

## INTRODUCTION

In the Americas, Indigenous peoples struggle to maintain a dignified existence amidst multiple forms of systemic injustice, and those who defend their rights are often the target of violent attacks and intimidation. Recently, however, Indigenous peoples and communities have been able to celebrate milestone victories, which are a recognition of their legitimate demands and the result of years of mobilization, courage and determination; victories that were unthinkable not so long ago and that can be seen as one step more towards the full recognition of Indigenous peoples' rights.

While some progress has been made to protect and promote Indigenous peoples' rights, the majority of Indigenous peoples continue to encounter social, political, and economic threats to their collective well-being and very existence. Their cultural heritage, ancestral lands, and right to self-determination remain under attack.

Indigenous peoples in the continent are over-represented among those living in poverty, the under-paid, those with lower level of education, lower life expectancy, higher maternal and infant mortality, as well as less access to sanitation and drinking water. In other words, historical discrimination has kept Indigenous peoples more excluded, marginalized and outside of decision-making processes than other groups.

In this context of exclusion, the consequences for Indigenous women are often more severe, as they must bear the additional weight of gender oppression and discrimination. A 2013 study conducted by the United Nations concludes that the discrimination that Indigenous women suffer on the basis of their Indigenous identity is aggravated by the discrimination on the basis of their gender and class.

The effects of historical discrimination are often aggravated by the lack of implementation of legislation intended to protect Indigenous peoples' rights. The States of the Americas have obligations with regard to the collective rights of Indigenous Peoples. Fifteen States have ratified International Labour Organization Convention 169 and all States of the region the states of the region have now unanimously endorsed the United Nations Declaration on the Rights of Indigenous Peoples in 2007. Furthermore, the Inter-American Human Rights System has issued rulings and reports on these issues and several national courts have recognized these rights, including the right to consultation and free, prior and informed consent. In addition, the rights of Indigenous peoples are protected in the constitutions of many states in the Americas.

The centre of Indigenous peoples' struggles for rights and justice is often about control of natural resources and their territories, which may be rich in natural resources. States and multinational corporations have forcibly removed Indigenous peoples in the name of social and economic development. Often, these so-called "development" programs have resulted in environmental and cultural destruction and community displacement. In a recent report, the Inter-American Commission of Human Rights (IACHR) recognises that demand over Indigenous peoples natural resources is leaving Indigenous peoples living in voluntary isolation and initial contact in the Americas in an even more vulnerable situation.

Indigenous peoples' special connection to their traditional lands is pivotal in analysing discrimination against them. Land and natural resources are fundamental to Indigenous peoples' identities, cultures and ways of life. When Indigenous peoples claim rights to land, they refer to specific places where they have lived for generations, where their cultures and traditions are given life and are reaffirmed by their presence. For them, the defence of their land and territory is central to their survival and enables them to protect themselves from further abuses.

Over and over again and across the American continent, when Indigenous peoples oppose large scale economic projects that they claim will have a negative impact in their rights, harm their culture and environment, or they insist in having a voice in the decisions that will affect their lives, their human rights are not respected: Indigenous peoples are forcibly evicted or displaced, denied their right to traditional lands, they suffer intimidation and violent attacks, their protests are repressed with excessive force or they are faced with a discriminatory use of the judicial system against them.

## HISTORIC JUDGEMENT IN FAVOUR OF MAPUCHE PEOPLE

**On 29 July 2014, the Inter-American Court of Human Rights made public a historic judgement about the discriminatory use of the justice system in Chile against the Mapuche Indigenous People.**

The Court established that the convictions of the eight cases under consideration, were based in stereotypes and prejudices against the Mapuche Indigenous people, which constituted a violation of the principle of equality and non-discrimination and the right to equal protection of the law. The eight victims in this case were convicted as perpetrators of terrorisms under Law No. 18,314 (known as "Antiterrorist Act"). The Court also concluded that Chile violated the rule of law and the right to presumption of innocence to the detriment of the eight victims in this case due to the application of the so call "Antiterrorist Act" against them. Three of the victims were at the time of the facts of the case, traditional authorities of the Mapuche indigenous people. The Court also determined that Chile committed violations of the right to freedom of thought and expression and political rights, because, in the circumstances of this case, the additional penalties restricting those rights were disproportional and constituted a serious impairment of those rights. Such involvement was particularly severe in the case of Messrs. Ancalaf Llaupe, Norín Catrimán and Pichún Paillao, in their capacity as leaders and traditional leaders of their communities. This sentence has great significance for Indigenous peoples in the whole continent, setting clear limits in the use of anti-terrorism legislation to address social protests, demonstrations and Indigenous peoples' demands.

## STRUGGLE OVER RIGHT TO TERRITORIES AND NATURAL RESOURCES

Considering the significance of land and natural resources for Indigenous Peoples, and the long struggle and suffering that these communities had to endure to defend their rights, we can say without hesitation that the recent victories of the Sawhoyamaya peoples is truly historic. A great importance not only for the Indigenous peoples of Paraguay but for all Indigenous peoples in the Americas and around the world.

### SAWHOYAMAYA: A DREAM COME TRUE

**After two decades of struggle, the Sawhoyamaya indigenous community will be able to return to their ancestral land.**

When Carlos Marecos, leader of the Sawhoyamaya indigenous community, found out that after two decades of painful struggle his people could return to their ancestral land, he could not help shedding some tears. "Indigenous peoples only cry when they achieve their freedom. And today we feel like we are getting out of prison; and that is why many cried with emotion", he said.

For years, Carlos Marecos and his community lived in a dangerously narrow strip of land next to a main road. On 11 June this year, President Horacio Cartes enacted a law that will allow the Paraguayan State to expropriate more than 14,400 hectares of land in the Chaco region to return them to the Sawhoyamaya.

"We lived at the side of the road, we lived badly. Several members of the community died in accidents, of disease. Nobody respected us. Now this is our victory. I am very happy, and I cry because my grandmother, my father and many members of my family did not have the opportunity I have today to enjoy our land. I'm grateful to everyone" said Aparicia Gonzalez, an indigenous woman from the Sawhoyamaya community.

The path of victory has been long. The Sawhoyamaya's legal battle began in 1991, when the community took legal actions to get recognition to their right to more than 14,000 hectares of ancestral lands situated in two areas known as Retiro Santa Elisa and Estancia Michi, in northern Paraguay. Fifteen years later, having received no positive response from the authorities, they filed a complaint with the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which in 2006 ruled in his favor. This is a victory not only for Sawhoyamaya community. It is a triumph for the hundreds of thousands of Indigenous peoples in Paraguay, most of them invisible and discriminated against, whose communities have poverty and illiteracy rates significantly higher than the rest of the Paraguayan population. It is not a celebration for everybody, however.

The Yakye Axa Indigenous community is still fighting to be able to return to their lands, despite the 2015 Inter-American Court of Human Rights ruling in their favour and the agreement reached in 2012 with the current owner of their lands.

The rights to freedom of expression and to participation are firmly established in international human rights law. By virtue of these rights, Indigenous individuals and peoples have the right to oppose and actively express opposition to extractive projects, both in the context of State decision-making about the projects and otherwise, including by organizing and engaging in peaceful acts of protest. States are bound to respect and protect rights of freedom of expression and participation, and may impose limitations on the exercise of those rights only within narrow bounds and for reasons of public order. Indigenous peoples across the Americas continue to be the target of intimidation, violent attacks and killings when they oppose big scale economic projects, which they claim will have devastating effects over their rights. In other instances Indigenous communities are forcibly evicted or displaced, their public protests are met with excessive force or they are discriminated against by the judiciary system.

## ATTACKS AGAINST THE WIWA, CURVARADÓ AND JIGUAMIANDÓ RIVER BASINS COMMUNITIES

The Wiwa Peoples, one of the Indigenous Peoples inhabiting the Sierra Nevada de Santa Marta, in Colombia, are opposing a number of mining, infrastructure, tourism and other projects in the Sierra Nevada area, which they consider would disrupt their food sources, affect their traditional way of life and threaten their survival. Together with the other Indigenous communities in the Sierra Nevada area, the Wiwa are campaigning for recognition of their rights over lands.

Last May, Sebastián Pastor Mojica, a leader of Wiwa Yugumaiun Bunkuanarrua Tayrona Organization (Organización Wiwa Yugumaiun Bunkuanarrua Tayrona, OWYBT) was victim to an attempted forced abduction by two armed men. This is the latest attack against members of the OWYBT. Last year a grenade was thrown against the house of Pedro Manuel Loperena, the coordinator of the OWYBT's Human Rights Commission.

OWYBT is the Indigenous organization representing the Wiwa Indigenous Peoples of the Sierra Nevada de Santa Marta mountain range in Colombia. It has been campaigning for justice in cases of human rights abuses against the Wiwa community carried out by the security forces, paramilitaries operating with them, and guerrilla forces. The Wiwa Peoples were provided with precautionary protection measures by the Inter-American Commission on Human Rights in 2005.

Through the early 2000s to the present, the Wiwa population and other Indigenous Peoples in the area faced repeated death threats and killings at the hands of the security forces, operating in alliance with paramilitary forces. These human rights violations coincided with or preceded the construction of a dam and the concession of extractive licences to a number of companies in the region. Guerrilla forces have also been responsible for numerous human rights abuses against members of the Wiwa and other communities in the region in their efforts to maintain a presence in the region.

In Colombia, control of land, for political, economic and military reasons, has been one of the main drivers of the long-running armed conflict. The impact on Indigenous and Afro-descendent communities who have traditionally relied on the land for their livelihoods is enormous, and women and girls from these communities are particularly hard hit. Some eight million hectares of land have been misappropriated during the conflict, much of this as a result of human rights violations carried out by paramilitary forces counting on security force support. The Afro-descendant communities of the Curvaradó and Jiguamiandó River Basins are often the target of paramilitaries' attacks. For years they have been reclaiming their lands, which were occupied by powerful economic interests to establish African Palm plantations, cattle-ranches or other economic enterprises. Many of those opposing these economic activities within their territory have been threatened and killed as a result. On 20 May this year, armed men attempted to kill the land restitution leader Enrique Cabezas near a military base in the Curvaradó River Basin, north-western Colombia. Rafael Truaquero, another land claimant, and his family were also threatened.

Enrique Cabezas has been receiving repeated threats as he is among those denouncing the links between paramilitaries and security forces in the area, as well as criticizing the establishment of a military base on lands collectively owned and claimed by the Curvaradó communities.

In March 2003, the Inter-American Human Rights Court issued provisional protection measures for the inhabitants of the Afro-descendant communities of the Curvaradó and neighbouring Jiguamiandó. These measures were lifted last year on the understanding that Colombia's Constitutional Court would continue the process of monitoring the implementation of the Court's order. However, the communities consider that the Colombian authorities' efforts to guarantee their safety is seriously inadequate. In addition, despite repeated orders by the Constitutional Court, the land has not been returned to the communities.

Many other conflicts in the region, which involve indigenous peoples, are often linked to governments not fulfilling their obligations regarding Indigenous Peoples' right to a consultation process to obtain their free, prior and informed consent. The UN Special Rapporteur on the Rights of Indigenous Peoples has noted that Indigenous peoples' free, prior and informed consent is required, as a general rule, when extractive activities are carried out within Indigenous territories. This general rule derives from the character of free, prior and informed consent as a safeguard for the internationally recognized rights of Indigenous peoples that are typically affected by extractive

activities that are carried out within their territories. Other large scale development projects which, due to their invasive nature may have similar consequences for the enjoyment of Indigenous peoples' rights, are likely to require the same strict threshold. The general requirement of indigenous consent for extractive activities within Indigenous territories may be subject to certain limited exceptions, in particular, when any limitations on Indigenous peoples' substantive rights comply with standards of necessity and proportionality with regard to a valid public purpose, defined within an overall framework of respect for human rights. Critically any such limitation should be subject to independent judicial review.

Whether or not Indigenous consent is a strict requirement in particular cases, States should ensure good faith consultations with Indigenous peoples on extractive or other activities that would affect them and engage in efforts to reach agreement or consent. In any event, the State remains bound to respect and protect the rights of Indigenous peoples and must ensure that other applicable safeguards are implemented as well, in particular steps to minimize or offset any limitation on the rights through impact assessments, measures of mitigation, compensation and benefit sharing. The recognition of right to a process of free, prior and informed consent, including by enabling legislation which is respectful of international standards, continues to be one of the main unfulfilled responsibility of States in the region. In 2012, the Inter-American Court of Human Rights (IACHR) ruled in favour of the **Kichwa Indigenous Peoples of Sarayaku vs Ecuador** case, condemning the state for having authorized an extractive project in the Indigenous peoples' territory without their consent. Some of the IACHR orders have already being complied by Ecuador and in July 2014 the State and the community met to agree an implementation plan for the pending reparations. However, there are disagreements over the fulfilment of the State obligation to regulate Indigenous peoples' right to a process of free, prior and informed consent, which is for the Sarayaku the most important order dictated by the Court.

There have been some important steps in **Bolivia** to regulate Indigenous Peoples' rights regarding consultation on matters affecting them. In May a new Mining Law (Ley de Minería) was passed, which also regulates the right to consultation in relation to mining projects. However, according to the new law, consultation is excluded for prospecting and exploration activities and does not recognize the principle of free, prior and informed consent as a crucial requirement for projects that are going to have a major impact on Indigenous communities. Moreover, a bill on Free, Prior and Informed Consultation has been discussed and agreed between the government and several organisations. The bill still needs to be passed by the Legislative. Some Indigenous groups have criticised that the current text does not recognize the principle of free, prior and informed consent as established in international human rights standards. Bolivia is the second country in Latin America that is introducing legislation on consultation with Indigenous peoples after Peru passed a law in 2011. However, even in Peru, lack of systematic implementation means that Indigenous peoples' right to a process of free, prior and informed consent is not guaranteed for extractive projects, which is the cause of conflicts. Many other countries in the region are also discussing legislation on this line.

## CONCLUSION

Indigenous Peoples in the Americas continue the long struggle to have their rights respected, to defend their ancestral lands, resources, and ways of life. Indigenous men and women have raised above discrimination, attacks and injustices and stepped forward in defence of their rights, demanding from States concrete measures that protect their lives, livelihoods and territories. Indigenous men and women have demonstrated once more that they will carry on fighting until they are free from discrimination and injustice and can live a life where their human rights are respected. On 9 August, UN International Day of Indigenous peoples, Amnesty International would like to add its voice to the millions of Indigenous peoples in the Americas to ensure their rights are respected. The organization calls on the region governments to:

- Enact legislation to fulfil the right to consultation and free, prior and informed consent in line with international and Inter-American human rights system standards;
- Grant concessions authorizing exploration and exploitation activities, or carry out any other development projects that can affect Indigenous peoples, only if there is proper consultation and other adequate safeguards for protection for their rights, including the right of free, prior and informed consent, according to international and inter-American standards;
- Take urgent action to resolve land disputes and ensure that Indigenous peoples are not evicted from claimed lands, or impaired in the use of their traditional territories, while such disputes are unresolved;
- Create and preserve the conditions for Indigenous leaders and community members to peacefully defend their rights without fear of reprisals, especially by avoiding the improper use of the criminal justice system to discourage their work as human rights defenders;
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- Bring to justice perpetrators of violence against Indigenous human rights defenders;
- Take due diligence measures to protect Indigenous women and girls from all forms of violence, including sexual violence, as well as prosecute those responsible for these abuses whether they are state or non-state actors and provide appropriate support services to the survivors;
- Challenge discriminatory attitudes against Indigenous peoples and gendered discriminatory attitudes against Indigenous women and girls that causes or condones violence against them;
- Take measures to fully implement the rights enshrined in the United Nations Declarations on the Rights of Indigenous Peoples.

<http://www.amnesty.org/en/library/info/AMR01/002/2014/en>