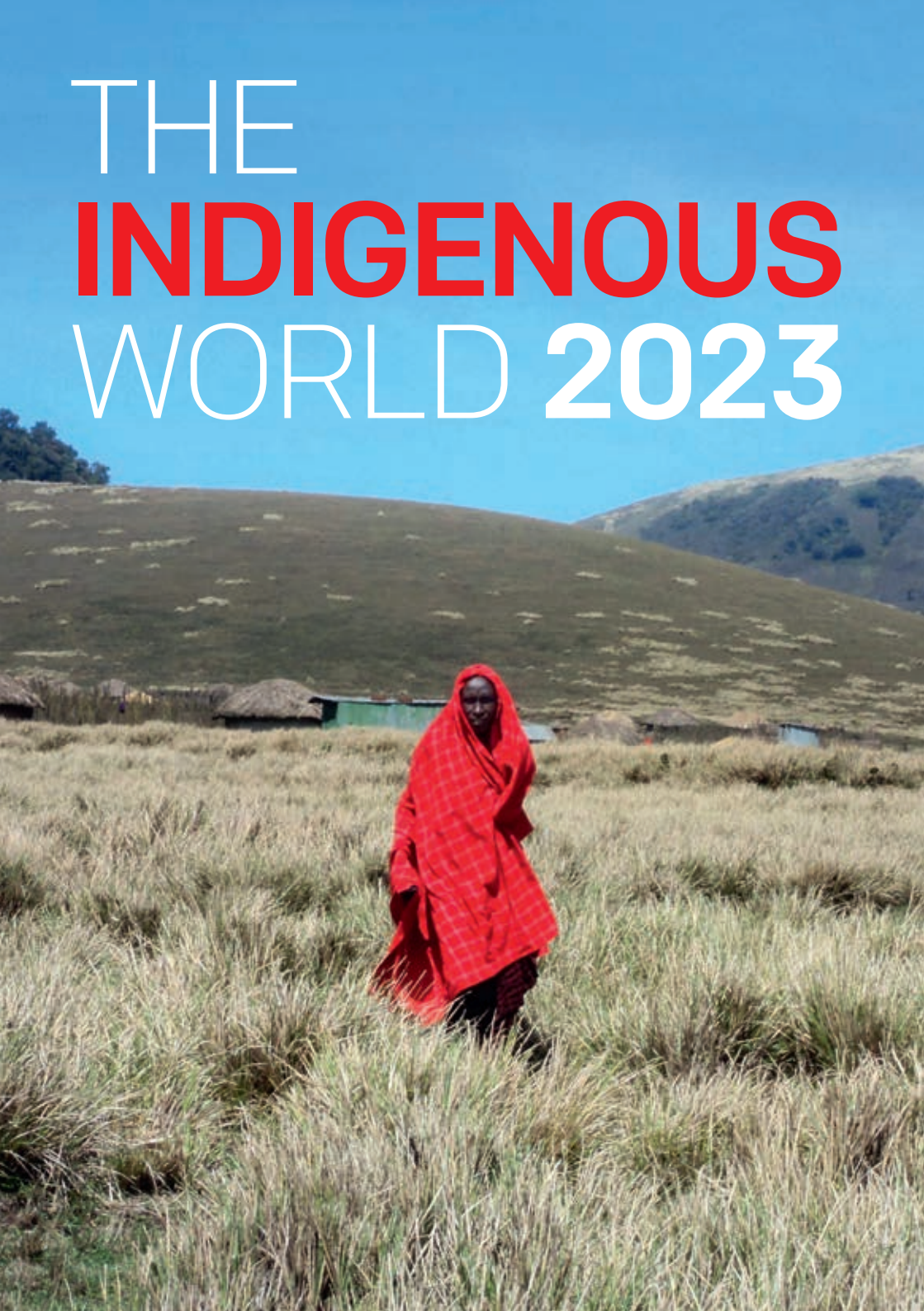
THE INDIGENOUS WORLD 2023



The Indigenous World 2023

37th 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, Sofia Pedersen Sierra, Stefan Thorsell and Kathrin Wessendorf
Maps: David Nathaniel Berger and Dwayne Mamo
Cover photograph: Indigenous Peoples in Tanzania face increasing threats of evictions from their lands in the name of nature and biodiversity conservation. This is also the case for many of the Indigenous Maasai people living in the Ngorongoro Conservation Area in Tanzania, which is a multiple land use area and a UNESCO World Heritage Site. **Photo credit:** Geneviève Rose / IWGIA
English translation: Elaine Bolton
Proofreading: Elaine Bolton, Morgane Jaouen, Käthe Jepsen and Dwayne Mamo
Design and layout: www.nickpurserdesign.com
Prepress and Print: Eks-Skolens Grafisk Design & Tryk, Copenhagen, Denmark

© The authors and The International Work Group for Indigenous Affairs (IWGIA), 2023. All Rights Reserved

HURIDOCS CIP data
Title: The Indigenous World 2023
Edited by: Dwayne Mamo
Pages: 720
ISSN: 1024-0217
ISBN: 978-87-93961-61-6
Language: English
Index: 1. Indigenous Peoples – 2. Yearbook – 3. International Processes
BISAC codes: LAW110000 Indigenous Peoples
REF027000 Yearbooks & Annuals
POLO35010 Political Freedom & Security / Human Rights
Geographical area: World
Publication date: April 2023

The reproduction and distribution of information contained in The Indigenous World is welcome as long as the source is cited. However, the translation of articles into other languages and of the whole book is not allowed without the consent of IWGIA.

The articles in The Indigenous World are produced on a voluntary basis. It is IWGIA's intention that The Indigenous World should provide a comprehensive update on the situation of Indigenous Peoples worldwide but, unfortunately, it is not always possible to find authors to cover all relevant countries. The articles reflect the authors' own views and opinions and not necessarily those of IWGIA itself. IWGIA can furthermore not be held responsible for the accuracy of their content. The Indigenous World is published annually in English and Spanish.

Executive Director: Kathrin Wessendorf
Head of Finance and Operations: Frank Lausten

This book has been produced with financial support from the Danish Ministry of Foreign Affairs (DANIDA)

MIX
Papir
FSC
FSC® C109833

Contents

Editorial 6

PART 1 - Region and Country Reports

Africa

Algeria 25
Botswana 35
Burundi 45
Cameroon 51
Democratic Republic of the Congo (DRC) 60
Ethiopia 65
Gabon 74
Kenya 79
Libya 90
Morocco 97
Namibia 104
South Africa 113
Tanzania 122
Tunisia 132
Uganda 139
Zimbabwe 150

Asia

Bangladesh 158
Cambodia 169
China 181
India 191
Indonesia 207
Japan 214
Laos 228

Malaysia 237
Myanmar 246
Nepal 258
Philippines 271
Taiwan 280
Thailand 290

Central and South America and the Caribbean

Argentina 300
Bolivia 307
Brazil 315
Chile 323
Colombia 336
Costa Rica 344
Ecuador 355
French Guiana 370
Guatemala 377
Guyana 386
Mexico 396
Nicaragua 404
Paraguay 417
Peru 425
Rapa Nui (Easter Island) 433
Suriname 437
Venezuela 445

The Arctic

Kalaallit Nunaat (Greenland) 455
Sápmi 465

Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia

Israel 474
Palestine 484
Russia 498

North America

Canada 511
United States of America 521

The Pacific

Aotearoa (New Zealand) 531
Australia 539
French Polynesia 547

PART 2 - International Processes and Initiatives

African Commission on Human and Peoples' Rights (ACHPR) 557
Business and Indigenous Peoples' Rights 566
Convention on Biological Diversity (CBD) 572
Defending the Rights of Indigenous Women 583
European Union Engagement with Indigenous Issues 591
Indigenous Persons with Disabilities Global Network (IPWDGN) 599
IUCN Africa Protected Areas Congress (APAC) 609
The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) 623
The Green Climate Fund (GCF) 632
The Indigenous Navigator: Self-Determined Development 639
The Inter-American Human Rights System (IAHRS) 646
The Intergovernmental Panel on Climate Change (IPCC) 658
The Sustainable Development Goals (SDGs) and Indigenous Peoples 667
UN Framework Convention on Climate Change (UNFCCC) 676
UN Permanent Forum on Indigenous Issues (UNPFII) 688
UN Special Rapporteur on the Rights of Indigenous Peoples 694
World Intellectual Property Organization (WIPO) 703

PART 3 - General Information

About IWGIA 713
IWGIA Publications 2022 715

Editorial

This year's edition of *The Indigenous World* takes a closer look at Indigenous Peoples' rights in conservation efforts. In times of a global climate and biodiversity crisis, focusing on the protection of nature is crucial and, increasingly, studies show that Indigenous Peoples are among the most effective guardians of nature. This has been recognised by some international processes, as we will see further below. However, the reports in this edition show a disturbing global picture of conservation efforts ignoring Indigenous Peoples, their rights and knowledge.

Many of the reports in this year's edition also note the drastic ramifications COVID-19 and skyrocketing living costs have had on Indigenous Peoples worldwide throughout 2022, including food insecurity and hunger, declining incomes and increased crime rates. Furthermore, national efforts aimed at economic recovery, and at addressing the energy crisis, have had negative consequences for Indigenous Peoples as the pressure of natural resource extraction on their lands has increased.

Much of the world began to open up in 2022 as the effects of COVID-19 abated and humanity's protection against the virus increased but it began to grapple with a number of other factors that have led to 2022 being, in many ways, a more difficult year than 2021. Russia's war on Ukraine and a food crisis of unprecedented proportions, alongside prolonged and deadly droughts and other effects of climate change, have been exponentially harming those on the most marginal fringes of society, including Indigenous Peoples.

The achievements of the 2030 Agenda for Sustainable Development are currently in peril, with major challenges stemming from the COVID-19 pandemic, the climate and biodiversity crises, ever growing economic inequality and armed conflict. In fact, the 2030 target to achieve the Sustainable Development Goals (SDGs) is looking increasingly out of reach, which was apparent in the UN Secretary General's comments at the 2022 High Level Political Forum (HLPF) where he called on States to rescue the SDGs.[1]

As a tragic paradox, in the race to address these global crises,

many top-down initiatives, albeit well-meaning, have failed to engage Indigenous Peoples, obtain their Free, Prior and Informed Consent (FPIC), or safeguard their rights. This has had negative consequences for Indigenous Peoples, including mass evictions, violent attacks and threats, detentions and arrests and, at the very worst, killings.

Indigenous Peoples' role in conservation and the protection of biodiversity

In December 2022, States adopted the Kunming-Montreal Global Biodiversity Framework (KMGBF), a global agreement on the protection of the world's biodiversity. This global biodiversity strategy will guide global actions to protect and restore biodiversity by 2050.

As noted in Section C of the KMGBF:

> *The framework acknowledges the important roles and contributions of indigenous peoples and local communities as custodians of biodiversity and partners in conservation, restoration and sustainable use. Its implementation must ensure the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of indigenous peoples and local communities are respected, documented and preserved with their free, prior and informed consent, including through their full and effective participation in decision-making, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that indigenous peoples currently have or may acquire in the future.*[2]

Indigenous Peoples' rights and their knowledge and contribution to the goals are mentioned in one of the four goals to be achieved by 2050 and in seven of the 23 targets for 2030. We applaud the International Indigenous Forum on Biodiversity (IIFB), representing Indigenous Peoples from all seven socio-cultural regions, for their tireless and effective ef-

forts to promote strong language on human rights and Indigenous Peoples' rights, as well as on the important roles and contributions of Indigenous Peoples in the protection of world biodiversity in the agreement.

The strong emphasis on Indigenous Peoples' rights in the KMGBF is remarkable and will hopefully mark a paradigm shift in international conservation efforts. Past State-centred conservation efforts have often led to human rights violations and failed nature conservation outcomes. Sadly, this edition of *The Indigenous World* includes numerous examples of such violations and outcomes, despite the fact that Indigenous Peoples manage and protect at least 28% of the land area[3] and studies have shown that lands and territories managed by Indigenous Peoples are better conserved and have higher biodiversity than any other protected land.[4]

Indigenous Peoples' rights and role in conservation was duly recognised by the International Union for Conservation of Nature (IUCN) at its Africa Protected Areas Congress (APAC), which took place in July 2022. The 2022 APAC recognised that there was an outdated and damaging preconception that conservation areas are limited to those that are State-owned and controlled, without taking into consideration various other models that are often more successful, such as Indigenous and community conservation areas.

In another part of the world, in December 2022, the European Parliament and the European Council furthermore reached an agreement on the Deforestation-free Products Regulation to prevent companies from placing six commodities, i.e. cattle, wood, palm oil, soy, cocoa, and coffee and their derivate products, linked to deforestation and forest degradation, onto the EU market, or exporting them from the EU. These commodities have been linked to evictions and other human rights violations related to land grabbing of Indigenous lands. Unfortunately, the regulation only requires companies to verify compliance that the rights of relevant Indigenous Peoples have been respected if these rights have been enshrined in the relevant legislation of the country of production.[5, 6]

State-owned and controlled conservation or protected areas often employ an outdated tactic of fortress conservation. As this edition points out, unfortunately this is still the way conservation is viewed and practised in Bangladesh, Cameroon, Chile, India, Nepal, Tanzania, Thai-

land, Tunisia and Uganda, to name but a few.

This is a very damaging misunderstanding of what conservation can be but it does give governments the impetus to demarcate areas as conservation areas and evict people, often Indigenous, at will. When this happens, it is often done violently, without notice to and involvement of those being evicted, and with no plan to rehabilitate and rehouse the displaced.

Governments, supported by international conservation corporations, may form partnerships seemingly for the benefit of nature but with detrimental effects for Indigenous Peoples. The expansion of protected area networks is thus often at the expense of Indigenous Peoples who lose rights and access to the lands, territories and resources they have protected and depended on for millennia.

This dark side of conservation is often underreported or unnoticed.

How fortress conservation manifests in the Indigenous reality

One glaring example of State-controlled conservation gone wrong is taking place in Tanzania where the government continues to expand conservation and protected areas further and further into Maasai ancestral lands, regardless of the human costs.

In June 2022, the government moved ahead with its plan to create a 1,502 km^2 game reserve – Pololeti Game Reserve – in the Loliondo division of Ngorongoro District by sending in a 700-strong paramilitary group to demarcate the land, which led to severe violence causing hundreds to flee into hiding. Dozens of people were injured, many with gunshot wounds, and one police officer was killed, leading to the arrest of 24 Indigenous persons, many of them leaders, on conspiracy to murder charges. The charges were seen as a politically motivated attempt to silence Indigenous people and were dropped after six months due to lack of evidence. In total, 240 homesteads were demolished, leaving 600 women, children and young men homeless and, since the establishment of the reserve, more than 11,000 head of livestock have been confiscated for grazing on the traditional grazing lands.

Similarly, Ruaha National Park is slated to expand again, even

though when it was last increased in 2008 officials announced that there would be no further growth. This next phase will lead to the relocation of several villages. In previous phases, government-led relocations were done without proper planning or FPIC and Indigenous communities fear the same will happen again. This was the case in the Ngorongoro Conservation Area in 2022 where 3,000 Maasai were relocated to another village, creating land-use conflicts between villagers. Tarangire National Park is also slated to expand by 100 km, thus encroaching onto a village and making 2,000 Indigenous people homeless, alongside their cattle. As in Loliondo, villagers have resisted, which has led to arrests, shootings and cattle confiscation.

Reporting on the land grabbing, displacement and subsequent violence in Tanzania is very difficult in a situation of widespread media censorship. Additionally, the government is making it increasingly difficult for Indigenous people to live on the disputed lands by closing down social and economic services in their areas.

Some of the same tactics are being used in Cambodia and India where the governments are using various laws to target organisations, peoples, and freedoms, such as the right to peaceful assembly and freedom of speech and independent media. These repressions target those who protest or report on particular issues, including land disputes.

In Cambodia, the government is continuing to implement forest conservation (REDD+) projects without the involvement or FPIC of Indigenous Peoples. Further, an important law on protected areas that enshrined Indigenous Peoples' rights to lands was amended in 2022 to replace the term "Indigenous Peoples" with "local communities", which now denies Indigenous Peoples in the country their collective land rights as peoples, as guaranteed in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Indigenous Peoples were not involved or consulted in the amendment process and are experiencing a continuous shrinking of the civic space.

In Uganda, President Museveni made an announcement in June 2022 that no people should be allowed in the Mt. Elgon Forest, which has been turned into a national park despite being the ancestral land and home of the Benet people. This has led to violence and arrests. Last year alone, at least 50 Benet were arrested and three imprisoned for using their own lands for their pastoralist and hunter-gatherer activi-

ties. The Batwa people have experienced similar dispossession from their ancestral land in the name of conservation. They took the matter to court and, in 2021, a Constitutional Court decision granted land rights back to the Batwa. The decision is, however, locked in appeal and, in the meantime, the government plans to move ahead with the construction of a road through a forest reserve on Batwa ancestral land.

In Thailand, the government continues to use fortress conservation, which has led to conflicts between Indigenous Peoples and the government as well as the criminalization of Indigenous Peoples who carry out traditional, sustainable activities in protected areas. In 2022, there were 1,502 legal cases against community members for infractions such as forest encroachment, setting of forest fires and illegal logging.

In India, the Ministry of Environment, Forest and Climate Change replaced the 2003 Forest Conservation Rules under the 1980 Forest Conservation Act with a new 2022 version that included several amendments that now allow private developers to clear forests on Indigenous lands without seeking FPIC. The same is happening with land acquisitions made without FPIC for the building of private enterprises, such as factories, or the government drive to develop monoculture plantations for teak, palm oil and rubber. In one case, 57 villages protested the illegal allocation of their land for the planned construction of a cement company that would cause the displacement of 60,000 people. The country report in this edition goes on to note that tens of thousands of Indigenous people, if not more, have already been evicted in 2022 in the name of conservation efforts.

In Laos, one-third of the country is made up of 23 protected biodiversity areas in which over 840,000 people, including Indigenous communities, live in over 1,200 villages. These people are heavily dependent on the natural resources therein but their lives are being threatened by the creation of so-called Totally Protected Zones that will restrict human access, as outlined in new agreements in 2022 between government officials and security forces to "mitigate the illegal timber and wildlife hunting industries". However, such agreements have been shown to monopolise illegal logging and wildlife trade in the hands of corrupt government officials rather than to serve conservation goals.

There are also good examples of how conservation can benefit bio-

diversity and people, as described in the article on Namibia – a country considered by the IUCN to be a global leader in biodiversity conservation. As of the end of 2022, the country had 86 communal conservancies covering 166,045 km^2 and comprising 238,701 people. These conservancies are set up as agreements between the government and local communities, including Indigenous communities, organising the management of lands in a way that communities have the right to use resources for their own benefit. The communities can also lease the right to manage the resources to private companies and, in return, receive various benefits, such as employment, food and medicines. This model has not only increased biological diversity in the areas but has also led to population increases of wildlife, including megafauna.

Political developments around the world

Political developments and social unrest across the globe, particularly in Latin America and Asia, have affected Indigenous Peoples dramatically in both positive and negative ways, some of which continue to play out in 2023.

In Brazil, the election of Luiz Inácio Lula da Silva as president was seen as a positive step for the recognition of Indigenous Peoples' rights as compared to the situation under former President Jair Bolsonaro who was vocal and unequivocal in his position against Indigenous Peoples' land rights. In his first days in office, Lula da Silva reversed or altered several of Bolsonaro's anti-environmental or anti-Indigenous measures and created the Ministry of Indigenous Peoples. And, in an unprecedented development, five Indigenous persons were voted into the Chamber of Deputies as a result of a consolidated Indigenous political bloc.

In Peru, in early December 2022, Congress dismissed President Pedro Castillo following his decision to install an emergency government. Castillo had only been president since mid-2021. Since then, mass protests have taken place in the capital and in areas where Indigenous Peoples are in the majority, calling out the deep and structural racism faced by Indigenous Peoples.

2022 led to some stability in Colombia after elections that Gustavo Petro and his running mate Francia Márquez won with strong support from Indigenous Peoples and ethnic minorities as the candidates ran on a platform committed to fixing the discrimination and structural violence Indigenous Peoples suffer. Indigenous people were also appointed to high government positions. Despite this, armed conflicts with multiple armed organisations continued, leading to the killing of 42 Indigenous leaders, the displacement of hundreds of people, the recruitment of minors into the armed organisations, and sexual violence against women and girls.

There was hope in Chile in 2022 when two years of work on a new, progressive Constitution included language on the recognition of Indigenous Peoples, rule of law, as well as the inclusion of collective rights, women's rights and right of nature. However, the Constitution was rejected in a referendum. In December, the political parties represented in the National Congress signed the so-called Agreement for Chile to continue the constitutional process. Indigenous Peoples are concerned about language in the new agreement that refers to Chile as a singular and indivisible state, thus negating Indigenous Peoples' rights and autonomy, together with the establishment of a new plurinational and intercultural state. Further, as the constitutional process continues, Indigenous Peoples will be underrepresented in relation to their demographics.

Meanwhile, in the Philippines, after eight years of persecution of Indigenous Peoples by President Rodrigo Duterte's government, the situation for Indigenous Peoples does not seem to be much better with the election of President Bongbong Marcos – son of former dictator Ferdinand Marcos Sr. – and Vice President Sara Duterte – daughter of Duterte. In his first State of the Union address, Marcos doubled down on former President Duterte's Build! Build! Build! (BBB) Programme, which has led to a huge and seemingly endless number of infrastructure projects that routinely violate Indigenous Peoples' rights and has led to the killing, detention and imprisonment of countless Indigenous people and defenders, not to mention devastating harm to the environment. The President also called for an increase in renewable energy projects and foreign investment in mining projects, which will only compound the negative effects on Indigenous Peoples.

Threatening effects of industry: focus on mining

A multitude of industries and infrastructure projects are threatening Indigenous Peoples' lives and rights, such as agribusiness, energy projects, fossil fuels, and logging but one particularly egregious industry runs as a clear thread through many of the reports in this book: mining. As with any of these industries, in the situation of Indigenous Peoples, it goes hand-in-hand with severe human rights violations.

According to Brazil's National Institute for Space Research (INPE), illegal mining on Indigenous lands in the northern region of Brazil increased more than eightfold between 2016 and 2022, during former President Bolsonaro's regime, leaving behind a legacy of 45,586 km^2 of deforestation in the Amazon, one of the highest deforestation rates on record. August 2022 hence saw the highest rate of deforestation in 10 years with 638 km^2 of forest destroyed.

Additionally, according to the Socio-environmental Institute [Instituto Socioambiental], deforestation caused by illegal mining and land invasions in 2022 mainly affected Indigenous lands with a confirmed presence of isolated Indigenous Peoples. Monitoring identified that 1,192 hectares had been deforested and 594 alerts issued in territories with isolated peoples throughout the Brazilian Amazon.

In Venezuela, in 2022, mining was identified in 14 Indigenous territories, which has led to human rights abuses, including arbitrary arrests, disappearances, semi-slavery and killings. Indigenous organisations and the UN Human Rights Council's Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela both report that Indigenous Yanomami people have been forced into slave labour by gold miners. The head of the Puerto Cabello del Caura Indigenous community reported the killing of 12 people working at the El Silencio mine in April 2022, including four Yanomami people.

In Ecuador, the promotion of extractive projects and concessions, especially metal mining, scaled up in 2022, and NGOs and environmental groups estimate that there are now at least 700 illegal mining sites across the country, many of which are on protected areas and Indigenous territories. This is happening while the country is embroiled in unrest linked to President Guillermo Lasso's neoliberal policies, rising fuel prices and food shortages, marking 2022 as the country's worst year on

record for criminal violence – a year in which 4,603 violent deaths were reported (an increase of 82.5% on 2021).

Several Indigenous communities defending their lands in Guatemala were violently evicted by security forces as the government prioritises the interests of mining and palm oil companies over the human rights of Indigenous Peoples. Houses, possessions, and crops were burned and livestock killed, and the government imposed a state of emergency to limit rights, a common tactic used when such conflicts arise, rather than trying to employ a more peaceful strategy of mediated resolution.

Meanwhile, in the Philippines, mining permits continued to be granted at a high rate, half of which are for mining rights on ancestral lands. In general, as of June 2022, 83 out of a total of 410 so-called Environmentally Critical Projects listed by the Environmental Management Bureau were situated on Indigenous lands, covering over 500,000 hectares.

Year of important global milestones

Landmark international decision for Indigenous women and girls

After nearly 20 years of collective actions and advocacy across the seven socio-cultural regions of the world, the Indigenous women's movement succeeded in getting the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to develop a specific recommendation on Indigenous women and girls, and this was adopted on 26 October.

General Recommendation 39[7] (GR39) promotes the voices of Indigenous women and girls as agents of change and leaders both inside and outside their communities and addresses the different forms of intersectional discrimination frequently committed by State and non-State actors. However, it also recognises Indigenous women's key role as leaders, knowledge holders and transformers of culture within their families, villages and communities.

The General Recommendation has been adopted and officially forms part of the Convention, meaning that it is binding on States, which will now have to periodically report on the concrete measures they are implementing in response to the provisions set out in GR39.

The adoption of GR39 is not only important for the explicit protec-

tion it guarantees Indigenous women and girls worldwide but is also a significant and inspiring example of what collective and concerted efforts by a large, dedicated group can achieve in the face of seemingly endless obstacles.

GR39 also comes at a time when Indigenous women and girls need as much protection as possible. As reported in this edition, women and girls continue to suffer at the hands of aggressors. In India, a 2022 report by the National Crime Records Bureau showed that 1,324 Indigenous women and girls were raped in 2021 and the trend continued into 2022. In Bangladesh, according to a human rights report from the Kapaeeng Foundation, at least 22 Indigenous women and girls, ranging in age from 3-75, from the plains as well as the Chittagong Hill Tracts, were subjected to violence. In Tanzania, as part of the violent forced evictions by military and police in Ngorongoro, Indigenous women and girls were victims of sexual and gender-based violence (SGBV). Such violence has also been reported in Colombia, Namibia, Venezuela and Zimbabwe, either due to government violence, legal and illegal infrastructure projects, or the economic crisis stemming from the effects of COVID-19.

Further, in a different but related case, in 2022 it came to light that, between 1966 and the 1970s, Danish doctors had inserted intrauterine devices (IUDs) into 4,500 Inuit women and girls in Kalaallit Nunaat (Greenland), some as young as 12, often without their knowledge and consent, or that of their parents. At the request of Naalakkersuisut, the Government of Greenland, a commission has been set up to prepare an impartial investigation into this "IUD case" and other pregnancy prevention methods used by Denmark between 1960 and 1991.

Important development in the recognition of Indigenous Peoples' right to land, territories and resources

In December 2022, the Committee under the UN International Covenant on Economic, Social and Cultural Rights (CESCR) adopted General comment No. 26 on Land and Economic, Social and Cultural Rights,[8] which clarifies the specific obligations States have regarding land and land tenure governance under the covenant, including important references to Indigenous Peoples' rights to land territories and resources.

Most significantly, the Committee recognises that land is closely linked to Indigenous Peoples' right to self-determination, which it con-

siders to be an essential condition for the effective guarantee and observation of individual human rights, as well as for the promotion and strengthening of these rights. Specifically, it observes that, in accordance with their right to self-determination, the collective ownership of Indigenous Peoples' lands, territories and resources shall be respected, which implies that these lands and territories must be demarcated and protected by State parties.

The adoption of this comment is indeed an important step forward in the recognition of Indigenous Peoples' land rights by the CESCR.

The comment will, from now on, help the Committee to monitor States' performance of their treaty-related obligations on issues related to land and land tenure governance. It should also become a very important tool for Indigenous Peoples when preparing their "alternative" or "shadow reports" to the Committee in the context of State review processes.

UNDRIP 15 years on

2022 was an important year globally for Indigenous Peoples as it marked the 15th anniversary of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the most comprehensive instrument to ensure the minimum standards of recognising, promoting and protecting Indigenous Peoples' rights.

The adoption of the UNDRIP on 13 September 2007 was a huge, decades-long achievement for the Indigenous Peoples' Movement and recognition of Indigenous Peoples' rights internationally. However, 15 years on, there is a wide gap between what the UNDRIP guarantees and how States actually implement the rights enshrined in the declaration they have signed.

Indigenous Peoples globally continue to suffer human rights violations at the hands of States and private enterprises, who, at times, blatantly ignore the international instrument by means of explicit laws and court decisions that deny the rights of Indigenous Peoples or, at other times, simply pay lip service to Indigenous Peoples, their rights and the UNDRIP.

Further, in many cases, Indigenous Peoples are still not recognised as Indigenous by national governments, some of which claim that all people within the country are Indigenous and thus do not need the special protections provided by the UNDRIP. This not only undermines the

self-identified Indigenous groups within a country but also allows national governments to circumvent the UNDRIP in the pursuit of State interests.

Despite this, Indigenous Peoples, their local, national and regional organisations, as well as international civil society organisations, are continuing to work together to monitor the implementation of the UNDRIP.

One such way this is being done globally is through The Indigenous Navigator, an initiative launched in 2014 that collects data by and for Indigenous Peoples in order to document whether and how the UNDRIP, and other instruments, are being implemented and what real change, if any, is being made on the ground. As of 2022, The Indigenous Navigator had expanded and is now being used in 28 countries.

Some good examples in 2022 of governments being proactive in the implementation of the UNDRIP came from Canada, which has started to develop a National Action Plan, in consultation with Indigenous Peoples, to implement its federal level act to align Canadian law with the UNDRIP. Further, Vancouver became the first city in the country to develop its own municipal-level strategy to implement the UNDRIP.

And in the Democratic Republic of the Congo, after 15 years of tireless advocacy, the government adopted its first national law on the protection and promotion of the rights of Indigenous Peoples in 2022. The government is also extending this to legally securing the ancestral lands and territories of Indigenous Peoples, which should now be under the control of the Indigenous communities.

International Decade of Indigenous Languages

The year also marked the inauguration of the International Decade of Indigenous Languages (2022-2032),[9] a key outcome stemming from the 2019 International Year of Indigenous Languages. The decade focuses on the right of Indigenous Peoples to preserve, revitalise and promote their languages, as well as to ensure Indigenous languages are used by governments and private enterprises when communicating with and informing Indigenous communities and, further, that Indigenous languages are also recognised and used in public schools.

In his September 2022 thematic study on the role of Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge,[10] the UN Special Rapporteur on the rights of Indigenous Peoples noted that Indigenous languages

are rapidly disappearing, which also means invaluable knowledge and culture is being lost. He also noted that Indigenous women are key to the protection and use of Indigenous languages and supported the call to support Indigenous women to urgently develop and implement Indigenous language education programmes.

In Botswana, for example, a new National Language Policy was established in 2022 to include the teaching of San and Nama languages and will hopefully begin implementation in 2023. In Morocco, Tamazight was established as an official language in 2020 but the government at that time remarked that implementation would not begin until after the pandemic had eased. Implementation thus began in 2022, albeit slow, due to insufficient funds. And in Venezuela, the National Institute of Indigenous Languages implemented a plan to strengthen the teaching of Indigenous languages in the country.

Conversely, in Myanmar, where the country is still mired by the effects of the military coup in February 2021, which continues to displace millions, a former law that allowed Indigenous languages to be used in education has now been rolled back and only Burmese is allowed.

And in Peru, when schools reopened after COVID-19, there was backlash against the government for attempting to change schools from being bilingual to monolingual to help recruit more teachers, many of whom do not speak Indigenous languages. Non-bilingual principals and teachers were, nonetheless, still hired. Indigenous organisations have petitioned the government to ensure that any reclassification of schools must only be done with their FPIC.

Understanding the benefits of moving fast with consideration

As evidenced in the reports in this year's edition of *The Indigenous World*, Indigenous Peoples continue to contend with a general attitude that they are the ones who must sacrifice for the greater good and that their lives and voices are not as important as other citizens when decisions are made.

But decisions can be made, and actions can be taken, that respect human rights and give back control to communities. They can also be

made in consultation with Indigenous Peoples, who have valuable and often unrecognised knowledge that can contribute to the process.

Perhaps the largest injustice being perpetrated is the thinking that including and listening to Indigenous Peoples will only slow us down in meeting international agreed targets such as the SDGs, the Paris Agreement and the Global Biodiversity Framework. And yet, by including everyone, including the most marginalised, we will not only reach our goals more fairly and holistically, we may even end up there more quickly.

Tribute to Patrick Kulesza

We were saddened by the passing of Patrick Kulesza. Patrick had always had a close and strong relationship with IWGIA. He was a highly esteemed member of our Board, ensuring that Indigenous Peoples in the Francophone world were always included in our work. Patrick was a great resource person with whom we collaborated extensively over many decades. His contributions were greatly appreciated by all of us who worked with him. He was a valuable and rich contributor to *The Indigenous World*, providing many country reports to each edition on Indigenous Peoples in Africa and the Pacific. Patrick's dedication to Indigenous Peoples will always be with us. Every year, he voluntarily translated *The Indigenous World* into French, as *Le Monde Autochtone*, to help spread important information to the French-speaking world concerning the situation of Indigenous Peoples' rights. He was always positive and good company. Patrick will be missed and will remain in our thoughts.

Dwayne Mamo
General Editor

Kathrin Wessendorf
Executive Director

Ida Theilade
Chair of the Board

Copenhagen, March 2023

Notes and references

1. United Nations. António Guterres. Secretary-General´s remarks at the opening of the 2022 High-level Segment of ECOSOC, Ministerial Segment of High-Level Political Forum. 13 July 2022, https://www.un.org/sg/en/content/sg/speeches/2022-07-13/secretary-generals-remarks-the-opening-of-the-2022-high-level-segment-of-ecosoc-ministerial-segment-of-high-level-political-forum
2. United Nations. Environment Programme. Conference of the Parties to the Convention on Biological Diversity. Fifteenth meeting. Kunming-Montreal Global biodiversity framework; Draft decision submitted by the President. 7-19 December 2022, https://www.cbd.int/doc/c/e6d3/cd1d/daf663719a03902a9b116c34/cop-15-l-25-en.pdf
3. Garnett et al. 2018. A spatial overview of the global importance of Indigenous lands for conservation. Nature. https://www.nature.com/articles/s41893-018-0100-6
4. FAO and FILAC. 2021. Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean. Santiago. FAO. https://doi.org/10.4060/cb2953en
5. For more information please refer to the procedure file of the Deforestation Regulation: European Parliament. 2021/0366 (COD). Deforestation Regulation, https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0366(COD)&l=en
6. https://www.fern.org/publications-insight/eu-anti-deforestation-law-disappointment-as-policymakers-prioritise-trees-over-people-2606/
7. OHCHR. "General recommendation No.39 (2022) on the rights of Indigenous women and girls". OHCHR, 26 October 2022, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigeneous
8. United Nations. Economic and Social Council. Committee on Economic, Social and Cultural Rights. General comment No. 26 (2022) on land and economic, social and cultural rights, https://www.ohchr.org/en/documents/general-comments-and-recommendations/ec12gc26-general-comment-no-26-2022-land-and
9. International decade of Indigenous Languages 2022-2032, https://idil2022-2032.org/
10. UN General Assembly. "Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge. Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay." 2022, https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F28&Language=E&DeviceType=Desktop&LangRequested=False

About The Indigenous World

The compilation you have in your hands is the unique result of a collaborative effort between Indigenous and non-Indigenous activists and scholars who voluntarily document and report on the situation of Indigenous Peoples' rights. We thank them and celebrate the bonds and sense of community that result from the close cooperation needed to make this one-of-a kind documentation tool available.

For 37 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 2022. *The Indigenous World 2023* adds not only documentation, but also includes a special focus on conservation and Indigenous Peoples' rights.

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

ATLANTIC OCEAN
MEDITERRANEAN SEA
Algieres
TUNISIA
MOROCCO
ALGERIA
LIBYA
MAURITANIA
MALI
NIGER

The Amazigh are the Indigenous people of Algeria and other countries of North Africa. The Algerian government does not, however, recognize 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, a 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 Arabized 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 recognized as a "national and official language" in Algeria's Constitution in 2016. But, in practice, the Amazigh identity continues to be marginalized and folklorized 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 of Arabization).

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.

Algeria joins UN Human Rights Council but rejects universal nature of human rights and does not respect its international commitments

The only candidates for the four vacant seats for Africa on the Human Rights Council (HRC), Algeria, Morocco, South Africa and Sudan joined the UN's highest human rights body on 11 October 2022 for a three-year term commencing 1 January 2023.[1] Civil society organizations and the Algerian media expressed their surprise at this election of Algeria to the HRC since "there is no more freedom of expression in the country, the press is silenced, political parties are under a blackout, there is no more democratic life, the population is terrorized by police hunts and justice is instrumentalized".[2] In a joint report published in October 2022, international NGOs[3] even considered that a number of countries, including Algeria, were not qualified to apply for the HRC because they were violating fundamental rights and freedoms and failing to demonstrate their respect for high standards of human rights.

Moreover, Algeria, which has ratified the main international legal instruments, refuses to recognize the universal nature of human rights. During the submission of the fourth report of the Algerian State under the Universal Periodic Review in November 2022, the Algerian Minister of Justice, Mr. Abderrachid Tabi, said that his government "rejects any unilateral vision of foreign values that do not recognize the philosophical, civilizational, historical, cultural and religious features" of his country.[4] The argument of an allegedly "specific vision" of Algeria in terms of "values" and rights and freedoms is being used as justification for the Algerian government's failure to respect its international obligations and in order to allow it to adopt laws and administrative, judicial and police practices that are at odds with democratic principles and universal human rights.

During the Universal Periodic Review of Algeria in November 2022, representatives of several governments (Canada, United States of America, Germany, Great Britain, Belgium, Norway, Australia...)[5] expressed their concern at human rights violations in the country and made recommendations that the Algerian government should comply with international law. They called for the repeal of Article 87(a) of the Criminal Code, which contains an excessively broad and vague definition of terrorism; the release of human rights defenders; amendment of the law on associations to bring it into line with the Constitution and international law; the repeal of the law restricting the international funding of civil society organizations; and the adoption of concrete measures to guarantee exercise of the right to freedom of expression, association and assembly. They also urged Algeria to stop abusing pre-trial detention orders and harassing members of religious minorities, to establish an independent process for appointing judges and prosecutors, and to facilitate visits by UN mandate holders.

Taking advantage of the impunity it enjoys, Algeria shows little respect for the recommendations of UN bodies and obstructs visits by UN mandate holders. For example, according to Amnesty International,[6] of the 229 recommendations made to the Algerian State in 2017 during the third session of the Universal Periodic Review, 103 were either not met or were only partially met, giving a compliance rate of only 55%. In October 2022, the Human Rights Committee adopted its report on the follow-up to the concluding observations made to Algeria as a state party to the International Covenant on Civil and Political Rights.[7] In this report, the Committee regrets that its recommendations made in 2018, particularly regarding the amendment to Law No. 91-19 on associations to bring it into line with good practice, the lifting of restrictions on the right to freedom of expression and assembly, and the cessation of prosecutions of human rights defenders and journalists, have not been followed.

The visit of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, scheduled for 12-22 September 2022, has been postponed to an unspecified date at the request of the Algerian government. This visit was originally scheduled for 2011 and has subsequently been postponed year on year. For the representative of the Algerian League of Human Rights, "It is a disguised refusal of the visit of the Special Rapporteur to Algeria because the situation of public

freedoms is so catastrophic, especially for the rights under the mandate of this special rapporteur."[8]

Mr. Mohammad Alnsour, head of the Middle East and North Africa (MENA) section of the Office of the High Commissioner for Human Rights was, however, able to visit Algiers for a visit described as "technical" from 28 November to 2 December 2022. No report on this visit has been made public to date.

In April 2022, the Working Group on Arbitrary Detention considered that Kamira Nait Sid, co-president of the NGO World Amazigh Congress, who has been in pre-trial detention since 24 August 2021, was being held arbitrarily.[9] For the Working Group, Mrs. Nait Sid's activities to defend the rights of the Amazigh are protected by the right to freedom of expression, association and assembly, guaranteed by Articles 19 and 20 of the Universal Declaration of Human Rights (UDHR), and by Articles 19, 22 and 27 of the International Covenant on Civil and Political Rights. It accordingly called on the Algerian government to immediately and unconditionally release Mrs. Nait Sid, to ensure that she receives the necessary medical care, and to grant her the right to obtain redress, including compensation, in accordance with international law. To date, however, none of the demands of the Working Group on Arbitrary Detention have been met and Kamira Nait Sid remains in prison.

At its 73rd Ordinary Session held in Banjul, The Gambia, from 21 October to 10 November 2022, the African Commission on Human and Peoples' Rights (ACHPR)[10] adopted a report on the human rights situation in Africa. Concerning Algeria, the "African Commission recalls the urgent appeal letter it sent to the Algerian government on 2 September 2021 concerning the devastating effects of COVID-19 on the Indigenous Amazigh populations, the arson attacks in the territory of Kabylia and the repression against the Amazigh, to which no response has been given to date", and notes that "the repression against the Amazigh and particularly against the Kabyl community has increased in recent years, with some 300 Kabyl imprisoned often without trial, some for two years". The report also notes that "Kamira Nait Sid, co-president of the NGO World Amazigh Congress, has been detained for more than 13 months, in an arbitrary manner according to the opinion of the UN Working Group on Arbitrary Detention (A/HRC/WGAD/2022/15)". In conclusion, the African Commission called on the Algerian government to

"conduct independent investigations into the issues raised in the urgent appeal letter of 27 September 2021, to significantly reduce the length of pre-trial detention, and to release Amazigh detainees who are in arbitrary detention". In November 2022, the Algerian authorities released some 50 Amazigh political prisoners.

A dark New Year for Amazigh human rights

Over the past two years, the government has adopted reforms to the Criminal Code that are highly restrictive of freedoms, justifying them by the need to "criminalize acts that threaten the security and stability of the country, public order and security, undermining State security and national unity."[11] Heavy penalties are provided for any person or civil society organization that receives financial aid from abroad (Article 2) or who disseminates "fake news" (Article 3). Concerning terrorism, Article 87(a) uses such a broad and imprecise definition that any person using his or her freedom of expression is likely to be prosecuted for "apology for terrorism". The government has now classified the Amazigh political organization the "Movement for the Self-Determination of Kabylia" (MAK) as a terrorist organization, even though this movement has always acted by peaceful means. The Algerian legal arsenal has enabled the authorities to carry out hundreds of arrests, detentions and convictions of Kabyls, including members and sympathizers of the MAK but also human rights defenders, leaders of Amazigh associations, journalists, writers, artists, and others.

Kamira Nait Sid, co-president of the NGO World Amazigh Congress, detained since 24/08/2021 and prosecuted for membership of a terrorist organization and apology for terrorism was tried and sentenced on 5 December 2022 by the Court of Sidi-Mhamed of Algiers to five years in prison and a 100,000 Dinar fine (approx. 685 euro). Her lawyers have filed an appeal against this judgement.

During the forest fires that ravaged Kabylia in August 2021 and which claimed between 200 and 300 lives, Djamel Ben Smail, a young man from another region of Algeria, died in unresolved circumstances in Larvaa-Nat-Iraten, a locality in Kabylia. The police then proceeded to arrest 100 Kabyls, accusing them of having set fire to the forest and kill-

ing Djamel Ben Smail. Following a summary trial before the Criminal Court of Algiers on 24 November 2022, 54 people were found guilty and sentenced to death for terrorism, arson, murder and membership of the MAK, 28 others were sentenced to terms ranging from 2 to 10 years in prison and the rest of this group's members were acquitted. Algeria has observed a moratorium on capital punishment since 1993 but has not abolished the death penalty.

During the trials, the defence lawyers all denounced violations of the law and procedures governing justice, including a lack of material evidence; the acceptance of confessions obtained through use of torture; charges and convictions based on Article 87(a) of the Criminal Code, which is considered unconstitutional and repeatedly denounced by the relevant UN bodies; and a ban on defendants or their lawyers speaking Tamazight during the hearings. Lawyers have called these trials "shams" or "political trials" with "phantom offences".[12]

An unknown number of Amazigh, particularly human rights defenders, are being prevented from leaving the country even though they are not subject to any legal proceedings, and others are actively being sought by police search and intervention brigades (BRI). Others are leaving the country by whatever means, including clandestinely, in order to reach Europe. This is the case of, among others, Said Salhi, vice-president of the Algerian League for the Defence of Human Rights (LADDH), who was forced into exile in Europe on 23 June 2022.[13] Algeria leaves human rights defenders no choice but to remain silent, go into exile or go to prison.

A policy of conservation and of establishing protected areas that does not take Indigenous populations into account

Algeria became a Party to the Convention on Biological Diversity (CBD) on 3 November 2004. On the domestic legislative level, the issue of conservation and protected areas is framed in the context of Law No. 11-02 of 17/02/2011on protected areas.[14] This distinguishes between different types of protected areas: national park, nature park, nature reserve, strict nature reserve, habitat and species management reserve, natural site and biological corridor.

Algeria has 11 national parks, five of which are classified as biosphere reserves, five nature reserves, 42 wetlands of international importance and two specially protected areas of Mediterranean interest. Some of these areas fall under the Ministry of Agriculture and others under the Ministry of Culture.

Numerous problems weigh on these areas, such as population growth and urbanization, pollution, fires, overgrazing, poaching, rural poverty, the effects of global warming, a lack of interest, militarization, a lack of financial and human resources, etc.[15] To this must be added their sole management by the State and the lack of involvement of local populations in the creation and management of protected areas. "The decision is entirely top-down and centralized, without involving Indigenous people in the decision-making process."[16]

There is an urgent need to "reconcile biodiversity conservation with the social concerns of the people through proper integration, including their involvement in the decision-making process".[17] Failing this, government projects are perceived locally as intrusive and the populations feel "attacked" and dispossessed of their land assets and their living environment, the legacy of their ancestors. In addition, the sociocultural and linguistic features of the Indigenous Amazigh populations need to be taken into account along with their ancestral knowledge and know-how. The government is also obliged to respect the Amazighs' right to Free, Prior and Informed Consent (FPIC) for all projects that affect them. This is not currently the case.

The conservation of natural ecosystems through the establishment of protected areas for the preservation of natural resources is not new in Algeria but is not a priority for the country. For example, Algeria has more than doubled its military budget for 2023 but does not have a single aircraft for fighting forest fires.

Notes and references

1. "12 countries elected to serve new terms on Human Rights Council." UN News, 11 October 2022, https://news.un.org/en/story/2022/10/1129457
2. "CDH : l´Algérie devenue membre au côté de Cuba,Quatar, la Chine..." Le Matin d´Algérie, 11 November 2022, https://lematindalgerie.com/cdh-lalgerie-devenue-membre-au-cote-de-cuba-qatar-la-chine/
3. "Report rejects Algeria, Sudan, Venezuela, Vietnam for top U.N. human rights

posts." UN Watch, 3 October 2022, https ://unwatch.org/report-authoritarian-regimes-set-to-win-top-u-n-human-rights-posts/

4. "L´engagement de l´Algérie en faveur du renforcement et de la protection des droits de l´homme souligné." Algérie Presse Service, 12 November 2022, https ://www.aps.dz/algerie/147502-l-engagement-de-l-algerie-en-faveur-du-renforcement-et-de-la-protection-des-droits-de-l-homme-souligne
5. Zerrouky, Madjid., and Mustapha Kessous. "Droits humains: l'Algérie essuie des critiques à Genève", Le Monde, 11 November 2022, https://www.lemonde.fr/afrique/article/2022/11/11/droits-humains-l-algerie-essuie-des-critiques-a-geneve_6149486_3212.html#:~:text=Vendredi%2011%20novembre%2C%20l'Alg%C3%A9rie,les%20quatre%20ou%20cinq%20ans.
6. Amnesty International. "Algérie: rétrécissement de l'espace civique." Information presented at the 41st session of the UPR Working Group, 7-18 November 2022, https://www.amnesty.org/fr/documents/mde28/5313/2022/fr/
7. International Covenant on Civil and Political Rights. "Evaluation of the information on Follow-up to Concluding Observations." Human Rights Committee, 5 December 2022, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/FollowUp.aspx?Treaty=CCPR&Lang=en
8. Makedhi, Madjid. "Fixée pour le 12 septembre en cours: La visite du rapporteur special de l´ONU sur les libertés reportée." El-Watan, 8 September 2022, https://elwatan-dz.com/fixee-pour-le-12-septembre-en-cours-la-visite-du-rapporteur-special-de-lonu-sur-les-libertes-reportee
9. Human Rights Council. "Avis adopté par le Groupe de travail sur la détention arbitraire à sa quatre-vingt-treizieme session (30 mars-8 avril 2022). Avis nº 15/2022, concernant Kamira Naid Sid (Algérie)." Working Group on Arbitrary Detention, 21 June 2022, https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session93/2022-10-10/A-HRC-WGAD-2022-15-AdvanceEditedVersion.pdf
10. African Commission on Human and Peoples Rights (ACHPR). 73rd Ordinary Session. Banjul (Gambia), 21 November to 10 November 2022, https://achpr.au.int/en/sessions/73-ordinary
11. Lounes, Bekacem. "Algeria." In The Indigenous World 2020, edited by Dwayne Mamo, 28–35. The International Work Group for Indigenous Affairs (IWGIA), 2020, https://www.iwgia.org/en/algeria/3574-indigenous-world-2020-algeria.html; Lounes, Bekacem. "The Indigenous World 2021: Algeria." The Indigenous World 2021, edited by Dwayne Mamo, 24–36. The International Work Group for Indigenous Affairs (IWGIA), 2021, https://www.iwgia.org/en/algeria/3993-iw-2021-algeria.html
12. "Algérie: procès de l'injustice à l´encontre les Kabyles." Amazigh World Congress, 15 November 2022, https://www.congres-mondial-amazigh.org/2022/11/15/alg%C3%A9rie-proc%C3%A8s-de-l-injustice/
13. Kessous, Mustapha., and Madjid Zerrouky. "En Algérie, pour les militants des droits humains, l'exil ou la prison." Le Monde, 11 November 2022, https://www.lemonde.fr/afrique/article/2022/11/11/en-algerie-pour-les-militants-des-droits-humains-l-exil-ou-la-prison_6149419_3212.html
14. Loi n°11-02 du 14 Rabie El Aouel 1432 correspondant au 17 février 2011 relative aux aires protégées dans le cadre du développement durable. Journal officiel de la République Algérienne n°13, http://faolex.fao.org/docs/pdf/alg106152.pdf
15. R, Attig. "Gestion participative des aires protégées en Algérie: parc national d´El-Kala." Thesis, Centre de documentation méditerranéen (CIHEAM), 2011, https://www.iamm.ciheam.org/ress_doc/opac_css/index.php?lvl=notice_

display&id=31697 ; Kerbiche, Fatima., and Aknine Souidi Rosa. "The management of national parks in Algeria through human and financial means: Illustrated by the case of the Djurdjura national park (PND)." Revue de Financement, Investissement et Développement Durable, June 2022, https://www.asjp.cerist.dz/en/downArticle/631/7/1/194091

16. Alileche, Ahmed. "There is a lack of value placed on protected areas." El-Watan, 18 December 2018, https://www.elwatan.com/pages-hebdo/magazine/il-y-a-un-manque-de-valorisation-des-aires-protegees-13-12-2018

17. Ibid

Belkacem Lounes *holds a doctorate 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 United Nations 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 2,359,659 inhabitants,[1] having celebrated its 56th year of independence in 2022. Its government does not recognize any specific ethnic groups as Indigenous, maintaining instead that all citizens of the country are Indigenous. 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 71,791; the Balala (2,481); and the Nama (2,901), a Khoekhoe-speaking people. The San were traditionally hunter-gatherers but today the vast majority consists of small-scale agro-pastoralists, cattle post workers, or people with mixed economies. Only an estimated 300 San people are full-time hunter-gatherers, but many others hunt or gather as a supplement to other food sources. The San belong to a large number of sub-groups, most with their own languages, including the Ju/'hoansi, Bugakhwe, Khwe-ǁAni, Ts'ixa, ǂX'ao-ǁ'aen, !Xóõ, ǂHoan, ‡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.

Botswana is a signatory to the Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW), the Rights of the Child (CRC) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and it voted in favor 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 people included in the Botswana Constitution. Botswana's census does not include information on ethnicity. Botswana took part in the 21st Session of the UN Permanent Forum on Indigenous Issues (UNPFII) held in New York from 25 April-6 May 2022 and the meetings of the Committee on the Elimination of Racial Discrimination in Geneva on 21 and 22 November 2022.

Poverty and policy issues

The year 2022 saw COVID-19 exacerbating poverty, inequalities and unemployment in the country. Like many southern African countries, Botswana was faced with high fuel and food prices, resulting in a rising cost of living. In the past year, largely due to COVID-19, the war in Ukraine, and the global economic situation, food insecurity and hunger have increased, incomes have declined, crime rates have gone up, and Indigenous people have become more reliant on government support systems. These include Ipelegeng, a labor-based public works program that provides employment opportunities, cash, food, and skills training.[2]

A Presidential Commission of Inquiry into the Review of the Constitution was put in place, and it reported its findings on 29 September 2022.[3] Its 19 members discussed the rights of the Basarwa San at length but the Commission made no recommendations specifically related to these people.

In 2022, Botswana established a new National Language Policy that includes the teaching of mother tongue San and Nama languages – a policy that was welcomed by Indigenous women, men and youth. The Botswana Language Policy has been accepted but not yet implemented.

Community-Based Natural Resource Management and Community Trusts

The Botswana government has been engaged in a number of projects that involve wildlife and natural resources, including a Government of Botswana-United Nations Development Programme effort entitled the "Kgalagadi-Ghanzi Drylands Ecosystem Project", which includes integrated land-use planning, anti-poaching enhancement, and human-wildlife conflict (HWC) mitigation. Land-use planning will be used to establish wildlife corridors between two of Botswana's largest protected areas: the Kgalagadi Transfrontier Park (KTP) and the Central Kalahari Game Reserve (CKGR). New policies on game farming and income generation relating to natural resources has been developed, and a new National Anti-Poaching Strategy promulgated.

With regard to Community-Based Natural Resource Management (CBNRM), while discussions were ongoing about devising an enhanced CBNRM policy, many existing community trusts and community-based organizations that have rights to wildlife were finding themselves in difficulty, particularly since tourism declined so precipitously during the COVID-19 pandemic. A number of these belong to Indigenous Peoples. At least half a dozen community trusts in North West District (Ngamiland) and Ghanzi District, all of them San-dominated, were taken over by private safari companies, resulting in a reduction in benefits and incomes for Indigenous community trust members. Some of these trusts wanted to file grievances with the government but the Grievance Redress Mechanism that was supposed to have been designed in 2022 was yet to be in place by the end of the year.[4]

The number of arrests of members of Indigenous communities for contravening wildlife conservation laws declined in 2022 but six San children were arrested in the CKGR in July by Department of Wildlife and National Parks game scouts for being in possession of wild game meat.

Government continues its tight control over the lives of people in the CKGR

As reported in the Indigenous World for the past two decades, the Government of Botswana has been involved in efforts to relocate hundreds of San and Bakgalagadi involuntarily from the CKGR, arguing that their needs would be better met in resettlement sites outside of the reserve.

After losing a series of court cases brought by the residents of the reserve, several hundred people were allowed to return although they were not able to access government services or to receive health assistance, food commodities, or educational opportunities for their children inside the Central Kalahari. Some residents of the reserve, notably several G//ana families in Metsiamonong, one of the five communities in the Central Kalahari, refused to leave the CKGR. One of these individuals, Pitseng Gaoborekwe, became ill and his family moved him to New Xade, one of the resettlement sites outside of the Central Kalahari boundaries. Unfortunately, he did not recover, and he passed away on 21 December 2021. His body was placed in a mortuary in the district

capital of Ghanzi. Mr. Gaoberekwe's three children, Lesiame, Keitatotse and Dikakanyetso, sought to have his body returned to Metsiamonong for burial but the Ghanzi District Council and later the Department of Wildlife and National Parks (DWNP) denied the request, demanding that the family bury the body in New Xade.[5] When the family refused, they received a court order on 9 March 2022 telling them to bury the body outside of the Reserve within seven days.[6]

Smith Moeti, a nephew of the deceased and representative of the family, explained: "In our culture, it is sacrilegious to contravene the covenant we had with the departed. It is a traditional rite." He continued by saying, "We must at all costs follow the dead's words because the moment they pass they become our ancestors."[7]

Much of 2022 was taken up with a legal battle over the right to bury Mr. Gaoberekwe in his ancestral territory. On 25 April, the government brought the case before the Botswana High Court under Judge Itumeleng Segopolo. Lesiame Pitseng, son of the deceased, was named the chief applicant. The family's attorney, Nelson Ramataona, stated that Lesiame had not only a right but a duty to bury his father in the CKGR and that other families had been permitted to bury their dead inside the CKGR.[8]

Advocate Sidney Pilane, who had represented the government in the original CKGR case, represented it again here. He said of Mr. Gaoberekwe, "He is deceased and no longer exists as a person with rights. He is now a thing. And the question arises whether anybody can assert his right when he is deceased and what right does the applicant have to assert the dead person's right?"[9] Judge Segopolo ruled against the family, ordering Lesiame Pitseng to bury his father's body outside the Reserve or spend 30 days in jail.

The High Court's decision against the burial drew attention both in Botswana and worldwide. A supporter used a social media post to request donations toward the family's legal bills. Within a few months, 100,000 pula had been raised.[10] A member of the Botswana parliament, Dithapelo Keorapetse, criticized the government's "systematic injustices against the First People of the Kalahari". Another MP, Dr. Neva Tshabang, said, "I think the government must relax its stance regarding areas with ancestral linkages."[11]

Encouraged by this wave of support, the family filed an appeal,

which was heard in the Court of Appeals on 12 December.[12] Its decision was essentially the same as that of the High Court.[13]

Coincidentally, during the time the appeal was being heard in court in Botswana, several Botswana officials were in Geneva participating in hearings held by the United Nations Committee on the Elimination of Racial Discrimination. The UN Committee expressed its regret that "... those groups who were not party to the *Roy Sesana and others v. Attorney General* case have not been allowed to return to the Reserve to settle there. Furthermore, those who are allowed to return must obtain a permit in advance and encounter difficulties in resuming and conducting their traditional activities." The report goes on to urge the State party:

> *to fully implement the High Court's decision in [the Sesana case], by allowing all ethnic groups originating from the Central Kalahari Game Reserve to return and settle there unconditionally. The Committee also recommends that the State party provide them with effective access to basic social services and enable them to resume their traditional activities without hindrance.*[14]

After the appeal was denied, the family agreed on an approach to the burial that would satisfy official demands. Smith Moeti sent a letter to the Attorney General stating that the family would not resist the government's burial of their father in New Xade but they would not participate in it. He wrote:

> *In a nutshell, the government of Botswana has all along wanted to bury Pitseng Gaoberekwe at New Xade, and their courts granted the government her wish and the family of Gaoberekwe shall not partake in the burial of their father in New Xade or anywhere else, except the CKGR.*

The family is considering taking the matter to a higher court such as the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, or the UN.[15]

By year end, Pitseng Gaoberekwe's body still remained in the mortuary in Ghanzi.[16]

ReCon plans to explore for petroleum in Botswana in 2023

As reported in the Indigenous World in previous years, the Canadian oil company Reconnaissance Energy Africa (ReconAfrica) has obtained licensing agreements from both the Botswana and Namibian governments to explore for petroleum and gas in the Kavango River Basin where some 40,000 Indigenous people reside. The concessions to ReCon Africa comprise approximately 30,000 sq km (13,600 square miles) in the Kavango River Basin, which is 530,000 sq km in size. The area is defined by the Kavango River, which eventually empties into the famed Okavango Delta in Botswana, a World Heritage site.

The company had not started on-the-ground activities in Botswana as of the end of 2022 but there is every evidence that they plan to start soon, under the name Reconnaissance Energy Botswana (REB). An announcement from REB was posted in the Botswana Gazette in October 2022,[17] stating that it had "only been gathering data" and that it "currently has no on the ground operations in the license area in Botswana" but that they would soon begin seismic surveys performed by lightweight vehicles "about the size of a tractor". Sources in the area have communicated their understanding that REB is planning to begin drilling in early 2023.[18]

ReCon has stated repeatedly that their license excludes the Tsodilo Hills and the Okavango Delta. However, sources in the Tsodilo area report that they were visited by ReCon representatives and told they would probably have to move.[19] The Okavango Delta contains some 6,000 Indigenous people and there are at least 200 Ju/'hoansi in Tsodilo.

Diphetogo Anita Lekgowa, a Khwe San from Khwaai in the Okavango Delta, attended the COP 27 meeting held in Sharm El-Sheik, Egypt in November 2022. While there, she was interviewed by the BBC and spoke about ReCon.[20] "We don't want this project to happen," she told the BBC. "We are concerned for the environment and the protection of our natural resources, because once [drilling starts] there will be a whole load of change. The animals will migrate, and we fear losing our Indigenous plants."

Ms Lekgowa is from the Bugakhwe "River San" people and grew up in the Okavango Delta. "Why is our government interested in oil when

there are other things that can be done that can bring in revenue?" She has created an historic village museum for tourism in her home community of Khwai and is a member of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC).[21]

Another San activist, Gakemotho Satau of the Kuru Family of Organizations, said "The planned oil drilling activities pose great liabilities to the lives supported by the water resources", noting that ReCon will need to consume either groundwater or river water for drilling purposes.[22]

ReCon has drilled three test wells in Namibia, none of which have yielded commercially viable results. Consequently, its stock value has plummeted. Most of the company's officers have sold off their own stock.[23] Nevertheless, the Botswana government appears to have remained firm in its commitment to the project.

Women's and children's issues in Botswana

In his State of the Nation address, President Masisi said that gender equity (*Bogaetshe*) remains a key priority of his government.[24] Gender-based violence (GBV) appears to have increased in Botswana during 2022, especially among Indigenous communities, an issue that the government is attempting to tackle with new policies and procedures in the Ministry of Gender Affairs. San women and children continue to be the victims of violence and abuse at an alarming rate.

"Defilement and teenage pregnancy remain a serious problem in the Ghanzi District, leading to many girls dropping out of school," according to Seabotseng Befeletse, an outreach officer with the Botswana Gender-based Violence Prevention and Support Center (BGBVC). These problems are especially urgent in the parts of Ghanzi occupied by the Basarwa, Baherero and Bakgalagadi communities, he said.[25]

In December 2022, a child-friendly police station was initiated in Ghanzi, sponsored by the Government of Botswana, UNICEF and the Japanese government. The purpose of the special station is to encourage communities to report cases of violence against children, because children are often reluctant to speak out against perpetrators. Dr. Joan Matji of UNICEF said, "In 2018, we conducted a study that revealed that children are scared of reporting cases of abuse because of how they will be treated when they go to the police station." Similar programs have been developed in several other locations in the country. [26]

Indigenous children's status declined in 2022 as a result of the COVID-19 pandemic, declining incomes and less food availability resulting from global economic conditions. Botswana had one of the world's highest COVID-19 vaccination rates (64%), which helped to reduce the morbidity and mortality rates from the virus. The intervention of government and non-government organizations to provide soap for hand-washing, access to water, and food in situations where COVID-19 was a major problem proved useful in reducing the impacts of COVID-19 and other diseases.

Notes and references

1. Statistics Botswana. "2022 Population and Housing Census; Preliminary Results." Census 2021, https://www.statsbots.org.bw/2022-population-and-housing-census-preliminary-results
2. Masisi, Mokgweetsi E.E. 2022. "Botswana State of the Nation." 14 November 2022. Gaborone: Government of Botswana. https://www.facebook.com/BotswanaTelevision/videos/state-of-the-nation-address-2022/487909020070794/
3. Republic of Botswana. "Report of the Presidential Commission of Inquiry into the Review of Constitution of Botswana." 20 September 2022, https://constitutionnet.org/sites/default/files/2022-12/Final%20Commission%20Report%2028%20Sep%202022.pdf
4. UNDP Botswana Project Management Unit, personal communication. 31 December 2022.
5. Thalefang, Charles. "The gods will be mad at us." Mmegi, 14 April 2022, https://www.mmegi.bw/features/the-gods-will-be-mad-at-us/news
6. Basimanebotlhe, Taaone. "Fight over burial costs Gaoberekwe family." Mmegi, 28 March 2022, https://www.mmegi.bw/news/fight-over-burial-site-costs-gaoberekwe-family/news
7. Thalefang, Charles.
8. "Government faces backlash over CKGR burial." The Botswana Gazette, 27 April 2022, https://www.thegazette.news/news/govt-faces-backlash-over-ckgr-burial-court-ruling/
9. Thalefang, Charles Staff. "High court to rule as deceased awaits burial." The Monitor, 25 April 2022, https://www.pressreader.com/botswana/the-monitor-4753/20220425/281530819581925
10. Ontebetse, Khonani. "Patriots bankroll Basarwa of CKGR over right to bury." Sunday Standard, 12 July 2022, https://www.sundaystandard.info/patriots-bankroll-basarwa-of-ckgr-over-right-to-bury/
11. Botswana Gazette.
12. Mlilo, Portia. "CKGR burial saga reaches Court of Appeal." The Voice Botswana, 5 October 2022, https://thevoicebw.com/ckgr-burial-saga-reaches-court-of-appeal/
13. Piet, Bame. "The CKGR Conundrum." The Voice Botswana, 14 December 2022, https://thevoicebw.com/the-ckgr-conundrum/

14. SEMK Botswana. "Government Denies Family´s Request to bury their Father in the CKGR." 23 December 2022, http://www.semkbotswana.nl/en/nieuws.php
15. Basimanebotlhe, Tsaone. "Gaoberekwe family's burial dilemma." Mmegi, 23 December 2022, https://www.mmegi.bw/news/gaoberekwe-familys-burial-dilemma/news
16. "No burial yet for CKGR man." Africa Press, 1 January 2023, https://www.africa-press.net/botswana/all-news/no-burial-yet-for-ckgr-man
17. ReCon Botswana. "Latest Updates on Reconnaissance Energy Botswana's project in the Kavango Sedimentary Basin." The Botswana Gazette, 26 October 2022, https://www.facebook.com/TheGazettebw/photos/a.327783877619/10159539224127620/?type=3
18. Personal communications from residents of the area to author. 16 August 2022.
19. Tsodilo Community Development Trust (TCDT) and Tsodilo Village development committee. Email to the authors. 18 July 2022.
20. Diseko, Lebo. "COP 27: Namibia-Botswana oil project being called a sin." BBC News, 11 November 2022, https://www.bbc.com/news/world-africa-63567513
21. IPACC. "Meet the IPACC team", https://www.ipacc.org.za/the-team/
22. Ontebetse, Khonani. "Massive drilling project could put Africa's Okavango Delta at risk." Earth Island, 25 July 2022. https://www.earthisland.org/journal/index.php/articles/entry/drilling-project-africas-okavango-delta-risk/
23. "Makoba leaves OP for controversial ReconAfrica." The Botswana Gazette, 3 November 2022.
24. Masisi, Mokgweetsi (p 10).
25. Shone, Irene. "Shocking Revelations." The Midweek Sun, 25 May 2022, https://www.pressreader.com/botswana/the-midweek-sun/20220525/281646783757783
26. Kelapile, Tuduetso. "Child friendly police station launched." Mmegi, 16 December 2022, https://www.mmegi.bw/news/child-friendly-police-station-launched/news

Robert K. Hitchcock *is a Professor of Anthropology at the University of New Mexico, Albuquerque, New Mexico, USA, rkhitchcock@gmail.com and rhitchcock@unm.edu*

Judith Frost *is a freelance consultant who has done extensive work on San issues in Southern Africa. frostjjaa@gmail.com*

Burundi

RWANDA
BURUNDI
Gitega
DEMOCRATIC REPUBLIC OF THE CONGO
TANZANIA

The term "Twa" is used to describe minority populations historically marginalised both politically and socially in the Democratic Republic of the Congo (DRC), Uganda, Rwanda and Burundi.

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

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

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

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

Declaration on the Rights of Indigenous Peoples in September 2007.

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

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

General developments in Burundi's political and legislative context

No new laws were passed promoting or protecting the rights of Burundi's Indigenous Peoples in 2022. The State of Burundi has, however, co-opted a woman from the Batwa community into the government during this 2020-2025 legislature: the Hon. Imelde Sabushumike, current Minister of National Solidarity, Social Affairs, Human Rights and Gender. There are also a number of Batwa Indigenous community members with positions in national and regional institutions, such as:

- Mrs. Goreth Bigirimana, Member of the Assembly of the East African Community;
- Mrs. Charlotte Rukundo, member of the Truth and Reconciliation Commission, a commission, the mandate of which was renewed in 2022;
- Mr. Léonard Habimana, who works in the General State Inspectorate;
- Six Members of Parliament, four men and two women;

- Mrs. Mariam Iranyishuye, member of the National Women's Forum;
- The Hon Vital Bambanze, elected for a second term as Member of the U.N. Permanent Forum on Indigenous Issues;
- The Hon. Emmanuel Nengo, selected and assigned to the Coordinator's Office for the U.N. System in Burundi by the OHCHR as a Senior Fellow.

Education of Indigenous Batwa children in Burundi

The number of Batwa children attending primary and secondary school is still insufficient. The number is beginning to increase, however, especially due to the free education measure introduced by the government in 2006 and awareness-raising efforts among the Batwa.

Unissons-nous pour la Promotion des Batwa (UNIPROBA), an Indigenous organization in Burundi, estimated for 2022, the number of Batwa pupils attending primary school was 9,720 across the country's 18 provinces, while those attending secondary school was estimated at some 2,610 children. It is also reported that there are 52 Batwa students in various public and private universities, 223 Batwa who have so far completed secondary school but are unemployed, and 34 Batwa who have completed university.

The main difficulties preventing the Batwa from accessing education are poverty, hunger, ignorance, lack of follow-up, marginalization, and early marriage, among other things.

Situation of Indigenous women in Burundi

Together with the Welthungerhilfe programme, and in consortium with two other civil society organizations, UNIPROBA is working to promote human rights in general and women's rights, in particular, through a project to strengthen the rights of small farmers and marginalized groups (Batwa ethnic minority). This project began in 2022 and is providing training on human rights and Indigenous Peoples' rights to Batwa beneficiaries, including Batwa women. This has resulted in the

election of Batwa women to local councils at the hill (commune) level. Because of the awareness raising that has been conducted, many women have also joined cooperative movements, such as savings and credit associations, in order to gain some financial autonomy within their households.

Protected areas

In March 2022, the Central African Sub-Regional Assembly on Indigenous Peoples' Areas and Territories was held in Goma, Democratic Republic of Congo. At this conference, a declaration was produced by the participants and sent to a number of different stakeholders. This declaration contains a commitment to help promote the Africa Protected Areas Congress (APAC)-Territories of Life from the following perspectives:

- By raising awareness among Indigenous Peoples and local communities of the value of their territories and further mobilizing them around self-determination for the governance and management of those territories;
- By supporting the communities to build their own capacities to better document and advocate for legal recognition and defend their Territories of Life;
- By supporting the APAC Global Consortium to complete its regionalization process;
- An institutional commitment to recognizing APAC-Territories of Life at the sub-regional level with legal guarantees, following the example of African Protected Areas and traditional knowledge guidelines;
- Legal recognition, in each country, of APAC-Territories of Live by means of legislation;
- By creating a monitoring group to oversee the "APAC quality" of Territories of Life and their networks in the sub-region.

The 1st APAC meeting was held in Kigali, Rwanda, in July 2022. During this Congress, the delegates from Indigenous organizations made the

following commitments:

- To deploy our wisdom, energies and traditional knowledge to advance the conservation and sustainable use of our biodiversity in a culturally appropriate manner and from a rights-based approach.
- To continue to transfer our traditional knowledge to the next generation through our cultural channels and forms.
- To ensure that our natural resource areas are proactively protected and rehabilitated, and to work collaboratively as equal partners, where necessary, with State and non-state conservation agencies.
- To establish a pan-African body of Indigenous Peoples and local communities that will serve as a platform for our shared concerns, actions, programmes and cross-learning among States and that will follow up on the implementation of this declaration. To build national and sub-regional networks to feed into the pan-African platform.

Vital Bambanze *is a Mutwa from Burundi. He is a founding member of UNIPROBA and was Chair and Central Africa Representative of the Indigenous Peoples of Africa Coordinating Committee (IPACC), and Chair of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP). He is now a member of the United Nations Permanent Forum on Indigenous Issues (UNPFII). He has a degree in Social Arts from the Department of African Languages and Literature, University of Burundi.*

Cameroon

NIGERIA
CHAD
CAMEROON
CENTRAL AFRICAN REPUBLIC
Yaoundé
EQUATORIAL GUINEA
GABON
REPUBLIC OF THE CONGO

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

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^2 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.

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

The 10th session of the Inter-ministerial Committee on Oversight of Indigenous Peoples' Projects (CISPAV)

The 10th session of CISPAV[1] was held on 3 August 2022 in the Merina Hotel and saw the participation of Statutory members such as governmental sectorial administrations that conduct work in relation to Indigenous Peoples, technical and financial partners, representatives from programs and projects, civil society organizations working on Indigenous issues, representatives of Indigenous Peoples' organizations and the technical secretariat of the CISPAV. The general objective of the session was to continue making the National Plan for the Development of Indigenous Peoples (PNDPA) known to the principal social actors to ensure that they anchor all their activities in favor of Indigenous Peoples in the PNDPA. It was also an opportunity to encourage funding institutions working in the field of promotion and protection of the rights of Indigenous Peoples to orient their funding towards the PNDPA, evaluate the actions carried out in favor of Indigenous Peoples in 2021-2022 and conduct advocacy for the mobilization of resources with which to implement the PNDPA. The proposed budget for implementation of the five-year plan stands at some USD 21 million.

The Minister of Social Affairs, Mrs. Pauline Irene Nguene, welcomed the participants. She outlined various reforms and initiatives on the part of the government and its partners to promote the development of the human capital and well-being of Indigenous Peoples, among which is the adoption of the National Plan for the Development of Indigenous Peoples (PNDPA), which is a reference document for Indigenous Peoples' development. She expressed her concern to ensure the socio-economic inclusion of Indigenous Peoples based on an integrated vision of their development and by placing the Indigenous Peoples themselves at the heart of their own development. All of which needs a real synergy of action between the different actors working to promote and protect the rights of Indigenous Peoples. It is in this light that she pleaded with the representatives of government departments to carry out advocacy within their departments to take the PNDPA on board. She also called on the technical and financial partners present to align their programs and projects on Indigenous Peoples within the framework of the PNDPA.

This was followed by a presentation of actions carried out in the area of promoting Indigenous Peoples by the various stakeholders in 2022. These actions were in the field of education, health, agriculture, inter-community dialogue, citizenship, conservation and the sustainable management of resources. Difficulties faced included the poor involvement of Indigenous Peoples in projects involving them, a lack of collaboration between the various actors and insufficient communication.

Future priority areas identified were the inclusion of Indigenous Peoples in the management of local affairs, taking into account their specific needs in regional development plans, the production of a guide for the inclusive development of Indigenous Peoples and a scaling up of the distribution of civil status documents.

International Day of the World's Indigenous Peoples

International Day of the World's Indigenous Peoples in Cameroon was celebrated in Batouri, in the Kadey Division of East Region on 9 August 2022 under the theme "The role of Indigenous women in the preservation and transmission of traditional knowledge".

Cameroon also celebrated the day under a second theme of "Promoting inclusive education in a post-COVID-19 context: the place of the Indigenous child".

The event was a moment for socializing between Indigenous groups, showcasing their knowledge such as their pharmacopoeia, colorful dress and hairstyles, artifacts such as calabashes for milk conservation, culinary and colorful dances.

In her speech, Minister Nguene stressed the role of the Indigenous woman and called for the inclusion of women in decision-making spaces. She also emphasized the important role education plays, especially for Indigenous girls, in fighting prejudice and gender-based violence, which are a cause for exclusion. She stressed that, in order to leave no one behind, Indigenous Peoples should place more emphasis on education, and that of the girl child in particular, blending universal education with traditional knowledge as Cameroon does not yet have special education programs for Indigenous Peoples like some other countries.

Indigenous Peoples and protected areas

The protected areas of Cameroon include national parks, wildlife sanctuaries, faunal reserves, and one floral sanctuary.[2] With the support of international conservation societies and other international development organizations, the Cameroonian authorities have set up several programs since 2017 to continue to strengthen the protection of natural resources and biodiversity in the fight against climate change.

In 2022, Cameroon once again recorded practices of injustice against Indigenous Peoples in relation to conservation issues and protected areas. These acts included the granting of concessions without consulting Indigenous Peoples. As a result, the allocation of large portions of land for conservation has had negative consequences for Indigenous Peoples, who are continuously impoverished on a daily basis.

In the case of the Far North region of Cameroon, for example, the situation of the Indigenous Peoples living in the vicinity of the Waza, Benue and Bouba Djidda parks deteriorated in 2022 given that the three protected areas cover more than 40% of the total area of the region thus increasing the vulnerability of Indigenous people such as the Mbororo whose lifestyle entails moving in search of pastures for their cattle. For a region like the Far North, this marked reduction in the size of accessible arable land for Indigenous people brings about an automatic shortage of natural resources – something which is especially serious given the region's high demographic growth and growing desertification. These issues were key factors behind the ongoing intercommunity crisis between the Arab Choas and Mbororos pastoralists, and the Kotokos and Mousgoun who are farmers and fisher people's communities in 2022, who continued to fight over land and natural resources. These conflicts led to the massive displacement of people fleeing the conflict to other parts of the country and into the neighboring countries of Tchad and Nigeria.

Nevertheless, over the past ten years, due to strong advocacy from human rights and development organizations, the increasing problems and escalating costs associated with traditional conservation models and the growing realization of the potential benefits to conservation of working with communities, and Indigenous communities in particular, some conservationists have begun to accept the need to involve com-

munities in their conservation plans. Since the 1990s, conservation projects have begun to involve Indigenous Peoples and local communities; however, few have involved communities fully in the development and implementation of their management plans for conservation areas, the so called "co-management option". The International Union for Conservation of Nature (IUCN) has supported a dozen conservation projects in the Congo Basin, home to numerous forest-dependent communities, to explore different approaches to co-management.[3] However, recent works highlights that less than 1% of Africa's forest estates is under community-based or State/community-based management[4] and it is likely even lower in Central Africa.

Indigenous Peoples and climate change (COP 27)

Over 13 representatives of the Network of Indigenous and Local Populations for the Sustainable Management of Central African Forest Ecosystems (REPALEAC) Cameroon were present at COP 27. Many side events were organized and many of the participants from Cameroon were on panels, such as the side events organized by UNESCO, Local Communities and Indigenous Peoples Platforms, Global Alliance for Territorial Communities, FIMI, International Indigenous Peoples Forum on Climate Change, IPACC, GEF Small Grants, FSC and REPALEAC.

Human rights violations in 2022

On 23 April 2022, Mr. Issa Djauoro was killed by an officer of the gendarmerie of Mayo Baleo in the Faro and Deo Division of Adamawa Region. Mr. Issa, a Mbororo pastoralist from the area, was stopped by gendarmes for a routine control. It was said he had all his identification papers but the gendarmes threatened him and insisted on taking him to their brigade to lock him up. He was scared and tried to run but one of the gendarmes shot him at short range. The gendarmes then ran, abandoning him while he was in agony. A truck of the Rapid Intervention Unit that was on patrol found him and took him to hospital but he died upon arrival. The family launched a complaint with the government's Com-

missioner for Military Justice. The perpetrator, Mr. Mukete, was arrested and is in custody awaiting trial. His arrest came as a result of advocacy by Indigenous organizations and media publicity of the killing.

Still in the Adamawa Region, Hamadou Bello, Garba and Mallam Ali were fleeing threats of hostage takers from Mbe Division so they hurriedly asked for a transhumance permit to move their herds of animals with their families to a more secure locality. They were some 23 family members in total, and they were moving their herds of around 500 cows, and 200 sheep, goats and donkeys. They moved out of the transhumance corridor that was on their official permit in order to escape the hostage takers, who threatened to follow them. However, they were arrested by the gendarmerie brigade commander of Ngan-ha on 19 March 2022 and accused of theft and trespass. On the transhumance permit, they had declared fewer animals than they had in their possession, which is a common practice because of the exorbitant amounts of money they have to pay for each service from the authority in charge of livestock.

The family heads were detained in the Ngaoundere Central prison awaiting trial while their wives and children stayed in the locality not knowing where to go to. Their animals were losing condition as they were crammed onto council premises without feed. The Mayor who had the responsibility of keeping the animals sold some to buy feed but it was not sufficient as heavy rains were falling. He attempted to auction the cows but retracted due to pressure from the media, Mbororo Social and Cultural Development Association (MBOSCUDA) and the regional office of the Cameroon Human Rights Commission.

The local council of Ngan-ha finally allowed the family members to help look after the animals. They registered losses as the animals died because of hunger. Kind individuals and MBOSCUDA gave the families assistance in the form of food and security. Finally, the high media coverage of the affair made the authorities of the area and even the central government find a quick solution. After several adjournments, the court gave its decision on 20 April 2022[5] sentencing the accused to 15 days' imprisonment and a fine of USD 8 each. The court asked the Mayor of Ngan-ha to return all their animals, and they finally got back 400 cows. The rest could not be accounted for by the Mayor.

Insecurity

Insecurity remained a concern in the North-West, South-West and East regions and in the three northern regions of Cameroon throughout 2022.

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.

Schools and businesses in the two regions remained closed in 2022 in many rural areas. Although schools are open in the major cities of the regions, the smooth running of the academic year is still nevertheless negatively impacted much of the time by long curfews, often imposed by the armed secessionist groups who control most of the hinterland.

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 2022, 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 by the Indigenous Mbororo peoples, in particular, are also regularly rustled.

Insecurity remains high in the northern regions. The pastoralists are losing their livelihood base, which is cattle, due to kidnapping, ransom-taking and killings. The phenomenon is less talked about by the media and the authorities despite the magnitude it is taking every year. In 2022, there were many raids carried out by the hostage takers who kidnap to demand heavy ransoms. Many lives were lost during 2022 in the course of kidnapping. One such case is Alhadji Yedi Kaou and Boukar, who were brothers living in Boubjo in the Rey Bouba Division and who, in an attempt to resist the kidnappers, were shot and killed in their homes in December 2022.[6] There are so many cases of raids and killings, and most of these cases are not documented. One of the few cases that was brought to our attention shows that the ransoms paid

out by three Mbororo pastoralists in Rey Bouba Division amounted to USD 60,000.[7] These crimes are impoverishing the Mbororo pastoralists and many have lost their lives. The insecurity is forcing them to move – and sometimes to even more insecure places like the Central African Republic and Nigeria.

Notes and references

1. The concerns of Indigenous Peoples are examined within the framework of the Inter-ministerial Committee on the oversight of Indigenous Peoples' Projects (CISPAV). It was created through a Ministerial Act in 2013 to coordinate and harmonize all the actions of various stakeholders involved in the promotion and protection of the rights of Indigenous Peoples.
2. UNEP-WCMC. Protected Area Profile for Cameroon from the World Database on Protected Areas. February 2023, https://www.protectedplanet.net/en/country/CMR
3. Borrini- Feyerabend, Grazia., Ashish Kothari., Gonzalo Oviedo., and Adrian Phillips. "Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation." January 2004, https://www.researchgate.net/publication/242302211_Indigenous_and_Local_Communities_and_Protected_Areas_Indigenous_and_Local_Communities_and_Protected_Areas_Towards_Equity_and_Enhanced_Conservation
4. Alden-Wily, Liz. A qui appartient cette terre? Le statut de la propriété foncière coutumière au Cameroun. (Ed Fenton, 2011), https://nelga-ca.net/elibrairie/a-qui-appartient-cette-terre/
5. Jugement No. 560/COR. 20 April 2022
6. Interview with Abdoulaye Sabani, focal point of AIWO-CAN for the North Region.
7. Ibid

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 Organization Central African Network (AIWO-CAN).*

Democratic Republic of the Congo (DRC)

The Democratic Republic of the Congo 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 organizations (CSOs) in the DRC and 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) but CSOs give a figure of up to 2,000,000 (3% of the population).[1] They are widely acknowledged as the first inhabitants of the national rainforests[2] and 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.[3]

There is, however, little recognition 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 has 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.

New law promulgated to promote and protect the rights of Indigenous people

Indigenous people remain one of the most marginalized and poorest groups in the DRC.[4, 5] To remedy this situation, on 15 July 2022, DRC President Felix Antoine Tshisekedi promulgated the first national law No. 22/030 on the protection and promotion of Indigenous Pygmy people's rights,[6] which is planned to take effect in February 2023.

The result of nearly 15 years of tireless advocacy by Indigenous Pygmy people and their representative organizations, this adoption marks a major turning point for these threatened communities and for the preservation of their ancestral habitat, namely the forests of the Congo Basin.

The DRC is taking another step forward in protecting the world's second largest tropical forest. The promulgation of this new law fulfils the commitment expressed by President Tshisekedi to legally secure the ancestral lands and territories of the Indigenous Pygmy in the form of large natural, ecological and community reserves, according to the will and under the control of these people.[7] In this regard, the law guarantees, in particular: easy access to justice and basic social services; recognition of the uses, customs and pharmacopoeia of the Pygmies where not contrary to the law; and full enjoyment of the customary lands and resources contained in their living environments.

Developing the law's potential and impact now that it has been enacted requires long-term financial, technical, and political commitment and support, both nationally and internationally. Having the text is one thing; enjoying the rights contained in it is another, and it is therefore important to ensure the law is properly implemented. This means tools need to be worked on from the very start that will facilitate awareness and implementation of the benefits and guarantees contained in the law, and the law needs to be integrated into other policies and legal frameworks that impact the lives of Indigenous Pygmy people. The reforms underway must also be consistent with this new legislation in order to guarantee the full enjoyment of the rights of Indigenous Peoples.

It is hoped that this law will serve as a model for Indigenous Peoples in neighbouring countries that aspire to national legal protection, such as Congo Brazzaville.

Successful community conservation model

The Equator Initiative, led by the UN Development Programme (UNDP), aims to identify exceptional local solutions for the climate, people, and planet. This 13th round of the UNDP Equator Prize focused on local communities and Indigenous groups in rural areas who have developed innovative, nature-based solutions in order to create a global safety net and help redefine prosperity, development, and our relationship with nature.[8]

The 2022 prize was awarded to 10 laureates who stood out for their initiatives to protect biodiversity and fight global warming, one of which was the DRC non-governmental organization Mbou-Mon-Tour, (MMT) based in the province of Mai-Ndombe.[9, 10] The award ceremony took place on 30 November 2022.

MMT's programme is original in that it was initiated by the local populations themselves, whereas many of the conservation initiatives carried out in the DRC have been primarily the work of the State or international organizations. The population has been kept away from Protected Areas for a long time, some having even suffered humiliation by being evicted from their land without any compensation. The local communities have thus had the impression of being sacrificed for the benefit of animals. MMT's approach, on the other hand, is to find a delicate balance between human and animal interests, a sort of peaceful coexistence between the two species. To do this, local people have, through participatory mapping, defined the areas reserved for bonobo conservation and those for human activities. In the past, such work was done in an air-conditioned office in the city and was imposed on the villagers.

Notes and references

1. World Bank. "République Démocratique du Congo; Cadre Stratégique pour la Préparation d'un Programme de Développement des Pygmées." December 2009, http://documents1.worldbank.org/curated/en/394761468247843940/pdf/511080ESW0FREN1Strategy0Egl0version.pdf
2. Busane, Wenceslas Ruhana Mirindi, Jean Paul Mashugalusa Rwabashi, Innocent Bashizi Balagizi, Innocent Ntakobanjira Bisimwa, Jean Marie Bantu Baluge, and Jacob Kaluka Muhagarhe. L'expulsion des populations pygmées du Parc National de Kahuzi-Biega: Faits, conséquences et perspectives. ERND, 2017, pp. 25- 27.
3. Barume, Albert K. "The Indigenous World 2017: The Democratic Republic of

Congo". In The Indigenous World 2017, edited by Katrine Broch Hansen, Käthe Jepsen and Pamela Leiva Jacquelin, 470-477. Copenhagen, IWGIA, 2017, https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2017.pdf

4. "Gestion durable des forêts par les peoples autochtones – RDCongo." Initiative pour la forêt de l´Afrique Centrale, cafi, https://www.cafi.org/fr/pays-partenaires/democratic-republic-congo/support-indigenous-peoples
5. World Bank. "République Démocratique du Congo cadre stratégique pour la préparation d'un programme de développement des Pygmées." December 2009 : http://documents1.worldbank.org/curated/en/394761468247843940/pdf/511080ESW0FREN1Strategy0Egl0version.pdf
6. Journal Officiel de la République Démocratique du Congo. "Loi No22/030 du 15 Juillet 2022 Portant Protection et Promotion des Droits des Peuples Pygmées." 14 November 2022, https://faolex.fao.org/docs/pdf/cng213451.pdf
7. Democratic Republic of Congo. "Discours du chef de l´État à l´occasion de la Journée Internationale des Peuples Autochtones (JIPA)." 8 August 2020, available at: https://drive.google.com/file/d/1FJPqk9MR7UxOuBPFpA6EKRB2cNM7r4Tv/view and https://gitpa.org/web/RDC%202021.pdf
8. PNUD. "Appel à nomination: Prix Equateur 2022." 14 March 2022, https://www.undp.org/fr/news/appel-nominations-prix-equateur-2022
9. PNUD. "Dix Peuples autochtones et communautés locales de neuf pays remportent le Prix Equateur 2022." 8 August 2022, https://www.undp.org/fr/press-releases/dix-peuples-autochtones-et-communautes-locales-de-neuf-pays-remportent-le-prix-equateur-2022
10. "L´ONG Mbou-Mon-Tour remporte le prix Equateur 2022." 5 December 2022, https://pfbc-cbfp.org/actualites-partenaires/Mbou-Mon-Tour.html

Patrick Saidi Hemedi *is the National Coordinator of the Dynamique des Groupes des Peuples Autochtones (DGPA) and Vice-President of the Board of Directors of the Réseau des Populations Autochtones et Locales pour la Gestion Durable des Écosystèmes Forestiers de la RDC (REPALEF-RDC).*

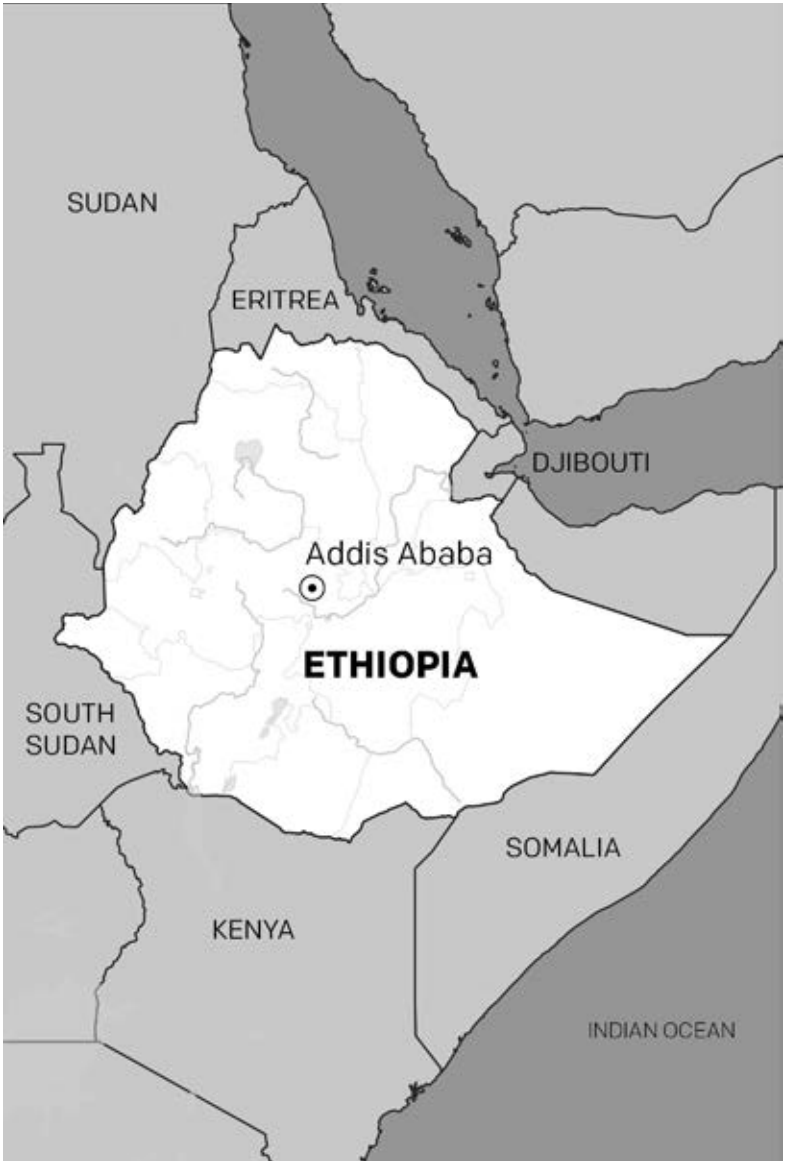
Jean-Christophe Bokika *is Chair of the Executive Committee of the NGO Mbou-Mon-Tour.*

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 Peoples' programme.*

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

Ethiopia


SUDAN
ERITREA
DJIBOUTI
Addis Ababa
ETHIOPIA
SOUTH SUDAN
SOMALIA
KENYA
INDIAN OCEAN

The Indigenous Peoples of Ethiopia make up a significant proportion of the country's estimated population of 120 million. Around 12% are pastoralists who live across the country, particularly in the Ethiopian lowlands, which constitute some 60% of the country's total landmass. There are also several hunter-gatherer communities, including the forest-dwelling Majang (Majengir) and Anuak peoples, who live in the Gambella Regional State.

Ethiopia is believed to have the largest livestock population in Africa, a significant number of which are in the hands of pastoralist communities living on land that, in recent years, has been under high demand from foreign investors. Such "land grabbing" has further exposed the tenuous political and economic situation of Indigenous Peoples in Ethiopia. Indigenous Peoples' access to healthcare provision and to primary and secondary education remains highly inadequate. In recent years, a confluence of conflicts and natural calamities have further compounded the difficulties that Indigenous Peoples face in Ethiopia.

According to the 1995 Ethiopian Constitution, land is owned by the State and the peoples of Ethiopia, and cannot be sold and exchanged. The Constitution guarantees the rights of pastoralists to free land for grazing and cultivation as well as the right not to be displaced from their own lands. Although the Constitution states that the implementation of these constitutional provisions is to be determined by law, there is no national legislation protecting Indigenous Peoples' rights. Ethiopia has not ratified ILO Convention 169 and it was absent during the voting on the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

For the past four years, Ethiopia has been on a wild rollercoaster ride that started with a whirlwind of political and legal reforms and promise of peace and reconciliation but then quickly descended into what seems like a bottomless pit of conflicts, turmoil, and political uncertainty. The country is currently afflicted by insecurity, lawlessness, rampant corruption, unprecedented levels of inflation and a spike in the cost of living. Adding insult to injury, the country is also experiencing one of the worst droughts in its recent history. In the midst of this confluence of crises, the most vulnerable and historically-marginalized Indigenous communities, among others, are being disproportionately affected. The year 2022 was therefore a time of trials and tribulations for the Indigenous Peoples of Ethiopia.

Northern Ethiopia

Ever since the war broke out in northern Ethiopia in November 2020 between the Federal Government and its allies, on the one hand, and the Tigrai Forces on the other, thousands of lives have been lost; millions more have been displaced; billions of dollars of property and infrastructure have been destroyed; and its manifold ripple effects have been felt all over the country. Conflicts and unrest in other parts of the country where Indigenous communities are found, namely Oromia, Benishangul Gumuz, Gambella and Southern Nations, Nationalities and Peoples' Region (SNNPR), also further exacerbated the general security, humanitarian and economic situations in the country.

Although the main theatre of the conflict in the north has been the Tigrai region, in 2021 and 2022 the conflict spilled over to the neighboring Afar and Amhara regional states, and the impact on the inhabitants of these three regions, in particular, has been devastating. The Afar Regional State, home to the Afar pastoralist Indigenous communities, has seen some of the fiercest fighting as it is a strategic location through which 90% of the country's imports and exports are transported. At the beginning of the year, the battle fronts had shifted to Afar, reportedly displacing 300,000 in the region.[1]

The conflict has been characterized by gruesome human rights and International Humanitarian Law violations committed by both sides to the conflict. As one of the reports on Afar indicates:

> *a significant number of civilians have died, suffered physical and psychological injuries as well as sexual and gender-based violence as a direct result of acts of violence committed by parties to the conflict. Health facilities, schools, places of worship, public facilities and infrastructure and civilian property were pillaged and/or destroyed. Hundreds of thousands of people have been displaced and subjected to a multitude of challenges.*[2]

The conflict has not only caused heavy casualties to human lives and destruction to the scanty and dilapidated infrastructure in Afar, one of the least developed regions in Ethiopia with the harshest natural environment for human existence, but it has also ruptured the cordial relationship the Afar and Tigrai regions and their people had enjoyed for decades. It will take some time and serious concerted effort to rebuild Afar and mend the relations between the two peoples. The destruction and disruption of livelihood systems in Afar occasioned by the conflict also requires urgent attention.

Afar-Somali border conflict

The border between the two main pastoral communities in Ethiopia, the Afars and the Somalis, who both have their own regional states, experiences frequent violent conflict due to long-running disputes over contested territory.[3] The ethnic-based federal arrangement seems to have further compounded and intensified the dispute. The disputed areas have important resources, including the Awash River and the highway and railway line between Addis Ababa and Djibouti, which both communities need for their livestock and trade-related activities and income respectively.

Deadly clashes between the two Indigenous communities continued in 2022. In August, the Afar region militia and Special Forces, who have been well-armed by the Federal Government as allies in the fight against the Tigrai Forces, reportedly attacked disputed villages in the Somali region resulting in hundreds of civilian deaths, massive destruction, theft and displacement of local residents.[4] In November, yet another conflict broke out in Dheymeed Woreda of Somali Regional State, killing at least 18 civilians, injuring several others and displacing thousands more.[5]

Oromia

Towards the end of the year, while fighting stopped in northern Ethiopia as a result of a Permanent Cessation of Hostilities Agreement signed between the warring parties in November 2022, the lingering conflict in Oromia, where some Indigenous pastoral communities are found, flared up when the Federal Government waged a full-scale war against what it calls the Oromo Liberation Army – Shane (OLA-Shane) rebel group, which has been accused of attacking civilians, the execution and abduction of government officials as well as the destruction and looting of property. Due to the fighting, some areas are cut off making them inaccessible and depriving them of basic services such as electricity, telephone and internet.

Benishangul

In the Benishangul Gumuz region, where the Gumuz and Shinasha Indigenous communities live, the situation in the restive Metekel Zone[6] is dire. Armed Gumuz groups are accused of attacking and killing ethnic Amharas, which has led to the establishment of a military command post since September 2020 with strict curfew hours and tight security measures. The violence in the region has displaced approximately 411,014 people. Thousands of Internally Displaced Persons (IDPs), mainly Gumuz, have not received any food aid, emergency health and nutrition services, shelter or non-food items.[7] At least 12,000 houses, 142 schools, 107 health posts and 183 animal health posts have been damaged. Up to 660 water schemes out of the 1,494 in the zone are non-functional.[8]

Gambella

Gambella region, which is home to the Anyuak and Nuer Indigenous communities, has also witnessed violent clashes between security forces and rebel groups operating in the region. For instance, in June, OLA-Shane and the Gambella Liberation Front (GLF) launched a joint surprise attack on the regional capital killing up to 37 people.[9] Murle

gunmen from neighboring South Sudan also stage frequent attacks and raid cattle and abduct children. In February, a group of Murle gunmen raided the Dima refugee camp in the Gambella region of Ethiopia, killing one person and wounding two others.[10]

Impact of climate change

Ethiopia is experiencing one of the most severe droughts in the last 40 years following four consecutive failed rainy seasons since late 2020. Drought-affected pastoralist and agro-pastoralist communities in southern and eastern Ethiopia have consequently suffered from the impact of multiple and often recurring droughts. In addition, these communities have endured the impact of desert locust infestations, conflict and outbreaks of disease, including the COVID-19 pandemic. The drought is compounding a complex situation in the Somali region of Ethiopia, which was already host to millions of internally displaced people. Other drought-affected regions in the country include Afar, Oromia and the SNNP.[11] The Borena Zone in Oromia region is one of the hardest hit areas in the country.

According to the Famine Early Warning Systems Network (FEWS NET),

> *pasture conditions are among the driest on record, with few to no migration options. … an estimated 3.5 million livestock have died between late 2021 and mid-May 2022, and herd sizes are likely to decline further given very limited livestock births this season and high offtake expected during the upcoming dry season. An additional 25 million weakened and emaciated livestock are also at risk of deaths, which would be devastating for a population heavily reliant on livestock for nutrition, notably for children, and income.*[12]

In the Somali region alone, more than 286,000 people have been forced from their homes over the last two years and are now living in informal camps on the outskirts of towns. The majority are women and children. Displacement increases the risk of sexual violence and exploitation for women. The drought-induced closure, either fully or partially, of over

1,100 schools in the Somali region also leaves young girls more vulnerable to child labor and early marriage.[13]

In Gambella region, heavy rains from early August to October caused flooding across 12 districts, displacing an estimated 180,000 people. Displaced people have taken refuge in substandard and overcrowded shelters such as schools and health facilities, and some remain living in the open. Seventy-two per cent of cropland was damaged (mostly the staple maize) and, on average, 8% of livestock have reportedly died. Destruction of properties and of social infrastructure is also rampant with 250 water schemes in 10 flood-affected *woredas* rendered non-functional and requiring maintenance. In addition, over 70 health facilities have been affected by the floods, leaving the population in these areas without access to health services. There is also a high risk of an outbreak of water-borne diseases due to stagnant water and poor hygiene and sanitation. Meanwhile, at least 135 schools have been damaged by the floods affecting the education of over 56,000 children.[14]

Green Legacy and pastoral policy

One of the flagship programs of the Office of the Prime Minister is the Green Legacy, launched in 2019 with an ambitious plan of planting 20 billion trees by 2024. While this is a commendable initiative, the project is mainly focused on highland and urban areas, disregarding the dry lowlands inhabited by pastoralists, where it is needed the most.

No tangible steps have also been taken towards the implementation of the Pastoral Policy and Implementation Strategy that was adopted by the Council of Ministers in March 2020. This could be explained by distractions caused by ongoing conflicts as well as the Government's misinformed and misguided urban-centered development approach that seems to be oblivious to the fact that the country has an agriculture-based economy and that the overwhelming majority of the population live in rural areas. This assertion can further be substantiated by what is dubbed as "Ten Years Development Plan: A Pathway to Prosperity 2021-2030" that was developed without any public consultation and lacks clear and meaningful rural policy. Unless and until this

is corrected, the demands and interests of rural dwellers at large and indigenous communities in particular will continue to be trampled on.

Conclusion

The signing of the November 2022 Permanent Cessation of Hostilities Agreement has given some respite and is hoped to lead to the rehabilitation, reconstruction and recovery of affected communities and areas. Nonetheless, conflicts raging in other parts of the country will also need to be peacefully resolved. A genuine and comprehensive national dialogue is required with the full participation of all stakeholders concerned, including historically marginalized Indigenous communities, in order to lay firm foundations for a lasting peace, reconciliation, healing and sustainable development. The vicious cycle of oppression, marginalization, discrimination and impunity, which is at the heart of the country's ills, need to be broken once and for all. Anything short of that may create a semblance of stability for a short while but will ultimately plunge the country into the abyss of endless conflicts and disintegration.

Notes and references

1. Gerth-Niculescu, Maria. "'My brothers and sisters are dying': Inside the conflict in Ethiopia's Afar region." The New Humanitarian, 31 March 2022, https://www.thenewhumanitarian.org/news-feature/2022/03/31/inside-the-conflict-in-Ethiopias-Afar-region
2. Ethiopian Human Rights Commission. "Afar and Amhara Regions: Report on Violations of Human Rights and International Humanitarian Law in Afar and Amhara Regions of Ethiopia, 11 March 2022, https://ehrc.org/afar-and-amhara-regions-report-on-violations-of-human-rights-and-international-humanitarian-law-in-afar-and-amhara-regions-of-ethiopia-published/
3. The disputed areas are three Kebeles located in Afar's Zones 1 and 3 and Somali's Sitti Zone. The areas include Adaytu Kebele of Mille Woreda, Undufo Kebele in Gewane Woreda, and Gedamaytu Kebele in Amibara Woreda. Ethnic Somalis who inhabit the contested territory want to join the neighboring Somali Regional State in Ethiopia, an action that the Afar regional authorities strongly oppose.
4. Hadi, Mohamed. "The mass exodus of Ethiopian Somalis to Sitti Zone." Ethiopia Insight, 11 October 2022, https://www.ethiopia-insight.com/2022/10/11/the-mass-exodus-of-ethiopian-somalis-to-sitti-zone/
5. Ababa, Addis. "Ethiopia: More Than a Dozen Civilians Killed Following Latest

Clashes Between Afar, Somali Regions Militias Near Border Areas." allAfrica, 12 November 2022, https://allafrica.com/stories/202211120084.html

6. Metekel Zone, located in Benishangul Gumuz Region of Ethiopia, is home to many ethnic groups, such as the Gumuz, the Amharas and the Shinashas. The region shares a border on the west with Sudan and is also the site of the Grand Ethiopian Renaissance Dam (GERD). In 2019, inter-communal tensions and violence broke out in the border areas with West Gondar of Amhara region. In 2021, violence evolved into complex armed hostilities, with reports of indiscriminate attacks against civilians. Attacks by unidentified armed groups have killed thousands and displaced 150,000 people in Bullen, Dangur, Dibate, Guba, Mandura and Wombera woredas, representing over 30% of the total population of Metekel Zone.
7. UN Office for the Coordination of Humanitarian Affairs. "Ethiopia: Access Snapshot, Metekel Zone (Benishangul Gumuz Region)." 30 April 2022, https://reliefweb.int/report/ethiopia/ethiopia-access-snapshot-metekel-zone-benishangul-gumuz-region-30-april-2022
8. "Ethiopia humanitarian country visits Metekel Zone of Benishangul Region to see humanitarian situation, response." United Nations Ethiopia, 25 April 2022, https://ethiopia.un.org/en/179072-ethiopia-humanitarian-country-team-visits-metekel-zone-benishangul-region-see-humanitarian
9. Wilkins, Henry. "What's Behind Violence in Ethiopia's 'Other' Conflict?" Voice of America – Africa, 2 September 2022, https://www.voanews.com/a/what-s-behind-violence-in-ethiopia-s-other-conflict-/6729178.html
10. Cirino, Winni., and Selam Mulugeta. "The many conflicts within the Ethiopia-South Sudan transboundary conflict." The Niles, 16 August 2022, https://www.theniles.org/en/articles/society/20858/
11. United Nations Office for the Coordination of Humanitarians Affairs. "Ethiopia: drought response July – December 2022 (Revised)." 8 September 2022, https://reliefweb.int/report/ethiopia/ethiopia-drought-response-july-december-2022-revised
12. Ibid.
13. Creta, Sara. "Ethiopia's worsening drought sees hunger number soar." The New Humanitarian, 17th August 2022, https://www.thenewhumanitarian.org/news-feature/2022/08/17/drought-Ethiopia-hunger-pastoralism-climate-change
14. UNICEF. "Ethiopia: Humanitarian Situation Report No. 10" October 2022, https://reliefweb.int/report/ethiopia/unicef-ethiopia-humanitarian-situation-report-no-10-october-2022

Samuel Tilahun Tessema *is a Senior Legal Advisor on South Sudan and Sudan for the IGAD Special Envoy, and an Expert Member of the Working Group on Indigenous Populations/Communities and Minorities of the African Commission on Human and Peoples' Rights.*

Gabon

CAMEROON
EQUATORIAL GUINEA
Libreville
GABON
REPUBLIC OF THE CONGO
ATLANTIC OCEAN

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

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

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

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

There are also Bakoya living in Ivindo, in Djouah (north) and Loué (east) districts of Zadié department (Mékambo). They number some 1,618 individuals across Ogooué-Ivindo. The greatest concentration of Pygmies is found among the Babongo of Lopé (Ogooué-Lolo), estimated at 708 individuals, but also the Bakouyi (Mulundu) and Babongo of Koulamoutou, Pana and Iboundji, numbering some 2,325. To these statistics must be added the Babongo or Akoula of Haut-Ogooué (4,075 individuals) and those in Ngounié and Nyanga, 4,442 individuals.

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

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

National parks and protected areas

The Pygmies of Gabon have been driven from their ancestral lands. The forests they used to inhabit were established as national parks and protected areas by the Gabonese state in 2002 without their Free, Prior and Informed Consent (FPIC) and without compensation. There are currently 13 national parks in Gabon covering some 11.5% or 30,000 km^2 of the Gabonese territory. These parks are managed by the National Parks Agency under the technical supervision of the Minister with responsibility for National Parks. The parks aim to preserve key ecosystems, diversify the country's economy through the development of ecotourism, and enhance the value of Gabon's forests.[1]

The Association for the Development of the Culture of Gabon's Pygmy Peoples (ADCPPG) is a non-profit association established in 2003 to conduct advocacy activities for Indigenous Peoples in Gabon, including defending their rights to land. Its main objectives are the following:

- To raise awareness among Pygmy populations and provide them with conservation training for their participation
- To contribute aid to the fight against poverty
- To encourage participation in development
- To promote the culture of the Pygmy peoples
- To encourage young people to participate in the challenges of the future.

In April 2022, the ADCPPG participated in a dialogue in Libreville, Gabon, on managing the Moyabi forest landscape in Haut-Ogooué province. The dialogue was linked to the start-up of the "Global Environment Fund (GEF) 7 project: Transforming the governance of forest landscapes in the landscape corridor between Bas Ogooué and Bas Nyanga". The project aims to support Gabon's efforts to sustainably manage forest landscapes and ecosystems. It is focused on conserving high-value forest landscapes while improving livelihoods for local communities through better – i.e. more inclusive – governance that is consistent with biodiversity conservation and enhancement objectives, integrated land-use planning, and which includes private sector engagement.[2]

The ADCPPG is also working to acquire a 2,075 ha community forest for the Pygmy people that can act as a model for the sustainable management of Gabonese forest ecosystems. It is located in the village of Kanda-piè in the department of Ogoulou-Mimongo, Ngounié province.

Gabon also forms part of the sub-regional "Partnership for People, Nature and Climate" project launched in 2022. This project aims to enhance Indigenous Peoples' land rights and local conservation in order to achieve global conservation, climate and development goals in the Congo Basin. This initiative supports the participation and knowledge of Indigenous Pygmies in biodiversity conservation and aims to secure their land rights. The project is being funded from 2022-2025 by the Bezos Earth Fund (BEF), in partnership with the Rights and Resources Initiative (RRI) and the Indigenous Peoples' Network for the Sustainable Management of the Congo Basin Forests (Repaleac).

Africa Climate Week (ACW) 2022 took place from 29 August to 2 September in Gabon. ACW 2022 engaged and empowered more than 2,300 stakeholders to drive climate action across countries, communities and economies. An ACW 2022 Output Report provides a record of engagement that will be able to guide the implementation of the Paris Agreement in Africa.[3] ACW 2022 was hosted by the Government of Gabon and organized by UN Framework Convention on Climate Change (UNFCCC).

Notes and references

1. Fondation BGFIBank. "Agence Nationale des Parcs Nationaux." https://www.fondation-bgfibank.com/agence-nationale-des-parcs-nationaux/

2. "Projet GEF-7: transformer la gouvernance du paysage forestier." United Nations Development Programme (UNDP), 16 December 2022, https://www.undp.org/fr/gabon/communiques/projet-gef-7-transfomer-la-gouvernance-du-paysage-forestier
3. "Africa Climate Week 2022. Output Report." 10 October 2022, https://unfccc.int/sites/default/files/resource/ACW2022_OutputReport_10102022.pdf

Denis Massande *is a Babongo Pygmy from the village of Kanda-Piè, department of Ogoulou-Mimongo, south Ngounié, and President of the Association for the Development of the Culture of the Pygmy Peoples of Gabon (ADCPPG).*

Kenya

SOUTH
SUDAN
ETHIOPIA
UGANDA
SOMALIA
KENYA
Nairobi
TANZANIA

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 mi-

norities 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.

The cost of drought

The number of people identified as in need of humanitarian assistance in July 2022 was estimated at 3.5 million, a reflection of the worsening food insecurity driven mainly by poor rainy seasons over the past four years.[1] More than 77.5% of this population are in the pastoral areas of Turkana, Baringo, Mandera, Garissa, Marsabit and Samburu counties. Livestock mortality in Marsabit county, for example, was recorded at 8%, and at 10% in Samburu and Mandera counties.[2] The economic costs of drought in the year 2022 are estimated at Kenya Shilling (KES) 10.7 billion (approx. 79 million euro), largely caused by poor planning and the reactionary responses of the responsible authorities. Multi-layered challenges posed by drought have blatantly enhanced the vulnerability of the Indigenous pastoral population.

One of the challenges identified in the drought response management stems from the centralization and lack of ownership, resources, and technology at the county government level, preventing them from pre-empting or minimizing the magnitude of the loss and damage that often follows the onset of droughts. Moreover, the drought management system is not strongly connected to county-level resource allocations, which leaves drought mitigation actions entirely dependent on centralized national actions.[3] The lack of contingency funds available poses a hindrance to drought management and responses at the county and community level. Similarly, reactionary responses as opposed to strategic plans that could influence future drought preparedness have continually contributed to the crisis that has adversely affected pastoral communities for years, posing a risk to their livelihoods.

The campaign to reject the Forest Conservation and Management (Amendment) Bill 2021

The proposed Forest Conservation and Management (Amendment) Bill 2021 sought to minimize the role of the Kenya Forest Service (KFS), allowing politicians to decide who can change forest boundaries. The proposed amendment opened the door to forest destruction, endangering the Indigenous forests and biodiversity therein. It would have paved the way for forest excisions and a subsequent scramble for forests without the intervention of the KFS.[4] This stirred concerted efforts among environmentalists, conservationists and Indigenous stakeholders all geared towards a campaign to reject the amendment bill through the local media and open letters to the President. This ultimately resulted in the lapse of the amendment bill on 9 June 2022. This outcome was happily received among Indigenous communities as a sigh of relief for Kenya's forests and a reflection of the deep understanding of the amendment's implications on forestry sustainability on the part of Kenyan citizens and institutions.

National Assembly's Adoption of Sessional Paper No. 3 on the National Action Plan on Business and Human Rights

Kenya is the second African country to transpose the United Nations Guiding Principles on Business and Human Rights (UNGPs) nationally through the National Action Plan on Business and Human Rights, published and launched in 2019. This was formally adopted by the National Assembly on 2 November 2022 through Sessional Paper No. 3, which gives effect to its implementation.

The thematic focus areas of the National Action Plan include land and natural resources, labour, revenue transparency, environmental protection and procedural barriers to accessing remedy. The Sessional Paper lists a number of policy commitments, including a requirement to conduct human rights due diligence, develop inclusive procedural guidelines for use by businesses, individuals and communities in their negotiations for land access and acquisition, enforcement of all ap-

plicable laws, as well as respect for internationally recognized human rights laws and standards as they relate to land access and acquisition, natural resource management, environment and revenue management.

The adoption of Sessional Paper No. 3 comes at a critical time during which Kenya is heavily entering into agreements that will allow for continued investments on Indigenous Peoples' lands. Kenya's investment history and its challenges, coupled with non-compliance with legal processes, can offer important lessons learnt to new and proposed investors, for instance within the areas of renewable energy transition and megaprojects. And the history and lessons learnt can particularly offer Indigenous communities insight to use as leverage when asserting their human rights with respect to investments.

Natural Resources (Benefit-Sharing) Bill 2022

This proposed bill seeks to give effect to Article 69 of the Constitution of Kenya, which imposes on the State an obligation to "Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits". While the bill is expected to establish a clear system and structure of benefit-sharing between exploiters, national government, county government and local communities, the question of what amounts to "equitable" is brought into a greater focus. The system of benefit-sharing proposed by the bill allocates only a paltry 12.8% of benefits from natural resources for community projects and disproportionately allocates 68% to the national government. The bill further proposes the allocation of 19.2% of the money to projects within the wider county. The disproportionate allocation of funds fails to take into account the fact that Indigenous and local communities incur the greater costs of resource exploitation.

Similarly, the definition of natural resources accorded in the proposed bill fails to include resources given in the definition under Article 259 of the Constitution of Kenya, which includes renewable energy resources, minerals, and fossil fuels. Instead, the bill defines natural

resources as sunlight, water resources, forest biodiversity and genetic resources, wildlife resources, industrial fishing and wind. If passed in its current state, the bill would exclude Indigenous communities whose geothermal energy, oil minerals and other natural resources are being exploited.

Kenya at COP 27

The current Kenyan government has inherited the plans laid-out under Vision 2030 by which the objective to transform Kenya into an industrializing state is vitally dependent on clean energy. Reaffirming this commitment during COP 27, the President signed a framework agreement with an investor to collaborate on the development of sustainable green industries in Kenya in order to produce 30 Gigawatt of green hydrogen in Kenya.[5] The production of green hydrogen is set to leverage on excess geothermal power,[6] and it remains apparent that most geothermal resources are located on Indigenous Peoples' lands. The investment company is set to establish a hydrogen and ammonia plant in Nakuru County, near an already contested area that hosts Kenya's largest geothermal power station, Olkaria IV. Controversies related to Olkaria include the displacement of over 1,200 Maasai community residents, threats and intimidation of human rights defenders, inadequate compensation and an entire disruption of livelihoods. The establishment of the proposed ammonia plant presents a new layer of challenges for Indigenous Peoples in the area, who are already faced with multi-dimensional challenges caused by the geothermal exploration.

Existing and ongoing renewable energy investments have brought severe challenges to the Indigenous communities whose lands host renewable energy resources. The investment methods, from acquisition of lands to compensation of affected communities, have been marred by multiple injustices. The framework signed during COP 27 aims to establish a wind farm and an ammonia plant in a predominantly Indigenous landscape, and if previous renewable investments are anything to go by, the question of a just energy transition brings multiple energy injustices into sharp focus.[7]

The Lake Turkana Wind Power case

On 19 October 2021, the High Court of Meru delivered a judgement in the Lake Turkana Wind Power case, noting that the setting aside of the parcels of land known as LR 28031/1 measuring approximately 40,000 acres and LR 28031/2 measuring approximately 110,000 acres, both situated in Loiyangalani, South Horr (Marsabit County) was irregular, unlawful and unconstitutional; and that the titles issued to Lake Turkana Wind Power were irregular and unlawful, the Court thereby declaring that they should be cancelled. The Court further gave Marsabit County Government, the Attorney General, the Chief Land Registrar and the National Land Commission one year to strictly comply with the existing law on the setting aside process, failing which the titles would stand cancelled and the suit land would revert to the community.[8]

The defendant in this case filed a review five months after the judgement was delivered noting that no tangible actions had been taken in compliance with the existing laws on setting aside the suit land. The review is currently ongoing, and the timeline for compliance as mandated by the Court has now been extended for six (6) months and until the review ruling is delivered.

Although the review asserts to introduce "new" evidence to the Court, it is apparent that the defendant does not dispute the fact that the process of setting the suit properties aside was irregular and therefore, despite the review application, the irregularity in the process of the suit land acquisition is not in doubt.

The Ogiek reparation ruling

The historic reparation ruling of 23 June 2022 by the African Court on Human and Peoples' Rights in the Ogiek's case[9] reaffirmed and upheld the rights of the Indigenous Ogiek people to their ancestral land, following the landmark ruling delivered in May 2017.[10] The Court ordered the Government of Kenya to pay compensation of KES 57,850,000 (approx. 429,000 euro) for material prejudice for loss of property and natural resources, and KES 100,000,000 (approx. 741,000 euro) for moral prejudice suffered by the Ogiek due to violations of the right to non-discrim-

ination, religion, culture and development.[11] The Court further ordered non-monetary reparations, including the restitution of Ogiek ancestral lands and full recognition of the Ogiek as Indigenous Peoples. Specifically, the Court mandated the Kenyan government to undertake delimitation, demarcation, and titling in order to protect Ogiek rights to property revolving around their occupation, use and enjoyment of the Mau Forest and its resources.

The two judgements establish a fundamental precedent for Indigenous Peoples in Kenya and across Africa in their struggle for recognition, and they are highly significant for all those Indigenous Peoples on the continent who have been battling historical injustices such as forcible evictions from ancestral lands. The reparation judgement solidifies the 2017 ruling bringing to closer attention government-led conservation actions and practices that have continuously harmed Indigenous Peoples across Africa.

East African Indigenous Peoples' Land Summit

The East African (EA) Indigenous Peoples' (IP) Land Summit 2022 was held from 21-25 November 2022 in Nanyuki, Laikipia County in Kenya. This Summit was co-convened by the Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT) Kenya and the Pastoralists Alliance for Resilience and Adaptation in Northern Rangelands (PARAN). It brought together over 350 representatives of Indigenous Peoples, representing Indigenous Peoples' organizations and networks in East Africa from Kenya, Uganda, Rwanda, Tanzania, Burundi, DRC and Ethiopia, including pastoralists, wetland and forest dwellers, hunters and gatherers, women, youth and Persons with Disability (PWD); officials from the Kenya National Land Commission (NLC), Ministry of Lands, Public Works, Housing, and Urban Development (MLPPUD), county governments (Laikipia, Samburu, Isiolo, Turkana, Mandera, Marsabit), the East Africa Legislative Assembly (EALA), African Union Inter-African Bureau for Animal Resources (AU-IBAR), civil society organizations (CSOs) and other development actors in collaboration with other partners. The Summit was held under the theme of: "Amplifying Collective Voices of Indigenous Peoples through Inclusive Dialogues

and Learning to Enhance Land Rights for Livelihoods and Conservation in East Africa".[12]

One of the extensively debated themes was conservation, with a primary focus on Indigenous Peoples' conservation models. Anchoring the discussion on the value and importance of secure land rights and traditional conservation, it was noted that secure land rights are a major challenge when it comes to traditional conservation models. Similarly, climate change impacts pose a challenge to conservation, as evidenced by increased human-wildlife conflicts as a result of diminishing resources. Representatives from across East Africa noted that, despite Indigenous Peoples being the custodians of their land, wildlife and natural environment, some Indigenous Peoples are living as squatters far removed from their ancestral land, having lost thousands of hectares of their ancestral land to fortress conservation.

The following challenges were also identified during the Summit:

- Indigenous Peoples continue to struggle to secure legal recognition of their land, territories, waters and their legal and cultural identity, and other human rights with cases of historical injustices still pending in various national and regional courts.
- The increased cases and threats of forced eviction and displacement of Indigenous Peoples from their ancestral lands, loss of life, land and livelihoods, and subsequent criminalization of community livelihoods over contested landscapes and waters.
- Slow processes and lack of commitment by national and sub-national governments in facilitating documentation and registration of Indigenous Peoples' land, and in resolving land disputes.
- Failure by governments and private investors to embrace and enforce the implementation of the principle of Free, Prior and Informed Consent (FPIC) when acquiring Indigenous Peoples' land, disregarding their rights to decision-making, negotiation for benefit-sharing, fair valuation, and compensation in a timely manner.
- The attempt by some governments and private investors to pilot test a new "land investment model" that seeks to equate and replace fair and meaningful compensation of Indigenous

Peoples´ land with Corporate Social Responsibility (CSR).

- Increased land degradation and impacts of climate-induced hazards disproportionately affect Indigenous Peoples, men, women, boys and girls, and persons with disability; They reduce land productivity, increase poverty and hunger and weaken resilience and adaptation capacities; and Indigenous Peoples have at times had to the bear the burden of climate mitigation actions and efforts implemented by governments, such as evictions from our land and territories to pave way for Green Energy Projects (solar, wind, and hydropower projects) implemented without FPIC.
- Inadequate, and or a lack of national and sub-national/county-level coordination mechanisms, policies and strategies for livestock production, marketing and value addition continues to put Indigenous Peoples' pastoralist communities' livelihoods at risk of major losses due to climate hazards such as drought.
- The lack of data disaggregated by gender on Indigenous Peoples' social and economic aspects, which is needed to inform their needs and potential, hinders development and implementation of gender responsive policies on pastoralism, livelihoods, and conservation.[13]

Notes and references

1. Republic of Kenya. The 2022 Long Rains Season Assessment Report. Kenya Food Security Steering Group (KFSSG). July 2022, https://reliefweb.int/report/kenya/kenya-2022-long-rains-season-assessment-report-august-2022
2. Ibid
3. Roba, G.M. "Drought in Kenya: Time to shift from crisis to risk management." The Elephant, 18 March 2022, https://www.theelephant.info/op-eds/2022/03/18/drought-in-kenya-time-to-shift-from-crisis-to-risk-management/
4. Chen, Kang-Chun. "Indigenous communities uncertain over proposed change to Kenyan Forest law." Mongabay, 21 February 2022, https://news.mongabay.com/2022/02/indigenous-communities-uncertain-over-proposed-change-to-kenyan-forest-law/
5. Republic of Kenya. Remarks by His Excellency Hon. William Samoei Ruto, PhD., C.G.H., President of The Republic of Kenya and Commander-In-Chief of the Defence Forces, on Behalf of The African Group and Kenya at the 27th Conference of Parties (COP 27) to the United Nations Framework Convention on Climate Change (UNFCCC). Egypt, 7 November 2022, https://unfccc.int/sites/default/files/resource/KENYA_cop27cmp17cma4_HLS_ENG.pdf
6. O´Farell, Seth. "Kenya's FFI Green Hydrogen deal: 'Other countries will follow

suit'." FDi Intelligence, 14 November 2022, https://www.fdiintelligence.com/content/interview/kenyas-ffi-green-hydrogen-deal-other-countries-will-follow-suit-81645

7. Kanyinke, Sena. Renewable Energy Projects and the Rights of Marginalized/Indigenous Communities in Kenya. 2015
8. Case Judgement. Republic of Kenya in the Environment and Land Court at Meru. ELC Case No.163 of 2014, https://www.cases.sheriahub.com/the_case/S3huSWFobVMvTlluSlJTTnZVeE1SdFNwSnFHeHpnPT0/
9. African Commission on Human and Peoples' Rights v The Republic of Kenya. 2022
10. African Commission on Human and Peoples' Rights v The Republic of Kenya. 26 May 2017
11. African Commission on Human and Peoples' Rights v The Republic of Kenya. 2022
12. East Africa Indigenous Peoples' Land Summit 2022 Final Declaration
13. Ibid

Mali Ole Kaunga *is a Laikipiak Maasai and 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 Conflicts Transformation – www.impactkenya.org) and Convenor of PARAN (Pastoralists Alliance for Resilience and Adaptation in Northern Rangelands). He is Senior adviser to the research team for Shared Lands. Contact: Olekaunga@gmail.com.*

Libya

MEDITERRANEAN SEA
TUNISIA
Tripoli
ALGERIA
LIBYA
EGYPT
NIGER
CHAD
SUDAN

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

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

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

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

Status quo in a fragile calm

Since the disagreement over the proposed constitutional referendum in September 2021 and the failure of the plan to hold parliamentary and presidential elections in December of the same year, Libya has continued to live in institutional and political chaos, with two assemblies and two governments vying for power. The "parliament" based in Tobruk in the east of the country, which considers itself legitimate because it emerged from elections in 2014 and on 10 February 2022, has appointed Fathi Bashagha as prime minister. In Tripoli, Abdelhamid Debeiba, prime minister of a so-called national unity government was appointed on 21 March 2021 and is supported by a Presidential Council.

Each of the two governments controls part of the territory and has an "army" comprised of militias born in the aftermath of the fall of former dictator Moammar Gadhafi in 2011. The country is split in two and their governments are at war with each other through armed groups loyal to either government. On 22 July 2022, intense fighting took place in Tripoli, resulting in 16 deaths, including civilians, and some 50 in-

jured.[1] Just over a month later, on 27 August 2022, new armed clashes between armed militias in Tripoli left 32 people dead and 159 injured. According to local media, militias loyal to the Bashagha government attempted to enter Tripoli by force but were repelled by groups supporting the existing Debeiba government.[2]

The numerous foreign interferences in Libya play a decisive role in maintaining the Libyan crisis, notably by supplying arms to the warring parties, despite the arms embargo declared by the UN.[3] No less than 13 actors are directly or indirectly involved in Libya: the neighbouring countries (Egypt, Algeria, Sudan, Chad), the Arab-Islamic countries (Saudi Arabia, United Arab Emirates, Qatar), the European countries (France, Great Britain, Italy), the United States, Russia and Turkey. The most influential are the Arab-Islamic states, Egypt, the European countries, the United States, Russia and Turkey. Libya is of geostrategic, oil-producing, religious, security and migratory interest and each country is seeking to preserve its own interests there, to the detriment of the Libyan population.

Without legitimate and recognized State institutions and a unified authority, the population suffers in anguish, without any protection, hoping for a return to peace and stability. At the end of her visit to Libya from 14 to 21 December 2022,[4] Ms Reem Alsalem, UN Special Rapporteur on violence against women and girls, stated that "political deadlock, insecurity, instability, governance and rule of law challenges and problematic legal frameworks that are not in line with Libya's international human rights obligations were among reasons for the appalling situation". This is characterized by "horrific levels of torture, sexual violence, abduction for ransom, detention, trafficking in persons, forced labour and unlawful killings." Ms Alsalem also denounced the "proliferation of armed groups and weapons driving complex and cross-border criminal enterprises, [which] have strengthened the rampant impunity that reigns for crimes committed".

The UN Independent Fact-Finding Mission on Libya conducted its fifth fact-finding mission to the country from 20 October to 21 November 2022.[5] UN investigators met with various stakeholders but were not permitted to visit prisons or the southern city of Sebha, which is inhabited mainly by the Indigenous Amazigh Kel-Tamacheq community.

The Indigenous Peoples of Libya, eternally forgotten

While armed groups fight for control of territories and resources, the weakest Indigenous communities are left behind and continue to suffer the most severe discrimination. Such is the case of 15-20,000 families, or some 80,000 Kel-Tamacheq people in southern Libya who are still being deprived of Libyan nationality and identity documents. As a result, they are denied access to State education, training and health services, and cannot be legally employed. The demands they have regularly made to the Libyan administration since 2011 have not been successful.

Although their territory in Fezzan (southern and south-western Libya) is rich in mineral resources, including gas and oil, the Kel-Tamacheq are the poorest people in the country because they have no control over these resources.

The Kel-Tamasheq community in Libya also faces the challenge of the closure of the border with Algeria on security grounds. Kel-Tamacheq populations living on both sides of the border have a tradition of cross-border movement and exchange that has been brutally interrupted. The consequences can be dramatic when people cannot visit a loved one or get medicine or food from the other side of the border.

The representatives of the High Council of Amazigh of Libya (HCAL) and the Mayors of the Amazigh municipalities of Yefren, Kabaw and Qalaa, had an opportunity to raise the challenges faced by the Amazigh of this country with Ms Stephanie Williams, Special Advisor on Libya to the UN Secretary-General, during their meeting on 1 March 2022 in Tripoli.[6] The Mayors and representatives of the HCAL highlighted the marginalization of their community from the political process and State institutions and the extrajudicial detentions to which Amazigh are subjected by armed groups, and demanded respect for their right to participate in the country's constitutional and institutional project.

In fact, the non-Arab communities of Libya, and particularly the Amazigh, have for many years now been expressing their desire for a federal Libyan state in which their territories would enjoy a status of autonomy that would allow them to preserve their specific features. No answer has been given to date but the Tripoli government is making numerous symbolic gestures towards the Amazigh.[7] In the current situation, however, this is probably more out of a concern to keep them on board than to really hear their demands.

Conservation and protected areas

Libya is a country that comprises more than 90% desert in which the vast majority of the population is concentrated in a thin strip along the Mediterranean coast. With a total area of 1.76 million km^2, Libya has seven national parks, one of which (Ashafean in the Adrar Nefussa) was classified as a biosphere reserve (MAB) by UNESCO in 2021.[8] The country also has five marine protected areas and two wetlands.

Under the dictatorship of the former regime and, indeed, in the current context of civil war that has lasted since 2011, the issue of biodiversity and nature protection is not a matter of concern for many Libyans. The various authorities are too busy with their political and military battles, while the people are more worried about their own survival.

Nevertheless, with the impetus and support of foreign partners, including the United Nations Environment Programme (UNEP/MAP), the Global Environment Facility (GEF), the International Union for Conservation of Nature (IUCN) and the World Wildlife Fund (WWF), the Government of Tripoli has decided to launch a "project to create 30 new protected areas including wetlands, marine and coastal sites and biosphere reserves".[9]

As things stand, all animal and plant species are under serious threat in Libya due to the combined effects of the lack of a public policy to protect biodiversity and nature, global warming, deforestation, poaching and civil war. Khaled Ettaieb, Professor of Zoology at the University of Tripoli, illustrates the extent of the disaster in Libya: "Before the fall of Gaddafi, even hunting rifles were prohibited. Since 2011, however, poaching has been undertaken with weapons of war and sophisticated vehicles".[10]

Notes and references

1. "En Libye, calme 'fragile', les Nations unies craignent de nouvelles violences." Le Monde and AFP, 31 August 2022, https://www.lemonde.fr/afrique/article/2022/08/31/en-libye-calme-fragile-les-nations-unies-craignent-de-nouvelles-violences_6139603_3212.html
2. "Libye: des affrontements meurtriers secouent Tripoli, faisant craindre une nouvelle guerre." Middle East Eye, 28 August 2022, https://www.middleeasteye.net/fr/actu-et-enquetes/libye-tripoli-affrontements-guerre-haftar-dbeibah-

bachagha
3. Mast, Fleur. "Les ingérences étrangères en Libye." Center for Studies and Research on the Arab and Mediterranean World (CERMAM), 13 April 2022, https://cermam.org/fr/les-ingerences-etrangeres-en-libye/
4. United Nations Special Rapporteur on violence against women and girls, official visit to Libya, 14-21 December 2022. Summary preliminary findings and recommendations. "Libya: Alarming levels against women and girls must end." 23 December 2022, https://www.ohchr.org/en/press-releases/2022/12/libya-alarming-levels-violence-against-women-and-girls-must-end-says-un
5. United Nations, Human Rights, Office of the High Commissioner. "UN Fact-Finding mission Libya concludes fifth investigative mission." 30 November 2022, https://www.ohchr.org/en/press-releases/2022/11/un-fact-finding-mission-libya-concludes-fifth-investigative-mission
6. "Stephanie Williams meets with Amazighs stressing of compromise and inclusiveness in country's current complex political environment." Lana Agency, 02 March 2022, consulted 15 January 2023, https://lana.gov.ly/post.php?lang=en&id=235370
7. "Head of GNU Government participates in the Amazigh new year celebrations in Nalut." Lana Agency, 13 January 2022, consulted 15 January 2023, https://lana.gov.ly/post.php?lang=en&id=230160
8. "La Libye rejoint pour la 1ère fois le réseau mondial de Biosphères de l'Unesco avec la Réserve de biosphère d'Ashafean." Unesco news, 17 September 2021, https://www.unesco.org/fr/articles/la-libye-rejoint-pour-la-1ere-fois-le-reseau-mondial-de-biospheres-de-lunesco-avec-la-reserve-de
9. Takouleu, Jean Marie. "LIBYE: WWF et l´UICN appuient la designation de 30 aires matines protégées." Afrik 21, 28 February 2022, https://www.afrik21.africa/libye-wwf-et-luicn-appuient-la-designation-de-30-aires-marines-protegees/
10. Chibani, Ali. "Le Maghreb prend conscience du déclin de sa biodiversité." Orient XXI, 4 August 2020, https://orientxxi.info/magazine/le-maghreb-prend-conscience-du-declin-de-sa-biodiversite,4034

Belkacem Lounes *holds a doctorate 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 United Nations 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 Amazigh people founded an organization called the "Amazigh Cultural Movement" (ACM) 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 are under constant pressure to assimilate. Morocco has for many years been a unitary state with centralized authority, a single religion, a single language and a 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 an 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 now begin.

Morocco has not ratified ILO Convention 169 and has not adopted the United Nations Declaration on the Rights of Indigenous Peoples.

Overview of the situation of Amazigh rights in 2022

The 2021 legislative elections were won by the RNI (*Rassemblement National des Indépendants*), a centre liberal party. During its electoral campaign, the RNI focused on Amazigh rights and the implementation of the official status of Tamazight (the language of the Indig-

enous Amazigh). Several activists from the Amazigh cultural movement have joined the campaign and are supporting this party's proposal. The new government took office at the start of 2022.

In January 2022, the government announced a budget of 200 million dirhams (around 20 million euro) with which to implement the official status of the Amazigh language. It is a positive start but some consider this budget still insufficient to fulfil the many projects needed (education, justice, administration, culture, media, development catch-up plan for marginalized Amazigh territories, etc.) and they are demanding more funding and a special body within the government to take lead on the Amazigh language project.[1]

Unfortunately, by the end of 2022, teaching of the Amazigh language was still not properly up and running and, from an educational point of view, the budget allocated to recruiting teachers of Tamazight was only sufficient to recruit 400 posts for the 3,814,438 pupils in the primary cycle.[2] In the field of media, there is only one Amazigh television channel and Amazigh radio stations do not cover the entire Moroccan territory. Administrative documents are only in Arabic, even though Tamazight has been an official language since 2011. The Amazigh New Year is still not recognized as a holiday, although this was an electoral promise. On Friday 30 December 2022, the Moroccan Association for Human Rights (AMDH), the largest human rights organization in Morocco, called on the government to recognize the first day of the Amazigh New Year as an official holiday in the country, similar to the calendar year and the Muslim year, as a symbolic initiative by which to recognize the Amazigh cultural identity of the Moroccan people.[3]

The land problem also remains unresolved, despite demonstrations demanding a solution and protection from looting and destruction of the property and fields of Indigenous Peoples due to overgrazing by nomads from the desert. The increased overgrazing in the Souss-Massa region and the increased demarcation of forests all comes at the expense of collective lands. Civil associations held meetings with officials in the capital, Rabat, and obtained promises from them to "intervene to the extent possible" to urge the government to find a solution to the overgrazing dilemma. A number of actors do not have high hopes, however, that the political parties or even the Ministry of Agriculture will be able to solve this problem as they consider that the solution lies in the hands of the Ministry of the Interior.[4]

Protected areas: traditional knowledge linked to Indigenous rights

In Morocco, the Indigenous Amazigh have accumulated enormous experience in the management of protected areas, both in the mountains and plains. Some of these protected areas are still functioning well but others are being degraded by overgrazing and the impacts of climate change.

The Amazigh use the term "*Agdal*" (an Amazigh word that means protected) to designate their protected areas. It refers to collective lands managed by the "*Jmaa*" commune based on customary rights highly respected by the inhabitants. The *Agdal* cover a great diversity of uses, including pastoral activities, grazing and forestry. Agricultural *Agdal*, or *Agdal n'targa*, are particularly popular in areas where crops are grown, either permanent or seasonal depending on the dominant crop. There is a general practice among all tribes to protect their fields from theft of agricultural products and encroachment: in the mountain areas of the Atlas (walnut trees), in the oases (date palms) and in the plains, including in the argan groves (argan fruits). Where arboriculture is dominant, for example, the crucial period is during the ripening of the fruit. Early fruits must therefore be protected until it is time for the harvest. Forest *Agdal*, or *Agdal n'o'azeddam* (wood collection), can be found in the region of Ait Bouguemmez (Central High Atlas), and on the southern slopes, around Mgouna.[5]

In environmental conditions such as those of Morocco, where mountains and a dry climate predominate, fertile soils are scarce so people have invented systems of use for forests and fruit trees that are framed by a strong, original legislation. To manage scarcity, customary law has been used to ensure that everyone gains fair access. Customary law applies to all members of the "*Taqbilt*" tribe without exception, regardless of social category. In some cases, where cultivable land is scarce and fruit trees are unable to meet the needs of the entire community, several families may share the harvest from a single tree, such as an almond or argan tree. And to ensure that the harvest takes place under good conditions and avoids creating any kind of conflict, the *Jmaa* (Assembly) has established a special regulation in this regard. It is the *Jmaa* that sets the date of the harvest, and it is forbidden to start harvesting even privately-owned trees before that date. In general, the

Agdal open their doors to their rightful owners twice a year, first for the harvesting of the crop, and then for grazing at the start of the summer once the crop has been brought in.

The role of these *Agdal* is crucial in the preservation of biodiversity, especially in the mountains, which remain a treasure trove of ecosystems and biodiversity in Morocco and in the Mediterranean area as a whole.

Indigenous protected areas and Moroccan legislation

The Moroccan Constitution recognizes the Amazigh identity of the Moroccan people but there are no laws that recognize or refer to the term Indigenous, apart for an implicit recognition in the *dahir* (law) of April 1919 concerning collective lands. The term "local community" in Morocco refers to a *de facto* situation and does not imply any legal or formal connotation. However, in international legal texts, local communities are understood to be "traditional" groups that, like Indigenous Peoples, have customs, beliefs and traditional knowledge of natural resources.[6]

Morocco has ratified the Paris Agreement (UNFCCC) and the Nagoya Protocol (CBD), both of which clearly mention the term "Indigenous Peoples", but the Moroccan government prefers to use the term "local community".

According to a study conducted by the Global Support Initiative for Indigenous and Local Community Conserved Areas and Territories: "field studies demonstrate that there are many territories that meet the requirements of the Africa Protected Areas Congress (APAC) as defined at international level, especially in the High Atlas, which is also a Biodiversity Hotspot" .[7]

An analysis of the national reality and the legal framework of Morocco shows that much remains to be done to address the issue of protected areas as defined by APAC. Nevertheless, significant progress has been made since there are now territories and local communities that recognize themselves as covered by APAC; further, ever more institutional actors have a grasp and understanding of the APAC phenomenon and ever more NGOs and researchers are joining the process.

In addition, Morocco's political openness and flexibility in managing social conflicts, as well as recent developments in the design of protected areas nationally and active participation in UNFCCC and CBD COP meetings, have all helped advance the legislative side of protected areas. The Moroccan law on protected areas (2008) "allows associations, in conjunction with national institutions, to endow Agdal with the status of 'community protected area'".[8]

Notes and references

1. "La politique anti-amazighe se poursuit au Maroc." Kabyle, 5 August 2022, https://kabyle.com/communiques/la-politique-anti-amazighe-se-poursuit-au-maroc
2. "Performance, nombre d´élèves, effectifs...Bilan chiffré de l´année scolaire 2020-2021." Media 24, 14 February 2022, https://medias24.com/2022/02/14/enseignement-lannee-scolaire-2020-2021-en-chiffres/
3. Mejdoup, Khalid. "Maroc: l´Association marocaine des droits appelle à reconnaitre le Nouvel An amazigh comme jour férié officiel." 7 January 2022, https://www.aa.com.tr/fr/monde/maroc-lassociation-marocaine-des-droits-humains-appelle-%C3%A0-reconnaitre-le-nouvel-an-amazigh-comme-jour-f%C3%A9ri%C3%A9-officiel/2468316#
4. Al-Raji, Muhammad. "Civil activities request the intervention of the Ministry of the Interior to confront the "overgrazing" of Sous". 27 May 2022, https://www.hespress.com/%D9%81%D8%B9%D8%A7%D9%84%D9%8A%D8%A7%D8%AA-%D9%85%D8%AF%D9%86%D9%8A%D8%A9-%D8%AA%D8%B7%D9%84%D8%A8-%D8%AA%D8%AF%D8%AE%D9%84-%D9%88%D8%B2%D8%A7%D8%B1%D8%A9-%D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84%D9%8A-994764.html
5. "Aires conservées autochtones et communautaires au Maroc: les agdals." APAC, 29 February 2016, https://www.iccaconsortium.org/index.php/fr/2016/02/29/aires-conservees-autochtones-et-communautaires-au-maroc-les-agdals-2/
6. Initiative d'appui mondial aux Aires et Territoires conservés par les Peuples Autochtones et les Communautés locales [Global Support Initiative for Indigenous and Local Community Conserved Areas and Territories] (ICCA-GSI) STRATEGIC SUPPORT PROJECT FOR COMMUNITY HERITAGE AREAS AND TERRITORIES (CHPA) IN MOROCCO. Prepared by Najwa Es-siari Consultant.
7. Ibid
8. Auclair, Laurent., and Mohamed Alifriqui. Agdal patrimoine socio-écologique de l'Atlas marocain. Rabat, IRCAM and IRD, 2012, 81

Dr. Mohamed Handaine *is the President of the Confederation of Amazigh Associations of South Morocco (Tamunt n Iffus), Agadir, Morocco. He is a university graduate, historian and writer, and Director of the Centre for Historical and Environmental Amazigh Studies. He is a founder member of the Amazigh World Congress and has published a number of works on Amazigh history and culture. He is the President of the Indigenous Peoples of Africa Co-ordinating Committee (IPACC), the IPACC North African Regional Representative and a member of the steering committee of the ICCA Consortium in Geneva & Member of the Steering Committee of UNESCO's International Decade of Indigenous Languages (2022-2032).*

CONTENTS

Namibia

ANGOLA
ZAMBIA
NAMIBIA
BOTSWANA
Windhoek
ATLANTIC OCEAN
SOUTH AFRICA

The Indigenous Peoples of Namibia include the San, the Ovatue and Ovatjimba, and potentially a number of other peoples including the Damara, Nama, and Topnaars. Taken together, the Indigenous Peoples of Namibia represent some 8% of the total population of the country, which was 2,727,409 as of July 2022. 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 Naro, and the!Xóõ. Each of the San groups speaks its own language and has distinct customs, traditions, and histories. The San were mainly hunter-gatherers in the past but, today, many have diversified livelihoods. Over 80% of the San have been dispossessed of their ancestral lands and resources, and they are now some of the poorest and most marginalised peoples in the country. The Ovatjimba and Ovatue (Ovatuwa) are largely pastoral people, formerly also relying on hunting and gathering, residing in the semi-arid and mountainous north-west of Namibia (Kunene Region). Together, the pastoralists number some 28,675, or 1.04% of the total Namibian population.

The Namibian government prefers to use the term "marginalised communities" when referring to the San, Otavue and Ovatjimba, support for whom falls under the Division of Marginalised Communities (DMC) in the Ministry of Gender Equality, Poverty Eradication, and Social Welfare. 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 produced a mid-term report for the Universal Periodic Review of the Human Rights Council in Namibia in 2022. Namibia representatives attended the 21st session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York from 25 April-6 May 2022.

Introduction

Namibia, a multiparty democracy, is considered a high middle-income country by the World Bank and the United Nations Development Programme. The country celebrated the 32nd anniversary of its independence on 21 March 2022. Like many Sub-Saharan African countries, Namibia faced a number of major challenges in 2022. These challenges included the impacts of COVID-19 on the health and well-being of Namibians, the effects of the Ukraine-Russia war, which began on 24 February 2022 and led to increased food prices, higher energy costs, greater unemployment, and a general lowering of incomes, particularly among those people who self-identify as Indigenous and Marginalised Communities in the country.

As reported by President Hage Geingob in his State of the Nation Address to Parliament on 6 April 2022:

> *Government's social safety nets, including the Food Bank, Drought Relief, Old Age Social Grants and Grants to Marginalised Communities, People with Disability, Orphans and Vulnerable Children, as well as the School Feeding Programme, have gone a long way to mitigate hunger and poverty among many vulnerable households.*[1]

His Excellency President Geingob went on to say that the Government of Namibia spends in excess of N$412 million per month on Social Safety Nets and an additional N$160 million on Drought Relief per annum. He noted that some 20% of the country's population was receiving a government grant in one form or another in 2022.[2]

Reports by various non-government organisations working with Marginalised communities indicated an increase in hunger in places ranging from Zambezi Region to Kunene Region and from Otjozondjupa Region to Erongo Region where the Topnaars are located.[3] The Namibian government attempted to circumvent the hunger problem by ensuring commodity distribution along with clean water, soap, and other goods. Information on dealing with COVID-19 was provided by NGOs in mother-tongue languages, as seen, for example, in Kunene and Otjozondjupa.

In spite of the COVID-19 pandemic and travel restrictions, in 2022 Namibia's tourist numbers increased by 32,962 from the previous year, to 265,718.[4]

Conservation, community-based natural resource management and Indigenous Peoples in Namibia

According to the International Union for Conservation of Nature (IUCN), Namibia is considered a world leader in biodiversity conservation and programmes that involve community-based natural resource management.[5] In line with the Namibian government's community-based natural resource management policy, local institutions known as conservancies can be established in communal areas of the country. A conservancy consists of a group of people who have pooled their resources for the purpose of conserving and utilising wildlife in its broadest sense (taken here to include mammals, birds, fish, vertebrates, invertebrates, and other lifeforms). Conservancies must be constituted legally, have clearly defined physical boundaries acceptable to neighbouring communities, have a council that consists of elected or appointed community representatives, and have a management plan that is acceptable to the Namibian government. Members of each conservancy have the right to utilise wildlife resources within its boundaries for the benefit of the community. In some cases, the conservancy leases out the right to oversee the resources to a private company, in exchange for which it receives benefits such as meat, employment and, in some cases, goods such as medicines and blankets. Overseeing the communal conservancies is the responsibility of the Ministry of Environment, Forestry, and

Tourism (MEFT). MEFT sets wildlife quotas, ensures that the activities of the conservancies are consistent with regional and national resource policies, and provides technical assistance and advice. Ultimately, the conservancy system is a partnership venture between the Ministry of Environment, Forestry and Tourism and rural people on communal land in Namibia, which covers some 298,200 km^2 or 36.07% of the country's total area of 826,680 km^2.

According to the Namibian Association of Community-Based Natural Resource Management Support Organizations (NASCO), as of the end of 2022 there were 86 communal conservancies in the country covering a total of 166,045 km^2 and comprising 238,701 people.[6] Communal Conservancies are found among Indigenous communities such as the Ju/'hoansi San in Nyae Nyae,!Kung and Khwe San in N≠a Jaqna, Khwe in Bwabwata National Park and in the Kunene Region among Ovahimba, Ovatjimba, Ovazemba and Ovatue communities. Some of these conservancies are more successful than others, with the Nyae Nyae Conservancy, for example, paying out some N$7 million (US$470,000) to its members in 2022.[7] There were also some conservancies that were struggling, such as those in the Omaheke and Kavango West Regions. Some of the more successful conservancies were the ones that also included community forests, of which there were 43 in Namibia in 2022.

Advantages of the communal conservancies included increased biodiversity conservation, with wildlife populations including megafauna (e.g., elephants), predators (e.g., lions) and antelopes, with giraffes and elands showing increases in numbers in 2022. Anti-poaching activities on the part of the government, NGOs, and communities helped to reduce the losses of wildlife in many parts of the country. Some of the conservancies engaged in translocation of wildlife, which helped to restore the numbers of animals in their areas.

Legal cases and struggle for recognition

In terms of the various legal cases that have been filed by San communities against the government, the appeal of the Hai//om collective action case was dismissed by the Court of Appeals in March 2022.[8] The appeal on the Nyae Nyae illegal grazing civil case continued to await hearing as of the end of 2022, and no ruling had as yet been issued on

the long-standing parallel case in the N≠a Jaqna Conservancy (NJC), where illegal fencing and the introduction of cattle and other domestic animals continued in spite of previous High Court rulings.

The Khwe of Bwabwata National Park in Zambezi Region continued to try and seek recognition whereby a Khwe Traditional Authority (TA) would be appointed but their efforts were stymied by the Namibian government and the Mbukushu Traditional Authority. The Parliamentary Standing Committee on Constitutional and Legal Affairs (PSCCLA) undertook a fact-finding visit to Bwabwata National Park in Kavango East from 14 to 16 March 2022. The report of the Standing Committee did not endorse the request of the Khwe for a Traditional Authority. As it stands, the Mbukushu continue to control much of the Kavango East Region and portions of Bwabwata National Park. Currently, the Khwe can only be involved in decision-making through the Kyaramacan Association as the primary body through which Khwe People can engage in negotiations and discussions over the management of resources and benefit-sharing from activities such as trophy hunting and resource collection within Bwabwata National Park. The problem, however, is that Kyaramacan Association is not an exclusively Khwe body and therefore cannot fully represent the unique needs and interests of the Khwe People as a whole.[9] The Mbukushu, for their part, continue to see the Khwe as a sub-tribe and therefore subsidiary to the Mbukushu.[10]

Among the Ovahimba, land issues and traditional authority representation continued to be raised in 2022.[11] The Ovahimba currently have some 35 Traditional Authorities but several of the Ovatjimba subgroups would like to receive Traditional Authority status, which has yet to be granted. One of the concerns of the Ovatjimba related to the plans for a new dam on the Kunene River. Ancestral Land Claims were made by Ovahimba, Ovatue, Hai//om,!Kung, and Khwe in 2022.[12]

Oil and gas exploration and threats to the Kavango Region of Namibia

Concerns about oil and gas exploration by a Canadian oil company, Reconnaissance Energy Africa (ReconAfrica) continued to be raised in 2022. In spite of claims on its website, the company has been em-

ploying fracking (hydraulic fracturing) techniques in the region north of Khaudum National Park in the Kavango West and East Regions.[13] One of two wells has been test-drilled but proved to have insufficient evidence of oil, raising serious questions as to the claims of ReconAfrica. In addition, according to residents of the Kavango East Region, the employment promises of the company have been overstated, and only a small number of Kavango and no San have been able to obtain jobs from the company. Kavango and Khwe villagers in Kavango East Region reported that some of their wells were drying up due, they assumed, to the fracking activities of the company. They also said that some villagers had been dispossessed, contravening Namibian government statements that no resettlement would take place as a result of ReconAfrica activities. By the end of 2022, the ReconAfrica stock price on the Canadian stock exchange had fallen by 78% and investors were taking legal action against the company.

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, Poverty Eradication and Social Welfare (MGEPESW) 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. Gender-based violence (GBV) was on the increase in 2022, in part due to the social transformations brought about by the COVID-19 pandemic. This was true in the Indigenous communities in Namibia in 2022. The Combating of Rape Amendment Bill 2022 was tabled in the Namibian Parliament on 22 February 2022. The Committee on the Elimination of Discrimination Against Women (CEDAW) congratulated Namibia for its adoption of its First National Action Plan on Women, Peace, and Security (17 June 2022).[14] CEDAW also noted that Namibia had one of the highest percentages of women in its national parliament.

Unfortunately, there were no Indigenous women in Parliament but there were Indigenous women in the management committees of communal conservancies and village-level organisations such as water committees and Parent-Teacher Associations.

Conclusions

According to President Hage Geingob and reports from the Namibian Parliament, Namibia was on the rebound economically in 2022. The country had resolved some of its economic problems and had sought to diversify its economy. Namibian representatives played a leading role in discussions about climate change at the meetings of COP 27 related to the United Nations Framework Convention for Climate Change (UNFCCC) held in Egypt from 6-16 November 2022. Namibian Indigenous representatives attended this meeting and held discussions with Indigenous representatives from other countries, including Botswana. Namibia also had substantive talks about world economic issues at the United Nations and other forums in 2022. Indigenous Peoples and Marginalised Communities in Namibia were hopeful that their status would improve in the coming years.

Notes and references

1. Geingob, Hage G. 2022 8th State of the Nation Address, 6 April 2022. Windhoek: Government of the Republic of Namibia.
2. Ibid, p. 32.
3. These NGOs included the Legal Assistance Centre, Integrated Rural Development and Nature Conservation, the Nyae Nyae Foundation of Namibia, and the Red Cross and Red Crescent Society of Namibia.
4. Namibia Tourism Board data,www.visitnamibia.com, 15 January 2023. Also, Ministry of Environment, Forestry and Tourism, www.meft.gov.na. accessed 30 January 2023. Specific information can be found in "Hope for the tourism sector, as Namibia records 37.6% growth in tourist arrivals", 7 July 2022.
5. International Union for Conservation of Nature (IUCN) website, www.iucn.org, accessed 15 December 2022. See, in particular, a side event, 7 December 2022 entitled: Inclusive and effective implementation of draft target 3: Lessons learnt from past country experiences. www.iiucn/org/events
6. Namibian Association of Community-Based Natural Resource Management Support Organizations (NASCO), www.nasco.or.na, accessed 18 December 2022.
7. Information from the Nyae Nyae Conservancy and the Nyae Nyae Development Foundation of Namibia, 29 December 2022.
8. Menges, Werner 2022 San group appeal in Etosha rights case fails. *The Namibian* 19 March 2022.
9. Van Wyk, Corinna 2022 Bwabwata National Park – The Khwe must be heard. Windhoek: Legal Assistance Center, 5 April 2022.
10. Fisch, Maria 2022. The Hambukushu of Namibia's Kavango Region: A Comprehensive History. Windhoek: Namibia Scientific Society/Kuiseb Publishers.

11. Miyamoto, Kana 2022 Traditional authorities, legal power and land disputes in north-west Namibia, Anthropology Southern Africa, 45(1):16-29.
12. Odendaal, Willem 2022 The Tsumib Judgments and their Implications for Asserting Ancestral Land Rights in Namibia. *Namibian Journal of Social Justice* 2:210-215.
13. Information from the Namibia Nature Foundation and the Namibian parliamentary standing committee on natural resources, 18 October 2022.
14. Report of the Committee on the Elimination of Discrimination Against Women, Geneva, 17 June 2022. https://www.ohchr.org/en/news/2022/06/experts-committee-elimination-discrimination-against-women-congratulate-namibia

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

Benjamin Begbie-Clench *is a freelance consultant who has done extensive work on San issues in Southern Africa, benbegbie@gmail.com*

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 Khoe-San (also spelled Khoi-san, Khoesan, Khoisan), comprising the San and the Khoikhoi. The main San groups include the ‡Khomani San, who reside mainly in the Kalahari region, and the Khwe and!Xun who reside mainly in Platfontein, Kimberley. The 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 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 recognized 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.

Responding to draft South African policies on sustainable use of wildlife

The South African Department of Forestry, Fisheries and the Environment (DFFE) released the Draft White Paper on Conservation and Sustainable Use of South Africa's Diversity (hereinafter, White

Paper) and the related Draft Game Meat Strategy for South Africa (hereinafter, Game Meat Strategy) for comment in mid-2022. The purpose of the White Paper was to create an overarching policy environment for the sustainable use of plants and animals in South Africa. The Game Meat Strategy was a more detailed proposal to promote the production of game meat for human consumption and to make the game ranching industry in South Africa more inclusive.

In response to the government's call for comments on both documents, the Elsie Vaalbooi Development Organization (EVDO, representing San people from the Kalahari), the Wupperthal Original Rooibos Co-Op (KhoiKhoi and San people) and the National Khoi-San Council submitted letters in support of a technical submission from Resource Africa.[1] The Community Leaders Network of Southern Africa (CLN), which represents rural communities that include Indigenous Peoples' groups, also provided support for this submission. The key points that were highlighted in the Resource Africa submission and endorsed through the support letters of the Indigenous communities were: 1) the need to develop community-based natural resource management (CBNRM) in South Africa; 2) the historic and current reliance of Indigenous Peoples' groups on the sustainable use of plants and animals for their livelihoods; 3) the need for Free, Prior and Informed Consent (FPIC) to be adhered to by government in the process of making new policies; and 4) the need for current policies to reflect the South African Constitution insofar as it supports the legal principle of sustainable use.

These letters called for the government to learn from neighbouring countries that have implemented CBNRM as a policy that promotes sustainable development and nature conservation in rural areas. The Draft White Paper referred to communities largely as passive recipients of the benefits derived from the sustainable use of biodiversity. This approach fails to recognize rural communities as the primary custodians of wildlife and the traditional customs of Indigenous people that have regulated harvesting and hunting to ensure long-term sustainability.

The concept of CBNRM, by contrast, puts communities at the centre of conservation and allows them to draw on traditional practices of sustainable use in their wildlife management strategies. Since Namibia, Botswana, Zambia and Zimbabwe all have long-running CBNRM programmes and policies to support this concept, the South African gov-

ernment can learn from these to develop CBNRM nationally.

The history of South Africa was marked by a lack of FPIC under the apartheid government when making decisions on where and how Indigenous people and local communities were allowed to live. People were thus dispossessed of their rights to use natural resources based on their traditional practices, as these were considered to be State property. Article 24(b) of the new South African Constitution is clear that all South Africans have the right to "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development". It is in this spirit that these institutions reminded the South African government of their rights to natural resources.

While the government took into account the recommendations of several experts, non-governmental organizations and industry stakeholders when drafting the White Paper and Game Meat Strategy, prior to this call for comments there was no opportunity for Indigenous people and local communities to contribute to this process.

Indigenous heritage - Two Rivers

The African headquarters of Amazon is being constructed[2] at a site of historical and cultural significance for the KhoeSan 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 recognize the importance of this site to the KhoeSan, Indigenous groups are divided over whether or not this development should go ahead.

The Western Cape First Nations Collective (WCFNC) a registered Indigenous umbrella body of Khoikhoi organizations,[3] which represents several KhoiKhoi and San people connected to the historical five groups (Gorinhaiqua, Gorachouqua, Cochoqua, Korana, Griqua Royal House, San Royal House of NIIn‡e), is in favour of the development. They confirmed that it has been participatory and inclusive of their collective voices, and they stated that all affected stakeholders had had the 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,[4] as chair of WCF-NC, stated that they supported this development in the interests of their people, seeing this new heritage centre as a place of anchorage for the KhoeSan people where they can reclaim the story of their own history and traditions.

However, other First Nations organizations[5] have joined activist groups that oppose the development and which, in August 2021, filed a court case aimed at halting construction at the site. The Goringhaicona Khoi Khoin Indigenous Tribal Council (GKKITC) opposed the development on the grounds that the area is of intangible heritage and should not be destroyed. The River Club, where the development is currently being constructed, sits at the confluence of the Black and Liesbeek rivers – an area considered sacred by the First Nation people as a result of the Battle of the Gorinhaiqua, which saw the Khoi group kill the Portuguese Viceroy Francisco de Almeida, who had raided the First Nations' cattle.

In November 2022, the Cape Town High Court dismissed an earlier decision to ban the development. The court concluded that the Goringhaicona Khoi Khoin Indigenous Traditional Council's (which forms part of the First Nations Organizations opposing Amazon's development) High Commissioner Tauriq Jenkins had "misrepresented" the Goringhaicona Khoi Khoin's constitution and therefore had no authority to bring an application in their name. Court papers and the ruling show that some members of the GKKITC said they had not given Jenkins the authority to pursue the case legally in their name, while another said he had been made to sign forms he did not quite comprehend. Others also claimed not to know or ever have met Jenkins.[6] The court found it was clear the decision was based on misrepresentation.

The Western Cape First Nations Collective Chair, Zenzile Khoisan, stated

> *..... our position to exercise the right of Indigenous cultural agency has been vindicated by the courts because what we have done is to engage with the developer to do what the South African government has failed to over more than three decades of democracy.*[7]

It remains to be seen if other parties will institute further proceedings to oppose the development.

Knoflokskraal, Grabouw-KhoeSan communities reclaiming ancestral land in the Western Cape

The process of land reform in South Africa is meant to bring justice, restore dignity and foster equity after systemic land dispossession under apartheid and colonialism. This process has, however, been delayed and has largely excluded the KhoeSan people, who were dispossessed of their land prior to the apartheid era during early colonial periods.[8]

The continued land reform exclusions resulted in some KhoeSan communities taking action by reclaiming ancestral lands in some parts of the Western Cape, thus forming settlements on State land that are considered illegal by the government.

In recent years, the Cochoqua Tribal Council, with the Chainouqua, Hessequa and Outeniqua!Xam groups, has attempted to occupy lands in 67 different sites across the Western Cape province.[9] The government has blocked the settlement of many of these areas by obtaining court bans and arresting settlers. Communities are hoping that their settlements will finally result in the government acting on its promises for land restitution to historically displaced Indigenous Peoples' 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 Government Department of Public Works.[10] Their community leader states that there is evidence that their ancestors occupied this land prior to colonization.

Despite not having access to basic amenities such as water and electricity, the community continues to be determined to reclaim its ancestral land from the government. During 2022, the South African Parliamentary Portfolio Committee was briefed by the South African Police and the Department of Forestry, Fisheries and the Environment on the land invasions into the Grabouw forest area. The parliamentary committee questioned the police about the number of cases opened and how they were dealing with these "invaders". The Indigenous community, for their part, is continuing its struggle for secure tenure to their ancestral lands found within the Grabouw forestry area.[11]

Traditional and Khoisan Leadership Act

In March, the Commission on Khoi-San Matters under the Department of Traditional Affairs launched an awareness campaign about the application process for Khoi -San communities and leaders who wish to be recognized as such under the Traditional and Khoi-San Leadership Act of 2019.[12] The campaign focused on engaging communities in the application process, criteria for qualification, application forms, and other provisions of the act concerning applications, including the timeframes within which applications for recognition can be submitted and processed. The campaign was linked to the opening of the application process. Prospective applicants will have two years to submit their applications to the commission. Applications will close on 29 March 2024.

Chaired by Prof. Nico Adam Botha, the commission was established in 2021 with the purpose of assisting the government in the recognition process of Khoi-San communities and leaders. The commission investigates applications for recognition and makes recommendations to the minister responsible for traditional and Khoi-San leadership.[13]

As the government is in the process of operationalizing the act through the opening of the application process, some civil society organizations and Khoi-San leaders are criticizing and even opposing the act. Some argue that the act is flawed when it comes to protecting the customary and informal land rights of communities living in communal land areas and lacks tools that would permit rural citizens to hold traditional authorities accountable.[14] Others challenge the very requirement for Khoi-San communities to go through a process of application for recognition.[15]

Notes and references

1. Ms Jansen, an author of this paper, is the CEO of Resource Africa.
2. Charles, Marvin. "Court battle looms over R4 billion redevelopment of the River Club in Cape Town." News24, 4 August 2021, https://www.news24.com/news24/southafrica/news/court-battle-looms-over-r4-billion-redevelopment-of-the-river-club-in-cape-town-20210804
3. YouTube. "Western Cape First Nations Collective on the River Club development." Ian Landsberg, 31 January 2022, https://www.youtube.com/watch?v=JpsznVmEXvw
4. "Khoi and San divided over River Club Development in Cape Town." eNCA News,

27 September 2021, https://www.youtube.com/watch?v=HmkIzUuwfFQ
5. Liesbeek Action Campaign. "Organisations Leading on Legal Action." https://www.liesbeek.org/organisations-opposing-the-development
6. Ngcuka.O. Daily Maverick: "First Nations Group opposed to Amazon Headquarters Project Appeals Recent Court Judgement." 7 December 2022, https://www.dailymaverick.co.za/article/2022-12-07-first-nations-group-opposed-to-amazon-headquarters-project-appeals-recent-court-judgment/
7. Williams, Rafieka. "Victory for Amazon HQ developers after River Club judgment rescinded based on fraud." IOL, 9 November 2022, https://www.iol.co.za/capeargus/news/victory-for-amazon-hq-developers-after-river-club-judgment-rescinded-based-on-fraud-92e70d2c-0881-44cd-8f0d-6ab7e704a1c3
8. Jansen, Lesle. "South Africa." In The Indigenous World 2021, edited by Dwayne Mamo, pp. 132-138. Copenhagen: International Work Group for Indigenous Affairs (IWGIA), 2021, The Indigenous World 2021: South Africa - IWGIA - International Work Group for Indigenous Affairs
9. Thebus, Shakirah. "Khoisan continue with land reclaiming in the Western Cape despite some pushback." IOL News, 11 January 2021, https://www.iol.co.za/capeargus/news/khoisan-continue-with-land-reclaiming-in-the-western-cape-despite-some-pushback-433f0e91-e13c-4685-aa11-137b7878dea9
10. "The people of Knoflokskraal will not leave 'the land that belongs to their ancestors.'" Newzroom Afrika, 24 October 2021, https://www.youtube.com/watch?v=fJyxxdKezR8
11. Parliamentary Monitoring Group. "Land invasions at 'Knoflokskraal' site in the Grabouw plantation: follow-up engagement with Ministers." 25 October 2022, https://pmg.org.za/committee-meeting/35827/
12. Jansen, Lesle.
13. Government Gazetter. Department of Traditional Affairs. Notice 1207 of 2022. Invitation to nominate persons to be considered as members of commission on Khoi-San matters." 5 August 2022, https://www.gov.za/sites/default/files/gcis_document/202208/47197gen1207.pdf
14. "STOP THE BANTUSTANS CAMPAIGN: Taking the Traditional and Khoi-San Leadership Act 3 of 2019 to court." https://lrc.org.za/wp-content/uploads/LRC-TKLA-englishWEB.pdf
15. Pongco, Siyamthanda. "Khoi-San Leadership Act 'writes SA's first indigenous people out of history'." Grocotts Mail, 20 April 2022, https://grocotts.ru.ac.za/2022/04/20/khoi-san-leadership-act-writes-sas-first-indigenous-people-out-of-history/

Lesle Jansen *is Head of Indigenous Peoples & Local Communities Resource Rights at Jamma International. She is from South Africa and based in Cape Town. She is also an Indigenous lawyer serving on the African Commission's Working Group on Indigenous Populations and Minorities in Africa.*

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

Tanzania

DEMOCRATIC REPUBLIC OF THE CONGO
UGANDA
KENYA
RWANDA
BURUNDI
TANZANIA
Dar es Salaam
ZAMBIA
MOZAMBIQUE
MALAWI

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

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

Expansion of conservation areas

The expansion of conservation areas in Tanzania is the one of the main drivers of conflicts, forced evictions and land dispossession of Indigenous Peoples in Tanzania. The situation is worse than ever. There is a strong anti-pastoralist discourse in the country, and pastoralists are being blamed for many problems, including land degradation, wildlife decline and water shortages. Pastoralists all over

Tanzania are being harassed, arrested, and forcibly evicted from their lands. They are being heavily fined for trespassing into wildlife conservation areas, and their livestock are being confiscated. All this leads to massive impoverishment and food insecurity.

The Loliondo evictions

The issue of Loliondo and Ngorongoro captured both local and international attention in 2022 especially from June 2022 onwards. On 10 June 2022, the government launched a forcible eviction of pastoralists from 14 villages in Loliondo and Sale Divisions of Ngorongoro District. In Ololosokwan village, the government deployed military, police and rangers from the Ministry of Natural Resources and Tourism. Villagers attempted to peacefully resist being evicted. However, a deadly confrontation ensued. This led to an infamous shoot-out, which left dozens of Maasai people wounded, including children, women and the elderly.

The forcible eviction was linked to an operation to annex 1,502 km^2 of village land in Loliondo. This was done through Government Notice No 421 signed by the Minister for Natural Resources and Tourism in order to establish the Pololeti Game Controlled Area (PGCA) and Government Notice No.604 of 2022 signed by the President, upgrading the Pololeti Game Controlled Area (PGCA) to the Pololeti Game Reserve (PGR). These acts contravene the Constitution of Tanzania of 1977, the Land Act No.4 of 1999, the Village Land Act No.5 of 1999 and the Wildlife Conservation Act No.5 of 2009, among others.

An estimated 500 Indigenous Maasai pastoralists fled their homes in the wake of 10 June. Even to date, residents in Loliondo live under threat of the security forces who continue to arbitrarily arrest, interrogate and intimidate people in order to prevent them from demanding their human, land and natural resource rights.

In relation to the June 2022 evictions, gender-based violence was committed by military and police officers who abducted women and girls and subjected them to sexual harassment, including rape in Njoroi and Mairowa villages. Other members of the community, including men and young men, were stripped naked and left to flee in a state of humiliation. Men opted to sleep away from their homes for fear of being abducted, harassed and detained.

A total of 240 homesteads were demolished, rendering an approximately 600 women, children, young men and men homeless. It was very difficult to get these issues reported due to media censorship. It is estimated that around 76 young men were arrested and had their smartphones confiscated by security forces to ensure that the violations of human, land and natural resource rights would not reach the media.

The annexation of the 1,502 km^2 of land for the purpose of wildlife conservation by establishing the Pololeti Game Reserve denied 14 villages and nine wards of Loliondo and Sale Divisions in Ngorongoro District access to vital grazing resources: pasture, salt leaks and water. This created huge land-use conflicts between Indigenous Maasai pastoralists and the wildlife conservation authorities. Livestock entering the recently demarcated 1,502 km^2 area that has been declared the Pololeti Game Reserve are captured and auctioned without consideration that the illegally grabbed land was crucial dry season grazing for pastoralists, which they badly need during the dry times of the year. Pastoralism in Loliondo and Sale divisions has thus been curtailed by wildlife conservation, and some villages such as Arash, Piyaya and Malambo have lost around 90% of their village land, including grazing land.

The annexation of the 1,502 km^2 of land to the Pololeti Game Reserve has seriously affected the villages of Ololosokwan, Kirtalo, Oloipiri, Lopolun, Maaloni, Piyaya, Arash, Orkuyaine, Enkobereti, Olalaa, Mnuken, Olmanie, Oloirien, Losoitok, and Malambo. The villages were all legally registered as village land before the Pololeti Game Reserve came into existence.

The June 2022 annexation of the village lands has negatively impacted Indigenous pastoralists who have been caught grazing on what were their previous village grazing lands. It is estimated that more than 11,000 livestock have been caught by game rangers in the newly established Pololeti Game Reserve, and that pastoralists have to date been forced to pay fines amounting to USD 287,500. These acts can be perceived as an outright attempt by the government to impoverish the Indigenous Maasai pastoralists of Loliondo and Sale divisions in the name of wildlife conservation and big game hunting for fun.

The increasing levels of poverty have led more than 70 Maasai children from Loliondo and Sale who were studying both in Tanzania and Kenya to drop out of school due to the inability of their parents to meet the costs of their education following the eviction operation.

One 70-year-old man – Oriais Oleng'iyo – disappeared without trace during the evictions. He was last seen badly wounded by bullets and being held by the security forces. His tormented family is still looking for him in vain.

Twenty-seven Indigenous Loliondo pastoralists were charged with murder and conspiracy to murder a police officer on 15 June 2022. Three of them were subsequently released. In November 2022, after six months of litigation and advocacy interventions, the Director of Public Prosecutions (DPP) failed to produce evidence on the case. The then State Prosecutor, Upendo Shemkole, told the court that the DPP had no intention of pursuing the case further, a decision that resulted in the unconditional release of the remaining 24 accused pastoralists by the High Court of Tanzania. Cries of joy were heard in the High Court grounds when this was announced.[3]

The situation in the Ngorongoro Conservation Area

A programme to evict Indigenous Maasai pastoralists from the Ngorongoro Conservation Area (NCA) to Msomera, Lengusero, Saunyi, Kitwai B and Kitwai A villages in Handeni, Kilindi and Simanjiro districts in Tanga and Manyara regions is underway. Over 3,000 Indigenous Maasai and Barabaig pastoralists, together with their livestock, have already been relocated from the NCA to Msomera village. This relocation has created land-use conflicts between the Indigenous Maasai pastoralists from Ngorongoro and the residents of Msomera village.[4] Apart from the relocation being in violation of the human, land and natural resources rights of NCA Indigenous Maasai pastoralists, it is also creating new problems for the resident Indigenous Maasai pastoralists of Msomera, and the Government of Tanzania, the Ministry of Natural Resources and Tourism (MNRT) and the Ngorongoro Conservation Area Authority (NCAA) are escalating the problem rather than resolving it.

To support and speed up the process to evict Indigenous Maasai pastoralists from the NCA, the government, MNRT and NCAA, in collaboration with several other ministries, are working to eliminate pastoralists' access to social and economic services in the NCA in order to make life unbearable and thus push people to leave. Civil society organizations' efforts to engage communities in legal advocacy to defend their human, land and resource rights are also being frustrated.[5]

Drought and violations of human rights around Protected Areas

The rainfall in the rainy season 2021/22 was almost non-existent across much of Tanzania. Wild animals, including but not limited to herds of elephants, invaded villages inhabited predominantly by Indigenous Peoples. Wild and domestic animals shared the rangeland and this, combined with drought, led to the rapid depletion of pastures and water in the villages.

Wildlife conservation laws in Tanzania are extremely biased in favour of wildlife. These laws include the Wildlife Conservation Act No.5 of 2009, the National Parks Act [Cap 282 R.E. 2002], and the Forest Act and Ngorongoro Conservation Area Act 284. With the exception of the Ngorongoro Conservation Area, livestock are prohibited from entering into wildlife preserved areas in Tanzania, and breaching these laws leads to severe punishment.

Expansion of the Ruaha National Park

The Ruaha National Park was established in 1964, and its original size was 6,078 km^2. On 24 July 1998 it was expanded to 4,148 km^2 and several villages were forcibly evicted in the process. On 20 June 2006, the Usangu Game Reserve was incorporated, and this expanded the Ruaha National Park to 10,226 km^2.

On 15 December 2007, the Ruaha National Park was once again extended to 20,266 km^2. This was after the parliament of Tanzania had approved an unlawful annexation of 10,000 km^2 of land belonging to 48 villages.[6] The government did not seek the Free, Prior and Informed Consent (FPIC) of these villages.

On 25 October 2022, at a rally held in Ubaruku Town, Mbarali District, the Minister for Lands, Housing and Settlements Development, Angelina Mabula, ordered the 48 villages that were supposed to have encroached into the Ruaha National Park to leave immediately. The minister, in a very intimidating way, warned the "trespassers" to start leaving the park.[7] All the villages the minister is accusing of being within the park are, without exception, legally registered as corporate bod-

ies under the Local Government Act No.7 (District Authorities) of 1982. This registration gives the village council jurisdiction to exercise powers within the boundaries of the registered area. The villages are also registered as village land under the Village Land Act.

Right after minister Mabula had spoken, the Deputy Minister for Livestock and Fisheries, Abdalah Ulega, told the frightened audience that the pastoralists would be relocated to an area of some 44,000 ha on the Usangu Ranch.[8] Other people are already living on this ranch, and the area is much smaller than the village lands that the pastoralists will be evicted from.

The government is arguing for the expansion of the Ruaha National Park by referring to the drying up of the Great Ruaha River. The Great Ruaha River is increasingly becoming seasonal, and the river has for decades stopped flowing for several months. The situation is becoming worse, and consequently the fauna and flora in the Ruaha National Park and beyond are paying a very high price. This crisis is also causing hydropower shortages. Pastoralists have been wrongly accused and grievously punished for the drying up of the river. In 2006/7, the State unleashed its armed forces to evict pastoralists from Mbarali District in relation to this issue. And the State has repeatedly continued to breach laws, the constitution and international legal frameworks, wrongly physically assaulting pastoralists and dispossessing them of their livestock.

Park rangers use the opportunity to enrich themselves via the eviction exercise (extortion of illegal "fines" and seizing of livestock) and they kill people with impunity. Armed militias are also involved. They have raided hundreds of livestock found near water sources, and when pastoralists try to take their livestock back, they are killed or injured. The government is using the drought and water crisis to create negativity and hatred towards the pastoralists, and now the pastoralists are becoming scared of bringing their livestock to the water sources.

Expansion of Tarangire National Park

The Tarangire National Park was established in 1970 by evicting Maasai pastoralists. Through Government Notice No.160, the area of the park was established at 2,600 km^2. The State has subsequently been arbitrarily expanding this park by annexing land belonging to many villages,

and today the park stands at 2,850km^2. The authorities want to further expand the national park by 100 km onto village land for wildlife protection, and the Maasai people (more than 2,000) and their livestock have been given a few days' notice to move out. The people are refusing to move, and there is a huge conflict, in which people have been arrested, shot and livestock has been confiscated.

Killings of Indigenous Peoples with impunity

On 5 July 2022, in Mwanga District, Kilimanjaro Region, rangers from Mkomazi National Park fatally shot 17-year-old Ngaitepa Marias Lukumay. This generated unprecedented condemnation especially from the social media. The pressure became unbearable for TANAPA (Tanzania National Parks), a parastatal which manages the park. It was forced to issue a public apology on 12 July 2022. No action was taken against the known suspects. Too often the rangers shoot, injure and kill villagers and get away with it. Allegedly the deceased attempted to prevent the rangers from seizing the animals he was herding.

The East African Crude Oil Pipeline and the Akie hunter-gatherers

The East African Crude Oil Pipeline Project (EACOP) is a pipeline that will transport oil produced from Lake Albert oilfields in Uganda to the port of Tanga in Tanzania. EACOP promises on its website that: "The pipeline is buried and once topsoil and vegetation have been re-instated people and animals will be able to cross freely anywhere along its length."

EACOP will traverse the land of Indigenous Peoples such as the Akie. The Akie hunter-gatherer community of Kiteto District, Manyara Region, continued to engage with the EACOP in 2022. The oil pipeline will run through some of their sacred sites, and the Akie community was consulted regarding the reallocation of these sites. The EACOP project facilitated plans for reallocation, and the Akie community members welcomed this and considered the plans ideal. The process was done through a Free, Prior and Informed Consent (FPIC) document, which

was also brought before civil society organizations, namely PAICODEO, UCRT and PINGO's Forum for review and it was translated for the Akie community before the signing of a Memorandum of Understanding between the Akie and EACOP. The organizations sat down with representatives of the Akie and went through the FPIC document together, sharing the meaning of FPIC principles and how this will be effective for them.

Notes and references

1. National Bureau of Statistics and Office of Chief Government Statistician. "2012 Population and Housing Census: Population Distribution by Administrative Areas." March 2013, https://www.nbs.go.tz/index.php/en/census-surveys/population-and-housing-census/162-2012-phc-population-distribution-by-administrative-areas
2. Other sources estimate the Hadzabe at between 1,000-1,500 people. See, for instance: Madsen, Andrew. "The Hadzabe of Tanzania: Land and Human Rights for a Hunter-Gatherer Community." Copenhagen: IWGIA, 2000
3. Please see the online media article https://youtu.be/sAB4HeJ65aw on the release of the Loliondo 24 accused of murder and conspiracy to murder a police officer during the human, land and natural resources rights conflicts to resist the annexation of 1, 500 km^2 of land into PGCA – PGR. Last accessed 17 December 2022
4. "Fact Finding Report. Field Research at the Resettlement Site - Msomera Village In Handeni District, Tanzania." Oakland Institute, 2022, https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/pdfpreview/field_research_msomera_resettlement_site_october_2022.pdf
5. Traditional Land Use, Seasonal Livestock Movement and Culturally Critical Resources in Ngorongoro, Sale and Loliondo Divisions Report. Ministry of Natural Resources and Tourism, 12 December 2022.
6. Ofisi ya Mkuu wa Wilaya ya Mbarali. "Taarifa ya Uhamasishaji na Utambuzi wa Hifadhi ya Taifa ya Ruaha na Vijiji vya Wilaya ya Mbarali Kuanzia Tarehe." 19 January-13 February 2017, pp 1.
7. 7 Jamhuri of Dar Es Salaam, 26 November 2022
8. YouTube. "Waziri Ulega Kwa Uchungu Akubali Wafugaji Waondoke Bonde La Ihefu 'Sio Kila Shari Ni Shari Tuondoke', Global TV Online, https://www.youtube.com/watch?v=HEq_r8uN9rw

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-Maastrict 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 Arabization. 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 Arabs.

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, recognize 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 civilization 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.

A new Constitution for Tunisia that continues to deny the existence of the Amazigh

After President Kais Essaid suspended Parliament on 25 July 2021 and dismissed the Islamist party (Ennahda)-dominated government, he scheduled a constitutional referendum and new parliamentary elections in 2022.

A new Constitution was therefore proposed and adopted by popular referendum on 25 July 2022.[1] For the Amazigh, the Indigenous people of Tunisia, this new text does nothing new to recognize them or their rights. Tunisia clearly excludes its Amazigh component and does not recognize any diversity. Tunisia is defined as "a unitary state" (Article 4) that "forms part of the Islamic nation" (Article 5) and "part of the Arab nation". "The official language is Arabic" (Article 6) and it also forms "part of the great Arab Maghreb" (Article 7). The Amazigh people of Tunisia are not even mentioned in the preamble to the new Constitution. Officially, therefore, the Amazigh of this country do not exist and have never existed and, consequently, no specific rights can be recognized to them. Tunisia thus confirms its denial of the Indigenous Amazigh people of this country.

However, in 2016, taking into consideration the alternative reports of NGOs,[2] the Committee on Economic, Social and Cultural Rights recommended that Tunisia recognize the language and culture of the In-

digenous Amazigh people and ensure its protection and promotion, as requested by the Committee on the Elimination of Racial Discrimination in 2009. The committee also asked the State party to collect, on the basis of self-identification, statistics broken down by ethnic and cultural affiliation; to take administrative and legislative measures to ensure the teaching of the Amazigh language at all school levels; to encourage a knowledge of Amazigh history and culture; and to facilitate the smooth running of cultural activities organized by Amazigh cultural associations.[3]

To date, none of these recommendations have been acted upon. Tunisia is content merely to use some aspects of the Indigenous Amazigh culture (Berber carpets, jewellery, festivals, in particular) as a tourist attraction.

Tunisia faces its fourth Universal Periodic Review (UPR)

Tunisia submitted its fourth report to the UPR Committee in November 2022. Most of the comments focused on the themes of democracy and the excessive concentration of power in the hands of the Head of State, together with the narrowing of freedoms due to increasingly restrictive legislation.

With regard to the Amazigh community in Tunisia, the recommendations were limited to guaranteeing the right of Amazigh children to an intercultural and bilingual education that respects their culture and traditions, in particular by incorporating Tamazight as a second language in school, and to take measures, in cooperation with Amazigh cultural associations, to enhance and make Amazigh cultural practices better known.[4, 5] These recommendations are the same as those made to the Tunisian government in 2021 by the Committee on the Rights of the Child (CRC/C/TUN/CO/4-6).

Nature conservation and protected areas

Protected areas in Tunisia are of recent creation (1977) and are under the supervision of two different administrations: the Ministry of Agri-

culture and the Ministry of the Environment. Other ministries, such as those of Economic Development, Finance, Defence, Equipment and Housing, and Tourism are, however, also involved in conservation policy to varying degrees. The legislation concerning the conservation of biodiversity and protected areas comprises the Forestry Code of 1988 and Law No. 2009-49 of 21 July 2009. [6, 7]

Tunisia has also signed a significant number of international texts: the Convention on World Cultural and Natural Heritage (1975), the CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora (1975), the African Convention on the Conservation of Nature and Natural Resources (1977), the Ramsar Convention on Wetlands of International Importance (1981), the Barcelona Protocol on Specially Protected Areas in the Mediterranean (1983), the Bonn Convention on Migratory Species (1986), the Rio Convention on Biological Diversity (CBD, 1993), the Cartagena Protocol on Biodiversity (2002), the International Treaty on Plant Genetic Resources for Food and Agriculture (2003), and the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (AEWA, 2004).[8] This might lead one to believe that Tunisia attaches high importance to the preservation of nature but the reality is very disappointing.

Tunisia, an arid country with a Mediterranean climate and an average rainfall not exceeding 200 mm/year, is home to slightly more than 7,000 species of terrestrial and aquatic animals and plants. The country has 17 national parks (four of which have been classified as biosphere reserves), 27 nature reserves, four wildlife reserves and 38 wetlands of international importance. They account for 7.18% of the national territory,[9] very far from the 30% target set by the 2022 UN Biodiversity Conference agreement in Montreal.[10, 11]

Despite the stated good intentions, political and social instability as well as a general deterioration in living conditions in Tunisia since the 2011 "revolution" have prevented sufficient awareness, both at the level of government and society, of the crucial issue of preserving the country's natural wealth. The lack of financial resources allocated to managing protected areas, the lack of staff, lack of training, weakness of data collection, poaching, corruption, the lack of involvement of Indigenous communities and climate hazards are all challenges that threaten the survival of this country's animal and plant species. According to biologist and environmental activist, Mohsen Kalboussi:

> *In Tunisia, protected areas management can be summarized in one simple phrase: fence and ban! These bans first affected the communities that were using these areas before they were put under protection (grazing, collection of wood, vegetation, fruits, medicinal plants...). Conflicts broke out at some sites but the administration imposed its choice on the local populations. A compromise could have been reached but it was not even attempted.*[12]

In Tunisia, as elsewhere, the exclusion of Indigenous communities from decisions concerning their natural resources and territories is the main reason for the failure of conservation and nature protection experiments. These communities must be considered key partners and consequently involved right from the early stages of conservation projects on their territories. They will then be able to contribute their knowledge and know-how to the management of an environment that has been theirs for centuries. A balanced solution must be found between an ecological model and a sustainable economic model whereby Indigenous communities will be able to safeguard their subsistence through the positive spin-offs of protected areas (jobs, tourism, sale of local handicrafts, etc.).

Notes and references

1. Constitution of the Tunisian Republic, adopted by referendum on 25 July 2022, http://www.iort.gov.tn/WD120AWP/WD120Awp.exe/CTX_10904-45-niFYFlzLwZ/ConstitutionNew/SYNC_1768356691
2. "Eclatante victoire des Amazighs de Tunisie à l'ONU." Amazigh World Congress, 15 October 2016, https://www.congres-mondial-amazigh.org/2016/10/15/nouvel-article-de-blog/
3. Committee on Economic, Social and Cultural Rights. "Concluding observations on the third periodic report of Tunisia." 14 November 2016, https://www.ecoi.net/en/file/local/1404090/1930_1500474565_g1625454.pdf
4. Report of the Office of the United Nations High Commissioner for Human Rights, 7-18/11/2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/606/32/PDF/G2260632.pdf?OpenElement
5. EPU de Tunisie. "Fiche d´information sur la discrimination contre les minorités et autres groupes marginalisés en Tunisie." November 2022, https://minorityrights.org/wp-content/uploads/2022/10/UPR_Tunisia_Factsheet_FR-MRG.pdf
6. République Tunisienne. Code Forestier et ses textes d'aplication. 2010, http://droit-afrique.com/upload/doc/tunisie/Tunisie-Code-2010-forestier.pdf

7. Loi n. 2009-49 du 20 juillet 2009: Loi n. 2009-49 du 20 juillet 2009, relative aux aires marines et côtières protégées. http://www.citet.nat.tn/Portail/doc/SYRACUSE/42446/loi-n-2009-49-du-20-juillet-2009-loi-n-2009-49-du-20-juillet-2009-relative-aux-aires-marines-et-coti?_lg=en-US
8. Chakroun, B. Houman., Z. Benaissa., and P. Francour. "Situation alarmante des aires protégées tunisiennes pendant la révolution: échec d´une politique de conservation et remède. Quid de la recherche?" Bulletin de la Société zoologique de France 137, 2012, pp33-47, https://www.researchgate.net/publication/258837217_Situation_alarmante_des_aires_protegees_tunisiennes_pendant_la_revolution_Echec_d%27une_politique_de_conservation_et_remedes_Quid_de_la_recherche
9. "Les aires protégées en Tunisie." OENOMED, article 1, September 2021, https://www.enicbcmed.eu/fr/oenomed-met-en-lumiere-le-lien-entre-les-aires-protegees-et-la-viticulture-en-tunisie
10. "UN conference concludes with 'historic' deal to protect a third of the world's biodiversity." UN News, 19 December 2022, https://news.un.org/en/story/2022/12/1131837
11. See also: "COP15: un accord historique." UN, 19 December 2022, https://unric.org/fr/cop15-un-accord-historique/
12. Kalboussi, Mohsen. "Menaces sur les aires protégées en Tunisie." 28 September 2022, https://nawaat.org/2022/09/28/menaces-sur-les-aires-protegees-en-tunisie/

Belkacem Lounes *holds a doctorate 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 United Nations Expert Mechanism on the Rights of Indigenous Peoples, and author of numerous reports and articles on Amazigh and Indigenous Peoples' rights.*

Uganda

SOUTH SUDAN
DEMOCRATIC REPUBLIC OF THE CONGO
UGANDA
Kampala
KENYA
LAKE VICTORIA
RWANDA
TANZANIA

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, the Karamojong and Basongora pastoralists, who are not recognized specifically as Indigenous Peoples by the government.

The Benet, who number slightly over 8,500, live in the north-eastern part of Uganda. The 6,700 or so Batwa 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.[1] 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[2] 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, in addition to 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 envisaged to deal with the historical disadvantages of children, people with disabilities and women, is the basic legal source of affirmative action in favour of Indigenous Peoples in Uganda.[3] The *Land Act* of 1998 and the *National Environment Statute* of 1995 protect customary interests in land and traditional uses of forests. However, these laws also authorize the government to exclude human activities in any forest area by declaring it a protected area, thus nullifying the customary land rights of Indigenous Peoples.[4]

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

Batwa still struggling to claim their rights despite winning court case

Having achieved victory on 19 August 2021 in a case filed in the Constitutional Court against the Uganda government, the Batwa people expected that they would be free to access and use their land from 2022 onwards. However, this was not to be the case. Instead, the government appealed against the judgement and, by the end of 2022, the matter was still before the Supreme Court of Uganda.

The case was brought before the Constitutional Court of Uganda in the name of the United Organization for Batwa Development in Uganda (UOBDU) and 11 individuals from the Batwa people. It was a representative action, meaning that it concerned an injustice suffered by all Batwa caused by their exclusion and evictions from their ancestral lands in the Bwindi, Mgahinga and Echuya forests in the name of conservation, and if successful, would result in a remedy for all those Batwa.

The most important request in the petition was that the Government of Uganda should recognize the Batwa's right to their ancestral lands. The Batwa were never compensated for their exclusion and evic-

tion from their ancestral lands (no financial compensation and no alternative land) and the survival of the Batwa people depends on regaining their connection and rights to their ancestral lands. The petition also called for an agreement to be reached between the Batwa and the government on how to ensure that the forest and biodiversity would continue to be protected. In addition, because revenue is made from the forests (by the government from tourism) the petition called for such revenue to be shared with the Batwa, on the principle that it is only fair that the fruits of any land should rightfully come to those who have a right to that land.

The case was supported by evidence from many sources, not just the petitioners. Authoritative testimony was provided by experts with knowledge of the Batwa culture and way of life, environmental policy, great ape conservation and international human rights law.

Unfortunately, the judgement of the Constitutional Court in favour of the Batwa has done little to improve their human rights. They are still beaten at leisure, threatened and even killed, often with no justification at all, by other dominant tribes. Two Batwa boys were allegedly killed by members of dominant tribes in May and November 2022 over suspicions that they had stolen Irish potatoes. The victim's relatives have been compromised and threatened by the suspected killers and so are unwilling to follow up the matter with the courts of justice. Another Mutwa's house in Kanaba was also burnt down with all his belongings by his landlady in November 2022. This was because he was squatting on her land and had refused to offer the casual labour required by the landowner. Batwa people are usually given land on which to squat and live on for a certain period and, in return, they are supposed to offer casual labour whenever they are called upon. They have no right to deny, and if they do so they will be chased away. The matter in Kanaba was reported to the nearby sub-county police station and the parties were reconciled.

Notwithstanding the 19 August 2021 judgement, the government is already proposing to construct a road through the Bwindi Impenetrable Forest/National Park to Buhoma in Kanungu district, and it also plans to gazette the Echuya Forest Reserve into a national park. It will be recalled that the ownership of both the Bwindi Impenetrable National Park and the Echuya Forest Reserve is still in contention. In none of these developments are the Batwa people consulted or involved and their human rights are continuously being violated thus denying them

their rights as the rightful owners of these lands.

The Batwa are nonetheless still willing and eager to fight for their rights until they fully regain them and so the decision of the Constitutional Court of Uganda only reinforces the will of the community to push relentlessly for their land rights.

The situation of the Benet people

The entirety of 2022 was full of challenges for the Indigenous Benet community. Main areas of concern related to climate change, education, health, land and human rights violations.

Climate change

Climate change manifested itself in unpredictably low rainfall that severely affected food production as well as a reduction in water levels. This meant that communities, especially women and girls, had to travel long distances to access water for household use, while those watering animals also had to travel long distances. This reduced family-level productivity and increased food insecurity.

Education and health

There has been a slight improvement in the education sector with the recruitment of some Benet teachers by the District Education Office. This followed recommendations arising out of the 2021 findings of the data collection by the Benet Mosop Community Association from the six sub-counties of Tuikat, Kwosir, Kitowoi, Benet, Kaseko and Kwoti. The data clearly identified the need to recruit more teachers. And even though more teachers were recruited, the Benet community still feels that the intervention was minimal. School dropout rates remained high notwithstanding this recruitment. This is partly attributed to the fact that distances to schools remain high. In addition, like all other even years, 2022 was a circumcision year in which many boys take part. Many children engage in the rituals and festivities, which interfere with school time resulting in traditionally high dropout rates.

Scant progress was noted in the health sector in terms of improving old structures, with government saying it could do little due to limited funding.

Roads and water

Not much was done in the roads sector. There were no major repairs completed across the whole of Kween district. Neither water source nor infrastructure repairs were undertaken during the year.

Land rights, conservation and human rights abuses

On the land rights of the Benet, the situation has deteriorated. This follows the visit of President Museveni to Kapchorwa on 9 June 2022. During the visit, he made a pronouncement that nobody should be allowed in Mt. Elgon forest, which has been made into a national park. This has presented an extra barrier for the Benet in terms of accessing their ancestral forest land. Consequently, people looking for their means of survival in the forest are being arrested almost on a daily basis by the Uganda Wildlife Authority (UWA).

The Benet community continues to face harassment from a combined force of the UWA and the Uganda Police Force. Working in collaboration, the two forces ensure that anybody arrested by UWA is taken to the police from where they are transferred to court the next day and placed on remand immediately. The authorities have given themselves an illegal right to deny culprits bail on the pretext that the person was found in the forest illegally. In exceptional circumstances, someone may be bailed out after paying anything from UGX 800,000 to UGX 1,000,000 (USD 220 to 275) to the court. UWA continues to fine community members UGX 50,000 (USD 13.50) per cow, UGX 30,000 (USD 8) per goat and UGX 20,000 (USD 5.40) per sheep if they are found to have strayed into the national park. In the case of dogs straying into the park, they are killed. UWA claims to be implementing the provisions of the Wildlife Act of 2019.

People found in the park are arrested by the UWA Rangers, tortured and imprisoned. The latest victim was a 20-year-old boy who was beaten to near death. Over 50 Benet people were arrested in 2022 alone. Three of them are serving sentences in prison.

Legal processes sought by the Benet

In June 2022, Onyango and Company Advocates gathered the views of the Benet community on human rights abuses. As a follow-up, in October they filed a number of cases against the Uganda government at the

Uganda Human Rights Commission Soroti Branch. Other cases were taken to Mbale High Court and the date for hearing was scheduled for January 2023. Some of the cases involve challenging the provisions of the Land Act and Uganda Wildlife Act of 2019. Petitions will be made at the Constitutional Court seeking to amend these laws given that implementing them does not, for the moment, require Free, Prior and Informed Consent (FPIC).

In November 2022, the community considered taking the government to court and sought the services of the Centre for Food and Adequate Living Conditions Lawyers (CEFROTS). The lawyers agreed and a team led by counsel David Kabanda visited the community to assess the magnitude of the crimes committed. The community signed affidavits and the case was filed at Mbale High Court. The case was later withdrawn when a group of lawyers advised that, since there were several cases in one, it would make sense to consolidate them so that they were heard as one.

Other community engagements

Benet women attended the Chepkitale Mount Elgon Kenya meeting on 16th to 20th March 2022. They successfully showcased their song writing. At the end of the meeting, they were admitted to a newly formed women movement called the East African Assemblies. The movement consists of women from the Benet in Uganda, the Chepkitale, Sengwer of Cherangany, Ogiek of Mau, Yaaku of Mukogodo forest in Laikipia northern Kenya and Aweer of Lamu in coastal Kenya, the Maasai of Simanjiro, Loliondo and Ngorongoro in Tanzania, the Batwa of Kisoro, Bundibugyo in Uganda and their counterparts in the Democratic Republic of Congo (DRC). As the movement continues to gain momentum, it is likely that many equally marginalized women will join. Follow up meetings were held from June 16th to 20th and another one from 21st to 25th November. The next one is scheduled for March 2023.

Other progress

With support from the Forest Peoples Programme, the Benet community was represented at the African Protected Areas Congress (APAC) summit in Kigali, Rwanda in July 2022 by David Chemutai, coordinator of the Benet Mosop Indigenous Association. Together with Sharon Chel-

angat, he also represented the community at the session of the African Commission on Human and Peoples' Rights in Banjul, The Gambia from 21-25 October 2022 with support from Amnesty International.

With support from the Slow Food Programme, Sharon Chelangat represented the community in Milan, Italy from 21-28 September 2022.

Six Benet community members were invited by the UWA Executive Director to a meeting on 8 December 2022. After long arguments and cross-examinations, Mr. Charles Mugisha, Deputy Executive Director, the second-in-command and in charge of operations in UWA, was persuaded to accept that the Benet people have Indigenous knowledge of conservation as they used to graze their cattle on the grasslands and preserve the forest and that the community could help stop illegal loggers in collaboration with UWA. The Deputy Executive Director was impressed with the idea and, in response, requested that the Benet Mosop Community Association (BMCA) coordinator write and submit a proposal to UWA focusing on the issues raised. The proposal has since been submitted and the community is waiting to hear from UWA.

Meetings were held between the Benet community, the Uganda Human Rights Commission (UHRC) and the UN Office of the High Commissioner for Human Rights on 14 and 15 December 2022. UHRC promised to follow up on the Memorandum of Understanding announced by the Northern Uganda Vice-Chair of the ruling National Resistance Movement Party (NRM) Hon. Mike Mukula two years ago, in which many promises – including access to land and resettlement – were made but which have hitherto not been implemented.

The situation in Karamoja

The Karamojong and conservation: the state of human-wildlife conflict in Karamoja

According to 2010 information from the Uganda Wildlife Authority, *40.8%* of all land in Karamoja falls under protected and conservation areas.[5] However, according to the National Land Policy, the proportion currently under conservation in Karamoja is 53.8%.

In 2022 there were serious challenges of human-wildlife conflicts coupled with cattle rustling – all of which affected the local peoples

of Karamoja, especially communities around the conservation and protected areas of Kidepo and Kidepo Valley National Park. These human-wildlife conflicts led to the loss of lives, property and land belonging to the local communities, including the Dodoth of Kaabong district, Ethur of Abim district, Napore, Nyangea and Mening of Karenga district, and Jie of Kotido district.

The routine animal counts in Kidepo in June 2022 indicated that over 400 elephants occupy the community land and roam between the Sangar, Sidok, Kakmar, and Loyoro areas. In 2022 alone, more than 10 people lost their lives to buffaloes and elephants and over 38 people were injured by elephants and buffaloes in the Karenga community wildlife area.

The peoples most affected by human-wildlife conflicts are: the peasant farmers and pastoralists of Karenga district (Lokori, Lobalangit, Kalimon, Sangar, and Kawalakol); the agro-pastoralists communities of Kaabong district (Sidok, Lobongia, Kakamar, Lolelia south, Loyoro, and Lolelia main); Kotido district (Kaicheri and Kapeta sub counties); Abim district (Camukok, Atunag, and Alerk sub counties); Kitgum district (Orom East, Akurumo, and Namokora); and Agago district (Adilang, Paimol, Kaket, and Lapono sub counties). The extent of destruction and loss is highest in the districts of Kaabong and Karenga. During the 2022 food crisis situation in Karamoja, about 100 hectares of various crops in the Kaabong and Kotido districts were lost to wildlife, forcing many local communities to migrate to urban centers.

Community and land conservation in Karenga District

In the past, the Government of Uganda gazzetted over 956 km^2 of community land into what it called the Karenga Community Wildlife Area (KCWA). The area in question cuts across three districts: Karenga, Kotido, and Agago. The community as of now is struggling to get back the stretch of the land from the government.

Compensation for human-wildlife conflicts

The 2019 Wildlife Act as amended, states that the Government of Uganda will compensate for the lives and property lost to wildlife destruction with communities around protected areas. In 2022, Kidepo Valley National Park (KVNP) and Karenga Community Wildlife Area (KCWA) registered the highest number of communy lives and property destroyed,

mainly by elephants.

However, as much as the law is clear on compensation, it also states that, "one should have protected his or her property before wild animal destruction".[6] Protection in this case is defined to include fencing and defending your life and property before destruction. This limits the actual extent of compensation.

The Karenga, Kaabong, Abim, Kitgum, Kotido, and Agago Community Wildlife Association (KKAKKA CWA) is working towards building a fund to elevate extremely vulnerable households (those comprising women, children, and youth) in those districts by providing a small fund and food items/grains as compensation for lost livelihoods.

Notes and references

1. United Organization of Batwa Development in Uganda (UOBDU). Report about Batwa data. August 2004, p.3.
2. Uganda Bureau of Statistics. 2018 Statistical Abstract. May 2019, https://www.ubos.org/wp-content/uploads/publications/05_2019STATISTICAL_ABSTRACT_2018.pdf
3. Baker, Dr. Wairama G. "Uganda: The marginalization of Minorities." Minority Rights Group International (MRG), 3 December 2001, p.9, https://minorityrights.org/publications/uganda-the-marginalization-of-minorities-december-2001/
4. Land Act, 1998, articles 2 and 32, http://faolex.fao.org/docs/pdf/uga19682.pdf; The National Environment Statute, 1995, article 46.
5. Rugadya, Margaret., Herbert Kamusiime. "Tenure in Mystery: the Status of Land Under Wildlife, Forestry and Mining Concessions in Karamoja Region, Uganda." Nomadic People, June 2013, https://www.researchgate.net/publication/272273578_Tenure_in_Mystery_the_Status_of_Land_Under_Wildlife_Forestry_and_Mining_Concessions_in_Karamoja_Region_Uganda
6. The Uganda Wildlife Act 2019 amended

Benjamin Mutambukah *was formerly the Coordinator of the Coalition of Pastoralist Civil Society Organisations in Uganda and Chairman of the Eastern and Southern African Pastoralists Network (ESAPN). He is currently ESAPN Interim Coordinator and continues to represent the network 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. Email: benjamuta@gmail.com*

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 achieve 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*

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

Mukandinda Winfred *is Land Rights Officer for the United Organization for Batwa Development in Uganda (UOBDU).*

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

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 3,129 Tshwa and 1,540 Doma in Zimbabwe, representing approximately 0.031% of the country's population of 15,121,004 in 2022. 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 2022 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 "Koisan" 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 the well-being of minorities and marginalised communities. Work was done on the Tjwao language by the Tsoro-o-tso San Development Trust in 2022.

Introduction

In spite of a relatively optimistic view of the state of the Zimbabwe economy presented by President Emmerson Mnangagwa in his State of the Nation Address of 23 November 2022,[1] the country had continued to deteriorate economically, socially, and politically. Inflation rates had worsened, and the agricultural economy was facing serious challenges. Some of the problems were the result of the continuing COVID-19 pandemic. In addition, the Ukraine-Russia War that began on 24 February 2022 resulted in higher food prices and lower access to fertilisers and other necessary agricultural goods. The number of Zimbabweans whose livelihoods had become more difficult increased in 2022, something that was particularly true for Indigenous and Marginalised Communities. Electricity cuts were common, and many people had power for less than half a day.

The ruling party (the Zimbabwe African National Union – Patriotic Front, ZANU-PF) continued to crack down on dissidents, and numerous journalists and members of non-government organisations were detained, arrested, and jailed. Demonstrations against the Mnangagwa government continued and even intensified toward the end of 2022 as national elections loomed. The COVID-19 pandemic was exacerbating an already serious health crisis in the country. Outbreaks of disease including, measles, occurred in some areas, as seen, for example in Manicaland and Mashonaland East in April 2022. Child vaccination rates for COVID-19 and other diseases declined, in part because of misinformation spread by apostolic churches.[2] The Minister of Local Government, July Moyo, told the World Health Organization that the Zimbabwe Police were being used to enforce vaccinations.[3]

All of the health problems, including COVID-19 and tuberculosis, were present among Indigenous people in Zimbabwe in 2022.

Zimbabwe's Community-based Natural Resource Management Programme

Zimbabwe was the first country in southern Africa to establish a Community-based Natural Resource Management (CBNRM) Programme, known as the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). CAMPFIRE-related activities were ongoing in Tsholotsho and Bulalimamangwe Districts where the Tshwa reside, and in Mbire District in north-central Zimbabwe where the Doma reside, in 2022.[4] Tshwa and Doma both said in interviews that while they appreciated the CAMPFIRE programme, they felt that individual community members should receive more of the benefits instead of Rural Development Councils. They also said that the CAMPFIRE Association should be more attentive to Indigenous and Marginalised communities.[5]

Wildlife conservation was more problematic than it had been in the period before the COVID-19 outbreak because of reductions in the staff of the Department of National Parks and Wildlife Management and in community-level wildlife protection work. However, some Tshwa and Doma households' incomes increased in 2022 due to an expansion in the number of tourists visiting their areas.

Zimbabwe's forestry sector had some positive returns for local communities in 2022, with women in particular being able to benefit from forest products.[6] This was particularly the case for Tshwa households in Matabeleland North. At the same time, the cost of fuelwood locally increased, causing hardship among many households. Although Zimbabwe was not in a drought in 2022, water availability continued to be a problem in some areas, particularly in the drier regions of western Zimbabwe.[7]

Employment and national park issues

Tshwa men participated in artisanal gold mining in Tsholotsho District and Matabeleland South in 2022,[8] while a few sought employment at

the Hwange Colliery north of Hwange National Park in Matabeleland North. With the expansion of ecotourists visiting Hwange National Park and adjacent areas, several dozen Tshwa households were able to benefit from employment in wildlife-related and tourism industries.[9]

Approximately 20 Tshwa were employed by the Zimbabwe Prisons Correctional Services (ZPCS) in prisons in Tsholotsho and Lupane. Tshwa women expanded their production of crafts, including baskets for the local and international markets. In areas adjacent to Hwange National Park, land reform efforts affected Indigenous and other people, especially women.[10]

Status of Indigenous women and youth

Zimbabwe carried out a population and housing census from 21-30 April 2022. The results of the census revealed that there were more women than men in the country. They also showed that there was considerable variation in population densities in Zimbabwe, with the arid west having lower densities of people.[11] Family sizes among the Tshwa and Doma appear to have expanded, with as many as 5-7 children in a family.[12]

In late October 2022, several dozen Doma women from Kanyemba in the Zambezi Valley attended a workshop sponsored by First Lady Auxilia Mnangagwa, who set up the Angel of Hope Foundation.[13] The training activities in this workshop involved the production of facial products and management of small-scale enterprises. This workshop had the backing of the Ministry of Women's Affairs, Community, Small and Medium Enterprises Development, which also sponsored workshops with Tshwa women in Tsholotsho District in 2022.

Zimbabwean women's organisations noted that the rates of rape and spouse and child abuse increased in 2022, possibly related to the COVID-19 pandemic. These problems affected both

Tshwa and Doma households. Gender-based Violence (GBV) was on the increase, something that the Zimbabwe government pledged to address. In general, Indigenous women's and children's health statuses declined during 2022. Calls were heard from Indigenous people in Zimbabwe for more emphasis to be placed on their health and well-being, which echoed recommendations from the Women's Coalition of Zimbabwe and Women's Action Group and UNICEF.

Conclusions

Indigenous Peoples in Zimbabwe felt that they were worse off in 2022 than they had been previously. Some of them said that they wanted greater access to vaccinations and other health-related interventions. They told the Tsoro-o-tso San Development Trust (TSDT) and other NGOs that they were hopeful that the Zimbabwe government would pay more attention to their needs in the future. They were grateful for the assistance of the Zimbabwe Human Rights Commission (ZHRC) and various government departments for health and child welfare programmes. Indigenous communities were concerned about the state of Zimbabwe's economy, and they said that they were more than willing to do what they could to promote the well-being of all Zimbabweans.

Notes and references

1. Government of Zimbabwe. Mnangagwa, Emmerson. "Zimbabwe State of the Nation Address." 23 November 2022.
2. Marima, Tenda and Stephanie Nolen. "More than 700 children have died in a measles outbreak in Zimbabwe." New York Times, 24 September 2022, https://www.nytimes.com/2022/09/24/health/measles-outbreak-zimbabwe.html
3. Kaledzi, Isaac. "Zimbabwe: WHO triggers measles outbreak response." Deutsche Welle, 9 December 2022, https://www.dw.com/en/zimbabwes-measles-outbreak-who-triggers-crisis-response/a-63066598
4. Jani, Vincent., Anton H. de Wit., and Nigel Webb. Evaluating the Relevance of the CAMPFIRE Principles to Wildlife Utilization in Northern Zimbabwe. African Journal of Wildlife Research, 2022, 52(1), 56-71; Ndlovu, Davy., Ben Begbie-Clench., Robert K. Hitchcock., and Melinda C. Kelly. The Tshwa San of Zimbabwe: Land, Livelihoods, and Ethnicity. In Livelihoods of Ethnic Minorities in Rural Zimbabwe. Edited by Kirk Helliker, Patience Chadambuka, and Joshua Matanzima, 2022, pp. 31-50.
5. *Tsoro-o-tso San Development Trust Annual Report for 2022*. Bulawayo: TSDT.
6. Chipango, Ellen Fungisai. "Between a rock and a hard place: Negotiating gender, forest laws and capabilities for fuelwood access in Zimbabwe." Geoforum, June 2022, volume 132, 42-51.
7. Gwate, Onalenna., and Graham Ndou. "Exploring water use and production dynamics of an indigenous dry forest in southwestern Zimbabwe." Journal of Arid Environments, March 2022, volume 198, https://doi.org/10.1016/j.jaridenv.2021.104678
8. Dube, Nqobizitha., Funa Moyo., Mkhokheli Sithole., Gracsious Ncube., Peter Nkala., Nevel Tshuma., Mandlenkosi Maphosa., and Clifford Mabhena. "Institutional exclusion and the tragedy of the commons: Artisanal mining in Matabeleland South Province, Zimbabwe." The Extractive Industries and Society, November 2016, volume 3(4), 1084-1094.

9. Department of National Parks and Wildlife Management, personal communication, 4 November 2022; Zingi, Godwin K., Addingtone Mpofu, Leonard Chitongo, Taona Museva, Emmerson Chivhenge, and Moline R Ndongwe. "Ecotourism as a vehicle for local economic development: A case of Tsholotsho District Zimbabwe." Cogent Social Sciences, https://doi.org/10.1080/23311886.2022.2035047
10. Mhlanga, Nelson and Pisa, Lloyd Shorai. "Impacts of the Agrarian Land Reform Policy on Livelihoods of Resettled Communities Adjust to the Hwange National Park, Zimbabwe." International Science and Technology Journal of Namibia, 2022, 15:57-69.
11. Zimstat, Government of Zimbabwe. "Population and Housing Census." 2022.
12. Ndlovu.; Jani, Vincent. Resource Management, Livelihoods and Ethnic Minorities: The Case of the Doma, Northern Zimbabwe.; Helliker, Kirk., Patience Chadambuka, and Joshua Matanzima. "In Livelihoods of Ethnic Minorities in Rural Zimbabwe." Cham, Switzerland: Springer, pp. 89-106.
13. Rupapa, Tendai. "Doma women thank first lady for opportunities." The Herald, 31 October 2022, https://www.herald.co.zw/doma-women-thank-first-lady-for-opportunities/

Davy Ndlovu *is the director of the Tsoro-o-tso San Development Trust (TSDT) in Bulawayo, mdavydavy@gmail.com*

Benjamin Begbie-Clench *is a freelance consultant who has worked extensively on San issues throughout Southern Africa, benbegbie@gmail.com*

Robert K. Hitchcock *is an anthropology professor at the University of New Mexico and a member of the Board of the Kalahari Peoples Fund, rkhitchcock@gmail.com*

Melinda C. Kelly *works with the Kalahari Peoples Fund and does research with San peoples in Zimbabwe, Botswana, Namibia, and South Africa, melindackelly@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 2022 census, the country's Indigenous population numbers approximately 1,650,159[1] or 1% of the total population. Indigenous Peoples in the country, however, claim that their population stands at some five million.[2] The majority of the Indigenous population live in the plains districts of the country,[3] and the rest in the Chittagong Hill Tracts (CHT).

The State does not recognize 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 included.[4] Yet only cultural aspects are mentioned, whereas major issues related to Indigenous Peoples' economic and political rights, not least their land rights, remain ignored.

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

The Government's prohibition on using the term "Indigenous"

Prior to the International Day of the World's Indigenous Peoples in 2022, the Ministry of Information and Broadcasting of Bangladesh issued a circular directing all the electronic media of Bangladesh not to use the term "Indigenous".

The official notice (memo number – 15.00.0000.028.18.183.14.596)

directed university professors, experts, newspaper editors, and other members of civil society not to use the term in any TV talk shows arranged on the day. It also directed the media to refrain from using the term as it is not constitutionally approved.[5] However, there is no such State law or restriction in the Constitution of Bangladesh.

The circular is an undemocratic, derogatory directive to Indigenous Peoples, and a serious threat to the freedom of speech of citizens. It is disrespectful towards Indigenous communities and violates the right of Indigenous Peoples to freely self-identity.

Hope turned to despair: 25 years of the CHT Accord

2 December 2022 marked the 25th anniversary of the signing of the Chittagong Hill Tracts (CHT) Accord, a historic turning point for the Indigenous and permanent Bengali residents of the CHT. The signing of the accord in 1997 raised hopes that peace would be restored and the processes of self-determined development would speed up in this conflict-ridden region. The signing of the accord did bring an official end to armed conflicts between Bangladeshi State forces and armed members of the Parbatya Chattagram Jana Samhati Samity (PCJSS).

Yet, two and a half decades later, peace remains elusive and violent armed conflicts routinely ravage the lives of Indigenous Peoples. Various development initiatives during the post-accord period, in the form of tourism, infrastructure, connectivity and business, among others, resulted in the loss of ancestral lands and destruction of lives and livelihoods of Indigenous Peoples.[6, 7, 8, 9] Moreover, neoliberal State policies and corporate greed have put the natural environment and ecology of the region under serious threat.[10, 11]

A main cause of this deplorable state is the delayed and improper implementation of the CHT Accord, particularly the provisions that are vital for ensuring sustainable peace and development. The State claims that 48 out of 72 provisions have been fully implemented and 15 have been implemented in part. However, the PCJSS claims that only 25 provisions have been implemented fully and 18 partly, while 29 provisions remain outstanding.[12]

Indeed, the implementation process has remained either very slow or virtually stagnant over the past few years. Non-implementation of

the decisions of the CHT Accord Implementation and Monitoring Committee clearly illustrates this claim. In the sixth meeting of this committee (held in December 2022), it was revealed that none of the decisions concerning various provisions taken at the fifth meeting, held one year earlier, had been implemented, as concerned State authorities had not taken any initiative in this regard.[13]

Contrarily, attempts to violate provisions continued. For example, the government issued a decision in April 2022 to set up a camp of the Armed Police Battalion (APBn) on the land of an army camp abandoned as part of the accord implementation process rather than returning the land to the actual owners.[14] Naturally, the non-implementation and violations of the provisions have led to a growing sense of betrayal and mistrust of the government among Indigenous Peoples. Santu Larma, the signatory on behalf of the PCJSS, even noted in a recent public meeting that he does not see implementation as being possible any more.[15]

Given such a frustrating situation, Indigenous Peoples of the CHT and various rights groups within and beyond the country have remained active in urging the government to implement the accord, particularly considering that it is critical for the rights and development of the CHT's local populations. For example, on 20 December 2022, an urgent appeal was submitted to the Government of Bangladesh by 54 organizations and 187 individuals from 42 countries for the proper, speedy and full implementation of the accord.[16] While expressing his concern, Francisco Calí Tzay, the UN Special Rapporteur on the rights of Indigenous Peoples, highlighted in a statement on 2 December 2022: "The non-implementation of the accord ... has left the Indigenous Peoples vulnerable, marginalized, and deprived of determining their own development, as they are entitled to in the accord."[17] Michelle Bachelet, the UN High Commissioner for Human Rights likewise called for full implementation of the peace accord during her first visit to Bangladesh in August 2022.[18] No response has been reported from the government regarding her urge to implement the accord.

Alarming state of human rights in the CHT

While the CHT Accord implementation process is stuck in a quagmire, the situation of human rights and fundamental freedoms in the CHT re-

mains in an alarming state. A PCJSS report documented 235 incidents of human rights violations in 2022 whereby 1,935 Indigenous persons from the CHT has been subjected to violations, forms of which included land grabbing and forced eviction, trumped-up charges, arbitrary arrest, temporary detention, torture, sexual assault and killing. State agencies, alongside non-State groups such as "army-backed terrorist groups", "communal and fundamentalist quarters", "Muslim Bengali settlers", and "land grabbers", were identified as the main perpetrators of these incidents. The report notes:

> *79 people in 110 incidents were victims of human rights violations by security forces and law enforcement agencies, 708 people in 85 incidents by army-backed armed terrorist groups, 448 people in 40 criminal incidents by communal and fundamentalist groups, Muslim Bengali settlers and land grabbers.*[19]

Alongside these human rights violations, spaces for political activism and fundamental freedoms of expression, association and movement remain critically limited in the region. Hundreds of Indigenous political activists and supporters remain on the run due to fear of State persecution.[20] While restrictions on foreigners visiting the CHT without prior permission[21] have been continuing since 2015, foreign citizens concerned with human rights have rarely been allowed to enter the region in recent years. During her August 2022 visit, Michelle Bachelet was reportedly not allowed to enter the CHT to observe the human rights situation.[22] In November, a delegation of foreign diplomats, spearheaded by the UN Resident Coordinator to Bangladesh, was allowed to visit the CHT but only on 10 conditions set by the Ministry of Foreign Affairs (MoFA). One of them was the mandatory presence of the local MP of the ruling party and the local Deputy Commissioner (DC) in the event the delegation should meet the chair of the CHT Regional Council (CHTRC) as well as the mandatory presence of the DC during the delegation's meeting with the Chakma circle chief in Rangamati district. Similar directives were also issued in October 2022 during a visit by the Danish ambassador to the CHT.[23] These instructions from the MoFA have been identified as racist and colonial by Indigenous activists.[24]

Khasi villages under threat

The very survival of several Khasi villages (*punjis*) in Moulvibazar district, located in north-eastern Bangladesh, is under serious threat due to ongoing coercion and harassment by forest department officials and a corner of influential local Bengalis with diverse backgrounds, including employees and owners of surrounding tea estates, petty entrepreneurs, politicians and farmers. The ongoing compulsion of these influential actors, with the use of violence as well as legal means, targeted at the ancestral lands of these Indigenous villagers, has put their everyday life as well as their sustainable livelihood practices in danger. Incidents of ravaging betel leaf farms (*paan jhum*)[25] has remained a common and frequent phenomenon over the past few years in an attempt to coerce Indigenous Peoples out and off their lands so that they can be used by government and private entities for projects.

Betel leaf farming is an age-old agricultural practice of Khasi villagers, which is considered by scientists to be supportive of conserving local biodiversity.[26] Since farming of betel leaves remains the main source of living for most Khasi people, the betel leaf vines (paan gach) form a main target of attacks. A protest against harming betel leaf vines can even lead to experiences of violence, as a young Khasi man from Nunchhari Punji survived a violent attack by a group of influential Bengalis on 23 December 2022. Khasi leader Flora Bably Talang suspects that the ultimate motive behind the attacks on the vines is to grab the land of the betel leaf farms (*paan jum*) of Khasi villagers.[27]

Together with attacks, a protracted problem these Khasi villagers have been enduring for over two decades is the criminal cases filed by the forest department. For instance, 15 criminal cases have been filed against members of 50 families from Doluchhara Punji since 2011. Seven of these cases are still ongoing. The forest department blames the villagers for encroaching on State land. Some Khasi villagers have even been involved in multiple criminal cases. With the cost of a single hearing in the court amounting to between five and seven thousand takas (up to 60 euro), running a case for several years can cost a significant amount for an individual. As in the case of the villagers of Doluchhara Punji, therefore, these cases are being handled collectively so that the villagers can pool their resources together. Nevertheless, this excessive financial burden has resulted in the forced dropout of several Doluch-

hara Punji children from school.[28]

The problems facing Khasi villagers are rooted in the absence of land titles. Since the British colonial period, the ancestral lands of various Khasi villages have been turned into State lands, currently managed by the forest department. Khasi villagers have been fighting to recover the legal rights to their own lands over the past few decades. The villagers of Doluchhara, for example, have been involved in a court case in this regard since 1999, and it still remains unresolved. Nevertheless, forest department officials have been trying to repeatedly implement so-called social forestry projects by making local Bengali beneficiaries grab their land. Indigenous activist Helena Talang noted that the Doluchhara Punji villagers' current conflict with the forest department started with a social forestry project being implemented on their land since 2010-11. Khasi villagers living in and using this land were not the beneficiaries of this project but a group of influential Bengalis were. Later, since around 2017-18, these rich and influential Bengali beneficiaries forcibly took over 12 betel leaf farms. Villagers from different Khasi villages of the region have been in fear of eviction ever since.[29]

Indigenous Peoples' land being grabbed by rubber company

Indigenous Peoples in Lama, in Bandarban Hill District, are facing ongoing violence as part of land grabbing. Lama Rubber Industries Limited has been trying to evict the local Mro people living in Langkom Karbari Para, Joychandra Tripura Karbari Para, and Rangen Karbari Para of Sarai union under Lama Upazila of Bandarban for a long time. The group allegedly grabbed 400 acres of land belonging to the Mro and Tripura people (comprising 65 families) in 2022 and, when the Mro and Tripura people protested, the company filed at least three court cases against them.[30]

Additionally, company employees attacked and seriously injured local Indigenous villagers 11 times.[31] Other acts of violence against the Indigenous Peoples of this area have also been reported. For instance, on 26 April, a group associated with the company cut and set fire to trees, orchards, and jum fields belonging to Indigenous Peoples.[32] On 11 August, land grabbers attacked and ransacked the Ashoka Buddhist temple in Rengyen Karbari Para. On 1 September, other attackers alleg-

edly looted 25 maunds of pumpkin from gardens belonging to the local Mro people.[33] On 6 September, workers from the company allegedly mixed poison into a stream that is the only source of drinking water for the residents of Rengyen Karbari Para.[34] Further, on 24 September, the company allegedly cut down some 300 banana plants belonging to the local Mro people.[35] With all these criminal acts, the company is trying to create an environment of terror and destroy the livelihoods of local Indigenous Peoples so that they can grab the remaining lands.

Unfortunately, despite instructions from the National Human Rights Commission[36] to ensure the security of the local people, and recommendations put forward by the Bandarban Hill District Council to cancel a lease[37] given to Lama Rubber Industries Limited following a fact-finding mission, the local administration is reluctant to take any action against the rubber company. Indigenous Mro and Tripura people are therefore living in fear of further attack and eviction.

Violence against Indigenous women and girls

Following a trend similar to previous years, Indigenous women and girls in Bangladesh survived multiple forms of violence in 2022. According to a human rights report from the Kapaeeng Foundation, Indigenous women and girls from the plains as well as the CHT were subjected to violence in at least 21 cases.[38] Nine of these cases took place in the plains, while the rest in the CHT. At least 22 Indigenous women and girls suffered from the reported cases of violence. The Kapaeeng Foundation's report notes that two women and girls were killed, two women were gang raped, five women were raped, seven women sustained rape attempts, four women were physically assaulted and one woman was sexually harassed. The age of the victims ranged from 3–75 years.

Notes and references

1. Bangladesh Bureau of Statistics. "Population and housing census – preliminary report 2022." Government of the Peoples Republic of Bangladesh, 2022, p10
2. Barkat, Abul. "Political Economy of Unpeopling of Indigenous Peoples: The Case of Bangladesh." Paper presented at the 19th biennial conference, Bangladesh Economic Association, 8-10 January 2015

3. Halim, Sadeka. "Land loss and implications on the plain land adivasis." In "Songhati", edited by Sanjeeb Drong, p. 72, Bangladesh Indigenous Peoples Forum, 2015
4. Article 23A stipulates: "The State shall take steps to protect and develop the unique local culture and tradition of the tribes, minor races, ethnic sects and communities."
5. "Bangladesh government instructs TV channels not to use the word 'Indigenous' when referring to ethnic tribes." Global Voices South Asia, 9 August 2022, https://globalvoices.org/2022/08/09/bangladesh-government-instructs-tv-channels-not-to-use-the-word-indigenous-when-referring-to-ethnic-tribes/#:~:text=On%20July%2019%2C%202022%2C%20the,15th%20amendment%20of%20the%20constitution.
6. Adnan, S. and R. Dastidar. Alienation of the Lands of Indigenous Peoples in the Chittagong Hill Tracts of Bangladesh. Chittagong Hill Tracts Commission and IWGIA, 2011
7. Ahmed, H.S. "Tourism and State Violence in the Chittagong Hill Tracts of Bangladesh." Thesis, University of Western Ontario, 2017, https://ir.lib.uwo.ca/etd/4840/
8. Tanzimuddin Khan, Mohammad. Neoliberal Development in Bangladesh: People on the Margins. (Dhaka: The University Press Limited, 2019)
9. Chakma, M.K. and S. Chakma. "Adivasi Odhyushito Onchole Porjoton o Unnayan: Adivasider Ongshidaritto o Sorkarer Bhumika." Paper presented at a roundtable organized by Kapaeeng Foundation on 20 August 2015 at CIRDAP Auditorium in Dhaka.
10. Adnan, S. "Alienation in Neoliberal India and Bangladesh: Diversity of Mechanisms and Theoretical Implications." South Asia Multidisciplinary Academic Journal 13, 2016
11. Azad, Abu., and She Thowai Marma. "Greed for land burns hills to ashes." The Business Standard, 30 April 2022, https://www.tbsnews.net/bangladesh/greed-land-burns-hills-ashes-412390
12. "Key provisions in CHT accord yet to be implemented: discussion." New Age Bangladesh, 24 November 2022, https://www.newagebd.net/article/187390/key-provisions-in-cht-accord-yet-to-be-implemented-discussion
13. "6th meeting of the CHT Accord Implementation Committee held after one year." Hill Voice, 6 December 2022, https://hillvoice.net/en/6th-meeting-of-the-cht-accord-implementation-committee-held-after-one-year/
14. Chakma, Mangal Kumar. "Can police be deployed in the army-withdrawn camp sites in the CHT?" The Daily Star, 2 July 2022, https://www.thedailystar.net/views/opinion/news/can-police-be-deployed-the-army-withdrawn-camp-sites-the-cht-3061406
15. "Peace deal no longer implemented, struggle inevitable: Santu Larma." BD News 24, 23 December 2022, https://bangla.bdnews24.com/samagrabangladesh/f6kqpfcu11?fbclid=IwAR0-nO8hfoJpp8UCgWzjKVrbCnn3gcbR99vja-9qvxCN3bDtnXd47Se_VvE
16. "Appeal for International Community to the Govt of Bangladesh for Full Implementation of CHT Accord." Hill Voice, 22 December 2022, https://hillvoice.net/en/appeal-of-international-community-to-the-govt-of-bangladesh-for-full-implementation-of-cht-accord/
17. "Bangladesh: UN expert concerned about non-implementation of Chittagong Hill Tracts Accord." OHCHR, 2 December 2022, https://www.ohchr.org/en/press-releases/2022/12/bangladesh-un-expert-concerned-about-non-

implementation-chittagong-hill
18. "UN High Commissioner for Human Rights Michelle Bachelet concludes her official visit to Bangladesh." OHCHR, 17 August 2022, https://www.ohchr.org/en/statements/2022/08/un-high-commissioner-human-rights-michelle-bachelet-concludes-her-official-visit
19. "PCJSS Annual Report of 2022 on Human Rights Situation in CHT." Parbatya Chattagram Jana Samhati Samiti, 1 January 2023, https://www.pcjss.org/pcjss-annual-report-of-2022-on-human-rights-situation-in-cht/
20. Chakma, Pallab and Bablu Chakma. "The Indigenous World 2020: Bangladesh" in The Indigenous World 2020, edited by Dwayne Mamo, 202-211. IWGIA, 2020, https://www.iwgia.org/en/bangladesh/3598-iw-2020-bangladesh.html
21. "Foreigners' entry to hills restricted." The Daily Star, 6 February 2015, https://www.thedailystar.net/foreigners-entry-to-hills-restricted-63486
22. "Organizations protest against human rights violation in Chittagong." Dhaka Tribune, 13 August 2022, https://www.dhakatribune.com/nation/2022/08/13/organizations-protest-against-human-rights-violation-in-chittagong
23. "Racist instructions issued by Foreign Ministry again on the visit of diplomats to CHT." Hill Voice, 16 November 2022, https://hillvoice.net/en/racist-instructions-issued-by-foreign-ministry-again-on-the-visit-of-diplomats-to-cht/
24. "Chittagong Hill Tracts ruled by apartheid and colonialism." Hill Voice, 24 November 2022, https://hillvoice.net/en/%e0%a6%ac%e0%a6%b0%e0%a7%8d%e0%a6%a3%e0%a6%ac%e0%a6%be%e0%a6%a6%e0%a7%80-%e0%a6%93-%e0%a6%94%e0%a6%aa%e0%a6%a8%e0%a6%bf%e0%a6%ac%e0%a7%87%e0%a6%b6%e0%a6%bf%e0%a6%95-%e0%a6%95%e0%a6%be%e0%a7%9f/?fbclid=IwAR0TcQ6nzD1qgvtoO_sWhBGDi3_B9R_vR7N_TPVqu0NFrjn33n6z2pP0S28
25. "Miscreants destroy 150 betel leaf trees of Moulvibazar jhum farmers." The Daily Star, 12 September 2022, https://www.thedailystar.net/news/bangladesh/crime-justice/news/miscreants-destroy-150-betel-leaf-trees-moulvibazar-jhum-farmers-3117451?fbclid=IwAR0kpI_0OW76KWQfEp9u3dOh1bs8R6xekT6WEUJL_xovxZNjkMAQlg5Bzis
26. T.K Nath., Inoue Makoto., M.J Islam., and M.A Kabir. "The Khasia Tribe of northeastern Bangladesh: their socio-economic status, hill farming practices and impacts on forest conservation." 25 May 2003, https://www.tandfonline.com/doi/abs/10.1080/14728028.2003.9752467
27. Juri, Moulvibazar. "A complaint has been lodged with the police regarding the stabbing injury of a young man in Kulaura." Prothomalo, 23 December 2022, https://www.prothomalo.com/bangladesh/district/rhwjpz3dns?fbclid=IwAR3HT6uKCsBGcJ0fFXIVcPwmbSbDfneXNwVjHNvGw7c1j7tCDXMtr0rjCdQ
28. Deshwara, Mintu. "No Christmas for them." The Daily star, 25 December 2022, https://www.thedailystar.net/news/bangladesh/news/no-christmas-them-3204436
29. Nahar, Mehrun. "Doluchhara Khasipunji can survive?" BD News 24, 21 December 2022, https://bangla.bdnews24.com/bangladesh/ku88q9hwqo
30. "Protection sought for 400 acres of Mro, Tripura land in Lama." New Age Bangladesh, 22 September 2022, https://www.newagebd.net/article/181758/protection-sought-for-400-acres-of-mro-tripura-land-in-lama.
31. "Heinous attack and torching of indigenous Mro houses by Lama Rubber Industries in Bandarban." Kapaeeng Foundation, 5 January 2023, https://kapaeengnet.org/heinous-attack-and-torching-of-indigenous-mro-houses-by-

lama-rubber-industries-in-bandarban/

32. Ibid

33. Information obtained from written press statement read out at a press conference organized by affected Indigenous communities from Lama in Dhaka on 5 September. More about the press conference here: "Demand for protection of land in Bandarban." Bangladesh Post, 5 September 2022, https://bangladeshpost.net/posts/demand-for-protection-of-land-in-bandarban-93969

34. "CHT Commission urges govt to protect indigenous people in Lama." The Daily Star, 28 September 2022, https://www.thedailystar.net/news/bangladesh/news/cht-commission-urges-govt-protect-indigenous-people-lama-3130126

35. "This time there is a complaint against Lamay Rubber Company for cutting 300 banana trees." The Daily Star, 26 September 2022, https://bangla.thedailystar.net/news/bangladesh/news-397771

36. "Stop harassment of Mros, Tripuras at Lama: NHRC." New Age Bangladesh, 4 October 2022, https://www.newagebd.net/article/182764/stop-harassment-of-mros-tripuras-at-lama-nhrc

37. It is notable that bypassing the customary land rights of Indigenous Peoples and leasing land to outsiders for commercial and non-commercial purposes started in CHT in the mid-1980s, which caused the displacement of many Indigenous communities. In Bandarban district alone, a total of 46,775 acres of land divided into 1,871 plots were leased out to influential outsiders for horticulture and rubber plantations. In this process, in 1994, the Lama Rubber Industries shareholders, who are outsiders to the CHT, took out a lease of 375 acres of land in Sarai mouza and 1,225 acres of land in Daluchhari mouza for a rubber plantation for a period of 40 years from the district administration. However, it is alleged that the company occupied much more land than they had been allotted.

38. Kapaeeng Foundation. Human Rights Report 2022 on Indigenous Peoples in Bangladesh. 2023

***Pallab Chakma**, Executive Director, Kapaeeng Foundation. Email: pallab.juju@gmail.com*

***Bablu Chakma** is a human rights defender. Email: bablu_du2004@yahoo.com*

CONTENTS

Cambodia

THAILAND
LAOS
CAMBODIA
Phnom Penh
VIETNAM
GULF OF THAILAND

Cambodia is home to 24 different Indigenous Peoples who speak at least 19 Indigenous languages.[1, 2] With an estimated population of 170,000 to 400,000, they constitute approx. 1.1 - 3% of the national population. Disaggregated data on Indigenous Peoples generally vary considerably between surveys.[3, 4, 5] Numbers are likely to be ambiguous since government data classify Indigenous Peoples by language and not ethnicity.[6] Furthermore, contemporary stigmatization of Indigenous Peoples in the Khmer society, as well as a legacy of fear of the devastating Khmer-Rouge regime, result in some Indigenous Peoples being unwilling to identify themselves to the authorities as Indigenous, for fear of repercussions.[7]

The Indigenous territories include the forested plateaux and highlands of north-eastern Cambodia, where the majority live in the provinces of Ratanakiri, Mondulkiri, Kratie, Stung Treng, Kampong Thom, and Preah Vihear.

Indigenous Peoples continue to face discrimination and forced displacement from their lands, which is extinguishing them as distinct groups.[8] These patterns are driven by ongoing State and transnational corporate ventures aimed at 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 the CRC but has still not ratified ILO Convention No. 169 on Indigenous and Tribal Peoples.[9, 10] Cambodia has further signed the Kyoto Protocol of 2002 and the Paris Agreement in 2017 and is a party to the UN Framework Convention on Climate Change.

Introduction

Throughout 2022, the repressive authoritarian regime of Hun Sen and the Cambodian People's Party continued to repress civil and political rights via use of the Criminal Code, the State of Emer-

gency Law, and the Law on Associations and Non-Governmental Organizations (LANGO), targeting press freedom, the right to peaceful assembly, civic organizations, Indigenous networks, non-governmental organizations (NGOs), individuals, as well as the opposition Cambodia National Rescue Party, which was banned in 2017.

In January, three journalists were arrested and charged with incitement under the Criminal Code on allegations that they had incited villagers to occupy State land during a broadcast regarding a land dispute.[11] In March, the UN High Commissioner for Human Rights expressed concern at the authorities' use of COVID-19 restrictions to erode democratic and civic space, including as a pretext to break a lawful strike.[12] In May, a Cambodian journalist was released after serving eight months in prison charged with "incitement to commit a felony or create social chaos".[13] The arrest happened after the journalist reported on a land dispute, which allegedly involved high-ranking officials in Botum Sakor National Park. According to the Cambodian Center for Human Rights, the government frequently uses criminal offences enshrined in the Criminal Code, including defamation, incitement, insult, and lèse-majesté to silence independent voices. Article 5(11) of the State of Emergency Law authorizes the government to prohibit any speech or expression that could "cause people panic or chaos or bring damage to the national security" or could "cause confusion" among the public. The law has been widely criticized as arbitrary and unclear since numerous statements could be interpreted as "causing confusion".[14]

Conservation

According to the government, Cambodia is committed to sustainable economic growth and claims to protect the most vulnerable people in Cambodia.[15] In November, at the UN Framework Convention on Climate Change Conference of the Parties (COP 27), Cambodia signed contracts with international corporations for 15 million tonnes of carbon credits from Reducing Emissions from Deforestation and Forest Degradation (REDD+) projects. REDD+ projects aim to allow stakeholders to gain value from protecting and conserving their forestlands. On paper, the projects are acclaimed as a ground-breaking collaboration to end deforestation between the government, NGOs, local communi-

ties, and large companies.[16] However, various conservation projects are being established without the Free, Prior and Informed Consent (FPIC) or involvement of the Indigenous communities living in the relevant areas. Indigenous Chong in the Cardamom Mountains and Kui in Prey Preah Roka are among the affected Indigenous communities who are facing the threat of losing their ancestral lands. NGOs assigned REDD+ projects have been observed threatening Indigenous Peoples if they have been farming or collecting non-timber forest products from their ancestral lands, which are officially under conservation. Indigenous Peoples are often excluded from areas they have been conserving for generations, consequently losing access to their livelihoods and natural resources.[17] The proclaimed collaboration with communities[18] to end deforestation is thus rarely achieved. Indigenous Peoples have been the stewards of these forests for millennia. They have the knowledge and are the most effective in conserving forests and should rightly be at the heart of efforts to conserve protected areas.[19]

Collective land titles

Despite the commitment made by the government to accelerate registration of Collective Land Titles (CLTs),[20] only five CLTs were approved in 2022, making a total of 38 CLTs granted to Indigenous communities. The prolonged process is still widely criticized as numerous Indigenous communities are facing challenges due to the complicated requirements for obtaining CLTs and due to the limitations on size of land enshrined in the law, which restrict Indigenous traditions and livelihoods. Moreover, communities that hold CLTs are still exposed to land encroachment, and face difficulties defending their lands due to a lack of enforcement by the responsible authorities,[21, 22, 23,] including land encroachment by the local authorities for private land ownership. Additionally, the authorities occasionally appropriate established CLTs in the name of conservation, often without FPIC. Many Indigenous Peoples have consequently been criminalized because they practise traditional agriculture on their ancestral land. Indigenous communities have responded with protests and occupation of disputed land, filed complaints, and requested legal action.[24]

Amendments of laws concerning Indigenous Peoples

In the spring, the government initiated amendments to various laws affecting Indigenous Peoples, among others the Protected Area Law of 2008. The Protected Area Law deals with forests set aside for conservation such as national parks, wildlife sanctuaries, natural heritage sites etc., in which development is prohibited or limited for ecological or cultural conservation. The Protected Area Law of 2008 mentions Indigenous Peoples 23 times and "..recognizes and secures access to traditional uses, local customs, beliefs, and religions of the local communities, and Indigenous ethnic minority groups residing within and adjacent to the protected areas" (Art. 22). The law guarantees the rights of Indigenous Peoples to participate in decision-making on the sustainable management and conservation of biodiversity (Art. 4).[25] The law encourages local and Indigenous communities to participate fully in the provision of the protected area management, conservation, and development.

However, the draft amendment removes mention of Indigenous Peoples and reduces it to "local communities", an alteration that denies them their rights under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Furthermore, the government failed to strategically involve Indigenous Peoples in the amendment process.[26]

In August, representatives from 151 Indigenous communities and organizations together with Indigenous lawyers held a consultative workshop to collect inputs on the draft amendments to the Protected Area Law and the Forestry Law of 2002. The workshop concluded that the amendments to the laws should incorporate individuals' and the collective rights of Indigenous Peoples to access information in adequate time, as well as collective agreed mechanisms for full and fair consultation without intimidation, threats, or restriction of the rights over the management of land, forests, and natural resources. The recommendations further concluded that the laws should specify that Indigenous communities are socially and culturally distinct, which means that Indigenous societies are not the same as local communities. Further, the law should recognise rights and provisions of governance, which guarantee tenure of traditional rotational cultivation, as this ban is a serious violation of Indigenous rights and livelihoods. Moreover, the

draft amendments should contain specific articles that recognize the adequate size and type of land use for collective land ownership that can support Indigenous Peoples' livelihoods and culture.[27]

Representatives from the Ministry of Interior, Ministry of Rural Development, national and international NGOs also attended. The ministries noted the recommendations and affirmed they would follow up with their respective departments.

Criminalization of Indigenous Peoples

In Mondulkiri, 2022 was marked by a rise in the market value of land, along with an increase in land violations and criminalization of Indigenous land defenders. Spiritual mountains and burial land continued to disappear at alarming rates. While mountains constitute State land, which under Cambodian law is illegal to sell, interpretations of what constitutes a mountain have been bent in favour of development. Around Sen Monorom and Ou Reang district, the once beautiful, forested landscape has been replaced with a concrete landscape of cement covered with hotels, resorts, casinos, and shopping malls, along with agribusiness plantations, destroying up to 80% of the natural landscape.

Widespread corruption from top to bottom has resulted in an increase in land disputes between Indigenous communities and powerful tycoons and real estate traders.[28, 29, 30] Moreover, development has caused intra-community breakdown and conflicts. In some communities, Indigenous Peoples have been coerced into selling land, while some individuals have been involved in the illicit sale of Indigenous land. Real estate traders and concession holders have gradually begun taking legal action against Indigenous communities for trespassing, practising traditional farming and religious beliefs, and for living on their ancestral lands According to unofficial data, approx. 91 court cases criminalizing Indigenous Peoples took place in Cambodia in 2022. Meanwhile, the authorities have consistently ignored legal appeals by Indigenous Peoples[31, 32, 33] totalling around 50-70 cases. Many Indigenous Peoples who have been part of conserving the forests for generations are consequently being driven to losing their sustainability, identity, and religious beliefs as the authorities allow private companies to destroy their Indigenous foundations.[34]

Alongside increased encroachment onto Indigenous land, there is a rise in the presence of illegal loggers and immigrants from other areas of Cambodia, some of whom have brought drugs into Indigenous villages. Because of the significant loss of traditional livelihoods due to forest destruction, some have seen their livelihood reduced to illegal logging. This development has caused a rise in drug addiction, especially among Indigenous youth. Harmful casualties of these addictions can be seen in the form of increased illegal logging among Indigenous youth in order to earn enough to cover their addiction,[35] as well as domestic violence against Indigenous women and children.[36]

Prey Lang and Prey Preah Roka

In 2022, ruthless and alarming levels of illegal deforestation continued in Prey Lang and Prey Preah Roka forests, caused by national and transnational corporations coupled with the corruption of the authorities.[37] Despite overwhelming evidence from satellite images and ground verification conducted by Indigenous community networks, and national and international organizations, the Cambodian authorities continued to deny the presence of large-scale forest crimes within the protected areas.[38, 39]

Prey Lang and Prey Preah Roka include some of the largest remaining lowland forests in Cambodia and are home to approximately 250,000 Indigenous people. Within the protected wildlife sanctuaries, the Prey Lang Community Network (PLCN) and Prey Preah Roka Forest Community Network (PFCN), which consist mainly of Indigenous Kui, conduct peaceful forest patrols to document and prevent illegal logging.

Throughout 2022, the Ministry of Environment (MoE) continued to ban the networks from engaging in forest patrols.[40] Members of the networks describe how harassment, threats of arrest, intimidation from armed MoE rangers and attempts to coerce members to register under the criticized LANGO law were a constant in 2022.[41, 42, 43] Reports emphasize how illicit logging activities in the protected areas would be unachievable without the embedded corruption of the Cambodian authorities i.e., within the MoE, the military, and the police. By providing access to protected forests[44] and turning a blind eye to the transportation

of illegally felled timber occurring day and night,[45] corruption is fuelling forest crimes linked to various economic land concessions.[46, 47, 48]

To further exacerbate forest destruction, the authorities and the Cambodian Schneitec Group have commenced the marking out of a new power grid, which is planned to cut across the Prey Lang wildlife sanctuary in order to connect Phnom Penh with electricity from high-polluting coal plants in Laos.[49] The area is one of high biodiversity and conservation value, including the endemic swamp forest[50] and Kui spiritual forests.[51] The Schneitec Group has yet to provide information as to the impact on the forest and compensation for land lost. Indigenous communities are concerned that changes to the forest will cause irreversible damage to the rich biodiversity and severely impact community members, many of whom do not hold Collective Land Titles.[52] As forests are intrinsically bound to the identity, language, culture, farming traditions and spirituality of Indigenous Peoples, forest crimes are fundamentally erasing their future and the rich biodiversity of Indigenous guarded forests.[53]

In November, PLCN, PFCN and the Monk Community Forest attended the UN Convention on Biodiversity in Montreal (COP 15). The three networks are working actively to protect forest and biodiversity in the Prey Lang, Prey Preah Roka and Prey Songrukhavorn by educating community members and engaging them in forest and biodiversity restoration, conservation, and protection, including observing illegal deforestation, forest crimes, transportation, and animal trapping. At COP 15, they urged the MoE to work cooperatively with community members to protect the forest. So far, despite the ban on their patrols and the increased legal and physical violence they face, including organised illegal logging by powerful tycoons, and government oppression, the Kui groups have refused to accept the government's plans and remain determined to protect their ancestral forests.[54, 55]

Solidarity in opposition to corruption

Regardless of multiple and intensified threats, human right violations, and destruction of Indigenous lands, the solidarity and collaboration between various Indigenous Peoples of Cambodia was only strength-

ened during 2022. This unity gives hope to Indigenous Peoples for future campaigns, struggles and movements. However, if the authoritarian regime persists on a path of corruption, human rights abuses, non-democratic rule, and forest crimes in collaboration with the powerful elite, the conservation of forests and well-being of Indigenous Peoples will continue to diminish. The Cambodian authorities must make it a priority to crack down on internal corruption and forest crimes, and acknowledge the rich knowledge and resources of Indigenous Peoples as essential partners in conservation efforts.

Notes and references

1. Cambodia Indigenous Peoples' Organization, "Indigenous Peoples Data", accessed on 29 December 2022, http://cipocambodia.org/our-work/developing-indigenous-peoples-center/#1585208858312-76224c71-df89
2. OHCHR, "Committee on the Elimination of Racial Discrimination reviews report of Cambodia, asks about nationality, land grabs and civic space", 29 November 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25372&LangID=E
3. Cambodia Indigenous Peoples Organization, "National Report on Demographic and Socio-Economic Status of Indigenous Peoples in Cambodia", 23 October 2021, https://cipocambodia.org/national-report-on-demographic-and-socio-economic-status-of-indigenous-peoples-in-cambodia/
4. National Institute of Statistics, Ministry of Planning Phnom Penh, Cambodia, "General Population Census of Cambodia 2008. National Report on Final Census Results", 2009, accessed in February 2022, https://camnut.weebly.com/uploads/2/0/3/8/20389289/2009_census_2008.pdf
5. Committee on the Elimination of Racial Discrimination (CERD), "Combined fourteenth to seventeenth periodic reports submitted by Cambodia under article 9 of the Convention, due in 2012: International Convention on the Elimination of All Forms of Racial Discrimination", 2018, https://digitallibrary.un.org/record/1653468
6. Ironside, Jeremy. "Localizing global concepts: an exploration of Indigeneity in Cambodia". In Critical Asian Studies, volume 54, number 3, pp.374-397. Routledge, 2022.
7. Charlotte Hinterberger, Bernice See, Sek Sophorn, Sochea Svay, Jade Tessier, Ek Yothin. Threatened Lands,Threatened Lives. Asia Indigenous Peoples Pact Foundation, 2014, https://aippnet.org/wp-content/uploads/2020/02/20.-Threatned-Lands-Threatene-Lives.pdf
8. Committee on the Elimination of Racial Discrimination (CERD), "Concluding observations on the combined fourteenth to seventeenth reports of Cambodia." 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fKHM%2fCO%2f14-17&Lang=en
9. Office of the High Commissioner for Human Rights (OHCHR), "End of the mandate statement by the Special Rapporteur on the situation of human rights in Cambodia", 2021, https://www.ohchr.org/en/NewsEvents/Pages/

DisplayNews.aspx?NewsID=27039&LangID=E
10. International Labour Organization (ILO), "Up-to-date Conventions and Protocols not ratified by Cambodia.", https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103055
11. Buth Reaksmey Kongkea. "Five charged with incitement in K Chhnang." Khmer Times, 10 January 2022, https://www.khmertimeskh.com/501003614/five-charged-with-incitement-in-k-chhnang/.
12. The High Commissioner for Human Rights (Michelle Bachelet), "Global Update: Bachelet urges inclusion to combat "sharply escalating misery and fear", annual Report and Oral Update on the activities of her Office and recent human rights developments at the 49th session of the Human Rights Council, 07 March 2022, https://www.ohchr.org/en/speeches/2022/03/global-update-bachelet-urges-inclusion-combat-sharply-escalating-misery-and-fear
13. UN Human Rights Office of the High Commissioner (OHCHR), "State of Press Freedom in Cambodia", 2022, https://www.ohchr.org/sites/default/files/2022-08/press-freedom-cambodia-en.pdf
14. The Cambodian Center for Human Rights, ARTICLE 19. "Joint Submission to the UN Human Rights Committee in advance of its third review of the Kingdom of Cambodia", 2022, https://www.article19.org/wp-content/uploads/2022/01/Cambodia-ICCPR-Joint-Submission_CCHR-and-ARTICLE-19.pdf
15. Say Samal, National Statement Kingdom Of Cambodia, at The 27th United Nations Climate Change Conference, 15th November 2022, https://unfccc.int/sites/default/files/resource/CAMBODIA_cop27cmp17cma4_HLS_ENG.pdf
16. Jennifer, L. "Cambodia to Sell 15 Million Tonnes of REDD+ Carbon Credits." Carbon Credits, 18 November 2022, https://carboncredits.com/cambodia-to-sell-15m-mt-of-redd-carbon-credits-to-corporates/
17. CIPA documents 2022. Available upon request from Cambodian Indigenous Peoples Association
18. MoE, FA, MAFF, FiA. "Second Forest Reference Level for Cambodia under the UNFCCC Framework" Modified Submission, 3 February 2022, https://redd.unfccc.int/files/cambodia_2nd_frl_modification_submission_20213005.pdf
19. Argyriou D., Theilade I., Bori P. "1st Forest Monitoring Report". Under the project Citizens Engaged In Environmental Justice For All (CEEJA). University of Copenhagen, 2022.
20. Royal Government of Cambodia, "National Strategic Development Plan 2019-2023", adopted in 2019, http://cdc-crdb.gov.kh/en/strategy/documents/nsdp-2019-2023_en.pdf
21. Kingdom of Cambodia Nation Religion King, "Study report on Indigenous Collective Land Management and Use In Mondulkiri province", 2022, by Secretariat Working Group April 2022. Available upon request from Cambodian Indigenous Peoples Association (CIPA)
22. CIPA documents 2022. Available upon request from Cambodian Indigenous Peoples Association
23. Ironside, Jeremy. "Localizing global concepts: an exploration of Indigeneity in Cambodia". In Critical Asian Studies, volume 54, number 3, pp.374-397. Routledge, 2022.
24. Ibid.
25. Kingdom of Cambodia, "Protected area law", 2008, https://portal.mrcmekong.org/assets/v1/documents/Cambodian-Law/-Protected-Areas-Law-(2008).pdf
26. RGC. 2008. Protected Areas Law, No NS/ RKM//0208/007. Accessed online Jan 2022. http://www.cambodiainvestment.gov.kh/law-on-nature-protection-area-

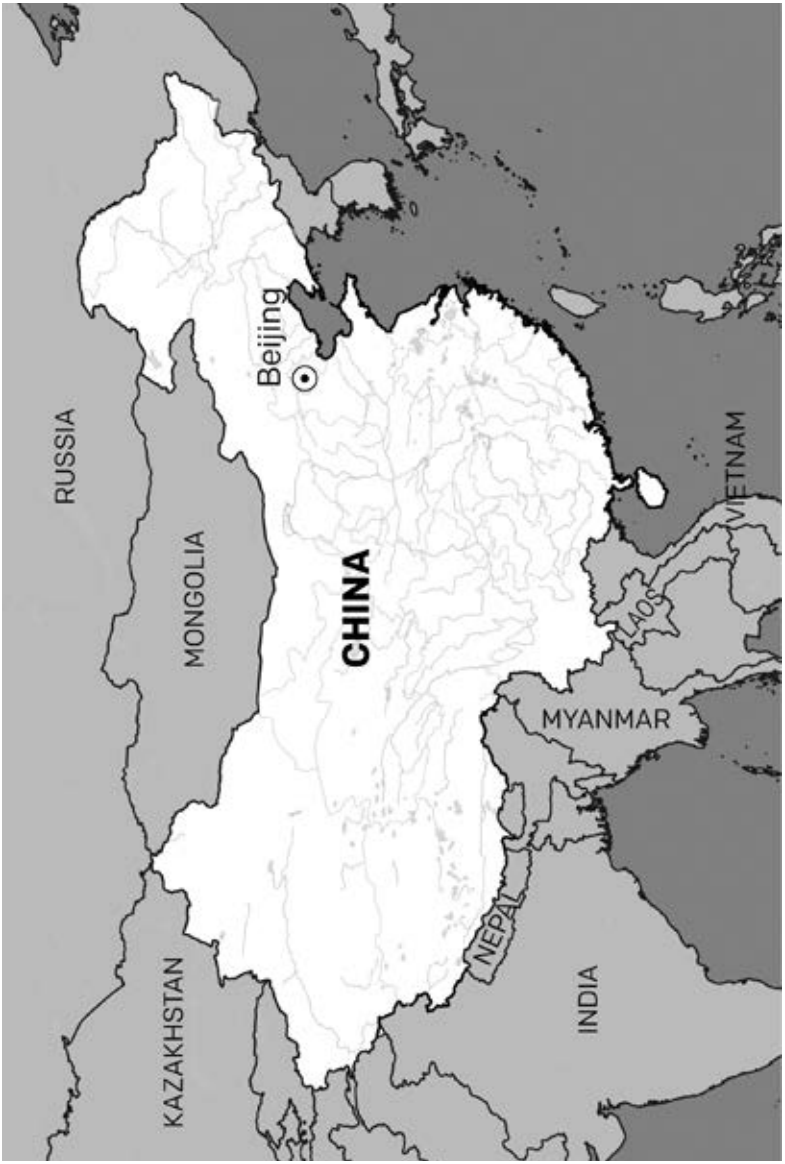
protected-areas-law_080104_080104.html
27. Joint Statement. CIPA documents 2022. Available upon request from Cambodian Indigenous Peoples Association
28. Minea, S. "Indigenous people call police questioning injustice." Khmer Times, 10 May 2022, https://www.khmertimeskh.com/501071994/indigenous-people-call-police-questioning-injustice/
29. Minea, S. "Indigenous people lament court action in land dispute." Khmer Times, 24 May 2022, https://www.khmertimeskh.com/501080683/indigenous-people-lament-court-action-in-land-dispute/
30. Minea, S. "200 indigenous people protest against company for land encroachment." Khmer Times, 17 March 2022, https://www.khmertimeskh.com/501042590/200-indigenous-people-protest-against-company-for-land-encroachment/
31. Minea, S. "Indigenous people call police questioning injustice."
32. Minea, S. "Indigenous people lament court action in land dispute."
33. CIPA documents 2022. Available upon request from Cambodian Indigenous Peoples' Association
34. Kongnov, T. "NGO urges law amendments to provide for indigenous people." Khmer Times, 9 September 2022, https://www.khmertimeskh.com/501147611/ngo-urges-law-amendments-to-provide-for-indigenous-people/
35. Koemsoeun, S. "Indigenous communities concerned over rising drug addiction." Khmer Times, 10 February 2022, https://www.khmertimeskh.com/501022305/indigenous-communities-concerned-over-rising-drug-addiction/
36. CIPA documents 2022. Available upon request from Cambodian Indigenous Peoples Association
37. Amnesty International. "Cambodia: 'Our traditions are being destroyed': illegal logging, repression, and Indigenous peoples' rights violations in Cambodia's protected forests." 28 January 2022, Cambodia: 'Our traditions are being destroyed': Illegal logging, repression, and Indigenous peoples' rights violations in Cambodia's protected forests - Amnesty International
38. Argyriou D., Theilade I., Bori P.
39. Minea, S. "No deforestation in Prey Lang Wildlife Sanctuary as alleged, MOE." Khmer Times, 10 January 2022, https://www.khmertimeskh.com/501003726/no-deforestation-in-prey-lang-wildlife-sanctuary-as-alleged-moe/
40. Flynn, G., Ball, A., Srey V. "Large-scale logging in Cambodia's Prey Lang linked to politically-connected mining operation." Mongabay, 26 May 2022, https://news.mongabay.com/2022/05/large-scale-logging-in-cambodias-prey-lang-linked-to-politically-connected-mining-operation/
41. Yalirozy, T. "Indigenous Communities Accuse Environment Officials of Illegal Logging, Corruption." Cambodianess, 2 February 2022, https://cambodianess.com/article/indigenous-communities-accuse-environment-ministry-of-illegal-logging-corruption
42. Soriththeavy, K., Kroypunlok, M. "Prey Lang Community Forest Patrols Persist Despite Being Blocked, Held, Questioned." VOD English, 4 October 2022, https://vodenglish.news/prey-lang-community-forest-patrols-persist-despite-being-blocked-held-questioned/
43. Anonymous source Prey Lang
44. Amnesty International.
45. Anonymous source of Prey Lang
46. Flynn, G., Ball, A., Srey V. "Large-scale logging in Cambodia's Prey Lang linked to politically-connected mining operation."

47. Flynn, G., Ball, A., Srey V. "Opaque infrastructure project 'a death sentence' for Cambodia's Prey Lang Wildlife Sanctuary." Mongabay, 1 June 2022, https://news.mongabay.com/2022/06/opaque-infrastructure-plans-a-death-sentence-for-cambodias-prey-lang-wildlife-sanctuary/
48. Argyriou D., Theilade I., Bori P.
49. Flynn, G., Ball, A., Srey V. "Opaque infrastructure project 'a death sentence' for Cambodia's Prey Lang Wildlife Sanctuary."
50. Theilade, I. Schmidt, L. Chhang Phourin, McDonald J.A. "Evergreen swamp forest in Cambodia: floristic composition, ecological characteristics, and conservation status." Nordic Journal of Botany 29: 71-80, 2011, Evergreen swamp forest in Cambodia: floristic composition, ecological characteristics, and conservation status (utrgv.edu)
51. Flynn, G., Ball, A., Srey V. "Opaque infrastructure project 'a death sentence' for Cambodia's Prey Lang Wildlife Sanctuary."
52. Soritheavy, K., Keeton-Olsen, D. " Power Line Markers Reveal Looming Path of Destruction in Prey Lang." VOD English, 7 September 2022, https://vodenglish.news/power-line-markers-reveal-looming-path-of-destruction-in-prey-lang/
53. Amnesty International.
54. Ibid.
55. Spirituality and Forest Protection. 2022. COP15-Joint Statement of The Prey Lang community Network (PLCN), The Prey Preah Roka Community (PFCN), and The Monk Community Forest (MCF).

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

Katrine Gro Friborg *is a researcher working on Indigenous rights and knowledge, gender, agroforestry and ethnobotanical relations.*

China


RUSSIA
MONGOLIA
KAZAKHSTAN
Beijing
CHINA
NEPAL
INDIA
MYANMAR
LAOS
VIETNAM

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,[1] 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).

Legislation affecting Indigenous Peoples

China actively carried out legislative and policy measures on wetlands protection in 2022. *The Wetlands Protection Law* entered into force on 1 June[2] and, in October, China published the *National Wetlands Protection Plan (2022–2030)*. These laws and policies set out the overall legal framework, specific requirements and goals to be achieved by 2030 in the domestic implementation of the International Convention on Wetlands (known as the Ramsar Convention). In addition, the Yellow River Protection Law was adopted on 30 October.

Furthermore, China chaired the 14th Meeting of the Conference of the Contracting Parties (COP 14) of the Ramsar Convention in Wuhan and initiated the Wuhan Declaration in November.

China is home to some of East Asia's most important wetlands and the Tibetan Plateau is "the water tower" of most rivers in the country and in Asia, such as the Yangtze, the Yellow River, the Mekong River, etc. China is among the few countries to have adopted domestic law specifically for the protection of wetlands. Since the International Convention on Wetlands (known as the Ramsar Convention) entered into force in China on 31 July 1992, China has designated 64 sites as Wetlands of International Importance (Ramsar Sites), which together cover over 7.3 million hectares (73,000 km^2).[3]

Many of these Ramsar sites are situated in the regional national autonomous areas and are thus homelands to what Chinese legislation describes as "minority nationalities".

On 30 October 2022, the National People's Congress (NPC) passed the Yellow River Protection Law[4] – a second piece of legislation on a specific river basin following the Yangtze River Protection Law, which came into effect in 2021. The Yellow River Valley is normally referred to as the birthplace of Chinese civilization, and is often called the "Mother River of China". However, the Yellow River, which is 5,464 kilometers long, can be divided into three segments: the upper reaches (3,472 km), middle reaches (1,206 km), and lower reaches (786 km). Both the upper and middle reaches cover vast traditional herding areas inhabited by Tibetan and Mongolian herders. There are also other native ethnonational groups with distinctive cultures such as Sala, Tu, and Hui in the region. The *Wetlands Protection Law, the Yellow River Protection Law, and the National Wetlands Protection Plan (2022–2030)* reveal normative and implementation gaps between these domestic legislations/policies and the Ramsar Convention in relation to Indigenous Peoples.

The Ramsar Convention encourages Contracting Parties to promote, recognize and strengthen the active participation of Indigenous Peoples and local communities as key stakeholders for conservation and integrated wetland management. The Ramsar Strategic Plan 2016-2024 incorporates a target (Target 10) on the traditional knowledge, innovations, and practices of Indigenous Peoples and local communities.[5] When comparing the standards and aspirations described in the Convention, the existing Chinese legal framework and practice make no

reference to the relevance of traditional knowledge, recognition of customary use of wetlands resources, or full and effective participation of Indigenous and local communities at all relevant levels.

During the 14th Conference of the Parties to the Convention on Wetlands (COP14) on 6 November 2022 in Wuhan, China, ministers and ambassadors of Contracting Parties adopted the *Wuhan Declaration* – a statement of political will reaffirming the principles of the Convention to conserve, restore and ensure wise use of wetlands.[6] The Declaration stresses the importance of Indigenous Peoples' full and effective participation with Free, Prior and Informed Consent (FPIC), as the UN Declaration on the Rights of Indigenous People sets out. In addition, it emphasizes the importance of the role of Indigenous knowledge and practices in improving the conservation, restoration, and wise use of wetlands. It also encourages states to enshrine Indigenous Peoples as rights holders of and contributors to wetlands protection through administrative and legislative measures. China will serve as chair of the Ramsar Convention Standing Committee in the coming three years and provide overall leadership to the secretariat and various subcommittees. It now faces opportunities and challenges in the process of guiding the global protection of wetlands, while at the same time improving the effectiveness of its work domestically in relation to Indigenous Peoples.

Draft law on ecological conservation of the Qinghai-Tibet Plateau

In December, the 38th session of the Standing Committee of the 13th National People's Congress reviewed the draft law on ecological conservation of the Qinghai-Tibet Plateau for the second time.[7]

The Qinghai-Tibet Plateau is defined as the region including the whole area of the Tibet Autonomous Region, Qinghai Province, and relevant parts of the Sichuan, Gansu, Yunnan provinces, and Xinjiang Uyghur Autonomous Region. There are various minority nationalities including Tibetans, Mongolians, Luoba, Lisu, Nu, Yi, and others residing in the area. Among the 64 articles of the draft, none addresses the rights of minority nationalities, Indigenous or local communities. Article 46 speaks about "respecting and maintaining local traditional culture and folklore" and reasonably utilizing tourism resources when develop-

ing ecological tourism there. From an Indigenous Peoples' rights perspective, various aspects are lacking in the draft relating to respecting the substantive and procedural rights of native minority nationalities in relation to their effective participation, legitimate representation, and self-determination or FPIC in the process of the legislative activities.[8]

National Park Spatial Layout Plan and the Law on National Parks (draft)

Together with the Ministry of Finance, the Ministry of Natural Resources, and the Ministry of Ecology and Environment, the National Forestry and Grassland Administration has developed a comprehensive policy on national parks – *the National Park Spatial Layout Plan.* According to the plan, China has identified 49 sites in 28 provinces where national parks have been or potentially could be built. The total area of the identified sites accounts for about 10% of the country's land area.

The plan includes forests, grasslands, wetlands, and deserts inhabited by minority nationalities. There are Tibetans, Mongolians, Yi and other native ethnonational groups traditionally living within the territories of national parks, including the Three-River-Source National Park and the Qinghai Lake National Park, the Giant Panda National Park, the Northeast China Tiger and Leopard National Park.

Meanwhile between 19 August and 19 September 2022, the National Forestry and Grassland Administration published the draft Law on National Park for public comments.[9]

While both the plan and the draft law provide the basis for a new national park system for strengthening environmental conservation, they both fail to recognize the role of Indigenous and local communities as rights holders and contributors in practice or provide for their participation in national parks' governance.

High Commissioner's visit to China and Xinjiang Report

The UN High Commissioner for Human Rights, Michelle Bachelet, visited China for six days in May 2022.[10] It was the first such trip in 17 years. During her mission, Ms Bachelet spoke with a range of government of-

ficials, civil society organizations, academics, and community and religious leaders.

In Xinjiang, Ms Bachelet raised questions and concerns about the application of counter-terrorism and de-radicalization measures and their broad application and encouraged the government to undertake a review of all such policies to ensure they fully comply with international human rights standards and are not applied in an arbitrary or discriminatory way.

Ms Bachelet also reiterated the importance of protecting the linguistic, religious, and cultural identity of Tibetans, allowing Tibetans to participate fully and freely in decisions about their religious life. She announced new areas of engagement between her office and the Chinese government in order to dialogue on human rights issues.

On 31 August 2022, the High Commissioner last working day at the OHCHR, a long-awaited report was published.[11] It concluded that:

> *The extent of arbitrary and discriminatory detention of members of Uyghur and other predominantly Muslim groups, pursuant to law and policy, in context of restrictions and deprivation more generally of fundamental rights enjoyed individually and collectively, may constitute international crimes, in particular crimes against humanity." The assessment also stated that human rights situation in XUAR "requires urgent attention by the Government, the United Nations intergovernmental bodies and human rights system, as well as the international community more broadly.*[12]

China presented its rebuttal in a detailed response to the report, arguing that the assessment was based on disinformation and lies fabricated by anti-China forces and out of a presumption of guilt. It further suggested that the report distorts China's laws and policies, wantonly smears and slanders China, interferes in China's internal affairs, and also undermines the credibility of the OHCHR.[13]

Special Rapporteurs

On 7 September, 45 UN experts released a statement supporting the OHCHR's assessment of Xinjiang.[14] The experts described the assessment as comprehensive, principled, and built on the findings and views

of multiple Special Procedure mandate holders and Working Groups.

They expressed their profound concerns at systematic human rights violations and their widespread effect on individuals and minorities in China's Xinjiang Uyghur Autonomous Region. They repeated a call for the Human Rights Council to convene a special session on China and called on the Chinese government to invite mandate holders, affirming their availability to undertake country visits, as well as to provide technical assistance and government support to the UN experts' missions to China.

The UN Human Rights Council

Despite the above findings and calls on the part of the OHCHR and the UN experts, the UN Human Rights Council rejected a draft decision entitled *Debate on the situation of human rights in the Xinjiang Uyghur Autonomous Region, China* by a vote of 17 in favor, 19 against and 11 abstentions on 6 October 2022. The debate would have taken place at the UNHRC's next regular session in March 2023.[15] China commented that the US and some other Western countries were propagating falsehoods on Xinjiang at the Human Rights Council and had put together a draft decision on that erroneous basis in an attempt to use UN human rights bodies as a tool to interfere in China's internal affairs, using the agenda of Xinjiang in order to contain China.[16]

NGOs

Leading human rights NGO Amnesty International expressed the following observation in terms of the Xinjiang vote failure betraying the core mission of the UN Human Rights Council. The:

> *vote protects the perpetrators of human rights violations rather than the victims – a dismaying result that puts the UN's main human rights body in the farcical position of ignoring the findings of the UN's own human rights office…For Council member states to vote against even discussing a situation where the UN itself says crimes against humanity may have occurred makes a mockery of everything the Human Rights Council is supposed to stand for…(the Council) failed the test to uphold its core mission, which is to protect the victims of human rights violations everywhere, including in places such as Xinjiang."*[17]

The UN treaty bodies

Due to the lack of improvement in the human rights situation in Xinjiang, the UN Committee on the Elimination of Racial Discrimination adopted a decision under its early warning and urgent action procedure at its 108th session on 24 November 2022. The Committee called on China to immediately investigate all allegations of human rights violations in the Xinjiang Uyghur Autonomous Region (XUAR), including those of torture, ill-treatment, sexual violence, forced labor, enforced disappearances, and deaths in custody. The Committee also called on China to immediately release all individuals arbitrarily deprived of their liberty in the XUAR, whether in "Vocational Education and Training Centers" or other detention facilities, and to provide relatives of those detained or disappeared with detailed information about their status and well-being.[18]

Outlook for the coming year

The Kunming-Montreal Global Biodiversity Framework (KMGBF)[19] was adopted at the Fifteenth meeting of the Conference of the Parties (COP 15) to the Convention on Biological Diversity (CBD), chaired by China. It is important to ensure that establishing a national park system and other biodiversity conservation measures undertaken in China move forward in a way that recognizes the territories and rights of Indigenous Peoples and their contributions to the governance of biodiversity. However, as of today, there are obvious inconsistencies in China playing a leading role in promoting global cooperation governance on the conservation of wetlands and biodiversity while domestically denying the existence and relevance of Indigenous Peoples in the country.

Notes and references

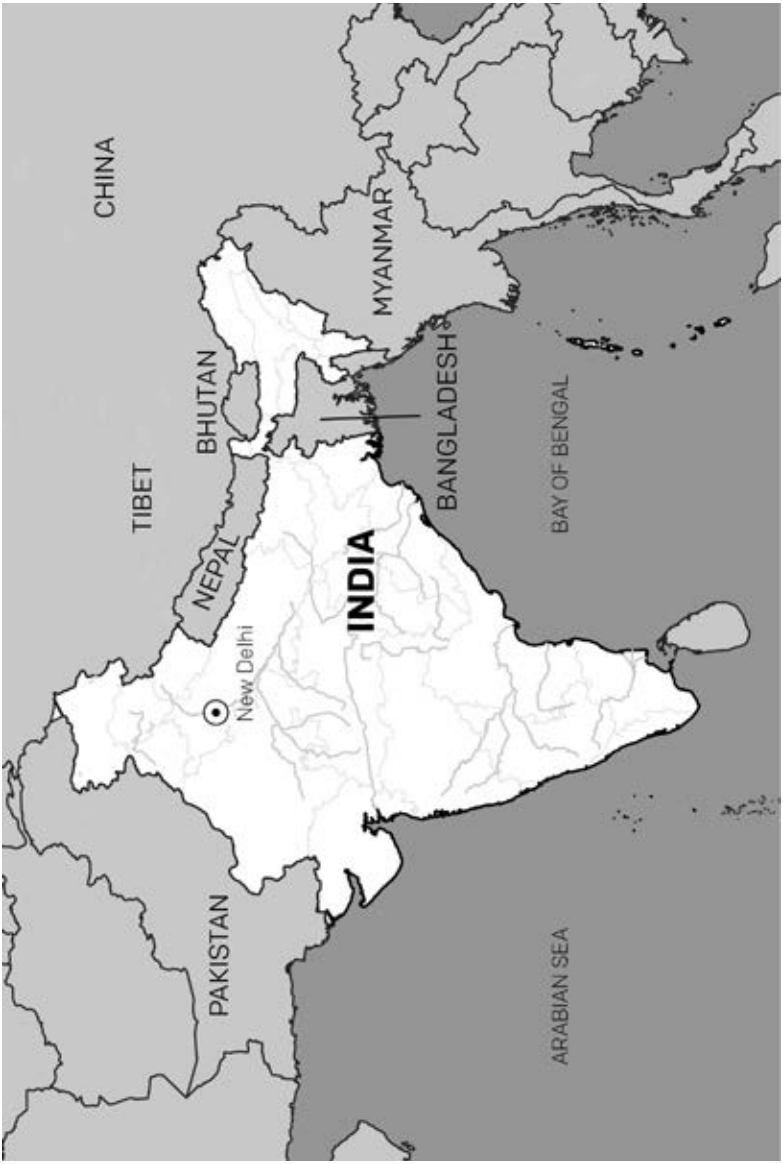
1. "China Statistical Yearbook 2021." China Statistics Press; 2021, http://www.stats.gov.cn/tjsj/ndsj/2021/indexch.htm
2. Ministry of Ecology and Environment of PRC. The Wetlands Protection Law, https://www.mee.gov.cn/ywgz/fgbz/fl/202112/t20211227_965347.shtml
3. The Ramsar Convention. China, https://www.ramsar.org/wetland/china
4. NPC. Yellow River Protection Law of China. 2022, http://www.npc.gov.cn/npc/c30834/202210/1af57adb03f54fd7821e7d35efe6ca15.shtml

5. The 4th Strategic Plan 2016-2024, The Convention on Wetlands of International Importance especially as Waterfowl Habitat – the "Ramsar Convention". https://www.ramsar.org/sites/default/files/documents/library/4th_strategic_plan_2016_2024_e.pdf
6. Wuhan Declaration. https://www.ramsar.org/sites/default/files/documents/library/wuhan_declaration_final_e.pdf
7. Gao Jing, Drafting Law on Ecological Conservation of the Qinghai-Tibet Plateau Shall Strengthen Biodiversity Conservation, 28 December 2022, http://www.npc.gov.cn/npc/c30834/202212/ef61d3070f5c4b358e76a50f8d4a9260.shtml
8. The Law on Ecological Conservation of the Qinghai-Tibet Plateau (draft). 2022, https://npcobserver.com/wp-content/uploads/2022/09/Qinghai–Tibet-Plateau-Ecological-Conservation-Law-Draft.pdf
9. State Forestry and Grassland Administration Government Network. "The National Park Law (Draft): Draft for comments." 19 August 2022, http://www.forestry.gov.cn/main/153/20220819/150732442216001.html
10. "UN rights chief concludes China trip with promise of improved relations." UN News, 28 May 2022, https://news.un.org/en/story/2022/05/1119302
11. UN. OHCHR. "OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China." 31 August 2022, https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf
12. Ibid, Para. 148 and 149
13. "China's rebuttal to the Xinjiang Report." Permanent Mission of PRC to the UN Office at Geneva and other International Organizations in Switzerland, 31 August 2022, https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/ANNEX_A.pdf
14. UN OHCHR. "Xinjiang report: China must address grave human rights violations and the world must not turn a blind eye, say UN experts." UN Media Center, 07 September 2022, https://www.ohchr.org/en/press-releases/2022/09/xinjiang-report-china-must-address-grave-human-rights-violations-and-world
15. UN. OHCHR. "Human Rights Council Adopts 21 Texts and Rejects One Draft Decision, Extends Mandates on Older Persons, Rights to Development, Arbitrary Detention, Mercenaries, Slavery, Indigenous Peoples, Safe Drinking Water and Sanitation." UN Media Center, 06 October 2022, https://www.ohchr.org/en/news/2022/10/human-rights-council-adopts-21-texts-and-rejects-one-draft-decision-extends-mandates
16. Ministry of Foreign Affairs of PRC. "Foreign Ministry Spokesperson's Remarks on the Human Rights Council's Vote Against a Draft Decision on Xinjiang." 07 October 2022, https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/2535_665405/202210/t20221007_10777575.html
17. "China: Xinjiang vote failure betrays core mission of UN Human Rights Council." Amnesty International, 6 October 2022, https://www.amnesty.org/en/latest/news/2022/10/china-xinjiang-vote-failure-betrays-core-mission-of-un-human-rights-council/
18. UN. "Prevention of Racial Discrimination, Including Early Warning and Urgent Action Procedure. Decision 1 (108)." Committee On The Elimination Of Racial Discrimination, 108th session, 14 November-2 December 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FEWU%2FCHN%2F9624&Lang=en
19. "The Kunming-Montreal Global Biodiversity Framework, agreed at the 15th meeting of the Conference of Parties to the UN Convention on Biological

Diversity is now available as document CBD/COP/15/L25." Official CBD Press Release, 22 December 2022, https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222

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

India


CHINA
TIBET
NEPAL
BHUTAN
PAKISTAN
New Delhi
INDIA
MYANMAR
BANGLADESH
BAY OF BENGAL
ARABIAN SEA

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.[1] With an estimated population of 104 million, they comprise 8.6% of the total population. There are, however, many more ethnic groups that would qualify for Scheduled Tribe status but are not officially recognized and, consequently, the total population 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, that recognize 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 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"[2] or in its justification of the Citizenship Amendment Bill. The State government of Jharkhand declared the International Day of the World's Indigenous Peoples celebrated on 9 August every year worldwide as a state holiday.[3]

Special Focus: Forest and wildlife conservation laws and policies detracting from Indigenous Peoples' rights

Law amendments

The rights of Indigenous Peoples to land and forest resources have been increasingly targeted through forest and wildlife conservation laws and policies.

On 28 June, the Ministry of Environment, Forest and Climate Change (MoEFCC) replaced the 2003 Forest Conservation Rules (FCR) under the 1980 Forest Conservation Act (FCA) with a new 2022 version that included several amendments.[4] The new rules give the government the power to allow private developers to clear forests without consulting Indigenous Peoples and forest dwellers – in clear violation of the right to Free, Prior and Informed Consent (FPIC) guaranteed under the 2006 Forest Rights Act (FRA) and the 1996 Panchayats Extension to Scheduled Areas (PESA) Act.[5]

In September, in a letter to the MoEFCC, the National Commission for Scheduled Tribes (NCST) also raised concerns saying the 2022 FCR would have "serious" impacts on the rights of Scheduled Tribes and Other Traditional Forest Dwellers. The NCST noted that the MoEFCC did not consult the commission on such an important amendment. In its response letter in November to the commission, the MoEFCC asserted that the new rules comply with all provisions, including settlements of rights under the FRA.[6]

On 14 July, the MoEFCC amended the 2006 Environmental Impact Assessment (EIA) Rules to provide exemptions for highway projects in border areas, thermal power plants that run on biomass, the fish handling capacity of ports and harbours, and airport terminal expansions, among others.[7] In other words, such projects will not need to be assessed for their impacts on people and the natural ecosystem, and will not need to seek public consultation, among other issues.[8]

Displacement of Indigenous Peoples

Indigenous Peoples' lands continued to be illegally acquired for business and infrastructure development without FPIC. Further, their rights are being undermined by the government's diversion of the use of forest lands for industries by diluting conservation laws. Indigenous Peoples thus often face forced eviction, arrest, torture, and killings, and are denied access to the forest and its resources for food in the name of forest and wildlife conservation.

Throughout 2022, some 45,000 Adivasis from 52 villages located in the Ranipur Wildlife Sanctuary in Chitrakoot district, Uttar Pradesh were living in constant fear of eviction after being served eviction notic-

es under the 1927 Indian Forest Act.[9]

On 16 October, hundreds of Indigenous Peoples protested against the process of land acquisition by the Jharkhand Industrial Area Development Authority (JIADA) in West Singhbhum district of Jharkhand without the consent of the Gram Sabhas (village councils). Indigenous Peoples alleged that JIADA had identified approximately 492.64 acres for allocation to industrial development.[10]

Similarly, from 18-21 October, thousands of Indigenous people from 57 villages in Sundargarh district of Odisha organized a 100 km *padyatra* (march) from Ramabhal to the District Collector/Administrator's office to protest the illegal allocation of 750 acres of land from the 57 villages. The State government had allocated the land to the Dalmia Cement Company without the consent of the Gram Sabha and without conducting a social impact assessment. Around 60,000 Indigenous people are facing displacement.[11]

On 4 November, the MoEFCC granted final environmental clearance for the Rs 72,000-crore (8.11 billion euro) megaproject on Great Nicobar. Earlier, on 27 October, the ministry granted Stage 1 Forest Clearance for the project.[12] The final environmental clearance was granted based on the environmental impact assessment report, which is replete with inaccuracies and inadequacies, in addition to reflecting a flawed understanding of the tribal communities.[13] It will threaten the survival of two Indigenous tribes –the Shompens and Nicobarese– which are classified as "particularly vulnerable tribal groups".[14] On 29 April, the UN Committee on the Elimination of Racial Discrimination (CERD Committee) asked the Government of India to submit information, by 15 July, on the measures adopted to prevent any adverse and irreparable impact of the megaprojects on the Particularly Vulnerable Tribal Groups (PVTGs), including the impact on the ecosystem, on biodiversity, and on the livelihood and existence of the PVTGs, and steps taken to ensure strict observance of laws and policies relating to the protection of the PVTGs. The CERD Committee made the intervention following a complaint filed by ILAI.[15]

On 7 June, 341 forest dwellers from Rampur Ratia village in the Gularia forest in Bahraich district, along with two other villages: Dharampur Ratia and Sampat Purwa in Dudhwa National Park in Lakhimpur Kheri district, were served eviction notices by the Forest Department, claiming they were encroachers.[16]

Approximately 286 tribal families, including 216 families belonging to the Sahariya tribe from villages in Kuno National Park in Sheopur district, Madhya Pradesh and 70 families from Jahangarh village, were facing imminent relocation following the release of wild cheetahs brought from Namibia into the national park on 17 September.[17] The animals were brought in without the FPIC of the community, and they were forced to relocate to a place identified by the State government.

A number of Indigenous people who have been evicted from reserve forests in the name of conservation have yet to be provided any rehabilitation or help from the government. For example, more than 520 Chakma and Garo Indigenous people who were evicted from the Lumding Reserve Forest in Hojai district, Assam, in November 2021, had still not had any support from the State government a full year later.[18] India's Supreme Court failed to adjudicate its 2019 ruling, which it subsequently stayed, to evict millions of forest-dwelling Indigenous people from their homes across the country at year end. The Court last heard the case on 13 September.[19]

Criminalization of livelihood practices

The livelihood of Indigenous Peoples and forest dwellers has been criminalized as they face arrest and detention under various conservation laws, including the 1972 Wildlife (Protection) Act (WPA).

Some of the instances of criminalization of livelihood practices in 2022 included the arrest of 12 Indigenous men under the WPA in Mancherial district, Telangana on charges of encroaching on a tiger reserve in June;[20] the killing of a an Indigenous man and injury of three other Indigenous persons after having been shot by forest officials in the Khadyapura forest area in Vidisha district, Madhya Pradesh as they were collecting wood on 9 August;[21] the illegal detention and torture of three Indigenous persons in Melaghat Tiger Reserve in Amravati district, Maharashtra as they went fishing on 25 August;[22] the arrest and torture of an Indigenous man in a false case of smuggling wild animal meat at Kuzhikanam forest station under Idukki Wildlife Sanctuary in Idukki district, Kerala in September;[23] the torture to death of a 49-year-old Indigenous man at Gundre Forest Range office in Mysuru district, Karna-

taka following his detention on charges of possessing deer meat on 12 October;[24] and the killing of a 40-year-old Indigenous man and injuries to another after being shot by forest officials for collecting wood in the Khalingduar Reserve Forest in Udalguri district, Assam on 16 November.[25] In one of these cases, the victims or their families were awarded compensation.[26]

Legal rights and policy developments

On 15 September, a tripartite peace agreement was signed between the Government of India, the Assam State government and eight armed Adivasi groups in Assam to bring the Adivasi groups into the mainstream and give them political and economic rights.[27]

Further, a number of communities are set to be included in the list of Scheduled Tribes. On 14 September, the Government of India approved a proposal to add the Hatti tribe in the Trans-Giri area of Sirmour district, Himachal Pradesh; the hill tribes of Narikoravan and Kurivikkaran of Tamil Nadu; the Binjhia community in Chhattisgarh; and the Gond community in certain districts of Uttar Pradesh.[28]

Violations of Indigenous Peoples' rights by security forces and armed opposition groups

Security forces continued to be involved in human rights violations in 2022, including the custodial death and torture of Indigenous people.

Some of the cases reported included the torture of a 19-year-old Indigenous man by a police officer after booking him in a case of drink driving in Nirmal district, Telangana on 23 March;[29] the killing of a 48-year-old Indigenous man in judicial custody due to alleged torture after he was arrested on charges of brewing illicit liquor in Tiruvannamalai district, Tamil Nadu on 27 April;[30] the torture of seven Indigenous persons while in police custody for carrying farm tools in Ahmedabad district, Gujarat in July;[31] the torturing to death of a 35-year-old Indigenous man after his arrest while travelling in a vehicle at Gelekey police station in Sivasagar district, Assam on 21 August;[32] the killing of a 29-year-old Indigenous man due to alleged torture in custody at the Railway police

station after his arrest in robbery cases in Pune district, Maharashtra on 24 August;[33] the killing of a 19-year-old Indigenous man who died due to alleged torture in police custody after his arrest in a case of looting in Indore district, Madhya Pradesh on 3 September;[34] the killing of a 35-year-old Indigenous man who died in police custody following his detention in a theft case at Roing police station in Lower Dibang Valley district, Arunachal Pradesh on 17 September;[35] and the torture of an Indigenous man in custody during questioning in connection with a murder case in Seoni district, Madhya Pradesh on 30 September and 12 October.[36]

A number of Indigenous Peoples in the North-Eastern region and the Naxalite-affected areas in the "tribal belt" were victims of human rights abuses, including extrajudicial killings by security forces. The incidents included the torture of a 42-year-old Indigenous man at Garu police station in Latehar district, Jharkhand on 23 August after he was picked up by police on suspicion of aiding Maoists;[37] the killing of two Indigenous men by the Special Operations Group during an alleged encounter with Maoists in Malipadar forest in Koraput district, Odisha on 11 November;[38] and the killings of five tribals from Meghalaya[39] in an alleged unprovoked shooting by Assam Police near the Assam-Meghalaya border on 22 November.[40]

Armed opposition groups, in particular the Maoists or Naxals, continued to be responsible for gross violations of international humanitarian law for the killings of Indigenous persons on charges of being "police informers", or simply for not obeying their *diktats* (orders). Those killed included a 32-year-old tribal man at Upargumu village in Kandhamal district, Odisha on 14 February;[41] two tribals in Gadchiroli district, Maharashtra on 14 April;[42] a tribal in Balaghat, Madhya Pradesh on 6 August;[43] a tribal-elected representative of Kurnapally village in Bhadradri Kothagudem district, Telangana on 29 August;[44] a tribal from Mababadi village in Kandhamal district, Odisha on 23 October;[45] and a tribal from Kondapur village in Mulugu district, Telangana.[46]

Situation of Indigenous women

The individual and collective rights of Indigenous women and girls are regularly denied or violated in private and public spaces. Sexual vio-

lence, trafficking, killing or being branded a witch, militarization or State violence, and the impact of development-induced displacement remain major issues faced by women and girls.

In its latest report "Crime in India 2021", published on 29 August 2022, the National Crime Records Bureau (NCRB) recorded a total of 1,324 cases of rape against Indigenous women and girls in 2021.[47] Sexual assaults were perpetrated by both civilians and security forces.

The trend continued in 2022 with several reported cases. On 1 January, two Indigenous minors were raped in Ravada village in Vizianagaram district, Andhra Pradesh by a 35-year-old man posing as a police officer.[48] On 10 July, a 14-year-old Indigenous girl was gang-raped and murdered by nine persons in Goudapada village in Phulbani district, Odisha. All nine accused were arrested by police.[49] On 2 September, a 14-year-old Indigenous girl was allegedly raped and killed by a non-tribal in Mufassil police station in Dumka district, Jharkhand.[50] On 4 October, a 50-year-old Indigenous widow was gang-raped in Serengdag area in Lohardaga district, Jharkhand by two personnel of the India Reserve Battalion.[51] On 6 October, a 40-year-old Indigenous woman was allegedly tortured in custody at Kanjarda police outpost in Neemuch district, Madhya Pradesh by a woman police officer for filing a complaint against her for not taking action over a complaint the Indigenous woman filed against her husband.[52]

Witch-hunting, which remains one of the most common forms of violence against Indigenous women in India, continued to be reported in 2022, including the killing of an Adivasi woman and her husband in Baksa district, Assam in April;[53] the killing of a 45-year-old Adivasi woman by a mob in Mohanpur village in Kokrajhar district, Assam in May;[54] the killing of a 45-year-old woman in West Singhbhum district, Jharkhand on 3 July;[55] the killing of a 70-year-old woman in Khuri village in Garhwa district, Jharkhand on 3 July;[56] the killing of a 70-year-old woman in Mayurbhanj district, Odisha on 16 July;[57] the killing of a 56-year-old Adivasi widow in Kokrajhar district, Assam on 24 July;[58] the killing of a 35-year-old Indigenous woman in Jamun Toli area in Ranchi district, Jharkhand on 24 July;[59] and the killing of two Indigenous women, aged 45 and 66, in Ranchi district, Jharkhand on 4 September.[60]

Conditions of internally-displaced Indigenous people

The Government of India does not have any data on the number of Indigenous Peoples internally displaced by industrial and infrastructure projects or armed conflicts.

The resettlement of the Bru (Reang) people from Mizoram in Tripura had not been completed by the end of 2022 and the deadline for their resettlement has been extended to February 2023.[61]

The Indigenous people who sought shelter in Telangana from Chhattisgarh due to the conflict between the Salwa Judum and Maoists in 2005 remain at risk of eviction. On 27 November, the Forest Department in Telangana issued notices to 40 families of the Guthikoya tribe, who have been living on forest land, to vacate the area in Kothagudem division in Bhadradri-Kothagudem district.[62]

Tribals displaced by development projects continued to be denied rehabilitation. On 16 October, some 64 tribal families who were displaced after they were forced to vacate their ancestral homes due to the construction of a dam on the Yamuna River in Lohari village in Dehradun district, Uttarakhand in April 2022 were not provided any rehabilitation or compensation.[63]

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^2. The Nagas comprise several tribes living primarily in the north-eastern region of India and north-western Myanmar.

Naga traditional concept of conservation

Since time immemorial, Nagas have always shared a symbiotic relationship with nature[64] and this is found in their folklore, songs, culture and tradition. Even in the midst of the Naga's heaviest tension – the conflict and war with India for self-determination – nature came to their rescue in the form of shelter and food as most Nagas were driven out of their homes, villages and forests. Nature and conservation are thus

of the utmost value to the Nagas. As such, the conservation of forests and its associated biodiversity are given the utmost priority. Conservation has been practised since the dawn of Naga civilization and can be found embedded in their culture and practices.

For instance, we see the practice of community reserved forests in almost every Naga village, which act as reservoirs for their livelihood. Likewise, we also see the practice of protecting particular species of trees, animals, etc. For example, large trees around villages have never been cut down and certain animals and birds have never been hunted because of their value or association with human beings. We see the essence of conservation ethos in their folklore and traditional practices, practised not necessarily from a climate change perspective but from a spiritual and social responsibility perspective.

Monoculture: A threat to biodiversity conservation

In the name of economic growth, government and privately-initiated monoculture plantations have found their place securely in the region. As such, today we have large tracts of land given over to Rubber and Teak, *Duabanga* (Kokon) plantations all over Nagaland. At present, the focus has shifted to oil palm cultivation. According to the records, the state has 5,423 ha spread across the state under oil palm cultivation. Further, the government is of the view that, "oil palm takes up massive space... it requires a huge space for oil palm cultivation and the ministry is trying to increase area in the Northeast region; in a hectare, hardly 142 crops can be planted".[65] In their own words, "oil palm requires massive space", and thus acts as a direct threat to land and biodiversity.

It is to be noted that the government signed an MoU with Shivasais Oil Palm Ltd in 2014 and has assured the farmers that a processing unit and market for the same will be developed. As of 2023, however, nothing has been done leading one poor farmer in Dimapur to lament, "We eat the oil palm seed raw".[66]

One year on since the Oting Massacre

"People tell us to forgive and forget. But whom do we forgive? First we have to be told that these were the people responsible for the incident," Chenwang Konyak, a cancer survivor who also suffered a serious brain stroke after his son's death in the Oting Massacre, said as he awaits justice.[67]

On 4 December 2021, six coal miners returning from work were killed in a botched ambush by the security forces at Oting village of Mon district, while seven others were gunned down when angry villagers scuffled with them after discovering the bullet-riddled bodies of the labourers on an army truck. One security personnel was also killed in the melee. Another civilian was killed when a mob attacked an Assam Rifles camp at Mon town the next day.[68]

Since the Oting incident, the demand for removal of the Armed Forces (Special Powers) Act (AFSPA) from Nagaland has gained voice and, as a result, AFPSA has been removed from certain parts of Nagaland with effect from 1 April 2022 although it is still active in Mon district.[69]

Notes and references

1. Since the Scheduled Tribes or "tribals" are considered India's Indigenous Peoples, these terms are used interchangeably in this text.
2. Government of India, Ministry of Home Affairs, North East Division. "Constitution of High Level Committee to look into social, economic, cultural and linguistic issues of the indigenous population in the State of Tripura." 7 September 2018, https://mha.gov.in/sites/default/files/filefield_paths/HLC_Tripura.PDF
3. Mukesh, Asrp. "World Indigenous People's Day: Jharkhand CM declares public holiday, Congress plans grand celebration." The Times of India, 9 August 2020, https://timesofindia.indiatimes.com/city/ranchi/world-indigenous-peoples-day-cm-declares-public-holiday-cong-plans-grand-celebrations/articleshow/77438738.cms
4. The Forest (Conservation) Rules, 2022 is available at https://parivesh.nic.in/writereaddata/FCRule2022Notificationdated28062022.pdf
5. Grover, Samarth. "What Are Forest Conservation Rules 2022? Why Are They Being Criticised?" The Quint, 11 July 2022, https://www.thequint.com/climate-change/what-are-forest-conservation-rules-2022-why-are-they-being-criticised#read-more
6. "Have not taken any stand on new forest conservation rules: National ST body chief." The Print, 3 January 2023, https://theprint.in/india/have-not-taken-any-stand-on-new-forest-conservation-rules-national-st-body-chief/1295876/
7. Ministry of Environment, Forest and Climate Change, Government of India. "EIA Notification, 2006 and subsequent amendments". S.O.3194(E), 14 July 2022, http://environmentclearance.nic.in/report/EIA_Notifications.aspx
8. Perinchery, Aathira. "Now, Highway Projects Near Borders Don't Need Environmental Clearance." The Wire, 26 July 2022, https://thewire.in/government/now-highway-projects-near-borders-dont-need-environmental-clearance
9. Alim Jafri, Abdul. "UP Polls: 'Where Will We Go?' Ask Tribals in Chitrakoot on Being Served Eviction Notices." Newsclick, 1 February 2022, https://www.newsclick.in/UP-Polls-Where-Will-We-Go-Ask-Tribals-Chitrakoot-Being-Served-Eviction-Notices

10. Bisoee, Animesh. "Tribals say 'no' to land acquisition." The Telegraph, 19 October 2022, https://www.telegraphindia.com/jharkhand/tribals-say-no-to-land-acquisition/cid/1892868
11. "'Won't Give an Inch to Dalmia Cement': 5,000 Adivasis in Odisha Protest 'Illegal' Land Acquisition." The Wire, 25 October 2022, https://thewire.in/rights/sundergarh-tribal-protest-footmarch
12. Sekhsaria, Pankaj. "'Planned destruction of Adivasi culture and lives': Experts raise alarm over Great Nicobar project." The Scroll, 25 November 2022, https://scroll.in/article/1038263/planned-destruction-of-adivasi-culture-and-lives-experts-raise-alarm-over-great-nicobar-project
13. Ibid
14. Ibid
15. Shepherd, Verene. Committee on the Elimination of Racial Discrimination, Office of the High Commissioner for Human Rights. "Action Letter." 29 April 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FInd%2F9556&Lang=en
16. Singh, Manoj. "UP Forest Dwellers Accuse Forest Department of Denying Them Their Rights." The Wire, 23 August 2022, https://thewire.in/rights/up-forest-dwellers-accuse-forest-department-of-denying-them-their-rights
17. Asif Siddiqui, Mohammad. "The last holdouts of Kuno: Taking the forest out of the Sahariyas", Daijiworld, 6 December 2022, https://www.daijiworld.com/news/newsDisplay?newsID=1026617
18. Chakma Reporter. "Assam: One Year After Forcible Eviction, Displaced Chakmas Live in Absolute Destitution." YouTube, 15 November 2022, https://www.youtube.com/watch?v=WMGyai7cD70&t=582s
19. Supreme Court of India. "Writ Petition (Civil) No.109/2008." https://main.sci.gov.in/supremecourt/2008/8640/8640_2008_5_102_38168_Order_13-Sep-2022.pdf
20. Sushil Rao, Ch. "Telangana: 12 tribal women arrested over attempt to encroach forest land." The Times of India, 4 June 2022, https://timesofindia.indiatimes.com/city/hyderabad/12-tribal-women-arrested-over-attempt-to-encroach-forest-land/articleshow/91996498.cms
21. Indigenous Lawyers Association for India. "Madhya Pradesh: Intervention Made Against Killing Of One Tribal And Injuries To Three Others." 22 August 2022, http://www.indigenouslawyers.org/interventions/madhya-pradesh-intervention-made-against-killing-of-one-tribal-and-injuries-to-three-others/
22. Singharia, Kanishka. "Tribal men burnt with hot bars for illegal fishing in Maharashtra's Amravati." Hindustan Times, 26 August 2022, https://www.hindustantimes.com/cities/mumbai-news/tribal-men-burnt-with-hot-bars-for-illegal-fishing-in-maharashtra-s-amravati-101661525579914.html
23. "False case against tribal youth: Panel seeks action." The Times of India, 3 December 2022, https://timesofindia.indiatimes.com/city/kochi/false-case-against-tribal-youth-panel-seeks-action/articleshow/95953212.cms
24. Karthik K K. "Karnataka: Tribal man in foresters' custody dies of suspected torture in HD Kote." The New Indian Express, 13 October 2022, https://www.newindianexpress.com/states/karnataka/2022/oct/13/karnataka-tribal-man-in-foresters-custody-dies-of-suspected-torture-in-hd-kote-2507545.html
25. Khan, Shajid. "Assam: Forest guards shoot Adivasi woodcutter dead in Udalguri", The North East Now, 17 November 2022, https://nenow.in/north-east-news/assam/assam-forest-guards-shoot-adivasi-woodcutter-dead-in-udalguri.html

26. Tiwari, Vishnukant. "1 Dead as MP Forest Officers Allegedly Open Fire at Tribals in Vidisha, Probe On." The Quint, 10 August 2022, https://www.thequint.com/news/india/mp-vidisha-forest-officials-kill-tribal-injure-others-dakshin-lateri-forest-range#read-more
27. Ministry of Home Affairs, Press Release,15 September 2022, https://pib.gov.in/PressReleasePage.aspx?PRID=1859665
28. Lakshman, Abhinay. "Explained | The process of inclusion or exclusion from the Scheduled Tribes list." The Hindu, 19 September 2022, https://www.thehindu.com/news/national/explained-the-process-of-inclusion-or-exclusion-from-the-scheduled-tribes-list/article65906246.ece
29. "Tribal youngster allegedly beaten by SI ends life in Nirma." Telangana Today, 24 March 2022, https://telanganatoday.com/tribal-youngster-allegedly-beaten-by-si-ends-life-in-nirmal
30. Vaitheeswaran B. "Tamil Nadu man dies in custody, kin blames police", The New Indian Express, 30 April 2022, https://www.newindianexpress.com/states/tamil-nadu/2022/apr/30/tamil-naduman-dies-in-custody-kin-blames-police-2448097.html
31. "NHRC Orders CP To Act In Atrocity Plaint", Ahmedabad Mirror, 22 September 2022, https://www.ahmedabadmirror.com/nhrc-orders-cp-to-act-in-atrocity-plaint/81845040.html
32. Indigenous Lawyers Association of India, "Complaint dated August 25, 2022 filed with National Human Rights Commission", Case No. 301/3/15/2022-AD.
33. Ibid.
34. "MP: Tribal man arrested in loot case dies in custody; five cops suspended." The Print, 4 September 2022, https://theprint.in/india/mp-tribal-man-arrested-in-loot-case-dies-in-custody-five-cops-suspended/1115738/
35. Riba, Karyir. "Two custodial deaths in Sept as one dies by suicide in Roing police station", The Arunachal Times, 3 October 2022, https://arunachaltimes.in/index.php/2022/10/03/two-custodialdeaths-in-sept-as-one-dies-by-suicide-in-roingpolice-station/
36. "Bhopal: Tribals arrested during protest against police atrocities." The Free Press Journal, 23 October 2022, https://www.freepressjournal.in/bhopal/bhopal-tribals-arrested-during-protest-against-police-atrocities
37. Bisoee, Animesh. "No FIR against guilty cops over Latehar 'torture' yet." The Telegraph, 31 August 2022, https://www.telegraphindia.com/india/no-fir-against-guilty-cops-over-latehar-torture-yet/cid/1883542
38. "NHRC seeks report on Koraput 'fake' encounter." The New Indian Express, 21 November 2022, https://www.newindianexpress.com/states/odisha/2022/nov/21/nhrc-seeks-report-on-koraput-fake-encounter-2520451.html
39. "Meghalaya-Assam border firing: Fresh protests break out; Shah assures CBI probe." The Indian Express, 24 November 2022, https://www.newindianexpress.com/nation/northeast/2022/nov/24/meghalaya-assam-border-firing-fresh-protests-break-out-shah-assures-cbi-probe-2521776.html
40. "Assam Police used 'unprovoked, uncontrolled' force: Himanta on border violence", The Arunachal Times, 24 November 2022, https://arunachaltimes.in/index.php/2022/11/24/assam-police-used-unprovoked-uncontrolled-force-himanta-on-border-violence/
41. "Suspected Maoists kill tribal man suspecting him to be police informer." The Print, 16 February 2022, https://theprint.in/india/suspected-maoists-kill-tribal-man-suspecting-him-to-be-police-informer/833328/
42. Bose, Soumitra. "Maharashtra: Two tribals kidnapped, murdered by Maoists

in south Gadchiroli." The Times of India, 14 April 2022, https://timesofindia.indiatimes.com/city/nagpur/maharashtra-two-tribals-kidnapped-murdered-by-maoists-in-south-gadchiroli/articleshow/90849075.cms

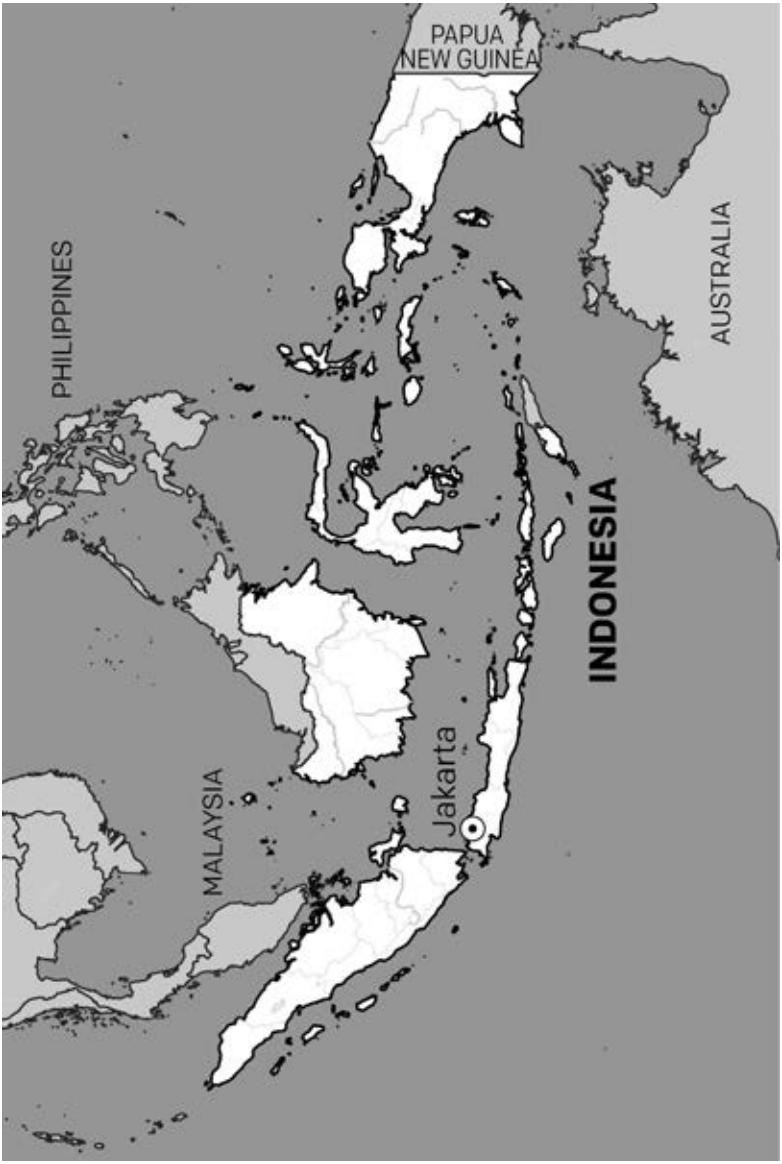
43. "Maoists kill villager on suspicion of being police informer in MP's Balaghat." Telangana Today, 6 August 2022, https://telanganatoday.com/maoists-kill-villager-on-suspicion-of-being-police-informer-in-mps-balaghat
44. Sridhar, P. "Man killed by suspected Maoists in Telangana's Charla mandal." The Hindu, 30 August 2022, https://www.thehindu.com/news/national/telangana/man-killed-by-suspected-maoists-in-telanganas-charla-mandal/article65829099.ece
45. "Maoists torch vehicles, equipment in Odisha's Kandhamal." The Hindu, 25 October 2022, https://www.thehindu.com/news/national/other-states/maoists-torch-vehicles-equipment-in-odishas-kandhamal/article66052987.ece
46. "Telangana: Tribal man killed by Maoists over allegedly being police informer." The New Indian Express, 10 November 2022, https://www.newindianexpress.com/states/telangana/2022/nov/10/telangana-tribal-man-killed-by-maoists-over-allegedly-being-police-informer-2516902.html
47. National Crime Records Bureau, Ministry of Home Affairs. "Crime in India 2021. Statistics Volume-II." https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%202.pdf
48. "Criminal poses as cop, allegedly rapes two minors in Andhra's Vizianagaram." The New Indian Express, 3 January 2022, https://www.newindianexpress.com/states/andhra-pradesh/2022/jan/03/criminal-poses-as-cop-allegedly-rapes-two-minors-in-andhras-vizianagram-2402456.html
49. "Nine held for gang rape and murder in Odisha's Goudapada village." The New Indian Express, 25 July 2022, https://www.newindianexpress.com/states/odisha/2022/jul/25/nine-held-for-gang-rapeand-murder-in-odishasgoudapada-village-2480416.html
50. "Amid row over Dumka girls' deaths, bodies of two women recovered near Ranchi; likely murdered over witchcraft suspicion." The New Indian Express, 5 September 2022, https://www.newindianexpress.com/nation/2022/sep/05/amid-row-over-dumka-girls-deaths-bodies-of-twowomen-recovered-near-ranchilikely-murdered-over-w-2495070.html
51. Sahay, Sanjay. "Lohardaga woman who was 'raped' by constables serious." The Times of India, 8 October 2022, https://timesofindia.indiatimes.com/city/ranchi/lohardaga-woman-who-was-raped-by-constables-serious/articleshow/94716204.cms
52. "MP: FIR against female cop in Manasa for assaulting and threatening tribal woman." The Free Press Journal, 10 October 2022, https://www.freepressjournal.in/indore/mp-fir-against-female-cop-in-manasa-for-assaulting-and-threatening-tribal-woman
53. "Assam: Adivasi couple killed over witchcraft suspicion in Baksa." NorthEast Now, 12 April 2022, https://nenow.in/north-east-news/assam/assam-adivasi-couple-killed-over-witchcraft-suspicion-in-baksa.html
54. Choudhury, Ratnadip. "Assam Woman Killed, Hanged From Tree Over Witchcraft Fears: Cops." NDTV, 9 May 2022, https://www.ndtv.com/india-news/kokrajhar-witchcraft-case-assam-tribal-woman-killed-hanged-from-tree-over-witchcraft-fears-2959853
55. "Jharkhand: 45-year-old tribal woman killed on suspicion of witchcraft in West Singhbhum district." First Post, 6 July 2022, https://www.firstpost.com/india/jharkhand-45-year-old-tribal-woman-killed-on-suspicion-of-witchcraft-in-

west-singhbhum-district-10878121.html
56. "Jharkhand: 70-year-old woman beaten to death over 'witchcraft." The Indian Express, 5 July 2022, https://indianexpress.com/article/cities/delhi/jharkhand-woman-beaten-to-death-witchcraft-8009347/
57. "Elderly Tribal Woman Hacked To Death Over Witchcraft Suspicion." Outlook, 17 July 2022, https://www.outlookindia.com/national/elderly-tribal-woman-hacked-to-death-over-witchcraft-suspicion-news-209842
58. "Assam: Widow Thrashed To Death Over Suspicions Of Practising Witchcraft." The Sentinel, 24 July 2022, https://www.sentinelassam.com/north-east-india-news/assam-news/assam-widow-thrashed-to-death-over-suspicions-of-practising-witchcraft-604190
59. "35-yr-old killed over witchcraft charges in Ranchi." The Times of India, 24 July 2022, https://timesofindia.indiatimes.com/city/ranchi/35-yr-old-killed-over-witchcraft-charges/articleshowprint/93081392.cms
60. "Amid row over Dumka girls' deaths, bodies of two women recovered near Ranchi; likely murdered over witchcraft suspicion." The New Indian Express, 5 September 2022, https://www.newindianexpress.com/nation/2022/sep/05/amid-row-over-dumka-girls-deaths-bodies-of-twowomen-recovered-near-ranchilikely-murdered-over-w-2495070.html
61. "Tripura: Deadline for Bru resettlement extended till February 23." NorthEast Now, 10 November 2022, https://nenow.in/north-east-news/tripura/tripura-deadline-bru-resettlement-extended-february-23.html
62. Sadam, Rishika. "After Telangana range officer's killing, Guthikoya tribe faces boycott, pressure to leave forest." The Print, 29 November 2022, https://theprint.in/india/after-telangana-range-officers-killing-guthikoya-tribe-faces-boycott-pressure-to-leave-forest/1240180/
63. Mishra, Jigyasa. "Uttarakhand: Six Months On, Tribals Displaced For Vyasi Dam Still Await Rehabilitation." India Spend, 16 October 2022, https://www.indiaspend.com/land-rights/uttarakhand-six-months-on-tribals-displaced-for-vyasi-dam-still-await-rehabilitation-838936
64. For example, the Ao Nagas believed that they learn how to sing from a song tree. This tree was unique in the sense that it became a man by night and tree by day. As a result, they never use to cut the song tree unless necessary and without proper propitiation.
65. Rhakho, Reyivolü. "Nagaland to extend oil palm plantation area in 8 districts." Eastern Mirror, 2 September 2022, Nagaland to extend oil palm plantation area in 8 districts - Eastern Mirror (easternmirrornagaland.com)
66. "Nagaland sees scope in oil palm production; 2000 hectare covered in 6 districts." Eastern Mirror, 24 September 2020, Nagaland sees scope in oil palm production; 2000 hectare covered in 6 districts - Eastern Mirror (easternmirrornagaland.com)
67. "Nagaland: For Families of Oting victims and survivors, election just another 'event'." The New Indian Express, 19 February 2023, Nagaland: For families of Oting victims and survivors, election just another 'event'- The New Indian Express
68. Ibid
69. Ibid

Tejang Chakma *is Head of Research with the Indigenous Lawyers Association of India.*

Dr. Martemjen *belongs to the Indigenous Ao Naga community of Nagaland, is a member of the Naga Peoples Movement for Human Rights (NPMHR) and author of the book "Biodiversity Conservation, Indigenous Knowledge and Practices: A Naga Perspective".*

Indonesia


PHILIPPINES
MALAYSIA
Jakarta
INDONESIA
PAPUA
NEW GUINEA
AUSTRALIA

Indonesia has a population of approximately 250 million people. The Indigenous Peoples' Alliance of the Archipelago – *Aliansi Masyarakat Adat Nusantara* (AMAN), an independent Indigenous organization that represents 2,512 Indigenous communities throughout Indonesia, totalling some 20 million individual members – estimates that the number of Indigenous Peoples in Indonesia stands at between 50 and 70 million individuals.

The third amendment to the Indonesian Constitution recognizes Indigenous Peoples' rights in Article 18b-2. In more recent legislation, there is implicit recognition of some Indigenous Peoples' rights, referred to as: *Masyarakat Adat* or *Masyarakat Hukum Adat*, including Act No. 5/1960 on Basic Agrarian Regulation, Act No. 39/1999 on Human Rights, and MPR Decree No. X/2001 on Agrarian Reform. Act No. 27/2007 on Management of the Coastal Zone and Small Islands and Act No. 32/2010 on the Environment clearly use the term *Masyarakat Adat* and use the working definition (in terms of characteristics) of AMAN. The Constitutional Court affirmed the constitutional rights of Indigenous Peoples to their land and territories in May 2013, including their collective rights to customary forests.

While Indonesia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), government officials argue that the concept of Indigenous Peoples is not applicable as almost all Indonesians (with the exception of the ethnic Chinese) are Indigenous and thus entitled to the same rights. Consequently, the government has rejected calls for specific needs from groups identifying themselves as Indigenous.

Throughout 2022, Indigenous Peoples in Indonesia demonstrated their resilience to the political pressure and policies that were increasingly moving away from the agenda of recognizing and protecting Indigenous Peoples. The fact that recognition has been confirmed in the Constitution[1] does not necessarily mean that the State is carrying out its mandate to establish the Indigenous Peoples Law. After a long process of more than a decade, the Indigenous Peoples Bill re-

mains simply a bill in Parliament. By the end of 2022, the Indigenous Peoples Bill had again failed to be adopted into law, as in previous years. In the midst of this situation, there have recently been a number of discriminatory laws and regulations enacted that have placed Indigenous Peoples in an increasingly threatened position.

Over the last five years, there have been at least 301 cases of grabbing of 8.5 million hectares of customary territories together with the criminalization of 672 Indigenous persons. In general, conflicts that occur on Indigenous Peoples' territories relate to the plantation sector, State forest areas, mining, and the construction of infrastructure projects. Meanwhile, there were 19 cases of expropriation of Indigenous territories, together with criminalization and violence of Indigenous Peoples in 2022 alone. Indigenous individuals who are persistent in fighting for their rights to their territories, including youth and women, are the victims. Meanwhile, these conflicts involved Indigenous territories covering almost 600,000 hectares.[2]

By the end of 2022, the Indonesian government had succeeded in designating parts of 105 Indigenous territories as customary forest, covering a total area of 148,488 hectares.[3] However, instead of speeding up the recovery of Indigenous Peoples' rights to customary forests as mandated in the MK.35/2012 decision, as many as 2,400 hectares of customary lands have been confiscated through social forestry programmes other than the Indigenous Forests programme, which is the only rights-based programme (in terms of land title) under social forestry. In addition, the threat of the National Strategic Project is also a major factor in the expropriation of Indigenous territories. The National Strategic Project is an Indonesian infrastructure project that has been identified as vital to increasing Indonesia's economic growth.

Policies related to or affecting Indigenous Peoples

Criminal Code

In December 2022, the Government of Indonesia passed an amendment to the Criminal Code. The old version of the criminal code did not regulate customary law as part of living law. The new, amended criminal code defines customary law as living law but the problem is that this

will be regulated by the implementation of regional regulations with reference to government regulations to be initiated later. This will result in the death of the dynamic nature of customary law and revoke the original rights of Indigenous Peoples to exercise customary law, as carried out for generations, because the authority to enforce customary law will no longer lie with Indigenous Peoples but will henceforward be fully under the authority of the State. The intention to strengthen customary law through the Criminal Code somehow took a wrong turn.[4]

Presidential Decree on the Job Creation Omnibus Law

The previous Indonesian government passed the law known as the Job Creation Omnibus Law in 2020.[5, 6] The existence of the Omnibus Law provides an open door for development permits and further erodes and opens up space for violations of Indigenous Peoples' rights. Civil society submitted a Judicial Review to the Constitutional Court in 2021 requesting the repeal of the Omnibus Law and the Court then declared the Omnibus Law unconstitutional. However, on 30 December 2022, the President issued Decree in lieu of Law (PERPPU) 2/2022 concerning Job Creation which reinstated the legal force of the Omnibus Law. In substance, this implies no change for Indigenous Peoples in this Decree. It means that the potential to expropriate customary territories for investment reasons, as regulated by the Omnibus Law, will continue.[7]

Presidential Decree on Carbon Economic Value

The government's response to addressing climate change has been to approve carbon trading. This policy is reflected in Presidential Regulation Number 98/2021 on Implementation of Carbon Economic Value to Achieve Nationally-Determined Contribution Targets and Control of Greenhouse Gas Emissions in National Development.[8] One of the basic problems of this Decree is that the right to carbon is a State-controlled right when, in fact, the right to carbon cannot be separated from a set of rights owned by Indigenous Peoples, namely the right to the Indigenous territories (land, water and sea) that produce carbon.

Conservation Bill

In other sectors, the Indonesian government is currently discussing amendments to the conservation law.[9] Given that conservation man-

agement should adopt the traditional knowledge of Indigenous Peoples in managing their territory, the amendment should provide a mechanism for administering Indigenous Peoples' conservation areas that is easy and cheap, with legally legitimate results, so that collaboration between Indigenous Peoples and the government around management can take place in a fair and sustainable manner. In fact, however, this amendment has not shifted from the conservation paradigm of keeping people out of conservation/protected areas towards simple protection, preservation and use.

Indigenous Peoples and conservation

At the time the Basic Agrarian Law was enacted in 1960, it was stated in the law that the State's right to control land, water and space and the natural resources contained therein could be delegated to the central government, regional governments and Indigenous Peoples. However, in reality the right to "control" is monopolized by the central and regional governments. The right to "control the country" has experienced a distortion and hijacking of meaning to become merely "legitimacy" for the authorities to "privatize" the management of natural resources and ignore their basic mandate for the greatest prosperity of the people. As a result, Indigenous Peoples remain neglected in conservation governance.

In many cases, people in and around conservation areas have been evicted from their lands, for example, Lore Lindu and Ujungkulon.[10] With legal legitimacy, Indigenous Peoples' access to conservation areas is restricted and, in some cases, completely prohibited. Around the Ujungkulon National Park area, there are still Indigenous Peoples who have difficulty in obtaining access to enjoy their basic rights such as the right to proper housing, health, education, electricity and also a sense of security. It seems there is a close relationship between restricting access to natural resources and the process of impoverishment. Poverty is a condition that is understood as a consequence of various inequalities (social, economic, political).

Based on as yet unpublished data compiled by organizations working on Indigenous Peoples' issues, an area of 4.5 million hectares

of customary lands that have been mapped out in a participatory manner is being claimed for inclusion in a National Park area. This figure is equivalent to 17.2% of the participatory mapping area, and is higher than for other conservation area categories. This is an opportunity for the criminalization of Indigenous Peoples and confiscation of Indigenous territories in the name of conservation.

Recognition and protection of Indigenous Peoples at the local level

As of October 2022, 161 regional (provincial level) and local (district level) regulations had been successfully enacted.[11] These regulations focus on the recognition and protection of Indigenous Peoples as legal subjects and their rights, including to their territories. Currently, the territories of 968 Indigenous communities covering an area of 12.4 million hectares have been mapped. Only a few of these communities have obtained legal recognition and land title from the government.

This shows a slight positive trend but, at the same time, exposes the real situation of Indigenous Peoples' recognition and protection in Indonesia, which still relies on sectoral laws and regulations. Indonesia's constitution recognizes the existence of Indigenous Peoples but the constitutional mandate that the State should immediately enact the Indigenous Peoples Law has not thus far been implemented.

Notes and references

1. Indonesia Constitution 1945.Article 18-b, https://www.mkri.id/public/content/infoumum/regulation/pdf/UUD45%20ASLI.pdf
2. AMAN. AMAN's End of Year Report. 2022, pp 22, https://www.aman.or.id/publication-documentation/catatan-tahun-2022-aman:-melawan-penundukan
3. Ministry of Environment and Forestry. Achievements of Social Forestry Up to 1 October 2022, http://pskl.menlhk.go.id/berita/437-capaian-perhutanan-sosial-sampai-dengan-1-oktober-2022.html?showall=1&limitstart=
4. "The "Living Law" in the RKUHP Violates the Rights of Indigenous Peoples." AMAN, 2022, https://www.aman.or.id/news/read/pengaturan-hukum-yang-hidup-dalam-rkuhp-melanggar-hak-masyarakat-adat
5. Siringoringo, Jakob., and Victor Mambor. "Indonesia." In The Indigenous World 2020, edited by Dwayne Mamo, pp 218-231. Copenhagen: The International

Work Group for Indigenous Affairs (IWGIA), 2020, https://www.iwgia.org/en/indonesia/3602-iw-2020-indonesia.html

6. Siringoringo, Jakob., and Victor Mambor. "Indonesia." In The Indigenous World 2021, edited by Dwayne Mamo, pp 250-266. Copenhagen: The International Work Group for Indigenous Affairs (IWGIA), 2021, https://www.iwgia.org/en/indonesia/4224-iw-2021-indonesia.html
7. AMAN's End of Year Report. AMAN, 2022, https://www.aman.or.id/publication-documentation/catatan-tahun-2022-aman:-melawan-penundukan
8. Presidential Regulation 98/2021 concerning Implementation of Carbon Economic Value. 2021, https://peraturan.bpk.go.id/Home/Details/187122/perpres-no-98-tahun-2021.
9. Wahyu Chandra. "The Conservation Bill is Expected to Accommodate the Interests of Indigenous Peoples." Mongabay, 2022, https://www.mongabay.co.id/2022/12/01/ruu-konservasi-diharap-akomodir-kepentingan-masyarakat-adat/
10. Eko Cahyono, Erasmus Cahyadi, Monica Ndoen. Exclusion in the Name of Conservation - A Study by AMAN. 2018.
11. AMAN's End of Year Report. 2022, pp 16, https://www.aman.or.id/publication-documentation/catatan-tahun-2022-aman:-melawan-penundukan

Monica Ndoen *is an Indigenous person from Rote, East Nusa Tenggara. She is now the Special Envoy to the Secretary General of AMAN. moni cakn@aman.or.id*

Japan

RUSSIA
CHINA
SEA OF JAPAN
JAPAN
SOUTH
KOREA
Tokyo
PACIFIC OCEAN

The two Indigenous Peoples of Japan, the Ainu and the Ryūkyūans (or 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 recognized as an Indigenous people of Japan. The most recent government surveys put the Ainu population in Hokkaido at 13,118 (2017) and in the rest of Japan at 210 (2011), although experts estimate the actual population to be much higher.[1]

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 reincorporated into the Japanese state. Some 1.45 million people live throughout Okinawa prefecture. The Japanese government does not recognize the Ryūkyūans as Indigenous Peoples.

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

Ainu

As of May 2023, four years will have passed since the enactment of the Ainu Policy Promotion Act (hereinafter APPA), which was purportedly designed to improve the Ainu situation. Yet, in terms

of Ainu Indigenous rights such as self-determination, nothing has changed[2] and, during 2022, Ainu activists and their supporters called the law into question both conceptually, in terms of its premises, and functionally, in terms of its ineffectiveness to prevent discrimination against the Ainu.

The Raporo Ainu Nation litigation

In terms of questioning the premises of the law in relation to international human rights instruments such as ILO 169 and the UNDRIP, the Raporo Ainu Nation litigation[3] seeks to fundamentally call into question the history of Hokkaido. At the core of its argument is the claim that Ainu *kotan* were self-governing bodies ("tribes") whose sovereignty has never been ceded through treaty or other agreements between either the Japanese State or the Prefecture of Hokkaido and the Ainu people. At the hearing on 26 May, the defendants' (Japanese State and Prefecture of Hokkaido's) arguments to the contrary, that the plaintiff's claims were already covered by current Japanese law, and thereby a moot point, had almost moved the presiding judge to make a decision on the litigation. However, the local press and supporters of the plaintiffs rallied to put pressure on the judge. First, on the day before the next hearing on 1 September, journalists highlighted the case, including mention of the judge's name, in an opinion article in the local Hokkaido Shimbun Newspaper.[4] Second, the team of lawyers for the plaintiffs submitted testimony to the International Covenant on Civil and Political Rights (ICCPR) in late August.[5] As a result of the submission of the statement to the ICCPR, the tone of the Recommendations to the Japanese State has become more severe, and the case remains alive, with the 10th hearing scheduled for 23 March 2023.

Incidences of hate speech

On 30 November, Sugita Mio, former Japanese Parliamentary Vice-Minister for Internal Affairs and Communications, underwent parliamentary questioning for defamatory remarks made against Ainu and Kore-

an-Japanese activists on her personal blog, which the Constitutional Democratic Party of Japan deemed as hate speech.[6] The comments in question, which had originally been posted on Sugita's blog during the June 2016 Geneva gathering of the Convention on the Elimination of Discrimination Against Women, referred to Ainu and Korean-Japanese delegates dressed in traditional regalia as "shabby", "old women engaged in cosplay" and called them the "shame of Japan". Together with photos of the individuals, these remarks had remained accessible on Sugita's blog for over six years, even though she had subsequently been nominated to the post of Vice-Minister.[7] One Ainu victim who vocally decried the incident in the press[8] pointed out her suffering due to the ineffectiveness of the APPA legislation in combatting discrimination, after being subjected to over 650 cases of Internet slander in just three weeks.[9]

Ainu activists and their supporters quickly joined forces with other Japanese minority groups/victims of Sugita's comments, such as the Minority Women's Forum,[10] to issue statements collectively denouncing Sugita, calling for a personal apology, and demanding that the Kishida administration relieve Sugita of her duties.[11] Although Sugita was effectively dismissed from her post at the end of December, the conditions by which hate speech on the part of politicians and bureaucrats is being allowed to continue under conservative Liberal Democratic Party rule is still seriously being called into question,[12] and a multi-party minority group-sponsored forum against hate speech is due to be held in Sapporo at the end of February.

Meanwhile, hate speech has also found its way into political campaigning, with one candidate from Sapporo in the July national parliamentary elections having denied the historical continuity of the Ainu before the 14th century in official election statements, claiming instead that the Yamato Japanese are the original inhabitants of the island and thus that the development of Hokkaido was therefore not an act of colonization.[13] A group of Ainu activists and their supporters issued a statement pointing out the mistaken nature of these claims and decrying the use of elections for the purposes of fomenting racial misunderstanding.[14]

Ineffectiveness of the APPA

Other challenges to Japan's policy for and legal protection of the Ainu have taken place. A nationwide survey of Ainu residents[15] conducted by a citizens' group revealed that, in addition to criticism of the APPA's failure to prevent the discrimination mentioned above, over 80% of Ainu respondents were dissatisfied with the law's system for soliciting Ainu community opinion in the enactment of promotional initiatives. Additionally, over 70% of these Ainu respondents were disappointed with the social impact[16] of the Upopoy National Museum and Park, with the law's failure to protect Ainu Indigenous rights, such as salmon harvesting, with its failure to address fundamental Ainu welfare issues, and with its failure to properly account for diversity within the Ainu community.[17]

On the other hand, journalists[18] revealed that the 2nd Wing of the Japanese Air Self-Defence Forces, Chitose, had incorporated Ainu designs into its battalion logo. That the current APPA provides no protection against acts of co-optation of Ainu intellectual property by private companies is problematic in itself; under essentially settler colonial relations, whether the even more questionable immorality of the Japanese military incorporating Ainu designs comes to be criticized by the Ainu community remains to be seen.

Ryūkyūans (Okinawans)

Military expansion

In January 2022, the U.S. and Japanese governments agreed a joint document regarding the militarization of the Ryūkyū Islands in the event of an escalation of tensions around Taiwan.[19] The document was discussed at the Japan-U.S. Security Consultative Committee (2 plus 2) and included a strengthening of the Self-Defence Forces in the Nansei Islands and the joint use of facilities by Japanese and U.S. forces. It also confirmed the continuation of the construction of a new base at Henoko. While missile units were deployed to the Self-Defence Forces' base stationed on Miyako Island in 2020, it has also been decided that missile units will be deployed to Ishigaki Island in 2023, as well as to Okinawa Island and Yonaguni Island. In 2022, an electronic warfare unit

was also deployed to Okinawa Island, and large-scale joint Japan-US training has been conducted as well.[20, 21, 22, 23, 24, 25, 26, 27] The islands are being converted into military fortifications[28, 29] through the deployment of the Osprey,[30, 31] and an increase in fighter aircraft.[32, 33] Protests by citizens against these moves have become increasingly frequent.[34, 35, 36]

The Land Regulation Law came into effect in September. This law restricts the use of land in the vicinity of government-designated facilities such as U.S. military and Self-Defence Forces bases, and on remote border islands, and is expected to restrict protests around bases. There are concerns that property rights, privacy rights, and freedom of expression will be violated.[37, 38]

In December 2022, after losing a lawsuit at the High Court in 2021, the prefecture lost a Supreme Court case opposing the construction of the new Henoko base in Nago City. The court's decision thus allows the national government to proceed with the construction.[39, 40] More than 70% of voters in the 2019 prefectural referendum opposed the construction of the base but the national government has been forcing it through.

In June, the media reported that high concentrations of PFAS (organic fluorine compounds) had been detected in drinking water sources near U.S. military bases.[41, 42] PFAS have been pinpointed as causing a potential health hazard, including an increased risk of prostate cancer, elevated cholesterol levels, pregnancy hypertension, low birth weight and bone mutations in children. Since the national government has taken no action, the prefecture conducted its own water quality investigation, and a citizens' group measured the blood PFAS levels.[43, 44, 45] High concentrations of PFAS were also detected in water tanks on the Self-Defence Forces base.[46] In November, a man who owns the land on the base applied to the Okinawa Defence Bureau, a regional bureau of the Ministry of Defence, for a soil contamination investigation but his application was rejected.[47, 48]

Meanwhile, the possibility that soil and sand containing the remains of victims of the Battle of Okinawa may be used in the construction of the new base in Henoko has raised public opposition. In 2020, an application submitted by the Defence Bureau to change the design of the new base construction in Henoko states that 70% of the soil to be used for land reclamation will come from the southern part of Okinawa Island, which was the site of a fierce battle during the Second World

War. The collection of human remains in the area has not yet been completed.

Mr. Takamatsu Gushiken, a representative of the volunteer group "Gamafuyaa", which collects the human remains of victims of the Battle of Okinawa, has asked Okinawa Prefecture to request that the national government withdraw its plan to take the soil and sand with the remains. Nationwide, 219 local governments have submitted letters of opposition to the plan to the national government.[49, 50] Mr. Gushiken has held hunger strikes to call for a cessation in the use of such soil and sand[51] and he and others have also held public hearings to listen to the opinions of war veterans and bereaved families.[52]

Discrimination against Ryūkyūans

In January, a Ryūkyūan high school student riding a motorcycle late at night lost his eyesight when he came into contact with the baton of a police officer who was patrolling the area to watch for reckless driving. The police officer claimed that he hit the student when he put out his hand to stop the motorcycle, while the high school student claimed that he was attacked.[53, 54, 55]

The victim spread the incident on social media and, as a result, many young people rushed to the police station to which the officer is assigned to protest, throwing stones and other objects.

The police officer was a Japanese person who had been transferred from outside the prefecture under a "special secondment" programme initiated by the Japanese government as a crime prevention measure in response to the 2016 murder of a woman by a U.S. military personnel. The incident and ensuing riots sparked an outpouring of hate speech on the Internet against Ryūkyūans. Okinawa Prefecture Governor Denny Tamaki expressed his outrage at the hate speech.[56, 57, 58]

In November, the Okinawa Prefectural Police qualified the officer's actions as "intentional", sent the case to prosecutors, and apologized to the victim, but has not recognized it as a hate crime.[59]

During the Okinawa gubernatorial election in September, fake news and hate speech on the Internet by a member of the Osaka City Council and other individuals was rampant against Governor Denny Tamaki, a vocal opponent of the new Henoko base construction, and against Ryūkyūans.[60, 61] In October, Japanese citizen Mr. Hiroyuki Nishimura tweeted derisively about the new base construction protests and

said, "Okinawans do not speak clean Japanese."[62, 63] This kind of discrimination has long been common and erupts on occasions, such as at election time.

The movement to restore the rights of Indigenous Ryūkyūans

In April, descendants lost a lawsuit in which they were demanding that Kyoto University return human remains stolen in the 1920s and 1930s from Ryūkyūan graves by anthropologists for research purposes. The descendants are currently appealing to the Osaka High Court.[64, 65, 66] Additionally, there is an ongoing case, filed in January 2022 at the Naha District Court, that demands the disclosure of official documents related to the remains of Ryūkyūans retained by the Okinawa Prefectural Board of Education.[67, 68]

International advocacy

In July, during the session of the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), Ryūkyūan activists reported on various issues, including the violation of their right to self-determination caused by military bases,[69, 70] issues of theft of Ryūkyūan human remains,[71] PFAS contamination, and the issue of Ryūkyūan languages in danger of extinction.[72, 73] Symposiums on Indigenous Peoples and UN activities were held this year to promote the restoration and awareness of the rights of Ryūkyūans.[74, 75] In July, the Ryūkyū Indigenous Peoples' association, Mabui Gumi nu Kai, and other citizen groups also produced a leaflet in Japanese, English, Spanish, and Portuguese that aids an understanding the UNDRIP, for distribution to Ryūkyūans, including those living outside the prefecture and overseas.[76, 77]

The UN Human Rights Committee and the UN Committee on the Elimination of Racial Discrimination have recommended that the Japanese government recognize the people of Ryūkyū/Okinawa as Indigenous Peoples and guarantee their rights. In response, conservative politicians in Okinawa Prefecture have submitted petitions to municipal councils calling for the withdrawal of the UN recommendations.

In response to this, Indigenous Peoples' rights activists have been doing sensitization work. In February, a citizens' group explained the contents of the UN recommendations to the council members at the Nishihara Town Council meeting and, as a result, the council reject-

ed the motion for withdrawal of the recommendations.[78] On the other hand, at the Tomigusuku City Council meeting in December, a majority of its members voted for to withdraw the recommendations despite the fact that members of a citizens' group explained the meaning of the recommendations to some council members and held a public awareness campaign in front of the council building during the session.[79]

Notes and references

1. Population figures for Hokkaido taken from the 2017 Survey of Ainu Livelihoods conducted by the Hokkaido prefectural government in cooperation with the Ainu Association. Hokkaido Government, Environment and Lifestyle Section. "Hokkaido Ainu Survey on Livelihood Report." 2017, https://www.pref.hokkaido.lg.jp/ks/ass/new_jittai.html Population figures for the rest of Japan taken from the 2011 Survey of Non-Hokkaido Ainu Livelihoods conducted by the Council for Ainu Policy Promotion. "Non-Hokkaido Ainu Survey on Livelihood Report." 2011, https://www.kantei.go.jp/jp/singi/ainusuishin/dai3/haifu_siryou.pdf; many with Ainu ancestry do not publicly identify as Ainu due to discrimination and stigma in Japanese society. Ainu observers estimate the actual population of those with Ainu ancestry to be between 100,000 and 300,000, with 5,000 in the greater Kanto region alone.
2. Gayman, Jeff., Dr. Kanako Uzawa., and Fumiya Nagau. "Japan." In The Indigenous World 2021, edited by Dwayne Mamo, pp. 232-245. Copenhagen: The International Work Group for Indigenous Affairs, 2021 https://www.iwgia.org/en/japan/4226-iw-2021-japan.html
3. Ibid
4. Kaneko, Buntaro and Yuma Kakuta. "Ninpi sakeru kuni Urahoru Ainu no rekishi o. Syakegyososhou Genkokugawa 'Seikatsu to Hokori o torimodositai.'" Hokkaido Shimbun Press, 30 August 2022, https://www.hokkaido-np.co.jp/article/723848/
5. Raporo Ainu Nation. NGO Alternative Report Regarding the Seventh Periodic Report of the Government of Japan at the Human Rights Committee. 8 September 2022.
6. Nakayama, Gaku. "Sugita Mio Soumu Seimukan, Kondo wa Ainu Minzoku ya Zainichi Korean e no Bujyoku de Hihan Sattou Soredemo Koutetsu wo Sinai Kishida Shushou." Tokyo Shinbun Press, 2 December 2022, https://www.tokyo-np.co.jp/article/217363
7. Ibid
8. Ibid
9. Negishi, Hiroko. "Sugita-shi wa Sabetsuhatsugen wo Mitomete Ainu Minzoku Kankei Dantai ga Hihan." Hokkaido Shimbun Press, 22 December 2022, https://www.hokkaido-np.co.jp/article/779337/
10. Minority Women's Forum. "Sugita Mio Giin no Sabetsu Hatsugen ni kansuru Koukai Youseibun". 3 December, 2022, https://imadr.net/wordpress/wp-content/uploads/2022/12/letter-to-PM-Kishida.pdf
11. Kaneko, Buntaro. "Sugita Soumu Seimukan Koutetsu wo Youkyuu. Ainu Minzoku Kankei Dantai ga Ikensho." Hokkaido Shimbun Press, 8 December 2022, https://

www.hokkaido-np.co.jp/article/772054/

12. Itou, Keiko. "Sugita Mio Zen Soumu Seimukan Koutetsu Seiken wa Shinken ni Sabetsu Kaisho o." Ryukyu Shinpou Press, 31 December, 2022.; See also: "Editorial: Japan vice-minister Sugita unfit to serve after series of discriminatory remarks." Mainichi Shinbun Press, 9 December 2022, https://mainichi.jp/english/articles/20221209/p2a/00m/0op/006000c
13. Hokkaido Senkyo Kanri Iinkai (Hokkaido Elections Committee). "Senkyou Kouhou." 25 June 2022.
14. Citizens' Alliance for the Examination of Ainu Policy. "Senkyo ni Magirekonda Heito Supichi o Hinan Simasu" 17 July 2022, https://ainupolicy.jimdofree.com/%E5%B8%82%E6%B0%91%E4%BC%9A%E8%AD%B0%E3%81%AE%E6%8F%90%E6%A1%88-%E5%A3%B0%E6%98%8E/%E9%81%B8%E6%8C%99%E3%81%AB%E7%B4%9B%E3%82%8C%E8%BE%BC%E3%82%93%E3%81%A0%E3%83%98%E3%82%A4%E3%83%88%E3%82%B9%E3%83%94%E3%83%BC%E3%83%81%E3%82%92%E9%9D%9E%E9%9B%A3%E3%81%97%E3%81%BE%E3%81%99/
15. The survey, released in March, 2022 was distributed to 80 Ainu individuals representing over 60 organizations, and responded to by 38 Ainu individuals representing 23 Ainu organizations, including branches of the Ainu Association of Hokkaido.
16. In other words, that the creation of the museum had done nothing to improve their Indigenous human rights, and that the facilities and exhibitions averted attention from the history of Ainu suffering undergone during the colonization of Ainu lands.
17. Citizens' Alliance for the Examination of Ainu Policy. Ainu "sisaku suishin hou" kaisei ni mukete no anketo chousa houkokusho. Sapporo: Self-Published. 2022.
18. Butai danketsu mezashi Shin maaku settei. Chitose Kuuji DaiNi Koukuudan. Hokkaido Shimbun Press, 8 December 2023, https://www.hokkaido-np.co.jp/article/772359
19. Ryukyu Shimpo, "[Deep Dive] Clarification of Military Base in Nansei Islands. Okinawa Prefecture Reacts to Growing Tension, Japan-U.S. 2 Plus 2." 8 January 2022, https://ryukyushimpo.jp/news/entry-1451180.html
20. "Deployment of Missile Unit to Miyako Island." QAB (Ryukyu Asahi Broadcasting Corporation) News, April 7 2020, https://www.qab.co.jp/news/20200407124812.html
21. "Surface-to-ship missiles to be deployed to Katsuren's Ground Self-Defense Force sub-camp for the first time on Okinawa's main island. First Deployment of Surface-to-Ship Missile Unit to Okinawa Island." Okinawa Times, 21 August 2021, https://www.okinawatimes.co.jp/articles/-/807921
22. "Deployment of missile units to Yonaguni Island planned." Asahi Shimbun, 27 December 2022, https://www.asahi.com/articles/ASQDW6KK0QDWUTFK027.html
23. "Self-Defense Forces to Deploy 'Electronic Warfare Unit' in Okinawa." Okinawa Times, 29 March 2022, https://www.okinawatimes.co.jp/articles/-/933636
24. "Japan-U.S. Joint Integrated Exercise in Okinawa from tomorrow in anticipation of contingency." Okinawa Times, 9 November 2022, https://www.okinawatimes.co.jp/articles/-/1054244
25. "Self-Defense Force vehicles and personnel to be removed from Okinawa, out of prefectural area from Nakagusuku Bay Port, Japan-U.S. Joint Exercise: Civic groups hold protest rally." Ryukyu Shimpo, 21 November 2022, https://ryukyushimpo.jp/news/entry-1619438.html

26. "Fighting vehicles on public roads in Yonaguni...from Okinawa, governor 'regrets,' town mayor 'needs'." Asahi Shimbun, 19 November 2022, https://www.asahi.com/articles/ASQCL5SYHQCLDIFI009.html

27. "Self-Defense Forces personnel stopped this newspaper's cameraman from filming, saying, 'Let me also see you erase the data'." Ryukyu Shimpo, 12 November 2022, https://ryukyushimpo.jp/news/entry-1614793.html

28. "We cannot allow the premise of war,' citizens' group protests against evacuation shelters in Sakishima Islands." Okinawa Times, 21 September 2022, https://www.okinawatimes.co.jp/articles/-/1028355

29. "Historic Shift to Possessing Counterattack Capability: Three Security Documents, Long-Range Missile Deployment." Okinawa Times, 16 December 2022, https://www.okinawatimes.co.jp/articles/-/1074621

30. "Osprey takes off from Naha Military Port, Prefecture and Naha City protest." RBC, 14 November 2022, https://newsdig.tbs.co.jp/articles/rbc/203561?display=1

31. "Ten serious accidents during flight... Ten years after the Osprey deployment in Futenma, concerns about their safety have not been dispelled." Okinawa Times, 1 October 2022, https://www.okinawatimes.co.jp/articles/-/1033895

32. "U.S. military's Futenma airfield sees the highest number of takeoffs and landings, 3,446 times, by foreign aircraft, 33% increase in comparison with last year, 23% increase in late-night and early-morning flights." Okinawa Times, 5 May 2022, https://www.okinawatimes.co.jp/articles/-/952959

33. "Four F-22 fighter jets fly to Kadena, concerns over increase in noise due to retirement of F-15s." Ryukyu Shimpo, 5 November 2022, https://ryukyushimpo.jp/news/entry-1611026.html

34. "No More Battle of Okinawa: Nuchi du Takara no Kai" http://nomore-okinawasen.org

35. "'Don't let Okinawa become a battlefield' Citizens hold protest rally in Naha against Japan-U.S. Joint Exercise in Okinawa." Ryukyu Shimpo, 15 November 2022, https://ryukyushimpo.jp/news/entry-1616267.html

36. "To stop the deployment of missiles in Uruma City." Ryukyu Shimpo, 29 November 2022, https://ryukyushimpo.jp/news/entry-1623776.html

37. "Editorial: Land Regulation Law Fully Enforced, don't allow evil law that has no ground." Ryukyu Shimpo, 19 September 2022, https://ryukyushimpo.jp/editorial/entry-1586314.html

38. "Study meeting among lawyers and others about the dangers of the Land Use Regulation Law." Okinawa Times, 24 July 2022, https://www.okinawatimes.co.jp/articles/-/996638

39. "Lawsuit over withdrawal of Henoko landfill approval lost at Supreme Court; Okinawa Prefecture's appeal rejected." Okinawa Times, 8 December 2022, https://www.okinawatimes.co.jp/articles/-/1070354

40. Okinawa Prefecture, "Update on Henoko New Base Construction Issue." https://www.pref.okinawa.jp/site/chijiko/henoko/latest.html

41. "PFAS 38 times higher than national standard at 7 points around Kadena Air Base." Okinawa Times, 4 June 2022, https://www.okinawatimes.co.jp/articles/-/969847

42. "Up to 292 nanograms of PFAS in underground water sources." Okinawa Times, 5 March 2022, https://www.okinawatimes.co.jp/articles/-/920702

43. "High concentrations of organic fluorine compounds, drilling around U.S. military's Futenma Air Station, Okinawa Prefecture, to identify source of contamination." Okinawa Times, 2 February 2022, https://www.okinawatimes.

co.jp/articles/-/904120
44. "PFAS pollution: Demand for on-site investigation of U.S. military base to the state by Okinawa Citizens' Liaison Group in Okinawa Prefecture." Okinawa Times, 26 April 2022, https://www.okinawatimes.co.jp/articles/-/948892
45. OTV (Okinawa Television) website OKITIVE. "PFAS blood concentration test shows 'PFAS blood level test finds PFOS three times higher than the national average'." https://www.otv.co.jp/okitive/article/29949/
46. "PFAS Detection 80,000 Times Higher than Guideline Value at Naha Base of Maritime Self-Defense Force." Ryukyu Shimpo, 1 June 2022, https://ryukyushimpo.jp/news/entry-1526362.html
47. "A man who owns land within the Air Self-Defense Force's Naha base seeks entry to the land, saying he wants to pass on uncontaminated land to his descendants, planning to survey at his own expense over PFOS contamination." Ryukyu Shimpo, 14 November 2022, https://ryukyushimpo.jp/news/entry-1615449.html
48. "Defense Bureau refuses entry of landowners without showing legal grounds, for PFAS survey at Air Self-Defense Forces Naha base." Okinawa Times, 15 December 2022, https://www.okinawatimes.co.jp/articles/-/1073680
49. "[Editorial] Using the sand and soil from the site of a fierce battle is an unforgivable act from a humanitarian standpoint." Ryukyu Shimpo, 22 October 2020, https://ryukyushimpo.jp/editorial/entry-1211716.html
50. "Mr. Gushiken calls for withdrawal of collection of sand and soil that contains human remains in southern part of Okinawa, pointing out it as a 'big mistake,' and also proposing that the governor send a message to the United Nations." Ryukyu Shimpo, 11 August 2022, https://ryukyushimpo.jp/news/entry-1564932.html
51. "Don't reclaim Henoko with sand mixed with human remains. A volunteer to collect remains goes on hunger strike in front of Yasukuni Shrine". Tokyo Shimbun, 15 August 2022, https://www.tokyo-np.co.jp/article/196109
52. QAB (Ryukyu Asahi Broadcasting Corporation). "Gamafuyaa: Meeting Held to Hear from War Victims' Families." News 'Catch', 29 November 2022, https://www.qab.co.jp/news/20221129158355.html
53. OTV (Okinawa Television). "High School Student Blinded in Contact with Police Officer' Eating. Two Different Perceptions." 11 February 2022, https://www.fnn.jp/articles/-/312103/
54. "My friends were beaten up by police. More than 300 youths stormed the police station and caused a commotion." Okinawa Times, 28 January 2022, https://www.okinawatimes.co.jp/articles/-/901815
55. "High school students seriously injured. Okinawa Police Department officers have been 'specially seconded' from outside the prefecture for the past two years." Ryukyu Shimpo, 15 February 2022, https://ryukyushimpo.jp/news/entry-1470832.html
56. "'Please don't make me suffer': Seriously injured high school student criticized on the Internet, one week has passed since the riot at the Okinawa police station." Ryukyu Shimpo, 3 February 2022, https://ryukyushimpo.jp/news/entry-1464480.html
57. "'Extremely unforgivable,' says Okinawa Governor Tamaki after high school student loses sight in contact with police officer, considering curbing Okinawan hate on the Internet." Okinawa Times, 4 February 2022, https://www.okinawatimes.co.jp/articles/-/905620
58. "Resolute NO to Discrimination against Okinawa: Don't Blur it with the Word

'Prefectural Citizens'." Okinawa Times, 9 December 2022, https://www.okinawatimes.co.jp/articles/-/1070678

59. "High School Student Blinded by Police Baton, the Officer sent to the prosecutors, with Okinawa Prefectural Police Opinion Calling for Prosecution: Judged Series of Actions as Intentional, Apologies to Victims". Ryukyu Shimpo, 3 November 2022, https://ryukyushimpo.jp/news/entry-1609836.html
60. "'Candidate Denny wants to turn Okinawa into China's vassal state', 'Okinawa Will Be Ethnically Cleansed', accused Osaka City Councilor of her Tweets." Okinawa Times, 6 September 2022, https://www.okinawatimes.co.jp/articles/-/1019508
61. "'Idiot' and 'chose to be a vassal state of China'... 'Hate against Okinawa' on SNS one after another concerning results of the gubernatorial election, including false and threatening contents." Ryukyu Shimpo, 14 September 2022, https://ryukyushimpo.jp/news/entry-1583599.html
62. "Hiroyuki's comment on 'sit-in' does not touch the essence, promoting hate." Okinawa Times, 13 October 2022, https://www.okinawatimes.co.jp/articles/-/1039845
63. "Hiroyuki's Comment, 'Okinawans Can't Speak Grammatically,' over 'Japanese language' of Okinawans." Okinawa Times, 12 October 2022, https://www.okinawatimes.co.jp/articles/-/1039253
64. "Kyoto District Court rules against return of Ryukyuan remains collected by Kyoto University, lost by residents". Kyoto Shimbun, 21 April 2022, https://www.kyoto-np.co.jp/articles/-/775729
65. "Editorial [Not Ruling for Return of Ryukyuan remains] It goes against the world's trend." Okinawa Times, 23 April 2022, https://www.okinawatimes.co.jp/articles/-/947367
66. "Lawsuit over removal of Ryukyu remains: Plaintiffs appeal for return from the viewpoint of international human rights law. Osaka High Court hears oral arguments on appeal." Ryukyu Shimpo, 4 December 2022, https://ryukyushimpo.jp/news/entry-1626515.html
67. "Lawsuit over blacking out of documents on remains, prefectural side takes a contentious stance. Oral Arguments at Naha District Court." Ryukyu Shimpo, 18 June 2022, https://ryukyushimpo.jp/news/entry-1535284.html
68. Public lawsuit website 'CALL4'. "For return of remains of Ryukyuan ancestors". https://www.call4.jp/search.php?type=action&run=true&items_id_PAL[]=match+comp&items_id=I0000076
69. "'It's an international humanitarian issue': Appeal for withdrawal of the use of soil with remains for new base construction, by Mr. Gushiken, a representative of Gamafuyaa, at a U.N. event." Ryukyu Shimpo, 7 July 2022, https://ryukyushimpo.jp/news/entry-1545337.html
70. "'Bases Infringe on Right to Self-Determination,' Mr. Gushiken from Gamafuyaa Appeals at UN." Ryukyu Shimpo, 6 July 2022, https://ryukyushimpo.jp/news/entry-1544808.html
71. "'Will never give up on return,' Bones taken from Okinawa grave by scholar: Ryukoku University Professor Matsushima Explains at UN." Okinawa Times, 6 July 2022, https://www.okinawatimes.co.jp/articles/-/986686
72. "Ryukyuan languages 'in danger of extinction,' appeal at UN. Ms Oyakawa, 'Okinawa faces double colonialism'." Ryukyu Shimpo, 8 July 2022, https://ryukyushimpo.jp/news/entry-1545881.html
73. "'Concerned about long-term health damages of PFAS' caused by U.S. military bases: Appeal at the UN, The Association of Comprehensive Studies for

Independence of the Lew Chewans." Ryukyu Shimpo, 7 July 2022, https://ryukyushimpo.jp/news/entry-1545333.html
74. "Okinawa's Current Situation 'Colony,' Indigenous People's Network Matsushima stressed." Okinawa Times, 24 February 2022, https://www.okinawatimes.co.jp/articles/-/915291
75. "Activities at the United Nations, reports by The Association of Comprehensive Studies for Independence of the Lew Chewans." Okinawa Times, 16 July 2022, https://www.okinawatimes.co.jp/articles/-/992521
76. "Indigenous peoples' rights: Document for explanation completed, Mabui Gumi nu Kai and others." Okinawa Times, 13 July 2022, https://www.okinawatimes.co.jp/articles/-/990594
77. "Introducing Indigenous Peoples' Rights: Two Groups Distributing Translated Versions." Okinawa Times, 31 October 2022, https://www.okinawatimes.co.jp/articles/-/1049307
78. "'Okinawan people are Indigenous people': Nishihara Town Council rejects the petition to withdraw UN recommendations." Ryukyu Shimpo, 28 March 2022, https://ryukyushimpo.jp/news/entry-1492526.html
79. "Tomigusuku City Council adopts the petition to retreat 'Indigenous peoples,' with majority votes." Ryukyu Shimpo, 23 December 2022, https://ryukyushimpo.jp/news/entry-1636905.html

Jeff Gayman *is a 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 15 years.*

Dr. Kanako Uzawa *is an Ainu researcher, artist, and rights advocate. She is a member of the Association of Rera in Tokyo. She completed her PhD at the University of Tromsø – the Arctic University of Norway in 2020. Her most recent work engages with the Ainu art exhibition as a guest curator in collaboration with the University of Michigan Museum of Art in the United States. Kanako is also an editorial board member of Alter-Native: An International Journal of Indigenous Peoples in Aotearoa New Zealand.*

Ryoko Nakamura *is a Ryukyuan Indigenous person. She is the co-representative of "Nirai Kanai nu Kai", a citizens' organization that works for the repatriation of Ryukyuan human remains.*

Laos

CHINA
VIETNAM
SOUTH
CHINA
SEA
LAOS
Vientiane
THAILAND
CAMBODIA

With a population of just over 7 million,[1, 2] Laos is the most ethnically diverse country in mainland Southeast Asia.[3] 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 recognized 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 people.[4]

The Lao government currently recognizes 160 ethnic subgroups 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 at all economic levels. They have more limited access to healthcare, lower rates of education, and less access to clean water and sanitation. Between 20 and 32.5% of Indigenous people relying on unimproved or surface water compared to just 8.5% of Lao-Tai, and while only 13.9% of Lao-Tai practice open defecation, this rises to between 30.3 and 46.3% among Indigenous people.

Laos has ratified ICERD (1974), CEDAW (1981) 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. Organizations openly focusing on Indigenous Peoples or using related terms in the Lao language are therefore 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.

Dissemination of the Decree on ethnic affairs

From April 2021 to April 2022, the Department of Ethnic and Religious Affairs (DOERA) disseminated the new Decree on Ethnic Affairs in districts with international borders across all provinces of the country. This series of workshops was the first opportunity for DOERA to conduct outreach awareness raising on this scale and promote Indigenous Peoples' rights in State management by disseminating the Decree on Ethnic Affairs, aimed at promoting Indigenous Peoples' awareness of their rights and entitlement to development benefits. Indigenous Peoples were invited to participate and share their concerns: issues that emerged included access to health care and government services, education for Indigenous youth, a desire to be recognized as a distinct group, etc. In total, over 400 people participated in the workshops, including Mon-Khmer, Sino-Tibetan and Hmong-Ew-Hmien speaking groups.[5]

Conservation in Laos

Lao PDR is in one of the 10 most important global biodiversity ecoregions and home to some of the world's biologically richest and most endangered species. The country includes four ecologically diverse regions: (a) the Northern Highlands, (b) the Annamite Range; (c) the Indo-Chinese karst landscapes; and (d) the Mekong plain.

There are an estimated 8,000–11,000 species of flowering plants in the country, many of which are economically valuable; between 150

and 200 species of reptiles and amphibians, 700 species of birds, 90 species of bats, over 100 species of large mammals, and 500 species of fish.[6] The Lao government has established three categories of wild animal based on geographic range, population size and population decline/increase, in addition to extinction probability analyses. This categorization and its associated restrictions have a direct impact on Indigenous communities' access to the wildlife on which they rely for food, clothing, shelter, culture, trade, income etc.

The first National Biodiversity Conservation Areas (NBCAs) were established by Prime Ministerial Decree 164 in 1993.[7] There are currently 23 National Protected Areas in Laos covering an area of over 29,000 km^2. The area occupied by protection and conservation forests is over 80,000 km^2 – 33.3% of Lao PDR, and 76% of recognized forest estate.[8]

The government has established its first four national parks in the last two years: Hin Nam Nor, Nam Et Phou Leuy, Nakai Nam theun and Phou Khao Khouay. Hin Nam No, the country's third national park and a preeminent example of Indo-Chinese karst, is short-listed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) to become the nation's first natural UNESCO World Heritage site.[9]

In addition, local authorities have established 57 provincial conservation forests; 23 provincial protection forests; 144 district and 8 conservation forests and 52 district protection forests totalling 1.4 million ha.[10]

Over 840,000 people in over 1,200 villages live within or on the boundary of 23 national biodiversity reserves. Most of these villagers belong to Indigenous Peoples' groups and are heavily dependent upon the sustainable use of natural resources within these reserves for their nutrition and livelihoods.[11] These guardian villages are increasingly involved in the collaborative management of those protected areas.

Strengthening inter-agency law enforcement cooperation to mitigate illegal timber and wildlife-related trade

The Ministry of Agriculture and Forestry (MAF) and the Prosecutor's Office have recently improved methods of coordination by signing

Agreement 422 in April 2022 to address the issues of the illegal timber industry and wildlife trade. They have agreed to set up a joint committee in charge of dealing with criminal offences regarding the Forestry Law and Law on Aquatic and Terrestrial Animals. There has also been an agreement between the Environment Police and DOFI at the central level and right down to the province and the idea is to coordinate with the Lao Wildlife Enforcement Network (Lao-WEN), which gathers together all officers including police, army, customs, etc. The agreement on wildlife signed at central level also includes timber.

The development of a national regulatory framework and subsequent law enforcement is likely to restrict Indigenous Peoples' access to natural resources and forest, and animals listed as protected species, notably in the Totally Protected Zones (TPZ) within National Protected Areas.[12]

Forest management devolution and recognition of customary land tenure

The new Forestry Law (2019) promotes village forest management over much of the forestry estate. This is a huge paradigm shift as it effectively places forest management under the responsibility of those directly dependent upon the forests for their livelihoods. The principles of the national conservation strategy acknowledge that conservation efforts will only be made possible by respecting and supporting the knowledge, innovations, and practices of local people who depend on them.[13] Proper FPIC is yet to be implemented and the implementation on the ground differs between provinces. In Bokeo province, for instance, the Provincial Agriculture and Forestry Office (PAFO) proactively plans to scale up community forestry in 100 villages in the next five years; other provinces, however, have not even started to pilot community forestry yet.

Some international projects are currently advancing the Policy Framework on Land Tenure Recognition inside Forestlands. The World Bank's (WB) Enhancing Systematic Land Registration Project (P169669) has been supporting the Ministry of Natural Resources and Environment (MONRE) and the MAF to draft a Prime Ministerial Decree on Issuing Titles and Land-Use Certificates in State Forestlands, with technical

support from Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the Mekong Region Land Governance (MRLG). In 2022, GIZ prepared draft guidance to provide implementation details for those processes, MRLG is piloting the issuing of titles and certificates inside State forestlands in Khammouane province, and the WB is likely to receive funding to start preparing an action/investment plan for the implementation side. This will allow Indigenous people to secure their permanent production land by means of individual land titles inside conservation, protection and production forests. This would directly contribute to the recognition of land use inside the national forest category but many are sceptical and doubt that the decree, even if proclaimed, will ever be implemented.[14]

Indigenous communities entitled to benefits from Carbon Fund payments

In 2022, the Governance, Forest Landscapes and Livelihoods project (GFLL) started implementing a pilot project in six northern provinces, all sharing an international border with one of the surrounding countries of Thailand, Myanmar, China and Viet Nam and covering 8.1 million hectares. The project builds on the indicative benefit-sharing arrangements proposed in the Emission Reductions Programme Document (ERPD). Indigenous forest-dependent communities are entitled to 90% of the 77% share of the performance-based allocations of the ER Payments from the Carbon Fund.[15] Indigenous communities' customary conservation areas consist mostly of sacred forest, spirits forests, ceremonial grounds, cemeteries (often several areas depending on the type of death), leprosy forest (in the past lepers were ostracized from the community to avoid spreading) and forest sanctuaries. All of those Indigenous conservation forests are now being closely monitored, contributing on the one hand to their protection from predatory exploitation by external actors looking for land for commercial plantation, mining, etc. and on the other now enabling Indigenous communities to generate economic benefits.

Indigenous communal land titling

The NGO Maeying Huamjai Phattana (MHP) or Women Mobilizing for Development Association successfully supported the documentation and demarcation of customary land-use rights and land-use practices in the two Indigenous communities of Paktha district, Bokeo Province in 2022. The process followed the standard process of Forest Land-Use Planning as per the Department of Forestry but MHP went further in obtaining a communal land tenure certificate for the Village Use Forest (VUF) in both villages.

Recognition of communal land tenure quite an achievement in the Lao context where customary land tenure has not yet been recognized. MHP has been a key civil society organization involved in the Forest Law Enforcement, Governance and Trade towards Voluntary Partnership Agreement (FLEGT-VPA)[16] negotiation process in Laos and this achievement is being uploaded in the first database that MHP and its partner have just set up to collect evidence and research that can be used to support discussions in the FLEGT-VPA in Laos.

The Association for Rural Mobilization and Improvement (ARMI), the Wildlife Conservation Association (WCA) in Laving-Laveung National Protected Area in Savannakhet province, and the Rural Research and Development Promoting Knowledge Association (RRDPA) in Sayabouly province are also among the CSOs advocating for and strengthening forest-dependent Indigenous communities' rights to manage their forest and natural resources in Laos.

Various empowering schemes are now widely used by internationally funded projects for example Lao Landscapes and Livelihoods and non-governmental organizations such as the Regional Community Forestry Training Centre and the World Wide Fund for Nature, including Free, Prior Informed Consent. After decades of being scapegoated for the deforestation and forest degradation in Laos, the wind seems to be blowing in a new direction and Indigenous communities are now increasingly perceived as guardians, with their participation a sine *qua non* criterion for sustainable management of the forest and biodiversity in Laos.

Notes and references

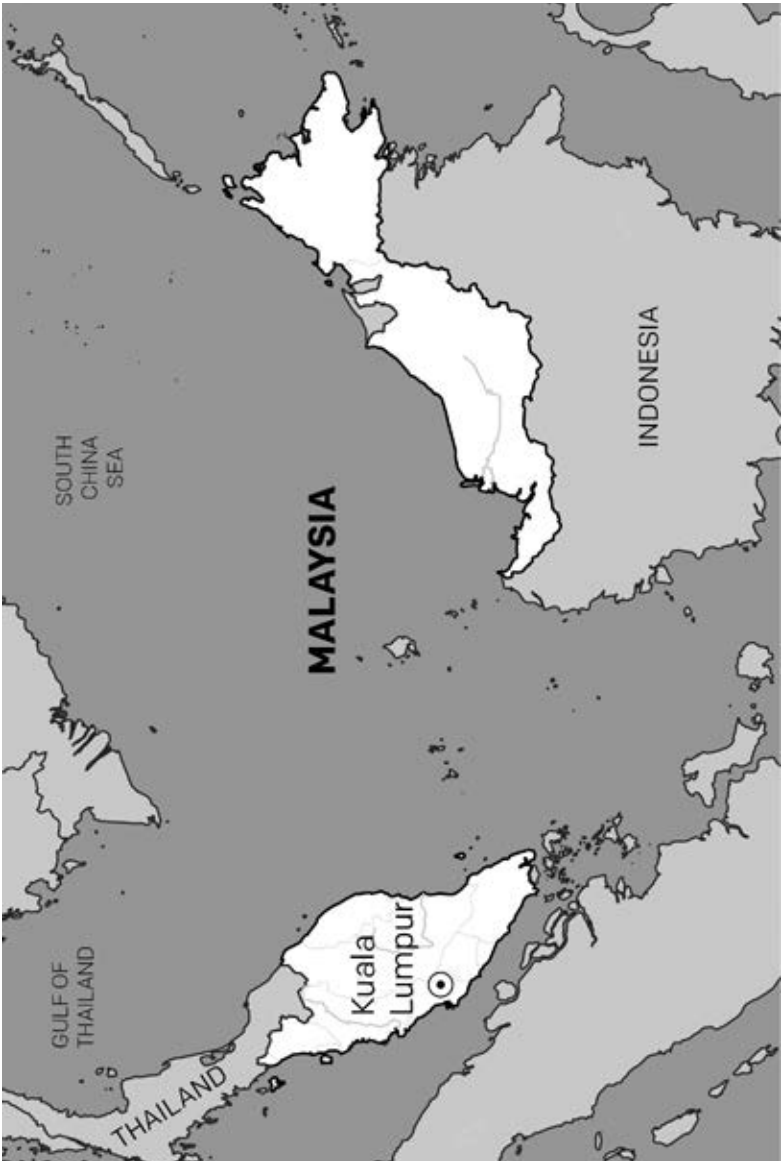
1. UNDP, Human Development Reports – Laos, http://hdr.undp.org/en/countries/profiles/LAO
2. World Bank, https://data.worldbank.org/country/LA
3. "Ethnic minorities and indigenous people." Open Development Laos, 28 August 2018, https://laos.opendevelopmentmekong.net/topics/ethnic-minorities-and-indigenous-people/
4. UN OHCHR. "Statement by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights on his visit to Lao PDR, 18-28 March 2019." 28 March 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24417&LangID=E
5. Daviau, Steeve. Report on the Dissemination of the Decree on Ethnic Affairs presented to the Department of Ethnic and Religious Affairs (DOERA), Ministry of Home AFFAIRS (MOHA). Funded by the Swiss Cooperation (SDC), 2022
6. According to: Lao People´s Democratic Republic. "National Biodiversity Strategy and Action Plan 2016-2025." https://faolex.fao.org/docs/pdf/lao163645.pdf
7. Robichaud, William., C. W. Marsh, S. Southammakoth, S. Khounthikouommane. "Review of the National Protected Area System of Lao PDR." Lao-Swedish Forestry Programme, Division of Forest Resources Conservation (Department of Forestry), IUCN-The World Conservation Union, 2001, https://data.laos.opendevelopmentmekong.net/library_record/review-of-the-national-protected-area-system-of-lao-pdr
8. Clarke, J. E. "Biodiversity and Protected Areas in Lao PDR." Regional Environmental Technical Assistance 5771, https://data.opendevelopmentmekong.net/dataset/0bbcda64-c9eb-4325-94a8-f4e27ca04f7d/resource/2607ebf9-649e-4743-a9f2-57f58f2ded51/download/0002547-environment-biodiversity-and-protected-areas-lao-p-d-r.pdf
9. "Lao Biodiversity: A Priority for Resilient Green Growth." Green Growth Advisory Programme for Lao PDR, 4 February 2020, https://openknowledge.worldbank.org/bitstream/handle/10986/34131/Lao-Biodiversity-A-Priority-for-Resilient-Green-Growth.pdf?sequence=4&isAllowed=y
10. Lao People´s Democratic Republic
11. The World Bank. "Lao Biodiversity : A Priority for Resilient Green Growth." 17 July 2020, https://www.worldbank.org/en/country/lao/publication/lao-biodiversity-a-priority-for-resilient-green-growth
12. Total Protection Zone refers to a forest area that is pristine and unused, the main habitat, feeding and breeding place for various wild animals and it is a place of diverse and dense vegetation. In this zone, it is strictly prohibited to conduct any forestry activity or to harvest any forest products, and there must be no unauthorized entry into the zone.
13. Akkharath, Inthavy. "The Biodiversity Conservation in Lao PDR." https://www.cbd.int/doc/c/febc/d601/be8635c27bb12d873fac7ef9/tscws-2017-01-19-laos-pdr-en.pdf
14. Personal communications with government officials from the Department of Forestry, December 2022.
15. Department of Forestry, Ministry of Agriculture and Forestry. "Governance, Forest Landscapes and Livelihoods-Northern Laos. Benefit Sharing Plan (FINAL)." September 2021, https://documents1.worldbank.org/curated/

en/657571634612542776/pdf/Lao-Peoples-Democratic-Republic-Northern-Laos-Emission-Reductions-Payments-Project-Benefit-Sharing-Plan.pdf

16. Forest Law Enforcement, Governance and Trade (FLEGT) is the EU's Action Plan to eradicate illegal logging and subsequent trade in tropical countries by strengthening the enforcement, governance, sustainable forest management (SFM) and promotion of trade in legally-produced timber. FLEGT VPAs are trade deals between the EU and a timber producing country that are negotiated in a way that ensures that wood being sold in the EU can be shown to be legally sourced. They aim to deliver a timber trade that is transparent, accountable and sustainable and which supports, rather than harms, forest communities.

***Steeve Davia**, anthropologist, has been working on Indigenous Peoples' issues in Laos for over 20 years. daviausteeve@gmail.com*

Malaysia


SOUTH
CHINA
SEA
GULF OF
THAILAND
THAILAND
MALAYSIA
Kuala
Lumpur
INDONESIA

The 2020 Census shows that the Indigenous Peoples of Malaysia were estimated to account for around 11% of the 32.4 million national population. They are collectively known as Orang Asal. The Orang Asli are the Indigenous Peoples of Peninsular Malaysia and they numbered 206,777 in 2020.

The 18 Orang Asli subgroups within the Negrito (Semang), Senoi and Aboriginal-Malay groups account for 0.8% 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 (and 12 new ethnic groups which are discussed below). They constitute around 1.2 million or almost 50% of Sarawak's population of 2.45 million people. In Sabah, the 39 different Indigenous ethnic groups are known as natives or Anak Negeri and make up some 2.1 million or 62% of Sabah's population of 3.4 million. The main groups are the Dusun, Murut, Paitan and Bajau groups. While the Malays are also Indigenous to Malaysia, they are not categorized 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 recognizing the customary land rights and customary law of the Indigenous Peoples are still in place. However, they are not properly implemented, and are even outright ignored by the government, which gives priority to large-scale resource extraction and the plantations of private companies and State agencies over the rights and interests of the Indigenous communities. In Peninsular Malaysia, while there is a clear lack of reference to Orang Asli customary land rights in the National Land Code, Orang Asli customary tenure is recognized 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.

Fishing for votes

Malaysian politics has never been as unstable as the last four years. Having had two changes of government since 2018, there was talk throughout 2022 of another general election towards the end of the year.[1]

With a very fractured and polarized electorate, there was much uncertainty among the three main political coalitions as to their chances of forming the next federal government. This meant that every vote counted. As such, the run-up to the elections saw little flashes of government largesse in recognizing Orang Asal rights, or at least addressing their concerns and demands.

For example, the Department of Orang Asli Development (JAKOA) announced that it would undertake a two-year study to consider amendments to the existing Aboriginal Peoples Act, which was enacted in 1954. This was to ensure, it said, that there were appropriate sections in the act to address current issues and provide better protection for the Orang Asli community.[2]

In the Bornean state of Sarawak, measures were taken to give autonomy and independence to the Native Courts and to elevate them to the same level as the Civil and Syariah (Islamic) courts.[3] Furthermore, in response to growing calls from the Indigenous community, the Sarawak State Assembly also unanimously passed the Interpretation (Amendment) Bill 2022 which, among other things, now considers a child from a mixed marriage as a Native even if only one of the parents is. There is no longer a requirement that both parents must be a Native of Sarawak. The amendment also recognized an additional 12 "races" in the Constitution as being the Indigenous races of Sarawak. These are the Bagatan, Bakong, Bemali, Berawan, Dali, Lakiput, Jatti Miriek, Narom, Sa'ban, Tatau, Tring and Vaie.[4]

In another positive development for native rights, the Sarawak

government revoked an oil palm concession involving 4,400 hectares of native customary lands. While this may not be a blanket recognition of native customary rights in Sarawak – as the revocation came just before the Penan, Berawan, and Tering communities in Mulu were headed to court to seek the nullification of the concession and it was also an "election year" – the natives concerned were grateful to the State Premier for revoking the concession and hoped that he would follow through and abandon the planned township in that region.[5]

Asserting Indigenous/State rights

That the Chief Minister of the State of Sarawak is now to be referred to as the "Premier" is yet another positive development – as it reasserts Sarawak's status as a self-governing territory.[6] This is in line with the acknowledgement of both Sabah and Sarawak as two distinct regions in the Federation of Malaysia rather than just two of its 13 states. It was these two regions that merged with Malaya (now called Peninsular Malaysia) to give rise to the formation of the new nation state, Malaysia, in 1963.

Nevertheless, while the Bornean regions of Sabah and Sarawak, with their majority Indigenous population and their Indigenous-led regional governments, share the same rights and protections as Malays in Peninsular Malaysia under Article 153 of the Federal Constitution, the reality is that these rights have been curtailed or ignored. In terms of the higher echelons of government and senior government positions, for example, Sabah and Sarawak are seriously under-represented and largely discounted.[7]

Natives of Sabah and Sarawak each make up a mere 5% of the civil service, respectively, followed even less by the Orang Asli from Peninsular Malaysia. More disturbing is the revelation that there are no natives from East Malaysia nor Orang Asli holding "Turus" grade, which is the highest attainable civil service position.[8]

The native "non-Islamic" character of Sabah and Sarawak has also been diluted over the years. The move towards forming an Islamic state, the plan to introduce *hudud* (Islamic) laws, and the attempt to export Peninsular Malaysia's hard-line Islamic trend have aroused discomfort among the people of Sabah and Sarawak.[9]

In Peninsular Malaysia, there appears to be a trend towards greater control over the lives and lands of the Orang Asli. A case in point was when the Department of Orang Asli Development (JAKOA), through its Gua Musang District office, issued a directive in October 2022 barring outsiders, including those from welfare NGOs, from entering Orang Asli areas without the prior written approval of JAKOA, the Forestry Department and the Gua Musang Land Office.[10] That the Orang Asli themselves are not being asked for approval indicates how they are seen as "wards of the State". Although supposedly done for better "disaster management" in view of the anticipated year-end floods, this move was seen by some Orang Asli as both illegal and a directive that was politically motivated.[11] The latter was particularly so as the order was issued when the country was going into its 15th general election and in a district where the Orang Asli vote was crucial. As it turned out, the 12-term Member of Parliament lost at least 1,566 Orang Asli votes, losing his seat by a mere 163 votes.[12]

Community vs corporate conservation

Environmental and conservation issues have continued to affect the Orang Asal both positively and negatively. On the occasion of the 2nd Asia Parks Congress, held from 24-29 May in Sabah, 247 Indigenous and local community representatives sought respectful and equitable partnerships with governments, industry and other stakeholders for a rights-based approach to conservation.[13]

To this end, of the three regions in Malaysia, Sabah has the best record of engaging the community in the State's forestry management.[14] The Forestry Department's commitment to "social" conservation and forestry is also reflected in its official denunciation and rejection of the controversial Nature Conservation Agreement (NCA), supposedly signed between the Sabah government and a little-known Singaporean firm.[15] The Sabah Attorney-General declared that the proposed NCA was rendered non-binding and unenforceable because, among other things, the designated area (some 1,000,000 hectares), which includes a sizeable number of native customary lands, had not been ascertained or identified.[16]

Sarawak also appeared to be moving in this direction when it passed a bill to amend the State's Forests Ordinance with the intention of improving the management of forests and their natural resources by creating, among other things, protected and communal forests.[17] This legislative action appears timely, especially since the natives still face many threats to their Native Customary Rights (NCR) lands from various parties. For example, a complaint was lodged by five Sarawak-centred NGOs against timber giant Samling, which was accused of logging natural forests in the traditional territories of the Penans in the Baram and Limbang watersheds, in violation of Indigenous rights and without Free, Prior and Informed Consent (FPIC), resulting in the destruction of high conservation value forest.[18]

New threats from deforestation

From 2000 to 2020, Malaysia experienced a net loss of 1.12 million hectares (-3.8%) of tree cover.[19] It should be noted however that "tree cover" includes forest plantations where "degraded forests" (which includes the shifting cultivation lands of the Orang Asal) are cleared to grow fast-growing trees to sell as pulp and timber.[20, 21] In Peninsular Malaysia alone, 256,769 hectares of forest reserves have been licensed to be cleared for plantations.[22] The Rimba Disclosure Project (RDP) also discovered that a total of 43,539 hectares of forest lands – including those officially earmarked for conservation – were being offered for sale online.[23] The decline in "tree cover" coupled with increased forest plantations can only mean a reduction in the area under natural forest, i.e. actual deforestation.

The increased rate of deforestation has resulted in a new threat to the Orang Asli in Peninsular Malaysia: an increase in human-wildlife conflict incidents. Wild elephants are now increasingly encroaching onto Orang Asli lands. The decreasing size of their habitat has caused them to encroach closer to the Orang Asli settlements, destroying their food and cash crops. Tiger sightings close to Orang Asli settlements have also increased, causing fear and preventing the Orang Asli from entering their farms and forests, thus affecting their subsistence and livelihoods.[24, 25] The beginning and close of 2022 also saw two tragic

consequences in this regard for the Orang Asli: the mauling to death of an Orang Asli man by a tiger,[26] and the trampling to death of an Orang Asli woman by an elephant.[27]

The Deputy Chief Minister of Kelantan state, where both deaths happened, denied that the tiger attacks were due to deforestation or a loss of habitat. He added that logging could not be blamed as "logging only causes a little bit of flooding".[28] The Director of the Kelantan State Wildlife Department also commented that "areas that have been deforested are actually good for the tiger population."[29] With such mindsets, it appears that there is very little hope for the forests or the forest communities.

Nevertheless, the end of 2022 saw the Pakatan Harapan (Pact of Hope) coalition take the reins of a unity government at federal level. Its election manifesto promised to protect Orang Asal rights and to protect the environment.[30] The hope is that the new government will bring about changes in the mindset of the people responsible for the well-being of the forests and the Orang Asal.

Notes and references

1. It was eventually held on 19 November 2022, bringing a new unity government into power under the stewardship of the reform-oriented Pakatan Harapan coalition or Pact of Hope.
2. "Jakoa to begin study on Aboriginal Peoples Act amendments: Mahdzir Khalid." The Vibes, 22 July 2022, https://www.thevibes.com/index.php/articles/news/66500/jakoa-to-begin-study-on-aboriginal-peoples-act-amendments-mahdzir-khalid
3. Edward, Churchill. "Elevating Sarawak's Native Courts as respected judicial institution." Borneo Post, 24 April 2022, https://www.theborneopost.com/2022/04/24/elevating-sarawaks-native-courts-as-respected-judicial-institution/
4. "Passed – Sarawak bill recognising mixed-marriage children as natives." Free Malaysia Today, 15 February 2022, https://www.freemalaysiatoday.com/category/nation/2022/02/15/passed-sarawak-bill-recognising-mixed-marriage-children-as-natives/
5. "State revokes oil palm concession in Mulu, indigenous communities thank Premier." Borneo Post, 5 October 2022, https://www.theborneopost.com/2022/10/05/state-revokes-oil-palm-concession-in-mulu-indigenous-communities-thank-premier/
6. "Sarawak asserts status with 'Premier' to replace chief minister." Free Malaysia Today, 13 February 2022, https://www.freemalaysiatoday.com/category/nation/2022/02/13/sarawak-asserts-status-with-premier-to-replace-chief-minister/

7. "Sabah, S'wak 'seriously under-represented' on federal level: legal expert." The Vibes, 1 February 2022, https://www.thevibes.com/articles/news/53310/sabah-swak-seriously-underrepresented-on-federal-level-legal-expert
8. Ibid.
9. "Sabah, Sarawak mow known as region, no longer states- Ahmad Zahid." The Malaysian Reserve, 13 January 2023, https://themalaysianreserve.com/2023/01/13/sabah-sarawak-now-known-as-regions-no-longer-states-ahmad-zahid/
10. "Outsiders barred: Orang Asli activists claim it's 'political', mull legal action." Malaysiakini, 20 October 2022: https://www.malaysiakini.com/news/640393
11. Mohd, Hariz. "Jakoa: Outsiders barred for disaster management, nothing political." Malaysiakini, 20 October 2022, https://www.malaysiakini.com/news/640440
12. Facebook. "Where the Orang Asli vote helped bring down a political giant." Center for Orang Asli Concerns, 22 November 2022, https://www.facebook.com/profile/100067516428238/search/?q=gua%20musang
13. "Api-Api Declaration." 2nd Asia Parks Congress, 29 May 2022 https://www.forestpeoples.org/sites/default/files/documents/Api-Api%20Declaration.pdf
14. Johnlee, E.B., Ibrahim, A.L., Naito, D., and Lintangah, W. "Social forestry for sustainable forest management (SFM): A case study in Tongod District, Sabah." Center for International Forestry Research (CIFOR), 2020, https://www.cifor.org/knowledge/publication/7647/
15. Mamo, Dwayne, ed. The Indigenous World 2022. Copenhagen: IWGIA, 2022, 247
16. Tong, Geraldine. "Sabah AG: NCA is non-binding until conditions met." Malaysiakini, 9 February 2022, https://www.malaysiakini.com/news/610118
17. Tawie, Sulok. "Sarawak deputy premier says Forests Bill to better manage its natural resources." Malay Mail, 19 May 2022, https://www.malaymail.com/news/malaysia/2022/05/19/sarawak-deputy-premier-says-forests-bill-to-better-manage-its-natural-resources/7626
18. "Forest Stewardship Council FSC called on to drop Samling Group." The Borneo Project, 12 October 2022, https://borneoproject.org/forest-stewardship-council-fsc-called-on-to-drop-samling-group/
19. Global Forest Watch. Malaysia, https://www.globalforestwatch.org/dashboards/country/MYS/?category=summary&dashboardPrompts=eyJzaG93UHJvbXB0cyI6dHJ1ZSwicHJvbXB0c1ZpZXdlZCI6WyJkb3dubG9hZERhc2hib2FyZFN0YXRzIl0sInNldHRpbmdzIjp7InNob3dQcm9tcHRzIjp0cnVlLCJwcm9tcHRzVmlld2VkIjpbXSwic2V0dGluZ3MiOnsib3BlbiI6ZmFsc2UsInN0ZXBJbmRleCI6MCwic3RlcHNLZXkiOiIifSwib3BlbiI6dHJ1ZSwic3RlcEluZGV4IjowLCJzdGVwc0tleSI6ImRvd25sb2FkRGFzaGJvYXJkU3RhdHMifSwib3BlbiI6dHJ1ZSwic3RlcHNLZXkiOiJ3aWRnZXRTZXR0aW5ncyJ9&location=WyJjb3VudHJ5IiwiTVlTIl0%3D&map=eyJjZW50ZXIiOnsibGF0Ijo0LjExMzI4NTU5OTg0MzQ4OSwibG5nIjoxMDkuNDU0MjA0NTU1MDAzNDd9LCJ6b29tIjo0LjA5NTAwNDMzMjYyMzUwMTUsImNhbkJvdW5kIjpmYWxzZSwiZGF0YXNldHMiOlt7ImRhdGFzZXQiOiJwb2xpdGljYWwtYm91bmRhcmllcyIsImxheWVycyI6WyJkaXNwdXRlZC1wb2xpdGljYWwtYm91bmRhcmllcyIsInBvbGl0aWNhbC1ib3VuZGFyaWVzIl0sImJvdW5kYXJ5Ijp0cnVlLCJvcGFjaXR5IjoxLCJ2aXNpYmlsaXR5Ijp0cnVlfSx7ImRhdGFzZXQiOiJOZXQtQ2hhbmdlLVNUQUdJTkciLCJsYXllcnMiOlsiZm9yZXN0LW5ldC1jaGFuZ2UiXSwib3BhY2l0eSI6MSwidmlzaWJpbGl0eSI6dHJ1ZSwicGFyYW1zIjp7InZpc2liaWxpdHkiOnRydWUsImFkbV9sZXZlbCI6ImFkbTAifX1dfQ%3D%3D&showMap=true
20. According to the criteria set by the Forestry Department of Peninsular Malaysia, forest plantations are restricted to "degraded forests" damaged by illegal

logging, shifting cultivation, pests, or fire or one where the average volume of harvestable timber per hectare is less than 153 cubic metres. Based on these criteria, most forests in Peninsular Malaysia are considered "degraded" and, by extension, eligible to be turned into forest plantations.

21. "Forest plantations in reserves: quick to cut, slow to grow." Macaranga, 2 March 2022, https://www.macaranga.org/forest-plantations-in-reserves-quick-to-cut-slow-to-grow/#:~:text=Forest%20plantations%20are%20touted%20to,of%20harvest%20dates%20or%20yields

22. "Tree Farming Gone Wrong." Macaranga, 23 February 2022, https://www.macaranga.org/forest-plantations-tree-farming-gone-wrong/

23. "Over 43,000ha of forest up for sale online, including for logging: NGO." The Vibes, 3 February 2022, https://www.thevibes.com/articles/news/53445/over-43000ha-of-forest-up-for-sale-online-including-for-logging-ngo

24. "Save our forests, Orang Asli demand of Ismail Sabri after fatal mauling of villager." The Vibes, 12 January 2022, https://www.thevibes.com/articles/news/51830/save-our-forests-orang-asli-demand-of-ismail-sabri-after-fatal-mauling-of-villager

25. Asyraf, Faisal. "MP slams Perhilitan as Orang Asli live in fear of rampaging elephants." Free Malaysia Today¸ 6 December 2022, https://www.freemalaysiatoday.com/category/nation/2022/12/06/mp-slams-perhilitan-as-orang-asli-live-in-fear-of-rampaging-elephants/

26. "Orang Asli man mauled to death by tiger in Gua Musang." New Straits Times, 7 January 2022, https://www.nst.com.my/news/nation/2022/01/761205/orang-asli-man-mauled-death-tiger-gua-musang

27. "Orang Asli woman dies after being trampled by wild elephant." The Star, 6 December 2022, https://www.thestar.com.my/news/nation/2022/12/06/orang-asli-woman-dies-after-being-trampled-by-wild-elephant

28. Ghazali Faizal, N. "Illegal logging 'not serious' in Kelantan - deputy MB." Malaysiakini, 26 January 2022, https://www.malaysiakini.com/news/608522

29. Ghazali Faizal, N. "Deforested area good for tigers, claims K'tan Forestry director." Malaysiakini, 24 January 2022, https://www.malaysiakini.com/news/608217

30. Kitaboleh. "Kita Boleh. Harapan GE15 Action Plan", https://kitaboleh.my/en/home-english/

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*

Myanmar

INDIA
CHINA
BANGLADESH
MYANMAR
Naypyidaw
LAOS
BAY OF BENGAL
THAILAND
ANDAMAN SEA
GULF OF
THAILAND

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-recognised concept of Indigenous Peoples. The government claims that all citizens of Myanmar are *"Indigenous" (taing-yin-tha)* and, on that basis, dismisses the applicability of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) to Myanmar. Indigenous Peoples' rights activists use the Burmese language term *hta-nay-tain- yin-tha* 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.[1]

The government recognises eight ethnic groups as national races or *taung-yin-tha:* Kachin, Karen, Karenni, Chin, Mon, Burman, Arakan and Shan. According to the 1982 *Citizenship Law,* ethnic groups who have been present in the current geographical area of Myanmar since before 1823 (the start of the first British annexation) are considered *taung-yin-tha.*[2] However, there are a number of ethnic groups that are considered or see themselves as Indigenous Peoples, such as the Naga, who would not identify with any of those groups.

In accordance with the 2008 Constitution,[3] Myanmar/Burma is divided into seven States, seven Regions, and one Union Territory. These political boundaries are, to some extent, organised according to ethnic demographics. The seven states are named after seven large ethnic groups namely, Kachin, Kayah (Karenni), Kayin (Karen), Chin, Mon, Rakhine and Shan states. Although the Bamar (Burmese) do not have a specifically named state, they are the dominant ethnic group living in the country, predominantly in six of the seven Regions (Sagaing, Magwe, Mandalay, Yangon, Ayerywaddy, and Bago) and the Union Territory of Nay Pyi Taw. There are also five self-administered areas and one self-administered Region that form part of Regions or States, each named after the ethnic group that forms the majority in the area (Naga, Danu, Pa-O, Paluang, and Kokang and the Wa Self-Administered Division).

On 1 February 2021, the Myanmar Military (Tatmadaw) attempted a *coup d'état* by deposing the elected government, the National League for Democracy (NLD), detaining Aung San Su Kyi and members of both Union and State-level Parliaments. The military junta failed to consolidate power after the attempted coup due to resistance from the Myanmar people. Since then, large parts of Myanmar have descended into civil war as a revolution has been taking place, shaped by growing allegiances between elected lawmakers, Ethnic Revolutionary Organisations, strike and protest leaders, and civil society organisations. At the centre of this alliance is the National Unity Government (NUG) and the broader, more representative, National Unity Consultative Council (NUCC), an inclusive body that includes a range of revolutionary organisations that hold territory and act in alliance with the NUG. Most foreign governments and international institutions have so far been reluct ant to formally recognise either the junta or the NUG as the government of Myanmar. Governments and other officials do engage with both entities in international fora.

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).

Scorched earth campaign

By the end of 2022, the tally of documented pro-democracy activists and other civilians killed via military crackdowns had reached a total of 2,689, although the real number is likely much higher. There remains the ongoing detention of over 13,000 peopl.[4] Political prisoners include opinion leaders, members of civil society, key political figures, health workers, and civil servants formerly involved in the administration of elections.

In July, four democracy activists were executed by Myanmar's military in what was believed to be the first use of capital punishment in decades. The four – including activist Ko Jimmy and lawmaker Phyo Zeya Thaw – were accused of committing "acts of terror". They were sentenced to death in a closed-door trial.[5]

The humanitarian situation continues to be dominated by hostilities and increasing economic stress for millions of people. Frequent, indiscriminate attacks, including airstrikes and artillery fire in civilian areas, have caused casualties and spread fear. Displacement also continues to rise despite some reported returns. According to the latest UN figures, the estimated number of new internally displaced persons (IDPs) since the military takeover has passed 1.1 million, bringing the total number of IDPs across the country to over 1.5 million.[6] While Indigenous Peoples' territories continue to be some of the worst affected conflict areas, the junta has also actively targeted the Burmese heartland in areas such as Magway and Sagaing.

Despite the United Nation's (UN) Special Envoy, Noeleen Heyzer, calling on coup leader Senior General Min Aung Hlaing on 17 August to cease air and artillery strikes on civilian targets and the torching of homes, the State Administration Council (SAC) intensified its scorched earth campaign.[7] In November, it was estimated that 38,383 houses in 12 states and regions had been razed.[8] Later in December, Myanmar Junta forces torched 19 villages in Depayin Township, destroying 50% of houses and leaving 10,000 people homeless. The attack, which began on 1 December, resulted in the razing of 1,700 buildings, including religious infrastructure.[9]

The Myanmar Junta also intensified the use of its air force to commit war crimes and crimes against humanity. Amnesty International

documented 16 unlawful air attacks between March 2021 and August 2022 in Kayah, Kayin and Chin states, as well as in Sagaing Region.[10] The attacks killed at least 15 civilians and injured some 36 more. Aerial bombardments have also destroyed homes, religious buildings, schools, medical facilities and a camp for displaced persons. Recent junta aerial attacks include indiscriminate air strikes against a concert held at a Kachin Independence Army base in Kachin State, killing more than 80 people, and against a school in Let Yet Kone village, Sagaing Region, killing at least 12 people.[11]

Conservation challenges

Conservation efforts undertaken by Indigenous communities across Myanmar have been in decline since the coup. This is in part due to inherent security risks due to the ongoing conflict,[12] large amounts of displacement and the increasingly aggressive natural resource extraction currently being carried out by the SAC and private entities operating as opportunists during the political crisis. Deprived of revenue, the military junta has increasingly relied on revenue from natural resources to support their operations and their ongoing campaign to retain power.[13]

Despite ongoing sanctions, since the coup the junta has reportedly auctioned more than USD 8 million in teak and exported more than USD 190 million in timber products. Companies in the EU, the US, UK, Canada, and Switzerland have all reportedly continued to import timber from Myanmar since their sanctions came into force in 2021.[14] Meanwhile, civilian populations left without access to livelihoods have resorted to working at mining sites that are stripping mountainsides and riverbanks of trees.[15] Furthermore, at least half of the more than 1 million people internally displaced by the conflict have sought refuge in Myanmar's forested areas, creating new pressures on already heavily impacted ecosystems.

Three recent examples cited in reports include the proliferation of gold mining in Kachin State, driven by crony companies that have polluted streams and rivers, destroyed cultural heritage sites, and eroded and damaged agricultural lands;[16] large-scale mining sights in Eastern Shan State, which have impacted surrounding agricultural lands; and

tin and gold mines in Tanintharyi Region led by state and ethnic armed groups, damaging local riverine ecosystems upon which communities depend for their livelihoods.[17]

Speaking at a press conference in the lead up to UNFCCC COP 27, the United Nations Special Rapporteur on the situation of human rights in Myanmar, Tom Andrews, said that with security risks and travel restrictions blocking a comprehensive assessment, the full extent of environmental degradation and destruction following the military takeover was "hard to imagine".[18]

Ethnic governance

As the junta's public administration system continued to collapse in large parts of the country, resistance organisations continued to strengthen governance institutions to fill the void. In Myanmar's ethnic areas, ethnic resistance organisations (EROs) and newly formed local coalition "councils", including elected politicians, EROs, civil society organisations (CSOs) and striking civil servants, are the primary actors leading these efforts. The councils aim to supplant the SAC and serve as the main State-based bodies for social and political affairs in their regions, a nascent implementation of federalism at the state level.

In some areas, such as Kachin, Karen, Chin and Karenni states, the SAC administration is largely inactive. In areas such as Mon State, Bago Region and Tanintharyi Region, EROs and people's defence forces (PDFs) closely aligned with the anti-coup federal democracy movement also consolidated control throughout 2022.[19] Meanwhile, significant parts of Rakhine and Shan states remain under the control of well-established EROs such as the Arakan Army (AA), which have kept themselves distanced from the anti-coup, pro-democracy movement but stand in opposition to centralised rule by the SAC.

Peace talks?

In early 2022, the military junta reached out to 17 of Myanmar's armed ethnic groups, including seven that had been unwilling to sign the 2015

Nationwide Ceasefire Agreement (NCA) with the military, and invited them to preliminary peace talks to mark the 75th Union Day celebrations. So-called "terrorist" organisations, meaning Peoples Defence Forces and the National Unity Government of the Republic of the Union of Myanmar (NUG) were excluded from the invitation.[20]

The Karen National Union (KNU), Chin National Front (CNF), Kachin Independence Army (KIA) and Karenni National Progressive Party (KNPP) all publicly rejected the approach.[21]

However, in September peace talks were held between 10 ethnic armed organisations (EAOs) and the junta. Among the signatories of the 2015 NCA were the Democratic Karen Benevolent Army (DKBA); the Karen National Union/Karen National Liberation Army-Peace Council (KNU/KNLA-PC); the Pa-O National Liberation Organisation (PNLO); the New Mon State Party (NMSP); the Arakan Liberation Party (ALP); the Restoration Council of Shan State (RCSS); and the Lahu Democratic Union (LDU). Non-signatories of the NCA that joined the peace talks were the United Wa State Army (UWSA), the National Democratic Alliance Army (NDAA) and the Shan State Progress Party (SSPP).[22]

The talks were widely regarded as standard divide-and-rule tactics initiated by the SAC. The rationale for engagement on the part of these resistance elements was assumed to be the possibility of negotiating self-administered zones, easing military tensions, providing input to the formation of a federal democratic union, either by amending the Military-drafted 2008 Constitution or re-writing it and, finally, pursuing the development of their respective regions.[23]

Whatever the rationale behind the engagement, the actions were condemned by civil society organisations who urged attendees to refrain due to the fact it was a sham dialogue intended to divide and rule over the resistance groups, namely the Spring revolution forces, the people and ethnic armed organisations.[24]

Education

In November 2022, the SAC announced an amendment to the National Education Law that reneges on reforms that were to permit ethnic languages to be used alongside the Burmese language as the language of instruction in the classroom. Section (43), sub-section (b) of the amend-

ed Law states that all classes must now be taught only in the Burmese language.[25] While at the time of writing the reaction of the NCA signatories to the amendment was not known, the amendment goes contrary to the spirit of the NCA with its commitment to support "efforts to preserve and promote ethnic culture, language, and literature".[26]

Meanwhile teachers operating under the NUG's attempts to conduct parallel education systems during 2022 were increasingly a target of violence. U Saw Tun Moe, a teacher at a civilian NUG-funded school in Thit Nyi Naung village in southern Pauk Township, Magwe Region, was abducted by junta troops on Sunday 16 October. His body was found the next day, decapitated and leaning against the gate of a school in the nearby village of Taung Myint. His head was impaled on a spike on the school gate above his body, and three of his fingers had been cut off.[27] This followed the arrest of at least 30 teachers working for or suspected of being affiliated with a private online school with ties to the NUG in July.[28]

Legal developments

Aside from the education sector, other policy developments have been developed that will further shrink civic space as the SAC looks to consolidate authoritarian control. The SAC has pursued a draconian Cyber Security Bill which, on the face of it, would outlaw virtual private networks (VPNs), throttle access to social media networks, and force internet companies to hand over user data to the military, as well as prosecute critics and representatives of non-complying companies.[29]

In October, an Organisation Registration Law was announced that replaced the progressive 2014 Associations Registration Law whereby registration was voluntary and there were no prohibitions or punishments, largely seen as fostering the growth of Myanmar's domestic civil society and facilitating cooperation with the government. Under the new law, however, running an unregistered organisation can now result in a prison term of up to three years, while members of an unregistered NGO can be fined up to 500,000 MMK (approx. 220 euro) or face a jail sentence of up to two years. Organisations were given a deadline of 60 days to register under the new legislation.[30] The law, aimed specifically at INGOs and NGOs, requires recommendations via the Ministry of

Investment and Foreign Economic Relations and the Ministry of Immigration and Manpower, who submit their opinion to the Ministry of Foreign Affairs. As well as yearly auditing, registration and gaining approval for activities from local SAC administrations in any given area, severe penalties are incurred for directly or indirectly contacting or supporting organisations or individuals who have taken up arms against the State, punishable by five years in prison or 5,000,000 MMK (approx. 2,100 euro) or both.[31]

Given the ongoing implementation of the four-cuts doctrine[32] across the country, local civil society and grassroots organisations have played a vital and sometimes life-threatening role in the provision of humanitarian assistance to those in need, particularly food, health care, shelter, safe drinking water, and sanitation facilities, and they are operating largely in contested areas and thus willingly or unwillingly interacting with resistance organisations. A spokesperson for the UN Office of the High Commissioner for Human Rights Myanmar team was quoted as saying that this latest legal development will "diminish what operational space is left for civic organisations to deliver essential goods and services to a population that is struggling to survive."[33]

Notes and references

1. "Coalition of Indigenous Peoples in Myanmar/Burma." Joint Submission to the UN Universal Periodic Review, March 2015, https://www.chinhumanrights.org/wp-content/uploads/2015/08/Coalition-of-IPs-in-Myanmar_UPR.pdf
2. Burma Citizenship Law 1982, Pyithu Hluttaw Law No 4 of 1982. Section 3
3. "Myanmar´s Constitution of 2008 with Amendments through 2015." Comparative Constitute Project, https://www.constituteproject.org/constitution/Myanmar_2015.pdf?lang=en
4. Daily Briefing in Relation to the Military Coup." Assistance Association for Political Prisoners, 2 January 2023, https://aappb.org/?p=23856
5. Abdul Jalil, Zubaidah. "Myanmar: Military executes four democracy activists including ex-MP." BBC News, 25 July 2022, https://www.bbc.com/news/world-asia-62287815
6. Myanmar Emergency Update, UNHCR, 5 December 2022 https://data.unhcr.org/en/documents/details/97372
7. Pyi Taw, Nay. "Note to Correspondents: Statement by the Secretary-General's Special Envoy on Myanmar, Noeleen Heyzer." United Nations, 17 August 2022, https://www.un.org/sg/en/content/sg/note-correspondents/2022-08-17/note-correspondents-statement-the-secretary-general%E2%80%99s-special-envoy-myanmar-noeleen-heyzer
8. Figures relate to the period of May 2021 to November 2022: "Myanmar Regime

Forces Torch Over 38,000 Homes Since Coup." The Irrawaddy, 13 December 2022, https://www.irrawaddy.com/news/burma/myanmar-regime-forces-torch-over-38000-homes-since-coup.html

9. "Myanmar Regime Forces Burn 19 Villages in Depayin." The Irrawaddy, 19 December 2022, https://www.irrawaddy.com/news/burma/myanmar-regime-forces-burn-19-villages-in-depayin.html
10. "Deadly Cargo." Amnesty International, 3 November 2022, https://www.amnesty.org/en/latest/research/2022/11/myanmar-the-supply-chain-fueling-war-crimes/
11. "Airstrike Kills at Least 80 During Outdoor Concert in Myanmar." New York Times, 25 October 2022, https://www.nytimes.com/2022/10/25/world/asia/myanmar-coup-concert-killed.html
12. Fishbein, Emily, and Nu Nu Lusan. "'Afraid of the gun': Military coup fuels Myanmar resource grab." Aljazeera, 14 December 2022, https://www.aljazeera.com/news/2022/12/14/afraid-of-the-gun-military-coup-fuels-myanmar-resource-grab
13. Forest Policy Trade and Finance Initiative. "Myanmar's Timber Trade One Year Since the Coup: The Impact of International Sanctions." March 2022, https://www.forest-trends.org/wp-content/uploads/2022/03/Forest-Trends_Myanmars-Timber-Trade-One-Year-Since-the-Coup.pdf
14. ibid
15. All Burma Indigenous Peoples Alliance. "Caught Between the Coup and Climate Change: Indigenous Communities In Burma Continue their Struggle for Justice Amid Unprecedented Pressures." November 2022, https://progressivevoicemyanmar.org/wp-content/uploads/2022/11/Briefing-paper-Eng.pdf
16. Fishbhein, Emily., Jaw Tu Hkawing, Nu Nu Lusan, and Jauman Naw. "Kachin tycoon draws controversy over gold mining at Myitsone." Frontier Magazine, 11 February 2022, https://www.frontiermyanmar.net/en/kachin-tycoon-draws-controversy-over-mining-at-myitsone/
17. Fishbein, Emily., and Nu Nu Lusan.
18. Cowan, Carolyn. "Myanmar communities decry disempowerment as forest guardians since 2021 coup." Mongabay, November 2022, https://news.mongabay.com/2022/11/myanmar-communities-decry-disempowerment-as-forest-guardians-since-2021-coup/
19. Ei Ei Tun, Naw Show., and Kim Joliffe. "Self-determination under an interim constitutional framework: Local administration in ethnic areas of Myanmar." June 2022, https://research.kim/wp-content/uploads/2022/06/Self-Determination-under-a-common-constitutional-framework_24-June-2022-25.pdf
20. "Junta omits key stakeholders from Myanmar Union Day peace talks." Radio Free Asia, 8 February 2022, https://www.rfa.org/english/news/myanmar/talks-02082022204844.html
21. "Ethnic Armed Groups Reject Myanmar Junta Chief's Peace Talks." The Irrawaddy, 25 April 2022, https://www.irrawaddy.com/news/burma/ethnic-armed-groups-reject-myanmar-junta-chiefs-peace-talks.html
22. Wansai Sai. "Myanmar junta plays games with EAO 'peace talks'" Mizzima, 3 October 2022, https://mizzima.com/article/myanmar-junta-plays-games-eao-peace-talks
23. Ibid
24. An Open Letter From 567 Civil Society Organizations Calling For Leaders

of the Ethnic Resistance Organizations not to Engage with Myanmar's State Administrative Council, 26 September 2022, available at https://progressivevoicemyanmar.org/2022/09/26/an-open-letter-from-567-civil-society-organizations-calling-for-leaders-of-the-ethnic-resistance-organizations-not-to-engage-with-myanmars-state-administrative-council/

25. "National Education Law, Amended by the SAC, is being Criticized as the Implementation of Chauvinism." BNI Online, 14 November 2022, https://www.bnionline.net/en/news/national-education-law-amended-sac-being-criticized-implementation-chauvinism

26. The Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organizations. United Nations Peacemaker, 15 November 2015, https://peacemaker.un.org/sites/peacemaker.un.org/files/MM_151510_NCAAgreement.pdf

27. "UN, Asean must take urgent action to hold Myanmar Junta accountable for atrocities." New Straight's Times, 22 October 2022, https://www.nst.com.my/world/region/2022/10/842862/un-asean-must-take-urgent-action-hold-myanmar-junta-accountable

28. Thit, Han. "At least 30 teachers detained following data leak and arrest of NUG-linked school founder." Myanmar Now, 22 July 2022, https://myanmar-now.org/en/news/at-least-30-teachers-detained-following-data-leak-and-arrest-of-nug-linked-school-founder

29. Strangio, Sebastian. "Myanmar Junta Set to Pass Draconian Cyber Security Law." The Diplomat, 31 January 2022, https://thediplomat.com/2022/01/myanmar-junta-set-to-pass-draconian-cyber-security-law/

30. "'We are facing a crisis': New law puts Myanmar NGOs in 'impossible' position." Frontier Magazine, 14 December 2022, https://www.frontiermyanmar.net/en/we-are-facing-a-crisis-new-law-puts-myanmar-ngos-in-impossible-position/

31. "New Myanmar Law Registration of Associations Law Imposes additional requirements on non-governmental organisations." Allen and Gledhill, 7 December 2022, https://www.allenandgledhill.com/mm/perspectives/articles/22817/mmkh_new-registration-of-associations-law-imposes-additional-requirements-on-non-governmental-organisations#:~:text=Perspectives%20Knowledge%20Highlights-,New%20Myanmar%20Registration%20of%20Associations%20Law,requirements%20on%20non%2Dgovernmental%20organisations&text=On%2028%20October%202022%2C%20the,(%E2%80%9C2014%20Law%E2%80%9D).

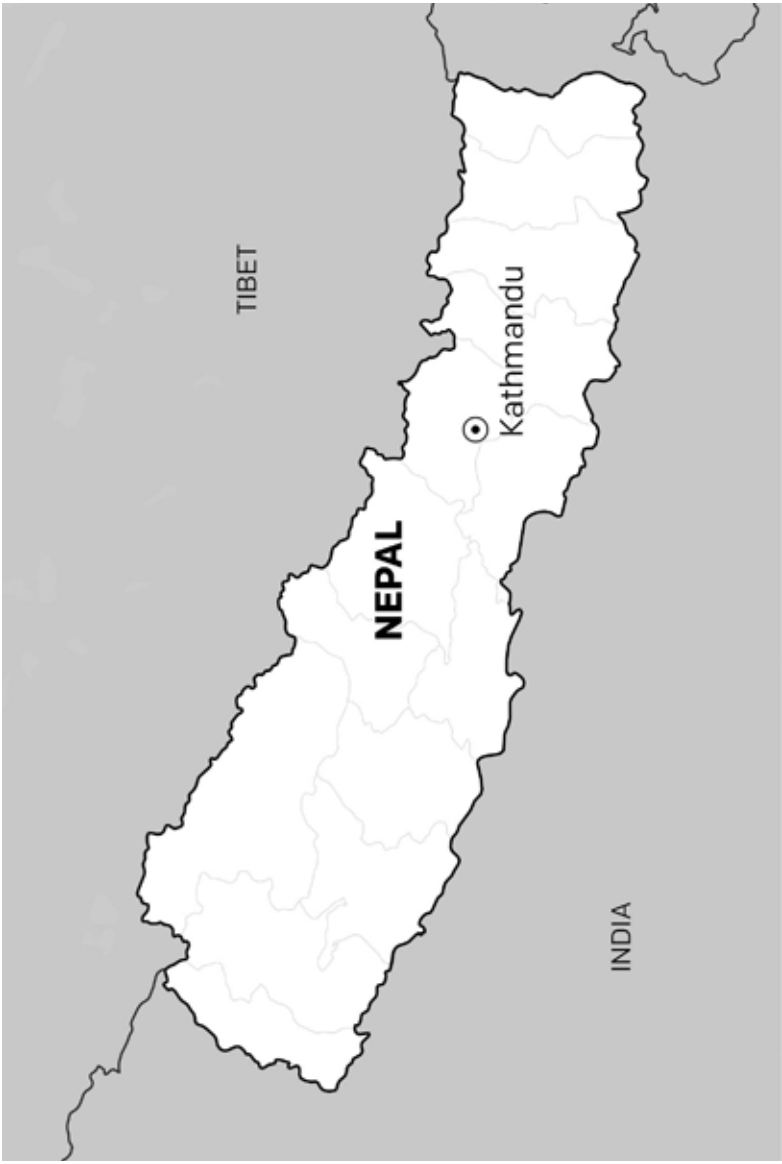
32. "Collective Punishment: Implementation of "Four Cuts" in Mindat Township." International working Group on Indigenous Affairs and Chin Human Rights Organization (IWGIA), 2022, https://www.iwgia.org/en/resources/publications/4615-iwgia-chro-four-cuts.html

33. "Myanmar: UN Human Rights Office deeply concerned by new NGO law." United Nations Human Rights, News Release, 28 November 2022, https://bangkok.ohchr.org/ngo-law-myanmar/

The author and publisher of this article are well aware of the existing Myanmar/Burma name dispute; however, Myanmar is here used consistently to avoid confusion.

This article was produced by the ***Chin Human Rights Organization (CHRO)****. CHRO works to protect and promote human rights through monitoring, research, documentation, and education and advocacy on behalf of Indigenous Chin people and other ethnic/Indigenous communities in Myanmar. The organisation is a founding member of the Indigenous Peoples' Network of Myanmar, made up of over 20 non-governmental organisations engaged in Indigenous Peoples' issues in the country.*

Nepal



The preliminary results of the national census of 2021 revealed that the total population of Nepal is 29,192,480, being 51.04% female and 48.96% male. The Central Bureau of Statistics (CBS) has not yet revealed the census results relating to caste, ethnicity, language and religion.[1] According to the 2011 census, the Indigenous Nationalities (Indigenous Peoples) of Nepal comprise 36% of the total population of 30.2 million,[2] although Indigenous Peoples' organizations claim a higher figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 Indigenous Peoples; 59 castes, including 15 Dalit castes;[3] and three religious groups, including Muslims.

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[4] supremacy but denies the collective rights and aspirations of Indigenous Peoples,[5] this is despite the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Council of Indigenous Peoples (WCIP) Outcome Document. Their implementation is still wanting. The laws, draft bills, ordinances and policies are not in line with UNDRIP and ILO Convention 169. The Nepalese government has shown no sign of implementing the recommendations, nor amending the Constitution to explicitly recognize the right to self-determination and all the rights of Indigenous women in line with the UNDRIP, as recommended by the UN Committee on the Elimination of Discrimination against Women (CEDAW).

Indigenous Peoples' reservation of "conservation"

The Indigenous Peoples of Nepal and elsewhere in the world are the custodians/guardians/protectors of biodiversity. Nepal's Indigenous Peoples' model of conservation is based on their core, fundamental norms and values, which include full respect for Mother Earth, nature, cosmovision, interconnectedness and interdependence, collective decision-making, and common well-being. It is based on subsistence need not greed. Nepal's Indigenous Peoples, like those around the world, have been protecting biodiversity from generation to generation, exercising their sovereign, universal, natural, fundamental, inalienable, indivisible human rights-based conservation approach based on principles of self-determination and non-discrimination since time immemorial.

In Nepal, all conservation models, with the exception of Indigenous Peoples' models, are "conservation" models that ultimately destroy the lands, territories and resources of Indigenous Peoples. Some research findings have shown ongoing criminalization of Indigenous Peoples' customary laws and self-governing institutions, suppression of Indigenous Peoples through militarization, government-induced involuntary displacements, the denial of their collective rights, restrictions on livelihood based on customary knowledge, technology, skills and practices, and Indigenous Peoples being viewed as both strangers on their own ancestral lands, and as problems rather than as a solution to conservation.[6, 7, 8, 9, 10] A human rights-based approach with meaningful respect for collective rights has therefore been advocated by Indigenous Peoples to recognize Mother Nature, traditional knowledge and livelihoods, and Indigenous Peoples' rights.

Ongoing human rights violations in the name of conservation

According to the Department of National Parks and Wildlife Conservation, the department:

> *was established in 2037 BS (1980 AD) to conserve and manage wildlife and biodiversity of the country. Nepal has established a*

> *very good network of Protected Areas system with 12 National Parks, 1 Wildlife Reserve, 1 Hunting Reserve, 6 Conservation Areas, and 13 Buffer Zones extending from lowland Terai to high mountains, covering 23.39% of the total country's land, which contribute to in-situ conservation of ecosystems and biodiversity across the country. Conservation efforts made by the government of Nepal is worldwide popular and highly recognized by the international societies.*[11]

Additionally, there are 19,361 Community Forests (CF) comprising 1,813,478 hectares of national forests. All these conservation areas are superimposed onto Indigenous Peoples' ancestral lands, territories, and resources.

Human rights violations in Chitwan National Park (CNP) have been documented in a Fact Finding Mission of the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and the National Indigenous Women's Federation (NIWF).[12] These include killings, death after alleged torture, mistreatment and sexual abuse, arbitrary detention, harassment, seizing of goods, involuntary work, verbal abuse/slandering, physical abuse, statelessness, violation of land rights, displacement, loss of traditional livelihoods, fishing and boating rights, ecological crises, violation of cultural rights, especially loss of cultural identity, sacred spaces and nature, conflicts, racism.

In a report by the Special Rapporteur (SR) on the rights of indigenous peoples, José Francisco Calí Tzay writes on "Protected areas and indigenous peoples' rights: the obligations of States and international organizations"[13] that:

> *In Nepal, the Chitwan National Park was included in the World Heritage List in 1984 without the consent of the local indigenous peoples. In 2009, the then mandate holder raised concerns about the mistreatment, arbitrary detention and sexual abuse of indigenous peoples in the Park. In 2020, the SR sent a communication regarding renewed allegations of forced eviction and torture and ill-treatment of Chepang indigenous peoples in the Park. Indigenous peoples continue to be targeted for their livelihood practices, and their homes have been de-*

> *stroyed in retaliation for collecting resources, including medicinal herbs, within the Park.*[14]

Human rights violations continue unabated

The findings of KIOS Foundation[15] and LAHURNIP in the report *Impact of Dhorpatan Hunting Reserve and Chitwan National Park on Indigenous Peoples in Nepal* published in 2022 states:

> *The restriction on the use of rangelands threatens to weaken the traditional institution of Magar through which they have been exercising their autonomy and self-determination. The socio-political system of Magar, Kachahari, which has a close association with transhumant management, spirituality, and socio-cultural practices, was under threat of extinction. With this, they have gradually been detached from the customary laws of using rangelands, life ways, and traditional governance.*[16]

And:

> *The militarization at Dhorpatan Hunting Reserve (DHR) has caused abuses, harassment, threat, illegal arrest, and detention of the Magars. Many detainees have been illegally kept and tortured in the camps for several days without any legal processes. The DHR has criminalized the customary practices of living of local Indigenous Peoples. Thus, they have been facing intimidation and heteronomy for several years whilst adopting their customary practices of living based on natural resources.*[17]

According to an unpublished report prepared by NIWF in July 2022,[18]

> *Chabilal Neupane, a local human rights defender and central Chairperson of the Madhyabarti Chetra Janadhikar Mahasangh-Nepal, who has been studying violations of rights by the CNP, including Nepal Army personnel, for more than two decades, has shared data of 24 cases of violations making 593*

> *people (429 males and 164 females) victims. Of them 503 are Indigenous Peoples (365 men and women). Number of Dalit victims are 39 (31 men and 8 women) and 51 Bahun Chetri[19] (35 men and 16 women)... He has documented Inhuman treatment by Chitwan National Park Administration and Buffer Zone User's Committee and Security Personnel (from January 2020 to June 2021) in 6 categories: (1) confiscation of net/ttapi, hand net, (2) arrest without any wrongdoing or committing a crime, (3) beating, (4) killing/Death, (5) Abusive words, harassment, sexual harassment, mental torture, and (6) Mental Pain due to Deprivation of Eligible Awards as per Rules & Regulations. Human rights violations have occurred in many places in Madi.*

Ramesh Kumar Paudel reported in a news article published in the Kathmandu Post on 29 March 2022 that: "The Chitwan National Park on Sunday afternoon torched Kajiman Chepang's hut in Kusumkhola in the park's forest area. Kajiman is the same person whose hut was burnt down on July 18, 2021, for which the national park had received criticisms from various quarters." He further writes: "This time, the park burnt down around a dozen huts in the area, including that of Kajiman, on Sunday while some other huts were demolished."[20]

Recommendation 4, made in the report entitled *Embedding Human Rights in Nature Conservation: From Intent to Action* by the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, 17 November 2020, says: "WWF Nepal should have an independent mechanism for reviewing and considering all complaints, including those against park rangers and army personnel and those in respect of indigenous peoples' rights and their access to local resources".[21] The recommendation has not been meaningfully implemented yet.

Avoid using the phrase "Indigenous Peoples and local communities"

In his July 2022 report on protected areas and Indigenous Peoples' rights, the UN Special Rapporteur on the rights of Indigenous Peoples,

José Francisco Calí Tzay, noted that the obligations of States and international organizations had not yet been applied in Nepal. As Nepal has ratified many international laws, including ILO Convention 169, and adopted the UNDRIP and the Convention on the Elimination of Racial Discrimination (CERD), the government has duty to meaningfully implement these obligations, which it has not.

Universally, he notes that: "the use of terms or phrases such as 'Indigenous Peoples and local communities' should be avoided to the greatest extent possible, without undermining the situation of unrecognized Indigenous Peoples. Any use of such terms should be expressly without prejudice to the specific rights of indigenous peoples under international law."[22]

Human rights lacking in government conservation efforts

There are many challenges in protecting and promoting human rights in conservation areas but there is a basic principle that the State should return all the lands grabbed from Indigenous Peoples in the name of conservation for the guaranteed guardianship of Indigenous Peoples, with collective ownership and control over their respective ancestral lands, territories and resources. For example:

- When conservation efforts deny Indigenous Peoples' rights, several negative effects transpire. For example, in a 2022 interview, snow leopard expert Kamal Thapa described a particular example of the Dhorpatan Hunting Reserve:

  Local [Indigenous Peoples] who have been grazing lamb and mountain goats are today not allowed to enter their own lands. Naur [also known as bharal or 'blue sheep'] hunting is permitted and foreigners can hire a helicopter to enter the area for hunting. They spend their US dollars in Kathmandu for the helicopter ride and the capital city gets the benefits. Organizers [Travel agents in Kathmandu] take foods from the city [to the Dhorpatan Hunting Reserve] as well. Therefore, money

does not come to the villages that no longer exist due to government eviction. [Former] locals receive no benefits; on the contrary, they face injustices. On top of being forced to leave their ancestral lands, they have been deprived of the potential economic benefits [had they not been forcibly evicted]. It has become a big issue. Before, there was no army, later they were posted [to ensure locals did not return]. One of the villagers told me: 'Our own people created the mess!' Villagers complained that the mess was created by a leader from Rukum who became Home Minister.[23]

- A Tharu Indigenous woman, Urmila Gamba Tharu, recounts in her 2022 article that the Tharu Indigenous people can no longer collect Gungi (wetland snails) as has been their tradition. Instead of people collecting around the lake, army personnel carrying guns can now be seen and villagers have begun to be arrested on charges of fishing and collecting Gungi illegally. Tharu stated that she now wonders whether she is a thief for collecting the snails and fishing the lakes and rivers as her people have done since time immemorial. "Those communities that have been guardians of nature for centuries are now branded as criminals. The spiritual relationship of Indigenous Peoples with water, forest and land is being delinked. Now, the days she laughed and enjoyed with her friends as they collected Gungi and fishing, only remain as a memory."[24]

- Bankariya is one of the endangered Indigenous Peoples with a total of 21 households and a population of 86. Their ancestral lands, territories and resources are in the Parsa National Park and the park had previously leased them some lands for 20 years but this has now expired. A delegation of Indigenous Bankariya, including representatives of the NIWF, therefore submitted a memorandum demanding that the government give them collective ownership of their ancestral lands, territories and resources.[25]

The dominant caste groups in Nepal have difficulty understanding the interconnectedness within and between the living and non-living that Indigenous Peoples often believe in. For example, Diwakar Pyakurel, a journalist belonging to the dominant caste group Bahun, writes:[26]

> *Leaders of indigenous peoples and local communities in Nepal have not only talked about their environmental rights; their demands extend as far as an amendment to the constitution, which requires a wide-ranging political agreement of the parliament members, not mere bureaucrats. For example, the NIWF, in its appeal published for the biodiversity COP 15, refers to a recommendation from a UN committee monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and talks about 'the lack of recognition of the rights of indigenous women in the constitution and the general lack of recognition of the right of indigenous peoples to self-determination'. Hence, it states, 'We demand the recognition of indigenous peoples' right to self-determination with autonomy and customary self-governing institutions... We demand the recognition of indigenous nations' sovereignty based on the principles of parallel sovereignty.*

When Indigenous Peoples think of anything, such as conservation, biodiversity, flora and fauna, land, forest, water, mines, environment, customary laws, customary self-governing institutions, Indigenous values, marriage, family, kinship, culture, spirits, ancestors, sovereignty, and future generations, these are all very much interconnected. A disturbance of one of its parts will hence have negative consequences on other parts, and ultimately on the whole. Indigenous Peoples therefore try to restore balance as soon as possible if there is a problem.

Khas Arya domination in the parliamentary election

The CERD issued two early warnings to Nepal[27, 28] with recommendations to ensure direct representation of Indigenous Peoples in the then Constituent Assembly. The Constitution of Nepal 2015, however, made no provision for such representation. Ganesh Rai, a journalist belonging to the Rai Indigenous people, reported, "The recent General Election [of 20 November 2022] for the Elected House of Representative, i.e. Lower House of the Parliament, of the total 164[29] elected parliamentarians 94

(54%) were from the dominant Khas Arya caste group, 41 (25%) from Indigenous Peoples, 28 Madhesi (27%), one (0.6%) from Dalit and none (0.0%) from Muslim."[30] He further writes that, of the 41 elected Indigenous Peoples nine are Newar, six Tharu, five Magar, five Rai, five Gurung, and four Tamang. Although the elected members are Indigenous by birth, they do not represent Indigenous Peoples but only the political parties they run for. No political party in Nepal is working for the rights of Indigenous Peoples.

Tika R. Pradhan of the Kathmandu Post writes:

> *It's been 15 years since the country embraced the proportional representation electoral system, but only a handful of groups and communities have repeatedly benefitted from the system while a large number of smaller and marginalised communities remain deprived of representation in the national legislature … according to a yet-to-be-published report of the National Inclusion Commission, a constitutional body, as many as 62 of the 126 ethnic groups have never been represented in Parliament.*[31]

The 62 groups listed that have never made it to Parliament include 21 Indigenous Peoples and 12 linguistic groups of the Rai Indigenous people.[32, 33]

Formal recognition of customary institution

The government does not formally recognize the customary institutions of Indigenous Peoples. The local governments in Bardiya and Kailali districts have formally recognized the Barghar customary self-governing institution of the Tharu Indigenous people since 11 January 2021.[34, 35] In May 2022, "Jahada Rural Municipality", a local government in Morang district, "endorsed the resolution of recognizing the customary institution of Shantal Indigenous Peoples and to establish a cultural protected area of Shantals from the 10th village assembly. We need to work further to bring the law to institutionalize the resolution."[36]

World Bank Inspection Panel

On 3 March 2022, the World Bank Board of Executive Directors approved an Inspection Panel recommendation to investigate the Nepal-India Electricity Transmission and Trade Project and its additional financing in Nepal.[37, 38]

Notes and references

1. "CBS to make detailed census report public by end of 2022." Online Khabar, 23 December 2022, https://english.onlinekhabar.com/cbs-public-nepal-census-report-2022.html
2. The Central Bureau of Statistics (CBS) of Nepal make population projection every day. Projected population on 15 January 2020 is 30,212,287; Nepal, Indigenous Women, https://www.gitpa.org/web/NEPAL%20en%202021%20GB%20.pdf
3. Hindu cosmology divides the population into hereditary caste groups who are ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system, and are highly marginalized to this day.
4. According to the constitution, Bahun, Chetri, Thakuri, and Dasnami caste groups belong to the Khas Arya caste group.
5. 61 Indigenous Peoples were initially officially recognized in Nepal through the ordinance, *Rastriya Janajati Bikas Samiti (GathanAdesh)* 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 Indigenous Peoples list, Manange was dropped, Thinatan, Syangtan and Chitan were merged as Tin GaunleThakali and Yakkha was added, making it a list of 59 Indigenous Peoples.
6. Bhattachan, B.Krishna. "The Indigenous World 2017: Nepal." In The Indigenous World 2017, edited by Katrine Broch Hansen, Käthe Jepsen, and Pamela Leiva Jacquelin, 405-411. Copenhagen: IWGIA, 2017, https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2017.pdf
7. Bhattachan, B.Krishna. "The Indigenous World 2018: Nepal." In The Indigenous World 2018, edited by Pamela Jacquelin-Andersen, 371-378. Copenhagen: IWGIA, 2018, https://www.iwgia.org/images/documents/indigenous-world/indigenous-world-2018.pdf
8. Bhattachan, B.Krishna. "The Indigenous World 2019: Nepal." In The Indigenous World 2019, edited by David Nathaniel Berger, 366-373. Copenhagen: IWGIA, 2019, https://www.iwgia.org/en/nepal/3457-iw2019-nepal.html
9. Bhattachan, B.Krishna. "The Indigenous World 2020: Nepal." In The Indigenous World 2020, edited by Dwayne Mamo, 302-312. Copenhagen: IWGIA, 2020, https://www.iwgia.org/en/nepal/3607-iw-2020-nepal.html
10. Bhattachan, B.Krishna. "The Indigenous World 2021: Nepal." In The Indigenous World 2021, edited by Dwayne Mamo, 278-287. Copenhagen: IWGIA, 2021, https://www.iwgia.org/en/nepal/4236-iw-2021-nepal.html
11. The 12 National Parks (NP) are: 1. Banke NP, 2. Bardiya NP, 3. Chitwan NP, 4.

Khaptad NP, 5. Langtang NP, 6. Makalu Barun NP, 7. Parsa NP, 8. Rara NP, 9. Sagarmatha NP, 10. Shey-Phoksundo NP, 11. Shivapuri Nagrajun NP, and 12. Shukla Phanta NP. The only wildlife reserve is the Koshi Tappu Wildlife Reserve. The only Hunting Reserve is the Dhorpatan Hunting Reserve. There are six Conservation Areas are: (1) Annapurna CA, (2) Api Nampa CA, (3) Gaurishankar CA,(4) Kanchenjunga CA, (5) Krishnasaar CA and (6) Manaslu CA. There are13 Buffer Zones; See the map: Government of Nepal. Ministry of Forests and Environment. Department of National Parks and Wildlife Conservation, https://dnpwc.gov.np/en/; https://dnpwc.gov.np/en/

12. Lawyers' Association for Human Rights of Nepalese IPs and National Indigenous Women Federation. "Fact Finding Mission Report. Violation of Indigenous Peoples' Human Rights in Chitwan National Park of Nepal." February 2020, https://www.lahurnip.org/uploads/project/file/17.-violation-of-indigenous-peoples-human-rights-in-chitwan-national-park-of-nepal,-feb-2020.pdf

13. United Nations. General Assembly. "Rights of indigenous peoples." Seventy-seventh session, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/431/62/PDF/N2243162.pdf

14. Ibid

15. KIOS was founded by 11 Finnish NGOs; KIOS Foundation. "What is KIOS.", https://kios.fi/en/about-copy/

16. KIOS Foundation and Lawyers' Association for Human Rights of Nepalese IPs. "Impact of Dhorpatan Hunting Reserve and Chitwan National Park on Indigenous Peoples in Nepal." May 2022, p. xii, https://www.lahurnip.org/uploads/publication/file/impact-of-dhorpatan-hunting-reserve-and-chitwan-national-park-on-indigenous-peoples-in-nepal.pdf

17. Ibid

18. NIWF. "Study of Selected Cases Indigenous Peoples Victimized by the Chitwan National Park During COVID -19 Pandemic." July 2022.

19. Bahun and Chetri are the dominant Hill Hindu castes.

20. Kumar Paudel, Ramesh. "Chitwan National Park once again sets settlers' huts ablaze." The Kathmandu Post, 29 March 2022, https://kathmandupost.com/province-no-3/2022/03/29/chitwan-national-park-once-again-sets-settlers-huts-ablaze

21. "Embedding Human Rights In Nature Conservation: From Intent To Action." Report of the Independent Panel of Experts of the Independent Review of allegations raised in the media regarding human rights violations in the context of WWF's conservation work, 17 November 2020, https://wwfasia.awsassets.panda.org/downloads/independent_panel_report___embedding_human_rights_in_conservation.pdf

22. United Nations. General Assembly. "Rights of indigenous peoples." Seventy-seventh session, p.6, 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/431/62/PDF/N2243162.pdf

23. Its original text is in Kha Nepali language. The translation into English is mine; Sushant, Gurung. "'Tribals' organizations and movements also had to raise their voice at the right place." Chetlung, https://www.chetlung.com/agenda/58888-1645097425.html

24. Tharu, Urmila Gamva. "At present Jugmani Tharu cannot pick bells." Jhannaya, https://jhannaya.nayapatrikadaily.com/news-details/1672/2022-03-26

25. Facebook. MADRE, posted 16 June 2022

26. Pyakurel, Diwakar. "What's blocking indigenous peoples and local communities

in Nepal from Claiming their biodiversity rights?" Online Khabar, 14 December 2022, https://english.onlinekhabar.com/indigenous-peoples-nepal-biodiversity.html

27. United Nations. OHCHR. 13 March 2009, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FNPL%2F5514&Lang=en

28. United Nations. OHCHR. 28 September 2009, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCERD%2FALE%2FNPL%2F5513&Lang=en

29. It is 265.

30. Rai, Ganesh. "Dominance of Khas-Arya in the House of Representatives." Ekantiour, 19 November 2022, https://ekantipur.com/news/2022/12/05/167020440869954762.html

31. Pradhan, Tika R. "Nearly half of ethnic groups unrepresented in Parliament in 15 years of PR exercise." The Kathmandu Post, 15 October 2022, https://kathmandupost.com/politics/2022/10/15/nearly-half-of-ethnic-groups-unrepresented-in-parliament-in-15-years-of-pr-exercise

32. Ibid

33. Rai is one of the 59 Indigenous Peoples formally recognized by the government. However, Rai are divided as the Kirat Rai Yayokkha consider Rai as one Indigenous people and some Rai consider each of the more than 28 linguistic groups of Rai as separate Indigenous Peoples, which is reflected in the list as well.

34. Narbadia Barghar Act 2077. 22 January 2022, https://barbardiyamun.gov.np/barghar_aen_2077

35. "The Indigenous World 2021." Edited by Dwayne Mamo, 278-287. Copenhagen: IWGIA, 2021, https://www.iwgia.org/en/nepal/4236-iw-2021-nepal.html

36. Facebook. LAHURNIP, posted 23 May 2022

37. "Board Approves Panel Recommendation to Investigate Nepal Transmission Project; Parties to be Offered Option of Dispute Resolution." Inspection Panel, 4 March 2022, https://www.inspectionpanel.org/news/board-approves-panel-recommendation-investigate-nepal-transmission-project-parties-be-offered

38. Bhattachan, B.Krishna. "The Indigenous World 2021: Nepal." In The Indigenous World 2021, edited by Dwayne Mamo, 278-287. Copenhagen: IWGIA, 2021, https://www.iwgia.org/en/nepal/4236-iw-2021-nepal.html

Krishna B. Bhattachan *belongs to the Thakali Indigenous Peoples. He is one of the founding faculty members and former Head of and retired from the 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. He is Vice Chair of the Adivasi Guthi Nepal.*

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.

2022 national elections

The 2022 national presidential elections resulted in Ferdinand "Bongbong" Marcos Jr., the son of the late dictator Ferdinand Marcos Sr., winning the presidency while Sara Duterte, former President Rodrigo Duterte's daughter, was elected as the new Vice-President. The election results sparked protests among various groups in the country as they claimed the polls were tainted by fraud.[1] Election watchdog Kontra Daya (Against Fraud) claimed there was a lack of transparency in the automated election system, massive and systematic disinformation favouring President Marcos' deception of the electorate, rampant and unchecked vote-buying, and the harassment, intimidation and red-tagging or terrorist-labelling of the opposition.[2]

The 2022 elections also witnessed overwhelming support for an opposition candidate, with millions of Filipino volunteers rallying behind the presidential candidacy of Vice-President Leni Robredo, a known critic of the Duterte administration and against the return to power of former dictator Ferdinand Marcos' family. This is only the second time in Philippine history, after Filipinos supported the presidential candidacy of Cory Aquino against Ferdinand Marcos Sr. in 1986, that such an outpouring of support has been shown for an outsider candidate. A significant number of Indigenous Peoples were among those who supported Robredo. On 6 April 2022, a broad coalition of Indigenous Peoples known as 1Sambubungan signed a covenant with Robredo and vice-presidential candidate Kiko Pangilinan, with the two promising to ensure the protection of Indigenous Peoples' rights, including the reflection of Indigenous Peoples in the 2025 national census, should they win the election.[3]

Indigenous Peoples fear that the new administration ruled by a Marcos/Duterte tandem will further aggravate the human rights violations, land grabbing, resource plundering, and other violations of Indigenous Peoples' rights amidst a worsening political, economic and climate crisis. The previous Duterte administration had already laid the groundwork for the continuity of its tyrannical rule and natural resource plundering through laws and policies that were among the culprits of the widespread and systematic violations of all people's human rights, including Executive Order 70,[4] which created the National Task Force: End Local Communist Armed Conflict, the 2020 Anti-Terrorism Act, and Executive Order 130,[5] which lifted the moratorium on new mining permits.

Land rights and conservation

The Philippines is one of 17 megadiverse countries in the world, with more than 52,177 described species.[6] According to the UN Environment Programme (UNEP), a megadiverse country needs to have at least 5,000 of the world's plants as endemic species and a rich marine ecosystem within its border.[7] The Philippines is also one of the world's biodiversity hotspots with at least 700 threatened species, thus making it one of the top global conservation areas.[8]

Having been stewards of lands and natural resources since time immemorial, Indigenous Peoples have enabled the conservation and protection of ecosystems and biodiversity. Contrary to the State's concept of public lands and natural resources as belonging to the State and practically at its disposal, for Indigenous Peoples, land is life, with their culture and identity intrinsically tied to it. Defence of ancestral lands from threats of destruction and plunder combined with the Indigenous Peoples' governance and knowledge systems and practices of protection and sustainable use and management of resources have greatly contributed to biodiversity conservation. Seventy-five per cent or 96 out of 128 Key Biodiversity Areas in the country are within ancestral domains.[9] An area of 5.26 million hectares or 75% of the country's remaining forests are also found in Indigenous territories.[10]

The Indigenous Peoples' practice of biodiversity conservation also plays a critical role in mitigating the impacts of climate change. A 2021 assessment of 10 Indigenous Peoples' Community Conserved Territories and Areas (ICCAs[11]) conducted by the Philippine ICCA Consortium found that the ICCAs store 10.5 million tons of carbon, which is equivalent to the gas emissions of at least seven million cars per annum.[12]

The government's biodiversity conservation strategy is to declare Protected Areas under the National Integrated Protected Areas System Act of 1992 and the Expanded National Integrated Protected Areas System Act of 2018. Since 2018, 240 protected areas have been established, covering 5.45 million hectares or 14.2% of the country's territory. On 8 April 2022, former President Duterte signed into law five measures declaring five more sites as protected areas.[13] However, protected areas have historically suffered constraints ranging from a lack of representation of communities, policy conflict and a lack of funding, which hamper decision-making.[14] Conflicts between State and customary laws persist

due to the government-imposed "Core Zones" and "Strict Protected Zones" of Protected Areas, where Indigenous communities are prohibited from the access, use, control and management of their sacred sites, watersheds, hunting grounds and forests that sustain their culture and livelihoods.[15] The restrictions imposed by Protected Areas could lead to the displacement of Indigenous communities from their territories and the criminalization of traditional access to and use of resources within their territories.[16] For instance, the rescue of a Philippine Eagle[17] by the Manobo Indigenous people was not commended by the government but they were instead accused of illegal hunting of wildlife.[18]

Protected Areas and ICCAs are also areas where resource exploitation occurs. Since 2014, 772 large-scale mining permits covering 1.9 million hectares, half of which is in ancestral domains, have made Indigenous communities vulnerable to natural disasters and human rights violations.[19] As of June 2022, 83 out of a total of 410 Environmentally Critical Projects (ECPs[20]) listed by the Environmental Management Bureau in 2022 are situated in Indigenous territories, covering 501,205 hectares of Indigenous lands. Mining and other extractive industries account for 51% of all documented ECPs within areas registered under Certificate of Ancestral Domain Titles (CADTs), the formal tenurial instrument for ancestral lands under the Indigenous Peoples Rights Act.[21]

Indigenous Peoples maintain that conservation approaches will only be effective if there is genuine recognition of Indigenous Peoples' land rights, traditional governance, meaningful participation, natural resource management systems and other Indigenous knowledge systems and practices.

Development aggression and FPIC violations

Despite the persistent struggles of Indigenous communities against the entry and renewed operations of destructive projects in their resource-rich territories, their right to Free, Prior and Informed Consent (FPIC) continues to be constantly violated.

In the case of the China-backed New Centennial Water Source-Kaliwa Dam Project, the project holder, Metropolitan Waterworks and Sewerage System (MWSS), is pursuing the project using a railroaded Memorandum of Agreement signed on 28 January 2022 between MWSS, the

National Commission on Indigenous Peoples (NCIP) and a group of individuals who do not represent the affected communities.[22] Meanwhile, Indigenous communities opposing the South Korea-funded Jalaur mega-dam project continue to suffer militarization following the infamous Tumandok massacre in December 2020.[23] In the Cordillera region, the Isnag Indigenous people filed criminal and administrative complaints against the NCIP in January 2023 for manipulating the FPIC process for the Gened 1 dam project, the first in a series of six mega-dams (Gened Dams or Apayao Dams) of the Pan Pacific Renewable Power Philippines along the Abulog-Apayao River in Apayao province.[24] The Kaliwa, Jalaur and Gened dam projects are among the numerous mega-dam projects in Indigenous territories that formed part of the Duterte administration's Build! Build! Build! (BBB) Programme.[25]

During his first State of the Nation Address in July 2022, President Marcos vowed not only to continue but also to expand former President Duterte's controversial BBB Programme. He also plans to increase the country's use of renewable energy sources such as hydropower, geothermal, solar and wind as a solution to help slow down the effects of climate change.[26] Moreover, in his bid to address the rising inflation and public debt that hit the country's economy badly in the first six months of his presidency, Marcos is turning to more foreign investments, including large-scale mining.[27] All of these, however, mean that resource extraction and the plundering of Indigenous Peoples' lands and resources will only intensify under Marcos' administration.

Human rights and the Universal Periodic Review

Philippine Indigenous Peoples took part in the processes for the 4th cycle of the Universal Periodic Review (UPR) of the Philippine government's human rights record under the administration of former President Duterte from 2017 to 2022. The UPR was seen as an important venue to tackle the situation of Indigenous Peoples, especially at a time when the democratic space is shrinking in the Philippines and the justice system has not been working effectively, further resulting in unabated human rights violations.[28] The issues and recommendations of various Indigenous Peoples' organizations were put forward through joint reports and participation in the 41st Session of the UN UPR Working Group.

State violence and impunity during the Duterte administration was the worst in history since the Marcos dictatorship from 1972-1986. In many cases, human rights violations occurred as a result of the government's response to the struggles of Indigenous Peoples against the plundering of their ancestral lands and resources.

Data from Indigenous alliance groups Panaghiusa[29] and Sandugo[30] revealed that human rights violations against Indigenous Peoples between 2016 and 2021 included 126 extrajudicial killings, 160 frustrated extrajudicial killings, 227 illegal arrests, 478 illegal detentions, six enforced disappearances, and 97,118 victims of forced displacement. On top of this, numerous Indigenous leaders faced trumped-up charges, terrorist-labelling, abductions and shoot-to-kill orders.

2022 was no different, with the extrajudicial killings of Lumad teachers Chad Booc[31] and Jojarain Alce Nguho III, the abduction of Stephen Tauli,[32] weaponization of the laws and trumped-up cases against Cordillera Peoples Alliance leaders, as well as the use of the Philippine Anti-Terrorism Law in a trumped-up criminal case[33] against five nuns and volunteers of the Rural Missionaries of the Philippines whose work involved empowering Indigenous communities.

Despite this intensification of State attacks, Indigenous Peoples are striving to rise up against development aggression and rights violations. Given the continuing tyrannical nature of President Marcos' government, however, Indigenous Peoples are expecting a situation of relentless rights violations in the next few years. Indigenous Peoples and their advocates thus intend to continue to engage the international community for support as they continue their work on the ground.

Notes and references

1. Gregorio, Xave. "Asserting 'poll fraud', protesters reject Marcos victory at Comelec HQ." PhilStar, 10 May 2022, https://www.philstar.com/headlines/2022/05/10/2180086/asserting-poll-fraud-protesters-reject-marcos-victory-comelec-hq
2. Bordey, Hana. "Kontra Daya claims fraud in Eleksyon 2022." GMA Network, 19 May 2022, https://www.gmanetwork.com/news/topstories/nation/832256/kontra-daya-claims-fraud-in-eleksyon-2022/story/
3. Subingsubing, Krixia. "Robredo, Pangilinan sign covenant with Indigenous Peoples." Inquirer.net, 6 April 2022, https://newsinfo.inquirer.net/1578833/robredo-pangilinan-sign-covenant-with-indigenous-peoples#ixzz7roDyhgMP
4. Romero, Alexis. "Duterte signs 'whole-of-nation' EO vs insurgency." PhilStar Global, 11 December 2018, https://www.philstar.com/

headlines/2018/12/11/1876093/duterte-signs-whole-nation-eo-vs-insurgency
5. Chavez, Leilani. "'Complete turnaround': Philippines' Duterte lifts ban on new mining permits." Mongabay, 15 April 2021, https://news.mongabay.com/2021/04/complete-turnaround-philippines-duterte-lifts-ban-on-new-mining-permits/
6. Legal Rights and Natural Resources Center. "State of the Indigenous Peoples Address: 2022 Report." 4 November 2022, https://www.lrcksk.org/post/sipa-2022-report-launched-half-of-ancestral-domains-found-under-environmental-threat
7. Alvaro Limos, Mario. "The Philippines Is One of Only 17 Megadiverse Countries in the World." Esquire, 23 June 2021, https://www.esquiremag.ph/long-reads/features/17-megadverse-countries-in-the-world-philippines-a00293-20210623
8. Convention on Biological Diversity. "Country Profiles. Philippines – Main Details." https://www.cbd.int/countries/profile/?country=ph
9. Reyes, Giovanni. "Land Rights, ICCAs and Climate Struggle: the case of Ikalahan and Egongot Indigenous Peoples Community Conserved Territories and Areas." 2023.
10. "SIPA 2022 Report launched: Half of ancestral domains found under environmental threat." Legal Rights and Natural Resources Center, 4 November 2022, https://www.lrcksk.org/post/sipa-2022-report-launched-half-of-ancestral-domains-found-under-environmental-threat
11. ICCAs are defined by the International Union for Conservation of Nature (IUCN) as "natural and/or modified ecosystems, containing significant biodiversity values, ecological benefits and cultural values, voluntarily conserved by Indigenous Peoples and local communities, both sedentary and mobile, through customary laws or other effective means"; See: "Bio-cultural diversity conserved by indigenous peoples & local communities – examples & analysis." Companion document to IUCN/CEESP Briefing Note No. 10, 2010, https://www.iied.org/sites/default/files/pdfs/migrate/G02786.pdf
12. The Philippine ICCA Consortium. "The Philippines: A national analysis on the status of territories of life." https://report.territoriesoflife.org/national-and-regional-analysis/philippines/
13. Gita-Carlos, Ruth Abbey. "Mt. Pulag, 4 others declared protected areas." Philippine News Agency, 28 April 2022, https://www.pna.gov.ph/articles/1173177
14. The Philippine ICCA Consortium.
15. Reyes, Giovanni. "Land Rights, ICCAs and Climate Struggle: the case of Ikalahan and Egongot Indigenous Peoples Community Conserved Territories and Areas." 2023.
16. The Philippine ICCA Consortium.
17. The Philippine Eagle is listed as critically endangered by the International Union for Conservation of Nature (IUCN); See: Philippine Eagle Foundation. "The Philippine Eagle." https://www.philippineeaglefoundation.org/philippine-eagle
18. The Philippine ICCA Consortium.
19. Reyes, Giovanni. "Land Rights, ICCAs and Climate Struggle: the case of Ikalahan and Egongot Indigenous Peoples Community Conserved Territories and Areas." 2023.
20. An Environmentally Critical Project (ECP) is a project or programme that has high potential for significant negative environmental impacts as defined under Presidential Proclamation 2146 (1981)
21. Legal Rights and Natural Resources Centre. "State of the Indigenous Peoples Address: 2022 Report."

22. Cabico, Gaea Katreena. "MOA for China-backed Kaliwa Dam signed despite Dumagats' protests." PhilStar Global, 3 February 2023, https://www.philstar.com/headlines/climate-and-environment/2022/02/03/2158315/moa-china-backed-kaliwa-dam-signed-despite-dumagats-protests
23. Cabico, Gaea Katreena. "Gov't urged to stop 'destructive' mega dam projects." PhilStar Global, 17 January 2023, https://www.philstar.com/headlines/climate-and-environment/2023/01/17/2238246/govt-urged-stop-destructive-mega-dam-projects
24. Quitasolm Kimbelrie. "Apayao folk sue NCIP, local officials for FPIC process irregularities." Northern Dispatch, 26 January 2023, https://nordis.net/2023/01/26/article/news/apayao-folk-sue-ncip-local-officials-for-fpic-process-irregularities/
25. Rey, Aika. "Build, Build, Build: Mapping the Duterte administration's infrastructure legacy." Rappler, 28 June 2022, https://www.rappler.com/business/build-build-build-mapping-duterte-administration-infrastructure-legacy/
26. Gita-Carlos, Ruth Abbey. "Renewable energy tops Marcos admin's climate change agenda." Philippine News Agency, 25 July 2022, https://www.pna.gov.ph/articles/1179678
27. Penarroyo, Fernando. "Marcos bets on mining." Philippine Resources, 8 November 2022, https://www.philippine-resources.com/articles/2022/11/marcos-bets-on-mining
28. "Cordillera Peoples Alliance appeals to the United Nations to end impunity in the Philippines." Cordillera Peoples Alliance, 12 November 2022, https://cpaphils.org/cpa-appeals-to-the-united-nations-to-end-impunity-in-the-philippines.html
29. Panaghiusa Philippine Network to Uphold Indigenous Peoples' Rights, https://www.panaghiusa.com/
30. Facebook. Sandugo – Movement of Moro and Indigenous Peoples for Self-Determination, https://www.facebook.com/SandugoNatMin/
31. Gallardo, Froilan. "Lumad teacher Chad Booc, 4 others slain in Davao de Oro – military." Rappler, 25 February 2022, https://www.rappler.com/nation/lumad-teacher-booc-others-slain-davao-de-oro-military/
32. Commission on Human Rights. "Statement of CHR Executive Director, Atty Jacqueline Ann de Guia, on the alleged abduction of an IP rights activist in Tabuk City, Kalinga." 23 August 2022, https://chr.gov.ph/statement-of-chr-executive-director-atty-jacqueline-ann-de-guia-on-the-alleged-abduction-of-an-ip-rights-activist-in-tabuk-city-kalinga/
33. Calleja, Joseph Peter. "Filipino nuns accused of 'financing terrorism'." UCA News, 16 August 2022, https://www.ucanews.com/news/filipino-nuns-accused-of-financing-terrorism/98411

Sarah Bestang K. Dekdeken *is a Kankanaey Igorot from the Cordillera region of northern Philippines. She is the current Secretary General of the Cordillera Peoples Alliance, a federation of progressive people's organizations, mostly grassroots-based organizations among the Indigenous communities of the Cordillera region.*

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: Amis (also Pangcah), Atayal (also Tayal), Bunun, Kavalan, Paiwan, Puyuma, Rukai, Saisiyat, Sakizaya, Sediq, Thao, Truku, Tsou, Tao (also Yamei), Kanakanavu, and Hla'alua.

Ten lowland Indigenous Peoples groups (Pingpu) are not recognized as such by the government and hence not extended the same rights as the 16 recognized groups and thus are also excluded from the Council of Indigenous Peoples' (CIP) policies and programmes. The ten unrecognized peoples are: Babuza, Hoanya, Kaxabu, Ketagalan, Makatao, Papora, Pazeh, Siraya, Taokas, and Tavorlong.

The 16 recognized groups enjoy representation at all levels of government, from 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, in the east coast and in the south. However, nowadays over half of the Indigenous population lives in the urban areas of the country.

The main challenges facing Indigenous Peoples in Taiwan are their rapidly disappearing cultures and languages, encroachment onto their traditional domain, the denial of their rights and the exclusion of the 10 lowland (Pingpu) Indigenous Peoples.

The CIP is the State agency responsible for Indigenous Peoples. Taiwan has adopted a number of laws designed to protect Indigenous Peoples' rights, including the Constitutional Amendments on Indigenous representation in the Legislative Assembly, protection of language and culture and political participation (2000); the Indigenous Peoples' Basic Act (2005); the Education Act for Indigenous Peoples (2004); the Status Act for Indigenous Peoples (2001); the Regulations regarding Recognition of Indigenous Peoples (2002); 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 the self-governance of Indigenous Peoples of Taiwan.

Since Taiwan is not a member of the United Nations it is not party to UN human rights instruments.

Truku consent for mining

In the long-running legal dispute between Asia Cement Corp and the Truku Indigenous people over mining operations[1] and Indigenous land rights, a vote was organized on 12 February for local Truku community residents of Siulin Township, Hualien County on Taiwan's east coast.

The court battle and mining law amendment in parliament had dragged on for some years due to legal manoeuvring and lobbying on both sides. Meanwhile, in 2021, the Ministry of Economic Affairs approved Asia Cement's continuing operations on a 20-year mining rights extension.

A turning point came in September 2021 when the High Administrative Court ruled against Asia Cement Corp for contravening articles of Taiwan's Indigenous Peoples Basic Law, citing that the company did not conduct a consultation and nor did it obtain the approval of the affected Indigenous community.[2]

The court thereby upheld the need for Free, Prior and Informed Consent (FPIC) to protect the rights of Indigenous Peoples and, after that ruling, consultations took place from late 2021 to early 2022 between the company and a council of chosen leaders representing the affected Truku Bsngan community in Siulin Township.[3]

The process led to the organization of a vote on 12 February to address the FPIC requirements and on whether the residents would agree that Asia Cement Corp should continue its operations where the company already had consent for quarrying and mining from landowners and on public land reserved for Indigenous Peoples. The result came as a victory for Asia Cement Corp with 294 ballots in agreement (83 per

cent of households) and 45 ballots against.[4]

Local Indigenous residents who opposed the mining company protested outside the polling station, while environmental activists alleged that the company had used unfair tactics and threats of losing economic benefits to pressure the residents, as local authorities and police had to keep order during the voting.[5]

Afterwards, Asia Cement Corp released a statement thanking the Truku community residents for their support and suggesting that the process "will become a model for corporations to consult and obtain consent, and to respect the wishes of the indigenous people."[6]

The statement also stressed that the company would comply with environmental protection and ensure safety at work, implement a revenue-sharing mechanism, and provide more jobs for Truku community members.

Those opposing the company's continued operations staged more protests, accusing the Asia Cement Corp of winning the vote by misleading the community by presenting only favourable information, promising generous local investments, social benefits programmes and job creation for community members while threatening to pull out if the result was not in the company's favour.

Since the FPIC process, with a result that was clearly favourable for the company, government officials, including the CIP, have promised to respect the decision of the Truku community.[7] In its statement, the Ministry of Economic Affairs praised the process as setting a good example of economic development and benefit-sharing between the Indigenous community and business sector. The statement noted that the consultation process had helped ensure the protection of Indigenous Peoples' rights while at the same time enabling the mining operation and cement production to continue, thus allowing for a sharing of benefits with the community, also meeting the needs of the industry and the nation's economic development.[8]

Recognized Indigenous Peoples oppose Pingpu Peoples

Throughout 2022, Taiwan's Pingpu groups (also known as plains aborigines, Pe'po peoples)[9] persisted in their struggle for recognition. Ironical-

ly, one of the strongest forces opposing the Pingpu's formal recognition as Indigenous Peoples are the 16 peoples whose status as Indigenous as already recognized by the government and who are thus able to access government benefits designed to empower Indigenous Peoples in Taiwan.

Pingpu activists have been bolstered by the worldwide Indigenous rights movement, the enactment of the Indigenous Peoples' Basic Law in Taiwan, and government leaders' promises to restore justice for Pingpu Peoples. Facing an erosion of their culture, ethnic identity and language, in recent years Pingpu activists have resorted to legal challenges and arguing that existing government policies are contravening laws and violating the rights of Pingpu groups.

The main case was launched by Siraya leader, Uma Talavan, on behalf of the Siraya people, in which she questioned CIP's refusal to recognize the Indigenous status of the Siraya.[10] The High Administrative Court took up the case in 2020 and later referred it to the Constitutional Court for interpretation on the Status Act for Indigenous Peoples and other relevant laws.

When the case entered its oral hearing in June 2022, politicians and leaders representing recognized Indigenous Peoples (known as Taiwan's Status Indigenous Peoples) convened meetings across Taiwan to declare their opposition to the recognition of Pingpu Peoples as Indigenous.

The first such meeting was a press conference held in New Taipei City on 26 June 2022 where leaders presented a public declaration with the slogan: "When Pingpu become lowland Indigenous people, Status Indigenous Peoples groups will be exterminated."[11] This event was followed by news briefings in Hualien County and Taitung County, and in Taoyuan, Taichung, and Kaohsiung cities, where leaders of Taiwan's status groups also stated their opposition to granting Indigenous status to Pingpu Peoples.[12]

Taitung County deputy council speaker Lin Tsung-han, whose Paiwan name is "Sakinu Maysang", said that if Pingpu groups received Indigenous status it would impact negatively on the current 16 recognized Indigenous groups and dilute Taiwan's special Indigenous status, leading to the destruction of existing Indigenous ethnic identity, culture, and traditions.[13] Lin also claimed that too many Pingpu Peoples could receive the status and thus gain too much political power, depriving the existing Indigenous groups of their rights and leading to the extermination of Taiwan's current 16 Status Indigenous Peoples.

CIP Minister Icyang Parod also spoke publicly to support these declarations, asking the Constitutional Court to respect the "existing large differences" between the Status Indigenous Peoples and the Pingpu groups and arguing that "recognizing Pingpu groups as Indigenous people will adversely affect the rights enjoyed by those who are currently recognized."[14, 15]

The stance taken by Lin and his fellow Taitung Indigenous councillors came as a shock to Pingpu activists. They pointed out that, in essence, it was one Indigenous group denying the existence of another Indigenous group in order to exclude the latter group from sharing the benefits and privileges of the recognized groups.[16]

Constitutional ruling in Siraya's favour

On 28 October, Taiwan's Constitutional Court handed down its ruling on Siraya's case, stating that Siraya and other Pingpu groups have the right to be recognized as "Indigenous people" and giving the government a three-year period to amend and implement relevant law statutes to enable Pingpu recognition.[17]

The Constitutional Interpretation stated that Taiwan's native Austronesian peoples, including Pingpu groups, were able to obtain constitutionally protected Indigenous status, and thus rejected CIP's opposing arguments.[18]

Hailed as a landmark decision, unanimous among the 15 Grand Justices, the ruling stated that it was unconstitutional to use provisions in the Status Act for Indigenous Peoples, as CIP had done in the past, to deny Indigenous status registration to Pingpu groups.

The Grand Justices affirmed that "Native Austronesian peoples had been living in Taiwan since historic times, prior to the arrival of Han Chinese, which later become the majority population. These original peoples had their traditional living spaces throughout Taiwan, and each independently had evolved their language, history, and cultural traditions."

The ruling said that individuals had to register to obtain their Indigenous status, and prove belonging to one of the Pingpu tribes, where tribe members must have a "collective identity as an ethnic group" that retains its culture, language, and traditional practices. They also had to substantiate their ties to the Austronesian people via historical documents and reports.

While recognizing the importance of the ruling, Uma Talavan pointed out that Indigenous politicians and CIP officials could put up barriers to block the Siraya people from obtaining Indigenous status.[19] In her court presentation, Uma Talavan and the Siraya people's delegates pointed to CIP's exclusion policy and refusal to allow Siraya to register as violations of the guarantee of equality among all ethnic groups under the Constitution, as well as a violation of the State's guarantee to safeguard the status and political participation of all Indigenous groups, pointing out that, according to the Constitution: "The State shall affirm cultural pluralism and shall actively preserve and foster the development of aboriginal languages and cultures."

She noted that the State and its government agencies had denied the Siraya and other Pingpu groups' Indigenous culture, tradition, and collective ethnic identity, for which they have struggled for over two decades to gain recognition while facing pervasive discrimination, assimilation forces, and real dangers of cultural extinction. She also accused the State of contravening its own Constitution and international covenants on Indigenous Peoples' rights to safeguard them from assimilation by the main population.[20]

Documents and government reports were also presented that proved that Pingpu rights advocates had been active in Taiwan's Indigenous rights movement since the early 1990s and that Pingpu representatives had participated at United Nations forums and international conferences on Indigenous issues since that time, all before Taiwan established the CIP in 1996.

"Since participating in these struggles and Indigenous rights movement in early 1990s, it has now been nearly three decades and many Pingpu leaders and elders have passed away or are in advanced age. They and their families cannot wait any longer and the State should not delay the judgement and should not continue to violate the Constitution to deprive Pingpu Indigenous groups of their proper rights and status as Indigenous people of this country," Talavan said.[21]

Wildlife conservation setback

Collaboration between Indigenous communities, conservation groups and researchers, and government agencies has led to considerable

progress in recent years in the protection of Taiwan's forest and wildlife.

Two prominent incidents in 2022 concerning Formosan black bears killed by poachers with hunting rifles received significant news coverage, however, with condemnation from conservation activists and various sectors of society due to its detrimental impact and tarnished image after years of touting conservation success stories in Taiwan.

The first incident was in May when a dead Formosan bear, a critically endangered species protected by law under the nation's Wildlife Conservation Act, was found buried near a mountain village in Nantou County of central Taiwan.[22] The second incident took place in December, when an online video of a group of men carrying a dead bear on scooters went viral.[23] Local authorities launched an investigation to find out the circumstances and to identify who did the killing.

In the May incident, investigators tracked down the poachers, who turned out to be two Indigenous Bunun hunters from the same family in nearby Bokai Village. The poachers admitted to setting a steel-wire trap for hunting that had snared the bear, which they then killed by firing three shots at it.[24]

The December incident led investigators to southern Taiwan's Pingtung County, near a mountain village of Wutai Township, populated mainly by Indigenous Rukai people. A search in the poacher's house uncovered freezers containing the carcasses of a Formosan black bear and Formosan serow (wild goat) as well as the remains and pieces of four Formosan sambar deer, all protected species according to Taiwan's wildlife regulations.[25]

All poachers are currently facing prosecution on charges of illegal poaching and killing of protected wildlife, in contravention of the Wildlife Conservation Act. Both cases stirred up public anger, with conservation groups and politicians condemning the poaching activities.[26]

Since the investigation determined that both cases were illegal poaching by Indigenous hunters, the public focused on the fact that the poachers had in both cases violated the traditional customs of most Indigenous communities for protecting the black bear as a sacred animal.[27] Responding to the public outcry, CIP officials released a statement calling on all Indigenous communities to put an end to the killing of protected wildlife and follow traditional beliefs that have respect for the Formosan black bear.[28]

Notes and references

1. Jason Pan Adawai. "Taiwan. Mining law and Truku land right." In The Indigenous World 2020, edited by Dwayne Mamo, pp. 324-326. Copenhagen: The International Work Group for Indigenous Affairs, 2020, https://www.iwgia.org/en/taiwan/3609-iw-2020-taiwan.html
2. "Court defends IP rights in Asia Cement case." Liberty Times News, 18 September 2021, https://news.ltn.com.tw/news/society/breakingnews/3676200
3. "Bsngan Community consultation on agreeing to a vote, controversies between pro and con groups." Central News Agency, 12 February 2022, https://www.cna.com.tw/news/ahel/202202120118.aspx
4. "Bsngan Community Council holds voting, 294 ballots in favor to approve for Asia Cement mining operation."" Taiwan Indigenous TV News, 12 February 2022, https://news.ipcf.org.tw/22297
5. "Hualien community vote to agree for Asia Cement mining operation amidst disputes." The News Lens, 13 February 2022, https://www.thenewslens.com/article/162702
6. "Asia Cement mining operation receives 83% support from local community." Economic Daily, 13 February 2022, https://money.udn.com/money/story/5612/6094217
7. Council of Indigenous Peoples release. "Bsngan Community Council for voting to approve extending mining operation, CIP respects the decision by indigenous community residents." 12 February 2022, https://www.cip.gov.tw/zh-tw/news/data-list/35AE118732EB6BAF/7C4907F8B89C86E9E30A90A0C0814788-info.html
8. Ministry of Economic Affairs release. "Ministry endorses the approval decision, for reaching agreement on rights of indigenous peoples and economic development for the industry." 12 February 2022, https://www.moea.gov.tw/Mns/populace/news/News.aspx?kind=1&menu_id=40&news_id=98813
9. Pingpu peoples, who have been continuously denied government recognition as Indigenous Peoples, are generally classified according to their ancestral domains, from north to south: Ketagalan, Taokas, Pazeh, Kaxabu, Papora, Babuza, Hoanya (Lloa), Siraya, Tavorlong, and Makatao.
10. "Siraya demand for Indigenous status recognition, court litigation case to fight against CIP exclusion." Taronews, 26 February 2019, https://living.taronews.tw/2019/02/26/264934/
11. "Indigenous people groups and councilors of New Taipei City oppose granting indigenous status to Pingpu groups, it will impact on nation's all indigenous peoples to infringe on their rights." Liberty Times News, 26 June 2022, https://news.ltn.com.tw/news/life/breakingnews/3972722
12. "Taitung councilors oppose recognition of the Siraya." Taipei Times, 29 June 2022, https://www.taipeitimes.com/News/taiwan/archives/2022/06/29/2003780787
13. "Taitung County Indigenous Councilors declare to oppose granting Pingpu groups to have lowland Indigenous people status." United Daily News, 28 June 2022, https://udn.com/news/story/7327/6421526
14. "CIP opposes indigenous recognition to Pingpu groups, Will divert away resources for recognized Indigenous peoples." Liberty Times News, 27 June 2022, https://news.ltn.com.tw/news/politics/breakingnews/3973642
15. "(CIP) Council opposes official Indigenous status for Pingpu people." Central

News Agency, 29 June 2022, https://focustaiwan.tw/culture/202206290019
16. "Siraya academics do not agree on proposal to set up for separate agency Council for Pingpu Groups." Taiwan Indigenous TV News, 29 June 2022, https://news.ipcf.org.tw/40920
17. "Constitutional Court paves way for Siraya recognition." Taipei Times, 29 October 2022, https://www.taipeitimes.com/News/front/archives/2022/10/29/2003787907
18. Taiwan Constitutional Court - Interpretation Case No. 17 of 2022. Siraya People Request for Indigenous Status. 28 October 2022, https://cons.judicial.gov.tw/docdata.aspx?fid=38&id=310021
19. "Siraya Constitutional Case set up basis for Pingpu groups' indigenous recognition." Taiwan Indigenous TV News, 29 October 2022, https://news.ipcf.org.tw/56357
20. "Winning court case does not mean Indigenous status for Siraya, Uma Talavan asks amending law statues to address deficiencies." ETToday News, 28 October 2022, https://www.ettoday.net/news/20221028/2368365.htm
21. Taiwan Constitutional Court - Interpretation Case No. 17 of 2022.
22. "Formosan bear killed, evidence buried: police." Taipei Times, 13 May 2022, https://www.taipeitimes.com/News/taiwan/archives/2022/05/13/2003778149
23. "Man arrested for hunting protected wild animals." Taipei Times, 16 December 2022, https://www.taipeitimes.com/News/taiwan/archives/2022/12/16/2003790812
24. "Finish investigation on Dongmao Shan killing black bear case." The News Lens, 21 September 2022, https://www.thenewslens.com/article/173026
25. "Pingtung Police arrest Wutai Township resident on alleged killing of Formosan black bear and sambar deer." Liberty Times News, 9 December 2022, https://news.ltn.com.tw/news/society/breakingnews/4150217
26. "Formosan black bear shot and killed by rifle, flaws in regulation by indigenous tradition and government management." The News Lens,19 December 2022, https://www.thenewslens.com/article/178304
27. "Rukai indigenous leader speaks out on local men riding scooters to show off killed Formosan black bear." Next Apple News, 14 December 2022, https://tw.nextapple.com/local/20221214/431B6EFE0386A1B6D1F166BEB94BAE5E
28. "CIP say killing of Formosan black bear violates indigenous tradition and cultural taboo." Liberty Times News, 20 December 2022, https://news.ltn.com.tw/news/life/breakingnews/4160544

Jason Pan Adawai *is a journalist and director of the Indigenous rights activist organization, TARA-Pingpu, 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, Taiwan.*

Thailand

MYANMAR
LAOS
THAILAND
Bangkok
CAMBODIA
GULF OF THAILAND
ANDAMAN SEA
MALAYSIA

The Indigenous Peoples of Thailand live mainly in three geographical regions of the country: Indigenous fisher communities (the Chao Ley) and small populations of hunter-gatherers in the south (Mani people); small groups on the Korat plateau of the north-east and east; and the many different highland peoples in the north and north-west of the country (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.[1]

The Indigenous population in Thailand is estimated at around five million people, or 7.2% of the total population.[2] According to the Department of Social Development and Welfare (2002), the total officially recognized population number is 925,825 and they are distributed across 20 provinces in the north and west of the country. There are still no figures available for the Indigenous groups in the south and north-east. When national boundaries in South-East Asia were drawn during the colonial era and 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 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Universal Declaration of Human Rights. It voted in support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but does not officially recognize the existence of Indigenous Peoples in the country. The Constitution 2016 section 70 refers to 'Ethnic groups'.

In 2010, the Thai government passed two cabinet resolutions to restore the traditional livelihoods of the Chao Ley[3] and

Karen, on 2 June and 3 August respectively.

In 2014, Indigenous people in Thailand established the Council of Indigenous Peoples in Thailand (CIPT) to promote and protect the rights of Indigenous Peoples in Thailand.

Natural resource management and conservation policies and laws

Indigenous Peoples in Thailand are generally concerned about the lack of land tenure security and control over their natural resources that they have used, occupied, and taken care of for hundreds of years.

The State's centralized policy on natural resource management focuses mainly on forest and biodiversity conservation. The social aspect of forests, especially the close and inter-dependent relationship between people and nature, is totally lacking. The government continues to apply this conservation concept by keeping people away from the forests in order to 'protect' only the flora and fauna on the land. This can clearly be seen from existing forestry laws.[4] None of them refer to land rights or communities' customary land tenure rights or, where reference is made to community rights (as in the Community Forestry Law 2019 and National Park Law 2019), it is limited only to user rights. This has become problematic and has led to conflict over natural resource management between communities and the State,[5] including direct criminalization of community members who carry out traditional, sustainable activities. These have increased in number over the years with no concrete solution in sight (there are 1,502 legal cases reported from January – December 2022, including forest encroachment; forest fires; illegal logging; wildlife poaching and collection of NTFPs).[6]

In addition, the proposed solution on the land-use issue, according to the new forestry laws amended in 2019,[7] especially with regard to conducting community land-use surveys and mapping, have posed grave concerns to many Indigenous Peoples.

Feedback from Indigenous communities on the land-use survey

The very limited timeframe given for conducting the community land-use surveys makes it very unlikely that all communities living in forest areas can be mapped within the identified timeframe. Most communities are still not aware of the new law, and it remains unclear how the full, effective participation of villagers will be ensured in the process.

On 18 September 2022, Indigenous Media Network (IMN) was invited to document and cover information on the verification of community land-use surveys undertaken by the Royal Forestry Unit at Huay E-kang village and nearby communities in Maewang District, Chiang Mai province.

Most villagers expressed concern that information on land-use surveys conducted by the Royal Forestry Unit was incorrect and undertaken without the full and effective participation of the villagers. Ms Thasanee Kapyarom, an Indigenous woman leader from Huay-Ekang said:

> *... I do not understand the land-use survey process. Why has the Information of the Royal Forestry Unit and the one jointly conducted by villagers and the Local Administrative Organization (LAO) been totally different?*[8]

Villagers proposed and recommended that the Royal Forestry Unit use the existing land-use map that villagers had jointly produced with the Local Administrative Organization (LAO) as baseline information for verification. Failing this, there would be a negative impact on more than 80% of community members, especially as regards lack of land for farming.

Land claim of Karen people at Bangkloi in Petchaburi province, Thailand

Bangkloi is a Karen village situated in the Kaeng Krachan National Park that was recently registered as a new natural World Heritage site by the World Heritage Committee on 26 July 2021, despite massive protests and years of campaigning against the nomination.[9] Karen people were relocated from their traditional homeland (Jaipaendin or Bangkloi Bon)

to Bangkloi Lang in 1996 and 2009 respectively.[10]

On 14 January 2021, 85 Karen people (65 men and 20 women) from Baan Bang Kloi Lang walked back to their ancestral land at Baan Bang Kloi Bon[11] to live and farm there as insufficient farm land had been allotted to them despite promises by the government. They were later arrested and detained at the Kaengkrachan National Park office on 5 March 2021 on charges of encroachment, construction, clearance, seizure, possession and other acts of degrading or changing areas from their original nature in the Kaengkrachan Forest Complex (KKFC) without permission (in accordance with Section 19 of the National Park Act, B.E. 2562.) Twenty-two of these were imprisoned in the central prison of Petchaburi province.

With the support of civil society organizations and the Lawyers Council, all 22 villagers were released on bail shortly after.

Save Bangkloi Group was established in February 2021 to campaign and help the affected villagers.

Affected villagers from Bang Kloi, together with their #SAVEBangKloi allies, staged a rally near the Government House on 1 February 2022 to follow up on the earlier proposed solutions for Bangkloi villagers who had returned to their ancestral lands.[12] These included (i) suspend the arrests and take no legal proceedings against any villagers; and (ii) issue the Order to set up the Land and Arable Areas Dispute Resettlement Committee to study and resolve the problem faced by Karen Indigenous people, particularly in relation to their inadequate land allocations and the continued practise of their traditional livelihoods. This agreement was signed by Capt. Thammanat Prompao, Deputy Minister of Agriculture and Cooperatives on behalf of Prime Minister Prayut Chan-O-cha. Following negotiations, it was finally agreed on 3 February 2022 to form an independent fact-finding and problem resolution committee to study the case and propose solutions for the affected villagers.[13] The study is now ongoing.

Expansion of Ob Khan National Park area

Ob Khan National Park covers an approximate area of 574 square kilometres in Chiang Mai Province. The geographical features of the Na-

tional Park consist largely of high mountains.[14]

Ob Khan National Park is one of the parks whose protected area the Thai government, through the Department of National Parks, Wildlife and Plants Conservation, has been planning to expand since 1996. On 18 October 2022, there was a public hearing conducted with stakeholders involved, including Indigenous communities, at the Samoeng district office meeting hall in Chiang Mai. Indigenous people from different villages were unanimously opposed to the proposal to expand such protected area boundary. Mr. Sira Pongpanit, village headman of Moo. 5 said:

> *... We propose an area of 24,513 rai or 3,891 ha. be mapped out from the Ob Khan National Park. It is our spiritual land. We have taken good care of this for a long time...We would like the officers to see us as forest caretakers, not encroachers... that way we can mutually work together.*[15]

There will be further consultations with the communities involved to agree on this issue. Villagers will need to closely monitor the information to ensure they are informed and form part of the consultations.

Update on the status of the proposed draft laws to promote and protect the rights of Indigenous Peoples and ethnic groups

In all, five draft laws on the promotion and protection of the rights of Indigenous Peoples and ethnic groups have been submitted to Parliament for consideration. These include:

1. *The draft law on the Council of Indigenous Peoples in Thailand B.E.*[16]
   This was drafted and submitted by the Network of Indigenous Peoples in Thailand to the President of the National Assembly on 7 April 2021 and was put on the official agenda of a parliamentary session in early 2022. According to the procedure for considering laws, there is a requirement to

submit a governmental draft law to Parliament before the parliamentary members can proceed with its consideration. As of the end of 2022, this draft law was still listed as an agenda items to be considered by parliamentary but it will not now be brought for discussion unless a governmental draft law has been submitted.

2. *The draft law on the Promotion and Protection of Ethnic Groups B.E.*
   This was drafted by the Parliamentary Standing Committee (PSC) and submitted to the President of the National Assembly for initial review to consider whether this law has a financial aspect or not. It was determined that the draft law does have a financial aspect and prior approval is therefore required from the Prime Minister before it can be listed and put on the official parliamentary agenda. There has been no progress as yet.
3. *The draft law on the Protection and Promotion of Ethnic Groups' Livelihoods B.E.*
   This draft was prepared by the Sirindhorn Anthropology Centre (SAC) and is considered to be the governmental draft of the law. Its submission was delayed due to additional information and documents needed from some of the government agencies involved, such as Ministry of Natural Resources and Environment and Ministry of Foreign Affairs. It was tabled in late 2022 for the President of the National Assembly's initial review as to whether it has a financial aspect or not and the appropriate parliamentary procedure will now follow but it will take some time.
4. *The draft law on Promotion and Protection of Ethnic Groups submitted by the Forward political party*
   This draft was considered as having a financial aspect and is therefore with the Prime Minister for approval.
5. *The draft law on the protection and promotion of the livelihoods of ethnic groups and Indigenous Peoples submitted by the People's Movement for a Just Society (P-Move)*
   This draft law also has a financial aspect and has to obtain initial approval from the Prime Minister. There has been no progress as yet.

One of the key challenges for these draft laws is that the current government's term in office ends in March 2023, which means Thailand will head into a general election. If these draft laws have not been considered by Parliament and the Prime Minister at that point, all processes will have to be restarted.

Notes and references

1. Ten groups are sometimes mentioned, with the Palaung also included in some official documents. The Department of Social Development and Welfare's 2002 Directory of Ethnic Communities in 20 northern and western provinces also includes the Mlabri and Padong.
2. This report (in Thai) is available at the IPF website: www.ipfinfo.org via the following link: https://drive.google.com/file/d/1kjKmySt5ssoDAr7PwTLVmN5f2cIFUiLt/view
3. Composed of Moken, Moklen and Urak-rawoy.
4. These include the National Forest Reserve Act, Forestry Act, Wildlife Sanctuary Act and National Parks Act.
5. See more information in Yearbooks 2012 and 2013: Rattanakrajangsri, Kittisak. "Thailand" in The Indigenous World 2012, edited by Cæcilie Mikkelsen, 298–304. The International Work Group for Indigenous Affairs (IWGIA), 2012, https://www.iwgia.org/images/publications/0573_THE_INDIGENOUS_ORLD-2012_eb.pdf Rattanakrajangsri, Kittisak. "Thailand" in The Indigenous World 2013, edited by Cæcilie Mikkelsen, 265–271. The International Work Group for Indigenous Affairs (IWGIA), 2013, https://www.iwgia.org/images/publications/0613_EB-THE_INDIGENOUS_ORLD_2013.pdf
6. Summary of legal cases related to forests from 2013- Jan. 2023 by the Department of National Park, Wildlife and Plants Conservation (DNP) from http://portal.dnp.go.th/Content?contentId=2134 This document can also be accessed at https://drive.google.com/file/d/1rf_Iv1CwgeZHDiqJwpGUmZK49uC7RVyl/view?usp=sharing
7. See more information in the Yearbook 2020: Rattanakrajangsri, Kittisak. "Thailand" In The Indigenous World 2020, edited by Dwayne Mamo, 332–341. The International Work Group for Indigenous Affairs (IWGIA), 2020, https://www.iwgia.org/en/thailand/3610-iw-2020-thailand.html
8. The Indigenous Media Network (IMN) interviewed Ms Thasanee Kapyarom, a woman leader from Huay-Ekang village on 18 September 2022 https://www.facebook.com/imnvoices/videos/799864794550083
9. IWGIA, News, "UNESCO World Heritage Committee tramples on human rights", 28 July 2021, UNESCO World Heritage Committee tramples on human rights - IWGIA - International Work Group for Indigenous Affairs
10. See more in The Indigenous World 2012: Rattanakrajangsri, Kittisak. "Thailand" in The Indigenous World 2012, edited by Cæcilie Mikkelsen, 298–304. The International Work Group for Indigenous Affairs (IWGIA), 2012, https://www.iwgia.org/images/publications/0573_THE_INDIGENOUS_ORLD-2012_eb.pdf
11. TheCitizen.Plus, "Karen community in Kaengkrachan is reclaiming their ancestral territory – Land of Heart.", 21 January 2021, https://thecitizen.plus/node/39404

12. Manushya Foundation, "Save Bangkloi is possible with the power of people!", 3 February 2022, https://www.manushyafoundation.org/post/savebangkloi-is-possible-with-the-power-of-people
13. Isranews, "นายกฯแต่งตั้งคณะกรรมการเร่งรัดแก้ไขปัญหากะเหรี่ยงบางกลอย 'อนุชา' เป็นประธาน", 3 February 2021, https://www.isranews.org/article/isranews-short-news/106315-Isranews-3.html
14. Mi Chiang Mai Tour, "Ob Khan National Park: Chiang Mai Attraction Place", Ob Khan National Park : Chiang Mai Attraction Place (mychiangmaitour.com)
15. Seub Nakhasathien Foundation, "สรุปเหตุการณ์ประกาศอช.ออบขานในพื้นที่จิตวิญญาณชุมชนปกาเกอะญอ", 22 October 2022, สรุปเหตุการณ์ ประกาศ อช.ออบขาน ในพื้นที่จิตวิญญาณชุมชนปกาเกอะญอ - มูลนิธิสืบนาคะเสถียร (seub.or.th)
16. From IPFINFO.ORG, "Draft law of Council of Indigenous Peoples in Thailand B.E...", 23 December 2020, https://drive.google.com/file/d/1QfwMVhfG_ypg-L8-aPN7mEnD3IJ9ArM-/view and the Parliament House's website: https://www.parliament.go.th/section77/survey_detail.php?id=162

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.*

Central and South America and the Caribbean

Argentina

BOLIVIA
CHILE
PARAGUAY
PACIFIC OCEAN
BRAZIL
URUGUAY
Buenos Aires
ARGENTINA
ATLANTIC OCEAN

Argentina is a federal country made up of 23 provinces plus an autonomous city (Buenos Aires, the capital), with a total population of close to 47 million people, according to initial data from 2022. The 2010 national census gives a total of 955,032 people self-identifying as descending from or belonging to Indigenous Peoples, and there is still no final data from the last census conducted in 2022. There are 35 officially-recognised Indigenous Peoples although the process of identity recovery is a dynamic one and so this number is fluid. 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 in force, forming part of the constitutional body of law. ILO Convention 169 takes precedence over national laws (it does not form part of the constitutional body of law), was ratified in 2000 and has been in force since 2002. In Argentina, the United Nations Declaration and the American Declaration on the Rights of Indigenous Peoples are also in effect and are of normative force.

The ambivalence of State policies: recognition of and disregard for Indigenous rights

2022 was marked by ambivalent and contradictory political and judicial decisions regarding the recognition of Indigenous Peoples' rights.

Alongside an historic ruling such as that of Napalpí, which recognises the genocide committed against Indigenous Peoples during the State-building process, came a judicial decision to imprison Mapuche women fighting for their territories.

Moreover, the government decided to extend the Territorial Emergency Law by means of a necessary and urgent decree but did not create the conditions necessary to discuss the Indigenous Community Property Law. The Ministry of Security decided to establish a unified se-

curity command – an unprecedented decision – to deal with a Mapuche community, Lafken Winkul Mapu that is recovering territory in the area of Lake Mascardi, Río Negro Province and a roundtable was convened by the government itself to reach an agreed solution.

Before giving further details about each of these stated policy lines, we will first explain the key ruling on the Napalpí[1] massacre, which related to the murder, persecution, torture and mutilation of some 500 Indigenous people from the Qom and Moqoit peoples in the Chaco territory in 1924. The ruling forms part of a judicial process of raising awareness and reviewing past events (in 2019, the Rincón Bomba[2] ruling recognised the massacre of the Indigenous Pilagá people in the territory of Formosa in 1947) with the aim of establishing the historical truth based on the collective memory of the Indigenous communities, and thus start a new path afresh.

This path will need to redefine a relationship with the State that has always been a traumatic one and thus overcome the impunity of those years, marked by a cover-up of the facts and prevailing racism, in order to open the door to the delivery of justice which, albeit late, sets out reparatory measures for the future with a view to building a different State.

The May 2022 ruling of the Federal Court of Resistencia, in Chaco, was just one legal element that contributes to this redefinition of decades of stigmatisation of Indigenous Peoples, which resulted in episodes of annihilation and extermination. The powerful symbolism of the ruling was accompanied by concrete measures that should gradually transform a paradigm of barbarism into one of reparation. This ruling is undoubtedly not enough but it is a necessary and essential step in the process of knowing, repairing, and transforming.

The Winkul community was formed around its *machi* (spiritual leader) who "rose up" in the lands of Lake Mascardi, Río Negro. They are demanding the territorial recognition (which is also spiritual recognition) that has historically been denied them. Since the murder of Rafael Nahuel,[3] disagreements with State authorities have multiplied.

Added to this are other actions at play on the local level such as constant harassment, a militarisation of the territory and demands by private individuals for the security of their homes. A space called the "Bariloche consensus" has been established and consolidated, bring-

ing together clearly "anti-Mapuche" sectors of society, including lawyers, businessmen and politicians, to build a discourse around the need to protect private property.

The burning of a traffic police sentry box by "hooded individuals" – it should be noted that there was no proof these hooded individuals were Mapuche given the impossibility of identifying them – precipitated the formation of a unified command of the federal security forces, which violently evicted the community on 4 October 2022. Seven women were arrested as a result of a joint operation on the part of four security forces, in territory that the Lafken Winkul Mapu community has been claiming as its own for years. Four of the women are still being held in pretrial detention with legal proceedings ongoing. These women have children, and one of them even gave birth in captivity.

As a final example of the vagaries of the political environment, in August 2022 the president of the National Institute of Indigenous Affairs (INAI) – the national government agency tasked with formulating and executing public policies for Indigenous Peoples – handed in her "resignation" following national and provincial political pressure caused by her role in the Mapuche territorial conflicts in the province of Río Negro. Her position has not yet been filled and this sends a clear message as to the relative importance this organisation holds in Argentine policy-making, with a negative effect on its day-to-day operations.

Also of concern is INAI's interpretation of the Territorial Emergency Law, and the moment when the Indigenous communities' territories need to be surveyed. It seems that INAI believes there is a time limit, and this is the moment when the law was passed (2006), ignoring the traditional and ancestral occupation claimed by the Indigenous communities themselves, which should be decisive when conducting the task of identifying the Indigenous territories appropriately.

Finally, the United Nations Special Rapporteur on the rights of Indigenous Peoples conducted an unofficial visit to the country in August 2022, visiting regions in both the north and south. Although his arrival was not prompted by an invitation from the authorities, his visit was useful in terms of learning about the realities facing Indigenous Peoples in Argentina. In addition, representatives of Indigenous Peoples and communities were able to explain the violations of their rights and their demands to an international authority.

The vagaries of judicial decisions

It is becoming increasingly clear that judicial decisions which, in the first instance, are protective of the rights of Indigenous Peoples are later being reversed by higher bodies, resulting in the need to take the case to the Supreme Court of Justice. This situation is damaging because it means that proceedings drag on for an uncertain period of time with an ever present threat of condemnation hanging over the communities, and this has a detrimental effect on the lives of Indigenous community members.

Such is the case of Lof Buenuleo[4] in the province of Río Negro. This community was accused of usurping the land, and the Provincial Court of Appeal decided to dismiss the case stating that the substantive issue was not a criminal matter but should be resolved through the civil courts, urging the resolution of the conflict by means of dialogue and mediation.[5] In 2022, the Higher Court of Justice of Río Negro overturned this ruling. In its operative part it resolved: "(..1) to annul Judgment No. 207 issued by the Court of Appeals on 24 November 2021; 2) to declare ex officio the nullity of the intervention of the Public Prosecutor's Office in which it adhered to the request for dismissal without a reasoned and legal motivation; 3) to forward the file to the Judicial Office of the III Higher Court of Justice Viedma Judicial District in order to continue the corresponding procedural acts from the review hearing held on 6 and 10 August 2021, and 4) to notify the Attorney General due to the importance and serious nature of the issue that demonstrates a clear dysfunction, to the detriment of the constitutional and legal principles that govern the actions of the Public Prosecutor's Office under his charge".

In the case of Lof Millalonco Ranquehue in Bariloche, province of Río Negro, a federal judge of the first instance ordered the national government to transfer the ownership of 180 hectares of land – allegedly belonging to the Argentine Army – to INAI free of charge in order to award it to the Indigenous community. The State appealed this decision with the result that the Supreme Court of Justice of the Nation had to review the ruling. This territorial dispute is indicative of a dispute between powers, since the Attorney General claims that the judiciary is unduly interfering in matters that lie solely within the scope of the legislature, which should grant such lands by law.

On the other hand, as an example of a good judicial decision, a fed-

eral judge issued an injunction ordering a gated neighbourhood to take down part of its fence to allow the free transit of a community that had been "de facto trapped" by the real estate development, condemning them to travel a long distance to reach their community. Arelauquen Country Club had closed the road to Lofche José Celestino Quijada, preventing its members from going to school, work, or to the hospital.

In this case, INAI stated that there was an obligation to demarcate the lands occupied by Indigenous communities and the Ministry of Defence of the Nation (since army lands were also involved), the Ministry of the Interior of the Province of Río Negro and the Nahuel Huapi National Park administration were notified. Although the injunction was issued at the end of 2022, the gated neighbourhood continues to insist that this will cause irreparable harm, and the municipality is arguing that its domain has been undermined.

An injunction filed by civil society organisations and the Wichí Misión La Loma Indigenous community In the province of Salta for the application and regulation of the Intercultural Health Law resulted in the Provincial Court confirming a precautionary measure that sets down an obligation to have intercultural facilitators accompany decision-making and practices involving Indigenous children. The recurrent deaths of children in departments in the northern part of the province due to malnutrition and other health problems, caused by their living conditions, led to the declaration of a social and health emergency in the region. The ruling in the first instance, ratified by the Provincial Court, is binding upon the State and focuses on improving access to health care for Indigenous children.

Conclusions

The line of historical continuity that can be seen from an analysis of the State policies of different government administrations only serves to demonstrate the systematic racism and resistance of the different State bodies to recognising and respecting Indigenous rights. Although Argentina includes a set of rights in its legal system that would appear to uphold an intention to build a genuinely egalitarian State, political and judicial decisions send another message.

Over the last year, hate speech that stigmatises Indigenous Peoples, based on arguments such as defending national sovereignty or

defending private property from attack, has re-emerged with a vengeance in the south of the country.[6] The justice system is responding to a political line that resists recognising Indigenous territories. Increases in both extractive activities and the real estate business are contributing to an exacerbation of the conflicts.

The Indigenous communities as "guardians" of the territory, preserving the natural commons and contributing to their conservation, precisely because of the special relationship they maintain with their habitat – based on their philosophy of "*buen vivir*" [good living or living well in nature] – are aspects which, in the final analysis, are seen as "a danger" to the economic interests at stake. Disputes and tensions remain, and the possibility of reaching a consensus through which to achieve a harmonious coexistence with Indigenous Peoples remains a prospect that does not seem achievable in the medium term.

Notes and references

1. Napalpí Massacre re. Truth Trial. Federal Court of Resistencia. June 2022.
2. Federation of Indigenous Communities of the Pilagá People v PEN re. Damages. July 2019.
3. For more information see: Silvina Ramírez. "Argentina". In *The Indigenous World 2022*, (IWGIA), 2022. Available at https://www.iwgia.org/en/resources/indigenous-world.html.
4. "Buenuleo Ramiro et al (Buenuleo Community) re. usurpation" – Extraordinary appeal – Art. 242 (File MPF-BA-04875-2019).
5. For more information see: Silvina Ramírez. "Argentina". In *The Indigenous World 2022*, (IWGIA), 2022. Available at https://www.iwgia.org/en/resources/indigenous-world.html.
6. Idem.

Silvina Ramírez *is a lawyer and Doctor of Law. She lectures at the Faculty of Law at the University of Buenos Aires (UBA) and the University of Palermo and other universities in the country and across Latin America. She is a founding member of the Association of Lawyers in Indigenous Law (AADI), academic adviser to CEPPAS (Centre of Public Policies for Socialism) and a member of the Board of Directors of the Institute for Comparative Studies in Criminal and Social Sciences (INECIP). She is the Argentina reference point for the Latin American Network of Legal Anthropology (RELAJU). Contact: silvina.ramirez@gmail.com*

Bolivia

BRAZIL
BOLIVIA
La Paz
PARAGUAY
ARGENTINA
CHILE
PERU
PACIFIC OCEAN

According to the 2012 National Census, 41% of the Bolivian population over the age of 15 is of Indigenous origin, although 2017 projections by the National Institute of Statistics indicate that this percentage is likely to now have increased to 48%. Of the 36 recognized peoples in the country, the majority of those living in the Andes are Quechua- and Aymara-speaking (49.5% and 40.6% respectively). In the lowlands, the Indigenous Peoples are largely the Chiquitano (3.6%), Guaraní (2.5%) and Moxeño (1.4%) who, together with the remaining 2.4%, make up the 36 recognized Indigenous Peoples. To date, Indigenous Peoples have consolidated their collective ownership of 25 million hectares of land in the form of Tierras Comunitarias de Origen (Community Lands of Origin / TCO), representing 23% of the country's total area. 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 approval of Law No. 3760 on 7 November 2007. With the new State Political Constitution, Bolivia adopted the name of Plurinational State in 2009.

Advance of the extractive industries into Indigenous territories and protected areas

The small and medium-sized private mining sector occupies a privileged position in the ruling power bloc nationally, and this has granted it preferential regulatory and/or *de facto* treatment in terms of accessing areas for the implementation of mining activities in protected areas and on Indigenous territories in non-traditional zones such as the Amazon.

According to recent studies, there are more than 300 gold dredges operating along the 172 km of the Madre de Dios River that runs through the Multiethnic Indigenous Territory II alone, using irrational levels of mercury. This situation arose when Madre de Dios was declared a "fiscal mining reserve", approved by Supreme Decree 3516/18. And yet only 7%

of these operations are legal. This situation was reported to the United Nations Special Rapporteur on Toxic Substances.[1] Alongside this, a report[2] highlighted allegations of the existence of multiple dredges searching for gold along the Kaka and Beni rivers in the Madidi National Park. This is located in the northern Amazon Forest of the department of La Paz, one of the most megadiverse areas in the world.[3]

The impact of this activity on the communities that live and depend on these rivers is reflected in the presence of mercury in the fish. It can also be seen in the disappearance of turtle eggs due to the effects of the debris these dredges leave behind when removing the gold. In these cases, these dredges are not operating with the authorization of the State, far less with the Free, Prior and Informed Consultation or Consent (FPIC) of the Indigenous Peoples.

In mid-October, there was a massive demonstration in the city of La Paz on the part of the private mining sector that led to the signing of an agreement with the National Protected Areas Service (SERNAP) and the Mining Jurisdictional Authority aimed at making the procedures for gold mining in the Madidi, Apolobamba and Cotapata parks (La Paz) viable. However, the 18 Indigenous Peoples of the La Paz Indigenous Peoples Organization (CPILAP) managed to obtain the cancellation of this agreement on 7 November through the signing of an act with the Vice-Ministry of Environment and Water that prevents the mining authorization procedures from being formalized.

In March, it emerged that the management of the San Marías Integrated Management Area had been granting authorizations to the mining company, Mincruz S.R.L., to enter the Pantanal Indigenous Territory of the Chiquitano people to exploit its tantalum. The company had in fact been granted an environmental licence at one point but, due to legal restrictions in the protected area, had never been able to commence operations. Within the context of a supposed consultation launched by the company, one of the communities affected agreed to the start-up of operations. Nevertheless, immediately afterwards, due to resistance from other communities settled in the basins of the lower Pantanal, as well as complaints from legislators, the Ministry of Environment and Water revoked the company's environmental licence.[4]

Complaints of mining in Bolivia gained more visibility with the arrival in the country of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal

of hazardous substances and wastes, Marcos Orellana,[5] who presented the situation to the General Assembly in the context of a thematic report entitled "The Impact of Toxic Substances on the Human Rights of Indigenous Peoples".[6] The Rapporteur reported that Bolivia was becoming a hub for illicit mercury trafficking in the Amazon region. He also explained that mercury contamination was affecting Indigenous Peoples and urged the State to implement an action plan within the framework of the Minamata Convention.[7]

Indigenous autonomy and forest conservation

In the Beni sub-Amazon region, the Multiethnic Indigenous Territory (TIM) has been embarked on a long and bureaucratic process aimed at accessing autonomy, ongoing now for more than 12 years. One of the final steps for implementing the Statute that would enable the formation of the new government was supposed to be completed in 2022: the Plurinational Legislative Assembly's (bicameral Congress) approval of a law Creating the Territorial Unit. Senate approval was obtained only in October and the Territorial Creation Law is now expected to be enacted in 2023.

Meanwhile, the TIM has been conducting planning and management actions for greater control of the common assets and biodiversity of their territory. In this context and within the framework of the Management Plan defined by the TIM Sub-organization,[8] they have established a framework for declaring the Loma Santa Natural Conservation Area, setting out three management categories that will be managed by the sub-organization and subsequently transferred to the autonomous government of the TIM.

In the Santa Cruz Chaco, the autonomous Guaraní government of Charagua Iyambae managed to get the Agro-environmental Court to declare an Environmental Moratorium in the Ñembi Guasu Conservation and Ecological Interest Area as a precautionary measure against the settlements and land clearance (burning) that had been authorized for peasant communities and which was partly responsible for the large fires that ensued over the 2019-2021 period.[9] Agro-environmental Ruling No. 11/2022 also reaffirms the Indigenous autonomy as the competent local government within the framework of the Plurinational

State, making constructive dialogue possible between the authorities and social organizations in order to resolve the environmental conflicts caused by the systematic recurrence of fires since 2018.

The same outcome was not achieved in the case of the conflict triggered in the Bajo del Isoso aream in the same jurisdiction of Charagua Iyambae, due to the clandestine construction of a bridge over the Parapetí River by a Mennonite settlement known as Cuaririrenda, which borders the Guaraní community of the same name.[10] The construction of the bridge without any authorization from the Indigenous government or the competent environmental authorities divided Charagua's organizations: some communities supported its erection[11] together with the construction of the settlement on an area of approximately 14,000 hectares in the so-called Bañados del Isoso, a highly fragile RAMSAR site[12] where it is anticipated more than 100 wells will now be drilled.

This conflict reflects an unresolved issue in the way Indigenous autonomies operate, and that is the role that the grassroots community organizations will continue to play within the context of the new autonomous structures. In the case of the Guaraní, community leaders continue to enjoy greater legitimacy, even to impose their own views on developments or specific decisions, than their own representatives in the autonomous government's organs of power. This is causing a weakness or contradiction in the State responsibilities enjoyed by these latter. There is therefore a need to review the current model of autonomies so that the different powers dialogue and coordinate but do not overlap with each other, within the context of a vision of Living Well, which is the pillar of this institution-building.

It is also important to point out that the declaration or creation of conservation areas, protected or with restrictions covering part of the territories, has been an important defence strategy against State decisions that violate Indigenous rights and jeopardize the environmental stability of their common assets. The creation of the Loma Santa Conservation Area of the Multiethnic Indigenous Territory has precisely the objective of legally safeguarding environmentally fragile areas and the nuclei of biodiversity reproduction that are fundamental for the continuity of life throughout the territory. The key to these areas is for them to meet the historical demands and objectives of territorial reconstitution and to be under their own administration, recovering and strengthening their own systems of use, control and access to their traditional spaces.

International processes

Organized by IWGIA, the Organization for Legal and Social Support (ORÉ) and the Confederation of Indigenous Peoples of Bolivia (CIDOB), a Regional Seminar on the Right to Autonomy and Indigenous Justice was held in Santa Cruz de la Sierra from 5-7 October. The seminar addressed Indigenous justice from the perspective of the exercise of self-determination and autonomy. In relation to Indigenous autonomies, the debate revolved around the barriers States erect to their full access and exercise, despite important national laws recognizing them, as in the cases of Bolivia, Ecuador and, to some extent, Colombia. There was also a discussion on cases where the lack of a favourable constitutional or legal framework has encouraged certain peoples to generate their own autonomous processes e.g. in the cases of Peru and Chile. In terms of Indigenous justice systems, it was noted that practices of State denial, subordination, invisibility and superimposition on their justice systems persist, although there are some exceptions of complementarity and concurrence with the principles of legal pluralism recognized in a number of constitutions. Finally, it was concluded that, if strengthening these justice systems is a way of strengthening autonomy and the right to self-determination then it is essential for Indigenous Peoples to equip themselves with less reactive and more educational models of justice, as a preventive framework for conflict prevention.

On 22 March, the Human Rights Committee adopted its concluding observations on Bolivia's report concerning respect for civil and political rights in the country. With regard to the rights of Indigenous Peoples, the State was reminded that it must consult in good faith in order to obtain their Free, Prior and Informed Consent (FPIC) before adopting and implementing any measure that may affect their way of life and/or culture. In addition, the State was urged to redouble its efforts to ensure that no measures are adopted that could affect protected areas or Indigenous territories, as well as to protect Indigenous Peoples in a situation of high vulnerability, including the prompt regulation and implementation of Law 450 of 2013.[13]

Notes and references

1. CEJIS. *Indígenas de la Amazonía norte denuncian la violación de sus derechos al Relator de sustancias tóxicas de las NNUU.* Bolivia: CEJIS, 15 December 2022. Available at https://www.cejis.org/indigenas-de-la-amazonia-norte-denuncian-la-violacion-de-sus-derechos-al-relator-de-sustancias-toxicas-de-las-nnuu/
2. Gustavo Jiménez Gonzáles. "Madidi: dragas acechan uno de los parques más biodiversos del mundo". *Mongabay*, 14 May 2020. Available at https://es.mongabay.com/2020/05/bolivia-dragas-en-el-parque-madidi/
3. Madidi National Park is home to 3,174 Tacana, Leco and Quechua people living in 31 communities. The park overlaps with the Tacana I, Lecos de Apolo, and Lecos de Larecaja Indigenous Territories (TIOC). https://programs.wcs.org/identidadmadidi/MADIDI/CULTURAL-RELEVANCE.aspx
4. Juan Manuel Ijurko. "Revocan licencia ambiental a empresa minera que operaba en le ANMI San Matías". *El Deber*, 7 July 2022. Available at https://eldeber.com.bo/santa-cruz/revocan-licencia-ambiental-a-empresa-minera-que-operaba-en-el-anmi-san-matias_285321
5. See https://www.ohchr.org/en/special-procedures/sr-toxics-and-human-rights
6. See https://www.ohchr.org/en/documents/thematic-reports/a77183-impact-toxic-substances-human-rights-indigenous-peoples-report
7. United Nations Environment Programme. *Minamata Convention on Mercury. UNO, September 2019.* Available at https://www.unep.org/resources/report/minamata-convention-mercury
8. ORE. *Plan de Gestión y Control Autónomo de los Recursos Naturales y Biodiversidad del Territorio Indígena Multiétnico (TIM).* IWGIA, 2022. Available at https://iwgia.org/es/recursos/publicaciones/4952-plan-de-gestión-y-control-autónomo-de-los-recursos-naturales-y-biodiversidad-del-territorio-ind%C3%ADgena-multiétnico-tim.html
9. Plurinational Agro-environmental Order No. 11/2022. Bolivia, 9 February 2022. Available at https://arbol.tribunalagroambiental.bo/tujllaki/web/index.php?r=site%2Fvisorresoluciondoshtml&codresolucion=ANA-S1-0011-2022
10. Roberto Navia Gabriel. "El puente 'clandestino' de los menonitas lleva la deforestación a los Bañados de Isoso y amenaza al Kaa Iya". *Revista Nómadas,* 26 January 2022. Available at https://www.revistanomadas.com/el-puente-clandestino-de-los-menonitas-lleva-la-deforestacion-a-los-banados-de-isoso-y-amenaza-al-kaa-iya/
11. "Puente construido por menonitas tiene un aval con los comunarios". *Eju Tv*, 4 February 2022. Available at https://eju.tv/2022/02/puente-construido-por-menonitas-tiene-un-aval-con-los-comunarios/
12. It is the largest wetland in the country with 615,882 hectares and is partly within the Kaa-Iya National Park of the Gran Chaco, bordering the Isoso TIOC of the Guaraní people. The Bañados del Isoso collects the great system of surface and underground waters of the Parapetí river basin, which even penetrates the Paraguayan Chaco. It is registered under code 1087-BOL 04 dated 17 September 2001. See https://web.archive.org/web/20190605174730/http://www.redeschaco.org/index.php/sincategoria/253-el-rio-parapeti-y-los-banados-del-izozog
13. Document CCPR/C/BOL/CO/4, original in Spanish, 2 June 2022.

Leonardo Tamburini *is the Executive Director of ORÉ (Organization 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 Bolivia), and legal advisor to the Guaraní Autonomy of Charagua Iyambae.*

Brazil

ATLANTIC OCEAN
VENEZUELA
COLOMBIA
BRAZIL
PERU
BOLIVIA
Brasilia
PARAGUAY
PACIFIC OCEAN
URUGUAY
ARGENTINA

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 individuals distributed across 305 ethnic groups. They speak 274 languages and the proportion of Indigenous people aged over five years who speak an Indigenous language at home is 37.4%. In turn, the census revealed that 17.5% of Indigenous people do not speak Portuguese as opposed to 76.9% who do. The largest ethnic group is the Tikúna, accounting for 6.8% of the Indigenous population. Indigenous Peoples are present in all five regions of Brazil, with the northern region being home to the largest number (342,800), and the fewest living in the south with 78,800. Of the total number of Indigenous people in Brazil, 502,783 live in rural areas and 315,180 in towns and cities.[1]

2022 marked the end of Jair Bolsonaro's government and the pandemic control caused by COVID-19, both leaving a "scorched earth" scenario. Bolsonaro's government was marked by its denial of the pandemic and, as a result, the country suffered 697,762 deaths[2] and 36,953,492 infections; these included 44,743 cases of COVID-19 among 158 Indigenous Peoples and 1,590 deaths among 121 Indigenous Peoples.[3] Vaccine coverage among Indigenous Peoples did not even reach 50% due to the influence of the evangelical churches, which joined Bolsonaro in the belief that getting vaccinated would transform you into an alligator. This ended up putting the Indigenous Peoples at great risk.

From the start, Jair Bolsonaro's government made its purpose very clear through statements such as "no indigenous land will be demarcated in my government" or "not one more centimetre demarcated". Later, Bolsonaro stated: "The Indian is our brother, he wants to be reintegrated into society."[4] These messages, repeated ad nauseam, were coupled with a development project based on primary exports, backed by the rural and public security power groups, both pushing for the opening up of Indigenous territories and conservation units for the exploitation of

minerals, pasture, soybean and corn crops, as well as beef production for China, the largest buyer.[5]

Indigenous Peoples formed one of the major obstacles to this strategy. Over the last four years, there has thus been no further demarcation of Indigenous lands and, moreover, there has been a significant increase in the number of deaths of Indigenous and non-Indigenous activists. People have been transferred away from agencies that were protecting both the Indigenous issue and the environment.

Bolsonaro actually "opened the door" to unbridled exploitation of the Amazon rainforest, resulting in laws that were protecting it being repealed or broken. Under his watch there was an increase in fires, mineral exploitation, high rates of Indigenous child malnutrition, and river contamination.

It was against this backdrop that, in October 2022, Luis Ignacio da Silva was elected president of Brazil and another five Indigenous people were voted into the Chamber of Deputies: Celia Xacriabá (Partido Socialismo e Liberdade Minas Gerais, PSOL-MG), Juliana Cardoso (Partido dos Trabalhadores São Paulo, PT-SP), Paulo Guedes (PT-MG), Silvia Waiãpi (Partido Liberal Amapá, PL-AP), Sônia Guajajara (PSOL-SP).

On the one hand, we are witnessing the extreme devastation of Indigenous lands and their peoples. On the other, however, we have the October parliamentary elections in which an unprecedented number of Indigenous people were successful as a result of the Indigenous Peoples' united parliamentary bloc, the so-called *Bloque del Cocar.*

The Amazon and the Indigenous population

One of the first decrees passed by the Bolsonaro government was to transfer the Brazilian Forest Service from the Ministry of Environment to the Ministry of Agriculture. This was followed by the fragmentation of the Brazilian Institute for Environment and Renewable Natural Resources (IBAMA) and the Chico Mendes Institute for Biodiversity Conservation (ICMBio), replacing specialist technicians with people trusted by the government and linked to agribusiness, mining and logging interests in an attempt to relax laws and monitoring/protection services. Between January 2019 and March 2022, 98% of the deforestation alerts issued were not addressed by the federal government. In turn, in 2019,

conciliation centres were created to further reduce and relax environmental fines.[6]

The Brazilian Amazon comprises nine states: Amazonas, Acre, Roraima, Rondônia, Pará, Maranhão, Amapá, Tocantins and Mato Grosso, and these are where most of the country's Indigenous population live, accounting for approximately 440,000 Indigenous individuals represented by 180 Indigenous Peoples, in addition to several groups living in isolation. At the same time, these are the states with the highest production of soybean, cattle, mineral extraction, timber extraction and fish. This paradigm results in a constant asymmetric struggle between the local population and the interests of a large number of national and international businessmen supported by the Bolsonaro government.

The legal Amazon is considered one of the best preserved biomes in the world due to laws and regulations that have hindered environmental devastation and the invasion of Indigenous territories. However, over the last four years, the region has suffered deforestation at the hands of rural and development interests. To rid itself of the obstacles, the Bolsonaro government created new regulations and rolled back on all the rights that had previously been gained, resulting in a humanitarian and environmental disaster. The death of Brazilian indigenist Bruno Pereira and British journalist Dom Phillips in the Javari Valley[7] while fighting for environmental protection and Indigenous rights, as well as the constant denunciations of environmental disasters on Yanomami and Munduruku lands, are just two examples.

According to the National Institute for Space Research (INPE), illegal mining on Indigenous lands in the northern region of Brazil increased more than eightfold between 2016 and 2022. Illegal activities were detected on Yanomami Indigenous lands in Roraima and in six reserves in Pará: Sai-Cinza, Munduruku, Baú, Kayapó, Apyterewa and Trincheira/Bacajá.

It was against this backdrop that Bolsonaro ended his term in office, leaving behind a legacy of 45,586 km^2 of deforestation in the Amazon.[8] August saw the highest rate of deforestation in ten years, with 638 km^2 of forest destroyed. Compared to other states in the Amazon region, Pará suffered the highest deforestation rate, accounting for 40% of the total. The state is rich in minerals such as bauxite, iron, manganese, limestone, gold and tin, and has been the victim of a significant

increase in illegal mining, logging and encroachment onto Indigenous lands.

According to the Instituto Socioambiental,[9] deforestation caused by illegal mining and land invasions in 2022 mainly affected Indigenous lands with a confirmed presence of isolated Indigenous Peoples. Monitoring identified that 1,192 hectares had been deforested and 594 alerts issued in territories with isolated peoples throughout the Brazilian Amazon.

In a written statement presented to the 21st session of the United Nations Permanent Forum on Indigenous Issues (UNPFII 21), leader Milena Mura warned that the consequences were devastating for Indigenous Peoples: "Mining on Indigenous lands is genocide for us because it affects us directly, generating environmental and social impacts, affecting our traditions, culture and customs."

Bills and laws that threaten both Indigenous people and the environment

The bills listed below were not created exclusively under Bolsonaro's government but were submitted to parliament for a vote during his administration, in violation of the 1988 Constitution and international agreements to which Brazil is a signatory.

- In February 2022, Decree 10,966 created the category of "artisanal mining" to be "stimulated" in the Amazon region. The decree also created the Interministerial Commission for the Development of Artisanal and Small-scale Mining, which will not include any representation from Indigenous Peoples, traditional communities or the social movements. This decree legitimizes illegal mining in the Amazon and favours an important electoral support base for President Bolsonaro.
- Bill 191/2020, which authorizes mining and other extractive activities on Indigenous lands.
- Bill 490/2007 could also result in devastating losses for the native peoples of the region. It anticipates changes in the rules governing the Indian Statute for Indigenous land demarcations, opening up areas to water and energy exploitation.

- Bill 191/2020 seeks to authorize mining and other extractive activities on Indigenous lands. In addition, Draft Resolution No. 14/2022 is going through the Senate, aimed at creating a parliamentary bloc in support of mining in the Legal Amazon.
- Bills 191/2000, 2633/2020, 3729/2004 and 490/2007 formed a key part of the agenda of Jair Bolsonaro's presidential administration (2019-2022).

Indigenous movements

In response to this offensive, Indigenous movements have become the greatest expression of resistance and resilience. The Association of Indigenous Peoples of Brazil (APIB) has played a leading role in this struggle, leading protests and marches at crucial moments of voting on laws that represent a threat to Indigenous Peoples, such as Bill 490/2007, Temporary Framework; Bill 191/2020, Mining on Indigenous Lands; Bill 6299/2002, known as the Poison Package; Bill 2633/2020 and Bill 510/2021, *Grilhagem* of Public Lands;[10] Bill 3729/2004 (now PL 2159/2021, under analysis by the Senate) on Environmental Licensing; and Bill 2699, on the Statute of Disarmament and Carrying of Weapons.

In 2022, the *Campamento Tierra Libre*, a traditional movement of Indigenous Peoples claiming their rights, declared:

> *We are more than 8,000 leaders from 200 Indigenous Peoples, coming from all regions of Brazil to gather at the 18th Acampamento Terra Livre. We are responding to the call from our highest national representative body, APIB, and its regional organizations. We come to Brasilia with the multiple colours of our feathers to show the country and the world that, as we learned from our ancestors, we continue and will continue together, resisting the different extermination projects that the elites, owners or representatives of capital and their successive rulers and allies in the Legislative Branch have articulated against us throughout these 522 years.*[11]

It also set out an Indigenous platform for the reconstruction of Brazil based around four themes:

- Theme 1. Indigenous land rights - Demarcation and protection of Indigenous territories now!
- Theme 2. Recovery of spaces for Indigenous participation and social control.
- Theme 3. Reconstruction of indigenist policies and institutions.
- Theme 4. A halt to the anti-Indigenous agenda in the Federal Congress.

The same meeting launched the so-called *Bancada del Cocar:* "This bloc is intended to replace the rural landowners' bloc. To replace the bullet bloc. We want the National Congress to be representative of Brazil and, to be representative of Brazil, there must be more Indigenous women".[12] It was the first time that a majority of Indigenous Peoples had united around two agendas: against environmental degradation and against violations of Indigenous and human rights. This resulted in a record 183 Indigenous nominations.

Because of its explicit policy of genocide of the Brazilian Indigenous Peoples, whether through the denial of COVID-19 and the total lack of assistance to Indigenous Peoples or the constant violations of Indigenous and human rights, the Bolsonaro government faces a serious complaint at the Hague Tribunal for the genocide of Indigenous Peoples.

Notes and references

1. Government of Brazil. Available at: http://www.brasil.gov.br/governo/2015/04/populacao-indigena-no-brasil-e-de-896-9-mil
2. "Number of confirmed cases of COVID-19 in Brazil". Available at: https://covid19br.wcota.me
3. Fabio Pontes. "Vacinação no Vale do Javari está atrasada e indígenas denunciam que anciões estão morrendo por Covid-19". *Amazonia Real*, 23 February 2022. Available at: https://amazoniareal.com.br/vacinacao-no-vale-do-javari-esta-atrasada-e-indigenas-denunciam-que-ancioes-estao-morrendo-por-covid-19/
4. "Relembre 7 vezes em que Bolsonaro atacou direitos dos indígenas". Yahoo Noticias, 13 June 2022. Available at: https://br.noticias.yahoo.com/relembre-7-vezes-em-que-bolsonaro-atacou-direitos-dos-indigenas-162258426.html
5. Victor Hugo Biongiolo. "Produtos mais Exportados pelo Brasil e seus destinos em 2021". UNESC, 28 May 2022. Available at: https://www.unesc.net/portal/blog/ver/656/51031
6. Iza Lourença. "Inimigo da natureza: Um balanço do legado de destruição

ambiental de Bolsonaro". Sindicato dos Bancarios, 26 September 2022. Available at: https://santosbancarios.com.br/artigo/inimigo-da-natureza-um-balanco-do-legado-de-destruicao-ambiental-de-bolsonaro/

7. Cristiane Prizibisczki. "Amazônia em guerra: morte de Dom e Bruno escancara situação de abandono de Terras Indígenas do país". OECS, 15 June 2022. Available at: https://oeco.org.br/reportagens/amazonia-em-guerra-morte-de-dom-e-bruno-escancara-situacao-de-abandono-de-terras-indigenas-do-pais/
8. Greenpeace Brazil. "Legado de destruição: Amazônia perde 45.586 km² somente no governo de Jair Bolsonaro". Brazil: Greenpeace, 30 November 2022. Available at: https://www.greenpeace.org/brasil/imprensa/legado-de-destruicao-amazonia-perde-45-586-km²-somente-no-governo-de-jair-bolsonaro/
9. Giovanna Costanti. "Terras Indígenas com povos isolados estão entre as mais ameaçadas de 2022". Brazil: Instituto Socioambiental, 10 February 2023. Available at: https://www.socioambiental.org/noticias-socioambientais/terras-indigenas-com-povos-isolados-estao-entre-mais-ameacadas-de-2022
10. In Portuguese, the term *grilhagem* refers to the illegal appropriation of public or private land by means of false documents, such as land titles, with the objective of legalizing the occupation and exploitation of the land.
11. Edgar Kanaykõ. "ATL 2022: Povos Indígenas unidos, movimento e luta fortalecidos". Brazil: APIB, 14 April 2022. Available at: https://apiboficial.org/2022/04/14/atl-2022-povos-indigenas-unidos-movimento-e-luta-fortalecidos/
12. Scarlett Rocha. "Mulheres indígenas lançam Bancada do Cocar para derrotar o lobby da mineração e a bancada ruralista". Brazil: Observatório da Mineração, 9 April 2022. Available at: https://observatoriodamineracao.com.br/mulheres-indigenas-lancam-bancada-do-cocar-para-derrotar-o-lobby-da-mineracao-e-a-bancada-ruralista/

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 Indigenous Youth Action (AJI/GAPK).*

Chile

BOLIVIA
PACIFIC OCEAN
ARGENTINA
Santiago
CHILE
ATLANTIC OCEAN

Despite steadily increasing since the 1990s, the size of Chile's Indigenous population has shown no major changes since the 2017 census. A total of 2,185,792 people self-identify as Indigenous, equivalent to 12.8% of the country's total population (17,076,076). The Mapuche are the most numerous (almost 1,800,000 people), followed by the Aymara (156,000 people) and the Diaguita (88,000 people).[1] A sustained increase in the urban Indigenous population as compared to the rural population is notable, with 87.8% of the Indigenous population now living in urban areas compared to 12.2% in rural ones.[2]

Law 19,253 of 1993, or the "Indigenous Law", has not been amended despite its reform being urgently 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 and the 2016 American Declaration on the Rights of Indigenous Peoples.

Since the referendum of September 2022 in which the electorate rejected the proposed new Constitution, the political parties represented in the National Congress have been seeking to promote a new constitutional process through the so-called "Agreement for Chile".

Indigenous Peoples and biodiversity conservation

The close and profound relationship that Indigenous Peoples maintain with nature, together with the contributions they make to biodiversity conservation and the importance of their traditional ecological knowledge and associated rights, have been increasingly recognized and valued in the international context, and this was reinforced by the new Global Biodiversity Framework approved in the context of COP 15 in December 2022.[3]

However, while Chile is being increasingly recognized internationally for its actions and efforts to conserve biodiversity and address the climate crisis, there has been little progress in recognizing and support-

ing the contributions made by Indigenous Peoples. This can be seen, for example, in the absence of a public policy to this effect; in the lack of focal points, managers or a unit on Indigenous affairs within the Ministry of the Environment;[4] and in the scarce funding available to support their conservation initiatives.[5]

Conservation in Chile thus far continues to be synonymous with protected areas cut off from human intervention and administered by the State through the National Forestry Corporation (CONAF). Alongside this, private conservation initiatives have been emerging, several of which overlap with lands claimed by Indigenous Peoples,[6] and yet the State has failed to act to regulate these situations. Although there are a large number of conservation initiatives led by Indigenous Peoples and communities that are seeking to strengthen the self-determination and protection of their territories, these initiatives generally receive no publicity and have little technical or financial support to carry them forward.[7]

Nevertheless, some of the current government's initiatives might be able to provide solutions. For example, the creation of a Commission for Peace and Understanding was announced in November 2022. This will begin operating in March 2023 with the aim of mapping Mapuche land claims and establishing concrete mechanisms for their restitution.[8] Although this commission, like the government's general policy, addresses only lands and not territories as stipulated in international standards, it is hoped that this registry will include the lands and territories claimed in protected areas and that it will be possible to propose solutions that will allow for the protection and conservation of biodiversity at the same time.

In addition, the bill creating the Biodiversity Service and the National System of Protected Areas (SBAP Law),[9] which has been passing through Congress for more than eight years and is now reaching its final stage, offers an opportunity to address the relationship between Indigenous Peoples and conservation more broadly speaking, both the overlap with protected areas and recognition and support for Indigenous conservation initiatives, both terrestrial and marine. And yet the bill still has some way to go to meet international standards and the challenges presented by the new Global Biodiversity Framework and its 2030 targets.

Overlapping of protected areas with Indigenous territories

Chile currently has 106 State Protected Wildlife Areas (ASPE), covering 22% of its land area and 42% of its maritime waters. The phenomenon of overlap between ASPEs and Indigenous lands has been confirmed by the National Forestry Corporation (CONAF) itself, which in 2000 estimated that, of the 94 units of the National System of State Wildlife Protected Areas (SNASPE) at that time, covering a total of 14.5 million hectares, 18 were in some way related to Indigenous Peoples. A more recent study of the relationship between protected areas and Indigenous Peoples[10] shows that the phenomenon of overlap is present right across the country. This study identified a total of 25 SNASPE protected areas (out of a total of 101 units in 2017) that were overlapping with Indigenous communities, covering a total of 10.5 million hectares or some 70% of the SNASPE land area.

Even though this phenomenon is present throughout the country – both in land and marine areas – the State has no public policy to address the issue. In its absence, situations have been addressed in an isolated manner and in response to the demands of the peoples and communities involved, for example, Los Flamencos National Reserve[11] and Rapa Nui National Park.[12] In the case of the Mapuche people, there has been a particular upsurge in their initiatives and governance project. From the point of view of safeguarding and protecting the territories, this requires a greater commitment from the State with regard to decision-making in the ASPEs, promoting a more binding participation on the part of communities that make customary and biocultural use of the territory and generating spaces for dialogue and meeting in order to promote inclusive conservation projects, with effective participation of the communities in decision-making at both planning and territorial management levels. This is evident, for example, in the historic claims to Indigenous lands and territories in protected areas such as the Villarrica National Park, the Malleco Forest Reserve and the Puyehue National Park but, to date, no agreed solutions have been found. In the case of the Kawésqar and Yagán canoe peoples of Patagonia, overlaps can be found with various ASPEs throughout their territory.[13] Despite some efforts, they still do not have adequate governance or restitution arrangements in place.

In this context, claiming Indigenous lands and territories in ASPEs has been consolidated as a fundamental pillar of recognising the territorial rights of Indigenous Peoples in Chile. The pressure of the extractivist model, added to the context of the water and climate crisis within the territories, has led the communities to question the logic of Western conservation. This logic is limited to protecting biodiversity and spaces of high eco-systemic importance, devaluing the territories that lie outside these colonially-viewed boundaries and excluding Indigenous Peoples' from participating in the decision-making processes for spaces they have historically guarded and protected.

In some regions and territories, CONAF is now showing signs that it might be seeking mechanisms by which to ensure the good governance of those protected areas that overlap with Indigenous territories. This has been motivated by the fact that the Expert Assessment Group for the Green List (EAGL Chile) was established in Chile in June 2022 with the aim of applying the standard of the International Union for Conservation of Nature's (IUCN) Green List of Protected and Conserved Areas in the country.[14] This tool certifies not only the good management of protected areas but also their governance and includes indicators on Indigenous rights.

Women defending and protecting coastal areas

The Law on Marine Coastal Spaces of Native Peoples (ECMPO), also known as the Lafkenche Law, is a regulation promoted by the Mapuche-Lafkenche communities which seeks to recognize and protect their territorial rights to the coastline and the sea. Since its entry into force in 2008, it has become established as a mechanism by which to hand over the management of a delimited marine space to a community or association of communities that have exercised customary use of that space with the aim of preserving its uses, ensuring the conservation of the natural assets included therein and promoting the welfare of the communities.

Since then, this law has been increasingly used by various Indigenous Peoples to defend their territorial rights and protect coastal and marine areas, which are increasingly being threatened by exogenous development models, extractivism and pollution. There are currently

more than 100 ECMPO applications across seven regions of the country, covering an area of more than 30,000 km^2. Nevertheless, with long processing times that exceed the legal deadlines, only 13% of these applications have actually completed the process. Political and administrative obstacles appeared as soon as the scope and impact of this law on the reorganization and governance of Chile's marine and coastal areas became evident.

Indigenous women have played a fundamental role in this scenario, both in the drafting of the law and in the processes for requesting and processing these spaces. It is also likely that they are the ones who undertake most of the customary uses noted and they play a key role in the transmission of knowledge on the sea and the environment: as gatherers, educators, artisans, gardeners, caretakers and spiritual guides and, increasingly, also as leaders, fisherwomen, divers and boat owners. Many of them perform several of these activities alongside their tasks of childcare, family, home and community care. Even so, their contributions are scarcely recognized or visible, and their activities and roles are seldom remunerated.

Faced with these shortcomings and threats, some Indigenous women have expressed an intention to join together and reflect on and discuss possible actions, proposals and recommendations for strengthening the ECMPO and the defence of the sea from their perspective. For example, the Network of Native Women for the Defence of the Sea [*Red de Mujeres Originarias por la Defensa del Mar*] has been building alliances between women of different ages and territories who live in coastal areas and fight to defend the sea in order to generate an exchange of experience across their diverse knowledge and strengthen their proposals and advocacy with other actors and decision-makers linked to women's rights and the defence of the sea.[15]

The Kawésqar people are likewise seeking to protect the sea and their living territories, and they have initiated the "No more salmon farms" campaign to stop the expansion of these in the Kawéqar National Reserve.[16] Two of Nova Austral's nine cultivation centres were going to be located inside the Kawésqar National Reserve, which is incompatible with the reserve's protection objectives. Furthermore, their initial evaluations were defective, which meant that impacts on the marine environment, landscape and tourism could not be ruled out, in addition to which they also failed to consider the territory as ancestral and of rel-

evance to the Kawésqar people's way of life.[17] As a result, in December 2022, the Third Environmental Court of Valdivia annulled the Environmental Assessment Decisions (RCA) issued for the two salmon farming centres noted above. Leticia Caro, representative of the Nomads of the Sea Family Groups [*Grupos Familiares Nómades del Mar*], points out:

> *The ruling of the Environmental Court seeks to ascertain and demand that the processes are complied with in accordance with the law; the invalidation of these permits does nothing more than demonstrate that what we say is true, that our territory is not compatible and will not be compatible with the salmon farming industry and that our ancestors today see us from the memories of the territory.*[18]

Indigenous Peoples in the constitutional process

As noted in IWGIA's *The Indigenous World 2022,*[19] Indigenous Peoples played a leading role in the process of drafting a new constitution for Chile that began in 2019 following the social uprising. Their participation was based on the inclusion of 17 Indigenous reserved seats in the Constitutional Convention (CC): seven Mapuche, two Aymara, and one for each of the other peoples recognized in the law, out of a total of 155 elected Convention members.

The proposed constitutional text presented by the Convention last July, which included a consultation process, included nearly 50 provisions (out of a total of 380) referring to recognition of the collective and individual rights of these peoples, such as recognition of their pre-existence; their right to self-determination and autonomy or self-government; to their own institutions, authorities and justice systems; to participation; to consultation and Free, Prior and Informed Consent (FPIC); to cultural diversity and to their own culture, identity and world vision, heritage and Indigenous language; and to equality and non-discrimination; and referring to the plurinational and intercultural nature of the State.[20] All of these rights are consistent with international law and current trends in Latin American constitutionalism.

Such provisions triggered strong criticism from conservative sectors: their media campaign aimed at rejecting the constitutional text in

the September 2022 referendum focused on its indigenist nature and on "the fragmentation of the country" given the proposal to declare the State of Chile as plurinational and intercultural. Against this backdrop, the constitutional proposal coming from the Convention was rejected by 62% of voters in the referendum.

Although the media campaign with its false news, together with the economic situation of the country, and the situation of growing violence around the conflict in Araucanía – with State violence expressed through a prolonged state of emergency and reactive violence on the part of Mapuche organizations – goes some way to explain this rejection, a critical analysis of what happened is needed. In the case of Indigenous Peoples, the detailed inclusion of norms referring to their rights may not have been the right strategy to obtain popular approval. This took precedence over emphasizing the incorporation into the Constitution of the rights set out in current international treaties ratified by Chile: political, territorial and cultural rights, including autonomy and Indigenous justice as contained in ILO Convention 169.[21]

In December 2022, the political parties represented in the National Congress signed the so-called Agreement for Chile, which approves a continuation of the constitutional process. The Agreement establishes "constitutional bases", which include the nature of the Republic of Chile and the unitary and decentralized nature of the State, property rights and the rights of Indigenous Peoples understood as "(...) part of the Chilean nation, which is one and indivisible", among other things. In addition, a Constitutional Council is to be established, composed of 50 people elected by popular vote (with gender parity and supra-numerary Indigenous seats) who will be responsible for drafting the constitutional proposal; an Expert Commission of 24 experts elected by the National Congress will be in charge of producing a preliminary draft of the Constitution; and a Technical Committee on Admissibility, composed of 14 jurists elected by the Senate, will be able to declare the inadmissibility of norms challenged by one-fifth of the Constitutional Council.

This Agreement has serious limitations in both its form and substance from a human rights perspective. In terms of form, the right to direct participation in public affairs, as recognized by international treaties ratified by Chile, is limited. Basically, the peoples' right to self-determination as recognized in these treaties, a right to which the

Indigenous Peoples are entitled on the basis of the United Nations and American Declarations on the Rights of Indigenous Peoples, is being curtailed.

At the time of writing this section of *The Indigenous World 2023,* the reform bill approved by Congress requires 1.5% of the total votes obtained in the voting for councillors to elect one Indigenous seat on the Constitutional Council; 3.5% of the same total for the election of two seats; and, for additional seats, a further 2% to the 3.5% referred to above. The anticipated formula thus prevents any possibility of Indigenous participation proportional to their demographics. Nor does it allow for representation of all Indigenous Peoples on this constitutional body as was the case with the Constitutional Convention.[22] This has generated frustration and scepticism among Chile's Indigenous Peoples, who are considering their potential participation in this second stage of the constitutional process.

Mining and Indigenous Peoples of the north

In March 2022, following a sanction procedure, the Environmental Superintendency (SMA) fined the company Minera Escondida Limitada (operated by BHP Billiton) nearly USD 6 million for causing damage to the underground water resources that feed the delicate high Andean ecosystem of the Vegas de Tilopozo, in the Salar de Atacama (Antofagasta Region), an area utilized by the Lickanantay communities for traditional uses.

Following this, given the impacts identified on their lands, territories and common assets, the Atacameño Indigenous Community of Peine filed a lawsuit for environmental damage against the mining company through the Environmental Court of Antofagasta (Roll No. D-12-2022).[23] This court granted the community the status of main plaintiff, unprecedented in Chilean environmental law since legislation stipulates that the holder of such action should be the State.

Subsequently, the State Defence Council (CDE) also sued the same company but in addition extended the lawsuit to the copper mining company Compañía Minera Zaldívar (Antofagasta Minerals) and the lithium company Albemarle, given that they had participated in the ex-

traction of considerable amounts of water from wells near the damaged area. This lawsuit furthermore considered damages in other sectors adjacent to the Salar de Atacama. The Court opted to merge the cases as there were two main plaintiffs.

In this case, which is currently underway, the plaintiffs allege, among other things, damage to the vegas and azonal vegetation systems, unique integral ecosystems that include particular species such as the *heleobia atacamensis*.[24] This microorganism is an endemic species of high scientific value and requires special protection despite the decreed conservation status, as its category is critically endangered.[25]

As reported in *The Indigenous World 2022,*[26] before leaving office, then President Piñera awarded two tenders for the exploration and exploitation of lithium in the country's northern salt flats without identifying a specific sector. Several Indigenous communities then filed constitutional actions for protection in order to have these annulled, alleging a lack of prior Indigenous consultation and the violation of other rights contained in national legislation and in ILO Convention 169.

The Supreme Court upheld the appeals filed and annulled the bids previously granted on the grounds that the geographic location where the projects were to be developed had not been specified, and therefore the communities that might be affected could not be identified. In terms of consultation, the Court referred to the norms of ILO Convention 169, highlighting the need to initiate such a process prior to any prospecting or exploitation of subsoil resources, relocation or alienation of land.[27]

For its part, the government of Gabriel Boric has reiterated the need to create a national lithium company, and this has generated some discussion among the Indigenous Peoples and communities as they are not being taken into account in this regard. A similar situation occurred with the discussion of the National Mining Policy 2050, which took place in 2022,[28] and which envisages promoting mining in the short, medium and long-term as an engine for sustainable development in Chile, presenting copper and lithium as essential minerals for the energy transition and to combat climate change. However, the lack of a human rights or Indigenous Peoples' perspective in such an important State policy, as well as the lack of any effective mechanisms for participation in its production, is cause for concern. It is thought this measure may be reviewed and modified by the current administration.

Notes and references

1. National Institute of Statistics. *Summary of results. Census 2017*. 2018. Available at https://www.censo2017.cl/descargas/home/sintesis-de-resultados-censo2017.pdf
2. *Ibid. Cit.*
3. This has been reflected in the new Kunming-Montreal Global Biodiversity Framework. Available at https://www.cbd.int/conferences/2021-2022/cop-15/documents (Decision 15/4).
4. Although each government appoints a focal point for Article 8j (on traditional knowledge) of the Convention on Biological Diversity, they are not representatives of Indigenous Peoples and have not undertaken action in this area.
5. Although the Environmental Protection Fund (FPA) has a specific line of support, the amounts and lines of action to be financed are very limited. See https://www.fondos.gob.cl/ficha/mma/FPA2023-Proyecto-Sustentables-Pueblos-Indigenas
6. For example, the Tantauco Park, owned by former President Sebastián Piñera, which overlaps with Realengo titles claimed to this day by Indigenous communities.
7. Arce, L., Guerra, F. and Aylwin, J. eds. *Cuestionando los enfoques clásicos de la conservación en Chile: el aporte de los pueblos indígenas y las comunidades locales a la protección de la biodiversidad.* [Questioning classical approaches to conservation in Chile: the contribution of Indigenous Peoples and local communities to biodiversity protection]. Observatorio Ciudadano, Consorcio TICCA, Chile, 2016. Available at https://observatorio.cl/cuestionando-los-enfoques-clasicos-de-la-conservacion-en-chile-el-aporte-de-los-pueblos-indigenas-y-las-comunidades-locales-a-la-proteccion-de-la-biodiversidad/
8. See https://www.ex-ante.cl/lo-que-hay-que-saber-de-la-comision-por-la-paz-y-el-entendimiento-el-plan-de-boric-para-la-restitucion-de-tierras-mapuche/
9. In June 2014, the government of Michelle Bachelet sent a bill to the Senate creating the Biodiversity and Protected Areas Service (SBAP) and the National System of Protected Areas (SNAP) (Bulletin No. 9,404-12). The bill of law was submitted to Congress without any prior consultation process with the Indigenous Peoples. As a result of Indigenous challenges, the government decided to launch a consultation process on the project in early 2016.
10. Molina, R. "Control territorial indígena y gestión turística de Áreas Silvestres Protegidas: experiencia Atacameña y Rapa Nui, Chile" [Indigenous territorial control and tourism management of Protected Wildlife Areas: Atacameño and Rapa Nui experience, Chile] *Polígonos, Revista de Geografía* Np. 30; 281-303, 2018.
11. Created in 1990 on territory ancestrally owned by the Atacameño or Lickanantai people, which has led to the signing of partnership agreements for management of some of these units by the Indigenous communities.
12. Created in 1966 on Easter Island, in the ancestral territory of the Rapa Nui people and, after years of conflict, the Chilean State has handed over the administration of this park to the Rapa Nui through a 50-year free concession. See https://www.bcn.cl/leychile/Navegar?idNorma=1115907
13. Aylwin, J., Arce, L., et al. "Conservación y pueblos indígenas en la Patagonia chilena" ["Conservation and Indigenous Peoples in Chilean Patagonia"]. In Castilla, J. C., Armesto, J. J., and Martínez-Harms, M. J. (Eds.). *Conservación en*

la Patagonia chilena: evaluación del conocimiento, oportunidades y desafíos. [Conservation in Chilean Patagonia: knowledge assessment, opportunities and challenges]. Santiago, Chile: Ediciones Universidad Católica, 2021.

14. See https://www.iucn.org/es/noticias/202207/la-conformacion-oficial-del-grupo-eagl-de-chile-esta-en-proceso

15. Lorena Arce, Karina Vargas and Yohana Coñuecos. *Encuentro y articulación de mujeres por la defensa del mar en el sur de Chile* [Meeting and coordination of women for the defence of the sea in southern Chile]. ICCA Consortium, 14 June 2022. https://www.iccaconsortium.org/index.php/es/2022/06/14/encuentro-y-articulacion-de-mujeres-por-la-defensa-del-mar-en-el-sur-de-chile/

16. See https://www.nomassalmoneras.cl

17. *Salmonicultura en la Reserva Nacional Kawésqar: Tribunal Ambiental anuló la RCA de dos centros de cultivo de salmones.* [Salmon farming in the Kawésqar National Reserve: Environmental Court annuls RCAs of two salmon farming centres]. Fima, 28 December 2022. Available at https://www.fima.cl/2022/12/28/salmonicultura-en-la-reserva-nacional-kawesqar-tribunal-ambiental-anulo-la-rca-de-dos-centros-de-cultivo-de-salmones/

18. Ibid. Cit.

19. *The Indigenous World 2022.* Copenhagen: IWGIA, 2022. Available at https://www.iwgia.org/doclink/iwgia-book-the-indigenous-world-2022-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTIwMjItZW5nIiwiaWF0IjoxNjUxMTM5NTg1LCJleHAiOjE2NTEyMjU5ODV9.jRnv3PeantfRZtJg4jph8xdshK5Mh25Z3hlcPs9As_U

20. See *Convención Constitucional. Propuesta Constitución Política de la República de Chile 2022* [Constitutional Convention. Proposed Political Constitution of the Republic of Chile 2022]. Available at https://www.chileconvencion.cl/normas-aprobadas-pleno/

21. See https://observatorio.cl/reflexiones-ciudadanas-en-torno-a-la-derrota-del-apruebo/

22. See https://constituyente.uchile.cl/clavesconstituyentes/academicos-u-de-chile-advierten-escasa-incidencia-de-pueblos-originarios-en-el-proceso-constitucional/

23. See https://causas.1ta.cl/causes/259/expedient/7533/books/206/?attachmentId=13093.

24. See https://clasificacionespecies.mma.gob.cl/wp-content/uploads/2019/10/Heleobia_atacamensis_10RCE_03_PAC.pdf.

25. Regarding *heleobia atacamensis*, see: http://especies.mma.gob.cl/CNMWeb/Web/WebCiudadana/ficha_indepen.aspx?EspecieId=5418&Version=1. Other species that inhabit the Salar de Atacama are in a similar situation, affected by the metal and non-metal mining industry, according to the Ministry of the Environment in the National Inventory of Species (https://clasificacionespecies.mma.gob.cl/).

26. *The Indigenous World 2022.* Copenhagen: IWGIA, 2022. Available at https://www.iwgia.org/doclink/iwgia-book-the-indigenous-world-2022-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTIwMjItZW5nIiwiaWF0IjoxNjUxMTM5NTg1LCJleHAiOjE2NTEyMjU5ODV9.jRnv3PeantfRZtJg4jph8xdshK5Mh25Z3hlcPs9As_U

27. See https://www.pjud.cl/prensa-y-comunicaciones/noticias-del-poder-judicial/74522.

28. See https://www.mch.cl/2022/03/10/biministro-jobet-anuncia-que-chile-cuenta-por-primera-vez-con-una-politica-de-estado-para-una-mineria-sustentable/.

Lorena Arce, José Aylwin, Marcel Didier, Simón Crisóstomo *and* ***Karina Vargas*** *are members of the Observatorio Ciudadano (www.observatorio.cl).*

Colombia

ATLANTIC OCEAN
PANAMA
VENEZUELA
PACIFIC OCEAN
Bogotá
COLOMBIA
ECUADOR
PERU
BRASIL

Colombia is noted for its geographic, biological and cultural diversity. Vast coastal and Andean regions, tropical rainforests along the Pacific Coast and in the north-west Amazon, the Orinoco plains, extensive desert areas and islands are all home to 115 Indigenous Peoples and Afro-descendant communities. These communities are all recognized as collective rights-holders by the Constitution and the law.

According to the 2018 national census, ethnic populations accounted for 13.6% of the country's population (48,258,494 people), being a total of 1,905,617 individuals who self-identify as different Indigenous Peoples, plus 4,671,160 Afro-descendants, Raizal, Palenquero and Rrom. Some 58.3% of the Indigenous population live in 827 legally-constituted collectively-owned reserves covering an area of 29,917,516 hectares,[1] while the remaining 41.7% of the population has, over the past few decades, migrated to urban areas. For their part, 7.3% of people who consider themselves Afro-descendants form part of rural community structures and live in 178 collectively-owned territories, organized around Community Councils.

With the exception of the Amazon region, lands legalized as ethnic collective property are becoming increasingly scarce, and the administrative and judicial processes of recognition, extension, regulation and restitution have been at a virtual halt for more than a decade due to previous governments.

Conquering change for life

After a 2021 marked by the longest and most massive social protests in the country's history, 2022 was characterized by the dynamic nature of an electoral process that was to culminate in a change in the national government and in the Congress of the Republic. Although not without some shocks due to violence, electoral fraud and even attempted coups on the part of extreme right-wing sectors, Colombia’s popular majorities managed to elect a president and a vice-president who do not come from the traditional ruling elites or

their political parties. The triumph of Gustavo Petro, a former M-19 guerrilla fighter, and Francia Márquez, an environmental and feminist leader from the Afro-descendant movement, marks a milestone in the history of Colombia's precarious democracy.

In this electoral process, most of the ethnic peoples, communities and organizations from the different regions, who were also major protagonists in the social uprising of 2021, became actively involved in Petro's campaign and turned out *en masse* to vote for the Historic Pact, a coalition formed with the aim of bringing Petro to power. This active ethnic participation in the elections was a result of agreements reached by which a popular government represented by Petro and Francia would work towards removing the discrimination and structural violence suffered by Indigenous Peoples; effectively guaranteeing the collective rights enshrined in the 1991 Constitution and international treaties; protecting the territories and resources of the peoples; resolving serious situations of violence, poverty, food insecurity, humanitarian and environmental crisis, and loss of autonomy; and, above all, towards making peace a reality in the territories. The commitments made to the ethnic peoples and communities were summed up in Petro and Francia's government programme under these general principles:

> *Peasant, Indigenous, Afro-descendant, black, Raizal, Palenquero and Rrom men and women, organized in villages, reservations and collective territories in rural and urban communities in their diversities, their cosmovisions, their laws of origin, territories, authorities, economic models, ancestral knowledge, their own educational projects, languages, in short, their interculturality, with their peasant, Indigenous and Cimarrona guards, will govern from their territories and will contribute by guiding and defining the future of the nation and the planet as ancestral wise men and women, as the foundation of the productive economy and food sovereignty and as guardians of life, territory and peace.*[2]

Once in office, towards the end of 2022, the new government attended meetings and gatherings with the communities and their organizations, one of them being the "Weaving Unity" Indigenous Peoples' Summit at

which previous commitments were ratified and some criteria were established so that dialogue could take place on the basis of equals: government to government.

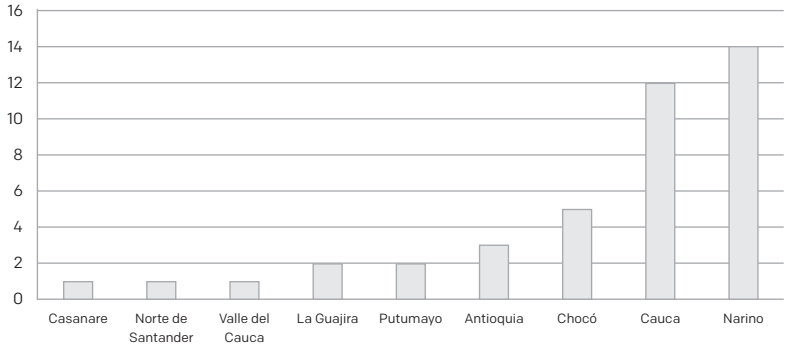
> *Within the framework of this Summit, we reaffirm that we are native peoples, prior to the formation of nation states, with our own governments, supported by Indigenous guards and other forms of spiritual and cultural protection for our territory, and we will participate in this era of transition and Change for Life under a government-to-government relationship, with structural proposals that allow for the affirmation of our rights and the transformation of the country.*[3]

Against this backdrop of mutual recognition and shared interests, a period of transition aimed at a change for life was welcomed. In addition, with the prompt appointment of Indigenous and Afro-descendant individuals to high government positions,[4] a first step was taken to prevent any attempt to roll-back on origin, ethnicity and social class in a clear message of inclusion, vindication of capacities, and recognition of the historic debt to the country's original populations.

No respite from the humanitarian crisis

Despite the arrival of a new government committed to building a "Total Peace" that includes real implementation of the Final Peace Agreement with the FARC guerrilla, the resumption of dialogue with the National Liberation Army (ELN), and even the opening of negotiations in order to bring groups linked to paramilitarism, drug trafficking and organized crime to justice, acts of violence were still continuing in some of the country's ethnic territories at the end of 2022. According to data collected by the National Indigenous Organization of Colombia (ONIC),[5] Indepaz and other analysts, the Indigenous Peoples most affected by murders of their leaders in 2022 were the Awá, Nasa and Embera in the departments of Nariño, Cauca, Chocó and Antioquia. The death toll totalled 42, and this does not take into account the hundreds of Indigenous people displaced, contained or threatened, minors recruited, women and girls raped and the victims of other crimes in these and other regions.

Indigenous leaders assassinated in Colombia in 2022



Source: Prepared by the authors based on Indepaz data (2022)

As has been documented for years, the violations suffered by Colombia's ethnic peoples and communities can be explained by multiple factors and power logics rooted in colonialism, which have been reproduced and taken root in all spheres of hegemonic society. The forces currently causing the greatest tension and direct violence on ethnic territories are organized crime groups, closely linked to drug trafficking mafias and corrupt political sectors related to local, regional and national power sectors. These groups, often associated with members of the security forces, are not only involved in drug and arms trafficking but in extortion, human trafficking and other high-impact crimes, working out of the constantly disputed ethnic territories.

Extractivist interest in the strategic natural resources located on Indigenous and Afro-descendant lands also continues to be intertwined with the conflict and its actors. This situation has resulted not only in environmental damage but also in displacement, containment, militarization and a general undermining of territorial governance and autonomy.

Resistance is not endurance: the Final Report of the Truth Commission

In mid-2022, the delivery and dissemination of the Final Report of the Truth Commission – a body created in the context of the Peace Agree-

ment signed between the Colombian State and the FARC guerrillas in 2016 – generated huge shock waves. This shock was felt not only by the victims, organizations, communities and civil society sectors that had corroborated the horrors of the war and by some of its perpetrators but also by a number of public and private sectors, politicians, media outlets and individuals who expressed their outright rejection of the report, either because it revealed their direct or indirect links with actors in the conflict, or because the truth threatened their power base, which is dependent upon the existence of a State intertwined with mafias and corruption, or because they were profiting or benefiting from the reign of war.

The special section of the report devoted to ethnic peoples is entitled *Resistance is not endurance. Violence and damage against ethnic peoples in Colombia*.[6] In this volume, the Truth Commission steps back and analyses the violence suffered by these peoples in the present while not losing sight of the threads that explain it from the past:

> *[The report] gathers the memories of historical violence – the invasion, the slave trade and colonialization – as well as the memories of violence against territory and nature, that have jeopardized the collective future project of the Indigenous, black, Afro-Colombian, Raizal, Palenquero and Rrom peoples. Through the multiple testimonies, reports, experiences and reflections received, the Commission was able to build a broad story, narrated from the pain that has marked bodies and territories, and also to account for the terror that shook the collective being of these peoples and the links that have allowed each community to forge a vision of the universe and of life.*[7]

In its reconstruction of the individual and collective violations to which these peoples have been victim, the report not only presents figures on the disproportionate damage caused to ethnic peoples and communities but also documents some cases with new testimonies that demonstrate the ongoing institutionalized racism and classism that lie at the root of "(...) multiple forms of violence and exclusion that survive today. These exclusions have dehumanized ethnic peoples, normalized the atrocious practices of the armed conflict and aggravated its impacts".[8]

In its final recommendations,[9] the report emphasizes: "(...) ethnic peoples, women from popular sectors and children and youth in rural or marginalized urban areas" have been most affected by the armed conflict. In turn, it proposes a series of actions and approaches (ethnic, territorial, gender) that could make a transition to peace possible, settling the historic debt with ethnic peoples and communities, guaranteeing their constitutional rights and their rights to truth, justice, reparation and non-repetition as victims of the armed conflict and of the structural violence they continue to suffer.

Notes and references

1. National Land Agency. 2022. Open Data Portal. Available at https://data-agenciadetierras.opendata.arcgis.com/datasets/agenciadetierras::resguardos-ind%C3%ADgenas-1/explore?location=4.101836%2C-72.792174%2C5.78&showTable=true
2. Historic Pact. *Colombia: potencia mundial de la vida. Programa de Gobierno* [Colombia: world power of life. Government Programme]. Historic Pact, 2022, p. 33. Available at https://gustavopetro.co/descarga-programa-de-gobierno/
3. CRIC. *Declaratoria Cumbre de Pueblos Originarios, Tejiendo la Unidad* [Declaration of Indigenous Peoples' Summit, Weaving Unity]. Silvia, Cauca: CRIC, 2022. Available at https://www.cric-colombia.org/portal/declaratoria-cumbre-de-pueblos-originarios-tejiendo-la-unidad/
4. "Petro nombra a tres líderes indígenas en cargos de gobierno, ¿por qué?" [Petro appoints three Indigenous leaders to government positions, why?] *El Tiempo,* 20 July 2022. Available at https://www.eltiempo.com/politica/gobierno/gustavo-petro-por-que-se-la-jugo-con-tres-indigenas-para-los-nuevos-cargos-688409
5. National Indigenous Organization of Colombia (ONIC). *Informe final 2022 sobre afectaciones a los derechos humanos en los pueblos indígenas de Colombia y situación de los pueblos indígenas en frontera Colombia-Venezuela* [Final report 2022 on human rights impacts on Indigenous Peoples in Colombia and the situation of Indigenous Peoples on the Colombia-Venezuela border]. Colombia: ONIC, 2022. Available at https://onic.org.co/images/CO-INFO-20230102-informe_final_afectaciones_DDHH_pueblos_indigenas_ONIC.pdf
6. Commission for the Clarification of Truth, Coexistence and Non-Repetition. *Hay futuro si hay verdad. Informe Final, Tomo 9. Resistir no es aguantar: violencias y daños contra los pueblos étnicos de Colombia* [There is a future if there is truth. Final Report, Volume 9. Resistance is not endurance. Violence and damage against ethnic peoples in Colombia]. Colombia: Commission for the Clarification of Truth, Coexistence and Non-Repetition, 2022. Available at https://babel.banrepcultural.org/digital/collection/comision-col/id/11
7. Op. Cit., 2022.
8. Op. Cit., 2022.
9. Commission for the Clarification of Truth, Coexistence and Non-Repetition. *Hay futuro si hay verdad. Informe final. Hallazgos y recomendaciones de la*

Comisión de la Verdad de Colombia [There is a future if there is truth. Final Report. Findings and recommendations of the Colombian Truth Commission]. Colombia: Commission for the Clarification of Truth, Coexistence and Non-Repetition, 2022. Available at https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones

Diana Alexandra Mendoza *is a Colombian anthropologist with a Master's in Human Rights, Democracy and the Rule of Law, and a specialist in Cultural Management. She works with Indepaz and IWGIA as an independent researcher. She has extensive experience in individual and collective rights, environment and culture.*

Costa Rica

NICARAGUA
CARIBBEAN SEA
San José
COSTA RICA
PACIFIC OCEAN
PANAMA

Eight Indigenous Peoples live in Costa Rica: the Huetar, Maleku, Bribri, Cabécar, Brunka, Ngäbe, Bröran, and Chorotega, accounting for 2.4% of the population. According to the 2010 National Census, a little over 100,000 people identify as Indigenous.

Although almost 7% of the national territory (3,344 km^2) is notionally covered by 24 Indigenous territories, this is simply the area stated in the decrees establishing them as a large proportion have been invaded by non-Indigenous occupants. A total of 52.3% of the Bribri area has been invaded in Kekoldi, 53.1% of the Brunca territory in Boruca, 56.4% of the Teribe people's territory in Térraba, 58.7% of the Maleku people's land in Guatuso and 88.4% in Zapatón, Huetar territory.[1]

In a country where nearly 20% of the population lives below the poverty line this percentage reaches alarming levels among the 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%.[2]

Costa Rica ratified ILO Convention 169 in 1993 and added recognition of its multicultural nature to the Political Constitution of the Republic. Even so, the 2022 report of the Special Rapporteur on the rights of Indigenous Peoples indicates that: "Although article 1 of the Constitution, amended in 2015, stipulates that Costa Rica is a multi-ethnic and multicultural State, it does not recognize the existence of the Indigenous Peoples."[3]

Indigenous Law 6172 of 1977 recognized the traditional Indigenous organizations and established the legal status of Indigenous Peoples, the mechanisms to prevent appropriation of their land by non-Indigenous persons, and the procedures and funds for expropriation and compensation. This law has, however, never been implemented. On the contrary, the State has tolerated the invasion and dispossession of Indigenous lands by local landowners and politicians. Indigenous organizations have been demanding land titling for decades. The slow pace of the studies and the lack of political will to carry out the titling

and evict squatters led to the emergence of a land recovery movement that has been evicting squatters since 2011.

A subsequent regulation imposed a form completely alien to their traditional power structures on the Indigenous Peoples, the "Indigenous Integral Development Association" or ADII, under the supervision of the National Directorate for Community Development, an entity that has the capacity to understand neither Indigenous rights nor an intercultural approach. For the Special Rapporteur, since they are: "imposed State institutions that report to the executive branch, [they] are not suited to guaranteeing representation for indigenous peoples, which have their own system of government".[4]

Among the Indigenous organizations 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.

Twenty-eight years waiting for the Law on Autonomous Development of Indigenous Peoples

The draft Law on the Autonomous Development of Indigenous Peoples was published in the Official Gazette in 1994.[5] The year 2022 therefore marked 28 years during which Parliament has refused to discuss it and the executive branch has failed to give it priority. There is still strong racist reticence and fierce opposition from the private sector and conservative political parties who believe it to be a risk to extractive investments.

Constitutional Chamber of the Supreme Court ratifies rights of Indigenous Peoples and rules non-Indigenous occupants illegal[6]

Two rulings (29 June and 9 October) of the Constitutional Chamber in 2022 rejected unconstitutionality actions brought against the Indigenous Law[7] and its Article 3 in 2022:

> *Indigenous reserves are inalienable and imprescriptible, non-transferable and exclusive to the Indigenous communities that inhabit them. Non-Indigenous persons may not rent, lease, purchase or in any other way acquire land or plots within these reserves. Indigenous people may only negotiate their lands with other Indigenous people. Any transfer or negotiation of land or land improvements on Indigenous reservations between Indigenous people and non-Indigenous shall be absolutely null and void, with all the consequences of the case (Article 3).*

The Constitutional Chamber indicated that persons who acquired land within Indigenous territories after the Indigenous Law (1977) came into force had acted in bad faith and the acquisition was therefore null and void. With this second ruling:

> *(...) it is reaffirmed that the action of the peoples who are exercising justice by their own hand, recovering their land in Saka Duwë Senaglo, Seglö Kaskä ä, Kono Jú, San Andrés, Crun Shurin, Yuwi Senaglo and Kelpego is correct. Although the ruling is not the end of this process, it is a concrete sign that the land and the rights of the native peoples, denied for centuries, can be recovered.*[8]

Report of the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, on his visit to Costa Rica in December 2021[9]

The Special Rapporteur presented an insightful report[10] on the situation of the country's Indigenous Peoples in which he examined the human

rights violations that limit their access to justice, security and a dignified life. His main concerns are given in the summary:

> *It is imperative that the Government give priority to addressing structural problems, in particular by guaranteeing the indigenous peoples' rights to their lands, territories and natural resources, to respect for their own authorities, to proper operationalization of consultations and to realization of their economic, social and cultural rights. The Special Rapporteur is concerned about the structural racism that pervades the judiciary, especially at the local level, the lack of effective measures to protect human rights defenders and the impunity for crimes committed against land defenders.*

The report describes the context of vulnerability in which many Indigenous communities survive: "There is evidence of government initiatives and erratic actions on the part of the Costa Rican state in implementing them."[11] For example, "Although the Special Rapporteur emphasizes the importance of the inclusion, for the first time, of the ethnic self-identification rubric in the 2011 census, he finds it regrettable that the disaggregated statistical data on indigenous peoples required to set social and economic policies relevant for meeting those peoples' specific needs are lacking."[12]

The Rapporteur stated his concern at allegations of serious violations of the rights of Indigenous Peoples on their territories.[13] He deplored the fact that "much indigenous territory remains in the hands of non-Indigenous persons" and that this has contributed to the loss of "their identity, knowledge, language and food sovereignty".[14] He stressed the State's ineffectiveness, which has carried out no "effective regularization" of the lands and that[15] "to date no restitution [of lands] has taken place" through the National Plan for the Recovery of Indigenous Lands (2016-2026).[16]

In terms of conservation and protected areas, despite the approval of a consultation mechanism in 2018, there is still a lack of "Indigenous peoples' [...] participation in the drawing up of management plans that affect their collective rights".[17] Barriers persist for Indigenous people to access traditional ancestral fishing and hunting sites located within

protected areas that are superimposed on the Maleku, Bribri, Cabécar and Boruca territories, and access to sacred sites is prohibited.[18] The Rapporteur was also concerned about the climate of violence and intimidation towards people who defend their rights.[19] He denounced the ongoing impunity for murders of territorial defenders, Sergio Rojas and Jehry Rivera, and the fact that "the State has not connected the murder of the two leaders with the conflict over the restitution of indigenous lands and that none of the culprits have been sentenced". [20] In this regard, the Costa Rican state's decision not to ratify the Escazú Agreement[21] sent a message that impunity is not close to being a thing of the past any time soon in the country.[22]

December visit of the Assistant Secretary-General for Human Rights[23]

The United Nations Assistant Secretary-General for Human Rights, Ilze Brands Kehris, expressed her concern for the ancestral territories of Indigenous Peoples that are illegally occupied by non-Indigenous persons and urged the Costa Rican government to "accelerate efforts towards full land restitution, in accordance with the recent decision of the Constitutional Court".[24]

Transformation and degradation of ecosystems

For the Indigenous Peoples of Costa Rica, dispossession of their territory has meant that large population groups have been forced onto the least fertile lands, lands over which they have never had legal security. It has also meant that those who appropriated the Indigenous lands have deforested them and turned them over to cattle ranching and industrial crops, such as banana and pineapple. Half of the territories are in the hands of landowners who have transformed complex forest ecosystems into pastureland. The main cause of ecosystem degradation is livestock farming, which covers some 20% of the country's surface area.[25] The Indigenous Peoples have had to adapt their traditional livelihoods and their relationships with the environment, subsequently

losing the balance for which they are well known. The long-term consequences of this are poverty, social exclusion and increased vulnerability to climate change. In Costa Rica, 5,844 km^2 of land and sea are protected and well conserved by Indigenous Peoples. Within the Indigenous territories there are 1,728 km^2 of forests in protected areas, including refuges, national parks and three UNESCO World Heritage sites.[26]

Action-research on community agency and social mapping in the Maleku territory, carried out in collaboration with elders and leaders, has revealed that only "29% of the territory is in Maleku possession". It has also highlighted the serious nature of the socio-environmental impact of land grabbing. The sacred site of *Tójifa facára*, a cosmological reference in Maleku ancestral territoriality, comprises the headwaters and waterfall of the Sol River. "The socio-spatial analysis shows four properties registered by non-Indigenous people and illegally occupying (...) the lands where the springs and the respective areas for protecting the source of the Maleku community aqueduct are located; two properties are even occupied by private companies." This space, highly sensitive and strategic for the source's water recharge and for Maleku culture, is largely covered by pastureland for the settlers' cattle ranching activities. This results in environmental degradation and contamination of this sacred Maleku site. [27]

Future prospects

2022 was an important year for the recognition of territorial rights and the Indigenous land recovery movement has applauded the rulings of the Constitutional Chamber, as well as the Rapporteur's report. And yet the absence of dialogue between Rodrigo Chaves' government and the Indigenous movement since the inauguration of the new government in May is worrying. It is striking that the president has publicly questioned ethnic self-identification and Indigenous rights to self-determination, alleging that landowners and hotel companies located in Indigenous territories may have vested rights and insinuating that Indigenous land recovery campaigns instigate violence.[28] The presidential directive creating a Technical Committee for the attention of the Indigenous population,[29] issued on International Day of the World's Indigenous Peoples,

has been described by the movement as a smokescreen to hide the ineffectiveness of the agrarian institutions. At the first meeting of the Technical Committee in Buenos Aires, the person allegedly responsible for the death of Jehry Rivas appeared, publicly confessed his responsibility and was applauded by the group of participants.[30]

In the meantime, structural issues remain unresolved and land grabbers continue to act with impunity without the State taking any steps to resolve this problem. The trial of Jehry Rivera's alleged killer begins on 23 January 2023.

Tribute to Carlos Camacho Nassar

Anthropologist and geographer Carlos Camacho Nassar passed away suddenly on 13 June 2022.

Carlos was a close friend of IWGIA, with a deep knowledge of human rights and Indigenous land rights. He supported Indigenous governance processes across almost all of Latin America and published some highly important texts on Indigenous Peoples' right to self-determination and territorial governance. He was for many years also in charge of producing the Costa Rican section of The Indigenous World. IWGIA would like to pay tribute to our colleague and friend, Carlos, for all that he has left us.

Notes and references

1. Calí Tzay, Francisco. *Report of the United Nations Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, on his visit to Costa Rica in December 2021.* Presented at the United Nations General Assembly on 28 September 2022 (p.3). Available at: https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F28%2FAdd.1&Language=E&DeviceType=Desktop&LangRequested=False
2. Calí Tzay, Francisco. *End of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Francisco Calí Tzay at the conclusion of his visit to Costa Rica. Office of the United Nations High Commissioner for Human Rights, 17 December 2021.* Available at: https://www.ohchr.org/en/statements/2021/12/end-mission-statement-united-nations-special-rapporteur-rights-indigenous
3. Calí Tzay, Francisco. 2022. Op. cit., p.3.
4. Ibidem, p.5.
5. Legislative Assembly of the Republic of Costa Rica. *Law on the Autonomous*

Development of Indigenous Peoples (File No. 14,352). 2010. Available at: http://proyectos.conare.ac.cr/asamblea/14352%203M137.pdf

6. Duran Castro, Osvaldo. "Un fallo que honra la vida de Sergio Rojas Ortiz". *Semanario Universidad*, 24 October 2022. Available at: https://semanariouniversidad.com/opinion/un-fallo-que-honra-la-vida-de-sergio-rojas-ortiz/ Pomareda García, Fabiola. "Sala IV ratifica nulidad de compra de tierras por personas ajenas a la comunidad si se hizo después de la ley de 1977". *Semanario Universidad*, 20 October 2022. Available at: https://semanariouniversidad.com/pais/sala-iv-ratifica-que-compra-de-tierras-indigenas-por-parte-de-no-indigenas-es-nula-si-se-hizo-despues-de-promulgada-la-ley-indigena/#:~:text=Pa%C3%ADs%20Justice-,Sala%20IV%20ratifica%20nulidad%20de%20compraraza%20de%20de%20de%20tierras%20in
7. Indigenous Law No. 6172. 1977. http://www.asamblea.go.cr/sd/SiteAssets/Lists/Consultas%20Biblioteca/EditForm/Ley%20Ind%C3%ADgena%206172.pdf
8. Duran Castro, Osvaldo. Op. cit.
9. United Nations Human Rights Office of the High Commissioner. Acting High Commissioner: Addressing the Legacies of Colonialism Can Contribute to Overcoming Inequalities Within and Among States and Sustainable Development Challenges in Twenty-First Century. Press release issued on 28 September 2022. Available at: https://www.ohchr.org/en/press-releases/2022/09/acting-high-commissioner-addressing-legacies-colonialism-can-contribute
10. Calí Tzay, Francisco. 2022. Op. Cit.
11. Boeglin, Nicolas. Derechos de los pueblos indígenas: informe del Relator Especial de Naciones Unidas exhibe graves y persistentes lagunas en Costa Rica. 1 October 2022. Available at: https://www.diarioconstitucional.cl/2022/10/01/derecho-de-los-pueblos-indigenas-informe-del-relator-especial-de-naciones-unidas-exhibe-graves-y-persistentes-lagunas-en-costa-rica-por-nicolas-boeglin/ Boeglin, Nicolas. "Los derechos de los pueblos indígenas en Costa Rica a la luz del reciente informe del Relator Especial de Naciones Unidas". *Rule of Law Agenda*. 20 December 2022. Available at: https://agendaestadodederecho.com/los-derechos-de-los-pueblos-indigenas-en-costa-rica-a-la-luz-del-reciente-informe-del-relator-especial-de-naciones-unidas/
12. Calí Tzay, Francisco. 2022. Op. cit., p.3. cited by Boeglin, Nicolas (2022).
13. See Camacho Nassar, Carlos. "Costa Rica". In D. Mamo (Ed.), *The Indigenous World 2020* (pp. 387-395). Copenhagen. IWGIA, International Work Group for Indigenous Affairs, 2020. Available at: https://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf. See also Camacho Nassar, Carlos. "Costa Rica". In D. Mamo (Ed.), *The Indigenous World 2021* (pp. 370-378). Copenhagen. IWGIA, International Work Group for Indigenous Affairs, 2021. Available at: https://iwgia.org/doclink/iwgia-book-the-indigenous-world-2021-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3VzLXdvcmxkLTIwMjEtZW5nIiwiaWF0IjoxNjI4ODM5NjM2LCJleHAiOjE2Mjg5MjYwMzZ9.z1CuM7PcT5CPkV0evx8ve88y6v0vmwDu_51JQ_lwAkM & Camacho Nassar, Carlos and Durocher, Bettina. "Costa Rica". In D. Mamo (Ed.), The Indigenous World 2022 (pp. 382-390). Copenhagen. IWGIA, International Work Group for Indigenous Affairs. Available at: https://www.iwgia.org/doclink/iwgia-book-the-indigenous-world-2022-eng/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1ib29rLXRoZS1pbmRpZ2Vub3

VzLXdvcmxkLTIwMjItZW5nIiwiaWF0IjoxNjUxMTM5NTg1LCJleHAiOjE2NTEy
MjU5ODV9.jRnv3PeantfRZtJg4jph8xdshK5Mh25Z3hlcPs9As_U

14. Calí Tzay, Francisco. 2022. Op. cit., p.7.

15. National Plan for the Recovery of Indigenous Lands 2016-2026.

16. Calí Tzay, Francisco. 2022. Op. cit., p.7 and Martínez, Alonso. "Autoridades no tienen claridad de cuando finalizara el plan de recuperación de territorios indígenas". *Delfino*. 20 April 2022. Available at: https://delfino.cr/2022/04/autoridades-no-tienen-claridad-de-cuando-finalizara-el-plan-de-recuperacion-de-territorios-indigenas

17. Calí Tzay, Francisco. 2022. Op. cit., p.10.

18. Ibid.

19. Calí Tzay, Francisco. 2022. Op. cit., p.10-11. And pers. comm. from Pablo Sibar, Bröran leader, 3 January 2023.

20. Calí Tzay, Francisco. 2022. Op. cit., p.10

21. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. Available at: https://www.cepal.org/en/escazuagreement This regional treaty, adopted in Costa Rica in 2018, proposes encouraging States to provide protection mechanisms for environmental defenders.

22. Brown, Kimberley. "We go in and take indigenous land back from cattle ranchers" Q&A with activist Pablo Sibar". Mongabay Series: Indigenous Peoples and Conservation, Land Rights and Extractives. *Mongabay*. 21 November 2022. Available at: https://news.mongabay.com/2022/11/we-go-in-and-take-indigenous-land-back-from-cattle-ranchers-qa-with-activist-pablo-sibar/

23. Statement by Ilze Brands Kehris, United Nations Assistant Secretary- General for Human Rights, at the end of her official visit to Costa Rica (12-12-2022). Available at: https://www.ohchr.org/en/statements-and-speeches/2022/12/statement-un-assistant-secretary-general-human-rights-ilze-brands

24. Herrera, Manuel. "Acelerar esfuerzos para restitución de tierras a indígenas insta la ONU a Costa Rica". *AmeliaRueda.com*, 12 December 2022. Available at: https://ameliarueda.com/nota/restitucion-tierras-territorios-originarios-ONU-noticias-costa-rica

25. UNREDD Programme. "Costa Rica. How access to finance supports sustainable cattle ranching." Quoted by Brown, Kimberley. Op. cit. Available at: https://www.un-redd.org/multi-media-stories/how-access-finance-supports-sustainable-cattle-ranching-costa-rica

26. Calí Tzay, Francisco. 2022. Op. cit., p.10.

27. Solís Aguilar, David and Gutiérrez Arguedas, Alberto (2022). "Agenciamientos comunitarios por los derechos territoriales Maya Ixil en Guatemala y Maleku en Costa Rica". 1st ed. City of Buenos Aires, Latin American Council of Social Sciences (CLACSO). Available at: https://www.clacso.org/wp-content/uploads/2022/12/V2-Recuperacion-con-igualdad-de-genero-05-Costa-Rica.pdf

28. Vecinos de China Kicha. "Esto dice el gobierno...!". Facebook, 14 December 2022 https://www.facebook.com/100065010503819/posts/pfbid02sD3UktEe5L8ZuKY5wZT7UzKKdcpFTSC4ap3GRteRWieYakbakyrAPa6WLmZGR8rcl/?mibextid=Nif5oz

29. Guideline No. 003-MJP: Creación y declaración de interés público de mesa técnica interinstitucional para la construcción de ruta de trabajo y la atención de la población indígena 2022-2026. Presidency and Ministry of Justice and Peace. 9 August 2022. https://www.mideplan.go.cr/directrices

30. Pomareda García, Fabiola. "Presunto asesino de indígena Jerhy Rivera confiesa el asesinato en actividad oficial en Buenos Aires, donde lo aplauden y vitorean". *Semanario Universidad*, 18 August 2022. Available at: https://semanariouniversidad.com/pais/presunto-asesino-de-indigena-jerhy-rivera-confiesa-el-asesinato-en-actividad-oficial-en-buenos-aires-donde-lo-aplauden-y-vitorean/

Bettina Durocher *is an agricultural engineer with a Master's degree in rural development and a Doctorate in education and pedagogical mediation. She has conducted and published studies on Indigenous agroforestry, socio-environmental conflicts, women's agrarian rights and women's and Indigenous knowledge of food security. She works as a freelance researcher and consultant specializing in climate resilience with gender equality and interculturalism in humanitarian and international development programmes. Contact: durocher.bettina@gmail.com*

Carlos Camacho Nassar *(14 February 1953 - 13 June 2022) was an anthropologist and geographer. He conducted studies on Indigenous rights, particularly territorial issues and their associated conflicts in South America, Mexico, Central America and the Caribbean. In addition, he produced several publications on the subject.*

CONTENTS

Ecuador

According to February 2022 data from the National Institute of Statistics and Census (INEC), Ecuador's current population stands at 18,232,933. There are 14 Indigenous nationalities in the country totalling more than one million people, most of which are grouped into a number of organizations at the national, regional and local level. The Indigenous nationalities and peoples live mainly in the highlands (68.20%), followed by the Amazon (24.06%), with only 7.56% along the coast. In the 2010 census, the following Indigenous nationalities were considered able to self-identify: Tsáchila, Chachi, Epera, Awa, Kichwa, Shuar, Achuar, Shiwiar, Cofán, Siona, Secoya, Zápara, Andoa and Waorani.[1] The Kichwa nationality makes up the greatest percentage (85.87%) and accounts for nearly 800,000 individuals. Despite the small percentages of most nationalities, they all have the same collective rights within the framework of a Plurinational State. The highland province with the largest rural Indigenous population is Chimborazo (161,190 Indigenous people in 2010). To date, and after almost 15 years of the 2008 Constitution and more than two decades on from ratification of ILO Convention 169, there are still no specific or clear public policies fully guaranteeing the rights of Indigenous Peoples and preventing or neutralizing the risk that some of these peoples may become extinct, given the highly vulnerable situation in which they are living.

Various events took place throughout 2022 due to State policies that were likely to have an impact on the economic, social and political situation of Indigenous Peoples, and on the ongoing disagreements with the State. Three key elements can be noted in this regard: the neoliberal policies in place since the government of Lenin Moreno, which have continued with even greater intensity under the mandate of banker Guillermo Lasso; the absence of any regulations governing extractive projects, especially mining activity in Indigenous territories, resulting in permanent violations of their collective rights; and the limited response to the demands of Indigenous and peasant

organizations, the main groups affected by neoliberal adjustment policies, despite widespread days of social protest in the middle of the year.

Neoliberalism, poverty and migration

The expectations generated by Lasso's rise to power were soon to be dashed by the economic and social consequences of a strict application of the orthodox agenda agreed with organizations such as the International Monetary Fund. This agenda includes the dismantling of public institutions, reducing the State's regulatory power and eliminating subsidies, under the premise of "austerity", in critical areas such as security, health and education.

Indigenous families are among those most severely affected by poverty, extreme poverty and unemployment. According to INEC data, some 4,500,000 people are considered poor in the country, with 1,900,000 of these living in extreme poverty, exacerbated by the COVID-19 pandemic. This is suffered all the more intensely in rural areas and in Indigenous communities. In terms of social indicators, for example, unemployment and a lack of income have an impact on the poor nutrition of families.[2] According to UNICEF data, child malnutrition affects one in every three children. Alongside this, school dropout rates have increased and more than 4.1% of the country's children and adolescents have now dropped out of school, with some schools even suspending classes due to a lack of State budget and insecurity.[3]

In economic terms, the burden of the crisis has fallen most heavily on Indigenous and peasant communities, whose landholdings are less than 10 hectares and farmed using family labour. The absence of government support in terms of technical assistance and production credits, together with the elimination of subsidies, inflation, and rising input, transport and fuel costs, has all had a direct impact in terms of further decline and poverty.[4]

At the same time, Ecuador ended 2022 with its worst record of criminal violence ever. Across the country, 4,603 violent deaths were reported, being a rate of 25 cases per 100,000 inhabitants. Growth has been exponential in this regard: the official rate in 2021 was 13.7 deaths, i.e., an increase of 82.5% in one year.[5]

It was against this backdrop that Ecuador saw more than 100,000

migrants leave the country this year. Researcher Jacques Ramírez confirmed this figure with INEC data. And he added that the country had reached a figure of 188,000 (migratory balance) across 2021 and 2022. "We are living a second migratory wave in the 21st century so far. Migrations and the desire to leave a country occur when there is a crisis scenario. In this case, the country is suffering from poverty, unemployment, insecurity, violence and death. Migration in this context is therefore a survival strategy," he said.[6]

Extractive industries, illegal mining and the government's response

The promotion of extractive projects and concessions – especially metal mining – was scaled up in the country in 2022. At the same time, illegal mining activities intensified under the protection of contracts and demarcated areas, affecting protected areas and Indigenous territories. NGOs and environmental groups estimate that there are now 700 illegal mining sites across the country, 64% of them on the northern and southern borders.

One of the most conflictive cases is in the province of Napo, in the north-central Amazon, on the ancestral territory of the Kichwa that sits on the banks of the Jatunyacu River, in the communities of Yutzupino and Naranjalito. Approximately 3,000 artisanal gold miners have settled there in the last two years.[7]

According to Andrés Tapia, leader of the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (CONFENIAE):

> *[For the past two years] through the Manifesto for Water, Life and Nature, together with other groups and the Napo Ombudsman's Office, we have denounced the concessions granted without consultation to the Chinese company TerraEarth Resources S.A. over a total of 7,125 hectares (...). On 17 January 2022, our action demanding Protection and a Request for Precautionary Measures was partially accepted, acknowledging the violation of the constitutional rights of nature recognized and guaranteed by the Constitution of the Republic (Art. 71)*

> *and the right to restoration (Art. 72). We filed an appeal in order to have all our claims recognized and to see our rights to free, prior and informed consultation guaranteed (...).*[8]

In February 2022, backed up by the military, the Agency for Regulation and Control of Non-Renewable Resources seized 124 backhoe loaders. At the end of November 2022, State authorities again tried to enter Yutzupino but armed people threatened them and the operation failed. According to numerous testimonies from local residents, the government's operations are "a farce" because the director of the Agency (of Regulation and Control) himself makes the inspections publicly known. And even machines from the Prefecture of Napo have been seen.[9]

Illegal individuals enter small *mestizo* or Indigenous communities and co-opt their territories. They offer money for the use of their land. In the face of the State's neglect, there are even some Indigenous leaders and community members who choose to become involved in illegal mining, mainly the extraction of gold deposits from the sandy beds of these rivers. In contrast to the large legal concessions, this mining takes place at easily accessible points and it occurs more easily amidst an environment of organizational weakness.[10]

Both the concession-holding companies and those responsible for illegal activities create divisions between those community members who choose to exploit the resources and those who do not. Some community members are bribed with offers of up to USD 4,000 to lease their land for illicit activities. The fact that there is also money for the sector's residents explains why some of these communities are not making a fuss about what is going on.

Patricio Meza, advisor to CONFENIAE and member of the National Anti-Mining Front, states:

> *(...) there is a boom in illegal mining. There were armed groups inside Yutzupino. The Front went to the public security forces to have them evicted through the Ministry of the Interior and this was achieved but now they are in Naranjalito and downriver. One of the strategies of the Chinese company TerraEarth Resources is to allow illegal mining in order to then arrive in the area as "saviours". Together with environmental groups, the*

Napo Ombudsman's Office, the Carlos Julio Arosemena Tola Cantonal Assembly, six parish governments and two Indigenous organizations, we filed a protective action for violation of human and environmental rights due to legal and illegal mining. The action was filed against the Ministries of Environment and Energy, and the Regulatory Agency of this latter ministry. The judges recognized the violation of the rights of nature but not of human rights. The Napo Court ordered the defendants to implement a reparation plan and the Napo Prosecutor's Office to carry out investigations on the Ila, Blanco, Chimbiyacu, Anzu, Jatunyacu, Napo and Misahuallí rivers, where evidence of illegal mining was found (...). Some of the illegal miners are front men for a local authority.[11]

Sinangoe: a light in the midst of darkness

The ancestral community of Sinangoe is located in the north-eastern Amazon, in the province of Sucumbíos. It forms part of the A'i Cofán territory and covers an area of approximately 100,000 hectares. In addition, there are five other communities scattered over an area of 150,000 hectares, even crossing over the border into Colombia. The economy of these communities is forest-based and includes fishing, hunting and forestry.

In the case of Sinangoe, the Ecuadorian government incorporated the ancestral A'i Cofán territory into the Cayambe Coca National Park more than 30 years ago without consultation. Most of the villagers never agreed that their territory should be considered a "park" controlled by the State for conservation purposes but the Ministry of the Environment believed that the human population was endangering efforts to protect the country's natural heritage and so it signed an agreement with the local community whereby these latter agreed to restrictions on their ancestral activities and way of life in exchange for State protection, monitoring and supervision of their territory.

This protection never materialized, however. Quite the contrary, the A'i Cofán and their territory have been besieged by various exogenous factors such as tourism, settlers and, in recent years, gold mining. As

of 2017, 52 concessions had been granted for mineral exploration and exploitation. Of these, 20 have now been issued and 32 are still under negotiation.[12]

Several mining activities were detected by A'i Cofán environmental monitors. They conducted fortnightly tours in groups of seven to 15 people to gather evidence that enabled them to file a complaint with the Ministry of the Environment (MAE). Initially, the authorities denied the problem, arguing that these activities were outside the boundaries of the ancestral territory. However, this evasion of responsibilities also included the Mining Regulation and Control Agency (ARCOM) and the then National Water Secretariat (SENAGUA).

At the community's insistence, they admitted that these were illegal activities on the ancestral territory and that, although the concessions had been granted, these latter did not have the environmental licences to commence their operations. The case came to court and the community of Sinangoe filed a protective action against MAE, ARCOM and SENAGUA through the Single Chamber of the Provincial Court of Justice of Sucumbíos. On 3 August 2018, the judge of the Multipurpose Judicial Unit, based in the Gonzalo Pizarro canton of the Province of Sucumbíos, resolved to accept the proposed protective action due to violations of the right to prior consultation, as enshrined in Article 57(7) of the Constitution of the Republic.[13]

In reparation, it ordered: a) the suspension of the administrative procedures for mining concessions located in the area of the Chingual, Cofanes and Aguarico rivers; and b) that the corresponding Free, Prior and Informed Consultation (FPIC) be carried out. This ruling was, however, immediately appealed by the MAE, ARCOM and SENAGUA. The appeal hearing took place in September and ruled that there had been no violation of the community's right to FPIC because it was not necessary, since the mining activity was allegedly not within the ancestral territory, and nor did it affect their rights.[14]

Having postponed the hearing for more than a month, in February the judges of the Single Chamber of the Provincial Court of Justice of Sucumbíos ratified the ruling in favour of the Cofán de Sinangoe Indigenous community. Nevertheless, the dictated reparation measures established under the responsibility of the MAE, the Ministry of Energy and SENAGUA were still not implemented. The case gained internation-

al recognition and came to the knowledge of the UN Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli Corpuz, who visited Ecuador at the end of 2019 and reported back to the United Nations Committee on Economic, Social and Cultural Rights (CESCR). Subsequently, the CESCR called on the Government of Ecuador to comply with this ruling, as there had been an evident violation of the rights of the A'i Kofán community of Sinangoe.

Four years later, in January 2022, the Constitutional Court of Ecuador, through Judges Carmen Corral Ponce, Alí Lozada Prado and Hernán Salgado Pesantes, chose Case No. 273-19-J, the ruling in favour of the community of Sinangoe, due to its severity and national relevance.[15] And, among other things, as the highest constitutional body, it issued a ruling that stated: "The matter is serious because the mining activity, if not adequately consulted on, informed, planned and executed, could affect their ancestral territories, because it would induce a radical change in their ways of life and threaten nature, water, environment, culture, territory and health."[16] After 13 years of the Montecristi Constitution, the Constitutional Court has finally enforced a constitutional provision on this matter for the first time.

June national strike, repression and dialogue

The Lasso government's neoliberal policies and their social impacts have resulted in a rapid erosion of the regime's popularity. The State's failure to comply with the agreements made after the popular protests in October 2019,[17] in particular regarding the removal of the State subsidy and the increase in fuel prices, despite the repeal of Executive Decree No. 883, together with the widespread deterioration in living conditions for most of the population, as already noted above, provoked new protests over 18 days in June 2022, far more intense and lasting than the events of 2019. According to Franklin Ramírez, professor and researcher on FLACSO's Political Science Programme, "The national strike led by the Indigenous movement and, in particular, its authoritarian prosecution by the regime, transformed citizen antipathy towards Lasso into a mass mobilization that no longer demanded only a redirection of the public agenda but also the president's departure."

One of the main demands of the social organizations was fuel price controls, as the price of fuel had increased considerably since the start of 2020. The price of diesel had almost doubled, from USD 1 to USD 1.90 per gallon (3.8 litres), and petrol from USD 1.75 to USD 2.55, according to AFP agency estimates.

The Confederation of Indigenous Nationalities of Ecuador (CONAIE) presented a 10-point document that included: 1) a freeze on fuel prices; 2) a moratorium on debts with public, private and cooperative banks; 3) fair prices for rural products such as milk, rice, bananas, onions, fertilizers, potatoes, corn, tomatoes, etc.; 4) improved employment and labour rights, with policies and public investment to curb job insecurity and ensure the sustainability of the popular economy; 5) no expansion of the extractive mining or oil frontier: repeal of Decrees 95 and 151; 6) respect for collective rights, such as intercultural bilingual education, Indigenous justice, FPIC, the organization and self-determination of Indigenous Peoples; 7) a halt to the privatization of strategic sectors such as Banco del Pacífico, hydroelectric plants, social security, telephone companies, highways, health, etc.; 8) policies to control prices and market speculation for basic necessities; 9) an urgent budget for health and education, particularly given the lack of medicines and understaffing of hospitals; 10) security, protection, and the creation of effective public policies to stop the wave of violence, contract killings, crime, drug trafficking, kidnapping and organized crime.[18]

Although CONAIE, through its president Leonidas Iza, was calling for a so-called "national strike", the demands made largely included more general aspirations. Only item 7 referred to a direct demand of the Indigenous Peoples. In turn, two points touched on peasant demands (fair prices for farm products) and those of small/medium producers (renegotiation of debts and a debt moratorium) and one called for a moratorium on the extractive frontier. The others formed part of an anti-neoliberal platform based around four points: curbing job insecurity, stopping privatizations and resuming public investment in health and education, and demanding price controls for basic necessities and a reduction in fuel prices. The issue of citizen security was unprecedented and is a reaction to the unstoppable wave of violence, drug trafficking and crime that the country is enduring.

The national strike began at midnight on 13 June 2022 and was to last until 30 June 2022. Collective actions included the blockade of several interprovincial highways in the Amazon and the highlands, with several social and trade union organizations joining the paralysis, especially banana farmers from the coast. In the cities, transport routes were gradually suspended. The Ministry of Education maintained normal class attendance for schools and colleges although road blockades limited the movement of people.[19]

At the same time, the National Popular Coordinating Committee was demanding that the National Electoral Council (CNE) issue ballots to initiate a petition for the recall of President Lasso, something this organization refused to do. Other protest actions by high school and university students in Quito and Cuenca added to this event.[20]

On 14 June, in the early hours of the morning, some 90 kilometres south of Quito in Pastocalle, Cotopáxi, the president of CONAIE, Leonidas Iza, was violently arrested in an operation involving 65 police officers. Iza was transferred to Quito, where he was held *incommunicado* for eight hours in the Flagrancy Unit. Following allegations of irregularities in the proceedings, he was transferred to Latacunga and held at a military air base in that city.[21] As soon as news of the transfer became public, hundreds of people, largely members of the Indigenous and Peasant Movement of Cotopaxi (MICC), blocked the city demanding the immediate release of their leader.[22]

"The arbitrary nature of the measure (his whereabouts were unknown for a few hours) led to solidarity with the movement and radicalized the Indigenous grassroots. Without realizing it, Iza was quickly bringing people together. The decision to take the mobilization to Quito accelerated the regime's forceful response," said Franklin Ramírez.[23]

On 17 June, Lasso decreed a state of emergency in three provinces (extending it to five three days later) and ordered the occupation of the Ecuadorean Cultural House in Quito, an autonomous space that historically houses the Indigenous movement in the capital. From a purely military logic, the aim was to make the logistical conditions (sleeping, eating, meeting) of the mobilized people difficult while they were away from their communities.[24] The last time the Cultural House was taken over by the State was 42 years ago, during the military dictatorship.

Road closures increased in several provinces of the country, main-

ly in the inter-Andean region. As a result, interprovincial public transport was suspended across most of the country, and food shortages worsened in cities such as Cuenca, Quito, Latacunga, Ambato and others. Police and military repression intensified in various areas of the country. Several digital media (critical of the government) were also hacked. The best known case was that of Radio Pichincha, whose server was taken down by attacks from the United States and Germany.[25]

In this context, General Luis Lara, Minister of Defence, stated: "(...) Ecuador's democracy is at serious risk due to the concerted action of notable individuals who are impeding the free movement of the majority of Ecuadorians (...) and manipulating the social protest."[26]

The Salesian and Central Polytechnic universities of Ecuador, which had taken in hundreds of Indigenous families from the Central Highlands and Amazon (forming "peace and humanitarian aid zones") provided a wide range of food, medicine and assistance to the wounded during these intense days of protest in Quito. Despite requests to respect these zones, however, the police threw tear gas bombs into the Salesian University.

After several failed calls for dialogue from the National Assembly and the Catholic Church (through the Ecuadorian Episcopal Conference), the government finally agreed to call off its violence and repression and sit down at the table with delegates from the Indigenous organizations, headed by CONAIE, the National Federation of Indigenous and Black Organizations (FENOCIN) and the Federation of Evangelical Indigenous People (FEINE). However, following an obscure incident in a community near the oil fields in which a group of soldiers was attacked, resulting in the death of one of them, the government accused the Indigenous organizations (without any evidence) of committing this act. President Lasso issued a statement announcing that the dialogue had broken down: "We will not sit down to talk with Leonidas Iza again. He has political interests that are not those of his followers, and he is intent on deceiving the Indigenous movement and the country as a whole." CONAIE rejected Lasso's accusations stating: "(...) the government has broken off the dialogue, confirming its authoritarianism, lack of will and incapacity". On the eve of the end of the social protest, the death toll was nine dead, 500 injured and hundreds more arrested.

Following this first suspension of the dialogue, several popular

demonstrations joined the anti-government forces in Quito and other cities: feminist, LGBTIQ+, neighbourhood and student collectives marched in protest, demanding Lasso's resignation. After intense lobbying by the Ecuadorian Episcopal Conference, the government finally agreed to mediation and the inauguration of a dialogue that was to put an end to the protests, based on the signing of a "Peace Act" drawn up by the Church as mediator, in which several points were agreed. Among those present were government authorities and representatives of CONAIE, FEINE and FENOCIN.[27] The Executive agreed to reduce the price of fuel, to make efforts to target its subsidy, to repeal Executive Decree No. 95 on oil policy, and to reform Decree No. 151 in order to prohibit mining in protected areas.[28]

The dialogue took place under asymmetrical conditions, with the notable absence of the head of government, who kept his distance and acted through his ministers. This was interpreted as a sign of great political weakness, disrepute and low credibility. Almost three uninterrupted weeks of mobilization and protest, together with the State's contempt and repressive violence against the demonstrators, had turned the initial Indigenous demands into a "popular rebellion" in which diverse popular actors converged to demand the government's resignation.

In the end, however, the dialogue ended up achieving very few of the demands made in economic and social terms but instead gave the weakened Lasso government the space in which to formulate proposals for social programmes that were not initially included in his radical neoliberal policy. At the end of the year, Leonidas Iza, president of CONAIE, denounced the fact that:

> *The National Government is not respecting the agreements established in the dialogue given that it has announced a Mining Protection Plan in 11 territories where large-scale mining is already being carried out (...). They are going to militarize territories where there is a mining presence but there are people in those territories, comrades from communes, communities, peoples and nationalities, peasant brothers and sisters, montubio comrades, comrades who are linked to agriculture, who do not want mining.*[29]

Notes and references

1. Data taken from the Agenda for Equal Rights of Indigenous Nationalities and Peoples, Afro-Ecuadorian People and Montubio People 2019-2021. Available at: http://www.pueblosynacionalidades.gob.ec/wp-content/uploads/2020/02/Agenda-Nacional-para-la-Igualdad-de-Pueblos-y-Nacionalidades.pdf
2. INEC. "Boletín Técnico Nº 02-2323-ENEMDU Encuesta Nacional de Empleo, Desempleo y Subempleo (ENEMDU), December 2022. Pobreza y Desigualdad". National Institute of Statistics and Census (INEC). Available at: https://www.ecuadorencifras.gob.ec/documentos/web-inec/POBREZA/2022/Diciembre_2022/202212_Boletin_pobreza.pdf
3. UNICEF. Malnutrition Programme, Ecuador. UNICEF. Available at: https://www.unicef.org/ecuador/desnutrici%C3%B3n
4. "La pobreza en Ecuador no es igual para todos". *Revista Gestión*, October 2022. Available at: https://www.revistagestion.ec/index.php/analisis-sociedad/la-pobreza-en-ecuador-no-es-igual-para-todos-menos-la-pobreza-extrema
5. "Ecuador lidera el incremento de violencia criminal en Latinoamérica". *Primicias*, December 2022. Available at: https://www.primicias.ec/noticias/en-exclusiva/ecuador-incremento-muertes-violentas-latinoamerica/
6. "100 mil ecuatorianos salieron del país en lo que va del 2022". *Radio Pichincha*, 16 November 2022. Available at: https://www.radiopichincha.com/100-mil-ecuatorianos-salieron-del-pais-en-lo-que-va-del-ano-2022/
7. Colectivo de Geografía Crítica del Ecuador. "Informe geográfico sobre la situación territorial en la provincia de Napo sobre algunas zonas donde se está explotando minería metálica". Colectivo de Geografía Crítica del Ecuador, March 2021. Available at: https://geografiacriticaecuador.org/wp-content/uploads/2022/01/Informe-inspeccion-Napo_Geografia-Critica_2020_marzo-2021_FINAL-con-firma.pdf
8. CONFENIAE. "Rueda de Prensa ante la actividad minera en la provincia del Napo". CONFENIAE, 18 February 2022. Available at: https://confeniae.net/2022/rueda-de-prensa-ante-la-actividad-minera-en-la-provincia-del-napo
9. Evelyn Tapia. "Minería ilegal crece sin control en la provincia amazónica de Napo". *Primicias*, 29 November 2022. Available at: https://www.primicias.ec/noticias/economia/mineria-ilegal-napo-contaminacion-amazonas/
10. "Impacto de la minería ilegal en Napo". *Mongabay*, 16 August 2022. Available at: https://es.mongabay.com/2022/08/en-corto-cual-es-el-impacto-de-la-mineria-ilegal-en-la-provincia-de-napo-en-ecuador/
11. CONFENIAE. "Boletín de Prensa Marcha por la Vida". CONFENIAE, 9 February 2022. Available at: https://confeniae.net/wp-content/uploads/2022/02/Boletin-de-Prensa-Marcha-9feb2022-Napo-1.pdf
12. Suárez B., Gisela. Acción y conflicto entre la comunidad Cofán de Sinangoe y el Estado ecuatoriano frente al extractivismo minero. Quito: Universidad Andina Simón Bolívar, Master's Degree in Latin American Studies, 2020. Available at: https://repositorio.uasb.edu.ec/bitstream/10644/8043/1/T3482-MELA-Suarez-Accion.pdf
13. Office of the Ombudsman of Ecuador. *Historic ruling in favour of the A'i Cofán de Sinangoe nationality against mining*. 22 October 2019. Available at: https://www.dpe.gob.ec/fallo-historico-a-favor-de-la-nacionalidad-ai-cofan-de-sinangoe-contra-la-mineria/
14. Sucumbíos Court. *Sinagoe case ruling*. Available at: https://www.derechosdelanaturaleza.org.ec/wp-content/uploads/2019/07/SENTENCIA-

PRIMER-NIVEL-COF%C3%81N-SINANGOE.pdf
15. Constitutional Court. *Case No. 273-19-JP 27/1/2022*. Available at: https://portal.corteconstitucional.gob.ec/FichaRelatoria.aspx?numdocumento=273-19-JP/22
16. Constitutional Court of Ecuador. *Ruling No. 273-19-JP/22*. Available at: http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOidjOWE4ODAyZC03Y2E1LTQ4NDItOWIzNS01ZDZjMzZiM2I3ZGMucGRmJ30=
17. Cf. Ortiz-T., Pablo. "Ecuador". *In The Indigenous World*. Copenhagen: IWGIA, 2020. pp. 396-409. Available at: https://iwgia.org/images/yearbook/2020/IWGIA_The_Indigenous_World_2020.pdf
18. CONAIE. "Demandas de la movilización nacional, popular y plurinacional". CONAIE, 20 June 2022. Available at: https://conaie.org/2022/06/20/demandas-de-la-movilizacion-nacional-popular-y-plurinacional/
19. INREDH. "Informe sobre los derechos humanos durante los 18 días de protesta social". INREDH, 8 July 2022. Available at: https://inredh.org/paronacionalec2022-informe-sobre-los-derechos-humanos-durante-los-18-dias-de-protesta-social/
20. "Ecuador: Lasso, entre destitución de la Asamblea Nacional o implementación de la 'Muerte cruzada'". France 24, 25 June 2022. Available at: https://www.france24.com/es/am%C3%A9rica-latina/20220625-lasso-entre-la-destituci%C3%B3n-de-la-asamblea-nacional-o-la-implementaci%C3%B3n-de-la-muerte-cruzada
21. Alianza por los Derechos Humanos Ecuador. "Boletín Prensa Detención Leonidas Iza Paro Nacional". Alianza por los Derechos Humanos Ecuador, 14 June 2022. Available at: https://ddhhecuador.org/2022/06/14/documento/boletin-prensa-detencion-leonidas-iza-paro-nacional-junio-2022-eng
22. "Indígenas ecuatorianos llaman a levantamiento nacional". *Telesur*, 14 June 2022 Available at: https://www.telesurtv.net/news/ecuador-paro-nacional-llamamiento-levantamiento-nacional-20220614-0018.html
23. "At times the president himself does not believe what he says and every time there are high tension scenarios that require his presence he is absent, he disappears." *Wambra*, 29 June 2022. Available at: https://wambra.ec/franklin-ramirez-presidente-lasso-no-cree-en-su-palabra/
24. "Policía allana la Casa de la Cultura en Quito". *Wambra*, 19 June 2022. Available at: https://wambra.ec/policia-allana-la-casa-de-cultura/
25. Amnesty International. "Ecuador: Represión contra protestas está causando crisis de derechos humanos". Amnesty International, 20 June 2022. Available at: https://www.amnesty.org/es/latest/news/2022/06/ecuador-repression-protests-causing-human-rights-crisis/
26. "Ministro de Defensa alerta 'la democracia en Ecuador está en serio riesgo'". *Swiss Info*, 21 June 2022. Available at: https://www.swissinfo.ch/spa/ecuador-protestas_ministro-de-defensa-alerta--la-democracia-en-ecuador-est%C3%A1-en-serio-riesgo-/47691484
27. Cárdenas, J.; Ponce F.; Sempértegui (Coords.) (2023) Diálogo entre gobierno, movimiento indígena y organizaciones sociales. Documentary report (June-October 2022). Quito: UPS-Abya Yala. At: https://dspace.ups.edu.ec/handle/123456789/24181
28. CONAIE Logros del Paro Nacional en Ecuador. In: https://conaie.org/wp-content/uploads/2022/07/LOGROS-DEL-PARO-NACIONAL_removed_compressed.pdf
29. "El Gobierno no está respetando los acuerdos establecidos en las mesas de

diálogo, denuncia Leonidas Iza". *Radio Pichincha*, 21 December 2022. Available at: https://www.radiopichincha.com/el-gobierno-no-esta-respetando-los-acuerdos-establecidos-en-las-mesas-de-dialogo-denuncia-leonidas-iza/

Pablo Ortiz-T. *is a sociologist. He holds a Doctorate in Cultural Studies and a Master's Degree in Political Science. He is a lecturer/researcher at the Universidad Politécnica Salesiana de Ecuador (UPS), Quito, and is coordinator of the State and Development Research Group (GIEDE). Contact: portiz@ups.edu.ec*

French Guiana

French Guiana is a French overseas territory located in the eastern Amazon, in South America. It shares a border to the west with Suriname, and to the east and south with Brazil. The area of the territory is 83,846 km^2. The population is estimated at 301,099 inhabitants (INSEE, 2023) living mainly in the capital of Cayenne and along the coast. More than 90% of the territory is covered by a dense equatorial forest representing 1% of the Amazon rainforest. The interior of the country is only accessible by plane or by canoe.

During colonization (1604-1946), France applied the principle of "*terra nullius*" – vacant land owned by no-one – to take over the lands of Indigenous Peoples. French Guiana has no longer officially been a colony since 1946 but it is still administered by the French government, which owns over 90% of the territory.

The Constitution of the French Republic prohibits ethnic statistics. It is therefore difficult to ascertain the exact number of Indigenous Peoples. According to researchers' estimates, these peoples represent some 4% of the Guianese population, or more than 12,000 individuals. Six Aboriginal communities survived colonization: the Kali'na Tileuyu, the Lokono and the Pahikweneh live on the coast near urban centres and the Wayãpi, Teko and Wayana live in the interior of the territory along the rivers.

In 2007, France ratified the United Nations Declaration on the Rights of Indigenous Peoples but refuses to ratify International Labour Organization (ILO) Convention 169. Indeed, the Constitution of the French Republic does not recognize the specific rights of Indigenous Peoples on the grounds that all French citizens are equal in the eyes of the law.

Indigenous Peoples' protected areas

French Guiana shares many natural riches with the Amazon. More than 90% of the territory is covered by primary forest and an impressive network of rivers. In 2007, a national park of nearly 3.4

million hectares was created in the south of the territory. The Amazonian Park of French Guiana is connected to the Tumucumaque Mountains National Park in Brazil. With a total area of 7.3 million hectares, these two national parks form the largest protected tropical area in the world.[1]

Since 1987, France has recognized the existence of protected areas dedicated to Indigenous Peoples. National legislation provides for the possibility of allocating areas of land to them known as areas of "collective use rights". The objective is to allow the inhabitants to benefit from sufficiently large areas of land to be able to practise hunting, fishing, gathering, agriculture and to meet their subsistence needs. These are therefore located in areas of primary forest with an abundance of fauna and flora. Thanks to their traditional and environmentally-friendly way of life, Indigenous Peoples' land management is one of the best strategies for biodiversity conservation in French Guiana.

These subsistence areas are managed directly by the Indigenous leaders of one or more villages. They decide on the use and distribution of the land among the inhabitants. Indigenous Peoples do not, however, hold title to the land. In fact, the French government remains the owner of these Indigenous lands. To obtain land use rights, Indigenous leaders must apply to the French government's representative in French Guiana, the Prefect, who has the power to validate or cancel the creation of a subsistence area.[2]

Subsistence areas affected by economic development

Indigenous Peoples' protected areas currently account for more than 750,000 hectares, or around 5% of the territory of French Guiana. The system of land allocation by decision of the Prefect is, however, being increasingly challenged by Indigenous Peoples for several reasons.

Firstly, the "subsistence" criterion, provided for in national legislation in 1987 to justify the creation of a zone, is now obsolete. Indeed, the notion of subsistence cannot nowadays be limited to hunting, fishing and gathering given the social, economic and legal changes that have taken place in French Guiana, as well as the new lifestyles among the young Indigenous generation. Indigenous Peoples are therefore calling

for legislative reform so that they can develop environmentally-friendly economic and community projects in these areas.[3]

Secondly, the administrative procedures for requesting land are complex and requests often go unanswered by the Prefect for several years. At the same time, however, the French government authorizes urban construction projects and industrial projects on these lands and these have an impact on the living spaces of Indigenous Peoples.

Indeed, French Guiana has strong development needs due to its high population growth (+2.1% per year). The territory is having to face many challenges concerning housing, food, transport and energy. These projects require the use of large areas of land, often at the expense of forest and protected areas. Indigenous Peoples are therefore demanding that the French government respect their Free, Prior and Informed Consent (FPIC). To do this, they are using the mechanisms of the United Nations, such as in 2019 when they fought the "Montagne d'or" mining project.[4]

Police repression of Indigenous activists

As a landowner the French government sometimes authorizes industrial projects on lands that have been claimed by Indigenous Peoples for many years. This is currently the case of the power plant project,[5] which involves clearing 78 hectares of forest near an Indigenous village. This project is being driven by the "Hydrogène de France" company, which obtained the Prefect's authorization to construct the power station. The company claims to have obtained the agreement of the Indigenous village chief but, in fact, it did not follow the consultation protocol.

This situation has created serious tensions. The company accused the chief, Mr. Roland Sjabere, of damaging their equipment to prevent the project from going ahead. On 24 October 2022, the security forces arrested the Indigenous leader.[6] They entered the village without the prior consent of the inhabitants and used tear gas and handcuffed the leader in front of the frightened inhabitants. And yet this man is a respected leader legitimately advocating for respect for the integrity of his people's territory.

This arrest took place under unacceptable conditions and outraged Guianese public opinion. Indigenous organizations have denounced the total lack of respect for an Indigenous leader who is a member of the Customary Grand Council. To this day, the power plant project is still underway with the support of the French government and non-Indigenous Guianese politicians.

The tragedy of residential schools

In October 2022, a journalist's investigation led to the publication of a book on the young Indigenous children forcibly interned in Catholic boarding schools in French Guiana.[7] As early as the 1930s, hundreds of Indigenous children were placed in these residential schools, known as "Indian homes". The voices of former residents are now being heard, just as in Canada where the issue of residential schools has been the subject of controversy for several years.

The creation of an association in the memory of the Indian homes has been announced at the initiative of the Grand Customary Council.[8] This association will lead a project to set up a "truth and reconciliation" commission to address the violence committed in these residential schools. This will enable civil (non-criminal) investigations to be opened into the violence committed against these people in order to move towards a recognition of the victims and their painful history. It is a question of knowing the truth, understanding the causes and responsibilities, and considering measures to ensure reparation and non-repetition. It is also a question of publicly opening a debate on the prejudice suffered by these Indigenous children, removed from their family and their customs, the victims of a cultural genocide.[9]

The difficulty is that France is still reluctant to acknowledge responsibility for its actions during the colonial period and it refuses to apologize. In French Guiana, the French government has done nothing to provide reparations to the Indigenous Peoples. This is unlike in Canada, which has set up a similar commission for the tragedy of its Catholic residential schools. There, this work resulted in an official apology from Pope Francis and a pardon from Prime Minister Justin Trudeau.

Election of a new President for the Customary Grand Council

On 12 March 2022, the chief of the Maroon people, Mr. Bruno Apouyou, became the new President of the Grand Customary Council[10] of French Guiana with a three-year mandate.

The Grand Customary Council is an institution created in 2007 at the initiative of the French government. It is responsible for representing the Indigenous and Maroon peoples of French Guiana. It defends their legal, economic, social, cultural, educational and environmental interests. However, the Customary Grand Council does not have administrative autonomy because it is under the supervision of the French government. It can be consulted by the Prefect or local political authorities on decisions affecting the lives of Indigenous and Maroon peoples. The Customary Grand Council issues "advisory" opinions that are not binding. The Prefect therefore has the power to follow these opinions or not.

Since its creation, the French government has imposed a system of shared governance between the Indigenous and Maroon peoples on the Grand Customary Council. The customary rights and traditions of these two peoples are, however, radically different. Again, this was done without any FPIC.

Although these two peoples live in good harmony, the election of a Maroon leader in 2022 resulted in a deadlock in terms of defending the specific interests of each people. The new president has made known his willingness to defend the specific interests of the Maroon people. The President of the Grand Customary Council therefore does not have the authority to express himself on matters concerning Indigenous Peoples in discussions with the French government. This is why they are demanding the creation of an independent institution governed by their own Indigenous leaders.

Notes and references

1. WWF French Guyana website, https://www.wwf.fr/espaces-prioritaires/guyane
2. Légifrance. Code général de la propriété des personnes publiques. Partie réglementaire. 5ème partie. Livre Ier. Titre IV. Chapitre III : Concessions et

cessions à des communautés d'habitants (Articles R5143-1 à D5143-6). https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070299/LEGISCTA000029399369/

3. "Les zones de droit d'usage des Amérindiens: comprendre les attributions du foncier pour mieux le gérer (1/2)." Guyane la 1ère, 12 November 2019, https://la1ere.francetvinfo.fr/guyane/zones-droit-usage-amerindiens-comprendre-attributions-du-foncier-mieux-gerer-770565.html
4. "Treaty Bodies - How a UN Committee contributed to end a controversial mining project in French Guiana." International Service for Human Rights, 14 November 2019, https://ishr.ch/latest-updates/treaty-bodies-how-a-un-committee-contributed-to-end-a-controversial-mining-project-in-french-guiana/
5. CEOG website, https://www.ceog.fr/le-projet
6. "Roland Sjabere placé en garde à vue à Saint-Laurent." Mo News Guyane, 24 October 2022, https://monewsguyane.com/2022/10/24/roland-sjabere-place-en-garde-a-vue-a-saint-laurent/
7. "En Guyane, l'histoire encore taboue de « l'éducation forcée » d'enfants amérindiens." Ouest-France, 3 October 2022, https://www.ouest-france.fr/region-guyane/en-guyane-l-histoire-encore-taboue-de-l-education-forcee-d-enfants-amerindiens-90cb2600-3b3f-11ed-a64e-162cc23a7f46
8. "Homes indiens: un collectif pour faire reconnaître les 'traumatismes'." France-Guyane, 2 February 2023, https://www.franceguyane.fr/actualite/societe-social-emploi/homes-indiens-un-collectif-pour-la-reconnaissance-des-verites-922242.php
9. "Guyane: les enfants autochtones veulent la vérité sur les violences dans les pensionnats catholiques." Ouest-France, 2 February 2023, https://www.ouest-france.fr/region-guyane/guyane-les-enfants-autochtones-veulent-la-verite-sur-les-violences-dans-les-pensionnats-catholiques-2226b042-a2f1-11ed-8428-de9553521eb9
10. "Bruno Apouyou élu à la tête du Grand Conseil Coutumier." Guyane la 1ère, 13 March 2022, https://la1ere.francetvinfo.fr/guyane/bruno-apouyou-elu-a-la-tete-du-grand-conseil-coutumier-1253829.html

Alexandre Sommer-Schaechtele *belongs to the Kali'na Tileuyu people. He is a legal expert on Indigenous Peoples' rights and holds a Master's degree in business law from the University of Nice Sophia Antipolis (France). In 2014, he became a member of the Organisation des Nations Autochtones de Guyane française (Organization of Indigenous Nations of French Guiana). In 2018, he followed the Office of the UN High Commissioner for Human Rights' Indigenous Fellowship Programme in Geneva. Since then he has been conducting advocacy and writing reports on the situation of the Indigenous Peoples of French Guiana in order to alert the United Nations experts. He gives conferences in France and abroad.*

Guatemala

MEXICO
BELIZE
GUATEMALA
Guatemala City
HONDURAS
EL SALVADOR
PACIFIC OCEAN

Guatemala has a population of 14.9 million inhabitants, of which 6.5 million (43.75%) belong to the Mayan 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), as well as the Garifuna, Xinka and Creole or Afro-descendant peoples.

Indigenous people continue to lag behind Guatemalan society as a whole in terms of health, education, employment and income, and this situation is even worse for Indigenous women. There is a structural racism that lies at the root of this inequality and social exclusion, as well as violations of the fundamental rights of Indigenous Peoples. Although the Political Constitution of the Republic of Guatemala recognizes the existence of Indigenous Peoples and calls itself a multicultural society, and even though the government has ratified international agreements on the rights of Indigenous Peoples, in practice, the social, economic and political gap between Indigenous and non-Indigenous Peoples is a vast. For example: the State invests USD 0.4 per day in each Indigenous person but USD 0.9 per day in each non-Indigenous person;[1] poverty affects 75% of Indigenous people but only 36% of non-Indigenous people;[2] chronic malnutrition affects 58% of Indigenous people compared to 38% of non-Indigenous people.[3] In terms of political participation, Indigenous people make up no more than 15% of members of parliament or high-ranking public officials.

Guatemala has ratified ILO Convention 169 and, since 2010, this text has been of constitutional rank, obliging the country to recognize the rights of Indigenous Peoples. The country has also acceded to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the UN Food and Agriculture Organization's (FAO) Policy on Indigenous and Tribal Peoples. In practice, however, exclusion, discrimination and structural racism prevail.

A year of setbacks

Indigenous Peoples continued to suffer the effects of the government's policy of denying their rights throughout 2022; they received no significant responses to their demands and their living conditions deteriorated as a result of the pandemic and the country's social, economic and political crisis. Some of the key events described in this report are: the mobilization of various Indigenous Peoples' organizations against the current government's lack of commitment to fighting corruption and the rollback of human rights that has taken place; the criminalization of Indigenous communities fighting to defend their lands and territories; complaints at the exclusion of Indigenous Peoples from treatment during the COVID-19 pandemic; the tragedies that have resulted in the deaths of Indigenous migrants; the submission of a report on the situation of Indigenous women; and the scant progress made in terms of programmes, legislation and policies for Indigenous Peoples.

Indigenous mobilization demands action to combat State corruption and co-optation

A number of Indigenous organizations organized several activities during 2022 in protest at the lack of government action to address key issues related to human rights, the Peace Accords, the fight against corruption and the exercise of an independent justice system. One of the central issues was the protest against the re-election of the current Attorney-General for a second four-year term. This is someone whom the Indigenous organizations claim has persecuted judges, journalists and prosecutors in their attempts to fight corruption and impunity.[4] A number of individuals accused of corruption (lawyers, congressmen, former presidents and businessmen) have been released or have had their sentences reduced and, now, with the support of the Public Prosecutor's Office, they are spearheading the persecution of officials who used to work in the now defunct International Commission Against Corruption and Impunity in Guatemala (CICIG) and in the Special Prosecutor's Office Against Corruption and Impunity (FECI). The Public Prosecutor's Office has demanded the arrest of 11 prosecutors and former

prosecutors, in addition to other people,[5] some of whom are now in jail or under criminal investigation, in clear retaliation at their efforts to combat corruption.[6]

Among the most significant cases of persecution was the arrest of Rubén Zamora, editor of *El Periódico*, a newspaper known for its critical role in fighting corruption and which, due to pressure, was forced to cancel its print version;[7] the resignation and subsequent exile of Judge Miguel Ángel Gálvez, who headed up the corruption case against former president Otto Pérez and former vice-president Roxana Baldetti;[8] and the trial against former prosecutor Virginia Laparra, who was responsible for investigating cases of corruption.[9]

Violent evictions, criminalization and a state of emergency: the government's solution to Indigenous demands

Several Q'eqchi' communities, including Chapín Abajo, Tz'inte' and Buena Vista in the municipality of El Estor, department of Izabal; Se Inup in the municipality of El Chal, department of Petén, and the Poqomchi communities of Washington, Pancoc, Pamojón, in the municipality of Purulhá, department of Baja Verapaz, have been violently evicted from their homes by the security forces for defending their ancestral lands and territories.[10] Far from addressing the demands of the Indigenous communities, the government is instead protecting the interests of the mining, oil palm and large landowner companies operating in these areas. The Indigenous communities of El Estor, for example, have been criminalized ever since they protested against oil palm plantations and mining operations.[11] During the eviction, armed agents of these companies took advantage of the situation to set fire to houses, crops, domestic animals, food and household goods, leaving children, women and the elderly unprotected from the elements. To reinforce control, the government imposed a state of emergency in the conflict areas, a mechanism that limits constitutional guarantees and facilitates the persecution of community leaders.

In cases of long-standing border conflicts between communities (Nahualá - Santa Catarina Ixtahuacán in the department of Sololá, and

Tajumulco - Ixchihuán in the department of San Marcos), the government's response has focused simply on imposing a state of emergency[12] without putting in place any processes that would resolve these problems, which resurface intermittently with regrettable consequences.[13] Having dismantled the institutions that specialized in conflict resolution (Secretariat of Agrarian Affairs and the Nation Permanent Dialogue Commission), the government now has little capacity to deal with these situations and therefore resorts to imposing states of emergency.

To give the security forces greater powers when suppressing demonstrations and popular protests, during the year the Congress of the Republic proposed approving Law 6076, the Public Order Law, which was widely rejected by the population. A demonstration led by the Indigenous organization *48 Cantones de Totonicapán* of the Maya K'iché people was noteworthy in that it forced a backdown on the part of the government.[14]

Failure of COVID-19 vaccination among the Indigenous population

The National COVID-19 Vaccination Plan has been considered a resounding failure since the country has the worst vaccination rate on the continent, with only 35% of the population fully vaccinated.[15] This rate is far worse among the Indigenous population since only one in four of them are vaccinated. This situation is a clear reflection of a structural ethnic disparity since insufficient government efforts were made to establish culturally-appropriate programmes. The official version is that the Indigenous population rejected the vaccine but, in reality, there was not enough campaigning in native languages and nor were community structures used to promote it.

The impact of the pandemic on the Indigenous population is still not known as the country lacks statistics broken down by ethnic belonging. Unofficially, it is known that there were numerous deaths, especially among the elderly.

Indigenous Peoples therefore turned to their ancestral knowledge of traditional medicine to cope with the pandemic, using their native plants and local therapies to prevent and recover from the impacts of

the disease. Indigenous communities also established their own prevention protocols and encouraged the use of traditional medicine in the form of native plants and therapies to strengthen immunity.

Migrant tragedy benefits Guatemalan economy

Faced with the economic crisis rocking Central America, irregular migration has become an escape valve for thousands of people who decide to embark on the venture of migrating to the United States. And yet migration entails unfortunate dangers in terms of loss of life. During the course of 2022, nearly 900 people,[16] including Guatemalans from the Indigenous regions of the country, died in their efforts to cross the border from Mexico to the United States.[17] Some cooperation organizations are promoting programmes to reduce such migration. It is nonetheless undeniable that the country's economy survives largely thanks to remittances sent home to families from abroad, which have grown steadily. Such remittances grew from USD 1.6 billion in 2002 to USD 18 billion in 2022[18] (higher than the country's total volume of exports, estimated at USD 15 billion in 2021),[19] which means that the country's economy relies greatly on migration.

Uncertain outlook for the upcoming general elections

During the course of the year, the different political forces mobilized around their preparations for the general elections in mid-2023 when the president, members of parliament and municipal mayors will be elected. As has been customary, the political parties go to the Indigenous communities to garner votes but their manifestos never include any significant ethnic issues. The Indigenous vote represents at least half of the electorate, which is why the political parties compete for it with trivial offers, gifts and propaganda. Few policy proposals emerge from the Indigenous organizations and those that do are fragmented. It is therefore difficult to imagine how they will gain greater representation given that fewer than 15 Indigenous individuals have been elected

to Congress out of a total of 168 in any election, a situation that is even worse in the case of Indigenous women, of whom no more than three have ever been elected.

The political struggle for Indigenous women's rights

During the submission of the report on the "Situation of Indigenous Women in Guatemala", prepared as an input for the fourth cycle of the United Nations Universal Periodic Review (UPR), the Tz'ununija' Indigenous Women's Movement of Guatemala denounced the racial discrimination from which Indigenous women in Guatemala continue to suffer. The movement, which brings together more than 85 organizations from across the country, highlighted: the lack of public policies, limiting and discriminating against women's access to justice (the courts are centralized in the cities, increasing the costs of using them, and there are insufficient interpreters who speak Indigenous languages); the lack of access to land; the failure to implement Free, Prior and Informed Consultation (FPIC); criminalization, which affects the physical and mental well-being of Indigenous women; and the murders and sexual assaults against women.

From 9-11 October, the III International Summit of Indigenous Women of Abya Yala was held in Guatemala with the participation of Indigenous women leaders representing the native peoples and the ethnic diversity of the American continent. The summit is organized with the aims of strengthening continental coordination around an analysis of the situation of violence against Indigenous women, building coordination strategies and raising demands with States, and analysing the scope and limitations of Indigenous women's political and economic participation and the impacts of racism and its mechanisms of dispossession and violence.[20]

Notes and references

1. "Inversión en pueblos indígenas, según el presupuesto ejecutado en 2015". Guatemala: Central American Institute for Fiscal Studies, July 2017. Available at https://www.icefi.org/sites/default/files/inversion_en_pueblos_indigenas_0.pdf
2. "Situación de Derechos Humanos en Guatemala". IACHR, 31 December.

Available at http://www.oas.org/es/cidh/multimedia/2016/guatemala/guatemala.html
3. "Análisis de situación, nutricional de Guatemala. Secretaría de Seguridad Alimentaria y Nutricional". Available at http://www.sesan.gob.gt/wordpress/wp-content/uploads/2018/05/Situacion-SAN-Guatemala-dia-1.pdf
4. "Autoridades de los 48 Cantones se pronuncia por reelección de Porras". *El Periódico*, 17 May 2022. Available at: https://elperiodico.com.gt/sociedad/local/2022/05/17/autoridades-de-los-48-cantones-se-pronuncian-por-reeleccion-de-porras/
5. PZP. "36 historias de persecución contra operadores de justicia y defensores de derechos humanos". PZP. Available at: https://pzp.gt/herramientas/casosmp/
6. Elsa Coronado. "Exilio o cárcel. El 2022 fue el año en el Ministerio Público intensificó la persecución contra jueces, fiscales, periodistas y activistas". *Plaza Pública*, 6 December 2022. Available at: https://www.plazapublica.com.gt/content/exilio-o-carcel-el-2022-fue-el-ano-en-el-que-el-ministerio-publico-intensifico-la
7. Axel Vicente, Sandy Pineda and EFE. "El Periódico pone fin a su edición impresa luego de que sus directivos señalaran presiones". *Prensa Libre*, 30 November 2022. Available at: https://www.prensalibre.com/guatemala/elperiodico-pone-fin-a-su-edicion-impresa-luego-de-que-directivos-senalaran-presiones-mientras-su-presidente-sigue-preso/
8. Jody García. "Así impidió la Corte Suprema de Justicia que el Juez Gálvez pudiera defenderse". *Plaza Pública*, 16 November 2022. Available at: https://www.plazapublica.com.gt/content/asi-impidio-la-corte-suprema-de-justicia-que-el-juez-galvez-pudiera-defenderse
9. Angélica Medinilla. "Sentencia a Virginia Laparra, una exfiscal condenada por denunciar la corrupción". *Agencia Ocote*. Available at: https://www.agenciaocote.com/blog/2022/12/18/sentencia-a-virginia-laparra-una-exfiscal-condenada-por-denunciar/
10. Francisco Simón Francisco. "Más de mil agentes de la PNC intentaron desalojar a 36 familias en el Estor, Izabal". *Prensa Comunitaria*, 7 July 2022. Available at: https://prensacomunitaria.org/2022/07/mas-de-mil-agentes-de-la-pnc-intentaron-desalojar-a-36-familias-en-el-estor-izabal/
11. "El Estor: la lucha por la recuperación de la tierra del pueblo Q'eqchi'". *Prensa Comunitaria*, 5 January 2022. Available at: https://prensacomunitaria.org/2022/01/el-estor-la-lucha-por-la-recuperacion-de-la-tierra-del-pueblo-qeqchi/
12. Congress of the Republic. *Plenary ratifies state of siege in Ixchihuán and Tajumulco*. Congress of the Republic. Available at: https://www.congreso.gob.gt/noticias_congreso/8571/2022/4
13. "Guatemala extiende el estado de sitio en municipios enfrentados por tierras". *Swiss Info*, 19 January 2022. Available at: https://www.swissinfo.ch/spa/guatemala-tierras_guatemala-extiende-el-estado-de-sitio-en-municipios-enfrentados-por-tierras/47275584
14. Julio Román and Mynor Toc. "48 Cantones de Totonicapán exige que ley de Orden Público no sea aprobada". *Prensa Libre*, 17 August 2022. Available at: https://www.prensalibre.com/guatemala/politica/48-cantones-de-totonicapan-exigen-que-ley-que-regula-uso-de-fuerza-publica-no-sea-enviada-a-la-cc-y-que-sea-eliminada-en-sesion-del-congreso-breaking/
15. Jeanelly Vásquez. "Fracaso del Plan Nacional de Vacunación en Guatemala". *La Hora*, 8 July 2022. Available at: https://lahora.gt/nacionales/

jeanelly/2022/07/08/revista-aborda-el-fracaso-en-la-vacunacion-y-la-desconexion-con-poblacion-indigena/

16. "Record letal de migrantes en la frontera México – Estados Unidos: 853 muertos en 2022". *Euronews*, 6 November 2022. Available at: https://es.euronews.com/2022/11/06/record-letal-en-la-frontera-mexico-estados-unidos-853-muertos-en-2022#:~:text=internacionales-,R%C3%A9cord%20letal%20en%20la%20frontera%20M%C3%A9xico,Unidos%3A%20853%20muertos%20en%202022

17. *Retorno de migrantes guatemaltecos fallecidos*. Government of Guatemala. Available at: https://guatemala.gob.gt/arriban-al-pais-restos-de-19-guatemaltecos-fallecidos-en-accidente-en-chiapas/

18. Bank of Guatemala. *Remesas Familiares*. Bank of Guatemala. Available at: https://www.banguat.gob.gt/es/page/remesas-familiares-0

19. Bank of Guatemala. *Guatemala en Cifras, 2021*. Bank of Guatemala. Available at: https://www.banguat.gob.gt/sites/default/files/banguat/Publica/guatemala_en_cifras_2021.pdf

20. Factor Méndez. "Cumbre Internacional de Mujeres Indígenas de Abya Yala". *La Hora.GT,* 7 October 2022. Available at: https://lahora.gt/opinion/fmendez/2022/10/07/cumbre-internacional-de-mujeres-indigenas-de-abya-yala/

Silvel Elías *is Maya K'iché and the director of the Program of Rural and Territorial Studies (PERT-FAUSAC) at the School of Agronomy of the Universidad de San Carlos in Guatemala.*

Guyana

ATLANTIC OCEAN
VENEZUELA
Georgetown
GUYANA
SURINAME
BRAZIL

Indigenous Peoples – or Amerindians as they are identified both collectively and in legislation – number some 78,500 in the Co-operative Republic of Guyana, or approximately 10.5% of the total population of 746,955 (2012 census).[1] They are the fourth largest ethnic group, East Indians being the largest (40%), followed by African Guyanese (29%) and self-identified "Mixed" (20%). The Chinese, Portuguese and Whites constitute tiny minorities. Amerindians refer to these non-Indigenous people as "coastlanders" since most of them are settled on the coast.

The Amerindians are grouped into nine Indigenous Nations, based on language. The Warao, the Arawak and the Carib (Karinya) live on the coast. The Wapichan, the Arekuna, the Makushi, the Wai Wai, the Patamona and the Akawaio live in villages scattered throughout the interior. Amerindians constitute the majority of the population of the interior, in some regions 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 Preamble to the Constitution of Guyana recognises "the special place in our nation of the indigenous peoples" and recognises "their right as citizens to land and security and to their promulgation of policies for their communities".[2] 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.

Introduction

For a global audience, the whole of this chapter on Guyana could usefully record one major success in the struggle to secure land tenure, one partial success, and one potentially major failure in 2022. Legal and effective resource tenure remains a central issue for most Amerindian communities. Promises to revise the technically defective Amerindian and Mining Acts have not been given priority, and no revisions were commenced in 2022.

The increasing tendency of the current political administration to engage in authoritarianism affects everyone in Guyana but especially the less politically potent Amerindian communities.

A win towards more secure Amerindian resource tenure

In December 2021, the Inter-American Court of Human Rights (IACtHR) delivered its judgement on the admissibility and merits of the petition by the Akawaio Indigenous community of Isseneru for secure land title and defence from invading gold miners, dating back to 2013. The judgement only became public knowledge in April 2022.[3] The IACtHR identified 16 violations of the rights of the community and its members and made three specific recommendations to the government: (1) adopt the necessary measures to ensure that the Isseneru community and its members receive full reparations for the material and immaterial damages they suffered on account of the violation of their human rights; (2) amend legislation; and (3) adopt any measures necessary to support Isseneru and its members in the proper fulfilment of their own duty to preserve and protect the environment.

The judgement is significant because the IACtHR accepted that (1)

Isseneru could not obtain an unbiased outcome in Guyanese courts as presently operated and so could approach the IACtHR even without formally exhausting domestic legal remedies; and (2) Isseneru had waited for an unconscionably long time because of the lethargy of Guyanese courts and lawyers.

The IACtHR made frequent reference to the American Declaration of the Rights and Duties of Man (1948),[4] to which Guyana is committed by virtue of its membership of the Organisation of American States. The IACtHR denied a subsequent government request for a full hearing but did grant some months of extension in order to act on the recommendations. In December 2022, the representative Amerindian Peoples Association sadly noted the poor response from the government at policy level[5] but positively noted that the technical agency Guyana Geology and Mines Commission (GGMC) had, by June, begun to take action against gold miners on the titled lands.[6]

Priority of gold mining over ancient Amerindian rights

Amerindian customary lands remain open to government-awarded mining concessions, which are cheap to acquire and to retain year after year. Courts in Guyana assume the priority of gold mining over ancient Amerindian rights, and this remains a severe obstacle to rational land titling. Consequently, Amerindians still have title to only around one-third of the customary lands claimed back in 1966-7.

Three significant disputes over gold miners in Amerindian areas persisted in 2022 in different parts of Guyana. Medically, the uncontrolled use of mercury amalgam in artisanal gold mining continues to have severe effects on some communities.[7, 8] The situation of the Chinese Landing community, similar to that of Isseneru, was being examined by the UN Committee on the Elimination of Racial Discrimination (CERD). Here, a community of 200 Amerindians has been invaded by over 500 gold miners who have excavated a main pit over 150 metres deep.[9, 10] The government appears to be unable to enforce any law in that area.

Some steps towards Amerindian tenure security in the Upper Mazaruni river catchment

Another long-running court case concerned the ancestral lands of six villages of Akawaio and Arekuna people in western Guyana, in the Upper Mazaruni river catchment. The area had been gazetted officially to facilitate the entry of gold and diamond miners. In 1959, one-third of the district was de-reserved and villages were recognised in 1976 and offered communal land titles in 1998. The villages refused the titles as they wanted legal recognition of a boundaried district within which villages could move locations across the infertile soils with traditional rotational agriculture.[11] Thus, they requested, as per the Amerindian Act 2006, that the district be reconstituted.

Partly due to pressure from the private sector association, the Guyana Gold and Diamond Miners Association, the request was left unattended for 24 years. At last, on 16 December 2022, the acting Chief Justice herself re-opened the case and recognised the traditional, ancestral and unceded territories of the villages and their radical title from time immemorial.[12] Unfortunately, her knowledge of land and mining and Amerindian laws was inadequate. An appeal will be submitted in February 2023.[13]

Loss of control of forests on titled Amerindian Lands

Building on its supporting roles in the development of the Guyana Forestry Commission's (GFC) Monitoring, Reporting and Verification System (MRVS), the US-based consultancy Winrock International has developed a "jurisdictional carbon credit" scheme (Architecture for REDD+ Transactions/ART) to facilitate whole-country quantities of emission reductions to be traded internationally. Notwithstanding the fact that there are no current estimates of emission reductions in Guyana, Winrock awarded 33.47 million carbon credits (tonnes of CO2e) to the Government of Guyana on 1 December 2022.[14]

On the same day, 37.5 million carbon credits were purchased for USD 750 million over ten years by Hess Corporation, a US company with

a 30% stake in Guyana offshore deep-water oil fields in the Stabroek Tract licence area.[15] The application to Winrock for certification of forest-based carbon credits by the Guyana Forestry Commission (GFC) was for 18 Mha, the whole area of Guyana's natural forest, including the 2.3 Mha of forest on titled Amerindian Village Lands. Winrock has been asked to provide a plain-language explanation to the people of Guyana as to the nature of the carbon credits, how they were estimated, what are the uses of such credits, and what the sale of carbon credits means for Amerindian managerial control of their own titled resources.[16, 17] Neither Winrock nor the Government of Guyana had responded by the end of 2022.

Without clarification from Winrock, it appears that the Government of Guyana has sold carbon credits that are the legal property of the titled *Amerindian* villages. There is a clear procedure in sections 14 and 15 of the Amerindian Act (chap. 29:01, 2006)[18] for making rules related to Village Lands. Approval of a rule requires a two-thirds majority vote at a formal village meeting, and transfer of management control of communal village assets to the government would require the same such approved rule. By the end of 2022, no Amerindian village had been asked to make such a transfer. The sale of carbon credits from forests in titled Amerindian villages thus appears to have been absolutely illegal.

Instead of clarification, government Ministers and supporters have emphasised that 15% of the income from the sale of these carbon credits will be placed in the government-controlled Amerindian Development Fund. Allocations may be made to Amerindian Village Councils for items in their village development plans, if approved by the government. Thus, not only has the government apparently taken control of titled Amerindian forests but also has control over the income from the sale of the forest-based carbon credits.

Paternalistic distribution of goods

The People's Progressive Party/Civic (PPP/C) government continued its traditional paternalistic relationship towards the Indigenous 10.5% of the population, replacing handouts of buses, bicycles and boats during 2015-2020 with handouts of agricultural tractors and solar panels

in 2022. There did not appear to have been a prior survey of needs and it is unclear whether 165 identical tractors will serve the needs of so many Amerindian communities. At intervals during the year, the government did make some attempts to supply spare parts and provide some training in maintenance and repair, as well as to encourage more equitable access to the equipment. Having immediately cancelled the Hinterland Employment and Youth Service (HEYS) programme on assuming political power in late 2020, in 2022 the PPP/C government restarted some form of training for Amerindian youths, concentrating on information technology rather than the more needed agricultural and mining subjects. Solar panels are being supplied from India and should be useful for powering access to more widespread and reliable internet communications. However, there is a marked lack of integrated planning and so some communities have panels and storage batteries but still no reliable internet, and vice-versa.

Additionally, the combination of the COVID-19 pandemic and oil-stimulated increases in the cost of living led to a series of handouts of cash or sacks of household items (known as "hampers") to arbitrarily chosen groups of citizens. In Amerindian areas, these handouts look like, and are understood to be, vote-buying exercises but are hard to resist in poor communities.

Threats of mega-farms and of oil affecting fisheries

The PPP/C government appears to have no ecologically-aware advisers and does not seem to understand that the low population density in the hinterland of Guyana is mainly due to ancient soils that are infertile. The government has been inviting external investors, including for agriculture, without explaining that very large quantities of synthetic fertilisers and pesticides would be needed to secure commercial crops. Destabilising these infertile but ecologically stable areas with synthetic chemicals is likely to reduce the natural terrestrial and aquatic biodiversity. It is precisely the spectacular landscape and brilliantly-coloured biodiversity that attract groups of eco-tourists. Industrial agriculture is likely to have adverse effects on Amerindian cash incomes which, in some

places, are strongly geared to the provision of low-impact eco-tourism. In addition, these areas are mainly subject to Amerindian customary rights. As Guyana subscribes to the concept of Free, Prior and Informed Consent (FPIC, through its endorsement of the UN Declaration on the Rights of Indigenous Peoples in 2007 and explicit confirmation in the Low Carbon Development Strategy (LCDS) of 2009), the invited investors would need to be informed about Indigenous rights and FPIC. This did not happen in 2022.

The coastline of the North West District of Guyana is at risk of being hit by slicks from the offshore oil fields of Guyana. This danger is acknowledged and mapped in the Environmental Impact Assessments for the first four fields identified by ExxonMobil. Neither the Civil Defence Commission of Guyana nor ExxonMobil itself has in-country equipment to control major spills from well-head blowouts. No equipment or slick dispersant chemicals have been pre-positioned in the North West District to prevent oil slicks from contaminating the fishing grounds, turtle nesting beaches or mangroves. Both Government and ExxonMobil act as if deaf to these concerns, including the concerns of Amerindian fishers who take a wider variety of fish than do East Indian fishers.

Organised Amerindians could form a third party

The PPP/C government is more aware than the previous government coalition was that organised Amerindians could form a third party that would hold the balance of power between the two evenly matched major parties. The sheer physical distances between Amerindian communities, however, make it difficult to develop a collective view, and further isolation has been caused by the COVID-19 pandemic. Despite this, the increasing provision of better information technology and internet connection, coupled with more reliable local electrical power through family-level solar panels could make it easier to develop distinctively Amerindian political positions. The last time this was evident was under the Arawak leadership of Stephen Campbell, who died in 1966, the year of Independence from British colonial rule.

Outlook for 2023

Even without a collective Amerindian political party, the small government income from the giant oil field earnings could be apportioned to give a larger budget for Amerindian issues. The 2023 budget speech by the Minister for Finance included USD 2.5 million for land titling, USD 23.5 million for general Amerindian development, and possibly USD 13.5 million for funding approved "village sustainability plans".

Notes and references

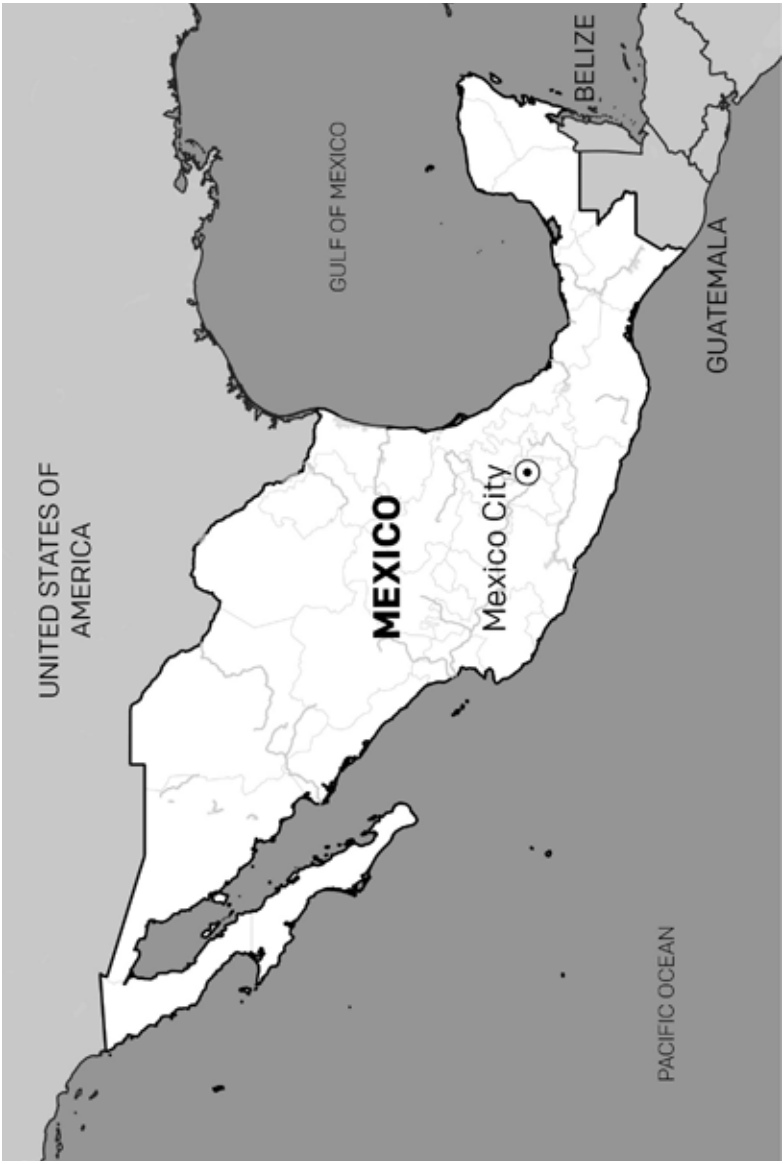
1. Bureau of Statistics, Guyana. 2012 Census, Compendium 2 Population Composition. July 2016, https://statisticsguyana.gov.gy/wp-content/uploads/2019/11/Final_2012_Census_Compendium2.pdf
2. Ministry of Legal Affairs, Guyana. The Constitution of the Co-operative Republic of Guyana, chapter 001:01, Preamble, p.26, https://mola.gov.gy/information/laws-of-guyana/410-chapter-101-the-constitution-of-the-co-operative-republic-of-guyana
3. "IACHR recommends `full reparations' by state to Isseneru villagers for human rights violations." Stabroek News, 28 April 2022, https://www.stabroeknews.com/2022/04/28/news/guyana/iachr-recommends-full-reparations-by-state-to-isseneru-villagers-for-human-rights-violations/
4. The American Declaration of the Rights and Duties of Man, http://humanrightscommitments.ca/wp-content/uploads/2018/10/American-Declaration-of-the-Rights-and-Duties-of-Man.pdf
5. "APA asks Govt. to end 'inexcusable pattern of inaction' on Chinese Landing matters." Kaieteur News, 4 December 2022
6. Bhagirat, L. "Isseneru says GGMC addressing mining issues in wake of IACHR ruling-but still no official word from gov't on way forward." Stabroek News, 12 June 2022, https://www.stabroeknews.com/2022/06/12/news/guyana/isseneru-says-ggmc-addressing-mining-issues-in-wake-of-iachr-ruling/
7. Papannah, D., and Laurel Sutherland. "Parabara still in the dark on high mercury exposure - after no follow up to alarming findings of study." Stabroek News, 30 May 2021, https://www.stabroeknews.com/2021/05/30/news/guyana/parabara-still-in-the-dark-on-high-mercury-exposure/
8. "A filthy business." Stabroek News, 1 October 2022, https://www.stabroeknews.com/2022/10/01/opinion/editorial/a-filthy-business/
9. Bhagirat, Lakhram. "Livelihoods, health under threat as miners' grip on Chinese Landing tightens -besieged leaders say laws being flouted, call for promised action." Stabroek News, 7 August 2022, https://www.stabroeknews.com/2022/08/07/news/guyana/livelihoods-health-under-threat-as-miners-grip-on-chinese-landing-tightens/
10. "Chinese Landing Part 2." Stabroek News, 12 August 2022, https://www.stabroeknews.com/2022/08/12/opinion/editorial/chinese-landing-part-2/
11. Butt Colson, A. J. Land. Its occupation, management, use and conceptualization: the case of the Akawaio and Arekuna of the Upper Mazaruni District, Guyana. Last Refuge Ltd. 2009.
12. "High Court rules in historic Amerindian land rights claim." News Room, 16

December 2022
13. "Amerindian group files notice of appeal to CJ's ruling in decades-old Upper Mazaruni land titling case." Kaieteur News, 2 February 2023, https://www.kaieteurnewsonline.com/2023/02/02/amerindian-group-files-notice-of-appeal-to-cjs-ruling-in-decades-old-upper-mazaruni-land-titling-case/
14. "ART issues world's first jurisdictional forestry carbon credits to Guyana." Winrock International, 1 December 2022, https://winrock.org/art-issues-worlds-first-jurisdictional-forestry-carbon-credits-to-guyana/
15. "Hess Corporation and the Government of Guyana announce REDD+ carbon credits purchase agreement." Business Wire, 2 December 2022, https://www.businesswire.com/news/home/20221202005187/en/Hess-Corporation-and-the-Government-of-Guyana-Announce-REDD-Carbon-Credits-Purchase-Agreement
16. "The range of tenures (property rights) that underlie the jurisdictional carbon credits sold by Guyana to oil company Hess Corporation." Stabroek News, 15 December 2022, https://www.stabroeknews.com/2022/12/15/features/the-range-of-tenures-property-rights-that-underlie-the-jurisdictional-carbon-credits-sold-by-guyana-to-oil-company-hess-corporation/
17. Bulkan, J. "Queries about the purchase by Hess Corporation of jurisdictional carbon credits from the Government of Guyana." Oil and Gas Governance Network, 16 December 2022, https://www.oggn.org/2022/12/16/queries-about-the-purchase-by-hess-corporation-of-jurisdictional-carbon-credits-from-the-government-of-guyana/
18. Act No. 6 of 2006. Amerindian Act 2006, https://parliament.gov.gy/documents/acts/4680-act_no_6_of_2006.pdf

Janette Bulkan *is an Associate Professor in the Faculty of Forestry, University of British Columbia, Canada. She was previously Coordinator of the Amerindian Research Unit, University of Guyana (1985 to 2000) and Senior Social Scientist at the Iwokrama International Centre for Rainforest Conservation and Development, Guyana (2000 to 2003). Janette 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


UNITED STATES OF AMERICA
MEXICO
Mexico City
GULF OF MEXICO
BELIZE
GUATEMALA
PACIFIC OCEAN

According to data from the 2020 Population and Housing Census, produced by the National Institute of Statistics and Geography (INEGI), 23.2 million people aged three years or above self-identify as Indigenous in Mexico, equivalent to 19.4% of the country's total population. This breaks down into 51.4% (11.9 million) women and 48.6% (11.3 million) men. Of the 23.2 million people who self-identify as Indigenous, 7.1 million (30.8%) speak an Indigenous language and 16.1 million (69.2%) do not. The 2020 Census also records that 6.1% of the country's total population speak one of the country's 68 native languages (broken down into at least 364 variants). This is equivalent to 7.36 million people, of which 51.4% women (3.78 million), and 48.6% (3.58 million) men. Of these, 6.4 million also spoke Spanish and 866,000 did not, with just four of the country's 32 states (Oaxaca, Chiapas, Yucatán and Guerrero) accounting for 50.5% of the total number of Indigenous language speakers. In addition, the 2020 Census indicates that 11.8 million people live in Indigenous households in Mexico, 5.7 million of them men and 6.1 million women, with an average of 4.1 individuals per household.[1]

The long road to exercising the right to autonomy over water

The Oaxaca Coordinating Body of Peoples United for the Care and Defence of Water (COPUDA) received its water concession titles from the Mexican government in August 2022 in the context of a decree establishing the regulated zone of Aquifer 2025 for the administration and control of the extraction, use or exploitation and conservation of groundwater.[2] This decree is the first legal instrument establishing the communities' rights to self-determination, autonomy, their right to territory and to jointly administer water with the federal authorities. It also regulates legal pluralism by establishing compliance with administrative water laws and international treaties on Indigenous rights, as well as the communities' own regulatory systems. It further establishes self-determination and autonomy; legal pluralism; intercul-

turality; non-discrimination; consultation and Free, Prior and Informed Consent (FPIC); and respect for and protection of traditional water-related knowledge as guiding principles of the government's relationship with Indigenous communities.

This achievement in respect of Indigenous rights to water as set out in the decree is the result of a more than 15-year-long struggle on the part of the 16 Zapotec Indigenous communities that make up COPUDA. The communities refer thus to the Indigenous movement for the defence of water: "(...) it was born out of the need to seek solutions to the drought, as well as to a series of discriminatory policies implemented by the State, which exacerbated the water shortage situation in 2005. We thus embarked on a legal path in order to overcome the administrative problems deriving from regional restrictions that were limiting access to water for Indigenous and peasant communities."[3]

As a result of an Indigenous consultation that was ordered by a court judgement, several agreements were reached, such as the right of the communities to participate in the administration of water,[4] the granting of collective water concessions, the application of internal regulations and the harmonization of the powers of the Federal Executive with those of the Indigenous authorities, in addition to coordination between both authorities. The decree sets out the duty of the Federal Executive to register the regulations that communities may draw up in the exercise of their autonomy and self-determination in order to publicize them and ensure compliance on the part of third parties. This duty is still pending fulfilment, as is enjoyment of this right on the part of other Indigenous communities in Mexico.

Water and the Indigenous population

The importance of the *Report of the Special Rapporteur on the human rights to safe drinking water and sanitation of indigenous peoples*, presented during 2022, should not be under-estimated as it raised the profile of the issue and the contributions of ancestral cultures and proposed viewing water management from a perspective of recognizing the value of the cosmovisions and knowledge of Indigenous Peoples.[5] It clearly includes aspects and problems of great relevance and topicality

that need to be resolved. It is worth highlighting the role of women in this regard, which goes beyond "fetching water" given that they contribute to health care and to improving the quality of life of the population by using water resources in their healing therapies: in the hydrotherapy of *temazcales* [steam baths], for example, and in the use of thermal waters, not to mention the use of water as a symbolic resource.[6]

Water is furthermore a fundamental element in the cosmovision of the Indigenous population. According to data from the *Diccionario de la Medicina Tradicional Totonaca de Veracruz [Totonaca Dictionary of Traditional Medicine of Veracruz],*[7] produced by the University Programme for the Study of Cultural Diversity and Interculturality of the National Autonomous University of Mexico (PUIC-UNAM) and the Papantla Indigenous Arts Centre in Veracruz in coordination with traditional doctors, it was found that, in the Totonaca cosmovision, natural resources are related to deities that take care of them:

> *Everything in this world has a soul, everything is alive and always has an owner who takes care of the environment and its order. Water, plants, animals and also air, stones, fire, mountains, earth and everything around humankind has a soul; they all have a spirit and an owner who takes care of them (Martinez, 2012, cited in Zolla, et al, 2022: 305).*

The same source speaks of *Aktsini*, God of Water, who "occupies an important place together with the Sun. *Aktsini* is said to have power over the water of streams, lakes, springs, wells and the sea. They are also dangerous because they represent the storm or hurricane." This knowledge coexists in a context in which Indigenous Peoples are continuing to push for a new form of integration into societies, a new social pact in which the political structures of the States recognize their specific cultural features, their inalienable rights as peoples with autonomy and self-determination, and their possessions, all of which make their own development possible as full political subjects. This is because they still suffer a situation of economic and social inequality in the country compared to other sectors of the population, as confirmed by their lack of basic infrastructure, including water and sanitation.

According to the 2015 Intercensal Survey[8] conducted by INEGI, to-

gether with data from the National Institute for Indigenous Peoples (INPI), 12.8% of the population do not have piped water in their homes and 26.9% lack drainage, a situation that results in a greater likelihood of health problems. This situation is made even more difficult by the lack of access to water services (a social deprivation suffered by 47% of the Indigenous population) and represents a barrier to addressing any pandemic situation, in which water is fundamental. As UNESCO has pointed out, "Water is of huge importance in the context of the current health crisis".[9]

The situation remains unresolved since the most recent data from the National Council for the Evaluation of Social Policy (CONEVAL) reported that 67.4% of the Indigenous language-speaking population still suffers al lack of basic housing services. The native peoples of Mexico thus face a number of problems on their territories, including the deterioration of the natural resources (hazards and disasters), political, interethnic and religious conflicts, insufficient educational opportunities (only 4.6% of the population has achieved a professional level, according to ENEGI 2018 data[10] and, in 2020, schooling levels were recorded at an average of 6.7 years for men and 5.8 for women, according to CONEVAL), in addition to low income (46.4% of the population survives on an income below the poverty line, according to CONEVAL, 2020).[11]

These situations are a reflection of the disadvantaged relationship that persists between Indigenous people and the rest of society and the State. This restricts them in the way they are able to face up to current problems such as climate change, which "is already seen as an attack affecting the survival of entire societies" (PUIC, 2022);[12] one of its consequences is the impact that is being felt on water resources. There is therefore a need to build new plural and intercultural models based on equity, developed in dialogue with social organizations, government and intergovernmental agencies and universities but, above all, with the local Indigenous population.

UN experts point out negative impacts of Train Maya project

Following a letter from the UN human rights rapporteurs to the Mexican government on the Train Maya project on 21 September 2020, several

UN experts repeated their concerns in a press release issued on 7 December 2022. In this communiqué, they state that the government's megaproject, known as the Train Maya, which envisages laying 1,500 km of railway line on the Yucatán peninsula, was endangering "the rights of indigenous peoples and other communities to land and natural resources, cultural rights and the right to a healthy and sustainable environment".[13]

Various protests and strategies have been organized by civil society organizations against this megaproject, including legal injunctions granted by the courts due to the lack of environmental impact studies, to mention just one violation of State and federal laws. To get round this situation, the federal government therefore declared the project a "priority for national security", meaning that it was able to omit several environmental and social safeguards. The rapporteurs themselves emphasized that the Mexican State could not circumvent international agreements and treaties governing respect for human rights and environmental protection. In turn, Fernanda Hopenhaym, chair of the UN Working Group on Business and Human Rights, stated, "That decision not only has the potential to allow human rights abuses to remain unaddressed but also to undermine the project's purpose of bringing inclusive and sustainable social and economic development to the five Mexican states involved."[14]

Another aspect of concern to the rapporteurs is the participation of the Mexican army in the project's management and construction, as well as the increased number of threats and attacks on human rights defenders and respect for the FPIC of the region's Indigenous Peoples. This last aspect is set against the clear backdrop of the points made by the Office of the United Nations High Commissioner for Human Rights in Mexico (OCHCR-Mexico) to the Mexican government, between 15 November and 15 December 2019, regarding the Indigenous consultation process on the "Train Maya Development Project", noting that "it has so far not complied with all international standards on the matter".[15]

The signatories of the December 2022 press release are: the UN Working Group on Business and Human Rights; Francisco Cali Tzay, Special Rapporteur on the rights of Indigenous Peoples; Saad Alfarargi, Special Rapporteur on the right to development; Alexandra Xantha-

ki, Special Rapporteur in the field of cultural rights; Mary Lawlor, Special Rapporteur on the situation of human rights defenders; David R. Boyd, Special Rapporteur on human rights and the environment, among others.

Endnote: As this article went to press, the University Programme for the Study of Cultural Diversity and Interculturality of the National Autonomous University of Mexico (PUIC-UNAM) published the work *Atlas II: Impactos de los Megaproyectos en Territorios Indios y Negros de América Latina [Atlas II: Impacts of Megaprojects on Indigenous and Black Territories in Latin America.]* The work, coordinated by Nemesio J. Rodríguez, analyses a number of aspects of the impacts of megaprojects on land, territories, health and nutrition, as well as modern slave labour and the popular organizations and movements that question and defend themselves from these projects.[16]

Notes and references

1. INEGI Press Release No. 430/22. *Estadísticas a propósito del Día Internacional de los Pueblos Indígenas*. INEGI, 8 August 2022. Available at: https://www.inegi.org.mx/contenidos/saladeprensa/aproposito/2022/EAP_PueblosInd22.pdf
2. Decree establishing the regulated zone of the Valles Centrales Aquifer 2025 in the State of Oaxaca. Available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5636230&date=24/11/2021#gsc.tab=0
3. Press Release. "Simulación de la Conagua: 16 comunidades Zapotecas de Oaxaca exigimos cumplimiento de acuerdos firmados en proceso de consulta indígena garantizando nuestro derecho al agua". Flor y canto, 10 August 2020. Available at: http://cdiflorycanto.org/web/2020/08/12/comunidades-zapotecas-exigen-cumplimiento-de-acuerdos-a-conagua/
4. *Minutes of Agreements Corresponding to the Closing of the Fourth Stage of the Free and Informed Consultation Process to Amend the Decree on Restrictions in the Central Valleys of Oaxaca*. 12 October 2019. Available at: http://cdiflorycanto.org/web/wp-content/uploads/2020/08/ACTA-CONSULTIVA-12OCT20192.pdf
5. Pedro Arrojo Agudo. *Human rights to safe drinking water and sanitation of indigenous peoples: state of affairs and lessons from ancestral cultures.* UNO, 27 June 2022. Available at: https://www.ohchr.org/en/documents/thematic-reports/ahrc5124-human-rights-safe-drinking-water-and-sanitation-indigenous.
6. Zolla, C., Sánchez, C., García, H., Bautista, L. and García, J. (Coords.). *Diccionario de la medicina tradicional totonaca de Veracruz*. Mexico: PUIC-UNAM and CAI, 2022.
7. Ibidem.
8. INEGI. *Encuesta Intercensal 2015.* INEGI, 2016. Available at: https://www.inegi.org.mx/programas/intercensal/2015/
9. UNESCO. *Pueblos indígenas y COVID-19: una mirada desde México*. UNESCO,

4 August 2020. Available at: https://es.unesco.org/news/pueblos-indigenas-y-covid-19-mirada-mexico

10. INEGI. *Encuesta Nacional de Ingresos y Gastos de los Hogares.* INEGI, 2018. Available at: https://www.inegi.org.mx/programas/enigh/nc/2018/

11. CONEVAL. *Informe de la pobreza multidimensional en México, 2020.* Metodología actualizada 2018-2020. CONEVAL, 2020. Available at: https://www.coneval.org.mx/InformesPublicaciones/Paginas/Mosaicos/Informe_de_pobreza_2020.aspx

12. PUIC. (2022). Plan de Desarrollo Institucional, UNAM.

13. United Nations. Mexico: *Government and business must address negative impacts of Train Maya project, say UN experts* 7 December 2022. Available at: https://www.ohchr.org/en/press-releases/2022/12/mexico-government-and-business-must-address-negative-impacts-train-maya

14. Ibidem.

15. UN-HR. "ONU-DH: el proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia". UN-DH, 19 December 2019. Available at: https://hchr.org.mx/comunicados/onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-los-estandares-internacionales-de-derechos-humanos-en-la-materia/

16. Rodríguez, Nemesio J. Programa Universitario de Estudios de la Diversidad Cultural y la Interculturalidad UNAM. "Atlas II: Impactos de los Megaproyectos en Territorios Indios y Negros de América Latina". 28 February 2023. Available at: https://www.imezinal.unam.mx/

Carolina Sánchez García*, Director of PUIC-UNAM;* ***Juan Mario Pérez Martínez****, Technical Secretary of PUIC-UNAM;* ***Rocío Becerra Montané****, Teaching Coordinator of PUIC-UNAM and* ***José del Val****, Coordinator of PUIC-UNAM Advisors.*

Nicaragua

CARIBBEAN SEA
HONDURAS
NICARAGUA
Managua
COSTA RICA
PACIFIC OCEAN

Nicaragua has seven Indigenous Peoples: the Chorotega (221,000), Cacaopera or Matagalpa (97,500), the Ocanxiu or Sutiaba (49,000) and the Nahoa or Nahuatl (20,000) live in the Pacific, centre and north of the country while the Caribbean (or Atlantic) coast is inhabited by the Miskitu (150,000), the Sumu or Mayangna (27,000) and the Rama (2,000). Other peoples who also enjoy collective rights according to the Political Constitution of Nicaragua (1987) are the people of African descent, known as 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 U.S.-funded "Contra" armed front. Peasant farmers from the Pacific together with Indigenous Peoples from the Caribbean Coast participated in the Contras. In 1987, following a friendly settlement of the conflict through the Inter-American Commission on Human Rights (IACHR) aimed at putting an end to Indigenous resistance, 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).

Following the Inter-American Court of Human Rights' (IACtHR) judgement in the case of the *Mayangna (Sumo) Community of Awas Tingni v. Nicaragua* in 2001, 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, was enacted. This law recognizes 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. However, starting that same year, the political party in government began to co-opt Indigenous and Afro-de-

scendant authorities, culminating in the imposition of governments parallel to those legitimately elected by the communities and territories. In 2015, the Alliance of Indigenous and Afro-descendant Peoples of Nicaragua was formed.

Protected areas and the Green Climate Fund's controversial Bio-Clima Project

The Green Climate Fund (GCF) proposed financing FP146 for Nicaragua "Bio-Clima Project: Integrated Climate Action to Reduce Deforestation and Strengthen Resilience in Bosawás and Río San Juan Biosphere Reserves" through the Central American Bank for Economic Integration (CABEI) with implementation from mid-2022 on. However, the outcome of a Final Compliance Assessment Report on the GCF's operating policies and procedures has created uncertainty regarding the GCF's implementation. In this article, we will analyse the background, complaints procedure and uncertain implementation of the Bio-Clima Project.

Nicaragua is located in the heart of the American continent and has a territory of approximately 370,000 km^2; of this, 130,000 km^2 constitute the country's land surface and 200,000 km^2 its marine territories in the Pacific Ocean and Caribbean Sea. Nicaragua has declared 75 legally-protected areas covering an area of 7,462,410 hectares, equivalent to 57% of the national territory.

The most important protected areas were created by the State between 1990 and 2003 on Nicaragua's Caribbean Coast, an area that comprises 54% of the national territory, 80% of the forests and most of the country's Indigenous populations. The Caribbean Coast is administratively divided into the Autonomous Region of the Northern Caribbean Coast (RACCN) and the Autonomous Region of the Southern Caribbean Coast (RACCS).

The most important protected areas in Nicaragua are the Bosawás Biosphere Reserve (1997),[1] the Southeast Nicaragua Reserve – including the Indio y Maíz Biological Reserve and the Cerro Silva and Punta Gorda Forest Reserves[2] – now known as the Río San Juan Biosphere

Reserve (2003),[3] and the Isla de Ometepe Biosphere Reserve in the Nicaraguan Great Lake (2010).[4] These reserves were also declared as such by UNESCO and the Nicaraguan Caribbean Biosphere Reserve[5] (2021) was recently declared by the State.[6]

Most of Nicaragua's protected areas have been superimposed on territories traditionally and historically occupied by Indigenous and Afro-descendant peoples. Between 2005 and 2013, under a collective and inalienable property regime, the State titled a total of 23 territories comprising 304 communities and covering an area of 37,841 km^2 or 31.16% of the national territory.[7] However, the last stage of the titling process, known as "*saneamiento*" or regularization – when the rights of third parties within the titled territories are established – has not been conducted by the State. Meanwhile, environmental degradation and settler encroachment continue on the Indigenous territories that are also legally-protected areas.[8]

The Green Climate Fund and the Bio-Clima Project

The GCF was established by the United Nations Framework Convention on Climate Change in 2010 as one of the main financial mechanisms by which to support developing countries in implementing their climate change policies.

The GCF[9] has agreed to finance the Bio-Clima Project: Integrated Climate Action to Reduce Deforestation and Strengthen Resilience in Bosawás and San Juan River Biosphere Reserves[10] in Nicaragua for a total of USD 116 million,[11] through the Central American Bank for Economic Integration (CABEI). The project aims to reduce emissions by addressing deforestation on Nicaragua's Caribbean Coast, an important area for the conservation of biodiversity and the livelihoods and cultures of Indigenous and Afro-descendant peoples.

The socio-political context of Nicaragua

The Bio-Clima Project has nonetheless received a great deal of criticism for ignoring Nicaragua's general socio-political context since 2018, and particularly the context in the areas of project implementation. In addition, CABEI has been accused of corruption[12, 13] and is considered the main financial backer of the Nicaraguan government, without even considering the human rights violations attributed to the State.[14] Criticism from Indigenous people[15] and environmentalists also points to a lack of

State commitment in counteracting deforestation and protecting the traditional property and personal integrity and security of members of Indigenous and Afro-descendant peoples living in protected areas.[16]

The Nicaraguan government is currently concentrating its environmental and natural resource management decisions within the Presidency of the Republic[17] and has relaxed its natural resource regulations and controls:[18] the budget for managing protected areas, traditionally financed by international cooperation, has declined by more than 80%; access to public information has been limited;[19] and spaces for civil society participation generally have been closed and environmentalism in the country criminalized.[20]

The Río San Juan Biosphere Reserve

The Grand Interoceanic Canal megaproject that will cross Nicaragua is incompatible with the objectives of the Bio-Clima Project and was promoted without due consultation with the Indigenous and Afro-descendant peoples, despite the fact that 52% of its route will cross the territories of these peoples. In addition, the megaproject's constant announcements have resulted in massive encroachment onto the Indio Maíz Biological Reserve, part of the Río San Juan Biosphere Reserve.[21] The case is currently before the Inter-American Court of Human Rights. In addition, slaughterhouses and meat distributors are buying cattle from illegal cattle ranching within the protected area.[22]

Gold mining

Gold has become Nicaragua's most valuable export, surpassing beef in 2020, and this also comes from legally-protected areas. Mining is being conducted in the Río San Juan and BOSAWÁS Biosphere Reserves[23] despite this activity being incompatible with the environmental proposals of the Bio-Clima Project. The gold business has formed the object of U.S. sanctions against senior Nicaraguan government officials and the Nicaraguan Mining Company (EMINAS).[24, 25]

Attacks on Indigenous people in Bosawás

The Bosawás Biosphere Reserve is clearly suffering deforestation due to the advance of the agricultural frontier and extensive cattle ranching. In addition, since 2015, Indigenous Peoples have suffered systematic attacks and dispossession of their – State-titled – territories, causing entire communities to be forcibly displaced.[26] The *2022 Annual Re-*

port of the Office of the United Nations High Commissioner for Human Rights in Nicaragua,[27] delivered to the 49th Session of the United Nations Human Rights Council, noted:

> *In 2021, indigenous peoples and people of African descent in Nicaragua continued to suffer discrimination and violence. Even though the right to autonomy over their land and territories is protected by law, violent attacks have continued to prevent the peaceful enjoyment of their rights. OHCHR received reports of at least six attacks and violent incidents that affected indigenous peoples in 2021, resulting in at least 11 indigenous men killed, 1 woman and 1 girl raped, and 7 persons injured, including 2 children.*

These actions are contrary to the safeguards that should have been implemented to protect Indigenous Peoples in the implementation of the Bio-Clima Project.

Green Climate Fund approves Bio-Clima Project

Despite the context described above, the GCF Board of Directors approved the project in 2021, albeit with certain conditions.[28] CABEI and the Government of Nicaragua therefore signed the agreements on the Bio-Clima Project; however, the GCF Secretariat subsequently granted CABEI a deadline of 7 June 2022 to comply with the conditions in order to access the first disbursement of project funds. To date, no such conditionalities are known to have been met.

Carbon capture project cancelled

The difficulty in meeting the necessary conditions for the implementation of this type of project in Nicaragua became evident on 23 February 2021 when the carbon capture project, financed by the World Bank's Carbon Fund, was cancelled. Bilaterally agreed between the World Bank and the Nicaraguan government, the Fund Management Team (FMT) explained the cancellation:

> *(...) unfortunately we cannot move forward with the ERPA [Emission Reduction Payment Agreements] at this stage. ERPAs are complex projects that require the implementation of*

> *very robust systems from the outset, particularly to ensure full benefit sharing with Indigenous communities. They also require frequent on-site monitoring and evaluation, continuous supervision and third-party certification of results.*[29]

The cancellation was decided due to the impossibility of having a solid environmental and social monitoring system and benefit-sharing plan – especially given the lack of Free, Prior and Informed Consent (FPIC) and the State's imposition of governments parallel to those legitimately elected by the communities (these parallel governments are made up of people related to the political party in government in Nicaragua) – required as a vital part of all FCPF ERPAs in relation to monitoring, supervision and certification.

The World Bank acted prudently given the high reputational and financial risk of meeting the project's objective amdist the conditions of violence, forced displacement and devastation of the territory currently being suffered by the Indigenous Peoples of the Caribbean Coast of Nicaragua, where the project was to be implemented.

Complaint regarding the Bio-Clima Project

On 30 June 2021, the Independent Redress Mechanism (IRM)[30] received a complaint – confidentially for fear of reprisals from the Nicaraguan government – regarding the Bio-Clima Project. The complainants alleged that the project would harm Indigenous and Afro-descendant communities because (i) there had been no adequate consultation with the communities leading to Free, Prior and Informed Consent (FPIC); (ii) the project would result in environmental degradation and further attacks by armed non-Indigenous settlers; (iii) CABEI's actions did not appear to comply with GCF policies on participation and information disclosure; (iv) the GCF Board conditions imposed on the project could not be effectively defined and enforced; and (v) the Government of Nicaragua would not comply with its obligations for the implementation of the Bio-Clima Project.[31]

The complaint was declared admissible on 21 July 2021 and the initial steps – attempts to resolve the problem, settlement/mediation – were concluded on 17 January 2022 with no result. In this context, the IRM embarked on its compliance assessment of the GCF's operational policies and procedures for the Bio-Clima Project, in particular its In-

terim Environmental and Social Safeguards, Environmental and Social Policy (ESP), Indigenous Peoples Policy (IPP) and Updated Gender Policy (UGP).

The IRM rules on the complaint

In response to complaint C-0006-Nicaragua, the IRM initiated an investigation process: the IRM's Compliance and Dispute Resolution Specialist undertook a mission to Central America, met with interested parties and conducted consultations with CABEI, the Government of Nicaragua and FVC staff. Following this investigation process, an initial Compliance Assessment Report was issued and published on 24 April 2022. This report concluded that there was *prima facie* evidence of adverse impacts caused or likely to be caused by the project's non-compliance with GCF operating policies and procedures.[32] The IRM then began the compliance investigation to ascertain the details of the matter.

The IRM issues its Final Compliance Assessment Report

On 30 August 2022, the IRM submitted its Final Compliance Assessment Report to the GCF Board of Directors. The co-chairs and the GCF Board of Directors have a responsibility to rule on the report[33] and publish their decision within 10 days. The GCF Board of Directors held its 34th meeting during the second week of October 2022. However, during the meeting, the GCF Board of Directors met with CABEI and Nicaraguan government officials, excluding civil society members and GCF observers. They subsequently announced that a decision on the report would not be taken until the next GCF meeting to be held in March 2023.

The decision taken by the GCF's Board of Directors must be in accordance with the regulations and guidelines of its own institution in order to truly fulfil its objectives.

United Nations rapporteurs request information

Due to the constant complaints from the Indigenous Peoples of Nicaragua's Caribbean Coast through the special mechanisms of the United Nations, in September 2022 the Special Rapporteur on the rights

of Indigenous Peoples, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on extrajudicial, summary or arbitrary executions jointly requested information from the State of Nicaragua on the situation of these peoples and their traditional territories in the protected areas where the Bio-Clima Project was to be implemented.[34]

Unfortunately, the State of Nicaragua has refused to cooperate with the United Nations, which makes the implementation of the Bio-Clima Project even more difficult since one of the conditionalities imposed by the GCF is the involvement of a United Nations body as independent third party monitoring its implementation. This lack of cooperation on the part of the State therefore makes it practically impossible for it to comply with this condition.

Notes and references

1. The Bosawás Biosphere Reserve was recognized by the Man and the Biosphere Programme in October 1997, and was ratified by the Government of Nicaragua in 2001, by means of Law No. 407 (Law declaring and defining the Bosawás Biosphere Reserve). The reserve forms part of the heart of the Mesoamerican biological corridor and is, in turn, the second largest tropical rainforest in the Americas, after the Amazon. It is also considered a UNESCO World Heritage site. The text of Law No. 407 was retrieved from http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/276abf1f6374c9f2062570ae0052d6aa?OpenDocument
2. Executive Decree No. 42-91 establishes the areas around Cerro Silva, including Punta Gorda, as Protected Areas. Furthermore, the Decree for the Creation of Forest Reserves (Decree 38-92 of 26 June 1992) established the areas already declared as protected around Cerro Silva as Forest Reserves, within the following natural limits: Escondido River, Mahogany River, Cerro Silva, Cerro Cabecera de Kukra (405 metres), confluence of the Serrano and Chiquito rivers, confluence of the Mora and Punta Gorda rivers, to their mouth at the sea. The Regulations governing Nicaragua's Protected Areas were subsequently issued, Decree No. 14-99, published in Official Gazette Nos. 42 and 43 of 2 and 3 March 1999. Available at http://legislacion.asamblea.gob.ni/Normaweb.nsf/9e314815a08d4a6206257265005d21f9/2225795adad762df06257217006632b7 Article 2 of Decree No. 66-99 on Updating and Specifying the Categories and Boundaries of Protected Areas in the Southeastern Territory of Nicaragua, published in Official Gazette No. 116 of 18 June 1999, updates and specifies the category of Natural Reserve for the Cerro Silva and Punta Gorda Reserves. Available at http://legislacion.asamblea.gob.ni/normaweb.nsf/9e314815a08d4a6206257265005d21f9/5f5a230633eb332906

25723a00600179

3. Biosphere Reserve is one of the categories defined and recognized within Nicaragua's National System of Protected Areas, and it includes the Southeastern Biosphere Reserve, declared protected by national legislation in 1999. The new name given since then has been the San Juan River Biosphere Reserve. On 17 April 1990, the Nicaraguan government established the creation of the Southeastern Natural Protected Area of Nicaragua by means of Presidential Decree 527. This decree created the Solentiname National Monument, the Guatuzos Wildlife Refuge, the Fortaleza de la Inmaculada Concepción de María Historic Monument, and the Great Indio-Maíz Biological Reserve. In 1994, by means of Decree 28-94, the Southeast Region of Nicaragua was created as a Sustainable Development Territory and, in 1999, by means of Decree 66-99, the Southeast Biosphere Reserve of Nicaragua was created and is still in effect. Available at https://reservaindiomaiz.org/historia/
4. López-Sáez, José Antonio y Pérez Soto, Josué. "Permanencia y transmisión del acervo botánico etnomedicinal en la Isla de Ometepe (Nicaragua)". *Revista española de antropología americana/ Departamento de Antropología y Etnología de América*, 40(2):125-144, February 2010. Available at Retrieved from: https://www.researchgate.net/publication/235921015_Permanencia_y_transmision_del_acervo_botanico_etnomedicinal_en_la_Isla_de_Ometepe_Nicaragua
5. "El nuevo lío entre Colombia y Nicaragua: la reserva de biósfera que creó Daniel Ortega". El Espectador, 16 February 2021. Available at https://www.elespectador.com/mundo/america/el-nuevo-lio-entre-colombia-y-nicaragua-la-reserva-de-biosfera-que-creo-daniel-ortega-article/
6. National Map of Tourism Protected Areas. Available at https://www.mapanicaragua.com/areas-protegidas/
7. Executive Report of CONADETI and the CIDTs as of 30 June 2013. Available at https://www.poderjudicial.gob.ni/pjupload/costacaribe/pdf/informe_costacaribe3006.pdf Y, "Comandante-Presidente Daniel entrega títulos comunitarios a pueblos originarios de la Costa Caribe de Nicaragua". *El 19 digital,* 29 October 2016. Retrieved from: https://www.el19digital.com/articulos/ver/titulo:48337-comandante-presidente-daniel-entrega-titulos-comunitarios-a-pueblos-originarios-de-la-costa-caribe-de-nicaSalinas
8. *[The Committee] is concerned about the stagnation of efforts to regularize indigenous territories and address the lack of effective mechanisms for the protection of indigenous peoples' rights to their lands, territories and resources. The Committee is concerned about the serious social conflicts and violent disputes over the possession and use of lands and territories that arise between indigenous peoples and third parties that occupy or wish to exploit the natural resources in such territories, particularly in territories belonging to the indigenous and Afrodescendent peoples on the Caribbean coast (art. 1). Concluding observations on the fifth periodic report of Nicaragua.* Committee on Economic, Social and Cultural Rights (hereinafter CESCR Report 2021) E/C.12/NIC/CO/5, 11 November 2021, para. 11. Available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fNIC%2fCO%2f5&Lang=en
9. Green Climate. Projects & Programmes FP146 Bio-CLIMA: Integrated climate action to reduce deforestation and strengthen resilience in BOSAWÁS and Rio San Juan Biospheres. Green Climate. Available at www.greenclimate.fund/project/fp146#overview

10. CABEI. *BCIE aprueba a la República de Nicaragua US$ 84.0 millones para la ejecución del Proyecto Bio-Clima*. CABEI, 15 December 2020. Available at https://www.bcie.org/novedades/noticias/articulo/bcie-aprueba-a-la-republica-de-nicaragua-us840-millones-para-la-ejecucion-del-proyecto-bio-clima

11. "Nicaragua: $116 millones para el agro con una línea de crédito del BCIE el gobierno nicaragüense financiará proyectos enfocados en la transformación de la ganadería extensiva, agricultura y explotación de madera". *Central América Data*, 13 November 2020. Available at https://www.centralamericadata.com/es/article/home/Nicaragua_116_millones_para_el_agro

12. "Ottón Solís rompe confidencialidad del BCIE y lanza serias denuncias contra la entidad". La Tribuna, 13 November 2021. Available at https://latribunacr.com/2021/11/13/otton-solis-rompe-confidencialidad-del-bcie-y-lanza-serias-denuncias-contra-la-entidad/

13. Berg, Ryan C. (2023). "Why Is CABEI Funding Nicaragua's Dictatorship and What Can the United States Do about It?" available at: https://www.csis.org/analysis/why-cabei-funding-nicaraguas-dictatorship-and-what-can-united-states-do-about-it

14. "'El BCIE no es una instancia de derechos humanos', responde Dante Mossi ante críticas por oxigenar al régimen de Ortega". *Dispatch 505*, 9 May 2022. Available at https://www.despacho505.com/el-bcie-no-es-una-instancia-de-derechos-humanos-responde-dante-mossi-ante-criticas-por-oxigenar-al-regimen-de-ortega/

15. 100 Noticias Nicaragua. "Consejo de Ancianos de Moskitia escribe al Banco Mundial por proyecto Bio Clima que presentó régimen". YouTube, 23 June 2022. Available at https://www.youtube.com/watch?v=B736kBzGyPg

16. "BCIE oxigena a Ortega con préstamo de más de 100 millones de dólares para 'deforestación'". Artículo 66, 17 November 2021. Available at https://www.articulo66.com/2021/11/17/bcie-oxigena-ortega-prestamo-millonario-deforestacion

17. "INAFOR pasa a la presidencia de la República". *100 % Noticias,* 25 April 2017. Available at https://100noticias.com.ni/actualidad/85069-inafor-pasa-a-la-presidencia-de-la-republica/

18. Through Decree No. 15-2017, the government exempted many companies, private projects, and even individual investors from the requirement to conduct Environmental Impact Assessments (EIA), even when they are within protected areas. And, through Decree 20-2017 it repealed Decree 76-2006, establishing much more expeditious, flexible, discretionary and less participatory processes for obtaining permits, authorizations and licences. In addition, it has failed to establish the technical criteria, methodologies, requirements and administrative procedures for conducting this strategic environmental assessment. The "polluter pays" principle has furthermore been eliminated.

19. Guillermo Medrano. "Acceso a la información pública: 13 años de cuarentena en Nicaragua". Despacho 505, 13 June 2020. Available at https://www.despacho505.com/acceso-a-la-informacion-publica-13-anos-de-cuarentena-en-nicaragua/

20. Judith Alonso. "Medio ambiente en 'peligro de extinción' en Nicaragua". *DW*, 9 April 2022. Available at https://www.dw.com/es/medio-ambiente-en-peligro-de-extinci%C3%B3n-en-nicaragua/a-61416004

21. Acosta. María L. *El impacto de la Ley del Gran Canal Interoceánico de Nicaragua sobre los pueblos indígenas y afrodescendientes de Nicaragua.* Available at

https://www.calpi-nicaragua.com/wp-content/uploads/2014/12/El-Impacto-de-la-Ley-del-Gran-Canal-FINAL-11-10-141.pdf

22. Carlos Morales. "La mafia ganadera de Indio Maíz". *Onda Local*, 20 December 2019. Available at https://ondalocalni.com/especiales/811-mafia-ganadera-reserva-indio-maiz/

23. Boletín de Monitoreo de la Fundación del Río. "Nicaragua y su oro perverso". Fundación del Río, 14 July 2022. Available at https://reservaindiomaiz.org/wp-content/uploads/2022/07/Nicaraguaysuoroperverso.pdf

24. Wilmer Benavides. "¿Por qué EE.UU. sancionó el negocio del oro en Nicaragua? Aquí las razones". *Artículo 66*, 24 October 2022. Available at https://www.articulo66.com/2022/10/24/sanciones-estados-unidos-oro-nicaragua-daniel-ortega/

25. U.S. Department of the Treasury. "Treasury Sanctions Nicaraguan State Mining Company", 17 June 2022. Available at: https://home.treasury.gov/news/press-releases/jy0822

26. María Luisa Acosta. "Graves Violaciones a los Derechos Humanos de los Pueblos Indígenas en el caribe nicaragüense". *Diálogo Derechos Humanos*, 6 April 2021. Available at https://dialogoderechoshumanos.com/agenda-estado-de-derecho/graves-violaciones-a-los-derechos-humanos-de-los-pueblos-indigenas-en-el-caribe-nicaragueense

27. OHCHR. "Situation of human rights in Nicaragua". OHCHR, 24 February 2022. Available at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_49_23_AdvanceEditedVersion.pdf

28. Ortega Ramírez, Pedro. "Aprueban crédito del BCIE para programa Bio-Clima en Bosawas y Río San Juan". *El 19 digital,* 17 November 2021. Available at https://www.el19digital.com/articulos/ver/titulo:122870-aprueban-credito-del-bcie-para-programa-bioclima-en-bosawas-y-rio-san-juan

29. Communication sent via email on 23 February 2021 to Carbon Fund participants and observers by the Fund Management Team (FMT). See also: "BM cancela pago millonario a Nicaragua por desacuerdos en tema de indígenas". *Swiss Info,* 24 February 2021. Available at https://www.swissinfo.ch/spa/nicaragua-ind%C3%ADgenas_bm-cancela-pago-millonario-a-nicaragua-por-desacuerdos-en-tema-de-ind%C3%ADgenas/46397848

30. 1- The Independent Redress Mechanism (IRM) is an accountability and redress mechanism established by the Green Climate Fund (GCF) to enhance the effectiveness of GCF operations and respond to the concerns of people adversely affected by GCF-funded projects or programmes. 2- Among others, the IRM is mandated to receive and consider complaints from persons who believe they have been, or may be, adversely affected by GCF projects or programmes that do not comply with GCF policies and procedures (including social and environmental safeguards). 3- The IRM is independent of the GCF Secretariat and reports directly to the GCF Board of Directors, which oversees the Fund's investments and management. To learn more about the IRM see https://es.irm.greenclimate.fund/ And, on the procedures of the Independent Redress Mechanism (IRM) see https://irm.greenclimate.fund/sites/default/files/document/procedures-and-guidelines-irm-final-july-2021_0.pdf

31. FVC/MIR. Reporte de evaluación del cumplimiento. Caso C-0006- 24 de abril de 2021. Available at https://es.irm.greenclimate.fund/sites/default/files/case/compliance-appraisal-report-publication-c0006-spanish-final-version.pdf

32. FVC/MIR. Reporte de evaluación del cumplimiento. Caso C-0006- 24 de abril de 2021. Available at https://es.irm.greenclimate.fund/sites/default/files/case/

compliance-appraisal-report-publication-c0006-spanish-final-version.pdf
33. Case Register. C0006 Nicaragua FP146: Bio-CLIMA: Integrated Climate Action to Reduce Deforestation and Strengthen Resilience in Bosawás and San Juan River Biosphere Reserves. Available at https://irm.greenclimate.fund/case/c0006
34. "Mandatos del Relator Especial sobre los derechos de los pueblos indígenas; del Relator Especial sobre la cuestión de las obligaciones de derechos humanos relacionadas con el disfrute de un medio ambiente sin riesgos, limpio, saludable y sostenible y del Relator Especial sobre ejecuciones extrajudiciales, sumarias o arbitrarias" (Ref.: AL NIC 4/2022). Geneva, Switzerland, 7 September 2022. Available at https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=27541

Dr. Maria Luisa Acosta *was president of the Academy of Sciences of Nicaragua and coordinator of the Centre for Legal Assistance to Indigenous Peoples (CALPI). Contact: calpi2014@gmail.com; http://calpi-nicaragua.com*

Paraguay

Five linguistic families and 19 Indigenous Peoples self-identify in Paraguay: the Guaraní (Aché, Avá Guaraní, Mbya, Pai Tavytera, 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 statistics from 2017, the country's Indigenous population stands at 122,461 people.

Chapter V of the 1992 Constitution recognizes Indigenous Peoples as cultural groups dating back to before the formation and organization of the Paraguayan State, recognizing them rights such as ethnic identity, communal property, participation and education, and taking into account their cultural features.

Paraguay has a legal framework that guarantees and recognizes a wide range of rights in favour of Indigenous Peoples, having ratified the main instruments of international human rights law, both in the universal and Inter-American systems.

A tightening of penalties and continued forced evictions led to protests on the streets of Asunción on 10 December 2021, demanding an end to the persecution and criminalization of Indigenous people and peasant farmers.

A significant political and social feature of this situation was undoubtedly the appropriation of the commemorative date of International Human Rights Day by the social and Indigenous movement. Until not so long ago, this was used only by social actors from civil society organizations to make their demands and complaints known. The overwhelming criminalization and violence suffered by peasant settlements and Indigenous communities, a pattern aimed at depriving the former of access to land and agrarian reform and the latter of their communal property rights, underscored the importance of unity of action by the different sectors affected.

The demonstrations began on 10 December 2021 and, although the main protagonists were the peasant organizations, there was also broad participation from organized Indigenous sectors, and the victims of forced evictions in particular.[1]

The main demand of this mobilization, and of those that were to follow in the first four months of 2022, was repeal of the law converting what had up until then been an offence into a crime: the punishable act of trespass.[2] With the approval of this measure, the penalties for trespass were doubled with the clear intention of putting pressure, through threat of imprisonment, on those who have found the occupation of land and social protest to be their only tool for obtaining their rights over the last few decades.

The social and Indigenous movements' demonstrations and protests found their equivalent in civil society organizations' actions for enforceability of rights. The Coordinating Committee for Human Rights in Paraguay (CODEHUPY) coordinated efforts to promote national and international debate around the deteriorating human rights situation of Indigenous communities, documenting cases and submitting communications to international human rights protection organizations such as the Inter-American Human Rights System and the Universal System, both of which quickly became concerned about the situation in Paraguay.

In February, Indigenous people from the Ka'a Poty community and others, together with representatives from the social organizations, participated in what could be described as "a social challenge" to the government in Asunción's Plaza de Armas, a place that had become a kind of camp for the homeless. At that time, hundreds of Indigenous people deprived of their land by the State were camped out there, subjected to the humiliation of living in a public space under the eyes of a society that is generally incapable of reacting in human rights terms in order to show solidarity.

In this context, the meeting with representatives of various public institutions included the recently replaced head of the Paraguayan Indigenous Institute (INDI), who had only been in office for a week at the time.[3]

Coinciding with this action, on the very same day, the Inter-American Commission on Human Rights (IACHR) notified the Paraguayan Foreign Ministry that a thematic hearing would be convened on forced evictions and agrarian policy in Paraguay, to be held in March 2022.[4]

During its first period of sessions last year, the IACHR became the first international forum to analyse the worsening situation of human rights violations against the Indigenous and peasant victims of forced evictions in 2022.

In the meantime, protests were taking place throughout many of

the country's departments, including Caaguazú, Canindeyú and San Pedro, culminating in a large mobilization of peasants and Indigenous people in the capital in March. The objective was to achieve the demands they had been making since the end of 2021, consisting of a repeal of the penal reform that criminalized social struggle and protection of the communities.[5]

These successive and coordinated actions by various sectors of the social movement and civil society organizations, especially CODEHUPY, finally led to a high-level political meeting in April between the Indigenous and peasant leadership and the main congressmen and women and representatives of the Executive.[6] The meeting, set institutionally within the framework of the joint session of the Human Rights, Agrarian Reform and Indigenous Peoples commissions of the Senate, also welcomed international observers from the United Nations Organization.

This was the first time since the start of the pandemic and the wave of persecution, repression and criminalization of the land struggle that there had been a direct dialogue between the peasant and Indigenous leadership and several of the main political protagonists of these regressive and repressive measures. The meeting was held in the Acosta Ñu Hall of the Chamber of Senators under the watchful eye of representatives from the Office of the UN High Commissioner for Human Rights, among them Jan Jarab, and the UN Resident Coordinator in Paraguay, Mario Samaja, who participated in the dialogue.

The proposed agenda focused on four issues raised by the Indigenous and peasant representatives: 1) legal regularization of peasant and Indigenous settlements; 2) protection of peasants and Indigenous people from forced evictions; 3) recovery of ill-gotten lands; and 4) care for those individuals and families evicted, particularly those camped in the capital city and in other places around the country, such as in squares or along roadsides.

Following these protests and actions to demand their rights, the social movement fell into a kind of lethargy, without having obtained a positive response to or favourable progress in its demands. It was against this backdrop that criminal legislation, already amended to tighten the penalties for trespass, was consolidated in 2022 in the absence of a parliamentary majority capable of reversing it.

After the period of protest described above, the only thing that resonated strongly was the public demonstration held in the capital, Asunción, under the auspices of the National Indigenous Coordinating Body for a Dignified Life, which repeated the massive march held the previous year (2021) on the same date in 2022, 12 October.[7] The demands, in this case exclusively from the Indigenous sector, once again focused on their core social agenda: an end to forced evictions, recognition of the communities' traditional ownership rights and, consequently, legal security and titling of the lands they occupy and which form a constituent part of their traditional habitat. Public investment in infrastructure and production likewise formed one of the demands made to the State.[8]

What happens next will depend largely on the composition of the future Congress, as well as on the policies implemented by the Executive (these public bodies may change after the general elections of 30 April 2023) and, of course, on the mobilizing capacity of the Indigenous movement and its coordination with other sectors.

Violence on the rise in Amambay and the Paĩ Tavyterã are suffering

The Paĩ Tavyterã, a people living on the border of Paraguay and Brazil and, it has to be said, on the borders of Paraguayan society as well, were shocked when two of their members were killed and a third seriously injured during an incursion by an armed group. The criminal group, known more than a decade ago as the Paraguayan People's Army (EPP), broke into the Cerro Guasú or Jasuka Venda area and perpetrated the crime, according to accounts that have become public knowledge.[9]

In this context, the security forces also clashed with the attackers and killed three of them, one of them Indigenous, when they refused to lay down their weapons and surrender to the authorities, according to the official report issued by the Internal Defence Operations Command - Joint Task Force.

This fact confirmed the fears already expressed for at least two years now by the Paĩ Tavyterã organizations, who have repeatedly stated their concern at the militarization of their territory, both by State

forces and by those operating outside the law.

In addition to the inherent risk of being caught in the crossfire between the security forces and groups fighting in the area, this situation is especially concerning for the Indigenous Paĩ as it results in a restriction of their freedom of movement in Jasuka Venda for fear of falling victim to the armed violence, in a place considered sacred to their tradition and culture.

Although Amambay department has been the scene of widespread violence linked to the production, transit and illegal sale of drugs for decades, the current situation seems to have reached new levels of concern and threats to the lives of the communities living in the departments bordering Brazil.

Inter-American Court of Human Rights (IACtHR): enhanced monitoring in Paraguay

In its last resolution on monitoring of the Yakye Axa judgement in 2022, the IACtHR announced the start of what it called "enhanced monitoring" and brought forward the establishment of the Court's secretariat in the Republic of Paraguay in order to more effectively monitor the measures that the State has yet to adopt in relation to the Yakye Axa (2005), Sawhoyamaxa (2006) and Xákmok Kásek (2010) communities.[10]

This decision marks the start of a new phase in its procedures for monitoring judgements and deepens a practice long requested by the victims. A more active role on the ground is therefore to be expected for the IACtHR, aimed at ensuring full compliance of its decisions not only in the Yakye Axa case but also in the two other cases it is monitoring in relation to Indigenous affairs in Paraguay.

Conclusions

2022 was marked by intense mobilizations in which the Indigenous movement could be seen to be working in growing coordination with other social organizations. Nevertheless, and despite the above, which is undoubtedly encouraging in terms of opportunities for different ac-

tions aimed at enforcing their rights, regressive and repressive measures that should have been reversed ended up being consolidated during the year due to the political conditions existing in the Paraguayan Congress, which is strongly influenced by agribusiness interests.

Notes and references

1. CODEPUHY. "Gran movilización contra violaciones de derechos humanos". CODEHUPY, 10 December 2021. Available at https://www.codehupy.org.py/gran-movilizacion-contra-violaciones-de-derechos-humanos/
2. Paraguay. *Law No. 6830 Amending Article 142 of Law No. 1160/1997 "Criminal Code", and its amendment, Law No. 3440/2008. Library and Central Archive of the National Congress,* 30 September 2021. Available at https://www.bacn.gov.py/leyes-paraguayas/9670/ley-n-6830-modifica-el-articulo-142-de-la-ley-n-11601997-#:~:text=%2D%20Invasi%C3%B3n%20de%20inmueble%20ajeno.,libertad%20de%20hasta%20seis%20a%C3%B1os
3. CODEHUPY. "CODEHUPY impulsa espacio de diálogo entre el Estado y familias afectadas por desalojos". CODEHUPY 16 February 2022. Available at https://www.codehupy.org.py/codehupy-impulsa-espacio-de-dialogo-entre-el-estado-y-familias-afectadas-por-desalojos/
4. CODEHUPY. "Denunciarán ante la CIDH situación de familias desalojadas en Paraguay". CODEHUPY, 16 March 2022. Available at https://www.codehupy.org.py/denunciaran-ante-la-cidh-situacion-de-familias-desalojadas-en-paraguay/
5. CODEHUPY. "Vigésima quinta marcha campesina por la reforma agraria". CODEHUPY, 22 March 2018. Available at https://www.codehupy.org.py/vigesima-quinta-marcha-campesina-por-la-reforma-agraria/
6. Chamber of Senators. "En reunión interinstitucional tratan situación de comunidades campesinas e indígenas". Chamber of Senators, 17 April 2022. Available at http://www.senado.gov.py/index.php/noticias/noticias-comisiones/9546-en-reunion-interinstitucional-tratan-situacion-de-comunidades-campesinas-e-indigenas-2022-04-27-17-42-45
7. "Marcha indígena: Sin territorio no hay vida digna". *Tierraviva*, October 2022. Available at https://www.tierraviva.org.py/marcha-indigena-sin-territorio-no-hay-vida-digna/
8. "Por el solo hecho de nuestra existencia los pueblos indígenas que habitamos el Paraguay tenemos derechos a vivir libre y dignamente en nuestro hábitat tradicional ". *Tierraviva*, 12 October 2022. Available at https://www.tierraviva.org.py/por-el-solo-hecho-de-nuestra-existencia-los-pueblos-indigenas-que-habitamos-el-paraguay-tenemos-derecho-a-vivir-libre-y-dignamente-en-nuestro-habitat-tradicional/
9. "EPP mató a pareja de indígenas antes de enfrentamiento, según FTC". *Última Hora*, 23 October 2022. Available at https://www.ultimahora.com/epp-mato-pareja-indigenas-antes-enfrentamiento-segun-ftc-n3029956.html
10. I/A Court H.R. *Resolution of the Inter-American Court of Human Rights of 24 June 2022, Case of Yakye Axa v. Paraguay. Monitoring Resolution of Judgement* Available at: https://www.corteidh.or.cr/docs/supervisiones/yakyeaxa_24_06_22.pdf

Oscar Ayala Amarilla *is a human rights defender, lawyer and coordinator of the legal team of Tierraviva a los Pueblos Indígenas del Chaco, Paraguay. Contact: oayala@tierraviva.org.py*

This article is based on another, by the same author, published on the website of the Coordinating Committee for Human Rights in Paraguay. Available at https://ddhh2022.codehupy.org.py/los-indigenas-siguen-al-albur-de-una-clase-politica-negligente-y-sometida-a-intereses-economicos/

Peru

COLOMBIA
ECUADOR
BRAZIL
PERU
Lima
BOLIVIA
PACIFIC OCEAN
CHILE

The Peruvian State recognizes 47 Indigenous languages spoken by 55 different peoples. According to the 2017 National Population Census, almost six million people (5,972,603) self-identify as belonging to an Indigenous or native people, representing just over a quarter of the total population. Of these, 5,176,809 identify as Quechua and 548,292 as Aymara. The Amazonian population in the census who self-identify as Asháninka, Awajún, Shipibo, or other Amazonian peoples total 197,667. In addition, some 50,000 identify as belonging to other Indigenous or native peoples. Census under-registration in the Amazon region is, nevertheless, a known and ongoing problem.

More than 20% of the national territory is covered by mining concessions, which overlap with 47.8% of the territory of the peasant communities. In the Peruvian Amazon, hydrocarbon concessions cover 75% of the region, affecting almost all villages. The superimposition of these concessions on top of communal territories, the enormous pressure from the extractive industries and their polluting effects, the absence of land-use planning and the lack of effective implementation of prior consultation are all exacerbating the territorial and socio-environmental conflicts in the country.

Peru has signed and ratified the ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples in 2007.

2022 was a year of great challenges and threats for Indigenous Peoples. During the second year of former President Pedro Castillo's mandate, whose election enjoyed massive Indigenous support in both the Amazon and the highland regions, several laws and policies promoted by the Executive and Congress were found to be in violation of fundamental rights, generating a robust response from the organizations and civil society. In turn, in 2022, the new Omicron variant of COVID-19 seriously affected all Indigenous regions due to poor vaccination rates, albeit this time causing low mortality.

Policies against intercultural bilingual education

The International Decade of Indigenous Languages and the return to in-person classes following COVID-19 was heralded by a government onslaught against the policy of intercultural bilingual education (IBE). The focus has been on converting IBE schools into non-bilingual rural schools in order to recruit for positions that should have been reserved for teachers with Indigenous language skills, under the pretext of ensuring that the positions are rapidly covered in the short-term. Although a prompt and massive reaction led to a reversal in this policy, the government insisted on new and similar regulations throughout the course of the year, which it supplemented with the appointment of principals of IBE schools with non-bilingual teachers.

Indigenous organizations and peoples have stressed that any reclassification of schools would require a process of Free, Prior and Informed Consultation (FPIC). The national Indigenous organization, the Interethnic Association for the Development of the Peruvian Rainforest (AIDESEP), has filed an injunction against these anti-IBE measures. It is clear that the measures approved by means of Ministry of Education resolutions are aimed specifically at favouring teachers from the union created by Castillo, the Federation of Peruvian Education Workers (FENAFE). These measures are taking place in a context in which several Indigenous organizations are using technical and legal arguments to justify the need to set up intercultural units for local educational management in areas with a high concentration of Indigenous population and, at the same time, provide strong support for the training and professionalization of Indigenous teachers.

In favour of illegal mining on Indigenous lands

Another surprising policy on the part of a government elected with Indigenous support was the protection offered to informal mining, thus encouraging its entry onto Indigenous territories. Preceded by announcements in various presidential speeches, Supreme Decree 010-2022-MINEM has relaxed the rules for formal mining operations thereby allowing individuals previously charged with the crime of ille-

gal mining to be registered and remain on the Formal Integrated Mining Registry. In addition, informal miners thus registered can legally obstruct inspections of mining sites. The requirement to peacefully carry out their activities is also eliminated. The miners, emboldened by official announcements and regulations in August and December, have moved back *en masse* into different areas from which law enforcement officers had previously removed them, in particular the Indigenous territories of the Awajún and Wampís peoples, who have been checking their attempts to take over basins rich in alluvial gold deposits for years.

In October, in the Cenepa basin, Awajún territory, these miners dared to attack the premises of the Organization for the Development of the Cenepa Border Communities (ODECOFROC), fortunately resulting in no deaths on that occasion. In this and other contexts, Law 31,494, which the Congress of the Republic insisted on enacting even though the previous government had been persuaded not to, is a matter for concern. The law refers to the formation of Rural Self-Defence and Development Committees, allowing private individuals and the army to equip themselves with weapons, opening up the risk of paramilitary armies being formed in the context of disputes with invaders of Indigenous territories and the presence of illegal loggers.

Reserves for peoples living in isolation targeted by logging interests

What began at the start of 2022 as a demonstration by logging interests supported by the Governor of Loreto against the establishment of Indigenous reserves for peoples living in voluntary isolation and initial contact in October became a proposal to modify Law 28,736 on the Protection of Indigenous Peoples in Isolation and Initial Contact (PIACI Law). Among other initiatives, the bill, sponsored by the Loreto Development Coordinator, seeks to transfer the procedures for declaring PIACI Indigenous Reserves to the regional governments.

As denounced by Indigenous organizations, in particular the Regional Organization of Indigenous Peoples of the East (ORPIO), several proposals for the creation of such reserves were submitted more than a decade ago without the Ministry of Culture ever examining the files. Several of these proposals would now be in jeopardy should such a bill prosper.

Fortunately, in 2022, after 18 years of waiting, the Ministry of Culture approved the study for the recognition of the Napo and Tigre villages of Indigenous Peoples living in isolation, villages which have for years been disputed by oil interests supported by the Ministry of Energy and Mines.

Oil spills and more oil spills

In January 2022, a large oil spill on the north-central coast helped raise awareness among the authorities and civil society of the environmental impact of poorly regulated oil activities and irresponsible companies. This spill occurred when an ocean tanker was unloading oil for the La Pampilla refinery owned by Repsol, located north of Lima. It was initially claimed that the spill had been caused by the effects of a tsunami following an earthquake on the island of Tonga, and it was alleged that it had involved less than a third of a barrel of oil. In the end, it was ascertained that 11,900 barrels had been spilled.

This crime, which dismayed the country, has continued to be a daily occurrence in lots 192 and 8, which are not operational, and along the NorPeruvian Oil Pipeline, all of whose facilities are in a state of disrepair. The pipeline was the cause of almost a dozen spillages in 2022, contaminating the territories of the Wampís, Awajún, Chapras, Kukama and Achuar peoples. The operators of lots 192 and 8 have refused to acknowledge any of the impacts caused by the spills in 2022 or previous years, or those caused by the abandonment of hazardous substances and scrap metal, leaving the Achuar, Kukama, Kichwa and Quechua organizations that make up the platform known as Indigenous Amazonian Peoples in Defence of their Territories (PUINAMUDT) with the burden of having to demand remediation.

For these plots, the Peruvian government has undertaken to increase the remediation fund for the affected sites but the companies have not been held responsible. However, detailed characterization and engineering studies for the first 32 of more than 1,800 sites are progressing at a snail's pace, resulting in constant uncertainty for the Indigenous families who are forced to live exposed to heavy metal contamination.

Criminalization of and attacks on Indigenous defenders

In April 2022, the death of Asháninka leader Ulises Lorenzo Rumiche Quintumari, in the central rainforest of Pango, added to the growing list of environmental defenders being threatened by illegal mining, forestry and drug trafficking economies. These threats do not come only from illegal actors, however. Fourteen years after the protests that occurred (2008) on the Tigre River, the Public Prosecutor's Office has moved to hold the trial of 18 community members and Kichwa authorities in response to a lawsuit filed by the Pluspetrol company, which the Public Prosecutor's Office revived in 2017.

The situation caused by threats to leaders and community members who are defending their rights to a healthy territory has led to a recommendation to the Ministry of Justice and Human Rights that protection mechanisms should henceforward include collective measures of attention and protection, as measures currently have to be requested individually for each person, often overlooking those defenders with less visibility along with their family members. It has also been recommended that, as a protection measure for criminalized defenders, they should be provided with a comprehensive public defence service in the corresponding investigations.[1]

Setbacks in the area of consultation

In relation to an "amparo" lawsuit filed by two Aymara peasant communities in the Puno region (Chila Chambilla and Chila Pucará) calling for the cancellation of mining concessions on their lands, the Constitutional Court declared the lawsuit inadmissible in its ruling in March 2022, in a clear roll-back of its own jurisprudence and that of the Inter-American Court, and in contradiction with the current Constitution. Such was the opinion of the Ombudsman's Office, recalling that the right to consultation is a fundamental right that is "enshrined in ILO Convention 169, which has been ratified by the Peruvian State by means of Legislative Resolution No. 26,253 since 2 February 1995". In turn, it emphasized that the sentence was in contravention of the Constitution, which es-

tablishes that "norms relating to rights and freedoms recognized by the Fundamental Law shall be interpreted in accordance with the Universal Declaration of Human Rights and with international treaties and agreements ratified by Peru in this regard".[2] The Court itself had recognized the validity and rank of this law in several rulings in the past. After such a violation of their rights, it is not surprising that it was the Aymara communities of Puno – who in April marched on Lima to protest the sentence – that spearheaded the demonstrations and challenged the established order, paralysing the country come the end of 2022.

Progress amidst setbacks

The Awajún Autonomous Territorial Government, which ratified its statute and elected its authorities at the end of 2021, began to exercise its functions in 2022. The scope of the autonomous Awajún government covers around three million hectares in the regions of Cajamarca, San Martín, Amazonas and Loreto, in which 247 communities have been recorded. With this new territorial structure, there are now almost a dozen such governments determined to exercise governance of their territories and defy the wilful State decision to ignore the existence of Indigenous Peoples as political rights-holders.

Notes and references

1. ERI et al. "Funcionamiento de la política pública de protección de defensoras y defensores indígenas criminalizados y amenazados". EarthRights International, May 2022, p.28. Available at https://earthrights.org/publication/informe-funcionamiento-de-la-politica-publica-de-proteccion-de-defensoras-y-defensores-indigenas-criminalizados-y-amenazados/
2. "Defensoría del Pueblo rechaza sentencia del Tribunal Constitucional que desconoce consulta previa a los pueblos indígenas como derecho fundamental". Ombudsman's Office of Peru, 5 March 2022. Available at https://www.defensoria.gob.pe/defensoria-del-pueblo-rechaza-sentencia-del-tribunal-constitucional-que-desconoce-consulta-previa-a-los-pueblos-indigenas-como-derecho-fundamental/

Frederica Barclay *is a Peruvian anthropologist and historian. She is currently serving as President of the Centre for Public Policy and Human Rights - Peru Equidad.*

Rapa Nui (Easter Island)

Rapa Nui is an island of 16,628 hectares located in the middle of the Pacific Ocean and separated from the coast of continental Chile by more than 3,700 kilometres. The Rapa Nui people live there, descendants of an age-old culture recognized for the creation of large megalithic structures known as Moai and for having developed a unique civilization.

Rapa Nui is currently a territory annexed to the State of Chile by virtue of a treaty signed by both nations on 9 September 1888 called the "Agreement of Wills". This document establishes respect for the investiture of Rapa Nui chiefs and reserves ownership of the land for their people. However, the Chilean State has systematically failed to comply with these agreements, usurping ownership of the land and committing major violations of the rights of its native inhabitants.

Indigenous affairs in Chile generally were strongly marked by the process of drafting a new Constitution that took place in the country throughout 2022. This historic event represented the first time that the human rights of Indigenous Peoples in Chile, a country that has not even recognized the existence of its native peoples at this level, had been brought to the fore at the constitutional level.

Rapa Nui formed part of this process, first through its representation in the Constitutional Assembly – by means of seats reserved for Indigenous Peoples –, and second through the submission of "draft Indigenous standards". In this context, extensive assemblies were held at which the Rapa Nui people considered the content of a norm or article in this new constitutional text. The Chilean Constitution currently comprises one article (126a) related to Easter Island, the origin of which is focused on its geographic location, and it in no way recognizes the existence of the Polynesian Rapa Nui people or their rights.

Horizontally, through their traditional organizations, the Rapa Nui people have expressed the need for the State of Chile to ratify and comply with the 1888 Treaty of Wills, the basic document on which the legal relationship between both parties rests, and which was signed

as an international treaty by two autonomous nations at the end of the 19th century.

In this context, the claims of the Rapa Nui people have been focused on their right to self-determination and territorial rights, together with the need for reparations from the State due to years of human rights violations and neglect.

During August, a delegation headed by the Office of the United Nations High Commissioner for Human Rights (OHCHR), together with the United Nations Development Programme (UNDP), undertook an official visit to Rapa Nui[1] during which informative workshops were held for the community regarding the draft of the new Constitution. The representatives of the UN agencies also held meetings with Rapa Nui leaders and their main organizations, such as the Council of Elders, the Assembly of Family Clans (Honui) and the Rapa Nui Parliament, together with other civil society organizations, which meant it was also possible to partly analyse the situation of children and women on the island.

The constitutional process failed in the end, with the new Constitution being rejected in a national referendum held on 4 September 2022. It should be noted that Rapa Nui was one of the few places that voted in favour of the new Constitution.

Subsequently, on 28 September 2022, the Government of Chile formally committed to moving forward with a local governance proposal for Rapa Nui. This encompasses a project for autonomous government and a land policy together with the sustainable development of its people.

In addition, the second half of 2022 was marked by the "opening up of Rapa Nui" since, as a result of the COVID-19 pandemic, the territory had been closed to commercial flights and visits for 872 days. This situation kept the inhabitants of the island free from the disease for more than two years, and demonstrated how the people prioritized health over economic issues given that the main and only source of income in the territory is tourism.

As of August, commercial flights with tourists resumed. This resulted in the arrival of the virus in the territory but the situation was duly controlled without causing any damage. This also commenced a process of economic recovery and recovery from the high unemployment caused by the pandemic.

During November, several Rapa Nui organizations had the op-

portunity to participate in international events: firstly, an international meeting of experts, a preliminary body to the United Nations Permanent Forum on Indigenous Issues, under the theme "Truth processes, transitional justice and reconciliation", held in Santiago, Chile.

Secondly, they attended the "Expert workshop on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council", held in Geneva, Switzerland. This workshop was held under the auspices of Human Rights Council Resolution 48/11 by which the OHCHR was requested to convene a four-day expert workshop in 2022 on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council. This workshop enabled various Indigenous experts to dialogue directly with State representatives regarding Indigenous participation at the international level.

Finally, the Municipality of Rapa Nui was invited to run a parallel event within the framework of the 11th UN Forum on Business and Human Rights.

Notes and references

1. OHCHR. "Chile: Oficina realizó misión conjunta con PNUD a Rapa Nui" [Chile: Office conducts joint mission to Rapa Nui with UNDP]. OHCHR, 30 August 2022. Available at https://acnudh.org/chile-oficina-realizo-mision-conjunta-con-pnud-a-rapa-nui/

Benjamin Ilabaca D. *is a Rapa Nui lawyer, legal adviser to the Municipality of Easter Island and the Rapa Nui Parliament. He also acts as an international consultant.*

Suriname

ATLANTIC OCEAN
GUYANA
Paramaribo
FRENCH
GUIANA
SURINAME
BRAZIL

The Indigenous Peoples of Suriname number approximately 20,344 people, or 3.8% of the total population of 541,638[1] (census 2012). The four most numerous Indigenous Peoples are the Kaliña (Carib), Lokono (Arawak), Trio (Tirio, Tareno) and Wayana. In addition, there are small settlements of other Amazonian Indigenous Peoples, mostly 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 recognize 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

The Government of Suriname, headed by President Chandrikapersad Santokhi, submitted a draft law[2] on the Collective Rights of Indigenous Peoples and Tribal Peoples in Suriname to the National Assembly (the unicameral Parliament of Suriname) in June 2021. The National Assembly subsequently appointed an internal "commission of rapporteurs", which commenced a lengthy consultation process on this draft with various stakeholders over a number of months, interpreted

by many as intentional delay. The National Assembly then contracted a group of external legal experts to review the feedback received from stakeholders, and this group presented its findings in November 2022. It was expected that the draft law would thereafter be tabled formally for debate and eventual approval; however, this did not happen until the end of January 2023. The draft law put forward for discussion contained surprising amendments[3] to the original draft, points that were reportedly not recommendations from the feedback nor from the external expert group but last minute changes from members of parliament. Even members of the Committee of Rapporteurs itself expressed their surprise and disapproval of the introduced changes, which are deemed contrary to the actual recognition of land rights of Indigenous and Tribal Peoples. The chairperson of the Commission announced that the amended draft would again be sent out for consultation and further debate on the draft was suspended without fixing a timeframe for future discussion.

It may thus take a while longer before the draft law is seriously debated and approved. Meanwhile, the Indigenous and Tribal Peoples of Suriname and their rights, including land rights, remain unrecognized and unprotected. In spite of rhetorical promises, the current government has continued to issue land and concession rights within Indigenous and Tribal Peoples' territories, causing various outbursts of protest.[4]

While apparently delaying the debate on the Collective Rights bill, another legislative product was swiftly tabled for approval in the National Assembly, in spite of protests from Indigenous and Tribal Peoples' organizations, in particular, who feel this law will open the door to individual and large land ownership in their (yet unrecognized) territories. The draft law on "Land Conversion"[5] will permit the conversion of land lease titles into full property titles which, once issued, will be very hard to withdraw or expropriate, in contrast with the current land lease titles. It is an open secret that many land lease titles have been issued in the interior of Suriname, which is home to the Indigenous and Tribal Peoples, and converting those into property titles will make recognition of their collective land rights even more complex if not impossible. Both Indigenous[6] and Tribal Peoples submitted petitions to Parliament to halt any debate on the Land Conversion draft law until their collective land rights have been legally recognized, and stressed that the current conception of "domain land belongs to the State" was contradictory to

international law and particularly the judgements of the Inter-American Court of Human Rights, which has required Suriname to legally recognize the collective property rights of Indigenous and Tribal Peoples over their ancestral territories. The protests may have helped (temporarily?) and the discussion on the draft law on Land Conversion was suspended in favour of commencing discussions in Parliament on the 2023 Government Budget. Fear does, meanwhile, remain that it will be pushed through.

Other developments

The UN Secretary General, António Guterres, visited[7] Pierrekondre-Kumbasi, an Indigenous community in Suriname, in July 2022, on the fringes of his visit to a Caribbean Community (Caricom) summit that was held in Suriname during the country's presidency of Caricom. On that occasion, the Association of Indigenous Village Leaders in Suriname (VIDS, its abbreviation in Dutch) and the coordinating body for Tribal Peoples, KAMPOS, at handed over and read out an appeal[8] to him requesting his attention on the insecure legal position of Indigenous and Tribal Peoples in Suriname, as well as the impacts of climate change, which was the focus of his visit to Caricom and Suriname. The Secretary General ensured VIDS of his support for these aspects and made corresponding statements in the Surinamese media and through his own channels.[9]

The Suriname government established a National SDG Platform[10] consisting of representatives of the UN Major Groups in July 2022. The SDG Platform initially consisted of a core group but is to be expanded to other major groups in 2023. Its task will be, among others, to monitor Suriname's achievement of the Sustainable Development Goals (SDGs).

During a live broadcast speech[11] on 19 December 2022 by Prime Minister Mark Rutte in The Hague, the Government of the Netherlands offered its formal excuses to the descendants of all enslaved persons during its colonial past, and announced the start of further dialogue with relevant organizations in Suriname and in the Netherlands Antilles. This apology followed a critical report "Chains of the Past" on the role of the Netherlands in the slave trade, and recommended "recognition, excuses and repair" for the role of the Kingdom in slavery. As representa-

tive and institute of the traditional authorities of the Indigenous Peoples in Suriname, VIDS declined[12] the invitation of the Dutch Embassy in Suriname to attend the broadcast of the speech in Paramaribo, stating that it had never been consulted nor involved in this apology and did not want to give any impression of approval of or support for this apology without having gone through the traditional process of full information and consultation with its communities. It is expected that the Dutch Embassy in Suriname will hold a meeting with VIDS on this matter in 2023.

The expected oil and gas boom in Suriname seems further away than initially expected, after oil finds in 2020 in Suriname's territorial sea caused much speculation. Big oil companies such as Total Energies and Apache Oil have delayed their final investment decision (FID), according to[13] the Suriname State Oil company, because of the complex properties of the seabed, with a great deal of clay. Potential first oil harvesting is not now expected before 2027. VIDS had expressed concern at the impacts of the oil industry and related spin-off effects on the lands and resources of the Indigenous Peoples in Suriname, and its potential for widening rather than closing the development gap between the coastal regions and the interior of Suriname.

Policy and economic reform measures taken by the Government of Suriname, many of which are requirements of the International Monetary Fund (IMF) for support from its Extended Support Facility,[14] are taking a heavy toll on the country's already impoverished population. VIDS expressed its concern at the impacts of the government's economic recovery programme during its Eighth General Conference in August 2022. The social safety net measures, in particular, are apparently focused predominantly on fiscal and other measures benefiting urban citizens, and disregarding the interior Indigenous and Tribal Peoples' population, which has little formal employment and finds it increasingly difficult to participate in the national economy due to the disproportionate impacts of rising prices, especially transport, in those deep rural areas.

The IMF approved a support package under its Extended Fund Facility to the amount of USD 688 million over three years (with an immediate disbursement of USD 55.1 million)[15] in support of the Suriname government's recovery and growth plan. VIDS expressed its concern that the economic adjustment measures would be felt hardest in the interior communities and requested special attention from the govern-

ment to mitigate the impacts.[16]

VIDS,[17] as the traditional authority of all Indigenous Peoples in Suriname, celebrated its Eighth General Conference in Washabo, West Suriname, in August 2022. During this five-yearly conference, attended by approximately 200 representatives (chiefs, women and youth) from practically all Indigenous villages in Suriname, the multi-annual policy programme for the coming five years was discussed and approved. A new Board was also appointed for VIDS by consensus, for the first time ever headed by a female village leader, Muriel Fernandes[18] of Cassipora village. The VIDS Board consists of nine regional representatives, all chiefs of their respective villages, who are appointed by consensus (and not through elections) and upon recommendation of the respective regions. The closing ceremony was attended[19] by the President of Suriname, who received the Resolutions of the Conference[20] and promised to install a working group to implement the decisions contained therein. The Presidential Working Group was indeed established in early 2023.

Notes and references

1. The population is highly ethnically and religiously diverse, consisting of Hindustani (27.4%), Maroons ("Bush negroes", 21.7%), Creoles (16%), Javanese (14%), mixed (13%), Indigenous Peoples ("Amerindians", 3.8%) and Chinese (1.5%) (census 2012). At least 15 different languages are spoken on a daily basis in Suriname but the only official language is Dutch, while the *lingua franca* used in less formal conversations is *Sranan Tongo* (Surinamese).
2. De Nationale Assemblée. "VIDS vraagt voor de derde keer Wet Uitgifte Domeingrond aan te houden". De Nationale Assemblée. https://dna.sr/media/322328/21_899__Pres._Sur.___Aanb._Wet_Collectieve_Rechten_Inheemse_en_Tribale_Volken.pdf
3. Wet van houndende regels met betrekking tot collectieve rechten van Inheemse volken en de Tribale volken. (Raamwet Collectieve Rechten Inheemse Volken en de Tribale Volken). 31 January 2023. https://dna.sr/media/374445/23_208__am_23_02__Leden_A._Gajadien_e.a.__Aanb._Amendement_Raamwet_Collectieve_Rechten_Inheemse_en_Tribale_Volken.pdf
4. "SURINAME-Indigenous groups call on the government to grant recognition of their lands". *Caribbean Times*, 9 August 2022. https://caribbeantimes.com/suriname-indigenous-groups-call-on-the-government-to-grant-recognition-of-their-lands/; "Hollandse Kamp protesteert tegen gronduitgifte". *Star Nieuws*, 25 January 2023. https://www.starnieuws.com/index.php/welcome/index/nieuwsitem/73948 & "Saramaccaners blijven fel gekant tegen bouw houttransportbrug". *SNC.com*, 13 April 2022. https://surinamenieuwscentrale.com/saramaccaners-blijven-fel-gekant-tegen-bouw-houttransportbrug
5. De Nationale Assemblée. "Ontwerpwet wijz. Decreet Uitgifte Domeingrond".

De Nationale Assemblée. https://dna.sr/wetgeving/ontwerpwetten-bij-dna/in-behandeling/ontwerpwet-wijz-decreet-uitgifte-domeingrond/ https://dna.sr/nieuws/vids-vraagt-voor-de-derde-keer-wet-uitgifte-domeingrond-aan-te-houden/

6. https://dna.sr/nieuws/de-marrongemeenschap-dient-petitie-in-aan-parlement/
7. VIDS.'' Trio-Inheemsen hebben nieuwe granman''. Facebook, 21 September 2021. https://www.facebook.com/VIDSSuriname/posts/166809984005037 4?__cft__[0]=AZUbUWWikjCL6KFtIsmf1pi-sd4OL_HEGb11Y0T74WNjAoqG3CdPBbYeQuhDDWSV2ZI5Mg9-HNXLW20hFFv9pmgkfCeGryJBH0um6KXjJU4N2zqwMcRb01CK40rMo9xDs-ZfjdgB1vDiCQcQna-gXD7P9pgIQJf6jyf5xUOVFnuCD1M-1CVKpQA0CHbE5KVreR-E&__tn__=%2CO%2CP-R
8. VIDS. VIDS overhandigt brief aan vn secretaries Generaal''. VIDS, 3 July 2022. https://vids.sr/vids-overhandigt-brief-aan-vn-secretaris-generaal/
9. United Nations. ''In Suriname, Secretary General António Guterres...'' United Nations, 3 July 2022. https://media.un.org/en/asset/k1u/k1uvyqlzgo
10. https://cds.gov.sr/de-boodschap/sdg-platform-kent-brede-nationale-vertegenwoordiging/ https://media.un.org/en/asset/k1u/k1uvyqlzgo
11. Mark Rutte. ''Government response to Ketenen van het verleden, the report of findings issued by the Advisory Board of the Slavery Past Dialogue''. 19 December 2022. https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2022/12/19/kamerbrief-met-reactie-kabinet-op-rapport-adviescollege-dialooggroep-slavernijverleden/Kamerbrief+met+reactie+kabinet+op+rapport+Adviescollege+Dialooggroep+Slavernijverleden+%28Engels%29.pdf
12. VIDS. ''VIDS wijst uitnodiging nederlandse kabinetsreactie af''. VIDS, 19 December 2022. https://vids.sr/vids-wijst-uitnodiging-nederlandse-kabinetsreactie-af/
13. Ivan Cairo. ''Geen offshore olie vóór 2027''. *De Ware Tijd Online*, 2 December 2022. https://dwtonline.com/geen-offshore-olie-voor-2027/
14. International Monetary Fund (IMF). ''Suriname and the IMF Reach Staff-Level Agreement on the Second Review of the Extended Arrangement Under the Extended Fund Facility''. IMF, 17 May 2022. https://www.imf.org/en/News/Articles/2022/05/17/pr22157-suriname-and-imf-reach-staff-level-agreement-on-second-review-of-extended-arrangement
15. IMF. ''IMF Executive Board Approves Extended Arrangement Under the Extended Fund Facility for Suriname''. IMF, 22 December 2022. https://www.imf.org/en/News/Articles/2021/12/22/pr21400-imf-executive-board-approves-extended-arrangement-under-the-extended-fund-facility-suriname#:~:text=Washington%2C%20DC%20%3A%20The%20Executive%20Board,or%20366.8%20percent%20of%20quota)
16. VIDS. ''Inheems gezagsorgaan bezorgd over situatie binnenland''. Facebook, 13 January 2022.https://www.facebook.com/VIDSSuriname/posts/1751714728355551?__cft__[0]=AZVNnYXVAYL5zfirYSRz_P7O7me4p6pjhZHT2IqslbGQJUhhfS4uWkjoUOcCIj9YBODawtu_g0y7MjKT-FYxA9rMP1avnnZNIKjGOea_jM1EsLtBcOd5S9uzQHQ93uw4C0SMMbVG9jfj7K-rzFAGcnSJFpAnCQYocG35Z3dI3np094JfGo3trKuRp9r2ofaj7TE&__tn__=%2CO%2CP-R
17. https://www.facebook.com/VIDSSuriname/
18. VIDS. ''Muriel Fernandes nieuwe VIDS-voorzitter''. Facebook, 29 August 2022.

https://www.facebook.com/VIDSSuriname/posts/pfbid037rX5g7441qkMqF9sDNBRukx1vm8Eqf8s5ZVrDe4ncZjHZ2vN2tKSGgfbgKuYVMcNl?__cft__[0]=AZW0eXXp6tGqHGZYtg5eb5owjKEmwcjFlxtdWSsmrnL6ROnZO0M8G2hrvjztI78Vn_CH6OzdN5QmF6DBZ7IlpTccoA6VXo53ObBnTU-Gv0kEc5CiympEeYT2xxvdCbm-cH63EkyfMLTY8zSP3Dr-oPqrJ1xKf2SdleuAGaDPcV7tlhpH0sXWHk_-H2WUdbaGbXot3jdQ8pizWjDCBsvisFkV&__tn__=%2CO%2CP-R

19. "President Santokhi bezoekt VIDS-conferentie". *Suriname Herald*, 29 August 2022. https://www.srherald.com/suriname/2022/08/29/president-santokhi-bezoekt-vids-conferentie/

20. VIDS. "Resolutions Eighth VIDS Conference". Vids, 29 August 2022. https://vids.sr/wp-content/uploads/2022/09/Resolutions-Eight-VIDS-Conference-EN.pdf

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

Of a total population of 27,227,930, 724,592 are Indigenous (2.8%) and belong to 51 different peoples, mostly concentrated (85%) in the state of Zulia and the Amazon region.

In 1999, the constitutional process ensured that the fundamental rights of Indigenous Peoples and communities were guaranteed in the Constitution and that a set of legal and regulatory provisions were established to broadly protect them. These include the Law Approving ILO Convention 169, the Organic Law on Indigenous Peoples and Communities, the Law on the Cultural Heritage of Indigenous Peoples and Communities, and the Law on Indigenous Languages.

These successes of the legal framework for the protection of nature and Indigenous Peoples are not in line with some of the more recent public policies, however, which have opted to promote an extractive development model to alleviate the country's difficult economic situation. Mining is detrimental to the physical and cultural survival of Indigenous Peoples and contradicts established guidelines and land-use planning.

In addition to their own struggles for autonomy and the defence of their territories and ways of life, many Indigenous Venezuelans face the same problems as the rest of the population: high levels of poverty, poor services, insecurity, and so on. A lack of adequate services, especially in health and education, often results in migration to the cities and urban areas. In many cases, this does not solve the problem but, in contrast, only makes it worse as they become distanced from their traditional ways of life.

The situation of Indigenous rights in Venezuela needs to be understood as a result of policies that favour mining expansion, violations of Indigenous Peoples' rights, the development and implementation of State policies, plans and projects expressly aimed at facilitating the conditions of Indigenous Peoples, and the activism of both Indigenous representatives and civil organizations in defence of their peoples' rights and heritage.

Official information on these issues is scarce. It generally circulates through the media and non-governmental organizations, and therefore lacks the necessary systematization and dissemination. This situation reveals the State's weakness in preventing and addressing the problems of these peoples and shows the difficulty in following up on complaints. In this regard, what is reported below has been largely compiled from the media and from materials produced by civil society organizations and from meetings with spokespersons of grassroots Indigenous organizations. It provides a general overview but lacks statistical precision.

Extractive policies have far-reaching consequences for the peoples of Amazonia

The exponential increase in mining in or near Indigenous territories is significantly related to the consolidation of the Strategic National Development Zone (ZEDN) of the Orinoco Mining Arc (AMO)[1] as a strategic development zone. This year, mining was identified in 14 Indigenous territories, with the largest net expansion in Pemón territory but with concerning impacts on the territories of the Kari'ña, Ye'kwana, Uwottüja, Kurripaco, Jotï and Yanomami. In addition to the known environmental consequences,[2] this has generated a myriad of problems for the Indigenous Peoples affected.

Some of these effects were laid out in the UN Human Rights Council Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela report published on 20 September 2022, a focus of which was items to be investigated were irregularities related to or derived from the ZDEN-AMO.[3] The report includes human rights abuses and violations in the region perpetrated by armed groups in the area (many of them related to Colombian guerrillas and national *pranatos* or gangs) as well as by some actors linked to State bodies. Crimes, violations and abuses against villagers include arbitrary arrests, disappearances, extortion, corporal punishment, and sexual and gender-based violence. In this context, it is imperative to follow up on these allegations and further investigate the events that occurred in the states of Amazonas and Delta Amacuro, as members of the mission were unable to carry out in-depth investigations for lack of time and resources.

The ZEDN-AMO has also led to people being displaced from other areas, many from adjacent Indigenous communities, seeking to improve their precarious living conditions. It is estimated that at least half of those who are working in these mines do so under conditions of semi-slavery, are Indigenous and, in addition, are often minors.

Mining has an impact not only on those who, out of necessity, have moved to the camps but also on the people who remain in the communities, where the absence of those who have left leaves its mark on community dynamics. Family plots (*conucos*) are abandoned, the trade in traditional products declines, traditional family structures are fragmented and many communities end up divided into those who defend mining and those who do not. These changes have diminished the communities' capacities to withstand pressure from external groups on their productivity and, therefore, their possibilities for autonomy and self-government. In addition, there are effects on human health, biodiversity and multiple ecosystem functions that should not be overlooked.

The mission's allegations are in line with others made by Indigenous organizations.[4] For example, *Horonami*, the Yanomami organization, reported that members of their people have been forced to work as slaves by *garimpeiros* (gold miners), who have also raped and prostituted women and murdered community members. Part of their strategy to control the territory starts by bringing food, weapons, shotguns and machetes into the communities. The severity of the situation is compounded by the fact that these deaths have not been officially investigated by the State.

The head of the community of Puerto Cabello del Caura, Arcadio Rondón, also reported the murder of 12 people working at the El Silencio mine in Sucre municipality, Bolívar State in April. The authorities were able to find only four bodies, one Creole and three Indigenous Jivi from the communities of La Felicidad and Urbana. The culprits are yet to be found.[5]

To counteract these crimes caused by illegal mining and the presence of armed Colombian drug-trafficking terrorists (TANCOL), the Bolivarian National Armed Forces (FANB) undertook eight military operations during 2022, including Operation Roraima 2022 and Operation Autana I-2022, which included air, land and river patrols in the Transboundary Area. The miners, mainly Venezuelan and many of them Indigenous, reported violations of their human rights, the burning of camps registered with the Venezuelan Mining Corporation, supplies

for the La Iguana Indigenous community clinic being stolen and other abuses. The FANB argues that these complaints respond to the fact that TANCOL groups are forcing them to perpetrate them.[6]

Some notorious cases of impunity and justice

In March, there was a dispute between military personnel from the Parima B base[7] and members of the community, who were demanding access to the Internet service. The altercation resulted in the deaths of four Yanomami and some personnel from the base injured. The incident reflects the lack of an intercultural policy that could facilitate coexistence, in addition to other tensions and problems that urgently need addressing. Almost a year after the event, Parima B community's demands for justice have still not been answered: no charges have been brought, despite multiple complaints and Yanomami representatives having met with the vice-presidency.

This fact, together with the murder of Virgilio Trujillo Arana,[8] a young Uwottüja leader who was coordinating the Territorial Guards, protectors of nature and the ancestral territory of their people, shows the impunity that exists in the Amazon. No charges have been brought in this case either and the Indigenous leaders of grassroots organizations that publicized the murder have been threatened. The implications this has for their lives has affected the way in which these organizations are able to work.

Both cases contrast with the sentence in favour of Amina Días and Celis Chipiaje, two young Jivi women who were abused by Bolivarian National Navy frigate lieutenant Roger Bracho Gaucha.[9] In April, he was convicted of aggravated sexual assault and sentenced to 13 years in prison. The ruling sets an important precedent for the role of Indigenous organizations and community members in demanding justice.

Activism and contributions of Indigenous organizations to the peoples' causes

2022 was a year of broad participation in local, regional and international events, demonstrating a consolidation of the Indigenous organizations.

The Regional Organization of Indigenous Peoples of the Amazon (ORPIA) promoted and participated in events at different levels aimed at addressing issues related to the protection and management of their ancestral territories, health, education and special Indigenous jurisdictions, as well as fundamental agreements on biodiversity.[10] These included the participation of Eligio DaCosta in putting together COICA's (Coordinating Body of Indigenous Organizations of the Amazon Basin) Amazon for Life Initiative, which was later approved as a motion by the Congress of the International Union for Conservation of Nature (IUCN); and that of Amelia Conde, the Uwottüja leader and vice-coordinator of ORPIA, in the context of the UN Permanent Forum on Indigenous Issues. Amelia also participated in the event organized by GTI PIACI-Wataniba on "Autonomous Protocols for Free, Prior and Informed Consent: An Alternative Tool for Regulating Indigenous Communities"[11] to speak about her people's protocol. Together with ORPIA's General Coordinator, Eligio DaCosta, she also represented the Venezuelan Indigenous Peoples at the V Amazon Summit / XI COICA Congress, where they participated in the presentation of the Amazonia 80 x 2025 action plan to protect the rainforest.[12] ORPIA also attended the II Binational Forum for the Integration of the Border Peoples of Colombia and Venezuela.[13]

In turn, representatives of the Uwottüja and Wataniba peoples took part in the II Regional Meeting of Indigenous Peoples of the Amazon[14] in Leticia, Colombia where, through intercultural dialogue and an exchange of experiences, they sought to reach a regional consensus on the strategies to be used to maintain the integrity of the forests, based on a consolidation of the peoples' governance.

For its part, the Venezuelan government organized the Congress of the New Era,[15] in which representatives of more than 50 of the country's Indigenous Peoples participated to discuss the territorial, social and economic issues that concern them.

Policies that have an impact on Indigenous Peoples

In the context of the Decade of Indigenous Languages (2022-2032) being promoted by UNESCO, the National Institute of Indigenous Languages of Venezuela (INIDI) has begun to implement a plan to strength-

en the teaching of Indigenous languages in the country. With support from UNICEF, the Ministry of Popular Power for Education, the Ministry of Popular Power for Indigenous Peoples, grassroots Indigenous organizations and ORPIA, meetings were held with elders from the Ye'kwana, Baré, Baniva, Warekena, Ñegantú and Yeral Indigenous communities to gather information.

In addition, the Legislative Council of the Indigenous State of Amazonas (CLEIA) approved the Governor's "New Amazonas" Development Plan aimed at strengthening the Amazonian identity.[16] Its areas of action include improving the system of care and social assistance for the vulnerable and promoting the State's economic growth. A further objective is to discuss the environmental problem created by mining in order to adapt the legal instruments regulating this activity. This plan opens up the possibility of legalizing mining in this State so we must be very attentive to the consequences it may have on the communities.

Notes and references

1. The ZEDN Orinoco Mining Arc covers an area of 111,843.70 km², more than one-tenth of the national territory. This area, rich in gold, copper, diamonds, coltan, iron, bauxite and other minerals, has been illegally exploited since 2016 when the government started to encourage mining in this region. This situation has resulted in increased mining, especially gold mining, throughout the rest of the Venezuelan Amazon.
2. In the *Policy Brief* on mining in the Venezuelan Amazon prepared by Wataniba-Raisg, the land area directly affected by this activity is given as reaching approximately 1,337 km² by 2021, so it can be assumed that the figures will be even higher now. And, according to Mapbiomas, the extraction of mineral resources from this Venezuelan region has advanced at a rate of 1,249% over the last 37 years, both inside and outside protected areas. Although mining is prohibited across the entire state of Amazonas (Decree 269, 1989) and in many areas of the states of Bolívar and Delta Amacuro, this activity has been increasing in the Yapacana, Canaima and Caura National Parks, as well as the Macizo Cuao-Sipapo and Cerro Moriche natural monuments, which correspond to Indigenous territories.
3. This report was published on 20 September 2022. With resolution 42/25, the Human Rights Council established an Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela on 27 September 2019, which was extended to September 2022 by resolution 45/20. Among the items to be investigated were irregularities related to or derived from the establishment of the ZDEN-AMO as a strategic development zone. Although the mission was not able to fully investigate in Amazonas and Delta Amacuro states due to lack of time and resources it was able to outline certain patterns in the nature of the

abuses and violations in AMO and the surrounding areas. For more information see: United Nations. "Venezuela: La Misión internacional independiente observa responsabilidades por crímenes de lesa humanidad". United Nations, 20 September 2022. Available at: https://news.un.org/es/story/2022/09/1514771

4. See Wataniba Amazon Socio-environmental Working Group. "El derecho a la integridad personal y seguridad del territorio desde la mirada de un 'hornán' Yanomami". Wataniba Amazon Socio-environmental Working Group, 14 January 2022. Available at: https://watanibasocioambiental.org/el-derecho-a-la-integridad-personal-y-seguridad-del-territorio-desde-la-mirada-de-un-hornan-yanomami/ and Minerva Vitti, María de los Ángeles Ramírez and Joseph Poliszuk. "La veda a la minería se levanta en 'La Nueva Amazonas'". *Armando Info*, 16 February 2022. Available at: https://armando.info/especial-corredor-furtivo/la-veda-a-la-mineria-se-levanta-en-la-nueva-amazonas.html
5. This is not the first time something like this has happened, there are precedents. See for example the following links: https://runrun.es/noticias/363694/cuatro-indigenas-de-la-comunidad-gavilan-fallecieron-en-mina-de-amazonas/; https://es.mongabay.com/2022/11/la-mina-de-oro-en-la-que-trabajan-de-la-mano-eln-disidencias-de-colombia-y-la-guardia-venezolana/ y https://talcualdigital.com/operativo-militar-en-yacapana-recrudece-violencia-y-mineria-ilegal-en-amazonas/
6. For more information, please see: http://www.ejercito.mil.ve/?p=8590; https://www.lapatilla.com/2022/08/16/operacion-autana-en-bolivar-mineros-denuncian/; https://www.defensa.com/venezuela/venezuela-lanza-simultaneamente-operaciones-roraima-2022-autana y https://twitter.com/PableOstos/status/1559566332793917440
7. Wataniba Amazon Socio-environmental Working Group. "El derecho a la integridad personal y seguridad del territorio desde la mirada de un 'hornán' Yanomami". Wataniba Amazon Socio-environmental Working Group, 14 January 2022. Available at: https://watanibasocioambiental.org/el-derecho-a-la-integridad-personal-y-seguridad-del-territorio-desde-la-mirada-de-un-hornan-yanomami/ and "La veda a la minería se levanta en 'La Nueva Amazonas'". *Armando Info*, 16 February 2022.Available at: https://armando.info/especial-corredor-furtivo/la-veda-a-la-mineria-se-levanta-en-la-nueva-amazonas.html
8. Wataniba. "Virgilio Trujillo Arana". Instagram, 1 July 2022. Available at: https://www.instagram.com/p/CfexwwnuhDN/
9. Wataniba Amazon Socio-environmental Working Group. "A veces la tenacidad y la valentía demuestran que no todo tiene que ser inaceptablemente igual: 13 años de prisión a teniente que abusó sexualmente de dos mujeres indígenas jivi en Amazonas". Wataniba Amazon Socio-environmental Working Group, 30 April 2022. Available at: https://watanibasocioambiental.org/13-anos-de-prision-a-teniente-que-abuso-sexualmente-de-dos-mujeres-indigenas-jivi-en-amazonas/
10. Regional Organization Of Indigenous Peoples Of Amazonas - ORPIA. "#Conversatorio". Facebook, 23 November 2022. Available at: https://www.facebook.com/orpiavenezuela/posts/pfbid02PBgTDvnapbgKoqMT9AdB2KmVgL3MrYR2dnb17ggWzY7NqCUthPSPR93E5791ezFsl
11. Wataniba Amazon Socio-environmental Working Group. "Protocolos Autonómicos de Consentimiento Libre, Previo e Informado: Una Herramienta Alternativa hacia la Regulación de las Comunidades Indígenas." Facebook, 25 April 2022. Available at: https://www.facebook.com/WatanibaSocioambiental/

photos/a.715843531899791/2207796352704494?type=3
12. See Regional Organization Of Indigenous Peoples Of Amazonas - ORPIA. "#Hoy en el XI Congreso de la Coica (...)". Facebook, 9 September 2022. Available at: https://www.facebook.com/orpiavenezuela/posts/pfbid033LPQEBUJWqXYEoDBj7k4zLRNoJxUDNBwUEzSofrHYTbRYTMv1bZrjEtkZr87cngvl COICA. "La Cumbre Amazónica ha sido el escenario de propuestas lideradas por los pueblos indígenas para proteger la Amazonía". COICA, 8 September 2022. Available at: https://coicamazonia.org/la-cumbre-amazonica-ha-sido-el-escenario-de-propuestas-lideradas-por-los-pueblos-indigenas-para-proteger-la-amazonia%EF%BF%BC/
13. Regional Organization Of Indigenous Peoples Of Amazonas - ORPIA. "#SomosCOICA| Rumbo al Congreso Extraordinario de COICA.. Facebook, 8 November 2022. Available at: https://www.facebook.com/page/366168910174461/search/?q=septiembre
14. Wataniba Amazon Socio-environmental Working Group. "Conversaciones de la Amazonía: muchos pueblos, una Amazonía, una voz". Wataniba Amazon Socio-environmental Working Group, 20 October 2022. Available at: https://watanibasocioambiental.org/conversaciones-de-la-amazonia/
15. ORPIA Venezuela. "#Rostros #congresonuevaépoca #indígenas #amazonas". Twitter, 6 December 2022. Available at: https://twitter.com/OrpiaAmazonasVE/status/1600122795479875584
16. See Miguel L. Rodriguez. "El proyecto de ley estadal (...)". Twitter, 18 November 2022. Available at https://twitter.com/GOB_MiguelR/status/1593706221906845698; Minerva Vitti Rodríguez. "La veda a la minería se levanta en 'La Nueva Amazonas'". Revista SIC, 21 May 2022. Available at: https://revistasic.org/la-veda-a-la-mineria-se-levanta-en-la-nueva-amazonas/; Draft State Law on the Economic and Social Development Plan for the State of Amazonas - New Amazonas 2021-2025). Venezuela. Available at: https://drive.google.com/file/d/1cb8q6k7cYbtD4tccGIdMuRbFrAjYuJ3j/view

Report prepared by the team of the ***Wataniba Amazon Socio-environmental Group.*** *Wataniba is a civil society organization that promotes sustainable territorial management processes in the Venezuelan Amazon, supports Indigenous grassroots organizations by providing them with technical training to defend and exercise their rights and offers them support for their socio-productive enterprises and actions in favour of their identity and culture.*

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 56,562 inhabitants (May 2022).[1] 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 Kangia (East Greenland), who speak Iivi oraasia (East Greenlandic) and the Inughuit/Avanersuarmiut near Thule who speak Inuktun. 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 culture includes subsistence hunting, commercial fisheries, tourism, and emerging efforts to develop the oil and mining industries. Approximately 50% of the national budget is financed by Denmark through a block grant.

In 2009, Greenland entered a new era with the inauguration of its Act on Self-Government, which gave the country further self-determination within the Kingdom of Denmark. Together with the Danish Constitution, the Self-Government Act articulates Greenland's constitutional position in the Kingdom of Denmark. The Self-Government Act recognizes the Greenlandic people as a people under international law with the right to self-determination.

Greenland has a public government, and it aims to establish a sustainable economy in order to achieve greater independence. Greenland's self-government consists of the Inatsisartut (Parliament), which is the elected legislature, and the Naalakkersuisut (Government), which is responsible for overall public administration, thereby forming the executive branch. The Inatsisartut has 31 elected members. The Government of Greenland adopted the UN 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 prioritized actions to establish Indigenous Peoples' collective rights to land and resources in their territories.

Human rights violations

The "IUD case"

During 2022, a radio podcast brought to light the fact that, from 1966 to the 1970s, around 4,500 girls and women in Greenland had intrauterine devices (IUDs) inserted by Danish doctors. The IUDs were used on girls as young as 12, and most often without consultation or the Free, Prior and Informed Consent (FPIC) of the women, the girls or their parents. Inuit Pisinnaatitaaffii pillugit Siunnersuisoqatigiit (the Human Rights Council of Greenland, hereinafter IPS) has demanded that the Danish State launch an unbiased and thorough investigation into the abuse of girls and women in Greenland who were systematically subjected to involuntary IUD insertions.[2]

Inserting an IUD in girls and women without their consent is a gross violation of the right to one's own body, and is a degrading and inhumane treatment, both with regard to the consequences the abuse has had on the girls and women, and in terms of the attitude to the girls and women that the IUD scandal represents.

At the request of Naalakkersuisut, the Government of Greenland, a commission has been set up to prepare an impartial investigation into what they are calling the "IUD case" and other pregnancy prevention measures over the period 1960-1991. The commission resumed after a new government was formed in Denmark in December 2022. The authorities must recognize the significant negative impact this involuntary intervention has had on the girls' and women's health, well-being, and development. It should also be considered whether this can be classified as genocide or attempted genocide. In this regard, IPS and

the Danish Institute for Human Rights (DIHR) have stated that it should not be the individual victims' responsibility to apply for recognition and compensation.

It is IPS' understanding that the so-called "IUD Campaign" was not the only violation of general human rights or Indigenous Peoples' rights following the formal end of the colonial era in 1953. For this reason, an unbiased, independent investigation of all human rights violations from the end of the Second World War to the present day has been demanded.

In a continuation of this case, Naalakkersuisut and the Danish government also agreed in June 2022 to launch an historical investigation into the relationship between Greenland and Denmark in the period from the end of the Second World War to the present day.[3] Although the Universal Declaration of Human Rights was adopted in 1948, there are several known examples of human rights violations during this period, such as "the experimental children" and the "legally fatherless" children.[4] The State's obligation to provide special protection to Indigenous Peoples was ratified by Denmark in 1996. It is therefore relevant to have a thorough investigation so that the trauma can be treated and the healing process can begin.

The Ivaaraq case

The Ivaaraq case, where a woman unable to defend herself or give consent was subjected to one or more assaults that led to a pregnancy, sent shockwaves across Greenland. Ivaaraq is a residential care institution for children, youth and adults with physical and psychological disabilities. Neither the staff at the Ivaaraq institution nor relatives had discovered the pregnancy before the woman went into labour.

Along with others, IPS has pointed out the need to have procedures in place to guarantee the safety and integrity of people placed in residential care institutions, especially given the well-known challenge of recruiting trained staff. It is also imperative that procedures and a culture focused on residents' safety, integrity and well-being are ensured in the workplace. In addition, there need to be frequent inspections of the country's residential care institutions with the aim of preventing violations of the residents' rights.[5]

Naalakkersuisut has announced that a nationwide investigation

into residential care institutions is to be conducted.

Like the IUD scandal, the Ivaaraq case is another serious violation of human rights that is not only in contravention of the rights enshrined in the UNDRIP but also those in the Convention on the Rights of Persons with Disabilities.

In February 2022, the Parliament decided that the Naalakkersuisut would accede to the Istanbul Convention (the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence). In Naalakkersuisut's presentation: Visions and Priorities for the Justice Area 2022, it noted that data collection on e.g., gender and age in cases of violence will be prioritized so that knowledge of violence in close relationships can be strengthened. By acceding to the Istanbul Convention, the authorities are also committed to placing an increased focus on psychological violence, which can have serious and lasting consequences for the victim.[6]

Conservation

Greenland has one national park, three UNESCO sites and 12 protected wetlands. The world´s largest national park is located in north-east Greenland, with an area of 972,000 km² – nearly the combined size of France and Spain – and a coastline of 18,000 km, which includes both the highest parts of the Northern Hemisphere's largest ice cap and the world's northernmost area of land. Today, the only residents are the Sirius dog sled special force and the staff of weather stations.[7] For thousands of years, various Inuit cultures lived and survived here thanks to the high Arctic animals.[8]

As for UNESCO sites, Ilulissat Icefjord is the channel through which ice that carves off of Sermeq Kujalleq (Ilulissat Glacier) reaches the sea. Sermeq Kujalleq is one of the most active and fastest moving glaciers in the world and has been studied for over 250 years, helping to develop our global understanding of climate change. As well as being an invaluable research site for scientists, it is also a popular tourist site.[9] Besides Ilulissat Icefjord, Greenland has two other UNESCO sites, Aasivissuit and Kujataa.

Aasivissuit – Nipisat [Inuit Hunting Ground between Ice and Sea] is located in the Arctic Circle in the central part of West Greenland. The area contains the remains of 4,200 years of human history. It is a cultural landscape that bears witness to its creators' hunting of land and sea animals, seasonal migrations and a rich and well-preserved tangible and intangible cultural heritage linked to climate, navigation and medicine.

The features of the site include large winter houses and evidence of caribou hunting, as well as archaeological sites from the Paleo-Inuit and Inuit cultures. The cultural landscape includes seven key localities, from Nipisat in the west to Aasivissuit, near the ice cap in the east. It bears testimony to the resilience of the Inuit cultures of the region and their traditions of seasonal migration. This area is the largest ice-free landscape in Greenland, meaning that it has acted throughout history as a valuable hunting ground for many different groups of settlers, and still does for Greenlanders today, as its UNESCO status currently does not hinder the local use of nature.[10]

Kujataa is a subarctic farming landscape located in the southern region of Greenland. It bears witness to the cultural histories of the Norse farmer-hunters who started arriving here from Iceland in the 10th century and of the Inuit hunters and Inuit farming communities that developed from the end of the 18th century. Despite their differences, the two cultures, European Norse and Inuit, created a cultural landscape based on farming, grazing and marine mammal hunting. The landscape represents the earliest introduction of farming to the Arctic, and the Norse expansion of settlement beyond Europe.[11]

The three UNESCO sites are still in their development phase but so far they do not seem to be infringing on the rights of the Inuit living in or near them but have instead opened up opportunities for highlighting and strengthening the intangible heritage of the areas.

Greenland has 12 designated Ramsar sites that serve to protect unique landscapes or wildlife habitats from degradation. Ramsar sites are wetlands of international importance, particularly as habitat for waterfowl, and must be protected. The Convention on Wetlands (Ramsar Convention) regulates what can be done in the individual areas, taking into account their special basis for designation.[12]

Greenland in international institutions

Naalakkersuisut represents Greenland's interests in international bodies such as the Arctic Council, Nordic Council, and in UN and EU frameworks such as the Convention on Biological Diversity (CBD), the International Maritime Organisation, and the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR).[13]

Naalakkersuisut has been part of various international and bilateral commissions on the conservation and management of various marine mammals and sea birds since the 1990s,[14] and there are yearly quotas for the hunting and fishing of many animals, to the frustration of many Inuit hunters and fishers. This has historically led to tension between fishers and the Greenland Institute for Natural Resources, which advises Naalakkersuisut and other authorities on sustainable exploitation of living resources and safeguarding the environment and biodiversity.[15]

The unhindered inclusion of Naalakkersuisut in these international decision-making processes is extremely important as our unique Indigenous knowledge is often needed to create solutions to current issues.

Greenland has been used as a platform for research into climate change for years and, as such, it has been important for the Inuit Circumpolar Council (ICC) that guidelines should be drawn up to ensure equitable and ethical research practices. On 3 June 2022, the ICC released its protocols for the Equitable, Ethical Engagement of Inuit in the Circumpolar World aimed at all decision and policy makers, researchers and others operating in the Arctic, where the slogan "Nothing about Us without Us" shines through. The fact that decision makers and researchers need to be reminded to be ethical speaks volumes.[16]

Hazardous waste

Despite Greenland's hard work with regard to protecting our land and animals, there is still a huge infrastructure deficit and, as such, waste management has been a major issue along the coast where hazardous waste is a source of emissions of several environmental harmful substances.[17]

When it comes to hazardous waste, the abandoned American bases in Greenland have caused political strife, in particular Camp Centu-

ry. In 2017, then Naalakkersuisoq for Foreign Affairs, Vittus Qujaukitsoq, appealed to, among others, the UN Special Rapporteur on the rights of indigenous peoples. The appeal concerned, among other things, Denmark's responsibility for cleaning up after American military installations.[18] Shortly afterwards, however, the complaints were withdrawn.

In 2018, the Danish Ministry of Foreign Affairs, in collaboration with the Attorney General, investigated the apportionment of responsibility for the clean-up after the military base.[19] The study has not been published, however, and access to it has been denied. The abandoned base has yet to be cleaned up.

IPS and DIHR made the following recommendations regarding Kalaallit Nunaat:

- Denmark and Greenland to ensure efficient and responsible handling of hazardous waste after military operations and of everyday waste.
- Greenland and Denmark to prepare a publicly available plan for clean-up and remediation of the Camp Century military facility to prevent environmental pollution and health risks to the Greenlandic population.
- Naalakkersuisut, in collaboration with municipalities, to inform the civilian population of the health risks associated with living near landfills that emit toxic chemicals, what hazardous waste is, and proper waste management.
- Naalakkersuisut to accede to the Stockholm Convention on Persistent Organic Pollutants.

IPS is calling for a strong focus on the climate crisis and for knowledge sharing while still respecting Indigenous knowledge, Indigenous Peoples' rights and respect for our custodianship while we combat this ongoing disaster.

As our home melts away, we express our support to all Indigenous Peoples around the world who continue to live under ever more extreme circumstances.

We stand with you in solidarity.

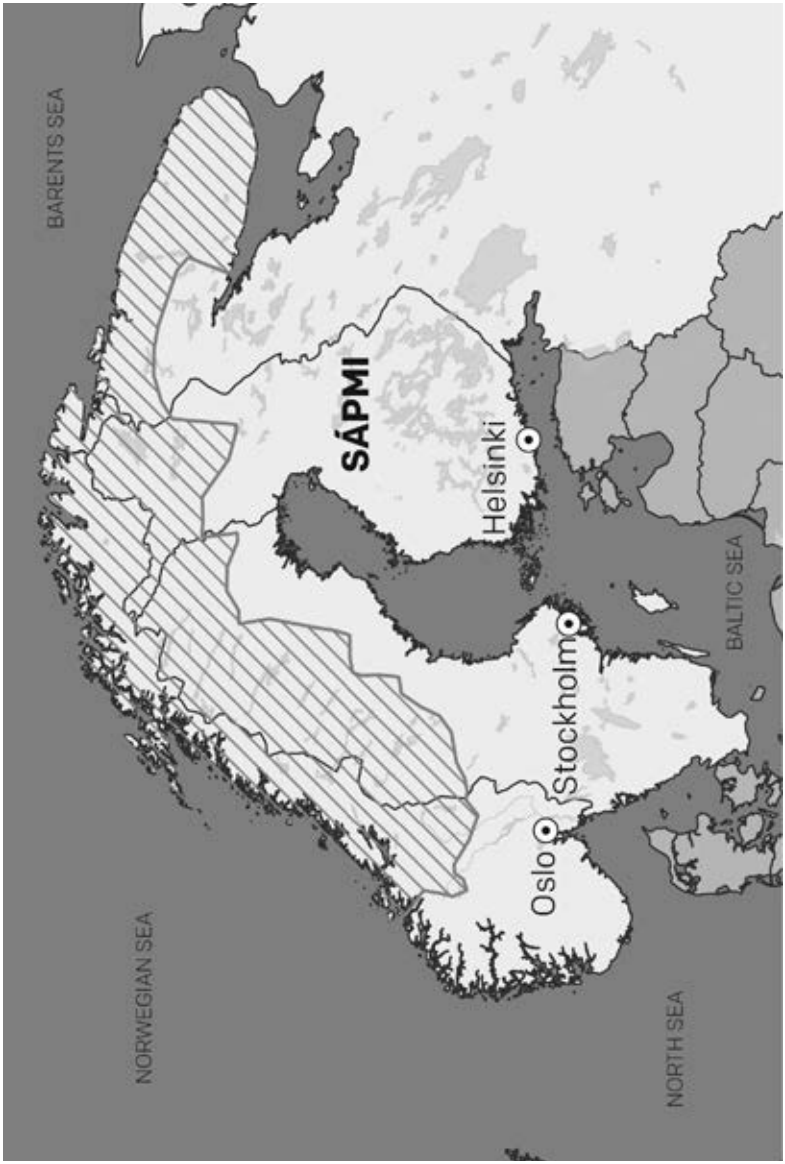
Qujanaq.

Notes and references

1. "Statistics Greenland. Greenland in Figures 2022." Statistics Greenland https://stat.gl/publ/en/GF/2022/pdf/Greenland%20in%20Figures%202022.pdf
2. Murray, A. "Inuit Greenlanders demand answers over Danish birth control scandal." BBC News, 30 September 2022, https://www.bbc.com/news/world-europe-63049387
3. "Greenland, Denmark initiate investigation into past relations." Eye on the Arctic, 9 June 2022, https://www.rcinet.ca/eye-on-the-arctic/2022/06/09/greenland-denmark-initiate-investigation-into-past-relations/
4. Read more about this social experiment implemented in 1951 and aimed at educating children in Denmark: Absalonsen, Joanna., and Louis Ilik Papis Chemnitz. "Kalaallit Nunaat." In The Indigenous World 2021, edited by Dwayne Mamo, 496-503. Copenhagen: The International Work Group for Indigenous Affairs (IWGIA), 2021, https://www.iwgia.org/en/kalaallit-nunaat-greenland/4227-iw-2021-kalaallit-nunaat-greenland.html
5. Filskov, N., Carlsen, K. S., Ventegodt, M., & Holck, L. (Eds.). Beretning til det grønlandske parlament, Inatsisartut 2021-22. Institut for Menneskerettigheder. 2022.
6. Ibid.
7. "Statistics Greenland. Greenland in Figures 2022." pp 26
8. "The National Park". Visitgreenland.com, https://visitgreenland.com/the-national-park/
9. "Iluissat Glacier" UNESCO World Heritage Convention. The List. https://whc.unesco.org/en/list/1149
10. "Aasivissuit – Nipisat Inuit Hunting Ground between Ice and Sea." UNESCO World Heritage Convention. The List. https://whc.unesco.org/en/list/1557
11. "Kujataa Greenland: Norse and Inuit Farming at the Edge of the Ice Cap." UNESCO World Heritage Convention. The List. https://whc.unesco.org/en/list/1536
12. "Areas of work" Government of Greenland. https://naalakkersuisut.gl/departementer/dep_for_landbrug_selvforsyning_energi_og_miljoe/internationalt_samarbejde/arbejdsomraade?sc_lang=da
13. Ibid.
14. "Hunting." Government of Greenland. https://naalakkersuisut.gl/departementer/dep_for_fiskeri_og_fangst/fangst_og_jagt?sc_lang=da
15. "The institute." Greenland Institute of Natural Resources. https://natur.gl/about-us/naturinstituttet/?lang=en&_gl=1*lreg78*_ga*NDM0MjQ4NzQ4LjE2NzI5NjYzNTg.*_up*MQ
16. "Circumpolar Inuit Protocols for Equitable and Ethical Engagement." Inuit Circumpolar Council Canada. https://www.inuitcircumpolar.com/project/circumpolar-inuit-protocols-for-equitable-and-ethical-engagement/
17. "Waste management in Greenland: current situation and challenges." Rasmus Eisted and Thomas H. Christensen. https://www.researchgate.net/publication/50304022_Waste_management_in_Greenland_Current_situation_and_challenges
18. "Greenland brings Denmark before the UN for failing to clean up old US military pollution." Arctic Today. https://www.arctictoday.com/greenland-brings-denmark-before-the-un-for-failing-to-clean-up-old-us-military-pollution/?wallit_nosession=1
19. "Camp Century: Regeringen undersøger USA's ansvar for forurening." KNR. https://knr.gl/kl/node/210528

Qivioq Løvstrøm *is the Chair of the Human Rights Council of Greenland (IPS), 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. She has experience of 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*

Sápmi


BARENTS SEA
NORWEGIAN SEA
SÁPMI
Helsinki
Oslo
Stockholm
BALTIC SEA
NORTH SEA

Sápmi[1] 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

As reported in *The Indigenous World 2022*, there are ongoing truth and reconciliation processes in Finland, Norway and Sweden where the purpose of these processes is to identify and assess historical and current discrimination, including the assimilation policies of the states and violations of rights, and how they have affected and continue to affect the Sámi and their communities today.[2] The purposes of these three commissions are slightly different and so are their mandates.

The Indigenous Sámi people in Norway do not have their own Truth Commission. Instead, there is a joint Truth Commission for the Sámi and two of Norway's national minorities, the Kvens and the Norwegian/Forest Finns. The Commission to Investigate the Norwegianization Policy and Injustice against the Sámi and Kvens/Norwegian Finns (TRC) is made up of 12 experts all of whom have been appointed by the Stortinget (Norwegian Parliament). The TRC is to complete its work by 1 June 2023 and to deliver its report to the Presidium of the Stortinget. The purpose of this investigation is to *"lay the groundwork for the recognition of the experiences of the Sámi and Kvens/Norwegian Finns during enforcement of this policy by the Norwegian authorities, and what consequences these experiences have had for them collectively and individually."*[3] The mandate describes three tasks for the TRC:

1. Perform a historical survey to map the Norwegian authorities' policy and activities towards the Sámi and Kvens/Norwegian Finns locally, regionally and nationally.
2. Carry out an investigation of the effects of the Norwegianization policy. The Commission is to consider how the Norwegianization policy has affected the majority population's attitudes towards the Sámi and Kvens/Norwegian Finns and will investigate the consequences of Norwegianization to the present day.
3. Propose measures to contribute to further reconciliation.

In December 2022, the chairperson of the TRC, Mr. Dagfinn Høybråten, made a statement about the 4-year work of the Commission, focusing

on the need for Norway as a nation to address the injustices of the past and implement measures to strengthen the knowledge of the various consequences the harsh assimilation policy has had for the Kven and Finn minority and for the Indigenous Sámi in Norway.[4] The Commission has received over 650 testimonies from individuals who have shared their experiences with the commissioners.

On the other side of the border, in Sweden, the Sámi Parliament and the Government of Sweden came to an agreement to establish a Truth Commission for the Sámi people (*Sanningskommissionen för det samiska folket*) in 2021, and the 12 commissioners were appointed in June 2022.[5] The Truth Commission for the Sámi People in Sweden is now starting to collect testimonies from Sámi in communities and cities all over Sweden about how Swedish policies have affected them individually and collectively. The historical oppression of the Sámi in Sweden has included forced relocation of Sámi reindeer herders from their traditional lands, establishment of nomad schools, Sámi being the victims of "racial biology" studies,[6] industrialization of Sámi lands and communities and a ban on speaking the Sámi language or practising their own religion. Sweden's commission will examine Sámi history and policy dating back to the 1500s. The Commission's task is to both receive testimonies from Sámi about their experiences and raise awareness of the history of the Sámi and their situation today. The Truth Commission in Sweden will finalize its work by the end of 2025 and propose measures for reparations that will contribute to sustainable Sámi societies and reconciliation.

In Finland, the Truth and Reconciliation Commission concerning the Sámi people (TRC Finland) had a challenging start.[7] The commission was established in October 2021 but was affected by resignations in May 2022. The TRC in Finland was originally set up with five appointed commissioners: two by the Sámediggi- Sámi Parliament in Finland, one by the Skolt Sámi Siida Council and two by the Finnish government.[8] In May 2022, two of the appointed commissioners and the Commission's Secretary General resigned due to lack of sufficient resources and support for the Sámi who were participating in the work of the Commission.[9] In June, the Sámi Parliamentary Assembly in Finland decided to continue to support the process and elected two new commissioners at its plenary session in October 2022, after postponing their decision

on the continuation of the work of the TRC due to the need to *"explore more deeply the perspectives of Sámi society and the continuation of the Truth and Reconciliation process"*.[10]

The revision of the Sámi Parliament Act in Finland

In June 2022, the Committee on the Elimination of Racial Discrimination (CERD), acting under article 14 (7) (a) of the International Convention on the Elimination of All Forms of Racial Discrimination, found that Finland had violated article 5 (c) of the Convention.[11] A number of Sámi individuals claimed that Finland had violated the Sámi people's human rights in relation to their own ways of defining their membership and political participation. CERD recommended that the State party provide an effective remedy to the petitioners by urgently initiating a genuine negotiation for the review of section 3 of the Act on the Sámi Parliament. CERD said that this section should be defined in a manner that respects the right of the Sámi people to provide their Free, Prior and Informed Consent (FPIC) on matters relating to their own membership and their political participation for the enjoyment and full realization of other rights of Indigenous communities, in particular their economic, social and cultural rights guaranteed in accordance with article 5 (c) and (e) of the Convention.[12] In the 2015 Sámi Parliament elections, Finland's Supreme Administrative Court ruled that around 100 people who identified themselves as Sámi but who were not recognized as Sámi persons by the Sámi community and the Sámi Parliament should be added to the electoral roll and therefore be eligible to vote in the Sámi Parliament elections that year. There are genuine, well-founded concerns that if enough people not recognized by the Sámi get elected to parliament then very soon the Sámi could become outnumbered in their own representative political body.

The CERD decision is a follow-up to two individual complaints from 2019 to the UN Human Rights Committee whereby the Committee found that Finland had violated the Sámi peoples' internal right to self-determination under the Covenants.[13] The Committee urged the Finnish government to pass amendments to the Sámi Parliament Act that were in line with international human rights law. A reform of the

Sámi Parliament Act has long been delayed by successive Finnish governments, with little progress over the last few years. If reforms were completed they could enshrine the right to self-determination for the Sámi people in Finnish law and rectify the breaches of international conventions that the UN treaty bodies have identified.

Finnish Prime Minister Sanna Marin has said she was sorry for delays in acting on new human rights legislation for the Indigenous Sámi people.[14] The Sámi Parliament in Finland has voted to approve the draft Sámi Parliament Act, which also includes strengthened language on consultations with the Sámi in, for instance, development projects, the establishment of mines or other types of extractive industry on Sámi lands. The draft Act requires negotiation with the Sámi Parliament on any measures that may "carry particular importance for the Sámi" with the goal of obtaining its consent. This language brings the Sámi Parliament Act closer to the State's obligation to negotiate on the basis of FPIC under international law and, more specifically, the United Nations Declaration on the Rights of Indigenous Peoples.[15] Members of the Sámi Parliament voted 15-3 with one abstention to approve the draft of the Sámi Parliament Act, which is now being considered by the Finnish Parliament, Eduskunta.

Indigenous Navigator Sápmi

The Indigenous Navigator in Sápmi project is a collaboration between three different organizations: the Saami Council (Sámiráđđi), the Sámi University of Applied Sciences (Sámi allaskuvla) and the International Work Group for Indigenous Affairs (IWGIA). The project has produced country surveys on Norway and Finland, and will continue to produce a country survey on Sweden as well. The data provided by the Indigenous Navigator can help Indigenous Sámi communities to monitor the level of implementation of their rights both on the local and national levels and to identify implementation gaps in the future. The project also aims to identify where data is still missing and to produce community surveys in different Sámi communities. A number of UN treaty bodies have criticized the Nordic countries for decades over their lack of reliable statistics and disaggregated data on the Sámi. For example, Statistics Finland produces statistics on persons living in Finland according to

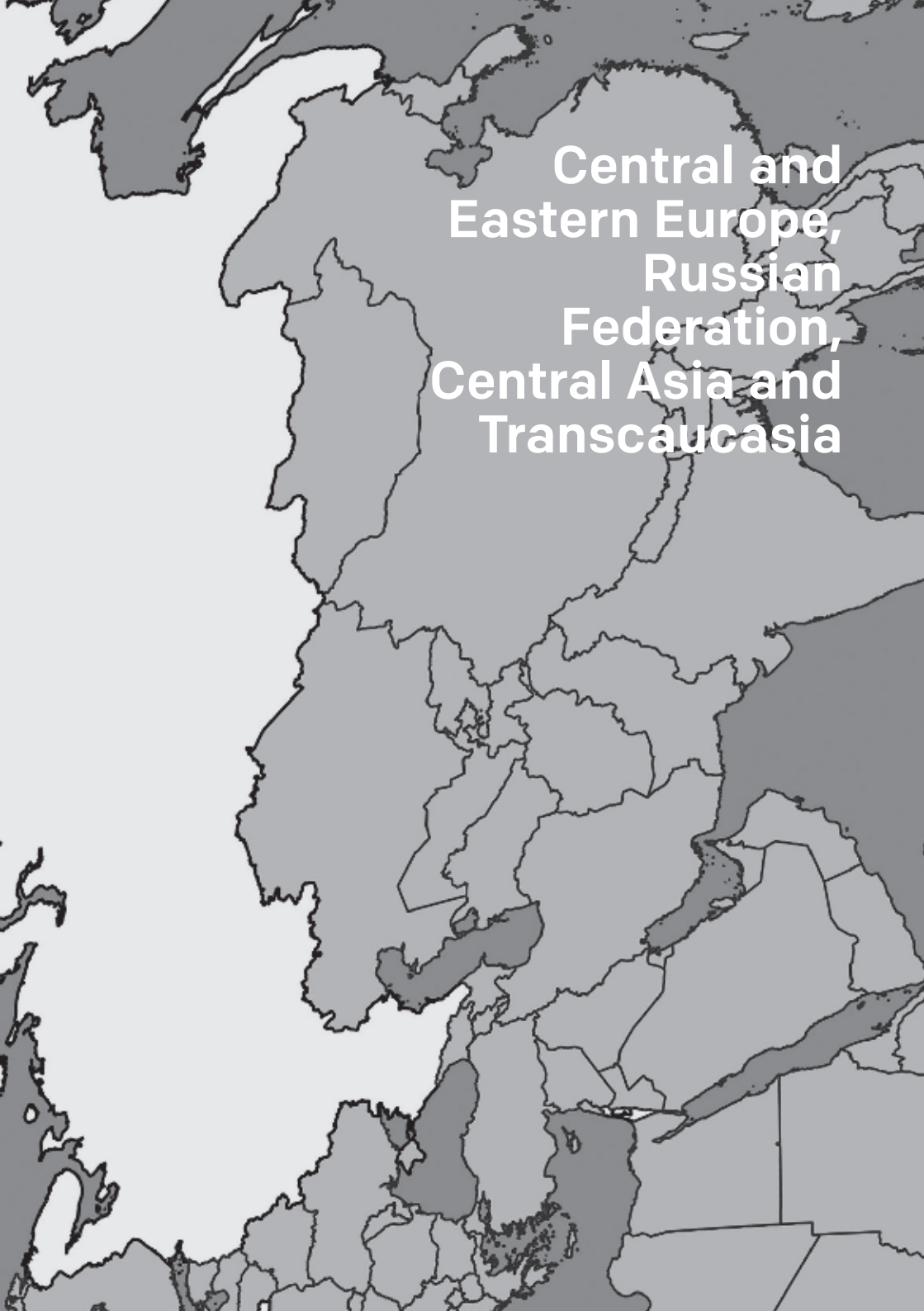
their nationality, language and country of birth but not ethnicity. Moreover, Norway does not include ethnic identifiers in its national censuses. Within the framework of the Indigenous Navigator Sápmi project, the legal situation and main challenges facing implementation of the human rights of the Indigenous Sámi people in Finland, Sweden, and Norway is now being mapped.[16]

Notes and references

1. This article covers developments in Sámi homeland areas in Finland, Norway and Sweden and for the Sámi people living in these three Nordic countries. The Sámi traditional territory also include areas in the Kola Peninsula, Russia where the Sámi people in Russia live.
2. Vars, Laila Susanne. "Sápmi" in The Indigenous World 2022, edited by Dwayne Mamo, 500 – 507. Copenhagen: The International Work Group for Indigenous Affairs (IWGIA) 2022, https://www.iwgia.org/en/sapmi/4679-iw-2022-sapmi.html
3. The Truth and Reconciliation Commission website, https://uit.no/kommisjonen_en
4. The Truth and Reconciliation Commission website, address by chair of the Commission, Mr. Dagfinn Høybråten: https://uit.no/kommisjonen/presse/artikkel_en?p_document_id=798854, see also filmed version of his address at https://www.youtube.com/watch?v=TVboUJl_SVU
5. For more about the mandate, see: Vars, Laila Susanne. In The Indigenous World 2022, edited by Dwayne Mamo, p. 502. Copenhagen: The International Work Group for Indigenous Affairs (IWGIA) 2022; for more about the Commissioners, see the website for the Truth Commission for the Sámi People, Sweden: https://sanningskommissionensamer.se/om-kommisionen/
6. Malmberg, Åsa. *"How the Sami were affected by research in 'racial biology'."* Uppsala University, 10 December, 2021, https://www.uu.se/en/news/article/?id=17908&typ=artikel
7. For more about the process in Finland, see: Vars, Laila Susanne.
8. Official website of the Truth and Reconciliation Commission Concerning the Sámi People in Finland, https://sdtsk.fi/en/commission/
9. Quinn, Eilis. "*Truth and Reconciliation Commission should continue says Sami Parliament in Finland.*" Eye on the Arctic, 27 June 2022, https://www.rcinet.ca/eye-on-the-arctic/2022/06/27/truth-and-reconciliation-commission-should-continue-says-sami-parliament-in-finland/
10. Quinn, Eilis. "*Truth & Reconciliation Commission in Finland—Election of new commissioners postponed.*" Eye on the Arctic, 25 August 2022, https://www.rcinet.ca/eye-on-the-arctic/2022/08/25/truth-reconciliation-commission-in-finland-election-of-new-commissioners-postponed/
11. See article: Human Rights Centre. "CERD: Finland has violated the rights of Sámi guaranteed in the International Convention on the Elimination of All Forms of Racial Discrimination." 22 June 2022, https://www.humanrightscentre.fi/uutiset/cerd-finland-has-violated-the-right/#:~:text=CERD%3A%20Finland%20has%20violated%20the%20rights%20of%20S%C3%A1mi,to%20

S%C3%A1mi%20electoral%20roll%20on%2013%20June%202022.
12. United Nations. International Convention on the Elimination of All Forms of Racial Discrimination. Opinion adopted by the Committee under article 14 of the Convention, concerning communication No. 59/2016. https://um.fi/documents/35732/0/CERD_C_106_D_59_2016_34006_E.pdf/2cfa37cf-1586-e622-b6ff-77526158a470?t=1655206211235
13. For more about the communications to the Human Rights Committee, see: Vars, Laila Susanne, "Sápmi" in The Indigenous World 2020, edited by Dwayne Mamo, 531-532. Copenhagen: The International Work Group for Indigenous Affairs (IWGIA) 2020, https://www.iwgia.org/en/sapmi/3636-iw-2020-sapmi.html
14. Mac Dougall, David. "Finland's Sanna Marin apologises for lack of action on rights of indigenous Sámi people." Euronews, 29 October 2022, https://www.euronews.com/2022/10/29/finlands-sanna-marin-apologises-for-lack-of-action-on-rights-of-indigenous-sami-people
15. Mac Dougall, David. "Finland's indigenous Sámi politicians clear new human rights law hurdle." Euronews, 29 November 2022, https://www.euronews.com/2022/11/29/finlands-indigenous-sami-politicians-clear-new-human-rights-law-hurdle
16. "Indigenous Navigator in Sápmi: *'Statistics would be of particular importance in mapping the rights of indigenous peoples'*." Saami Council, Sámi allaskuvla- Sámi University of Applied Sciences and IWGIA, 9 August 2022, https://iwgia.org/en/news/4887-indigenous-navigator-in-s%C3%A1pmi-%E2%80%9Cstatistics-would-be-of-particular-importance-in-mapping-the-rights-of-indigenous-peoples%E2%80%9D.html

Laila Susanne Vars *is a member and former Chair of the United Nations Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), representing the Arctic region. She is an Indigenous Sámi lawyer with a PhD in international law. She is currently one of the Commissioners in the newly established Truth Commission for the Sámi People in Sweden and the President and Chair of the Executive Board of the Sámi University of Applied Sciences – Sámi allaskuvla in Norway. For further information about the Sámi University see: www.samas.no*



Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia

Israel

LEBANON
SYRIA
MEDITERRANEAN SEA
PALESTINE
Jerusalem
ISRAEL
EGYPT
JORDAN

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.[1]

Today, some 300,000 Bedouin citizens of Israel live in the Naqab, in four types of locations: government-planned townships, recognized villages, villages in the process of recognition[2] and villages that Israel refuses to recognize (unrecognized villages).[3] There are 35 unrecognized 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".[4]

Most of the Bedouin population lost their lands when Israel declared it as *Mawat* ("dead", uncultivated agricultural lands) and reclaimed it as State land.[5] 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 nationalized by way of a number of laws, including the *Absentee Property Law* (1950)[6] and the *Land Acquisition Act* (1953).[7]

There was no exception made for the Naqab Bedouin, who were forcibly 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.[8]

Since the beginning of the 1970s, Israel has been conducting an ongoing non-consensual and non-participatory urbanization 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.[9] However, Bedouin residents from unrecognized villages are not included in these national poverty indicators.[10] In addition to the seven townships, the State recognized 11 Bedouin villages from 1999 onwards,[11] hailing their recognition as a fundamental shift in government policy, which had previously focused exclusively on forced urbanization. In June 2021, the coalition agreement signed by the Head of the United Arab List, the Deputy Prime Minister and Minister of Foreign Affairs and Prime Minister included the recognition of the unrecognized Bedouin villages of Khašim Zannih, Rakhamah and ʿabdih within the first 90 days of the government. Although the Cabinet approved the decision in November 2021, it was conditional upon the requirement that at least 70% of the Bedouin residents give their consent to leave their lands and move to the new established villages before the recognition process is finalized. That 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 recognized.[12]

Two decades later, however, there is no significant difference between these villages and the unrecognized ones. The residents of most recognized villages continue to be denied access to basic services and are under constant threat of house demolitions.[13] The remaining 28% of the Bedouin population (around 100,000 people) live in unrecognized villages[14] 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 Unrecognized Villages (RCUV), an informal community body.

The State's systematic violation of the Indigenous citizens of the Naqab's right to freedom of expression and protest

In January 2022, the Keren Kayemeth LeIsrael and the Jewish National Fund (hereinafter KKL-JNF) began to plant forests over the lands of the Al-Atrash family in the villages of Sa'wah and Khirbit al-Watan. This project, the "communal seeding of trees", targeted 5,000 *dunams* (1,250 acres) along the Anim stream, which runs to Beer Sheva wadi.[15] On 13 January, thousands of Bedouin residents and other activists gathered on Road 31 to protest the KKL-JNF activities, including on the lands of the Al-Atrash family, in a demonstration approved by the police. Community members and activists from around the region voiced their objections to the extra-judicial appropriation of Bedouin lands whose ownership is partly claimed by the Al-Atrash family.[16] In response, they were met with unprecedented police brutality.

Multiple testimonies reported to the Negev Coexistence Forum (NCF)[17] document how, several minutes after the beginning of the protest, police violently repressed the demonstration. Methods NCF has documented include: live-firing of rubber bullets, the use of horses to trample and intimidate protestors, unnecessary and extreme physical violence, and firing tear gas from drones. These methods remain legal and can be used at liberty by the police, no matter the outcome. It is important to stress how, ultimately, the objective of these measures was to repress unarmed Israeli citizens from exercising their legitimate right to protest. Five months later, some of the protestors were still under arrest, while others were experiencing post-traumatic stress and fear.

As a result of the international advocacy work NCF has been carrying out to denounce police violence during protests in the Naqab in January 2022, the UN Special Rapporteur on minority issues, the Spe-

cial Rapporteur in the field of cultural rights, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance have sent a communication to the State of Israel requesting observations relevant to these allegations regarding the international human rights law, (Special Rapporteur on minority issues, 3 July 2022).

In the following weeks, police detained, investigated, and terrorized Bedouin citizens in the surrounding communities. Witnesses wonder whether the attacks were premeditated as a way to suppress future demonstrations, and stifle the growing political activism against the JNF, led by Bedouin civil rights leaders. One hundred and fifty-five Bedouin citizens were arrested for simply appearing at a demonstration.[18] The Israeli Security Agency Shabak detained and investigated six to eight people in what was allegedly considered an "anti-terror" campaign. By July 2022, the number of criminal charges had reached 38. Hundreds of Bedouins were arrested in the weeks following the demonstration, often without cause or warrant. By July 2022, there were four minors under house arrest, all with restraining orders and another four adults in custody until the end of proceedings. A security indictment was filed against all of them. Dozens of activists were severely injured during the demonstration.

Continued form of targeting Bedouin activists and human rights defenders

Watan Mahdi, a female Arab student and left-wing activist affiliated with the Hadash party, was summoned by the academic secretary to the Ethical Committee of Ben Gurion University in disciplinary proceedings over a Mahmoud Darwish quote she read at a Nakba Day demonstration on 22 May. The university claims that her recalling of the Palestinian poet to "remember the martyrs who fulfilled the unity of the country, the people and history" constituted incitement to terrorism. The summons letter was sent on 27 July following a complaint filed by the university's group of "Im Tirtzu", a right-wing Zionist group, according to which the student was disobeying the instructions of the authorities and agreements that had been reached with the university before

the demonstration. On 27 October, the Association for Civil Rights in Israel (ACRI) appealed to the president and the rector of the university demanding that the disciplinary procedure taken against the student be cancelled.[19] They also claimed that filing a lawsuit due to a sentence said in Arabic because of the alleged interpretation of a word among the Jewish public was absurd, and that it was furthermore flawed by cultural and racial bias.

Another case that portrays the State's oppression of the basic right of freedom expression is the arrest of Bedouin human rights defender and pharmacy student, Mariam Abu Kwider. On 12 May, after a demonstration in memory of journalist Sheerin Abu Aqla held at Ben Gurion University, several policemen in civilian clothes detained her. She had previously been interrogated by the Israeli Security Agency for publishing content on social media allegedly promoting incitement. Mariam was forcibly arrested and taken to the police station in a civilian car, while other students followed her in their private cars.[20] The Magistrate's Court agreed to release her on restrictive conditions (house arrest and non-use of social media, computers and telephone) and bail of USD 1,500 on release plus two guarantors of USD 3,000 each. After the judge had issued their decision, the police appealed it in the District's Court. Adv. Ibn Bari lodged an appeal to cancel the decision of detention for four days and the Judge decided to keep her arrested for 10 days. Mariam Abu Kwider is being charged with incitement, is prohibited from using her phone and from having any access to the internet. In addition, she is "in human custody", in other words she cannot move without one of her guardians accompanying her.

UN bodies in relation to the Bedouins' Indigenous rights in 2022

Since the violent escalation of May 2021[21] the International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel (hereinafter CoI) has worked to gather information on multiple human rights violations that have been initiated since then. NCF has contributed to the Report of the CoI, presented at the 77th session of the United Nations General Assembly in September.

In chapter four, *Nature of the control exerted by Israel in the territories that it occupies and the situation inside Israel*, it is reported that in 2022:

> *Palestinian citizens of Israel are still subjected to discriminatory policies including the confiscation of land, demolitions and evictions that affect the Bedouin in the Negev and Palestinians residing in other areas of Israel. In addition, several Israeli laws discriminate against Palestinian citizens of Israel. For example, the Nation State Law of 2018 gives only Jews the right to self-determination in Israel and removes the status of Arabic as an official language alongside Hebrew...Bedouin and herder communities are at a particular risk of demolitions, forced evictions and forcible transfer. Israeli authorities have used overt coercion in forcing them to leave their homes and make way for Israeli use of the land.*[22]

In its conclusions, it is stated that:

> *Actions by Israel constituting de facto annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.*[23]

The systematic actions of occupation in the West Bank are replicated and applied in the Bedouin unrecognized villages of the Negev-Naqab, inside Israeli territories, where historical lands are continuously being expropriated, and uprooting and afforestation activities are frequent State practices with which to dispossess the Bedouin citizens of their lands.

According to the announcement of the former Minister of Interior, Ayelet Shaked, in March, the government approved the establishment of 14 new Jewish settlements in the Negev.[24] Those government decisions reflect a reproduction of the mechanisms of oppression that are taking place in the occupied Palestinian territories and portray a clear segregation between Jewish and Arab residents living in the Negev-Naqab.

Since the events of May 2021 in the Negev-Naqab, including the

mass arrests, use of violence and multiple mechanisms for oppressing the Bedouin, these Indigenous communities are experiencing a growing breakdown of trust with the government, being increasingly threatened over their basic civil and political rights. This is resulting in a more vulnerable context for a population that continues to fall below the poverty line and is the poorest in Israel, without any means of escape. Furthermore, the government does not seem to be willing to treat the Bedouin Indigenous people as citizens but rather demands that they be punished and their rights stripped from them, not for crimes they have committed but for their steadfast resistance to the State's long-standing neglect and its discriminatory policies.

General outlook for 2023

A dangerous amendment passed by the Israeli parliament now gives far-right politician and new Minister of National Security, Itamar Ben-Gvir, expanded powers and authority over the police to further target Palestinians in Israel. The proposed law would lead to an increase in cases of abuse, and degrading treatment by police officers targeting activists and demonstrators, including the Bedouin communities living in the Negev-Naqab. The Negev-Naqab has witnessed violent practices, especially during the May escalation of 2021,[25] with Israeli police targeting Palestinian youths and unleashing fascist militias that stormed and attacked Palestinian neighbourhoods. This cruel and degrading treatment by the police often includes extremely violent practices, prohibited according to international conventions and according to the Israeli Supreme Court itself – but the practices continue, nonetheless.

It is feared that the goal of this new change is to give the minister full authority over the police, and to be able to seize the powers available to the police chief and transfer them to himself so he can use the police as a weapon to spread his dangerous ideology. The minister can thus decide to target certain groups and subject them to police measures and repression, and to deny certain groups, especially Bedouins, the right to demonstrate. Guarantees of the civil rights of the Bedouin, as a Palestinian Indigenous minority, to demonstrate, express their identity and make use of their basic rights and services, are thus being threatened and are likely to be denied if the law is finally approved.

Notes and references

1. Negev Coexistence Forum for Civil Equality. "The Arab-Bedouin Community in the Negev-Nagab – A Short Background." accessed 10 January 2022, https://www.dukium.org/the-arab-bedouin-community-in-the-negev-nagab-a-short-background/
2. Kremer, Elianne., and NCF. "The Indigenous World 2022: Israel." In The Indigenous World 2022, edited by Dwayne Mamo. P 517. International Work Group for Indigenous Affairs (IWGIA), https://www.iwgia.org/en/israel/4680-iw-2022-israel.html
3. "Online Database - Life Characteristics of the Bedouin Population in the Negev - Demographics." Accessed 9 January 2023, https://in.bgu.ac.il/humsos/negevSus/SYBSN/Pages/demographics.aspx
4. For an interactive map of the Arab Bedouin villages in the Negev-Naqab, including background and information on services and infrastructure, see https://www.dukium.org/map/
5. For example, see: http://law.haifa.ac.il/images/documents/ColonialismColonizationLand.pdf
6. Absentee Property Law, 1950-57, https://tinyurl.com/y2ckm8kl
7. Land Acquisition Law, 5773-1953, https://tinyurl.com/y6p2aq4x
8. Negev Coexistence Forum for Civil Equality (NCF). "No Shelter in Place: State Demolitions in the Bedouin Communities and its Impact on Children; During the Covid-19 Pandemic" July 2021, p.7, https://www.dukium.org/wp-content/uploads/2021/07/HDR-2021-Data-on-2020-Eng-5.pdf
9. Dimensions of Poverty and Social Disparities - Annual Report, 2018, https://tinyurl.com/6jve9ckz
10. Negev Coexistence Forum for Civil Equality (NFC). "Indigenous Bedouin citizens neglected by the Israeli Central Bureau of Statistics." August 2021, https://www.dukium.org/wp-content/uploads/2021/08/Indigenous-Bedouin-citizens-neglected-by-the-Israeli-CBS.pdf.
11. Land Acquisition Law, 5773-1953
12. A coalition agreement to form a unity government, 2021, https://tinyurl.com/2shszxk3
13. NCF and Adalah (The Legal Center for Arab Minority Rights in Israel). "Violations of the ICERD against the Arab Bedouin citizens of Israel living in the Naqab/Negev desert." Joint NGO Submission to the CERD, 2019, p.2, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fNGO%2fISR%2f37260&Lang=en
14. Central Bureau of Statistics (CBS). Total population estimations in localities, their population and other information, 2018, https://www.cbs.gov.il/en/mediarelease/pages/2019/localities-in-israel-2018.aspx
15. Tov, M.H., Josh Breiner., Deiaa Haj Yahia., Jack Khoury., and Anshel Pfeffer. "JNF tree-planting in Israel's Negev ends after days of clashes with local Bedouin." Haaretz, 12 January 2022, https://www.haaretz.com/israel-news/2022-01-12/ty-article/.premium/after-clashes-more-police-sent-to-guard-jnf-forestation-work-in-israels-negev/0000017f-e6a7-da9b-a1ff-eeef8b760000
16. Negev Coexistence Forum. "Enforcing the Invisible Barrier: Police Violence during the January 2022 Protests of KKL-JNF Afforestation Projects." July 2022, p5, https://www.dukium.org/wp-content/uploads/2022/08/Violence-Report_2022_ENG_01-1.pdf
17. Ibid, p2

18. Ibid
19. "Violation of the freedom of expression of a female student at Ben Gurion University." The Association for Civil Rights in Israel (ACRI), accessed 4 December 2022, https://www.acri.org.il/post/__836
20. See the video documenting the events, https://www.youtube.com/watch?v=xvcmR9sYraI
21. Negev Coexistence Forum for Civil Equality. "The Arab-Bedouin Community in the Negev-Nagab – A Short Background." accessed 10 January 2022, p512.
22. United Nations, General Assembly. "Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel." [A/77/328], 14 September 2022, https://reliefweb.int/report/occupied-palestinian-territory/report-independent-international-commission-inquiry-occupied-palestinian-territory-including-east-jerusalem-and-israel-a77328-enar
23. Ibid
24. Melenitzki, G. "We were dreamers: Ayelet Shaked dreams of another 7 new settlements in the Negev." The Marker, 10 April 2022, https://www.themarker.com/realestate/2022-04-10/ty-article/.premium/00000180-5bd0-de8c-a1aa-dbf8fff50000
25. Dimensions of Poverty and Social Disparities - Annual Report, 2018

The Negev Coexistence Forum for Civil Equality (NCF) *was established in 1997 to provide a space for Arab-Jewish shared society in the struggle for civil equality and the advancement of mutual tolerance and coexistence in the Negev/Naqab. NCF is unique in being the only Arab-Jewish organization that remains focused solely on the problems confronting the Negev/Naqab area. NCF considers that the State of Israel is failing to respect, protect and 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

MEDITERRANEAN SEA
PALESTINE
East Jerusalem
ISRAEL
EGYPT
JORDAN

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.[1, 2] 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 700,000 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.[3] The short-lived Trump "Deal of the Century" recognized 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 and the Syrian Golan, 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 Periphery 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[4] in Area C were under demolition orders or stop work orders, a five-year high,[5] yet in 2022 that number climbed to 56 schools threatened with demolition or demolished[6, 7, 8] and, although Isfey al Fauqa was the only school demolished in 2022, following its original demolition on 23 November,[9] on 6 December Israeli authorities confiscated two tents and one latrine provided as humanitarian aid in response to the demolition of that school. Meanwhile, the war crime of forced displacement by Israeli authorities remains a constant threat.

Displacement, annexation and land-grabbing dominate reality

Any report on the state of affairs of the Indigenous Bedouin of Palestine in 2022 must focus, yet again, on increasing displacement and land-grabbing carried out by the Israeli occupation's military policies against Indigenous desert pastoralists in order to fulfil Israeli government instructions.

The new Israeli coalition of December 2022, for example, produced a manifesto, expressed by Prime Minister Benjamin Netanyahu, as a result of various coalition agreements, in which he declared its intention to "push to extend Israeli sovereignty in territory, while taking into account 'national and international interests'."[10]

Netanyahu also said at the time that "such a move would alienate much of the world and give new fuel to critics who compare Israeli policies in the West Bank to apartheid South Africa."[11]

In the run up to his fifth consecutive election in October 2022, however, he was even more explicit and[12] "revealed he intends to push for annexation of West Bank settlements if he is re-elected next week".

Adding, "I think that if I'm re-elected, I will get it. I have plans on how to get it".[13]

Hagai El-Ad, director of B'Tselem, Israel's leading human rights non-governmental organization, expands on this process:[14]

> *In these agreements, the 2018 Basic Law on Israel as the Nation-State of the Jewish People is evident in extensive displays of Jewish supremacy wherever Israel rules between the Mediterranean Sea and the Jordan River. The examples are many. The government opened its basic policy statement: 'The Jewish people have an exclusive and unquestionable right to all areas of the Land of Israel.' On top of this are steps for 'legalizing' settler outposts in the West Bank [..] In a country where 'Jewish settlement' is a 'national value' – as determined by a Basic Law that wasn't rejected by the Supreme Court – Jewish supremacy is the compass. The 37th government is generously making sure to flaunt all this ... As Elyakim Rubinstein, a former attorney general and Supreme Court justice, put it last month: 'Who is our flak jacket against The Hague? Mainly the Supreme Court. ... Weakening the court means weakening us in The Hague.' In other words, we don't have a court that protects human rights, we have a court that protects Israelis from being called to account for undermining the Palestinians' human rights.*

While relentless forcible displacement has been self-evident to those working at grassroots level for many years, and very much part of hard-line settler philosophy whereby "sovereignty" is virtually a code name for annexation,[15] it is now even attested to in UN reports, such as in the October 2022 UN Secretary General (UNSG) report (A/77/493):[16]

> *The report contains an update on settlement advancement and its impact on the human rights of the Palestinian people. Section IV highlights in particular the growing establishment of farm outposts with intensive settler violence worsening the coercive environment and forcing Palestinian herder families to leave their homes in what could amount to forcible transfer.*

Such forcible transfer by Israeli actors, whether military personnel or violent settlers,[17, 18] or co-ordinated actions between the two,[19, 20, 21] includes ongoing denial of Bedouin traditional rights and lifestyle through almost daily demolition of homes, schools[22, 23] or animal sheds,[24] and denial of their land claims: not least by pejorative reference to them as "nomads"[25, 26] instead of recognizing their identity as semi-nomads who traditionally move seasonally on their own lands. Israeli officials and settlers thus regularly refer to the Bedouin as nomads since that description conveniently casts them as mere wanderers, free to go elsewhere at will, as opposed to landowners with legal rights to be recognized by the Israeli legal system.[27]

Identity used as an "alibi"

Bedouin identity in OPT is even more complicated by refugee status, having been expelled from lands they own in Israel (in the case of the Jahalin tribe, in the 1950s), and to which they wish, in vain, to exercise their inalienable right of return,[28] embodied in UN SCR 194, a right that Israel consistently denies.[29]

Planning and zoning is the convenient "cover" for displacement by demolition: in the rural areas, including farmland, desert or the 48 nature reserves that take up 12% of Area C – only 1%[30, 31] is zoned for Palestinian residential purposes.[32, 33] The Israeli authorities' "alibi" when accusing Bedouin or other Palestinians of illegal building is also a deliberate attempt to deny Palestinian landowners their rights to build on their own, private lands. These lands are increasingly declared State lands, often initially marked out for "security" purposes – military training grounds or army bases or the Wall route[34] – and then regularly transferred to settlement authorities.[35]

Yet, whilst Bedouin in Area C – including the Judaean Desert and N. Jordan Valley - identify as Indigenous Peoples, many other Palestinian pastoral herders do not identify as traditional Bedouin but live a similar lifestyle as their neighbouring Bedouin, and suffer the same restrictions on their ability to remain steadfast on their desert lands.

The nightmare in Masafer Yatta

The fundamental difference between those Bedouin communities and some of the herders living in a region named Masafer Yatta, for example, in the South Hebron Hills in the West Bank, is that the Bedouins are originally refugees from the Negev with their origins in Saudi Arabia, while many Masafer Yatta herders are originally farmers from Yatta who own large portions of the lands slated for expropriation, on which they have lived for many generations and with a deep connection of belonging[36] to that land.

In Masafer Yatta,[37, 38] in 2022 the Israeli army began conducting regular military exercises inside what it delineates as 'Firing Zone 918'[39] in order to pressure residents to leave (visually described in Mondoweiss' film "Saving Masafer Yatta"[40]), together with ongoing demolitions of roads, homes and schools,[41, 42, 43] despite diplomatic visits of solidarity aimed at providing a protective presence.[44] Here, 12 rural hamlets are home to people who originally lived in large caves there, with their livestock. Their current situation has been painfully, yet eloquently, described by Israeli activist Ilana Hammerman: "Masafer Yatta residents are living a nightmare."[45]

Specifically referred to in the UNSG's report, the region also features in reports to regular Security Council meetings on the situation in the Middle East or specially convened UN Security Council meetings to discuss outbreaks of violence.[46]

Currently, the most traumatic aspect of that nightmare is the grievous harm of daily violence committed, especially in Firing Zone 918 villages, at the hands of violent settlers who have taken over hilltops in the region (or due to military demolitions or incursions involving scores of special forces). This violence, which is now at an all-time high since the UN started recording statistics in 2005, is now a known phenomenon,[47, 48] with UN Special Co-ordinator Tor Wennesland reporting:

> *Settler-related violence and provocations has also increased during the reporting period [1 June 2021 to 31 May 2022], contributing to the dynamic of escalating violence in the occupied West Bank.[49] I am alarmed, in particular, by the demolition of a donor-funded school in Masafer Yatta and the stated intention*

> *of Israeli authorities to demolish additional structures in the herding communities of that area, which would have a significant humanitarian toll, if implemented[50] ... Settlers abuse with little or no action from the Israeli security forces and Palestinians, fearing retribution, rarely file official complaints. When investigations take place, action against settlers is rare. Such impunity encourages further attacks ... the violent settler attacks, combined with restrictions on pastureland and water resources are key elements of the coercive environment which is effectively forcing Palestinian herders to move out of those areas.*

UN Special Rapporteur for human rights in the OPT, Francesca Albanese, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Morris Tiball-Binz, and the Special Rapporteur on freedom of peaceful assembly and association Clément Voule also issued a joint statement in December 2022 concerning these issues:

> *150 Palestinians have been killed in the occupied West Bank by Israeli forces so far this year, including 33 children [as of 14 December 2022]. In addition, a boy was killed by either Israeli forces or Israeli settlers who were firing side-by-side. At least two Palestinians were killed by settlers. 10 Israelis, including five settlers, one settlement guard and four Israeli forces have been killed by Palestinians in the occupied West Bank in 2022. [..] Armed and masked Israeli settlers are attacking Palestinians in their homes, attacking children on their way to school, destroying property and burning olive groves, and terrorising entire communities with complete impunity.[51]*

2022 is the sixth consecutive year in which the number of Israeli settler attacks in the occupied West Bank has increased, despite a 2016 UN Security Council resolution[52] specifically intended to halt settlement activity. These settler attacks and damage to Palestinian property has included 12,985 trees and 518 vehicles vandalized, according to the UNSG's report.

The three rapporteurs noted that "disturbing evidence of Israeli forces frequently facilitating, supporting and participating in settler attacks, makes it difficult to discern between Israeli settler and State violence … the impunity of one is reinforced by the impunity of the other".

Similarly, the UNSG's report refers in Sections 41-47 to "accountability", with the final recommendations citing "an almost total failure to ensure accountability for apparent unlawful killing of Palestinians, including in instances that raise concerns of extrajudicial executions and wilful killing. This is indicative of the climate of impunity which prevails with respect to Israeli security forces excessive force against Palestinians, including in the contexts of settlement."[53]

It is therefore the hope of Palestinians that the current case under consideration in The Hague at the International Court of Justice on the longstanding nature of the occupation will deliver, finally, accountability to end the aforesaid climate of impunity.[54, 55, 56]

The UNSG's 2022 report also noted:

> *On 4 May, the High Court of Justice rejected a petition against eviction orders issued to Palestinian residents of 12 herding communities in the Israeli-designated Firing Zone 918 in Masafer Yatta. The petition had been ongoing since 2012. The judgment is inconsistent with international law, including its narrow interpretation of the prohibition of forcible transfer to cover only mass transfers and for privileging Israeli military law over international law obligations. With the Israeli security forces now enabled to implement eviction orders and use the site for active military training 1,144 residents (282 men, 293 women, 299 boys, 270 girls) are at imminent risk of forced evictions and forcible transfer. On 11 May, demolitions in Khirbet Al Fakhiet and Markaz communities resulted in forced eviction of 49 people (20 male, 29 female), including 24 children, while other steps towards clearing of the area continued … Israel, as the occupying Power, must cease forced evictions and possible forcible transfer of Palestinian families from their homes in Masafer Yatta, in line with its obligations under international law.*

The writing is clearly on the wall, and yet the situation is only deteriorating, with those living through the violence the most seriously traumatised, or worse.

To put a human face to this tragic saga: Hajj Suleiman,[57, 58, 59, 60] an iconic activist leader, was beautifully eulogized by Awdah Hathaleen, a family member of his Bedouin Jahalin tribe of Umm al Khair in the South Hebron Hills. Suleiman was killed in January 2022 when a settler-driven police tow-truck hit him and drove off the scene. Hathaleen said in his eulogy:[61, 62, 63]

> *In a few hours, the New Year will be upon us. Let's turn the page of sorrows and declare the page of hope and love. Last year was the hardest and worst for all of us. A year that began with the martyrdom of the resistant Hajj Suleiman al-Hathlin on the seventeenth of January. A year in which we lived without Hajj Suleiman, a whole year trying to fill the void he left and we could not. A whole year where we remember him daily. We tried to forget and relieve ourselves, but we couldn't.*
>
> *A whole year in which the Israeli occupation's harassment increased to an unprecedented extent in Masafer Yatta. Many homes were demolished for simple people who have nothing, and other homes were threatened with demolition. A year in which schools were demolished and other schools were awaiting demolition, constantly afraid to be notified at any moment. A year in which 230 Palestinians were killed by the Israeli occupation. A year in which a decision was issued by the Israeli Supreme Court to displace eight Palestinian villages.*

Notes and references

1. "Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II)." Refworld, 28 September 1995. https://www.refworld.org/docid/3de5ebbc0.html
2. Pundak, Ron. "Decoding Bibi's West Bank Agenda." Haaretz, 1 August 2012, https://www.haaretz.com/opinion/decoding-bibi-s-west-bank-agenda-1.5275189
3. "Expel and Exploit: The Israeli Practice of Taking over Rural Palestinian Land." B'Tselem, December 2016, https://www.btselem.org/publications/

summaries/201612_expel_and_exploit
4. "Israeli army partially demolishes a school in the West Bank for the first time in 2021 – November 2021." ReliefWeb, 8 November 2021, https://reliefweb.int/report/occupied-palestinian-territory/israeli-army-partially-demolishes-school-west-bank-first-time
5. United Nations. OCHA. "West Bank demolitions and displacement | November - December 2021." 1 February 2022, https://www.ochaopt.org/content/west-bank-demolitions-and-displacement-november-december-2021
6. Mafarjeh, Noelle. "World Children´s Day: Snapshot of Palestine in 2022." Jerusalem 24, 20 November 2022, https://jerusalem.24fm.ps/17838.html
7. Facebook. "Ein Samia school is among 55 other schools in the West Bank under threat of Israeli demolition." Prime Minister´s Office – State of Palestine, 13 April 2022, https://www.facebook.com/watch/?v=553163019426900
8. "Palestinian Students to start their School Year 2022/2023." Action Aid, 29 August 2022, https://palestine.actionaid.org/news/2022/palestinian-students-start-their-school-year-20222023
9. Al Tahhan, Zena. "Israeli forces demolish Palestinian school in Masafer Yatta." Aljazeera, 23 November 2022, https://www.aljazeera.com/news/2022/11/23/israeli-forces-demolish-palestinian-school-in-masafer-yatta
10. "Netanyahu, far-right ally said to agree government will advance West Bank annexation." The Times of Israel, 22 December 2022, https://www.timesofisrael.com/netanyahu-far-right-ally-said-to-agree-government-will-advance-w-bank-annexation/
11. Ben Zion, Ilan. "Netanyahu´s government vows to expand West Bank settlements, annex occupied territory." PBS, 28 December 2022, https://www.pbs.org/newshour/world/netanyahus-government-vows-to-expand-west-bank-settlements-annex-occupied-territory
12. "Netanyahu says he intends to annex West Bank settlements if re-elected." Jewish News, 26 October 2022, https://www.jewishnews.co.uk/netanyahu-says-he-intends-to-annex-west-bank-settlements-if-re-elected/
13. Pope, Felix. "If I win the election, I´ll annex West Bank settlements, says Netanyahu." The JC, 26 October 2022, https://www.thejc.com/news/israel/if-i-win-the-election-ill-annex-west-bank-settlements-says-netanyahu-xyWzAJ2mkXNW8r5Apz6YV
14. El-Ad, Hagai. "Liberal Israel´s Masquerade Ball: A More Cultured Apartheid." Haaretz, 30 January 2023, https://www.haaretz.com/opinion/2023-01-30/ty-article-opinion/.premium/liberal-israels-masquerade-ball-a-more-cultured-apartheid/00000186-0262-df8c-a9ae-9f76ea0f0000
15. S. Lustick, Ian. "Annexation in right-wing Israeli discourse-The case of *Ribonut*." University of Pennsylvania, 2022, https://www.frontiersin.org/articles/10.3389/fpos.2022.963682/full
16. UN. General Assembly. "Israeli settlement in the Occupied Palestinian Territory including East Jerusalem, and the Occupied Syrian Golan. Report of the Secretary-General." 3 October 2022, https://reliefweb.int/report/occupied-palestinian-territory/israeli-settlements-occupied-palestinian-territory-including-east-jerusalem-and-occupied-syrian-golan-report-secretary-general-a77493-enar
17. Fabian, Emanuel. "Two left-wing activists hurt in West Bank after settlers hurl stones at them." The Times of Israel, 10 June 2022, https://www.timesofisrael.com/two-left-wing-activists-hurt-in-west-bank-after-settlers-hurl-stones-at-them/ "Video footage showed several settlers blocking the activists' car near

the Mitzpe Yair outpost in the South Hebron Hills, with one hurling stones at the vehicle and smashing the front passenger side window. According to the Yesh Din rights group, the activists were helping repair a road in the Masafer Yatta region, or Firing Zone 918, an agriculture area near Hebron."

18. UN. "Special Coordinator, Briefing Security Council, Appeals for Urgent Action as Israel-Palestinian Conflict Nears Boiling Point Once Again – Press Release (SC/15120)." 28 November 2022, https://www.un.org/unispal/document/special-coordinator-briefing-security-council-appeals-for-urgent-action-as-israel-palestinian-conflict-nears-boiling-point-once-again-press-release-sc-15120/

19. YouTube. "Settler shoots at Palestinians using Israeli soldier's weapon." TRT World, 2 August 2021, https://www.youtube.com/watch?v=Axq3gaiZJ3U

20. Adra, Basil. "WATCH: Settlers grabs Israeli soldier´s weapon, fires at Palestinians." 972 Magazine, 2 August 2021, https://www.972mag.com/settler-attacks-idf-south-hebron-hills/

21. "Video: Israeli guard, settler join forces in West Bank clash." The New Arab, 22 October 2022, https://www.newarab.com/news/video-israeli-guard-settler-join-forces-west-bank-clash

22. Hathaleen, Awdah. "In Masafer Yatta, teachers like me can´t guarantee our students an education." 972 Magazine, 15 November 2022, https://www.972mag.com/masafer-yatta-students-education/

23. Patel, Yumna. "The Israeli army demolished a school in Masafer Yatta. Residents say it won´t be the last." Mondoweiss, 28 November 2022, https://mondoweiss.net/2022/11/the-israeli-army-demolished-a-school-in-masafer-yatta-residents-say-it-wont-be-the-last/

24. Maps 2022 Bedouin and other herding communities' demolitions: 72 demolition incidents, in which 239 structures were destroyed; 110 having been agricultural and 14 livelihood.; UN. OCHA. "Data on demolition and displacement in the West Bank." https://www.ochaopt.org/data/demolition

25. "The Bedouin in Israel." Israeli embassies, https://embassies.gov.il/MFA/AboutIsrael/Spotlight/Pages/The-Bedouin-in-Israel.aspx

26. Mann, Sarah. "Bedouin in Israel." Be in Harim Tours, 22 November 2021, https://www.beinharimtours.com/bedouins-in-israel/

27. Bandel, Netael. "Documents Reveal Israel´s Intent to Forcibly Expel the Bedouin From Their Lands." Haaretz, 31 January 2022, https://www.haaretz.com/israel-news/2022-01-31/ty-article-magazine/.premium/documents-reveal-israels-intent-to-forcibly-expel-bedouin-from-their-lands/0000017f-e30e-d9aa-afff-fb5e038a0000 : Documents Reveal Israel's Intent to Forcibly Expel the Bedouin From Their Lands - New research [an opinion by Prof. Gadi Algazi, a historian from Tel Aviv University] has uncovered an Israeli military operation commanded by Moshe Dayan, whose goal was to forcibly remove Bedouin citizens from their lands. "Transferring the Bedouin to new territories would annul their rights as landowners and make them tenants on government lands," wrote Dayan in 1951. And a document written by the military government predicted that if the Bedouin, who refused to leave, did not move voluntarily, the army "would have to move them," Algazi's opinion added.

28. BIMKOM and UNRWA. "Al jabal: a study on the transfer of Bedouin Palestine refugees." https://www.unrwa.org/userfiles/2013052935643.pdf

29. Norwegian Refugee Council. "Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank." November 2015, https://www.nrc.no/globalassets/pdf/reports/bedouin-

rights-under-occupation.pdf
30. UN. OCHA. "West Bank. Area C: Key Humanitarian Concerns." https://www.ochaopt.org/sites/default/files/are_a_c_key_humanitarian_concerns.pdf
31. UN. OCHA. "Most Palestinian plans to build in Area C not approved." The Humanitarian Bulletin, January-May 2021, 22 June 2021, https://www.ochaopt.org/content/most-palestinian-plans-build-area-c-not-approved
32. Planners for Planning Rights. "Destructive Planning Policies. West Bank, 2018-2022." https://bimkom.org/wp-content/uploads/BimkomDemolitionsChangesReport.pdf
33. Equally, in East Jerusalem after its 1967 occupation, Israel only zoned 13% [Source: Prof. Omar Youssef, Al Quds Univ.] for Palestinian homes: land already fully built up in 1967 – meaning few Palestinian East Jerusalemites will ever be awarded building permits on their own land.
34. B´TSELEM. "Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank." December 2005, https://www.btselem.org/publications/summaries/200512_under_the_guise_of_security
35. B´TSELEM and BIMKOM. "Under the Guise of Security. Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank." December 2005, https://www.un.org/unispal/wp-content/uploads/2005/12/a40e88b2cb1c35b3852570ed00577efe_report.pdf
36. Arora, Rhea. "Ali Abu Awwad: 'I promise you: there is enough humanity on the other side'." Fieldbuilding, 16 November 2021, https://fieldbuilding.org/ali-abu-awwad/
37. "The international community must prevent the forcible transfer of Masafer Yatta communities, approved by Israel's High court of Justice." B´TSELEM, 5 May 2022, https://www.btselem.org/press_release/20220505_international_community_must_prevent_the_forcible_transfer_of_masafer_yatta_communities_approved_by_hcj
38. "Fast-tracked war crime: Israel informs Palestinians from Masafer Yatta of imminent expulsion." B´TSELEM, 2 January 2023, https://www.btselem.org/press_releases/20230102_fast_tracked_war_crime_israel_informs_palestinians_from_masafer_yatta_of_imminent_expulsion
39. UN Special Rapporteur for Human Rights in the OPT, Francesca Albanese, comments (at 5:47) about Israel lacking sovereignty in Masafer Yatta to operate a firing zone, stating: "International law is as valid as the will of international states to enforce it." YouTube. "Francesca Albanese at UNGA: Negotiated solution 4 Palestine-Israel ineffective, paradigm shift needed." Law for Palestine, https://www.youtube.com/watch?v=15PfmunooEs&t=30s
40. YouTube. "Saving Masafer Yatta." Mondoweiss, https://www.youtube.com/watch?v=Uop6_0ISKPM
41. YouTube. "The Voice of the Women in Masafer Yatta." Social TV, https://www.youtube.com/watch?v=doJcxANndRY
42. "Heads of Mission of the European Union and likeminded countries visit Khallet a-Dabe´ and a-Tuwani in Masafer Yatta." The Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), 28 September 2022, https://www.eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/heads-mission-6_en?s=206
43. "Conversations with friends: Masafer Yatta-Hebron-Burin." Machsom Watch, 14 December 2022, https://machsomwatch.org/en/content/conversations-friends-masafer-yatta-hebron-burin

44. YouTube. "European Diplomats Visit Masafr Yatta, Israeli Forces Continue Ethnic Cleansing of Palestinians." Unicorn Riot, https://www.youtube.com/watch?v=0FOBRIVzvY4

45. Hammerman, Ilana. "The Palestinians of Masafer Yatta Are Living a Nightmare." Haaretz, 2 February 2022, https://www.haaretz.com/opinion/2023-02-02/ty-article/.premium/the-palestinians-of-masafer-yatta-are-living-a-nightmare/00000186-0ce3-dc62-afb6-2ef3a33f0000

46. UN. "Special Coordinator, Briefing Security Council, Appeals for Urgent Action as Israel-Palestinian Conflict Nears Boiling Point Once Again – Press Release (SC/15120)." 28 November 2022

47. "Special Focus: Alarming Increase in Settlers Attacks against Palestinians in the Occupied Palestinian Territory (OPT) – Reporting Period: 3-14 October 2022." Al-Haq, 24 October 2022, https://www.alhaq.org/advocacy/20722.html

48. "Palestinian PM calls for deployment of UN observers to document Israel´s violations." Arab News, 19 December 2022, https://www.arabnews.com/node/2218711/middle-east

49. UN. General Assembly. "Israeli settlement in the Occupied Palestinian Territory including East Jerusalem, and the Occupied Syrian Golan. Report of the Secretary-General." 3 October 2022

50. "UN envoy reports 'sharp increase' in violence this year in Israel-Palestine conflict." UN News, 19 December 2022, https://news.un.org/en/story/2022/12/1131852

51. UN. OHCHR. "Israel: UN experts condemn record year of Israeli violence in the occupied World Bank." 15 December 2022, https://www.ohchr.org/en/press-releases/2022/12/israel-un-experts-condemn-record-year-israeli-violence-occupied-west-bank

52. UN. Security Council. "Resolution 2334 (2016)." 23 December 2016, https://www.un.org/webcast/pdfs/SRES2334-2016.pdf

53. Ibid

54. UN. OHCHR. "Commission of Inquiry welcomes General Assembly resolution requesting an ICJ Advisory Opinion relating to the Israeli occupation of Palestinian territory." 31 December 2022, https://www.ohchr.org/en/press-releases/2022/12/commission-inquiry-welcomes-general-assembly-resolution-requesting-icj

55. Crawford, Julia. "Israel-Palestine Conflict: What Difference Could An ICJ Ruling Make?" Justice Info, 6 February 2023, https://www.justiceinfo.net/en/112095-israel-palestine-conflict-difference-could-icj-ruling-make.html

56. International Court of Justice. "Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem (Request for Advisory Opinion)." 3 February 2023, https://www.icj-cij.org/public/files/case-related/186/186-20230203-ORD-01-00-EN.pdf

57. Instagram. awdah.hathaleen´s account post from the 31 December 2022, https://www.instagram.com/p/Cm1-Q1SNDq2/

58. Hammad, Shatha. "West Bank: Iconic Palestinian activist dies after run over by Israeli forces." Middle East Eye, 17 January 2022, https://www.middleeasteye.net/news/israel-palestine-suleiman-hathalin-dies-run-over

59. Levy, Gideon., and Alex Levac. "Israeli Police Ran Over a Palestinian Anti-occupation Protester – Then Fled the Scene." Haaretz, 14 January 2022, https://www.haaretz.com/israel-news/twilight-zone/2022-01-14/ty-article-magazine/.highlight/israeli-police-ran-a-over-palestinian-anti-occupation-protester-and-fled-the-scene/0000017f-e30b-d38f-a57f-e75bf7c00000

60. Alsaeed, Louy. "Suleiman Hathaleen: How a 73-year-old defied Israeli occupation." Aljazeera, 23 January 2022, https://www.aljazeera.com/features/2022/1/23/suleiman-hathaleen
61. Al-Waara, Akram. "West Bank: Truck used in Israeli police raid 'deliberately ran over' elderly Palestinian man." Middle East Eye, 6 January 2022, https://www.middleeasteye.net/news/palestine-west-bank-israel-police-deliberately-runs-over-elderly-man
62. "75-year-old anti-occupation activist succumbs to wounds sustained in deliberate run-over." Wafa News Agency, 17 January 2022, https://english.wafa.ps/Pages/Details/127683
63. Shezaf, Hagar., and Jack Khoury. "Palestinian Activist Dies Two Weeks After Being Run Over by Israeli Police Truck." Haaretz, 17 January 2022, https://www.haaretz.com/israel-news/2022-01-17/ty-article/.premium/palestinian-activist-dies-two-weeks-after-being-run-over-by-israeli-police-truck/0000017f-e13d-df7c-a5ff-e37fa44e0000

Angela Godfrey-Goldstein *is Director of Jahalin Solidarity, a Palestinian organization 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 on her work with Bedouin over the past 20 years was published in 2018 by Veritas in "Defending Hope". In 2021, she was awarded Human Rights and Child Education category winner in the www.blueprints.org Hall of Fame, as part of their World Indigenous Forum event, where she serves on the Council of 90.*

Russia

EAST SIBERIAN SEA
KARA SEA
BERENTS SEA
RUSSIA
SEA OF OKHOTSK
PACIFIC OCEAN
MOSCOW
UKRAINE
KAZAKHSTAN
MONGOLIA
CHINA

Indigenous Peoples are not recognized by the Russian legislation as such; however, Article 67 of the current constitution guarantees the rights of "Indigenous Small-Numbered Peoples". The 1999 Federal Act "On Guarantees of the Rights of the Indigenous Small-Numbered Peoples of the Russian Federation" specifies that Indigenous Small-Numbered Peoples are groups of less than 50,000 members, perpetuating some aspects of their traditional ways of life. According to this and two other framework laws that were enacted during the late 1990s, Indigenous Small-Numbered 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-centralization 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 recognized as "Indigenous Small-Numbered 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, Indigenous Small-Numbered Peoples of the North, Siberia and the Far East number about 260,000, less than 0.2% of Russia's total population (of which ethnic Russians account for 80%). Other peoples, such as the five million Volga Tatars, and many groups populating the North Caucasus are not officially considered Indigenous Peoples, and their self-identification varies. Since the Russian annexation of Crimea, several ethnic groups who self-identify as Indigenous have come under Russia's control, even though Russia has not recognized this self-identification: the Crimean Tatars, the Krymchaks and the Karaim.

Two-thirds of Indigenous Peoples are rural and depend on traditional subsistence strategies such as fishing, hunting and reindeer herding although Russia on a whole, is a highly urbanized country.

Civil society is affected by continually shrinking spaces as the country's secret police, the FSB, has gradually been gaining power. Since 2013, NGOs that receive foreign funding can be officially classified as "foreign agents", which led many of them to close down in order to minimize exposure to legal risks. Since 2018 the same practice has been extended to individuals as well. Many foreign NGOs have been banned as "undesirable organizations". Following the start of the war in Ukraine, the Russian government has intensified its crackdown on dissenting voices, leading to the closure of many civil society organizations and independent media.

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, and this negatively on the state of Indigenous Peoples' human rights in many ways and limits opportunities for their effective protection.

Russia has neither ratified ILO Convention 169 nor endorsed the UN Declaration on the Rights of Indigenous Peoples. The country inherited its membership of the major UN Covenants and Conventions from the Soviet Union: the ICCPR, ICESCR, ICERD, ICEDAW and ICRC. It also has ratified the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM).

Impact of Russia's aggression against Ukraine on Indigenous Peoples

In 2022, Russia's aggression against Ukraine, officially known as the special *military operation* by the Russian authorities to avoid the word "war" (the use of which was criminalized in relation to the inva-

sion of Ukraine soon after the invasion[1]) has, among other things, radically exposed the colonial realities in which the country's Indigenous Peoples, including the small-numbered Indigenous Peoples of the North, Siberia and the Far East, are living. Their territories have been treated as resource colonies since the 16th century, providing Russia with a large portion of its revenues. In Russia's war against Ukraine, it is the largely impoverished Indigenous Peoples who are suffering a disproportionate share of the casualties compared to the majority ethnic Russian population.[2]

In a context where the Russian government has previously successfully brought the entire movement of Indigenous Peoples in Russia under tight control, the overwhelming majority of Russia's domestic Indigenous organizations and actors, as well as Indigenous representatives in State bodies, from Russia's federal legislature down to the municipal councils, have publicly expressed their support for the war and the changing justifications for it. In this context, Russian Indigenous activists in exile are practically the only Indigenous activists who have publicly denounced the aggressive war on Ukraine. In response to the enthusiastic support for the *special military operation* against its neighbouring country among government-controlled organizations and personalities, a group of Indigenous activists in exile formed the International Committee of Indigenous Peoples of Russia (ICIPR). In its first statement,[3] the ICIPR denounced the war and, in August, the Committee published a report[4] detailing the impact of the Ukraine war on the small-numbered Indigenous Peoples of Russia.

Organizations in exile representing larger Indigenous groups not recognized as such by the Russian government, such as the Buryat, Tyvans, Sakha or Kalmyk, have also been vocal in their opposition to the war. Arguably the most visible among them was the US-based Free Buryatia Foundation,[5] which described the war as "colonial efforts on two fronts".[6] Some exiled activists are pointing to the need to "decolonize Russia", effectively understood as the disintegration of Russia, presented as an alternative to its transformation into a giant isolationist autocracy.

The war is expected to affect the work of Indigenous organizations and peoples whose ancestral territories extend into Russia, especially the Sámi and Inuit. On 10 April, the Saami Council announced that the

participation of its Russian member organizations in the work of the Council had been suspended.[7]

Indigenous Peoples in the Russian army

Like other non-Russian ethnic groups in Russia, small-numbered Indigenous Peoples are suffering a disproportionate level of casualties in Russia's war in Ukraine. Due to lack of work opportunities Indigenous young men are more likely to seek employment in the army than youth from other parts of the country, especially the wealthy urban centres. The testimony of one young man from Yamal Nenets Autonomous Region, one of Russia's most resource-rich regions where Indigenous Peoples still live in abject poverty says: "I had to take such a risky step and sign up – there was no other way out. It was either starvation or this. Now it has simply become unbearable, people are going to war. A lot of people are doing this, I'm not the only one."[8]

According to the Act on the Guarantees of the Rights of the Indigenous Small-Numbered Peoples, Indigenous Peoples have the right to an alternative civilian service that could be applied to avoid mobilization into the army fighting in Ukraine. However, in practice this right has only been implemented in two regions: Sakha (Yakutia) and the Nenets Autonomous Region (NAO).[9] For example, the Yamal Nenets Autonomous Region (YaNAO), which borders with the NAO, has not taken such a step. The news portal URA.ru writes: "The reindeer herders of the YaNAO are not granted a deferment from partial mobilization for the time being. [...] As a government source notes, one of the reasons why the authorities have not raised this issue is that livestock breeding is not a critically important branch of the region's economy."[10] The result of such inaction is that, for the Indigenous Peoples, some of whom number only a few dozen, the war is turning into a threat to their very existence as distinct peoples.

In Khabarovsk Krai, the chair of the regional branch of the Indigenous umbrella organization RAIPON, Lyubov Ozyal, appealed, without denouncing the war itself, to the president to stop the mobilization of Indigenous minority peoples, stating that "the total number of small peoples is only 1.7% of the territory's population." According to the text, five of its ethnic groups – the Orochi, Nigidals, Ulchis, Udege and Nivkhs

– are "in the process of extinction".[11] Similarly, Sergei Bezdenezhnykh, senator from Khabarovsk Krai, said during a meeting of the Federation Council (the Upper Chamber of the Russian Parliament) in December: "The mobilization of people living in Russia's Far East and North should be banned." In his view, "Because of the shrinking population in these territories, mobilization could be catastrophic for the small-numbered peoples."[12] While this is, to some extent, an expression of discontent, it is not an expression of opposition to the war as such. There is no known response by the Russian Federal Assembly to this statement.

Indigenous Peoples blamed for the brutality of Russia's forces

Both Russian supporters of the criminal aggression against Ukraine and Western opponents of the war are united in blaming its brutality on Indigenous Peoples within the Russian army and exculpating ethnic Russians. Following the discovery of evidence of the Bucha massacre of Ukrainian civilians, a video went viral in which a certain sergeant from Buryatia says: "I got scared and shot a peaceful Ukrainian."[13] In the interview, he tells how he was initially told that he was only going on a military exercise but ended up in Ukraine. He describes how Russian soldiers killed Ukrainian civilians and how he ended up shooting one of them.

Although later journalists have discredited the narrative of the brutality being exclusively committed by the Indigenous Peoples and ethnic minorities,[14] messages with such allegations have been trending on Russian language social media and abroad. The idea that the cruelty is to blame on Indigenous Peoples has spread so widely that it even misled Pope Francis who, during an interview, accused Chechens and Buryats of particular cruelty which, in his words, was alien to ethnic Russians. The Vatican later apologized for the statement.[15]

Land rights of Indigenous Peoples

The continued failure of the Russian government to establish nationally-recognized Territories of Traditional Nature Use (TTNU)[16] and, at the same time, the lack of full recognition of the locally-established TTNU

by the national government, contributed in 2022 to conflicts over the use of land and resources between companies, regional authorities and Indigenous Peoples maintaining traditional livelihoods and ways of life.

In December, Khanty shaman and environmental defender, Sergey Kechimov, known as the steward of the sacred Lake Imlor, was sentenced to six months of community service. Kechimov was accused by workers of oil giant Surgutneftegaz of threatening them with an axe. The day after the court's ruling, Kechimov was stopped by police on the way home. After the police tried to accuse him of driving a snow mobile under the influence of alcohol, the Indigenous activist broke free and ran away. He was later arrested and issued with a fine for resisting the police.[17]

According to Kechimov, Surgutneftegaz wants him to leave his camp near the sacred lake and stop interfering with the development of the oil field in the area. One of the key factors behind the case is that the TTNU where the lake and Kechimov's camp are located has been established by the Khany-Mansi Autonomous Region and is not recognized as such by the national government, while the oil company has obtained a state licence for exploration, oil production and the construction of an oil production structure in this region.

In the Republic of Khakassia, a conflict around a TTNU established by the Republic's administration has been ongoing since 2020 when the national government granted licences to gold mining companies to prospect for gold on land included in the TTNU without consulting the Indigenous Shor communities to whom the territory has been titled by the local government.

In October 2022, a meeting was held between the local administration, the gold miners and the Indigenous communities at which the miners presented their plans and offered compensation to the community. During the meeting, the compensation plan was unanimously adopted by the administration-controlled Council of Small-Numbered Indigenous Peoples. Further, the participants of the meeting were informed about the amendments introduced by the Government of the Republic of Khakassia on 20 June 2022 to the regional legislation that had established the TTNU in 2016. According to the amendments, the main condition for admitting companies to the TTNU is that there is a compensation agreement signed by the company, the regional administration and the Council of Small-Numbered Indigenous Peoples (a body whose composition is controlled by the administration). The

amendment was adopted by the administration of Khakassia without any consultation with the Indigenous Peoples affected.[18]

Fishing rights

In 2022, the authorities in Khabarovsk Krai in the Russian Far East continued to infringe upon Indigenous Peoples' fishing rights. In November 2021, the Supreme Court had nullified restrictions introduced in 2020 by the fishing authorities (Rosrybolovstvo), and this decision was upheld by the Appeals Chamber on 1 March 2022.[19] Despite the court's decision, the regional commission regulating fishing quotas for migratory species had still refused to establish the quota for the region's Indigenous communities by June, when the fish migration had already half passed.[20]

It is worth noting that the rulings of the Supreme Court uphold the right of small-numbered Indigenous Peoples to traditional hunting and traditional fishing regardless of their place of residence and registration, or occupation.[21]

The situation whereby government agencies are putting obstacles in the path of Indigenous Peoples' exercise of hunting and fishing rights is not limited to Khabarovsk Krai. For example, in January, Murmansk Region authorities refused to facilitate the exercise of fishing rights to prominent Sámi activist, Andrei Danilov, despite the fact that the activist had referred to the Constitutional Court ruling in his favour in his application.[22]

Implementation of the List of Indigenous Persons

In 2020, Russia enacted legislation that introduces a List of Indigenous Persons. According to the legislation, the new system was to come into force by 7 February 2022. The procedure for Indigenous people to get inscribed on the list is excessively bureaucratic and yet, under the new legislation, the list essentially limits the rights of Indigenous Peoples and grants access to many benefits reserved for Indigenous Peoples to those individuals inscribed therein.[23]

In June, at an extended meeting of the State Duma Committee on

Nationalities, the Deputy Head of the Federal Agency for Ethnic Affairs (FAEA), Anna Kotova, informed parliamentarians that over 70,000 representatives of Russia's small-numbered Indigenous Peoples had applied to be included, with almost 25,000 citizens already included on the list.[24]

At the time of this official communication, i.e. two years after the adoption of the Federal Law "On Registration of Persons Belonging to Small-numbered Indigenous Peoples" and four months after the List of Indigenous Peoples entered into force on 7 February 2022, less than 25% of more than 300,000 representatives of small-numbered Indigenous Peoples living in the Russian Federation had therefore submitted their application to be included on the list and less than 10 per cent were actually included on it. The low number of applications could at least partially be explained by the strict requirements and complicated application process. As for the low number of applications processed, according to FAEA the main reason the process is so slow is its ongoing automation.[25]

International human rights mechanisms

In 2022, the only international human rights mechanism that published a decision regarding Russia was the UN Human Rights Committee/ Committee on Civil and Political Rights (CCPR).[26] It had originally scheduled a discussion on the List of Issues for the Russian Federation for the March 2022 (131st session). However, when the European Union, as part of the sanctions against Russia, blocked its airspace to flights from Russia, the Russian delegation declined to attend.[27] Responding to this situation, the Committee initially moved the discussion to the summer but there is no record that such discussion did, in fact, take place.[28]

The consideration of Russia's State report was held during the Committee's 136th session[29] and the Committee published its concluding observations on 1 December.[30] The document fails to call Russia's aggressive war against Ukraine a war, instead referring to it as an "armed conflict initiated by the State Party" with regard to which it expresses its "extreme concern" (Para 6). Regarding Indigenous Peoples, it denounces the forced mobilization of, i.a., Indigenous Crimean Tatars

(para 38). The paragraphs dealing with small-numbered Indigenous Peoples of the North are paras 40-41. Following remarks regarding general infringements of land rights, decision-making rights and the lack of Free, Prior and Informed Consent (FPIC), the Committee specifically refers to the Centre for the Support of Indigenous Peoples of the North (CSIPN), one of the most respected independent Indigenous organizations from Russia which was forcibly closed by the Russian government in 2020. The document repeats its request for answers from Russia regarding other persecuted Indigenous rights defenders, all questions which have gone unanswered.

On 16 November, Russia's 7th Periodic Report on the implementation of the Covenant on Economic, Social and Cultural Rights was published.[31]

Under the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), Russia is still listed as undergoing the 5th reporting cycle, despite having exited from the Council of Europe in connection with its invasion of Ukraine.[32] In theory, Russia is still obliged to participate in the reporting process.

Notes and references

1. Simon Scott. "Russian law bans journalists from calling Ukraine conflict a 'war' or an 'invasion'." NPR, 5 March 2022, https://www.npr.org/2022/03/05/1084729579/russian-law-bans-journalists-from-calling-ukraine-conflict-a-war-or-an-invasion,
2. Sulyandziga, Viktor. "Alexey Bessudnov. Ethnic and regional inequalities in the Russian military fatalities in the 2022 war in Ukraine." Batani, 20 December 2022, https://batani.org/archives/2270
3. Statement of the International Committee of Indigenous Peoples of Russia. The Polar Connection, 11 March 2022, https://polarconnection.org/international-committee-of-indigenous-peoples-of-russia/
4. Sulyandziga, Viktor. "Russian Aggression against Ukraine and Indigenous Peoples of Russia." Batani, 24 August 2022, https://batani.org/archives/2156
5. Fee Buryatia Foundation, https://www.freeburyatia.org
6. Sulyandziga, Viktor. "Russia's war on Ukraine: Colonial efforts on two fronts." Batani, 30 September 2022, https://batani.org/archives/2207
7. "Cooperation with Russian side on hold." Saami Council, 10 April 2022, https://www.saamicouncil.net/news-archive/cooperation-with-russian-side-on-hold
8. "V ubiistve cheloveka net grekha, kak i na okhote: rasskaz nentca-olenevoda, kotoryi edet voevat iz-za dolgov." Cherta, 1 September 2022, https://cherta.media/story/nenec-podpisal-kontrakt-na-vojnu/
9. "Conscription of reindeer herders suspended in Yakutia – deputy." Sakha Life, 12 November 2022, https://sakhalife.ru/v-yakutii-priostanovlen-prizyv-

olenevodov/
10. "Vlasti YaNAO: olenevodam ne predostavliaetsia bron' ot mobilizatcii." Ura.ru, 14 October 2022, https://ura.news/news/1052595084
11. ""Umoliaem proiavit miloserdie. Korennye narody Khabarovskogo kraia prosiat otmenit mobilizatciiu." Indigenous Russia, https://indigenous-russia.com/archives/25241
12. "Senator Bezdenezhnykh: Mobilizatciia mozhet byt katastrofichna dlia malykh narodov." Sakha Life, 3 December 2022, https://sakhalife.ru/senator-bezdenezhnyh-mobilizacziya-mozhet-byt-katastrofichna-dlya-malyh-narodov/
13. "Ya ispugalsia i vystrelil v mirnogo ukraintsa." Linvideo, 1 May 2022, https://www.youtube.com/watch?v=D4hpX_rfPJg
14. Newman Dina. "The 'Savage Warriors' of Siberia: How an Ethnic Minority in Russia Came to be Unfairly Blamed for the Worst Crimes in Ukraine." Media Diversity Institute, 12 August 2022, https://www.media-diversity.org/the-savage-warriors-of-siberia-how-an-ethnic-minority-in-russia-came-to-be-unfairly-blamed-for-the-worst-war-crimes-in-ukraine/
15. "How the Pope's Racist Comments Parrot Russian Propaganda." Batani, 6 December 2022, https://batani.org/archives/2250
16. Murashko, Olga., and Johannes Rohr. "Russia." In The Indigenous World 2022, edited by Dwayne Mamo, 537-548. Copenhagen: The International Work Group for Indigenous Affairs, 2022, https://www.iwgia.org/en/russia/4682-iw-2022-russian-federation.html
17. "V Khanti-Mansijskom okruge policiya zaderzhala khranitelya svjashhennogo ozera Imlor Sergeya Kechimova." Indigenous Russia, 15 December 2022, https://indigenous-russia.com/archives/28797
18. "V Khakasii sostoialos zasedanie Soveta predstavitelei korennykh malochislennykh narodov." 27 October 2022, https://r-19.ru/news/obshchestvo/137539/
19. Apelliatcionnoe opredelenie Apelliatcionnoi kollegii Verkhovnogo Suda RF ot 01.03.2022 N APL22-18. https://legalacts.ru/sud/apelliatsionnoe-opredelenie-apelliatsionnoi-kollegii-verkhovnogo-suda-rf-ot-01032022-n-apl22-18/
20. Ne ukaz. Kak Vlasti Khabarovskogo Kraya ignorirujut reshenie Verkhovnogo Suda RF i prava korennykh malochislennykh narodov. CSIPN, 16 June 2022, https://www.csipn.ru/glavnaya/novosti-regionov/6015-ne-ukaz-kak-vlasti-khabarovskogo-kraya-ignoriruyut-reshenie-verkhovnogo-suda-rf-i-prava-korennykh-malochislennykh-narodov
21. See Russian Federation Government Order No. 631-r of 08 May 2009 (as amended on 09.04.2022): On Approval of a List of Traditional Occupations and Traditional Economic Activities of Indigenous Small-numbered Peoples of the Russian Federation and a List of Types of Traditional Economic Activities of Indigenous Small-numbered Peoples of the Russian Federation. http://www.consultant.ru/document/cons_doc_LAW_87690/beb7e7f131a7ff3656b71b7b30c30454fc1fdde7/
22. Ministerstvo Murmanskoj Oblasti osparivaet reshenie Konstitucionnogo Suda Rossii. Indigenous Russia, 20 January 2022, https://indigenous-russia.com/archives/18275
23. Murashko, Olga., and Johannes Rohr. "Russia." In The Indigenous World 2021, edited by Dwayne Mamo, 545-556. Copenhagen: The International Work Group for Indigenous Affairs, 2021, https://www.iwgia.org/en/russia/4246-iw-2021-russian-federation.html
24. "Bolee 70 tys. rossijan podali zajavlenie v federal'nyj spisok korennykh narodov".

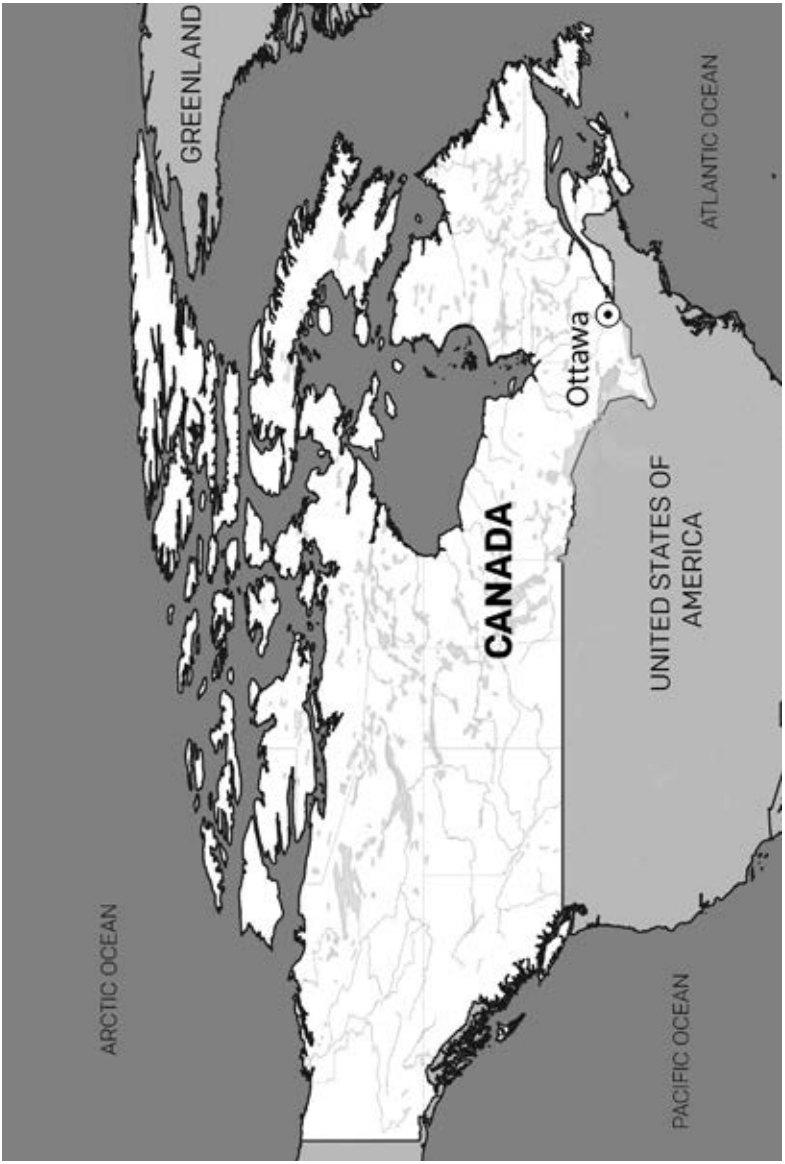
TASS, 9 June 2022, https://tass.ru/obschestvo/14872671
25. Report on the Observance of the Rights of the Legal Interests of Indigenous Minorities of the North, Siberia and the Far East in the Republic of Sakha (Yakutia) for 2021. Yakutsk, 2022, 54 - 55 (32), https://iu-upkm.sakha.gov.ru/uploads/66/ca796a04ecfb9fe14b0866bca1fe0289fc6173f8.docC
26. UN Treaty Bodies Database. Human Rights Treaty Bodies. Reporting status for Russian Federation, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=RUS
27. "Russia: UN Human Rights Committee postpones country review." OHCHR press releases, 3 March 2022, https://www.ohchr.org/en/press-releases/2022/03/russia-un-human-rights-committee-postpones-country-review
28. United Nations. International Covenant on Civil and Political Rights. List of issues in relation to the eighth periodic report of the Russian Federation. Human Rights Committee, 14 August 2022, https://undocs.org/CCPR/C/RUS/Q/8
29. Documents for the session available at: UN Treaty Bodies Database. Human Rights Treaty Bodies. CCPR – International Covenant on Civil and Political Rights. 136 Session, 10 October – 4 November 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=2575
30. United Nations. International Covenant on Civil and Political Rights. Concluding observations on the eighth periodic report of the Russian Federation. Human Rights Committee, 1 December 2022, https://undocs.org/CCPR/C/RUS/CO/8
31. United Nations. Economic and Social Council. Committee on Economic, Social and Cultural Rights. Seventh periodic report submitted by the Russian Federation in accordance with articles 16 and 17 of the Covenant, due in 2022. November 2022, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FRUS%2F7&Lang=en
32. Council of Europe Portal. National Minorities. Monitoring: Russian Federation, https://www.coe.int/en/web/minorities/russian-federation

Olga Murashko *is a Russian anthropologist and one of the co-founders of the former IWGIA local group in 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' organizations in Russia since 1995, focusing on their economic, social and cultural rights. He is currently working as a consultant for INFOE (Germany). In 2018, the Russian intelligence service FSB banned him from the country for 50 years.*

North
America

Canada


ARCTIC OCEAN
GREENLAND
CANADA
Ottawa
UNITED STATES OF AMERICA
ATLANTIC OCEAN
PACIFIC OCEAN

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.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

In November 2019, British Columbia (BC) became the first province in Canada to enshrine the human rights of Indigenous Peoples into law by unanimously passing Bill 41, the Declaration on the Rights of Indigenous Peoples Act.[1]

The Act supports the implementation of the UNDRIP by:

1. Requiring the Province, in consultation and cooperation with Indigenous Peoples, to take all measures necessary to ensure the laws of BC are consistent with the UNDRIP (section 3);
2. Requiring the development and implementation of an action plan, in consultation and cooperation with Indigenous Peoples, to achieve the objectives of the UNDRIP (section 4);
3. Requiring the Province to report annually on progress made toward alignment of laws and achievement of the goals in the action plan (section 5); and
4. Enabling agreements with Indigenous governing bodies, including joint or consent-based decision-making agreements that reflect Free, Prior and Informed Consent (FPIC) (sections 6 and 7).

The Act provides a framework for decision-making between Indigenous governments and the Province on areas of joint concern. The Act is far-reaching, covering a range of policy areas, including: Children and Families, Fisheries and Aquaculture, Agriculture and Ranching, Forestry, Environmental Assessment, Mining and more.

The Action Plan[2] to guide the implementation of the Act was developed in consultation and cooperation with Indigenous Peoples and was released in March 2022. The plan outlines 89 actions every ministry in the provincial government will take to implement the UNDRIP within the provincial jurisdiction. The 89 actions are divided into four themes: 1. Self-Determination and Inherent Right of Self-Government; 2. Title and Rights of Indigenous Peoples; 3. Ending Indigenous-specific Racism and Discrimination; and 4. Social, Cultural and Economic Well-being.

In 2019, the Federal Government of Canada, under the leadership of Prime Minister Trudeau and the Federal Liberal Party, was unable

to pass Bill C-262, a federal private member's bill that sought to "ensure that the laws of Canada are in harmony" with the UNDRIP. Following their reelection in the fall of 2020, the incumbent Prime Minister Trudeau passed Bill C-15, *An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples.*[3] Bill C-15 uses the failed Bill C-262 as the floor for recognizing and implementing the UNDRIP within a domestic framework.

The *United Nations Declaration on the Rights of Indigenous Peoples Act* (UNDA), collaboratively developed with Indigenous organizations and leaders following decades of Indigenous advocacy, affirms the UNDRIP 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 UNDRIP. The bill further seeks to bring Canada's laws into alignment with the UNDRIP.

The Act requires the Government of Canada, in consultation and cooperation with Indigenous Peoples, to:

1. Take all measures necessary to ensure that federal laws are consistent with the UNDRIP (Section 5);
2. Prepare and implement an action plan to achieve the objectives of the UNDRIP (Section 6);
3. Prepare annual reports on progress and table them in each House of Parliament (Section 7).

To achieve these objectives, in 2022 the Federal government began consultation and engagement with Indigenous Peoples across the country to collect Indigenous priorities in order to inform the creation of a National Action Plan. The action plan has a legislative deadline to be completed by June 2023. It is expected that this National Action Plan will include measures to address injustice, prejudice, violence and discrimination against Indigenous Peoples and to promote mutual respect and understanding as well as good relations. Measures will also include a specific mechanism to monitor and provide oversight, resource, remedy or other accountability measures for the implementation of the UNDRIP.

Actions to implement the UNDRIP have also begun at the local level. In 2022, the City of Vancouver became the first city to develop a strategy to begin implementing the UNDRIP within a municipal framework.[4]

In March 2021, the Council of the City of Vancouver unanimously adopted a motion to create a UNDRIP Task Force. The Task Force consisted of elected Councillors from Indigenous Nations on whose territory the city was built, including the Musqueam Indian Band, the Squamish Nation and the Tsleil-Waututh Nation, alongside elected Vancouver City Councillors. The Task Force tabled the City of Vancouver's UNDRIP Strategy, which was endorsed by the City of Vancouver in October 2022. The strategy provides Calls to Action for the City of Vancouver to implement the UNDRIP at the municipal level. These Calls to Action fall within the following themes:

1. Social, Cultural, Economic Well-Being;
2. Ending Indigenous-specific Racism and Discrimination;
3. Self-Determination and Inherent Right of Self-Government; and
4. Rights and Title of Indigenous Peoples.

The strategy calls attention to various issues impacting Indigenous Peoples within the city, including governance reform, right to water, right to sanitation, access to housing, cultural and heritage protection and representation, economic self-determination, environmental racism, policing, revenue-sharing and shared decision-making.

Conservation

Since time immemorial, Indigenous Peoples in Canada have cared for their territorial lands and waters. In the face of ongoing climate crisis, large-scale industrial development and increased pressures on their natural eco-systems and traditional food systems, Indigenous Peoples are leading the way in environmental conservation in many ways, one example of which is through the Indigenous Guardianship Program. Approximately 30 teams of Indigenous Guardians exist across Canada, working to conserve and manage their lands.[5] Guardians provided a number of benefits to their communities including search and rescue, wildlife monitoring and are part of a larger initiative of reasserting leadership and stewardship over their Nations' lands.

In December 2022, at the 15th Conference of Parties to the Convention on Biological Diversity, Canada announced CAD 800 million (approx. 552 million euro) of funding over seven years for large Indigenous-led conservation projects covering almost a million square kilometres of land.[6] Indigenous leaders have welcomed this funding as an acknowledgement of the powerful role that Indigenous Peoples have played in stewarding their lands and ensuring their integrity for generations to come.

Children and families

In 2007, Indigenous representative organization, the Assembly of First Nations (AFN), along with the First Nations Child and Family Caring Society of Canada, filed a human rights complaint alleging that Canada was discriminating against First Nations children and families in the provision of child protection services and the implementation of Jordan's Principle.

Jordan's Principle is a legal requirement that ensures that all First Nations children living in Canada are able to access the products, services, and the support they need.

In a landmark 2016 ruling, the Canadian Human Rights Tribunal (CHRT) ruled that Canada's definition of Jordan's Principle was discriminatory and ordered the federal government to take immediate measures to implement the full and proper scope of the principle.

After three decades of advocacy leading up to negotiations that concluded on 20 June 2022, the AFN approved a final settlement agreement (FSA) with the Government of Canada worth CAD 20 billion (approx. 13.58 billion euro) for First Nations children and families who have been discriminated against by Canada's Children and Families services between 1991 and 2022.

In December 2022, the CHRT ruled not to endorse the FSA, noting that while the FSA "substantially addressed" the CHRT's orders on compensation, it failed to "fully satisfy" these orders, effectively bringing Canada and the AFN back to the negotiation table.

Policing

Policing institutions in Canada have a long and troubled relationship with Indigenous Peoples, playing a significant role in the historic and continuing removal of Indigenous children from their homes, families and lands, and the removal and arrests of Indigenous land defenders from their territories.

The year 2022 saw Canada's national and local policing institutions coming under close scrutiny and criticism, with significant calls for reform to address ongoing systemic racism within the public institutions. Calls for change have been ignited by a number of events, including the death of an Ojibway father and grandfather who was shot by Vancouver Police Department (VPD) when responding to calls of "a man acting erratically" in August. This led to calls for a public inquiry and systemic change as to how the VPD interact with Indigenous Peoples in the city, including a shift from funding police services to community-based and trauma-informed services.[7] These calls were further compounded when the VPD failed to attend an apology ceremony hosted by the Heiltsuk Nation after a 2019 event that led VPD officers to wrongfully arrest a Heiltsuk grandfather and his granddaughter as they were attempting to open a bank account in the City of Vancouver.[8]

2022 also witnessed the death of a Williams Lake First Nations man after a distress call was made by his family to the police, which the family believes was handled improperly.[9] These calls for reform were further reinforced in early 2023 when Canada's federal police force, the Royal Canadian Mounted Police (RCMP), were found to have covered up the sexual assault by RCMP officers of vulnerable Indigenous women and girls between the late 1990s and early 2000s in Prince George, a remote city in British Columbia and the epicentre of the ongoing murdered and missing Indigenous women and girls crisis.[10]

Murdered and missing Indigenous women and girls

Canada's ongoing crisis regarding murdered and missing Indigenous women and girls continued in 2022. Indigenous advocacy groups have called for significant reform to policing institutions and for the full implementation of the 231 recommendations of the 2019 National Inquiry

into Missing and Murdered Indigenous Women and Girls, following a number of widely-reported murders of Indigenous women and girls in 2022, including the death of Marcedes Myran and Morgan Harris of the Long Plain First Nation,[11] and the death of Chelsea Poorman.[12] While some initiatives are underway to address the crisis, many of the Calls to Action of the 2019 report have gone unaddressed, with Indigenous leaders criticizing the Government of Canada for underfunding its work to address the crisis and the lack of partnerships with Indigenous women, families, First Nations governments and organizations, and front-line/grassroots organizations.[13]

Graves

Following the discovering of 215 unmarked graves on the grounds of a former Indian Residential School in Kamloops, BC on 28 May 2021, Indigenous Nations across the country have been using ground-penetrating radar to confirm thousands of other potential grave sites at residential school sites across the country.

The Truth and Reconciliation Commission of Canada (TRC), whose mandate was to inform all Canadians about what happened in residential schools through the documentation of the truth of survivors, their families and communities, has estimated that 150,000 First Nation, Inuit and Métis children attended residential schools. The TRC has further provided a conservative estimate that between 4,000 and 6,000 children died while in attendance at Canada's Indian Residential Schools between the 1870s and 1997.

In 2021 and 2022, the Canadian government committed CAD 2.2 million (approx. 1.5 million euro) in core funding to the National Centre for Truth and Reconciliation to support the centre's documentary review and provide important information to be included in the National Residential School Death Register. Since the findings in 2021, the federal government has committed more than CAD 320 million (approx. 220 million euro) to residential school site searches and support for survivors and their families.[14]

In 2022, the confirmation of these gravesites resulted in an apology from Pope Francis and his penitential trip to Canada in July, in recognition of the Catholic Church's role in Indian Residential Schools and

the intergenerational trauma caused by the atrocities committed on Indigenous children. And yet Indigenous leaders continue to criticize the Church for not yet having met its full financial obligations from the Indian Residential Schools Settlement Agreement, while calling for the increased accountability of the Church.[15]

Notes and references

1. Parliament of BC. "Bill 41 – 2019 Declaration on the Rights of Indigenous Peoples Act." Legislative session: 4th Session, 41st Parliament, 2019, https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/4th-session/bills/first-reading/gov41-1
2. Government of British Columbia. "Declaration on the Rights of Indigenous Peoples Act Action Plan 2022-2027". Reconciliation Transformation and Strategies Division, BC Ministry of Indigenous Relations and Reconciliation, 2022, https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf
3. House of Commons of Canada. "Bill C-15, An Act respecting the United Nations Declaration on the Rights of Indigenous Peoples." 2nd Session, 43rd Parliament, 3 December 2020, https://parl.ca/DocumentViewer/en/43-2/bill/C-15/first-reading
4. City of Vancouver. "City of Vancouver's UNDRIP Strategy." City of Vancouver, 25 October 2022, https://council.vancouver.ca/20221025/documents/p1.pdf
5. See: A National Indigenous Guardians Network Backgrounder, https://www.ilinationhood.ca/publications/backgrounder-a-national-indigenous-guardians-network
6. Coast Funds. "COP15: Government of Canada Commits Funding for Indigenous-Led Conservation in the Great Bear Sea." Coast Funds, 8 December 2022, https://coastfunds.ca/news/cop15-great-bear-sea/
7. "UBCIC Mourns the Tragic Murder of Ojibway Father and Grandfather by the VPD; Demands Immediate Reform." UBCIC, 26 August 2022, https://www.ubcic.bc.ca/ubcic_mourns_the_tragic_murder_of_ojibway_father_and_grandfather
8. Angela Sterritt. "Heiltsuk leaders reject Vancouver police apology after officers in bank arrest fail to attend ceremony." CBC News, 25 October 2023, https://www.cbc.ca/news/canada/british-columbia/heiltsuk-reject-apology-call-out-vancouver-police-chief-adam-palmer-for-denying-vpd-racism-1.6628452
9. "Williams Lake First Nation and UBCIC Call for Public Inquiry into Role of RCMP in First Nation Father's Death." UBCIC, 19 July 2022, https://www.ubcic.bc.ca/williams_lake_fn_ubcic_call_for_public_inquiry_into_role_of_rcmp_in_first_nation_fathers_death
10. Kathleen Martens. "Head of BC First Nations Justice Council says RCMP 'covered up' Prince George allegations." APTN, 14 February 2023, https://www.aptnnews.ca/national-news/head-of-bc-first-nations-justice-council-says-rcmp-covered-up-prince-george-allegations/#.Y-6nP94aQrI.twitter
11. Rachel Bergen. "First Nations advocacy groups, daughters of slain woman demand resignation of Winnipeg police chief." CBC News, 08 December 2022,

https://www.cbc.ca/news/canada/manitoba/assembly-manitoba-chiefs-long-plain-winnipeg-police-danny-smyth-1.6678751

12. "UBCIC Outraged with VPD's Quick Dismissal of Chelsea Poorman's Death, Demands Ongoing Investigation." UBCIC, 12 May 2022, https://www.ubcic.bc.ca/ubcic_outraged_with_vpd_quick_dismissal_chelsea_poormans_death_demands_ongoing_investigation
13. "First Nations Leadership Council Calls for Immediate Action to Address Colonial Violence Against First Nations Women and 2SLGBTQQIA+ People." FNLC, 3 June 2022, https://www.bcafn.ca/news/first-nations-leadership-council-calls-immediate-action-address-colonial-violence-against
14. Courtney Dickson. "Hundreds gather for memorial marking 1 year since discovery at Kamloops residential school." CBC, 19 May 2022, https://www.cbc.ca/news/canada/british-columbia/tk-eml%C3%BAps-kamloops-indian-residential-school-215-one-year-1.6459131
15. "BC Assembly of First Nations Acknowledges Apology from Vatican as First Step Towards Reconciliation." BCAFN, 1 April 2022, https://www.bcafn.ca/news/bc-assembly-first-nations-acknowledges-apology-vatican-first-step-towards-reconciliation

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 Vancouver, BC and a Senior Policy Analyst with the BC Assembly of First Nations.*

United States of America

The number of Indigenous people in the United States of America is estimated at between 3.1 and 8.7 million,[1] 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, the official status of being American Indian or Alaska Native is conferred on members of federally-recognized tribes. Five hundred and seventy-four Native American tribal entities were recognized as American Indian or Alaska Native tribes by the United States in January 2021,[2] and most of these have recognized national homelands. Federally-recognized 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-recognized and non-recognized 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 18%.

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.

2022 was marked by a most remarkable Supreme Court decision that overthrew standing policy and precedent going back 200 years and established new uncertainty over tribal sovereignty and jurisdiction. In *Oklahoma v. Castro-Huerta*,[3] the court decided not only to ignore its own precedents but to rewrite history. "Indian country is part of the State, not separate from the State," reads the opinion, reversing, without mention, the 1832 decision in *Worcester v. Georgia* ("The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force"). It had been established practice that crimes involving Native people on Native lands fall under federal and tribal, but not state, jurisdiction unless Congress explicitly decided otherwise. "It was taken as given, and rightly so, that without further legislation, states were precluded from exercising jurisdiction over offenses by non-Indians against Indians."[4]

The fact that the Castro-Huerta decision was political is evident from the reasoning behind the decision itself. The Castro-Huerta decision followed the McGirt decision,[5] which decided that the eastern half of Oklahoma was still reservation territory. Oklahoma courts thus recognized that the state had no jurisdiction over crimes committed by or against Native people. The state of Oklahoma then filed more than 30 petitions to the Supreme Court to overturn McGirt, Castro-Huerta being one of them. In its decision, the Supreme Court explains that: "The classification of eastern Oklahoma as Indian country has raised urgent questions about which government or governments have jurisdiction to prosecute crimes committed there" mostly because "About two million people live there, and the vast majority are not Indians." The court thus agreed to hear the case "in light of the sudden significance of this jurisdictional question for public safety." Yet, the principles of federal and tribal jurisdiction had been established everywhere for over 200 years. It thus seems apparent that, for the Supreme Court, questions of public safety only become relevant when they affect many non-Native people, and it sees public safety as being satisfied by giving non-Native entities all the power.

Justice Gorsuch, who wrote the opinion in McGirt, calls the Castro-Huerta decision an "egregious misappropriation of legislative authority" in the dissent, and calls on Congress to not "stand by as this

Court sows needless confusion across the country". The court's decision pretends that tribes are similar to other organizations or ethnic groups, thus ignoring the special legal status of Native peoples.[6] "Tribes are not private organizations within state boundaries," the dissent clarifies. "Their reservations are not glorified private campgrounds. Tribes are sovereigns." Chafing at the political nature of the decision, Gorsuch writes that: "Where our predecessors refused to participate in one State's unlawful power grab at the expense of the Cherokee, today's Court accedes to another's." Having rectified a historical wrong in McGirt, the dissent sees the decision as reimposing another:

> *Oklahoma's courts exercised the fortitude to stand athwart their own State's lawless disregard of the Cherokee's sovereignty. Now, at the bidding of Oklahoma's executive branch, this Court unravels those lower-court decisions, defies Congress's statutes requiring tribal consent, offers its own consent in place of the Tribe's, and allows Oklahoma to intrude on a feature of tribal sovereignty recognized since the founding.*
> *One can only hope the political branches and future courts will do their duty to honor this Nation's promises even as we have failed today to do our own.*[7]

Conservation

In March, the White Earth Band of Ojibwe Court of Appeals dismissed a suit by the tribe on behalf of Manoomin (wild rice) against the Minnesota Department of Natural Resources for lack of jurisdiction off-reservation.[8] The suit was targeted at the Line 3 pipeline[9, 10] but, perhaps more importantly, is in line with recent attempts to introduce Rights of Nature into the United States justice system through tribal codes and tribal courts. In January, the Sauk-Suiattle Indian Tribe, inspired by the Manoomin lawsuit, sued the city of Seattle on behalf of Tsuladxw (salmon) in a tribal court.[11] The tribe wants the city's utility company to remove three dams from the Skagit River Hydroelectric Project because they are impeding salmon migration to spawning grounds. Several tribes have passed Rights of Nature laws, which stand in contrast to United

States laws that see nature as a resource commodity.

In Minnesota, the Fond du Lac Band and the Grand Portage Band of Lake Superior Chippewa sued the federal Environmental Protection Agency (EPA) over its approval of new state water quality assessments. The state eliminated numeric standards and replaced them with narrative descriptions of water quality. The tribes have gathering rights to wild rice off-reservation and argue that the new standards will hurt the culturally important plant. The fear is that by eliminating actual measurements of water quality the door will be opened to non-enforcement. This is the first time a tribe has sued the EPA over approvals of state water quality standards.

In California and Oregon, the federal government announced that work would begin on the largest dam removal project in the world. Federal regulators approved the USD 500 million project in November. It will remove four dams on the Klamath River, a project long proposed by the Yurok, Karuk, and Hoopa Valley tribes and environmental groups. The removal will open up some 300 miles of salmon habitat.

In January, the Save the Redwoods League, a nonprofit organization devoted to protecting and restoring redwood forests, donated over 500 acres of coastal forestland in northern California to the InterTribal Sinkyone Wilderness Council. The Council consists of ten tribes: Cahto Tribe of Laytonville Rancheria, Coyote Valley Band of Pomo Indians, Hopland Band of Pomo Indians, Pinoleville Pomo Nation, Potter Valley Tribe, Redwood Valley Little River Band of Pomo Indians, Robinson Rancheria of Pomo Indians, Round Valley Indian Tribes, Scotts Valley Band of Pomo Indians, and Sherwood Valley Rancheria of Pomo Indians. In 1997, the Sinkyone Council was the first tribal entity to enter into a partnership with a private land trust to protect lands in perpetuity through conservation easements when it established the 3,844 acres InterTribal Sinkyone Wilderness with the Trust for Public Land.

Such collaboration is becoming more common, in part as the "Land Back" movement grows more prominent – the idea of returning lands to tribes, often as part of conservation mandates. In November, the Upper Mattaponi Indian Tribe and the Rappahannock Tribe of Virginia were awarded grants directly from the Virginia Land Conservation Fund to acquire forest lands.

The federal government has awarded Tribal Wildlife Grants through

the US Fish and Wildlife Service (FWS) since 2003. This year, it awarded almost USD 6 million to 33 tribes in 16 states. The projects include restoration plans, habitat restoration programs, fisheries monitoring equipment, and other projects. In September, the Department of the Interior released new guidance for collaboration with tribes. The Bureau of Land Management (BLM),[12] National Park Service (NPS),[13] and the FWS[14] released plans for better collaboration with tribal governments. In Montana, the Confederated Salish and Kootenai Tribes of the Flathead Reservation took management control over the National Bison Range from the FWS in a proposal decades in the making.[15, 16] The 19,000-acre large National Bison Range is located within the reservation.

Unfortunately, without addressing the roots of species extinction, industrial agriculture, an economy based on consumption, landscape changes, and ecosystem destruction, these efforts are but grains of sand on a beach. Three Native communities received USD 25 million each to relocate because of climate change: Newtok and Napakiak in Alaska and Quinault in Washington. Relocation efforts have been ongoing in some communities for over a decade.[17, 18, 19] Melting permafrost, rising sea levels, and coastal erosion render their locations increasingly uninhabitable. Another eight communities in Alaska, Arizona, California, Louisiana, and Maine received USD 5 million each to help with climate change-related issues. In April, the Bipartisan Infrastructure Law provided USD 216 million to the Bureau of Indian Affairs (BIA) for climate resilience programs over five years. USD 30 million of that money is earmarked for community relocation efforts. The relocation of one household can cost as much as one million dollars.

Conflicts over conservation

In September, a federal court decided once again that the Solenex oil lease in the Badger-Two Medicine area of the Lewis and Clark National Forest in Montana had to be reinstated.[20, 21] The area is sacred to the Blackfeet Nation. The lease was one of a number of resource extraction leases in this area first issued in 1982. After decades of education efforts, voluntary withdrawals, and government action, all other leases in the area have been withdrawn.

Conflicts over mineral extraction are projected to increase, especially as the United States attempts to achieve an energy transition reliant on key metals. Ninety-seven per cent of nickel, 89% of copper, 79% of lithium, and 68% of cobalt reserves and resources are found within 35 miles of reservations. Whether or not Native peoples object to mining depends on a variety of factors, of course. However, in many cases, the experience of Native communities is that companies try to cut corners. In October, two congressional committees released a report on how the proposed Pebble Mine copper mine project in Alaska (see The Indigenous World 2021) had tried to deceive the regulatory agencies in its permit applications.[22]

The Resolution Copper Mine in Arizona,[23, 24] which threatens the sacred Oak Flat in the Tonto National Forest, is on hold again. In June, a panel of the Ninth Circuit Court of Appeals approved the mine[25] but, in November, the full court approved a re-hearing. In the meantime, a technical review of the Final Environmental Impact Statement (FEIS) for the project by hydrogeologists from the Bureau of Land Management (BLM) recommended that several additional assessments and changes be made, among others to account for the effects of climate change.[26] In November, an Arizona Court of Appeals decided that the water permit for the mine project issued by the Arizona Department of Environmental Quality was issued improperly. Under the decision, the permit process would need to start over.

Policing

In July, the Oglala Sioux Tribe in South Dakota sued the Department of the Interior for more police officers. The tribe polices 3.1 million acres and receives almost 134,000 emergency calls a year but has only 33 federally-funded police officers and eight federally-funded criminal investigators. The tribe alleges that treaty obligations, trustee status, and federal law require the federal government to fund a sufficient number of law enforcement staff.[27] The South Dakota legislature also passed a resolution "urging the federal government to fulfill treaty obligations by fully funding" police departments of the Oglala Sioux Tribe and the Rosebud Sioux Tribe.[28] Similar to last year's decision in Rosebud v. Unit-

ed States, the lawsuit argues that the federal government is obliged to provide sufficient healthcare to the Lakota.[29]

Notes and references

1. Estimates vary depending on definitions. The official Census uses self-identification. It provides much smaller numbers for those who only identify as American Indian / Alaska Native than it does for those who identify as American Indian / Alaska Native and another population group. The Bureau of Indian Affairs, the Indian Health Service and other agencies of the federal government provide numbers based on enrollment in federally-recognized tribes and/or based on eligibility for their services. Current numbers are based on: American Community Survey. S0201 Selected Population Profile in the United States. The U.S. Census Bureau, 2021, https://data.census.gov/table?q=S0201&t=006:009:01A&y=2021&tid=ACSSPP1Y2021.S0201
2. Department of the Interior. Bureau of Indian Affairs. Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs. Federal Register 87, No.19, 7554-7558, 28 January 2022, https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01789.pdf
3. Oklahoma v. Castro-Huerta. Supreme Court of the United States. No. 21-429. 29 June 2022
4. Carole Goldberg, Distinguished Research Professor, UCLA School of Law, Chief Justice, Court of Appeals, Hualapai Tribe, Chief Justice, Court of Appeals, Pechanga Band of Indians. Testimony to the Subcommittee for Indigenous Peoples of the United States, Committee on Natural Resources, U.S. House of Representatives. Hearing on *Examining Oklahoma v. Castro-Huerta: The Implications of the Supreme Court's Ruling on Tribal Sovereignty.*
5. Braun, Sebastian. "The Indigenous World 2021: The United States." In The Indigenous World 2021, edited by Dwayne Mamo, 569-577, 2021, https://www.iwgia.org/en/usa/4253-iw-2021-usa.html
6. See, for example: Braun, Sebastian Felix. "Building on Native Sovereignty." In Native American Nationalism and Nation Re-building. Past and Present Cases, edited by Simone Poliandri, Albany: SUNY Press, 37-42, 2016
7. Oklahoma v. Castro-Huerta. Supreme Court of the United States. No. 21-429. 42, 29 June 2022
8. Minnesota Department of Natural Resources v. Manoomin. White Earth Band of Ojibwe Court of Appeals. File No. AP21-0516. 10 March 2022
9. Braun, Sebastian. "The Indigenous World 2021: The United States." In The Indigenous World 2021, edited by Dwayne Mamo, 569-577, 2021, https://www.iwgia.org/en/usa/4253-iw-2021-usa.html
10. Braun, Sebastian. "The Indigenous World 2022: The United States." In The Indigenous World 2022, edited by Dwayne Mamo, 562-571, 2022, https://www.iwgia.org/en/usa/4684-iw-2022-united-states-of-america.html
11. Sauk-Suiattle Indian Tribe v. City of Seattle. Sauk-Suiattle Tribal Court. Case No. SAU-CIV-01/22-001. Civil Complaint for Declaratory Judgment.
12. United States Department of the Interior. Bureau of Land Management. Permanent Instruction Memorandum No. 2022-011. 13 September 2022, https://www.blm.gov/sites/default/files/docs/2022-09/PIM2022-011%20+%20attachment.pdf
13. United States Department of the Interior. National Park Service. Policy Memorandum 22-03, https://www.nps.gov/subjects/policy/upload/PM_22-03.pdf

14. United States Department of the Interior. Fish and Wildlife Service. Director´s Order No.:227, https://www.fws.gov/sites/default/files/documents/076566-USFWS-DO.pdf
15. "The Indigenous World 2007: The United States." In The Indigenous World 2007, edited by Sille Stidsen, 81-90, 2007
16. Braun, Sebastian. "The Indigenous World 2008: The United States." In The Indigenous World 2008, edited by Kathrin Wessendorf, 66-75, 2008
17. Braun, Sebastian. "The Indigenous World 2014: The United States." In The Indigenous World 2014, edited by Cæcilie Mikkelsen, 55-64, 2014
18. Braun, Sebastian. "The Indigenous World 2017: The United States." In The Indigenous World 2017, edited by Katrine Broch Hansen, Käthe Jepsen and Pamela Leiva Jacquelin, 103-114, 2017
19. Braun, Sebastian. "The Indigenous World 2020: The United States." In The Indigenous World 2020, edited by Dwayne Mamo, 579-587, 2020, https://www.iwgia.org/en/usa/3640-iw-2020-united-states-of-america.html
20. Solenex, LLC v Haaland. United States District Court for the District of Columbia. Civil Case No. 13-993 (RJL). Memorandum Opinion. 9 September 2022.
21. Braun, Sebastian. "The Indigenous World 2019: The United States." In The Indigenous World 2019, edited by David Nathaniel Berger, 73-80, 2019
22. The House Committee on Transportation and Infrastructure. "No Current Plans..." Pebble LP, Sham Permitting, and False Testimony Threatening the World's Largest Salmon Habitat. October 2022, https://transportation.house.gov/imo/media/doc/TI Committee Pebble Mine Report and Appendix 1.pdf
23. Braun, Sebastian. "The Indigenous World 2021: The United States." In The Indigenous World 2021, edited by Dwayne Mamo, 569-577, 2021, https://www.iwgia.org/en/usa/4253-iw-2021-usa.html
24. Braun, Sebastian. "The Indigenous World 2022: The United States." In The Indigenous World 2022, edited by Dwayne Mamo, 562-571, 2022, https://www.iwgia.org/en/usa/4684-iw-2022-united-states-of-america.html
25. Apache Stronghold v. United States of America. United States Court of Appeals for the Ninth Circuit. No. 21-15295; D.C. No. 2:21-cv-00050-SPL. Opinion. 24 June 2022.
26. Dubas, Lisa, James Johnsen, and Steve Rice. Bureau of Land Management Review of Hydrology Aspects of the Resolution Copper Project. 13 June 2022, http://azminingreform.org/wp-content/uploads/2022/09/BLM-Hydrology-Review-of-USFS-Resolution-Copper-Project-FEIS.pdf
27. Oglala Sioux Tribe v. United States of America. United States District Court, District of South Dakota, Western Division. Civil Action No. 5:22-cv-5066. Complaint. 26 July 2022.
28. South Dakota Legislature. House Concurrent Resolution 6014, https://sdlegislature.gov/Session/Bill/23514
29. Braun, Sebastian. "The Indigenous World 2022: The United States." In The Indigenous World 2022, edited by Dwayne Mamo, 562-571, 2022

Sebastian Braun *is a cultural anthropologist. He is Director of the American Indian Studies Program at Iowa State University and Associate Professor of Anthropology in the Department of World Languages and Cultures. sfbraun@iastate.edu*

CONTENTS

The Pacific

Aotearoa (New Zealand)

Māori, the Indigenous people of Aotearoa, represent 16.5% of the country's 5 million population. The gap between Māori and non-Māori is pervasive: Māori life expectancy is 7 to 7.4 years lower 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.[1]

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 signatories signed, and an English-language version (the Treaty). Te Tiriti granted a right of governance to the British over their subjects, promised that Māori would retain *tino 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; the protection of Māori rights is therefore largely dependent upon political will and ad hoc recognition of Te Tiriti.

Aotearoa endorsed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2010. Aotearoa has not ratified ILO Convention 169.

Conservation and Māori rights

There were several developments of relevance to conservation and Māori rights in 2022. Two of these concern the Crown Minerals Act 1991, which is expressly focused on "promoting" exploitation of Crown-owned minerals (s 1A(a)). This conflicts with the *kaitiaki* (guardianship) responsibilities of *iwi* (nations) and *hapū* (extended kinship groups) with *mana whenua* (territorial authority) over those areas. A members bill was introduced into the House of Representatives which, amongst other things, would have amended the Act to prohibit the granting of permits for minerals prospecting, exploration and mining over conservation lands and waters.[2] It has not, however, progressed

past its first reading. The government's Crown Minerals Amendment Bill, which passed its first reading and is before the select committee, also proposes changes to the Act, including ending the "promotion" of mineral exploitation and "strengthen[ing] engagement between permit holders, *iwi* and *hapū* to ensure Māori cultural interests in minerals and mining activities are understood and respected."[3] The Bill's proposed changes nonetheless still fail to appropriately reflect the status of Māori as Tiriti partners.[4]

The proposed overhaul of New Zealand's resource management law also affects environmental protection and has important ramifications for Māori. The Spatial Planning and the Natural and Built Environment Bills both passed their first reading in 2022 and are before the select committee. They are intended to replace the much criticised Resource Management Act 1991 in order, among other things, to "better protect the environment".[5] One major concern regarding the bills is that they do not honour te Tiriti, particularly because the Natural and Built Environment Bill does not "effectively recognise or empower Māori to exercise their *tino rangatiratanga* under te Tiriti". It proposes recognising only some Māori rights (and responsibilities) holders and not others, and it conceptualises the health of the natural environment in a Eurocentric way.[6]

Māori water rights threatened

The enactment of new legislation has also threatened Māori water rights: the Water Services Entities Act 2022, which implements major water infrastructure reforms to storm water, drinking water and wastewater. The legislation shifts ownership, operation and management of water infrastructure, which was previously predominantly in the hands of local councils, to four publicly-owned regional bodies. The reforms purport to provide for co-governance with *mana whenua* but Māori concerns include the fact that proper co-governance is not reflected in the Act, such that Māori will effectively lose control over their water systems.[7]

UNDRIP action plan stalls

The first stage of the two-stage engagement process for the development of a plan to take action on the implementation of the UNDRIP was completed early in 2022 but progress on the second stage has since stalled.[8] A draft Declaration Plan – developed in partnership between the government, the National Iwi Chairs Forum's Pou Tikanga and the Human Rights Commission – was set to be released for public consultation but this did not happen. Initial targeted engagement with Māori on the plan identified 12 key and far-reaching themes for the plan, including *rangatiratanga*, participation in government, equity and fairness.[9] The concern is that a public backlash regarding Māori rights, particularly in relation to co-governance arrangements with Māori, has chilled the government's commitment to the plan.

Significant cases on *tikanga*

An important and much-anticipated judgement from New Zealand's highest court on the place of *tikanga Māori* (Māori law and custom) in State law was released in 2022 (for background see the *Indigenous World 2021*[10]). In *Ellis v R*,[11] the Supreme Court unanimously confirmed that "tikanga has been and will continue to be recognised in the development of the common law of Aotearoa/New Zealand in cases where it is relevant"; that it frequently "forms part of New Zealand law as a result of being incorporated into statutes and regulations" and that it "may be a relevant consideration in the exercise of [judicial] discretions."[12] Significantly, a majority of the Court held that problematic "colonial tests for incorporation of tikanga in the common law should no longer apply"; accepted that "tikanga was the first law of Aotearoa/New Zealand and that it continues to shape and regulate the lives of Māori"; cautioned the courts not to exceed their function when engaging with *tikanga*; and commented "that the appropriate method of ascertaining tikanga (where it is relevant) will depend on the circumstances of the particular case".[13] Despite these promising findings, ultimately *tikanga* did not feature centrally in the decision on the facts, which concerned admitting an appeal regarding criminal convictions against a deceased Pākehā appellant.

Tikanga was also prominent in another important judicial decision. *Ngāti Whātua Ōrākei v Attorney General*[14] concerned a challenge by the *iwi Ngāti Whātua Ōrākei* (NWO) to the Crown's Treaty settlement policy regarding overlapping claims by different *iwi* to the same lands. Without consulting with NWO, the Crown had offered parcels of land within central Auckland – where NWO asserts exclusive *mana whenua* – to Marutūāhu, a collective of five *iwi*. In turn, Marutūāhu asserted that they shared *mana whenua* over those areas. Attempts to resolve the conflict between NWO and Marutūāhu were unsuccessful and NWO ultimately took legal action against the Crown arguing that overlapping claims require the full consideration of *tikanga* and seeking a declaration that NWO has exclusive *mana whenua* over the relevant lands under *tikanga*. The judge hearing the case stated that *tikanga* is decided by *iwi* and *hapū* (for whom the dimensions of *tikanga* will vary) and not the Crown and declined to declare NWO as having exclusive *mana whenua* over the lands. The judge was strongly critical of the Crown's Treaty settlement policy, finding that "[t]he Crown will need to take reasonable steps to understand, recognise and respect the tikanga of iwi or hapū, and the Crown will need to actively protect the ability of iwi and hapū to exercise their tikanga".[15] The case reflects broader calls for much more sophisticated engagement with *tikanga* by the State and the exacerbation of inter-*iwi* divisions by Crown policy.

UN Disabilities Committee raises concerns

The UN Committee on the Rights of Persons with Disabilities identified serious concerns regarding the human rights situation of Māori with disabilities. In its concluding observations on the combined second and third periodic reports of New Zealand under the Convention on the Rights of Persons with Disabilities (CRPD), the Committee noted, for example, the under-representation of Māori with disabilities in legislative and policy development and decision-making processes, especially Māori children; the intersectional discrimination experienced by Māori with disabilities; high rates of violence against Māori women and girls with disabilities; issues of access to information for Māori with disabil-

ities; concerns regarding the removal of children from Māori parents with disabilities into State care; high rates of Māori children with disabilities in residential specialist schools; poorer health outcomes and vastly disproportionate poverty levels for Māori with disabilities; and the lack of support for Māori with disabilities to form their own organisations to represent themselves.[16]

The Committee's recommendations included that: New Zealand's legislative and policy frameworks should reflect the Treaty, the CRPD and the UNDRIP "to ensure that Māori persons with disabilities are closely consulted and actively involved in decision-making processes and that their right to self-determination is recognized"; measures are adopted to explicitly protect persons with disabilities from intersectional discrimination, including on the basis of their Indigenous status; initiatives are developed "to increase the provision of culturally appropriate, accessible information and communications for Māori persons with disabilities"; action is taken to ensure children are not removed from parents with disabilities, particularly Māori, on the basis of impairment; the high proportion of Māori children with disabilities in residential specialist schools is addressed; action is taken to improve health outcomes, address poverty and respond to violence against women and girls, including for Māori with disabilities; and measures are implemented "to support the development of organizations of Māori persons with disabilities".[17]

Additional developments

Additional developments of note in 2022 include: the release of a cabinet paper on arrangements and parameters for the high-level design of a new redress system for those abused in State and faith-based care, of which a high proportion are Māori;[18] critical Waitangi Tribunal reports, including concerning Te Ātiawa/Ngāti Awa claims as part of the Porirua ki Manawatu Inquiry;[19] *mana whenua* efforts to work with local and central government to address the chronic housing crisis;[20] and continued Māori-driven discussions on constitutional transformation to realise Māori rights.[21]

Future outlook

It is anticipated that Aotearoa will move into a recession in 2023, and COVID-19 cases will continue, and continue to impact Māori disproportionally. National general elections will be held in 2023, with Māori rights (particularly co-governance arrangements) expected to be a hot political issue as the conservative opposition party gains in the popularity polls. Some exciting forthcoming developments include the expected release of the final report of the Royal Commission into Abuse in Care.

Notes and references

1. Stats NZ, New Zealand Government, http://www.stats.govt.nz (these statistics are primarily drawn from the 2018 Census).
2. New Zealand Parliament. "Crown Minerals (Prohibition of Mining) Amendment Bill." Bill introduced 11 August 2022, first reading 22 November 2022, https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_125791/crown-minerals-prohibition-of-mining-amendment-bill#:~:text=The%20bill%20amends%20the%20Crown,from%20or%20granted%20by%20the
3. Ibid, select committee, report due 22 May 2023, https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_130002/crown-minerals-amendment-bill; Inside Government NZ. "Mining Act changes signal end for 'promotion' of Crown-owned minerals." 23 November 2022, https://insidegovernment.co.nz/mining-act-changes-signal-end-for-promotion-of-crown-owned-minerals/
4. For a general critique of the Act from a Māori perspective see: Carl Billington. "Does the Crown Minerals Act Undermine Partnership with Māori?" IPANZ, https://ipanz.org.nz/Article?Action=View&Article_id=150378.
5. Inside Government NZ. "New resource management laws given first reading." 22 November 2022, https://insidegovernment.co.nz/new-resource-management-law-given-first-reading/
6. For example, see the primers on the reforms prepared for the Federation of Maori Authorities (FOMA). FOMA, "Reform Of The Resource Management Act 1991." 12 December 2022, https://www.foma.org.nz/reform-of-the-resource-management-act-1991/.
7. New Zealand Parliament "Water Services Entities Bill begins three waters reform." originally published 20 June 2022, https://www.parliament.nz/en/get-involved/topics/all-current-topics/water-services-entities-bill-begins-three-waters-reform/; Manch, Thomas. "Labour alone in support of Three Waters bill as it passes into law", Stuff, 8 December 2022, https://www.stuff.co.nz/national/politics/130704446/labour-alone-in-support-of-three-waters-bill-as-it-passes-into-law
8. Te Puni Kōkiri (Ministry of Māori Development). "UN Declaration on the Rights of Indigenous Peoples." Last updated 20 October 2022, https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/un-declaration-on-the-rights-of-indigenous-

peoples; Radio New Zealand. "Government falling behind on timeframe for co-governance plans - Willie Jackson." 6 December 2022, https://www.rnz.co.nz/news/political/480211/government-falling-behind-on-timeframe-for-co-governance-plans-willie-jackson.

9. Jackson, Willie. "Next Steps in Declaration Plan" Beehive, 22 April 2022, https://www.beehive.govt.nz/release/next-steps-declaration-plan.
10. Te Aho, Fleur. "The Indigenous World 2021: Aotearoa (New Zealand)." in The Indigenous World 2021, edited by Dwayne Mamo, 579-588. Copenhagen: International Work Group for Indigenous Affairs (IWGIA), https://www.iwgia.org/en/aotearoa-new-zealand/4198-iw-2021-aotearoa-new-zealand.html
11. The Supreme Court of New Zealand. Case NZSC 114, 2022, https://www.courtsofnz.govt.nz/assets/cases/2022/2022-NZSC-114.pdf
12. Ibid, [19].
13. Ibid, [21]-[23] per Winkelmann CJ, Glazebrook and Williams JJ.
14. The Hight Court of New Zealand, Auckland Registry. Case NZHC 843, 2022. https://assets.maorilawreview.co.nz/ngati_whatua_orakei_trust_v_attorney-general_no.4_2022_nzhc_843.pdf
15. Ibid, [69]; For background see: Muru-Lanning, Charlotte. "The High Court's 'groundbreaking' Ngāti Whātua Ōrākei judgment, explained." The Spinoff, 29 April 2022, https://thespinoff.co.nz/atea/29-04-2022/the-groundbreaking-high-court-judgment-against-ngati-whatua-orakei-explained.
16. Committee on the Rights of Persons with Disabilities (CRPD). "Concluding observations on the combined second and third periodic reports of New Zealand." 26 September 2022, document CRPD/C/NZL/CO/2-3 see at [5(b)]; [7(b)]; [9(a)]; [11(a)]; [31(a)]; [43(b)]; [43(d)]; [45(d)]; [47(c)]; [49]; [53(a)]; [55]. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2FC%2FNZL%2FCO%2F2-3&Lang=en
17. Ibid at [6(b)]; [8(b)]; [10(a)]; [12(a) and (b)]; [32(a) and (b)]; [44(b)]; [44(d)]; [46(d)]; [48(c)]; [50]; [52(a)]; [54]; [56].
18. Hipkins, Chris (Minister for the Public Service). "Responding to the Royal Commission into Historical Abuse in Care's redress findings – Arrangements and parameters for the high-level design of a new redress system." 1 December 2012, https://www.abuseinquiryresponse.govt.nz/assets/Uploads/Cabinet-papers/2022-12-01-Cabinet-paper-Redress-system-design-arrangements.pdf.
19. Waitangi Tribunal. "Waikanae: Report on Te Ātiawa/Ngāti Awa Claims." Wai 2200, 2022.
20. Dimitrof, Stefan. "Mana whenua helping Rotorua solve chronic housing crisis." Te Ao Māori News, 13 December 2022, https://www.teaomaori.news/mana-whenua-helping-rotorua-solve-chronic-housing-crisis.
21. For example, see the Constitutional Kōrero 2022 https://www.constitutionalkorero.co.nz/

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*

Australia

INDIAN OCEAN
CORAL SEA
AUSTRALIA
PACIFIC OCEAN
Canberra
TASMAN SEA

As of 30 June 2021, there were 984,000 Aboriginal and Torres Strait Islander people, representing 3.8% of the total Australian population.[1] The most recent available data from the Australian Bureau of Statistics indicates that, among Indigenous Australians, 38% (337,400) live in major cities and 18% (154,900) live in remote and very remote areas combined. The proportion of the total population who were Indigenous increased with remoteness, from 1.8% in major cities to 32% in remote and very remote areas.

The Aboriginal and Torres Strait Islander population had a younger age structure than the non-Indigenous population, with both larger proportions of young people and smaller proportions of older people. This reflects higher birth rates and lower life expectancy in the Aboriginal and Torres Strait Islander population compared with that of the non-Indigenous population. One-third (33.1%) of Aboriginal and Torres Strait Islander people were aged under 15 years compared with 17.9% of non-Indigenous people in the same age group. People aged 65 years and over comprised 5.4% of the Aboriginal and Torres Strait Islander population compared with 17.2% of the non-Indigenous population. 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 2022, four of these targets were on track to be met, five were not on track, and eight 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 Aborigi-

nal and Torres Strait Islander people, of which there are around 12,000-16,000.

There is currently no reference to Aboriginal and Torres Strait Islander peoples in the national Constitution.

Referendum on constitutional recognition

The Australian Constitution was drafted at a time when Australia was considered a land that belonged to no-one before European settlement and when Aboriginal and Torres Strait Islander peoples were considered a "dying race" not worthy of citizenship or humanity. Aboriginal and Torres Strait Islander peoples were excluded from the discussions about the creation of a new nation to be situated on their ancestral lands and waters. To this day, Aboriginal and Torres Strait Islander peoples are not mentioned in the Constitution.[2]

The Albanese government was elected in May 2022. As part of the government's commitment to implement the Uluru Statement from the Heart,[3] the government announced that a referendum would be held in Australia during the term of the current Parliament to enshrine an Aboriginal and Torres Strait Islander Voice in the Australian Constitution. On 30 July 2022, Prime Minister Anthony Albanese announced draft words for a constitutional amendment on an Aboriginal and Torres Strait Islander Voice. The draft words to be added to the Constitution are:

- There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice.
- The Aboriginal and Torres Strait Islander Voice may make representations to Parliament and the Executive Government on matters relating to Aboriginal and Torres Strait Islander peoples.
- The Parliament shall, subject to this Constitution, have power to make laws with respect to the composition, functions, powers and procedures of the Aboriginal and Torres Strait Islander Voice.[4]

The Prime Minister also proposed a draft question to be put to the Australian people at a referendum. The draft referendum question is:

> "Do you support an alteration to the Constitution that establishes an Aboriginal and Torres Strait Islander Voice?"

The road ahead to achieving constitutional recognition is expected to be a difficult one. While a Voice to Parliament[5] will be created through legislation, the amendment to the Constitution can only be achieved if the referendum is successful – which will require a majority of Australians in a majority of states to vote yes. This is a difficult condition to meet and, of the 44 referenda held since federation, only eight have passed.[6]

There has been significant pushback from conservative politicians in Australia who are opposed to the idea of the Voice, and who argue that it will not achieve meaningful change for Aboriginal and Torres Strait Islander people.[7] Nevertheless, surveys have shown that there is significant support for the Voice and constitutional recognition among Australians, which has increased over time.[8]

Closing the Gap

The National Agreement on 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, programmes and services that affect them, better life outcomes are achieved.[9] The Agreement also identifies 17 socio-economic outcomes important to the rights, well-being and quality of life of Aboriginal and Torres Strait Islander people. Monitoring these socio-economic outcomes will help to determine if the Agreement is working to accelerate improvements in the lives of Aboriginal and Torres Strait Islander people.[10]

The second Annual Data Compilation Report to inform reporting on progress under the National Agreement on Closing the Gap was released by the Productivity Commission[11] in July 2022. The Productivity Commission's 2022 Annual Data Compilation Report identifies that new data is available to assess progress against baseline data for nine

targets, six of which have data available to monitor progress up to 2021, one year after commencement of the National Agreement. No new data is available in relation to the remaining targets since the baseline year of measurement for each target.[12]

The socio-economic targets provide limited information on progress at this stage. No new data are available since the baseline year for eight of the targets and, for the targets where there are new data available, the most recent data are for 2021, only one year after the Agreement commenced. For the targets that have new data and assessments of progress, the results are mixed and most need to be used with caution.

- Four are on track (healthy birthweight of babies, the enrolment of children in preschool, youth detention rates and land mass subject to rights and interests).
- Five are not on track (children commencing school developmentally on track, out-of-home care, adult imprisonment, suicide deaths, and sea country subject to rights and interests).[13]

Walking alongside Aboriginal and Torres Strait Islander people is key to implementation and improved outcomes.

Family Matters – Strong communities. Strong Culture. Stronger children.

This initiative is being led by SNAICC – National Voice for our Children and a group of eminent Aboriginal and Torres Strait Islander leaders from across Australia. This is Australia's national campaign to ensure Aboriginal and Torres Strait Islander children and young people grow up safe and cared for in family, community and culture. It aims to eliminate the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care within a generation (by 2040).[14]

The Family Matters reports examines what governments are doing to turn the tide on over-representation and improve outcomes for Aboriginal and Torres Strait Islander children. This report also highlights Aboriginal and Torres Strait Islander-led solutions and calls on governments to support and invest in the strengths of Aboriginal and Torres Strait Islander peoples to lead on child well-being, development and

safety responses for children. There were 22,297 Aboriginal and Torres Strait Islander children in out-of-home care in 2022, making Aboriginal and Torres Strait Islander children 10 times more likely to be in out-of-home care than non-Indigenous children, with fewer than half living with Aboriginal and Torres Strait Islander carers.[15]

Under the National Agreement, governments have committed to make decisions in genuine partnership with Aboriginal and Torres Strait Islander peoples and organisations; to invest in community-controlled services; to transform government agencies and non-Indigenous services into culturally-safe organisations; and to develop data and monitor outcomes in partnership with Aboriginal and Torres Strait Islander peoples. The National Agreement also committed specifically to reducing Aboriginal and Torres Strait Islander children's over-representation in out-of-home care by 45% by the year 2031, a target well-aligned to the Family Matters campaign's call to eliminate over-representation by 2040.

Aboriginal and Torres Strait Islander Members of Parliament

Following the commencement of the 47th Australian Parliament on 26 July 2022, there are now eight senators and three members of the House of Representatives who identify as Aboriginal or Torres Strait Islander. They are:

- Senator Dorinda Cox, Yamatji-Noongar, Western Australia
- Senator Patrick Dodson, Yawuru, Western Australia
- Senator Jacqui Lambie, Palawa, Tasmania
- Senator Kerrynne Liddle, Arrente, South Australia
- Senator the Hon Malarndirri McCarthy, Yanyuwa, Northern Territory
- Senator Jacinta Nampijinpa Price, Walpiri, Northern Territory
- Senator Jana Stewart, Muthi Muthi and Wamba-Wamba, Victoria
- Senator Lidia Thorpe, DjabWurrung, Gunnai, and Gunditjmara, Victoria
- The Hon Linda Burney MP, Wiradjuri, Member for Barton
- Dr Gordon Reid, Wiradjuri, Member for Robertson
- Ms Marion Scrymgour, Tiwi, Member for Lingiari [16]

This is the largest number of Aboriginal and Torres Strait Islander parliamentarians in the history of Australia. Since the first sitting of the Australian Parliament in 1901, only 17 parliamentarians have identified as Aboriginal and/or Torres Strait Islander.[17]

Notes and references

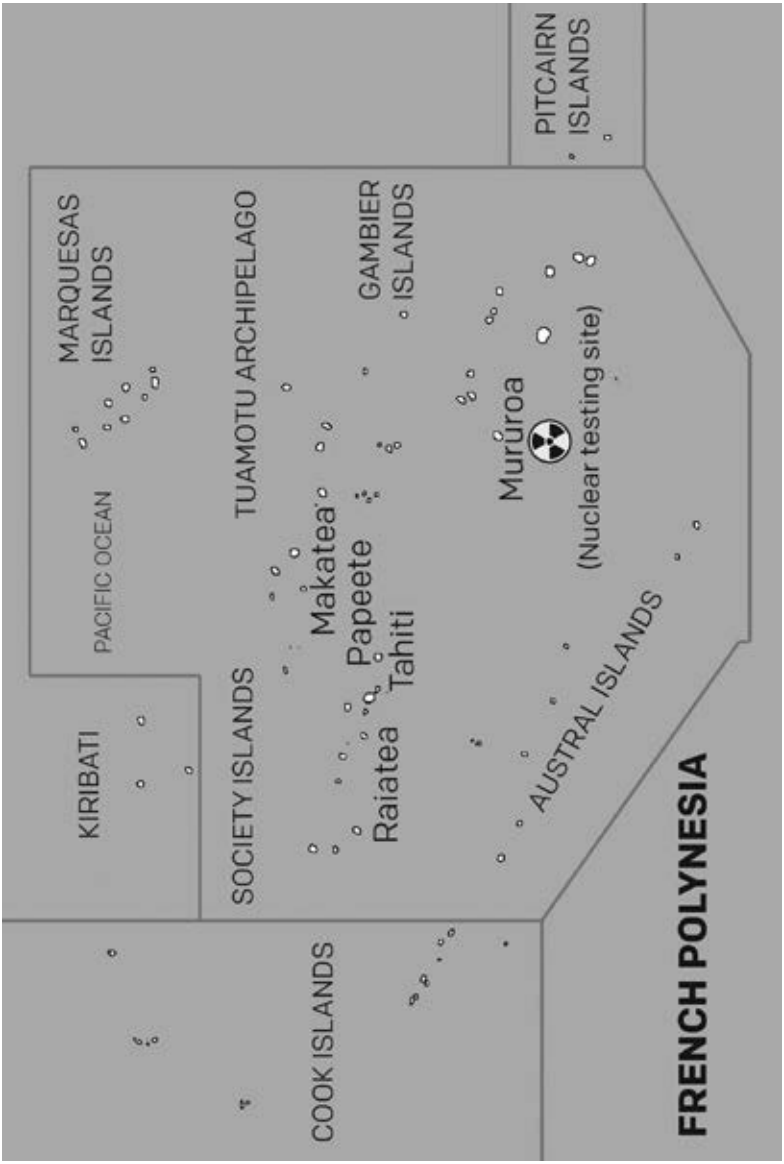
1. Australian Bureau of Statistics. Estimates of Aboriginal and Torres Strait Islander Australians. June 2021, https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/jun-2021
2. Australian Human Rights Commission. "About Constitutional Recognition." 2022, https://humanrights.gov.au/our-work/about-constitutional-recognition
3. The Uluru Statement from the Heart is an invitation to the Australian people from First Nations Australians. It asks Australians to walk together to build a better future by establishing a First Nations Voice to Parliament enshrined in the Constitution, and a Makarrata Commission for the purpose of treaty-making and truth-telling.
4. National Indigenous Australians Agency. "Referendum on an Aboriginal and Torres Strait Islander Voice." 2022, https://www.niaa.gov.au/indigenous-affairs/referendum-aboriginal-and-torres-strait-islander-voice
5. Gately, Iain., and Belinda Kendall. "The Indigenous World 2022: Australia". International Work Group for Indigenous Affairs, 2022. https://www.iwgia.org/en/australia/4686-iw-2022-australia.html
6. Lee, Emma. "First Nations people shouldn't have to wait for a referendum to get a Voice to Parliament." The Conversation, 10 June 2022, https://theconversation.com/first-nations-people-shouldnt-have-to-wait-for-a-referendum-to-get-a-voice-to-parliament-184316
7. Appleby, Gabrielle, and Eddie Synot. "What do we know about the Voice to Parliament design, and what do we still need to know?" The Conversation, 6 December 2022, https://theconversation.com/what-do-we-know-about-the-voice-to-parliament-design-and-what-do-we-still-need-to-know-195720
8. Levy, Ron., and Iain McAllister. "Our research shows public support for a First Nations Voice is not only high, it's deeply entrenched." The Conversation, 9 December 2021, https://theconversation.com/our-research-shows-public-support-for-a-first-nations-voice-is-not-only-high-its-deeply-entrenched-172851
9. Australian Government. "Closing the Gap." 2022, https://www.closingthegap.gov.au/
10. Productivity Commission. "Closing the Gap Annual Data Compilation Report July 2022."
11. The Productivity Commission is the Australian government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.
12. Australian Government. "Commonwealth Closing the Gap Annual Report 2022." 2022, Canberra, Department of the Prime Minister and Cabinet.
13. Productivity Commission, "Closing the Gap Annual Data Compilation Report July 2022."

14. SNAICC. "Family Matters Report 2022.", https://www.familymatters.org.au/the-family-matters-report-2022/
15. SNAICC. "Family Matters Report 2022 Snapshot", https://www.familymatters.org.au/wp-content/uploads/2022/11/1533_2022-F.M.-Snapshot-2pp_option-1.pdf
16. Parliamentary Education Office. "How many Aboriginal or Torres Straits Islander MPs or Senators are there and what are their names?", https://peo.gov.au/understand-our-parliament/your-questions-on-notice/questions/how-many-aboriginal-or-torres-straits-islander-mps-or-senators-are-there-and-what-are-their-names
17. Parliament of Australia. "Indigenous representation in the Senate." 12 July 2022, https://www.aph.gov.au/About_Parliament/Senate/Whats_On/Senate_matters/2022/July/Indigenous_Representation_in_the_Senate

Belinda Kendall *is a Worimi, Barkindji, Wailwan and Wiradjuri woman from New South Wales 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 of Aboriginal and Torres Strait Islander peoples and all Australians through leadership and healing.*

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 programmes 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.*

French Polynesia



The Kingdom of Tahiti became a protectorate under the French colonial project in 1842 and French Polynesia has been an Overseas Collectivity since 2004. It enjoys relative political autonomy within the French Republic through its own local institutions: the Government and Assembly of French Polynesia.

French Polynesia today has a population of 278,000 (of which some 80% are Polynesians).[1, 2] Population figures for 2020 point to a slowdown in population growth due to emigration, a declining birth rate and an ageing population.[3] This Overseas Collectivity is characterized by increasing social inequality, with income inequality higher than in metropolitan France: in 2015, one-fifth of the Polynesian population were living below the poverty line.[4] This situation can be explained in large part "by the very poor redistribution efforts of the Polynesian tax system",[5] i.e. the absence of income tax. Apart from economic inequalities, French Polynesia is also marked by a multitude of other social inequalities relative to metropolitan France, for example gender-related inequalities, with intra-family sexual violence being statistically much more pronounced[6, 7] and largely the result of inadequate professional support.[8]

French Polynesia has long been characterized by its polarized political life, with the *Tavini Huiraatira,* an independence party led by Oscar Temaru, on the one hand, and the *Tahoera'a Huiraatira,* an autonomist party led by Gaston Flosse, on the other. Until 2016, the latter advocated keeping French Polynesia within the Republic but since then has focused on changing its autonomous status to that of an associated state.[9] In 2016, a succession crisis within *Tahoera'a*, following Flosse being declared ineligible to stand for public office (confirmed by the Court of Cassation in January 2022[10]), led to the creation of a third political party, *Tapura Huiraatira*. This autonomist party was created in 2016 by Edouard Fritch, President of French Polynesia since September 2014 and re-elected in the regional elections of April - May 2018.

2022 elections and the political sphere

Since 2016, the decline of *Tahoera'a* has continued. Renamed *Amuitahiraa o te nuna'a Maohi* on 29 January 2022, for the first time since 1977 the party lost all its seats in the Territorial Assembly in March[11] following the defection of its last elected members.

Up until 2018, the electoral results were used by the autonomist representatives to remind the French representatives and the UN that, even though these elections were not a referendum on self-determination, they highlighted the poor support enjoyed by the independence party. Nevertheless, *Tapura* – which in October 2021 declared its support for Emmanuel Macron in the 2022 presidential elections – faced a major electoral setback in the June 2022 national legislative elections.

The three Polynesian constituencies were, for the first time, all won by the independence party, who sit on the left of the political spectrum: Moetai Brotherson, who was elected President of the Overseas Delegation of the National Assembly,[12] Steve Chailloux, and Tematai Le Gayic, the youngest ever French MP.[13] In the Assembly of French Polynesia, these electoral results led to the departure of men and women from *Tapura*, who now sit as non-attached members.[14] These defections also reveal the internal tensions existing within the political party in the run-up to the next regional elections in April 2023, as Édouard Fritch was given authorization by the State Council to stand for a third political term at the end of the year.[15]

The UN and the right to self-determination

French Polynesia has been on the UN's list of Non-Self-Governing Territories since May 2013. Proponents recall that re-inscription should lead to the organization of a referendum on self-determination giving the possibility of choosing between departmentalization, independence or association (associated state). The French State considers that "the question of French Polynesia" is part of its internal policy and therefore does not cooperate with the Fourth Committee of the United Nations General Assembly in charge of decolonization issues.[16]

During the 77th session of the Fourth Committee of the UN General

Assembly, held between September and November 2022, the representatives of the two major political groups expressed their views on the general political and institutional situation of French Polynesia.[17]

On the autonomist side, the Minister of Infrastructure, René Moana Temeharo, recalled the position of the Government of French Polynesia and the French State: the status of autonomy, which allows French Polynesia to favour a strong partnership with France, is desired by the Polynesian population and cannot be compared to a colonial situation. The June 2022 elections won by the pro-independence party should not, in his opinion, be interpreted as a challenge to this autonomous status but rather as a vote against the government's handling of the pandemic.

On the independentists' side, the representatives underlined the – at best – slowness and – at worst – inefficiency of the UN bodies in the Polynesian decolonization process. The vice-president of *Tavini*, Antony Giros, thus recalled that nine years after the re-registration of French Polynesia, the representatives of the French State have still not taken steps to organize a referendum on self-determination. This lack of dialogue is interpreted by Richard Tuheiava as hindrance to the decolonization process since it allows "the 'accommodating' elected government and the administering power the opportunity to silently advocate – behind the scenes – for a 'status quo' that does not correspond to the three options adopted by the UN General Assembly".[18] Moreover, the absence of a specific decolonization programme for French Polynesia, coupled with the French State's power of veto, which can still be exercised in this matter, makes it impossible for *Tavini* to change the status of Polynesia through UN channels. Richard Tuheiava believes this programme can be implemented without the administering power.

The consequences of nuclear testing

The 193 aerial and underground nuclear tests conducted by the French State in French Polynesia between 1966 and 1996, with terrible consequences for inhabitants both past and present, still form the object of struggles to obtain compensation for the victims and political recognition of their health consequences.

In 2021, research published in the book "Toxic" – co-authored by Tomas Statius, an investigative journalist, and Sébastien Philippe, a

researcher specializing in military nuclear power at Princeton University – highlighted how the French Atomic Energy Commission had minimized the impact of the contamination, in particular that of the 1974 Centaur test, which is said to have reached the island of Tahiti and affected 110,000 inhabitants.[19] At the same time, people suffering from radiation-induced illnesses have had difficulty in establishing a causal link between their illness and the nuclear tests, and therefore in obtaining compensation.

In order to improve the compensation process for victims of nuclear testing – currently governed by the Morin law – and to increase the monitoring of the contaminated atolls of Hao, Moruroa and Fangataufa, the pro-independence deputy Moetai Brotherson tabled a bill with the National Assembly in June 2021.[20] It was rejected but, shortly after, the French government organized a round table at the Élysée Palace in Paris devoted to the health consequences of the nuclear tests. This was not, however, followed up with any important announcements, with the government refusing "to recognize that the State lied" and dismissing "any idea of a pardon from France".[21]

Visiting French Polynesia a month later, Emmanuel Macron was naturally eagerly awaited on the nuclear issue but he confined himself to acknowledging the nation's debt to French Polynesia for having allowed it access to atomic weapons,[22] very far removed from the apology and request for forgiveness expected by many Polynesians.

The year 2022 was marked by important anti-nuclear social mobilizations: the demonstration of 2 July 2021 – the anniversary of the first nuclear test – is now an annual event, at the initiative of *Tavini*, the Protestant mā'ohi church and associations supporting victims of nuclear testing, in particular the main organizer *Moruroa e Tatou*. All those involved emphasize the distress of families who are struggling to obtain compensation, particularly following the death of the victims, and raising the transgenerational nature of radiation-induced diseases.

In response to the Polynesians' quest for answers about their nuclear history, in February the French government announced the declassification of archives concerning the activities carried out by the *Centre d'expérimentation du Pacifique* / Centre for Experimentation in the Pacific (CEP). Thirty-five thousand documents will gradually be declassified, representing 90% of the documents examined and approved for "free communication" by the commission set up by the Ministry of

Remembrance and Veterans.[23] This declassification procedure – which is not the first – requires qualification in two respects. First of all, the declassification of a document depends on whether or not it contains so-called "proliferating" information, i.e. information that could help in the manufacture of nuclear weapons. However, it is impossible to verify whether these decisions to open the archives are taken in good faith since this is precisely information to which access is forbidden. Second, documents that have received a favourable opinion but involve national defence secrets and/or the fundamental interests of the State are subject to a 50-year delay before public consultation, and this restricts access to nuclear archives.

Finally, Edouard Fritch travelled to Paris at the end of 2022 and proposed several constitutional changes to the Senate Delegation for Overseas France, including recognition of the "nuclear issue in French Polynesia and its various impacts" in the Constitution.[24] Given the high symbolic and political stakes attached to the nuclear issue, the autonomist leader thus demonstrated that he did not intend to let the independentists be the only ones to take a critical position with regard to the consequences of nuclear testing.

2022, the end of the pandemic?

The COVID-19 pandemic has deeply affected the economic, political, cultural and social life of French Polynesia. The lockdown and ban on international flights had considerable economic consequences, especially for the tourism sector, which is an important part of the Polynesian economy.[25]

There were several signs of improvement in the health situation in 2022. In fact, according to the Polynesian Ministry of Health, the first week of January 2023 showed a 56% decline in coronavirus-related infections, with only 28 cases reported in Tahiti.[26] This significant slowdown in the circulation of the virus has been accompanied by a total lifting of travel restrictions to and from Polynesia since 1 August 2022. This has resulted in a massive return of international tourists, particularly from the United States, which has put great pressure on the capacity of the local hotel system, while tourism from France is following a similar trend, with 15 to 20% more arrivals by air.[27]

This improvement in the Polynesian tourism sector is in line with the strategic planning established by the local government in November 2022 for the next five years,[28] which shows a willingness to consider the ecological, social and cultural impacts of an economic sector that is perceived as a priority for the islands.

Notes and references

1. Institut de la Statistique de la Polynésie Française (ISPF). "Point Études et Bilans de la Polynésie française, No.1256. Bilan démographique." June 2021
2. The last census noting "ethnic" categories dates from 1988: "Polynesians and similar" accounted for 80.58%, "Europeans and similar" 13.28% and "Asians and similar" 5.42%.
3. Ibid.
4. ISPF. "Budget des familles, 2017." Consulted 14 January 2023, https://www.ispf.pf/publication/id/1865
5. "Les inégalités de revenus bien plus fortes au fenua qu'en métropole." Tahiti Infos, 2 September 2019
6. Jaspard M., Elizabeth Brown., Dolores Pourette. "Les violences envers les femmes dans le cadre du couple en Polynésie française." Espace, Populations, Sociétés, 2004-2, pp.325-341.
7. In 2004, 7% said they had experienced at least one sexual assault before the age of 15 and 7% had experienced spousal violence in the last 12 months.
8. Hervouet, Lucile. "Qui suis-je pour juger? La production sociale du silence autour des violences sexuelles intrafamiliales en Polynésie française." Terrains & Travaux, 2022, No.40, pp.67-87
9. "Pays associé: Gaston Flosse présente son rêve statutaire." Tahiti Infos, 10 March 2016
10. "En Polynésie, Gaston Flosse définitivement condamné pour détournement de fonds publics." Le Monde, 12 January 2022
11. "Le groupe *Tahoera'a Huiraatira* n'existe plus à l'Assemblée." Polynésie la 1ère, 19 March 2022
12. Assemblée Nationale, "Délégation aux outre-mer. Délégation parlementaire." https://www.assemblee-nationale.fr/dyn/16/organes/delegations-comites-offices/dom
13. "Tematai Le Gayic, 21 ans, élu en Polynésie et plus jeune député de l'histoire de la Ve République." Le Monde, 22 June 2022
14. "Rohfritch, Bouteau et Schyle quittent le Tapura par profonde déception." Tahiti Infos, 14 September 2022
15. "Le Conseil d'État dit 'oui' à un troisième mandat d'Édouard Fritch." Tahiti Infos, 25 October 2022
16. For an overview of the self-determination discourse and fourth committee process in the French Polynesia see previous editions of the Indigenous World: Malogne-Fer, Gwendoline. "The Indigenous World 2019: French Polynesia." The Indigenous World 2019, edited by Dwayne Mamo, 242–249. The International Work Group for Indigenous Affairs (IWGIA), 2019, https://www.iwgia.org/en/french-polynesia/3418-iw2019-french-polynesia.html; Malogne-Fer, Gwendoline. "The Indigenous World 2020: French Polynesia." The Indigenous World 2020, edited by Dwayne Mamo, 606–612. The International Work Group for Indigenous Affairs (IWGIA), 2020, https://www.iwgia.org/en/french-

polynesia/3643-iw-2020-french-polynesia.html; Malogne-Fer, Gwendoline. "The Indigenous World 2021: French Polynesia." The Indigenous World 2021, edited by Dwayne Mamo, 599–606. The International Work Group for Indigenous Affairs (IWGIA), 2021, https://www.iwgia.org/en/french-polynesia/4219-iw-2021-french-polynesia.html; Malogne-Fer, Gwendoline. "The Indigenous World 2022: French Polynesia." The Indigenous World 2022, edited by Dwayne Mamo, 592–599. The International Work Group for Indigenous Affairs (IWGIA), 2022, https://www.iwgia.org/en/french-polynesia/4687-iw-2022-french-polynesia.html

17. Positions taken from the minutes of the 77th session of the Fourth Committee. "La Quatrième Commission donne le coup d´envoi des auditions de pétitionnaires de plusieurs territoires non autonomes inscrits a son ordre du jour." 4 October 2022, https://press.un.org/fr/2022/cpsd749.doc.htm

18. Ibid.

19. Malogne-Fer, Gwendoline. "The Indigenous World 2022: French Polynesia."

20. Draft bill of law aimed at getting France to assume responsibility and reparation for the consequences of French nuclear tests rejected by the National Assembly on 17 June 2021, T.A No.632.

21. Leyral, Mike. "Une table ronde sur le nucléaire pour déminer les relations entre la France et la Polynésie." Le Monde, 3 July 2021

22. Delpierre, Antoine. "Essais nucléaires en Polynésie française: Emmanuel Macron reconnaît une dette de la France." TV5 Monde, 28 July 2021, https://information.tv5monde.com/video/essais-nucleaires-en-polynesie-francaise-emmanuel-macron-reconnait-une-dette-de-la-france

23. "Essais nucléaires en Polynésie française : l'ouverture des archives progresse, sous conditions." Libération, 04 February 2022

24. "Fritch propose d'inscrire le fait nucléaire en Polynésie dans la Constitution." Tahiti Infos, 21 November 2022,

25. Malogne-Fer, Gwendoline. "The Indigenous World 2022: French Polynesia."

26. Ministry of Health and Prevention (French Polynesia). "Bulletin épidemiologique hebomadaire Covid-19 et grippe. Polynésie française. No.126" Plateforme Covid-19, 11 January 2023, https://www.service-public.pf/dsp/2023/01/10/chiffres-cles-covid-19-du-09-janvier-2023/

27. "Le tourisme en Polynésie a "structurellement changé."' Tahiti Infos, 17 January 2023

28. Ministry of Tourism (French Polynesia). "Fāri'ira'a Manihini 2025. L´accueil qui nous ressemble et nous rassemble. Stratégie de développement touristique en Polynésie française." https://www.service-public.pf/sdt/strategie-de-developpement-touristique/

Gwendoline Malogne-Fer *is a sociologist working for CERI (Science Po) and associate researcher at the Maurice Halbwachs Centre (CNRS/EHESS/ENS) in Paris. In 2007 she published a book on her sociology thesis entitled Les femmes dans l'Église 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 sits at the crossroads of gender studies, the sociology of Protestantism and the anthropology of migration. With Yannick Fer, she has also directed two documentaries 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] 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]*

Jules Gautheron *is a doctoral researcher in sociology at the Centre d'Études Sociologiques sur le Droit et les Institutions Pénales (CNRS/Ministry of Justice/UVSQ/CY University) and the Centre Maurice Halbwachs (CNRS/EHESS/ENS). Originally from the island of Ra'iātea, his dissertation focuses on the formation and renewal of the relationship of authority and coercion linking the French State and French Polynesia through the day-to-day actions of local security and justice actors, foremost among them law enforcement and judges. Studied from an ethnographic approach, the issues raised are at the intersection of the sociology of the overseas state, coloniality, security and justice.*

CONTENTS

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 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, has also played a crucial role for many years in ensuring and maintaining this vital engagement and dialogue.

In 2020, at the 66th Ordinary Session, the mandate of the

WGIP was renewed and expanded to include the rights of minorities, with the following amended title: "Working Group on Indigenous Populations/Communities and Minorities in Africa" (WGIPM).[1]

20th anniversary of the Working Group on Indigenous Populations/Communities in Africa (WGIP)

During the 71st Ordinary Session of the ACHPR, the WGIP hosted a one-hour panel discussion on 30 April 2022, commemorating its 20th anniversary. This celebration had been postponed since May 2021 due to several constraints. The event reflected on the state of Indigenous Peoples' rights on the continent, WGIP successes, the challenges faced and possible solutions, the scope and expanded mandate of the WGIP (now the Working Group on Indigenous Populations and Minorities/WGIPM) and prospects for enhancing delivery of its mandate. The event was also an opportunity to promote public awareness and visibility of the existence of the WGIP (now WGIPM).

In June 2022, in relation to the 20th anniversary of the WGIP, IWGIA published a report that re-captures the important and comprehensive work undertaken by the WGIP since its establishment. The report also provides links to all the major documents produced by the WGIP over its first 20 years.[2]

The Working Group on Indigenous Populations and Minorities (WGIPM)

The WGIPM did not meet physically in 2022. Ever since its establishment in 2000, the WGIP has met physically prior to almost all Ordinary Sessions of the ACHPR to assess and take stock of its work, make activity plans for the next six months and beyond, and meet with Indigenous representatives in order to continuously be informed of human rights violations faced by Indigenous Peoples on the African continent.

This practice was interrupted during the COVID-19 pandemic and it did not resume in 2022 in relation to the 73rd Ordinary Session of the ACHPR held from 20 October – 9 November 2022.

A call for applications for WGIPM Expert Members was launched on 27 June 2022, and a renewed call was made on 30 August 2022. The new WGIPM composition was published on 12 December 2022 via the "Resolution on the Renewal of Mandate, appointment of the Chairperson and Reconstitution of the Working Group on Indigenous Populations/Communities and Minorities in Africa - ACHPR/Res.533 (LXXIII) 2022".[3] ACHPR Commissioner Litha Musyimi-Ogana from Kenya was appointed as the new WGIPM Chairperson, Commissioner Marie Louise Abomo from Cameroon was appointed as the Vice-Chairperson and Commissioner Solomon Ayele Dersso from Ethiopia was appointed as a Member. Pag-Yendu M. Yentcharé (West Africa), Hawe Hamman Bouba (Central Africa) and Samuel Tilahun Tessema (Eastern Africa) were appointed as Expert Members. No Expert Members were appointed from North or southern Africa, and it was requested that these two positions should be re-advertised as soon as possible.

73rd Ordinary Session of the ACHPR

The ACHPR held its 73rd Ordinary Session from 20 October – 9 November 2022 in Banjul, the Gambia, its first Ordinary Session since the COVID-19 pandemic. During the session, the then chair of the WGIPM, Commissioner Solomon Ayele Dersso, presented his inter-session activity report[4] which highlighted:

Evictions and human rights violations towards the Maasai people in Tanzania

In June 2022, the Maasai Indigenous people in the Ngorongoro District of Tanzania faced gruesome attacks and forced evictions from their lands following the enforcement of a government decision to establish a nature conservation park in the area. These events had been forewarned and condemned in a joint letter issued on 22 February 2022 to the President of Tanzania by the WGIPM Chairperson, together with

the Commissioner Rapporteur for Tanzania - Commissioner Ourveena Geereesha.[5]

This appeal went unheeded, however, and following the eventual evictions in June 2022, the WGIPM Chairperson issued, on 13 June, an "Urgent call for cessation of the eviction of the Maasai Community in the Ngorongoro District in the United Republic of Tanzania", condemning the actions and calling for strong measures to address these human rights violations.[6] It also called for an immediate cessation of arbitrary and violent acts; the conducting of proper investigations by the State authorities; adequate compensation for the victims as applicable; and an inclusion of the Maasai in the decision process for land demarcation.

The WGIPM Chairperson emphasized in his inter-session report that the WGIPM was gravely concerned at the poor response of the Government of Tanzania to its commitment to engage with the ACHPR in realizing the rights of Indigenous people, and hoped that the government would take measures to guarantee the restitution of the rights of the Maasai people.

Forced evictions of Benet people in Uganda

On 4 October 2022, the WGIPM Chairperson issued a press statement concerning allegations of violence, intimidation, threats, sexual assault, destruction and confiscation of property, as well as the forceful eviction of the Mosopisyek community of Benet from their land in and around the Mount Elgon region in Uganda, without their Free, Prior and Informed Consent (FPIC).[7]

The statement noted that the violations have allegedly largely been perpetrated by members of the Uganda Wildlife Authority (UWA) in the process of enforcing a 1993 government decision establishing the Mount Elgon National Park, and that they escalated in the months of June to August 2022 after the community organized peaceful assemblies to reclaim their land. The statement pointed out that the Government of the Republic of Uganda has not enforced the 27 October 2005 court judgement that recognized the Mosopisyek community as Indigenous occupants of Mount Elgon and accorded them the right to remain in temporary settlements and reclaim their schools and services; and also, that the alleged actions of the UWA would amount to grave

danger to various rights of the members of this community, including their rights to: life, bodily integrity, justice, freedom of assembly, property, culture, family, existence and natural resources. The statement drew the attention of the Government of Uganda to ACHPR's Resolution 489 (LXIX) 2021 on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Populations in Africa, which emphasizes the rights of Indigenous populations and communities over the conservation, control, management, and sustainable use of their natural resources, as well as the duty of States to take necessary measures to strengthen their participation in such governance processes.[8]

The Chairperson called on the Government of Uganda to ensure the cessation of all forms of harassment or violence against the Indigenous Benet community, and hence guarantee their safety and security; ensure due investigations of alleged violations, accountability of the perpetrators, and effective reparations to the victims and/or their families; adopt all necessary measures for the full recognition of the rights of the Benet Indigenous Peoples over their lands, territories and resources as enshrined in the African Charter, and take all necessary steps to effectively implement the Consent Judgement of 27 October 2005; adopt relevant measures to guarantee an integration of international conservation policies and management plans across all protected areas in Uganda; and report back to the ACHPR on the steps undertaken and the result of the required investigations.

The Chairperson emphasized in his inter-session report that the Working Group remains concerned at the disregard of the rights of Indigenous groups and minorities by member states that continues to prevail even after due recognition in constitutional provisions and court judgement issued by these States themselves.

Repression of the Amazigh people in Algeria

The WGIPM Chairperson's inter-session report recalled the Letter of Urgent Appeal that was sent to the Algerian government on 27 September 2021 regarding the devastating effects of COVID-19 on the Amazigh Indigenous populations, arson attacks in the Indigenous territory of Kabylia and repression against the Amazigh people. The report emphasized

that no response had been provided by the Government of Algeria to date and that the repression against the Amazigh people, particularly against the Kabyle community, had increased in recent years, with some 300 Kabyles currently imprisoned without trial, some for as long as two years. The report also noted that Kamira Nait Sid, co-president of the World Amazigh Congress, had been arbitrarily detained for more than 13 months. The inter-session report called on Algeria to conduct independent investigations into the issues raised in the Letter of Urgent Appeal of 27 September 2021, to significantly reduce the length of pre-trial detention and to release Amazigh detainees who are in a situation of arbitrary detention.

Encouraging developments in the Democratic Republic of Congo (DRC)

The inter-session report highlighted that, on 10 June 2022, DRC's Parliament took a remarkable step in adopting a bill that recognizes the customary rights of its Indigenous population, specifically the Batwa peoples. The Batwa have suffered some of the worst forms of marginalization, discrimination, forced evictions, and even attacks and killings in their struggles to reclaim their land. The bill specifically guarantees access to justice for Indigenous Peoples; and a duty on the part of the State to recognize the traditions, customs and practices of Indigenous Peoples, and to take appropriate measures to facilitate the enjoyment of their rights, including with strategies to tackle their historical marginalization. Although the bill has been criticized for not making any provisions on strategies for land restoration, reparation or compensation, the report noted that the bill is a laudable step in advancing the rights of Indigenous Peoples in the DRC.

African Court Ogiek reparations ruling

On 27 June 2022, following the African Court's judgement on reparations in the Ogiek case, which was delivered on 23 June 2022, the WGIPM Chairperson issued a press statement highlighting ACHPR's anticipation for Kenya's cooperation in implementing the

Court's judgement.[9] The statement emphasized the significance of the judgement and, most importantly, its implementation, in light of upholding the rights of the people of Kenya, the Ogiek community and Indigenous populations across Africa. The statement also underscored the relevance of the judgement in its ability to hold policy organs of the African Union, as well as member states, responsible, to respect for their obligations to implement the decisions of the African Court. Finally, the statement called on collaborative efforts from the Kenya Human Rights Commission in ensuring that the prescriptions of the judgement are effected by the Kenyan government.

Advanced Course on the Rights of Indigenous Peoples in Africa

The Advanced Course on the Rights of Indigenous Peoples in Africa was run from 7-11 November 2022 by the Centre for Human Rights of the University of Pretoria in South Africa, in collaboration with the WGIPM and the International Work Group for Indigenous Affairs (IWGIA). The course was held in a hybrid format on the University of Pretoria's main campus.

A total of 59 participants attended the course, including people from 13 African countries (Kenya, Ethiopia, Sudan, Egypt, Ghana, Nigeria, Liberia, Zimbabwe, South Africa, Botswana, Lesotho, Malawi and DRC), three European countries (Austria, Wales and Belgium), and one participant each from Mexico, Haiti and New Zealand. Participants were mainly members and representatives of Indigenous communities, middle and senior-level government employees, managers of CSOs and NGOs, academics, private practitioners, legal practitioners, and senior law students and staff from National Human Rights Institutions (NHRIs). Among the CSOs/NGOs were both civil society organizations working on Indigenous Peoples' rights and those with a more general mandate.

Main topics addressed by the course included:

- Indigeneity in Africa: Indigenous Peoples' rights and the African regional human rights system;
- Sustainable development and Indigenous Peoples' rights;
- Policy and practice of African states on Indigenous Peoples'

rights: The Ogiek case in Kenya;
- The plight of the Maasai Indigenous people in Loliondo and Ngorongoro, Tanzania;
- The tension between business enterprises and livelihoods of Indigenous Peoples in the Congo basin;
- Experiences of rights activism by Indigenous Peoples, experiences from South Africa (Khomani San);
- UN instruments and mechanisms on the rights of Indigenous Peoples; and
- Free, Prior and Informed Consent (FPIC) vis-à-vis Indigenous Peoples (extractive industries, infrastructure and energy projects and international banks).

Additionally, IWGIA presented its yearbook *The Indigenous World 2022* and course participants made country presentations on the issues discussed throughout the week. Selected experts working on the issue of Indigenous Peoples as well as WGIPM members served as resource persons and presenters at the course.

Notes and references

1. African Commission on Human and Peoples' Rights. "455 Resolution on the Renewal of the Mandate, Appointment of the Chairperson, Reconstitution and Expansion of Mandate of the Working Group on Indigenous Populations/Communities, in Africa - ACHPR/Res. 455 (LXVI) 2020." 7 August 2020, https://www.achpr.org/sessions/resolutions?id=486
2. For more information on this subject see: Couillard, Valérie., and Jérémie Gilbert. The Working Group on Indigenous Populations/Communities in Africa: Celebrating 20 years of Indigenous leadership, standard setting and sensitization. Copenhagen: IWGIA, 2022, https://www.iwgia.org/en/resources/publications/4841-the-working-group-on-indigenous-populations-communities-in-africa-report-20-years-iwgia.html
3. African Commission on Human and Peoples' Rights. Resolution on the Renewal Mandate, appointment of the Chairperson and Reconstitution of the Working Group on Indigenous Population/Communities and Minorities in Africa – ACHPR/Res.533 (LXXII) 2022, https://achpr.au.int/index.php/en/adopted-resolutions/533-resolution-renewal-mandate-appointment-chairperson
4. African Commission on Human and Peoples' Rights. 73rd Ordinary Session of the African Commission on Human and Peoples' Rights; Intersession Activity Report Of The Working Group on Indigenous Populations/Communities and Minorities in Africa. 2022, https://achpr.au.int/en/intersession-activity-reports/working-group-indigenous-populations-communities-minorities-africa

5. African Commission on Human and Peoples' Rights. Statement on joint letter of urgent appeal to The United Republic of Tanzania, 22 February 2022, https://www.achpr.org/pressrelease/detail?id=622
6. African Commission on Human and Peoples' Rights. Urgent call for cessation of the eviction of the Masai community in the Ngorongoro district in The United Republic of Tanzania, 10 October 2022, https://www.achpr.org/pressrelease/detail?id=639
7. African Commission on Human and Peoples' Rights. Urgent call for the cessation of multiple rights violation against the Benet Mosopisyek Community in the Republic of Uganda.10 October 2022, https://www.achpr.org/pressrelease/detail?id=660
8. African Commission on Human and Peoples' Rights. 489 Resolution on the Recognition and Protection of the Right of Participation, Governance and Use of Natural Resources by Indigenous and Local Population in Africa – ACHPR/Res. 489 (LXIX)2021, https://www.achpr.org/sessions/resolutions?id=520
9. African Commission on Human and Peoples' Rights. The African Commission looks forward to Kenya's cooperation for the implementation of the judgement of the African Court on Reparation in Application 006/2012, https://www.achpr.org/pressrelease/detail?id=644

Marianne Wiben Jensen *is working as senior advisor for IWGIA and is the coordinator of IWGIA's Land Defence and Defenders Programme. She has a Master's degree in Cultural Sociology from the University of Copenhagen in Denmark. She has been working on the issue of Indigenous Peoples' rights for many years, with a particular focus on the African continent. She served as an Expert member of the African Commission's Working Group on Indigenous Populations/Communities from its establishment in 2001 until 2020, and she is the coordinator of IWGIA's work related to African Commission processes.*

Business and Indigenous Peoples' Rights

The UN Human Rights Council established the Forum on Business and Human Rights[1] in 2011 to serve as a global platform to "discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights".[2] The Forum is led and chaired by the Working Group on Business and Human Rights.[3]

This Forum is the world's largest annual meeting on business and human rights with more than 1,500 participants, including representatives from governments, business, civil society organizations, Indigenous Peoples' organizations, UN agencies, national human rights institutions, academic institutions, etc.

The Forum provides a unique opportunity to network, exchange experiences and learn from the many initiatives aimed at promoting respect for human rights on the part of businesses.

11th session of the Forum on Business and Human Rights

This session took place at the United Nations (UN) in Palais des Nations in Geneva, Switzerland, on 28, 29 and 30 November 2022.

The session provided an excellent opportunity for all participants to discuss the implementation of the second decade of the Guiding Principles on Business and Human Rights. The central theme of this year's session was a stocktake of efforts to ensure accountability and access to redress, focusing on how the implementation of the Guiding Principles can be accelerated from the perspective of rights-holders.

After two years of virtual sessions due to the COVID-19 pandemic,

the 2022 Forum session took a hybrid format, both virtual and face-to-face. Around 50 Indigenous representatives from different regions of the world actively participated in the work of this session.

Opening session: the statement of the Global Indigenous Peoples' Caucus

During the opening session, the Chair, Fernanda Hopenhaym, emphasized that the work of environmental and human rights defenders continued to be a great challenge and that any attack on them was unacceptable. She also noted that greater efforts were required by all parties if real progress was to be achieved in implementing the Guiding Principles. The roadmap for the next decade, drawn up by the Working Group on Business and Human Rights, focuses on effective implementation of the Guiding Principles, for which it was noted that it would be necessary to adopt binding measures at the domestic and international levels.

Implementation gaps and challenges undoubtedly remain the key issue. The Working Group has called on companies and States to develop tools for implementation of the Guiding Principles, and to promote a dialogue between the different stakeholders in order to advance the implementation process. The Chair concluded her speech by saying that the Forum was a safe space, without exclusion, and that she hoped that there would be no impediment to all participants being able to return to their countries without suffering reprisals.

During the opening session, Yana Tannagasheva, an Indigenous member of the Shor people of Siberia (Russia), also read out the declaration of the Global Indigenous Peoples' Caucus. In this statement she stressed, "While the decade of implementation of the Guiding Principles on Business and Human Rights (UNGPs) has contributed to increased awareness and attention on the rights and concerns of Indigenous Peoples in relation to business, more decisive action is urgently needed from States and businesses, especially at the national and local levels, for the implementation of the three pillars of the UNGPs in order to realize the rights and well-being of Indigenous Peoples."

In this statement, Indigenous Peoples pointed out that corporate activities on their territories have been and continue to be the cause of forced displacement, and the destruction of their ways of life, their In-

digenous food systems, their cultural heritage and sacred sites, harming their governance systems and the resilience of their communities, among other things. They also warned that they continue to suffer from massive environmental devastation of their territories, including air and water pollution, toxic waste, loss of biodiversity, degradation of their lands, forests and other resources. Indigenous Peoples fear that this will now continue in the name of economic recovery following the COVID-19 pandemic, as well as in relation to climate change mitigation actions and the energy transition if their rights to land, territories and resources are not recognized and fully protected.

The statement also explained that, in defending their lands and resources, Indigenous Peoples continue to be subjected to violent attacks, criminalization, threats and serious human rights violations such as murders, arbitrary arrests and detentions, violence against Indigenous women and girls, and torture, among other things. The strong message from the Indigenous Peoples was that these practices must end.

In addition, the Declaration of the Global Indigenous Peoples' Caucus focused on the need to establish effective corporate accountability mechanisms, ensure the meaningful participation of Indigenous Peoples and include their collective rights in National Action Plans (NAPs).

The active participation of Indigenous Peoples from the different regions of the world and their inclusion on most of the panels organized by the Office of the High Commissioner for Human Rights (OHCHR) was notable in this 11th session of the Forum. During the different panels, the representatives of Indigenous Peoples specifically denounced the siege conditions and criminalization being suffered by defenders of the rights of Indigenous Peoples at the hands of corporate entities, in complicity with the States. They also denounced the impacts of mining companies on their territories, the continued lack of consultation in relation to extractive projects on their territories, the camouflaging of the green economy by which States capture donations and loans to finance programmes that negatively affect them, for example, by declaring protected areas without informing or consulting the rights-holders of those territories.

For their part, the States in attendance at the Forum continued to state their commitment to human rights in the area of business activities. Some States made specific references to the NAPs they have al-

ready developed in relation to implementing the Guiding Principles on Business and Human Rights. On the issue of defending environmental rights and the situation of environmental defenders, special mention was made of the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean,[4] better known as the Escazú Agreement, which is an international treaty signed by 25 countries and ratified by 14 countries in Latin America and the Caribbean regarding protocols for protection of the environment. It nevertheless remains a perennially challenging issue primarily due to gaps in the implementation of legal norms, whether domestic or international by nature. Among the best practices presented, the European Union reported that it was working on a binding law on due diligence in relation to corporate actions and stressed that "it is time to move towards binding legislative measures that oblige companies to comply with their responsibilities".

During the last session of the Forum, on 30 November, a panel entitled "Ending the Criminalization of Indigenous Peoples' Rights Defenders: the Way Forward" was held.[5] This official panel was organized by the Working Group on Business and Human Rights, Indigenous Peoples Rights International (IPRI), Forest Peoples Programme (FPP), Asia Indigenous Peoples Pact (AIPP) and the International Work Group for Indigenous Affairs (IWGIA).

During the session, panellists highlighted the challenges faced by Indigenous Peoples in defending their rights from corporate-related abuses. Emerging good practices were shared to prevent and eradicate attacks, criminalization and other threats faced in the context of corporate activities, and opportunities for cooperation between Indigenous Peoples' rights defenders, States and companies were identified to facilitate the adoption and implementation of the Guiding Principles.

Most of the speakers' statements encouraged private companies and States to respect human rights, emphasizing that a country's economic growth must be framed within the context of respect for human rights, and that they cannot continue to resort to strategies of siege, defamation and violence to silence the voices of those working to defend human rights, environmental rights, diversity/gender rights and Indigenous rights in the context of business activities. As was to be expected, both the companies and the government representatives who participated expressed their commitment to human rights, despite the

fact that, in many cases, the reality in which most of the world's Indigenous Peoples live is unfortunately very different. Nevertheless, it must be recognized that good practices and initiatives to respect human rights were also presented by some companies and governments. One such example was the presentation of a law approved by the German government, which came into force in January 2023, obliging all private companies in the country to fully respect and implement the Guiding Principles on Business and Human Rights.

Closing of the session: the final statement of the Global Indigenous Peoples' Caucus

As at the opening session, the Global Indigenous Peoples' Caucus had the opportunity to make a statement at the closing session on behalf of the 50 Indigenous organizations present at the Forum. Benito Calixto, an Indigenous Peruvian, was designated as their spokesperson. In his statement he said: "As we have heard over the past three days, human rights defenders, including Indigenous defenders, suffer intimidation, criminalization and all kinds of violence, including murder and forced displacement, when they defend their fundamental rights and their lands and territories from corporate operations. States have adopted legislation to protect businesses and investments that are not in line with their human rights obligations. In some cases, security forces are deployed in our territories to protect investments, and this only increases the violence and human rights violations. When States fail in their duty to protect and companies ignore their responsibility to respect, strong accountability and grievance mechanisms are needed, with clear parameters on access to information, access to justice in different jurisdictions, and clear processes for fair redress when violations of Indigenous rights have occurred." In turn, he recalled that the Working Group on Business and Human Rights, treaty bodies and other UN human rights mechanisms have made numerous recommendations calling on States to protect the rights of Indigenous Peoples to self-determination, their lands and waters, their cultural heritage and the obligation to obtain the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples in the context of corporate operations. He also pointed out that: "There are rulings from regional and national courts

and resolutions from regional parliaments. But the situation in the territories does not change."

In this speech, the Global Indigenous Peoples' Caucus expressed its solidarity with Expert Mechanism on the Rights of Indigenous Peoples' member, Anexa Alfred Cunningham, who has been prevented from returning to her country by the Nicaraguan government. The government took this step following Anexa's participation in the 15th session of the Expert Mechanism on the Rights of Indigenous Peoples, which took place in Geneva in July 2022.

The Indigenous Peoples' statement was unanimously endorsed by all participants in this closing session of the 11th session of the Working Group on Business and Human Rights.

Notes and references

1. United Nations Forum on Business and Human Rights | OHCHR. See https://www.ohchr.org/en/hrc-subsidiary-bodies/united-nations-forum-business-and-human-rights
2. OHCHR. *Guiding Principles on Business and Human Rights*. New York and Geneva: OHCHR, 2011. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
3. Working Group on Business and Human Rights: OHCHR. See https://www.ohchr.org/en/special-procedures/wg-business
4. ECLAC. *Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean*. ECLAC, 2022. Available at: https://www.cepal.org/en/escazuagreement.
5. United Nations Forum on Business and Human Rights. "Session: Ending the Criminalization of Indigenous Human Rights Defenders: The Way Forward". Geneva: 29 November 2022. Available at: https://static.sched.com/hosted_files/2022unforumbhr/1d/Sesion%20sobre%20criminalizacion%20de%20pueblos%20indigenas_Foro%20Anual%202022.pdf

Larry Salomon P *is a Mayangna from Nicaragua. He is a lawyer and notary public, a defender of Indigenous rights with a focus on Nicaragua and a university lecturer. He is an expert on Indigenous Peoples' human rights and is a former fellow of the Indigenous Fellowship Programme of the OHCHR and the University of Deusto.*

Convention on Biological Diversity (CBD)

The Convention on Biological Diversity (CBD) is an international treaty under the United Nations (UN), adopted in 1992. The Convention has three objectives: to conserve biodiversity, promote its sustainable use, and ensure the equitable sharing of the benefits arising from its utilisation (Art. 1).

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 10th meeting of the Conference of the Parties (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, none of which were met.

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 interventions. The IIFB has managed to get many of the Convention's programmes of work to consider Indigenous Peoples' traditional knowledge, as well as their customary use of biodiversity and effective participation. The IIFB has also been ac-

tive in the negotiations regarding access to genetic resources in order to defend the fundamental rights of Indigenous Peoples that should be included therein.

Adoption of the Kunming-Montreal Global Biodiversity Framework at COP 15

After four years of difficult negotiations, a global biodiversity strategy to guide global action to 2050 was approved in the early morning of 20 December 2022. The agreement is called the Kunming-Montreal Global Biodiversity Framework (KMGBF).[1] Earlier in the year, three meetings of the Open-ended Working Group on the post-2020 Global Biodiversity Framework (OEWG) took place – in March, June and December, held in Geneva, Nairobi and Montreal, respectively –, finally culminating in the 15th Conference of Parties (COP 15) of the CBD in Montreal. Decisions were also adopted on the Planning, Monitoring, Reporting and Review of the KMGBF,[2] the Monitoring Framework and Indicators to track its implementation[3] as well as the development of a new programme of work and institutional arrangements on Article 8(j) and other provisions of the Convention related to Indigenous Peoples and local communities.[4]

A Nature and Culture Summit,[5] now a regular feature of the CBD COPs, had high-level panels and roundtable dialogues on strengthening links between nature and culture, local examples of biocultural diversity, knowledge systems and the values of nature and efforts on monitoring and indicators. Films highlighting stories from Local Biodiversity Outlooks were shown throughout the event and at numerous side events organised by IIFB and collaborating partners.[6]

Policy advocacy work of the IIFB

Accompanying these negotiations were regular, often weekly, preparatory meetings of the IIFB,[7] drafting, jointly discussing, and agreeing on policy proposals for submission during the formal and informal meet-

ings. IIFB's closing statement lauded the inclusion of significant language on the human rights, roles and contributions of Indigenous Peoples and local communities in the goals and targets of the KMGBF, and the importance of moving swiftly towards its implementation.

> *The urgency of the environmental crisis does not end with the signing of the GBF. We must work quickly and efficiently for its implementation. From the depths of our territories, our ancestors and authorities are urging serious actions to protect our Mother Earth and all life, together with us.*
>
> *The Post-2020 GBF recognizes the integrity and distinct nature of the lands, territories and resources of IPLCs and our full and equitable participation in decision-making towards its implementation. IIFB will be your partners in applying the adopted monitoring and reporting framework through community-based monitoring. Robust indicators for monitoring contributions of IPLCs, will provide a fuller picture of post-2020 GBF implementation, also applying indigenous concepts and local languages,.*
>
> *We have spoken and you have heard us, let us now put those words into action.*[8]

Rights of Indigenous Peoples and local communities in the goals and targets of the KMGBF

Indigenous Peoples' rights are explicitly mentioned in two paragraphs of the COP decision adopting the KMGB, in paragraph 8 on considerations for implementation; in one of the four goals (Goal C); and in seven of the 23 targets (targets 1, 3, 5, 9, 19, 21, and 22), including:

- Rights of Indigenous Peoples and local communities to lands, territories and resources;
- Recognition of the values, knowledge and contributions of Indigenous Peoples and local communities;

- Equitable governance and full and effective participation in decision-making;
- Protection and promotion of customary sustainable use;
- FPIC [Free, Prior and Informed Consent] in general (when considering implementation) and specifically in relation to access and benefit-sharing and use of traditional knowledge ;
- Access to justice and protection of environmental human rights defenders; and
- Rights of women and girls in the context of gender equity.

Other parts of and targets in the framework are also highly relevant (Targets 4, 13, 15, 17, 23) to Indigenous Peoples and local communities even when not explicitly mentioned. Other positive text for Indigenous Peoples and local communities is included in the KMGBF's sections on communication, education, awareness, and uptake.

Relevant language on the rights of Indigenous Peoples and local communities in the KMGBF (highlights added by author)

4. Urges Parties and other Governments, with the support of inter-governmental and other organizations, as appropriate, to implement the Kunming-Montreal Global Biodiversity Framework, and, in particular, to enable participation at all levels of government, **with a view to fostering the full and effective contributions of women, youth, indigenous peoples and local communities**, civil society organizations, the private and financial sectors, and stakeholders from all other sectors, to that end;

6. *Reaffirms* its expectation that Parties and other Governments will ensure that the rights of indigenous peoples and local communities are respected and given effect to in the implementation of the Kunming-Montreal Global Biodiversity Framework;

Section C.
Considerations for the implementation of the Kunming-Montreal Global Biodiversity Framework

Contribution and rights of indigenous peoples and local communities

8. The framework acknowledges the important roles and contributions of indigenous peoples and local communities as custodians of biodiversity and partners in its conservation, restoration and sustainable use. The framework's implementation must ensure that the rights, knowledge, including traditional knowledge associated with biodiversity, innovations, worldviews, values and practices of indigenous peoples and local communities are respected, documented, and preserved with their **Free, Prior and Informed Consent**, including through their **full and effective participation in decision-making**, in accordance with relevant national legislation, **international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, and human rights law**. In this regard, nothing in this framework may be construed as diminishing or extinguishing the rights that indigenous peoples currently have or may acquire in the future.

Section G. Global Goals for 2050 Goal C

The monetary and non-monetary benefits from the utilization of genetic resources, and digital sequence information on genetic resources, and of traditional knowledge associated with genetic resources, as applicable, are shared fairly and equitably, including, as appropriate with **indigenous peoples and local communities**, and substantially increased by 2050, **while ensuring traditional knowledge associated with genetic resources is appropriately protected**, thereby contributing to the conservation and sustainable use of biodiversity, in accordance with internationally agreed access and benefit-sharing instruments.

Section H. Global Targets for 2030

1. Reducing threats to biodiversity

TARGET 1 - Biodiversity-inclusive Spatial Planning

Ensure that all areas are under participatory, integrated and biodiversity-inclusive spatial planning and/or effective management processes addressing land and sea use change, to bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030, **while respecting the rights of indigenous peoples and local communities.**

TARGET 3 – Area-based Conservation

Ensure and enable that by 2030 at least 30% of terrestrial and inland water, and of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem functions and services, are effectively conserved and managed through ecologically representative, well-connected and **equitably governed** systems of protected areas and other effective area-based conservation measures, **recognizing indigenous and traditional territories**, where applicable, and integrated into wider landscapes, seascapes and the ocean, while ensuring that any sustainable use, where appropriate in such areas, is fully consistent with conservation outcomes, **recognizing and respecting the rights of indigenous peoples and local communities, including over their traditional territories.**

TARGET 5 – Addressing Overexploitation

Ensure that the use, harvesting and trade of wild species is sustainable, safe and legal, preventing overexploitation, minimizing impacts on non-target species and ecosystems, and reducing the risk of pathogen spill-over, applying the ecosystem approach, **while respecting and protecting customary sustainable use by indigenous peoples and local communities.**

2. Meeting people's needs through sustainable use and benefit-sharing

TARGET 9 – Sustainable Use of Wild Species
Ensure that the management and use of wild species are sustainable, thereby providing social, economic and environmental benefits for people, especially those in vulnerable situations and those most dependent on biodiversity, including through sustainable biodiversity-based activities, products and services that enhance biodiversity, and protecting and encouraging customary sustainable use by indigenous peoples and local communities.

3. Tools and solutions for implementation and mainstreaming

TARGET 19 – Financial Resources
Substantially and progressively increase the level of financial resources from all sources, in an effective, timely and easily accessible manner, including domestic, international, public and private resources, in accordance with Article 20 of the Convention, to implement national biodiversity strategies and action plans, by 2030 mobilizing at least 200 billion United States dollars per year, including by:
(f) Enhancing the role of collective actions, **including by indigenous peoples and local communities, Mother Earth-centric actions and non-market-based approaches** including community-based natural resource management and civil society cooperation and solidarity aimed at the conservation of biodiversity;

TARGET 21 – Biodiversity-inclusive decision-making
Ensure that the best available data, information and knowledge, are accessible to decision makers, practitioners and the public to guide effective and equitable governance, inte-

grated and participatory management of biodiversity, and to strengthen communication, awareness-raising, education, monitoring, research and knowledge management and, also in this context, **traditional knowledge, innovations, practices and technologies of indigenous peoples and local communities should only be accessed with their Free, Prior and Informed Consent,** in accordance with national legislation.

TARGET 22 - Rights
Ensure the **full, equitable, inclusive, effective and gender-responsive representation and participation in decision-making,** and **access to justice** and information related to biodiversity by **indigenous peoples and local communities, respecting their cultures and their rights over lands, territories, resources, and traditional knowledge, as well as by women and girls, children and youth, and persons with disabilities and ensure the full protection of environmental human rights defenders.**

KMGBF: weaknesses and risks

Beyond the highlighted elements above, there are underlying risks embedded in the overall framework, including weaknesses in addressing the direct and indirect drivers of the biodiversity crisis; regulating the impacts of business on biodiversity and people in Target 15; and the inclusion of biodiversity offsets and credits in Target 19.

COP 15 also failed to establish a dedicated Global Biodiversity Fund, including direct access mechanisms for Indigenous Peoples and local communities. Civil society organisations expressed serious concerns at the growing presence and influence of business interests and the potential for greenwashing and corporate capture in the process of implementation.

Monitoring and indicators and the battle for interpretation and implementation

The IIFB established a permanent Working Group on Indicators at the beginning of 2022 to ensure robust monitoring of the KMGBF, including the adoption of relevant indicators for Indigenous Peoples and local communities. COP Decision XV/5 welcomed community-based monitoring and information systems (CBMIS) and citizen science as contributing to the monitoring framework, including indicators on traditional occupations, Sustainable Development Goal (SDG) Indicator 1.4.2 on land tenure security, cultural vitality and linguistic diversity.[9] Further indicator work in 2023-24 is tasked to a technical expert group in order to address outstanding gaps (including on many of the indicators related to human rights) with the objective of finalising the monitoring framework at COP 16 in 2024.

Effective implementation of the KMGBF will require the full and effective participation of Indigenous Peoples and local communities in forthcoming processes to update National Biodiversity Strategies and Action Plans (NBSAP) and in establishing mechanisms for national and local monitoring, reporting and reviewing implementation. Reviewing and reforming national legal and policy frameworks to give effect to the rights of Indigenous Peoples and local communities on conservation, sustainable use of biodiversity, and access and benefit-sharing, as well as direct access to finances, will be important tasks arising from COP 15 decisions.

The Strategic Plan for Biodiversity and Aichi Biodiversity Targets (2011-2020) was remarkable for its non-implementation.[10, 11] With the global crises of biodiversity loss, climate change, pollution and social inequality deepening and accelerating with each passing day, will the KMGBF make a difference towards transformational change?

Public statements and analysis of COP 15 outcomes released by Indigenous Peoples organisations,[12, 13] non-governmental human rights organisations[14, 15] and civil society networks[16, 17] show different assessments about what was accomplished in Montreal and the challenges ahead. These range from cautious optimism to deep scepticism about the impacts of inter-governmental agreements, which are shackled within the structural dead-ends of mainstream economic and political

systems. Despite these constraints, representatives of Indigenous Peoples and local communities put in enormous work and effort to push forward legal and policy proposals aimed at reforming egregious practices by States and corporations and safeguarding their communities from their worst impacts.

The final outcomes are still to emerge, largely from the collective actions to be taken by Indigenous Peoples and local communities as they continue to address the crises of culture and nature in their homelands and in the policy processes of their choosing. The KMGBF may serve as a tool to bolster their self-determined efforts while holding States and corporations accountable for the implementation of jointly negotiated and agreed global commitments.

Notes and references

1. UN Environment Programme. "Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity. 15/4. Kunming-Montreal Global Biodiversity Framework." 7-9 December 2022, https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf
2. UN Environment Programme. "Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity. 15/6. Mechanisms for planning, monitoring, reporting and review." 7-9 December 2022, https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-06-en.pdf
3. UN Environment Programme. "Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity. 15/5. Monitoring framework for the Kunming-Montreal Global Biodiversity Framework." 7-9 December 2022, https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-05-en.pdf
4. UN Environment Programme. "Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity. 15/10. Development of a new programme of work and institutional arrangements on Article 8(j) and other provisions of the Convention related to indigenous peoples and local communities." 7-9 December 2022, https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-10-en.pdf
5. Convention on Biological Diversity. "Nature and Culture Summit – 11 and 12 December 2022 – COP 15." https://www.cbd.int/article/cop15-nature-culture-summit
6. Convention on Biological Diversity. "Local Biodiversity Outlooks 2." Local Biodiversity Outlooks 2 | Convention on Biological Diversity (cbd.int)
7. International Indigenous Forum on Biodiversity (IIFB), https://iifb-indigenous.org
8. Mathew, Alice. "Indigenous Peoples and Local Communities celebrate COP15 deal on nature, and welcome the opportunity of working together with states to implement the framework." International Indigenous Forum on Biodiversity (IIFB), https://iifb-indigenous.org/2022/12/19/indigenous-peoples-and-local-communities-celebrate-cop15-deal-on-nature-and-welcome-the-opportunity-

of-working-together-with-states-to-implement-the-framework/
9. UN Environment Programme. "Decision Adopted By The Conference Of The Parties To The Convention On Biological Diversity. 15/5. Monitoring framework for the Kunming-Montreal Global Biodiversity Framework."
10. Convention on Biological Diversity. "Global Biodiversity Outlook 5" https://www.cbd.int/gbo5
11. Local Biodiversity Outlooks (Second Edition), https://localbiodiversityoutlooks.net/
12. Lakpa Nuri Sherpa (AIPP). "Fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity (Part Two). Statement of IIFB." December 2022, https://iifb-indigenous.org/2022/12/19/final-statement-of-iifb-cop15-191222/
13. "Harmful Instrument, False Solutions, and Private Interests Take Over Global Biodiversity Summit." Indigenous Environmental Network (IEN), December 2022, https://www.ienearth.org/harmful-instruments-false-solutions-and-private-interests-take-over-global-biodiversity-summit/
14. "Biodiversity: COP15 biodiversity deal a 'missed opportunity' to protect Indigenous peoples' rights." Amnesty International, 19 December 2022, https://www.amnesty.org/en/latest/news/2022/12/biodiversity-cop15-biodiversity-deal-a-missed-opportunity-to-protect-indigenous-peoples-rights/
15. "COP 15: only a human rights-based approach will guarantee the newly agreed biodiversity targets, says Minority Rights Group International." Minority Rights Group International, 20 December 2022, https://minorityrights.org/2022/12/20/cop15/
16. "TWN Info Service on Biodiversity and Traditional Knowledge." Third World Network Berhad, 20 December 2022, https://www.twn.my/title2/biotk/2022/btk221204.htm
17. Lovera, Simone. "The Good, the Bad and the Ugly: A Historical Deal for Biodiversity." Global Forest Coalition, 29 December 2022, https://globalforestcoalition.org/the-good-the-bad-and-the-ugly-a-historical-deal-for-biodiversity/

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*

Defending the Rights of Indigenous Women

The strategy adopted by the Indigenous women's movement to confront the structural inequalities they face in all countries of the world has been to walk together, influencing strategic spaces from the local to the global both socially and politically. This has meant having a presence in the community assemblies on their territories, reaching out to national spaces with proposals for governments and also contributing to international spaces such as the UN.

On the basis of this strategy, Indigenous women realized that if the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) were to produce a specific General Recommendation in their regard this would be a milestone in the discrimination and violence they suffer. A recommendation would require UN member states to implement policies and programmes and ensure budgets focused on the effective protection of their rights.

Indigenous Women: Walking together on the Path of Change, Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) for Indigenous Women and Girls

The path taken by the Indigenous women's movement in getting CEDAW to develop a specific recommendation on Indigenous women and girls reached the global stage in 2004 when Indigenous women succeeded in getting the Permanent Forum on Indigenous Issues to adopt a specific recommendation requesting that CEDAW pay special attention to Indigenous women's issues.[1]

Collective construction from the local to the global, 2013 to 2021

Over the course of these eight years, different collective actions were carried out in the seven socio-cultural regions of the world to inform and gather input from the Indigenous women's movement.

An International Meeting for the Analysis and Deepening of CEDAW was held in 2013. It was at this meeting that the initiative for a General Recommendation on Indigenous Women was approved. In 2015, the International Indigenous Women's Forum (FIMI) conducted a global consultation that resulted in a policy position[2] and a formal letter to the CEDAW Committee experts.

In addition, the IXPOP Collective[3] submitted a formal request to the CEDAW Committee to draft a General Recommendation. This proposal was also disseminated during the International Political, Cultural and Sports Meeting of Women in Struggle in Chiapas, Mexico.

In Ecuador, the recommendation was presented during a course on Women's Human Rights in Latin America and the Caribbean, organized by the Institute of Higher National Studies and the Women's Human Rights Education Institute (WHRI).

The Regional Meeting of the Americas and the Continental Network of Indigenous Women of the Americas (ECMIA) held regional consultations to gather the priorities of Indigenous women in the Americas.

An expert meeting on Indigenous women's rights, organized by Madre, FIMI, the Centre for Women's Global Leadership (CWGL) and WHRI, was held in 2019. In the same year, the Permanent Forum again recommended that CEDAW produce a specific General Recommendation on Indigenous Women.[4]

Through the Asian Indigenous Women's Network (AIWN) and the African Indigenous Women's Organization (AIWO) regional networks, advocacy activities were carried out at regional Indigenous women's meetings.

The International Indigenous Women's Forum and the organization Madre launched the campaign "CEDAW for Indigenous Girls and Women: Let's walk together for change"[5] with the aim of providing materials on the process and inviting input to the General Recommendation.

In addition, ECMIA submitted an input document to the CEDAW Committee to inform the development of the General Recommenda-

tion on Indigenous Women and Girls. AIWO organized the virtual event "Indigenous Women of Africa and CEDAW".

Indigenous women leaders participated in the Equality Generation Forums held in Mexico and France in order to raise the profile of the Indigenous women's agenda, including the General Recommendation on Indigenous Women and Girls. In addition, the declaration adopted by the Second World Conference of Indigenous Women (2WCIW) noted the need for a CEDAW General Recommendation on Indigenous Women and Girls.

The year in which Indigenous women's advocacy paid off

Indigenous women reached 2022 having survived the COVID-19 pandemic and the adversities of a globalized world. Prior to CEDAW's publication of the recommendation, they began their collective advocacy actions at the Commission on the Status of Women 66 (CSW66) where the side event "Contributions to the Upcoming CEDAW General Recommendation on Indigenous Women and Girls" was held, co-sponsored by the Mexican government's National Women's Institute, FIMI and UN Women.

Regional meetings were held in the Americas, Africa, Asia, the Arctic and the Pacific in May. The first was held in Mexico between experts from Abya Yala, members of CEDAW, UN Women, UNESCO and government representatives.

In June, a commission of 30 global Indigenous women leaders participated in the 82nd Session of CEDAW in Geneva where they had an opportunity to discuss with the CEDAW Committee of Experts, and at which a first reading of draft General Recommendation 39 (GR39), including the contributions of Indigenous women, took place.

After a long process of negotiation, drafting and consultation, the CEDAW Committee adopted the landmark GR39 on 26 October in Geneva, Switzerland.

General Recommendation 39, CEDAW/C/GC/39 (GR39),[6] promotes the voices of Indigenous women and girls as agents of change and leaders both inside and outside their communities. The text addresses the different forms of intersectional discrimination frequently commit-

ted by State and non-state actors, as well as Indigenous women's key role as leaders, knowledge holders and transformers of culture within their families, villages and communities.

Once adopted, GR39 forms part of the Convention and is thus binding on States Parties. This means that States will have to give an account of the concrete measures implemented in response to the provisions of the General Recommendation on the rights of Indigenous women and girls in their periodic reports.

Indigenous women's voices, building change from the local to the global

GR39 gives Indigenous women hope that laws and agreements will be upheld, and that better living conditions can be guaranteed for Indigenous young women and girls. It was developed through consultation and dialogue with Indigenous women's organizations from across almost the whole world, and this enriches this strategic tool by broadening the vision of the Convention on the Elimination of All Forms of Discrimination against Women.

In the context of CSW66, Indigenous activist Tarcila Rivera Zea emphasized that GR39 responds to a global scenario and that Indigenous women are proud to have combined their collective efforts to achieve it.

She recalled that: "We initiated the process for the General Recommendation in 2004 during the Permanent Forum on Indigenous Issues considering that, as women and girls, we have specific features due to our ethnic origin and the multidimensional nature of violence." She went on to emphasize that: "We hope this General Recommendation will be ethically, morally, culturally and politically binding on member states and that women with disabilities will be included in the recommendation, as well as women in all our diversity."

It has taken 15 years for the adoption of GR39 to become a reality and for it to be recognized that Indigenous women and girls have specific characteristics by virtue of their cultural and ethnic background. The Indigenous women's movement recognizes that the text of GR39 highlights the multidimensional nature of the discrimination they suffer.

Indigenous women hope that GR39 will enable governments to set

a precedent in their understanding of the collective rights of Indigenous women when it comes to exercising justice or drafting public policies to eradicate discrimination in all its dimensions.

Sara Mux Mux, a Kaqchikel Maya from Guatemala, explained that this recommendation will be a key instrument because it will contribute to the intercultural and decolonizing interpretation of human rights, and noted: "The States will be held accountable and this will allow us to bring about change in the face of the inequality and the invisibility of Indigenous women." In addition, it will provide important elements for fulfilling the obligations of States Parties in the face of discrimination, racism and violence. GR39 alludes to the subordination of Indigenous women, and this responds to an oppression that finds its roots in a structural colonization that continues to be perpetuated.

Faith Nataya Saningo of the Maasai people of Kenya noted that this GR implies access to justice for different communities, "the recognition of Indigenous Peoples and the implementation of concrete actions that safeguard our rights" being necessary. CEDAW's GR39 implies justice and will help to raise the profile of the situations being experienced by Indigenous Peoples.

According to Eleanor Dictaan-Bang-oa of the Philippines, this recommendation is important because it relates to recognizing Indigenous women and girls. "Political will is required for its implementation. We are talking about violence, and it often happens in the name of tradition," Eleanor explained.

Teresa Zapeta Mendoza, a K'iche Maya from Guatemala, recognized the valuable alliances established to achieve such a historic and strategic recommendation. She added that she hopes it will result in reparations for the colonialism and inequalities found in the seven regions of the world and affirmed: "(...) in FIMI we are continuing to build bridges because this is a path. Adoption has been just one stage, and we have empowered ourselves along the way, recognizing our capabilities. Now, our commitment is to monitor implementation and participate effectively and actively in the CEDAW sessions to make contexts and demands visible from the grassroots level."

In summary, GR39 guarantees rights to self-determination and autonomy; to the integrity of lands, territories and natural resources, culture, cosmovision and environment; the right to access justice; the

right to a life free from gender-based violence, including psychological, physical, sexual, economic, spiritual, political and environmental violence; the right to participate as leaders in political and community life and as human rights defenders; the right to health, guaranteeing recognition of Indigenous health systems, knowledge and practices; the right to food and water security, and to the survival of Indigenous Peoples and cultural integrity; and to high-quality and culturally-sensitive education.

The process followed by the Indigenous women's movement in achieving CEDAW's GR39 is an example of how to build consultations and consensus around the drafting of a recommendation that reflects the reality and voices of Indigenous women globally. It is also a clear example of how to collectively mobilize in strategic spaces with governments, international human rights institutions, civil society organizations and the donor community.

"Wodum" Global Observatory for Indigenous Women against Violence, a tool for advancing Indigenous women's rights[7]

In this long path of struggle, through advocacy and visibility, the collective voice of Indigenous women has brought proposals for change and transformation of the structural inequalities and discrimination exercised against Indigenous Peoples, and against Indigenous women and girls, in particular.

The Observatory for Indigenous Women against Violence is one initiative that has been heavily promoted since 2010 as a global tool with which to raise the profile of the multiple forms of violence. From a holistic point of view, it conducts in-depth analyses of the historical and current causes and their impact on the lives of women and girls. It is a platform that provides relevant, accessible and useful information for follow-up, monitoring and advocacy actions in relation to compliance with international agreements signed by States in order to bring about a life free from violence for Indigenous women and girls.

One of the gaps constantly faced is the lack of statistical and qualitative data broken down by gender, ethnicity and generation. This

is why Indigenous women are working on their own system of case records, reports and studies based on intercultural research, the methodology for which requires a focus on decolonization, resistance and rebellion on the part of Indigenous Peoples and women. This work also invites an evaluative analysis of how much and how States comply with agreements signed on an international level and their implementation at different levels in order to influence decision-making spaces and to follow up and monitor the realization of our rights.

CEDAW's GR39 is undoubtedly an essential instrument in the search for better living conditions for Indigenous women and girls due to its broad recognition of their individual and collective rights and its binding nature, as well as the call to States, institutions and wider society to deconstruct the colonial, racist and sexist vision that is still prevalent today. The power of information that comes from the women's own voices on the problem of the violence they are suffering is essential to understanding and finding relevant and effective solutions.

The Observatory will, in this regard, continue to follow up and monitor compliance with GR39 as a key action in the fight against discrimination as a form of violence that has perpetuated exclusion and denied the rights of Indigenous women and girls around the world. This takes into account the fact that, unlike other international instruments, GR39 addresses violence from a holistic and multidimensional point of view.

According to Indigenous women’s experience of advocacy work in international forums, there is a need to move beyond the rhetoric and the statements, documenting actions taken and measures adopted, good practices and progress in combatting State violence, including initiatives developed by Indigenous women themselves and their organizations. In this context, the Observatory is intended to be a means and a tool through which to raise the visibility of this problem but also a way of identifying strategies to be followed and viable alternative solutions.

In light of GR39, the Indigenous women's networks across the seven regions of the world will use the resources produced as tools to influence States and wider society in order to propose changes, and make demands and proposals for public policies with decent budgets at all levels while exercising their rights to political participation and representation and continuing to connect and articulate the voices of women from the local to the global and vice versa.

Indigenous women are convinced that translating CEDAW's GR39

into substantive change in the lives of women and girls will involve enormous challenges and require real commitments from States Parties, institutions, UN agencies, the media, international cooperation, civil society, and the Indigenous Peoples and women, themselves, including Indigenous girls.

Notes and references

1. Permanent Forum on Indigenous Issues. "Report on the third session of the Permanent Forum on Indigenous Issues". 10 to 21 May 2004. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/384/68/PDF/N0438468.pdf?OpenElement
2. FIMI, ECMIA, CONAMI, AIWO, etc. "Posicionamiento global de mujeres indígenas para el Foro Generación Igualdad y más allá". Available at: https://fimi-iiwf.org/wp-content/uploads/2021/03/Global-Statement-GEF-and-Indigenous-Women-ESP.pdf
3. See https://ixpop.gt/
4. "Report on the 18th session of the Permanent Forum on Indigenous Issues". 22 April to 3 May 2019. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/144/83/PDF/N1914483.pdf?OpenElement
5. "CEDAW para las mujeres y niñas indígenas". Available at: https://www.madre.org/CEDAW4IWG-SP
6. OHCHR. "General recommendation No.39 (2022) on the rights of Indigenous women and girls". OHCHR, 26 October 2022. Available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigeneous
7. See https://observatoriomujerindigenas.fimi-iiwf.org/

*The **International Indigenous Women's Forum (IIWF/FIMI)** is a global network that brings together Indigenous women from seven socio-cultural regions. FIMI 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 EU (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 its influence within the territory of its Member States and its influence in international organisations, the EU also has a global impact, being 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 Indigenous Peoples' rights. Five EU Member States have ratified ILO Convention No 169[1] 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 regarding recognition of Indigenous Peoples' rights to a much more active involvement in ensuring the effectiveness of these rights in its policies.

Evolution of European legislation and recommendations relating to Indigenous Peoples

The involvement of the European Union in the protection of Indigenous Peoples' rights has grown and evolved considerably in recent years, particularly since 2017.[2]

The EU Action Plan on Human Rights and Democracy 2020-2024[3] provides strong references to Indigenous Peoples' rights and notably foresees: "Support[ing] Indigenous peoples by advocating for their participation in relevant human rights and development processes and by upholding the principle of Free, Prior and Informed Consent (FPIC) in all decisions affecting them."

In the context of the new EU Green Deal and its EU Biodiversity strategy for 2030,[4] new opportunities and actions were set up at the EU level to aid the protection, promotion, and respect of the rights of Indigenous Peoples worldwide. The European Commission proposes in its "Communication on the EU biodiversity strategy for 2030 - Bringing nature back into our lives" that the EU should ensure a principle of equality in "respect for the rights and the full and effective participation of Indigenous peoples and local communities". Moreover, the European Commission proposes that: "In all of its work, the EU will strengthen the links between biodiversity protection and human rights, gender, health, education, conflict sensitivity, the rights-based approach, land tenure and the role of Indigenous peoples and local communities."[5]

Members of the European Parliament (MEPs) are also increasingly involved in the defence of Indigenous Peoples' rights. Since the Parliament's Resolution on violations of the rights of Indigenous Peoples in the world (3 July 2018),[6] MEPs have become accustomed to involving Indigenous Peoples' representatives in their decision-making processes and ensuring the mainstreaming and transposition of their rights on a wide range of subjects. It is interesting to note that while Indigenous Peoples' rights have long been the almost exclusive concern of the DROI committee, many committees (AFET, DROI, DEVE, ENVI, LIBE, FEMM, INTA)[7] have now taken up these issues and are working to ensure their transposition into their area of competence.

On 26 September 2021, the Subcommittee on Human Rights held a hearing on Protecting Indigenous Peoples' Rights in Brazil and, in its

resolution of 17 February 2022[8] ("Human rights and democracy in the world – annual report 2021"), Parliament reiterated its commitment to the rights of Indigenous Peoples and is indignant in particular about:

> *(...) the fact that indigenous peoples continue to face widespread and systematic discrimination and persecution worldwide, including forced displacement, arbitrary arrests and the killing of human rights and land defenders; reiterates its call for the EU, its Member States and their partners in the international community to adopt all the necessary measures for the recognition, protection and promotion of the rights of indigenous peoples, including their language, lands, territories and resources, and the creation of a grievance mechanism to lodge complaints over violations and abuses; welcomes the work that civil society and NGOs are doing on these issues; refers to its appointment of a standing rapporteur on indigenous peoples within Parliament with the objective of monitoring the human rights situation of indigenous peoples; encourages countries to ratify the provisions of ILO Convention No 169 on Indigenous and Tribal Peoples; recommends that the EU and its Member States include references to indigenous peoples and the rights contained in the UN Declaration on the Rights of Indigenous Peoples in the relevant and emerging frameworks for due diligence.*[9]

On 13 September 2022, Parliament voted in favour of the proposed Deforestation Regulation.[10] This new law will ensure that companies do not sell products coming from worldwide deforested land in the EU. The new legislation includes products such as: livestock, cocoa, coffee, palm oil, soya and timber, including products which contain, have been fed with or have been made from these products (such as leather, chocolate and furniture).[11] During discussions, MEPs successfully added rubber, charcoal, printed paper products and a number of palm oil derivatives. MEPs also secured that companies will further have to verify compliance with the relevant legislation in the country of production, including on human rights, and that the rights

of the relevant Indigenous Peoples are respected. Parliament also secured a broader definition of forest degradation that includes the conversion of primary forest or naturally regenerating forest to forest plantations or other wooded land and the conversion of primary forest to planted forest.

Today, this involvement goes largely beyond supporting Indigenous Peoples' rights. Most of the EU's external policies include Indigenous Peoples' rights as a crosscutting issue through a rights-based approach to its development cooperation or by considering specific EU legislative measures that put Indigenous Peoples at the heart of deforestation, due diligence, conflict minerals, farm-to-fork strategies etc.

The forthcoming policy and legislative initiative on human rights and environmental due diligence, sustainable financial disclosure, and sustainable corporate[12, 13] reporting, as well as the strengthening of trade and sustainable development chapters in EU free trade agreements, will have an important impact on Indigenous Peoples' rights given the clear reference to the main international legal instruments related to these rights.

However, it should be emphasized that these legislative developments are being threatened by the current European context. The COVID-19 crisis, the current war in Ukraine and increases in the cost of living for European citizens, combined with a fear of the rise of the Far Right and populism in the next elections are all reasons invoked by Member States to stop or reduce the scope of this legislation. On 17 November 2022, EURACTIV[14] reported pressure from France, Italy, Spain, and Portugal to reduce the scope of the Corporate Sustainability Due Diligence Directive (CSDDD) to the supply chain of a company alone.

These pressures led the Council to make a proposal on 30 November 2022,[15] drastically reducing the obligations to protect human rights and largely exempting companies and their directors from their responsibilities. It is now Parliament's turn to react and protect the spirit of the original text. Its decision is expected in March 2023 but the attack on this legislation by certain Member States is being well conducted. Parliament is entering its last year of pre-election activity, which may reduce its mobilization capacity.

Conservation and a Human Rights-Based Approach (HRBA)

The EU is a member of the Convention on Biological Diversity (CBD) and party to the 30x30 target to bring at least 30% of the Earth's surface under conservation by 2030.

Increasing the size of protected areas without providing safeguards to protect the rights of Indigenous Peoples around the world could nevertheless result in serious human rights violations and cause dramatic social damage.

The EU has itself confronted this issue and was led last year to take the decision to suspend part of its funding to the World Wildlife Fund for Nature (WWF) due to violations of the human rights of Indigenous Peoples in the implementation of the project to create the Messok Dja protected area in Congo-Brazzaville.

On 30 June 2021, the EU adopted a staff working document "Applying the Human Rights-Based Approach to international partnerships",[16] which provides a HRBA methodology to guide all interventions under the "Neighbourhood, Development and International Cooperation instrument – Global Europe" (NDICI).[17]

This approach, based on the "do no harm" principle, requires EU partners, in particular its funds' recipients, to prevent the harmful results of their development, conservation and environmental protection interventions such as increased discrimination or violation of human rights.

Staff working documents are not legally binding on the EU but are binding on EU staff in their work. While the staff of the Commission working on human rights are aware of the rights of Indigenous Peoples and the issues that affect them, this is not necessarily the case for all the EU staff, or for all the partners of the EU. This staff working document should promote and ensure greater protection for the human rights of Indigenous Peoples in projects supported by the European Commission.

The EU has also announced that, of the 27 million euro allocated for the Global Gateway investment package on fair, accountable and inclusive trade and business to boost sustainability in global supply chains, it will allocate an additional 7 million euro to promote and protect the rights of Indigenous Peoples around the world. Additionally,

the EU announced that it would support projects to enable Indigenous communities to monitor and report human rights abuses and environmental damage, and to carry out fact-based advocacy with political and corporate actors at all levels. Indigenous Peoples will also receive EU support for their own initiatives to boost sustainable development.

The EU is a major player in conservation projects and its funding irrigates projects around the world. This strengthening of the obligation to respect the HRBA and this desire for direct collaboration with Indigenous Peoples are encouraging signs of a marked desire to prevent violations of the rights of Indigenous Peoples.

These developments have resulted in a fairly strong legislative framework but its implementation will be decisive. It will be important that representatives of civil society organizations, particularly those of Indigenous Peoples, involve the Commission and testify to the violations of their rights suffered and request sanctions in order to make this legal basis effective.

Notes and references

1. Denmark (1996), The Netherlands (1998), Spain (2007), Luxembourg (2018) and Germany (2021).
2. For more information on the EU legislative evolution related to Indigenous Peoples before the year 2023, please refer to: Rodriguez Fajardo, Amalia., and Mathias Wuidar. "The Indigenous World 2020: European Union Engagement with Indigenous Issues." In The Indigenous World 2020, edited by Dwayne Mamo,639-646, IWGIA, 2020, https://iwgia.org/en/european-union-engagement-with-indigenous-issues/3650-iw-2020-eu.html; Rodriguez Fajardo, Amalia., and Mathias Wuidar. "The Indigenous World 2021: European Union Engagement with Indigenous Issues." In The Indigenous World 2021, edited by Dwayne Mamo,677-682, IWGIA, 2021, https://iwgia.org/en/european-union-engagement-with-indigenous-issues/4266-iw-2021-european-union-engagement-with-indigenous-issues.html; Wuidar, Mathias. "The Indigenous World 2022: European Union Engagement with Indigenous Issues." In The Indigenous World 2022, edited by Dwayne Mamo, 684-690, IWGIA, 2022, https://iwgia.org/en/european-union-engagement-with-indigenous-issues/4698-iw-2022-european-union-engagement-with-indigenous-issues.html
3. European Commission. "Human rights and democracy in the EU – 2020-24 action plan." https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12122-Human-rights-and-democracy-in-the-EU-2020-24-action-plan_en
4. European Commission. "Biodiversity strategy for 2030." https://environment.

ec.europa.eu/strategy/biodiversity-strategy-2030_en#:~:text=The%20EU's%20biodiversity%20strategy%20for,contains%20specific%20actions%20and%20commitments.

5. Ibid
6. European Parliament resolution of 3 July 2018 on violation of the rights of indigenous peoples in the world, including land grabbing (2017/2206(INI)). Adopted 3 July 2018, https://www.europarl.europa.eu/doceo/document/TA-8-2018-0279_EN.html
7. European Parliament Subcommittee on Human Rights (DROI), European Parliament Committee on Foreign Affairs (AFET), European Parliament Committee on Development (DEVE), European Parliament Committee on the Environment, Public Health and Food Safety (ENVI), European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE), European Parliament Committee on Women´s Rights and Gender Equality (FEMM), European Parliament. Committee on International Trade (INTA)
8. European Parliament resolution of 17 February 2022 on human rights and democracy in the world and the European Union's policy on the matter – annual report 2021 (2021/2181(INI)). Adopted 17 February 2022, https://www.europarl.europa.eu/doceo/document/TA-9-2022-0041_EN.html
9. Directorate-General for Justice and Consumers. "Proposal for a Directive on corporate sustainability due diligence and annex." 23 February 2022, https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en
10. For more information please refer to the procedure file of the Deforestation Regulation: European Parliament. 2021/0366 (COD). Deforestation Regulation, https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2021/0366(COD)&l=en
11. European Commission. Proposal for a regulation on deforestation-free products. Directorate-General for Environment, 17 November 2021, https://environment.ec.europa.eu/publications/proposal-regulation-deforestation-free-products_en
12. European Commission. Proposal for a Directive on corporate sustainability due diligence and annex (CSDDD). Directorate-General for Justice and Consumers, 23 February 2022, https://commission.europa.eu/publications/proposal-directive-corporate-sustainability-due-diligence-and-annex_en
13. European Parliament. 2020/2129(INL). Corporate due diligence and corporate accountability. Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability, https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2020/2129(INL)
14. Allenbach-Ammann, János. "EU member states fight over scope of due diligence directive." Euractiv, 17 November 2022, https://www.euractiv.com/section/economy-jobs/news/eu-member-states-fight-over-scope-of-due-diligence-directive/?fbclid=IwAR0URSV5HzpzLddMSvidEasb2bYBjlEjmTTBYfly0Y2lVNmH1HOp2ISi-fo
15. Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937. Permanent Representatives Committee Council, 30 November 2022, https://data.consilium.europa.eu/doc/document/ST-15024-2022-REV-1/en/pdf
16. European Commission Staff Working Document. Applying the Human Rights Based Approach to international partnerships. An updated Toolbox for

placing rights-holders at the centre of EU's Neighbourhood Development and International Cooperation. 30 June 2021, https://international-partnerships.ec.europa.eu/system/files/2021-07/swd-2021-human-right-based-approach_en.pdf

17. For more information on Global Europe see also: "The new ´NDICI – Global Europe´(2021-2027)." European Union External Action, 17 March 2022, https://www.eeas.europa.eu/eeas/new-%E2%80%98ndici-global-europe%E2%80%99-2021-2027_en

Mathias Wuidar *is a human rights lawyer. He works as representative to the EU for the Indigenous Peoples' Center for Documentation, Research and Information (Docip).*

Anna Bichon *studies at the Institut d'Etudes Politiques in Fontainebleau. She interns as a European Policy and Advocacy officer at Docip.*

CONTENTS

Indigenous Persons with Disabilities Global Network (IPWDGN)

"Now we are at the table neither as Indigenous Peoples, nor as disabled, but as Indigenous persons with disabilities. That changes everything" — Setareki Macanawai[1]

"Empowering Indigenous women with disabilities means that we must be at the table making decisions about the issues that affect us"— Pratima Gurung[2]

Both these statements highlight the distinct identity that Indigenous persons/women with disabilities hold and urges acknowledgement of their multiple marginalized intersected identities and the societal forces around us that hinder them from exercising their rights.

54 million Indigenous persons with disabilities[3] — 28 million of which are Indigenous women with disabilities[4] — live around the globe with multiple marginalized intersected identities, routinely encountering historical, structural, systematic and indirect discrimination in their daily lives similar to that of "persons with disabilities" and "Indigenous people".[5]

Moreover, when these multiple identities overlap and associate with indigeneity, disability, or gender, which are identities tied to oppression, it stimulates each oppressive identity. Their lives are thus further impacted by the social influences around them, which distinguishably affect their lived experiences. Their lives can be restricted or determined for them, in contradiction to the principles of individual and collective rights, negating several important milestones for equality and human rights.

Consequently, issues pertaining to Indigenous persons/women with disabilities frequently remain less debated and invisible from both disability and Indigenous policies. Commonly, they struggle for their own existence and identity within these groups — both the Indigenous Peoples' movement and the persons with disabilities movement — in the absence of a broader movement.

Having a disabled identity connects Indigenous persons/women with disabilities to a social identity associated with stigma, prejudice, social norms and values, discrimination, limitation, barriers and exclusion. Similarly, an Indigenous identity also connects them to culture, language, connection to land, identity, colonization, discrimination, oppression, human rights violations, and a collective way of life. Historical injustices against Indigenous Peoples and persons with disabilities are compounded by marginalization from economic opportunities and exclusion from societal participation. However, the nexus of disability and indigeneity is not cohesive in a comprehensive form. There is a lack of prioritization, which has resulted in a failure to address the significant barriers faced by Indigenous persons with disabilities. They face multiple barriers to effective participation in society, including access to development programmes and funds, education, employment, health care, communication, and transportation services[6] and their narratives are often established from a dominant (Western and individual) worldview.

A failure to achieve a holistic and collective understanding as enshrined in Articles 21 and 22 of the UN Declaration on the Rights of Indigenous Peoples is related to the complex nexus of disability and indigeneity related to meso- and macro-level social, political, environmental, and institutional factors at the global and national levels. For instance, the formation of the Disability Caucus in 2012 at the UN Permanent Forum on Indigenous Issues (UNPFII) and the creation of the Indigenous Persons with Disabilities Global Network (IPWDGN),[7] were a milestone in paving a path to inclusion. In addition, the Regional Network of Indigenous Peoples with Disabilities and Regional Effort of In-

digenous Women with Disabilities[8] and the formation of national organizations such as the National Indigenous Disabled Women Association Nepal (NIDWAN)[9] and its provincial and local-level movements, the Nepal Indigenous Disabled Association (NIDA), like in several other regions of Asia, Africa, Latin America, and Australia, has been fundamental.

However, the struggle of these small initiatives for inclusion within the Indigenous and disability movements has yet to become more affirmative with self-advocacy, collective powerful stories and action. It has to move ahead with cross-movement collaboration and networks of peoples, beliefs and actions by valuing reciprocity.[10] At this juncture, the journey of Indigenous persons with disabilities in legitimizing themselves and co-creating spaces to set the agendas within the Indigenous and disability movements across the globe and escalating them in State and other discourse remains critical.

Amplifying collective voices at global level

The voices of voiceless Indigenous persons with disabilities have been amplified through different interventions in the global arena. The second Global Disability Summit (GDS 2022)[11] was one of the initiatives that took place in 2022, hosted by the Government of Norway and International Disability Alliance (IDA).[12]

GDS 2022 invited stakeholders, including national governments, multilateral agencies, donors, foundations, the private sector and civil society organizations, to make commitments on specific themes. In collaboration with IDA and Minority Rights Group, the IPWDGN held a side event on *Ensuring that Indigenous and Minority People with Disabilities are Not Left Behind in Covid-19 Recovery Efforts: Building New Partnerships to Meet Urgent Challenges* on 16 February. There were 63 specific commitments under five central themes at the summit.

The commitments listed under the Charter for Change[13] in 2018 included one reference to people with disabilities affected by multiple forms of discrimination, and there was little mention of intersectionality or of issues experienced by persons with disabilities from Indigenous communities. A review of the final 968 individual commitments made by stakeholders under the 2018 Charter revealed two references to Indigenous Peoples. These references can be taken as grounds for rein-

forcing the movement and framing the issues of Indigenous persons within the disability movement.

Similarly, during the 66th Commission on the Status of Women (CSW66)[14] several side events were organized at which the issue of Indigenous women with disabilities was considered.[15] Speakers highlighted the multiple identities of Indigenous women with disabilities and the nexus of disability and gender. In addition, two major side events were organized at the 15th session of the Conference of States Parties to the CRPD (COSP15)[16] entitled *Intersectional Approach to Disability Inclusion and Beyond at the CRPD* on 13 June, and *Disability Inclusive Climate Action Debate* on 17 June, where disability experts, leaders, governments, and development partners representing different organizations presented their statements, remarks, opinions and lived experiences on the issues impacting their lives from local to global levels. As a speaker in those sessions, Pratima Gurung (the author of this article) shared her local, national, regional and global lived experiences, reflections and a way forward for collective activism.

Historical path to inclusion: CEDAW General Recommendation (GR39)

The IPWDGN, IDA and NIDWAN welcomed the historic declaration and outstanding level of inclusiveness for the adoption of General Recommendation No. 39 on the rights of Indigenous Women and Girls (GR39),[17] providing guidance to States Parties to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on the more relevant issues facing Indigenous women and girls. GR39 is the first binding instrument focused on the rights of Indigenous women and girls and responds to a long-standing demand by Indigenous women themselves for a specific instrument to promote and protect their rights. It includes 30 references to disability and Indigenous women and girls with disabilities, referring specifically to non-discrimination and intersectionality. CEDAW includes "disability" among the many grounds for discrimination and layers of identities involved with regard to Indigenous women and girls with disabilities in paragraphs 2, 3, 4, 16 and 17 particularly.

Focusing more on issues specific to Indigenous women and girls

with disabilities, CEDAW highlights the gravity of discrimination and gender-based violence against Indigenous women and girls with disabilities living in institutions and stresses that women and girls with disabilities commonly experience a denial of their legal capacity, which leads to further human rights violations in areas such as access to justice, institutionalized violence, and forced sterilization. Throughout the recommendation, there are many specific recommendations on Indigenous women and girls with disabilities that relate to the Convention on the Rights of Persons with Disabilities and influence the upholding of human rights standards.

GR39 will guide CEDAW States Parties in implementing concrete measures to eliminate historical discrimination and the violation of the rights of Indigenous women and women with disabilities, taking into consideration their individual and collective rights. In collaboration with IDA, NIDWAN and local, regional and global organizations and networks of Indigenous women, women with disability and other women organizations, IPWDGN has submitted several reports on GR.

Co-creating spaces for disability-inclusive climate action at COP 27

NIDWAN has been attending and engaging in climate change issues and forums since 2015, focusing on the impacts of climate change in Asia.[18] The team attended COP 27 and highlighted the need for Indigenous and disability-inclusive climate change initiatives with meaningful participation and representation in accessibility issues,[19] cross-constituency collaboration,[20] and as key contributors to climate action,[21] emphasizing intersectionality in global climate negotiations[22] at side events, Indigenous Caucus meetings, in the Indigenous Pavilion and in a meeting with the United Nations Framework Convention on Climate Change (UNFCCC) secretariat.

Pratima Gurung, participated as a speaker in more than six side events on several topics, including *Inclusion of Person With Disabilities and Indigenous People With Disabilities at COP 27: From Participation to Accessibility, Climate Change is Everyone's Business and so is Disability: Sharing from Rightsholders and Stakeholders* on 10 November; *Leaving No One Behind: The Climate Crisis and People with Disabilities*

on 17 November; *Indigenous Women's Leadership in Climate Governance: Centring Indigenous Women's Perspectives and Resistance in Climate Justice* on 17 November; and *Disability, Food Security and Climate Change: the Need for Inclusive Action* on 15 November.

Documenting the voiceless

To shape the agenda of Indigenous Peoples and women with disabilities at the global level in different UN mechanisms and other international arenas, NIDWAN submitted reports at different levels. The call for submissions from the UN Special Rapporteur on Violence against Indigenous Women and Girls was submitted on 31 January, which highlighted the distinct forms and causes of violence that Indigenous women and girls with disabilities face in their daily lives. Collective, historical, structural and indirect violence are just a few of the forms incorporated in the report. Similarly, NIDWAN, in collaboration with four Indigenous women's organizations – NIW Federation, NIDWAN, INOWLAG and NIW Forum of Nepal – submitted a report on CEDAW GR39 on 31 January in order to include the voice of Indigenous women with disabilities.

Reflecting the work and synergy at regional level

Understanding these nuances, the struggles of Indigenous persons with disabilities in 2022 has been reflected in some progressive achievements. With the support and collaboration of International Disability Alliance (IDA), IPWDGN conducted several events, such as workshops in Bolivia, Nepal and Kenya, and festivals in Kenya in October.

The objective of the workshops was to unite, raise awareness, share and learn from different brothers and sisters, including duty bearers, about the issues and challenges faced by Indigenous persons with disabilities and come up with plans for influencing policies at the national level. These workshops also enabled the space and opportunity for Indigenous persons with disabilities to enhance their network at the community level.

The network also conducted research on the situation of Indigenous persons with disabilities in Baringo, Kenya to understand their sit-

uation, which is scheduled to be published in 2023.

With the support of the Disability Rights Funs (DRF/DRAF),[23] NIDWAN also initiated the first country-level assessments on Indigenous persons with disabilities in Asia, focusing on Nepal, Indonesia and Bangladesh. This will continue in 2023 and expand to other Asian countries. In addition, the endorsement of a disability inclusion policy within the executive structure of the Asia Indigenous Peoples Pact (AIPP),[24] and its implementation within AIPP member organizations with the support of DRF/DRAF, is one of the major achievements for disability inclusion and space creation within the Indigenous Peoples' network and organizations. The policy is a good example of and practice for other Indigenous organizations in region and globally.

Disaster Risk Reduction (DRR)

The 7th Session of the Global Platform for Disaster Risk Reduction (GP-DRR-2022), among others, considered actions to reduce disaster risk for the most vulnerable, including Indigenous Peoples, women, youth, and persons with disabilities, and to ensure their full and effective participation in decision making. Pratima Gurung presented the high-level dialogue focused on learning from COVID-19, highlighting pandemic realities and experiences faced by women, Indigenous persons with disabilities and other marginalized groups, recommending a system-wide, inclusive action approach, as well as an intersectional, cultural and disability inclusive approach for addressing disaster and emergencies, pointing to the central role of civil society.

Pratima Gurung also attended the Asia-Pacific Ministerial Conference on Disaster Risk Reduction (APMCDRR) with a key position paper and statements from Indigenous Peoples from the Asia Pacific region, in collaboration with AIPP and NIDWAN. She highlighted that response, relief, recovery, rehabilitation and reconstruction are the critical phases for Indigenous Peoples and their knowledge should be put at the centre of this. The Indigenous Peoples Position Paper on DRR was the first initiative taken in collaboration with AIPP and NIDWAN to highlight the issues of Indigenous Peoples in the APMCDRR.

In addition, Pratima Gurung was selected for the 2022 Rising Star

Women's International Network for Disaster Risk Reduction Leadership Award[25] as one of the inspiring women across the region contributing to the understanding, prevention and reduction of the risk of disasters.

Conclusion

With the trajectories of these meso- and macro-levels of progress, challenges, and triumphs, Indigenous persons with disabilities are co-creating their spaces and struggling within and beyond the movement for their distinct identity and inclusion with an intersectional lens by standing in a position to demand respect and the achievement of "*Nothing About Us Without Us*" with all concerned leaders, experts and stakeholders.

Notes and references

1. United Nations. OHCHR. "Expert Meeting on Indigenous Person with Disabilities." 7-8 July 2016, https://www.ohchr.org/Documents/Issues/Disability/ExpertMeetingFinalReport.docx
2. UN Women. "From where I stand: "We must be at the table making decisions." 19 April 2017, https://www.unwomen.org/en/news/stories/2017/4/from-where-i-stand-pratima-gurung
3. United Nations. Economic and Social Council. Permanent Forum on Indigenous Issues. "Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development." 2013, https://www.un.org/disabilities/documents/ecosoc/e.c.19.2013.6.pdf
4. UN Women. "Fact Sheet. Indigenous Women with Disabilities." 2020, https://www.unwomen.org/en/digital-library/publications/2020/04/fact-sheet-on-indigenous-women-with-disabilities
5. Gurung, Pratima. "Claiming Voices and Spaces: Indigenous Women with Disabilities in Nepal." South Asian Journal of Peacebuilding vol.5, no.1, Special Issue: Summer 2019, http://wiscomp.org/peaceprints/PPJ-5-1/PPJ-5.1-Article7.pdf
6. Global Disability Summit. "Ensuring the Inclusion of Indigenous Persons with Disabilities." 4 January 2022, https://www.globaldisabilitysummit.org/blogs/ensuring-the-inclusion-of-indigenous-persons-with-disabilities
7. International Disability Alliance. "Indigenous Persons with Disabilities Global Network." https://www.internationaldisabilityalliance.org/content/indigenous-persons-disabilities-global-network
8. National Indigenous Disabled Women Association – Nepal. "Side-Events During the 2nd World Conference of Indigenous Women." 27 August 2021, https://nidwan.org.np/2021/08/27/side-events-during-the-2nd-world-conference-of-

indigenous-women
9. National Indigenous Disabled Women Association – Nepal, https://nidwan.org.np/
10. Gurung, Pratima. "Our lives, our story: The journey of the voiceless towards advocacy." in Global Perspectives on Disability Activism and Advocacy Our way, edited by Karen Soldatic and Kelley Johnson. Interdisciplinary Disability Studies, Routledge, 2019, https://www.taylorfrancis.com/chapters/edit/10.4324/9781351237499-11/sex-trafficking-activism-disability-mark-sherry
11. Global Disability Summit, https://www.globaldisabilitysummit.org/
12. International Disability Alliance, https://www.internationaldisabilityalliance.org/
13. UK Government. "Policy Paper. Global Disability Summit – Charter for Change." 3 July 2018, https://www.gov.uk/government/publications/global-disability-summit-charter-for-change
14. UN Women. "CSW66 (2022)." https://www.unwomen.org/en/csw/csw66-2022
15. Side events during the 66th session of the CSW: "Understanding the Gendered Risks: Women as the Central Piece to the Climate Adaptation Puzzle." 15 March 2022; "Voice and Visibility: Global South Feminist Demands for Environmental Justice." 22 March 2022; "Intersectionality: Gender, Disability and Climate Change." 23 March 2022 in collaboration with NIDWAN.
16. United Nations. Department of Economic and Social Affairs Disability. "Conference of States Parties to the Convention on the rights of Persons with Disabilities." https://www.un.org/development/desa/disabilities/conference-of-states-parties-to-the-convention-on-the-rights-of-persons-with-disabilities-2.html
17. United Nations. OHCHR. "General recommendation No.39 (2022) on the rights of Indigenous women and Girls." 26 October 2022, https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigeneous
18. International Indigenous Peoples' Forum on Climate Change. "Impacts of Climate Change to Indigenous Peoples in Asia." 9 December 2015, http://www.iipfcc.org/events/2015/12/9/impacts-of-climate-change-to-indigenous-peoples-in-asia
19. Kelly-Costello, Áine. "Can COP27 contribute to disability-inclusive climate justice?" UnbiasNews, https://unbiasthenews.org/can-cop27-contribute-to-disability-inclusive-climate-justice/
20. Kelly-Costello, Áine. "Can COP27 contribute to disability-inclusive climate justice?" Disability Debrief, 7 November 2022, https://www.disabilitydebrief.org/debrief/cop27-climate-justice
21. Gurung, Pratima. "Indigenous women with disabilities are not just victims but we are key to climate solutions." Global Alliance for Green and Gender Action, 22 November 2022, https://gaggaalliance.org/indigenous-women-with-disabilities-are-not-just-victims-but-we-are-key-to-climate-solutions
22. Ruehl, Isabel. "How people with disabilities fought for formal recognition at COP27." Grist, 22 November 2022, https://grist.org/equity/how-people-with-disabilities-fought-for-formal-recognition-at-cop27
23. Disability Rights Fund, https://disabilityrightsfund.org/
24. Asia Indigenous Peoples Pact, https://aippnet.org/about-us
25. "Win DRR leadership awards 2022: rising star award – finalists." Prevention Web, 22 July 2022, https://www.preventionweb.net/blog/win-drr-leadership-awards-2022-rising-star-award-finalists

Ms. Pratima Gurung *belongs to the Gurung Indigenous Peoples community. She is a faculty member at Padmakanya College under Tribhuvan University, Nepal. She 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*

IUCN Africa Protected Areas Congress (APAC)

Held in Kigali, Rwanda from 18 to 23 July 2022, the IUCN Africa Protected Areas Congress (APAC) was the "first ever continent-wide gathering of African leaders, citizens and interest groups to discuss the role of protected areas in conserving nature, safeguarding Africa's iconic wildlife, delivering vital life-supporting ecosystem services, and promoting sustainable development while conserving Africa's cultural heritage and traditions."[1] The Congress was convened jointly by the Government of Rwanda, the International Union for the Conservation of Nature (IUCN) and the African Wildlife Foundation, and attracted more than 2,400 participants from across the African continent and beyond, representing governments, African regional bodies, Indigenous Peoples, local communities, NGOs, national and international experts and organizations, youth, academia, the judiciary, development agencies and the private sector.[2]

The overarching objective of the APAC was "to position Africa's protected and conserved areas within the broader goals of economic development and community well-being and to increase the understanding of the vital role parks play in conserving biodiversity and delivering the ecosystem services that underpin human welfare and livelihoods."[3]

The Congress was organized around the following three Streams: 1. Protected Areas ("Promoting effective and well-managed networks of protected and conserved areas in Africa"); 2. People ("People and protected and conserved areas: towards mutual well-being"); and 3. Biodiversity ("Africa's biodiversity as the basis for life on the continent"). Additionally, six cross-cutting themes were identified to help focus the discussions: Governance; Climate Change; Conflict; Science, Technology, and Indigenous Knowledge; Sustainable Financ-

ing; and Physical Infrastructure. The main outcome document of the Congress was the "Kigali Call to Action for People and Nature," agreed upon in the APAC closing plenary session on 23 July 2022.

Role and status of Indigenous Peoples

The APAC was organized on the basis of an understanding that the historic tendency to focus on State-owned and controlled conservation estates was outdated and was meant to "help move the discourse to embrace various forms of community conserved areas, private protected and conserved areas, as well as formal State-owned protected areas."[4] The organizers considered that community conserved areas were "a vital component to achieving the spatial conservation targets in the post-2020 Global Biodiversity Framework" and that to achieve this, "increased focus and investment [was] required to ensure communities integrate conservation as part of both conservation and livelihood options."[5]

The organizers recognized that "Indigenous Peoples and Local Communities (IPLCs) conserve, with associated rights and responsibilities, large areas of Africa's conserved lands, for example as conservancies, indigenous and community conserved areas, dry season grazing reserves, and sacred natural sites," acknowledging that they were "the 'original conservationists' way before conservation was a term and way before the Protected Area movement," and criticizing that their importance and role in conservation was seen as secondary and not sufficiently respected.[6] "Too often we view conservation as the domain of government, yet communities actively manage, conserve and use vast areas of inter-connected conservation value," they wrote in the introductory papers for the Congress.[7] One of the stated objectives of the APAC was to "[a]gree on practical measures to recognize, elevate, and uphold the rights, responsibilities and roles of indigenous people, local communities and young people in conserving nature."[8]

The organizers of the Congress envisaged that "IPLCs [would] showcase at APAC the important role they play in conserving Africa's

biodiversity and conserved areas" and would "engage fully in the three Streams and six cross-cutting themes."[9] They promised from the outset that APAC would "provide space for IPLCs through plenary presentations, keynote addresses, side events and a dedicated pavilion," and "ensure IPLCs are able to engage equitably with the private sector and formal protected area authorities".[10] They also pledged that the voice of Indigenous Peoples and local communities (recommendations, lessons, actions) would be integrated into the Kigali Call to Action.[11] Additionally, they announced that a two-day "Pre-Congress IPLC Workshop" would be organized to "help IPLCs make the case for the importance of their role in conserving Africa's biodiversity and conserved areas" and to "prepare the participants to engage fully in the three Streams and six cross-cutting themes."[12]

Indigenous Peoples were thus accorded a central and important role at the APAC from the very beginning albeit grouped and conflated with "local communities" in the context of the Congress, a practice that many Indigenous Peoples' organizations and networks from other regions have objected to as it may not properly recognize the rights of Indigenous Peoples compared to local communities.[13, 14] The three UN bodies focused on Indigenous Peoples' rights (the Permanent Forum on Indigenous Issues, Special Rapporteur on the rights of Indigenous Peoples, and Expert Mechanism on the Rights of Indigenous Peoples), as well as some States, have expressed concerns that the grouping of Indigenous Peoples with local communities may result in the undermining of the distinct status and rights of Indigenous Peoples under international law.[15] If the term is nevertheless used in this chapter, it is due to its usage in the conference documents and should not be seen as an endorsement of the practice.

Pre-congress consultations of Indigenous Peoples

A month before the APAC, representatives of Indigenous Peoples' organizations and networks from Africa convened in Nairobi, Kenya on 15-16 June 2022 to plan for their meaningful participation in the Congress. This meeting was attended by around 50 Indigenous participants and resulted in a declaration to IUCN, governments, and funding partners

(the "Nairobi Declaration"[16]) to be presented at the pre-congress workshop for Indigenous Peoples and local communities in Kigali.[17] The participants of the meeting nominated IMPACT Trust Kenya[18] as the Indigenous Peoples' organization to co-lead/host the pre-congress workshop.

Additionally, on 11-13 June and 17-19 June 2022, ten Indigenous Peoples' communities from Kenya, Uganda and Tanzania came together at Chepkitale, Mount Elgon, Kenya for the "East Africa Assembly on Land Justice and Indigenous Peoples Co-operation".[19] This assembly also produced a declaration to be presented at the APAC, the "People-to-People Declaration at Laboot."[20]

The official "Pre-Congress IPLC Workshop" took place on 16-17 July 2022 in Kigali and was co-organized by IMPACT Trust Kenya and the ICCA Consortium.[21] It drew participation from around 40 countries and was attended by some 150 representatives of Indigenous Peoples, local communities, and community-led conservation organizations from Africa. Among other things, the workshop aimed to shine a spotlight on how Indigenous Peoples and local communities are conserving a significant proportion of the world's biodiversity and nature through their self-determined cultures, ways of life and governance systems; to discuss experiences, challenges, opportunities, and recommendations for appropriate recognition and support for their self-determined priorities for their collective lands, waters and territories; to discuss strategies for advancing the movements for conservation justice and collective land, resources and tenure rights in the context of nature conservation (including the proposed "30x30 target" in the post-2020 Global Biodiversity Framework[22]); and to support Indigenous Peoples' and community representatives to prepare for participation in the APAC.[23]

Another key objective of the workshop was to prepare a consolidated declaration to the APAC from Indigenous Peoples and local communities. The resulting "Africa Indigenous Peoples and Local Communities (IPLCs) Kigali Declaration"[24] builds upon the Nairobi Declaration, the Laboot Declaration, and two declarations of ICCA Consortium regional assemblies. The Kigali Declaration provided the basis for the keynote speeches of Indigenous Peoples and local communities at the opening and closing sessions of the APAC and served as guidance for their representatives participating in high-level dialogue sessions, panels, and the drafting group preparing the outcome document of the Congress (the "Kigali Call to Action").[25]

IUCN Africa Protected Areas Congress, Kigali, 18-23 July 2022

The keynote address on behalf of Indigenous Peoples and local communities at the opening of the APAC was given by Milka Chepkorir, a Sengwer Indigenous woman from Kenya, who started her speech by underlining that "We, IPLCs, have had many experiences of conservation gone wrong: human rights violations, forced evictions, dispossession, displacement, and violence, even to the extent of being killed... People have lost their hunting and gathering, pastures and fishing areas to State-run and private protected areas and are being branded as enemies of the very wildlife we have always lived in peace with."[26] She highlighted that little to no progress had been made on the three key targets regarding Indigenous Peoples and local communities adopted by the 2003 IUCN World Parks Congress in Durban: Free, Prior and Informed Consent for the establishment of any new protected areas; meaningful participation by Indigenous Peoples and local communities in the governance of protected areas; and restitution of lands lost by communities to conservation.

"Twenty years later," Ms Chepkorir noted, "Here we are, still, talking about the same things." She added:

> *At the same time, we know our world is facing a crisis – we are losing biodiversity at a frightening rate and the climate is changing, making our planet unliveable for us all. Unfortunately, the conservation response, adopted from colonial times, has been sustained and even refined with increased militarization. These approaches have not only failed to offer a real solution to this crisis, but they have also caused untold harm and trauma to the very citizens which governments should look to as conservators.*

Similarly, the UN Special Rapporteur on the rights of Indigenous Peoples, Francisco Calí Tzay, noted in a video message[27] to the Congress:

> *The scientific community has acknowledged that Indigenous Peoples protect the biodiversity better than protected areas do. Yet they are often excluded from the management and con-*

> *trol of conservation projects and environmental programmes. Although Indigenous Peoples have contributed the least to climate change and biodiversity loss, they remain the most impacted by the creation of protected areas, facing forced eviction, criminalization, rape, torture and killing.*

The Special Rapporteur stressed the need to rethink and improve the way protected areas are located, governed, monitored, and managed:

> *Current models for creating protected areas threaten to dispossess Indigenous Peoples of their lands, limit access, impose restrictions on livelihoods, and interfere with the intergenerational transmission of knowledge, violating their rights to autonomy, security of land tenure and self-determined development... A whole new model of conservation is required that puts Indigenous Peoples – the best guardians of biodiversity – in control of their lands and resources. This requires a recognition of rights at the national and international level that includes securing land tenure, respecting the principle of free, prior and informed consent, and allocating funding and other benefits directly to Indigenous Peoples.*

While Ms Chepkorir pointed out in her opening address that "it wasn't at all easy for us to meet here and obtain a meaningful space to offer our views and proposed solutions for the way forward," Indigenous Peoples were successful in claiming that space and in making their voice heard at the Congress. Throughout the conference, there was significant participation of Indigenous Peoples' representatives in plenary panels and parallel events, and this participation clearly had a significant impact on the discussions and the outcome document of the Congress.

The central messages, demands and recommendations of Indigenous Peoples and local communities were summarized in a closing statement[28] read by Maidada Langa from Malawi in the closing plenary on 23 July. Mr. Langa underlined:

> *As shareholders and not mere stakeholders in the business of taking care of Mother Nature, we seek empowerment and not mere participation, so we can bring to bear our tradition-*

> *al knowledge, experiences, and solutions. In this regard, we seek a people-led approach to conservation in which people are firmly at the centre of conservation, while governments and government partners actively play an empowering role... [W]e seek decolonization of conservation through abolition of policies and laws that perpetuate neocolonial approaches to conservation that seek to separate us from nature on which we depend and lead to militarization of protected spaces.*

Mr. Langa also stressed that governments must "cease using benefit-sharing arrangements from tourism and other uses of our customary resources as compensation for displacement."

Central demands, requests and recommendations made by Indigenous Peoples and local communities at the Congress included the following:[29]

Addressed to governments:

- Stop the human rights abuses connected with conservation in Africa, including the endless eviction, displacement and dispossession of Indigenous Peoples and local communities and the many instances of threats, intimidations, violence, and criminalization and imprisonment of leaders and community members.
- End the militarization of protected areas.
- Ensure that the upholding of human rights guides every aspect of conservation in Africa.
- Advance efforts to recognize and respect the customary collective tenure rights of Indigenous Peoples and local communities.
- Commence, or accelerate, legal recognition of customary collective ownership of lands and resources.
- Implement the 2003 Durban Accord and Action Plan and the UNDRIP, prioritizing the restitution of lands and redress, and refrain from establishing new protected areas.
- Adopt policies that compel conservation donors and agencies to provide direct funding to Indigenous Peoples and local communities and not to fund organizations and actions that do not respect a human rights-based approach.
- Respect and implement decisions of the African Union mech-

anisms and structures, including already awarded resolutions and judgements.[30]

- Establish robust grievance and redress mechanisms for addressing conservation-related grievances and ensure that Indigenous Peoples and local communities have access to justice to resolve historical injustices related to conservation through compensation, reparations, and restitution.
- Ensure that conservation staff committing human rights abuses are held to account.
- Ensure that the Global Biodiversity Framework strongly incorporates the right to sustainable use of both flora and fauna, and that achievement of the proposed 30x30 target will not result in the loss of Indigenous Peoples' and local communities' lands.
- Adopt the recognition of Indigenous Peoples' and local communities' tenure rights as a strategy to achieve 30x30 targets.
- Prioritize community tenure-led conservation and make this the flagship of conservation in Africa.
- Focus the activities of government conservation agencies on empowering, assisting technically and financially as required, and monitoring community tenure-led conservation.

Addressed to donors and development partners:

- Support projects and programmes that promote secure land and resource rights for Indigenous Peoples and local communities.
- Support conservation management planning that incorporates the conservation ideologies of Indigenous Peoples and local communities, embedded in community tenure-led conservation.
- End funding to actors that do not respect a rights-based approach to conservation and stop enabling the militarization of conservation.
- Stop funding projects and programmes that do not have the Free, Prior and Informed Consent (FPIC) of affected Indigenous Peoples and local communities.
- Channel conservation and development funding directly to Indigenous and community organizations at the "point of im-

pact," and develop new mechanisms and practices for doing so.
- Meaningfully engage Indigenous Peoples and local communities in the monitoring and evaluation of conservation and protected areas.
- Create spaces for direct dialogue between donors and Indigenous Peoples and local communities.

Addressed to IUCN and other conservation organizations:
- Decolonize conservation and redefine the IUCN concept of protected areas, particularly category VI, which upholds national enforcement for creating protected areas.
- Replace the concept and practice of "protected areas" with "conservation".
- End the militarization of protected areas, promote people-nature relationships, apply FPIC, and ensure prioritization of funding for community-based conservation efforts.
- Create institutional frameworks to enable Indigenous Peoples and local communities to meaningfully engage as partners in the implementation and follow-up of the "Kigali Call to Action" and future APAC meetings and processes.

Addressed to researchers, media, and academia:
- Right the wrongs of misrepresentation that have been propagated by films, documentaries, articles, etc. which showcase an African conservation space in which wildlife exists without people.

The Kigali Call to Action

The APAC culminated in the "Kigali Call to Action for People and Nature,"[31] which was prepared by a special drafting team during the Congress and read out in the closing plenary session. The drafting team included two representatives of Indigenous Peoples and local communities, and many of the concerns and priorities articulated by Indigenous Peoples at the Congress are reflected in the Call. The stated purpose of the Call, according to its preamble, is to identify "priority actions to strengthen Africa's protected and conserved areas [PCAs] in a man-

ner that is just, equitable and fair and that will deepen the involvement of Indigenous Peoples and local communities".

The Call is organized into the following four sections: "Promoting inclusive and equitable governance," "Putting people at the centre of effective and equitable conservation," "Mobilizing the economic value of PCAs and sustainable financing," and "PCAs as natural solutions to the biodiversity and climate change crisis." Among many other things, it calls for:

- the identification, recognition, and empowerment of all custodians of nature in Africa to lead the way in conserving Africa's rich biodiversity through PCAs that are fair and just;
- support for Africa's Indigenous Peoples and local communities to sustain the wisdom, traditions, scientific and traditional knowledge, and customary approaches that will result in effective conservation and the long-term resilience of nature, culture, livelihoods and human well-being;
- acknowledgement of past and ongoing injustices experienced when Indigenous Peoples and local communities have not been accorded their rights, roles, responsibilities, and expectations in the pursuit of conservation goals, and for these injustices to be halted now and in the future;
- a mechanism to hear the voices of Indigenous Peoples and local communities, understand options for the resolution of their grievances and reach agreement on remedies that will rebuild confidence;
- the relationship between conservation and people to be restored and respected, so that nature conservation in Africa puts people at the centre;
- direct funding to Indigenous Peoples and local communities through mechanisms that are fair, equitable, and efficient, in order to address priority conservation and social outcomes;
- equitable, effective, generational and gender-responsive participation of Indigenous Peoples and local communities in decision-making related to biodiversity, at all levels, including access to justice and information, respect for and promotion of their rights over lands, territories and resources and their equitable enjoyment of benefits from the conservation and

sustainable use of biological and genetic resources;
- halting human rights abuses associated with law enforcement;
- adoption of the new International Ranger Federation Code of Conduct[32] by governments and conservation organizations;
- grievance mechanisms based on clear standards that are directly accessible to Indigenous Peoples and local communities in order to ensure speedy and appropriate resolution of conflicts and injustices.

While the Call does not directly mention the 30x30 target of the Global Biodiversity Framework, it calls for "[f]urther efforts to identify all areas of particular importance for biodiversity and ecosystem services that are neither protected nor conserved and to build these into conservation plans and programmes..., while ensuring that any proposed targets are not achieved at the expense of people". It also calls for the "[i]dentification and recognition of all areas in the custodianship of governance authorities that meet the definition of other effective area-based conservation areas (OECMs), and to seek their inclusion and support in national systems, following the free, prior and informed consent of their custodians".

In Africa, only 14% of the terrestrial landmass is currently defined as protected areas,[33] and an expansion to 30% (in line with the 30x30 target) will clearly not be attainable without including lands and territories traditionally owned, managed, used, or occupied by Indigenous Peoples and local communities, which make up a large share of Africa's intact ecosystems and key biodiversity areas.[34]

There is significant fear that pursuit of the 30×30 target would inevitably cause massive evictions of Indigenous Peoples and local communities from their territories if the expansion of protected area coverage continued to rely upon State-owned and run protected areas.[35] This underscores the importance of ensuring respect for Indigenous Peoples' collective rights over their traditional territories and their right to FPIC in the pursuit of the 30x30 target.

One main drawback of the Kigali Call to Action is that it "does not explicitly call for collective tenure as a path to achieving greater conservation. Nor does it call for a community-led approach to conservation. This suggests that participating governments and supporting conservation agencies remain stuck in a partnership that they propose to lead.

This fails to echo broader moves to devolve natural resource governance in which States and donors support land-dependent communities as front-line leaders of conservation and recognize and respect community conserved areas of all types."[36]

It has also been criticized that the Call to Action does not fully acknowledge current human rights violations sanctioned and/or funded by large conservation organizations and governments, who continue to follow outdated "fortress conservation" models in Africa and elsewhere.[37] Examples are the ongoing conservation-related injustices experienced by the Maasai in Tanzania, the Ogiek in Kenya, the Baka in Cameroon, and the Batwa in Uganda and the Democratic Republic of Congo. The Call to Action also does not mention the failure of some States to implement the decisions and judgements of African Union mechanisms that uphold the rights of Indigenous Peoples affected by conservation.

Perhaps the most concrete outcome of the APAC was the commitment in the Call to Action to develop an "African Protected and Conserved Areas Forum as an inclusive and consultative pan-African body... to guide the implementation and monitoring of APAC 2022 commitments through smaller regional meetings and the convening of the second APAC within the next 4-5 years." Additionally, the Kigali Declaration of Indigenous Peoples and Local Communities contains a commitment to set up a "pan-African IPLC body" anchored in national and sub-regional networks as a "platform for our shared concerns, actions, programmes and cross-learning among States and to follow up the implementation of this declaration."

Notes and references

1. Congress website, https://apacongress.africa/
2. Kigali Call to Action for People and Nature, https://apacongress.africa/download/english-version-of-apac-kigali-call-to-action/
3. Congress website.
4. APAC. "APAC Content for Streams and Cross-Cutting Themes." https://pfbc-cbfp.org/job-opportunities/APAC-Call.html?file=files/docs/news/7-2021/-EN-Master%20Document%20310521%20FINAL.pdf
5. APAC. "Value Proposition on IPLCs: Respect the role Indigenous Peoples and Local Communities play in conservation." https://apacongress.africa/download/value-proposition-for-indigenous-peoples-and-local-communities/.
6. Ibid.
7. Ibid.
8. APAC. "The Case for Protected Areas: For Nature & For People." https://

apacongress.africa/download/apac-brief/

9. APAC. "Value Proposition on IPLCs."

10. Ibid.

11. Ibid.

12. "APAC Content for Streams and Cross-Cutting Themes." Also see: https://apacongress.africa/programme/

13. Inuit Circumpolar Council. "Policy Paper on the Matter of "Local Communities"." 12 October 2020, https://www.inuitcircumpolar.com/project/policy-paper-on-the-matter-of-local-communities/

14. International Indian Treaty Council and *Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica* (COICA). "Statement of Support for UN Recommendations Addressing the Matter of "Local Communities". 24 June 2022, https://www.iitc.org/iitc-statement-of-support-for-un-recommendations-addressing-the-matter-of-local-communities/

15. Permanent Forum on Indigenous Issues. "Report on the twenty-first session (25 April–6 May 2022)," UN Doc. E/2022/43, para. 85. https://undocs.org/Home/Mobile?FinalSymbol=E%2F2022%2F43&Language=E&DeviceType=Desktop&LangRequested=False; EMRIP. "Efforts to Implement the UN Declaration on the Rights of Indigenous Peoples." Report to the Human Rights Council, 4 August 2021, UN Doc. A/HCR/48/75, para. 34; Joint statement of Canada, Estonia, Finland, Iceland, Latvia, Lithuania, Norway, Sweden and Denmark together with Greenland at the 14th session of EMRIP. 13 July 2021, https://cendoc.docip.org/collect/cendocdo/index/assoc/HASHc70c/2cf7f1b6.dir/EMRIP2021_Denmark.pdf; The Permanent Forum has "urge[d] all United Nations entities and States parties to treaties concerning the environment, biodiversity and the climate to eliminate the use of the term 'local communities' in conjunction with indigenous peoples, so that the term 'indigenous peoples and local communities' would be abolished" (Report on the 21st session, para. 85).

16. Nairobi Declaration, presented by the Africa Indigenous and Local Communities, to the Africa Protected Areas Congress (APAC). 2022, https://www.forestpeoples.org/sites/default/files/documents/Nairobi%20Declaration.pdf

17. IMPACT Trust Kenya. "Indigenous Peoples Pathways to the African Protected Areas Congress (APAC)." https://www.impactkenya.org/about-3-1

18. Indigenous Movement for Peace Advancement and Conflict Transformation (IMPACT), https://www.impactkenya.org/

19. For a film the communities made of the assembly, see: YouTube. "East Africa Assembly on Land Justice and Indigenous Peoples' cooperation – June 2022." InsightShare, https://www.youtube.com/watch?v=Ig8E4cNonDM.

20. The Laboot Declaration is available at https://drive.google.com/file/d/1UQ7MYpS7ggz2IU4XtqD4ZAI6bgHztiyQ/view

21. On the ICCA Consortium, see https://www.iccaconsortium.org/. The term "ICCA" broadly refers to Indigenous Conserved Territories and Areas Conserved by Indigenous Peoples and Local Communities.

22. A worldwide initiative for governments to designate 30 per cent of the world's terrestrial landmass and oceans as protected areas by 2030. The 30x30 target was subsequently adopted at the COP15 meeting of the Convention on Biological Diversity (CBD) in December 2022.

23. IMPACT Trust Kenya. "Indigenous Peoples' and Local Communities' Kigali Pre-Congress." 27 July 2022, https://www.impactkenya.org/post/indigenous-peoples-and-local-communities-kigali-pre-congress; the agenda of the pre-congress workshop is available at https://www.iccaconsortium.org/wp-

content/uploads/2022/07/kigali-pre-congress-iplc-workshop-programme-final-15-july-en.pdf

24. The Kigali Declaration is available at: Africa Indigenous Peoples and Local Communities (IPLCs), Kigali Declaration at the 1st Africa Protected Areas Congress (APAC) 2022, https://apacongress.africa/download/the-iplcs-declaration-to-apac2022/
25. The workshop appointed Mali Ole Kaunga of IMPACT Trust Kenya and Timothée Emini of OKANI, Cameroon, as representatives to participate in the drafting of the "Kigali Call to Action."
26. Opening statement by Milka Chepkorir, https://docs.google.com/document/d/1SaynE2kAGs0XZUwhLJgLLno7_QhjhvlXn_VYu0YkoWs/edit. For a video recording, see: YouTube. "The IUCN Africa Protected Areas Congress (APAC)." IUCN Africa Protected Areas Congress, https://www.youtube.com/watch?v=IoTC41UaSZ0&t=7347s
27. Video message from Francisco Calí Tzay: YouTube. "Day 4: The IUCN Africa Protected Areas Congress (APAC)." IUCN Africa Protected Areas Congress, https://www.youtube.com/watch?v=U9Eu158xdws&t=1099s
28. Closing remarks by Malidada Langa: YouTube. "Malidadi Langa presents closing remarks on behalf of IPLCs at APAC 2022." Resource Africa, https://www.youtube.com/watch?v=0NPcpwvyJ58
29. Compilation from the Kigali Declaration and the keynote speeches on behalf of Indigenous Peoples and local communities at the opening and closing sessions of the congress.
30. This refers to rulings of the African Court and Commission on Human and Peoples' Rights in favour of Indigenous Peoples, such as the rulings in the Endorois case and the Ogiek cases.
31. "IUCN Africa Protected Areas Congress. Kigali Call to Action for People and Nature." 23 July 2022, https://apacongress.africa/download/english-version-of-apac-kigali-call-to-action/
32. International Ranger Federation. Ranger Code of Conduct, https://www.internationalrangers.org/toolkit/ranger-code-of-conduct-2/
33. Protected Planet. Africa, https://www.protectedplanet.net/region/AF
34. WWF et al. "The State of Indigenous Peoples' and Local Communities' Lands and Territories." 2021, https://wwfint.awsassets.panda.org/downloads/report_the_state_of_the_indigenous_peoples_and_local_communities_lands_and_territor.pdf
35. Rights and Resources Initiative. "The Kigali Call to Action at the IUCN Africa Protected Areas Congress." 5 August 2022, https://rightsandresources.org/blog/the-kigali-call-to-action-at-the-iucn-africa-protected-areas-congress-statement-from-rris-africa-delegation/

Stefan Disko *works as an independent consultant on issues related to Indigenous Peoples, heritage and human rights. He holds an M.A. in World Heritage Studies from BTU Cottbus and an M.A. in ethnology and international law from LMU Munich.*

Lola García-Alix *is IWGIA's Senior Adviser on Global Governance.*

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.

In 2022, EMRIP continued to conduct its activities through a hybrid-format annual session, expert seminar, inter-sessional meeting, and coordination meetings with other Indigenous mechanisms accordingly. In its 15th session from 4-8 July 2022, EMRIP conducted three panel discussions: i) Impact of Development Projects on Indigenous Women, ii) Enhancing the Participation of Indigenous Peoples in the United Nations, and iii) International Decade of Indigenous Languages. A total of 24 side events were held virtually during the session on a broad array of themes relating to the rights of Indigenous Peoples.

EMRIP held its intersessional meeting from 7-9 December 2022. The meeting included a two-day expert seminar from 5-6 December 2022 on the "Impact of militarization on the rights of Indigenous Peo-

ples". The seminar's main objective was to hold an in-depth discussion for input to EMRIP's 2023 study; discuss the latest related developments in the policy, legal and institutional fields, at national, regional and international levels; identify good practices and challenges from different regions related to the developments; and contribute to approaches that facilitate constructive dialogue between States and Indigenous Peoples in the UNDRIP framework.

EMRIP participated in the Global Task Force for Making a Decade of Action for Indigenous Languages[1] in June and September 2022 and, in December, among other activities, the EMRIP chair attended the high-level segment of the International Decade of Indigenous Languages launch coordinated by the United Nations Educational, Scientific and Cultural Organization (UNESCO). EMRIP participated in an interactive dialogue with the Expert Mechanism on the Right to Development (EMRTD) in its sixth session from 31 October to 2 November, highlighting the relationship between the right to development and Indigenous Peoples, good practices, and the EMRIP's country engagement mandate. The EMRIP chair took part in the four-day Office of the High Commissioner for Human Rights (OHCHR) workshop on enhancing the participation of Indigenous Peoples in the Human Rights Council (HRC). EMRIP also took part in the 21st session of the Permanent Forum on Indigenous Issues (UNPFII), presented its report to the HRC at its 51st session, and participated in the annual panel discussion of the HRC on Indigenous Peoples' rights.

Thematic study adopted

At its 15th session, EMRIP adopted its study entitled: "Treaties, agreements and other constructive arrangements, between indigenous peoples and States, including peace accords and reconciliation initiatives, and their constitutional recognition" (A/HRC/51/50).[2, 3]

EMRIP sees the study as an opportunity to identify the principles and conditions, as well as the broader gaps and challenges, in the realization and exercise of Indigenous Peoples' rights to conclude treaties, agreements and other constructive arrangements with States and to have them respected and enforced. The study focused on UNDRIP Article 37.[4] It analysed the enabling conditions for the establishment

of treaties, agreements and other constructive arrangements for the recognition of Indigenous Peoples as such and the recognition of their rights, which are a precondition for the enjoyment of all the rights enshrined in the UNDRIP. This recognition may not be effective if it is not accompanied by structural reforms, the recognition of legal personality and power-sharing. Particularly important is constitutional recognition, which guarantees the highest level of domestic protection and provides continuity and immunity against instability, political change and/or regression of rights, including in domestic legislation and policies.

Another enabling condition identified in the study is the balance of power in negotiation processes, which is linked with the possibility of Indigenous Peoples participating according to their own decision-making processes, traditional legal systems, customs and practices, and institutions, and to have the means to do that, without interference or attempts to influence their composition or positions or suffering from any form of pressure and coercion. In this sense, the principle of Free, Prior and Informed Consent (FPIC) is relevant in guiding the way a process that leads to the establishment of an agreement should be undertaken. This principle represents the minimum standard and, when fully applied, may give greater legitimacy and strength to the instrument achieved.

The study further identified the conditions and obstacles for the effective implementation of such instruments. Some essential conditions are a common understanding and good faith in the interpretation of such instruments, while some challenges encountered are the lack of technical and financial means, political will and harmony with other regulations.

The study addressed the need to have appropriate mechanisms that support the process of negotiating and establishing agreements, are dedicated to monitoring and enforcing their implementation, and can handle and resolve conflicts, redressing and remedying grievances when these agreements are not fully implemented or are breached. When disputes related to alleged violations of treaties, agreements and other constructive arrangements are not settled in the domestic jurisdiction, the study reiterated the recommendation of the former Special Rapporteur (1999) and those made at the three UN Expert Seminars, which include the recommendations for establishing an international mechanism to handle disputes related to treaties, agreements and constructive arrangements and for establishing an international sec-

tion or body to register and publish all treaties concluded between Indigenous Peoples and States, giving due attention to securing access to Indigenous oral versions of those instruments.

During the session, participants addressed the recommendations and concerns set out in the study, such as the need for including a best practice for effective funding mechanisms such as independent funding bodies; while others focused on the importance of implementing existing constructive agreements signed with Indigenous Peoples. EMRIP was asked to pay particular attention to the importance of the greater presence of Indigenous women and girls in such a study. In addition, participants noted that the study was an important tool for justice and, as such, truth and reconciliation initiatives could be mentioned in the study as examples of constructive arrangements paving the way for rebuilding trust, partnerships and nation-to-nation relations.

Participants pointed out that the study contains references to peace accords in some of the focus countries, which was not addressed in depth. It was therefore requested that EMRIP conduct a separate study and report on peace agreements and accords in conflict and post-conflict situations involving or affecting Indigenous Peoples.

Indigenous participants also focused on the need to include a call for the OHCHR to launch an international Indigenous Peoples' treaty repository to ensure access to relevant texts by all parties, including those involving original spirit and intent as understood by the Indigenous Peoples concerned. Participants asked to work with the OHCHR to host a fourth treaty seminar in 2023 to review the implementation of and recommendations from the original UN treaty study, the three follow up seminars and the current study.

The study concluded with Expert Mechanism Advice No. 15, which put forward measures that States, Indigenous Peoples and other stakeholders can take to fulfil UNDRIP Article 37.

EMRIP's country engagement mandate implementation

Since its 2021 session, EMRIP has been unable to undertake any missions under its country engagement mandate due to the persistence of the COVID-19 pandemic. However, EMRIP has maintained a sustained

dialogue with requesters and member States to advance the definition and organization of the country engagement missions to be carried out in 2023.

EMRIP followed up on previous and ongoing country engagements, including the repatriation of the Maaso Kova spiritual object from Sweden's Museum of World Culture to the Yaqui people. In May 2022, the museum communicated the Swedish government's approval to repatriate the object. Subsequently, the first repatriation step took place on 3 June when the object was handed over to the Mexican Embassy in Stockholm with all stakeholders present. The International Indian Treaty Council, as the requesters of the country engagement, underscored the importance of EMRIP's follow-up on this engagement and its letters to the governments involved, stressing the need for the direct return of the object to its people.

Sweden's representative highlighted that the qualified and skilled guidance of EMRIP throughout the process was crucial and highly appreciated by all Swedish parties involved. Mexico's representative noted that their engagement on the return of the spiritual object is now at the presidential level, which will lead to the legitimate return of the object to the Yaqui people.

EMRIP also followed up on its country engagement with Finland, where the government and requesters participated in a lessons-learned event concerning EMRIP's 2018 mission. The President of the Sami Parliament of Finland explained that EMRIP had provided important comments on proposed amendments to the Sámi Parliament Act 1995, ensuring that the proposal was in line with the UNDRIP, and noted that the proposal was moving forward. The representative of the Government of Finland explained how the government would continue to work towards renewal of the Act.

Building relationships with other mechanisms

EMRIP is of the view that coordination between the three UN mechanisms dealing with Indigenous Peoples' rights is crucial to the success of all their mandates. During its 15th session, EMRIP had an interactive dialogue, focused on the implementation of the UNDRIP, with the UNP-

FII Chair, Special Rapporteur on the rights of Indigenous Peoples, a UN Voluntary Fund for Indigenous Peoples Board of Trustees representative, and representatives of two treaty bodies, who provided updates on their work on Indigenous Peoples' rights. EMRIP also held a thematic discussion on violence against Indigenous women with the participation of the Special Rapporteur on violence against women, its causes and consequences, who has prepared a thematic report on Indigenous women gender-based violence.[5]

Impact of development projects on Indigenous women

EMRIP's panel discussion on the impact of development projects on Indigenous women focused on the impact, challenges and measures taken by Indigenous women in contexts where development projects are being implemented by both State and non-state actors without FPIC.[6]

At its 15th session, EMRIP proposed that the HRC urge States to respect and guarantee fulfilment of FPIC with regard to the specific impact faced by Indigenous women in the context of development projects on their territories. This consultation should be done with a view to obtaining FPIC and ensuring respect for and full implementation of agreements resulting from fair and equitable negotiations, if any. States should take all appropriate measures, including through legislation, to ensure that business enterprises in or from their jurisdiction act with due diligence and comply with the full body of human rights, including the Guiding Principles on Business and Human Rights.

Further, EMRIP called for the HRC to recommend that States adopt preventive measures, such as the promotion of the political, social and economic empowerment of Indigenous women and girls, reaffirming their right to land ownership and control over natural resources, in particular water, on their territories and protecting them from dispossession, land encroachment and contamination. States should also be called upon to pay particular attention and take appropriate gender-sensitive responses and actions to address such impacts.

International Decade of Indigenous Languages

At its 15th session, EMRIP proposed that the HRC encourage States to engage in fruitful and sustained dialogue with Indigenous Peoples, scholars, civil society and other public and private actors in order to adopt and implement UNESCO's Global Action Plan for the International Decade of Indigenous Languages, taking into account the broad spectrum of human rights entailed in the promotion and fulfilment of Indigenous language rights. This includes ensuring the legal recognition of Indigenous languages; formulation of laws, legislation and programmes for social cohesion; participation and inclusion of Indigenous language speakers; and promotion of the functional use of Indigenous languages in all public domains and services.

EMRIP also urged States to take concrete measures for the implementation of the plan at local and national levels in a culturally-appropriate manner and in close consultation and cooperation with Indigenous Peoples. Funding should be allocated to ensure the full and meaningful participation of Indigenous Peoples.

Work for 2023

EMRIP decided to prepare a 2023 study on the status of Indigenous Peoples' rights worldwide in the achievement of the aims of the UNDRIP, mandated by the HRC.[7] The study will focus on the theme of the impact of militarization on Indigenous Peoples' rights in line with the UNDRIP. To that end, EMRIP organized an expert seminar on 5-6 December 2022. In 2023, EMRIP will also prepare a report on establishing effective monitoring mechanisms at the national and regional levels for the implementation of UNDRIP. In this regard an expert seminar was organized in February 2023. Both reports will be discussed and finalized during EMRIP's 16th session from 17-21 July 2023.

Reprisals against human rights defenders, mandate holders and Indigenous leaders

EMRIP emphasized and recalled that the UN system has committed to ensuring that its events are ones where everyone can participate in an

inclusive, respectful, and safe environment, without fear of intimidation, harassment or reprisals of any sort, as clearly established in the Code of Conduct to Prevent Harassment, Including Sexual Harassment at UN System Events.

EMRIP urged the HRC to call upon States to behave with integrity and respect towards all participants attending or involved with any EMRIP meeting and to ensure the highest ethical and professional standards. EMRIP also urged the HRC to strongly reaffirm that any act of harassment and reprisals is inadmissible and that it will be dealt with promptly.

EMRIP further called upon the HRC to reiterate the concerns and proposed action set out in Council resolutions A/HRC/42/19 (paras. 27–28) and A/HRC/48/11 (paras. 31–32), including the concern about the increase in cases of reprisals against Indigenous human rights defenders, among others. It also called upon the HRC to urge States to adopt emergency responses to ensure due protection of Indigenous leaders and their communities and to address all allegations and condemn all reprisals against Indigenous human rights defenders, including UN mandate holders working on Indigenous Peoples' rights and Indigenous Peoples' representatives attending EMRIP sessions.

EMRIP has been facing some incidents lately that could be understood as acts of intimidation and reprisals against individuals and groups who cooperate or have cooperated with the UN, its representatives and mechanisms in the field of human rights or in the discharge of their mandate as experts appointed by the HRC. For example, EMRIP raised concerns related to the impossibility of EMRIP expert member Ms Anexa Alfred Cunningham returning to her home country after the July 2022 session. EMRIP regularly liaises with the Office of the President of the HRC on allegations of acts of reprisal and intimidation committed against persons in connection with their contribution to EMRIP's work. EMRIP is in no way intimidated by these regrettable acts and will continue discharging its mandate robustly.

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 continue the dialogue and invite States to its session in July

2023 to share their views on how to facilitate a stronger dialogue with States regarding requests for country engagement.

Notes and references

1. UNESCO. "The Global Task Force for Making a Decade of Action for Indigenous Languages." https://en.unesco.org/idil2022-2032/globaltaskforce
2. United Nations. General Assembly. "Treaties, agreements and other constructive arrangements, including peace accords, and reconciliation initiatives, and their constitutional recognition. Study of the Expert Mechanism on the Rights on Indigenous Peoples." 2022, https://www.undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F50&Language=E&DeviceType=Desktop&LangRequested=False
3. Ibid. Prepared pursuant to paragraph 2 (a) of HRC resolution 33/25.
4. Article 37: 1) Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements. 2) Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.
5. United Nations. General Assembly. "Violence against indigenous women and girls. Report of the Special Rapporteur on violence against women, its causes and consequences, Reem Alsalem." 2022, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/323/90/pdf/G2232390.pdf?OpenElement (un.org)
6. United Nations. General Assembly. "Annual report of the Expert Mechanism on the Rights of Indigenous Peoples." 2022, https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F51%2F49&Language=E&DeviceType=Desktop&LangRequested=False
7. In resolution 33/25, paragraph 2 (a).

Binota Moy Dhamai *is the Chair of EMRIP (2022-2023) and its member from Asia. He is a Jumma-Tripura Indigenous activist from the Chittagong Hill Tracts (CHT) region of Bangladesh. His activism focuses 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 United Nations Framework Convention on Climate Change (UNFCCC) established the Green Climate Fund (GCF) to assist so-called developing countries in climate adaptation and mitigation actions. The GCF aims to catalyse a flow of climate finance to invest in low-emission and climate-resilient development pathways in support of the Paris Agreement goal of keeping average global temperature rise to 1.5 °C.[1] In doing so, the GCF accepts contributions generally termed as climate finance from so-called developed countries, as well as from public, non-public and alternative sources.[2] Following a rapid institutional start-up phase — the GCF was established in 2010 and has been in operation since 2015 — the GCF Initial Resource Mobilization (IRM) in 2014 raised USD 10.3 billion in pledges. Of this, USD 8.3 billion were confirmed through unconditional contributions and, after accounting for variation in exchanges rate, USD 7.2 billion have been available for the commitment during the IRM period.

Moving forward, at its 21st Board Meeting in October 2018, the first replenishment of the GCF (GCF-1) was launched and the 33rd Board Meeting held in July 2022 launched the second replenishment (GCF-2). According to the GCF statement, GCF-2 will further strengthen the Fund's ability to urgently respond to the climate crisis and empower climate action in developing countries for the 2024 – 2027 period. The Board decision also states that the replenishment process consists of a series of consultations that will culminate in a pledging conference in 2023. As of November 2022, the GCF had raised USD 10 billion equivalent in pledges, of which USD 9.9 billion equivalent was received.[3]

For key decision-making, the GCF has a Board of 12 members from UNFCCC Annex-1 Countries and another 12 from Non-Annex Countries. It also has two Active Observers (AOs) representing civil society, one of whom is from Annex-1 Countries and the other from Non-Annex Countries, as well as two AOs representing private sector organizations.

Unlike the UNFCCC and other UN mechanisms, the GCF does not recognize Indigenous Peoples as a distinct constituency. Nevertheless, the GCF has an Indigenous Peoples Advisory Group (IPAG) that was operationalized in 2022, and a stand-alone Indigenous Peoples Policy.

The AOs from civil society represent the Network of Civil Society Organizations, Indigenous Peoples and Local Communities (CSO Network), a coalition of non-profit observer organizations and Indigenous Peoples' organizations. Besides engaging in the CSO network, Indigenous Peoples and their allies are organized in the Indigenous Peoples Advocacy Team (IPAT).

Overview

As of 31 December 2022, the GCF had funded a total of 209 projects with project investment commitments amounting to USD 11.4 billion. Of the total commitment, the GCF is implementing USD 9.3 billion. It is estimated that these projects will help 666 million people increase their climate resilience and will contribute to preventing the emission of 2.4 billion tons of CO2 equivalent.[4] Micro- and small-scale projects constitute less than half (11% and 33%) of the portfolio whereas medium and large-scale projects account for 36% and 18%, respectively. GCF figures show that the number of large-scale projects are continuing to increase in the project portfolio. The size of a project is important given that larger projects have a higher risk of negative impact on nature and peoples.

In terms of financial instruments, the project investment amount comprises 43% loans, 41% grants, 9% equity, 4% result-based payments and 3% guarantees.[5] The amount of loans is higher among other

investment instruments. Compared to 2021, the GCF's grant investment has decreased by 1% and equity increased by 3% in the project portfolio. These figures raise the question of whether or not climate finance is flowing in accordance with Article 9 of the Paris Agreement, particularly Article 9.4, which states that climate finance should be grants-based on the principle of Common But Differentiated Responsibilities (CBDR). Contrary to Article 9.4, loan investment is increasing in the GCF portfolio.[6]

In terms of result areas, a significant amount is being invested in "livelihood of people and communities" – although there is no data available on how this has included Indigenous Peoples climate-friendly lifeways – followed by "health, food and water security" and "ecosystem and ecosystem services". Of the eight GCF result areas, the lowest amount of investment goes to "transport" and "building, cities, industries and appliances". In terms of investment theme, 49% goes towards adaptation and 51% towards mitigation in grant equivalent terms. In nominal terms, however, adaptation constitutes 38% and mitigation 62% of the portfolio. In terms of access modality, 76% of funds are accessed by international Accredited Entities (AEs), 13% by national Direct Access Entities (DAEs), and 11% by the regional DAEs.

Overall, these figures show how the GCF emphasizes project impact in quantifiable terms of tons of CO2 equivalent mitigated and number of people building their resilience in general. It is, however, equally important to have data on the projects' impact on the social, cultural, economic, ecological and overall well-being of communities and Indigenous Peoples.

Establishment of the Indigenous Peoples Advisory Group (IPAG)

The adoption of the Indigenous People Policy in 2018 was one of the most important advocacy achievements of Indigenous Peoples and their allies at the GCF.[7] A key element of the policy is the establishment of an Indigenous Peoples Advisory Group (IPAG).[8] In 2022, pursuant to paragraph 81 of the policy (decision B.19/11, Annex XI), the IPAG was operationalized.[9]

The main objective of the IPAG is to enhance coordination between the GCF, accredited entities and executing entities, States and Indigenous Peoples in relation to matters concerning Indigenous Peoples. The process of establishing the IPAG took place in accordance with paragraph 82 of the Indigenous Peoples Policy. The policy notes that the IPAG would comprise four Indigenous Peoples' representatives, one from each of the developing state regions where the GCF may fund activities. As set out in the Policy, Indigenous Peoples from each of these regions then went through a self-selection process to decide on a member to represent their region in the IPAG. The Secretariat and the IPAG then developed the terms of reference and functions of the group. The first meeting of the IPAG was held from 26-28 September 2022, in Songdo, South Korea.[10] This process of establishing and operationalizing the IPAG within the GCF is a key milestone.

Development of Environmental and Social Safeguards (ESS)

In carrying out its mandate and ambition of promoting a paradigm shift towards low-emission and climate-resilient development pathways, the GCF acknowledges the need to manage environmental and social risks and impacts, and improve the outcomes of all GCF activities. The CSO Network and IPAT have long been calling for dedicated safeguards to improve environmental and social outcomes. The GCF has thus far used the Performance Standards of the International Finance Corporation (IFC) as interim Environmental and Social Safeguards (ESS) and a tool for the GCF and its partners to identify and minimize any potential adverse environmental and social impacts of its activities, maximize environmental and social benefits, and improve the environmental and social performance of the GCF and its activities. At the 23rd Board Meeting, in July 2019, the Board thus decided to request that the Secretariat proceed to develop the GCF's own ESS, and to set the approach to be taken. The development of the ESS was to happen in three stages, with stakeholder consultations undertaken at each stage, and they would retain the basic structure and thematic content of the interim ESS.

Stage 1 produced a scoping report while, in early 2022 during Stage 2, the GCF presented a proposed structure and contents for the ESS. Stage 3 presented the first full draft, for which another round of "calls for input" was issued in November. The IPAG made its submission and the IPAT also made a detailed submission endorsed by IPAG members.[11] The submissions argued that the draft ESS relied too much on the original IFC Performance Standards and had added new language and elements without ensuring that the resulting safeguards would be sufficiently coherent and comprehensive to effectively protect Indigenous Peoples' rights. They further argued that this left the draft ESS open to interpretation, allowing for potentially dangerous loopholes and failing to meet all the necessary international standards. Key points raised in the submissions included the lack of proper linkage and compliance with the Indigenous Peoples Policy, non-recognition of Indigenous Peoples' positive contributions to climate action, and misinterpretation and misappropriation of the right and principle of Free, Prior and Informed Consent (FPIC), among other issues.

At a subsequent virtual consultation in December 2022, the GCF Secretariat promised to carefully consider the detailed input in its further development of the ESS. The final ESS is due to be adopted by the Board in 2023.

Consultation process for review and update of the Strategic Plan for the GCF's second replenishment period, 2024-2027

The GCF Strategic Plan sets out the Board's long-term strategic vision for the Fund, as well as its objectives and portfolio targets, priorities and operational priorities for the specific programming period. The initial Strategic Plan was adopted in 2016 for the IRM period (2015-2019). The Strategic Plan was then updated in 2020 for the first replenishment period (2020-2023). In May 2022, at its 32nd Board Meeting, the Board decided to launch the consultation process to inform the review and update of the Strategic Plan for the GCF's second replenishment period, 2024-2027.[12] In June 2022, GCF opened a call for submissions and conducted informal consultations. In response to the call, the IPAG submitted its inputs by highlighting the following key points:

A. Recognition of the different needs of Indigenous Peoples.
B. The significant role of public funds as mentioned in Article 9.3 of the Paris Agreement.
C. Importance of mobilizing grant-based climate finance pursuant to Paris Agreement Article 9.4.
D. Effective participation of Indigenous Peoples and recognition of their knowledge in climate action as highlighted by the IPCC AR6.
E. Recognition of the knowledge of Indigenous Peoples in adaptation as per Article 7.5 and support for non-carbon benefits in mitigation as stated in Article 5.2 of the Paris Agreement.
F. Compliance of the Strategic Plan with relevant articles of Paris Agreement in a holistic and integrated manner.
G. Direct access for Indigenous Peoples to GCF finance.
H. Effective monitoring of safeguards implementation.
I. Indigenous Peoples' disaggregated data.
J. Engagement of Indigenous Peoples in readiness activities.
K. KFocus on smaller, locally-led initiatives.

Going forward

Indigenous Peoples' voices and advocacy at the GCF continue to be pivotal. Keeping human rights and the rights of Indigenous Peoples at the center of climate finance is key for the well-being, integrity and survival of Indigenous Peoples and communities as well as for meeting the goals of the Paris Agreement.

Notes and references

1. Green Climate Fund. "Overview. About GCF." Accessed 23 December 2022, https://www.greenclimate.fund/about
2. Green Climate Fund. "Governing Instrument of the Green Climate Found." December 2011, https://www.greenclimate.fund/sites/default/files/document/governing-instrument.pdf
3. Green Climate Fund. Accessed 24 December 2022, https://www.greenclimate.fund/home
4. Ibid
5. Ibid

6. United Nations. Paris Agreement. 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf
7. Harada, Tomohiro., Tunga Bhadra Rai., Kathrin Wessendorf., Stefan Thorsell. The Indigenous World 2019: UN Framework Convention On Climate Change." In The Indigenous World 2019, edited by Dwayne Mamo, IWGIA, 648-649, 2019, https://iwgia.org/en/un-framework-convention-on-climate-change-unfccc/3675-iw-2019-unfccc.html
8. Green Climate Fund. "Indigenous Peoples Policy." https://www.greenclimate.fund/sites/default/files/document/ip-policy.pdf
9. Green Climate Fund. "Notification on the Indigenous Peoples Advisory Group of the Green Climate Fund." 17 February 2022, https://www.greenclimate.fund/sites/default/files/document/notification-indigenous-peoples-advisory-group-green-climate-fund.pdf
10. "GCF hosts first Indigenous Peoples Advisory Group Meeting." Green Climate Fund, 4 October 2022, https://www.greenclimate.fund/news/gcf-hosts-first-indigenous-peoples-advisory-group-meeting
11. The organizations issuing the submission include: Indigenous Peoples' International Centre for Policy Research and Education - Tebtebba Foundation, Center for the Indigenous Peoples Autonomy and Development (CADPI), Nepal Federation of Indigenous Nationalities (NEFIN), Pastoralists Indigenous Non Governmental Organisations' Forum (PINGO's Forum), International Work Group for Indigenous Affairs (IWGIA) and Forest Peoples Programme
12. Green Climate Fund. "Decision of the Board – thirty-second meeting of the Board, 16-19 May 2022, https://www.greenclimate.fund/sites/default/files/document/gcf-b32-15.pdf

Tunga Bhadra Rai *(tungarai@hotmail.com) belongs to the Rai Indigenous Nation of Nepal. He is an indigenous researcher and anthropologist currently working as the Director of Climate Change Program of Nepal Federation of Indigenous Nationalities (NEFIN). He engages in advocacy at the UNFCCC, GCF, and in other national and international fora. Mr. Rai has published articles on Indigenous Peoples.*

Stefan Thorsell *is Climate Advisor 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 representatives. Stefan has published on Indigenous Peoples' rights and climate change as well as 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 organizations 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 these rights. The Indigenous Navigator framework encompasses over 150 structure, process and impact indicators to monitor central aspects of Indigenous Peoples' civil, political, social, economic and cultural rights and fundamental freedoms enshrined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention 169 (ILOC169) 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, begun in 2014, has been developed and carried forward by a consortium consisting of the Asia Indigenous Peoples Pact (AIPP), the Forest Peoples Programme (FPP), the International Work Group for Indigenous Affairs (IWGIA), the Tebtebba Foundation – Indigenous Peoples' International Centre for Policy Research and Education (Tebtebba), the Danish Institute for Human Rights (DIHR) and the International Labour Organization (ILO). This consortium works in partnership with the European Commission.

Indigenous-led, by and for Indigenous Peoples

With its rights-based approach, the tools of the Indigenous Navigator allow Indigenous communities to document their situation in a way that is easily communicable to authorities and development actors. The standardized 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.[1, 2, 3]

The Indigenous Navigator was launched in 2014.[4] As the Indigenous Navigator 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.[5, 6]

Throughout 2022, the Indigenous Navigator continued to support community-led projects through analysis and utilization of its data. Indigenous communities and national organizations in Finland, Norway and Sweden completed and published their national surveys and began the work of implementing community surveys across Sápmi. The national surveys were initiated in partnership with the Sámi Allaskuvla (Sámi University of Applied Sciences) and 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.[7]

In October 2022, the Indigenous Navigator signed a new agreement with the European Commission and began phase three of its global implementation. The Indigenous Navigator is strengthening its implementation in the countries noted above, and has launched data gathering, advocacy and development activities in 14 new countries.[8]

A growing impact

As was reported in *The Indigenous World 2022,*[9] new community and national surveys were conducted in 2021 and 2022. A total of 165 of

these surveys were included in the public dataset, available through the Data Explorer[10] and Index Explorer.[11] These questionnaires are the result of the direct engagement of over 300 Indigenous communities in the data-gathering and analysis process, and they cover an approximate population of 300,000 Indigenous persons.

The COVID-19 pandemic has had a critical impact on Indigenous communities. 2022 saw a reprieve and lifting of some restrictions but, for Indigenous communities, the situation remained a critical issue. 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 remained key in controlling the spread and impact of COVID-19.

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 health, economic and political crises. Updates from partners in Nepal, Cambodia, Bangladesh, Bolivia, and Suriname on how they have been addressing the COVID-19 pandemic were covered in *The Indigenous World 2022.*[12]

In all, the Indigenous Navigator 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, 2,010 representatives from target groups have been trained in their rights, the SDGs, and other relevant public policies and budgets, as well as monitoring and advocacy skills.

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.[13] These dialogues have also impacted regional and global processes. Eight statements were prepared for the High-Level Political Forum (HLPF), and five were delivered with the support of the Indigenous Peoples' Ma-

jor Group. Indigenous Peoples were also able to participate and have their voices heard as a result of concerted advocacy, alliance building, and documentation at all levels.

At the global level, it is clear that the world lacks the full picture of the marginalization and discrimination suffered by Indigenous Peoples due to a dearth of disaggregated data and a critical gap in terms of tools and resources to engage comprehensively and securely. As the human rights-based approach to development has shown, if there is no disaggregated data on Indigenous Peoples, and no effort to ensure they are included in digital transformations, they will remain invisible, their rights will continue to be disregarded in the context of implementing the SDGs and they will be left behind. To address this, and highlight the crucial role of Indigenous Data, by and for Indigenous Peoples themselves, the Indigenous Navigator participated in the international proceedings of RightsCon 2022, the European Development Days 2022, the Human Rights Council 2022, and provided written input to the 67th session of the Commission on the Status of Women in 2023.[14] The Indigenous Navigator furthermore supported Indigenous representatives to attend COP 27 under the UN Framework Convention on Climate Change (UNFCCC),[15] and organized events at COP 15 of the Convention on Biological Diversity (CBD).[16]

Linking the unique perspective of the Indigenous Navigator as a key tool for monitoring the implementation and realization of Indigenous Peoples' rights together with the development of new technologies and engagement in the digital sphere, the Indigenous Navigator organized side events at the UN Permanent Forum on Indigenous Issues (UNPFII), HLPF, and CBD.

At the 21st session of the UNPFII, the event was entitled: *Indigenous Peoples' Rights and Development on the Ground.*[17] At the event, Indigenous leaders from Latin America, Africa, the Arctic and Asia shared their experiences of advocating for respect for and implementation of their rights and the critical role the Indigenous Navigator is playing in monitoring the rights of Indigenous Peoples and enhancing Indigenous Peoples' opportunity to collect community-generated and owned data on their situation.

At the HLPF, the Indigenous Navigator held an event entitled: *Indigenous Peoples' rights and the urgent need for technology to work for democracy.*[18] The event was co-organized with the Danish Ministry of

Foreign Affairs, Servindi, Centro de Estudios Jurídicos e Investigación Social (CEJIS), and IWGIA, with the participation of Chiara Adamo from the European Commission, and the United Nations Special Rapporteur on the rights of Indigenous Peoples, Francisco Calí Tzay. This virtual side-event offered a platform for Indigenous Peoples to share their challenges, perspectives and aspirations regarding technology's role in promoting a more just, equitable and peaceful global society. The key message from the proceedings was that technology must act to ensure democratic societies that fully respect Indigenous Peoples' rights. Further, it highlighted the critical role of Indigenous Peoples' own community-based data collection in demanding their rights.

Experiences of using the Indigenous Navigator tools were highlighted during COP 15 of the CBD, in the context of promoting Community-based Monitoring and Information Systems (CBMIS) to track progress in the implementation of global commitments in the post-2020 Global Biodiversity Framework. Members of the network presented community-generated data on the positive contributions of collective actions by Indigenous Peoples and local communities, as well as the negative impacts of external projects on climate and biodiversity-related projects implemented without the Free, Prior and Informed Consent (FPIC) of affected communities. As a result of these advocacy efforts carried out in close collaboration with the International Indigenous Forum on Biodiversity (IIFB) and its Working Group on Indicators, COP 15 adopted a decision inviting *"Parties and relevant organizations to support community-based monitoring and information systems and citizen science and their contributions to the implementation of the monitoring framework for the Kunming-Montreal global biodiversity framework."*[19]

Through their findings, the country-level and global-level engagement continues 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.

Continued commitment, a valued tool

National partners, as well as beneficiary communities, have proven, and continue to prove, their engagement and commitment to the In-

digenous Navigator as a valued tool to realize their rights by promoting it and submitting applications to expand their work and its coverage. National partners have organized and conducted activities that have performed beyond expectations given the local contexts and the catastrophic impacts of COVID-19. They are also continuously supporting local Indigenous communities who have shown their enhanced capacity to develop grant proposals, manage the implementation of pilot projects, strengthen their demands, describe their internal strategies, and engage with local municipal authorities alongside their visions for their own development.

In 2022, the Indigenous Navigator's consortium secured a new three-year grant from the European Commission for 2022-2025. The grant, "Indigenous Navigator - towards full and effective recognition and realization of Indigenous Peoples' rights", supports the Indigenous Navigator's vision and mission, including an expansion of the Indigenous Navigator's geographic outreach and impact, aiming to conduct national surveys in approximately 30 countries; improving its tools based on feedback from Indigenous communities and users; as well as developing and adding additional 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.

Notes and references

1. Berger, David. "The Indigenous Navigator." In The Indigenous World 2020, edited by Dwayne Mamo, 685-692. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA), 2020, Indigenous World 2020: The Indigenous Navigator: Self-Determined Development - IWGIA - International Work Group for Indigenous Affairs
2. Berger, David. "The Indigenous Navigator." In The Indigenous World 2021, edited by Dwayne Mamo, 734-745. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA), 2021, The Indigenous World 2021: The Indigenous Navigator: Self-Determined Development - IWGIA - International Work Group for Indigenous Affairs
3. Berger, David. "The Indigenous Navigator." In The Indigenous World 2022, edited by Dwayne Mamo 747-757. Copenhagen, Denmark: International Work Group for Indigenous Affairs (IWGIA), 2022, The Indigenous World 2022: The Indigenous Navigator: Self-Determined Development - IWGIA - International Work Group for Indigenous Affairs

4. Berger, David. "The Indigenous Navigator."
5. Visit: Indigenous Navigator. Indigenous data. https://indigenousnavigator.org/indigenous-data
6. Facebook. International Work Group for Indigenous Affairs (IWGIA). "Charting pathways to realize SDG 16 with Indigenous Peoples." Co-organizers: AIPP, FPP, DIHR, ILO, OKANI, PINGO's Forum, 2021, https://fb.watch/byX5BIISU3/
7. Berger, David. "The Indigenous Navigator."
8. These are: Argentina, Brazil, Chile, Ecuador, Guyana, India, Indonesia, Japan, Malaysia, Mexico, Paraguay, South Africa, Thailand, Uganda.
9. Berger, David. "The Indigenous Navigator." In The Indigenous World 2022
10. Indigenous Navigator. Data explorer for National submissions, website, https://indigenousnavigator.org/data-explorer/2; Indigenous Navigator. Data explorer for Community submissions, https://indigenousnavigator.org/data-explorer/3
11. Indigenous Navigator. Index Explorer for all submissions, https://indigenousnavigator.org/index-explorer
12. Berger, David. "The Indigenous Navigator." In The Indigenous World 2022
13. Berger, David. "The Indigenous Navigator."
14. United Nations. Economic and Social Council. Commission on the Status of Women, Sixty-seventh session. 3Stqtement submitted by Asia Indigenous Peoples Pact and International Working Group for Indigenous Affairs, non-governmental organization in consultative status with the Economic and Social Council." 2022, http://undocs.org/E/CN.6/2023/NGO/89 and https://iwgia.org/en/resources/publications/4924-iwgia-aipp-joint-statement-commission-status-women-67-session.html
15. See the article in this volume on the UNFCCC.
16. See the article in this volume on the CBD.
17. Watch the full side event: Indigenous Navigator. "UNPFII 2022 Side-Event: Indigenous Peoples' Rights and Development on the Ground." April 2022, https://youtu.be/IByN-Kn3k5s
18. Watch the full side event: Indigenous Navigator. "Indigenous Peoples' rights and the urgent need for technology to work for democracy." July 2022, https://youtu.be/okTG4fMMDa4
19. These interventions were led by Forest Peoples Programme. An overview of the side events organized can be found here: "COP15 – Working to include Indigenous Peoples and Local Communities' rights in new biodiversity agreement." Forest Peoples Programme, 2 December 2022, https://www.forestpeoples.org/en/news/2022/cop-15-indigenous-rights-global-biodiversity-framework

David Nathaniel Berger *is an Advisor at the International Work Group for Indigenous Affairs (IWGIA) and is a member of the team responsible for the Indigenous Navigator. He is passionate about sustainability, human rights and data, and works to ensure that Indigenous Peoples' rights are recognized, promoted and protected.*

The Inter-American Human Rights System (IAHRS)

The Inter-American Human Rights System (IAHRS) comprises two human rights bodies: the Inter-American Commission on Human Rights (IACHR or the Commission) and the Inter-American Court of Human Rights (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. 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 in order to give attention to the Indigenous Peoples of the hemisphere, as well as to strengthen, promote and systematize the work that the Commission itself carries out in this regard. To this end, the IACHR uses a variety of instruments, such as 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 organized by States, academic institutions and civil society. The Inter-American Court, on the other hand, issues advisory opinions and judgements, among other things.

The following sets out some of the main activities undertaken during 2022 by the IACHR in relation to the rights of Indigenous Peoples.

I. Thematic reports and Strategic Plan 2023-2027

The IACHR did not publish a thematic report on the rights of Indigenous Peoples during 2022. At its 185th Session, the Commission unanimously approved its new Strategic Plan for the period 2023-2027. This is the main institutional instrument for managing and contributing to the hemisphere's human rights challenges. It was prepared on the basis of a collaborative process with the broad participation of representatives of States and civil society, from whom relevant and strategic suggestions were received. The plan will act as a guide, establishing the priority actions and themes for the next five years and placing people and their rights at the heart of the Commission's mandate.[1]

With regard to the rights of Indigenous Peoples and the work of its thematic Rapporteurship, the Strategic Plan notes the persistence of challenges in achieving greater respect for and practical and effective exercise of the right to their self-determination, their political status and their economic, social and cultural development. At the same time, they continue to face difficulties in protecting their lands, territories and natural resources and in gaining respect for their representative authorities and their decision-making processes. In addition, violence against and criminalization of Indigenous leaders for defending their territories has intensified. Added to this are the differential impacts of the COVID-19 pandemic and climate change on the rights of Indigenous Peoples.[2]

For the 2023-2027 period, the Rapporteurship on the Rights of Indigenous Peoples therefore proposes continuing a strategy of i) promoting the human rights of Indigenous Peoples to life, personal integrity, culture, lands, territories and natural resources; ii) promoting and strengthening inter-American standards on the right to self-determination, in particular those related to autonomy and self-government, own systems of justice, jurisdiction, security and protection, own development priorities, and Free, Prior and Informed Consultation and Consent (FPIC), including own autonomous protocols for consultation and consent; and iii) protecting the rights of Indigenous Peoples in the context of the effects of climate change and promoting their leadership to develop responses to combat and mitigate these effects and protect the environment in general.[3]

II. Public hearings

During the sessions held in 2022, the following hearings addressed Indigenous Peoples' issues.

183rd Session[4]

During the 183rd Session, a hearing was held on the *Situation of the human rights of Indigenous Peoples in the context of extractive activities in Bolivia.* The IACHR received information on the effects of mercury contamination on the health, life, food and healthy environment of Indigenous communities in Bolivia, as the State is failing to adequately regulate the use and importation of mercury. The petitioners highlighted the differential impact on women, children and adolescents. During the hearing, the State reported on existing measures for preventing the impacts of mercury, and expressed its willingness to regulate its use and ensure the responsible disposal of toxic substances in accordance with the Minamata Convention on mercury. For its part, the IACHR reiterated the importance of the State adopting a National Plan of Action for the control of and attention to damage deriving from mercury in light of its international obligations. It also stressed a duty to ensure that extractive activities are carried out with respect for human rights, including prior consultation and the direct participation of women in all processes, as well as culturally-appropriate reparations for those communities affected.

During the same session, the hearing on Case 13,641 was also held: *Peasant Communities and Peasant Patrols of the Provinces of Celendín, Hualgayoc-Bambamarca v. Peru.* The case deals with allegations arising over more than two decades in relation to the gold mining concessions of the Yanacocha company, which is developing the Conga project without prior consultation or consent of peasant communities and peasant patrols in the department of Cajamarca, and whose territories are located in the area in question. A member of a peasant patrol testified to the effects of the project and the risks to his livelihood. The UN Special Rapporteur on the rights of Indigenous Peoples testified as an expert witness and indicated that the peasant patrols are a form of Indigenous Peoples' organization. For its part, the State alleged that the petitioners should have previously sought, through administrative

and judicial means, to be identified as Indigenous Peoples in order to be consulted. It maintained that the peasant patrols were different forms of social organization deriving from the rural environment. After asking several questions of the declarants and the parties, the IACHR emphasized that it would continue to analyse the merits of the case and would adopt a report on the case in due course.

A hearing was also held on the *Situation of public policies on business and human rights in Peru.* At the hearing, Indigenous Peoples' organizations pointed out that the National Action Plan on Business and Human Rights had been approved without prior consultation and that their contributions had not been reflected in it, in particular aspects referring to consultation and consent, territorial ownership, food sovereignty and Indigenous jurisdiction. In addition, they denounced the State's poor oversight of mining and oil activities, which they hold responsible for the contamination of water, land and air. Finally, they denounced the criminalization and persecution of human rights and environmental defenders. For its part, the State stated that the National Action Plan on Business and Human Rights and the request for this hearing demonstrated its political will to seek solutions to these problems. It also underscored the openness of the authorities to receiving comments, recommendations and technical assistance for the implementation of this initiative. The Commission highlighted the right to participate in the design and implementation of public policies, recalled the recommendations in its report on Business and Human Rights and made its technical assistance tools available to the parties with regard to this initiative.

During the same period of sessions, a hearing was held on the *Situation of forced evictions and agrarian policies in Paraguay,* in which the petitioning organizations denounced human rights violations against Indigenous Peoples and peasant communities. They pointed out that the legislation increases the penalties for property invasion and acts of violence in the context of evictions, which have included the destruction of crops, homes, schools and ancestral spaces. They denounced the fact the evictions are carried out without taking into account the existence of titles in favour of the Indigenous communities. Meanwhile, the State indicated that the invasion of property is classified in the legal

system in order to safeguard public order. It also reported that members of Indigenous Peoples are provided with legal assistance and that there are priority social programmes for Indigenous communities. For its part, the IACHR highlighted the need to address the land tenure issue through dialogue between the State and civil society and the affected communities.

184th Session[5]

At the184th session, the hearing on Case 13,572 was held: *Mashco Piro, Yora and Amahuanca villages v. Peru*. This relates to a petition presented on behalf of these peoples who are living in voluntary isolation and initial contact in the regions of Madre de Dios, Cusco and Ucayali. The petition alleged that the Peruvian State had not provided full guarantees for the integrity of their territory, lands and natural resources, which poses a serious risk to their survival and physical, spiritual and cultural integrity. The declarant proposed by the petitioner explained the risks and threats faced by the Mashco Piro, Yora and Amahuanca peoples, the impact on the no-contact principle and the consequences of the presence of third parties on their territory. For its part, the declarant proposed by the State spoke of the policies and actions implemented by the Ministry of Culture for the protection of Indigenous Peoples in isolation and initial contact, related to territorial protection, the approval of specific regulations, the creation of Indigenous reserves, and the process of re-classification of the Madre de Dios territorial reserve. The IACHR asked the declarants and the parties about the process of recognizing and classifying the territories for Indigenous Peoples in voluntary isolation/initial contact as Indigenous reserves and their intangible nature. The IACHR will continue to consider the merits of the case and will adopt its report in due course.

185th Session[6]

During the 185th session, the hearing on *Ecuador: Social Protests and Indigenous Peoples* was held, focusing on the causes behind the social protests that began in June 2022. The organizations and representatives of the Indigenous Peoples highlighted the structural causes of the protests, related to inequality, poverty and the absence of policies developed with popular participation. They also denounced the crimi-

nalization and stigmatization of people who participated in the demonstrations. For its part, the State provided information on the aforementioned structural situations, the status of the roundtables set up to discuss the demands of the Indigenous Peoples, and the follow-up to the agreements reached after the protests. It also highlighted the public policies adopted in favour of Indigenous Peoples and expressed its commitment to comply with Inter-American standards and the recommendations of the IACHR. The IACHR emphasized the importance of maintaining dialogue as a requirement for the adoption of public policies and of the consultation and consent of Indigenous Peoples with respect of extractive activities. Finally, it reiterated its commitment to continue monitoring the situation of Indigenous Peoples in Ecuador.

During the same session, a hearing was held on *Brazil: the human rights of Indigenous Peoples,* which denounced the scaling up of violence against Indigenous Peoples and serious setbacks in their rights due to delays in the demarcation processes, the bills before Congress and the legal thesis of the so-called "temporary framework". The Indigenous organizations reported on the invasion of their lands by illegal miners and loggers, violence and criminalization by landowners and other third parties, and the precarious situation of their economic, social, cultural and environmental rights. For its part, the State highlighted measures in favour of Indigenous Peoples, including programmes in the areas of health, development and women's rights. During the hearing, the IACHR highlighted the importance of recognizing the rights of Indigenous Peoples, the demarcation of their territories and the realization of their rights to consultation and self-determination. It also asked about the actions taken to implement the precautionary measures granted in favour of Indigenous Peoples, and to prevent, investigate and punish acts of violence against them, including sexual violence against Indigenous women and girls.

The hearing on *United States: Indigenous Peoples and Forced Displacement in the Context of Climate Change* was also held in which representatives of Indigenous Peoples and organizations from the states of Louisiana and Alaska denounced the lack of effective action at the federal and state levels to address the impacts of climate change and extractive projects on their ancestral territories. For its part, the State recognized the challenges of climate change for Indigenous Peoples

and expressed its commitment to their right to self-determination. It also reported on measures adopted by the federal administration to guarantee prior consultation for projects with impacts on Indigenous Peoples, as well as investments in water infrastructure, the relocation of communities and resilience in the face of climate change. The IACHR highlighted the importance of guaranteeing prior consultation with regard to all federal projects so as to involve communities and effectively mitigate the differential environmental impacts they face from extractive industries, climate change and historical discrimination.

III. Precautionary measures

On 1 February 2022, the IACHR granted precautionary measure MC 858-21 in favour of the families of the Río Murindó and Río Chageradó Reservations of the Embera Eyábida Indigenous people in Colombia. The precautionary measure was requested due to the risk in which the beneficiaries find themselves as their original lands are being occupied by armed groups who are carrying out acts of violence, aggression, harassment, displacement and even murder. The IACHR requested that the State of Colombia adopt the necessary and culturally-appropriate measures to safeguard the lives and personal integrity of the families of the Río Murindó and Río Chageradó Reservations and to reach agreement with the beneficiaries and/or their representatives on the measures to be adopted.[7]

On 13 February 2022, the IACHR decided to extend precautionary measures in favour of Indigenous persons from the Musawas, Suniwas and Wilú communities of the Mayangna Sauni As territory in the Autonomous Region of the Northern Caribbean Coast, Nicaragua. The request was made due to threats, intimidation and violence against the inhabitants of these communities in a context in which land titling processes are still pending due to the presence of settlers on Indigenous territories. The IACHR requested that Nicaragua adopt the necessary and culturally-appropriate measures to safeguard the lives and personal privacy of the Indigenous people of these communities and agree on the measures to be implemented with the beneficiaries and their representatives.[8]

On 2 October 2022, the IACHR granted precautionary measures in favour of members of the Guapoy's community of the Guaraní Kaiowá Indigenous people in Brazil. The members of this community are facing a serious and urgent risk of irreparable damage to their rights as they have been subjected to acts of violence in the context of disputes over land ownership in the region and the murder of two Indigenous people who are proposed beneficiaries. Despite some actions taken by the State, the IACHR observed that the petitioners had reported new acts indicating an increase in violence against the community. The precautionary measures requested from the State of Brazil included the adoption of necessary and culturally-appropriate measures to protect the lives and personal integrity of members of the Guapoy's community of the Guaraní Kaiowá Indigenous people, particularly in relation to acts of risk attributable to third parties, among others.[9]

On 27 October 2022, the Inter-American Commission extended precautionary measure MC 449-22[10] in favour of 11 members of the União dos Povos Indígenas do Vale de Javari (UNIVAJA) in Brazil, who are facing risk due to their work to protect the Indigenous Peoples of the Javari Valley and their territory, as well as their direct participation in the search for the initial beneficiaries of this precautionary measure, Bruno Araújo Pereira and Dom Phillips, and their demand for justice for their murders. Due to the serious and urgent situation of the 11 persons identified, the IACHR requested that Brazil adopt the necessary measures to protect their lives and personal integrity, taking into consideration the cultural relevance of the measures adopted, and ensure that they can continue to carry out their work to defend human rights without being subjected to threats, harassment or acts of violence in the exercise of their duties, among others.[11]

On 11 December 2022, the Inter-American Commission granted precautionary measures in favour of Jhon Anderson Ipia Bibu, Indigenous leader, political coordinator and ethno-educator of the Nasa people of the Kwe'sx Yu Kiwe Indigenous Reservation due to the risk he is facing as a result of various threats and harassment by illegal armed groups, as well as having been shot by a firearm. Notwithstanding the actions taken by the State, the IACHR observed the ongoing threats from illegal armed groups and the inadequacy of the protection meas-

ures adopted by the State. The IACHR decided to grant the precautionary measure and requested that the State of Colombia adopt the necessary measures, with the corresponding ethnic approach, to protect the right to life and personal integrity of Jhon Anderson Ipia Bubu, as well as the necessary protection measures so that he can continue exercising his Indigenous leadership without being subjected to threats, intimidation, harassment or acts of violence, among others.[12]

IV. Petitions and cases

Admissibility reports

On 17 May 2022, the IACHR approved the admissibility report relating to the petition on behalf of the Kofán de Santa Rosa del Guamuez Indigenous community with respect of Colombia. The petition alleged the international responsibility of the Colombian State for violating the community's human rights due to the failure to consult on the construction of a military base in their territory; the failure to consult on the construction of works for the expansion of a pre-existing road in their territory; and the failure to guarantee the effective enjoyment and possession of their ancestral right by regularizing the property ownership of their reserve. The IACHR admitted the petition in relation to the rights to personal integrity, property, equality before the law, judicial protection and progressive development of economic, social, cultural and environmental rights, among other provisions of the American Convention on Human Rights.[13]

On 17 November 2022, the IACHR approved the admissibility report relating to the petition on behalf of Indigenous communities of the Maya Ixil people of Guatemala. The petitioning organizations denounced the systematic attacks against members of the Maya Ixil people perpetrated between 1982 and 1983, which they described as ethnic genocide. It is alleged that these attacks caused the death of 1,771 people belonging to the Ixil people, and included massacres, sexual violence against women and girls, acts of torture and forced disappearances, as well as the forced displacement of communities from their ancestral territory. They also denounced the impunity surrounding these events after more than 30 years. The IACHR admitted the petition in relation to provisions

of the American Convention relating to the rights to life, personal integrity, prohibition of slavery and servitude, personal liberty, and judicial guarantees, among others; as well as provisions of the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará).[14]

Cases referred to the Inter-American Court of Human Rights

On 5 January 2022, the IACHR referred the case of the *Quilombola Communities of Alcântara with respect of Brazil* to the Inter-American Court. This relates to the collective property of 152 communities affected by a failure to issue land titles, the installation of an aerospace base without due consultation and prior consent, the expropriation of their lands and territories, and the lack of judicial recourse to remedy the situation. The Commission concluded that the State was responsible for the violation of rights to personal integrity, judicial guarantees, freedom of expression and association, property, economic, social and cultural rights, among other rights recognized in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. The IACHR recommended that Brazil, among other things: delimit, demarcate and title the ancestral territory of the Quilombola communities of Alcântara, guaranteeing them secure tenure in accordance with recognized boundaries and in accordance with their cultural identity, social structure, economic system, customs, beliefs and distinctive traditions, and adopt measures so that the alternative lands currently occupied by the resettled communities are able to guarantee their self-determination and the right to peacefully live their traditional way of life.[15]

Notes and references

1. IACHR. Press Release 257/22, "IACHR Ends 185th Session with Approval of New Strategic Plan". IACHR, 16 November 2022. Available at: https://www.oas.org/

en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/257.asp
2. CIDH. "Strategic Plan 2023-2027: approved by the Inter-American Commission on Human Rights during the 186 period of sessions", OEA/Ser.L/V/II.185 Doc. 310, 31 October 2022, p. 30. Available at: https://www.oas.org/en/iachr/mandate/strategicplan/2023/StrategicPlan2023-2027.pdf
3. IACHR. "Strategic Plan 2023-2027: approved by the Inter-American Commission on Human Rights during the 186 period of sessions", OEA/Ser.L/V/II.185 Doc. 310, 31 October 2022, p. 30. Available at: https://www.oas.org/es/cidh/mandato/planestrategico/2023/PlanEstrategico2023-2027.pdf
4. Section based on IACHR, Press Release 059/22, "The IACHR concludes its 183rd period of sessions". IACHR, 22 March 2022. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/059.asp
5. Section based on IACHR, Press Release 148/22, "IACHR Completes 184th Period of Sessions with 15 Public Hearings on Human Rights in the Americas." IACHR, 29 June 2022. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/148.asp
6. Section based on IACHR, Press Release 257/22, "IACHR Ends 185th Session with Approval of New Strategic Plan". IACHR, 16 November 2022. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/257.asp
7. IACHR. Precautionary Measure No. 858-21, Families of the Río Murindó and Río Chageradó Reservations of the Embera Eyábida Indigenous People of Colombia. IACHR, 1 February 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_5-22_mc_858-21_co_es.pdf
8. IACHR. Precautionary Measure No. 505-15, Indigenous Peoples of the Musawas, Suniwas and Wilú Communities of the Mayangna Sauni As Territory in the Autonomous Region of the Northern Caribbean Coast with respect of Nicaragua. IACHR, 13 February 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_9-22_mc_505-15_ni_es.pdf
9. IACHR. Precautionary Measure No. 517-22, Members of the Guapoy's community of the Guaraní Kaiowá Indigenous People with respect of Brazil. IACHR, 2 October 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_50-22_mc_517-22_br_es.pdf
10. IACHR. Precautionary measure No. 449-22, Bruno Araújo and Dom Phillips with respect of Brazil. IACHR, 11 June 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_24-2022.%20mc-449-22-br%20otorgamiento%20directo_t.d_vf_es.pdf. The precautionary measure was granted in favour of Brazilian Indigenous rights expert and advocate Bruno Araújo Pereira and British journalist Dom Phillips, who disappeared in June 2022 while traveling through the Indigenous lands of the Javari Valley to document the situation of the Indigenous Peoples in that region. Both were later confirmed dead.
11. IACHR. Precautionary Measures No. 449-22, Identified members of the União dos Povos Indígenas do Vale de Javari (UNIVAJA). IACHR, 27 October 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_59-22_mc_449-22_es.pdf
12. IACHR. Precautionary Measures No. 822-22, Jhon Anderson Ipia Bubu with respect of Colombia. IACHR, 11 December 2022. Available at: https://www.oas.org/es/cidh/decisiones/mc/2022/res_70-22_mc_822-22_co_es.pdf
13. IACHR. Report No. 115/22. Petition 162-13. Admissibility. Kofán Indigenous community of Santa Rosa del Guamuez and its members. Colombia. IACHR, 17

May 2022. Available at: https://www.oas.org/es/cidh/decisiones/2022/CO%20165-13%20Comunidad%20indigena%20Kofan%20de%20Santa%20Rosa%20del%20Guamuez%20ADM%20ESP_FINAL%20WEB.pdf

14. IACHR. Report No. 307/22. Petition 1784-13. Admissibility. Indigenous Communities of the Maya Ixil People. Guatemala. IACHR, 17 November 2022. Available at: https://www.oas.org/es/cidh/decisiones/2022/GTAD_1784-13_ES.PDF

15. IACHR. "IACHR Takes to Inter-American Court of Human Rights Case Involving the Collective Property of Alcântara's Quilombola Communities, With Regard to Brazil", Press Release. IACHR, 12 January 2022. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2022/013.asp

16. The compilation in this document 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.*[16]

The Intergovernmental Panel on Climate Change (IPCC)

The Intergovernmental Panel on Climate Change (IPCC) is a global subsidiary body of the UN and one of the most authoritative actors in assessing climate change.[1, 2] It comprises three working groups (WG): WGI examines the physical science of the past, present, and future climate change; WGII assesses the vulnerability of socio-ecological systems, climate change consequences and adaptation options; and WGIII focuses on climate change mitigation.[3]

Each WG assesses existing scientific, technical and quantitative socio-economic evidence following an outline defined at the beginning of the assessment cycle during a plenary with States. The outlines structure the chapters of each WG report, which include measures of confidence and probabilistic quantification of uncertainty. Each WG report is further complemented with a summary for policymakers (SPM) – a brief summary with key policy-relevant messages – and a technical summary (TS) – a more extended summary that includes technical information.

IPCC reports play a decisive role in how climate policy is defined, what issues are prioritized and what responses are made visible and promoted.[4] It is therefore crucial to understand what they say about Indigenous Peoples.

During 2021 and 2022, the three WGs released a set of reports constituting the sixth assessment cycle (AR6) of the IPCC. This chapter summarizes the content related to Indigenous Peoples in these reports, paying particular attention to Indigenous knowledge systems.[5] In the first section, we present the main messages that emerged from the IPCC findings set out in the reports. We then briefly analyse the scope and limitations of these references by taking a brief look at the structure and proceedings of the IPCC.

References to Indigenous Peoples in WGI: the physical science basis

The WGI full report includes 20 references related to Indigenous Peoples. The SPM has no references, and the TS includes only a brief reference to Indigenous knowledge.

The main message of this report is that Indigenous knowledge complements scientific evidence on climate change. The report highlights the role of oral traditions as sources of information that enrich instrumental data. Although the report accepts that Indigenous knowledge includes relevant information, it fails to promote its use along with [non-Indigenous] science – which is evidenced by its omission from most chapters. The report also suggests that Indigenous knowledge is at risk because knowledge holders are "passing away".

References to Indigenous Peoples in WGII: impacts, adaptation and vulnerability

The WGII full report mentions Indigenous Peoples 1,130 times, including 17 references in the SPM. The TS mentions Indigenous Peoples 94 times.

All WGII chapters refer to Indigenous Peoples. Chapter 1 notes that WGII has engaged with different types of knowledge, including Indigenous knowledge, during the preparation of the report. This chapter also defines and highlights the role of Indigenous knowledge, which is defined as "the understandings, skills and philosophies developed by societies with long histories of interaction with their natural surroundings".[6] Nevertheless, WGII recognizes that there is no single definition, as this will vary according to context. It also recognizes that this knowledge is crucial for addressing climate risks, avoiding the reproduction of injustices and rights violations, and promoting climate action. Furthermore, it notes that the inclusion of Indigenous knowledge in IPCC processes is supported by Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

Although the treatment of Indigenous-related content is uneven across chapters, the main message is that Indigenous Peoples are among the groups most vulnerable to the effects of climate change.

The report highlights malnutrition, water scarcity, food insecurity, mental health effects, fires, livelihood losses, and rising costs, mortality and morbidity from climate-sensitive diseases, increased respiratory problems, and greater exposure to floods and droughts. Furthermore, the IPCC recognizes that Indigenous Peoples are experiencing irreparable damage to their languages, knowledge systems and livelihoods due to biodiversity loss.

For the first time, the IPCC recognizes that the vulnerability of Indigenous Peoples is produced and exacerbated by the legacy of colonialism. Colonial dynamics also mean that Indigenous Peoples are negatively affected by maladaptation practices that reinforce inequities and exposure to high risks, such as forced relocation. According to WGII, avoiding maladaptation requires rights-based approaches –including recognition, procedural and distributive justice–, participatory methodologies, the inclusion of Indigenous knowledge, and consultation and informed consent.

Due to their vulnerability and historical marginalization, WGII notes that the participation of Indigenous Peoples in climate governance is an ethical requirement. This engagement is further supported by the extensive evidence presented across the report regarding the contributions of Indigenous Peoples and their knowledge systems to adaptation. However, it recognizes that this knowledge is weakening.

Among Indigenous Peoples' contributions, WGII highlights Indigenous knowledge that is associated with better management/conservation and biodiversity sustainability and is fundamental to risk reduction, food and water security, and more equitable, effective and durable adaptation outcomes. Indigenous Peoples' knowledge plays a fundamental role in the search for solutions because of its localized characteristics and capacity to link diverse cultures, policy frameworks, economic systems, and biodiversity management. It also promotes intergenerational and holistic approaches.

Because of these contributions, WGII indicates that collaborating with Indigenous Peoples, promoting dialogue with [non-Indigenous] sciences, and strengthening their decision-making and leadership capacities all increases the chances of sustainable adaptation and resilient climate development.

Furthermore, WGII highlights evidence demonstrating that the

involvement of Indigenous Peoples and their knowledge holders in climate governance has several positive outcomes related to justice and equity. Indigenous Peoples' engagement in decision-making allows for better addressing of historical inequity and injustices. In addition, applying Indigenous Peoples' customary and traditional justice systems enhances equity in adaptation policy processes. Such involvement and recognition demands a strengthening of self-determination, recognition of Indigenous Peoples' rights, and support for Indigenous knowledge-based adaptation.

References to Indigenous Peoples in WGIII: mitigation of climate change

The WGIII full report contains 74 references related to Indigenous Peoples, of which 12 are in the SPM. The TS has just one reference, which is to Indigenous Peoples' lands.

This report highlights the link between equity and mitigation and recognizes the intersectional impacts of climate change. It also recognizes that Indigenous Peoples are disproportionately impacted by the burdens associated with mitigation strategies, particularly Reducing Emissions from Deforestation and forest Degradation (REDD+) projects. Carbon sequestration carries risks to conservation, food and water security, wood supply, livelihoods, land tenure and land rights of Indigenous Peoples, especially when they limit communities' access to ecosystems – as in the case of "protected areas". WGIII also underlines the impacts of activities associated with resource extraction and renewable energy development, primarily when they are implemented on a large scale and where land tenure – which includes customary land tenure – is not secure.

WGIII goes beyond merely referring to Indigenous Peoples as vulnerable to the impacts of climate change and mitigation measures. Indeed, the report highlights the importance of Indigenous Peoples' advocacy. Indigenous movements have promoted climate justice by denouncing ongoing socio-ecological injustices, land claims, and a deeply spiritual and cultural commitment to environmental protection. Although their agency has allowed them to influence international ne-

gotiations, it has also led them to face high levels of repression and violence.

WGIII also highlights the role of Indigenous Peoples in mitigation efforts. Indigenous Peoples are crucial to land-based mitigation measures and forest governance. Concerning "protected areas", the report notes that community forest management (CFM) leads to a less intensive use of forest resources while providing carbon benefits by protecting forest cover. Furthermore, their knowledge contributes to biodiversity and ecosystem conservation, which is intertwined with improved climate resilience, disaster preparedness, quality of life, human well-being, and sustainable development. Nevertheless, the extent to which Indigenous Peoples can contribute to mitigation depends on the degree States permit their engagement at national and sub-national levels.

Based on the evidence assessed, WGIII concludes that amplifying the voices and agency of Indigenous Peoples has positive implications for climate policy. Their narratives can enable humanity to make sense of and imagine new futures, increase critical thinking, and promote agency and new coalitions. Accordingly, WGIII calls for a climate justice approach to be applied alongside more research on the role of and collaboration with Indigenous Peoples.

Discussion

In its latest cycle, the IPCC has made considerable progress in assessing the situation and contributions of Indigenous Peoples to climate science and policy. The AR6 moves the focus from Indigenous Peoples as vulnerable towards positioning Indigenous Peoples as relevant actors. This shift reflects the growing scientific evidence of the multiple benefits of recognizing Indigenous Peoples and their knowledge as equal contributors to climate science and policy. Some progress has been made with respect to the inclusion of Indigenous Peoples as authors. However, there are still many barriers to the effective and equitable engagement and representation of Indigenous Peoples in IPCC processes, which inevitably has implications for climate policy.

The treatment and consideration of, and interaction with, Indige-

nous Peoples across WGs is inconsistent and, in some cases, lacks the rigour warranted for an IPCC report, especially in WGI and WGII. For example, the relationship between the impact of mitigation policies on human rights and barriers to adaptation is not evenly observed. Although WGII pays attention to the violation of Indigenous Peoples' rights, WGIII relativizes it largely by mentioning compensation in the framework of mitigation projects. The core right and principle of Free, Prior and Informed Consent (FPIC) is omitted and diluted by an erroneous reference to "veto power".

Indigenous Peoples continue to be presented as a "civil society" group, which fails to recognize Indigenous Peoples' distinct and unique position as collective rights holders recognized by the UN. Further to this, Indigenous Peoples are presented as a largely homogenous sector. The references are often presented without acknowledging the diversity of Indigenous Peoples from the seven socio-cultural regions of the world, not to mention the vast diversity within these regions. By not taking a distinction-based approach, the reports promote a rather pan-Indigenous narrative that fails to acknowledge and respect the diversity of and distinction between Indigenous Peoples.

The IPCC also falls short of considering diversity and intersectionality among Indigenous Peoples. There are scant references to specific groups, such as Indigenous women, elders and children, who, besides being highly vulnerable, are central to the intergenerational transmission of knowledge.

Another significant shortcoming is the treatment given to Indigenous knowledge systems, which are mainly understood merely as *local practices*. Indigenous Peoples' values and worldviews, which underpin these actions – and contribute to rethinking the social and cultural causes of climate change – are still not explored in depth by the IPCC. Even though WGIII recognizes the role Indigenous Peoples should play in leading transformative change, the reports lack any substance regarding how this change needs to be predicated on Indigenous perspectives, worldviews, rights, and relationships with the environment. It does not delve into the complexities and nuances of Indigenous Peoples' profound, multi-layered, and intrinsic relationships with their lands, territories and resources.

Similarly, although the IPCC acknowledges knowledge co-produc-

tion processes, the assessment omits the conflicts around research that excludes Indigenous Peoples and their knowledge holders. Nor does it mention Indigenous Peoples' sovereignty over their knowledge systems. Furthermore, the AR6 reports speak primarily of *integrating* Indigenous Peoples' knowledge into strategies guided by non-Indigenous science rather than as a horizontal, equitable, and ethical collaboration. Such an orientation from the IPCC reflects the fact that it fails to recognize Indigenous knowledge systems as a distinct science. The root of this limitation lies in the way the reports are produced. Although the assessments present evidence that refers to Indigenous Peoples' distinct knowledge systems, they fail to ensure that Indigenous Peoples from different regions and their knowledge holders contribute equitably and horizontally to the process.

The collaboration with Indigenous authors and organizations is rather weak, and their particular contributions are not appropriately acknowledged. The Inuit Circumpolar Council (ICC), the international representative body of the Inuit, has pioneered work within the international Indigenous movement on the equitable recognition of Indigenous knowledge within the IPCC. And yet despite gaining IPCC observer status in 2020 as the first representative organization of Indigenous Peoples,[7] the reports do not refer to this. Furthermore, Indigenous authors are represented only by the countries in which they live or work rather than by their unique peoples or socio-cultural regions. This situation could be seen as an infringement of their right to self-identification and an undermining of their collective identity.

Indigenous values, worldviews and paradigms allow us to understand the importance of and how to holistically transform society to ensure urgent, holistic, just and effective responses to the human-induced climate crisis. It is therefore hoped that, in its next assessment cycle, the IPCC will not only continue to expand its attention on Indigenous Peoples but also involve representatives from all seven socio-cultural regions directly in a permanent, equitable and differentiated manner that is consistent with their status, rights, and role. In collaboration with Indigenous Peoples, the IPCC should also explore specific approaches aimed at better assessing the impacts of climate change on the interrelated rights of Indigenous Peoples, as well as pay more attention to Indigenous Peoples' contributions on all levels.

Notes and references

1. Livingston, Jasmine. "Reports." In A Critical Assessment of the Intergovernmental Panel on Climate Change, edited by Kari De Pryck and Mike Hulme, 39-48. Cambridge University Press, 2022, https://doi.org/10.1017/9781009082099.017
2. Beck, Silke and Mahony, Martin. "The IPCC and the New Map of Science and Politics." WIREs Climate Change 9, No. 6 (2018), https://doi.org/10.1002/wcc.547
3. See https://www.ipcc.ch/
4. Corbera, Esteve, Calvet-Mir, Laura, Hughes, Hannah, and Paterson, Mathew. "Patterns of Authorship in the IPCC Working Group III Report." Nature Climate Change 6, No. 1 (2016): 94–99, https://doi.org/10.1038/nclimate2782
5. This chapter builds in part on findings and recommendations from two briefing papers: https://iwgia.org/en/resources/publications/4621-iwgia-briefing-analysing-recognition-contrubutions-indigenous-peoples-ipcc-report.html and https://www.iwgia.org/en/resources/publications/4845-iwgia-briefing-analysing-a-new-paradigm-of-climate-partnership-with-indigenous-peoples-ipcc-report.html
6. IPCC. "Impacts, Adaptation and Vulnerability. Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change." p. 148. 2022.
7. van Bavel, Bianca, MacDonald, Joanna Petrasek, and Sambo Dorough, Dalee. "Indigenous Knowledge Systems." In A Critical Assessment of the Intergovernmental Panel on Climate Change, edited by Kari De Pryck and Mike Hulme, 116–125. Cambridge University Press, 2022, https://doi.org/10.1017/9781009082099.017

Rosario Carmona *is an anthropologist working as a postdoctoral researcher at the University of Bonn. Her work focuses on climate change policy and Indigenous Peoples' rights. For the last few years, she has collaborated with the International Work Group for Indigenous Affairs (IWGIA) and the International Indigenous Peoples' Forum on Climate Change (IIPFCC).*

Dalee Sambo Dorough *[Inuk-Alaska] serves as Senior Scholar and Special Adviser on Arctic Indigenous Peoples at the University of Alaska, Anchorage. She served as the Arctic Region representative to the Facilitative Working Group within the UNFCCC, and as the former Chair of the Inuit Circumpolar Council, and led their participation within the IPCC, UNFCCC, and related climate change fora.*

Joanna Petrasek MacDonald *has worked on climate change issues in the Arctic with Inuit at local, national, and international levels over the past decade. She has also worked for the UNFCCC on the Local Communities and Indigenous Peoples Platform (LCIPP). Joanna has published work on topics such as climate change and mental health, Inuit youth observations of climate change, and the Intergovernmental Panel on Climate Change (IPCC) process.*

Tunga Bhadra Rai *(tungarai@hotmail.com) belongs to the Rai Indigeo nous Nation of Nepal. He is an Indigenous researcher and anthropologist, currently working as the Director of the Climate Change Program of the Nepal Federation of Indigenous Nationalities (NEFIN). He engages in advocacy at the UNFCCC, GCF, and in other national and international fora. Mr. Rai has published articles on Indigenous Peoples.*

Gideon Abraham Sanago *is a Tanzanian Maasai Indigenous person, born and raised in Maasailand in Simanjiro District in northern Tanzania. He is working for Pastoralists Indigenous NGOs Forum (PINGO's Forum) as the Climate Coordinator. He engages on UNFCCC processes and monitoring of the Green Climate Fund projects in Tanzania. He is a Co-Chair of the African Caucus on climate change and a former member of the Global Steering Committee of the International Indigenous Peoples Forum on Climate Change (IIPFCC) representing Africa Region.*

Stefan Thorsell *is Climate Advisor 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 representatives. Stefan has published on Indigenous Peoples' rights and climate change as well as on the peace process in Colombia.*

The Sustainable Development Goals (SDGs) and Indigenous Peoples

Since the adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) by the UN General Assembly in September 2015, Indigenous Peoples have been engaging in national, regional, and global processes related to the SDGs. The sustained engagement of Indigenous Peoples in these processes, through the coordination of the Indigenous Peoples Major Group for Sustainable Development (IPMG), ensures that Indigenous Peoples' concerns and recommendations in relation to the implementation of the SDGs are taken into account. The main objective of IPMG engagement in the high-level political forum (HLPF) is to promote the recognition, protection and realization of Indigenous Peoples' rights, well-being, and dignity, and to enhance their contributions to sustainable development.

There remains an urgent need for initiatives and follow-up at national level, in order to ensure accountability from states in regard to their human rights obligations and commitments to leave no-one behind. Acknowledging this, IPMG works to ensure that Indigenous Peoples' perspective and initiatives are included, and they can thereby advance their self-determined sustainable development. This report is focused on key global developments relevant to Indigenous Peoples and the SDGs, including the HLPF, which is the global review process of the SDGs that is held every July at the UN Headquarters in New York.

Summary of the 2022 HLPF

The achievements of the 2030 Agenda for Sustainable Development are currently in peril with major challenges stemming from the COVID-19 pandemic, climate change, and conflict. This includes the persistent marginalization of Indigenous Peoples brought about by development interventions being implemented in their territories without their Free, Prior and Informed Consent (FPIC). The 2022 Global Sustainable Development Report highlights that a major challenge for many countries remains that of generating timely and disaggregated data.[1] As a result, it is difficult to track actual progress towards the realization of the 2030 Agenda. Of particular interest is the repeated call that data disaggregation by ethnicity remains a critical data gap in many countries. Lack of these indicators continue to have an impact on how the specific needs and priorities of Indigenous Peoples are integrated and addressed (or not) in national development processes.

In 2023, an SDG Summit will be held in September where Heads of State and Government will conduct a comprehensive review and stocktake of the SDGs and provide guidance on actions to be undertaken to accelerate the achievement of the SDGs by 2030. The 2030 target to achieve the SDGs seems out of reach, and this was apparent in the UN Secretary General's comments at the 2022 HLPF where he called to rescue the SDGs. Transformative actions that address historical injustices and the root causes of inequality are needed to concretely accelerate the achievement of the SDGs. Without this, the pledge of leaving no-one behind will remain nothing more than rhetoric.

COVID-19 and virtual participation

Meaningful participation of Indigenous Peoples in SDG-related processes was heavily affected by the pandemic. Participation by virtual means has remained challenging for many due to lack of access to reliable infrastructure or unstable electricity and internet access. This has had a particular impact on rural Indigenous communities and representatives.

For 2022, the IPMG was able to participate and coordinate Indigenous Peoples' participation in the Africa[2] and Asia[3] regional SDG fo-

rums and global events. including the United Nations Economic and Social Council (ECOSOC) Partnership Forum,[4] the Expert Group Meeting to prepare for the Thematic Review of SDG 15, and the 2022 HLPF.

2022 HLPF

The theme of the HLPF in 2022 was "Building back better from the coronavirus disease (COVID-19) while advancing the full implementation of the 2030 Agenda for Sustainable Development". The SDGs in focus were:

- Goal 4: Quality Education for all
- Goal 5: Gender Equality
- Goal 14: Life Below Water
- Goal 15: Life on Land
- Goal 17: Partnerships for the goals

Of the 44 countries that presented their Voluntary National Review (VNR) in 2022, there were 17 countries[5] with Indigenous Peoples. IPMG supported two Indigenous women representatives,[6] who were selected through a national process facilitated by the Major Groups and Other Stakeholders (MGOS) VNR Task Group to deliver the civil society collaborative statement on behalf of the MGOS. The in-person participation of Indigenous representatives from VNR countries also provided them with an avenue for direct engagement with their government representatives. Some of these dialogues yielded positive commitments / responses in relation to concerns raised, such as recognition of the collective land rights of Indigenous Peoples in Suriname. Outcomes of these meetings included a call for follow-up dialogues to be conducted at the national level in order to ensure that commitments made by states are implemented.

The HLPF 2022 was attended by six Indigenous Peoples' representatives from Cameroon, Suriname, Philippines, Mali, and the United States. All of the representatives came from countries reporting their VNR for 2022 except for the US. Eight[7, 8, 9, 10, 11, 12, 13] statements were prepared by the IPMG and five of the eight statements prepared were delivered by Indigenous representatives during the proceedings.

The IPMG also organized and co-organized two side events – one on the impacts of COVID-19 recovery on Indigenous Peoples and the other on the perspectives of Indigenous Peoples on the VNR. Indigenous representatives also spoke in three side events, as well as the Unmute Civil Society Towards a Recovery for All - Civil Society Organization Day co-hosted by the governments of Denmark and Costa Rica and co-organized by the UN Foundation, Action for Sustainable Development, CIVICUS, Global Call to Action Against Poverty, and Forus.

Outcomes of the 2022 HLPF

In the Summary of the President of ECOSOC on the 2022 HLPF,[14] references to Indigenous Peoples were made in Goal 14 where "ocean actions need to be informed by ocean science and engage local communities, including Indigenous communities..."; the need for direct partnerships with Indigenous Peoples; the vital need for "a renewed people-centered approach and focus on leaving no-one behind and hearing all voices, especially of the most vulnerable groups, such as the poor, Indigenous Peoples, and the youth, while taking a human rights-based approach"; the critical importance of forests and the stewardship role and land tenure rights of Indigenous Peoples; and the need for legal protection to prevent expropriation of Indigenous knowledge.

In the Ministerial Declaration of the 2022 HLPF,[15] references to Indigenous Peoples were made particularly in Goal 4 on access to quality education; Goal 5 on the disproportionate impacts of development on Indigenous women and girls and their "role as guardians of natural resources, biodiversity and ecosystems and agents of change in responding to climate change, eradicating poverty in all its forms and dimensions, enhancing sustainable agricultural and fisheries development, and ensuring food security and nutrition"; and, finally, in Goal 15 on the "vital role of Indigenous Peoples and local communities who depend on ecosystems for their livelihoods and have a key role in their stewardship, and we recall protecting the rights of Indigenous Peoples under the United Nations Declaration on the Rights of Indigenous Peoples".

These references to Indigenous Peoples must, however, translate into clear actions on the ground. If the world is to achieve the SDGs, States must implement and abide by their human rights obligations.

Six years of SDG implementation: Dream Big, Speak Loud

Under a banner calling for the world to "Dream Big and Speak Loud", the UN Secretary-General noted that the implementation of the Sustainable Development Goals (SDGs) is lagging behind and that, in fact, progress made in previous decades has been lost due to the war in Ukraine, COVID-19, and other global geopolitical factors. This was captured in UN Secretary-General António Guterres' opening remarks: "We must rise higher to rescue the Sustainable Development Goals – and stay true to our promise of a world of peace, dignity and prosperity on a healthy planet."

However large the dreams and however loud the voices, implementation of the SDGs is clearly lagging behind, and decades of development progress have been lost. Not only was there a strong focus on the key obstacles preventing countries from making progress but, critically, there was recognition that countries were, in some cases, being pushed further behind in the realization of the SDGs. The 2022 Global Sustainable Development report[16] highlighted rising poverty and inequalities, climate change, as well as biodiversity loss.

Climate change is also a key concern highlighted throughout the report, along with the glaring lack of data disaggregation by countries and national statistics offices, which makes the tracking of actual progress in the SDGs difficult. As a recommendation, the report provided that:

> *Timely, high-quality and disaggregated data can help trigger more targeted responses, anticipate future needs, and hone the design of urgently needed actions. To emerge stronger from the crisis and prepare for unknown challenges ahead, funding statistical development must be a priority for national governments and the international community.*[17]

For Indigenous Peoples, the data disaggregation by ethnicity is of critical importance to ensure that Indigenous Peoples are taken into account in State policies and programs. Data by Indigenous Peoples using the Indigenous Navigator[18] and other similar tools should be considered a source of data in relation to Indigenous Peoples and their sustainable development.

The situation of Indigenous Peoples since the adoption of the 2030 Agenda for Sustainable Development has not improved but has instead worsened, especially during the pandemic when COVID-19 responses were used to quell protests by Indigenous Peoples against destructive projects and the States' recovery measures repeatedly failed to include meaningful consultation with Indigenous Peoples.

While Indigenous Peoples bear the brunt of climate change, their territories, which they have sustainably managed for centuries, are continuously being subjected to development policies and projects that are resulting in their displacement, loss of livelihood, and loss of biodiversity in their lands and territories. Killings of Indigenous Peoples defending their lands and resources are increasing every year, as stated in the annual Global Witness reports.[19] Indigenous Peoples likewise continue to be subjected to threats, harassment and discrimination, and access to social services and culturally appropriate, mother tongue-based education is still wanting.

2023 HLPF

The 2023 HLPF will be held from 10-19 July 2023. The theme will be "Accelerating the recovery from the coronavirus disease (COVID-19) and the full implementation of the 2030 Agenda for Sustainable Development at all levels". Further, the HLPF will support the mid-term review of the implementation of the SDGs in preparation for the 2023 mid-term summit to be convened in September 2023. Without prejudice to the integrated, indivisible, and interlinked nature of the SDGs, the HLPF in 2023 will also review Goal 6 on clean water and sanitation, 7 on affordable and clean energy, 9 on industry, innovation and infrastructure, 11 on sustainable cities and communities, and 17 on partnerships for the goals in depth.

Forty-one countries will carry out voluntary national reviews (VNRs).[20] Of these countries, 14 have Indigenous Peoples, and these are: Burkina Faso, Cambodia, Canada, Central African Republic, Chile, Democratic Republic of the Congo, the European Union, Fiji, Guyana, Rwanda, Timor-Leste, United Republic of Tanzania, Venezuela, and Vietnam.

The UN General Assembly will likewise be holding the SDG Summit in September 2023 to:

> *[C]arry out a comprehensive review of the state of the SDGs, respond to the impact of multiple and interlocking crises facing the world, and provide high-level political guidance on transformative and accelerated actions leading up to the target year of 2030 for achieving the SDGs.*

The Summit is an opportune time for States to align their policies and development measures in order to pursue sustainable development to ensure they leave no-one behind. Urgent transformational actions by States and other development actors must be based on a human-rights framework, address the root causes of inequality, and align with environment protection. Actions should likewise provide necessary mechanisms to dismantle systemic discrimination and racism and strengthen the accountability of States, including ensuring democratic space for citizens.

Indigenous Peoples must be legally recognized as rights-holders, including the full respect and protection of their collective rights, as well as access to justice and concrete actions to end their discrimination as affirmed by international human rights instruments. They must be able to meaningfully participate in decision-making at all levels. Respectful partnerships with Indigenous Peoples will enhance their roles and contributions to sustainable development. Further, political will and resources are urgently needed to undertake data disaggregation by ethnicity in the monitoring and reporting on the SDGs at all levels to make Indigenous Peoples visible and accounted for in SDG implementation.

Notes and references

1. "The Sustainable Development Goals Report 2022" July 2022. Available at: https://www.un.org/sustainabledevelopment/progress-report/
2. Eighth Session of the Africa Regional Forum on Sustainable Development. https://www.uneca.org/events/technology%2C-climate-change-and-natural-resource-management/eighth-session-of-the-africa
3. Asia-Pacific Forum on Sustainable Development (APFSD). https://www.unescap.org/events/apfsd9
4. ECOSOC Partnership Forum. https://sdgs.un.org/events/ecosoc-partnership-forum-2022
5. Argentina, Botswana, Cameroon, Côte d'Ivoire, Dominica, El Salvador, Eritrea, Ethiopia, Gabon, Jordan, Mali, Philippines, Sri Lanka, Suriname, Tuvalu, Uruguay
6. Mali - Mariam Walet Aboubacrine and for Equatorial Guinea - Cecilia Maho

7. IPMG APRCEM HLPF Statement on SDG 17. 2022. https://iwgia.org/doclink/ipmg-aprcem-hplf-sdg-17-statement-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpcG1nLWFwcmNlbS1ocGxmLXNkZy0xNy1zdGF0ZW1lbnQtZW5nLTIwMjIiLCJpYXQiOjE2NzI2NjgzMzYsImV4cCI6MTY3Mjc1NDczNn0.VsYDI_xA36WDyeeOg7GCxi5HkoCHs7vaOT6sZR139PE
8. IPMG HLPF Statement on SDG 4. 2022. https://iwgia.org/doclink/ipmg-session-5-sdg-4-and-interlinkages-with-other-sdgs-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpcG1nLXNlc3Npb24tNS1zZGctNC1hbmQtaW50ZXJsaW5rYWdlcy13aXRoLW90aGVyLXNkZ3MtZW5nLTIwMjIiLCJpYXQiOjE2NzI2NjgzMzYsImV4cCI6MTY3Mjc1NDczNn0.ZsbDW12IwVTMUjemfrYqe4SNk35Z4vkZ2TJJ25ixylI
9. IPMG HLPF Statement on SDG 5. 2022. https://iwgia.org/doclink/ipmg-session-8-sdg-5-and-interlinkages-with-other-sdgs-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpcG1nLXNlc3Npb24tOC1zZGctNS1hbmQtaW50ZXJsaW5rYWdlcy13aXRoLW90aGVyLXNkZ3MtZW5nLTIwMjIiLCJpYXQiOjE2NzI2NjgzMzYsImV4cCI6MTY3Mjc1NDczNn0.iJarq3j9-QaOIIIx3T_RQuQkBd_jh1nHXAHSgZaXhcQ
10. IPMG HLPF Statement on Acting at the Local Level. 2022. https://iwgia.org/doclink/ipmg-acting-at-local-level-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpcG1nLWFjdGluZy1hdC1sb2NhbC1sZXZlbC1lbmctMjAyMiIsImlhdCI6MTY3MjY2ODMzNiwiZXhwIjoxNjcyNzU0NzM2fQ.95lk9xV44zRjWi7QK18A2_gFLiC-yhLiJ98StHP5CyY
11. IPMG HLPF Statement on Working Towards the 2023 SDG Summit. 2022 https://iwgia.org/doclink/ipmg-working-towards-the-2023-sdg-summit-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpcG1nLXdvcmtpbmctdG93YXJkcy10aGUtMjAyMy1zZGctc3VtbWl0LWVuZy0yMDIyIiwiaWF0IjoxNjcyNjY4MzM2LCJleHAiOjE2NzI3NTQ3MzZ9.NLPqepUSSwVHEmu6qZY_0NtVVGxB4Ted7Lc5_Vu5Mzc
12. IPMG HLPF Statement on SDG 14. 2022 https://iwgia.org/doclink/iwgia-ipmg-sdg-14-ipmg-statement-eng-2022/eyJ0eXAiOiJKV1QiLCJhbGciOiJIUzI1NiJ9.eyJzdWIiOiJpd2dpYS1pcG1nLXNkZy0xNC1pcG1nLXN0YXRlbWVudC1lbmctMjAyMiIsImlhdCI6MTY3MjY2ODMzNiwiZXhwIjoxNjcyNzU0NzM2fQ.jPSHR5E8Ja3BKfBKVS4YOqx9z3JwxUemOtwPQN9wTp8
13. Local Biodiversity Outlooks 2. 2022. Available at: https://www.cbd.int/gbo5/local-biodiversity-outlooks-2#:~:text=Local%20Biodiversity%20Outlooks%202%20(LBO,Agreement%2C%20and%20the%20Convention%20on
14. Summary of the President of ECOSOC on the 2022 HLPF . 2022. https://hlpf.un.org/sites/default/files/2022-11/Summary%20of%20the%202022%20HLPF%20POE.pdf
15. ECOSOC. 2022. "Ministerial declaration of the high-level segment of the 2022 session of the Economic and Social Council and the 2022 high-level political forum on sustainable development, convened under the auspices of the Council, on the theme "Building back better from the coronavirus disease (COVID-19) while advancing the full implementation of the 2030 Agenda for Sustainable Development". Available at: https://undocs.org/E/HLS/2022/1
16. "The Sustainable Development Goals Report 2022" July 2022. Available at: https://www.un.org/sustainabledevelopment/progress-report/
17. Ibid
18. The Indigenous Navigator. 2023. www.indigenousnavigator.org
19. Global Witness. 2022. A decade of defiance. https://www.globalwitness.org/en/press-releases/deadly-decade-land-and-environmental-activists-killing-every-

two-days/

20. Bahrain, Barbados, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Burkina Faso (2nd time), Cambodia (2ND TIME), Canada (2ND TIME), Central African Republic (2ND TIME), Comoros, Chile (3RD TIME), Croatia, Democratic Republic of the Congo (2ND TIME), European Union, Fiji (2ND TIME), France, Guyana (2ND TIME), Iceland, Ireland, Kuwait, Liechtenstein, Lithuania, Maldives, Mongolia, Poland, Portugal, Romania, Rwanda (2ND TIME), Saudi Arabia, Singapore, Slovakia, St Kitts & Nevis, Syrian Arab Republic, Tajikistan, Timor-Leste (2ND TIME), Turkmenistan, United Republic of Tanzania (2ND TIME), Uzbekistan, Venezuela (2ND TIME), Viet Nam (2ND TIME), Zambia

Article prepared by ***David Nathaniel Berger****, Advisor - IWGIA and the* ***Indigenous Peoples' Major Group on the SDGs****.*

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. After more than 20 years of climate negotiations, in 2015, UNFCCC State Parties adopted the Paris Agreement, a universal agreement aiming to hold "...the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C..." (Art. 2a). The Paris Agreement also sets out to increase the world's ability to adapt to the adverse impacts of climate change, and foster resilience and low greenhouse gas emissions development (Art. 2b) as well as making finance flows consistent with this (Art. 2c).[1] Indigenous Peoples are referenced five times in the Paris Agreement, including in the preambular (recognition of the rights of Indigenous Peoples) and operative text (Article 7.5 and Paragraph 135).[2]

The UNFCCC recognizes that achieving sustainable development requires 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 (IIPFCC), which serves as a caucus/mechanism for developing common positions and statements of Indigenous Peoples, and for un-

dertaking effective strategies, lobbying and advocacy work at UNFCCC meetings and sessions.

The Local Communities and Indigenous Peoples Platform ("the Platform") under the UNFCCC was formally established in 2015 albeit not immediately operationalized. 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 the 25th Conference of the Parties (COP 25) in December 2019. This was further advanced with the adoption of a subsequent three-year workplan at COP 26 in November 2021. These advances raised expectations among Indigenous Peoples who, given the lack of recognition of their nationhood by States, are trapped between the Convention's 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), necessitates a space at the negotiating table alongside States. As it is still early days for the Platform in UN terms, it remains to be seen whether the influence and recognition of Indigenous Peoples through direct participation at the UNFCCC will be elevated above that of civil society. Indigenous Peoples hold firm that their status as rights-holders must differentiate their participation from other constituencies and that of civil society.

The authors wish to dedicate this piece to the passing of our dear colleague and brother, Chris Honahnie (Hopi and Diné). His smile, laughter, and commitment to Mother Earth will be dearly missed.

COP 27[3] took place in Sharm El-Sheikh, Egypt, in November 2022, marking the first COP without any COVID-19 precautions since 2019. A total of 49,704 people were accredited, including Indigenous Peoples' representatives, party representatives, media, and civil society, surpassing COP 26 in Glasgow by nearly 10,000 participants and becoming the largest COP in history. The conference aspired to "turn words into action" and focus on implementing the Paris Agreement. The talks took place against a backdrop of multiple social, economic, geopolitical, health and environmental crises in the world: the ongoing health crisis caused by COVID-19; the food and energy security crisis; the systematic violation of human rights by authoritarian regimes and other actors, including the invasion of Ukraine by Russia; and, of course, the climate and biodiversity crises. COVID-19 continued to spread, with the total loss of lives surpassing 6.5 million, shining a stark light on inequity both between countries (especially the Global North and Global South) and within them.[4] At the same time, the climate and biodiversity crises continued to threaten the future of humanity and the planet, highlighted during the year in reports from the Intergovernmental Panel on Climate Change (IPCC).[5] These are analysed in the IPCC chapter of *The Indigenous World 2023* (see page 658).

The current emissions reduction trajectory is not looking good: the annual Updated Nationally Determined Contributions (NDC) Synthesis Report by the UNFCCC Secretariat confirmed that the combined climate pledges of 193 Parties will in fact increase emissions by 10.6% in 2030 rather than decrease them, putting the world on track for around 2.5 degrees Celsius of warming by the end of the century.[6] Despite this inaction, Indigenous Peoples continued to raise their voice, drawing on knowledge systems developed from thousand-year-old, reciprocal relationships with the natural world. At COP 27, Indigenous Peoples attended with over 270 representatives from the seven UN socio-cultural regions of the world, the highest number since COP 21 in Paris, which had marked a record number of Indigenous attendees. Despite this growing representation and presence of Indigenous Peoples, COP 27 failed to demonstrate the translation of this momentum into meaningful COP decision text.

COP 27: "turning words in action"?

Taking a page from the United Kingdom (UK) Presidency, the Egyptian government hosted a Sharm El-Sheikh Climate Implementation Summit (similar to the COP 26 World Leaders' Summit) during the first two days of the conference, welcoming Heads of State and Government from over 100 Parties. The event raised eyebrows when a "family photo" was released, highlighting a clear imbalance with regard to gender representation (predominantly men). Worse still, only select members of the nine constituencies were invited to participate in six "high-level" roundtable discussions on topics such as water security, vulnerable communities, energy security, and "just transition". Further, these members were not even guaranteed time to speak. These participation challenges were not limited to the high-level segment as access, surveillance, harassment, slow internet speeds, as well as a lack of accessible food and drink options, were rampant throughout the two weeks.[7] Two Indigenous representatives from North America had their accreditation revoked after briefly interrupting a speech by the President of the United States with a war cry and a banner denouncing fossil fuels.[8] As a result of this environment, Indigenous Peoples and civil society were granted permission to host the annual march for climate justice inside the blue zone to pre-empt clashes with Egyptian security.

The most monumental decision at COP 27 was the creation of the Loss and Damage Finance Facility, the culmination of nearly three decades of advocacy from small island nations and Least Developed Countries (LDCs). The journey to this decision began in controversy, igniting an "agenda fight" of nearly 24 hours of negotiations to solidify a discussion on "funding arrangements responding to loss and damage". The eventual decision, after significant back and forth (captured well by Carbon Brief[9]), was passed late into overtime and committed to establishing "new funding arrangements for assisting developing countries *that are particularly vulnerable to the adverse effects of climate change*, in responding to loss and damage..." [emphasis added], a new fund, and a transitional committee to operationalize these funding recommendations. These discussions will continue at COP 28, where ministerial consultations are to be held. This is a significant win for developing countries, and an acknowledgement that developed countries are historically responsible for the bulk of atmospheric greenhouse gas

emissions. Yet, there are no references in the text to Indigenous Peoples requiring additional advocacy and diplomacy, including in the form of a new member alongside a representative from the Youth and Women and Gender's Constituency to the Santiago Network advisory body,[10] to ensure Indigenous Peoples in developing countries can access these new funds. Further discussion is also needed in order to widen the conversation to incorporate loss and damage, including non-economic loss and damage, faced by Indigenous Peoples in all regions.

On Article 6, Indigenous Peoples had had some success at COP 26 in Glasgow in ensuring explicit reference to human rights and the rights of Indigenous Peoples, including in specific operative texts (for the first time ever), and establishing an independent grievance process in Article 6.4. Despite this progress, inclusion of Indigenous Peoples' priorities in Article 6.2, 6.4, and 6.8 at COP 27 was limited. Article 6.4, for instance, created quite the storm as recommendations from the supervisory body on greenhouse gas removals were clearly rushed and declared problematic, raising concerns for the integrity of the Paris Agreement. Many Parties agreed, and COP 27 sent this guidance back to the supervisory body for additional guidance on the use of emission reduction credits, or "A6.4 ERs" for short. Other relevant decisions were taken including on the Mitigation Work Programme, the Global Goal on Adaptation, Koronivia Joint Work on Agriculture, and Gender and Climate.[11]

The Sharm El-Sheikh Implementation Plan ("Implementation Plan") was the main political outcome of the conference. The process, however, was not transparent as the Egyptian Presidency approached the negotiations with a heavy hand, limiting the formal negotiating time and forcing Parties to discuss bilaterally with the Presidency. This approach effectively limited any meaningful involvement from Indigenous Peoples and other constituency groups. The eventual text maintained the language on "phasing-down" unabated coal and "phasing-out" inefficient fossil fuel subsidies included in Glasgow, and neglected to take any further steps on the role of fossil fuels more broadly. Notable commitments included a call for the transformation of the financial system and its structures (as well as practices and priorities) to address the climate emergency, a launch of the work programme on just transition, and a reference to the right to a clean, healthy and sustainable environment.[12] For Indigenous Peoples, though, the Implementation Plan took

steps backwards, as references to Indigenous Peoples decreased from eight in the Glasgow Climate Pact to two: one preambular reference to human rights and the rights of Indigenous Peoples; and another recognizing the important role that Indigenous Peoples, among many other actors, play in taking climate action.

Indigenous Peoples: growing representation in the UNFCCC

The presence of Indigenous Peoples at COP 27 was anything but marginal. A pre-meeting in October among Indigenous Peoples' representatives from Africa, in advance of the Africa and Asia Bi-Regional Gathering, set the foundation for strong coordination and collaboration amongst Indigenous Peoples, with a special emphasis on leadership from the host Indigenous region. Using this hospitality, the International Indigenous Peoples Forum on Climate Change (IIPFCC) hosted, with generous support from IWGIA, a two-day preparatory meeting in Sharm El-Sheikh with representatives from all seven regions to ensure a strong and united voice from Indigenous Peoples at the COP.[13]

Building on the momentum from the productive relationship with the COP 26 UK Presidency, as well as the institutional credibility associated with the new three-year workplan of the Local Communities and Indigenous Peoples Platform ("the Platform"), Indigenous Peoples effected a tangible increase in the presence afforded to them. In partnership with the UNFCCC Secretariat, a space for ceremony was created in the venue, allowing Indigenous Peoples to host cultural activities that included smudging, the burning of sacred medicines. A key element of this presence was the size and location of the Indigenous Peoples Pavilion, offered by the Egyptian Presidency in the blue zone (again) and self-funded by Indigenous Peoples, led by NDN Collective. The Indigenous Peoples Pavilion operated as a home base during the conference, containing a large, open-spaced theatre hall, a media zone where Indigenous Peoples could record videos and take interviews, an elders' lounge, and an office space for caucus coordination. Over the two weeks, 67 events by Indigenous women, men, and youth, representing hundreds of Indigenous nations from over 25 countries, shared pres-

entations, panel-discussions, film-screenings, and songs to showcase their initiatives on climate change adaptation and mitigation. Learning from COP 26, the full suite of presentations were live-streamed and can be found on the stand-alone website.[14]

In addition to the Pavilion, Indigenous Peoples held several high-level meetings, including a Presidency Dialogue with COP 27 President Sameh Shoukry, a closed-door meeting with US Special Envoy John Kerry and USAID Administrator Samantha Power, as well as a meeting with President-Elect Lula da Silva of Brazil, President Gustavo Pedro of Colombia, and UN Secretary General António Guterres. Indigenous Peoples from all seven regions were able to share with these representatives the role of Indigenous Peoples' rights, knowledge systems, and perspectives in addressing the climate crisis and the international climate policy process. These efforts also built on the suite of events organized by the Facilitative Working Group of the Platform, including the second Annual Gathering of Indigenous Knowledge Holders and the inaugural Indigenous Youth Roundtable (as described later in this article).

A key area of advocacy for Indigenous Peoples at COP 27 related to access to finance: a legacy spurred by a pledge of USD 1.7 billion at COP 26 by a group of financial partners for the period 2021-2025 targeted at Indigenous Peoples and local communities' forest tenure.[15] In response to the limited scope and geography, as well as concerns at the lack of money flowing directly to Indigenous Peoples,[16] Indigenous Peoples from all seven regions worked for over a year to developed a response to ensure direct Indigenous access to this funding, summarized in the document, *Principles and Guidelines for Direct Access Funding for Indigenous Peoples' Climate Action, Biodiversity Conservation and Fighting Desertification for A Sustainable Planet.*[17] The document prioritizes Indigenous Peoples' right to self-determined development and demands direct access to, and management of, funding pledged for Indigenous Peoples for all seven socio-cultural regions and ecosystems. Halfway through the COP, Indigenous leaders invited financial partners from the UN, public sector, private philanthropies and other stakeholders to formally launch the Principles and Guidelines. With over 200 in attendance, the Indigenous Peoples formally submitted the Principle and Guideline document to the partners in attendance.

The Local Communities and Indigenous Peoples Platform

The new three-year workplan of the Platform was adopted at COP 26 in Glasgow. 2022 was the first year of implementing the new set of activities, such as a series of training workshops and tools for Indigenous Peoples and States (new Activity 4 and 5), and an annual roundtable in collaboration with Indigenous youth (new Activity 8),[18] while also maintaining important activities such as the Annual Gathering of Knowledge Holders, as well as regional gatherings (Activity 1 and 2). The UNFCCC Secretariat continued the tradition of "Informal Dialogues with Contributors" before FWG meetings as a mechanism to support their full and effective participation.

FWG 7 was held over four days from 1-3 June in Bonn, marking the first gathering of the new FWG members, including Indigenous representatives self-selected by their regions. The new members had to elect new sets of Co-Chairs and Vice-Chairs (one Indigenous representative and one State representative for each) for the first one-year term.[19] Following this election, each agenda item followed a similar format, new FWG representatives received an update on Activity progress and volunteered to co-lead relevant activities. The members then received updates on the Global Stocktake, a panel discussion with authors from the Intergovernmental Panel on Climate Change, a collaborative discussion with constituted body representatives and a focused discussion on climate financing. Following discussion by the FWG members, the floor was then opened to dialogue for Indigenous and non-Indigenous contributors to comment.[20]

Several weeks before COP 27, the first ever bi-regional knowledge holders gathering was hosted in Chad, where knowledge holders from the African and Asian region, around 80 in all, got together to identify and address the impacts of climate change, bringing together strategies to reduce greenhouse gas emissions, support adaptation, and build climate resilience in a manner that respects and promotes human rights. The gathering demonstrated the essential role that Indigenous Peoples' knowledge systems play at the local, regional, and national level for climate, featuring the participation of ministerial and high-level officials from Chad. It ended with a community visit, profiling the lead-

ership that Indigenous Peoples are demonstrating on the ground and not just in the policy arena. A bi-regional gathering, hosted by the North American and Latin American and Caribbean regions, was also being planned for fall 2022 but has been postponed until March 2023.

The second FWG meeting of the year (FWG 8) took place in Sharm El-Sheikh on 1-4 November, following a circular format and beginning with a ceremonial opening by Uncle Raymon Minniecon, a Kabikabi and Gurang-Gurang knowledge keeper from Australia. Following an update on the workplan, the meeting shifted to a discussion of FWG input to the Global Goal on Adaptation and relevant constituted bodies, where representatives of the UNFCCC Secretariat, as well as representatives sitting on the Adaptation Committee, the Warsaw International Mechanism for Loss and Damage, and the Consultative Group of Experts, among others, presented to the FWG and observers, seeking feedback on how they can better include Indigenous representation. On the fourth day, the FWG held a closed meeting to confirm action items from the session, proposing a series of actions including an update to the draft working modalities, an effort from the FWG to provide greater clarity on the role of members and their relationship to the Indigenous Peoples' caucus.

The second Annual Gathering of Indigenous Knowledge Holders maintained the momentum from the first as 32 representatives, five from each region travelled to Sharm El-Sheikh to discuss their experiences, teachings, and reflections. The session included a full-day preparatory meeting, held on the same day as the Climate Implementation Summit, and a meeting with States, constituted bodies, and observers. The event created a series of Calls-to-Action and recommendations that tangibly demonstrated the leadership that Indigenous Peoples are showing on all elements of climate action.[21] On the second day of the Climate Implementation Summit, an all-day, Indigenous Youth Roundtable was held. This was the first roundtable of its kind, creating a safe space for Indigenous youth to share what is happening in their territories and communicate their experience to other Indigenous youth. The session was moderated by Dilbara Sharipova (Aborigen-Forum Network) and the late Chris Honahnie (FWG Alternate Member from North America). Following this preparatory meeting, the participants presented a series of recommendations to the Parties and relevant constituted

bodies to improve the meaningful participation of Indigenous youth in domestic, regional, and international climate policy and action. A multi-stakeholder open dialogue focused on strengthening the participation of Indigenous Peoples in research and scientific processes as well as a joint event with the Gender Action Plan on the role of Indigenous women in addressing climate change were held during the first week of the COP.

The series of events hosted by the Platform illustrates the growing role and influence of Indigenous Peoples in the UNFCCC. However, work remains to be done in order to continue breathing life into the workplan and translate the outcomes of these activities into tangible decisions that support Indigenous Peoples' leadership on the ground.

COP 28: moving east to Dubai

Indigenous Peoples continue to punch above their weight, making space in an inherently colonial institution, the UNFCCC. Their increasing presence, including the high number of Indigenous Peoples' representatives, shows how effective Indigenous Peoples' advocacy, diplomacy, and solidarity have been. However, COP 27 showed that the transition to implementation does not necessarily mean that these hard-fought gains will be translated into action plans on the ground. As such, Indigenous Peoples will need to continue asserting their rights and pressuring States, the private sector, and other actors to listen to the voices of Indigenous elders, women, men, youth, knowledge keepers, and leadership, and translate that listening into urgent action. In the midst of climate incrementalism, this is the only way to accelerate transformative and just change amid the 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
2. More about the references afforded to Indigenous Peoples within the UNFCCC can be found in this book prepared in collaboration between the International Indigenous Peoples Forum on Climate Change and the Centre

for Environmental Law: https://www.ciel.org/reports/indigenous-peoples-and-traditional-knowledge-in-the-context-of-the-un-framework-convention-on-climate-change-2020-update/

3. For more detail on the participants, see the UNFCCC's official participant list: https://unfccc.int/documents/624508 and https://unfccc.int/documents/624509
4. 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.
5. IPCC. "AR6 Climate Change 2021: The Physical Science Basis." Accessed 19 January 2022. https://www.ipcc.ch/report/ar6/wg1/
6. UNFCCC. "Updated NDC Synthesis Report: Worrying Trends Confirmed." Accessed 19 January 2023. https://unfccc.int/news/climate-plans-remain-insufficient-more-ambitious-action-needed-now
7. Politico reported on concerns from cyber security experts that Egypt's COP27 summit app – which offered information such as meeting times and venue maps – could be used to spy on delegates. When downloaded on an Android phone, the app allegedly has the capability "to hack private emails, texts and even voice conversations", according to experts who reviewed the app for Politico: https://www.politico.eu/article/cop-27-climate-change-app-cybersecurity-weapon-risks/
8. https://www.theguardian.com/environment/2022/nov/18/shameful-un-silencing-indigenous-voices-say-banned-cop27-activists and https://www.youtube.com/watch?v=Cu101vSslaw
9. Carbon Brief here: https://www.carbonbrief.org/cop27-key-outcomes-agreed-at-the-un-climate-talks-in-sharm-el-sheikh/
10. Please refer to the decision text on the Santiago Network Advisory Body: https://unfccc.int/sites/default/files/resource/cma4_auv_7_WIM.pdf
11. All relevant decision texts can be found here: https://unfccc.int/cop27/auv
12. For more information, please refer to the Sharm El-Sheikh decision text: https://unfccc.int/documents/624444
13. See the official statements of the IIPFCC here: http://www.iipfcc.org/
14. IIPFCC Pavilion. "Livestream." Accessed 19 January 2022. https://www.iipfccpavilion.org/livestream
15. https://ukcop26.org/cop26-iplc-forest-tenure-joint-donor-statement/
16. A report from a group of donors, the Forest Tenure Funders Group, showed that of the USD 321 million delivered in 2021, just 7% went directly from the donors to organisations led by Indigenous Peoples or local communities. More here: https://landportal.org/library/resources/indigenous-peoples-and-local-communities-forest-tenure-pledge-annual-report-2021
17. The document can be accessed here: https://assets.takeshape.io/86ce9525-f5f2-4e97-81ba-54e8ce933da7/dev/01375808-c4d4-412c-80a5-8a516e835976/Indigenous%20peoples%20-%20principles%20%26%20guidelines%20for%20direct%20access%20funding.pdf
18. 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
19. Natsha Museba Banda (representing the United Nations regional group of African States) and Onel Masardule (representing the United Nations Indigenous sociocultural region of Central and South America and the Caribbean) as co-Chairs. Gunn-Britt Retter (representing the United Nations

Indigenous sociocultural region of the Arctic) and Tiana Carter (representing the United Nations regional group of Western Europe and other States) were elected as Vice co-Chairs.

20. A full set of outcomes from the meeting can be found in the Co-Chairs Note: https://lcipp.unfccc.int/information-hub/information-record-detail?source=896&typeresource=918&id=553

21. The recommendations from COP 27 had not been completed by time of publication. Instead, the recommendations and summary of the first Annual Knowledge Holders Gathering at COP 26 can be found here under Activity 1 of the 2020-2021 workplan: https://lcipp.unfccc.int/about-lcipp/workplan-activities

Graeme Reed *is an Anishinaabe from the Great Lakes (Wiikwemkoong Unceded Territory) with mixed ancestry from England, Scotland, and Germany. He works at the Assembly of First Nations leading their involvement in federal and international climate policy, including as North American Indigenous representative of the Facilitative Working Group of the UNFCCC's Local Communities and Indigenous Peoples Platform, and outgoing co-Chair of the International Indigenous Peoples' Forum on Climate Change. He holds a PhD from the University of Guelph.*

Hindou Oumarou Ibrahim *is an Indigenous woman from the Mbororo pastoralist people in Chad and Founder/President of the Association of Indigenous Women and Peoples of Chad (AFPAT). She is an advocate for the greater inclusion of Indigenous Peoples and their knowledge and traditions in the global movement to fight the effects of climate change, protect the environment and their rights. Ms Ibrahim received the Pritzker Emerging Environmental Genius Award and was appointed as a UN Sustainable Development Goals Advocate. She serves as a Member of the UN Permanent Forum on Indigenous Issues, is a member of the Indigenous Peoples of Africa Coordinating Committee (IPACC), and co-Chair of the UNFCCC's International Indigenous Peoples' Forum on Climate Change.*

Stefan Thorsell *is Climate Advisor 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 representatives. Stefan has published on Indigenous Peoples' rights and climate change as well as 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 (UNDRIP) 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.

21st session of the UN Permanent Forum on Indigenous Issues

Given the continuing COVID-19 situation and travel restrictions, the Permanent Forum took place in a hybrid format from 26 April - 5 May 2022. The special theme of the 21st session was "Indigenous Peoples, business, autonomy and the human rights principles of due diligence, including free, prior and informed consent (FPIC)". 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[1] highlights how Indigenous Peoples lack recognition and face poor implementation of their rights and flagrant violations of their rights and their lands, while the need for their FPIC and the right to autonomy and self-government is disregarded by local businesses and transnational corporations involved in mining, logging, and oil and gas extraction, among other sectors. The forum noted that ensuring a human rights-based approach to Indigenous Peoples' rights to land, waters, territories and resources, governance and secure customary tenure is essential for their continued contribution and significant role in achieving the post-2020 global biodiversity framework. Indigenous lands, waters and territories need to be recognized directly and as a category separate from "protected areas" or "other effective area-based conservation measures", including when recognizing the land rights of Indigenous women.

In addition to the special theme, the Permanent Forum also discussed the International Decade of Indigenous Languages (2022-2032), Indigenous women and girls, and the 2030 Agenda for Sustainable Development. The forum also noted the ongoing killings, violence and harassment of Indigenous human rights defenders, including In-

digenous women, in the context of resisting mining and infrastructure projects and other such developments. Challenges faced by Indigenous human rights defenders featured in dialogues with the UN Special Rapporteur on the rights of Indigenous Peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples.

The Permanent Forum decided on the special theme of "Indigenous Peoples, human health, planetary and territorial health and climate change: a rights-based approach" for their 2023 session.

International Day of the World's Indigenous Peoples 2022

The International Day of the World's Indigenous Peoples is celebrated annually on 9 August. In 2022, the Department of Economic and Social Affairs organized a commemorative event with the theme: The Role of Indigenous Women in the Preservation and Transmission of Traditional Knowledge.[2] Participants included Indigenous Peoples' organizations, UN entities, Member States, civil society, relevant stakeholders and the general public.

The event featured video messages from the UN Secretary-General, the World Health Organization's Director-General and the Chair of the Permanent Forum. This was followed by an interactive dialogue.

International Expert Group Meeting on Truth, Transitional Justice and Reconciliation Processes

At its 2022 session, the Permanent Forum recommended the theme of the Expert Group Meeting as "Truth, transitional justice and reconciliation processes", and this took place from 15-17 November 2022 at the UN Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, Chile organized by the UN Department of Economic and Social Affairs (UNDESA).

During the two-day meeting, experts discussed the following themes: conflict resolution; truth, transitional justice, and reconciliation (both in international law and the UN system); barriers preventing

Indigenous Peoples' participation; examples of lessons learned from work carried out by and with Indigenous Peoples; standards and policies for conflict resolution, truth, transitional justice, and reconciliation, and strategies to identify gaps and challenges together with a possible way forward.

Experts noted the challenges in bringing States to dialogues that recognize the equal value and standing of Indigenous Peoples' reconciliation and justice systems. It was noted that, in some cases, States are interested in the process of reconciliation but not necessarily in hearing or acknowledging the truth. Further, transitional justice is limited in that it tends to focus on ending a specific conflict while ignoring the wider underlying issue of colonialism. Experts emphasized the importance of Indigenous truth reaching the public, as opposed to the more mainstream biased perspectives that tend to dominate communications.

Furthermore, experts stressed that the core goals of Indigenous Peoples' socio-economic systems are prosperity, harmony, peace, sustainability, reciprocity and responsibility for the whole community. States have, however, traditionally viewed these systems as barriers to "development" and adopted policies to ban or destroy them. Structural inequities and inequalities are further reinforced by discriminatory legislation and oppressive laws, which ignore Indigenous Peoples' customs and other systems. In such situations, Indigenous governance systems are on the brink of extinction. And yet Indigenous Peoples themselves can revitalize their systems for the betterment of Indigenous Peoples and their communities. Participants called on States to respect Indigenous governance systems and recognized Indigenous authorities in State dialogue mechanisms.

The meeting was attended by Indigenous experts, Members of the Permanent Forum, UN entities, academics, NGOs and Indigenous Peoples. A report of the expert group meeting will be presented at the 2023 Permanent Forum session.

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 that

have the main task of implementing the System-Wide Action Plan on the Rights of Indigenous Peoples (SWAP). SWAP was officially launched by the UN Secretary-General in 2016 at the 15th Session of the Permanent Forum.[3] The Indigenous Peoples and Development Branch/Secretariat of the Permanent Forum on Indigenous Issues (IPDB/SPFII) is the permanent co-chair of the IASG and plays a central role in implementing the SWAP. In 2022, the UN Educational, Scientific and Cultural Organization (UNESCO) was a co-chair of the IASG.

In 2022, the IASG continued working on the implementation of the Call to Action of the UN Chief Executives Board for Coordination (CEB): building an inclusive, sustainable and resilient future with Indigenous Peoples.[4]

UNDESA, the Office of the UN High Commissioner for Human Rights (OHCHR), UNESCO, the International Labour Organization (ILO) and the UN Population Fund (UNFPA), with the support of the Development Coordination Office (DCO), organized three roundtables with Resident Coordinators (RCs) on Indigenous Peoples' Knowledge and its Potential to Advance Sustainable Development; on Protecting Indigenous Human Rights Defenders; and on Promoting Participation of Indigenous Peoples in National Development Processes in the first quarter of 2022.

The 43rd session of the UN High-Level Committee on Programming (HLCP) CEB met and discussed the progress report presented by IASG on the CEB Call to Action implementation in April 2022 and made new recommendations.[5] The overall reaction was positive, with the HLCP pointing to the value of IASG's role and appreciating the vision for a proactive, human rights-based approach and the emphasis on disaggregation of data related to Indigenous Peoples. Members valued the organization of the roundtables and the engagement with RCs and UN Country Teams (UNCTs).

In the second half of 2022, the IASG continued following up on the recommendations emanating from the CEB, with two working groups: 1) Engagement with RCs, UNCTs and Indigenous Peoples and, 2) SWAP Indicators.

The IASG participated in a clinic on diversity and inclusion with RCs, attended by more than 120 Resident Coordinators on 19 October 2022. UNDESA represented the IASG and highlighted UNDRIP, the SWAP-Indigenous Peoples and the CEB Call to Action.

Members of the Permanent Forum on Indigenous Issues – 2023-2025

The members of the Permanent Forum from 1 January 2023 to 31 December 2025 are as follows: Mr. Vital Bambanze (Burundi), Ms Tove Søvndahl Gant (Denmark), Mr. Ali Hajilari (Islamic Republic of Iran), Mr. Keith M. Harper (United States of America), Ms Hindou Oumarou Ibrahim (Chad), Ms Aluki Kotierk (Canada), Ms Li Nan (China), Mr. Suleiman Mamutov (Ukraine), Mr. Bornface Museke Mate (Namibia), Ms Hannah McGlade (Australia), Mr. Darío José Mejía Montalvo (Colombia), Ms Naw Ei Ei Min (Myanmar), Ms Hanieh Moghani (Islamic Republic of Iran), Mr. Rodrigo Eduardo Paillalef Monnard (Chile), Mr. Geoffrey Roth (United States), Ms Valentina Vyacheslavovna Sovkina (Russian Federation). More details on the Members can be found online.[6]

Please visit the UNPFII website for more information about the Members and the selection process: www.un.org/indigenous

Notes and references

1. United Nations Permanent Forum on Indigenous Issues. "Report on the twenty-first session (19-30 April 2021)." https://undocs.org/en/E/2021/43
2. United Nations Department of Economic and Social Affairs Indigenous Peoples. "International Day of the World's Indigenous Peoples 2022." https://www.un.org/development/desa/indigenouspeoples/international-day-of-the-worlds-indigenous-peoples-2022.html
3. United Nations Department of Economic and Social Affairs Indigenous Peoples. "System-wide action plan (SWAP)." https://www.un.org/development/desa/indigenouspeoples/about-us/system-wide-action-plan.html
4. United Nations System Chief Executives Board for Coordination. "Building an Inclusive, Sustainable and Resilient Future with Indigenous Peoples: A Call To Action." 2020, https://unsceb.org/sites/default/files/2021-01/CEB-Call-to-Action-Indigenous-2020-WEB%20%281%29.pdf
5. 5 United Nations System Executive Board for Coordination. Second Regular Session of 2022. 27-28 October 2022, https://unsceb.org/sites/default/files/2023-01/CEB.2022.2.SOD_.Advance%20Unedited%20Version.pdf
6. United Nations Permanent Forum on Indigenous Issues. "Membership of Permanent Forum on Indigenous Issues." 2023, https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/newmembers.html

This 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 59 "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 practice; 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.[1]

On 1 May 2020, Mr. José 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.

During 2022, the 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.

2022 thematic studies

Each year, the 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 2022 focused on the role of Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge (A/HRC/51/28).[2] In March, the Rapporteur organized a virtual consultation to inform his report, on the occasion of which he collected 38 oral and written submissions from Indigenous participants.

The report highlights how Indigenous women are custodians of vital knowledge spanning diverse realms, including food and agriculture, health and medicine, natural resource management, language, crafts and spiritual practices. Their knowledge is acquired on the basis of observations refined through practices that have been passed down generations of Indigenous Peoples, and it is critical to maintaining cultural identity; managing the risks and impacts of climate change; protecting biodiversity; achieving sustainable development; and building resilience in the face of pandemics and other extreme events.

The report identifies challenges to this preservation and transmission, including the critically rapid disappearance of Indigenous languages and, with them, the loss of invaluable knowledge and culture around the world, and it supports the call of Indigenous women to receive support to urgently develop, fund and implement Indigenous language education programmes to support intergenerational knowledge transmission. The lack of legal protection and intellectual property rights over Indigenous women's knowledge has also led to cases of Indigenous art and culture being exploited for tourism and commercial gain, or the misappropriation of Indigenous knowledge of plants by pharmaceutical or agricultural companies.

The report highlights best practices by Indigenous Peoples and States to preserve and transmit Indigenous women's knowledge, such as for example, cross-cultural women's health initiatives. The integration of Indigenous medical practices into State-run or State-funded clinics serves the dual purpose of making medical services more available to Indigenous women and fostering the transmission and preservation of Indigenous scientific knowledge of healing practices.

The thematic report (A/77/238) presented to the General Assembly in October 2022 provided an update on the topic of protected areas, which was initially addressed in a report by his predecessor in 2016 (A/71/229).[3] The report focuses on the obligations of States and international organizations to respect, protect, and promote Indigenous Peoples' rights in the context of creating and maintaining protected areas. In April, the Rapporteur collected oral and written submissions from Indigenous participants to inform his report during a consultation held at the University of Arizona.

The report comments on the final negotiations at the UN Convention on Biological Diversity COP on the post-2020 global biodiversity framework, which sets a target to increase global protected areas on land and at sea to at least 30% by 2030 in order to reduce threats to biodiversity. Insufficient assurances have been provided to Indigenous Peoples that their rights will be preserved in the process. Indigenous Peoples fear a new wave of green investments without recognition of their land tenure, management and knowledge, increased restrictions on access to their lands, waters and resources, and scaled up "fortress conservation", which has been proven to generate forced evictions, violence and killings. The report calls for the real drivers of biodiversity decline, such as industrialization, overconsumption and climate change, to be addressed, and for a genuine commitment to a human rights-based approach to conservation to be reflected in the final text of the post-2020 global biodiversity framework adopted at the 15th COP in December 2022.

The report also provides an update on concerns about alleged Indigenous Peoples' rights violations at or in the vicinity of several sites that have been nominated for or included on the UNESCO World Heritage List, including in Thailand, Kenya, Nepal, the United Republic of Tanzania, Botswana, Namibia, Denmark/Greenland and Sweden. The inclusion of a site on the UNESCO World Heritage List essentially guarantees a sustained increase in tourism and associated economic benefits for the State and could serve, if Indigenous Peoples were effectively included in the management of such sites, to support Indigenous Peoples' livelihoods and self-determined development.

Recent revisions to the Operational Guidelines for the Implementation of the World Heritage Convention requires State parties to adopt a human rights-based approach to the identification, nomination and

management of World Heritage sites. The Guidelines also encourage States to actively promote initiatives to develop equitable governance arrangements, collaborative management and redress mechanisms for Indigenous Peoples. However, the report highlights continuing allegations of Indigenous Peoples being excluded from the nomination, declaration and management of World Heritage sites on their lands. Disrespect for Indigenous Peoples' rights aggravates human rights violations and results in their marginalization from the management of sites.

The Operational Guidelines do not require evidence of Indigenous Peoples' Free, Prior and Informed Consent (FPIC) for nominations affecting them. The World Heritage Committee does not allow Indigenous Peoples to participate effectively in the Committee's decision-making on issues affecting them. In practice, Indigenous representatives cannot address the Committee until after it has already adopted decisions relating to sites.

The report calls for human rights impact assessments to be carried out together with Indigenous Peoples before nomination processes begin and for a review of the World Heritage Committee's working methods to ensure the effective participation of Indigenous Peoples and UN human rights experts in decision-making processes affecting Indigenous Peoples – *before* the Committee makes its final decision. It calls for periodic reviews of the human rights situation at sites and measures to reconsider World Heritage status if requirements are not met; and for the establishment of an accessible independent grievance mechanism.

Finally, the report reflects on REDD+ initiatives, in particular concerns over the lack of participation and transparency in the sharing of benefits with Indigenous Peoples and highlights some good practices of Indigenous-led conservation.

The report underlines how Indigenous Peoples must be recognized as rights-holders in conservation efforts undertaken on their lands and territories and urges States, international organizations and conservation organizations to demonstrate genuine commitment to a human rights-based approach to conservation. Ensuring respect for the rights of Indigenous Peoples, rather than excluding them from their lands in the name of conservation, will ultimately benefit the planet and its peoples as a whole.

Country visits

No official country visits were conducted in 2022. However, the Rapporteur conducted eight academic visits to Guatemala, Honduras, Colombia, Peru, Argentina, Ecuador, Sweden and Chile during which he exchanged with a number of Indigenous Peoples and authorities, as well as government and international community representatives.

In 2023, the Rapporteur will conclude the official country visit to Denmark and Greenland initially undertaken by his predecessor in March 2020 but which had to be interrupted due to COVID-19. He will also conduct a follow-up visit to Canada, last visited in 2013. The 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 2022, the Rapporteur issued 61 communications to States and other entities, such as private corporations and intergovernmental organizations, in response to information received on alleged violations of Indigenous Peoples' human rights. 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.[4, 5]

The mandate issued press releases on cases of urgency or special concern. Examples include press releases expressing concern over a broad range of issues, including for example the negative impacts of the Train Maya project in Mexico; the lack of targets for States to realize Indigenous Peoples' rights in the Post-2020 Post Global Framework of Implementation for the UN Convention on Biological Diversity; the lack of implementation of the Chittagong Hill Tract Agreement in Bangladesh; and the "poison package" draft bill on pesticides in Brazil.

Concerns were also publicly expressed with regard to the escalating violence against Maasai amid new plans to evict them from their ancestral lands in Tanzania through to serious abuses against Papua peoples in Indonesia, and the endangering of Indigenous lands and environment due to open-pit mining in Sweden. Press releases also raised

the issue of the killing of Nasa Indigenous defenders and the risks facing defenders who challenge corporate activity in Colombia, as well as the restriction of civic space in Nicaragua, and lauded the historic African Court ruling that awarded reparations to the Ogiek peoples in Kenya.

Collaboration with UN specialized entities, regional human rights bodies and other activities

The Rapporteur continued the mandate's collaboration with the Permanent Forum on Indigenous Issues (UNPFII) and the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP).

In February, the Rapporteur offered inputs to an Expert Seminar organized by EMRIP on "The Impact of Militarization on Indigenous Land: A Human Rights Focus". In March, he provided inputs to EMRIP's study on "Indigenous Peoples and the Right to Self-Determination: An International Academic Forum on Implementing the United Nations Declaration on the Rights of Indigenous Peoples".

The mandate continued to collaborate with the human rights treaty bodies, special procedures and the wider UN system. In January, the Rapporteur provided inputs to the consultation organized by the Special Rapporteur on the human rights to safe drinking water and sanitation in order to inform his thematic report to the General Assembly dedicated to the right to drinking water and sanitation of Indigenous Peoples (A/77/167). In April, the Rapporteur organized a "Hybrid Consultation" on "Indigenous Peoples and the Implementation of their Right to Water in Domestic Legal Systems". The Rapporteur is using the inputs received to produce presentations and offer technical assistance on this topic. In November, the Rapporteur contributed to the work of a four-day workshop organized by the UN Office of the High Commissioner for Human Rights (OHCHR) on possible ways to enhance the participation of Indigenous Peoples in the work of the Human Rights Council in Geneva. Also in November, the Rapporteur provided inputs to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) General recommendation No.39 (2022) on the rights of Indigenous women and girls.[7] He also attended and moderated a meeting of the 11th session of the UN Forum on Business and Human

Rights in Geneva dedicated to the question of the criminalization of human rights defenders.

He continued to collaborate with the wider UN system to promote Indigenous Peoples' rights and greater implementation of the UNDRIP. In March, he participated in the 66th session of the Commission on the Status of Women (CSW) and provided input on the topic of "Women and youth at the frontlines of the climate change response: How to challenge inequalities in leadership, recognition and responsibility?" In September, he contributed to a working meeting organized by the Food and Agriculture Organization to promote an open dialogue around the issue of Toxics and Pollutants Affecting Indigenous Peoples.

The mandate continued to play an active role on the topic of protected areas. In May, the Rapporteur participated in the International Union for Conservation of Nature (IUCN) regional forum on "Indigenous Peoples, protected areas and other effective means of conservation" in Honduras. In June, the Special Rapporteur attended the "Stockholm +50: a healthy planet for the prosperity of all – our responsibility, our opportunity" organized by the UN General Assembly. He contributed to the conference by raising the urgent need for Indigenous Peoples' participation to ensure positive advancement in the global environment and climate action debates. He delivered a statement highlighting the disproportionate impact of climate change on Indigenous Peoples and the need to guarantee Indigenous Peoples' rights in conservation and climate change action. In November, he participated remotely in the International Workshop on Conservation and Indigenous Peoples in Eastern and Southern Africa organized by the UN Department of Economic and Social Affairs, which took place in Kenya. In December, he participated remotely in sessions of the Montreal COP 15 on the Convention on Biological Diversity and briefed the International Indigenous Forum on Biodiversity.

In terms of cooperation with regional human rights mechanisms, in March the Rapporteur submitted an *amicus curiae* brief in case No. 13.641 *Comunidades y Rondas Campesinas de Cajamarca v. Peru* [Peasant Communities and Patrols of Cajamarca v Peru] and testified before the Inter-American Commission on Human Rights. The brief addressed the legal concept of Indigenous Peoples' right to identity and recognition.[8] In August, he submitted an *amicus curiae* brief before the

Inter-American Court of Human Rights in case No. 12.973 *Pueblos Indígenas Tagaeri y Taromenane (in voluntary isolation) v. Ecuador* [Tagaeri and Taromenane Peoples (in voluntary isolation) v Ecuador].[9] In September, he provided an expert brief to the European Parliament Human Rights Subcommittee (DROI) on the situation of Indigenous Peoples in the Brazilian Amazon and the consequences for Indigenous Peoples of a lack of land tenure.

Finally, the Rapporteur engaged directly with governments, particularly during academic visits, to provide advice on international law and offer and facilitate mediation efforts between governments and Indigenous Peoples, including in Ecuador in August, where he participated in a dialogue organized by the Episcopal Conference between the Ecuadorian government and Indigenous Peoples represented by the Confederation of Indigenous Nationalities of Ecuador (CONAIE).

Notes and references

1. United Nations (UN). OHCHR. "Special Rapporteur on the rights of indigenous peoples." https://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx
2. UN General Assembly. "Indigenous women and the development, application, preservation and transmission of scientific and technical knowledge. Report of the Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay." 2022, https://undocs.org/Home Mobile?FinalSymbol=A%2FHRC%2F51%2F28&Language=E&DeviceType=Desktop&LangRequested=False
3. UN OHCHR. "A/77/238: Protected areas and indigenous peoples' rights: the obligation of States and international organizations – Report of the Special Rapporteur on the rights of indigenous peoples." 19 July 2022, https://www.ohchr.org/en/documents/thematic-reports/a77238-protected-areas-and-Indigenous-peoples-rights-obligations-states
4. UN OHCHR. "Special Procedures of the Human Rights Council. Communications reports of special procedures." https://www.ohchr.org/en/special-procedures-human-rights-council/communications-reports-special-procedures
5. UN OHCHR. "Communication report and search." https://spcommreports.ohchr.org/Tmsearch/TMDocuments
6. See all press releases: UN. OHCHR."OHCHR Latest News." https://www.ohchr.org/en/latest?field_content_category_target_id%5B158%5D=158&field_content_category_target_id%5B162%5D=162&field_content_category_target_id%5B161%5D=161&field_content_category_target_id%5B159%5D=159&field_entity_target_id%5B1291%5D=1291
7. UN OHCHR. "General Recommendation No.39 (2022) on the rights of Indigenous women and Girls." 26 October 2022, https://www.ohchr.org/

en/documents/general-comments-and-recommendations/general-recommendation-no39-2022-rights-indigeneous
8. UN OHCHR. Special Procedures. "Amicus Curiae" 15 March 2022, https://www.ohchr.org/sites/default/files/2022-03/Amicus%20brief%20to%20IACHR_SR%20indigenous%20peoples_EN.pdf
9. UN OHCHR. "Comments on legislation and policy. Special Rapporteur on the rights of indigenous peoples." https://www.ohchr.org/en/special-procedures/sr-Indigenous-peoples/comments-legislation-and-policy

Lilia Petrosyan *and* ***Christine Evans*** *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.*

Seánna Howard *and* ***Elisa Marchi****, both based at the University of Arizona, Indigenous Peoples Law and Policy Program as well as* ***Claire Morclette****, based in Geneva, 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: hrc-sr-Indigenous@un.org

World Intellectual Property Organization (WIPO)

Indigenous Peoples have rights over their traditional knowledge, traditional cultural expressions and genetic resources, including associated intellectual property rights, as recognized in Article 31 of the UN Declaration on the Rights of Indigenous Peoples.[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 like weaving and house construction.[2] "Traditional cultural expressions" are the myriad forms in which traditional culture is expressed, including music, dance, stories, art, ceremonies, designs and symbols.[3] "Genetic resources" are defined as genetic material of actual or potential value found in plants, animals or micro-organisms. Examples include medicinal plants, agricultural crops and animal breeds.[4]

Conventional intellectual property laws are, however, woefully inadequate in protecting these rights. 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 pharmaceutical, fashion and film 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 traditional knowledge, traditional cultural expressions and genetic resources.

Indigenous Peoples participate in the IGC as observers and participate collectively through an *ad hoc* Indigenous Caucus averaging around 15 to 20 people per session.

In 2022, the IGC held four negotiation sessions and the WIPO General Assembly agreed to convene a diplomatic conference to conclude an international legal instrument relating to genetic resources and associated traditional knowledge by 2024.

Overview

The IGC operates under two-year mandates, renewed biennially. The 2022-2023 mandate directs the IGC to "continue to expedite its work, with the objective of finalizing an agreement on an international legal instrument(s) ...which will ensure the balanced and effective protection of genetic resources, traditional knowledge and traditional cultural expressions."[5] The IGC held four negotiation sessions in 2022, centered around separate draft texts for each of the three subject matters.[6, 7, 8]

All negotiation sessions are held at the WIPO headquarters in Geneva, Switzerland, and the 2022 sessions were offered in a hybrid format allowing for virtual participation. Specific details about the background and workings of the IGC and Indigenous Peoples' participation therein can be found in prior editions of The Indigenous World.[9, 10, 11, 12]

Genetic resources

IGC 42

Following a two-year hiatus in substantive negotiations during the COVID pandemic, the IGC took up genetic resources at its 42nd session,

28 February-4 March 2022. The IGC re-elected Mr. Ian Goss of Australia as its Chair for IGC 42, with Ms Lilyclaire Bellamy of Jamaica elected to take over the role of Chair thereafter. Prior to the pandemic, Mr. Goss had, on his own initiative, developed a "Chair's Text" on genetic resources, hoping to advance the negotiations.[13, 14] However, for IGC 42, the Consolidated Document Relating to Intellectual Property and Genetic Resources remained the official negotiation text.[15]

The key issue of contention in the genetic resources negotiations is whether to require patent applicants to disclose the origin or source of genetic resources and associated traditional knowledge. Although mandatory disclosure is broadly supported by Member States and the Indigenous Caucus, a small number of Member States object. Proponents assert mandatory disclosure provides valuable information to determine whether genetic resources and associated traditional knowledge have been accessed appropriately, thus helping to prevent misappropriation, and can facilitate Member States' efforts to comply with other existing obligations, specifically the Convention on Biodiversity's Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. Opponents argue a disclosure requirement is overly burdensome for patent applicants and creates delays and uncertainty that would stifle innovation and have negative economic consequences. They prefer instead to focus on preventing the erroneous granting of patents for non-novel inventions, through use of information systems to support searches of prior art.

Although no agreement was reached on the disclosure requirement, some progress was made on other provisions and Member States agreed to forward the revised Consolidated Document as the basis for further negotiations at IGC 43. While the Consolidated Document was the focus of the negotiations at IGC 42, many Member States, as well as the Indigenous Caucus, expressed support for at least some aspects of the Chair's Text, which includes the majority-supported mandatory disclosure requirement as well as initiatives relating to information systems for prior art searches.

IGC 43

The IGC continued its negotiations at IGC 43, 30 May0-3 June 2022, the final session of the biennium on genetic resources. An *ad hoc* expert

group approved at IGC 42 met the day before the session to discuss disclosure requirements and information systems. The Indigenous Caucus selected two Indigenous representatives to participate in the expert group. The results of the expert group's work were reported to the IGC plenary and served as the primary basis for the first round of textual revisions for the session.

Under the direction of the new Chair, Lilyclaire Bellamy, the session opened with discussion of the working methodologies for future IGC sessions. Some Member States commented that allowing Member States to unilaterally make modifications to the texts, as under the existing methodology, has resulted in circularity in the negotiations with progress made in one session subsequently being undone in the next. Recommendations to advance the negotiations included establishing intersessional technical working groups and the use of small groups and informal meetings during IGC sessions. It was noted that any such groups must be transparent and inclusive, including the participation of Indigenous Peoples. In the end, agreement was reached to organize virtual intersessional ad hoc expert group meetings on disclosure requirements and information systems and the Chair committed to further consultations with Member States and the Indigenous Caucus on methodologies to be used in future sessions.[16]

The session had a definite tone of procedural stocktaking and many Member States expressed frustration at the IGC's lack of progress. A significant number expressed support for using the Chair's Text, which was viewed as being more streamlined and balanced, as the basis of negotiations going forward, and called for the convening of a diplomatic conference on this text, which is the traditional step for concluding a treaty at WIPO. Other Member States preferred to continue the IGC's work on the Consolidated Document.

Despite considering methodology for future sessions, work at IGC 43 followed the pre-existing methodology and a revised version of the Consolidated Document was developed. However, some Member States objected to the revised text as failing to narrow gaps in the different positions and continued to advocate for use of the Chair's Text as the basis for negotiations. Because Member States could not agree on forwarding the revised Consolidated Document as the basis for further negotiations, the official genetic resources text reverted back to the Consolidated Document as revised at IGC 42.

WIPO General Assembly

Although in retrospect perhaps foreshadowed at IGC 43, a seemingly unexpected and undeniably significant breakthrough on the genetic resources front occurred at the WIPO General Assembly's 14-22 July 2022 meeting. Acting on a proposal put forward by the Africa Group, the General Assembly decided to elevate the genetic resources negotiations to the diplomatic level by convening a diplomatic conference to conclude an international instrument on genetic resources and associated traditional knowledge by 2024.[17] The decision included that the Chair's Text form the basis for the diplomatic conference, a special session of the IGC be held prior to the conference to allow Member States an opportunity to reach agreement on further refinements to the text, and a Preparatory Committee be convened to establish the conference's Rules of Procedure.

Supporters of the proposal emphasized the length of time the negotiations had been underway without reaching conclusion, the level of maturity of the discussions, and the urgent need to finalize a legal instrument to protect genetic resources and associated traditional knowledge of Indigenous Peoples and local communities. Opponents expressed that it was premature and possibly counter-productive to go to diplomatic conference due to outstanding negotiation issues that should in their view be resolved by consensus among the technical experts in the IGC first. Although a diplomatic conference is the traditional step for concluding a treaty at WIPO, there is no guarantee that the diplomatic conference will result in a binding treaty or other legal instrument that will be signed up to by Member States.

Under the IGC's provisional schedule for 2023, the special session to make revisions to the Chair's Text before sending it to diplomatic conference will take place from 4-8 September 2023, followed by the Preparatory Committee meeting from 11-13 September 2023. An issue of deep concern for the Indigenous Caucus is the pathway for participation of Indigenous Peoples in the diplomatic conference process. Given that the subject matter of the negotiations directly impacts Indigenous Peoples' intellectual property rights as recognized in Article 31 of the UN Declaration on the Rights of Indigenous Peoples, the Caucus' position is that Member States must act to ensure Indigenous Peoples' full and effective participation.

Traditional knowledge and traditional cultural expressions

IGC 44

Following the discussion of working methodologies at IGC 43 and the Chair's subsequent consultations with Member States and Observers – and perhaps energized or at least shaken up by the movement on the genetic resources front – IGC 44, the first of the biennium's four negotiation sessions on traditional knowledge and traditional cultural expressions, kicked off under a new working methodology. The new methodology focused less on unilateral textual modifications by Member States and more on issue-by-issue discussion in informal meetings and contact groups and development by the IGC Facilitators of "Facilitators' Alternative" text provisions based on these discussions.

The work of IGC 44 centered on the text provisions regarding objectives (i.e., the intentions and purposes to be achieved by the instruments), definition of terms, subject matter (i.e., what is to be covered by the instruments, including specifying eligibility criteria to define the traditional knowledge and traditional cultural expressions to be protected), scope of protection, databases, exceptions and limitations, and sanctions and remedies. The intended beneficiaries of protection under the instruments was also a topic of discussion. While there is general agreement that Indigenous Peoples are primary beneficiaries, there are questions about if/how to define local communities beneficiaries and whether nation states or "other entities" might also be beneficiaries. The Facilitators condensed and crystallized the discussions into alternative provisions added to the texts and Member States agreed to forward the revised texts to IGC 45 as the basis for further negotiations. Member States also approved convening an *ad hoc* expert group prior to IGC 45 to address specific negotiation issues.

In a further effort to accelerate and advance the work, the Chair committed to developing a Chair's Text on Traditional Knowledge and Traditional Cultural Expressions to be made available by IGC 45. An advisory committee was established to assist the Chair in this process, and the Indigenous Caucus selected two Indigenous representatives to participate in the committee.

IGC 45

Work continued at IGC 45, 5-9 December 2022, on the traditional knowledge and traditional cultural expressions texts. The *ad hoc* expert group met the day before to discuss issues of scope of protection, exceptions and limitations, and sanctions and remedies. The results of the *ad hoc* expert group were reported to the IGC plenary.

During the week, negotiations took place via formal interventions and informal, open-ended contact groups, as well as in a small contact group established to focus on the issue of beneficiaries. Discussions centered on the Facilitators' Alternative provisions developed at IGC 44, as well as further work on other issues including those addressed by the *ad hoc* expert group.

Based on all the discussions taking place during the session, on the final day the Facilitators presented revised versions of the traditional knowledge and traditional cultural expressions texts, following the methodology established at IGC 44 of including "Facilitators' Alternative" provisions. Member States took the decision to transmit the revised texts to IGC 46 for further consideration at that session, which will take place from 27 February-3 March 2023.

As promised at IGC 44, the Chair introduced a "Chair's Text of a Draft International Legal Instrument relating to Intellectual Property and Traditional Knowledge/Traditional Cultural Expressions".[18] In very preliminary form and described by the Chair as a "work in progress", the draft did not form the basis for discussions at the session. A revised version of the Chair's Text is expected to be introduced in advance of IGC 46.

Notes and references

1. "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." G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples, 13 September 2007, art. 31(1)
2. "Traditional Knowledge." WIPO, 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.

3. "Traditional Cultural Expressions." WIPO, https://www.wipo.int/tk/en/folklore/
4. "Genetic Ressources." WIPO, https://www.wipo.int/tk/en/genetic/ ; Genetic resources found in nature are not creations of the mind and thus are not intellectual property. But intellectual property issues are 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.
5. The 2022-2023 mandate and work program are available at: "Assemblies of the Member States of WIPO. Sixty-Second Series of Meetings. Agenda Item 18. Report on the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). DECISION." 4-8 October 2021, igc-mandate-2022-2023.pdf (wipo.int)
6. Current versions of the draft texts as of the end of 2022 are available at: "The Protection of Traditional Knowledge: Draft Articles Facilitators' Rev." WIPO, 9 December 2022, WIPO/GRTKF/IC/45/FACILITATOR REV. TK
7. "The Protection of Traditional Cultural Expressions: Draft Articles Facilitators' Rev." WIPO, 9 December 2022, WIPO/GRTKF/IC/45/FACILITATOR REV. TCE
8. "Consolidated Document Relating to Intellectual Property and Genetic Resources." WIPO, 31 March 2022, WIPO/GRTKF/IC/43/4
9. Noe, Sue. "The Indigenous World 2019: World Intellectual Property Organization." In The Indigenous World 2019, edited by Dwayne Mamo, 651-658, Copenhagen: IWGIA, 2019, Indigenous World 2019: World Intellectual Property Organization (WIPO) - IWGIA - International Work Group for Indigenous Affairs
10. Noe, Sue. "The Indigenous World 2020: World Intellectual Property Organization." In The Indigenous World 2020, edited by Dwayne Mamo, 770-776, Copenhagen: IWGIA, 2020, Indigenous World 2020: World Intellectual Property Organization (WIPO) - IWGIA - International Work Group for Indigenous Affairs
11. Noe, Sue. "The Indigenous World 2021: World Intellectual Property Organization." In The Indigenous World 2021, edited by Dwayne Mamo, 805-813, Copenhagen: IWGIA, 2021, The Indigenous World 2021: World Intellectual Property Organization (WIPO) - IWGIA - International Work Group for Indigenous Affairs
12. Noe, Sue. "The Indigenous World 2022: World Intellectual Property Organization." In The Indigenous World 2022, edited by Dwayne Mamo, 830-837, Copenhagen: IWGIA, 2022, The Indigenous World 2022: World Intellectual Property Organization (WIPO) - IWGIA - International Work Group for Indigenous Affairs
13. "Chair's Text of a Draft International Legal Instrument Relating to intellectual Property, Genetix Resources and Traditional Knowledge Associated with Genetic Resources." WIPO, 16 December 2021, WIPO/GRTKF/IC/42/5 ;
14. An amended version of the Chair's Text is available at: Goss, Ian. "NON-PAPER-Amended Draft International Legal Instrument Relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated woth Genetic Resources." WIPO, 18 May 2022, WIPO/GRTKF/IC/43/NON-PAPER
15. "Consolidated Document Relating to Intellectual Property and Genetic

Resources." WIPO, 16 December 2021, WIPO/GRTKF/IC/42/4

16. The Indigenous Caucus nominated two Indigenous representatives to participate in each of the expert groups.

17. Information about the diplomatic conference and links to related documents are available at: "Diplomatic Conference on Intellectual Property and Genetic Resources." WIPO, https://www.wipo.int/diplomatic-conferences/en/genetic-resources/index.html

18. Bellamy, Lilyclaire. "Non-paper: Chair's Text of a Draft International Legal Instrument relating to IP and TK/TCE (Zero Draft)." WIPO, 29 December 2022, WIPO/GRTKF/IC/45/CHAIRS TEXT

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 and IGC 45. She can be reached by email at 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

IWGIA Publications 2022

English

Books

The Indigenous World 2022
Edited by Dwayne Mamo
ISBN 978-87-93961-49-4

The Green Climate Fund in Peru: Indigenous organisation's recommendations on its safeguards
Published by Cocama Association for the Development and Conservation of San Pablo de Tipishca (ACODECOSPAT), Federation of Native Communities of the Corrientes River Basin (FECONACOR), Quechua Indigenous Federation of Pastaza (FEDIQUEP), Autonomous Territorial Government of the Wampis Nation (GTANW), Organisation of the Indigenous Kichwa Amazonian Peoples of the Peru-Ecuador Border (OPIKAFPE), National Organisation of Indigenous Andean and Amazonian Women of Peru (ONAMIAP), Indigenous Peoples United in Defence of their Territory (PUINAMUDT), IWGIA & Peru Equidad Centre for Public Policy and Human Rights
ISBN 978-87-93961-51-7

Briefing Papers

Recognising the contributions of Indigenous Peoples in global climate action? An analysis of the IPCC report on Impacts, Adaptation and Vulnerability (March 2022)

Implementing UN Recommendations on Indigenous Women: Understanding barriers and enablers (June 2022)

A new paradigm of climate partnership with Indigenous Peoples: An analysis of the recognition of Indigenous Peoples in the IPCC report on mitigation (June 2022)
Published by IWGIA, the Inuit Circumpolar Council (ICC), Nepal Federation of Indigenous Nationalities (NEFIN) & Pastoralists Indigenous NGO Forum (PINGO's Forum)

Reports

Collective Punishment: Implementation of "Four Cuts" in Mindat Township

Published by IWGIA & Chin Human Rights Organization (CHRO)

The Working Group on Indigenous Populations/Communities in Africa: Celebrating 20 years of Indigenous leadership, standard setting and sensitisation

Written by Valérie Couillard & Jérémie Gilbert
ISBN 978-87-93961-55-5

Recognition of Indigenous Peoples in Nationally Determined Contributions

Written by Rosario Carmona, Graeme Reed, James Ford, Stefan Thorsell, Rocío Yon, Francisca Carril, Johnson Cerda & Kerrie Pickering

Study on Consultation and Free, Prior and Informed Consent with Indigenous Peoples in Africa

Written by Leonardo J. Alvarado
ISBN 978-87-93961-54-8

Urgent Alerts

Urgent Alert: 70,000 Maasai in Loliondo, Tanzania, face another forceful eviction (January 2022)

Urgent Alert: Threats of forced eviction of the Maasai indigenous pastoralists of the Ngorongoro Conservation Area (NCA) and Ngorongoro District in Tanzania (February 2022)

Urgent Alert: New serious threats towards the Maasai people of Loliondo in Tanzania (June 2022)

Statements & Submissions

Written submission to the UN Special Rapporteur on Violence against Women, its causes & consequences: IWGIA inputs to the Report on violence against Indigenous Women and Girls (January 2022)

Indigenous Peoples' Rights and UNESCO World Heritage Sites: Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples for his report to the 77th Session of the UN General Assembly (March 2022)
Published by IWGIA, International Indigenous Peoples' Forum on World Heritage (IIPFWH) & Indigenous Peoples of Africa Co-ordinating Committee (IPACC)

Written submission to the UN Special Rapporteur on Violence against Women: IWGIA inputs to the Report on violence against women and girls in the context of the climate crisis (March 2022)

Review of India under UPR during 4th Cycle: The case for specific recommendations on Indigenous Peoples (October 2022)
Published by IWGIA & Indigenous Lawyers Association of India (ILAI)

IWGIA & AIPP Statement to the Commission on the Status of Women 67th Session (October 2022)
Published by IWGIA & Asia Indigenous Peoples Pact (AIPP)

IWGIA Statement to the African Commission on Human and Peoples' Rights on the Human Rights Situation in Africa (October 2022)

Multimedia

Video

Fighting for the Forgotten: The Working Group on Indigenous Populations / Communities in Africa

Podcasts

Locked Down and Locked Out: The Mbororo in Cameroon

Locked Down and Locked Out: South Africa

Locked Down and Locked Out: What Needs to Change

COP26 – A battle for peoples and planet – Indigenous Peoples' rights in climate action under threat

På besøg hos oprindelige folk i Thailand med Operation Dagsværks secretariat (Danish)

Spanish

Books

El Mundo Indígena 2022
Edited by Dwayne Mamo
ISBN 978-87-93961-50-0

El Fondo Verde para el Clima en el Perú: Recomendaciones Indígenas sobre sus Salvaguardas
Published by Cocama Association for the Development and Conservation of San Pablo de Tipishca (ACODECOSPAT), Federation of Native Communities of the Corrientes River Basin (FECONACOR), Quechua Indigenous Federation of Pastaza (FEDIQUEP), Autonomous Territorial Government of the Wampis Nation (GTANW), Organisation of the Indigenous Kichwa Amazonian Peoples of the Peru-Ecuador Border (OPIKAFPE), National Organisation of Indigenous Andean and Amazonian Women of Peru (ONAMIAP), Indigenous Peoples United in Defence of their Territory (PUINAMUDT), IWGIA & Peru Equidad Centre for Public Policy and Human Rights
ISBN 978-87-93961-51-7

Sin chivos ni cementerios. La energía eólica en los dominios del pueblo Wayúu de Colombia
Written by Diana Alexandra Mendoza
ISBN 978-87-93961-58-6

Plurinacionalidad y autodeterminación indígena en América Latina
Written by Roger Merino
ISBN 978-87-93961-57-9

Para una justicia con enfoque intercultural en Misiones
Edited by Asociación Civil Rumbo Sur
Written by Morita Carrasco
ISBN 978-987-4474-49-0

Plan de Gestión y Control Autónomo de los Recursos Naturales y Biodiversidad del Territorio Indígena Multiétnico (TIM)
Edited and written by ORÉ – Organización de Apoyo Legal y Social
ISBN 978-9917-615-06-4

Nuestra Palabra. Relatos y testimonios de los boras del Ampiyacu
Written by Jean-Patrick Razon & Alberto Chirif
ISBN 978-87-93961-56-2

Briefing Papers

¿Reconocimiento de los pueblos indígenas y sus aportes en la acción climática? Un análisis del informe del IPCC sobre Impactos, Adaptación y Vulnerabilidad (marzo de 2022)

¿Reconocimiento de los pueblos indígenas y sus aportes en la acción climática? Análisis del reconocimiento a los pueblos indígenas en el informe del IPCC sobre mitigación (junio de 2022)

Published by IWGIA, the Inuit Circumpolar Council (ICC), Nepal Federation of Indigenous Nationalities (NEFIN) & Pastoralists Indigenous NGO Forum (PINGO's Forum)

Reports

Protocolo autonómico de Consulta y Consentimiento Libre, Previo e Informado del pueblo Wayúu, Cabo de la Vela

Published by INDEPAZ & IWGIA

Written by Pueblo Wayúu, Cabo de la Vela

Reconocimiento de los pueblos indígenas en las contribuciones determinadas a nivel nacional (NDC)

Written by Rosario Carmona, Graeme Reed, James Ford, Stefan Thorsell, Rocío Yon, Francisca Carril, Johnson Cerda & Kerrie Pickering

Protocolo de relacionamiento, concertación y diálogo de mutuo respeto de la Nación Wampís con el Estado peruano

Edited and written by Autonomous Territorial Government of the Wampis Nation (GTANW)

Focos de calor acumulados de enero a agosto de 2022

Edited and written by Centro de Estudios Jurídicos e Investigación Social (CEJIS) & Centro de Planificación Territorial Autonómica (CPTA)

Protocolo Autonómico de Consulta Previa: Kimbilá municipio de Izamal, Yucatán

Edited by Junta de Pobladores de Kimbilá, municipio de Izamal Yucatán

Protocolo o lineamientos para la realización de la consulta previa sobre la propuesta de "Reglamento de asistencia técnica, jurídica y logística a las comunidades que realizan elecciones de presidencias de comunidad por el sistema de usos y costumbres"

Edited by Comunidad Nahua de San Felipe Cuauhtenco, Municipio de Contla de Juan Cuamatzi, Tlaxcala

Portuguese

Reports

O extrativismo mineral do ouro e os direitos indígenas ameaçados. Governo brasileiro impulsiona a atividade minerária sem garantir os direitos dos povos indígenas
Written by Ricardo Verdum

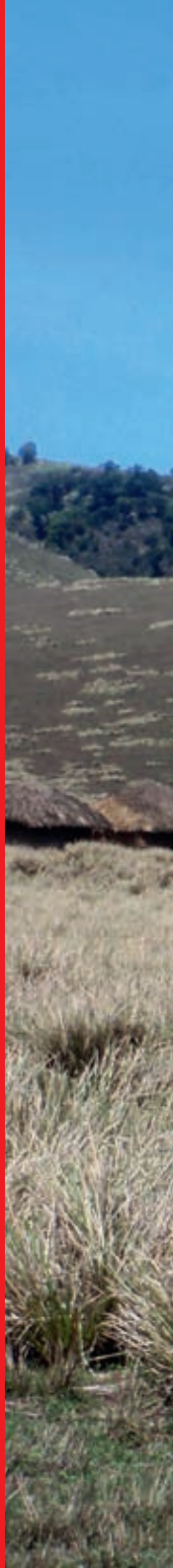
The compilation you have in your hands is the unique result of a collaborative effort between Indigenous and non-indigenous activists and scholars who voluntarily document and report on the situation of Indigenous Peoples' rights. We thank them and celebrate the bonds and sense of community that result from the close cooperation needed to make this one-of-a kind documentation tool available.

For 37 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 2022. The Indigenous World 2023 adds not only documentation, but also includes a special focus on conservation and Indigenous Peoples' rights.

Currently, 15% of the world's surface is made of protected areas and that number is expected to double by 2030. While there is work being done to adopt conservation measures that respect the human rights of Indigenous Peoples, considerable implementation gaps remain, and conservation measures have caused and continue to cause human rights violations of Indigenous Peoples worldwide. Indigenous Peoples' lands and territories constitute at least 28% of the global land surface including unique ecosystems and vital biodiversity. Over the years, Indigenous Peoples have consistently emphasised that conservation should be regarded as their responsibility as their land management practices have repeatedly been found to be some of the best strategies for biodiversity conservation. Thus, the environment can best be protected by recognising Indigenous Peoples' rights to territory, self-determination, legal representation and cultural freedom. However, one main tenet of conservationists is that preservation, alongside close regulations and restrictions, can best be achieved when people are removed from the protected areas, meaning that Indigenous Peoples are often forcibly evicted. This becomes increasingly dangerous for Indigenous Peoples as more countries move to conserve the remaining planet's biodiversity by creating more protected areas, disregarding their rights to land, territories and resources and often without their free, prior and informed consent.

Though we have chosen to focus on conservation and Indigenous Peoples' rights 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 56 regional and country reports and 17 reports on international processes and initiatives covered in this edition underscore these trends. IWGIA publishes this volume with the intent that it is used as a documentation tool and as an inspiration to promote, protect and defend the rights of Indigenous Peoples, their struggles, worldview and resilience.

IWGIA

9 788793 961616