, who made a collective call for action to ensure, protect and promote the rights of Indigenous persons with disabilities during emergencies and normal times. All the speakers reflected on the multiple aspects of Indigenous persons with disabilities. Data provided during the event stated that 91.13% Indigenous persons with disabilities had experienced social and economic impacts due to the COVID-19 pandemic, 60.74% had lost their livelihood during COVID and 55.44% had not received any COVID relief or support. They all therefore pledged to call for action from all member states, governments, development partners in order to produce a concrete plan and to work collectively.

## **Advocating for marginalized voices globally and nationally**

2021 has been instrumental in advocating for voices globally and nationally. The NIDWAN team engaged in oral and written interventions to the following international bodies: the Commission on the Status of Women, the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, UN Permanent Forum on Indigenous Issues, the United Nations Framework Convention on Climate Change, CEDAW Committee, Women's Philanthropy Sessions and also submitted a written submission on the Situation of Indigenous Women and Girls with Disabilities to the CEDAW Committee as a contribution to the preparation of its General Recommendation on Indigenous Women and Girls. The written submission focused on the issues facing Indigenous women with disabilities and NIDWAN was also able to make an oral intervention to the CEDAW Committee.

NIDWAN's team, Ms Pratima Gurung and Ms Sajana Gurung, presented to the 14th Conference of States Parties to the Convention on the Rights of Persons with Disabilities' side event on operationalizing disability-inclusive education in a low-income country context. "Nothing about us, without us: Amplifying the priorities of women and girls

with disabilities at the CRPD and CEDAW Committees in the post COVID recovery process”, and on the General Recommendation of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) on 15 June 2021.

In addition, Ms Gurung spoke to the Indigenous Peoples Caucus during the 26<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change highlighting the need to establish a Disability Caucus. Prior to COP 26, she also spoke in two webinars, one entitled “Can South Asia Combat the Climate Crisis?” on 31 October and the other entitled “Disability-Inclusive Climate Action: Rights and Obligations.” Ms Gurung also shared her opinions in “Transformation: Young Feminists Creating the Future ” organized by the Equality Fund on 23 September 2021.

In April 2021, NIDWAN also invited Ms Bandana Rana and Ms Ana Peláez Narváez, CEDAW Committee Members, to the 26<sup>th</sup> and 27<sup>th</sup> IDWAN Discussion Series (NDS) to discuss Indigenous Women’s rights in the CEDAW Committee and the Inclusion of Women with Disabilities’ Issues in its General Recommendation on Indigenous Women and Girls. NIDWAN also engaged with feminist allies on issues related to Environmental Justice and contributed to a global discussion on multiple and intersectional voices in “Feminist Climate Solutions for People and Planet: The Power of Cross-Movement Collaboration for Climate Justice”, which was part of the Shimmering Solidarity: Global Rights Summit.<sup>18</sup> Moreover, at the 20<sup>th</sup> Session of UNPFII, Ms Gurung gave a presentation at a side event organized by the World Food Program on “WFP and Indigenous Peoples: generating evidence for action”, which focused on Indigenous Peoples with disabilities in Nepal and their access to food. At the Generation Equality Forum 2021, NIDWAN gave a presentation on “Beijing+25/26 Review and Discussion, focusing on Accountability.”

During the year, NIDWAN continued to contribute to issues related to Indigenous women with disabilities, producing several articles for international journals and the organization was also able to reach 2,950+ direct and 3,300+indirect beneficiaries at the grassroots level through different support, services and training.

Through these initiatives, the voices of Indigenous persons with disabilities are being heard. However, there are numerous challenges in terms of access to information, health, food, education, participation

and, in most places, these issues are not recognized as human rights issues and Indigenous persons with disabilities are compelled to live as non-human being,<sup>19</sup> so there is an urgent need to build a better and more comprehensive collective understanding of the human rights of Indigenous persons, including Indigenous women with disabilities, to ensure that our Indigenous brothers and sisters, government officials, member states and development partners are inclusive of all and that no-one is left behind.

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**Ms Pratima Gurung** belongs to the Gurung Indigenous Peoples community. She serves as a faculty member in Padmakanya Multiple Campus, Tribhuvan University, Nepal and is General Secretary of the Indigenous Persons with Disabilities Global Network (IPWDGN) and President of the National Indigenous Disabled Women Association Nepal (NIDWAN). You can reach her at [mailmepratima508@gmail.com](mailto:mailmepratima508@gmail.com)



# The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is a subsidiary body of the Human Rights Council composed of seven independent members, one from each of the seven Indigenous sociocultural regions: Africa; Asia; the Arctic; Central and Eastern Europe, the Russian Federation, Central Asia and Transcaucasia; Central and South America and the Caribbean; North America; and the Pacific. Resolution 33/25, adopted by the Human Rights Council in 2016, amended EMRIP's mandate to provide the Human Rights Council with expertise and advice on the rights of Indigenous Peoples as set out in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and to assist Member States, upon request, in achieving the aims of the UNDRIP through the promotion, protection and fulfilment of the rights of Indigenous Peoples, including through country engagement.

**A**s in 2020, the COVID-19 pandemic not only continued to disrupt the work of the EMRIP in 2021 but also the lives of Indigenous Peoples globally. EMRIP continued conducting its activities virtually and adjusted its annual session, inter-sessional meeting, and coordination meetings with other Indigenous mechanisms accordingly. EMRIP engaged with the University of Manitoba and launched a virtual seminar on the right to self-determination in February 2021, which informed the EMRIP's report on the subject adopted during its 14<sup>th</sup> session. It conducted its 14<sup>th</sup> session virtually in July 2021 through four regional meetings with the purpose of receiving comments on two reports: 1) Study on the Rights of the Indigenous Child, and 2) Report on the Implementation of the UN Declaration on the Rights of Indigenous

Peoples (UNDRIP), focussing on the right to self-determination. The regional discussions and written submissions highlighted good practices and challenges with regard to the thematic study and report. A total of 10 side events were held virtually during the session on a broad array of themes relating to the rights of Indigenous Peoples.

EMRIP attended the Global Task Force for Making a Decade of Action for Indigenous Languages<sup>1</sup> in March and June 2021, coordinated by the United Nations Educational, Scientific and Cultural Organization (UNESCO). On 24 June 2021, the Chair of EMRIP took part virtually in the day of discussion organized by the Committee on the Elimination of Discrimination against Women (CEDAW) on its general recommendation on the rights of Indigenous women and girls. EMRIP transmitted a written submission on the subject for the Committee's consideration. EMRIP also contributed to the Committee on Economic, Social and Cultural Rights' Draft General Comment on Land and Economic, Social and Cultural Rights. EMRIP took part in the 20<sup>th</sup> session of the Permanent Forum on Indigenous Issues, held virtually in April 2021. Despite the constraints of the COVID-19 pandemic, EMRIP finalized an Advisory Note as requested by Indigenous Peoples in Brazil, which was provided pursuant to its country engagement mandate under Human Rights Council resolution 33/25 (para. 2).

## **The Thematic Study on the Rights of the Indigenous Child under the UNDRIP and the Report on “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous Peoples and the right to self-determination”**

EMRIP's annual session took place virtually from 12 to 16 July 2021 where it held four regional meetings focussing on the draft study on the Rights of the Indigenous Child under the United Nations Declaration on the Rights of Indigenous Peoples and comments in this regard, as well as a closed meeting for members to analyse the outcome of the regional meetings on 15 July.

EMRIP also presented the draft report entitled “Efforts to implement the United Nations Declaration on the Rights of Indigenous Peoples: Indigenous Peoples and the Right to Self-Determination”. Both

the draft study and the draft report were revised following the session based on comments and suggestions received by EMRIP from all participants. An analysis of the meetings can be found in EMRIP's annual report which it submitted to the Human Rights Council at its 48<sup>th</sup> session in September 2021.<sup>2</sup>

The Study on the Rights of the Indigenous Child under the UN-DRIP<sup>3</sup> provided EMRIP with the opportunity to integrate a human and children's rights-based approach into the interpretation of Indigenous children's rights under the UNDRIP. It examines both the individual and collective rights of Indigenous children, as well as the interplay between them, and incorporates the principle of the best interests of the child in the context of Indigenous children. The study is linked to the Report on Self-Determination, highlighting that Indigenous Peoples' capacity to meet their children's needs depends on their ability to exercise their right to self-determination. This is essential when considering existing gaps in areas such as education and child welfare. The study concluded with Advice No. 14, in which EMRIP put forward some measures that States, Indigenous Peoples and other stakeholders could take to implement the relevant rights as contained in the UNDRIP. For the first time, EMRIP's session included the participation of Indigenous children. The powerful statements made by these children and youth enriched the debate, notably the Study on the Rights of the Indigenous Child. This has encouraged participants to engage more regularly with children and youth in the future.

The Report on the Right to Self-Determination<sup>4</sup> builds upon other United Nations studies and reports on self-determination and should be read in conjunction with other EMRIP reports, in particular its reports on the right to participate in decision-making, recognition, reparation and reconciliation, land rights and free, prior and informed consent, in which it expounded on the right to self-determination as the fundamental norm upon which Indigenous rights are grounded.

The Report concludes with recommendations to both States and Indigenous Peoples highlighting the direct correlation between the extent of the formal recognition of Indigenous Peoples by States and the extent to which States respect, protect and fulfil their right to self-determination. The greater the level of recognition, the deeper the implementation of the right.

### **Regional dialogues**

The first three days of EMRIP's 14<sup>th</sup> session were dedicated to holding regional dialogues on the thematic study and report mentioned in the section above.<sup>5</sup>

### **Rights of Indigenous children**

Participants reported that Indigenous children face discrimination and marginalization. Limited access to education in their native languages remains a challenge, and they referred to various forms of historical and current physical and psychological abuse against them, raising serious concerns regarding the racism and hate crimes experienced by Indigenous children. They also addressed the structural causes of this problem, and its potential remedies. Despite progress in reforming child welfare systems, participants stressed that much work still needed to be done, for example on the need for accountability.

In the context of COVID-19, Indigenous children's education had reportedly been interrupted because they lacked access to electricity, smartphones and/or the Internet, and some had dropped out of school to support their families financially. Both Indigenous children and those with disabilities faced challenges in accessing quality education and participants called for a review of education policy to address the needs of all Indigenous children without discrimination.

Participants stressed the need to increase Indigenous children's access to bilingual education, higher education opportunities and health services, including sexual and reproductive health and education services. Indigenous girls and young women were particularly vulnerable to poverty, barriers to education, harmful cultural practices, early pregnancy, and barriers to accessing health care and reproductive health services and products, among other things. These risks were intensified in contexts of conflict where there is a need to protect the rights of Indigenous girls and young women in accordance with national and international standards. The risks associated with sexual violence, trafficking and child labour, particularly among Indigenous girls and young women, were also raised, and States were called upon to establish culturally appropriate responses and prevention measures.

Participants expressed concern at child removal policies and practices and at the over-representation of Indigenous children in the youth justice system, youth suicide, child protection services and out-of-

home care services. Concern was also expressed at the risks faced by Indigenous children who work as human rights defenders, and a recommendation was made for EMRIP's study to address the civil and political rights of Indigenous children.

### **Right to self-determination: human rights focus**

In relation to this report, participants expressed their concern at the limited implementation of the UNDRIP on matters concerning Indigenous women in many countries and at the stigmatization and criminalization of Indigenous Peoples when demanding their right to self-determination. Participants urged States to recognize Indigenous Peoples' right to self-determination over Indigenous territories and to recognize Indigenous law on an equal footing with domestic law.

Several participants reported that Indigenous Peoples did not have effective political participation and were not consulted on matters affecting them, such as the exploitation of natural resources. Development projects were authorized without their free, prior and informed consent, causing the destruction of sacred sites, displacement and toxic contamination, among other things. Participants emphasized that limited recognition of self-determination increases the risks associated with State responses to climate change, including droughts and floods.

A significant number of participants stressed the challenges facing Indigenous Peoples with regard to implementing free, prior and informed consent. Even in favourable legal environments, its implementation is ineffective. There is still a strong reluctance on the part of the State in some countries to recognize Indigenous Peoples, including their legal claims to autonomy and self-determination. EMRIP was urged to include observations applicable to the rights of Indigenous Peoples in situations of generalized violence or armed conflict.

## **Implementation of EMRIP's country engagement mandate**

Despite the constraints of the COVID-19 pandemic, EMRIP continued its country engagement work in 2021.<sup>6</sup> It continued its communications with Indigenous Peoples with regard to undertaking a mission to Canada and was engaged in follow-up conversations on its mission to

Finland in 2018. EMRIP also managed to finalize a country engagement request received from Indigenous Peoples in Brazil, which was undertaken virtually, and produced an Advisory Note on how to protect Indigenous Peoples during the current COVID-19 crisis.

EMRIP finalized a country engagement with Sweden regarding a repatriation request from the Yaqui peoples in Mexico of a spiritual object “the Maaso Koya”. EMRIP’s engagement resulted in the parties welcoming the initiation of a process of repatriation of the item to Mexico. An Advisory Note, which is a public record of the engagement, has been posted on EMRIP’s webpage along with advice and information from EMRIP’s previous engagements in Mexico City, Finland and New Zealand.<sup>7</sup> Several other country engagement requests remain open, including the one to the Democratic Republic of the Congo, which had to be cancelled for security reasons in 2020, as well as to Kenya, the Russian Federation and Australia. On another note, Japan was in continuous communication with the Hokkaido Ainu Association and other relevant stakeholders regarding EMRIP’s request to carry out a country engagement mission.

EMRIP regularly encourages Indigenous Peoples and States to make requests under its country engagement mandate. To date, most requests have come from Indigenous Peoples.<sup>8</sup> New country missions relating to the requests received are under preparation.

## **Building relationships with other mechanisms**

EMRIP is of the view that coordination between the three UN mechanisms dealing with the rights of Indigenous Peoples is crucial to the success of all their mandates. In 2021, the members of EMRIP held a private meeting with the Chair and other members of the Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and a representative of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Peoples.

In addition, during its annual session, EMRIP held an interactive dialogue with four Treaty Bodies: the CEDAW, the CERD, the CRC and the Human Rights Committee. This dialogue focused on the work the treaty bodies are undertaking with regard to Indigenous Peoples’ rights,

which is increasing exponentially, i.e. through references to the UNDRIP in their work.

In 2021, EMRIP also contributed to the CEDAW's upcoming General Recommendation on the Rights of Indigenous Women and Girls and to the CESCR's draft General Comment on Land and Economic, Social and Cultural Rights.

EMRIP also participated in the annual meeting of the UN Inter-Agency Support Group (IASG) on Indigenous Issues and contributed to the discussion on the current trends, challenges and opportunities in implementing EMRIP's mandate. The issue of how IASG members could usefully engage and support EMRIP's mandate was also discussed.

## **Inter-sessional meeting, expert seminar and future reports**

In 2021, EMRIP decided to prepare a 2022 study on "Treaties, agreements and other constructive arrangements, between Indigenous Peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition" and organized a virtual expert seminar from 29 November to 1 December 2021.

In 2022, EMRIP will also prepare a report on the militarization of Indigenous land from a human rights focus. The draft report on militarization and the draft study on "treaties and constructive arrangements" will be discussed and finalized by EMRIP during its 15<sup>th</sup> session from 4 to 8 July 2022.

EMRIP has also decided that its study for 2023 will be on the impact of development policies on Indigenous heritage, with a focus on Indigenous women, and that its report for 2023 will be on establishing effective monitoring mechanisms at the national and regional levels for the implementation of UNDRIP.

## **Prospects for EMRIP's future and continuing work**

The issue of reprisals and attacks against Indigenous human rights defenders remains an issue. EMRIP has urged the Human Rights Council to call upon States to ensure that Indigenous human rights defenders,



including child human rights defenders, are guaranteed due protection during the COVID-19 pandemic and thereafter, including a safe working environment and security. EMRIP has also looked at reviewing laws that criminalize the work of Indigenous human rights defenders, in compliance with the UNDRIP and other international standards. It has also urged States to address all allegations of reprisals and to condemn all reprisals against Indigenous human rights defenders, United Nations mandate holders working on the rights of Indigenous Peoples and representatives of Indigenous organisations, including children, attending sessions of EMRIP.

A further issue of concern for EMRIP is the absence of requests from States to engage with EMRIP under its country engagement mandate as well as States' failure to respond to requests from Indigenous Peoples regarding EMRIP's country engagement missions. EMRIP intends to invite States to its session in July 2022 to share their views on how to facilitate a stronger dialogue with States with regard to requests for country engagement.

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5. The four regional dialogues held were i) Africa and North America Regions, ii) Pacific and Asia Regions, iii) The Arctic, Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; and iv) Central and South America

- and the Caribbean.
6. Resolution 33/25 provides the EMRIP with a mandate to: engage with States at the national level by offering technical assistance on legislation and policies and capacity building; provide advice on the implementation of recommendations from the human rights mechanisms; and act as a dialogue facilitator between States and/or the private sector and Indigenous Peoples, all with the purpose of implementing the rights set out in the UNDRIP. This mandate is thus a complement to monitoring mechanisms such as the treaty bodies, the special procedures of the Human Rights Council and the Universal Periodic Review procedure (UPR).
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***Binota Moy Dhamai*** is the Vice-chair of EMRIP and its member from Asia. He is a Jumma-Tripura Indigenous activist from the Chittagong Hill Tracts (CHT) region of Bangladesh. His activism focusses on peace and the human rights of Indigenous Peoples, including the issue of implementing the intra-State peace agreement between the State and Indigenous Peoples. He is currently a doctoral candidate at the School of Regulation and Global Governance (RegNet), Australian National University, Australia.



# The Green Climate Fund (GCF)

The Green Climate Fund (GCF) is a climate finance mechanism established by the United Nations Framework Convention on Climate Change (UNFCCC) in 2010 and operating since 2015. The GCF assists developing countries with climate adaptation and mitigation actions. It aims to catalyse a flow of climate finance to invest in low-emission and climate-resilient development pathways, supporting the UNFCCC and Paris Agreement goal of keeping average global temperature rise to 1.5 degrees Celsius.<sup>1</sup> In doing so, the GCF can accept contributions from the developed country parties to the UNFCCC, as well as from public, non-public and alternative sources including, among others, countries not party to UNFCCC, entities and foundations.<sup>2</sup> At COP 26 in November 2021, developed country parties made a new promise to make USD 100 billion a year in climate finance available by 2023. The deadline for their previous commitment to achieving this goal had passed in 2020. This renewed pledge constitutes an opportunity for the GCF as a key mechanism in channelling this funding.

As of 31 December 2021, the GCF had funded a total of 190 projects with project investments amounting to USD 10 billion or a total of 37.2 billion including co-financing. The GCF estimates that these projects will help 612 million people increase their climate resilience and will contribute to preventing the emission of 2 billion tons of CO<sub>2</sub> equivalent.<sup>3</sup> Of the total 190 approved projects, micro and small projects constitute less than half (12% and 32%) of the portfolio, whereas medium and large projects form 39% and 17% of the portfolio, respectively. The size of a project is important given that bigger projects have a higher risk of negatively impacting nature and peoples. In terms of financial instruments, the projects' investment portfolio comprises 44% loans, 42% grants, 6% equity, 6% re-

sult-based payments and 2% guarantees.<sup>4</sup> Again, these figures reflect how climate finance, which is supposed to be channelled through grants based on the principle of Common But Differentiated Responsibilities (CBDR), is in reality provided largely in the form of loans.

The GCF's policy and funding decisions are taken by 24 Board members. Observer organisations lobby and influence decisions through the Observer Network of CSOs, Indigenous Peoples and Local Communities led by two active observers, one from the developed and one from the developing countries. Indigenous representatives and support organisations are organised in the Indigenous Peoples Advocacy Team as well as taking an active part in the Observer Network. The southern active observer is currently an Indigenous representative.

## Introduction

In 2021, the GCF continued to emphasise project impact in the quantifiable term of CO<sub>2</sub> equivalent emissions prevented and number of people building their general resilience. However, it is equally important to have data on the projects' impact on the social, cultural, economic and ecological well-being of communities and Indigenous Peoples. The GCF Indigenous Peoples Policy, adopted in 2018, sets the basis for bridging those gaps and safeguarding human rights and the rights of Indigenous Peoples in GCF activities. The policy represents a high-level and rights-based benchmark for the GCF's operation and climate finance at large. It stresses the importance of the environmental, social and cultural integrity of GCF-financed activities.

The Indigenous Peoples Policy is one of the most important advocacy achievements of the Indigenous Peoples Advocacy Team to date.<sup>5</sup> The policy contributes not only to the safeguarding of human rights in the GCF but also more widely as a contribution towards implementing the Paris Agreement commitment of protecting human rights and the rights of Indigenous Peoples in climate action.<sup>6</sup> Bearing this in mind, 2021 was another mixed year of frustrating realities and rhetoric while also offering some promising developments.

## **COVID-19 and the shrinking space for Indigenous Peoples and civil society participation**

Like every other business across the world, GCF activities were partly paralysed by the COVID-19 pandemic. Ways of operating have changed; events and meetings have gone virtual. Projects have been pushed through with little or no consultation of Indigenous Peoples and civil society. In gross, Indigenous Peoples and civil society participation in the GCF has shrunk during the pandemic.

The GCF held three board meetings in 2021, all of which were held virtually. The Board approved 12 funding proposals.<sup>7</sup> Nine of these have a potential impact on Indigenous Peoples.<sup>8</sup> Consultations with Indigenous Peoples about these projects on the ground and during Board meetings were challenging.

On top of the challenges of participating in and coordinating during virtual meetings, people might experience technical glitches, poor Internet connectivity, inconvenient time zones and difficulties in accessing “board rooms” at any time, on top of the usual English-only language barrier. Coordination amongst CSOs and Indigenous Peoples, and engagement with Board members, their advisers and accredited entities during Board meetings remained challenging. Apart from the two CSO active observers, no observers had access to the Zoom room of the Board meetings. The only way to follow Board meetings was via webstreaming. The meetings often turned into “executive sessions”, closed to observers and not webstreamed either.

In-fighting among Board members made it hard for the Board to work as “one Board”. This led to delays, executive sessions and inaction during meetings. Consequently, some decisions were pushed into “between Board meeting” decisions that left slim opportunities for CSOs to intervene. Overall, Indigenous Peoples and CSOs had to magnify their voices from the corner of a shrinking space for participation.

## **Rhetoric and realities of a paradigm shift**

Besides the pandemic penalising Indigenous Peoples’ and civil society participation, the GCF’s investment criteria of “paradigm shift potential” remained somewhat ironic in the context of its funding proposals

where, in reality, the “business as usual” approach prevailed. Projects presented to the Board failed to include distinct features and approaches around Indigenous science, world views and innovation. Rather, the Board repeated the old “development project” vs “climate project” debate. Indigenous Peoples and CSOs had to shout about the lack of consultation of Indigenous Peoples, women, youth and civil society at large. Interventions on project proposals focused, among other issues, on the failure to obtain Indigenous Peoples’ Free, Prior and Informed Consent (FPIC) or to ensure their ownership. And, often, the active observers were only called to make interventions *after* the projects had been approved by the Board – making such interventions moot and academic.

Rhetoric around compliance with the Indigenous Peoples Policy in funding proposals persisted. And yet the process of designing the projects failed in many cases to respect Indigenous Peoples’ rights, for instance by not considering how Indigenous Peoples’ innovations, world-views and science can bring distinct potential to GCF projects. The Indigenous Peoples Policy requires entities and individuals engaged in GCF-funded activities to ensure full and effective participation and meaningful consultation leading to FPIC, not to hinder self-determined climate action or the integrity of Indigenous Peoples’ rights in matters related to them. This did not, however, occur in some funding proposals. In summary, the “paradigm shift” remains rather empty rhetoric for Indigenous Peoples.

## **A neglected facet of GCF projects**

Given that climate change has been proved to be an anthropogenic phenomenon, the human face of the climate crisis should be at the centre of GCF projects. Human beings are agents of change. The “software” of change rests on human values and the “hardware” runs only if the software is well-established. Indigenous Peoples’ values, lifeways, world views and knowledge are crucial “software” in climate action on the ground but these factors are still undermined.

Indeed, one of the questions unpacked in the context of “fundable projects” and “climate rationale” was the role of Indigenous Peoples’ knowledge in climate action. From Indigenous Peoples’ perspective, knowledge does not come from a vacuum, nor from an empty space or

a laboratory or university. Their knowledge is rooted in land, territories and resources. It is passed down by their elders to the younger generations in various ways and forms such as rituals, folklore, dances, songs and festivities. Such practices, knowledge and technologies, grounded in communities, constitute some of the most potent climate solutions. And yet these are still by and large neglected in climate finance.

## **Developments amidst the pandemic**

In 2021, the GCF kicked off a pending task of institutionalising its Indigenous Peoples Advisory Group (IPAG). The Indigenous Peoples Policy requires that the GCF establish the IPAG in order to enhance coordination between the GCF, accredited entities and executing entities, states and Indigenous Peoples.<sup>9</sup> On that basis, the GCF announced a call for nominations of IPAG members from the regions.<sup>10</sup>

The GCF also started scoping for the development of the GCF Environmental and Social Safeguards (ESS), including a call for public inputs. The ESS applied by the GCF to date (as an interim) are the Performance Standards of the International Finance Corporation. The Secretariat also announced calls for public inputs on other matters including sectoral guides on agriculture and food security, and cities, buildings and urban systems, respectively. Civil society and Indigenous Peoples responded to these calls and gave their input.

The GCF indicated a willingness to continue the REDD+ Results-Based Payment Program after funding for the pilot phase was exhausted in 2020.<sup>11</sup> It made a call for public inputs while also undertaking a review with the objective of continuing the Results-Based Payment program.

Finally, disregarding for a moment the limited consultation with Indigenous Peoples and civil society, the approval of a total of 12 funding proposals in 2021 is a promising sign with regard to international climate finance flow. The accreditation portfolio of now a total of 113 entities increasingly shows a widening of GCF action. Thirty-two of these are categorised as projects with high negative risk (Category A). On the other hand, national direct access entities (DAEs) comprise 51% of the accreditation portfolio, which is also a promising step although only if actual climate finance flows directly to countries in need through these.

## Noteworthy initiatives taken by Indigenous Peoples in 2021

Parties to the UNFCCC finalised the Paris Rulebook and made a new finance pledge during COP 26 in Glasgow. Being the largest climate finance mechanism, the GCF is key in implementing this UNFCCC decision on finance mobilisation. In line with this, the GCF project portfolio is increasing every year.

In light of this, it is crucial to see how the GCF has been implementing its own Indigenous Peoples Policy and the Paris Agreement preamble language on human rights and the rights of Indigenous Peoples. Data on GCF projects being implemented in Indigenous Peoples' territories and information about project impact on Indigenous Peoples are important to safeguard human and Indigenous Peoples' rights. In this context, the Tebtebba Foundation launched an "Indigenous Peoples Tracker on GCF Projects" in 2021. This tool aims to establish a baseline of information on and analysis of GCF-approved projects potentially impacting Indigenous Peoples positively or negatively.<sup>12</sup> The tracker shows that 70 out of a total of 190 projects approved as of 31 December 2021 have a potential impact on Indigenous Peoples. Those 70 projects are approved across 50 countries.<sup>13</sup>

Tebtebba Foundation also ran a webinar series about the GCF in 2021 to raise awareness among and build the capacity of Indigenous Peoples. In partnership with the International Work Group for Indigenous Affairs (IWGIA), the Nepal Federation of Indigenous Nationalities (NEFIN) organised national awareness training workshops with Indigenous Peoples in Nepal. NEFIN held coordination calls and meetings with the accredited entities in the country. These initiatives were helpful for Indigenous Peoples to be able to understand, follow the GCF and secure their rights in the GCF projects.

In Peru, Indigenous Peoples' organisations<sup>14</sup> developed recommendations and a set of minimum standards, validated by their communities, for engagement in national GCF processes. These were presented to the Ministry of Economy and Finance (Peru's national designated authority for the GCF), the Ministry of Environment and relevant accredited entities with the aim of institutionalising a formal permanent space for coordination and consultation of Indigenous Peoples in 2022.



These bottom-up initiatives taken by Indigenous Peoples in 2021 constitute important precedents that can be replicated by Indigenous Peoples, national designated authorities and accredited entities in other countries. Indeed, scaling-up of such activities would serve to strengthen the legitimacy and efficiency of the GCF as well as the all-important safeguarding of Indigenous Peoples' rights in climate action.

## Going forward

To progress towards facilitating climate actions in respect of human rights and the rights of Indigenous Peoples, the GCF must take the following steps:

- Formalise and operationalise the IPAG.
- Support Indigenous Peoples-friendly and self-determined climate projects.
- Adhere to FPIC and comply with the Indigenous Peoples Policy in its entirety in GCF activities, including in the development of funding proposals.
- Promote a real paradigm shift by bringing Indigenous Peoples' perspectives, worldviews, innovations, knowledge and contributions into climate action.
- Develop and implement strong environmental and social safeguards.
- Monitor and strengthen effective implementation of the Indigenous Peoples Policy.

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**Tunga Bhadra Rai** ([tungarai@hotmail.com](mailto:tungarai@hotmail.com)) belongs to the Rai Indigenous Nation of Nepal. He completed a Master's degree in Anthropology from Tribhuvan University and participated in the Cornell Nepal Study Program. He works with the Nepal Federation of Indigenous Nationalities (NEFIN) Climate Change Partnership Program based in Nepal. Mr. Rai has published articles and research papers on Indigenous Peoples.

**Stefan Thorsell** is Climate Adviser at the International Work Group for Indigenous Affairs (IWGIA). He engages in international climate advocacy at the UNFCCC and the GCF in collaboration with Indigenous Peoples' representatives. He has contributed to publications on Indigenous Peoples' rights in climate action and published research on the peace process in Colombia.



# The Indigenous Navigator: Self-Determined Development

The Indigenous Navigator is an online portal providing access to a set of tools developed for and by Indigenous Peoples. By using the Indigenous Navigator, Indigenous organisations and communities, duty bearers, NGOs and journalists can access free tools and resources based on updated community-generated data. By documenting and reporting their own situations, Indigenous Peoples can enhance their access to justice and development and help document the situation of Indigenous people globally.

Through the Indigenous Navigator framework, data is collected that can be used by Indigenous Peoples to advocate for their rights and to systematically monitor the level of recognition and implementation of those rights. The Indigenous Navigator framework encompasses over 150 structure, process and impact indicators to monitor central aspects of Indigenous Peoples' civil, political, social, economic and cultural rights and fundamental freedoms enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169 (ILO C169) and other relevant human rights instruments. In addition, the framework enables monitoring of the outcome document of the World Conference on Indigenous Peoples (WCIP) and the Sustainable Development Goals (SDGs).

The Indigenous Navigator initiative, begun in 2014, has been developed and carried forward by a consortium consisting of the Asia Indigenous Peoples Pact (AIPP), the Forest Peoples Programme (FPP), the International Work Group for Indigenous Affairs (IWGIA), the Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education, the Danish Institute for Human Rights (DIHR) and the International Labour Organization (ILO). This consortium works in partnership with the European Commission.

## Indigenous-led, by and for Indigenous Peoples

**W**ith its rights-based approach, the tools of the Indigenous Navigator allow Indigenous communities to document their situation in a way that is easily communicable to authorities and development actors. The standardised indicators make it possible to compare results across sectors, communities, countries and continents. It also enables longitudinal comparison over time to measure progress and identify major implementation gaps. This data strengthens the position of Indigenous communities as they engage with civic, state and global entities to claim their rights.<sup>1</sup>

The Indigenous Navigator was launched in 2014.<sup>2</sup> As the initiative has developed, there have been consistent upgrades and revisions to ensure that the framework and tools (including training, surveys, the comparative matrix and tools database, and the index) meet the needs and expectations of the Indigenous communities that are using them. In April 2021, the consortium launched the revised framework and tools,<sup>3</sup> and a new website and data portal.<sup>4</sup> The launch event also served as a launch for a key report focused on SDG 16 — Peace, justice and strong institutions — utilising Indigenous Navigator Data.<sup>5</sup>

While this work has been in progress, the Indigenous Navigator has continued supporting community-led projects through its small grants facility. These projects are identified and designed by Indigenous communities on the basis of the data collected and this complements the actions and strategies carried out by the same communities. They act as a direct action on the needs expressed and enhance these communities' ability to claim their rights.

In 2021, Indigenous communities and national organisations in Finland, Norway and Sweden began to implement the tools and framework. National surveys were initiated in partnership with the Sámi allaskuvla (Sámi University of Applied Sciences) and the Sámiráđđi (Saami Council). Throughout the year, activities continued in Latin America: Bolivia, Colombia, Peru and Suriname; Asia: Bangladesh, Cambodia, Nepal and the Philippines; and in Africa: Cameroon, Kenya and the United Republic of Tanzania.<sup>6</sup>

## A growing impact

As reported in *The Indigenous World 2021*, new community and national surveys were conducted in 2020 and 2021. In 2021, 164 of these surveys were included in the public dataset, available through the new Data Explorer<sup>7</sup> and Index Explorer.<sup>8</sup> These questionnaires are the result of the direct engagement of over 300 Indigenous communities in the data-gathering and analysis process.

The Indigenous Navigator's framework, tools, data collection and subsequent discussions on the results from the questionnaires led to a participatory process of identification of the most urgent issues that needed to be addressed. Alongside the identification of issues and sensitisation on rights, survey results often served to confirm the experiences and observations of the local communities and allowed them to visualise and communicate their issues in a tangible and quantifiable manner. This process resulted in the development and full implementation of 58 data-driven projects. These pilot projects, which are led and carried out by Indigenous communities, promote innovative solutions to urgent issues in the local context, taking into account Indigenous Peoples' own values, worldview, economies and life plans. They also, collectively, cover all 17 SDGs.

## A period of adjustment

The COVID-19 pandemic has had a critical impact on Indigenous communities. Nationwide, preventative efforts to control the spread of the pandemic, including lockdowns, limitations on inter-regional and international travel, and Indigenous Peoples' own efforts to contain and isolate themselves affected the implementation of data collection, advocacy and the small grants facility's activities.

To ensure vulnerable communities were able to protect themselves and face up to the pandemic, restrictions on mass gatherings and domestic travel were adhered to and plans for training workshops, dialogue meetings, monitoring visits and field activities were adapted.

Planned consultations on the Indigenous Navigator's tools, surveys and global portal were impacted. Nevertheless, a newly-devel-

oped, user-friendly and sustainable Indigenous Navigator Global Portal was launched. In close coordination with consortium partners, the Danish Institute for Human Rights organised six sessions of virtual consultations with Indigenous Navigator partners in Africa, Asia, Europe and Latin America. These consultations led to the adjustment of critical features included in the new Portal design as well as improvements in the tools and their related guidance for users, and ensured full transparency within the consortium on the platform's development and interaction. Corrections and refinements of the Global Portal were implemented throughout 2021.

Despite the challenges, the consortium partners, along with their national counterparts and Indigenous communities, achieved considerable progress in the implementation of the Indigenous Navigator, which has been instrumental in responding to the immediate and long-term needs of these communities in times of sanitary, economic and political crisis.

In Nepal, for example, Indigenous communities have actively used their advocacy skills. Enhanced by their experience with the Indigenous Navigator, they have had constructive dialogues with local and provincial governments, and their national human rights commission, regarding access to public funds, social services and protections. They have also been monitoring the recovery from the pandemic as well as the implementation of the SDGs.

In Cambodia and in Bangladesh, a total of 30 new communities were surveyed and, in Cambodia, a national dialogue was held between Indigenous Peoples, government institutions and CSOs on Indigenous Peoples' disaggregated data. Further, the Cambodia Indigenous Peoples' Organisation organised workshops on the National Report on Demographic, Socio-economic Status of Indigenous Peoples in Cambodia to present Indigenous Peoples' Data in the report as well as discuss how to move forward to support Indigenous Peoples based on the available data/gaps.

In Bolivia, in November 2021, Indigenous representatives from the Indigenous Autonomies of *Territorio Indígena Multiétnico I, Cavineño* (Beni), *Tapacarí Cóndor Apacheta* (Oruro) and *Lomerío* (Santa Cruz) held a meeting where they shared their experiences of claiming their rights to autonomy and how they have proceeded to constitute their own governments.

In Suriname, work has continued on a multi-regional communication project developed in response to the COVID-19 pandemic.<sup>9</sup> *De Vereniging van Inheemse Dorpschoufden in Suriname* (VIDS), the national coordinating organisation in Suriname for the Indigenous Navigator, also published key information regarding the response to the pandemic, and Indigenous Peoples' participation in decision-making processes.<sup>10</sup>

In addition to those concrete outcomes, the small-scale pilot projects also had a significant and unforeseen impact at the local level across all three continents. Community members report that they are fostering solid collaboration within communities, restoring their sense of community, revitalising their identities and cultures, renewing collective efforts to achieve their own goals, and enhancing Indigenous youth's capacities to lead and advocate for their rights. As Indigenous communities continue to become more aware of their rights, they are better equipped to use their data as advocacy tools, and this is guiding them to plan their future. Utilising these projects, 27 local government institutions have included targets for Indigenous Peoples in their development planning across Bolivia, Peru, Colombia, Cameroon, Bangladesh, Nepal and Cambodia. Sixteen official agreements and partnerships were established in 2021 between Indigenous communities and local governments across the project countries.

In all, the Indigenous Navigator initiative has reached 374 Indigenous communities through the small grants facility and enabled 150 Indigenous communities to develop and implement their self-determined proposals.

As a result of the Indigenous Navigator's implementation in 2021, a total of 2,010 representatives from target groups have been trained in their rights, the SDGs, other relevant public policies and budgets, monitoring and advocacy skills. Approximately 166,240 Indigenous people have benefitted from the implementation of these 58 projects.

## **From local to global**

At the country level, building on the data gathered through the surveys, the consortium has produced several knowledge products and regularly engages in direct dialogues and alliance-building activities.<sup>11</sup> These dialogues have had an impact on regional and global process-

es. Ten statements were prepared for the High-Level Political Forum (HLPF), and references to Indigenous Peoples were secured in the HLPF Ministerial Declaration 2021;<sup>12</sup> further, Indigenous Peoples were able to participate and have their voices heard as a result of the concerted advocacy, alliance building, and documentation. Three Indigenous representatives acted as lead discussants during the thematic reviews, and four statements were prepared and delivered during the 7<sup>th</sup> and 8<sup>th</sup> Asia-Pacific Forum on Sustainable Development (APFSD). Further, there were 16 inputs into Civil Society Collaborative statements, and six Indigenous representatives participated in the Voluntary National Review (VNR) sessions.

The Indigenous Peoples Major Group for Sustainable Development (IPMG) was able to prepare and produce two global summaries, 12 VNR reports and eight regional reports.

In 2021, two additional global reports were developed and published by the Indigenous Navigator consortium: *SDG 16 through the lens of the Indigenous Navigator: Charting pathways towards peace, justice and strong institutions with Indigenous Peoples*<sup>13</sup> and *Indigenous Navigator: Innovating Indigenous Education through the Small Grants Facility*.<sup>14</sup>

As a contribution to COP 15 of the Convention on Biological Diversity (CBD), together with the ILO and IWGIA, FPP convened a consultation with Indigenous Experts on Traditional Occupations in Labour Statistics on 2 November 2021. The outcomes of this meeting will contribute to the ongoing work on traditional occupations under the CBD. In addition, a follow-up preparatory meeting for the delayed CBD COP 15 was held on 8 December 2021. The event: “How Can We Better Protect and Promote Human Rights in the Post-2020 Global Biodiversity Framework? | High-Level Panel”<sup>15</sup> aimed to draw attention to the importance of human rights in the Global Biodiversity Framework prior to the final face-to-face negotiations of the post-2020 Global Biodiversity Framework, which are to be held in 2022.<sup>16</sup>

These global-level knowledge products supplement reports, briefs and articles produced at the national and regional level that are working to document (concretise) the communities' experiences. By doing so, they serve to inform policy makers and duty bearers of Indigenous Peoples' own situation and their own priorities.



Through their findings, the country-level and global-level knowledge products are continuing to contribute to ensuring the effective participation of Indigenous Peoples in the development, implementation, monitoring and review processes of policies and development initiatives at all levels.

## Indigenous women

Through the community surveys and advocacy processes of the Indigenous Navigator, Indigenous women across all regions reported that they face multiple forms of discrimination, unequal pay, violence and harassment, both inside and outside their communities, limited access to health services, lack of recognition of their land rights, and limited participation in the decision-making that affects their lives.

In the context of the second year of the COVID-19 pandemic, pre-existing inequalities and intersecting forms of discrimination have placed Indigenous women in a particularly vulnerable situation. Despite these persisting challenges, experiences reported through the Indigenous Navigator testify to Indigenous women's role as leading actors in building resilience.<sup>17</sup> The powerful engagement of Indigenous women in initiatives such as the Indigenous Navigator and through the pilot projects, some of which were designed to specifically address Indigenous women's needs, sheds light on their vital contributions.

It is clear through their contributions that action should be taken to ensure that Indigenous women realise their political rights, diversify their skills and abilities for their effective participation in decision-making forums, and are able to leverage their leadership through support for Indigenous women's organisations.

Much remains to be done to realise Indigenous women's right to education. This requires problem identification and sustained action to tackle barriers faced by Indigenous women and girls in accessing education at all levels, including vocational training. Additionally, Indigenous women's rights at work, as well as their right to freely engage in traditional and other economic activities, including sustainable entrepreneurial activities, should be promoted and protected.

It is essential to step-up action to enhance the recognition and protection of women's rights to land and natural resources, and to ensure their access to remedies in case of dispossession.

Finally, it is urgent to challenge and end discriminatory attitudes and stereotyping as well as harassment and violence based on ethnicity, Indigenous identity and gender. These phenomena are persisting and entrenched obstacles to Indigenous women's equality. This should include building strong institutions to provide appropriate response to cases of gender-based violence against Indigenous women, as envisaged in ILO Violence and Harassment Convention, 2019 (No. 190).<sup>18</sup>

## **Responding to the pandemic**

In 2021, the Indigenous Navigator continued to provide first-hand information on the situation of Indigenous Peoples in the 11 countries where communities have participated in data collection, advocacy and project implementation.<sup>19</sup> One critical finding has been the differentiated impact that COVID-19 is having on Indigenous Peoples, which also varies from community to community. The data and consultations with partners conducted in 2021 identify how pre-existing barriers in access to health, social security and education are fuelling disproportionate impacts from the COVID-19 pandemic on Indigenous Peoples. Despite these critical challenges, the findings have also underlined the vital role played by Indigenous communities in building the response and recovery to the global COVID-19 crisis resulting from the pandemic.

The Indigenous Navigator's local partners have also developed their resilience capacities and worked to find ways to support Indigenous communities while providing them with logistical and technical support to cope with the crisis. In the Philippines, communities are building on previous experiences of crisis (e.g., droughts and rat infestations) and increasingly retrieving traditional seeds and crops, as well as rejuvenating traditional food production systems, as they have realised that reverting to their traditional food production systems and practices makes the community more resilient. In Tanzania, for instance, in collaboration with community health workers, the Pastoralists Indigenous Non Governmental Organization's Forum (PINGO's Forum) has trained Indigenous community members in the use of sanitation supplies. In Kenya, key information has been translated into local languages and disseminated. In Peru, the National Organization of Andean and Amazon Indigenous Women of Peru (ONAMIAP) has embarked on aware-

ness-raising campaigns relating to the risks associated with COVID-19 in Indigenous communities, including through community radio.

In various instances, local partners have emphasised that COVID-19 responses proposed and implemented by governments are often blind to local realities and therefore rejected by Indigenous groups.

## **Continued commitment, a valued tool**

National partners, as well as beneficiary communities, have proven, and continue to prove, their engagement and commitment to the Indigenous Navigator as a valued tool in realising their rights by promoting it and submitting applications to expand their work and its coverage. National partners have organised and conducted planned events and activities that have performed beyond expectations given the local contexts and the catastrophic impacts of COVID-19. They are also continuously supporting the local communities, who have shown their enhanced capacity to develop grant proposals, manage the implementation of pilot projects and strengthen their demands, describe their internal strategies, and engage with local municipal authorities alongside their visions for their own development.

In 2021, the Indigenous Navigator’s consortium adopted a new vision and renewed mission for 2021-2025. Over the next five years, the consortium intends to expand the Indigenous Navigator’s geographic outreach and impact, aiming to conduct national surveys in approximately 30 new countries, improve its tools based on feedback from Indigenous communities and users, as well as develop and add supplemental modules to address key topics identified by the wider Indigenous Peoples’ movement. These modules will cover key aspects of Indigenous Peoples’ rights related to biodiversity, climate change, gender and due diligence – with a focus on the impacts of business operations – and strengthen ongoing and new advocacy alliances.

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**David Nathaniel Berger** is an Adviser at the International Work Group for Indigenous Affairs (IWGIA) and a member of the team responsible for the Indigenous Navigator. He is passionate about sustainability, human rights and data, and works to ensure that Indigenous Peoples' rights are recognised, promoted and protected.



# The Inter-American Human Rights System (IAHRS)

The Inter-American Human Rights System (IAHRS) is composed of two human rights bodies: the Inter-American Commission on Human Rights (IACHR or the Commission) and the Inter-American Court of Human Rights (IACHR Court). Both bodies work to promote and protect human rights in the Americas. The IACHR is composed of seven independent members and two independent special rapporteurs, and is based in Washington, D.C., United States, while the Court is composed of seven judges and is based in San José, Costa Rica.

In 1990, the IACHR created the Rapporteurship on the Rights of Indigenous Peoples with the aim of providing support for the Indigenous Peoples of the hemisphere, as well as strengthening, promoting and systematising the work that the Commission itself carries out in this area. To this end, the IACHR uses a variety of instruments, including thematic studies and reports; petitions and cases, including friendly settlements; precautionary measures; thematic hearings; confidential requests for information from States; and press releases. The Rapporteurship also participates in conferences and seminars organised by States, academic institutions and civil society. The Inter-American Court, on the other hand, issues advisory opinions and judgements, among other tasks.

The following sets out some of the main activities undertaken by the IACHR in relation to the rights of Indigenous Peoples during 2021.

## Thematic reports

**O**n 30 December 2021, the Inter-American Commission on Human Rights (IACHR) published its thematic report on the *Right to Self-Determination of Indigenous and Tribal Peoples*. This is the first time that the IACHR has comprehensively addressed the scope and content of this right, which is fundamental to Indigenous and tribal peoples' enjoyment of their other human rights, both collectively and individually.

In preparing the report, a questionnaire was published in which the IACHR invited States, Indigenous and tribal peoples, civil society organisations, academic institutions and other interested parties to share information on the experiences, challenges, practices and legal recognition of self-determination in the different countries of the American continent. Virtual meetings were held with Indigenous and tribal representatives from North, Central and South America and the Caribbean, as well as with experts on the rights of Indigenous and tribal peoples, on specific topics such as the situation of peoples in isolation and initial contact, Indigenous Peoples living across borders or divided by state borders, and legal pluralism. Meetings were also held with justice workers and representatives of Indigenous autonomous governments.

There was a high level of interest and participation in the various regional meetings from representatives of Indigenous and tribal peoples as well as in the responses to the report questionnaire. State institutions, academia, non-governmental organisations and other sectors of civil society also contributed to this process through their responses to the questionnaire.<sup>1</sup> Despite the virtual meetings imposed by the pandemic, the dialogues with representatives of Indigenous and tribal peoples across the continent enriched the content of the report and provided a better understanding of their situation and their own aspirations and visions as regards this right.

The report included an intercultural perspective on the foundations and origins of this right, and the way in which it is conceptualised and materialised from the cultures, traditions, worldviews and normative systems of these peoples. It addressed the international standards in international law that recognise this right, primarily the American and

UN Declarations on the rights of Indigenous Peoples, which establish that these peoples have the right to self-determination, through which they “freely determine their political status and freely pursue their economic, social and cultural development”. It explained how important constitutive elements of self-determination are also reflected in other international treaties such as Convention 169 on Indigenous and Tribal Peoples and in the doctrine and jurisprudence of the Inter-American Human Rights System.<sup>2</sup> It further explained that exercise of this right gives rise to various measures in different contexts, so the starting point must be the current aspirations of the different peoples.<sup>3</sup> In this sense, “there is no single way of exercising the right to self-determination” and therefore “the content of this right is given in its exercise and readapts to changes in historical relations, political conditions and cultural transformations”.<sup>4</sup>

Another important component was the inclusion of practices and experiences shared by Indigenous and tribal peoples, including: the development of normative instruments for self-government and territorial management; life plans; the creation of territorial, municipal and other autonomous political-administrative entities; justice and jurisdiction systems; their own protection and security systems; autonomous consultation and consent protocols; and responses to and strategies for COVID-19. In contrast, the main challenges and barriers that Indigenous Peoples face in the exercise of their self-determination include a lack of respect for their decision-making processes and ways of electing their representative authorities due to interference from external actors, and challenges in the enjoyment of their rights over their lands, territories and natural resources, particularly in the context of natural resource exploitation without prior consultation or consent.

In its recommendations to the States, the IACHR emphasised that recognition of this right must take into account the specific features, aspirations, needs and proposals of each people. The recommendations include different areas of action aimed at strengthening and guaranteeing the important constituent elements of self-determination, including models of self-government, political representation, legal systems, territorial rights, economic, social and cultural development priorities, and their own autonomous protocols for consultation and free, prior and informed consent.



## II. Public hearings

During the sessions held in 2021, the following hearings addressed Indigenous Peoples' issues.

### 179<sup>th</sup> Period of Sessions<sup>5</sup>

The IACHR held a hearing on the *Impact of colonisation on the Indigenous territories of Nicaragua's Atlantic Coast*. At the hearing, it was reported that at least 13 murders and eight injuries had been recorded throughout 2020, along with the displacement of members of the Mayangna and Miskitu peoples. The petitioner denounced the lack of regulation of the Indigenous territories, which has prevented them from accessing, using and enjoying their lands and natural resources. The State of Nicaragua highlighted the approval of laws and policies on the rights of the Indigenous and Afro-descendant peoples of the Caribbean Coast in the areas of health, education, territorial rights and access to justice. For its part, the Commission acknowledged the participation of the State of Nicaragua in the hearing and, at the same time, expressed its concern at the lack of land titling and impunity in cases of attacks by settlers.

A hearing was also held on human rights and extractive projects in Honduras, in which it was denounced that the State's economic policy favours extractive and energy projects that have negatively affected the territorial rights of Indigenous and Afro-descendant peoples and rural communities. The lack of transparency and legal protection with regard to approving these projects was highlighted, as well as the persecution, violence and criminalisation of environmental and territorial defenders. The State of Honduras reported on preventive and remedial actions in situations of conflict generated by mining projects, and environmental and labour oversight measures for these projects. For its part, the IACHR stressed that development policies must respect the rights of Indigenous Peoples and international standards on business and human rights, and that differentiated and intersectional protection measures need to be adopted for human rights defenders. It requested additional information from the parties on the differentiated impacts on women, the elderly, and on situations of displacement and human mobility as a result of these projects, and on the implementation of recommenda-

tions made by the international mechanisms regarding consultation and free, prior, and informed consent.

During the same session, a hearing was held on the *human rights situation of cross-border Indigenous Peoples in the context of the COVID-19 pandemic in Ecuador, Colombia and Peru*, in which the petitioning organisations pointed out that Indigenous Peoples were suffering from a large number of cases, and highlighted the risks faced by those who are particularly exposed to the advance of the Brazilian strain. It was reported that the border closures and militarisation measures adopted by States have had a disproportionate impact on the peoples of the Pan-Amazon region. Measures to prevent the pandemic have lacked a cross-cultural approach, and this could affect vaccination campaigns. This situation only exacerbates pre-existing problems such as violence against leaders and the impact of oil spills, deforestation and extractivist projects that are implemented without consultation. They emphasised the need to develop binational and regional measures to protect these peoples. For its part, the IACHR stressed that the measures adopted by States in response to the pandemic needed to respect the worldview and ancestral knowledge of Indigenous Peoples, and that there was a need for coordinated actions among the States to address the situation in the Pan-Amazon region. It also expressed particular concern at the situation of peoples living in voluntary isolation and called on States to respect the principle of no contact and their decision to remain in isolation.

### **180<sup>th</sup> Period of Sessions<sup>6</sup>**

During the 180<sup>th</sup> Period of Sessions, a hearing was held on the precautionary measures (MC 51.15) put in place for the Wayuu Indigenous people in La Guajira department, Colombia, due to the humanitarian crisis the beneficiaries continue to face because of a scarcity of drinking water, food insecurity and a lack of adequate medical care. It was denounced that this situation has resulted in the avoidable deaths of several beneficiaries and that the actions taken by the State to implement the precautionary measures were not agreed upon with representatives of the beneficiaries, and nor did they take a cultural approach. For its part, the Colombian State reported on the creation of an intersectoral commission with responsibility for ensuring compliance with the pre-

cautionary measures granted by the IACHR and Judgement T-302-2017, particularly on issues of access to water, food security and health. It also reported on actions taken to carry out consultative processes and the implementation of public policies to reduce child mortality and malnutrition, which would include the beneficiaries. While recognising the actions implemented by the State, the IACHR reiterated the importance of dialogue and agreement on actions, to be reached with representatives of the beneficiaries. The IACHR expressed its willingness to participate in consultation meetings between the parties and to consider a possible visit to the territories.

A hearing was also held on the precautionary measures ruled in favour of the Yanomami and Ye'kwana people (MC-563-20), the Mundurucu people (MC-679-20) and the Guajajara and Awá people (MC-754-20) in relation to Brazil. The hearing was informed of the increased risks facing these Indigenous Peoples due to the continued presence of invaders on their lands, resulting in an increased spread of COVID-19 and other diseases, and mercury contamination from illegal mining. It was reported that the Special Indigenous Health Districts do not have sufficient capacity to deal with these issues and that violence against Indigenous leaders who denounce their situation has increased. For its part, the Brazilian State acknowledged the challenges in implementing the precautionary measures and reported on police operations against illegal mining on Indigenous lands, the reopening of the Ethno-environmental Protection Bases and vaccination campaigns against COVID-19 in Indigenous territories. The IACHR called on the State to strengthen its efforts to address the situation of violence and land invasions being suffered by Indigenous Peoples, and to improve the channels of communication between the parties in order to coordinate actions for the implementation of the precautionary measures.

### **181<sup>st</sup> Period of Sessions<sup>7</sup>**

The IACHR held a hearing on the human rights situation of Indigenous children and adolescents in boarding schools in the region, in which the petitioning organisations denounced situations of family separation, a lack of inclusive education, a lack of knowledge of their languages, cultures and Indigenous traditions, as well as the trauma and effects on their own mental health and that of their families. The situation of

boarding schools in Canada, Mexico and Colombia was discussed. The Commission recognised that institutionalisation in the region had been a focal point for violations of the human rights of Indigenous children and adolescents, as these schools were aimed at assimilation, and called for guarantees of their economic, social, cultural and environmental rights, as well as the right to truth, justice and reparation with an intercultural approach.

### **182<sup>nd</sup> Period of Sessions<sup>8</sup>**

During this session, a hearing was held on the human rights situation of Indigenous Peoples in the Peruvian Amazon. This highlighted the risks these peoples face due to extractive and infrastructure projects, drug trafficking, mining and illegal logging. The petitioning organisations denounced the lack of free, prior and informed consultation on projects carried out in Indigenous territories, as well as the impacts they have on the environment and the right to access water, highlighting the inter-generational, physical and spiritual effects. They also pointed out how vulnerable Amazonian environmental and Indigenous rights defenders are to violence. For its part, the Peruvian State reported on the National Human Rights Plan 2018-2021, the mechanism for protecting human rights defenders, and the General Government Policy 2021-2026 as measures that are all promoting and protecting the work of human rights defenders. The IACHR expressed its willingness to work on a joint roadmap based on the recommendations set out in the *Report on Indigenous and Tribal Peoples in the Pan-Amazon region* and urged the State to ratify the Escazú Agreement.

The hearing on *The situation of Indigenous Peoples and the right to the environment in the context of salmon farming in Chile* addressed the impacts of this economic activity on Indigenous communities and the ecosystems on which they depend. Violations of the rights to a healthy environment, free, prior and informed consultation, access to participation, information and justice, cultural survival and adequate food, among others, were denounced. The Chilean State emphasised its strong institutional framework and regulations aimed at guaranteeing the rights of these communities in the context of this economic activity. The IACHR and the Office of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights expressed their

concern at the vulnerable situation of Indigenous Peoples and the environmental degradation. They also called on the State to guarantee the rights of Indigenous Peoples to a healthy environment and to apply Inter-American standards in the context of business activities, through the effective use of their regulatory, supervisory and judicial functions, and also to ratify the Escazú Agreement.

### III. Precautionary measures<sup>9</sup>

On 23 December 2021, the IACHR granted precautionary measures in favour of the families of the Mixtec Indigenous communities of Guerrero Grande and Ndoyonuyuji together with five missing persons due to the serious and urgent risk of irreparable harm to their rights caused by a series of acts of violence and armed aggression in the municipality of San Esteban Atlatlahuca, Oaxaca, during October 2021. Families from these Mixtec communities were displaced by the violence and the burning of their homes, and the whereabouts of five people remains unknown. In its precautionary measures, the IACHR called on Mexico to adopt the necessary measures to: protect the rights to life and personal integrity of these Indigenous families, through culturally appropriate measures aimed at protecting their rights, especially those of the children, women and the elderly; guarantee security within the communities in order to prevent threats, harassment, intimidation and aggression against their inhabitants; and determine the whereabouts of the five missing persons in order to protect their right to life and personal integrity, among other things.<sup>10</sup>

On 15 July 2021, the IACHR granted precautionary measures in favour of Indigenous leader Yiner Hernás Quiguntar Cortés from Cauca, Colombia, due to threats and harassment against him. The State was called upon to adopt the necessary measures to protect his life and integrity in an effective and culturally relevant manner so that he can continue to carry out his work of defending human rights, among other measures.<sup>11</sup>

On 23 April 2021, the IACHR decided to grant precautionary measures in favour of Tsotsil Indigenous families living in 12 communities in the municipality of Aldama, Chiapas, Mexico, due to aggression

from armed actors. This situation took place despite the existence of a Non-Aggression Agreement. The IACHR requested that the State of Mexico: adopt the necessary and culturally relevant security measures to protect the life and personal integrity of the beneficiaries and, in particular, guarantee their safety within their communities and during their displacement, with a view to preventing threats, harassment, intimidation or acts of armed violence against them by third parties, among other measures.<sup>12</sup>

On 16 April 2021, the IACHR granted precautionary measures in favour of seven Indigenous Wichí women who were concealing their pregnancies through fear of the authorities in Formosa Province, Argentina. According to reports, this situation had made it impossible for them to access the medical care they needed for their pregnancy and forthcoming labour. The IACHR requested that Argentina immediately adopt measures to enable access to adequate culturally and linguistically appropriate medical care, in accordance with applicable international standards and in accordance with the free, prior and informed consent of the beneficiaries, taking into account their Indigenous worldview and from a gender perspective, among other measures.<sup>13</sup>

On 4 January 2021, the IACHR decided to grant precautionary measures in favour of members of the Guajajara and Awá Indigenous Peoples living in voluntary isolation in the Araribóia Indigenous Land, Brazil. The beneficiaries are at risk from the COVID-19 pandemic due to their particular vulnerability, deficiencies in health care and the presence of unauthorised third parties on their territory. The IACHR requested that the Brazilian State adopt the necessary measures to protect the rights to health, life and personal integrity of the members of the Guajajara and Awá Indigenous Peoples by implementing culturally appropriate measures to prevent the spread of COVID-19 and to provide adequate medical care under conditions of availability, accessibility, acceptability and quality, in accordance with applicable international standards, among other measures.<sup>14</sup>

## **IV. Petitions and cases**

### **Admissibility reports**

On 7 September 2021, the IACHR approved the admissibility report regarding the petition submitted on behalf of the Maya Achi, Q'eqchi and

K'iche communities of Guatemala. The petition to the IACHR alleged the State of Guatemala's responsibility for violating the human rights of 33 Indigenous Maya communities due to damage caused by the construction of the Chixoy hydroelectric dam, which was implemented in a context of violence, genocide, disappearances and forced displacement. This situation also had detrimental economic, social, cultural and environmental consequences. A lack of compliance with the reparations under the commitments acquired by the State was alleged. The IACHR admitted the petition in relation to the rights to life, personal integrity, personal freedom, judicial guarantees, freedom of expression and private property, among other provisions of the American Convention on Human Rights.<sup>15</sup>

On 14 July 2021, the IACHR approved the admissibility report for the petition of the Rapa Nui people with respect of Chile, which alleged violations of the right to their collective property, territory and natural resources. Despite requests for the recognition and autonomy of the Rapa Nui people for more than 125 years, more than 70% of their ancestral territory is under State control and ownership, and this has damaged their way of life and development. It was argued that the State needed to return the land in order to protect the ancestral property of the Rapa Nui people, and their right to self-determination. The IACHR admitted the petition in relation to the rights to life, judicial guarantees, freedom of conscience and religion, and to property, among other rights enshrined in the American Convention.<sup>16</sup>

On 28 March 2021, the IACHR approved the admissibility report regarding the petition submitted on behalf of the Navajo Indian communities of Crownpoint and Church Rock with respect of the United States. The petition alleges human rights violations following the approval of a licence to mine uranium in the Navajo communities of Crownpoint and Church Rock, New Mexico. The IACHR admitted the petition in relation to the rights to the benefits of culture, to justice and to property under the American Declaration of the Rights and Duties of Man.<sup>17</sup>

### **Merits reports**

No substantive reports relating to the rights of Indigenous Peoples were recorded on the IACHR website during 2021.

## Notes and references

1. IACHR. *Right to Self-Determination of Indigenous and Tribal Peoples*. OAS/ Ser.L/V/II, Doc. 413, 28 December 2021, paras. 52, 54. <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.
2. IACHR. *Right to Self-Determination of Indigenous and Tribal Peoples*. OAS/ Ser.L/V/II, Doc. 413, 28 December 2021, para. 4. <https://www.oas.org/en/iachr/reports/pdfs/self-determination-EN.pdf>.
3. *Ibid*, para. 356.
4. *Ibid*, para. 6.
5. Section based on IACHR, Press Release 076/21. *IACHR concludes 179th Virtual Period of Sessions*. 26 March 2021. [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/076.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/076.asp).
6. Section based on IACHR, Press Release 165/21. *IACHR completes 180th session*. 2 July 2021. [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/165.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/165.asp).
7. Section based on IACHR, Press Release 297/21. *IACHR completes 181st session*. 8 November 2021. [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/297.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/297.asp).
8. Section based on IACHR, Press Release 344/21. *IACHR completes 182nd session*. 17 December 2021. [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2021/344.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/344.asp).
9. General information on precautionary measures: <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/decisions/mc/about-precautionary.asp>
10. IACHR, Precautionary Measure No. 1050-21. *Families from the Mixtec Indigenous communities of Guerrero Grande and Ndoyonuyuji et al in Mexico*. 22 December 2021. [https://www.oas.org/es/cidh/decisiones/mc/2021/res\\_1050-21\\_mc\\_1050-21\\_mx\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2021/res_1050-21_mc_1050-21_mx_es.pdf).
11. IACHR, Precautionary Measure No. 552-21. *Yiner Hernán Quiguntar Cortés with respect of Colombia*. 15 July 2021. [https://www.oas.org/es/cidh/decisiones/mc/2021/res\\_53-21\\_mc\\_552-21\\_co\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2021/res_53-21_mc_552-21_co_es.pdf).
12. IACHR, Precautionary Measure No. 248-18. *Tsotsil Indigenous families from 12 identified communities in Aldama, Chiapas, Mexico*. 23 April 2021. [https://www.oas.org/es/cidh/decisiones/mc/2021/res\\_35-21\\_mc\\_284-18\\_mx\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2021/res_35-21_mc_284-18_mx_es.pdf).
13. IACHR, Precautionary Measure No. 216-21. *Seven pregnant women of the Wichí ethnic group with respect of Argentina*. 16 April 2021. [https://www.oas.org/es/cidh/decisiones/mc/2021/res\\_32-21\\_mc\\_216-21\\_ar\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2021/res_32-21_mc_216-21_ar_es.pdf).
14. IACHR, Precautionary Measure No. 754-20. *Members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Land in Brazil*, 4 January 2021. [https://www.oas.org/es/cidh/decisiones/mc/2021/res\\_1-21\\_mc\\_754-20\\_br\\_es.pdf](https://www.oas.org/es/cidh/decisiones/mc/2021/res_1-21_mc_754-20_br_es.pdf).
15. IACHR, Report No. 196/21. Petition 466-13. Admissibility. *Maya Achí, Q'eqchi and K'iche Indigenous communities*. Guatemala. 7 September 2021. <https://www.oas.org/es/cidh/decisiones/2021/GUAD466-13ES.pdf>.
16. IACHR, Report No. 150/21. Petition 172-15. Admissibility. Rapa Nui people. Chile. 14 July 2021. <https://www.oas.org/es/cidh/decisiones/2021/CHAD172-15ES.pdf>.
17. IACHR, Report No. 67/21, Petition 654-11. Admissibility. *Navajo Communities of Crownpoint and Church Rock, United States of America*. 28 March 2021. <https://www.oas.org/en/iachr/decisions/2021/USAD654-11EN.pdf>.
18. This compilation is the sole responsibility of the author and does not constitute a work carried out within the context of his role within the IACHR.



**Leonardo J. Alvarado**, M.A., J.D., L.L.M. is a lawyer and expert in international law on the rights of Indigenous Peoples. He is currently working as a specialist lawyer in the Office of the Rapporteurship on the Rights of Indigenous Peoples of the Inter-American Commission on Human Rights.<sup>18</sup>



# The work of the UN Treaty Bodies and Indigenous Peoples' Rights

The human rights treaty bodies<sup>1</sup> are the committees of independent experts in charge of monitoring the implementation by state parties of the rights protected in international human rights treaties. There are nine core international human rights treaties that deal with civil and political rights; economic, social and cultural rights; racial discrimination; torture; discrimination against women; child rights; migrant workers' rights; persons with disabilities; and enforced disappearances. The main functions of the treaty bodies are to examine periodic reports submitted by state parties, adopt concluding observations and consider individual complaints.<sup>2</sup> Concluding observations contain a review of both positive and negative aspects of a state's implementation of the provisions of a treaty and recommendations for improvement.

Treaty bodies also adopt general comments or recommendations which are interpretations of the provisions of the treaties. A large number of these interpretative documents makes reference to Indigenous Peoples' rights. So far, only the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC) have adopted general comments specifically addressing Indigenous Peoples' rights.

This article contains a non-exhaustive overview of the reference made by the treaty bodies in their concluding observations, general comments, decisions, views and opinions to Indigenous Peoples or to groups who are otherwise self-identifying as Indigenous Peoples with a special focus on the rights of Indigenous women/girls.<sup>3</sup>

## The treaty bodies and Indigenous Peoples' rights

The COVID-19 pandemic continued to impact the activities of the treaty bodies in 2021. The committees reviewed a total of 61 State party reports, adopted 59 concluding observations, 72 follow-ups on concluding observations,<sup>4</sup> and 132 list of issues and decisions, views and opinions on 314 individual communications. Under its Early-Warning Measures and Urgent Procedures (EWUP), the CERD issued nine Indigenous rights-related letters.

The committees continued to highlight patterns of human rights violations and abuses faced by Indigenous Peoples, including Indigenous women and girls, and to remind state parties of their obligations to protect their rights to equality and non-discrimination, including their collective rights to lands, territories and natural resources, to consultation and Free, Prior and Informed Consent (FPIC). The committees notably called upon state parties to combat and end the multiple and intersecting forms of discrimination faced by Indigenous women/girls, recognize and protect their rights to access, use and own lands, to consultation and FPIC and to guarantee their access to education, employment and health services. State parties were also requested to take measures to protect Indigenous women/girls from racial and gender-based violence, harassment and threats and to adopt and implement special temporary measures to accelerate equality and the representation of Indigenous women in leadership and senior management positions, political and public life and decision-making bodies and in the formulation and implementation of policies and strategies. A draft general recommendation on the rights of Indigenous women/girls was prepared by the Committee on the Elimination of Discrimination against Women (CEDAW)<sup>5</sup> for adoption in 2022.

## Summary of concluding observations addressed to the state parties under reviews

### Rights of Indigenous women and girls

Under its mandate of considering the progress made in the implementation of the Convention on the Elimination of All Forms of Discrimi-

nation Against Women, the CEDAW was particularly active in 2021 in addressing issues pertaining to the rights of Indigenous women/girls. Other committees also made specific reference to human rights violations faced by Indigenous women/girls. The CEDAW expressed concerns at the registration of Indigenous women/girls on the unified list of Indigenous Peoples recently established in the Russian Federation<sup>6</sup> and at the very low number of *Masyarakat Hukum Adat* (Customary Law Communities) recognized by Indonesia.<sup>7</sup> The Human Rights Committee, CCPR - International Covenant on Civil and Political Rights underlined the lack of measures taken to address the vulnerabilities of Indigenous women in Kenya.<sup>8</sup> The CEDAW noted the lack of legislation to protect the rights of Indigenous women/girls to their traditional lands (Sweden,<sup>9</sup> Indonesia, Ecuador<sup>10</sup>), the limited access of Indigenous women to their traditional lands and livelihoods in the Russian Federation and the impact of the removal of the requirement of environmental permits and impact assessments on Indigenous women's access to land in Indonesia. The Committee also underlined violations related to the right to consultation and FPIC and lack of benefit-sharing (Sweden, Indonesia, Ecuador) and pointed out the environmental damage and disproportionate impacts of development projects (Indonesia, Ecuador) and climate change and natural disasters (Russian Federation) on Indigenous women/girls. The Committee highlighted the lack of consideration of the gender-specific impact of the climate crisis (Sweden, Russian Federation, Denmark,<sup>11</sup> Ecuador) and of participation in the formulation and implementation of policies and strategies on climate change and disaster risk reduction (Sweden, Ecuador).

The CERD, CEDAW and Committee on Economic, Social and Cultural Rights (CESCR) underlined the multiple and intersecting forms of discrimination faced by Indigenous women/girls (Russian Federation, Ecuador, Chile,<sup>12</sup> Thailand<sup>13</sup>), and their limited access to education, employment and health (Ecuador, Chile, Thailand) in particular sexual and reproductive health services (Sweden, Ecuador, Bolivia<sup>14</sup>). The CEDAW further underlined the lack of representation of Indigenous women/girls in decision-making processes, political and public life and in leadership positions (Sweden, Indonesia, Ecuador). Lastly, the CEDAW highlighted gender-based violence (Indonesia, Ecuador) and hate crimes and discrimination (Sweden, Ecuador) targeting Indigenous women/girls, along with harassment, threats and violence targeting Indigenous and

women human rights defenders (Indonesia, Russian Federation), while the Committee Against Torture (CAT) expressed concern at racial violence, attacks, threats and ill-treatment targeting Indigenous women in Bolivia.<sup>15</sup>

A large number of recommendations were made to state parties to promote and protect the rights of Indigenous women/girls. The Russian Federation was invited to facilitate the registration process for Indigenous women/girls on the unified list of Indigenous Peoples while Indonesia was advised to expand the scope of *Masyarakat Hukum Adat*. Kenya was advised to put in place measures to promote and protect the rights of Indigenous women. The CEDAW recommended protecting Indigenous women's collective rights to their traditional land and resources (Indonesia, Russian Federation, Ecuador), including by amending legislation and eliminating customary practices undermining Indigenous women's rights to use and own land in Indonesia and by adopting a specific legislation in Ecuador. Indonesia was invited to conduct a gender assessment in the context of all environmental impact assessments. The CEDAW also recommended that Indonesia and Ecuador require the FPIC of Indigenous women and ensure benefit-sharing in relation to development projects and that Sweden adopt specific legislation requiring the FPIC of and consultations and benefit-sharing with Indigenous women/girls. In line with CEDAW General Recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, a number of state parties were invited to take into account the needs of Indigenous women/girls and include their participation in the formulation and implementation of climate change and disaster risk reduction policies and strategies (Sweden, Russian Federation, Denmark, Ecuador).

The CERD, CEDAW and CESCRC called upon state parties to combat and end the multiple intersectional discrimination faced by Indigenous women (Chile and Thailand), and guarantee access to education and health care (Denmark, Indonesia, Sweden, Ecuador, Chile, Russian Federation), in particular to sexual and reproductive health services (Denmark, Indonesia, Bolivia). The CEDAW recommended the adoption and implementation of measures, including temporary special measures, to accelerate equality and the representation of Indigenous women in leadership positions, in academia and in senior management positions (Sweden, Russian Federation, Denmark, Ecuador), as well as in

political and public life and decision-making bodies (Sweden, Russian Federation, Indonesia). Both the CEDAW and the CAT recommended combatting hate crimes and discrimination (Sweden, Ecuador, Bolivia) and gender-based violence (Indonesia, Ecuador) targeting Indigenous women/girls, adopting effective measures for the protection of Indigenous women human rights defenders (Indonesia, Russian Federation) and investigating, prosecuting and punishing perpetrators of hate crime, harassment, threats and violence (Indonesia, Bolivia).

A number of recommendations related to the protection of Indigenous women/girls in the face of the COVID-19 pandemic were made, notably calling upon state parties to implement measures to redress pre-existing gender inequalities by placing women and girls at the center of recovery strategies, paying particular attention to Indigenous women (Sweden, Denmark, Indonesia, Ecuador) and ensuring that measures taken to contain the pandemic do not limit their access to justice, protect them from gender-based violence, and guarantee education, employment and health care (Denmark, Indonesia).

After a day of general discussion, the CEDAW developed draft General Recommendation No. 39 (2021) on the rights of Indigenous women/girls, which addresses equality, non-discrimination and intersecting forms of discrimination;<sup>16</sup> access to justice and plural legal systems and the rights of Indigenous women/girls to: effective participation in political and public life, nationality, education, work, health, equality in marriage and family relations, culture, social protection and economic resources; food, water and seeds; land, territories and natural resources;<sup>17</sup> a safe, clean, healthy, and sustainable environment and protection from the effects of the COVID-19 pandemic.

### **Rights to self-identification and self-determination**

The CCPR and the CERD underlined the absence of legislation to protect Indigenous Peoples in Kenya and the lack of recognition of the status and rights of Indigenous Peoples in Thailand. The CESCR acknowledged the enshrinement of four types of Indigenous autonomous entity in the Bolivian Constitution but regretted that Indigenous communities face obstacles to obtaining autonomous status. The CCPR expressed concerns that the Views adopted by the Committee in 2018<sup>18</sup> concerning the right to self-determination of the Sami people in Finland had not been implemented and that the Sami Parliament Act has not yet been

amended in a way that guarantees the Sami people's right to self-determination. Kenya was advised to develop a legislation to expand the specific protection for Indigenous Peoples while Thailand was advised to affirm the status and the rights of Indigenous Peoples in its legislation, in line with the UNDRIP. The CESCR called upon Bolivia to adopt measures to facilitate the attainment of autonomous status for Indigenous communities. Finland was urged by the CESCR to strengthen the legal recognition of the Sami as Indigenous Peoples and by the CCPR to comply with all the Views adopted by the CCPR with respect of the Sami people and to speed up the process of revising the Sami Parliament Act with a view to respecting the Sami people's right to self-determination.

### **Right to land, territory and natural resources**

The CCPR underlined difficulties related to obtaining official recognition and registration of Indigenous lands in Kenya and to enjoyment of Indigenous Peoples' rights to lands and natural resources in Botswana,<sup>19</sup> in particular for the former residents of the Central Kalahari Game Reserve who are required to obtain entry permits to enter the reserve. The CESCR underlined the absence of full protection of Indigenous and aboriginal jurisdiction in Bolivia and of a mechanism guaranteeing the rights of Indigenous Peoples to own and use their lands and resources in Nicaragua.<sup>20</sup> The CERD pointed out the lack of protection of the collective property of Indigenous Peoples in Thailand and issues related to land restitution (Chile, Thailand) and land titling (Nicaragua, Thailand). The CESCR highlighted the erosion of the rights of the Sami to maintain their way of life and traditional livelihoods while the CCPR expressed concerns at the use of vague criteria when assessing the impact of development projects on Sami culture and traditional livelihoods and their limited effectiveness in upholding the rights of the Sami. The CERD pointed out the desecration of Indigenous sacred sites and the negative impact of waste disposal sites on the environment, health, and traditional ways of life of Indigenous communities in Chile while the CESCR underlined the irreversible damage caused by natural resource exploitation and its impact on Indigenous Peoples' rights to health and adequate standard of living in Nicaragua. Lastly, Committees underlined conflicts and violence caused by the occupation and exploitation of Indigenous lands by third parties (Nicaragua, Thailand, Chile) and land grabbing and forced evictions (Thailand, Kenya).

The CCPR recommended that Kenya ensure the official recognition and registration of Indigenous lands and that Botswana protect and recognize in law and in practice the rights of Indigenous Peoples to their lands and natural resources. Botswana was further requested to lift restrictions imposed on the former residents of the Central Kalahari Game Reserve preventing their return to and permanence in the reserve. The CESCR called upon Bolivia to ensure legal certainty for Indigenous Peoples over lands and natural resources and Nicaragua to establish a mechanism guaranteeing Indigenous Peoples' rights to own, use and control their lands and natural resources. The CERD further called upon Chile and Thailand to protect Indigenous Peoples' rights to own, use and control their lands and natural resources. Chile, in particular, was invited to implement dedicated legislation and expedite the restitution of Indigenous lands.

Nicaragua was requested to elaborate regulations for social and environmental impact assessments, paying special attention to Indigenous Peoples' territories, while Chile was requested to undertake environmental impact assessments on a systematic basis. The CESCR called upon Finland to act upon instances of infringement of the rights of the Sami to maintain their way of life and traditional livelihoods and Nicaragua to investigate cases of land grabbing. Thailand was requested to prevent business entities from engaging in activities which adversely affect Indigenous rights, and prevent illegal occupation and forced evictions. The CCPR recommended that Kenya step up safeguards against forced evictions of Indigenous Peoples, and comply with the decision of the African Court on Human and Peoples' Rights in respect of the rights of the Ogiek community of Mau.

### **Right to consultation and Free, Prior and Informed Consent**

The CESCR pointed out delays in the adoption of a law protecting Indigenous Peoples' rights to FPIC in Bolivia, the lack of a legal obligation to obtain the FPIC of the Sami in Finland and the absence of a mechanism to guarantee Indigenous Peoples' right to be consulted and the creation of parallel bodies supplanting the legitimately constituted representation of Indigenous communities in Nicaragua. The CESCR, CCPR and the CEDAW underlined the failure of Bolivia, Nicaragua, Finland and Sweden to engage in consultations to obtain FPIC of Indigenous Peoples prior to the approval of large-scale infrastructure projects and de-



cisions affecting their lands and rights. The CCPR underlined the lack of Indigenous participation in projects that affect sustainable development and resilience to climate change in Kenya.

The CESCR recommended that Bolivia strengthen its legislation on the right to consultation and FPIC and update regulations on mining and hydrocarbons accordingly. Similarly, Finland was requested by both CCPR and CESCR to strengthen the legal and procedural guarantees for obtaining the FPIC of the Sami, review its legislation and policies regulating development projects and extractive industries to ensure consultation and FPIC, and expedite the ratification of ILO Convention 169. The CEDAW recommended that Sweden revise its legislation, including the Minerals Act, to ensure that exploration permits are granted in consultation with the Sami parliament. Nicaragua was requested to adopt and implement a procedure guaranteeing the right to consultation and FPIC and ensure that legitimate Indigenous authoritative bodies are not supplanted by parallel decision-making institutions. The CESCR and CERD recommended ensuring the right to consultation in order to obtain the FPIC of Indigenous Peoples prior to any projects, legislative or administrative measures affecting their rights and lands (Bolivia, Thailand, Chile, Nicaragua) while the CCPR recommended ensuring the consistent application of the principle of FPIC before any developmental or other activity takes place on lands used or occupied by Indigenous communities (Botswana and Kenya).

### **Civil and political rights**

The CCPR and CERD expressed concern at reports of hate speech and hate crimes targeting Crimean Tatars in Ukraine and Indigenous rights activists in Thailand. The CESCR and the CAT underlined political repression and police clampdowns on Indigenous demonstrators and the security conditions in which human rights defenders defending the right to territory operate in Bolivia.<sup>21</sup> The CERD expressed concern at the excessive use of force by police, the disproportionate application of the Counter Terrorism Act to members of the Mapuche communities and the militarization of the conflict, which has led to the death and bodily harm of Mapuche people. The CED expressed concerns about killings, threats and reprisals faced by Indigenous Peoples and at the lack of progress in investigating disappearances related to the forced recruitment of Indigenous children by organized armed groups in Colombia<sup>22</sup>

while the CDESCR underlined violence related to land rights in Nicaragua. The CERD also underlined the mistreatment of Mapuche people and violations of their rights to due process and to practice their traditions, customs and rituals while in detention in Chile and the CAT raised the issue of the specific needs of Indigenous Peoples deprived of liberty in Bolivia.

The CCPR recommended that Ukraine review its legislation in order to prohibit hate crimes and combat intolerance, stereotypes and discrimination towards Crimean Tatars<sup>23</sup> while the CERD called upon Thailand to combat racist hate speech and incitement to racist violence against Indigenous Peoples. The CDESCR recommended that Bolivia prevent attacks against Indigenous Peoples and adopt a policy to protect human rights defenders while the CAT recommended that Bolivia provide training to law enforcement officers to prevent torture, ill-treatment and excessive use of force. Chile was urged to ensure that law enforcement officials refrain from using violence, to design policies promoting intercultural dialogue and fostering peace in conflict zones and to ensure that the Counter Terrorism Act is not applied to members of the Mapuche community for acts related to the expression of their social needs. The CED called upon Colombia to prevent violence, threats and reprisals and to investigate all acts of enforced disappearance, prosecute and punish perpetrators. While the CDESCR called upon Nicaragua to investigate all acts of violence targeting members of Indigenous Peoples. Chile finally recommended ensuring Indigenous Peoples' rights to due process and to practice their culture in detention and to train law enforcement and prison officers on Indigenous rights, customs, rituals and traditions.

## **Other general activities of the treaty bodies relevant to the rights of Indigenous Peoples**

### **Early-Warning Measures and Urgent Procedures (EWUP)**

Under its EWUP,<sup>24</sup> the CERD considered Indigenous rights-related cases in Australia,<sup>25</sup> Brazil,<sup>26</sup> Canada,<sup>27</sup> India,<sup>28</sup> Indonesia,<sup>29</sup> Peru,<sup>30</sup> and the United States of America.<sup>31</sup>

### **General Comments**

In addition to the draft General Recommendation on the rights of Indigenous women/girls prepared by CEDAW, the CDESCR developed draft

General Comment No. 36 (2021) on land and economic, social and cultural rights in which the committee recognizes Indigenous Peoples as being particularly at risk of discrimination in the governance of land tenure. A number of issues pertaining to land-related Indigenous rights are highlighted, including: the link between access to land and other rights, the role of special measures, the standard of FPIC, the need for protection of traditional and communal dimensions of land tenure and ensuring access to natural resources, the right of Indigenous Peoples over the lands and territories that they have traditionally occupied, extraterritorial obligations, the link between armed conflicts and forced displacements, land grabbing and land dispossession, climate change mitigation and adaptation measures.<sup>32</sup>

The Committee on the Rights of Persons with Disabilities (CRPD) developed a draft General Comment No. 8 on Article 27 on the right of persons with disabilities to work and employment in which the committee identifies Indigenous identity as one of the grounds for intersectional discrimination affecting persons with disabilities.<sup>33</sup>

The CRC adopted General Comment No. 25 (2021) on the digital environment, which notably requires state parties to take measures to: prevent discrimination faced by Indigenous children in accessing the digital environment; enhance the provision of diverse, accessible and beneficial content for Indigenous children and support educational and cultural institutions to make diverse digital and interactive learning resources available, including Indigenous resources.<sup>34</sup>

The CERD published a document addressing frequently asked questions about its General Recommendation No. 36 (2020) on preventing and combatting racial profiling by law enforcement officials in which the committee identifies Indigenous Peoples as one of eight specific groups most affected by racial profiling in law enforcement.<sup>35</sup>

The CESCR and CRC also worked on the development of general comments of particular interest.<sup>36</sup>

### **Individual complaints**

Under Articles 2,17 and 27 of its Convention, the CCPR adopted a landmark decision<sup>37</sup> on a complaint<sup>38</sup> filed by an Indigenous community leader and school teacher on behalf of the 201 Ava Guarani people of the Campo Agua'e Indigenous community against Paraguay.<sup>39</sup> The CAT

also adopted a decision<sup>40</sup> on a complaint<sup>41</sup> submitted by an Indigenous teacher and human rights defender member of the Indigenous Ayuujk People of Santa María Tlahuitoltepec against Mexico.<sup>42</sup> The CRC adopted a decision of non-admissibility<sup>43</sup> of a complaint<sup>44</sup> introduced by 16 children, including three Indigenous children from Alaska, the Marshall Islands and Sweden against Brazil and Germany.

## Notes and references

1. For more information on the treaty bodies: United Nations. OHCHR. "Monitoring the core international human rights treaties." <https://www.ohchr.org/EN/HRBodies/Pages/Overview.aspx>
2. For more information on the activities of the treaty bodies: United Nations. OHCHR. "Monitoring the core international human rights treaties." <https://www.ohchr.org/EN/HRBodies/Pages/WhatTBDo.aspx>
3. This article primarily focuses on the activities of 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) and the Committee on the Rights of the Child (CRC). Some relevant concluding observations and views from the Committee against Torture (CAT), and the Committee on Enforced Disappearances (CED) as well as draft general comments of the Committee on the Rights of Persons with Disabilities (CRPD) are also included. The activities of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and of the Committee on Migrant Workers (CMW) as well as the list of issues and follow-up on concluding observations are not included.
4. For more information on the follow-up procedure: United Nations. OHCHR. "Follow-Up to Concluding Observations." <https://www.ohchr.org/EN/HRBodies/Pages/FollowUpProcedure.aspx>
5. United Nations. OHCHR. "The Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 39 on the rights of indigenous women and girls – DRAFT." <https://www.ohchr.org/Documents/HRBodies/CEDAW/Draft-GR-rights-indigenous-women-and-girls/Draft-GR-indigenous-EN.DOCX>
6. United Nations. "CEDAW/C/RUS/CO/9. Convention on the Elimination of All Forms of Discrimination against Women. 8 January 2020. Committee on the Elimination of Discrimination against Women. Ninth periodic report submitted by the Russian Federation under article 18 of the Convention, due in 2019." <https://undocs.org/en/CEDAW/C/RUS/9>
7. United Nations. "CEDAW/C/IDN/CO/8. Convention on the Elimination of All Forms of Discrimination against Women. 24 November 2021. Committee on the Elimination of Discrimination against Women. Concluding observations on the eighth periodic report of Indonesia." <https://undocs.org/CEDAW/C/IDN/CO/8>
8. OHCHR. UN Treaty Body Database. "CCPR/C/KEN/CO/4. International Covenant on Civil and Political Rights. 11 May 2021. Human Rights Committee. Concluding observations on the fourth periodic report of Kenya."

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9. OHCHR. UN Treaty Body Database. "United Nations. CEDAW/C/SWE/CO/10. Convention on the Elimination of All Forms of Discrimination against Women. 24 November 2021. Committee on the Elimination of Discrimination against Women. Concluding observations on the tenth periodic report of Sweden." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fSWE%2fCO%2f10&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fSWE%2fCO%2f10&Lang=en)
  10. OHCHR. UN Treaty Body Database. "United Nations. CEDAW/C/ECU/CO/10. Convention on the Elimination of All Forms of Discrimination against Women. 24 November 2021. Committee on the Elimination of Discrimination against Women. Concluding observations on the tenth periodic report of Ecuador." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fECU%2fCO%2f10&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CEDAW%2fC%2fECU%2fCO%2f10&Lang=en)
  11. United Nations Digital Library. "United Nations. CEDAW/C/DNK/CO/9. Convention on the Elimination of All Forms of Discrimination against Women. 9 March 2021. Committee on the Elimination of Discrimination against Women. Concluding observations on the ninth periodic report of Denmark." <https://digitallibrary.un.org/record/3906928>
  12. OHCHR. "United Nations. CERD/C/CHL/CO/22-23. International Convention on the Elimination of Racial Discrimination. 100th session. 25 November–13 December 2019. Item 4 of the provisional agenda. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention. List of themes in relation to the combined twenty-second and twenty-third periodic reports of Chile." <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqKb7yhslsns7vAyg8M3uDZ7rn5ZZM3UjKBKTJCMsdXyZOf4Q2nhnjsCsOqK5B9glr4Asbbnnl5Z3cVFTo%2B6laZz9sQ9OcnrcsfHnYcNEEGXpM6wFEt>
  13. OHCHR. UN Treaty Body Database. "United Nations. CERD/C/THA/CO/4-8. International Convention on the Elimination of All Forms of Racial Discrimination. 10 February 2022. Committee on the Elimination of Racial Discrimination. Concluding observations on the combined fourth to eighth reports of Thailand." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fTHA%2fCO%2f4-8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CERD%2fC%2fTHA%2fCO%2f4-8&Lang=en)
  14. OHCHR. UN Treaty Body Database. "United Nations. E/C.12/BOL/CO/3. Economic and Social Council. 5 November 2021. Committee on Economic, Social and Cultural Rights. Concluding observations on the third periodic report of the Plurinational State of Bolivia." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fBOL%2fCO%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2fC.12%2fBOL%2fCO%2f3&Lang=en)
  15. OHCHR. UN Treaty Body Database. "United Nations. CAT/C/BOL/CO/3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 29 December 2021. Committee against Torture. Concluding observations on the third periodic report of the Plurinational State of Bolivia." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fBOL%2fCO%2f3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fBOL%2fCO%2f3&Lang=en)
  16. Para 28 notably recommends that states parties: (a) Develop comprehensive policies to eliminate discrimination against indigenous women and girls, guided by consultations with Indigenous women and girls (.); (c) Repeal and

- amend laws, policies, regulations, programmes, administrative procedures, institutional structures (...) which directly or indirectly discriminate against Indigenous women and girls; (d) Recognize and address intersecting forms of discrimination against Indigenous women and girls, and their compounded negative impact; (f) Adopt legislation to ensure Indigenous women and girls' rights to land, water, and other natural resources on an equal basis with men, including their right to a clean, healthy, and sustainable environment (...). States should ensure that Indigenous women in rural areas have equal access as men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied, or otherwise used or acquired, including by protecting them against discrimination and dispossession; (h) Protect Indigenous women and girls from discrimination by both state and non-state actors in and outside of their territories, especially in the areas of education, employment, health, social protection, and justice: OHCHR. "The Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 39 on the rights of indigenous women and girls – DRAFT." <https://www.ohchr.org/Documents/HRBodies/CEDAW/Draft-GR-rights-indigenous-women-and-girls/Draft-GR-indigenous-EN.DOCX>
17. Para 71 notably calls upon states parties to (a) recognize the rights of Indigenous women to collective ownership and control over land and customary land tenure, and develop policies to properly reflect this recognition in the local and national economies; (b) recognize legally the existence and rights of indigenous peoples to their lands, territories, and natural resources in treaties, constitutions, and laws at the national level and (c) require the free, prior and informed consent of indigenous peoples, including women, before authorizing economic and development projects on their lands, territories, and using their natural resources. OHCHR. "The Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 39 on the rights of indigenous women and girls – DRAFT." <https://www.ohchr.org/Documents/HRBodies/CEDAW/Draft-GR-rights-indigenous-women-and-girls/Draft-GR-indigenous-EN.DOCX>
18. *Sanila-Aikio v. Finland*: OHCHR. UN Treaty Body Database. "United Nations. CCPR/C/124/D/2668/2015. International Covenant on Civil and Political Rights. Advance unedited version. 1 February 2019. Human Rights Committee. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2668/2015." [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR\\_C\\_124\\_D\\_2668\\_2015\\_28169\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/FIN/CCPR_C_124_D_2668_2015_28169_E.pdf) and *Käkkäljärvi et al. v. Finland*: OHCHR. UN Treaty Body Database. "United Nations. CCPR/C/124/D/2950/2017. International Covenant on Civil and Political Rights. 18 December 2019. Human Rights Committee. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2950/2017. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F124%2FD%2F2950%2F2017&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F124%2FD%2F2950%2F2017&Lang=en)
19. OHCHR. UN Treaty Body Database. "United Nations. CCPR/C/BWA/CO/2. International Covenant on Civil and Political Rights. 24 November 2021. Human Rights Committee. Concluding observations on the second periodic report of Botswana." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBWA%2FCO%2F2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBWA%2FCO%2F2&Lang=en)
20. OHCHR. UN Treaty Body Database. "United Nations. E/C.12/NIC/CO/5.

- Economic and Social Council. 11 November 2021. Committee on Economic, Social and Cultural Rights. Concluding observations on the fifth periodic report of Nicaragua." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FNIC%2FCO%2F5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FNIC%2FCO%2F5&Lang=en)
21. OHCHR. UN Treaty Body Database. "United Nations. CAT/C/BOL/CO/3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 29 December 2021. Committee against Torture. Concluding observations on the third periodic report of the Plurinational State of Bolivia." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2FC%2FBOL%2FCO%2F3&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2FC%2FBOL%2FCO%2F3&Lang=en)
  22. OHCHR. UN Treaty Body Database. "United Nations. CED/C/COL/OAI/1. International Convention for the Protection of All Persons from Enforced Disappearance. 2 June 2021. Committee on Enforced Disappearances. Concluding observations on the additional information submitted by Colombia under article 29 (4) of the Convention." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CED%2FC%2FCOL%2FOAI%2F1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CED%2FC%2FCOL%2FOAI%2F1&Lang=en)
  23. Undogs.org. "United Nations. CCPR/C/UKR/CO/8. International Covenant on Civil and Political Rights. 30 January 2019. Human Rights Committee. Eighth periodic report submitted by Ukraine under article 40 of the Covenant, due in 2018." <https://undocs.org/CCPR/C/UKR/8>
  24. 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.
  25. Regarding the Western Australian Government's draft *Aboriginal Cultural Heritage Bill (2020 Draft Bill)* and its impact on Aboriginal peoples: "United Nations. OHCHR. Reference: CERD/EWUAP/105th session/2021/CS/ks. 3 December 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/INT\\_CERD\\_ALE\\_AUS\\_9504\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/AUS/INT_CERD_ALE_AUS_9504_E.pdf).
  26. Regarding the situation of COVID-19 in Brazil and its dramatic impact on Indigenous Peoples, particularly in the State of Amazonas: United Nations. OHCHR. Reference: CERD/EWUAP/104th Session/2021/CS/ks. 25 August 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT\\_CERD\\_ALE\\_BRA\\_9445\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT_CERD_ALE_BRA_9445_E.pdf); and regarding the impact of infrastructure projects in the State of Mato Grosso on Xavante and other Indigenous Peoples' rights: "United Nations. OHCHR. Reference: CERD/EWUAP/104th session/2021/CS/ks. 25 August 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT\\_CERD\\_ALE\\_BRA\\_9446\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT_CERD_ALE_BRA_9446_E.pdf)
  27. Regarding allegations of acts of racist violence against Mi'kmaq Indigenous Peoples in the Province of Nova Scotia: "United Nations. OHCHR. Reference: CERD/EWUAP/103rd Session/2021/MJ/CS/ks. 30 April 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT\\_CERD\\_ALE\\_CAN\\_9398\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/CAN/INT_CERD_ALE_CAN_9398_E.pdf).
  28. Regarding the *Draft Lakshadweep Development Authority Regulation 2021* and the potential harm it may cause to the Scheduled Tribes of Lakshadweep." United Nations. OHCHR. Reference: CERD/EWUAP/104th session/2021/CS/ks. 25 August 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT\\_CERD\\_ALE\\_Ind\\_9447\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT_CERD_ALE_Ind_9447_E.pdf).
  29. Regarding the insufficient levels of official state recognition of Indigenous

- Peoples in Indonesia: "United Nations. OHCHR. Reference: CERD/EWUAP/103rd session/2021/MJ/CS/ks. 30 April 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT\\_CERD\\_ALE\\_IDN\\_9400\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IDN/INT_CERD_ALE_IDN_9400_E.pdf).
30. Regarding allegations that a newly adopted regulation by the Regional Government of Ucayali (*Ordinance no. 010-2018-GRU-CR*) would negatively affect the Santa Clara de Uchnya Indigenous community and was adopted without adequate consultation and free, prior and informed consent: "United Nations. OHCHR. Reference: CERD/EWUAP/103rd session/2021/Peru/MJ/CS/ks. 30 April 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PER/INT\\_CERD\\_ALE\\_PER\\_9399\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/PER/INT_CERD_ALE_PER_9399_E.pdf).
  31. Regarding allegations that the expansion of a tar sands pipeline in the State of Minnesota was approved without adequate consultation and without obtaining the free, prior and informed consent of the Anishinaabe Indigenous Peoples and may cause significant harm: United Nations. OHCHR. Reference: CERD/EWUAP/104th session/2021/CS/ks. 25 August 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_9448\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9448_E.pdf); and regarding the impact of a planned oil and gas development in the Coastal Plain of the Arctic National Wildlife Refuge in Alaska on the Gwich'in Peoples: "United Nations. OHCHR. Reference: CERD/EWUAP/105th session/2021/CS/ks. 3 December 2021." [https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT\\_CERD\\_ALE\\_USA\\_9503\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_ALE_USA_9503_E.pdf).
  32. Para 17 focuses on the additional barriers faced by women in accessing land and calls for enhancing Indigenous tenure arrangements, including the documentation and codification of informal land rights regimes, where appropriate. Para 18 recognizes the international legal standard of free, prior and informed consent as it pertains to Indigenous Peoples and land governance. Para 20 calls upon state parties to recognize and protect communal dimensions of tenure, particularly in relation to Indigenous Peoples, highlighting their material and spiritual relationship to traditional lands as well as their collective rights to, use of and control over lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Para 23 addresses in detail the recognition of the right of Indigenous Peoples over the lands and territories that they have traditionally occupied within international law. Para 38 calls for attention to extraterritorial obligations relating to the negative impact of international investment negotiations, agreements and practices on Indigenous Peoples' access to their lands. (E/C.12/69/R.2): OHCHR. "Committee on Economic, Social and Cultural Rights. CESCR calls for written contributions to the draft general comment on Land and Economic, Social and Cultural Rights." [https://www.ohchr.org/Documents/HRBodies/CESCR/Contributions/E\\_C%2012\\_69\\_R\\_2\\_ODS\\_E.docx](https://www.ohchr.org/Documents/HRBodies/CESCR/Contributions/E_C%2012_69_R_2_ODS_E.docx).
  33. Para 24, on intersectional discrimination: (CRPD/C/GC/8): OHCHR. "Committee on the rights of persons with disabilities. Call for submissions: Draft General Comment on article 27 on the right of persons with disabilities to work and employment." <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallCommentsDraftGeneralComments.aspx>
  34. Para 11, on the right to non-discrimination; Para 52, on the right to access to information; Para 100, on the right to education: OHCHR. UN Treaty Body Database. "United Nations. CRC/C/GC/25. Convention on the Rights of the Child. 2 March 2021. Committee on the Rights of the Child. General comment No. 25 (2021) on children's rights in relation to the digital environment." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download).



- aspx?symbolno=CR%2FC%2fGC%2f25&Lang=en
35. The response to question 7 on page 1 states the following: “Racial profiling affects specific individuals and groups, such as indigenous peoples, people of African descent, national and ethnic minorities, Roma, migrants, refugees and asylum-seekers most.” OHCHR. UN Treaty Body Database. “Preventing and Combatting Racial Profiling by Law Enforcement Officials. General Recommendation No. 36. Frequently Asked Questions. January 2021.” [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/GEC/9463&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CERD/GEC/9463&Lang=en)
  36. The CESRC is working on a General Comment on Sustainable Development which will include “Indigenous Peoples, Peasants and Other People Working in Rural Areas” as one of the 10 key themes. OHCHR. Committee on Economic, Social and Cultural Rights. “(2) Preparations for the development of the General Comment on Sustainable Development and the International Covenant on Economic, Social and Cultural Rights.” <https://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCR-GC-Sustainable-Development.aspx>. The CRC is working on a draft General Comment No. 26 on children’s rights and the environment with a special focus on climate change in which the committee underlines that the negative effects of climate change are especially acute for Indigenous Peoples. The CRC published a relevant concept note: OHCHR. Committee on the Rights of the Child. “General comment on children’s rights and the environment with a special focus on climate change. Concept note.” [https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC\\_GC26\\_concept\\_note.aspx](https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC_GC26_concept_note.aspx)
  37. OHCHR. UN Treaty Body Database. “CCPR/C/132/D/2552/2015. Versión avanzada sin editar. 12 de octubre de 2021. Comité de Derechos Humanos. Dictamen aprobado por el Comité a tenor del artículo 5, párrafo 4, del Protocolo Facultativo, respecto de la comunicación núm. 2552/2015.” [https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/PRY/CCPR\\_C\\_132\\_D\\_2552\\_2015\\_33032\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/PRY/CCPR_C_132_D_2552_2015_33032_S.pdf)
  38. OHCHR. UN Treaty Body Database. “CCPR/C/132/D/2552/2015. Versión avanzada sin editar. 12 de octubre de 2021. Comité de Derechos Humanos. Dictamen aprobado por el Comité a tenor del artículo 5, párrafo 4, del Protocolo Facultativo, respecto de la comunicación núm. 2552/2015.” [https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/PRY/CCPR\\_C\\_132\\_D\\_2552\\_2015\\_33032\\_S.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared Documents/PRY/CCPR_C_132_D_2552_2015_33032_S.pdf)
  39. Adopted on 12 October 2021 concerning a communication submitted on 30 September by Benito Oliveira Pereira and Lucio Guillermo Sosa Benega, on behalf of the Campo Agua’e Indigenous community of the Ava Guaraní people. The complainants claimed violations of their rights in relation to Articles 2, 17 y 27 of the ICCPR. The Campo Agua’e Indigenous community lives in an area closely surrounded by large commercial farms that use fumigation. The fumigation, including the use of banned agrochemicals continuously for more than ten years in the area, had affected subsistence crops and fruit trees, impacted hunting, fishing and foraging resources, contaminated the waterways and harmed people’s health. The Committee found a violation of the complainants’ rights under Articles 2, 17, 27 of the Convention. The CCPR found that Paraguay’s failure to prevent and control the toxic contamination of traditional lands, due to the intensive use of pesticides by nearby commercial farms, was violating the Indigenous community’s rights and sense of “home”. This is the Committee’s first decision to affirm that, in the case of Indigenous people, the notion of “home” should be understood within the context of the

special relationship between them and their territories, including their livestock, crops and their way of life such as hunting, foraging and fishing. The Committee further found that Paraguay did not adequately monitor the fumigation and failed to prevent contamination and recommended that Paraguay complete criminal and administrative proceedings against all the parties responsible and make full reparation to the victims.

40. "Naciones Unidas. CAT/C/72/D/992/2020. Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. Versión provisoria sin editar. 8 de diciembre de 2021. Comité contra la Tortura. Decisión adoptada por el Comité en virtud del artículo 22 de la Convención, respecto de la comunicación núm. 992/2020." [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/CAT\\_C\\_72\\_D\\_992\\_2020\\_33417\\_S.docx](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/CAT_C_72_D_992_2020_33417_S.docx)
41. OHCHR. UN Treaty Body Database. "Naciones Unidas. CAT/C/72/D/992/2020. Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes. 7 de febrero de 2022. Comité contra la Tortura. Decisión adoptada por el Comité en virtud del artículo 22 de la Convención, respecto de la comunicación núm. 992/2020." [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f992%2f2020&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f72%2fd%2f992%2f2020&Lang=en)
42. Adopted on 8 December 2021 concerning a communication submitted on 17 May 2019 by Damián Gallardo Martínez and his family. The complainant claimed a violation of his rights under Articles 1, 2, 11, 12, 13, 14 y 15 of the Convention as he was arbitrarily arrested, tortured, forced to sign an alleged confession of involvement in criminal acts, accused of organized crime and child abduction, and detained in a maximum-security prison for five years and seven months. The Committee found a violation of the complainant's rights under Articles 2, 12, 13, 14 and 15 of the Convention. Acknowledging that the criminal proceedings brought against the complainant were part of a pattern of criminalization of the social protest, the Committee notably recommended that Mexico initiate an impartial and independent investigation into the acts of torture; prosecute, judge and punish perpetrators; grant reparation and the most complete rehabilitation possible to the victim; make a public apology and adopt measures to favor guarantees of non-repetition, including a guarantee of the systematic examination of the detention and interrogation procedures, and a cessation in the criminalization of the defense of the rights of the Indigenous villages.
43. United Nations. CRC/C/88/D/105/2019. Convention on the Rights of the Child - unedited version. 8 October 2021. Committee on the Rights of the Child. Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 105/2019." [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/BRA/CRC\\_C\\_88\\_D\\_105\\_2019\\_33021\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/BRA/CRC_C_88_D_105_2019_33021_E.pdf)
44. Adopted on 22 September 2021 by the CRC concerning the communication submitted on 23 September 2019 by 16 children represented by counsel, Scott Gilmore et al., of Hausfeld L.L.P., and Ramin Pejan et al., of Earthjustice against Argentina, Brazil, France, Germany and Turkey. The 16 complainants claimed that, by causing and perpetuating climate change, the State party had failed to take the necessary preventive and precautionary measures to respect, protect and fulfil the authors' rights to life, health and culture. The Committee found the communication inadmissible for failure to exhaust domestic remedies.

**Mélanie Clerc** ([melanie.clerc@un.org](mailto:melanie.clerc@un.org)) is a Human Rights Officer at the OHCHR. She is the focal point on Indigenous Peoples and minorities in the Human Rights Treaties Branch.

**Justine Berezintsev** has previously worked for the Indigenous Peoples and minorities section of the OHCHR. She now works in the field of Indigenous education and also acts as an independent consultant with the Indigenous Peoples Law and Policy (IPLP) Program at the University of Arizona.

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# UNESCO's World Heritage Convention

The Convention Concerning the Protection of the World Cultural and Natural Heritage (“World Heritage Convention”) was adopted by UNESCO’s General Conference in 1972. With 194 States Parties, it is today one of the most widely ratified multilateral treaties. Its main purpose is the identification and collective protection of cultural and natural heritage sites of “Outstanding Universal Value” (OUV). The Convention embodies the idea that some places are so special and important that their protection is not only the responsibility of the states in which they are located but also a duty of the international community as a whole.

The implementation of the Convention is governed by the World Heritage Committee (WHC), consisting of 21 States Parties. The WHC keeps a list of the sites it considers to be of OUV (“World Heritage List”) and monitors the conservation of these sites to ensure that they are adequately protected and safeguarded. Sites can only be listed following a formal nomination by the State Party in whose territory they are situated, and are classified as either “natural”, “cultural” or “mixed” World Heritage sites.

A large number of World Heritage sites overlap with Indigenous Peoples’ territories. Although most of these are classified as purely “natural sites”, without recognition of Indigenous cultural aspects, there are also some sites that are listed for their Indigenous cultural values or interlinkages between nature and Indigenous culture.

The WHC is supported by a secretariat (the UNESCO World Heritage Centre) and three advisory bodies (IUCN, ICOMOS and ICCROM) that provide technical evaluations of World Heritage nominations and help monitor the state of conservation of World Heritage sites. An Indigenous proposal to establish a “World Heritage Indigenous Peoples Council of Experts” as an additional advisory body was rejected by the WHC in 2001.

## Human rights abuses by eco-guards at World Heritage sites: WWF independent review

**D**espite the recent adoption by the WHC of policies and operational guidelines encouraging States Parties to follow a human rights-based approach in the implementation of the Convention and to respect Indigenous Peoples' rights in the nomination, management and protection of World Heritage sites,<sup>1</sup> the management of many such sites continues to be marked by a lack of respect for Indigenous Peoples' relationship to the land, a lack of protection of their traditional livelihoods and disregard for their cultural heritage. Human rights violations against Indigenous Peoples continue to occur unabated in many sites.

Ample evidence of this can be found in a November 2020 report<sup>2</sup> of an independent expert panel that was established by the World Wide Fund for Nature (WWF) to conduct an independent review into WWF's role in connection with human rights abuses against Indigenous Peoples and local communities in and around protected areas in Africa and Asia. The alleged abuses included instances of murder, rape, torture, physical beatings, unlawful arrests and detention, invasion of homes, and destruction and theft of personal property, all allegedly committed by eco-guards and other law-enforcement agents acting under the authority of governments, and were described in a series of articles published in BuzzFeed News and the Kathmandu Post in early 2019.<sup>3</sup> Of the eight protected areas that are implicated, five are listed as World Heritage sites (Lobéké National Park, Cameroon; Salonga National Park, Democratic Republic of Congo [DRC]; Dzanga-Sangha Protected Area, Central African Republic; Chitwan National Park, Nepal; Kaziranga National Park, India), and another two are tentatively listed for future World Heritage designation (Boumba Bek and Nki National Parks, Cameroon).

The independent panel report makes clear that the underlying cause of the human rights violations against Indigenous Peoples is the systemic denial of their customary rights to access and use their ancestral lands, territories and resources, as the International Indigenous Peoples' Forum on World Heritage (IIPFWH) has remarked, noting that "the World Heritage Convention is in many ways enabling, and sometimes even driving" the violations:

*Regrettably, the decisions of the WHC, the Advisory Bodies*

*and UNESCO have in many ways contributed to this denial, and may also have directly contributed to some of the violations described in the study, for instance by encouraging 'voluntary relocations' of Indigenous Peoples or by identifying traditional resource use as a threat. A contributing factor is also the fact that all of the implicated World Heritage sites are listed as purely 'natural sites', without an adequate recognition of Indigenous Peoples' relationship to the land in the OUV, and in disregard of our holistic view of our heritage. We therefore call on the Committee to stop labelling World Heritage sites in Indigenous Peoples' territories as purely 'natural sites', and to make changes to the wording of the natural criteria, so that the indissoluble bonds between Indigenous Peoples and their lands can be fully and consistently recognized in all sites.<sup>4</sup>*

## **44<sup>th</sup> Session of the WHC, Fuzhou/Online meeting, July 2021**

Originally scheduled for June/July 2020, the WHC's 44<sup>th</sup> session in Fuzhou, China was moved to July 2021 due to the COVID-19 pandemic and was held as an online meeting. Chaired by Tian Xuejun, China's Vice Minister of Education, the session was characterized by an extraordinary lack of regard for the views and concerns of Indigenous Peoples and civil society organizations and a lack of possibilities for them to meaningfully participate in the Committee's deliberations. Throughout the meeting, representatives of Indigenous organizations and NGOs were given the floor only after the Committee had already adopted its decisions on the various agenda items, and were thus completely excluded from the decision-making process. Their speaking time was in most cases restricted to just one minute. Not even the UN Special Rapporteur on the rights of indigenous peoples, Francisco Calí Tzay, was allowed to speak on the nomination of the Kaeng Krachan Forest Complex (Thailand) before the Committee had adopted its decision. He therefore emphasized in his statement:

*It is regrettable that your current working methods do not allow Indigenous Peoples to participate in decision-making processes which clearly affect their rights and the future of*

*their lands and resources. To ensure credibility, your working methods need to be brought in line with the UN Declaration on the Rights of Indigenous Peoples.*<sup>5</sup>

Also deplorable was the blatancy of politicized decision-making during the session. The World Heritage Convention has long been plagued by a decision-making culture within the Committee that allows the vested economic and political interests of individual States Parties to override the conservation purposes of the Convention, human rights principles, and the expert assessments and recommendations of the Committee's technical advisory bodies. This decision-making culture "strongly undermines the credibility of the Convention and UNESCO, and the effectiveness of protection strategies", as the IIPFWH has noted.<sup>6</sup> The inscription of sites on the World Heritage List and the declaration of sites as "World Heritage in Danger", in particular, have become highly politicized affairs often marked by aggressive lobbying, political maneuvering and deal-making.<sup>7</sup> As a result of this politicization, the WHC has approved many World Heritage nominations in recent years despite the advisory bodies recommending a referral or deferral because of unresolved concerns over the protection and management frameworks for the respective sites.

Even so, the extent of politicized decision-making was extraordinary during the Fuzhou session. Led by a phalanx of mostly authoritarian states (including Russia, China, Egypt, Ethiopia, Saudi Arabia, and Thailand), the WHC approved 37 of the 38 World Heritage nominations considered during the session,<sup>8</sup> even though the advisory bodies had recommended 16 nominations for referral or deferral. The WHC did not inscribe a single site on the List of World Heritage in Danger although, in the assessment of the advisory bodies, seven sites should have been declared as "In Danger" (including at least three sites of significance to Indigenous Peoples: Volcanoes of Kamchatka, Russia; Great Barrier Reef, Australia; and Kathmandu Valley, Nepal).<sup>9</sup> There are clear indications that several of these decisions by the WHC were the result of political horse-trading.<sup>10</sup>

Another site, the Selous Game Reserve (Tanzania), was kept on the World Heritage List by the Committee despite the fact that IUCN and the World Heritage Centre had concluded that a deletion from the List was

unavoidable<sup>11</sup> because the site's outstanding universal value (OUV) had been irreversibly damaged by the ongoing construction of a huge hydropower dam at the heart of the reserve, built by state-owned companies from China and Egypt. During the Committee's debate, China and other Committee members portrayed the hydropower project as a good example of finding a balance between conservation and "sustainable development". Only one Committee member, Norway, spoke out in favor of de-listing, noting that the decision was "a test of the credibility of the Committee".<sup>12</sup> Environmental organizations are highly concerned about the precedence that the decision not to de-list Selous sets in terms of the acceptability of large-scale developments within the boundaries of World Heritage sites.<sup>13</sup>

### **Inscription of the Kaeng Krachan Forest Complex (KKFC), Thailand**

A particularly disturbing example of politicized decision-making was the WHC's inscription of the KKFC as a natural World Heritage site, in blatant disregard of serious and persistent human rights violations against the Karen Indigenous communities in the KKFC; considerable concerns among the Karen that World Heritage status may have negative consequences for their land rights and traditional livelihoods; and the failure of the Thai government to meaningfully involve the Karen in the nomination process and obtain their free, prior and informed consent (FPIC). In inscribing the KKFC, the WHC ignored the recommendation of its advisory body IUCN,<sup>14</sup> as well as the strong pleas from Karen organizations, UN human rights mechanisms, and international NGOs<sup>15</sup> that the decision be deferred until the human rights concerns had been resolved and the Karen had provided their consent.

The decision to inscribe the KKFC was taken even though the WHC was fully aware, from official communications by UN human rights experts, that the "human rights violations [were] of a continuing nature, notably the failure to address the land rights concerns of the Karen in the KKFC as well as the impunity for the killings and enforced disappearance of human rights defenders and the forced evictions of members of the Karen community"; that "ongoing criminalisation and harassment of Karen community members and human rights defenders in 2021 undermine[d] the possibility to conduct good faith consultations"; that there was a "lack of concrete measures to address land tenure



rights and to recognise the traditional rotational agricultural practices of the Karen”; and that “inclusive and effective participation of indigenous peoples, equitable governance arrangements, collaborative management systems and redress mechanisms ha[d] not been established.”<sup>16</sup> The UN experts expressed particular concern over Thailand’s “lack of consultation with affected indigenous Karen and the failure to seek their FPIC”. In a press release issued shortly before the Committee’s decision, they warned: “Should the nomination as heritage status be approved it would perpetuate the denial of the Karen’s right to remain on their traditional lands and carry out their traditional livelihood activities based on rotational farming.”<sup>17</sup>

In approving the nomination, the WHC disregarded not only its own policies and commitments regarding Indigenous Peoples, as contained in the Operational Guidelines and the World Heritage Sustainable Development Policy (WH-SDP), but, with Thailand newly-elected to the Committee, also its own prior decisions concerning the nomination, in which it had requested Thailand “address in full the concerns that have been raised... concerning Karen communities within the KKFC” (2015), “achieve a consensus of support for the nomination of the property that is fully consistent with the principle of FPIC” (2016) and “demonstrate that all concerns have been resolved, in full consultation with the local communities, in accordance with paragraph 123 of the *Operational Guidelines* [on the need to demonstrate the FPIC of Indigenous Peoples]” (2019).<sup>18</sup>

Although IUCN had made it abundantly clear that “the Committee’s requests have not been fulfilled yet”,<sup>19</sup> the decision by which the KKFC was inscribed declares that it was “made on the understanding that the State Party has addressed the issues raised in [the 2019 decision], thus fulfilled the requirements of the Operational Guidelines”.<sup>20</sup> Neither the UN Special Rapporteur on the rights of indigenous peoples nor Indigenous organizations were allowed to address the Committee and challenge this “understanding” before the decision was adopted, although several Committee members explicitly requested that the Special Rapporteur be given the floor so that the Committee could make an informed decision.<sup>21</sup>

Only one member, Norway, argued against inscription and dissociated itself from the WHC’s decision, noting that “for Norway it’s not possible to support nominations where there are unresolved human rights

issues... As a committee, we have a responsibility to also ensure that paragraph 123 in the Operational Guidelines related to Indigenous Peoples and local communities is addressed’<sup>22</sup> Emblematic for the alarming level of politicization within the WHC was the fact that even a country like Australia (which had ceremoniously pledged in 2018 that it would be an advocate for upholding the WHC’s technical integrity and credibility during its term on the Committee and who had insisted on the need to obtain the FPIC of the Karen during the 2019 session<sup>23</sup>) remained completely silent during the debate, presumably in exchange for a vote by Thailand against the “In Danger” listing of the Great Barrier Reef.<sup>24</sup>

The IIPFWH remarked in an intervention after the decision was adopted:

*The decision represents one of the lowest points in the history of the Convention and indeed in the history of UNESCO. It tramples on the most fundamental principles and purposes of UNESCO, as well as those of the United Nations Charter... This decision is not the result of sound expert judgment based on the purposes of this Convention, good heritage practice and the principles of the [WH-SDP]. It is the result of highly politicized lobbying and horse-trading based on the economic interests of Committee members.<sup>25</sup>*

### **Reaction to the WWF independent review into human rights abuses**

Under the agenda item “State of conservation of World Heritage properties”, the WHC passed decisions on four of the five World Heritage sites implicated in the independent review into human rights abuses commissioned by WWF (Salonga, Lobéké, and Chitwan National Parks and Dzanga-Sangha Protected Area; the state of conservation of Kaziranga National Park was not considered at the session).<sup>26</sup> Drafted by IUCN and the World Heritage Centre, all of the relevant decisions refer to the independent review, express concern about the human rights violations and request the States Parties concerned to take action to address the issues in accordance with relevant international standards and the WH-SDP. However, significant discussions on the human rights violations did not take place at the Fuzhou session, the Committee simply adopt-

ed the provisions referring to the independent review as drafted by the secretariat and IUCN.<sup>27</sup>

Especially noteworthy is a general decision on the World Heritage sites of the DRC, which lays out a number of concrete measures the DRC should take to address the issues raised in the independent review. The decision expresses “significant concern” about the reported human rights abuses (not only in Salonga but also in Kahuzi-Biega National Park<sup>28</sup>) and requests the DRC to:

*take urgent measures to further strengthen its efforts to address this issue, including by establishing and implementing a national code of conduct for eco-guards and a grievance mechanism for human rights abuses, and by training all protected area staff on human rights issues as part of regular law enforcement training, as well as ensuring that management processes follow a rights-based approach and ensure full involvement of all stakeholders, in particular local and indigenous communities, in line with relevant international norms...*<sup>29</sup>

Although it is positive that the WHC, UNESCO and IUCN have expressed concern over the human rights abuses and are calling for rights-based site management, it must also be noted that the UNESCO/IUCN state of conservation report and the WHC’s decision on Salonga National Park once again reinforce the idea that the Yaelima Indigenous communities are a threat to the Park and should thus be relocated.<sup>30</sup> UNESCO and IUCN continue to list “Indigenous hunting, gathering and collecting” among the threats to the site<sup>31</sup> and the WHC’s decision requests the DRC to “pursue and accelerate the current process aimed at best preparing the relocation” of communities living within the Park, cautioning only that relocations should follow the principle of FPIC.<sup>32</sup> The IIPFWH therefore urged the WHC and IUCN to “recognize that the right of access by Indigenous Peoples to traditional lands, territories and resources contributes effectively to nature conservation, the preservation of biodiversity, as well as the reduction of poverty in rural areas”, to “stop promoting the ‘voluntary’ relocation of Indigenous Peoples from their ancestral lands”, and to “stop identifying ‘Indigenous hunting, gathering and collecting’ as a threat to the Park.”<sup>33</sup>

### Other noteworthy decisions

As always, many of the WHC's decisions under the "State of Conservation" item concerned sites inhabited by Indigenous Peoples. Several decisions also directly referred to Indigenous Peoples' livelihoods, resource use, cultural heritage, or involvement in management and decision-making.<sup>34</sup>

Noteworthy is the decision on the Volcanoes of Kamchatka (Russia). The site is home to several groups of Indigenous Peoples and part of it has been legally set aside for the protection of their traditional way of life. In 2020, Russia presented plans for a tourism resort and theme park that would be partly located in the World Heritage area. Russia subsequently informed UNESCO that it had modified the boundaries of a protected area within the site, the South Kamchatka Nature Park (SKNP), and thus removed the legal protection of part of the site in order to accommodate the tourism project. According to the Russian Indigenous network "Aborigin Forum", the decision to change the boundaries of the SKNP was taken without seeking the FPIC of Indigenous Peoples, although it affects the territory set aside for the protection of their way of life and creates a threat to their native habitat.<sup>35</sup> IUCN and the World Heritage Centre assessed that "removal of the legal protection of part of the property constitutes a clear potential danger to the property in line with... the Operational Guidelines" and therefore recommended that the Volcanoes be inscribed on the List in Danger. However, although the WHC expressed serious concern about the boundary modification and the proposed tourism resort, it only requested Russia "not to permit any construction of such kind and scale... if such construction could have negative impact on the property's OUV" and to invite a UNESCO/IUCN Reactive Monitoring mission to the property.<sup>36</sup>

Another noteworthy decision is that on the Ngorongoro Conservation Area (NCA), Tanzania. As mentioned in *The Indigenous World 2020*, UNESCO, the WHC and the advisory bodies have for many years identified the livelihood activities and growing population of the NCA's pastoralist residents as major threats to the OUV of the site and repeatedly encouraged Tanzania to promote the "voluntary relocation" of the Indigenous communities to areas outside of the NCA. Based upon their recommendations and requests, the Tanzanian government has imposed multiple restrictions on cattle grazing and a complete ban on ag-

riculture (including home gardens) in the NCA. These prohibitions have led to serious food insecurity, hunger and starvation among the NCA's residents and form part of the strategy to encourage their "voluntary relocation".<sup>37</sup> Additionally, the Tanzanian government has recently undertaken a review of the NCA's current Multiple Land Use Model (MLUM) and is considering the adoption of a new MLUM and accompanying resettlement plan that would radically rezone the NCA, significantly reduce the land available for pastoralism and remove over 70,000 of the NCA's Indigenous residents.<sup>38</sup> In early 2022, there were reports that the government was preparing to begin evicting people forcibly by the end of February 2022, leading to panic among the NCA residents.<sup>39</sup>

At the Fuzhou session, the WHC passed a decision<sup>40</sup> highlighting the need for an "equitably governed consultative process... with participation of all rights holders and stakeholders" in order to identify long-term sustainable solutions to address the continued conflicts with the communities in the NCA and the challenges resulting from population growth. It also requested Tanzania to ensure that the General Management Plan for the NCA, which is currently being developed, "is finalized in consultation with, and with the FPIC as appropriate of local stakeholders and rightsholders". Additionally, the WHC recommended that Tanzania invite a UNESCO advisory mission to the NCA to consider, in consultation with the relevant stakeholders and rights holders, whether the proposed MLUM, voluntary resettlement scheme and zoning of the property are adequate to address the issues. Notably, UNESCO and the advisory bodies proposed<sup>41</sup> that the IIPFWH be included in this mission, which would give the IIPFWH a role that it has advocated for but has thus far never played.

## **23<sup>rd</sup> session of the General Assembly of States Parties to the Convention, Paris, November 2021**

Given the WHC's increasing politicization, it is noteworthy that the General Assembly of States Parties in November 2021 adopted a "Declaration of principles to promote international solidarity and cooperation to preserve World Heritage" as a "means to uphold the integrity and credibility of the Convention and the World Heritage List".<sup>42</sup> Although

the declaration is explicitly “not legally binding” (and notably does not contain any references to human rights), it expresses a commitment to impartial decision-making based on objective and scientific considerations, verifiable technical evidence, and respect for the Operational Guidelines. States Parties to the Convention shall “Refrain from influencing the Committee’s deliberations and decision making through lobbying before and during the WHC sessions” according to the declaration. The declaration also states that the WHC commits to “encourage interventions from observers including... indigenous peoples’ representatives... before decisions are made by the Committee”.

## 50<sup>th</sup> anniversary of the World Heritage Convention

In 2022, UNESCO will celebrate the 50<sup>th</sup> anniversary of the Convention and has invited all concerned stakeholders to take stock of the achievements of the Convention and reflect on conservation challenges and strategies for the future through events and other activities. A dedicated website has been developed as a platform to connect across various activities.<sup>43</sup> A resolution adopted by the General Assembly in this regard recognizes “the importance of undertaking a reflection on how to strengthen the involvement and contribution of local communities and NGOs... to ensure an appropriate and equitable balance between conservation, sustainability and development in line with the [WH-SDP]”.<sup>44</sup>

## Notes and references

1. Operational Guidelines for the Implementation of the World Heritage Convention, WHC.21/01 (2021), paras. 12, 14bis, 64, 117, 119, 123; Policy for the Integration of a Sustainable Development Perspective into the Processes of the World Heritage Convention (2015), paras. 20-22, <https://whc.unesco.org/document/139747>.
2. “Embedding Human Rights in Nature Conservation: From Intent to Action”, available at [https://wwf.panda.org/wwf\\_news/wwf\\_independent\\_review\\_/](https://wwf.panda.org/wwf_news/wwf_independent_review_/).
3. Katie J.M. Baker and Tom Warren, “WWF’s Secret War” (article series), *Buzzfeed News*, 2019-2020, <https://www.buzzfeednews.com/collection/wwfsecretwar>; Tsering D. Gurung, “Nepali park officials tortured a man to death. Then, the government and the World Wide Fund for Nature rewarded them”, *Kathmandu Post*, March 3, 2019, <https://kathmandupost.com/investigations/2019/03/03/nepals-park-officials-who-beat-and-tortured-a-man-were-rewarded-by-the->

- government-and-the-world-wide-fund-for-nature.
4. Statement at the 44th session of the WHC, Agenda item 7 (State of conservation of World Heritage properties), July 17, 2021, <https://iipfwh.org/wp-content/uploads/2021/07/FINAL-IIPFWH-General-Statement-on-Item-7-SOC-Read-@WH-COM44-17-7-21-7-1.docx>.
  5. Statement under agenda item 8B.7, July 26, 2021. A video recording is available at <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=7920s>.
  6. Statement at the 44th session of the WHC, agenda item 8B.7 (Kaeng Krachan Forest Complex), July 26, 2021. A video recording is available at <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=8071s>.
  7. See, e.g., World Heritage Watch, *The Potsdam Papers: Results of the Potsdam Consultation on the Future of the World Heritage* (2021), <https://world-heritage-watch.org/content/wp-content/uploads/2022/01/The-Potsdam-Papers-Results-of-the-Potsdam-Consultation.pdf>.
  8. Not counting nominations that were withdrawn at the request of the relevant States Parties.
  9. See UNESCO, “Item 7B of the Provisional Agenda: State of conservation of properties inscribed on the World Heritage List” (Addendum), WHC/21/44.COM/7B.Add, June 21, 2021.
  10. See Graham Readfearn, “‘Low point’ in world heritage committee history as politics ‘tramples’ human rights of the Karen people”, *The Guardian*, August 6, 2021, <https://www.theguardian.com/environment/2021/aug/06/low-point-in-world-heritage-committee-history-as-politics-tramples-human-rights-of-the-karen-people>; and Eduardo Robaina, “Andrés Perelló: ‘No hemos traicionado a los ecologistas australianos’”, *Climática*, August 4, 2021, <https://www.climatica.lamarea.com/andres-perello-gran-barrera-de-coral/>.
  11. UNESCO, “Item 7A of the Provisional Agenda: State of conservation of the properties inscribed on the List of World Heritage in Danger” (Addendum), WHC/21/44.COM/7A.Add, June 21, 2021.
  12. For a video recording of the debate see [https://www.youtube.com/watch?v=9EsqE-Qa\\_Fg&t=6677s](https://www.youtube.com/watch?v=9EsqE-Qa_Fg&t=6677s).
  13. E.g., Rivers without Boundaries, “Natural Heritage Receives a Major Blow as the Selous Game Reserve is Discussed at Fuzhou Session of the World Heritage Convention Committee”, July 2021, <https://www.transrivers.org/2021/3341/>.
  14. IUCN, “IUCN World Heritage Evaluations 2021, Addendum”, WHC/21/44.COM/INF.8B2.ADD.
  15. For details, see IWGIA, AIPP, IIPFWH et al., “Joint Statement on the persistent human rights abuses occurring in the context of the World Heritage nomination of the Kaeng Krachan Forest Complex (Thailand) – A Submission to UNESCO’s World Heritage Committee”, June 30, 2021, <https://aippnet.org/wp-content/uploads/2021/07/Joint-Statement-on-the-World-Heritage-nomination-of-Kaeng-Krachan-Forest-Complex.pdf>. Also see the letter from Karen community members to the WHC of May 24, 2021, “Thai authorities disregard for human rights by arresting and prosecuting members of the Karen community and excluded them from participating in the World Heritage site proposal”, [https://iwgia.org/images/documents/Letters/Letter\\_to\\_the\\_world\\_heritage\\_committee\\_24052021.pdf](https://iwgia.org/images/documents/Letters/Letter_to_the_world_heritage_committee_24052021.pdf).
  16. See <https://spcommreports.ohchr.org>, Special Procedures joint communications of 20 April 2020 (AL OTH 23/2020) and 30 June 2021 (AL OTH 209/2021).
  17. OHCHR, “Thailand: UN experts warn against heritage status for Kaeng Krachan

- national park”, July 23, 2021. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27333&LangID=E>.
18. Decisions 39COM 8B.5 (2015), 40COM 8B.11 (2016) and 43COM 8B.5 (2019) of the WHC.
  19. IUCN, “IUCN World Heritage Evaluations 2021, Addendum”, WHC/21/44.COM/INF.8B2.ADD.
  20. Decision 44 COM 8B.7, para. 5.
  21. For a video recording of the debate, see <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=3879s>.
  22. See <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=6445s>.
  23. See the Summary Record of the WHC’s 42nd session (Manama, 2018), WHC/18/42 COM/INF.18, p. 40.
  24. Graham Readfearn, “‘Low point’ in world heritage committee history”, <https://www.theguardian.com/environment/2021/aug/06/low-point-in-world-heritage-committee-history-as-politics-tramples-human-rights-of-the-karen-people>.
  25. A video recording of the intervention is available at <https://www.youtube.com/watch?v=TAW9Ip0YUOU&t=8071s>.
  26. Decisions 44 COM 7A.44 (Salonga National Park), 44 COM 7B.174 (Sangha Trinational), and 44 COM 7B.188 (Chitwan National Park).
  27. Norway briefly noted the allegations of human rights violations during the discussion on Salonga National Park, emphasizing, along with Australia, the importance of protecting the rights of Indigenous Peoples and local communities in the Park.
  28. See Doc. WHC/21/44.COM/7A, p. 126.
  29. Decision 44 COM 7A.46 (General decision on the World Heritage properties of the DRC).
  30. See Decision 44 COM 7A.44 in combination with Doc. WHC/21/44.COM/7A and the reports of the 2020 and 2007 UNESCO/IUCN monitoring missions, available at <https://whc.unesco.org/en/list/280/documents/>.
  31. See UNESCO, “State of Conservation: Salonga National Park”, [https://whc.unesco.org/en/soc/?action=list&id\\_search\\_properties=280](https://whc.unesco.org/en/soc/?action=list&id_search_properties=280) and <https://whc.unesco.org/en/soc/4048>.
  32. Decision 44 COM 7A.44 (Salonga National Park).
  33. Statement under agenda item 7A.44, July 19, 2021, <https://iipfwh.org/wp-content/uploads/2021/07/FINAL-Declaration-of-the-Network-of-Indigenous-and-Local-Populations-for-the-Sustainable-Management-of-Forest-Ecosystems-in-Central-Africa-3.docx> (statement on behalf of REPALEAC, a network of Indigenous Peoples and local communities from Central Africa).
  34. *Inter alia* the decisions on Kenya Lake System (Kenya); Great Himalayan National Park; Manas Wildlife Sanctuary (India); Central Sikhote-Alin (Russia); Tasmanian Wilderness; Greater Blue Mountains (Australia); Wood Buffalo National Park (Canada); Río Plátano Biosphere Reserve (Honduras); and Qhapaq Ñan, Andean Road System (transnational).
  35. IIPFHW Statement under agenda item 7B.109, July 24, 2021 (on file with IWGIA). The presenter at the WHC session was cut off after 75 seconds, see <https://www.youtube.com/watch?v=BsyYCARCrXI&t=17555s>.
  36. Decision 44 COM 7B.109.
  37. Navaya James Ndaskoi, “Report of the Fact Finding Mission Conducted in Ngorongoro Conservation Area” (Arusha: PINGOS Forum, April 3, 2021), <http://pingosforum.or.tz/wp-content/uploads/2021/05/Ngorongoro-Fact-Finding-Mission-Report.pdf>. Also see William Olenasha, “A World Heritage Site in the



- Ngorongoro Conservation Area: Whose World? Whose Heritage?" In *World Heritage Sites and Indigenous Peoples' Rights*, ed. Stefan Disko and Helen Tugendhat (Copenhagen: IWGIA, 2014), 189-223, <https://www.iwgia.org/images/documents/popular-publications/world-heritage-sites-final-eb.pdf>.
38. See Andy Currier and Anuradha Mittal, *The Looming Threat of Eviction: The Continued Displacement of the Maasai Under the Guise of Conservation in Ngorongoro Conservation Area* (Oakland: Oakland Institute, 2021), <https://www.oaklandinstitute.org/looming-threat- eviction>.
  39. See IWGIA, "Urgent Alert: Threats of forced eviction of the Maasai indigenous pastoralists of the Ngorongoro Conservation Area (NCA) and and Ngorongoro District in Tanzania", February 23, 2022, downloadable at <https://www.iwgia.org/en/news/4607-maasai-ngorongoro-tanzania-forced-eviction.html>; and Oakland Institute, "Over 70,000 Maasai in Loliondo, Tanzania Face Renewed Eviction Threat to Make Way for Safari Tourism and Trophy Hunting", January 27, 2021, <https://www.oaklandinstitute.org/maasai-loliondo-tanzania-face-renewed-eviction-threat>.
  40. Decision 44 COM 7B.171.
  41. See UNESCO, "Item 7B of the Provisional Agenda" (Addendum), WHC/21/44.COM/7B.Add, June 21, 2021, p. 152.
  42. Doc. WHC/21/23.GA/INF.10.
  43. See UNESCO, "Item 9 of the Provisional Agenda" (23rd General Assembly of States Parties), WHC/21/23.GA/9, pp. 1-2.
  44. Resolution 23 GA 9.

**Stefan Disko** works as an independent consultant on issues related to *Indigenous Peoples, heritage and human rights*. He holds an M.A. in *ethnology and international law* from LMU Munich and an M.A. in *World Heritage Studies* from BTU Cottbus.



# UN Framework Convention on Climate Change (UNFCCC)

The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty adopted at the Earth Summit in Rio in 1992 to tackle climate change. In 2015, the UNFCCC adopted the Paris Agreement, a universal agreement to reduce global greenhouse gas emissions. The goal of the Paris Agreement is to hold "...the increase in the global average temperature to well below 2°C above pre-industrial levels and pursu[e] efforts to limit the temperature increase to 1.5°C..." (Art. 2a).<sup>1</sup>

The UNFCCC recognizes that achieving sustainable development requires the active participation of all sectors of society. Nine "constituencies" are therefore recognized as the main channels through which broad participation is facilitated in UN activities related to sustainable development. Indigenous Peoples constitute one of these major groups and thereby exercise an influential role in global climate negotiations. The Indigenous Peoples' constituency is organized in the International Indigenous Peoples' Forum on Climate Change (IIP-FCC), which serves as a mechanism for developing common positions and statements among Indigenous Peoples, and for undertaking effective lobbying and advocacy work at UNFCCC meetings and sessions.

The Local Communities and Indigenous Peoples Platform ("the Platform") under the UNFCCC has been gradually operationalized over the last six years since its establishment in 2015. Beginning with an agreement on the Platform's functions and purpose in 2018, progress advanced with the creation of a Facilitative Working Group (FWG) – the first constituted body under the UNFCCC with equal representation between Indigenous

Peoples and States. During the FWG's first year of operation, a two-year workplan (2020-2021), comprising 12 activities, was co-developed and adopted at COP 25 in December 2019. This was further advanced with the adoption of a second three-year workplan at COP 26 in November 2021. These advancements raised the expectations of Indigenous Peoples who, given the lack of recognition of their nationhood, predominantly by States, are trapped between the convention state/non-state binary and therefore not fully accommodated within the legal framework of the UNFCCC. Their inherent, collective right to self-determination as Peoples, reaffirmed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), provides an argument that they should be given a space at the negotiation table alongside States. As it is still early days for the Platform in UN terms, it remains to be seen if the influence and say of Indigenous Peoples at the UNFCCC will be elevated above that of civil society.

*This piece is dedicated to the passing of our dear colleague and brother, Estebancio Castro-Díaz. As he continues on his journey to being an ancestor, we honor, from all seven regions, his extensive legacy for Indigenous Peoples worldwide. We are privileged to carry his spirit with us always.<sup>2</sup>*

**T**he 26<sup>th</sup> Conference of the Parties (COP 26) took place in Glasgow after a year-long postponement, marking two years since the last COP. The first multilateral environmental meeting to take place in-person during the global COVID-19 pandemic, nearly 40,000 accredited Indigenous Peoples, party representatives, media, leaders, and civil society traveled to Scotland to push for urgent and transformative action to meet the Paris commitment and finalize the implementation guidance for the Paris Agreement.

The talks took place against a backdrop of multiple and intersecting crises in the world: the ongoing health crisis, the biodiversity crisis and, of course, the climate crisis. COVID-19 continues to spread, causing the loss of over five million lives across the globe, shining a stark

light on inequity both between countries (especially those of the Global North and Global South) and within them, as well as at COP. Delegates from Indigenous Peoples and the Global South were worried about their safe and equitable participation in the COP, raising concerns about the ongoing reality of vaccine apartheid and growing travel inequities.<sup>3</sup> At the same time, the climate crisis continues to threaten the future of humanity and the planet, highlighted by the Intergovernmental Panel on Climate Change (IPCC)'s report on "The Physical Science Basis".<sup>4</sup>

2021 picked up on the proposed climate momentum of 2020 whereby Parties were required to strengthen their "Nationally Determined Contributions" (NDCs – also known as their greenhouse gas emission reduction targets). Approximately 153 countries (accounting for 49% of global greenhouse gas emissions) submitted new, updated targets; however, in the weeks leading up to the COP session, the UNFCCC Secretariat's Updated NDC Synthesis Report found, even with these updated NDCs, that emissions would increase 16% by 2030 relative to 2010, instead of reducing by 45% to prevent warming past 1.5°C.<sup>5</sup> In light of this inaction, Indigenous Peoples do not stand idly by as they are advancing solutions grounded in a knowledge system developed by living reciprocally with Mother Earth for thousands of years.

This climate leadership is increasingly being recognized within the hallways of the UNFCCC. COP 26 marked the end of the Local Communities and Indigenous Peoples Platform's initial, two-year workplan and saw the adoption of a second, three-year workplan and an extension of the Facilitative Working Group's mandate. Indigenous Peoples continue to take tangible steps to show Parties why their voices, solutions and knowledge are integral to solving the climate crisis.

Outside of the UNFCCC, Indigenous Peoples saw further progress within the corridors of the United Nations. Two decisions by the UN Human Rights Council stand out: first, the Council's adoption of a resolution that recognizes a safe, clean, healthy and sustainable environment as a human right and calls on Member States to work with Indigenous Peoples to implement this right; and second, the Council's decision to appoint a new special rapporteur on the promotion and protection of human rights in the context of climate change. Combined, these are emblematic of the success of Indigenous Peoples' advocacy, providing an example of the growing awareness of the connection between human rights and environmental law and policymaking.

## COP 26: Our last chance?

Heralded as the “last chance to keep 1.5°C alive” by COP 26 President Alok Sharma, the two-year lead-up to the Glasgow Climate Conference was awash with political maneuvering, leader-level commitments, and criticism from civil society about the “most inclusive COP ever”, as declared by the United Kingdom (UK) amidst structural barriers to Indigenous Peoples and Global South participation. In a clear diversion from previous COPs, a World Leaders’ Summit opened the two-week conference as Heads of State and Government from 120 Parties attended, instigating a revolving conveyor belt of largely male leaders (only a handful of female leaders attended) calling for greater climate ambition and new financial pledges (in line with the USD100 billion committed in Copenhagen).<sup>6</sup> Worse still, members of the nine constituencies were given only four tickets for each series of six negotiations in the restricted area where topics such as Article 6 were being negotiated behind proverbially closed doors. For Indigenous Peoples, an announcement on the Glasgow Leaders’ Declaration on Forests and Land Use to halt and reverse forest loss and land degradation was welcomed but participants shared a collective sigh when the political roadshow ended, refocusing on the task at hand: the finalization of the Paris Rulebook.

The main outstanding issue of the Paris Rulebook was the cooperative approaches under Article 6 through which Parties’ intended to include controversial carbon market mechanisms. Since Paris, Indigenous Peoples have been pushing for strong safeguards for human rights and the rights of Indigenous Peoples to disallow violations under the new mechanisms similar to those caused by their predecessor, the Clean Development Mechanism under the Kyoto Protocol.<sup>7</sup> Support for these safeguards gained momentum at COP 25 in Madrid where, despite their absence from the text, several Parties became increasingly vocal for their inclusion. This continued in the two-year negotiation following Madrid, including at the informal Subsidiary Bodies consultations held in June 2021. In Glasgow, Indigenous Peoples were again firm, advocating for the inclusion of human rights and the rights of Indigenous Peoples in all three paragraphs (6.2., 6.4., and 6.8), the creation of an independent grievance mechanism, and the requirement for free, prior, and informed consent of Indigenous Peoples in the development of carbon market mechanisms. This advocacy was

largely successful as Parties concluded the contentious negotiation at COP 26. At the time of gaveling, the decision text included explicit reference to human rights and the rights of Indigenous Peoples, including in specific operative texts (for the first time ever). Further to this, the text created a process by which to develop an independent grievance process in Article 6.4. The text also included a call for Parties to engage in a local and subnational stakeholder consultation with Indigenous Peoples, among other groups, albeit failing to refer to the principle of free, prior, and informed consent. Though not all demands were fully adhered to, Indigenous Peoples celebrated the success in terms of human rights and the rights of Indigenous Peoples, creating an important precedent for the implementation of the Paris Rulebook. Other areas that were passed in Glasgow were common time frames (i.e., the length and submission of NDCs), the Global Stocktake, and the Glasgow Climate Pact.

The Glasgow Climate Pact was the main political outcome of the conference, picking up on the transition of cover decisions (i.e., those decisions that are led by the host Presidency) to political documents. This transition has enabled Parties to speak to items that may not be included in the full Paris Agreement. A clear example of this was the first mention of the “phase-down of unabated coal” and “phase-out of inefficient fossil fuel subsidies” in the UNFCCC’s history, even though the language was weakened by some last-minute changes by India, pressured by the United States and China.<sup>8</sup> Other key commitments included requests for Parties to revisit and strengthen their climate ambition in line with the 1.5°C target, increase the levels of finance for loss and damage (although a Glasgow Loss and Damage Facility was blocked by the United States and the European Union), the creation of a global goal on adaptation, and a series of ministerial meetings on pre-2030 climate ambition. Indigenous Peoples were well-represented in the decision (eight references), largely due to the constructive relationship with the UK COP Presidency, including emphasizing “...the important role of [Indigenous Peoples’] culture and knowledge in effective action on climate change”, and continuing to urge Parties to “...actively involve indigenous peoples and local communities in designing and implementing climate action.”<sup>9</sup>

## **Indigenous Peoples: a subtle representation in the UNFCCC**

This growing presence of Indigenous Peoples within the UNFCCC is not surprising. Over the past two years, Indigenous Peoples have been successful in leveraging advocacy and communication tactics, as well as the increased institutional credibility created by the Local Communities and Indigenous Peoples Platform, to develop a fruitful, reciprocal relationship with the COP 26 Presidency. In the lead-up to COP 26, the IIPFCC and UK COP Presidency co-facilitated a series of dialogues concerning Indigenous perspectives on nature-based solutions (NbS), and the role of Indigenous leadership in developing and leading NbS. These took place during the UN Regional Climate Weeks (Asia-Pacific, Africa, and Latin America and Caribbean) and on International Day of the World's Indigenous Peoples. These dialogues created a considerable amount of momentum, leading to the announcement of the Indigenous Peoples Pavilion at COP 26, held in the blue-zone (or the negotiations zone) for the first time ever.

The Indigenous Peoples Pavilion quickly became a refuge for Indigenous Peoples during the conference, containing both an office space for Caucus coordination and a live-streamed theater room. Over the two weeks, nearly 70 events were organized by Indigenous women, men, and youth, representing hundreds of Indigenous Nations from over 20 countries, sharing presentations, panel discussions, film screenings and songs to showcase their initiatives on climate change adaptation and mitigation with a focus on Indigenous knowledge systems. The full suite of presentations can be found on a stand-alone website, marking an important precedent for the communication and amplification (and connection) of Indigenous Peoples' voices during the COP negotiations, connecting to actions occurring back home.<sup>10</sup>

In addition to the Pavilion, COP President Sharma hosted a Presidency Dialogue with Indigenous Peoples, hearing directly from Indigenous representatives from all seven regions about the role of Indigenous Peoples' rights, knowledge systems and perspectives in addressing the climate crisis and the international climate policy process. While the discussion was useful, an Indigenous youth called out young people's lack of representation, calling for a separate meeting between them and COP President Sharma. Of particular note was the hosting of the

first Annual Gathering of Indigenous Knowledge Keepers, as part of the Platform workplan, where 28 knowledge keepers from the seven UN sociocultural regions met and developed a call-to-action for States.

## **The Local Communities and Indigenous Peoples Platform**

Although the initial two-year workplan of the Platform took place largely online, FWG members were able to make progress. The pandemic challenged them to adjust their activities to the virtual arena while remaining accountable to the concrete action expected by them and Indigenous Peoples alike. For 2021, this meant hosting one meeting (FWG 5) virtually and a second in-person with some virtual attendance in Glasgow. The virtual setting was challenging to navigate in terms of technologies, interpretation and time zones while also maintaining cultural protocols. Based on direction from Indigenous representatives, the UNFCCC Secretariat also introduced the concept of “Informal Dialogues with Contributors” before and after the FWG meetings as a mechanism to support their full and effective participation.

FWG 5 was held over four days from 21-24 June with each day involving around three hours of meetings.<sup>11</sup> Similar to previous years, the session included the final election of new Co-Chairs and Vice-Chairs (one Indigenous representative and one State representative for each) for the final one-year term.<sup>12</sup> Following this election, each agenda item followed a similar format whereby responsible FWG representatives presented an update on their respective activity as part of a stock take on progress under the initial two-year workplan, responded to any concerns of other FWG representatives, and then opened the dialogue for Indigenous representatives and observers to comment. Key updates included the completion of the thematic training workshops for Parties and relevant institutions to understand, respect, recognize and increase the ethical inclusion of Indigenous knowledge in the context of climate change (Activity 4), a final discussion on recommendations on the engagement and input of Indigenous Peoples and local communities across the UNFCCC process (Activity 6), mapping exercises related to the participation of Indigenous Peoples and local communities (Activity 7), and funding opportunities (Activity 11), among others.<sup>13</sup>



The rest of the session focused on the collaborative development of the draft second three-year workplan. Based on the discussion at the meeting, FWG members worked together to finalize the workplan and present it to Parties for adoption in Glasgow. The final draft workplan streamlined the number of activities in order to focus on those that would lead to the greatest outcomes for Indigenous Peoples. This included continuing annual international gatherings as well as regional gatherings (Activities 1 and 2, which were unable to occur because of COVID-19), a series of training workshops and tools for Indigenous Peoples and States (new Activity 4 and 5), and an in-session multi-stakeholder dialogue (new Activity 7), as well as new activities such as an annual round table in collaboration with Indigenous youth (new Activity 8).<sup>14</sup>

The second FWG meeting (FWG 6) took place in Glasgow from 28-30 October, marking the first time in two years that representatives had seen each other in person. The meeting followed a similar circular format, starting with a ceremonial opening by Indigenous representatives from North America, and then focusing on walking through the agenda. Although there was relative comfort in the draft workplan for consideration by Parties, an important discussion emerged around the development of terms of reference for the FWG, concluding that they would leave it for the new set of members to be nominated by FWG 7 in June 2022. Following this discussion on the workplan, the meeting shifted to the upcoming in-session activities, including the Annual Knowledge Keepers Gathering, and a long discussion on the potential to take a position on the inclusion of human rights and the rights of Indigenous Peoples in Article 6. After much discussion, the FWG was unable to take a position, despite general support for the rights of Indigenous Peoples. This highlights an important limitation of the body whereby Indigenous Peoples are still unable to have any formal mechanism through which to influence key negotiation items.

The Annual Gathering of Indigenous knowledge keepers was a momentous occasion. Nearly 28 representatives, including Indigenous women, youth, and men from each region, traveled to Glasgow to attend and share some of their observations, teachings and reflections. Although there was much last-minute negotiation, the knowledge keepers were able to confirm a full-day preparatory meeting on Saturday within the blue-zone in which Parties were actively prevented from participating. This symbolic (and physical) reclamation of space enabled

the knowledge keepers and other Indigenous Peoples' representatives to discuss internally, sharing their priorities, reflections and teachings in a safe space. These discussions were then synthesized by the FWG activity leads (including Andrea Carmen, Yow Mulalap, and Pasang Sherpa) in preparation for a meeting with States the following Monday. The Calls-to-Action and the discussion between knowledge keepers and Parties marked the first time that Indigenous knowledge keepers had directly addressed Party representatives within the UNFCCC.

Amidst all the controversy and inaction circulating inside and outside the negotiating rooms, the Local Communities and Indigenous Peoples Platform continued to make progress. After three relatively painless negotiation sessions, Parties adopted the second, three-year workplan. In the decision, Parties agreed to a continuation of the FWG without changes to its composition.<sup>15</sup> This included postponing the addition of local communities' representatives another three-years, and giving additional time for their self-mobilization and self-representation (instead of Parties speaking for them). Parties also adopted a formal review of the FWG with an invitation for Indigenous Peoples to make submissions, and proposed future consideration of the local communities' issue. The quick adoption and solidification of the growing role and influence of Indigenous Peoples within the UNFCCC is an important opportunity for Indigenous Peoples to continue breathing life into the workplan, slowly increasing the presence of Indigenous Peoples and their Nations within the UNFCCC.

## **The shift to implementation: COP 27 in the Africa region**

Indigenous Peoples continue to punch above their weight within the UNFCCC, forging space within an inherently colonial institution. The adoption of the new three-year work plan of the Platform and the references to Indigenous Peoples in the Glasgow Climate Pact demonstrate how effective Indigenous advocacy, diplomacy and solidarity have been. But this journey is far from over. As the Paris Agreement shifts into implementation, Indigenous Peoples will also need to shift their attention, balancing progress at the international level with gains in advancing Indigenous self-determination, Indigenous legal orders and Indige-

nous-led solutions to addressing the climate crisis. As COP 27 in Egypt marks the first time in five years that COP will be held outside of Europe and is heralded as the adaptation and loss and damage COP, Indigenous Peoples will pressure States to listen to the voices of Indigenous elders, women, knowledge keepers, experts, youth, and leadership. The ultimate success of this advocacy, and progress in the Platform, will depend on how well it can amplify the voices of Indigenous Peoples and speed up transformative change amidst the real, immediate and existential threats that Indigenous Peoples are facing daily.

## Notes and references

1. UNFCCC. "The Paris Agreement." Accessed 19 January 2022. <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>
2. *A full honouring can be found on the IIPFCC Website, here:* <http://www.iipfcc.org/blog/2021/5/11/the-passing-of-our-dear-colleague-estebancio-castro-diaz>
3. We feel that it is appropriate to capture this reality truthfully. In the words of World Health Organization Director-General Tedros Adhanom Ghebreyesus, the world reached a situation of vaccine apartheid in May 2021. At time of writing, nearly 40% of people in low-income countries have not received a first dose. More here: <https://www.nytimes.com/interactive/2021/world/covid-vaccinations-tracker.html>
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5. UNFCCC. "Updated NDC Synthesis Report: Worrying Trends Confirmed." Accessed 19 January 2022. <https://unfccc.int/news/updated-ndc-synthesis-report-worrying-trends-confirmed>
6. The series of presentations can be found on the UNFCCC website, here: <https://unfccc.int/cop26/world-leaders-summit>
7. Climate Home News. "Carbon offsets have patchy human rights record. Now UN talks erode safeguards." Accessed 19 January 2022. <https://www.climatechangenews.com/2019/12/09/carbon-offsets-patchy-human-rights-record-now-un-talks-erode-safeguards/>
8. Bloomberg Green, "India's Last-Minute Coal Defense at COP26 Hid Role of China, U.S." Accessed 30 January 2022, <https://www.bloomberg.com/news/articles/2021-11-13/india-s-last-minute-coal-defense-at-cop26-hid-role-of-china-u-s?sref=jjXJRDFv>; For more analysis, see van Asselt, H. "Breaking a Taboo: Fossil Fuels at COP 26" EJIL: Talk!, Accessed 30 January 2022, <https://www.ejiltalk.org/breaking-a-taboo-fossil-fuels-at-cop26/>
9. Paragraph 66, Glasgow Climate Pact
10. IIPFCC Pavilion. "Livestream." Accessed 19 January 2022. <https://www.iipfccpavilion.org/livestream>
11. Recordings can be found here: <https://lcipp.unfccc.int/events/5th-meeting-facilitative-working-group-fwg5>
12. Thomas Cameron (representing the United Nations regional group of Western European and other States) and Hindou Oumarou Ibrahim (representing the

United Nations Indigenous sociocultural region of Africa) as Co-Chairs. Tuntiak Katan (representing the United Nations Indigenous sociocultural region of Central and South America and the Caribbean) and Alick Bulala Muvundika (representing the United Nations regional group of African States) were elected as Vice Co-Chair.

13. Details on each of these events can be found on the web portal of the Local Communities and Indigenous Peoples Platform: <https://lcipp.unfccc.int/events/5th-meeting-facilitative-working-group-fwg5>
14. The final workplan, as well as the meeting notes, can be found in the FWG 5 Report: <https://lcipp.unfccc.int/events/5th-meeting-facilitative-working-group-fwg5>
15. UNFCCC. "Draft decision -/CP.26." Accessed 19 January 2022. <https://unfccc.int/documents/310391>

**Graeme Reed** is of mixed Anishinaabe and European descent. He works at the Assembly of First Nations leading their involvement in federal and international climate policy, including as co-Chair of the International Indigenous Peoples' Forum on Climate Change. In his free time, he is close to completing a doctorate at the University of Guelph exploring Indigenous visions of nature-based solutions.

**Inka Saara Arttijeff** is the Secretary for International Affairs at the Sámi Parliament in Finland, representing the Sámi Parliament at international climate change negotiations, including COP26. She comes from a family of Inari Sámi reindeer herders.

**Eileen Mairena-Cunningham** is an Indigenous Miskito researcher from the Caribbean Coast of Nicaragua. She is the liaison in Latin America and the Caribbean for the Indigenous Peoples Major Group and the Active Observer from Civil Society Organizations from developing countries in the Green Climate Fund.

**Stefan Thorsell** is Climate Adviser at the International Work Group for Indigenous Affairs (IWGIA). He engages in international climate advocacy at the UNFCCC and the Green Climate Fund in collaboration with Indigenous Peoples' representatives. He has contributed to publications on Indigenous Peoples' rights in climate action and published research on the peace process in Colombia.



# UN Permanent Forum on Indigenous Issues (UNPFII)

The United Nations Permanent Forum on Indigenous Issues (Permanent Forum) is an expert body of the United Nations Economic and Social Council (ECOSOC) with a mandate to provide advice on Indigenous issues to ECOSOC and, through it, to the UN agencies, funds and programmes; to raise awareness on Indigenous Peoples' issues; promote the integration and coordination of activities relating to Indigenous Peoples' issues within the UN system; and promote respect for and full application of the provisions of the UN Declaration on the Rights of Indigenous Peoples and follow up on its effectiveness.

Established in 2000, the Permanent Forum is composed of 16 independent experts who serve a three-year term in a personal capacity. They may be re-elected or re-appointed for one additional term. Eight of the members are nominated by governments and elected by the ECOSOC, based on the five regional groupings used by the UN, while eight are nominated directly by Indigenous Peoples' organizations and appointed by the ECOSOC President, one for each of the seven socio-cultural regions that broadly represent the world's Indigenous Peoples, with one seat rotating between 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.

The Permanent Forum meets each year for 10 working days. The annual sessions provide an opportunity for Indigenous Peoples from around the world to have direct dialogue with members of the Forum, Member States, the UN system,

including human rights and other expert bodies, as well as academics and NGOs. The Permanent Forum prepares a report of the session containing recommendations and draft decisions, which is submitted to ECOSOC.

## **International Expert Group Meeting on Indigenous Peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent**

In December 2021, the United Nations Department of Economic and Social Affairs (UN-DESA) organized the international expert group meeting entitled “Indigenous peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent”, as recommended by UNPFII and endorsed by ECOSOC. The meeting consisted of five two-hour sessions over five days on an online platform at different times of the day to facilitate participation from all regions.

Over the five-day discussion, experts discussed issues related to the impact of businesses on Indigenous Peoples’ rights. They proposed a series of recommendations to better address the situation and advance the implementation of rights in business operations.

Some of the issues highlighted were the reprisals experienced by Indigenous Peoples when not consenting to development projects affecting their livelihoods, and the more significant impact that acts of intimidation and retaliation have on Indigenous women, children, and youth. The meeting further emphasized the need to work at the national level to develop national action plans on business and human rights that are inclusive of Indigenous Peoples’ rights, with the support of the UN country teams. Another issue of concern highlighted was the lack of effective and accessible remedies for Indigenous Peoples to challenge businesses and extractive industries and the need for Indigenous Peoples to keep developing their own protocols on free, prior and informed consent.

The meeting was attended by Indigenous experts, members of the Permanent Forum, members of the Expert Mechanism, UN entities,

government representatives, academics, NGOs and the general public. A report of the expert group meeting will be presented at the 2022 session of the Permanent Forum.

## **2021 session of the Permanent Forum on Indigenous Issues**

Owing to the evolving COVID-19 situation, the UN Permanent Forum on Indigenous Issues took place in a hybrid format with mostly virtual (online) meetings from 19-30 April 2021. The special theme of the 20<sup>th</sup> session of Permanent Forum was *Peace, justice and strong institutions: the role of indigenous peoples in implementing Sustainable Development Goal 16*. Throughout the year, members of the Permanent Forum continued to carry out the Forum's mandate, readjusting to new and changing circumstances.

The report of the session<sup>1</sup> highlights the importance of peace and security and that the Forum is committed to facilitating a process among Indigenous Peoples and Member States aimed at rethinking and supporting international efforts to ensure peace and security and creating peacebuilding processes that guarantee the effective participation of Indigenous Peoples.

In addition to the special theme, the Permanent Forum also discussed COVID-19: building back better and its far-reaching implications for Indigenous Peoples, the upcoming International Decade of Indigenous Languages (2022-2032), and the 2030 Agenda for Sustainable Development. Human rights and challenges faced by Indigenous human rights defenders featured prominently in dialogues with the Special Rapporteur on the Rights of Indigenous Peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples. The Forum reiterated that access to justice for Indigenous Peoples – through mechanisms that do not violate or threaten their rights – is essential and that States must recognize that Indigenous Peoples' own justice systems are pivotal to ensuring their right to maintain their autonomy, culture, and traditions. The Forum noted that the COVID-19 pandemic has exposed and aggravated many pre-existing inequalities faced by Indigenous Peoples, especially Indigenous women and girls who have not only been left behind but have been left even further behind.<sup>2</sup>

## Gender and Indigenous women

In 2019, the Permanent Forum reiterated its invitation to the Committee on the Elimination of Discrimination against Women to adopt a general recommendation on Indigenous women, in accordance with the UN Declaration on the Rights of Indigenous Peoples and other international instruments:

*The Forum recommends that the general recommendation on indigenous women consider issues related to the individual and collective rights to equality, non-discrimination, and self-determination; social and economic rights, including the rights to decent work and land, territory, and resources; the right to water and food; cultural rights; civil and political rights; and the right to live free of any form of violence.<sup>3</sup>*

On 24 June 2021, the Permanent Forum welcomed the Committee on the Elimination of Discrimination against Women's organization of a virtual day of general discussion on the rights of Indigenous women and girls, organized by the Office of the High Commissioner for Human Rights. Further, the Permanent Forum stated that it was highly committed to this process and looking forward to contributing meaningfully to this effort. The Forum called for the adoption of a general recommendation on Indigenous women by CEDAW, in accordance with the UN Declaration on the Rights of Indigenous Peoples and other international instruments, which would be a milestone in the response to the Indigenous women's struggle.

In the same vein, the Forum reiterated that the general recommendation on Indigenous women must consider issues related to individual and collective rights to equality, non-discrimination, and self-determination; social and economic rights, including the rights to decent work and to land, territory, and resources; the right to water and food; cultural rights; civil and political rights; and the right to live free of any form of violence.

The Indigenous Peoples and Development Branch-Secretariat of the Permanent Forum (IPDB/SPFII) created and manages a dedicated webpage on gender and Indigenous women, as part of its outreach and awareness-raising activities. The web page contains information on In-



Indigenous women in intergovernmental processes such as the Permanent Forum and the Commission on the Status of Women (both subsidiary bodies of the Economic and Social Council), relevant recommendations, publications, reports and videos.<sup>4</sup>

## **International Day of the World’s Indigenous Peoples 2021 (9 August)**

International Day of the World’s Indigenous Peoples is celebrated annually on 9 August. In 2021, the Department of Economic and Social Affairs organized a commemorative event with the theme “Leaving no one behind: Indigenous peoples and the call for a new social contract”.<sup>5</sup> Participants included Indigenous Peoples’ organizations, United Nations agencies, Member States, civil society, relevant stakeholders and the general public.

The event featured an interactive discussion with two speakers on the distinct elements to be considered when building and redesigning a new social contract that is inclusive of Indigenous Peoples – in which Indigenous Peoples’ own forms of governance and ways of life must be respected, based on their free, prior and informed consent and genuine and inclusive participation and partnership.

## **Agenda 2030 for Sustainable Development**

As an expert body of the Economic and Social Council, the Permanent Forum plays a key role in ensuring that the rights and priorities of Indigenous Peoples are considered in the review and implementation of the Sustainable Development Goals (SDGs) and Agenda 2030. At the July 2021 High-level Political Forum (HLPF) at UN headquarters in New York with the theme of: *“Sustainable and resilient recovery from the COVID-19 pandemic that promotes the economic, social and environmental dimensions of sustainable development: building an inclusive and effective path for the achievement of the 2030 Agenda in the context of the decade of action and delivery for sustainable development”*, 16 out of 42 Member States<sup>6</sup> included some reference to Indigenous Peoples in their voluntary national reviews. Indigenous Peoples were most

frequently highlighted in reviews of Goal 1 (end poverty in all its forms everywhere), Goal 2 (end hunger, achieve food security and improved nutrition and promote sustainable agriculture), Goal 5 (achieve gender equality and empower all women and girls), and Goal 16 (promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels).

During the HLPF session, Ms Irma Pineda Santiago, Member of the Permanent Forum on Indigenous Issues, took part in a panel entitled “How do we get on track for building more peaceful, equal, and inclusive societies (SDGs 3, 10,16, 17 and interlinkages among those goals and with other SDGs)”. The issue of the negative socio-economic and health impacts of the COVID pandemic were discussed, including the increase in pre-existing inequalities. The need for a renewed social contract to address inequality and exclusion and provide access to justice was highlighted. Participants also noted that building back better required human rights-based approaches, should consider the impacts of climate change, and needed to involve all stakeholders, including youth, migrants, Indigenous Peoples and persons with disabilities.<sup>7</sup>

In the summary of the July 2021 HLPF, the President of ECOSOC<sup>8</sup> reported that Indigenous Peoples and other vulnerable groups were among the most deeply affected by the pandemic. It was further stated that gender-based inequalities and risks had deteriorated in particular, with negative impacts on the safety and socio-economic wellbeing of women and girls, Indigenous women also being significantly affected. It was also emphasized that inequalities in pandemic response and recovery had been exacerbated by the digital divide and unequal access to technology. Participants also noted that building back better required approaches based on human rights and which take into account the impacts of climate change, and that they needed to involve all stakeholders, including Indigenous Peoples.

Within the context of the 2030 Agenda for Sustainable Development and leaving no one behind, the Indigenous Peoples and Development Branch/Division for Inclusive Social Development of UN-DESA provides technical support for Member States in their implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Although the global pandemic greatly restricted in-person gatherings,

UN-DESA continued its collaboration with the governments of Uganda and Namibia in 2021, providing capacity development and policy advice in the drafting of policies that advance the rights of Indigenous Peoples. In Uganda, support was provided for both in-person and online meetings of the consultation group that is developing an affirmative action plan on Indigenous Peoples. In Namibia, a draft White Paper on the Rights of Indigenous Peoples is being considered by the cabinet, prior to official action. This support is provided within the framework of the System-Wide Action Plan on the Rights of Indigenous Peoples, as well as the 2030 Agenda for Sustainable Development, and includes policy and legislative review, capacity development for government officials and Indigenous representatives and the organization of dialogues that bring together Indigenous representatives, government officials and relevant stakeholders. UN-DESA provides such support at the request of governments from developing countries and it is always provided within the context of the Declaration on the Rights of Indigenous Peoples. UN-DESA also provides support to Resident Coordinators and United Nations Country Teams on matters related to Indigenous Peoples.

## **System-wide Action Plan on the Rights of Indigenous Peoples**

The Inter-Agency Support Group (IASG) for Indigenous issues consists of more than 40 UN entities and other international organizations and has the main task of implementing the System-Wide Action Plan on the Rights of Indigenous Peoples (SWAP). The SWAP was officially launched by the United Nations Secretary-General in 2016, at the 15<sup>th</sup> Session of the Permanent Forum. IPDB/SPFII is the permanent co-chair of the Inter-Agency Support Group and plays a central role in implementing the SWAP.

The annual IASG meeting was hosted by the 2021 co-chair, the United Nations Population Fund (UNFPA), in cooperation with IPDB/SPFII, and held online on 22 and 23 November. The meeting was attended by the Chairs of PFII and EMRIP members. The meeting included discussions of the IASG's involvement in implementing the UN System Chief Executives Board for Coordination's Call to Action on Indigenous Peoples and other activities in 2021 to ensure the more systematic par-

ticipation of Indigenous Peoples in United Nations country processes, such as the UN Sustainable Development Cooperation Frameworks as well as discussion of the IASG's contribution to the 2021 theme of the UNPFII "Indigenous peoples, business, autonomy and the human rights principles of due diligence including free, prior and informed consent", including agencies' policies.

The new co-chair of the IASG for 2022 is UNESCO. The IASG intends to host round tables with UN Resident Coordinators on issues related to Indigenous Peoples' knowledge and its potential to advance sustainable development; protecting Indigenous human rights defenders; and promoting the participation of Indigenous Peoples in national development processes.

Further, the IASG will continue working to including Indigenous Peoples in UN Decades relevant to them, such as the International Decade of Indigenous Languages (2022-2032) and other international meetings.

The IASG will also continue working to implement the System-Wide Action Plan on the Rights of Indigenous Peoples<sup>9</sup> and the UN System Chief Executives Board for Coordination's Call to Action on Indigenous Peoples<sup>10</sup> at all levels and mainstreaming Indigenous Peoples' rights in the UN development system.

## **Members of the Permanent Forum on Indigenous Issues, 2020-2022**

On 31 December 2022, the 16 members of the Permanent Forum will conclude their three-year term (2020-22). They are: Mr. Vital Bambanze (Burundi); Mr. Phoolman Chaudhary (Nepal); Ms Tove Søvndahl Gant (Denmark); Ms Lourdes Tibán Guala (Ecuador); Ms Hindou Oumarou Ibrahim (Chad); Mr. Grigory E. Lukiyantsev (Russian Federation); Mr. Bornface Museke Mate (Namibia); Ms Hannah McGlade (Australia); Mr. Dario Jose Mejia Montalvo (Colombia); Ms Anne Nuorgam (Finland); Mr. Simón Freddy Condo Riveros (Bolivia); Mr. Geoffrey Scott Roth (USA); Ms Irma Pineda Santiago (Mexico); Mr. Sven-Erik Soosaar (Estonia); Mr. Aleksei Tsykarev (Russian Federation) and Ms Xiaoan Zhang (China). Ms Tibán Guala, Ms Nuorgam and Mr. Chaudhary are all serving their second and final term as members of the Permanent Forum.

Of the total number of members, seven are women and nine are men.

Please visit the UNPFII website for more information about the members and the selection process: [www.un.org/indigenous](http://www.un.org/indigenous)

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*The article was written by the Indigenous Peoples and Development Branch-Secretariat of the Permanent Forum on Indigenous Issues.*



# UN Special Rapporteur on the Rights of Indigenous Peoples

The Special Rapporteur on the Rights of Indigenous Peoples is one of the 58 “special procedures” of the United Nations Human Rights Council. The special procedures are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective.

The Special Rapporteur has a mandate to promote the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and relevant international human rights instruments; to examine ways and means of overcoming existing obstacles to the full and effective protection of the rights of Indigenous Peoples; to promote best practices; to gather and exchange information from all relevant sources on violations of the human rights of Indigenous Peoples; and to formulate recommendations and proposals on measures and activities to prevent and remedy violations of those rights.<sup>1</sup>

On 1 May 2020, Mr. Francisco Calí Tzay from Guatemala, a former member of the Committee on the Elimination of Racial Discrimination, assumed the mandate of the Special Rapporteur on the rights of indigenous peoples.

**D**uring 2021, the Special Rapporteur continued to carry out work within the principal mandated areas: the promotion of good practices; responding to specific cases of alleged human rights violations; conducting thematic studies; undertaking country visits; and making recommendations to governments and other actors.

## 2020 thematic studies

Each year, the Special Rapporteur presents two thematic reports, one to the Human Rights Council and one to the General Assembly.

The thematic study submitted to the Human Rights Council in September 2021 was on the impact of State COVID-19 recovery measures on Indigenous Peoples.<sup>2</sup> It follows up on the thematic report presented to the General Assembly in 2020 on the global impacts of the pandemic on the rights of Indigenous Peoples.<sup>3</sup>

The report notes that State COVID-19 recovery measures negatively and disproportionately impact Indigenous Peoples. In many cases, recovery laws have been primarily geared towards managing the economic crisis and prioritizing and supporting the expansion of business operations at the expense of Indigenous Peoples, their lands and the environment. In many countries, security of land tenure is more of a concern for Indigenous Peoples than the virus itself. During the pandemic, there has been a sharp rise in illegal deforestation, land incursions and violence with little government aid or oversight. Emergency orders continue to accelerate resource exploration and extraction while stalling demarcation and official recognition of Indigenous lands. Government efforts to control illegal incursions into Indigenous territories have been reduced but amnesties for illegal logging, fishing and gold prospecting, along with industrial and commercial projects, continue or have escalated.

Indigenous Peoples have been severely and disproportionately affected by COVID-19 and face higher risks of infection and death, especially as new variants of the virus continue to emerge. Despite their increased vulnerability to the virus, vaccine roll-out for Indigenous Peoples, in particular those living in remote areas, has not been prioritized in most countries.

Indigenous Peoples continue to be subjected to forced evictions amidst the COVID-19 pandemic. The enforcement of COVID-19 measures has been used to strengthen authoritarian, militarized responses that criminalize Indigenous human rights defenders. Peaceful protests are being restricted while the expansion, construction and operation of commercial and extractive industries continues in order to promote economic recovery.

Indigenous Peoples have shown great resilience and collective strength during the pandemic and are revitalizing cultural practices as part of their successful measures to combat COVID-19. These initiatives should receive support from State reconstruction and recovery processes, so that Indigenous Peoples can restore traditional livelihoods and economies to sustain their communities.

Worldwide, Indigenous communities have taken action to overcome insufficient national COVID-19 information campaigns by governments. Education campaigns in Indigenous languages have been conducted through print, radio and social media to inform the community about vaccine effectiveness and limitations and address the spread of misinformation.

Protection of Indigenous territories is central, as it not only helps Indigenous Peoples to recover from the health crisis but also promotes food security and sustainable livelihoods, increasing resilience in the face of future pandemics. The report recommends greater inclusion and participation of Indigenous Peoples in the recovery process in order to address their rights and unique needs and calls for increased support for Indigenous-led initiatives to sustain their cultures and economies in the COVID-19 recovery period. Indigenous Peoples must be involved in the planning and implementation of COVID-19 recovery measures that affect them.

The thematic study presented to the General Assembly in October 2021 was dedicated to the challenges faced by Indigenous Peoples living in urban areas.<sup>4</sup> The report explored the specific causes and consequences of urbanization and the initiatives undertaken by Indigenous Peoples and States to address the rights and specific needs of Indigenous Peoples.

A significant number of the world's Indigenous Peoples live in urban environments, and there is a need to tackle issues of poverty, racism and marginalization and to strengthen support for those peoples. Urban migration may occur when Indigenous Peoples move to urban areas in search of employment and education opportunities, but also as a result of forced evictions, militarization, political instability and armed conflict. Extractive activities and development projects are leading push factors driving Indigenous Peoples to urbanize as their land rights are being undermined by intensified pressure from State policies that favor the escalation of large-scale projects for extractive



industries. The adverse effects of climate change, including wildfires, deforestation, drought and rising sea levels are further exacerbating the migration and urbanization of Indigenous Peoples. Indigenous Peoples often end up in precarious housing in the poorest urban areas, prone to natural disasters and environmental pollution.

Urbanization provides opportunities but often also entails poverty, stigmatization and discrimination. Indigenous Peoples commonly live in marginalized urban areas in which their rights and cultural needs are not effectively addressed by public policies or urban planning. Indigenous Peoples who voluntarily relocate, or are forcibly relocated, to urban areas encounter barriers to accessing adequate health care, safe drinking water and sanitation, culturally-appropriate education, employment opportunities and adequate housing.

Indigenous Peoples living in urban areas continue to experience the legacy of colonization and intergenerational trauma and face a unique set of challenges to their sense of identity, culture and connection to lands and resources. The report notes that it is imperative to pay special attention to the rights of groups at risk among Indigenous Peoples living in urban centers. Indigenous women and girls who migrate to urban areas are at increased risk of people trafficking, forced labor, prostitution, sexual exploitation and gender-based violence. Indigenous children living in these areas equally face barriers – they continue to be removed from their families and communities through State child welfare systems and are at greater risk of domestic servitude and forced labor.

Despite all the challenges, Indigenous Peoples are resilient, adapting to urban life and forging new paths, often with the help of Indigenous-led initiatives. State authorities should take measures to support the initiatives developed by Indigenous Peoples themselves. The report further recommends the adoption of legislation, policies and programs, in consultation with the Indigenous communities concerned, to provide collective protection mechanisms for Indigenous Peoples living in urban areas.

## Country visits

In December 2021, the Special Rapporteur conducted an official country visit to Costa Rica.<sup>5</sup> During the visit, the Special Rapporteur expressed

his concern over the more than 40 years of non-compliance by the State of Costa Rica with its obligation to return Indigenous lands belonging to eight Indigenous Peoples across the country. He expressed concern for the various attacks against human rights defenders, including Indigenous leaders who suffer intimidation and death threats in the context of defending their lands, territories and natural resources. In most cases, the underlying cause is the lack of land tenure security of Indigenous communities. He expressed worry at the lack of progress in the judicial processes concerning the killings of the two Indigenous leaders Sergio Rojas in 2019 and Jhery Rivera in 2020, beneficiaries of IACHR precautionary measures in 2015.

The Special Rapporteur received information on the lack of due consultation with Indigenous Peoples in the definition of protected areas and their management. He was also able to observe the significant discrimination and poverty that Indigenous Peoples suffer in the country, which impact their access to justice, education, health and political participation. The Special Rapporteur noted the multiple forms of discrimination suffered by Indigenous women and recommended that the State remove the obstacles women face to effective political participation and access to health care with an intercultural approach.

The Special Rapporteur invited the State to solve the land issue as soon as possible and create the conditions for a constructive dialogue in good faith with Indigenous Peoples in order to develop a comprehensive, participatory legislative reform in accordance with international human rights standards. In particular, he pointed out the need for constitutional recognition of the existence of Indigenous Peoples and their legal personality. Calí Tzay encouraged the continuation of the process of elaborating a policy on access to justice for Indigenous Peoples in accordance with international standards and to address structural forms of discrimination. While the Special Rapporteur welcomed the fact that the government has adopted a consultation mechanism in accordance with international human rights standards, he invited the Legislative Assembly and the Judiciary to develop their own consultation procedures with the participation of Indigenous Peoples.

In 2022, the Special Rapporteur hopes to conclude the official country visit to Denmark and Greenland. This was initiated by his predecessor in March 2020 but had to be interrupted due to COVID-19. He also expects to carry out a country visit to Chad, which has accepted his request to visit.

The Special Rapporteur will continue to seek country visits to Asia and Africa and urges States in these regions to accept requests to visit officially.

## **Communications and press releases**

During 2021, the Special Rapporteur issued more than 75 communications to States and other entities, such as private corporations and intergovernmental organizations, in response to information received on alleged violations of the human rights of Indigenous Peoples.<sup>6</sup> These communications on cases are included in the special procedures' joint communications report, submitted to each session of the Human Rights Council, and are publicly available online in the special procedures communications database.<sup>7</sup>

The mandate also issued numerous press releases on cases of urgency or special concern. Examples include press releases expressing concern over a broad range of issues, including for example: oil pollution in Peru and mercury levels in Brazil; continued criminalization of Indigenous human rights defenders in the Philippines, Guatemala and Honduras; and land-grabbing and planned tourism projects on Indigenous lands in Bangladesh and Indonesia. Concerns were also publicly expressed at the finding of mass graves of Indigenous children in Canada, attacks on Indigenous Peoples during peaceful protests in Myanmar and Colombia, and at the impact of conservation measures on Indigenous Peoples in Thailand.<sup>8</sup>

## **Collaboration with UN specialized entities, regional human rights bodies and other activities**

The Special Rapporteur continued the mandate's collaboration with the Permanent Forum on Indigenous Issues (UNPFII) and the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). In December 2021, he participated in the EMRIP seminar on treaties and constructive agreements and submitted written information for the Expert Group Meeting of the UNPFII on Indigenous Peoples, business and autonomies.

The Special Rapporteur maintained engagement with various United Nations agencies with a view to promoting good practices in their work regarding the rights of Indigenous Peoples. He participated in meetings of the United Nations Inter-Agency Support Group on Indigenous Peoples' Issues (IASG) to further the integration of Indigenous issues into the UN system's agenda and the implementation of the UN Declaration on the Rights of Indigenous Peoples.

The Special Rapporteur addressed, for the first time, a session of the UNESCO Heritage Committee in July 2021 during their consideration of nominated heritage sites. He participated in person at the IUCN World Conservation Congress in Marseilles in September 2021.

The mandate continued to collaborate with the human rights treaty bodies and special procedures. In June 2021, the Special Rapporteur participated in the CEDAW Day of General Discussion on the rights of Indigenous women and girls.

In terms of cooperation with regional human rights mechanisms, in May 2021 the mandate submitted written expert testimony to the Inter-American Court of Human Rights at the request of the petitioners in the case of the *Maya Kaqchikel Indigenous Peoples of Sumpango and Others vs. Guatemala*.<sup>9</sup> The Special Rapporteur contributed to an event arranged by the Inter-American Commission on Human Rights and IW-GIA on Indigenous autonomy in March 2021.

During the past year, he continued to participate in meetings relating to the environment and the rights of Indigenous Peoples, and he also engaged in various activities related to Indigenous human rights defenders.

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**Christine Evans** and **José Parra** support the mandate of the Special Rapporteur on the rights of indigenous peoples at the United Nations Office of the High Commissioner for Human Rights.

**Seanna Howard** and **Elisa Marchi**, both based at the University of Arizona, Indigenous Peoples Law and Policy Program provided external support for the mandate of the Special Rapporteur.

Email to contact the mandate of the Special Rapporteur on the rights of indigenous peoples: [ohchr-indigenous@un.org](mailto:ohchr-indigenous@un.org)



# World Intellectual Property Organization (WIPO)

Indigenous Peoples have rights over their traditional knowledge,<sup>1</sup> traditional cultural expressions<sup>2</sup> and genetic resources,<sup>3</sup> including associated intellectual property rights, as recognized in Article 31 of the UN Declaration on the Rights of Indigenous Peoples.<sup>4</sup> However, conventional intellectual property laws, in large measure, are woefully inadequate in protecting these rights. In the absence of effective legal recognition and protection, Indigenous Peoples' intangible cultural heritage, ranging in forms from textile designs to traditional songs, medicinal plant knowledge and environmental conservation, is often treated as being in the "public domain", and misappropriation by those within the fashion, film and pharmaceutical industries, among others, is widespread and ongoing.

The World Intellectual Property Organization (WIPO), a UN agency with 193 Member States, provides a forum for negotiating new international intellectual property laws. In 2000, WIPO Member States established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Since 2010, the IGC has conducted formal, text-based negotiations aimed at developing legal instruments for the protection of Indigenous Peoples' and local communities' traditional knowledge, traditional cultural expressions and genetic resources. Negotiations center around separate draft texts for each of the three subject matters.<sup>5</sup>

Due to the COVID-19 pandemic, substantive negotiations on the IGC texts have been stalled since 2019. However, the WIPO General Assembly renewed the IGC's mandate for the 2022-2023 biennium and the first of the six anticipated negotiation sessions under the new mandate is scheduled to take place in a hybrid format from 28 February to 4 March 2022.

## IGC’s 2020-2021 mandate and work program

The IGC operates under two-year mandates, requiring biennial renewal by the WIPO General Assembly. At its 2019 meeting, the WIPO General Assembly approved the IGC mandate and work program for 2020-2021.<sup>6</sup> The mandate directed the IGC to “continue to expedite its work, with the objective of finalizing an agreement on an international legal instrument(s) ...which will ensure the balanced and effective protection of” genetic resources, traditional knowledge and traditional cultural expressions. The work program provided for six negotiating sessions, four to take place in 2020 and two in 2021. However, due to the pandemic, no substantive negotiations occurred during the 2020-2021 biennium.

### IGC 41 – 30-31 August 2021

Originally scheduled for March 2020, the first of the six sessions anticipated under the 2020-2021 biennium, designated as IGC 41, was to address the genetic resources text. Following numerous unsuccessful attempts to reschedule IGC 41 in 2020 and 2021, and with the expiration of the 2020-2021 mandate looming, Member States agreed to hold IGC 41 in a hybrid format in August 2021 to address solely procedural matters. Foremost among these was the recommendation to the WIPO General Assembly to renew the IGC’s mandate for the 2022-2023 biennium. Member States recommended the General Assembly renew the mandate and adopt a work program on the same terms as the mandate and work program for 2020-2021. There were no normative discussions during IGC 41.<sup>7</sup>

### Indigenous participation at IGC 41

Indigenous Peoples participate in the IGC as accredited observers and join together to participate collectively through an *ad hoc* Indigenous Caucus.<sup>8</sup> IGC Member States frequently comment on the vital role of Indigenous Peoples in the deliberations, and acknowledge the necessity of their involvement for the legitimacy of the IGC’s work.

Due to the ongoing COVID-19 pandemic and the WIPO Secretariat’s medical protocols to safeguard participants and staff, only Regional Coordinators were authorized to attend the IGC 41 session in person.

All other participants, including Indigenous representatives, were limited to participating virtually, via WIPO's online remote participation platform or by viewing the live webcast on the WIPO website.

At each IGC session, the WIPO Secretariat provides support for an Indigenous Consultative Forum, typically held the day before the session begins, to facilitate the preparation of the Indigenous Caucus for participation in the session. Due to the necessity of participating virtually, and in view of the differing time zones of the Indigenous representatives participating, the Indigenous Consultative Forum for IGC 41 took place in shorter sessions held over two days, 28 and 29 August 2021.

The Indigenous Caucus delivered opening and closing statements during the IGC 41 session.<sup>9</sup> The Caucus also made an intervention supporting renewal of the IGC mandate. In its statements, the Caucus noted the many negative impacts suffered by Indigenous Peoples during the pandemic and the challenges and obstacles to Indigenous participation in the hybrid format. Highlighting the UN Declaration on the Rights of Indigenous Peoples and other international, domestic and Indigenous laws, and noting the urgent need to conclude the IGC negotiations and produce legal instruments for the protection of Indigenous Peoples' rights, the Caucus nonetheless urged that substantive negotiations be postponed until possible to ensure meaningful participation of Indigenous representatives, which was not possible in the present hybrid format. The Caucus also requested that Member States support future Indigenous participation in the negotiations by contributing to the WIPO Voluntary Fund and by acting on the 2019 recommendation from the UN Permanent Forum on Indigenous Issues to make permanent funding available for Indigenous participation utilizing WIPO core budget funds.

Each IGC session commences with a panel of Indigenous experts invited by WIPO to present on topics relevant to the negotiations. The Indigenous panel held during IGC 41 addressed "Intellectual Property and Genetic Resources/Traditional Knowledge/Traditional Cultural Expressions: Indigenous Peoples' and Local Communities' Perspectives". The panelists were Ms Bibi Barba of Australia, Mr Steven Benally of the United States, and Ms Jennifer Tauli Corpuz of the Philippines.<sup>10</sup>

### **IGC's 2022-2023 mandate and work program**

At its 2021 meeting, the WIPO General Assembly approved the IGC



mandate and work program for 2022-2023, as recommended by Member States at IGC 41.<sup>11</sup> The work plan calls for four negotiation sessions in 2022 and two in 2023.

The first session, IGC 42, is set to take place in a hybrid format from 28 February to 4 March 2022 and will address the genetic resources text. According to the invitation letter sent out by WIPO on 17 December 2021, in-person participation for IGC 42 will be limited to two delegates per Member State delegation and one delegate per observer delegation. As with IGC 41, other participants may follow the live transmission of the IGC proceedings online, either via the WIPO online remote participation platform or via the live webcast on the WIPO website. The Draft Agenda and other working documents for IGC 42, including the *Update of the Technical Review of Key Intellectual Property-Related Issues of the WIPO Draft Instruments on Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions Within the Framework of Indigenous Human Rights* commissioned by the WIPO Secretariat in response to a 2019 recommendation from the UN Permanent Forum on Indigenous Issues, are available on the WIPO website.<sup>12</sup>

The IGC's provisional schedule for 2022 includes an additional session from 30 May 3 June 2022 (IGC 43) addressing the genetic resources text and sessions addressing the traditional knowledge and traditional cultural expressions texts from 12-16 September 2022 (IGC 44) and 5-9 December 2022 (IGC 45).<sup>13</sup>

## Other related developments in 2021

### 2021 intersessional activities

Although no text-based negotiations took place in 2021, various intersessional activities were carried out to help keep the work of the IGC moving forward.

In January 2021, WIPO organized a virtual *Seminar on Intellectual Property and Genetic Resources*. The seminar, which took place over the course of three days, provided an opportunity for the sharing of regional, national and local experiences and case studies, and for discussion of substantive issues and exchange of views related to the issues involved in the genetic resources text negotiations.<sup>14</sup>

In June and July 2021, WIPO organized a series of informal infor-

mation sessions for Member States and the Indigenous Caucus on the history and status of the IGC negotiations and key issues involved in the negotiations.

Finally, intersessional processes established in 2020 continued in 2021, with Member States and accredited observers invited to (a) submit comments on the Chair's genetic resources text, (b) review and provide comments, corrections or updates to WIPO's online compilation of national and regional *sui generis* regimes providing intellectual property protection for traditional knowledge and traditional cultural expressions,<sup>15</sup> and (c) review and provide updated information for the online resources available on the WIPO Traditional Knowledge Division website, particularly the "Disclosure Requirements Table",<sup>16</sup> and the repository of "Regional, National, Local and Community Experiences".<sup>17</sup>

### **WIPO initiatives, training activities and information resources**

WIPO has undertaken a number of ongoing initiatives aimed at providing support for Indigenous Peoples and provides various practical training sessions and informational publications. Examples include WIPO's *Training, Mentoring and Matchmaking Program on Intellectual Property for Women Entrepreneurs from Indigenous Peoples and Local Communities*;<sup>18</sup> the *WIPO Photography Prize for Indigenous Peoples and Local Community Youth*;<sup>19</sup> and a 2021 webinar series entitled *How to Protect and Promote Your Culture* inspired by WIPO's publication *Protect and Promote Your Culture – A Practical Guide to Intellectual Property for Indigenous Peoples and Local Communities*.<sup>20</sup> WIPO also maintains an Indigenous Fellowship program.<sup>21</sup>

### **UN Permanent Forum on Indigenous Issues**

At its 20<sup>th</sup> session, held from 19–30 April 2021, the UN Permanent Forum on Indigenous Issues highlighted the continued misappropriation and illicit use of Indigenous Peoples' intellectual property and cultural heritage without their free, prior and informed consent. The Forum recommended that WIPO and Member States ensure protection against the misappropriation of Indigenous Peoples' intellectual property. In addition, the Forum appointed Forum members Irma Pineda Santiago and Simón Freddy Condo Riveros to conduct a study on collective intellectual property and the appropriation of ideas and creations of Indigenous Peoples to be presented at the Forum's 21<sup>st</sup> session in 2022.<sup>22</sup>

## Notes and references

1. The term “traditional knowledge” generally refers to technical know-how, skills and practices developed, utilized and passed down within a community’s traditional context. Examples include medicinal, agricultural and ecological knowledge, as well as methods for doing things such as weaving and constructing housing. WIPO. “Traditional Knowledge.” Accessed February 3, 2022. <https://www.wipo.int/tk/en/tk/>. Because the term “traditional knowledge” can be somewhat misleading, as it implies antiquity, many Indigenous activists in their international advocacy in multilateral processes prefer to refer simply to the “knowledge of Indigenous Peoples” or “Indigenous knowledge”. In the WIPO negotiations, Indigenous representatives emphasize that traditional knowledge is not confined to ancient knowledge but includes new and evolving Indigenous knowledge.
2. “Traditional cultural expressions” are the myriad forms in which traditional culture is expressed. Examples include music, dance, stories, art, ceremonies, designs and symbols. WIPO. “Traditional Cultural Expressions.” Accessed February 3, 2022. <https://www.wipo.int/tk/en/folklore/>
3. “Genetic resources” are defined as genetic material having actual or potential value found in plants, animals or micro-organisms. Examples include medicinal plants, agricultural crops and animal breeds. Genetic resources found in nature are not creations of the mind and thus are not intellectual property. Intellectual property issues are, however, associated with genetic resources, for example in the case of inventions utilizing genetic resources or where traditional knowledge is associated with the use of genetic resources. WIPO. “Genetic Resources.” Accessed February 3, 2022. <https://www.wipo.int/tk/en/genetic/>
4. “Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.” United Nations. “A/RES/61/295. General Assembly. Sixty-first session. Agenda item 68. Resolution adopted by the General Assembly on 13 September 2007. [without reference to a Main Committee (A/61/L.67 and Add.1)] 61/295. United Nations Declaration on the Rights of Indigenous Peoples. 2 October 2007.” Accessed February 3, 2022. [https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.18\\_declaration%20rights%20indigenous%20peoples.pdf](https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.18_declaration%20rights%20indigenous%20peoples.pdf)
5. Current versions of the draft texts are attached as annexes to the IGC’s 2019 report to the WIPO General Assembly: WIPO. “Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). July 30, 2019. Accessed February 3, 2022. [https://www.wipo.int/about-wipo/en/assemblies/2019/a\\_59/doc\\_details.jsp?doc\\_id=443934](https://www.wipo.int/about-wipo/en/assemblies/2019/a_59/doc_details.jsp?doc_id=443934). A fourth draft text, the *Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources*, developed in 2019 by the IGC Chair, Mr Ian Goss, as an alternative genetic resources text, is available: WIPO. “Chair’s text on GRs and ATK.” June 7, 2019. Accessed February 4, 2022. <https://www.wipo>.

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8. Like other observers, the Indigenous Caucus may make interventions on the floor of the IGC and propose modifications to the text under negotiation. Proposed modifications are incorporated into the draft text if they receive the support of at least one Member State. In addition, the IGC Chair, with Member State support, has systematically invited the Caucus to nominate representatives to participate in the various IGC working methodologies, such as *ad hoc* expert groups, informals and small contact groups.
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**Sue Noe** is a Senior Staff Attorney with the Native American Rights Fund (NARF), located in Boulder, CO USA. NARF is the oldest and largest non-profit law firm in the USA representing Native American tribes. Sue has attended IGC sessions since IGC 34 (June 2017) and served on the Indigenous Panel for IGC 36. She was also a presenter for the January 2021 WIPO Seminar on Intellectual Property and Genetic Resources. She can be reached by email at [suenoe@narf.org](mailto:suenoe@narf.org).



# PART 3

General Information

# About IWGIA

IWGIA is a non-governmental human rights organisation promoting, protecting and defending Indigenous Peoples' collective and individual rights. We have supported our partners in this fight for more than 50 years. We work through a global network of Indigenous Peoples' organisations and international human rights bodies. We promote recognition, respect and implementation of Indigenous Peoples' rights, including the right to self-determination by virtue of which they can freely determine their political status and freely pursue their economic, social and cultural development.

We believe that Indigenous Peoples as rights holders are powerful agents of change. Our partnership with their organisations and institutions is at the centre of all our work. Together with allies, and in solidarity with Indigenous Peoples, our core ambition is that Indigenous Peoples' rights to land, territories and resources and their self-determined development are promoted, respected and protected.

We foster change by:

- **Documenting** the situation of Indigenous Peoples and the human rights violations they experience, thus contributing to knowledge and awareness of their circumstances and promoting respect for their individual and collective rights;
- **Advocating** for change from decision-makers at local, national and international levels, including active engagement in international networks; and
- **Empowering** Indigenous Peoples' own organisations to act in order to claim and exercise their rights and to amplify the Indigenous Peoples' movements at local, national and international levels.

## Our mission

We promote, protect and defend Indigenous Peoples' rights.

## Our vision

A world where Indigenous Peoples everywhere fully enjoy their internationally recognised rights.

## How to get involved

You can follow our work by signing up for our newsletter: <http://eepurl.com/dsPkNP> or by following us on Facebook, Twitter, Instagram and LinkedIn – just search for us @IWGIA.

If you are interested in supporting us, please find various options on our support page: <https://www.iwgia.org/en/get-involved>





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# Author List

Abigail Bengwayan-Anongos  
Amina Amharech  
Angela Godfrey-Goldstein  
Angélique Mbelu  
Bablu Chakma  
Belinda Kendall  
Belkacem Lounes  
Ben Begbie-Clench  
Benjamin Ilabaca D.  
Benjamin Mutambukah  
Bettina Durocher  
Binota Moy Dhamai  
Cambodia Indigenous Peoples Alliance (CIPA)  
Camila Alomía  
Carlos Camacho-Nassar  
Carolina Sánchez García  
Chebet Mungech  
Chin Human Rights Organization (CHRO)  
Chingri Vashum  
Chouchouna Losale  
Christine Evans  
Claire Levacher  
Colin Nicholas  
David N. Silakan  
David Nathaniel Berger  
Davy Ndlovu  
Diana Alexandra Mendoza  
Diel Mochire  
Edith Kamakune  
Edward Porokwa  
Eileen Mairena-Cunningham  
Elianne Kremer  
Elisa Marchi  
Emmanuel Bayeni  
Felana Rakotovao  
Fleur Te Aho  
Frederic Wilson  
Fumiya Nagai  
Gail Potgieter  
Geneviève Rose  
Graeme Reed  
Gwendoline Malogne-Fer  
Hawe Hamman Bouba  
Heraclio López Hernández  
Hernando Silva  
Hjalmar Dahl  
Iain Gately  
Ian Bravo  
Indigenous Peoples and Development Branch - Secretariat of the Permanent Forum on Indigenous Issues  
Inka Saara Arttijeff  
International Indigenous Women's Forum (FIMI)  
Janette Bulkan  
Jason Pan Adawai  
Jeff Gayman  
Joel Ilunga  
Johannes Rohr  
John Palmer  
Joji Cariño  
José Aylwin  
José del Val  
José Parra  
Joshua Cooper  
Juan Mario Pérez Martínez  
Judith Frost  
Justine Berezintsev  
Dr. Kanako Uzawa  
Karina Vargas  
Dr. Karla Jessen Williamson  
Katrine Gro Friborg  
Kiri West

Kittisak Rattanakrajangsri  
Krishna B. Bhattachan  
Laila Susanne Vars  
Leonardo J. Alvarado  
Leonardo Tamburini  
Leslé Jansen  
Lola García-Alix  
Lorena Arce  
Loupa Pius  
Luis Jesús Bello  
Lương Thị Trường  
Mali Ole Kaunga  
Marcel Didier  
Maria de Lourdes Beldi de Alcântara  
Dra. María Luisa Acosta  
Mario J. Barrios Cáceres  
Mathias Wuidar  
Matthew Norris  
Max Ooft  
Mélanie Clerc  
Negev Coexistence Forum for Civil Equality  
(NCF)  
Ningreichon Tungshang  
Observatorio Ciudadano  
Olga Murashko  
Pablo Ortiz-T.  
Pallab Chakma  
Patrick Kulesza  
Penninah Zaninka  
Ms. Pratima Gurung  
Qivioq Løvstrøm  
Renzo Anselmo  
Robert K. Hitchcock  
Robyn K. Rowe  
Rosa-Máren Magga  
Mr. Santosh Chakma  
Seanna Howard  
Dr. Sebastian Braun  
Silvel Elías  
Silvina Ramírez  
Steeve Daviau  
Stefan Disko  
Stefan Thorsell  
Stephanie Russo Carroll  
Sue Noe  
Tonje Margrete Winsnes Johansen  
Tunga Bhadra Rai  
Victor Mambor  
Vladimir Aguilar Castro  
Yesho Alex



**The compilation you have in your hands is the unique result of a collaborative effort between Indigenous and non-indigenous activists and scholars who voluntarily document and report on the situation of Indigenous Peoples' rights. We thank them and celebrate the bonds and sense of community that result from the close cooperation needed to make this one-of-a kind documentation tool available.**

For 36 consecutive years IWGIA has published *The Indigenous World* in collaboration with this community of authors. This yearly overview serves to document and report on the developments Indigenous Peoples have experienced throughout 2021. The *Indigenous World 2022* adds not only documentation, but also includes a special focus on the contribution and situation of Indigenous women and their rights around the world.

Indigenous women play crucial roles in their communities as breadwinners, caretakers, knowledge keepers, leaders and human rights defenders. While Indigenous women have made small, but significant progress in being part of decision-making processes in some communities, risen to leadership in communal and national roles, and stood on the protest frontlines to defend their lands and the planet's decreasing biodiversity; the reality remains that Indigenous women are massively under-represented, disproportionately negatively affected by the decisions made on their behalf without their valuable input, and are too frequently the victims of intersectional discrimination and multiple expressions of violence and sexual assault. Violence against Indigenous women triggers other negative effects pertaining to their mental and physical health, lowering their self-worth, thus impacting their possibilities of earning an income, as well as their level of participation and decision-making powers. Though we have chosen to focus on Indigenous women this year, we encourage the analysis of their situation in every edition because reporting on their lives and the implementation of their rights is imperative, essential and crucial to fully reporting on the world of Indigenous Peoples and society as a whole.

The 60 regional and country reports and 21 reports on international processes and initiatives covered in this edition underscore these trends. IWGIA publishes this volume with the intent that it is used as a documentation tool and as an inspiration to promote, protect and defend the rights of Indigenous Peoples, their struggles, worldview and resilience.

