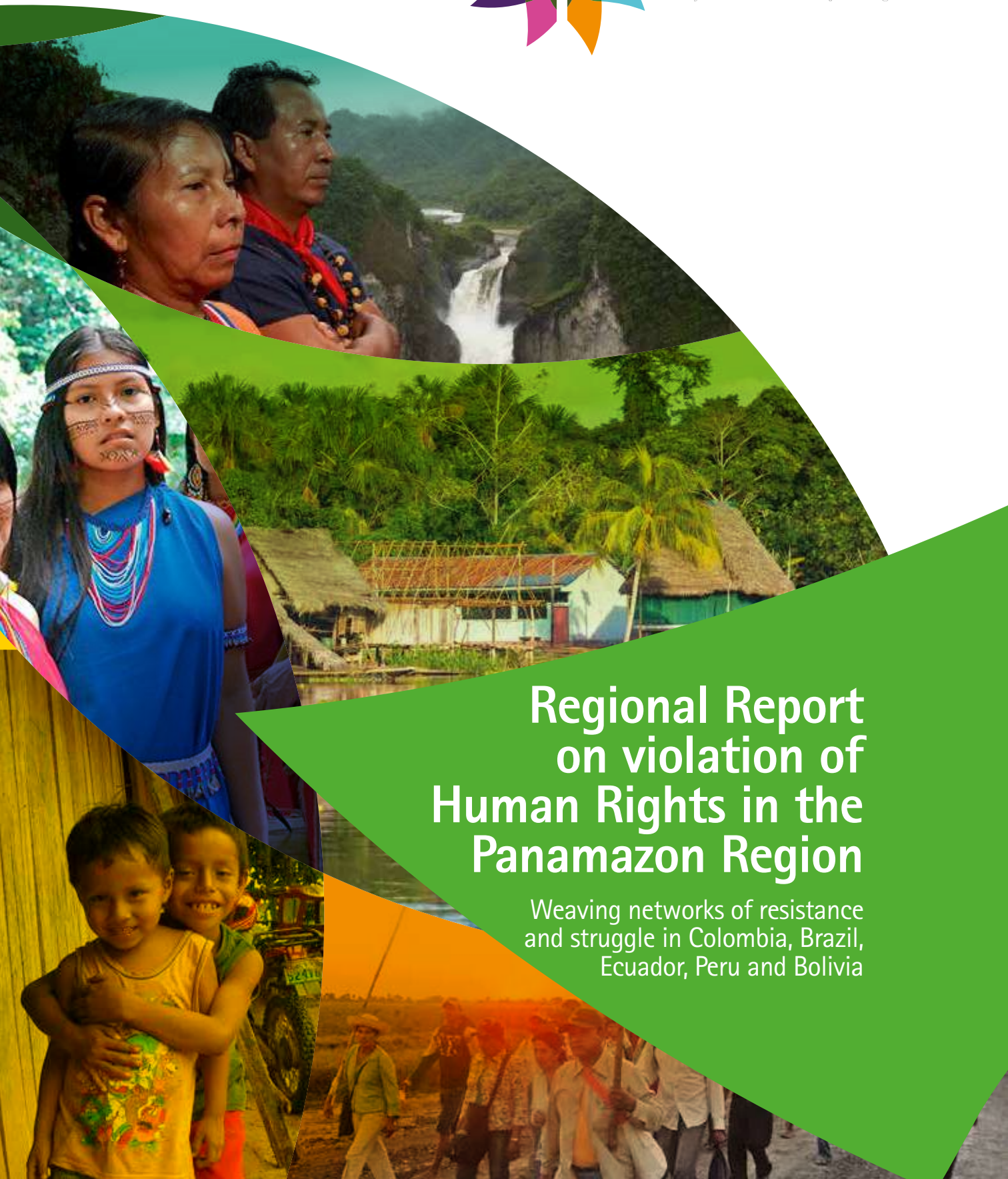




**REPAM**  
RED ECLESIAL PANAMAZÓNICA  
*fuentes de vida en el corazón de la Iglesia*



# Regional Report on violation of Human Rights in the Panamazon Region

Weaving networks of resistance  
and struggle in Colombia, Brazil,  
Ecuador, Peru and Bolivia





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Weaving Networks of Resistance  
and Struggle in Colombia, Brazil,  
Ecuador, Peru and Bolivia.

Amazonian Center for Anthropology and Its Practical Application – CAAAP (Peru)  
Yurimaguas Vicariate Land Ministry (Peru)  
Caritas Bolivia  
Caritas Ecuador  
Cónдор Mirador Amazonian Social Action Community – CASCOMI (Ecuador)  
Apostolic Vicariate of Aguarico (Ecuador)  
Indigenist Missionary Council -- CIMI (Brazil)  
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# Preface

The Pan-Amazonian Ecclesial Network (REPAM) is an organization duly endorsed and co-founded by the Catholic Church's regional institutions: CELAM (Latin American Episcopal Conference), CNBB (National Conference of Bishops of Brazil and its Amazonian Commission), CLAR (Latin America and Caribbean Confederation of Religious Men and Women), Latin America and Caribbean members of Caritas International Social Ministry, and national episcopal and religious conferences, with the backing of the Vatican Dicastery for Promoting Comprehensive Human Development. REPAM brings together various Catholic organizations and other groups and people of good will, that work, among many other things, to accompany and comprehensively defend the Amazon territories, the vulnerable groups that inhabit them (giving special attention to indigenous peoples and peasant farmers), and their rights.

REPAM aims to carry out its work in the 9 countries (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, Venezuela, and French Guiana, an overseas territory of France) that make up the Panamazon Region. We are working together with a diverse group of territorial organizations and institutions, ecclesial structures, and international networks that have experience in human rights work and advocacy, and in cooperation with Catholic universities and other similar institutions in the region.

REPAM was founded in 2014 in congruence with Pope Francis' vision for taking care of our common home, expressed in his socio-environmental encyclical "Laudato Si". Based on this vocation, REPAM wishes to continue its close cooperation, direct accompaniment, and promotion of Amazonian peoples and ecclesial organizations, in order to strengthen efforts for the comprehensive defense of this territory and its multiple actors who have been criminalized and/or threatened; all of this from a human rights perspective and that of the social doctrine of the Catholic Church.

We want, mainly, to motivate a deep reconciliation of the human spirit. We are living in a time of contradictions, and one of the greatest of these that most forcefully explains our fragmented human reality is the struggle between people who put their hopes in a power greater than humanity (greater than this world) and those who trust absolutely in humanity's capacity to make this



world a perfect place on their own. With all of this in mind, we feel a call to return to the principle of convergence, so that both points of view, together and integrated, might be a spiritual impulse and contribute to a transformation that will elevate life's purpose.

This complex, but so often fertile dialogue between the fundamental principles of Christianity and the foundations supporting human rights premises, requires a perspective of complementarity that goes beyond postures that prevent rapprochement. The love for others, that starts with valuing them and craves their dignity, is founded on the principle of mercy. Pope Francis expresses this in the papal bull "Misericordiae Vultus" (The Face of Mercy) published in 2015, in which he calls us to:

*"Let us open our eyes and see the misery of the world, the wounds of our brothers and sisters who are denied their dignity, and let us recognize that we are compelled to heed their cry for help! May we reach out to them and support them so they can feel the warmth of our presence, our friendship, and our fraternity! May their cry become our own, and together may we break down the barriers of indifference..." (MV No. 15).*

We are called to become near/neighbors if we want to build a different society: where those who are different have a place, where risks continue to be taken to consolidate universal, inalienable, independent, and indivisible human rights, a place that, for believers, is founded on the principle of acceptance and love for others: "I came so that they might have life and have it more abundantly" (Jn 10: 10).

*"That is why the Church values mankind and fights for their rights, for their liberty, for their dignity. This is the Church's authentic fight, and while human rights are trampled ... the Church feels persecuted, feels uncomfortable. Because the Church (...) cannot allow that God's image be trampled on by others..." --St. Óscar Romero (1977).*

That is why REPAM, with its human rights focus, has as its objective to become a platform for coordinating work and structuring processes for territorial actors to promote and demand the respect of their rights, accompanying them in their searches and struggles. In such a way, REPAM acts to coordinate efforts to connect territories with regional and international organizations and institutions with greater reach and impact.

With this in mind, REPAM has created a specialized school for "promoting, defending and demanding the respect of human rights in the Panamazon Region"; it is the result of a deep discernment that starts with listening to the screams and hopes of reality, becoming one with this reality, taking into account a Church history with its lights and shadows, staying there, accompanying those who suffer the impacts of a world system that has exhausted itself, that produces more and more disposable people every day, as the Pope has pointed out.



This school has been promoted and coordinated, since its first edition, by the Executive Secretariat of REPAM, in coordination with its Human Rights Division, and is the result of the efforts of many different institutions and structures such as the: Indigenist Missionary Council (CIMI), Itinerant Missionary Team, the Amazonian Center for Anthropology and Its Practical Application (CAAAP), Caritas Ecuador, Caritas Spain, the Human Rights Center of the Catholic University of Ecuador, special advisors (DPLF) to the Inter-American Commission on Human Rights (CIDH), and members of the Catholic Church's international network (religious congregations, universities, episcopal conferences, the UN Permanent Mission of the Holy See, specialized agents and centers) based in Washington, New York and Europe. In its second edition, we will have the support of social centers and universities that work with the Pan-Amazonian reality.

Nevertheless, the essential work has been carried out by the territories themselves (thirteen territories took part in the first edition of the school; their work serves as the foundation of the present document), who have participated in formation processes –afterwards applying them with other groups and in other sectors—, documentation, and other activities with international impact, each one at their own pace in accordance with their reality and possibilities, and with the support of the local chapters of REPAM. They are the authors of this important report that has been integrated and put together by the Executive Secretariat of REPAM and its Human Rights Division, and especially by Caritas Spain, whom we wish to deeply thank.

This document can be used to reaffirm our preferential option as Church and REPAM for the most impoverished, threatened, and excluded people and can be also used to reaffirm our intention to embrace their hopes and recognize that our mission will only be fulfilled when they are the subjects of their own history.

Card. Claudio Hummes  
President of REPAM

Mauricio López O.  
Executive Secretariat





# Chapter 1

## 1.1 Introduction: The Violation of Human Rights in the Panamazon Region

The Amazon Region is one of the most biologically and socially diverse ecosystems on the planet. It has 5.5 million square kilometers that are nourished by huge rivers that flow together in nine different countries: Venezuela, Colombia, Ecuador, Peru, Brazil, Suriname, Guyana, French Guiana, and Bolivia. The Panamazon Region has unique characteristics due to a bio-geographical location that is composed of a great cultural and biological diversity: 33 million people, 380 indigenous peoples, 140 communities in voluntary isolation, and 240 spoken languages belonging to 49 linguistic families.

The availability of resources caused people in the highlands, in various moments of history, to consider the Amazon a place to be conquered. In the countries that share the Amazon Basin, military, religious, commercial, and industrial ventures have been registered, being oriented to control this area in a way that incorporates its natural resource reserves into the national economies. These isolated and often unsuccessful efforts during the pre-Columbian and colonial times became more systematic and constant in the first decades of the 20<sup>th</sup> century, until in the second half of that century, great portions of the Amazon territory were consolidated (especially the parts closest to and most accessible from the highlands) into colonization and resource extraction frontiers.

These colonization policies, territorial occupations, and resource extractions in the Amazon area have had a great impact on the ancestral peoples. Projects for enlarging the agricultural frontier have led to these peoples' internal displacement, extermination and subjection to servitude. Rubber tapping, gold mining and Brazil nut production were often done using indigenous slave labor. The execution of modern hydrocarbon and mining projects occupies space, pollutes the environment, and causes irreparable damage to the culture and social peace of the affected peoples.



In the most remote areas, ancestral peoples continue living their lives according to their traditional ways (including the ones in voluntary isolation), but meanwhile, government policies and extractive, industrial and commercial projects insistently and forcefully push to enlarge their frontiers into the pristine forest that constitutes these peoples' homes. Perhaps the most compelling and dramatic feature of the present-day Amazon region is the growing presence of armed actors. The national armies of each country have been strongly present in the region, sometimes motivated by border conflicts, such as the one between Ecuador and Peru. Since the Amazonian Region is a boundary area, military presence is permanent. On occasions, these military forces act as an armed wing of public colonization, territorial occupation and natural resource extraction policies. The actions of illegally organized armed groups has turned the Amazonian Region into a conflict zone and its inhabitants into victims of political violence.

The extractive industries and production of illegal crops, multimillion-dollar activities based on the intensive exploitation of natural resources, rip the wealth out of the soil at the expense of devastating impacts on the Amazonian environment and the health and social peace of the area's inhabitants. The profits are transferred to international financial markets for the benefit of the very few. Little or none of this wealth returns to the region to ease the living conditions of the affected populations. In relation to these processes, the Amazonian population – indigenous and peasant farmers — have generally assumed the role of “victims or affected,” and that is how they are viewed by nations' social and public policies.

Nevertheless, the indigenous peoples, the peasant farmers, and the riverine communities, as well as other collectives that have occupied these territories, have developed production practices and lifestyles that are environmentally conscious while providing them with natural resources for their survival. Others, being even more conscious of their reality, have become actors, defenders of human and nature's rights, because of the outrages and abuses carried out by the external hegemonic interests. They are sure that the best response to negligence and silence has been resistance and persistent work carrying out activities that have laid the foundation of their Amazonian identity.

In the final decades of the 20<sup>th</sup> century, international human rights law has undergone important developments; in this context, the economic, social, cultural, environmental and collective rights of indigenous peoples have been progressively recognized through the approval of many international human rights instruments. The majority of the eight Amazonian countries are part of the following main international human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; International Labor Organization (ILO) Convention 169; the Charter of the American Convention on Human Rights; the American Convention on Human Rights; and the Protocol of San Salvador on Economic, Social and Cultural Rights, among others. They are also part of the main multilateral and international environmental agreements like the Convention on Biological Diversity.

The indigenous peoples, farmers, settlers, riverine communities and others that defend human rights and nature know that they have a very big challenge confronting and making themselves heard in a world that has chosen a mental monoculture and cultural hegemony. Despite the creation of diverse regulatory frameworks and principles for the protection of

their human rights, they know that they have to constantly speak out and remind the world of their rights, and make sure that those institutionally-recognized human rights are respected. They are conscious that many of the realities that they live in must be made known to the world, as well as the proposals and alternatives that they have crafted to live better lives, with a real recognition that highlights diversity and interculturality, and a clear commitment to their common home, their land, their natural resources, and the Pacha Mama (Mother Earth). They accept that they must unite, work together, share, and make known these common struggles of the region.

This report is acknowledged as a means or tool for revealing the many realities, problems and common factors of the Amazon Region. The purpose of this report is to help communities to find their voices and become a constant reminder (so that we don't forget) of the arbitrariness in the violation of human rights, and above all, to serve as a means to promote the revindication of these rights.

A main feature of the present work is its being the result of teamwork among grassroots organizations and collectivities that desire to report systematic violence from their point of view. The thirteen territorial cases of human rights violations that are presented in this document not only reveal problems, data, or geographical locations, but are the result of the confluence of various voices committed to the defense and promotion of human rights, and that also propose and work to organize and implement mechanisms to obtain guarantees that protect those rights.

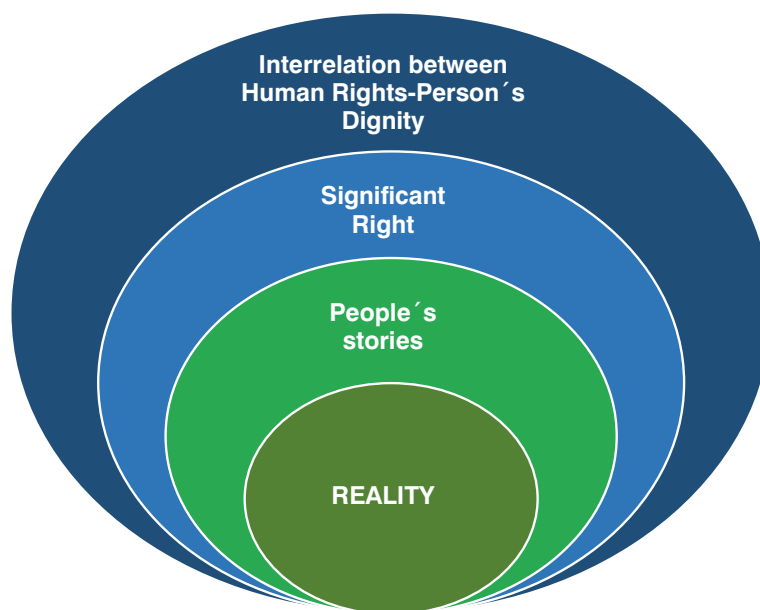
## 1.2.- Situational Analysis Methodology

As we have shared in the previous pages, one of REPAM's transversal human rights foci has been the accompaniment of various peasant farmer, riverine and indigenous communities suffering human rights violations. This focus has guided REPAM since the preparation of the first School for the Promotion, Defense and Enforceability of Human Rights, held in 2016 in Coca, Ecuador, which had the clear purpose of returning protagonism to and empowering territories (and mainly the people and peoples that inhabit them) that are living with daily violations of their rights and dignity.

With this in mind, the following report has four objectives:



- **Narration of Reality:** This was carried out by the protagonists of this same reality. It is their voices and their images that form the basis of today's report, of the information gathered concerning all that has occurred in the past, and of the requests and recommendations made to forge a different tomorrow.
- **Interrelation of Human Rights:** The human rights perspective employed in our analysis carries with it the need to be conscious that even though we have chosen to focus on the violation of a single human right in each territory, each and every human right is being violated with a different magnitude in all of the five countries that form part of this study: water; housing; health; protection of civil and political rights; the right to free, informed and well-intentioned consultation; territory; and collectivity. It is individual and collective dignity which we highlight in the face of the profits of an economic system focused on temporary gains and temporary effectiveness.
- **Legal Analysis:** Besides analyzing the economic, sociological, psychological, relational, and historical reality of individuals and peoples, we consider it essential to carry out a detailed study of the regulations and public policies that countries are implementing to support a market economy which does not focus on the needs of those individuals and peoples living in the Amazon. To do this well, we have relied on partners that accompany these territorial realities, as well as being **members of the REPAM network**.
- **Proposals for Public Policies and Regulations:** Each narrated reality encourages and leads to proposals for changing those realities. This document contains concrete proposals for improving each and every one of the thirteen realities studied, ending with a specific section of conclusions and shared proposals for the Panamazon Region.



Therefore, it is a methodology that:

- Starts with the territory and its changing reality, and takes into account all of its spheres (environment, relational, economic, legislative, sociological, historical, political...);
- Places in the center and organizes itself around the stories (visual, oral and written) of the individuals and peoples who are the protagonists of this reality and who are the ones suffering the violations of their human rights;
- Focuses on single rights violated in a significant way; and
- Later elevates this same lens so as not to miss the global interrelation with other human rights that add up to a brutal attack on the collective and personal dignity of the individuals and peoples that dwell in the Panamazon Region.



# Chapter 2.

## The Violation of Human Rights in the Peasant Farmer, River-Dwellers and Indigenous Communities: Thirteen Realities with a Bolivian, Brazilian, Peruvian, Colombian and Ecuadorian Amazonian Face

As we shared in the previous paragraphs, we have chosen to focus on five human rights that are being significantly violated in and among thirteen territories and peoples.

Upon profoundly analyzing the violations of each of these rights, we quickly arrive at how the access to, enjoyment of, and guarantee of other human rights, in an interrelated way, are also being deeply hurt.

These five rights are:

- The human right to self-determination, which is a basic principle for exercising all collective rights;
- The human right to identity;
- The human right to the non-criminalization of the defense of human rights;
- The human right to water; and
- The human right to habitat and adequate housing.

They work as a sort of “flashlight” to focus attention on each one of these rights and from there to widen the panorama little by little until the complete, brutal reality of human rights violations can be seen; violations with which the peasant farmer, riverine and indigenous communities of the Panamazon Region have lived with for hundreds of years and continue to live with every day.



## 2.1. The Human Right to Self-Determination as a Basic Principle for Exercising Collective Rights

Collective rights have turned into social assets for the political revindication of the indigenous peoples; their battles against a hegemonic power have not ignored the collective character and common interest inherent to their demands. Thus, having a sense of these rights has become a precondition for the revitalization of their political autonomy and cultural identity.

The right to self-determination is a principle from which other fundamental values of liberty and equality are derived<sup>1</sup>.

This is demonstrated in Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which states:

*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

James Anaya explains two aspects of this principle that were used to structure the collective rights of indigenous peoples. The first one refers to the substance of the principle of self-determination, which consists of constitutive and continuous elements; the second refers its reparative aspect.

**The constitutive element** requires that the design of governmental institutions substantially reflect the results of processes guided by the will of the governed people or peoples<sup>2</sup>.

In the same line, **the continuous element** requires that the design of political institutions -- independently from the processes that brought about their creation or transformation -- lets people live and develop themselves while being permanently capable of making significant decisions regarding economic, social and cultural issues<sup>3</sup>.

Finally, the **reparative aspect** refers to the effective and specific reparative actions for recognizing and revindicating the substantial elements of self-determination when these have been violated. These actions reflect the set of international laws created for the protection of the indigenous peoples.

In simpler words, an understanding of self-determination follows a process of self-identification and self-recognition of political and social self-management that lets the community live according to their own worldview, which automatically results in dignity through respect and recognition.

<sup>1</sup> Anaya, J. (2005). Los pueblos indígenas en el derecho internacional [The Indigenous Peoples in International Law]. Madrid: Trotta Publishing House, pp. 139-140.

<sup>2</sup> Ibid, p. 151.

<sup>3</sup> Ibid, pp. 152 and 154.



This means that the practice of the right to self-determination involves the practice of other collective rights of the indigenous peoples, such as freely establishing their political condition, freely pursuing their economic, social and cultural development; as well as autonomy and self-government in internal and local issues and having the necessary resources to finance their autonomous functions.<sup>4</sup>

Referring to this, Article 7 of ILO Convention 169 recognizes indigenous peoples' right to decide their own priorities with regards to the developmental process according to the measure in which it will affect their lives, beliefs, institutions, spiritual wellbeing, and the territory they use and occupy (in whatever way that may be), and to control as much as possible their own economic, social and cultural development.

This regulation exists because of the capacity that indigenous people have to decide their destiny and lives, a capacity which must be respected by all state authorities and the rest of society.

## Violation of the Right to Territory.

Some of the most important elements of self-determination are related to peoples' ability to control the physical space where they develop and carry out everything related to their way of life; that is why peoples' territory and the natural resources held there are so important. For this reason, Articles 20 and 32 of the Declaration<sup>5</sup> declare the right of indigenous peoples to safely enjoy their own means of survival and the right to determine and establish the priorities and strategies for the development or use of their land or territory and other resources.

The right to territory is not limited to land allocation; this right begins with the culture a community or a group of people identify with within the space where they develop their daily activities. Just as a territory has a relationship with the way in which it is inhabited, it also determines an interpretation of human productivity directed towards obtaining natural resources or creating new forms of production.

For the Mundukuru Indigenous People in Brazil, the logic of limiting the use and occupation of their territory makes no sense within their social and political structures ***because the land they use and occupy gives meaning to their world and they consider territory much more than just a physical space; it is their natural habitat, the jungle, with rivers, with all the creatures that live there, the place where they survive, the place of their history, their social organization, their politics.***

In the Inter-American System, the territorial rights of the indigenous peoples and tribes are mainly founded upon Article XXIII of the American Declaration, and Article 21 of the American Convention. The evolving and integral interpretation of the American Convention has permitted the Inter-American Commission on Human Rights (IACHR) and the Inter-American Human Rights Court (IAHR Court) to give a sense of protection to indigenous peoples' and tribes' rights related to their land and natural resources.

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<sup>4</sup> See Articles 3 and 4 of the Universal Declaration on the Rights of Indigenous Peoples.

<sup>5</sup> Universal Declaration on the Rights of Indigenous Peoples.



The IAHR Court has interpreted that the protections of Article 21 of the American Convention, concerning the right to property, extend to the close ties that indigenous peoples have with their land, as well as with the natural resources of their ancestral territories and the intangible elements derived from them.<sup>6</sup> It has been stated that the right to territory is one of the most significant factors for indigenous peoples' development, being tied to their effective social and cultural enjoyment. The IAHR Court has also highlighted that the territorial rights of indigenous peoples are related to their *“collective right to survival as an organized people, with control over their habitat as a necessary condition for reproduction of their culture, for their own development and to carry out their life aspirations.”*<sup>7</sup>

Therefore, all countries have the obligation to guarantee indigenous peoples' effective participation in the decisions related to any issue that affects their territory, taking in account the special relationship between indigenous and tribal peoples and their land and natural resources, and always bearing in mind the principle of self-determination.

Such is the importance of the right to the land, that in 2009, the IACHR published the report “Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources”. This report, among other things, mentions that *“Indigenous and tribal peoples have unique ways of life, and their worldview is based on their close relationship with land. The lands they traditionally use and occupy are critical to their physical, cultural and spiritual vitality. This unique relationship to traditional territory may be expressed in different ways, depending on the particular indigenous people involved and its specific circumstances; it may include traditional use or presence, maintenance of sacred or ceremonial sites, settlements or sporadic cultivation, seasonal or nomadic gathering, hunting and fishing, the customary use of natural resources or other elements characterizing indigenous or tribal culture. As the Inter American Court of Human Rights has pointed out, ‘for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.’ ‘[T]o guarantee the right of indigenous peoples to communal property, it is necessary to take into account that the land is closely linked to their oral expressions and traditions, their customs and languages, their arts and rituals, their knowledge and practices in connection with nature, culinary art, customary law, dress, philosophy, and values.”*<sup>8</sup>

Based on the above, it is important to denounce States' lack of consideration for indigenous peoples' rights in general, as well as the breach of their duty to guarantee and respect the right to territory, which has created serious risks for the survival of the indigenous and non-indigenous peoples in the Amazon.

Aminata Arará is an indigenous community located in the region of Alto Juruá in Brazil's Acre State. In this specific case, the problem identified is that the indigenous people's territory has still not been demarcated, which means there is no suitable regulation of it. Besides

6 IAHR Court. Case of the Kichwa of Sarayaku Indigenous Peoples vs. Ecuador. 2012, p. 40.

7 IAHR Court. Case of the Yakye Axa Indigenous Community vs. Paraguay. Merits, Reparations, and Costs. 2005, para. 146. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf).

8 IAHRC. Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, para. 1. <https://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf>



the violation of their right to territory, this has resulted in plundering and theft of natural resources and facilitated the age-old practice of land grabbing. There is no doubt that the lack of effective protections of this right leads to the violation of related principles like inalienability through land trade and concession to extractive industries, and the violation of other rights like that of prior consultation.

In this context, the Inter-American Commission stresses that the protective guarantees related to the right of property spelled out in inter-American human rights instruments can be invoked by indigenous and tribal peoples regarding their territories, even if these have not been formally titled, demarcated or delimited by the State. Along the same line, and following the pronouncements of the IACHR Court: ***“States cannot grant concessions for the exploration or exploitation of natural resources that are located in territories which have not been delimited, demarcated or titled, without effective consultations with and the informed consent of the people”***.<sup>9</sup>

On the other hand, one characteristic of isolated indigenous people’s territory is its relationship to their mobility as they move around within it to use its resources and develop their way of life. This has, without a doubt, created problems for understanding the reach of their territory since their cultural conditions lead them to conceive territory as all of the space in which they develop their way of life and not just the land where they make their temporary homes. Unfortunately, this second notion is the one that often prevails when considering the right to territory, generating grave incursions by the majority society with the goal of exploiting resources or expanding settlements that border indigenous territory.

In the procedural framework for the fulfillment and protection of indigenous peoples’ human rights, especially those in voluntary isolation, it is important to mention the precautionary measures dictated by the Inter-American Commission to Ecuador on May 10<sup>th</sup>, 2006 in favor of the Tagaeri and Taromenani Peoples, who currently live in the Ecuadorian Amazon Region in voluntary isolation, hidden from the outside world. They declared: ***“The Inter-American Commission requests the Ecuadorian state government to adopt effective measures to protect the life and the personal integrity of the Tagaeri and Taromenani [P]eoples, and especially, to adopt the necessary measures to protect the territories they inhabit, including the actions required to prevent the entry of third parties into their territory”***.<sup>10</sup>

As a result, the Ecuadorian state government implemented a precautionary plan for the protection of the Tagaeri and Taromenani Indigenous Peoples. Within the framework of this plan, the Ministry of the Environment created a map of their historical presence, which reflected the mobility patterns of these groups within a certain territorial range. However, with the state government’s decision to exploit oil blocks 31 and 43, the Ministry of Justice (that now controls the precautionary plan) published a new territorial map, which also served as one basis for declaring oil exploitation as a national interest.

This example illustrates the importance of properly delimiting the territory of these groups. In the first place, there should be clear boundaries for the territories needed to respect these peoples’ ways of life. At the same time, the delimiting should not be made subject to arbi-

9 IACHR. Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities. IGWA, OEA/Ser.L/V/II, Dec 2015, p. 136. <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf>

10 Precautionary Measures Process No MC-91. <http://www.ciudadanosporlademocracia.org/frontEnd/main.php?idSeccion=157>



trary decision-making by the state government, as there could be interests that are opposed to the rights of the indigenous peoples.

Facing delays and omissions from state governments concerning the collective recognition of their territories, many indigenous peoples have begun to implement their own procedures for self-demarcation of their land, denouncing how the soil has been affected and the irresponsible and excessive use of their resources. They even design protocols and political-legal structures to promote respect for their territory and autonomy.

In order to protect the territories of indigenous peoples and nationalities in the case of natural resource exploration and exploitation, as well as their right to participate in the decisions concerning issues that affect their interests,<sup>11</sup> international instruments recognize their right to prior consultation. That is to say, this right is directly tied to the protection of territory and the natural resources found within it since it helps conserve distinctive traditional ways of life and ensures that these peoples' cultural identities, social structures, economic systems, customs, beliefs and traditions will be respected, guaranteed, and protected by state governments.<sup>12</sup>

The right to prior consultation is seen from a wider perspective when it is understood as the material fulfillment of collective rights; that is why it has its foundation in the self-determination of the indigenous peoples.<sup>13</sup> With this in mind, the right to prior consultation has been related by the Declaration to various other rights that undoubtedly manifest the principle of self-determination for these peoples.

For these reasons, prior consultation has been treated as the right to give free, prior, and informed consent and as a fundamental dimension of the self-determination of indigenous peoples<sup>14</sup> since it permits them to freely structure their own political condition and their economic, social, and cultural development as owners of their own destinies.

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11 IAHR Court. Case of the Samaraká People v. Suriname, 2007.

12 Ibid.

13 Amazonian Legal Network, 2013, p. 14.

14 Permanent Forum on Indigenous Issues, 2011.





## 2.1.1. Awajún and Wampis Peoples (Amazon Region, Peru):

**Coordination by:** The Amazonian Center of Anthropology and its Practical Application –CAAAP, Peru<sup>15</sup>

### I. Introduction:

The Awajún and Wampis of the Cenepa have developed their collective life as peoples within an ancestral territory that covers the Condor Mountain Range and its surrounding areas. This area is extremely biodiverse and vulnerable, in terms of its ecology. It is considered one of twenty-five world biodiversity hotspots.<sup>16</sup> According to international institutions, the hotspot located in the tropical region of the Andes Mountains – where the Condor Mountain Range is located and where the Awajún, Shuar, Achuar and Wampis Peoples have traditionally lived in harmonious interrelation – **is the richest and most diverse hotspot in the world**; there we can find one sixth of all of the plants on the planet existing in less than one percent of the world's land area.

Because of its rich biodiversity, the area is extremely vulnerable both in ecological and human terms. That is the reason why, beyond any reasonable doubt, the very existence of the Awajún and Wampis Peoples is incompatible with mining activities. Nevertheless, **despite the importance of this territory, the established agreements regarding the defense of the territory of the indigenous peoples** have not been **honored**. These failures have led to mining concessions being granted (in fact, they continue being granted even now) without any prior consent in a highly biodiverse area, vulnerable in terms of its ecology, and that is considered the ancestral territory of the Awajún and Wampis of the Cenepa. Nowadays, the Awajún and Wampis of the Cenepa are forced to witness how their territory is given away in concessions to gold and copper mining companies, and how these companies' Environmental Impact Statements (EISs) and Environmental Impact Studies (EISs) are accepted and adopted without the indigenous peoples ever being consulted. Up until now, no mining concession within the area has gone through with any prior consultation process to get the free, prior and informed consent of the indigenous communities for mining activities.

### The Awajún and the Wampis

The Awajún and Wampis Peoples belong to the Jibaro ethno-linguistic family. In the Amazon Department of Peru, these people live along the shores of the Santiago, Domingusa, Cenepa, Marañón, Nieva, and Chiriaco Rivers and along a section of the Bagua-Nieva Marginal Highway.

According to the Second Census of the Indigenous Communities of the Amazonian Region of 2008, carried out by the National Institute of Statistics and Information (INEI),<sup>17</sup> the

<sup>15</sup> With the collaboration of Héctor F. Rodríguez, CAAAP lawyer, and Richard O' Diana.

<sup>16</sup> "Hotspot" is a term coined by the English ecologist Norman Myers in 1988 to refer to critical eco-regions of the planet that concentrate high percentages of biodiversity and that are currently in a state of environmental emergency. Hotspots contain 1,500 or more endemic species of plants and have lost in a collective way at least 86 percent of their original vegetation. The sum of the area of these still existing hotspots amounts to barely 2.3% of the Earth's surface but contains nearly 50% of all vascular plants species; 42% percent of terrestrial vertebrates only exist in these hotspots. They include 75% of the most threatened animal, bird and amphibian species on the planet.

<sup>17</sup> Instituto Nacional de Estadística e Informática [National Institute of Statistics and Information]. <http://proyectos.inei.gob.pe/web/biblioineipub/bancopub/Est/Lib0860/index.htm>



Awajún have a population of 55,366 individuals while the Wampis have a population of 10,613 people. According to this same institution, the Awajún have 281 communities, while the Wampis have 61.

Having warrior traditions, the Awajún and Wampis resisted the attempts of the Incas Túpac Yupanqui and Huayna Cápac to conquer them. When the Spanish conquerors invaded, motivated by the idea of finding gold, the Jíbaros reacted with a great rebellion (1599) and were capable of defending their territory from this and other invasion attempts.

The Awajún and Wampis peoples also contributed with their warrior traditions to the defense of the Peruvian Nation. Dozens of young people from these two groups participated in two international conflicts with their neighboring country, Ecuador, forming part of the military reserves during the False Paquisha (1981) and Cenepa (1995) conflicts. The task assigned to the Awajún and Wampis was to guide the members of the army and participate directly in battle. They were called “the eyes of the Peruvian armed forces”.

For the Awajún, it is very important to have a warrior spirit both to defend their territory and to hunt. With the purpose of developing this attitude, Awajún children are prepared to have a vision of *Ajútap*, the spirit of the brave warriors. Their territory is a main element of their cultural identity, since it is within their territory that the forest and river spirits dwell, beings responsible for giving them this vision. The Awajún youth visit the sacred waterfalls (*tuna*) and after following a routine of exercises they obtain the vision (which appears as a wild animal) which allows them to know how to act among their people and in society. While before the Awajún youth wanted to be good warriors, nowadays they pursue intellectual and professional leadership. This is evident in how Awajún youth try to obtain public sector jobs and participate actively in politics. The people organize themselves and look for opportunities to participate in the public life of the country. One proof of this is the development of the “Political Agenda for the Well-Being of the Indigenous People”, developed in 2011; it includes the demands and proposals of the indigenous peoples with regards to issues like prior consultation, territory, territorial regulations, socio- environmental conflicts, intercultural health and education, indigenous justice and political participation. Among other things, they ask to begin consultation processes to formulate a special legislation for the participation of indigenous people in election processes.

Socially, the Awajún People present a segmented social structure (without any central authority or central power) made up of domestic cells formed by a group of endogamic families.

Among their main activities are slash-and-burn agriculture (bananas, cassava, corn, rice, and wheat), hunting (small and medium size animals like wild pig, white-lipped peccary, lowland paca, armadillos, and monkeys using firearms; only a few still use blowguns with poison-tipped arrows), fishing (catfish, black prochilodus, carachama and mullet, having to fish collectively except in the Marañón River) and gathering.

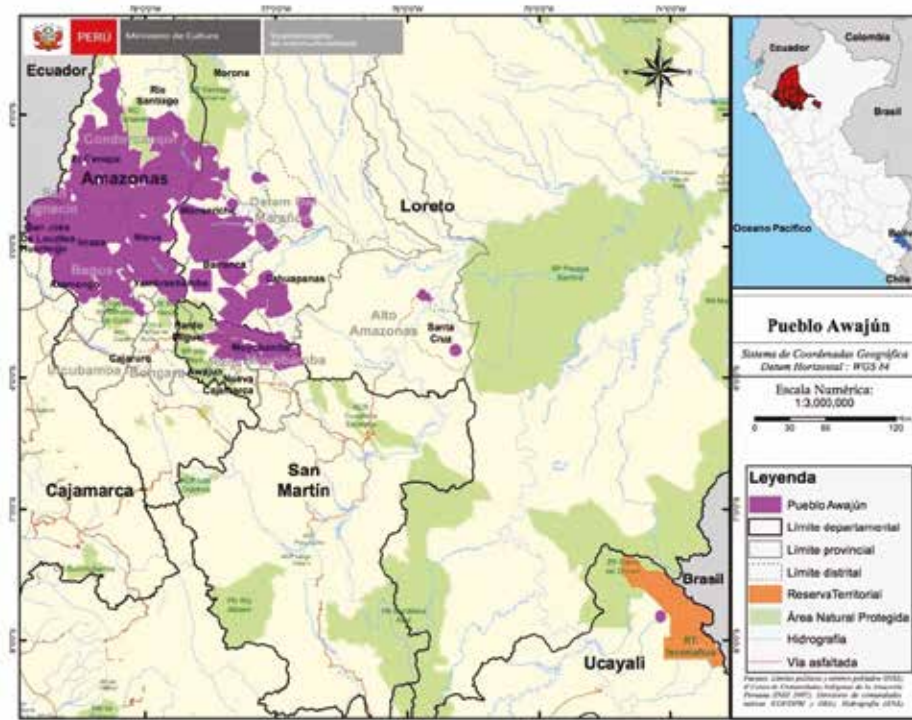
Regarding both education and healthcare, the Awajún face serious problems. On the one hand, the quality of services is very poor, and on the other hand, it is very difficult to access those services. Additionally, neither the educational or healthcare services take an intercultural approach.



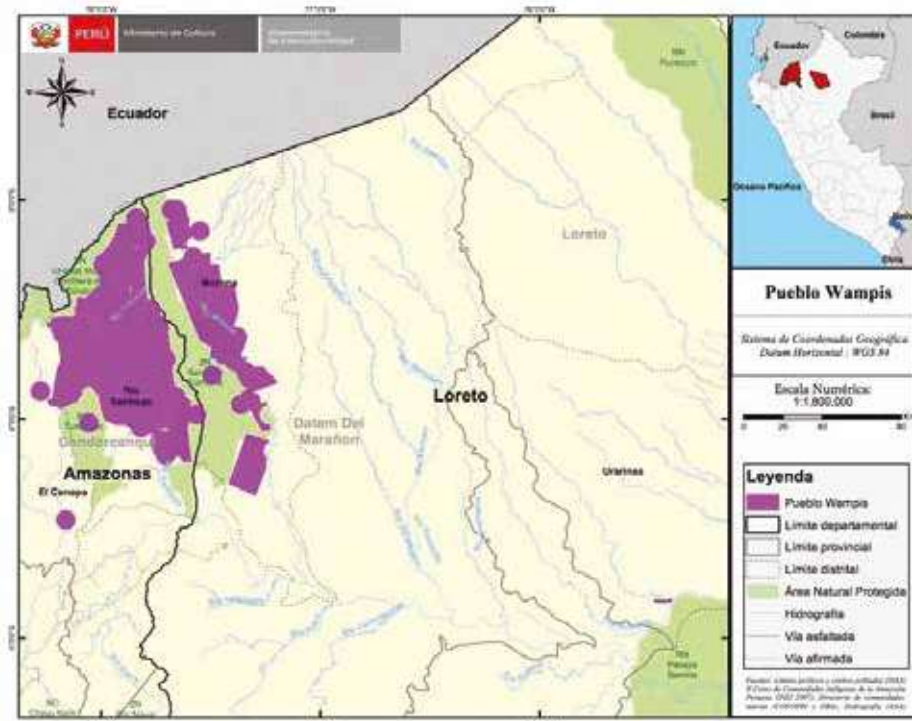


# Territorial Maps<sup>18</sup>

Map 1



Map 2



18 The first map shows areas inhabited by the Awajun People and the second areas inhabited by the Wampis, all of which are highlighted in purple. The areas surrounded by black lines and with large font bold letters show Peru's different departments.



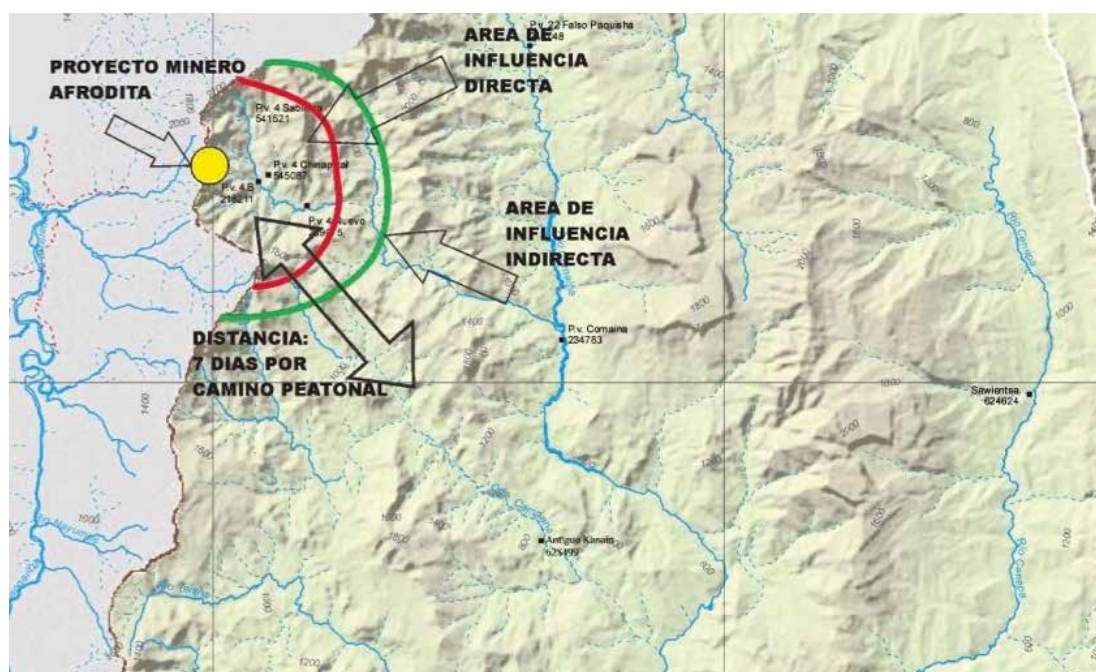
## II. Human Rights Violations:

In this report we will concentrate in four cases of human rights violations:

- The The Afrodita Mining Project in the district bordering the Cenepa River area;
  - The oil spill in the Awajún communities inhabiting the Chiriaco River area;
  - The construction of the Lorena Hydroelectric Power Plant in Imaza District (Bagua); and
  - The socio-environmental conflict and legal processes concerning the use of Land Plot 116.
- We have identified that indigenous communities' rights have been and are being severely affected by the Peruvian government in all of these cases. Therefore, in the following sections we look to briefly summarize each case focusing on the rights that have been affected, the current state of affairs, and the impact that the Amazonian Center for Anthropology and Its Practical Application (CAAAP) has had in the territory.

### 1. The Afrodita Mining Project in Cenepa:<sup>19</sup>

Map 3



In the year 2005, huge mining concessions were assigned to different companies that would end up directly and specifically damaging the indigenous population; during this process, the government ignored agreements that they had previously reached with the com-

<sup>19</sup> The following map shows the Afrodita Mining Project's location and its areas of direct and indirect influence. A two-directional arrow showing the distance that can be covered in seven days of walking is also included to help understand the project's size.



munities. In this context, the mining company Afrodita was able to move into one part of the territory that has a large amount of auriferous deposits, called El Tambo.

In this case, the Afrodita Mining Company installed some platforms and dug tunnels even though their Environmental Impact Study had not yet been approved; this was because of some permits that the Regional Government of Amazonas had given to the mining company. Nevertheless, in December 2016, the Regional Government of Amazonas annulled a resolution that had previously declared the indigenous territory and the Amazonian forest as fallow land and in February they denied Afrodita's request for usufruct of the land.

Despite this, the mining camp is still installed in indigenous territory because of legislative ambiguity. Referring to this, Zebelio Kayak, ex-president of the Organización de Desarrollo de las Comunidades Fronterizas del Cenepa (Cenepa Border Region Development Organization, OODECOFROC) during the IACHR hearing on March 17, 2017, concerning the right of the indigenous people and Amazonian communities to their territory, states:

"There are mining operations being performed by the Afrodita Mining Company without there being any approval by the indigenous people and this brings negative consequences because they use and take advantage of the river basins of the Cenepa; so we do not have clean drinking water, we see that the fish are dying, but the company up to now keeps on saying that they are not operating anything, but we, as inhabitants of the area, travel and see that they continue to operate. This brings...is bringing terrible and dangerous consequences for our water use: fish are dying, the children, especially mothers of families that directly benefit from the water, are in danger because of drinking it. Lastly, they haven't even invited us to learn what types of studies or impacts there were going to be, they just keep on doing exploration activities." -- IACHR Ordinary Hearing 161 on the Right of the Indigenous Peoples and Amazonian Communities to Their Territory, 2017.

This evidence demonstrates the violation of indigenous peoples' rights to prior consultation and to self-determination in which they should be able to choose their own model of development.

### *Data on the Mining Project.*

- **Location:** Condor Mountain Range, on the border with Ecuador, El Cenepa District, Condorcanqui Province, Amazonas Department, Peru.
- **Altitude:** From 1200 to 2050 mamsl.
- **Project developer:** Afrodita Mining Company (Compañía Minera Afrodita SAC (CMA)).
- **Project extension:** A total of 5008.75 hectares.
- **Population affected by being in the area of direct influence:** This area covers a



total of 9.9 hectares, which include the areas that will be impacted by the platforms, newly constructed access roads, ditches, and new installations for the supporting the mining facilities (camps and workshops).

- **Population affected by being in the area of indirect influence:** This area includes every part of the region in which the activities to be carried out can impact in any way the biological, physical and social aspects of the territory; it covers an area of 66.6 hectares.

- *Violated rights:*

**The Right to Prior Consultation:** This right implies that the state government of Peru must require and ensure that companies and public and private institutions that perform activities that could have a direct or indirect impact on indigenous peoples perform a prior, free and informed consultation before beginning any such activity. The state government violated this right when it allowed mining concessions in Cenepa without having first carried out free, prior and informed consultation of the Awajún People and upon approving the environmental management plan for their territory. This right is established in:

- Article 2 of Peru's Political Constitution, in Prior Consultation Law No 29785 (which is part of the constitutional bloc of law);
- Articles 6 and 7 of ILO Convention 169;
- Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples;
- Article 21 of the American Convention on Human Rights;
- Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination;
- Articles 1 and 47 of the International Covenant on Civil and Political Rights;
- Articles 1 and 25 of the International Covenant on Economic, Social and Cultural Rights; and
- Case Law STC 5854-2005-AA/TC of the Peruvian Constitutional Tribunal.

**The Right to Territory (Art. 15 of ILO Convention 169):** As a consequence of their omission regarding prior consultation of the Awajún People, the government allowed Afroditá Mining Company to possess a concession that took over part of traditional Awajún territory, limiting their use and enjoyment of its natural resources and their communal property.

**The Right to Self-Determination (Article 2.1 of the Constitution):** When the government granted Awajún territories and sacred sites to a mining company without any prior, free and informed consultation, they violated the communities' full freedom to pursue their collective plans and life projects and to transmit these to future generations.

**The Right to Good Health and to Live in an Adequate and Well-Balanced Environment:** Due to the possible negative impacts that could be generated as consequences of exploration activities: these impacts range from diminished visual quality and dangerous noise levels to the violation of the diversity of terrestrial flora and fauna.

Along the same lines, we can also see other rights being violated such as the right to identity, the right to communal property, and the right to natural resources, among others.



### *The Present Situation :*

Our role in this case was to give support to legal and political processes, working together with the communities and indigenous organizations in Condorcanqui Province, and with the technical help of some civil society institutions like CooperAcción and the Legal Defense Institute (IDL), as well as some others with a pastoral or productive bent like the Agricultural Fishery Service for Investigation and Economic Growth - SAIPE. **In this context, we finally accomplished the goal of making the company leave the territory. Even though the Afrodita Mining Company is no longer in the area performing mining activities, they have left behind machinery which continues to damage Awajún territory.**

## 2. Oil Spill in the Chiriaco Communities.

On January 25, 2016, the Northern Peruvian Pipeline, operated by the state company Petroperu, lacking in maintenance, ruptured and spilled three thousand barrels of oil into the Inayo Gorge, located in the Imaza District of Bagua Province in the Amazon Region, affecting more than 45 Awajún communities in the area. Petroperu, instead of implementing any of the appropriate remedial measures established in the contingency protocols of the company's environmental management plan, decided to counteract the damage caused by the pipe's fissure and subsequent oil leakage by hiring boys, girls and adults from the Awajún People to clean up the oil spill without giving them any equipment to protect them from the chemical substances present in the oil, thus exposing the Awajún to contamination and ignoring their responsibility to repair any environmental damage caused by the spill.<sup>20</sup>

Map 4



<sup>20</sup> The following map shows the Chiriaco area and the Marañón River. The red line denotes the area where the oil spill occurred.

On February 9, heavy rains caused the crude oil, which was not very well contained within the gorge, to overflow and enter the Chiriaco River, which in turn, is connected to the Marañon River, thus increasing the environmental liabilities to the territory and the vulnerability of the Awajún population, which has ended up suffering serious health and nutritional problems because of this contamination. After that, a group of civil society institutions, including the Amazonian Center for Anthropology and Its Practical Application (CAAAP), the Legal Defense Institute (IDL), and the National Coordinator of Human Rights financed blood and hair tests on 25 boys, girls and teenagers living in the Chiriaco area and that had participated in oil spill clean-up in the days following the leak, in order to measure the effects of this event on the population's health. Results showed that the children had high concentrations of heavy metals in their blood, which is related to the exposure of their bodies to petroleum and to the consumption of water and food that had been contaminated by these substances. Later, even engineers from Petroperu accepted in front of national media that, ***“Some children have gone later and have collected oil and we have given them a reward [...] for each cylinder they brought in”*** -- Manuel Suero, 2016.

With this evidence in hand, a large part of the population of these communities started to become aware of the impacts the oil spill was having on their health. Thus, a group of leaders and representatives of these communities (Nazareth, Wachapea, Nuevo Progreso, Pakún, etc.), helped by CAAAP, IDL and the Coordinator of Human Rights, initiated amparo proceedings (a type of legal procedure common in Latin America which solicits the halting of, protection against or reparation for the consequences of a government action) against the government in order to demand the restitution of their right to health and the creation and execution of a health plan to verify the negative effects of the oil spill. The proceedings were accepted by Bagua Civil Court in November 2017; the communities are still awaiting a verdict.

Picture 3



Photo 3 by: Taken by Enfoque Derecho <<https://www.enfoquederecho.com/2018/04/08/el-precio-de-los>





## Data:

- **Date on which the oil spill occurred:** January 25, 2016.
- **Location:** Northern Peruvian Pipeline, Imaza District, Bagua Province, Amazon Region, Peru.
- **Project developer:** Petroleum Company of Peru, S.A. - Petroperú, S.A.
- **Extension of the oil spill:** 3.5 km along the Inayo Gorge.

## Violated rights:

**The Right to Enjoy a Safe and Healthy Environment and a Balanced Development of One's Way of Life:** This right has been affected since the oil spill caused Awajún territory to be exposed to petroleum, which has resulted in negative impacts to various parts of the environment, such as:

- a. The river: the oil spill caused black spots to form in the river, which, mixing with the water, have contaminated both the plants and animals that live there.
- b. The land: The oil contaminated all the flora found in the area, including crops. As a consequence, animals were also affected by exposure to the oil, ingesting or absorbing it when moving around the polluted area.
- c. The air: Air contamination occurs because of the vapors that petroleum generates.

It should be mentioned that Petroperu's responsibility for and the existence of environmental damage, like the presence of heavy metals in the water, and health problems derived from the Northern Peruvian Pipeline's oil spill, have been acknowledged by the country's Inspection and Evaluation Organization (OEFA) in Resolution 1217-2018 OEFA/DFSAL.

**The Right to Good Health:** Within the context of this case, this right has clearly been violated since exposure to petroleum results in exposure to harmful substances like heavy metals. Concretely, Peru's Ministry of Health has stated that these metals can enter the body in three ways:

- a. Through the skin: Through absorption, that is, through direct contact with the oil or the contaminated river water.
- b. Through the mouth: By ingesting, that is, eating or drinking, any food that has been contaminated. In this specific case, through the consumption of fish or river water, which are both traditionally part of the Awajún diet.
- c. Through the nose: By breathing in polluted air.

When these substances enter one's body, petroleum exposure ends up producing both visible and invisible illnesses which may appear immediately or slowly, such as: dermatitis, damage to the nervous system, motor dysfunction, a decrease in sensorial and motor skills, mental health problems, damage to the digestive system, bone and muscle damage, and problems with the reproductive system, causing spontaneous abortions or infertility.

All of these health issues have been brought to light by various testimonies given by members of the Nazareth community.

According to the DIGESA (General Direction of Environmental Health and Food Safety), the only way to confirm heavy metal poisoning is by going to a health care institution and demanding that they take a hair, urine, blood or other type of sample to verify contamination in a laboratory. In this specific case, the Awajún people underwent blood tests to verify their contamination by heavy metals. We should add that besides the right to good health, other rights have also been violated, like the right to life and children's right to special protection.

Regarding this issue, in the documentary **“Petroleum: Tsegas jatai ishamamu (Fear of the Deadly Poison)”**,<sup>21</sup> the mayor of the city of Imaza assures that when people tell him that there is a mining revenue sharing deal with the city or an oil revenue sharing deal, he replies that what they really have is *“a contamination sharing deal”*.

### *Present Situation:*

On November 15, 2017, the First Civil Court of Bagua, Amazonas, accepted the filing of an amparo proceeding by the Nazareth and other affected communities against the Ministry of Health and other state offices and organizations because of the oil spill that took place on January 25, 2016. The amparo proceeding was presented with the aid of the Legal Defense Institute (IDL) and the National Coordinator for Human Rights, both of which continue to follow and support the case. It is again important to mention that the OEFA, the organization in charge of the environmental inspection, admitted in resolution 1712-2018-OEFA-DFSAL that the oil spill that occurred in Chiriaco and the subsequent environmental damage caused are the result of Petroperu's negligence since they did not carry out adequate maintenance on the Pipeline.

Despite this, there is still no verdict. In the documentary “Petroleum: Tsegas jatai ishamamu” (Fear of the deadly poison), the Apu of the community, Norberto Wamputsag expresses *“The entire State has abandoned us as always; one talks about and demands the respect of their rights, [but] even though we are affected, nothing happens in Peru”* (Fuentes & Dinos, 2018).

As part of our high impact activities to support this case, we created the documentary “Petroleum: *Tsegas jatai ishamamu*”, which has been successfully presented in spaces like the Indigenous Peoples' Forum in the Summit of the Americas (SOA) and in an event organized by the Amazonian Center for Anthropology and Its Practical Application (CAAAP) in coordination with Congresswoman María Elena Foronda.

In one presentation, Norberto Wamputsag, Apu of the community, expressed:

*“The children were affected by heavy metal poisoning [...] so, who's going to attend to the consequences? [...] As Apu of the community, I presented the documents for them to repair the damage, but until now there is no answer [...] Where are we going to go now?”*<sup>22</sup>  
While the environmental damage has been recognized, remedial actions are still few and far between and there remains a lot to do.

21 Hurtado, J. (Director). (2018). Presentation of the documentary denouncing oil contamination: «Petroleum, tsegas jatai ishamamu [Movie]. [https://www.youtube.com/watch?v=56iD\\_Dp4K\\_E](https://www.youtube.com/watch?v=56iD_Dp4K_E)

22 Ibid.



### 3. Lorena Hydroelectric Power Plant:

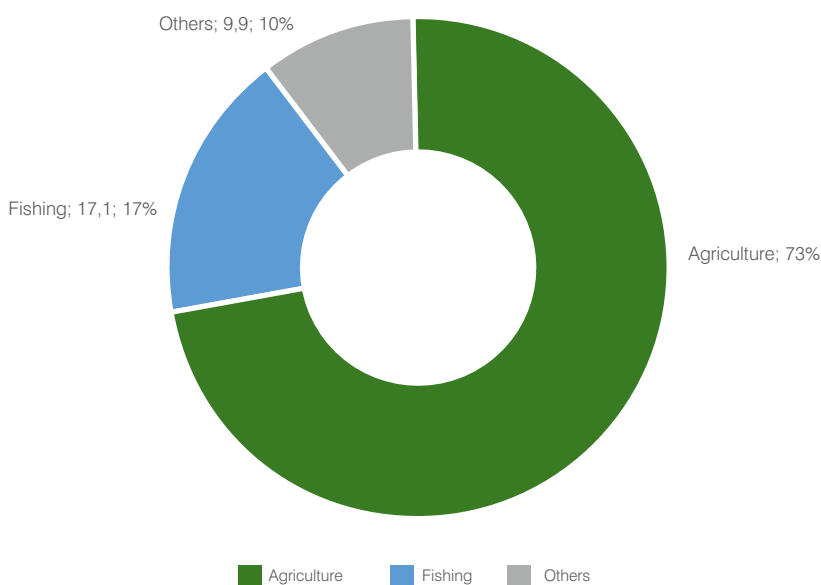
On May 19, 2015, the Amazonas Energy Company, S.A.C. was given a temporary concession of Plot 116 for a period of two years, which, on May 26, 2017 was extended for five more months by the Ministry of Energy and Mining. Thus, until October 2017, the company carried out the activities permitted by the temporary concession. It should be mentioned that this company is a branch office of the Brazilian firm Andrade Gutiérrez, one of the companies involved in the *Odebrecht Corruption Scandal*.

As of the present date, the project is on hold. Nevertheless, once the Environmental Impact Study is approved, the company will seek to obtain a permanent concession for the project. Since this is a hydroelectric project that implies the displacement of Awajún communities, prior consultation and consent will be required.

#### Data:

- **Location:** Aramango, Bagua Province, Amazonas Region.
- **Population that is affected by being in the area of the project's direct influence:** 1,107 individuals.
- **Native communities that are directly affected:** Tutumberos, Tsuntsunsa, Numpatkaim, Paik and the adjoining Shawi areas, Najem (an area adjoining Tutumberos) and Wampush (an area adjoining Paik); El Muyo village and the following settlements: Chingaza, Montenegro, Miraná, La Libertad, San Antonio, Puerto Perlamayo, Magdalena and Pomará.
- **Communities or settlements within the area of the project's indirect influence:** The settlements of Campo Seis, Aramango, Bellavista, El Porvenir, La Hermosa, Monte Seco and Las Guayusas.

Picture 4. Activities Carried Out by the Affected Population





## *Violated rights:*

**The Right to Prior Consultation:** Even though the Ministry of Energy and Mining has stated that temporary concessions do not require prior consultation, ILO Convention N°169, which was ratified by Peru in 1994, and is in effect since February 2, 1995, states in Articles 6 and 7 that prior consultation has to be carried out for any event that could affect indigenous peoples in any way. Since any territorial concession naturally has an impact, it is the obligation of the state government to consult those affected. Unfortunately, in this case, only participative workshops have been held. The company mentions that through these workshops agreements have been reached with the communities. However, these workshops are not part of a consultation process; they are only informative workshops.

Taking into account that the project is located in a rainforest area where the population carries out two of its main activities – agricultural activity, especially cocoa, coffee, banana, rice, and corn production; and fishing, because of the great variety of fish available – there is a clear violation of the rights to self-determination, territory and cultural identity.

## *Present Situation:*

On October 30, the company announced that they would stop their activities due to unfavorable economic conditions in the energy market. Up until now the project has been suspended and the permanent concession is still pending.

As part of our role in accompanying and following the case, CAAAP has taken part in the eight participative workshops carried out by the Social Management Unit of the Amazonas Energy Company with the purpose of analyzing the Environmental Impact Study of the Lorena project. The workshops were designed to be held in three rounds: before, during and after the EIA. At the moment only the pre-EIA workshops have been carried out:

- The first workshop took place in the community house of the Nativa Najen Community on May 30, 2017;
- The second workshop took place on May 30, 2017 in El Muyo Village. 79 people participated and the topic was mainly the reasons for the project and the consequences it would bring;
- The third workshop took place in the Native Community of Alto Nupatkaim;
- The fourth workshop took place on May 31, 2017 in the Tutumberos Settlement with 41 people;
- The fifth workshop took place in the Tutumberos Community with 42 people;
- The sixth workshop took place in the Montenegro Community with 51 people and 9 questions addressed;
- The seventh workshop took place in the Native Community of Tsuntsunsa with 34 people and 6 questions addressed; and
- The eighth workshop took place in the Native Community of Tipico with 20 people and 6 questions addressed.



It is important to mention that these workshops were not a prior, free and informed consultation but rather only informative meetings.

#### 4. Plot 116:

Land Plot 116 is located in Condorcanqui and Bagua Provinces in the Amazonas Region and in Datem of the Marañón in the Loreto Region. It has a total area of 658,879.677 hectares and overlaps the ancestral territory of the Awajún y Wampis Indigenous Peoples as well as two protected natural areas: the Santiago Comaina Reserve Zone (including 36.6 % of the reserve zone's land) and the Tuntanain Communal Reserve (covering 48.5% of the reserve's land).

In the year 2006, the Ministry of Energy and Mines issued Supreme Decree N° 066-2006-EM through which it approved the License Contract for the Exploration and Exploitation of Hydrocarbons in Plot 116, to be carried out by HOCOL Peru, S.A.C. Initially this project had an approved Environmental Impact Study (EIA) permitting the digging of up to two exploratory oil wells. In November 2009, the EIA was modified through Ministerial Resolution N° 571-2008-MEM/DM to allow for the perforation of four exploratory wells, and in October 2011, the General Direction of Energetic Environmental Issues of the MINEM, via Directorial Resolution N° 283-2011 MEM/AAE, approved a new EIA which authorized the exploration of two wells from a platform located in the native community of Wasap and the construction of a base camp in Ciro Alegría village (in the Nieva District).

During the process for approving the new EIA, the company carried out some informative workshops and public audiences in three communities (Kashap, Nieva and Ciro Alegría); still, these workshops should have taken place in all of the 73 communities that were being affected by the project in the Nieva, Cenepa and Santiago Districts of Condorcanqui Province. It should be mentioned that these workshops were developed to pass on information and were not designed as a form of prior consultation.

In July 2013, the Awajún and Wampis Peoples, represented by the indigenous organization ORPIAN- P and other organizations, making use of their right to petition, asked that a prior consultation regarding Plot 116 be carried out. They were not specific about the issue to be consulted.

On October 15, 2013, the Ministry of Energy and Mines denied the petition for consultation, arguing that Supreme Decree 066-2006-EM, which had approved the signature of the licensing contract for the exploration and exploitation for this plot, was issued in the year 2006, many years before the Law of Prior Consultation went into effect (2011).

On December 3, 2013, given the MINEM's refusal, the indigenous organizations appealed the judgment, which brought the case up to the Vice Ministry of Interculturalism. On March 14, 2014, the Vice Ministry answered denying the consultation petition, arguing that it is not possible to consult regulations that had been approved before the Law of Prior Consultation entered into force, such as the previously mentioned Supreme Decree.



The Vice Ministry supported its decision with the Second Final Complementary Amendment of the Prior Consultation Law, which states that the regulation does not overrule administrative measures issued before the law went into effect, that is to say, measures issued before 2011.

In 2014, the indigenous organizations ODECOFROC (Organization for the Development of the Border Communities of the Cenepa), CEPPAW (Special Permanent Commission of the Awajún and Wampis) and FISH (Indigenous Federation of the Shawit Section) held a number of meetings to confront this situation and decided to present an amparo proceeding against MINEM and Petroperu because they had omitted the prior consultation process when awarding the Plot 116 concession, asking for the nullification of the administrative provisions that had approved the concession of Plot 116 (Supreme Decree 066-2006-EM) and the Environmental Impact Study (RD 283-2011-MEM/AAE).

The complaint was presented before the Fourth Constitutional Tribunal of Lima's Superior Justice Court on August 12, 2013 and was allowed to proceed on December 10, 2014. This is the first amparo proceeding related to the omission of prior consultation for a hydrocarbon project allowed by the Judicial Power. At the moment, the request is being considered at the appellate level because the defendants presented an appeal (the court originally found in favor of the communities).

### *Data:*

- **Location:** Mainly in the Amazonas Region – Condorcanqui Province – Nieva, Río Santiago and El Cenepa Districts. It also covers part of Bagua Province in the Amazonas Region and Datem of the Marañón Province in the Loreto Region. However, the location of current hydrocarbon activities in Plot 116 is the Alto Marañón River basin which is located in Condorcanqui Province and the Imaza District of Bagua Province.
- **Project area:** 658,879.677 hectares, which overlap with the territory of 73 Awajún and Wampis communities, located in the five river basins of the Santiago, Nieva, El Cenepa, Marañón and Domingusa Rivers.
- **Protected natural areas:** It overlaps two: 36.9 % of the territory of the ANP Santiago Comaina Reserve Zone, and 48.5% of the territory of the ANP Tuntanain Communal Reserve.

### *Violated Rights:*

**The Right to Prior Consultation:** According to ILO Convention 169, communities have the fundamental right to demand from the state government a prior consultation before the implementation of any measure that might affect them, such as natural resource exploitation. This regulation has been a part of international human rights law and is valid in Peru since 1995. Subsequently, on December 12, 2006, the state government published Supreme Decree N° 066-2006-EM authorizing the contract with HOCOL Peru, SAC (followed by Mariel et Prom Peru and Pacific Stratus energy companies) and granting the License for Exploration



and Exploitation of Hydrocarbons in Plot 116, all without any prior consultation of indigenous communities. This contract was signed in December 2006 and continues in force up until the present.

- a. An end to the violation of their rights to consultation, consent, territory, health, cultural identity, and to live in a healthy environment, as acknowledged by ILO Convention 169, the Political Constitution of Peru, and the Inter-American Court of Human Rights;
- b. The suspension of the exploration activities in Plot 116 that are currently being carried out or that have been planned for the future in Condorcanqui (Amazonas), Bagua (Amazonas) and Datem of the Marañón (Loreto) Provinces, until a process of prior consultation has been realized to obtain the free, prior and informed consent of the native communities that live in the area;
- c. The nullification of Supreme Decree Nº 066-2006-EM, which originally permitted the concession of the license and contract to explore and exploit hydrocarbons in Plot 116, and of R.D. Nº 283-2011- MEM/AAE, which approved the EIA for two exploratory oil wells, since both of these measures were not consulted with the indigenous people that would be affected, even though both were issued after 1995, which is the year in which ILO Convention 169 was approved;
- d. That MINEM and PETROPERU be ordered to consult with and obtain the consent of the indigenous people for any new contract to license oil exploration activities and when realizing a new EIA; and
- e. That MINEM and PETROPERÚ order the removal from the plaintiff indigenous people's territory of Mariel et Prom Peru, Pacifica Stratus Energy and any other companies working with them under the aforementioned licensing contract until the prior consultation process is carried out. This removal must include any other entities or companies that in a direct or indirect way support or are connected to the interests of the previously mentioned businesses.

### *Present Situation:*

In the original case, the Fourth Constitutional Court of Lima declared in favor of the amparo proceeding presented on August, 2014 by ODECOFROC, CEPPAW and FISH, the organizations that represent the Awajún and Wampis Peoples, led by Zebelio Kayap,<sup>23</sup> Wrays Pérez,<sup>24</sup> Santiago Manuín and Ananías Shawit. This amparo proceeding brought to light the lack of consultation regarding the use of Plot 116 in El Cenepa District in Condorcanqui Province (Amazonas Region).

This ruling, as Zebelio Kayak mentions, is the “visible revindication of the invisible”,<sup>25</sup> since it demands not only the carrying out of a consultation process but that the ministries and companies obtain the consent of the indigenous people affected by the project. In this context, the judge declared as void the legislative instruments within which the contract was

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<sup>23</sup> Ex-president of ODECOFROC..

<sup>24</sup> ‘Pamuk’ or president of the Autonomous Territorial Government of the Wampis Nation.

<sup>25</sup> Vigilante Amazónico. (March 31, 2017). Sentencia obliga al Estado a Consulta en lote 116 [Sentence Forces the Government to Consult Regarding Lot 116]. Lima, Peru.



processed, that is, without legal effect. The sentence demands the suspension of all activities until the consultation is carried out and orders the Ministry of Energy and Mines (MINEM) to remove all petroleum companies from the area until the results of the consultation have been processed. **Unfortunately, the ruling was appealed by the defendants; at the moment, the case is being heard in an appellate court. On January 9, 2018, a public oral hearing was held at which both parties presented their arguments. Our side made clear the importance of having prior consultation and consent.**

**At the moment we are awaiting a ruling. Nevertheless, we consider that the ruling should still be in our favor, since, as Wrays Pérez declares:**

*"If the right to consultation is a constitutional right, no regulation coming from a lower level (such as the supreme decree authorizing the contract) can nullify that right [...] In our claim we asked that contract would be consulted with us, and the Environmental Impact Study [...] It is our right".*

### *Special Note on Actions in the Case That Have Had an International Impact*

On March 17, 2017, several cases were presented in a thematic hearing, "Right to Territory of the Indigenous Peoples and Amazonian Communities", before the Inter-American Commission of Human Rights at their headquarters in Washington, D.C., USA. They included two cases from Brazil, one from Ecuador, and the above-mentioned case from Peru, all with the backing of the Pan-Amazonian Ecclesial Network (REPAM), which requested the hearing before this supranational organization. Zebelio Kayap, leader of the indigenous Awajún community, presented the Peruvian case regarding conflict with the oil companies in Plot 116.

During the hearing, Zebelio Kayak, ex-president of ODECOFROC, explained the Awajún's motivation for being there:

*"The ancestral territory of the Awajún and Wampis Peoples is in danger, and our own government recognizes this [...] Our home, our habitat is in danger because our ability to develop our culture and education, our health, is threatened by these transnational companies who do not respect the indigenous peoples that have lived ancestrally, for millions of years, in this area".*

***-Right to Territory of the Indigenous Peoples and Amazonian Communities, 2017.***



Picture 5



Zebelio Kayap, Hearing before the Inter-American Human Rights Commission, 2017.

The indigenous leader highlighted the case brought before the IACHR and the motivation behind it; it had as its objective the removal of mining and oil companies from the area:

"Removed until the Peruvian state government applies prior consultation in good faith and with humane treatment, because we are also part of the Peruvian State, and we need protection, and this is what we have come here to ask, that you intercede for us because we also want to be respected and we deserve our rights".<sup>26</sup>

These statements by the indigenous leader regarding the Plot 116 case, helped make visible the constant violation of the right to territory, which leads to the violation of other rights like that of a dignified life, education, and health, among others. That is why REPAM's only petition for the IACHR was that they compile a thematic report on the right to territory, offering to work together with them on this project. Concerning this idea, Francisco Eguiguren, President of the Rapporteurship, expressed that

"We need to strengthen efforts to make States comply with and understand [...] that there is no longer any room for discussion regarding the

<sup>26</sup> IACHR. (2017). The Right to Territory of the Indigenous Peoples and Amazonian Communities. Washington, D.C., United States..

right of the indigenous peoples to be consulted [...].Therefore, the commission will give due attention to how it can continue to support the efforts to make state governments comply with their obligations".<sup>27</sup>

With this in mind, it can be seen that the IACHR is an ally in support of the defense of the rights to territory and prior consultation.

### III. Proposals:

Free health screenings for the population exposed to the oil spill: The Regional Health Departments (DIRESA) should organize health screenings for the exposed population and realize subsequent testing on those diagnosed with heavy metals in their blood. This proposal has the purpose of monitoring and providing a response to the healthcare needs of the people affected.

The strengthening of the health sector's response capacity, nationally as well as regionally, to mitigate the risks and exposure to petroleum caused by the oil spill. Since this is an event that could occur again, protocols need to be activated that will permit a rapid response in order to prevent more severe individual and collective health problems.

The starting and strengthening of programs to create access to safe drinking water in order to prevent further contamination in the population due to unsafe drinking water, since this resource is of vital importance and of daily use. These programs need to be supervised by a competent authority that can coordinate with the different levels of government. It should be mentioned that these programs need to focus on an intercultural health approach. Likewise, in order to facilitate a more rapid response to oil spills, the idea is to improve health system infrastructure and guarantee resources for each health facility, where there need to be enough personnel, medicines and/or alternative treatments to mount an effective response.

The incorporation of all of the population into the National Integrated Health Service (SIS): Promote the incorporation of the population into the SIS program, which should have the benefits necessary to cover the healthcare requirements of medical conditions associated with cancer or any other after-effects from exposure to dangerous chemicals. At the same time, state government financial coverage must be guaranteed and compensation measures put into place to cover environmental damage and health problems at the population and individual levels, all of this leading to environmental remediation and the repair of any damages caused.

The creation of integral territories: This is part of a strategy and a solution designed by the indigenous peoples and their organizations which have decided to manage and control their own territories according to their customs, traditions, beliefs and political decisions. In this context, the integral territories are based on indigenous autonomy, which is the faculty that they have to organize and direct their internal life, according to their own values, institu-

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27 Ibid..



tions, and mechanisms, within the State framework to which they belong. This proposal has legal, anthropological, historical and geographical foundations that seek recognition from all levels of the state government.

We also need to mention that there are some indigenous peoples in the Peruvian Amazon region that have already created recognized mechanisms for territorial autonomy like the one that the Wampis Community has developed: the Autonomous Territorial Government of the Wampis Nation. Other indigenous peoples like the Awajún and Achuar are in the same process of forming and consolidating these legal – political strategies for the defense of their territories.

Along these lines, it is necessary to continue following all of these cases in order to verify that the state government is fulfilling its obligations in favor of the indigenous peoples' human rights. In Peru's case, the need to reinforce at the national level the importance of putting into place prior consultation processes especially stands out.







## 2.1.2. The Tagaeri and Taromenani People. (Ecuadorian Amazon Region)

Coordinated by: The Apostolic Vicariate of Aguarico, and REPAM, Ecuador<sup>28</sup>

### I. Introduction:

*Legend says that the Waorani people came from an anaconda. The story tells that once upon a time the anaconda was laying in the sun on a very big beach and an eagle came and caught it with its claws. The anaconda tried to escape but could not do so. The eagle tore the anaconda apart, splitting it into two halves. From the upper part, the head, the women were formed, and from the lower part, the tail, men were formed. That is how the Wao people were formed.*  
–Waorani elder's narration of the origin of their people

**“The indigenous peoples in voluntary isolation (IPI) and the ones in the process of initial contact are entitled to human rights within a unique situation of vulnerability; they are one of the few groups that cannot fight for their own rights. This reality gives special importance to assuring the respect of their rights. Inasmuch as they are unable to defend their own rights, state governments, international organizations, members of civil society, and other actors that defend human rights are called to assure that their human rights be respected in the same way as those of all the other inhabitants of the Americas, taking into account the particularities of each situation.”**

### 1.1. Context

Indigenous peoples live in voluntary isolation in Yasuni National Park in the areas around the Yasuní, Tivacuno, Tiputini, Cononaco, Cononaco Chico and Tiwino Rivers.<sup>29</sup> Their territory contains a few blocks of land: Campo Armadillo, Campo Tiwino and Campo Cononoco. These peoples are known as the Tagaeri and Taromenani. They belong to the Waorani Nation's cultural family; the Waorani were forcibly contacted in the 1950s by North American evangelical missionaries from the Summer Institute of Linguistics (SIL).<sup>30</sup>

The life and existence of these Tagaeri and Taromenane Peoples has depended upon the pendulum of extractive policies in Ecuador. After many years of ignoring their existence, in 2006, a plan of protective measures to recognize their territory and respect their ancestral

<sup>28</sup> Sister Digna Erazo Benavides, Laurita Missionary

<sup>29</sup> The Tagaeri or Taga people are a group of the contacted Waorani, directly related to them, but that live in isolation in the jungles of Cononaco Chico; they have rejected contact with Cohuori or outsiders. The Taromenane, on the other hand, are a group that cohabits the jungle with the Waorani but that have not entered into a process of direct exchange with them. The Waorani recognize the conflicting otherness of this group under a number of different names: wiñatare, iwene, tadomenane, etc., without any of these denominations necessarily being what these people would call themselves. ...

<sup>30</sup> The Summer Institute of Linguistics (ILV) is a Baptist religious group that arrived in Ecuador in 1952 during the presidency of Galo Plaza Lasso; he signed an agreement with them to establish a linguistic base for translating the Bible into indigenous languages. This agreement was extended to cover the Amazon by President Velasco Ibarra in 1956.



way of life was dictated by the Inter-American Commission on Human Rights. Forced by local public pressure and the action of the IACHR, the Ecuadorian government designed a Plan of Protective Measures to comply with the dictates of the Court regarding guarantees for protecting these uncontacted tribes from the real threat of mass extinction.

The International Commission declared that in the case of indigenous peoples, “there is a direct relationship between self-determination and the rights to territory and natural resources”, a relationship that becomes even more relevant when we are talking about groups in voluntary isolation or the process of initial contact (IPIs). The respect for the human rights of IPIs has to be framed within a context of respect for their self-determination, their right to life, to their physical, cultural and psychological integrity (both individually and as a people), their right to health, and their right to the land, territory and natural resources that they have ancestrally used and occupied.

In 2007, the state government designed for the first time a Protection Policy for IPIs and proposed an initiative to protect the Yasuni ITT area; its objective was to protect both the lives of the people in voluntary isolation and Yasuni’s biodiversity.

In this sense, the state government’s efforts have been insufficient to care for the lives of these peoples; this same government has even maintained a two-sided discourse regarding their existence. It is more interested in reaching its financial objectives than in the protection of these groups.

On September 2013, the former president of Ecuador, Rafael Correa, declared as legal the exploitation of the Yasuní area; the justification for this action was that the initiative to keep Yasuni’s petroleum underground had failed. Based on this statement, the Ministry of Justice declared that, according to their investigation and report, no Tagaeri or Taromenane groups were present in the Yasuní ITT reserve, assuring that reports of such presence had only been based on rumors. The purpose of these declarations was to enable the government to continue with their public policies of economic development based on the extractive model (Tenth round of bidding, blocks 17, 14 and Armadillo).<sup>31</sup>

Map 5



31 Report on the Rights of Indigenous Peoples in Ecuador, p. 83.

## II. Situation:

During the first decade of the XXI century, territorial pressure, interethnic conflicts and the expansion of the frontiers for oil and wood extraction activities resulted in an outbreak of violent conflict with the isolated indigenous peoples. This conflict has been motivated by three main factors: a) the persistence of historical conflicts between some Waorani clans and the Taromenane; and b) the multifactor pressure on the isolated peoples' territories due to the expansion of colonization boundaries and extractive activities and c) Waorani movement closer to the isolated peoples' territory, among other important elements.<sup>32</sup> These realities have resulted in violent contact with the PIAs.

### EVENTS INVOLVING VIOLENT CONTACT WITH THE PIA'S IN ECUADOR, 2003-2016<sup>33</sup>

Date	Event	Groups Involved	Location	Victims
May 2003	Assault on a Taromenane household, resulting in the death of all of its members	Waorani from the Baibeiri clan and other allies.	The jungle around the Mencaro river	At least 15 Taromenane killed
2005	A woodcutter is attacked and killed with arrows	Taromenane/ Woodcutters	Shiripuno/Cononaco Chico	1 person killed (Johnny Espanha)
2006	Many woodcutters are attacked with arrows	Taromenane/ Woodcutters	Cononaco Chico	1 person killed, 2 injured
February 2008	Taromenane attack a woodcutter	Taromenane/ Woodcutters	Shiripuno	There are no victims, the woodcooters, cook escapes before being hurt.
March 2008	One woodcutter is killed with an arrow	Taromenane/ Woodcutters	Rumiyacu	1 person killed (Luis Castellanos)
April 2008	Waorani expedition against a Taromenane Household	Wane Cahuiya and five more waorani/ Taromenane	Rumiyacu	There are no victims, but there was a lot of tension and conflict between the groups
Agust 2009	Taromenane attack the Los Reyes community	Taromenane/ settlers	Los Reyes/Pindo-Hormiguero Road	3 people killed (Sandra Zavala + 2 children); 1 child kidnapped (later rescued)
March 2013	Taromenan attack on the Ompure and Buganey Clans	Taromenane/ Waorani	Yarentaro (waorani settlement in Block 16)	2 Ompure and Buganey killed
March 2013	Waorani revenge expedition against a Taromenane household	Waorani/ Taromenane	Ahuemuro river (aproximately)	Approximately 30 possible Taromenane victims; 2 Taromenane girls were kidnapped
January 2016	A Waorani couple is tacked on the banks of the Shiripuno River	Taromenane/ Waorani	Shiripuno/Cononaco Chico	1 person killed (Caiga Baihua), 1 injured

The Ecuadorian government made a commitment to the Inter-American Commission on Human Rights to abide by the Plan of Protective Measures. With respect to the vulnerability of the IPIs, they manifested their plan to guarantee the following rights of the IPIs: the right to life, the right to personal integrity, to personal liberty, equality before the law, to freedom of movement, the right to be isolated and to not be contacted, to legal guarantees, to good health, to a healthy environment, and to food and education according to their ancestral terms and customs. Up until now the results have not been adequate.

<sup>32</sup> The Universal Periodic Review (UPR) about Indigenous people in voluntary isolation. Ivonne Dávila.

<sup>33</sup> Ibid.



Photo 6. One of the oil and gas fields located in Yasuni National Park, Yasuní, Ecuador.



The protective measures found in the Constitution for IPIs have been understood to include strategies that strengthen the intangibility principle and assure the physical, cultural and territorial existence of these peoples and to confront external threats. Such measures are not effective and will not be effective while public policies of oil exploitation are promulgated, focused on an economic development that violates collective rights.

The interethnic massacres that have taken place between 2003 and 2013 show that IPIs remain in an extremely vulnerable situation; there remain those that even deny their existence. The Tagaeri and Taromenane understand their territory to be the entire jungle; territorial boundaries do not exist for them.

When environmental licenses are granted that allow oil activities in the ancestral territory of the IPIs; when their living area is insufficiently delimited and called the Intangible Zone; when we try to keep these peoples constrained to a fixed area, without access to their traditional gathering places; when plots for oil exploration are auctioned off within their ancestral territories; all of these actions breach the protective measures established by the IACHR in 2006 in favor of the Tagaeri and Taromenane Peoples.

State government efforts have been insufficient to care for the life of the IPIs. In the following bullet points we summarize the main threats to the rights of these IPIs:

- Territorial pressures and “downsizing”;
- The Waorani – Taromenane interethnic conflict;
- The inobservance of the precautionary principle; and
- The ineffective application of the reparation principle in public policies related to IPIs.

### III. Analysis of the Violations of Human Rights

#### 1.- The Right to Live Freely in One's Territory as Supported by National, Regional and International Legal Instruments.

....When he had everything ready, Nengi Wenga communicated with his father, the sun and asked him how long he had to live in the jungle in order to complete the mission that his father had given him. The sun god answered that he did not have to stay much longer, since all that he had to do was to finish delivering the wisdom and spirit that would illuminate the Wao People.

The young man was happy to learn of the mission he had been assigned by god, to spread his blood all over the world. Using his magic power, his spirit would turn into a jaguar to give courage to all of his warriors. Before, the Waoranis had been lost, disoriented, but the sun's son showed them the way and guided them.<sup>34</sup>

The PIAs do not understand the concept of boundaries, nor that of tangible and intangible zones; they move around depending on the season looking to satisfy their survival needs. It is the State's obligation to protect their rights both inside and outside of the Intangible Zone. The granting of oil concessions that generate economic benefits to satisfy the needs of a majority are unjustifiable when they completely violate the constitutional rights of a minority. The violation of the right to territory of these PIAs also threatens the following rights: their right to life, to personal integrity, to liberty, to equality before the law, to freedom of movement, to legal guarantees, to good health, to a healthy environment, and to food and education according to their ancestral customs.

#### 2.- The Right to the Self-Determination of Not Being Contacted.

The constant confrontations and reactions to the threats of the outside world demonstrate the PIAs resistance and rejection to such contact. The principle of no contact is the concrete expression of the PIAs right to self-determination. One of the reasons for protecting the rights of PIAs is the protection of cultural diversity; the loss of their culture would be a loss for all of humanity. As the IACHR and IAHR Court have mentioned on various occasions, indigenous peoples have the right to their cultural identity and state governments must guarantee their right to live in their ancestral territories in order to be able to preserve that identity.<sup>35</sup>

Some say that in the present voluntary isolation has become a forced isolation, one that these communities have been obligated to choose being faced with a lack of food, a lack of tools, a lack of possibilities to survive, being surrounded by an aggressive world; this is both a violation of their right to not be contacted.

34 IMA, Fabián Nenquimo. "Guerreros de la selva" [Jungle Warriors].

35 IACHR. (2013). Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas: Recommendations for Full Respect of Their Human Rights. <http://www.oas.org/en/iachr/indigenous/docs/pdf/Report-Indigenous-Peoples-Voluntary-Isolation.pdf>

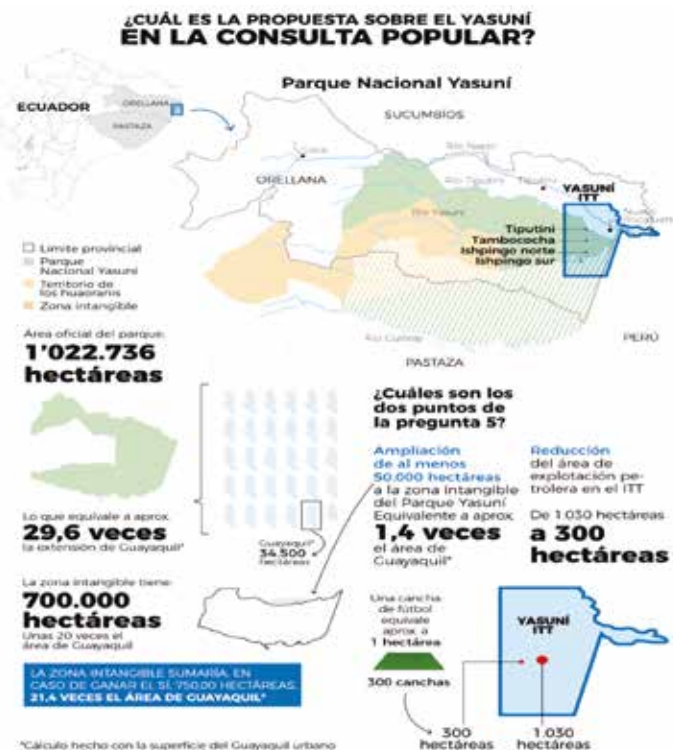


## Every Person's Life Is Important; Yasuni Is a National Cause.

On August 2013, following the Ecuadorian president's announcement which ended the initiative to protect Yasuni ITT National Park and jump-started oil exploitation in Tagaeri and Taromenani (PIA) territory, YASunidos began a process to exercise their right to call a popular consultation/referendum so that the Ecuadorian people could decide whether or not to leave the oil underground. This consultation would generate a binding declaration on society's part, while protecting their right to participation, regarding oil exploitation (or its prohibition) in Yasuni ITT National Park. YASunidos, fulfilling all of the requirements dictated by the national government and National Election Council, presented 856,704 signatures and a box of 14 files of individuals' identification documents soliciting a popular consultation; nevertheless, more than 60% of the presented signatures were rejected, leading to the petition's denial. The group presented many administrative and legal complaints which were also denied either for technical reasons or for no apparent reason whatsoever.

As can be seen, economic interests are always the ones that matter most. Without any scruples, they use tricks to silence the voices of those in favor of the ones without voice, the PIAs. The Amazon is not valued for its biodiversity but only for the money that people can extract from it through the exploitation of its resources.

Map 6.- The image contained in Map 6 explains the proposals that will be put up for debate in the national consultation in February 2018. The green area of the maps shows the extensión of Yasuni National Park, the orange area Waorani territory and the area crossed with lines the intangible zone inhabited by PIAs. The question to be put to the country in the national consultation has to do with enlarging the intangible area from 700,000 to at least 750,000 hectares and reducing oil exploration activities from 1,030 hectares to 300 hectares in the Yasuni ITT part of the map. To give the Ecuadorian population a reference point for these areas, they are also compared to the size of Guayaquil, Ecuador's largest city.





The current Ecuadorian government, led by Mr. Lenin Moreno, has managed a political discourse promoting protection of the Yasuni. He has also mentioned that he is listening to the voices of hundreds of environmental and social organizations, which is why he decided to include one question on the national popular consultation of February 4, 2018 regarding the enlargement of Yasuni's Intangible Zone by at least 50.000 hectares and the reduction of the oil exploitation area in Yasuni ITT (Ishpingo, Tambococha, Tiputini area) to one-third of its current size.<sup>36</sup>

The question put to popular consultation was: ***“Do you agree with increasing the Intangible Zone by at least 50.000 hectares and reducing the oil exploitation area authorized by the National Assembly in Yasuni National Park from 1030 hectares to 300 hectares?”***

At the moment, Yasuni National Park's Intangible Zone includes 758,051 hectares, according to Executive Decree 2187, signed by ex-president Alfredo Palacio. According to the arguments presented by the Executive Branch to the Constitutional Court, the proposed increase in the area's size seeks to protect the PIAs and to preserve the environment. In the document, the exact location of the areas to be added is not specified. That lack of clarity suggests many possible interpretations:

*“The question in the consultation is essentially ambiguous; it limits itself to ask about the area of the Intangible Zone and of authorized oil exploitation. We need to set aside the concept of national interest found in Article 407 of the Constitution of the Republic, which allows for oil activity in protected areas, in favor of the concept of the “public interest” for conserving biodiversity as is established in Articles 14 and 400 of the Constitution. The question should have been formulated as: Do you accept keeping the oil underground in Yasuni National Park? It is obvious that Ecuador's legislation not only contradicts itself with regards to its goal for protected areas, but also the international treaties like the Convention on Biological Diversity to which Ecuador is party.”*

*“The question itself does not change much about the reality of [the oil] exploitation in Blocks 31 and 43” authorized by the National Assembly in 2013. The Yasuni Biosphere Reserve is considered one of the most biodiverse places on the planet and is home to more than two million species. Even if the exploitation area is reduced to 300 hectares, the impacts on the Reserve would be exactly the same, since current environmental damage, which has already surpassed the area mentioned, has not been taken into account. The exploration phase, [which includes] the construction of roads, air and water contamination, [and] machinery noise has already had a negative impact on the ecosystems. According to the consultation question, opening new wells is not prohibited, and as long as that is so, the impact will be the same, and in an area like Yasuni, the decrease in flora and fauna populations will directly affect the indigenous people in isolation, who base their survival on these resources.*

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<sup>36</sup> Source: YASUnidos





While there are diverse opinions, each one from their point of view and interest, only one thing is true: If we do not defend Yasuni as PIA territory, we are accomplices to their forced disappearance by permitting their entrapment, little by little, and allowing them to continue to be affected by the economic interests that prevail in the governing authorities of our country and in our own consciences.

Photo 7. The Tiputini Oil Field on the border of Yasuni National Park; it started to produce its first barrels of oil in September 2016.



#### IV. Recommendations:

1. **The widening of the protective area for the Tagaeri and Taromenane Peoples (ZITT)**, taking into account their settle territory, hunting corridors and movements;
2. **The end of hydrocarbon extractive activities** in Block 66, Campo Armadillo;
3. The establishment of the **conditions for a Peace Agreement** on the part of the members of the Waorani Nation towards the PIAs;
4. The designing, by the state government, of **a process to pacify conflicts and reach a peace agreement** with the Waorani Nationality to prevent confrontations and conflict with the Tagaeri/Taromenane, defining reparative policies that will give restitution to victims, providing them, in the greatest measure possible, with the living conditions that they had before the conflict;
5. The intangible zone should **take into account the mobility patterns of the PIAs**: “this is a historical debt that Ecuador owes human rights”;
6. **The concept of national interest present in Article 407 of the Constitution of the Republic**, which allows oil extraction in protected areas, **should be set aside** in favor of the “public interest” to preserve biodiversity, established in Articles 14 and 400 of the Constitution; and
7. **Ecuadorian legislation which contradicts itself** with regards to its goals for protected areas, **and which also contradicts international treaties** like the Convention on Biological Diversity (CBD), to which Ecuador is party, **must be revised**.



## 2.1.3. The Yaminawa People (Brazilian Amazon Region):

**Coordinated by:** The Indigenist Missionary Council, Western Amazon Region, Brazil<sup>37</sup>

### I. Introduction:

The REDD+, Russas, Valparaíso and Purus projects are private projects oriented to the carbon market which operate within territory claimed by small riverine, settler and extractive communities. For a better understanding of these projects, we recommend reading and studying the report issued by an investigative mission carried out by the Human, Social, Cultural and Environmental Rights Platform, which is titled: “Economía Verde, Pueblos de los Bosques y Territorios: Violación de los derechos en el estado de Acrehe [Green Economy, Forest Peoples, and Territories: Violations of Rights in Acre State].” This document has oriented us, not only with regards to debating the Acre issue, but also in preparing the text that we now present.

Photo 8: The Nawa People protest for the demarcation of their territory and against oil exploitation.



Even though the REDD+ projects are a private initiative, we highlight the featured role of the Acre government and authorized NGOs that incentivize, foment and implement these projects. They have even implemented a law to make these carbon projects possible, and not only these but other public projects, often handing over indigenous land for these purposes, which has resulted in very serious changes in the social structures of these peoples and the evident violation of their rights.

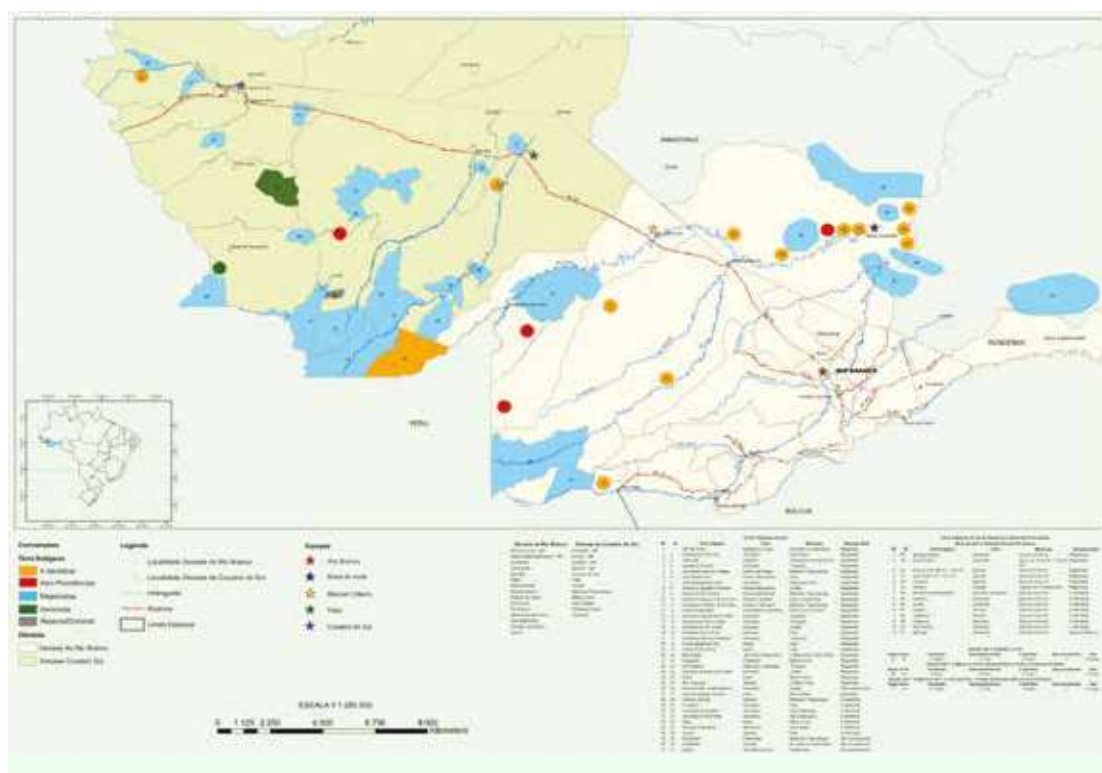
<sup>37</sup> With the collaboration of Lindomar Dias Padilha.



The violations caused by oil and gas exploitation in the Juruá Valley Region have a different characteristic; even though the exploitation project is a private initiative, it was presented and defended by Tião Viana (PT/AC), who at that moment was a Senator of the Republic, and who is now the current Governor of Acre. In this case, we highlight the participation of CIMI -The Indigenist Missionary Council-, which represents the indigenous peoples, and the Public Federal Ministry, whose efforts resulted in a preliminary decision from the Federal Judiciary suspending actions taken by the bidding company, Petrobras, and imposing conditions on regulatory organizations like the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA).

## 1.1. Indigenous Peoples and the Territorial Situation in the Eastern Amazon.

Map 7: \*On the left side of the map, the predominantly green area corresponds to the territory covered by the Diocese of Cruzeiro do Sul, while on the right side, the lighter colored area corresponds to the territory covered by the Diocese of Rio Branco.



Source CIMI – Indigenist Missionary Council, Western Amazon Region.

38 This land was demarcated in 2013, and is, therefore, protected from intruders. A judge has proposed that the area be shared with non-indigenous persons. Additionally, in 2016, the Brazilian government ruled that the process should start again from the beginning and annulled the demarcation. An anthropologist voluntarily proposed to delimit the area. However, to this day they have not presented their report, not to FUNAI (the National Foundation for Indigenous Peoples) nor to the Jaminawa Community.

39 An anthropologist voluntarily proposed to delimit the area. However, to this day they have not presented their report, not to FUNAI nor to the Jaminawa Community.

40 This case is no longer in FUNAI's hands, but has been passed on to Federal Justice.

Table 1 – The Indigenous Land Tenancy Situation in Acre State and the Southern Amazon

Indigenous Territory in Acre and the Southern Amazon					
Nº	Nº	Indigenous Territory	Peoples	Municipality	Current Situation
01	01	Alto Purús River	Hunikuí and Madiha	M.Urbano and Santa Rosa	Registered
02	02	Headwaters of the Rio Acre	Jaminawa	Assis Brasil	Registered
03	03	Campinas	Katukina	Tarauacá-Ac y Ipixuna-AM	Registered
04	04	Igarapé do Caucho	Hunikuí	Tarauacá	Registered
05	05	Jaminawa/Arara Bagé River	Arara and Jaminawa	Marechal Thaumaturgo	Registered
06	06	Jaminawa/Envira	Ashaninka/ isolados	Feijó	Registered
07	07	Jaminawa/Igarapé Preto	Jaminawa	Rodrigues Alves	Registered
08	08	Ashaninka of the Igarapé Primavera	(Ashaninka)	Jordão	Registered
09	09	Ashaninka of the Amônia River	(Ashaninka)	Marechal Thaumaturgo	Registered
10	10	Ashaninka y aislados Rio Envira	Ashaninka / isolados	Feijó y Santa Rosa	Registered
11	11	Hunikuí á and Ashaninka Rio Breu	Ashaninka and Hunikuí	Marechal Thaumaturgo	Registered
12	12	Katukina/Hunikuí	Shanenawa and Hunikuí	Feijó-Ac y Envira-Am	Registered
13	13	Hunikuí Colônia Veintisiete	Hunikuí	Tarauacá	Registered
14	14	Hunikuí Humaitá River	Hunikuí	Tarauacá	Registered
15	15	Hunikuí Jordão River	Hunikuí	Jordão	Registered
16	16	Hunikuí Nova Olinda	Hunikuí	Feijó	Registered
17	17	Hunikuí Praya de Carapanã	Hunikuí	Tarauacá	Registered
18	18	Madiha Igarapé do Pau	Hunikuí	Feijó	Registered
19	19	Madiha Envira River	Madiha	Feijó	Registered
20	20	Mamoadate	Jaminawa and Manchineri/ insolated	Sena Madureira y Assis Brasil	Registered
21	21	Poyanawa	Poyanawa	Mâncio Lima	Registered
22	22	Río Gregório	Katukina and Yawanawa	Tarauacá	Registered
23	23	Kaxinawá Jordão River	Hinikuí	Jordão	Registered
24	24	Nukini	Nukini	Mâncio Lima	Registered
25	25	Alto Tarauacá	Aislados	Jordão e Feijó	Registered
26	26	Hunikuí Seringal Independência	Kaxinawá	Jordão	Reserve/Dominial
27	27	Arara de Igarapé Humaitá	Arara	Porto Walter	Registered
28	28	Arara da Amônia	Apolima-Arara	Marechal Thaumaturgo	Bounded <sup>38</sup>
29	29	Curralinho	Hunikuí	Feijó	To be Identified <sup>39</sup>
30	30	Jaminawa de Guajará	Jaminawa	Sena Madureira	Without legal recognition
31	31	Jaminawa del Rio Caeté	Jaminawa	Sena Madureira	Without legal recognition
32	32	Naua	Naua	Mâncio Lima	Under revision by judicial authority <sup>40</sup>
33	33	Seringal Guanabara	Manchineri	Assis Brasil	To be Identified
34	34	Xinane	Insolated	Feijó	To be Identified
35	35	Kontanawa	Kontanawa	Marechal Thaumaturgo	Without legal recognition
36	36	Chandless	Insolated	M. Urbano y Santa Rosa	Without legal recognition; a state park has been created covering the isolated tribes' territory
37	37	Estirão	Jaminawa y Kulina	Santa Rosa	Without legal recognition



\*The first table describes territories in the Cruzeiro do Sul Diocese and the second table in the Rio Branco Diocese. The first column of numbers represents the case number for each diocese while the second column is the sum of the case numbers for the two dioceses combined.

The territory of Kampu was also claimed, but suffered a fire in 2006; all of the houses belonging to the Nikini People who lived in the area burned down.

Nº	Nº	Indigenous Territory	Peoples	Municipality	Current Situation
01	38	Igarapé Capana	Jamamadi	Boca do Acre-Am.	Registered
02	39	Inauini/Teuini	Jamamadi	Boca do Acre-Am y Pauini-AM	Registered
03	40	Boca do Acre BR 317 – km 45	Apurinã	Boca do Acre-Am	Registered
04	41	Apurinã BR 317 – km 124	Apurinã	Boca do Acre-Am	Registered
05	42	Camicuã	Apurinã	Boca do Acre-Am	Registered
06	43	Kaxarari	Kaxarari	Lábrea-Am y Extrema-RO	Registered
07	44	Monte/Primavera/Goiaba	Apurinã and Jama-madi	Boca do Acre-Am	To be identify
08	45	Iquirema	Jamamadi	Boca do Acre-Am	To be identify
09	46	Lurdes	Jamamadi	Boca do Acre-Am	To be identify
10	47	Cajueiro	Apurinã	Boca do Acre-Am	To be identify
11	48	Valparaíso	Apurinã	Boca do Acre-Am	To be identify
12	49	Caiapucá	Jaminawa	Boca do Acre-Am	This territory has been divided up by the Legal Land Program (Terra Legal); it still needs to be identified and titled.
13	50	São Paulino	Jaminawa	Boca do Acre-Am	To be identified/ titling conflicts.
14	51	Maracajú	Jamamadi	Boca do Acre-Am	Without legal recognition

The highlighted territory (in red) is highly problematic. There is no guarantee of the right to territory in these areas; the majority do not even have simple legal recognition as belonging to an indigenous group. The right to territory is guaranteed by the Federal Constitution of Brazil, but it is not respected. In Acre State, as can be seen in the above tables, there are still 18 areas that need to be demarcated or identified. There are also territories where the indigenous people live in voluntary isolation. They are:

**The Isolated People of Chandless** – They live along the upper part of the Purus River and along the Chandless River near the border with Peru. This group was identified by CIMI in 2002, the announcement being made in 2003, with the documentation signed by my own hand. Yet, it was only in 2016 that FUNAI (the National Foundation for Indigenous Peoples) recognized the veracity of the identification and the existence of this indigenous group.

**The Isolated Groups of Tapada** – Also identified by the CIMI team in 2000 (I was a member of the team). Up until now, FUNAI refuses to recognize the existence of this indigenous people. This group lives on a strip located along the headwaters of the Tapada River (this is where the name comes from), which flows into the Novo Recreio River, part of the Juruá River System along the border with Peru.

**The Isolated Groups of Breu** – A people that lives along the headwaters of the Breu River, which flows into the Juruá River. The existence of this people was also announced in 2002, by the CIMI of Cruzeiro do Sul investigative team (Rose and myself). However, up until today, FUNAI refuses to recognize their existence because the governments of Brazil and the State of Acre have an interest in this land for timber exploitation.



**The Isolated Groups of Jordão** – These peoples live along the headwaters of the Jordão River, near the border with Peru. FUNAI recognizes the presence of at least four peoples in voluntary isolation here. Nevertheless, the invasions of their land persist and there has not been any legal recognition of their territory up until this moment

Photo 9: An elderly Marunawa woman



Photo 10: Marunawa children



## II. Rights That Have Been Violated or Denied

### 1.- The Right to a Delimited and Protected Territory

We, the indigenous people of the State of Acre, Brazil, see that our rights are being violated. Our legislation is being changed to allow the expropriation of our territories. The Brazilian government and the government of Acre are creating laws that make it impossible for us to delimit our territory, thus threatening our lives and the lives of future generations.

The Brazilian Federal Constitution (CF), in Article 231, guarantees the right to territory for the indigenous peoples. According to this same Constitution, all indigenous territories should have been delimited by the year 1994. However, as can be seen, this law has never been observed, and, as a consequence, many of the indigenous peoples still do not have legal regularization of their territories. Let's see what the Brazilian Constitution says about the right to land:

*Art. 231. Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.*

*§ 2º The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.*

*§ 5º The removal of Indian groups from their lands is forbidden, except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.*

*§ 6º Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith. – Brazilian Constitution of 1988, official English translation. <http://english.tse.jus.br/arquivos/federal-constitution>*





It can be seen then, that the right to territory rests on tradition. That is, Brazil's highest law understands that indigenous peoples, by being the land's native and original inhabitants, are also its owners. Article 231 is explicit in stating saying that it is the Union's duty to delimit these lands, protect them, and make others respect the indigenous peoples' right to them. Therefore, the lack of demarcation of indigenous lands results in serious violations to their constitutional rights.

In the specific case of Acre and the Southern Amazon, as the tables show, there are 17 territories that have not yet been demarcated, and this does not include the land inhabited by the isolated peoples that have not yet been officially recognized. Besides being a serious violation of the right to territory, the lack of demarcation of indigenous territory enables the plundering and theft of natural resources and facilitates the age-old practice of fraudulent land expropriation (**with false titles**). Let's see what the Constitution says about the traditional land:

*§ 1º Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions. -- Brazilian Constitution of 1988*

Photo 11: Demarcation protests against REDD



The delimiting of traditional land, indigenous land, also guarantees the right to the physical and cultural reproduction of these peoples while at the same time protecting the envi-



ronment. Thus, delimiting indigenous lands has a very important and positive impact with regards to solving environmental problems while also positively impacting the social and cultural life of these peoples.

Another important element to mention is the process of delimiting and regulating these lands. The Constitution itself determines that the Federation, that is, the Federal Government, is directly responsible for demarcating and protecting indigenous lands. It also states that the governmental organization dedicated to assist indigenous peoples is in charge of carrying out the anthropological studies needed for territorial identification and its subsequent delimitation. In this case the national organization responsible for this work is FUNAI, the National Foundation for Indigenous Peoples, which is tied to the Ministry of Justice. Let's look then at what the law states in the governmental decree edited and published on January 8, 1996: see what the law says in the governmental decree edited and published on January 8th, 1996:

*Art. 1º The indigenous lands mentioned in 17, I, of Law Nº 6001, [published on] December 19, 1973, and Article 231 of the Constitution, will be administratively delimited through the initiative and with the orientation of the federal organization of assistance to the indigenous peoples, according to what is established in this decree.*

*Art. 2º The delimitation of the lands that have been traditionally occupied by indigenous peoples will be based on the work carried out by qualified anthropologists, who will realize, within the period of time established by the head of the federal organization of assistance to the indigenous peoples, the Anthropological Study for [Territorial] Identification.*

*§ 1º The federal organization for assistance to the indigenous peoples will designate a specialized technical team, preferably made up of members of the same organization and coordinated by the anthropologist, to perform further complementary ethnographical, sociological, legal, cartographical and environmental studies [in order to gather] the evidence of land tenancy needed for delimitation. –Brazilian Government, Decree Nº 1775, January 8, 1996.*

Although, in the opinion of many people, decree 1775 was unfavorable for indigenous peoples, it has been useful in sustaining their petitions for land demarcation. This decree, like Article 231 of the Federal Constitution, have been targeted by “ruralistas”, individuals linked to eco-business and others who desire to turn nature into financial profit. Acre is an important case because of the changes the local government has made to its legislation in order to create better opportunities for these economic interests.

There are so many indigenous lands in Acre pending demarcation that we are very far from finding a solution to the problem. In fact, the situation is only worsening. In Acre, there is a false discourse which defends that all of the indigenous lands have been regularized and that it is the



most protected region of Brazil with regards to the environment. This discourse has been spread widely, and, truthfully, there have not been any opportunities to dispute it. Few are the voices raised against this lie of “sustainability,” part of the so-called “Green Economy.” CIMI and the Dossier Acre Group have denounced these false claims, and when it has been possible, have made known the truth while accompanying the indigenous peoples.

The situation of indigenous peoples in isolation is even more precarious considering that these peoples do not maintain any contact with the rest of Brazilian society and, therefore, are not in a condition to defend themselves; they don’t even know about the legislation that protects them or the legislation that aims to rob them of their territory.

*Art. 7º The federal body of assistance to indigenous peoples will be able to, under the policing powers it has been granted in Section VII, Article 1º of Law nº 5731 (December 5, 1967), regulate the entry and transit of third parties in areas where the presence of isolated indigenous tribes has been proven, and take the necessary measures to protect these indigenous peoples. – Brazilian Government, Decree Nº 1775, January 8, 1996.*

In the case of Acre, in recent years, mainly since 2006, attacks on the territories of isolated peoples have intensified with the explicit purpose of forcing contact with them or eliminating their existence in order to clear territories for logging and oil and gas exploitation. The Regional FUNAI Office’s leaders function as trusted appointees of the state’s **governor**. Therefore, they first attend to the governor’s interests and then to what is legally established and imposed by the Constitution, such that they have even supported State Law Nº 2308 (October 22, 2010), known as the SISA law, which will be discussed later. This law looks to make it easier to free up indigenous lands, among others, for Payment for Environmental Services programs (PES), especially those operating under the mechanisms used by REDD (Reducing Emissions from Deforestation and Forest Degradation), which are frequently used to expropriate territory.

The right to a protected and demarcated territory is the source of many other rights, and thus, as in the case of Acre, the violation of this right becomes the source of the violation of many other rights, such as the right to exclusive usufruct, the right to prior consultation, and others that will be explored later. At the moment, it is necessary to emphasize how the non-demarcation of indigenous lands obeys market planning in the following three ways: (i) via direct expropriation of land, making it available for market use; since this land cannot currently be negotiated for, leased or sold, being “out of the market”; (ii) via the appropriation of the natural resources present in the non-demarcated territories such as water, forests, mineral resources, medicines, and of course, as a way to serve the carbon credits market; and (iii) for the implementation of major infrastructure projects or in order to satisfy needs related to power generation and transportation..



Photo 12



*§4º The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation. – Constitution of Brazil, 1988.*

As the Constitution itself affirms, indigenous lands are inalienable and, thus, indeed unavailable and “out of the market”. In other words, indigenous lands are exclusively destined to the physical and cultural reproduction of the peoples that traditionally occupy them. It also mentions that the rights over these lands never expire.

## 2. The Right to “Exclusive” Usufruct

In the previous section, we have demonstrated and legally supported the right to territorial recognition and demarcation, and the respect and protection of these territories, based on the Federal Constitution of Brazil, our supreme law, and Decree 1775/96.

In this section, we are going to explore in detail the right to exclusive usufruct and the right to the assets found in these territories. Therefore, we are going to consider what the Federal Constitution of Brazil establishes regarding these rights, without prejudice against complementary legislation, since all such legislation is derived from the Constitution, being the supreme law of the land:

*§ 2º The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein. – Constitution of Brazil, 1988.*

*The 2º paragraph of the Federal Constitution is objective and concise when talking about usufruct, leaving no room for doubt. No one, neither groups nor companies nor other interested parties can benefit from assets existing in indigenous lands. Additionally, as in the case of territory, usufruct has the ultimate purpose of guaranteeing the physical and cultural reproduction of the people. Only the subsoil is not included in the exclusive usufruct of the people, and the reason is simple: the subsoil contains minerals, which are the exclusive property of the Brazilian State. Nevertheless, the Constitution, going deeper into the subject matter, states:*

*§ 6º Acts with a view to occupation, domain and possession of the lands referred to in this article or to the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law, and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law. – Constitution of Brazil, 1988.*

Any act which aims to occupy, control or possess indigenous lands (unless it is by the same indigenous people) will be considered a legally null act, that is, without any legal affect. Once again, the Constitution reaffirms the right to exclusive usufruct. In the case of possession in good faith, the Union must compensate those involved, which, however, does not result in the recognition of possession or the right to usufruct. The land continues belonging exclusively to the indigenous peoples and the right to it must be considered as imprescriptible and inalienable. To help regulate this aspect of territorial rights, Decree 1775/96 says:

*Art. 4º Verified the presence of non-indigenous occupants in the demarcation area, the federal land tenancy body will give priority to the respective resettlement according to the survey realized by the technical team, and in observance of the corresponding legislation. –Brazilian Government, Decree Nº 1775, January 8, 1996.*

It is important to mention that, in this case, the presence of the federal organization assigned to accompany the non-indigenous people, the National Institute for Colonization and Land Reform (INCRA), is also fundamental, since it is this institute's responsibility to resettle the non-indigenous occupants of indigenous land. FUNAI's only responsibility is to provide due compensation when appropriate. Even though resettlement of those who have occupied the land in good faith is a priority, the non-indigenous inhabitants must still leave; they cannot coexist in the territory since the usufruct is exclusive to the indigenous people or peoples.





Taking into account the legal instrument of exclusive usufruct, we also support those that are against the implementation of projects and programs such as REDD (*Reducing Emissions from Deforestation and Forest Degradation*), since these mechanisms and projects are imposed on indigenous communities and given priority over indigenous territorial rights.

"This group of mechanisms, commonly known as the Green Economy, based on natural resource use and the commodification or financialization of nature, in Acre, have been violently applied against indigenous people and traditional communities. An articulated group, Dossier Acre, has risen up against this Green Economy, basing their criticism on research and analysis of the impacts it has on the life and culture of indigenous peoples. This group published a special document for the Rio +20 Peoples Summit held in Rio de Janeiro in 2012, called: "DOSSIER ACRE: the Acre that Those Who Buy and Sell Nature Hide". It presents an analysis of the lies and fallacies that the Government of Acre propagates concerning profits from the Green Economy. It is a document that is obligatory reading for those who want to understand how the Government of Acre has promoted, passed, and modified legislation to facilitate the expropriation and use of traditional and indigenous territories through the manipulation and co-option of leadership, supported by a sophisticated system of propaganda and media".

Photo 13



### 3. The Right to Free, Prior and Informed Consultation

Brazil signed International Labor Organization (ILO) Convention 169; this Convention has the status of law and has to be comprehensively applied in the country. This means that the Convention forms part of Brazil's constitutional law. So, let's examine what the Convention says regarding the right to free, prior and informed consultation in Article 6:

*1. In applying the provisions of this Convention, governments shall:*

*(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;*

*(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them;*

*(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.*

*2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. – ILO Convention 169.*

We think that it is very clear that the Convention forces the signing countries to comply with the right to consultation, which in this case, is equivalent to the right to live a full and harmonious life. It should be noted that this right differs significantly from the right to veto, even though, in some cases, the latter can be understood to be included in the former. In Brazil, especially in Acre, this right is neglected to an absurd degree; no prior consultation has been carried out for implementing any project, not even one.

When Brazil ratified ILO Convention 169, they wanted to make clear and reaffirm the Brazilian position with respect to the Convention, as can be seen in Decree 5051:

*The PRESIDENT OF THE REPUBLIC, using the powers given him by Article 84, Section IV of the Constitution:*

*Considering that the National Congress has approved, via Legislative Decree No 143, on June 20, 2002, the text of the International Labor Organization Convention 169 Concerning Indigenous and Tribal Peoples, adopted in Geneva, on June 27, 1989;*





*Considering that the Brazilian Government deposited the instrument ratifying the Convention with the Executive Director of the ILO on July 25, 2002;*

*Considering that the Convention has entered into international force on September 5, 1991, and for Brazil on July 25, 2003 according to what is established in Art. 38;*

**DECREES:**

*Art. 1º International Labor Convention 169 Concerning Indigenous and Tribal Peoples, adopted in Geneva on June 27, 1989, a copy of which is attached to this decree, will be fully executed and complied with in all of its content.*

*Art. 2º Any actions that will result from implementing the Convention and which imply large costs or onerous commitments that will affect the national patrimony, are subject to the approval of the National Assembly, as is established in Art. 49, subparagraph I, of the Federal Constitution.*

*Art. 3º This Decree enters into force on the date of its publication (Decree N° 5051, 2004).*

The aforementioned decree demonstrates that the Brazilian government unconditionally accepts what the Convention recommends. This posture of the Brazilian government, however, in the case of Acre, has not been applied, not in the least, up to the point that the same Acre state government created a law, called the SISA Law- the State System to Incentive Environmental Services. It should also be mentioned that oil and gas exploitation projects in the Juruá Valley region, like the SISA law, have been imposed on the Acre peoples, especially on the indigenous communities, without any type of consultation.

In response to Public Civic Suit N° 1849-35.2015.01.3001, received by the Public Federal Ministry (MPF), Dr. João Paulo Morreti de Souza, Substitute Federal Judge for Cruzeiro do Sul, Acre, decided to suspend oil and gas exploitation in Cruzeiro do Sul, Juruá Valley, Acre State. A public statement on the MPF's website relates the following:

*Federal Judge João Paulo Morretti de Souza declares, in his decision, that we have to consider the studies carried out by prestigious sources which suggest various types of possible and probable damage to the population and the environment in the regions where the fracking extraction model is being applied, involving great risk to water resources, minerals, flora, fauna and also human life, both with regards to the everyday life of the peoples of the region, as well as the possible increase in birth defects in the surrounding communities, which could be related to the presence of shale gas exploitation projects.*

*The decision also considered the lack of a free, prior and informed consultation process for the traditional peoples of the region, which violates International Labor Organization Convention N° 169.*



*It also ordered PETROBRAS to suspend, within a period of 10 (ten) days, all and any act derived from the auctioning of block AC-T-8 and the contract for hydrocarbon production in the Sedimentary Basin of Acre, involving both conventional and nonconventional resources, under penalty of a daily fine of 100 thousand reales, in addition to any other applicable legal sanctions.*

*Additionally, PETROBRAS is temporarily prohibited from performing any activity, including flyovers, investigations, inspections in situ, or any other measure related to the exploitation and production of hydrocarbons in the area, until the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar) is carried out, as provided for in the Ministry of Mines and Energy's inter-ministerial disposition N° 198/2012, and until free, prior and informed consultation takes place, according to what is prescribed by ILO Convention 169, of the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fine, in the case of non-compliance with the legal order, until it is completely carried out, of 200 thousand reales, in addition to any other applicable legal sanctions.*

*It is also temporarily prohibits the Union and the ANP from proceeding with any other auction procedure for exploiting or producing hydrocarbons in the Sedimentary Basin of Acre until the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar) is carried out, as provided for in the Ministry of Mines and Energy's inter-ministerial disposition N° 198/2012, and until free, prior and informed consultation takes place, according to what is prescribed by ILO Convention 169, of the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fine, in the case of non-compliance with the legal order, until it is completely carried out, of 200 thousand reales, in addition to any other applicable legal sanctions.*

*IBAMA is also prohibited from issuing licenses for any type of activity related to the exploitation and production of hydrocarbons in the Sedimentary Basin of Acre, until the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar) is carried out, as provided for in the Ministry of Mines and Energy's inter-ministerial disposition N° 198/2012, and until free, prior and informed consultation takes place, according to what is prescribed by ILO Convention 169, of the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fine, in the case of non-compliance with the legal order, until it is completely carried out, of 200 thousand reales, in addition to any other applicable legal sanctions.*

*This is an initial decision and it may appealed. The case can be followed on Cruzeiro do Sul, Acre's Federal Justice web page, case number 0001849-35.2015.4.01.3001 --Federal Public Ministry, AC 2015.*

The actions that resulted in judicial process N° 0001849-35.2015.4.01.3001 came about because of the many petitions realized through the initiative of civil society, and indigenous and riverine communities, which were always accompanied by CIMI- The Indigenist Missionary Council, which organized several reunions, seminars and workshops in the region, espe-



cially concerning the fracking technique. The Amazon River basin is considered the biggest fresh water basin in the world. During these reunions, the REDD projects and the misuse of the resources destined to the indigenous peoples, which were diverted by the administration of the Acre government to ONGs and state ministries, were also reported and denounced.

Photo 14



#### 4. Attacks on Constitutional Laws and Regulations

The Brazilian State has been, in a certain sense, taken over by a single political group which treats it as their own private business. This has been happening throughout Brazilian history. The great oligarchies have always commanded and given orders in our country. Numerous attacks on and destitutions of presidents, assassinations of leaders, and all sorts of attacks on laws and regulations have always been the common weapons used by these political oligarchies. Nowadays, we notice a recrudescence by the oligarchies and, consequently, we have new attacks on laws and regulations and, additionally, direct attacks on territories. Their only interest in these territories is to expropriate them in order to increase their power and income in an incredibly high concentration of profits.

In the National Congress, both the Federal Chamber and Senate, there are many proposals to change legislation or to create new laws, their objectives being to make it more difficult to demarcate land belonging to indigenous peoples, quilombas (settlements founded by groups of African descent) and other traditional communities, as well as to open new areas to attacks on fundamental, common, common use, and natural goods. There is a clear attack on the laws and norms that regulate the commercialization, commodification and financialization of these goods, such as the changes made to the Forestry Code. I mention the Forestry Code, among other reasons, since its author in the Federal Senate has been,

precisely, Senator Jorge Viana, from PT de Acre, ex-governor and brother of the ex-senator and current governor of Acre, Tião Viana, who, as mentioned above, is the author of the oil and gas exploitation projects there.

Among all the proposals to modify national legislation which would affect the indigenous peoples, Proposed Constitutional Amendment (PEC) N° 215 is the one that most threatens their territories. It looks to benefit almost all of the interests which go against the rights of the indigenous peoples, opening their territories to both capital and markets. Let us look at some of the main legislative proposals covered in a text published by the Socioenvironmental Institute (ISA):

### *Proposed Constitutional Amendment 65/2012: The End of Environmental Licensing*

PEC 65/2012 simply ends the process of environmental licensing, which is the main instrument provided by the law for controlling and preventing socioenvironmental damage. This PEC stipulates that the mere presentation of an Environmental Impact Study (EIA-Rima) implies its authorization, which then cannot be canceled or suspended. If the project is approved, no profound analysis of the socioenvironmental viability of any activity will be carried out. The affected populations and ecosystems will be left to the mercy and good faith of businessmen. This PEC has reverted to the Constitution and Justice Commission (CCI) of the Senate, which will consider, within a short time, the contrary view of Senator Randolfe Rodrigues (Rede-AP). From there, the PEC will immediately go to plenary session, and if it is approved, will be passed on to the Federal Chamber. It has been included in "Brazil's Agenda", which is a set of Senate President Rene Calheiros's (PMDB-AL) legislative priorities. The author of this PEC is Senator Acir Gurgacz (PDT-RO). In one interview he accepted that the proposal could benefit his family business. In the Federal Supreme Court (STF), Gurgacz is currently part of a case in which he is accused of falsifying documents and is the subject of a public felony accusation, with other suits against him in other judicial instances. ISA has published an editorial about this and has been participating in mobilization against the PEC, along with the Public Federal Ministry (MPF) and other organizations. One can express their opinion of the project on the Senate's website, or sign the Avaaz and Change.org petitions against it.

### *Senate Bill (PLS) 654/2015: Fast-Track Environmental Licensing*

This PLS looks to weaken the process of environmental licensing, reducing by up to eight months the time needed to license major infrastructure projects which the government considers to be strategic: fast-track licensing. This bill has attracted the attention of giant companies who would be contracted, many of which have been recently named in corruption scandals. If the law passes, risk of disasters could increase, like what happened in the Mariana Dam Disaster (MG), and it would be more difficult to prevent and mitigate the socioenvironmental damage caused by them. The proposal does not take into account the need for public audiences and eliminates a series of licensing steps, including the three phase system (initial prior license, installation license and operational license). During the process, if any government organization delays more than the appointed time for reviewing



the license request, the license is automatically approved according to the premise, “he who says nothing agrees”.

The project can be voted on at any moment during the Senate’s plenary sessions. If approved, it will be sent to the Federal Chamber. The bill is proposed by Senator Romero Jucá (PMDB-RR) and Senator Blairo Maggi (PR-MT), the latter of whom is the actual Minister of Agriculture and one of the largest soy producers in the world. Jucá is one of the greatest enemies of indigenous rights, and is the subject of four investigations in the Federal Supreme Court (STF) and two legal actions in the Federal Justice System. He is also mentioned in the Lava Jato and Zelotes Operations. Maggi is the subject of an investigation in the STF, accused of money laundering, and of one legal action in the Federal Justice System for administrative dishonesty. ISA has prepared a manifesto, signed by more than 130 organizations, and a petition, asking to more deeply discuss the issue. These two documents have been very important in the mobilization against this PLS. One can express their opinion of the project on the Senate’s website, sign the petitions in the Public Petitions section and post messages in the Panela de Pressão (Pressure Cooker) section against the proposal.

### *Senate Bill 620/2015: Biodiversity in Danger!*

This PLS has as its objective the authorization of the creation of parks and aquaculture areas on up to 0.5 % of the surface of hydroelectric lakes, reservoirs and dams belonging to the Union. With this pretext, it would weaken or eliminate regulations meant to control the activities carried out in these areas. For example, it permits fishing activity without a license, concession, authorization, or registration with any organization that controls such activity. The proposal opens a path to introducing non-native fish species to the area, one of the major threats to biodiversity as well as fisheries and aquaculture based on native fish. The project can be voted on at any time by the Constitution and Justice Commission of the Senate. If they and other Senate commissions approve it, it will be sent directly to the Federal Chamber, without having to pass through a plenary Senate vote. The proposal is authored by Senator Marcelo Crivella (PRB-RJ), who is a candidate for mayor of Rio and was the Minister of Fisheries during Dilma’s presidency and deals with lots of large companies associated with the sector. ISA has published an article about this topic and has delivered a technical brief against the proposal. One can vote against this PLS on the Senate’s website.

### *Proposed Constitutional Amendment (PEC) 215/2000: The Great Threat to the Rights of the Indigenous Peoples*

This is one of the greatest threats to the rights of the indigenous peoples granted by the Constitution and one of the main goals of ruralists. It pretends to transfer authority for decisions over indigenous lands from the Federal Government to Congress, at the same time opening up these areas to businesses with a high socioenvironmental impact and causing difficulties for the demarcation of their territory. If the bill is approved, new recognitions of indigenous lands will be permanently suspended. The project can be voted on in the Chamber’s plenary sessions. If it is approved, it will be passed on to the Senate. The Rapporteur for the





Chamber's Special Commission is the ruralist Congressman Osmar Serraglio (PMDB-PR), who is allied with Eduardo Cunha (PMDB-RJ). ISA has emitted a technical report concerning the consequences of the PEC's approval and has also released a manifesto against it signed by 48 senators. This organization has actively backed the National Mobilization of the Indigenous Peoples, the main group opposing this PEC. One can sign the Avaaz petition, Public Petition and Ipetition to express opposition to this PEC.

### **Proposed Constitutional Amendment (PEC) 76/2011: Opening Wide the Doors to Indigenous Lands**

The author of this PEC is, again, Senator Blairo Maggi (PR-MT). The proposal intends to open up indigenous lands to the installation of hydroelectric power plants, which are projects with a high potential for destroying the environment and the indigenous peoples' traditional ways of life. It is awaiting a vote on the Senate floor. If approved, it will be sent on to the Chamber. Together with indigenous leaders, ISA denounced the project at the Paris Climate Conference (COP-21) in December 2015, one of the largest events focused on the environment in all of human history. One can vote against the proposal on the Senate's website.

### **Legislative Bills 1216 and 1218/2015: More Delays and Difficulties for Land Demarcation**

In practice, this bill intends to make the demarcation of indigenous territory more difficult, for example, imposing the "temporary framework" to prove the right to territory. If approved, the only territories recognized would be the ones occupied by indigenous peoples at the time of the enactment of the Federal Constitution on October 5, 1988. These bills are being examined in the Constitution and Justice Commission of the Chamber; from there it would go to a floor vote. If approved, they will be sent to the Senate. The author of PL1216, is the ruralist Congressman Covatti Filho (PP-RS). These bills are financed by agroindustrial companies.

### **Legislative Bill (PL) 1610/1996: No Mining in Indigenous Lands!**

This is another bill authored by Senator Romero Jucá (PMDB-RR). Its objective is to allow mining in indigenous lands. The proposal threatens both the indigenous peoples and the environment, since mining is an activity with great socio-environmental impact. The indigenous communities have not been consulted regarding the proposal, which goes against ILO Convention 169, which Brazil has signed. The Rapporteur of the Special Commission analyzing the bill in the Chamber is Congressman Édio Lopes (PMDB-RR). He has been accused of malfeasance in a case before the STF and has received donations for his campaign from Vale Mining Company and other contractors involved in the Lava Jato Operation. If the bill is approved by the Special Commission, the PL will go to plenary session. For many years, ISA has been following the project's progress and petitions for investigations as well as registering and covering indigenous lands in order to call attention to the threat they are suffering.

### **New Mining Code (PL 37/2011): Mining: Who Is Interested?**

It pretends to simplify the procedures necessary to carry out mining activities, which generally have large socioenvironmental impacts. It involves very little environmental, social and



occupational safeguarding measures for the areas and populations affected. The proposal is of interest to large mining companies since it weakens the power of the state government to regulate public sector access to the natural resources. The current author of the project, Congressman Laudívio Carvalho (SD-MG), is finishing a new proposal, but we still do not know which text will be voted on nor in which instance (commission or plenary session), or when it might be passed. Vale Mining Company is among the donors to the Congressman's campaign. Carvalho was also the author of a bill defended by the weapons industry that looked to legalize free access to guns. ISA was one of the actors who filed a complaint presented to the Chamber's Ethics Council and the STF concerning the bill's previous author, Congressman Leonardo Quintão (PMDB-MG) who is accused of defending the interests of those who financed his campaign. ISA has also participated in the Committee to Defend the Territories Against Mining, which is a group of various social movements and civil society organizations opposed to the project. There is a petition one can sign against the New Mining Code.

### **Chamber Bill (PL) 34/2015 (Previously PL 4.148/2008): Is It Transgenic? We Need to Know!**

The project ends the obligation to include the symbol "T" on packages which contain transgenic products. The proposal was approved by the Chamber but then rejected by the Science and Technology Commission of the Senate, all of this after ISA and allied organizations publicly expressed their opinion against the bill in a public audience. The proposal could be voted on at any moment in the Agricultural Commission of the Senate; after this, it would pass to the Social and Environmental Commissions. The PL's author, Congressman Luís Carlos Heinze (PP-RS), is one of the most radical ruralist parliamentarians and one of the Chamber's main authors of projects that hurt indigenous peoples and the environment. In 2013, in a speech, Vicente Dutra (RS) said that "Quilombos, Indians, gays, [and] lesbians" are "everything that is no good". He is in the center of the investigation of the Lava Jato Operation by the STF. Large agroindustrial companies and the Queiroz Galvão Contracting Company, also involved in the Lava Jato Operation, are amongst his campaign donors --ISA, *Congress Approves It; And the Threats to Socioenvironmental Rights Persist*, 2017.

As can be seen, there are various proposals to modify national legislation with the goal of strengthening certain business sectors, such as the agroindustrial and mining sectors, which would harm peoples historically conquered rights. No guarantees or safeguards for the affected communities and peoples are mentioned; human and socioenvironmental rights are left on the back burner.

There are also bills and even already approved laws in the State of Acre which have as their precise goal to facilitate access to economic resources in the territories in order to continue with the exploitation, commodification and financialization of nature and common goods. A clear example of this is Law 2308, known as the SISA Law (Acre, 2010). It creates **"The State System of Incentives for Environmental Services - SISA, the Incentives Program for Environmental Services - ISA Carbon, and other Environmental Services and Ecosystemic Products Programs within the State of Acre and associated areas."**





*Art. 1º The State System of Incentives for Environmental Services – SISA is created with the objective of encouraging the preservation and increasing the supply of the following eco systemic products and services:*

- I. The sequestration, conservation, maintaining, increase in inventory and reduction of carbon flow;*
- II. The conservation of natural scenic beauty;*
- III. The conservation of sociobiodiversity;*
- IV. The conservation of water and hydric services;*
- V. Climate regulation;*
- VI. The valuing of culture and traditional ecosystemic knowledge; and*
- VII. The conservation and improvement of the soil –Government of Acre, Law 2308/2010.*

The curious thing about this type of initiative is that, since a free, prior and informed consultation process never took place, Acre´s government has charged third parties with analyzing these questions, relying on their reports, even though these groups do not have points of view that are even close to those of the local communities, and whose involvement is derived from agreements that have never been adequately clarified. For example, in SISA´s case, Acre´s government has acted and continues to act in perfect harmony, under the guidance of, and in partnership with the following institutions: WWF – EMBRAPA – GIZ – GCF – FOREST TRENDS – CTA – SOS AMAZÔNIA – GCP – CPI – GTA – UFAC – IPAM – EII.<sup>41</sup> All of these institutions are interested, in a way, in environmental issues and are motivated to carry out their work by receiving, in some cases, large quantities of money to realize activities that encourage, orient and spread initiatives that may seem, at first glance, to be “sustainable,” but which are really false solutions to socioenvironmental problems, and at the same time, favor the process of commodifying and financializing common goods and nature as a whole.

The law (2308/210) that created the SISA is undoubtedly unconstitutional, since it looks to legislate concerning issues and territories that are the exclusive purview of the Union, such as indigenous lands and national parks. The text of the law makes it clear that SISA is responsible, for example, for regulating carbon capture, as well as carbon flow. This, however, is the Union´s exclusive concern, even though it does not yet have a completely developed legislation concerning the issue. The text also mentions that the “conservation of the scenic beauty” means that SISA will act to protect (or not) the areas that they consider to be part of the state´s scenic beauty, including in national preservation areas, national parks, and even indigenous territories.

Section VI of the Law reveals more explicitly the interventionist intentions of Acre´s state government: the section referring to the “valuing of culture and traditional ecosystemic

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41 These abbreviations are explained in the index at the end of this section.



knowledge”. Here we see, very clearly, the focus on indigenous territories and their cultures and traditions. Now, as has been mentioned before, actions regarding these territories are the exclusive competence of the Federal Government through FUNAI – the National Foundation for Indigenous Peoples, and the goods present in these territories are the exclusive usufruct of these communities.

There are several proposals and even institutional laws currently in full force in Brazil that affect, restrict, and reduce access to peoples’ conquered rights. In Law 2308 there is a paragraph which describes Acre’s state government’s competencies as follows:

*Sole paragraph. The state public authority has the competence for managing, planning, carrying out, implementing, monitoring, and evaluating actions and creating regulations that have as their goal the environmental protection of forests, hunting, fishing, fauna, the conservation of nature, the defense of the soil and natural resources, pollution control, and, thus, the reduction of greenhouse gas emissions affected by deforestation and forest degradation, the accumulation of forest carbon by the State and the provision and conservation of other environmental ecosystemic products (...). – Government of Acre, 2010.*

*Based on these laws and proposals, the State of Acre specifically, and the government of Brazil, in general, have launched and are carrying out a process to dismantle, to an extent never before thought of, the legislation that protects and gives legal guarantees to individual, collective and socioenvironmental rights.*

Photo 15: REPAM hearing at IAHRRC, 2017.



Source: IAHRRC Communication Service.

### III. Conclusions and Proposals:

The situation of indigenous peoples' territories in Acre and the Southern Amazon, which lack demarcation, and have been invaded and expropriated, is directly connected to what we call "The Green Economy," oil and gas exploitation, and the human rights violations that result from these. Changing this reality requires, necessarily, a group of processes and initiatives to impact governments, organized by people within the State of Acre, Brazilians in general, people from other countries, people and organizations from civil society, and people and organizations that defend human rights.

It is a priority to protest and to prevent this approaching tragedy, which often comes disguised as "sustainability", and the protection of common goods and the peoples that depend on them. The concentration of income and profits is a grave threat to the planet, and, in a specific way, to the ancestral peoples who depend most directly upon these natural resources. When we defend these territories, we are also defending the lives of these peoples and life on this planet. We have as our purpose to add ourselves to so many of those who fight against these problems, in a great network that will strengthen this fight and at the same time open up spaces to criticize this development model based on profit at any cost, and to construct another world where rights are respected and life is preserved.

We refer here to the content of the open letter, published in October, 2016, in which the indigenous and riverine peoples, traditional communities, and organizations address society at large and governmental authorities demanding judicial and legislative pronouncement on these matters:

WE, the indigenous native peoples (Apolima-Arara; Arara; Apurinã; Arara do Bagé; Jaminawa-Arara; Kaxinawá; Katukina; Nukini; Nawa; Shanenawa; Yawanawá) and traditional communities (settlers and extractivists), women and men, people worried about the common good and conscious of our responsibilities (CIMI; Diocese of Cruzeiro do Sul; CPT- Children's Ministry; Diocesan Cáritas; Catechetical Ministry; COMIDI, University Professors and Legal Assessors of the Diocese), having gathered together from October 5 to 7, 2016, for a seminar with the following theme: "Commodification of Nature: Threats to Territorial Usufruct and Human Rights", have decided to express ourselves through this instrument, an open letter, concerning the problems that mortify us, and to demand answers to our problems from authorities and adequate public policies that meet our needs.



Photo 16



We will not allow other people to force us to accept the execution of projects nor that these projects be presented by groups who say that they represent us when they do not, rather belonging to government or non-governmental organizations, or even just as individuals. Among these projects, we highlight the REDD projects, forest management projects, petroleum and gas exploitation projects, especially using fracking, and also so-called infrastructure projects, like the construction of roads and railways, all carried out without the free, prior and informed consultation of our communities.

We repudiate the lack of respect and the idea of reducing our rights as a way to survive, as well as the attacks on our culture and customs, through the criminalization (for example) of our ways of managing the environment, crops, hunting, fishing, etc. We have been violently attacked, criminalized and penalized, sentenced with unpayable fines that at the same time, are of an unjust origin, since they act against our only form of survival. Even more serious is the fact that the state government has participated in punishing us in the name of private interests.

We assume our responsibilities as we have always done, but we affirm that the attacks on nature, on our common home, are caused by big industry and the central capitalist and developmental sectors based on unrestrained

consumption, the concentration of wealth and the distribution of poverty. Some projects that are presented as sustainable are really a farce and false solutions that end up sanctioning and criminalizing our communities, while transferring the usufruct from natural resources to private and even international companies.

We demand that a detailed investigation be carried out concerning the use of the resources that have been assigned to our communities, of which we were not even aware of nor had any access to. Therefore, we have decided to engage the Public Ministry so they may act in our favor and take the necessary measures.

The right to free, prior and informed consultation, besides being ignored in general in Brazil, is particularly unobserved in the State of Acre, which is especially worrying, since many projects implemented by these groups are being publicized as sustainable, while, in reality, they are no more than new, sophisticated ways of expropriating, exploiting and plundering territory.

## VI. Abbreviations

- BID** – Banco Interamericano de Desarrollo/Inter-American Development Bank (IADB or IDB)
- CF** – Constitución Federal/Federal Constitution
- CIMI** – Consejo Indigenista Misionero/Indigenist Missionary Council
- CNS** – Consejo Nacional de Caucheros/National Board of Rubber Tappers
- CPI** – Comisión Pro-Indio de Acre/Acre Pro-Indigenous Commission
- CPT** – Comisión Pastoral de la Tierra/Pastoral Land Commission
- CTA** – Centro de Trabajadores de la Amazonía/Amazon Workers' Center
- DHESCA** – Derechos Humanos, Económicos, Sociales, Culturales y Ambientales/Human, Economic, Social, Cultural and Environmental Rights
- EMBRAPA** – Empresa Brasileña de Investigación Agropecuaria/Brazilian Agriculture and Aquaculture Research Company
- EII** – Earth Innovation Institute
- FUNAI** – (Fundación Nacional del Indio)/National Foundation for Indigenous Peoples
- GFC** – Fuerza-Tarea de los Gobernadores para el Clima y Bosques/Governors' Working Group for the Climate and Forests
- GIZ** – Agencia Alemana de Cooperación Internacional/German Agency for International Cooperation
- GTA** – Grupo De Trabajo Amazónico/Amazon Working Group
- IBAMA** – Instituto Brasileño del Medioambiente y de los Recursos Naturales Renovables/Brazilian Institute of the Environment and Renewable Natural Resources
- IPAM** – Instituto de Investigación Ambiental de la Amazonía/Amazonian Environmental Research Institute.
- UFAC** – Universidad Federal de Acre/Federal University of Acre







## I. Introduction:

## 1. Ancestral Territory

## Map 8



*The “Isiboro Sécore National Park and Indigenous Territory” TIPNIS, together with the “Tsiman Forest Area” make up a single territory, an indigenous ancestral territory. Many years ago, it was even larger, but especially on the northern side, the plain (pampa) ecosystem has been taken over, little by little, by economic interests attracted to the potential it offers for livestock raising activities”.<sup>43</sup>*

The ancestral nature of this territory is questioned whenever the government tries to implement extractivist or infrastructure-based economic measures (among others), denying the historical, cultural and spiritual milestones of the indigenous peoples who inhabit this territory.

## 1.2. General Data

TIPNIS is located in the Beni and Cochabamba Departments and includes Ballivian Moxos, Marban, and Ayoropa Chapare Provinces. It has an Executive Land Title (TCO-NAL-000229),<sup>44</sup> in which Subcentral TIPNIS is recognized as the only collective owner of the territory, which has a total surface area of 1,236,296 hectares.

It is a protected area of Bolivia that was declared a National Park in Supreme Decree Nº 7401 on November 22, 1965 and declared an Indigenous Territory and National Park through Supreme Decree Nº 22610 on September 24, 1990. This second declaration was a consequence of the March for Territory and Dignity that started August 16, 1990 in the city of Trinidad, in which more than 300 men and women left the area and headed for the capital to seek recognition for their territory since it was being invaded by loggers. The government has never managed or looked after the area; the forests have been regulated by the water drainage into the plains and at the same time regulate the climate in the nearby, highly productive valleys. Additionally, large wetland, swamp and marsh areas play an important role in the hydrological functioning of the region.

The Moxeño-Trinitario, Yuracare and Tsimanin indigenous peoples have inhabited the area long before the Spanish colonization took place. According to studies, some isolated indigenous peoples may live there, among them Yuracares and Yuquis. Tsimanin communities living in voluntary isolation have been confirmed.

There are 64 Tsimanin, Yuracare and Moxeño-Trinitario communities that ancestrally own and inhabit the Isiboro Sécore National Park and Indigenous Territory.<sup>45</sup>

43 Revista Cuarto Intermedio Nº117. <http://fundacionxaveralbo.org.bo/libreria/cuarto-intermedio-n-117>

44 TCO, Ancestral Communal Land. According to Law 1715 “INRA Law = National Institute of Agrarian Reform”, passed in 1996 and modified by the Community Renewal Law, there are three ways to title land. One of these, known as SAN-TCO, is based on collective property and the ancestral nature of the territory.

45 The following map shows TIPNIS, which covers parts of both Beni and Cochabamba Departments.





Map 9



At the moment the communities are distributed within the following zones:

**SÉCURE RIVER ZONE:** Asunta, Usve, Oromomo, Areruta, La Curva, Santo Domingo, San José, Puerto Totorá, Cachuela, Villa Hermosa, La Capital, Santa Rosa del Sécure, Nueva Natividad, Tres de Mayo, Puerto San Lorenzo, Nueva Lacea, Villa Fátima, Coquinal, San Bernardo, San Vicente, Santa Lucía, San Bartolomé de Chiripopo, Nueva Galilea, Paraíso and Santa María de la Junta.

**ISIBORO RIVER ZONE:** Gundonovia, Nueva Vida, San Pablo, Loma Alta, Santa Clara, Villa Nueva, Altagracia, Limoncito, Bella Fátima de Las Pampitas, Nueva Esperanza, Santa Rosa, Santa Teresa, San Miguelito, San Andita, San Benito, Villa San Juan Nuevo, Santa Rosita, Limo, Puerto Patio, Santo Domingo, Zezerzama, Santa Anita y San Juan de Dios, Santísima Trinidad and San José de Patrocinio.

**CENTRAL ZONE:** Trinidacito, Dulce Nombre, San Antonio de Imose, Providencia de Chimimita, Monte Cristo, Concepción de Ichoa, San Ramoncito, Puerto Beni, Santiago, Buen Pastor, Puerto Pancho, San Jorgito, El Carmen, Tres de Mayo Río Ichoa, San Antonio Moleto, San José de la Angostura, Fátima de Moleto, Mercedes Lojojota and Santa Anita.

We make special reference to the communities that are surrounded by settlers or farmers: Santísima Trinidad, which has 190 families; Fátima de Moleto, with 10 families; Isarsama, with 5 families; José de Moleto, with 35 families; Limoncito del Isiboro; San Antonio de Moleto, with 15 families; Santa Anita with 5 families; and Puerto Patiño, which no longer exists. These communities use the organizational system brought by the settlers since they are in Polygon 7 (a colonization zone).

Photo 17



### *1.3. Socioeconomic Situation*

Access to TIPNIS is by land: from Trinidad via San Ignacio de Mojos, San Lorenzo, and Santo Domingo along the Sécore River. There is water access to the communities of Trinidad, Río Memoré, and Isiboro and air access to communities with a landing strip like Asunta, Oromomo, Puerto San Lorenzo, Centro de Gestión and Santísima Trinidad. There is land access from Cochabamba or Santa Cruz via Villa Tunari passing through the Chipiriri, Eterasama, Samusabete, Isinuta, Puerto Patiño, and Santísima Trinidad communities.

The communities are located far away from one another. To get to the highway that the government plans to build, people would have to transport their products from their homes to these communities and then, either by land or river, transport them up to the highway, whether the destination be Beni or Cochabamba.



With regards to education, the area has 46 sectional schools distributed within 6 districts: 5 in Gundonovia District, 7 in Santos Noco, 6 in Oromomo, 10 in San Miguel del Isiboro, 7 in Pedro Ignacio Muiba, and 11 in Cipriano Barace, with 5 schools outside of these district limits.

The population, according to the 1994 TIPNIS Census, consists of 4,563 people, divided as follows: Mojeños 68 %, Yuracare 26 %, and Chimanes 4%. However, there are also settlers established within the territory's red line (150 Km.), divided into 47 peasant labor unions and 4,000 families (about 7,000 people according to information from the National Institute of Agricultural Reform based on pending eviction processes). There are also 15,000 settlers in the buffer area to the south of TIPNIS.

This enormous population difference brings with it a high degree of vulnerability in terms of losing territory to the constant advance of new settlements.

TIPNIS' social organizations are:

- The Subcentral Government of the Isiboro Sécure National Park and Indigenous Territory – TIPNIS;
- The Central Government of the Mojeños Ethnic Peoples of Beni (CPEM-B);
- The Southern Indigenous Nationalities Council (CONISUR); and
- The Subcentral Government of TIPNIS' Indigenous Women.

With regards to healthcare, there are no hospitals in the territory. Although there are some sanitary stations and health centers, there is no medicine (just acetaminophen, and even that is difficult to come by sometimes). Even worse, there are no permanent or periodically scheduled health personnel present at these centers. There is also the KATHERY Center, which is administered by the Vicentine Sisters as a social service of the Catholic Church; it contributes with medium-level technical training to form professionals specialized in Agriculture and Veterinary Science.

## *1.4 The Present Situation in TIPNIS*

Describing TIPNIS's situation is difficult due to the complex political, economic and social conditions. Even so, the following aspects stand out:

a.- The current situation of the indigenous movement is worrisome because of the **division occurring between and among indigenous organizations**. This is a result of political intervention by the ruling government which has led to leadership instability and the permanent threat of these organizations falling apart.

At the same time, according to information provided by the communities, the geographical location of the new highway would benefit and strengthen illegal coca farming and encourage the formation of more peasant labor unions.

Taking into account that the indigenous peoples are surrounded by farming communities, other consequences of the new highway would be "violence between communities,



colonization, indiscriminate exploitation of natural resources, school dropout, an increase in drug trafficking and an increase in indigenous woman trafficking”<sup>46,47</sup>

Map 10



a.-**Intangibility Law Nº 266** will make it possible to expand coca production beyond the area marked off by the red line, into the heart of TIPNIS territory. Even now, settlers and third parties (individual homeowners) try to claim the territory despite its title of collective ownership; according to testimonies by local people, coca farmers are already selling land along the proposed highway's route.

b.-**The expansion of coca cultivation**, which means the destruction of the forest and, after a few years, the depletion of the soil due to its intensive use and the agrochemicals used on it (later on these lands will no longer be productive), as well as constant attempts by settlers to trespass on, claim and inhabit native communal lands.

c.-The destruction of the forest has various environmental consequences. It is assumed that it will affect the area's ability to retain rain water (a function carried out by the forests and wetlands or *Yomomales*), which is part of its function in regulating hydrological flow. Thus, floods will be worse in the rainy season with less water in dry seasons, increasing the

46 Interview of one of Subcentral TIPNIS's experts

47 The following map shows TIPNIS using satellite imagery. The polygon outlined in yellow is TIPNIS and the red area shows where colonizers have invaded TIPNIS in order to cultivate coca.





chances of fire. This will also affect the availability of water in rivers and for fish, which will also be threatened by the contamination caused by pesticide use.

In summary, megaprojects such as the construction of the highway in the middle of TIPNIS could affect the hydrological system in the region and worsen flooding. At the same time, we believe that the highway will make it easier for settlers, coca growers, loggers, hunters and other predatory agents to enter the area, affecting the natural resource base and way of life of the indigenous communities.

Having a road between Trinidad and Santa Cruz will not benefit TIPNIS, but rather those who live along the highway, especially settlers and coca growers.

The intensive use of the soil for coca cultivation in the southern part of TIPNIS has resulted in an accelerated depletion of the soil in this territory. Coca cultivation has caused loss of the land's natural nutrients and soil degradation and erosion, with very little possibility of recuperation. The indigenous peoples understand territory as a space for free use, which presents a problem of conflicting ethnic logics which has faced them for many years: On the one side are coca growers who understand the land in a parcelized fashion and on the other side are the Amazonian indigenous people who act as conservers of their territory and their customs (hunting and fishing).

### *1.5. Possible Effects of Law 969:*

This law declares that TIPNIS is no longer "intangible" territory, that is, that it is no longer protected. Among its possible negative effects are:

- The water supply is at risk, as a consequence of the deforestation of the Isiboro Sécure Forest
- Coca field expansion

This law is clearly a flagrant violation of the Political Constitution of the State with regards to its program to protect biodiversity, and of protections of indigenous territories and their right to prior consultation (International Labor Organization Convention 169); it also violates international treaties and international human right conventions.

Photo 18



## II. Resistance process:

### 1. The Eighth March:

Since the “First Indigenous March for Territory and Dignity” in 1990, which achieved the recognition of this territory via Supreme Decree, there have followed 20 years of constant resistance and struggle for rights; one milestone that especially marks the resistance process is the 2011 march, called the “Eighth March,” that started on August 15 and arrived at Plaza Murillo on October 19, 2011. 1,600 people participated in 65 days of marching.

These people were, as they had been for many years, brutally attacked by the National Police; they were hit, had their hands tied, were persecuted, kidnapped and relocated against their will. Mothers and fathers were separated from their children; others escaped into the forest and evaded capture. The courage of the San Borja and Rurrenabaque communities permitted the rescue of those kidnapped, preventing a plane from landing to take the indigenous people to unknown destinations, and scaring away the policemen that were guarding the people who had participated in the march.

### *What Occurred in Those Days*

There was verbal intimidation at all times, the discrediting of indigenous representatives, confrontation in San Ignacio de Moxos, some indigenous moxeño officers were given money to back the opposite side. On September 19, police officers and settlers prohibit marchers from accessing food and water for 6 days. On September 20, 20 women belonging to the Nacional Council of Ayllus and Markas del Qollasuyo (CONAMAQ), along with women from the Confederation of Indigenous Peoples of Bolivia (CIDOB) and the National Confederation of Indigenous Women of Bolivia (CNAMIB), started a vigil in San Francisco that lasted 35 days, withstanding constant chauvinist harassment and the permanent threat of police intervention. Vigils also took place in Santa Cruz, Cochabamba and Sucre.

On September 25, there was a BRUTAL repression in Chaparina. All of the people of Bolivia sympathized; vigils and protests multiply.

On September 28, an overwhelming national strike was called by the Bolivian Workers' Union (COB) and some other groups in support of the Isiboro Sécure National Park and Indigenous Territory.

Eight attempts at dialogue failed. The March's committee only demanded that the government carry out its own policies for change and that old development schemes not be permitted to overrun and squash the indigenous territories.

President Evo Morales tried several times to negotiate, starting a public consultation process in Oromomo and Santo Domingo, but disregarding all territorial representation. He was also present in the northern part of Cochabamba, carrying out consultations, putting the finishing touches on government projects and participating in 6 assemblies with federations from the tropical region.





A complaint was filed through the initiative of the Have No Fear Political Movement (MSM) regarding contract irregularities and the government's human rights violations during the march. Allegations have also been brought by the Public Defender's Office and Bolivia's Permanent Human Rights Assembly.

### *The March's Achievements*

The greatest achievement of the March was the enactment of Short Law 180, which prohibits the construction of the highway and ratifies the rights of the indigenous peoples. Passed on October 24, 2011, this law protects and recognizes the existence of the TIPNIS area, declaring it a natural and sociocultural patrimony, an ecological preservation and historical reproduction area, and the habitat of the Chiman, Yuracaré a Mojeño-Trinitario Peoples.

Thus the reasons for its protection and conservation being a primordial interest of the Bolivian State. It declared that the Villa Tunari - San Ignacio de Moxos highway would not pass through TIPNIS, and prohibited human settlement and land occupation by outsiders, declaring these activities as illegal with possible eviction by public forces should it be necessary (Arts. 3 and 5 of Law 180).

Additional regulations associated with the law (D.S. Nº 1146; February 24, 2012) were approved on October 24, 2011, almost 4 months later. Agreements were signed on the record to attend to the 16 demands contained in the "platform of struggle" established by the indigenous and traditional peoples related to the existence of indigenous peoples and the protection of the rights of all Bolivians and Mother Earth (including the protected natural areas).

## **2. The Ninth Native March:**

The new march asks the government to implement:

- The complete carrying out and enforcement of Law 180;
- Respect for participation and social control in the designing, construction, execution and monitoring of the regulations and public policies of the Plurinational State;
- That these be realized in coordination and consensus with the indigenous and ancestral peoples and nations, respecting their governing structures, as well as with other social groups from civil society;
- That the government demonstrate its commitment to construct legal regulations and public policies with full and effective participation;
- A National Agenda to adjust/redirect the process of constructing and implementing the Plurinational Communitarian State;
- The removal of settlements and illegal territorial occupation, as well as illegal coca plantations inside TIPNIS, to be carried out in coordination with the CPEMB, Subcen-



tral TIPNIS, and CIDOB,<sup>48</sup> with the appropriate follow-up measures, since the government should be working to eliminate illegal coca cultivation and territorial occupation without the need to be constantly denouncing it; and

- The immediate removal of the military ships of the Bolivian Armed Forces and the servicemen and military officials in charge of carrying out consultations in TIPNIS.

### 3. Current Actions of Resistance

After the passing of Law 969, which ended TIPNIS' designation as a protected area, and in spite of the Subcentral Indigenous Government's efforts to resist them, the following negative events have occurred:

1) The election of a new board of directors for the Bolivian Confederation of Indigenous Peoples (CIDOB), which occurred in response to the complaints expressed by the indigenous resistance. This board of directors is supported by the government through the distribution of economic resources to regional leaders, such as **"paying their bus tickets for them"**<sup>49</sup>

2) Subsequently, two different meetings of TIPNIS' indigenous leaders were convoked. The first was organized by the CIDOB, whose leaders were recently elected. Bolivia's president participated, and apparently, the majority of TIPNIS' indigenous leaders also took part. The other one was convoked by the Subcentral Indigenous Government of TIPNIS itself. It was realized with the presence of the Permanent Human Rights Assembly and civil society groups. During this second encounter, a series of events took place<sup>50</sup> which threatened the security of the indigenous leaders who participated at the Subcentral Government's Management Center, as is evidenced in the following testimonies:

*"On the way [to the center], police stopped small carts carrying food, tools and fuel; words were exchanged between naval officers and community members at the port's management center. There were scuffles and screams that prevented a naval convoy from coming ashore. The people came out and stopped them. More scuffles and shouting, fighting on the beach. The military left and the people returned to their meeting. On the way home there weren't any problems, although we were afraid of the reprisals that the government could take against us."*<sup>51</sup>

After the meeting at the management center, many leaders lived tense moments, fearing for their lives, declaring themselves to be in hiding, as was testified to by many; the intervention of the president of the Permanent Human Rights Assembly was necessary to restore calm.<sup>52</sup>

48 CPMB= Central Government of the Indigenous Peoples of Beni; TIPNIS= Isiboro Sécure National Park and Indigenous Territory; CIDOB= Confederation of the Indigenous Peoples of Bolivia.

49 <https://www.pressreader.com/bolivia/el-deber/20170822/281779924245883>

50 <http://www.ftierra.org/index.php/publicacion/boletines/171-boletin-trimestral-doce-n-12-tipnis-bajo-asedio>

51 <http://www.lostiempos.com/actualidad/economia/20170829/video-captura-tenso-momento-botes-oficialistas-e-indigenas-del-tipnis>

52 <http://www.lostiempos.com/actualidad/nacional/20170829/derechos-humanos-asegura-que-no-hay-indigenas-ni-activistas-detenido>



*"We make known that, at the beginning of this year (2018), a group of the board of directors, headed by the president of the Subcentral Government of TIPNIS' Indigenous Women, traveled to some of the TIPNIS communities to inform them about the activities being carried out and to find out how they could strengthen the resistance of their fight to defend their territory".*

In spite of a series of denunciatory actions taken by TIPNIS' native peoples, primarily the ones affected by the highway project that crosses the territory, they have manifested in distinct media, as well as in meetings held with the Indigenous Ministry and the Pan-Amazonian Ecclesial Network in Bolivia, that ***"although the government of Bolivia has approved laws in favor of Mother Earth and the president and vice-president show themselves as defenders of the indigenous communities in their speeches, the reality is different since they are violating our rights, because they don't respect our organizations, and in various ways they threaten the leaders who defend [our rights]"***<sup>53</sup>

Other actions taken include sending a leadership delegation from the indigenous peoples' organizations, from Subcentral TIPNIS, to present their case at the 23<sup>rd</sup> UN Climate Change Conference of the Parties (COP23) in Bonn, Germany and also to the International Rights of Nature Tribunal<sup>54</sup> to denounce the threats they face due to the Bolivian government's intention to build a highway through the middle of the forest.<sup>55</sup>

Along these lines, during the Coordinator for the Defense of Indigenous Territories' meeting, held February 24-25, 2018 in Santa Cruz, it was made known that the leadership delegation had presented a complaint to the International Rights of Nature Ethics Tribunal, which had been accepted for investigation, announcing the arrival of the Tribunal's Investigation and Observation Commission to Bolivia in August 2018.

## 4. Testimonies of the TIPNIS Indigenous Peoples

### *Mega Projects: Interviews with officials and an ex-leader:*

An ex-leader talks about the central government's megaprojects:

**Lizards:** Lizard hunting is taking place, but "it does not benefit the indigenous people, they do not pay well for the lizard skins, it's a personal business that only benefits the person who negotiates for the pelts. It's actually harming the territory because, with time, the lizards are going to be exterminated".

**Chocolates:** It only benefits a few families that have grouped together; it's

53 Positions expressed by representatives of the TIPNIS in meetings with the indigenous Pastoral and REPAM January 2018. Report of the International Commission of Nature Rights Observers. Report published on January 16, 2019. Content in: National Coordinator of Defense of the Territories, The Tipnis Case and the Rights of Mother Earth, 2019

54 [http://www.eldiario.net/noticias/2017/2017\\_11/nt171109/principal.php?n=90&demanda-por-tipnis-llego-a-bon-n](http://www.eldiario.net/noticias/2017/2017_11/nt171109/principal.php?n=90&demanda-por-tipnis-llego-a-bon-n)

55 <http://cambioclimatico.org.bo/website/index.php/example-pages/391-2017-11-08-23-44-24>

only once a year and the money earned is only just enough to survive.

**Power lines:** Right now, there are only the generators and the power lines. They worked when government officials inaugurated the project, but they don't work any longer because there is no fuel, the engines are deteriorating, no maintenance is being done, and the community members, we don't know how to operate the generators because we were never given any instruction on how to use them, and when they give them out they only give them to people who belong to their political party and they don't inform the rest of us about anything.

**My Water:** It doesn't work. The only benefit is that of the water tanks where we can collect rain water.

**Schools:** The community members of Sécure, Ichoa don't receive any benefit from the government mega-projects. Before we also had a school, parents were interested in their children learning how to read and write and when their sons grew up they looked for a wife for them, and husbands for the girls, the people were more honest, they lived a quiet life. As a Trinitaria-Yuracare he also indicates that in their community they collected maggots, they grilled them and ate them, they also ate Andean yam bean and other such foods.

**Health:** There were people that cured with home remedies, natural healers that cured the sick and when things were more serious they took them to the health stations or to the city to get medical attention in a hospital.

**The highway:** According to an interview with Matilde Noza, she mentioned that they gave them generators and they made them sign blank papers telling them that they were the receipts for electricity bills, however they were lying, because supposedly they were actually consenting to/indicating that they wanted the highway to pass through the middle of TIPNIS. She sees no benefit from the highway because her community is along the Isiboro River and it is approximately five days journey from the highway to the community; such a highway will only benefit the communities that are near the road to Cochabamba Buen Pastor, Santísima Trinidad; the highway they had asked the previous government authority for had a different route, and according to her, was one that did not divide the TIPNIS in half and that would have benefited various communities.

**Threat:** She says she is scared of the highway, scared that the same thing will happen to them that happened to the Ayoreos, that they would become seasonal wage laborers, because in Polygon 7 settlers continue taking over indigenous territory. She says that the highway is not progress, it is rather misfortune for the indigenous families.



TIPNIS' vice president:

She refers to the March: She tells us that she participated in the March because it is necessary to protect the territory for her and their children and grandchildren, besides they would not have a place to plant rice or bananas and would not have anything to eat; that would affect the 64 communities of her ethnic group. Preoccupied, she has seen that Bolivians support the indigenous people only up to a point; they are afraid of government retaliation. As a consequence of the gas thrown at the marchers there are some indigenous people who are sick, who are beaten up, some have tumors, nightmares, they do not see justice, but despite everything, she will continue fighting.

Another leader comments

"She says that thanks to the March they achieved the protection of their territory as provided for in Law 180, but today with Law 969 this protection has disappeared and the construction of the highway through the middle of TIPNIS continues, especially on the settlers' side of the territory".

*An ex-leader also mentioned that Law 969 is a violation of the UN Declaration on the Rights of Indigenous peoples.*

### III. Human Rights Threatened According to the Current Legal and Regulatory Framework

**With regards to the native indigenous farming peoples that dwell in the area:**

- a. The collective right to an authentic, prior, good faith, free and informed consultation (Art. 30, Num. 15 and Article 403 of the Political Constitution of the State; Art. 6 of ILO Convention 169; Article 19 of the UN Declaration on the Rights of Indigenous Peoples).**

The national government had already decided to build the Villa Tunari – San Ignacio de Moxos Highway, with its three sections, through the Isiboro Sécure National Park and Indigenous Territory (TIPNIS), before carrying out the consultation process for Law 222. It asked for a loan from Brazil, approved the loan via Law 005 on April 7, 2010, and approved the budget for the project in the corresponding financial law. It signed a public works contract for the highway's construction, through the Bolivian Road Authority (ABC) with OAS Ltda. Construction Company, of Brazil.

With this in mind, it is irrelevant that physical construction has not yet begun on section two (2) of the highway, because a prior and good faith consultation process is not a right and prerequisite for the physical construction of public works but is rather a right and prerequisite for the approval of the legal and administrative decisions that allow such construction.



The national government not only adopted legislative and administrative decisions to construct the highway without previously carrying out the required consultation, it also, without any prior consultation, executed Law N° 222 by signing a contract with OAS. It is unthinkable that a contract with these characteristics, with a million dollar loan and such a high cost, could exist if the construction firm, before signing the contract, did not have absolute certainty regarding the final route and design for the highway's three sections. The route for the first two sections and their relationship to TIPNIS constitute corroborating evidence for this affirmation.

Thus, the consultation for Law N° 222 was not prior put posterior, is not in good faith but rather in bad faith, is not free but rather manipulated by a national government that from the beginning has not assumed a neutral role concerning this issue, and is not informed but rather corrupted by a type of commercial publicity that the national government has run placing spots during various television stations' programming. Thus, the right to prior, authentic, in good faith, free and informed consultation, which belongs collectively to the owners of the Isiboro Sécure National Park and Indigenous Territory, was violated, along with the national and international norms which recognize, as in Article 30, Num. 15 and Article 403 of the Political Constitution of the State, Article 6 of ILO Convention 169, and Article 19 of the UN Declaration on the Rights of Indigenous Peoples, ratified in Bolivia through Law N° 3760 on November 7, 2007.

**b. The collective rights to free self-determination and territory, to the protection of sacred sites, to live in a healthy environment, with an adequate management of and sustainable ecosystem use, to autonomous management of indigenous territory, shared management of protected areas, to the exclusive use and management of forest areas, to communal or collective property in Isiboro Sécure National Park and Indigenous Territory, and to territorial integrity of indigenous land (Arts. 30 II, Num. 4, 7 and 17; 385 II; 388; 393; 394 III; and 403 of the Political Constitution of the State. Arts. 2, Inc. b; 4, Nums. 1 and 2; 7, Nums. 1 and 4; 13; 14, Nums. 1 and 2; and 15, Num. 1 of ILO Convention 169. Arts. 3, 4, 5, 23, 26, 29, and 32 of the UN Declaration on the Rights of Indigenous Peoples).**

These rights are threatened by authorities' failure to guarantee that the Villa Tunari – San Ignacio de Moxos Highway does not pass through Isiboro Sécure National Park and Indigenous Territory (a constitutional commitment that was first assumed under Law 180, later discarded by Law 222, and that today has been eliminated by the famous law dissolving the area's protected status).

The leaders of Isiboro Sécure National Park and Indigenous Territory, exercising their collective rights to free self-determination and territory, to autonomous indigenous management, to shared management of protected areas according to their norms and procedures, and to communal or collective property of this territory, have already decided that they do not want the Villa Tunari – San Ignacio de Moxos Highway to pass through the heart of TIPNIS; this decision was recognized by the national government through Law N° 180, passed on October 24, 2011.





The Bolivian government's passing of Law 180 was achieved by TIPNIS leaders as a result of the Eighth Indigenous March from TIPNIS to La Paz; this march was a peaceful form of revindication and social protest that avoided the violation of the collective rights threatened by the design, budget, loan and contract for the Villa Tunari – San Ignacio de Moxos Highway. Nevertheless these same authorities, instead of fulfilling their constitutional, international and legal obligation and duties to guarantee these collective rights, again threaten them and place them at risk of being violated in TIPNIS through the annulment of Law 180.

This situation will violate the collective right of TIPNIS' peoples to the exclusive usufruct and management of the forest areas and renewable natural resources that exist within the territory since this territory will be invaded by colonizers that will annul this exclusivity; thus, this right is also currently threatened.

The collective right to a healthy, protected and balanced environment (Arts. 33 and 34 of the Political Constitution of the State).

If the bad faith consultation process realized by authorities after approving the highway project and the annulment of Law 180 result in the construction of the Villa Tunari – San Ignacio de Moxos Highway, passing through the heart of TIPNIS territory, there will be many negative results. It will lead to the deforestation and soil degradation of the significant swaths of land over which the paved road will be constructed as well as adjacent areas because of the progressive expansion of groups of settlers that will not just use the land as a place to live but to grow intensive crops such as coca plants and other crops destined to industrial and commercial exploitation. This does not even take into account the impact of the many activities associated with road construction: the creation of infrastructure, the provision of goods and services, which will all have a significant impact, contaminating and degrading a healthy environment.

Sometime after the construction of this highway, TIPNIS, which serves as Bolivia's lung, and the world's as well, will stop doing so, having been turned into various densely populated urban centers filled with the hustle and bustle of industrial and commercial activities taking place in a highly contaminated environment because of the uninterrupted, ever expanding growth dynamic that a western developmental model implies, focused on maximizing coca production and the exchange and consumption of goods and services. In this way, TIPNIS will not only be affected as an indigenous territory but also, and especially, as a National Park and Ecologically Protected Area.

This attack against the environment and ecology is completely out of proportion when one takes into account the existence of various alternate highway routes that are technically viable and financially sustainable. This well known fact has been publicly put on display for national and international public opinion in discussions that have taken place over the past few months. If, among the administrative measures that the government has to take, one or more of these are less harmful to the environment than others, it is obvious that according to the law, justice and reason, the government has the obligation to implement the least harmful alternative, rather than the one that causes the most harm. There would not be an adequate relationship between the means and the end if the government opted to implement the most harmful option.



For these reasons, the collective right to a healthy, protected and balanced environment, because of the omissions of state authorities, is under threat of being violated. Article 33 of the Political Constitution of the State establishes that the exercise of this right should allow individuals and communities, of this and future generations, as well as other living things, to develop in a normal and permanent way.

Article 34 of the Political Constitution of the State establishes that any person, either acting as an individual or in representation of a community, has the faculty to initiate legal actions in defense of the rights of the environment, without this absolving public institutions of their obligation to act in their official capacity to halt attacks against the environment.

## IV. Conclusions and Proposals:

Having seen the threats that the indigenous peoples currently suffer, particularly in TIPNIS, it has become urgent to implement a process for strengthening the social organizations representing these peoples, at the same time taking into account the resolutions issued by Subcentral TIPNIS' board of directors, which are here reproduced:

In the meeting that took place in the management center, Subcentral TIPNIS and the ex-leaders present at that moment issued two resolutions. In the first resolution, they resolve: "To reject the enactment of Law 969 (passed on August 13, 2017) which abrogates Law 180 (making clear that they reject the construction of the road that divides TIPNIS' heartland); to denounce in front of international organizations that the indigenous peoples and nationalities of TIPNIS are at risk of extinction and ethnocide because of Law 969's approval, since it annuls the area's protected status; to take popular action; legal action against the violation of indigenous territories; international legal action regarding the alleged consultation; and to take measures such as vigils, workshops, forums, marches, popular actions; and to commit themselves together to defend TIPNIS and to demand that the government show the respect owed to the patrimony and people of Bolivia."<sup>56</sup>

In the second resolution, they resolve, among other things: "To declare themselves in a state of emergency and alert in order to take the legal action that the case merits. They call for national unity with more active and permanent citizen participation in knowing about and defending of the natural riches of the indigenous territories and protected areas".

The peoples that live in TIPNIS request the nation's government to abrogate Law N° 969, passed on August 13, 2017 which, in turn abrogated Law N° 180; and, in congruence with such an act, demand that no infrastructure projects such as the construction of the Via Tunari - San Ignacio de Moxos Highway take place in TIPNIS.

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56 Resolution resulting from the August 28th meeting in TIPNIS' Management Center.





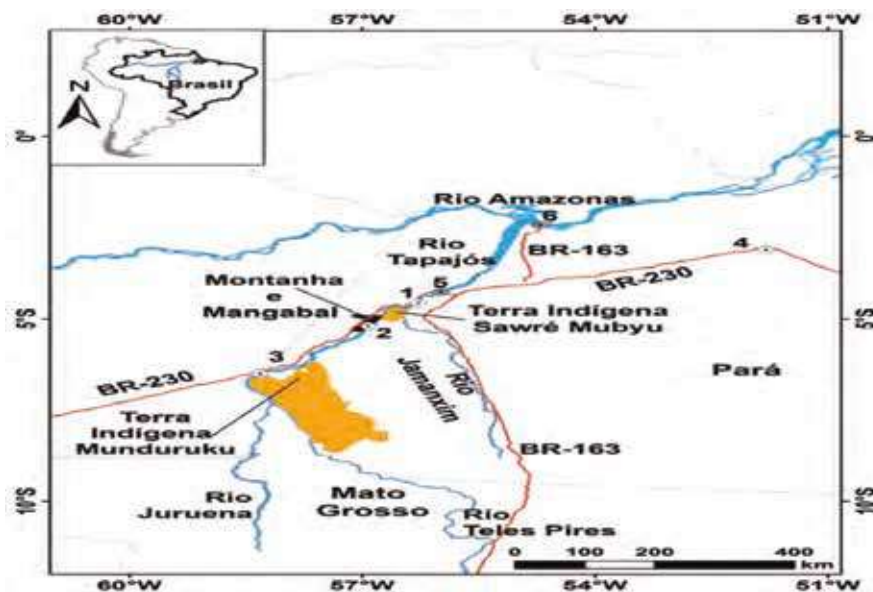
## 2.1.5. The Munduruku Peoples (Brazil)

**Coordinated:** Indigenist Missionary Council, North II, Brazil<sup>57</sup>

### I. Introduction: The Tapajós River Basin and the Peoples That Live There

The Tapajós River Basin embraces parts of Mato Grosso State and the western part of Pará State and is one of the largest tributaries of the Amazon River. Known since the Portuguese invasion as Mundurukânia, the middle and upper regions of the Tapajós River are inhabited by at least 13,000 indigenous belonging to the Munduruku and Apiaká Peoples, as well as a great diversity of traditional and coastal communities that live along its banks and those of its principal tributaries: the Jamanxim, Juruena and Teles Pires Rivers. In the lower region of the Tapajós and its tributary, the Arapiuns River, there live at least 12 different ethnic groups that include 9,000 people; among these groups are the Arapiun, Kumaruara, Tupinambá, Maytapú, Tapajó, Tapuia, Jaraki, Munduruku, Munduruku Kara Preta, Arara Vermelha and Apiaká Peoples.<sup>58</sup>

Map 11:



pp.

<sup>57</sup> In collaboration with Barbara do Nascimento Dias.

<sup>58</sup> The following map shows the region around the The São Luiz de Tapajós Hydroelectric Power Plant. Of particular importance are the Munduruku Indigenous Territory and the Sawré Mubyu Indigenous Territory, highlighted in yellow. The map is taken from the chapter Cosmetic Environmental Impact Studies, pp. 115-133, in: P.M. Fearnside (ed.) *Hidrelétricas na Amazônia: Impactos Ambientais e Sociais na Tomada de Decisões sobre Grandes Obras*. Vol. 2. Editora do INPA, Manaus. 297 pp.

With black earth indigenous archaeological sites spread all over the Tapajós River Basin, it can be seen that the rich culture and biodiversity of the area have been constructed during millions of years by the indigenous peoples that inhabited and still inhabit the region. Many villages of the Munduruku People, whose reality this report describes, are built upon these archaeological sites, which, in the native language of the people, are called *Katomp*. These lands are very fertile because their ancestors occupied them and reclaimed them from the jungle, during many different generations, and this is an important characteristic defining a place where complete families migrate to start new villages. These lands are also known to archeologists since they are archaeological sites; “the black earth results from a process of continuous occupation”.<sup>59</sup> They have had a human presence for thousands of years and there are many vestiges that demonstrate this presence.

The Munduruku People are historically known as a warrior people, recognized for cutting their enemies’ heads off and putting them on spears all along the route to their homes. Nowadays, the Munduruku People do not cut off peoples’ heads anymore but their warrior spirit is still the same. The name Munduruku means red ant, and it is said that it was given to them by their historical enemies because of the battle formations they used in war. The combat strategies they now use have changed, as well as the face of their enemies; before their enemies were marked with traditional indigenous paint, now their *pariwats*<sup>60</sup> are primarily marked by suits and ties as part of the government.

In the Munduruku cosmology, their community, as well as the Tapajós River, have been created by a very powerful Munduruku named Karosakaybu. The Tapajós River was born from the juice squeezed from the pits of three tucumã (a type of palm tree) fruits. All the forest, the rivers, the trees, the fish, the animals, even the sky and the light came from the transformation of Munduruku indigenous people into these elements and, for this reason, they are also their guardians.<sup>61</sup>

For them, there is no difference between the Munduruku, the fish and the trees, since, as a community chieftain explain, “Those who have life in the river have also suffered the transformation and in their world they are people just like us. We see them as fish, animals and trees, but in their kingdom they are people like us.” For this reason, they understand that it is the obligation of every person in their community - women, men, children, chieftains, shamans, warriors - to protect their territory; as a warrior woman says:

“Not only are the men warriors, but the women also. It is important that women know about education, health, as well as how to defend our territory, the strength of our culture. The *pariwats* are destroying our rivers, our forests and we are worried about our children and we have to fight together with our warriors”.

59 [https://www.researchgate.net/publication/308794869\\_Floresta\\_Virgem\\_O\\_longo\\_passado\\_humano\\_da\\_bacia\\_do\\_Tapajos](https://www.researchgate.net/publication/308794869_Floresta_Virgem_O_longo_passado_humano_da_bacia_do_Tapajos).

60 Munduruku word for enemy.

61 Interview with Jairo Saw, December 13, 2017, in Santarém (PA), Brazil.



For a long time, the whole internal upper region of Tapajós River<sup>62</sup> was a place traditionally occupied by them, but with time their settlements stabilized along the banks of the Tapajós and Cururu Rivers as a result of illnesses, like measles, that decimated entire populations.

The rubber cycle in the Amazon began in this region at the end of the 19th century with the extraction of latex, through a syringe, for use in rubber production. It has also influenced migratory processes to the river banks due to the regatões (traders or merchants) who exchanged spices and other goods like sugar for products that the indigenous people obtained from the forests, such as rubber.<sup>63</sup> All of these products were exported to countries in Europe and North America, but with the boom of latex exploitation in Asia the rubber cycle in the Amazon fell into decline.

Areas Currently Inhabited by the Munduruku Peoples in the Tapajós Region			
Name	Municipality	Area's Classification	Situation
Praja do Indio	Itaituba	Indigenous Reserve	In the process of being established as an indigenous reserve
Praja do Mangue	Itaituba	Indigenous Land	Homologated
Sawre Muybu	Itaituba	Indigenous Land	Delimited
Sawre Juybu	Itaituba	-	Being studied
Sawre Apompu	Itaituba	-	Being studied
Sai Cinza	Jacareacanga	Indigenous Land	Regularized
Munduruku	Jacareacanga	Indigenous Land	Regularized
Munduruku- Taquara	Belterra	Indigenous Land	Declared
Bragança Marituba	Belterra	Indigenous Land	Declared

For the Munduruku People, the logic of delimiting and demarcating the limits of their territory for use and habitation makes no sense, given the social and political structure of their people. The spaces they use, the ones that have significance to their world, go beyond the physical, as a wise chieftain maintains:

*"This is our natural habitat, with forests, rivers, with all the creatures, it is a place where the Munduruku circulate, it is a territory, and not just where there is a village or where there is a delimited or demarcated area, it is everything around us, and because of this, Munduruku territory has no limits. For us, this area is for our survival, but it is also a place where we know our own history, our own politics, and our own social organization. It is not only the place where we work the fields, it is where we learn from the heritage that our ancestors left us, and it needs protection, not just to be destroyed. Territory is not only where the village is or where the delimited land is; it is a patrimony that our ancestors left us to care for."*

62 Ramos, Andre. <https://pib.socioambiental.org/pt/povo/munduruku/796>.

63 Learn more at: <https://pib.socioambiental.org/pt/povo/munduruku/795>

Every day that goes by, pressure increases on the territory because of the invasion of loggers, palm tree growers, farmers, and “garimpeiros” (small-scale miners). Land demarcation, the recognition that the Federal Constitution of Brazil gives native peoples, has become the most viable way to save part of this huge patrimony left by their ancestors, that is the Amazon Region. The Tapajós River “*is the cradle of the Munduruku,*” manifests the chieftain, “[It] has a lot of history, a lot of sacred sites, a lot of places with greater concentration of Munduruku people, where they had their ceremonies and rituals”.

Photo 19



Photo: by: Bárbara Dias

## Government Onslaughts in the Region

A series of megaprojects and infrastructure projects are envisaged by the Brazilian government for the Amazon area, with the intention of constructing new routes that will enable the flow of commodities to the world market. These public projects are part of Brazil’s Plan for Growth Acceleration (PAC) I and II, along with the initiatives for the Integration of the Regional Infrastructure of South America (IIRSA), which is the program dedicated to integrating the 12 countries of South America through more modern transportation and energy infrastructure.

In the western part of Pará State, these programs involve different national and foreign investments, which, in the last few years, have grown considerably. In the city of Itaituba (PA), in the middle of the Tapajós, a number of bulk carrier ports have appeared along the river banks and in the city. At least 26 ports are foreseen for the region; Cargill, Bunge and Cianport are among the companies with the greatest interest in these projects.





In a sort of domino effect, in which infrastructure projects try to justify their existence based on the construction of an upcoming megaproject, the creation of transshipment cargo stations (ETC), waterways, railways, hydroelectric power plants, and the paving of highways cannot be understood as isolated projects satisfying different interests, but as the continuous and simultaneous construction of priority infrastructure to benefit and enable the expansion of agribusiness and mining in the region.

Thus, the construction of these ports is directly related to the continued construction and paving of the Cuiabá-Santarém and Transamazonica Highways (BRs 163 and 230, respectively). As far as this infrastructure is concerned, the completion of these works has become one of the primary goals pursued by agribusiness representatives since this is a strategic route for the flow of grains and commodities, uniting the center-west and northern parts of Brazil.

The new route, known as “the way out to the North”<sup>64</sup> is the cheapest alternative to arrive at Barcarena Port (PA) and continue on across the ocean to Europe and Asian countries that consume Brazil’s products at the same time clearing up the habitual, longer route that terminates at Santos-SP and Paranagua-PR Ports. There are many impacts from this road’s construction and paving: an increase in land tenancy speculation, illegal deforestation, fraudulent land ownership, routes enabling the flow of illegally extracted wood, and the extensive expansion of livestock raising, soy and other monoculture plantations.

At the same time, a 7 hydroelectric power plant complex is planned for the region, namely: São Luiz de Tapajós, Jatobá, and Chacorão on the Tapajós River, and Cachoeira do Caí, Cachoeira dos Patos, Jardim do Ouro, and Jamanxim on the Jamanxim River. The São Luiz de Tapajós plant, currently on hold, would be the largest of the seven, and the third largest hydroelectric power plant in the country. It would result in the flooding of 729 square kilometers, which would directly affect the Apiaká and Munduruku Indigenous Peoples and the Pimental, Montanha and Mangabal communities. It would also affect, in an indirect way, the indigenous of the Sateré-Mawé ethnic group, inhabiting the Andirá-Marau Indigenous Land, and the communities of São Luiz de Tapajós and Vila Rayol, among others.<sup>65</sup> Facing the intense onslaught of the large amounts of money spent pursuing the expansion of agribusiness and megaprojects in the Amazon area, the indigenous peoples of western Pará are resisting with the same intensity.

In the case of the São Luiz de Tapajós Power Plant, following recommendations from the Public Federal Ministry (MPF) and the technical reports issued by the National Foundation for Indigenous Peoples (FUNAI), and the end of the final time period for responding to the 180 inconsistencies found in the Environmental Impact Studies conducted by the company, the Brazilian Institute of the Environmental and Natural Renewable Resources (IBAMA) denied the license for the work. Despite this victory of the indigenous peoples and “beiradeiros” (riverine communities), this does not mean that the project will not be taken up again by the government, since the President of Eletrobrás and the General Director of the Operator of the National Electric System (ONS) announced, only a few months after the permit was denied, that the hydroelectric plant could be finished in 2022.<sup>66</sup>

64 Learn more at: <http://www1.folha.uol.com.br/mercado/2014/04/1445130-exportacao-de-soja-ganha-atalho-pelo-norte-com-novo-terminal-no-para.shtml>

65 Learn more at: <http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2016/violacoes-direitos-povo-indigena-munduruku>

66 Learn more at: <https://pib.socioambiental.org/pt/noticias?id=172535>

Meanwhile, the Environmental Impact Studies for the Jatobá Plant, located in the middle of the Tapajós River, have not stopped and are being reviewed by IBAMA; they are expected to be finished by 2018,<sup>67</sup> since on January 3, 2018 the National Agency of Electric Energy accepted the technical viability studies for the hydroelectric plant. The socio-environmental impacts will directly affect the beiradeiros of the Montanha and Mangabal communities; it will be necessary to move them inside the confines of the Agro Extractive Settlement Project (PAE) since the area they currently live in will be flooded. The impacts on their way of life are unavoidable due to the alteration in the river's dynamic and changes in fish reproduction habits, among other irreversible changes to the ecosystem and to the sacred places with which these populations interact and live.

## II. Violations and Threatens to Human Rights

*"They are violations carried out against our nature, against our Tapajós".*

The constitutional rights of the indigenous peoples are detailed in a specific chapter of Brazil's 1988 Constitution (Section VII, "On the Social Order", Chapter VIII, "On the Indigenous Peoples"),<sup>68</sup> but the fight to win the recognition of these rights has a long trajectory. With the return of democracy to Brazil after 21 years of military dictatorship, in the discussions surrounding the creation of a new constitution in 1987-1988, there was important and decisive citizen participation in its elaboration. However, indigenous peoples' issues were not considered a priority. Thanks to intense pressure by the indigenous communities and the organizations that supported them, it was possible to think of and construct a new perspective, different from the prevailing form of the government of dealing with these communities, which had been imposed and affirmed that the indigenous peoples should "integrate" into Brazilian society in such a way that their customs and traditions would be incorporated into society.

This logic of assimilation understood "being an indigenous person/people" as a stage of evolution to be overcome, up until the point in which everyone would simply be "Brazilian citizens". This perspective, however, is challenged when, during the writing of the 1988 Federal Constitution, the indigenous peoples rise up and fight for the Brazilian government to recognize the sociocultural and linguistic diversity of the indigenous peoples, "and the protection of their lands and goods, tangible and intangible".<sup>69</sup> Article 231, from Chapter 7 of the Federal Constitution, establishes that "Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property".<sup>70</sup> Even though these rights are all ensured by the Federal Constitution of 1988, the Brazilian government continues with its attempts at colonization as a way of dealing with the indigenous peoples and their traditionally occupied territories.

67 See: <https://noticias.uol.com.br/ultimas-noticias/reuters/2017/01/05/estudos-sobre-hidreletrica-jatoba-no-rio-tapajos-ganham-prazo-ate-final-de-2018.htm>

68 <https://pib.socioambiental.org/pt/c/direitos/constituicoes/introducao>

69 See: <https://www.cimi.org.br/direitos-indigenas/>

70 See: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)



In a visit to Brazil on March, 2016, the United Nations' Special Rapporteur on the Rights of Indigenous Peoples, Victória Tauli-Corpuz, had the opportunity to closely evaluate the projects and actions undertaken by the Brazilian government, both those planned and those that were ongoing, that would somehow impact the indigenous peoples in the country. Among the worries that the Special Rapporteur expressed was the non-compliance with legislation that guarantees free, prior and informed consultation, based on International Labor Organization (ILO) Convention 169, before the construction of any enterprise that could affect the lives of these peoples.

The construction of the Usina Hydroelectric Power Plant of Belo Monte, and the São Luiz de Tapajós Hydroelectric Complex of São Luiz de Tapajós are two emblematic cases mentioned by the Rapporteur that are responsible for violations of indigenous rights, violations that not only preceded the construction of the megaproject, but continue even now, when it is ready to function. For instance, in the Belo Monte case, none of the indigenous peoples in the 11 areas directly impacted by the plant have been consulted, nor has the plant complied with stipulated conditions. In both cases, even when Federal Public Ministry has interceded on behalf of the indigenous peoples, the legal system has used a legal mechanism, a carryover from the military dictatorship, called the Suspensión de Seguridad (SS) to block actions and "therefore, the law turns into an obstacle, instead of an ally, for realizing indigenous peoples' rights."<sup>71</sup>

This legal mechanism allows the justice system to reverse sentences handed down in favor of the indigenous peoples and can suspend various civil rights in favor of the federal government's economic interests, and has been used to authorize projects with great socio-environmental impact, ignoring the original rights of the indigenous peoples as well as those of other communities and traditional peoples. The SS "has already been used 12 times to tear down obstacles to the Tapajós Dams, more than the eight times it was used for the Belo Monte Dam" (Palmquist, 2014).

Among the recommendations made by the UN Special Rapporteur to the Brazilian government are the need to revise the use of the SS mechanism, since its only use has been to violate the original rights of the indigenous peoples, rights that existed even before the formation of the national government, with the only intention being the implementation of megaprojects with irreversible socioenvironmental impact, capable of causing real ethnocides. She also recommended the continued demarcation of indigenous lands – which has not been completed even up to the present day – and the enforcement of ILO Convention 169, with regard to its requirements for free, prior, and informed consultation.

## 2.1 Attacks to the Indigenous Peoples Constitucional Rights

Nationally, facing the onslaughts of a federal government wishing to capitalize, even more, on the Amazon area, the indigenous peoples continue to be threatened with being expelled from the territories that they have traditionally occupied. With very clearly defined goals to fulfill the interests of capital, and with the construction of megaprojects and infrastructure that will mainly benefit the interests of multinational large national companies, the national government, along

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71 Special Rapporteur on Indigenous Peoples Rights' report on her mission to Brazil



with private companies, do not spare any effort to get these projects implemented, even when this involves the destruction and death of the indigenous peoples and riverine communities.

With this as their end, they undermine the rights of the indigenous peoples to live their ways of life, with their territory and territoriality, in order to add other values to these areas: solely economic and political ones.

In the wake of these “developmentalist” projects pushed by the national government, in which the indigenous peoples are considered obstacles to the development of the region, various bills (PLs), interim measures (MPs), constitutional amendments (PEC) and other types of decrees are being proposed and implemented to make access more difficult to public policies or to take away rights.

### *2.1.1 Constitutional Amendment 215/2000 and the Time Frame Issue*

Among the abovementioned measures, we highlight Constitutional Amendment 215/2000, which transfers the power to decide on the demarcation of indigenous lands from the executive to the legislative branch of government. It was approved in a Special Commission of the Federal Chamber of Representatives in October 2015. The author of the bill is the ruralist<sup>72</sup> **Osmar Serraglio**.<sup>73</sup> In Brazil, the organization currently in charge of the demarcation of indigenous land is the executive branch – through the National Foundation for Indigenous Peoples, Ministry of Justice and the Presidency – since this an administrative function of the State, which has the obligation to identify, demark and protect the land traditionally occupied by native peoples. According to what is established in Decree 1775/1996, the indigenous land demarcation process has to follow the following steps, as manifested by the National Foundation for Indigenous Peoples (FUNAI):

- i) Identification and delimitation studies for the territory, carried out by FUNAI;
- ii) Administrative appeals;
- iii) Official declaration of the territory’s limits, realized by the Ministry of Justice;
- iv) Physical demarcation, carried out by FUNAI;
- v) The realization of a technical cadastral survey of the community’s territory, evaluation of the improvements to the territory carried out by non-indigenous occupants, realized by FUNAI and INCRA, the latter of which registers the non-indigenous occupants of the territory;
- vi) Homologation of the demarcation, carried out by the Presidency of the Republic of Brazil;
- vii) Removal of non-indigenous occupants. FUNAI pays them for improvements to the territory that they made in good faith while INCRA redresses the non-indigenous occupants who meet the profile established in the reform document;
- viii) Completion of the process of land registration in the Secretariat of the Union’s Patrimony, realized by FUNAI; and

<sup>72</sup> The term “ruralist” refers to legislators who represent (or who are) large landholders and who disagree with the demarcation of indigenous territories, tending to be solely interested in the expansion of livestock raising, monoculture and agribusiness activities.

<sup>73</sup> Congressman belonging to the Democratic Movement of Brazil, Paraná State (PMDB) - PR.



- ix) The declaration of banned areas to protect isolated indigenous peoples; realized by FUNAI".<sup>74</sup>

Effectively, PEC 215/2000 gives the National Congress the last word on the delimitation of indigenous lands. This means that the decisions regarding the delineation of the boundaries of native people's territory will be under the control of ruralist, business and mining interests; in the end, they will decide if indigenous territory is or is not delimited.

The time frame thesis, also mentioned in the Pec 215 Report, has been one of the 19 limitations imposed by the Federal Supreme Court (STF) for the delimiting of the Raposa do Sol Indigenous Territory; however, these 19 limitations are not related to other land delimitation processes, and therefore, apply only to this specific case. The time frame thesis refers to the fact that the indigenous land delimitation process only applies to territory occupied by the indigenous peoples on October 5, 1988, the date of the Federal Constitution's promulgation. But this conception of indigenous territory does not take into account the many violations and usurpations of indigenous territory that occurred before this date. For Lia Zanotta, member of the Brazilian Anthropology Association (ABA), this time frame limit "erases and makes invisible the occupation of indigenous peoples' native lands since they have been displaced and relocated many times,"<sup>75</sup> often by the Brazilian government itself.

All of these measures have been created to undermine one of the primary supports of the indigenous people's resistance and struggle, the Federal Constitution. The Sawre Muybu Village chieftain expresses his great concern for the attacks perpetuated by the government, attacks that could block the demarcation of the Sawre Muybu Indigenous Lands while facilitating the invasion of their territory and encouraging an increase in violence against indigenous peoples:

"In our struggle during 2017, we have not achieved all of the [necessary] victories, but we are going to continue fighting for the delimitation and control of our lands. The megaprojects that come to our region to destroy our lands, and the laws the government is creating to eliminate our rights so that the large businesses that destroy our land, can destroy our lands and eliminate our rights. We're not going to be able to win if these laws are passed, nor stop businesses from entering our territory. I have been alerting our relatives to fight for their territory, because we are going to keep fighting for our rights, to guarantee them".

The Detailed Identification and Delimitation Report for Sawre Muybu (RCID, according to its acronym in Portuguese - Relatório Circunstanciado de Identificação e Delimitação), published in the Union's Official Bulletin (DOU, according to its acronym in Portuguese - Diário Oficial da União) in April 2016, is the first and a fundamental stage in the delimitation process for indigenous territory. This great conquest, however, is threatened by the time frame thesis, quoted in the eight appeals (filed as part of the second stage of the delimita-

74 Information retrieved from: <http://www.funai.gov.br/index.php/2014-02-07-13-24-53>. For more information with explanatory notes, please consult: <https://www.cimi.org.br/terras-indigenas/demarcacao/>

75 Information retrieved from: <http://www.funai.gov.br/index.php/2014-02-07-13-24-53>. For more information with explanatory notes, please consult: <https://www.cimi.org.br/terras-indigenas/demarcacao/>



tion process, administrative appeal) to the Sawre Muybu Report, which state that there was no permanent occupation of the area by indigenous peoples before October 1988, even though archeological evidence proves there was.

All of the appeals to the report come from mining and energy interests, both public and private: the Mines and Energy Ministry (MME), the Environmental Ministry (MMA), the National Gold Association (ANORO), the Vermelho River Mining Company (which imports and exports diamonds), the National Industrial Confederation (CNI) and the Tapajós Consortium, made up of companies interested in the construction of the São Luiz de Tapajós Hydroelectric Plant (Eletronorte, GDF Suez, Copel, Cemig, Neoenergia, EDF and Camargo Corrêa).<sup>76</sup>

Even though the time frame thesis is considered unconstitutional by many jurists and anthropologists, on July 20, 2017, President Michel Temer made the time frame thesis official policy through a judgement published by the Union Advocate General (AGU) in the Union's Official Bulletin (DOU),<sup>77</sup> making it a legally binding instrument which public administration officials and offices must take into account during any land delimitation procedure.

### 2.1.2 Bill 1610/1996

The municipalities of Itaituba and Jacareacanga were born, mainly, from garimpeira (small-scale mining) activity during the 1980s; small-scale mining continues to be the most important economic activity in these cities. Gold and diamond garimpos (mining camps), which are generally illegal, can be found occupying indigenous lands, as is the case of the region's biggest garimpo, Chapéu do Sol, which is located within Sawre Muybu territory, a fact that causes insecurity and leaves the indigenous villages in a vulnerable situation with respect to the garimpeiros (miners). The mining activity contaminates the river and water table with cyanide and mercury, putting at risk the way of life, health and food security of these indigenous people and beiradeiros. At the same time, this constant invasion of their territory violates not only the physical space they belong to, and which guarantees their survival, but also their spiritual world:

"White people are destroying our nature; when they find objects crafted by our ancestors they do not respect them, they do not respect the old world, just because they want to harm the Mundurucu People. The garimpeiros find an object made by our ancestors, and they take it. My father, who is a shaman, recommended to them that they return one, because if they don't, it might cause us much harm. We asked them to give it back to us, because the spirits would come out against us, a lot of accidents might happen in our communities, we might suffer a lot. When something made by the ancients is found, it should be left in the same place, because spirits cry, they are our relatives from before, but the pariwat do not understand".

76 Information retrieved from: <http://www.funai.gov.br/index.php/2014-02-07-13-24-53>. For more information with explanatory notes, please consult: <https://www.cimi.org.br/terras-indigenas/demarcacao/>

77 Information retrieved from: <http://www.funai.gov.br/index.php/2014-02-07-13-24-53>. For more information with explanatory notes, please consult: <https://www.cimi.org.br/terras-indigenas/demarcacao/>





To these problems, we must add the threats caused by the New Mining Code and Bill 1610/96; the latter aims to regulate mining inside indigenous lands, to widen the veins of these ancestral territories, already open, for mining activity. All along the Teles Pires and Tapajós Rivers, a series of mining extraction requests have been made, which in many cases, for example, are on the borders of indigenous land and which might even affect that land directly. Up until 2015, there were 279 requests for mining exploration and extraction within Munduruku territory, 19 within Sai Cinza territory and 79 within Kayabi territory.<sup>78</sup> With these open discussions regarding new regulations for mining on indigenous land, invasions and pressure by garimpeiros are intensifying inside indigenous territory.

### 2.1.3 Violations of National and International Legislation

It is important to point out that public and private power work together in carrying out these projects, violating the legislation that protects indigenous peoples and native traditional communities, such as the International Labor Organization (ILO) Convention 169 concerning the free, prior and informed consultation that must be realized before constructing any project that could impact their lives. This is an important point if one wants to understand how the Brazilian government excludes from the debate those that will be most affected; they announce the implementation of these projects without consulting the community or peoples that would/will be impacted.

FUNAI's ex-president, María Augusta, has declared through a video,<sup>79</sup> recorded by the Munduruku in October 2014, that the government's slowness to publish the Detailed Identification and Delimitation Report for Sawre Muybu (RCID), ready since 2013, in the Union's Official Bulletin, was due to hydroelectric interests that the Brazilian government has in this indigenous territory. At the time, the plans to carry out the construction of the São Luiz de Tapajós Hydroelectric Power Plant were being considered by the Mines and Energy Ministry (MME). Besides denying traditional Munduruku and beiradeiros the possession of their territory, the government also used interim measures and laws to take away protections for Conservation Areas (CBUC o UC) that were seen as impediments to the construction of the power plant.

In the Sawre Muybu Indigenous Territory, the villages of Dace Watpu, Sawre Muybu and Karo Muybu, for example, would be completely flooded by the construction of the São Luiz de Tapajós Hydroelectric Power Plant, resulting in the removal the indigenous peoples from their villages, which is prohibited by the Federal Constitution:

*§ The removal of Indian groups from their lands is forbidden, except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.<sup>80</sup>*

78 See: [https://www.socioambiental.org/banco\\_imagens/pdfs/10147.pdf](https://www.socioambiental.org/banco_imagens/pdfs/10147.pdf)

79 See: <https://vimeo.com/111974175>

80 <https://www.jusbrasil.com.br/jurisprudencia/busca?q=ARTIGO+231+DA+CONSTITUI%C3%87%C3%83O+FEDERAL>

The Sawre Muybu Indigenous Territory overlaps with Itaituba I and II National Forests (FLONA for its acronym in Portuguese – Florestas Nacionais), which are suffering the onslaught of illegal loggers, small-scale miners and palm cutters. The Chico Mendes Biodiversity Institute (ICMBio), the institution responsible for the FLONAs (Environmental Conservation Units), and IBAMA remain silent, even when confronted with repeated allegations concerning the threats to this indigenous people's territory. Thus, the Munduruku have to create their own ways of resisting and defending their territory and culture.

At the same time, ICMBio is interested in auctioning off part of the FLONA bordering Sawre Muybu, across from the Montanha e Mangabal Agroextractivist Project (PAE), in order to implement forest management for logging purposes. They ignore the presence of the indigenous peoples and the socioenvironmental problems that could worsen, like illegal wood extraction in indigenous lands and in the beiradeira community. In March of this year, the Apiaká, Munduruku and beiradeiros living in Pimental, Montanha and Mangabal succeeded in blocking the continuation of public audiences for the forest concession of more than 300 thousand hectares until consultation is carried out with all the peoples that would be affected, according to the established consultation protocols.<sup>81</sup>

There are two urban villages in Itaituba, Praia do Indio and Praia do Mangue, which are the villages with the greatest cultural, social and territorial influence. The expansion of agribusiness towards the region, together with the uncontrolled construction of ports, including on the reserves' borders, confines the indigenous peoples, with every passing day, to smaller and smaller areas that prevent them from hunting, gathering, and carrying out agricultural activities. There is also a plan underway by the National Agency of Terrestrial Transportation (ANTT) to build a railroad to connect the city of Sinop-MT to Miritituba, in the district of Itaituba – PA, which would directly affect these two villages.

To enable this project to be carried out, there was a significant reduction of Conservation Areas (UCs), adding even more fuel to the conflicts in the region and motivating the territorial invasion of other UCs. This project would also have been carried out without any free, prior and informed consultation, but the Munduruku succeeded in blocking the two public audiences that were going to take place in the cities of Itaituba and Novo Progresso. The railroad could impact about 19 indigenous areas along its route and none of these communities have been listened to. The Federal Public Ministry (MPF) has recommended the suspension of the public audiences until the required consultations are carried out, based on ILO Convention 169. Nevertheless, the ANTT has continued with the process even after two failed audiences and the MPF's recommendation.<sup>82</sup>

#### *2.1.4 Pará State Decree 1.969/2018: Regulating Prior Consultation*

On January 24, 2018, Pará's state government published in the Union's Official Bulletin (DOU) Decree 1.969/2018, which creates a study group to prepare a state plan for prior consultation with the communities and the native peoples of Pará. The study group would be

81 For more details, visit: [http://www.cimi.org.br/site/pt-/?system=news&conteudo\\_id=9197&action=read](http://www.cimi.org.br/site/pt-/?system=news&conteudo_id=9197&action=read)

82 [http://www.cimi.org.br/site/pt-br/?system=news&conteudo\\_id=9603&action=read](http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=9603&action=read)



made up of: the State and Justice Secretariat; the Extraordinary State Secretariat for Social Policy Integration; the Pará State's Attorney General's Office; the State Secretariat of the Environment and Sustainability; the State Secretariat of Economic Development; Mining and Energy; and the Chief of Staff.

The decree has been instituted without any participation by or consultation of the peoples and native communities affected by the measure. Thus, since its beginning, it already violates ILO Convention 169, which ensures the participation and consultation of these peoples when a legal measure that affects their lives is being created or debated. The decree does not guarantee the effective participation of these peoples and communities, as has been mentioned in the Federal Public Ministry and Public Defender's Office's recommendation to revoke the decree, since the decree is unconstitutional and violates these peoples' right to effective consultation and participation in order to decide administrative and legal changes in their territories.

The idea of a national consultation plan, intended to be carried out in a reality made up of a great diversity of indigenous peoples and traditional communities that live together, each with their own social and political organizations, with their own culturally different forms of dialoguing and making decisions, their territories threatened and pressured by the government and large companies looking to build mega-enterprises, makes the real intention of this plan very clear: it looks to facilitate the approval of these projects by carrying out the approval process autonomously (without each individual community's input) and according to the State's cultural, social and political organization (instead of the communities'); and to weaken the right to free, prior, and informed consultation as established by ILO Convention 169.

Besides public institutions like the Federal Public Ministry and Public Defender's Office, the indigenous and riverine peoples have also taken a stand against the decree, demanding the respect of their consultation protocols. They do not accept the proposal that a study group, made up of government secretariats, carry out a state plan for consultation, violating legislation and international treaties.

## 2.2. Militarization of indigenous lands

Facing the resistance of indigenous and riverine peoples to the presence of investigators in the region looking to visualize and collect necessary information for the studies required to construct the São Luiz de Tapajós and Jatobá Power Plants, and without having consulted these peoples in a free, prior, and informed way, in March 2018, the federal government issued a presidential decree<sup>83</sup> ordering Federal Police, Federal Traffic Police, the National Public Security Force and the armed forces to accompany 80 investigators responsible for the technical viability study for the hydroelectric complex while they entered territory belonging to indigenous and native communities. Known as Operation Tapajós, this government intervention is even now remembered because of the trauma it caused those living along the Tapajós River, seeing their territory violated by the national armed forces. A letter from the Mundukuru People expresses their outrage in response to such an arbitrary action:

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83 For more information, visit: <https://www.cartacapital.com.br/sociedade/hidreletricas-energia-pra-que-e-pra-quem-4303.html>



We, chiefs, leaders, and warriors of the Munduruku People, have always fought, and will continue to do so, to defend our forests, our rivers, and our territory, since it is from our mother nature that we get what we need to survive. But the government, which is called to protect us, sends the armed forces to kill us, threaten us, and invade our villages. In short, they disrespect our people, they threaten and kill us, using their armed forces against the indigenous peoples as if we were terrorists or thieves.<sup>84</sup>

Photo 20



Photo 20. By: Marcio Márcio Isensee

Memories of the traumas caused by the armed forces are recorded in narrations going back to 2012, just one year before the Tapajós Operation, when, in the El Dorado Operation, a Munduruku from the Teles Pires community, Addenilson Kirixi, was murdered by a Federal Police representative. This operation was intended to be a megaoperation against illegal garimpos in the States of San Pablo, Rio de Janeiro, Rio Grande del Sur, Mato Grosso and Pará, but the violence lacing the government's actions once again marked the history of the Mundurukânia.

### 2.3. The Destruction of Sacred Places and Disturbances in Munduruku Cosmology Caused by the Pariwat

Along the Teles Pires River, there was a place called Cachoeira de Sete Quedas, part of the Mundurukus' sacred framework, which they call Karobixexe. The place is considered sacred to them since it is the place where the Munduruku spirits go when they die; only shamans can enter it. "The Karobixexe is the dwelling place of the dead, of our ancestors. If somebody dies, they go there; it is like a palace for them, a heaven," explains the wise man Jairo Saw, of the Sawre Aboy

84 The complete letter can be found at: [http://www.cimi.org.br/site/pt-br/?system=news&conteudo\\_id=6782&action=read&page=6](http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=6782&action=read&page=6)



Community. The Karobixexe has been destroyed to make way for the Teles Pires Hydroelectric Plant. The sacred funerary urns of the ancestors of the Munduruku community were removed from this place and taken to a museum in Alta Floresta City (MT) by the archeology company that was hired by the company responsible for the power plant. The removal of the urns has caused great distress to the Munduruku People since the company has intervened in their sacred world, irritating the spirits they should protect. In Munduruku cosmology, explains Jairo Saw, when we do not succeed in protecting the dwelling place of our ancestors, the life of the whole population is put in danger due to the fact that:

"The spirits that were there, feeling threatened when they see the destruction of their sacred places, go looking for a place to live; they are looking for a place to live in peace. They are angry and that anger, for us in this world, causes psychological problems, illnesses, climate change, natural disasters, tragedies, all of these things due to the destruction that causes [them to have] anger and the desire for taking revenge. Somebody that is not indigenous will not understand this. These disasters are because of this, the spirits are looking for a peaceful place. This is what we feel. Every accident that happens is because of this."

The removal of these urns has motivated women, shamans, boys, girls, community chiefs, warrior men and woman to take over, for a second time, the São Manoel Power Plant worksite in Mato Grosso State. The river of the same name is inhabited by Apiaká, Kayabi and Munduruku Indigenous Peoples and the power plant's construction is in an advanced stage. This power plant is also responsible for the destruction of other sacred sites of the Munduruku world, such as Dekoka'a (Monkey Snout), the place where the mother of the fish lives. No hydroelectric plant that has been constructed has consulted the traditional indigenous peoples and communities that would be affected, even upon the insistent recommendations of the MPF. They have used the Suspensión de Seguridad (SS) to allow them to act in this way.

Photo 21: Leaders meeting inside the São Manoel Power Plant worksite in July 2017.



Taken by: Caio Mota/FTP



All of the places considered sacred by the Munduruku People have relationships that interconnect them. Therefore, when one of these places is destroyed, the other ones also suffer. The chief of the community explains how this occurs:

There (Karobixexe), there is a connection with other mountains, with another waterfall, there is a connection that they live in those places, a path that exists and that unites them. There is one in Juruena, one in Kepruxa, São Luiz de Tapajós Waterfall, and another one here in Jamanxim near the door to hell.

In the Sawre Muybu Indigenous Territory there are many sacred places of the Munduruku People; these are being threatened by hydroelectrical construction and invaded by illegal garimpeira and logging activities. In the place known as Daje Kapap Eipi, the name given to the whole territory meaning sacred passage of the pig, very important historical events for the Munduruku occurred:

In our Sawre Muybu Territory, there is a sacred place where the son of Karosakaybu was being chased. He crossed to the other bank of the Tapajós River and the Munduruku that had been transformed into pigs, they were chasing the son of Karosakaybu, so they went down the riverbank to catch him and they threw themselves off of the other bank, also named estrecho y haces. Since they were the Munduruku from the past and had incredible abilities, they narrowed the width of the Tapajós in order to pass over it. Karosakaybu's path is underground, it's called the earthworm path, a secret underground passage. They had control over space and could shorten the way to be anywhere.

Photo 22: The community's chief points to the sacred place where the pigs crossed over the river with the son of Karosakaybu.





Thus, the destruction of any part of Munduruku territory, whether to make room for large government undertakings or for exploitation and other interests that destroy and interfere with their worlds (spiritual, physical, social, political) completely violates all of the rights, arduously fought for by these ancestral peoples, enshrined in national and international legislation.

Photo 23: Illegal gold extraction rig in the Sawre Muybu Indigenous Territory, very close to the sacred site.



### III. The Weaving of Resistance and Autonomy in Tapajós

"Our territory is a patrimony that our ancestors left for us to take care of".

Facing these attacks and government-legitimized violence, other resistance strategies are being adopted so that this process does not massacre, once again in history, the Amazon communities. One of these strategies is the elaboration of consultation protocols for the Munduruku in the Central Tapajós Region and the Santareno Highlands, and for the beiradeiras communities of Montanha and Mangabal, Pimentel, and São Francisco.<sup>85</sup> The communities develop the protocols, and explain to the government and the companies how the free, prior and informed consultations should be carried out in order to respect their customs, social organization and culture, as is guaranteed by ILO Convention 169.

<sup>85</sup> <http://www.terradedireitos.org.br/acervo/publicacoes/cartilhas/37/protocolo-de-consulta-das-comunidades-ribeirinhas-pimental-e-sao-francisco/22677>

### 3.1 Auto-Demarcations

The auto-demarcation of the central region of the Tapajós River, led by the Munduruku of the Sawre Muybu Indigenous Territory (TI), and begun in 2014, has occurred in alliance with *beiradeiros* from Montanha and Mangabal. In April 2016, the Detailed Identification and Delimitation Report for TI Sawre Muybu was published, but this is only one step in the demarcation process; with such slow progress and changes within the legislation, and in the judicial and executive branches, the report guarantees the right to their territory less and less with each passing day. Due to the government's delay in demarcating Sawre Muybu, the Munduruku themselves have decided to carry out the demarcation, to expel invaders, and to monitor and denounce all of the frequent invasions of their land. According to their chieftain:

We are threatened by loggers, *garimpeiros*, palm cutters and the looming dam construction. We are aware of the lack of government [intervention], how the law is being trampled. For this reason, we decided to carry out the demarcation. We know that this also gives us security, and if the government decides to honor this same demarcation, it will be very good for us. This land is our heritage, and from here we draw our livelihood. From the water we get fish and the forest is our marketplace. It's our survival.<sup>86</sup>

Currently, the *beiradeiros* of Montanha and Mangabal are also realizing auto-demarcation of the Agro-Extractivist Project (PAE), and the interweaving of resistance and autonomy is being consolidated throughout the basin. "With this, we make visible the physical frontier of the dispute that we brought many years ago to the judiciary system",<sup>87</sup> thus putting in check the arbitrary actions of the state government which conflict with the interests of the indigenous people and traditional communities.

In the lower region of the Tapajós, for example, several peoples have reaffirmed their ethnicity, once made invisible and silenced by the colonialism *of being, of power and of thought*.<sup>88</sup> Once they faced discrimination, racism and even the genocide of their peoples, so many felt threatened by belonging and being identified as indigenous. They found refuge in the silencing and concealment of their identity as a strategic form of survival.

Now these peoples are going through a process of ethical reaffirmation and fight for the recognition of their ethnicities and territories. The Borari and Arapium Peoples, for example, of the Maró TI, auto-demarcated their land in 2007 and are now organized in an autonomous way in order to control and monitor the constant invasions by loggers. For their leadership, the need to auto-demarcate arises from the constant invasions of their territory;

86 Interview: <https://ru-clip.com/video/BE7xy1sHrF8/autodemarcac%C3%A7%C3%A3o-munduruku.html>

87 <https://apublica.org/2014/12/batalha-pela-fronteira-munduruku/>

88 Quijano, L.A. (2002). Colonialidad, poder, globalización y democracia [Coloniality, power, globalization and democracy]. *Novos Rumos Magazine*, N. 37.



[Before] we had no need to have a demarcated territory, because the consensus at the time was that everything was ours. We were aware that we were Borari, although we didn't have the need to walk around saying that we were Borari because there was nothing threatening our customs and interests [...] In 2000, the indigenous movement began to emerge in TI Maró, mainly in the village of Nuevo Lugar, with discussions on how to defend our territory. We carried out a study on the family tree of our people, and it concluded that we were Borari and came from Alter do Chão. At that time, we decided that it was necessary to claim a piece of land for us, because the territory was already being divided up into many parts.

The Tupinambá of the Extractivist Reserve (Resex) have also initiated the process of auto-demarcation and fight for their ethnicity to be recognized so that they can manage their territory with autonomy.

### 3.2 Proposals: Prior Consultation Protocols for the Communities

The Mundukuru Consultation Protocol, developed in the village of Waro Apompu in Mundukuru Indigenous Territory and in Praia do Mangue Indigenous Territory during September 2014, had the full participation of the Munduruku People: men, women, children, shamans, midwives, warriors, women warriors, and chieftains. There the Munduruku People demanded compliance with ILO Convention 169 which stipulates prior, free and informed consultation before planning any undertaking that might impact in any way the lives and territories of indigenous peoples.

In order for the Munduruku People to be able to decide, we need to know what will really happen, and the government must listen to us. And before they carry out any consultation, we demand the demarcation of TI Sawre Muybu. We know the report is ready. We have the video of FUNAI's president admitting that the demarcation has not occurred because of the hydroelectric power plant. The government is not acting in the good faith demanded by the consultation process (ILO Convention No. 169, Article 6). We will never accept that they remove us from our land.

In this way, the consultation protocol was developed by the collective to inform the government and companies looking to initiate any project in these regions on how to consult these communities before starting any part of the construction process. In the protocol, they establish the manner, who, and where they should be consulted, ensuring the respect of their ways of life and social organization.

The Munduruku of all the villages of the Upper, Middle and Lower Tapajós River -should be consulted, even those located in indigenous lands that have not yet been demarcated [...] Chiefs [Captains], male warriors, female warriors and leadership must also be consulted. The chiefs are the ones who articulate and pass the information to all the villages [...] Women, so that they share their experience and their information. There are women who are shamans, midwives and artisans. They take care of the countryside, share their ideas, prepare the food, make homemade remedies and have a lot of traditional knowledge [...] University students, *Munduruku pedagogues, students from Ibaorebu, young people and*



*children also have to be consulted, as they are the generation of the future [...] Our organizations (Munduruku Indigenous Council Pusuru Kat Alto Tapajós-Cimpukat, Da'uk, Ipereg Ayu, Kerepo, Pahyhyp, Pusuru and Wixaxima) must also participate but can never be consulted on an individual basis.*

They also offers guidance on how the consultation process should be carried out:

The government cannot consult us when they have already made the decision. The consultation must be made before anything else. All meetings must be within our territory-in the village we choose-and not in the city, not even in Jacareacanga or Itaituba. Meetings may not be carried out on dates that interrupt the activities of the community (e.g. when we are working in the fields, cutting down trees or working on our plantations; during Brazil nut extraction; during flour [making] season; during our feasts; on Indigenous Peoples' Day). When the federal government comes to consult our village, they can't just arrive at the airstrip, stay one day and come back. You have to be patient with people. They have to live with our people, eat what we eat. You have to listen to our conversations. The government doesn't need to be afraid of us. If you want to propose something that will affect our lives, come to our home. We will not accept dialogue with consultants, we want you to consult us, you who have decision-making power. The meetings must be in the Munduruku language and we will choose the translators. In these meetings, our knowledge must be considered at the same level as the Pariwat (non-indigenous people). Because we are the ones who know about the rivers, the forests, the fish and the earth. We are the ones who will coordinate the meetings, not the government. The allies of our people must participate in the meetings: the Federal Public Ministry, the organizations we elect, and our special guests, including technicians trusted by us, who will be selected by us. The expenses incurred for us to be present, and that of our allies, in all meetings, must be covered by the government. For the consultation to be really free, we will not accept armed Pariwat at meetings (the Military Police, Federal Police, Federal Transit Police, Army, National Public Security Force, Brazilian Intelligence Agency or any other public or private security force). We will carry bows and arrows because it is part of our identity and not directly for war. For our safety, the meetings must be filmed by our people. Allies and government agents we have authorized can shoot and take pictures, provided they give us complete copies (unedited) at the end of the meeting. Our sacred places cannot be filmed or photographed. We will not accept the dissemination or misuse of our images.

In the Lower Tapajós Region, indigenous peoples are also under pressure due to the construction of large projects, and as this is taking place in a hegemonic way, they are not consulted and are marginalized from the process. Taking into account the positive experiences of creating consultation protocols for each community and with the understanding that this is also a very important instrument in their struggle, the indigenous peoples of the



Lower Tapajós intend to continue the construction of their consultation protocols in 2018 - they have already been developed in some communities - with the objective of forcing the Brazilian government and companies to comply with international conventions and the country's own internal legislation.

Thus, as the Tapajós River basin suffers from all of these attacks and threats, new forms of resistance are born: the indigenous peoples, riverine communities and quilombolas (communities of African descent) unite and plan resistance strategies together, sharing their experiences so that all of them might have access to important tools for their struggles. The consultation protocols are one of these tools; national and international organizations need to know about them in order to demand, in accordance with ILO Convention 169, that these peoples and communities, once and for all, be consulted and informed regarding any intervention or project that affects them, in the way that their traditions and customs dictate.

Photo 24



Photo by: Bárbara Dias

### 3.4 What Do the Munduruku Want?

We want the Brazilian government to demarcate our lands, and we women and men, are going to fight for it. Even after it is demarcated we will continue to fight for [our lands] in the same way. -- Claudeth Saw.

Our [country's] leaders do not think about protecting us. We are defending what is ours, but [we are] also in favor of non-indigenous people, because we know that nature is humanity's patrimony. People can't destroy it. So perhaps we can live in a new, better world. And we want the whole world to listen to us and to make the Brazilian government respect our rights! – Jairo Saw Munduruku.

## 2.2. THE HUMAN RIGHT TO CULTURAL IDENTITY

The right to identity is related to cultural integrity, which includes the idea of the right of Amazonian peoples to exercise and maintain their culture, to which a series of measure can be added, to be taken by the state governments, so that this culture remains intact, continues to be reproduced, and if the case requires, can develop under the best of terms.<sup>89</sup>

The Inter-American Court has expressed that traditions, customs, languages, art, rituals, and knowledge are, among others, aspects of the identity of indigenous peoples, which, as a function of their environment, and integrated with nature and their history, its members transmit and recreate from generation to generation.<sup>90</sup>

The way in which each of these aspects is transmitted and recreated from generation to generation is through the participation in or taking part in cultural life. This right is recognized in Article 15 of the ICESCR, and Article 14 of the San Salvador Pact, and consists of:<sup>91</sup>

- a) **The right to participate in cultural life:** The right to act freely; to choose one's own identity; to identify with one or more communities, or to change one's mind; to participate in the political life of society; to exercise one's own cultural practices and to express oneself in the language of one's choice;
- b) **The right to access to one's cultural life:** The right to know and understand one's own culture and that of others, through education and information, and to receive education and quality training with full respect of one's cultural identity; and
- c) **The right to contribute to cultural life:** The right of everyone to contribute to the creation of the spiritual, material, intellectual and emotional production/manifestations of their community.

### Violation of the Right to Indigenous Identity

The UN ESCR Committee, in its General Comment No. 21, describes the components of culture as follows:

*The concept of culture (...) encompasses inter alia, ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives.*<sup>92</sup>

89 Castro, F. (2016). Disertación: La política extractiva petrolera frente a los derechos de los pueblos indígenas [Dissertation: Oil Extractive Policy vs. the Rights of Indigenous Peoples]. PUCE. p. 46.

90 IAHRC Court. (2012). Case of the Kichwa Indigenous People of Sarayaku vs. Ecuador. p. 66.

91 Committee ESCR. (2012). General Comment Nº 21. <https://www.refworld.org/docid/4ed35bae2.html>

92 Ibid., para. 12-13.





Therefore, the recognition of these rights in relation to the culture of indigenous peoples includes the idea that each people will express their cultural identity according to their own way of seeing the world. Likewise, one of the principles to protect identity is interculturality, *that is to say, the coexistence, the relationship, the dialogue, the interchange between cultures, must take place in a framework of mutual respect, since each of them has the right to develop its potentialities to their maximum, and to learn from [intercultural] contact.*<sup>93</sup> This principle guides individual and collective participation in decision-making, planning, and the management of public affairs, and in people's control of state institutions and society. This is complemented by the capacity of social organizations to formulate proposals and demands regarding the social aspects of society. In other words, in order for the complete exercise of indigenous peoples' cultural identity to occur, we must work so that that relationship between the State and society, expressed through participation and involvement in decision-making regarding public affairs, is based on the respect for and recognition of diverse ways of seeing life and the world.

The ESCR Committee has established a framework of obligations that States must fulfill to create and promote an environment in which everyone, individually, in association with others, or within a community or group, can participate in the culture of their choice. Within this framework, States should take legal and other measures to ensure (a) equality and non-discrimination in the exercise of the law and guarantee respect for each person's decision to identify or not with various communities and their right to change their minds, (b) respect and protection of all persons to exercise their own cultural practices, within the limits of respect for human rights, (c) the elimination of barriers that inhibit or limit people's access to their own culture or that of others, and (d) the participation of indigenous peoples in the formulation of laws and policies that concern them.<sup>94</sup>

Despite this, the extractive activities in the Amazon have led to significant losses of cultural identity of communities and peoples, such as the Yanomami and Yekwana Peoples in Brazil and the Masetén indigenous communities in Masetén in Bolivia, not only as a result of environmental impacts, but social impacts that have fractured the areas' social fabric.

## The Violation of the Peasants' Right to Identity

In order to understand the dynamics and situation of the peasants in the Amazon, it is important to take into account their close relationship with the land, their activities and natural resources. Within the global context of their activities, agriculture stands out as the primary source of sustenance and work for small landowners and landless laborers. According to the study carried out by the Human Rights Council's Advisory Committee concerning the rights of peasants and others that work in rural areas, about 10 per cent of the world's people who suffer from hunger subsist via traditional primary activities such as fishing, hunting

93 Castro Felipe, Disertación: La política extractiva petrolera frente a los derechos de los pueblos indígenas. Pontificia Universidad Católica del Ecuador, 2016. [Dissertation: Oil Extractive Policy vs. the Rights of Indigenous Peoples]

94 Committee DESC. General Comment Nº 21, 2012.



and grazing.<sup>95</sup> Therefore, any other activity that undermines these practices, such as the competition for natural resources and indiscriminate natural resource exploitation, leads to consequences like land dispossession, and thus, a severe impact on the exercise of other rights such as health, education, food, etc.

The lack of protection and guarantees against interference and the devaluation of their work has obliged peasants to negotiate ownership and use of their land through mechanisms such as: leasing, mining servitudes, advance land sales, provision of land for monoculture, etc., because of extractive projects and the expansion of agro-industry, which has led to the forced eviction of peasant populations in rural areas and their proletarianization, the loss of food sovereignty, a lack of access to natural resources, and hence, the decline of their self-sustaining economy.<sup>96</sup>

Perhaps the main cause which underlies this series of problems identified in the Amazon Region is the discrimination against and the vulnerable state of the peasants. This type of violence, manifested in the daily life of societies, is also the consequence of various States' inobservance of and non-compliance with their obligations. The same United Nations Human Rights Council has identified the main causes of discrimination against and violation of peasants' right to be: the expropriation of their land, forced evictions and displacement, gender discrimination, the absence of agrarian reform and rural development policies, lack of minimum wages and protection, and the criminalization of the movements that defend and protect peasants' rights.<sup>97</sup>

To all this, we have to add peasants' lack of access to a legal defense for their social rights because of a lack of understanding and adjustment of the law to peasant reality. The law disregards the value of the close identification of these communities with the land and water, reducing their struggle to vague interpretations of civil regulations related to private property, empowering States to expropriate their land or force their eviction by discrediting their claims to traditional possession of the land.

According to Article 17 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, their right to land and territory is understood to include the space needed to maintain their different political, economic, social and cultural institutions that ensure their right to full participation, and that guarantees their food sovereignty and access to natural resources, as well as the respect of their right to seeds and of their knowledge and practice of traditional agriculture.

Taking into account the aforementioned points, it should be emphasized that the peasant identity is linked to their territory because of their treatment and usage of the land; from this, their traditional knowledge of agriculture, fishing and livestock is generated. These are the values, know-how and particular practices which need to be respected, protected and guaranteed to ensure biological and cultural preservation.<sup>98</sup>

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95 Doc A/HRC/19/75, para. 19.

96 Quevedo Ramírez, Thomas, *Agroindustria y concentración de la propiedad de la tierra [Agribusiness and the Concentration of Land Ownership]*, 2013. In: Vera Puebla Mónica, *Del campo a los tribunales: Herramientas para el litigio estratégico y la resolución de casos de Derechos Humanos de las campesinas y campesinos en el Ecuador [From the Field to the Courts: Tools for Strategic Litigation and the Resolution of the Human Rights Cases of Peasants in Ecuador]*, FIAN Ecuador, Quito 2017, p. 3.

97 A/HRC/19/75, para. 24.

98 Reflection on a legal case in the 4th Region Federal Regional Court, Environmental Courtroom, Curitiba-Brazil.



The identity of the peasants must arise from their own perspective and their daily bond with working the earth, highlighting the knowledge that this generates and which transforms them into autonomous and sovereign groups.

With all of this in mind, it is appropriate and necessary to present the plight of individual peasant communities whose struggles represent what is occurring throughout the Amazon. Vereda de Chaparrito Community in Colombia and Yurimaguas Community in Peru live out daily battles for the recognition of their identity, an identity that is embodied in their work and close ties with the land, which has led them to develop alternative knowledge to promote community and solidarity focused economies, and food autonomy and food sovereignty based on their right to seeds and sustainable production practices which ensure a friendly and responsible relationship with the environment. They have also highlighted the importance of their right to participation and association both to direct decision-making and as a way to be able to defend the land and water against arbitrary government interference resulting from the expansion of extractivism, monocultures and megaprojects.



## 2.2.1 Rural Identity, Sovereignty and Food Autonomy in the Colombian Southeast, "Vereda Chaparrito"

**Coordinated by:** Southeastern Colombia Regional Social Ministry<sup>99</sup>

Photo 25: Sunset in Vereda Chaparrito



By: P.S.R. Photographic Archives

### I. Introduction:

Thanks to its fertile land, geographical location, climatic conditions, and access to a significant amount of natural resources, Colombia is, undoubtedly, an agricultural country. Indeed, it is to such a degree that the United Nations Food and Agriculture Organization (FAO) has stated that Colombia *"is one of the five most important countries as a global food pantry."*

Nevertheless, national strategy has seemed to target the growth of sectors such as mining, hydrocarbons and large-scale agriculture with a focus on agrofuels.<sup>100</sup>

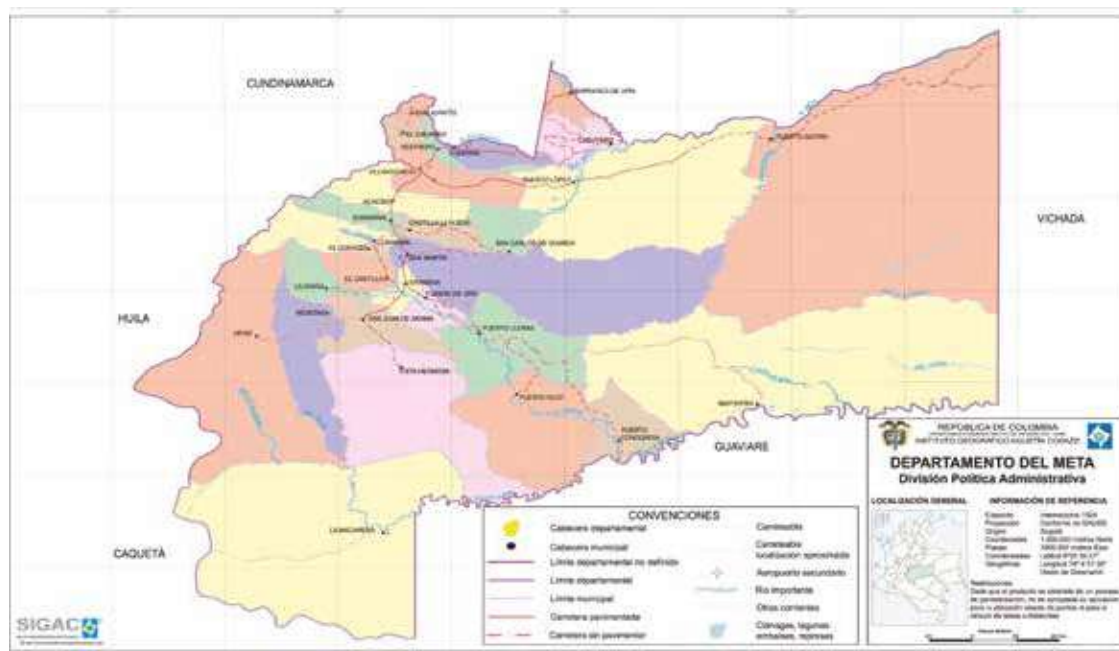
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<sup>99</sup> In collaboration with Haszel Dallaa Contreras Sierra.

<sup>100</sup> The following map shows the political and administrative divisions of the Department of Meta, Colombia.



Map 12



The needs of rural populations are not taken into account even though, according to the 3rd National Agricultural Census,<sup>101</sup> they live in poverty, are forgotten by the State government, and are the most affected by the armed conflict.

However, with the signing and implementation of the Final Peace Agreement, an opportunity has arisen to improve living conditions, in particular for peasant communities, this, according to the agreement's first point: **Towards a New Colombian Countryside: Comprehensive Rural Reform**, which proposes, as fundamental goals, access to and use of land, national rural plans, and development programs with a territorial focus (PDETs), including a strong component of monitoring and demanding the point's fulfillment by the State.

The Southeastern Colombia Regional Social Ministry, in its efforts to accompany, assist and train communities which cover over 42% of the country's national territory, has witnessed how strong national and international economic interests, in their fight to control territory, evict peasants, indigenous peoples, and settlers from their lands, in order to gain access to natural riches, which in this case, belong to the Orinoco and Amazon Regions.

101 <https://www.dane.gov.co/index.php/estadisticas-por-tema/agropecuaria/censo-nacional-agropecuaria-2014>

## II. Context:

### a. Land and Territory

"Many times we associate the notion of territory with rivers, roads, mountains, streets, buildings, and in general, with physical places, seldomly with culture, and almost never with our emotions, feelings and fears. Yet people always appear who make us aware that our territories are full of these things that motivate us to take care of it and protect it." -- Father Henry Soler.

Everything that the human being does is related to the Earth, which is of great importance for our lives. Without it, we would not have access to food, we would not have a place to live and build our homes, and all those who work in the fields would not be able to do so.<sup>102</sup>

No, taking a holistic view of things, the land cannot be recognized without territory. Darío Fajardo proposes the following way of understanding this: *"Two intimately related concepts. By land, [we mean] the physical and productive basis of a territory. By territory, we mean the set of relations and representations built from the land."*

In understanding the right to land and territory, the active subject is the peasant, indigenous or Afro-descendant who has the right to own land individually or collectively, safely, without risk of being evicted, to work their own land and obtain its products, and to administer and preserve the forests (Article 4 of the Declaration on the Rights of Peasants).

### b. Peasant Identity.

"My crop is my wealth and my land is my identity."

Jesús Pimentel, a young peasant and member of the Antorchas de Montes de María Youth Network in Colombia, wrote this musical theme for his land, a theme with which the peasants identify themselves:

"I am a working man, I am a young worker, of the fields and of peasants, I reward my sweat harvesting my crop. Young people, children, women, we tell about the resistance of the peasant who demands the rights of his land, and if I sing, I sing of my land, of my identity. Young man, I want you to analyze the customs of your grandfather. Go and defend your roots, take care of our soil. Joy and long life to the peasant! Listen to those beautiful phrases. By their cultivation [of her], the Earth identifies them."

<sup>102</sup> Coronado S. (2009). El Derecho a la tierra y el territorio [The Right to Land and Territory]. Centro de Investigación y Educación Popular [Center for Popular Research and Education] (CINEP). p. 9.





According to the Declaration on the Rights of Peasants,<sup>103</sup> *“a peasant is any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, [...] and who has a special dependency on and attachment to the land.”* But it is the concept of territory that allows us to understand the peasant identity, because one of the relationships generated between the land and the peasant is cultural: defined by the customs, beliefs and ways of life of the inhabitants, according to the trajectory of the community, and which generates roots and identity tied to the territory and the appropriation of that territory.<sup>104</sup>

Photo 26:



The identity of the peasants must arise from their own perspective, they need to be recognized as analytical subjects of their own development. It must be understood that they construct themselves through their own narrations, stories and histories, which make up family and communitarian life, a set of ideas that emerge through their culture, their history, as children of Mother Earth. We desire, using contributions from the same people who inhabit these territories, to show the social construction of the rural identity as told by its protagonists, since they are the ones who are an integral part of it.

*“The agrarian worker can only be subordinated as a laborer, as a worker for some businessman, and we say no, the peasant has a cultural construction that leads them to have a direct relationship with the land, linking the family to the activity of food production, to taking care of seeds. They are protectors of the environment, while an agrarian worker is none of these things. Thus, our commitment to reform the Constitution for it to say that peasants have preferential rights because they are a specially protected group,”* explains Senator Castilla.

<sup>103</sup> <https://digitallibrary.un.org/record/1650694>

<sup>104</sup> Coronado S. (2009). p. 12.

Therefore, we must recognize the indestructible union between land and peasants, the value of their local agricultural knowledge, the value of their agriculture and their relationship with nature, their cultural forms and ways of life, which must be preserved and protected as the nation's local cultural heritage, because not only their own existence is at risk, but that of our own history.

### *Ways of Protecting Land, Territory and Peasant Identity*

The ties between the peasants and their territory should not only be understood as the love they have for their land, but rather that this land give them what is necessary for their survival and family economy, which creates the following alternatives:

- **A solidarity focused economy:** Unlike the current economic system that favors individualism, this type of economy defends organizational and solidarity-based processes for developing members' economic projects. This includes proposals like community stores and revolving credit.
- **Sustainable production:** That responds to the current need for environmentally friendly agriculture and reflects responsible relationships with the land and the consumer. An example of this alternative is agroecology.
- **Citizen participation:** The guarantee of the rights to land and territory is linked to social processes of association and participation of the rural population exercising their capacity to make decisions and influence the State regarding the destiny of the land and those who inhabit it. One of the country's most powerful mechanisms for this, in the hands of the peasant communities, has been the popular consultations showing their rejection of mining and oil exploitation in their territories, which are mainly dedicated to agriculture.

### **c. Food Sovereignty and Food Autonomy**

The Vía Campesina International Movement defines food sovereignty as peoples' right to healthy and culturally appropriate food, produced with sustainable methods, as well as their right to define their own agricultural and food systems. It is based on the development of a model of sustainable peasant production that favors both communities and their environment, and which places the aspirations, necessities and ways of life of those who produce, distribute and consume food in the center of food systems and dietary policies, ahead of the demands of markets and companies.

This understanding highlights the role of the peasant as the central axis of the agro-food process, not like previous understandings in which decisions are taken by transnational food producers. To confront this reality, some of the peasants of southeastern Colombia, as active subjects, have brought about changes in this static model of rural development imposed on them by others, which does not take into account their realities. Instead of giving up, they have



taken steps towards the self-determination of their food and agricultural systems. These developments have taken place in the areas of: **seed care, environmentally friendly production methods, the strengthening of local markets and knowledge exchange.**

## *Ways of Protecting Peasants' Food Sovereignty*

Human and Natural Agriculture is the art of cultivating people, harvesting the sun, strengthening and preserving the soil and its natural foods, water, native seeds, local knowledge, flora and fauna in the ancestral territory; In order to design and implement diversified productive systems in harmony with NATURE!

-- William Velásquez Pérez, Bioagriculture

### • **Taking Care of One's Own Seeds**

Seeds constitute the foundation of food production for all human beings; their importance lies in the fact that they do not die, but are renewed, giving birth to hundreds of replacements for the original seeds.<sup>105</sup> This is why man, since the dawn of civilization, has kept the best seed samples to re-cultivate them, an ancient technique that in light of new policies is illegal, a fact that opposes the peasants' right to keep, sow, and develop their own seed/plant varieties and to exchange, give away, or sell them.

In this area, peasants' resistance is evident in the use of strategies such as community seed houses and seed custodians, which favor the rescue and storage of local seed varieties, important for maintaining the agro-ecological and sociocultural diversity of communities and peoples.<sup>106</sup>

### • **Environmentally Friendly Production**

In Colombia, small-scale farmers are the ones that dedicate the greatest percentage of their land to agriculture, and many have started to use alternative agricultural production practices in harmony with nature. There are several strategies. One is the planting of circular orchards in terraces with the objective of maintaining, conserving and/or increasing the biodiversity and fertility of the soil, forging food security in the territory, and serving as a strategy to weather climate change.

Another is the implementation of successional agroforestry systems (SAFS),<sup>107</sup> which help establish rural family economic mechanisms that not only include the cultivation process up

<sup>105</sup> Uribe M. (2016). Los derechos de los agricultores y convenio upov/91 [The Rights of Farmers and UPOV Convention 91]. Revista la propiedad intelectual [Intangible Property Journal] N.º 21. Universidad Externado de Colombia.

<sup>106</sup> Movimentos dos pequenos agricultores MPA. do Brasil [Small-Scale Farmers Movement of Brazil]. (2009). Casa de sementes criollas [Seed House for Local Varieties]. Instituto cultural padre Josimo [Padre Josimo Cultural Institute]. Porto Alegre, Brasil.

<sup>107</sup> Image 27 shows the design of a SAF, or edible forest. They are sown in forests which are not currently being used; the objective is to take advantage of such spaces and the climate the forest species offer, permitting adequate crop development. The left part of the image shows successive crop nuclei, including coffee and cocoa. Other crops and plants identified in the image's legend are, in order: cassava, caupi beans, pineapple, banana, and several tree species pertaining to the area. The image was designed by Paolin Andrade and Angela Hidalgo.

until the moment of harvest but also the transformation and commercializing of these products in peasant markets. There are also Diversified Edible Forests (DEFs) which are made up of diverse plant species. These species, according to their condition and function, are categorized by level or strata. The DEFs start with the planting of short-cycle pioneer species (first level), which establish the necessary and specific conditions for the establishment of the next level of plant species, and so on, until a last level or strata is reached made up of primary species in a so-called climax forest.<sup>108</sup>

Picture 27:



- **Local Commercialization: Farmers' Markets**



"Dear Chaparrito, Old Chaparro where I began to work on the farm in the spring, the spring when I formed my home in the company of my husband, and the social ministry, with its beautiful teachings, put us to work in the Peasants' Plaza to be able to progress. My dear municipality awaits with joy for us because we bring it the freshest products of the region, and with these coins we can take something home and thus succeed. I give thanks to my

108 Velasquez W. (2015). Bosques comestibles diversificados [Diversified Edible Forests]. Revista Semillas [Seed Journal] No. 57. One can also read more, in Spanish, at: <http://www.semillas.org.co/es/bosques-comestibles-diversificados-bcd>.

God and to the Social Ministry for having taught us this better culture." --  
Norley Sánchez, Vereda Chaparrito.

Peasant markets improve the rural family economy with the sale of healthy, quality products, without intermediaries, at fair prices that favor friendships, histories of life, and customs, in the process helping to unify families and strengthen their identity, and highlighting the role of women as protagonists in the consolidation of unity and identity.

- **Exchange of knowledge and flavors**

Through food we can get to know the way of life of the peasant communities, their rituals, their celebrations, their work and customs. Food and its preparation have to do with strengthening peasant identity, founded on what the families produce on their farms and the resources in their territories. It is an element that guarantees food security, food autonomy and food sovereignty. In this sense, it is a permanent process which the communities make use of.

Photo 28: Peasant market



Photographic record of the PSR.

### III. The Legal Framework for and Violations of Peasants' Rights

#### a. Legal Framework for the Protection of Peasants' Rights in Colombia

The legal protection of peasants has been advancing internationally with the Declaration on the Rights of Peasants and Other People Working in Rural Areas, pushed in 2013 by the General Assembly of the United Nations. Even if this instrument does not have a binding character, "*It is an essential step towards the recognition, promotion and protection of the rights of peasants*".

The Political Constitution of Colombia<sup>109</sup> also provides a legal framework for protecting peasants. Amongst its most important provisions are: (1) the social function of property (Article 58), (2) guarantees of agricultural workers' progressive access to land, and the provision of education, health, housing, social security, recreation, credit, communications, product marketing, technical and business assistance services (Article 64), (3) special protection for food production (Article 65), and (4) the obligation to provide agricultural credit (Article 66), which constitute the basis for State action to improve peasants' income and quality of life.

According to the Constitutional Court, agrarian property is supported by constitutional provisions 60, 64 and 66, establishing that access to land not only implies securing legal titles for but also improving the quality of life of rural people. The Constitution summarizes the guarantees of rural property as:

1. The right of agrarian workers to not be stripped of their property nor driven to get rid of it on the pretext of its lack of productivity, without first offering alternatives to make such property productive;
2. The right to not have the enjoyment of property affected without sufficient and powerful justification;
3. The right that the State adopt progressive and not regressive measures aimed at stimulating, promoting and favoring agricultural workers' access to property, and improving their quality of life and human dignity; and
4. The right to the protection of their food security by these same means (C-644-2012).

*Regarding the provisions of Article 65 of the Constitution concerning the right to adequate food and food security, the court assures that: "The protection of food production is based on two rights: the social individual right to adequate food and to not suffer hunger, and the collective right to food security, which can be recognized in the Constitution in various precepts which clearly reflect international human rights law" (C-644 of 2012).*

Although the Constitution has these guarantees, it has still not been possible to translate these precepts via legislation and public policy into concrete protection of the Colombian peasantry.

## **b. Acts That Violate Peasants' Human Rights**

The rights of peasants are at risk; this is happening as a result of regulations being used as instruments of oppression as well as omissions by the State government regarding peasants' reality. These situations can be described as follow:

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<sup>109</sup> <http://www.constitucioncolombia.com/>





- **The ZIDRES Law**

Law 1776, passed in 2016, creates and develops zones of rural, economic, and social development (ZIDRES).<sup>110</sup> This law is in force after passing constitutional examination (C-077 in 2017).<sup>111</sup> The national government will proceed to delimit these zones through a CONPES document.

The law proposes a model of rural development in which it is possible to allocate public lands to the execution of agro-industrial projects. These projects can be proposed by any person or associated company. However, large companies would have many more advantages in executing them. Stringent requirements such as financial and administrative viability, land acquisition capacity and access to technical assistance are established. There is no support for peasant associations to fulfill these requirements.<sup>112</sup>

The ZIDRES would radically reduce the amount of land available to give as property to landless peasants or postpone the guarantee of progressive land access to peasants, probably until the end of the concession contracts, which last 10 to 20 years.

These zones assume, without having proven the fact, that peasant production is inefficient by nature and that it is therefore necessary to favor production on a larger scale. The biggest risk is that it sends the message that the peasant economy has no place in the country's rural development model. Either the peasants become big businessmen or they will be replaced by them.<sup>113</sup>

- **Certified Seeds**

"We are Seeds. When the government issued this law and prevents us from exchanging seeds it's as if they were taking away our identity, our roots as the peasants that we are." -- Marco Martínez, Vereda Chaparrito.

The controversy started with resolution 970/2010<sup>114</sup> which obliges farmers to store, commercialize and use only certified seeds (those produced by large domestic or foreign companies), which generates two problems: it makes both the use of local, traditional seeds and the storage of seeds for future planting illegal.<sup>115</sup>

Although this provision was repealed, the fight continues since there are forces that continue to insist on the elimination of these traditional, millennia-old practices because of the economic benefits that the intellectual property rights to certified seeds produce.

110 <http://es.presidencia.gov.co/normativa/normativa/LEY%201776%20DEL%2029%20DE%20ENERO%20DE%202016.pdf>

111 <http://www.corteconstitucional.gov.co/relatoria/2017/C-077-17.htm>

112 Saffon, M. (2017). Zidres y paz: Un oxymoron [Zidres and Peace: An Oxymoron]. El Espectador.

113 Ibid.

114 <https://www.ica.gov.co/Normatividad/Normas-Ica/Resoluciones-Oficinas-Nacionales/RESOLUCIONES-DEROGADAS/RESOL-970-DE-2010.aspx>

115 Rodríguez D. y Rodríguez C. (2013). La 970 y el futuro de las semillas [The 970 and the future of seeds]. La Silla Vacía.



- **Mining and Hydrocarbon Exploitation in the Colombian Amazon**

In an investigation done by Rights, Diversity and Rainforests (DEDISE), of 147 projects identified as being implemented in the Amazon, 70% correspond to the mining and energy sector, consisting of mining and hydrocarbon extraction projects. According to data from 2008, 106 mining titles had been awarded in the Caquetá, Guaviare, Putumayo, Amazonas, Guainía, Vaupés, Cauca, Nariño, Meta and Vichada Departments; these titles sum to 95,300 hectares. In the year 2011, the current titles were 128, equivalent to 100,600 hectares, or 0.20% of the Colombian Amazon. In 2013, there were 180 titles covering 107,900 hectares.<sup>116</sup>

Development Law 1450 of 2011, and Resolution 045 of 2012 declared almost 22.3 million hectares as strategic mining areas (AEM), of which 17.5 million correspond to the Amazonas, Guainía, Guaviare, Vaupés, Vichada and Choco Departments. They are distributed in 202 blocks, corresponding to 15.4% of national territory. The AEM overlap with 70 indigenous reserves, in addition to four National Natural Parks: Tuparro, Puinawai, Nukak, Yaigoje Apaporis.

- **The Land Decree**

Although Point 1, Comprehensive Agrarian Development Policy, of The Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace, is an opportunity to solve the historical problems of rural communities, the regulations passed to implement it do not meet the expectations and guidelines of the agreement. One such case is Decree 902 of 2017, which creates measure to facilitate the comprehensive rural reform envisaged in the Final Agreement with regards to land issues, specifically the procedure for accessing and formalizing land access and the land fund.

So far it is the most important regulation concerning agrarian reform, as it seeks to resolve the issue of formalizing land ownership, including vacant plots; this issue was central to the origin of armed conflict in Colombia. The regulation has received quite a lot of criticism but, correctly, academics have presented a more impartial debate, which can be summarized as follows:

- Among the advances: The decree gives legal support to the Land Fund, offers faster and easier ways of resolving agrarian conflicts, such as the use of a single procedure for all matters, structures a massive plan towards free formalization of land ownership, and centralizes information about the beneficiaries of state programs in rural areas in the Registro de Sujetos de Ordenamiento - RESO.
- Among the failings: It allows large landowners the right to use currently non-productive land without the restrictions that apply to family agricultural units (UAF); it opens the possibility of juridical persons requesting the use of barren land; forest preserves can be handed over; and it allows large entrepreneurs to have property in projects in association with small farmers without taking into account the relative size of the partners at the moment that earnings are divided.<sup>117</sup>

<sup>116</sup> Tenjo, M. y Alvarez, P. (2015). La Amazonia colombiana: Análisis de las inversiones que amenazan los derechos de los pueblos y sus bosques [The Colombian Amazon: An Analysis of the Investments that Threaten the Rights of Peoples and Their Forests]. Derechos, Diversidad y Selvas [Rights, Diversity, and Rainforests] -- DEDISE..

<sup>117</sup> Leon, J. (April 4, 2017). Los avances, los retos y los micos del decreto para aterrizar el punto agrario [The Advances, the Challenges and the Failings of the Decree Concretizing the Agrarian Point]. La Silla Vacía.



### c. Vereda Chaparrito

The Vereda Chaparrito Community is located in the municipality of Puerto Concordia-Meta. The area legally consists of three land plots: Panfilera, Angosturas I and Angosturas II, which total approximately 1,100 hectares. The territory that forms Chaparrito was once classified as non-productive land, and the Colombian Institute of Agricultural Reform (INCORA) handed it out in the following way:

- In Resolution No 1021, emitted on September 26, 1996, INCORA awarded the Panfilera Plot, covering 636 hectares, to José Edilberto Rey Baquero and María Elena Ríos Guativa.
- In Resolution No 1000, emitted on September 25, 1996, INCORA awarded the Angosturas II Plot, covering 280 hectares and 4764 square meters, to Mr. Luis Enrique Gómez Alvarado.
- In Resolution No 079, emitted on March 24, 1998, INCORA awarded the Angosturas I Plot, with an extension of 187 hectares, to Mr. Luis Enrique Rodríguez Martínez.

The beneficiaries of these awards never took material possession of the land since peasant farmers had already lived there since before 1996. What the new beneficiaries did was to pay no attention to the rights of the farmers, selling the titles to the land to other people (Panfilera on December 12, 2005 with Real Estate Registration 236-38510 in San Martín-Meta; Angosturas II on June 15 of 2007 with Real Estate Registration 236-41167 in San Martín-Meta; and Angosturas I on July 3, 2007 with Real Estate Registration 236-41588).

Photo 29: Entrance to the Vereda Chaparrito, P. S. R. Photo Archives



Registro Fotográfico dela PS.R

The above demonstrates the phenomenon of land concentration in a few hands; it is worth highlighting that the person who bought the aforementioned plots has other properties around the Chaparrito area, mostly used for cultivating African palm. It is possible to visualize palm production at the entrance to the plot and around the Casa Verde area.

At the same time, it should be noted that this municipality was one focus of the armed conflict, with the presence of illegal armed groups, both FARC-EP and paramilitaries, who encouraged farmers in the area to illicitly cultivate coca, assuming that they had no economic alternatives, although it must be recognized that with such poor infrastructure conditions and lack of technical capacity, it would have been very difficult for them to produce and sell their agricultural products.

These illegal processes have consequences in the personal and collective lives of the communities because they generate a culture focused on speed, on ease, on doing things the wrong way, laying aside communal work, solidarity and the proper exercise of political roles, whether this be as part of a communal action board or in forming associations to manage productive projects.

Nevertheless, the advent of the national government's coca-growing eradication policies, which included no plan for substituting this crop's production, led to difficult situations and hunger.

This situation, in which the peasant families living in the Vereda Chaparrito Community are at risk of being evicted from their lands, even though they materially possess them, due to apparent legal issues related to property titles, violates a whole series of rights and constitutional guarantees that converge on the right to food.

The basic content of the right to food includes: ***The availability of food in sufficient quantity and quality to satisfy the nutritional needs of individuals, without the presence of harmful substances, and in a way acceptable to a given culture; and the accessibility of these foods in ways that are sustainable and that do not hinder the enjoyment of other human rights.*** Availability implies that people can obtain food for themselves by exploiting productive land or by the proper functioning of food distribution, elaboration and marketing systems. It includes nutritional sufficiency, the cultural acceptability of the food, and sustainable food practices. Accessibility implies physical, geographical, economic, and non-discriminatory access.



## IV. Proposals

### a. Legal – Político

These strategies should be aimed at working on the implementation of the Havana Accords<sup>118</sup> in order to achieve the desired territorial peace in the areas most affected by the conflict.

In this sense, **Part 1** is vital. **Towards a New Colombian Countryside: The Comprehensive Rural Reform** established the following measures for transforming rural areas and comprehensive rural reform:

1. **Access to land**, through the formalization, restitution and equitable distribution of it, together with promoting the proper use of land in accordance with its aptitude..
2. **The provision of public goods and services** such as education, health, recreation, infrastructure, technical assistance, food and nutrition, among others, that provide well-being and quality of life for the rural population; to be accomplished through Territorially- Focused Development Programs (PDETs), and National Plans for Comprehensive Rural Reform.
3. **The implementation of a system for the progressive guaranteeing of the right to food**

With regards to Point 2: Political Participation, it should focus on helping people participate in spaces such as the Special Transitory Electoral Districts for Peace and local Councils for Reconciliation and Coexistence in order to present territorial needs for debate.

The same focus applies to the other measures that are included in the Agreement, such as the points concerning the solution of the illicit drug problem and reparation for victims. We foresee an opportunity to improve conditions in rural areas as long as the Agreement's implementation includes a strong component of citizens and competent entities monitoring and demanding the State's fulfillment of it.

### b. Additional/Alternate Proposals

Along with the previously mentioned proposals, there also need to be additional strategies, such as those that facilitate processes of comprehensive human development, integrating organizational, productive and other important processes in such a way that people dedicate themselves, day by day, to improving their internal relationships (with their families and communities) and external relationships (with nature and territorial entities). **Maintaining this dialogue between nature, people, and community will help to develop more harmonious and satisfactory relationships, which translate into a good quality of life and people and creation being in harmony.**

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<sup>118</sup> [www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Paginas/Texto-completo-del-Acuerdo-Final-para-la-Terminacion-del-conflicto.aspx](http://www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Paginas/Texto-completo-del-Acuerdo-Final-para-la-Terminacion-del-conflicto.aspx)



Photo 30



Photographic record P.S. R

One current project, in cooperation with Caritas Luxembourg, offers support to 85 families living in the Departments of Meta and Guaviare, specifically in Chaparrito, Alto Mielon and Mereles in Meta and Simón Bolívar, Acacias, La Dos Mil and Baja Unión in Guaviare. These communities have been affected by the presence of different armed groups but have managed to overcome this wave of violence and are in search of better living conditions. They are made up of territories used for agricultural and livestock raising purposes in the Plains and Amazon Regions. The soils are very acidic and there are two very well-marked seasons: one is summer, with a scarcity of water, and the other is winter, with excessive rainfall.

This project seeks to help families overcome their dependence on and eliminate illicit crops that, for more than a decade, were their main source of income. The project focuses on generating new agricultural production experiences that respect and coexist with all forms of life and allow these families to deal adequately with the area's weather conditions; it also focuses on strengthening food security and the local economy. Additionally, a plan for training and field work forms part of the process in order to motivate the communities to generate a new lifestyle and to recover, in their families, a farmer-producer culture and rootedness in the territory, strengthening the union in and between communities, promoting reconciliation and peace.

At the same time, due to the challenges stemming from the lack of formal land ownership (which is not only a problem for these communities but in general for the country's rural population; there are families in possession of their land for more than 10, 15, or even 20 years, and because of a lack of legal title, are constantly at risk of being evicted), the project accompanies communities with legal assessment concerning the process for formalizing their land ownership.

All of the above actions have stimulated these communities to begin the process of learning about and demanding the fulfillment of their rights, and to suggest strategies for defending their land and territorial resistance. They are crafting an economy based on family farming, resistant to climate change; this is why these strategies are worthy of being reproduced, in order to propagate these beneficial effects to more communities and regions.





## Testimonies:

"I am a coffee grower. This comes from family tradition: my parents had coffee crops and my mom roasted it and milled it. I helped with that chore and it was where I learned this art of coffee. Now I am a producer for the peasant market. I plant "Pure Breeze" coffee. On my farm, called "Los Alcaravanes", we have owned and worked the land for more than 19 years. We have circular orchards where we plant pineapple, cassava, banana, fruit trees, grasses, sugarcane and giant elephant ear.

We have a problem related to the issue of land [ownership]. We want to have the titles for our lands. A wealthy landowner who produces palm oil wants to take our land away from us, push us out, not let us work or cultivate our plantations, but all peasants have the right to work in a dignified manner to be able to raise our children.

We, the farmers of Chaparrito, feel very sad. We are being run over; this person does not consider that some families have lived here for more than 22 years, that there are elderly people, disabled, children. We have nowhere to go. We feel violated in our rights to housing, free expression and the threat of being displaced again from our territory which we love, as we have built our families here." -- Peasant farmer in the Vereda Chaparrito Community.

Photo 31: CCoffee producer at a peasant farmers' market P.S.R. Photo Archives



Registro Fotográfico da P.S.R.



## 2.2.2. The Violation of Human Rights Among the Other Amazonians: The River-Dwellers

**Coordinated by:** The Vicariate of Yurimaguas Land Ministry, Peru<sup>119</sup>

### I. Introduction:

#### 1. Brief historical Notes:

Geographically, the Yurimaguas District is located in the Department of Loreto, located in the northeastern part of Peru in the Amazon Region. Bordering in the north with Ecuador and Colombia, in the east with Brazil, in the south with Ucayali Department and in the west with the San Martín and Amazon Departments, Loreto Department covers 368,852 km<sup>2</sup> (28% of Peru's territory), making it the country's largest department, and the seventh largest sub-national entity in both South America and Latin America.<sup>120</sup> The Loreto territory has more than one million inhabitants<sup>121</sup> and is populated by various indigenous groups and peasants known as river – dwellers.

The District of Yurimaguas has as its capital the city of Yurimaguas, located at the confluence of the Huallaga and Paranapura Rivers. The name Yurimaguas, according to some, comes from the fusion of the Yuris and Omaguas Indigenous Peoples, now extinct.

The district is home to 40,506 indigenous inhabitants, distributed among 243 indigenous communities, classified into 11 ethnic groups and, in turn, 5 ethnolinguistic families. The percentage of the population made up of indigenous peoples, at 48%, is the largest in the Loreto Department. This makes it easy to see the pluricultural and folkloric richness of the people, showing how interesting these ethnic groups are, these groups who, at the same time, play a very important role in the conservation of the forests and the environment.<sup>122</sup>

Like any tropical city, Yurimaguas' average temperature has a range of 21°C - 31 °C. Because of its location (lowland rainforest), the most common crops are sugarcane, bananas, cotton, cassava, rice and tobacco, among others.

Historically, the first missions that came to evangelize and have contact with the locals in the region were the Jesuits, who were later expelled by the Spaniards in 1767. It is also reported that the Spanish navigator Francisco de Orellana confronted the Omaguas in 1542 in order to get food for his expedition. At the end of the nineteenth century, the beginning of the rubber boom produced sudden fortunes for rubber tree growers and forced hundreds of indigenous people into slavery; during this period, the rivers of the jungle were explored, selected timber material was commercialized and the city of Iquitos was consolidated, becoming the department's capital.

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<sup>119</sup> With the collaboration of Idelia Calderón.

<sup>120</sup> [https://es.wikipedia.org/wiki/Departamento\\_de\\_Loreto](https://es.wikipedia.org/wiki/Departamento_de_Loreto)

<sup>121</sup> INEI, 2012.

<sup>122</sup> <https://es.wikipedia.org/wiki/Yurimaguas>



Loreto is also the most diverse Peruvian department in terms of ethnicities and indigenous languages and today is the territory most affected by constant oil spills and forest degradation due to the expansion of palm oil crops, rice cultivation and wood trafficking.

Politically and administratively, Peru is divided into regions, departments, provinces and districts. In theory, it has a unitary and decentralized state government; in practice, there is centralism and a dependency on the capital, Lima.

**The Economy of Peru** is the fifth largest economy in Latin America in terms of nominal gross domestic product (PBI) and has traditionally reflected its varied and complex geography.<sup>123</sup> In 2017, the total economy amounted to 192 billion, 169 million dollars.<sup>124</sup> If we divide this among Peru's 31 million inhabitants, we have a per capita GDP of 5,726 dollars.

The Peruvian economy is based on the exploitation, processing and exportation of natural resources, mainly mining, agriculture and fishing. There is no industrialization policy.

In this context of wealth, there is the other side: the peasants. They are the one who are suffering from political games. Peasants who, thanks to megaprojects, and to the passing of laws that allow more flexibility with regards to the negative impacts generated by such businesses in their ancestral territory, are having their lives expropriated, their environment taken away from them, their food. The government is forgetting its main function: defending the dignity of the human person.

In this report we will detail some of the violations that riverine communities are suffering or have suffered during these past years in this part of the Amazon: Yurimaguas.

## 2. Background Information Regarding Public Policies and Intervention in Yurimaguas

The Ministry of Agriculture, even before **the implementation of Law 22175**, allocated large expanses of land to individuals throughout the Amazon area, many of which remained uncultivated and abandoned.

Facing this palpable reality, the government issued **Law 22175: The Law of the Native Communities and Agricultural Promotion of the Jungle and Jungle Highlands**. One of its aims is to incorporate the native communities into national economic life in equitable and dignified conditions. In this same law, **the legal figure of abandonment is created**, that is to say, if the land has been allocated free of charge by the government, the owner has the obligation to make productive use of it (that is, till the land). Otherwise, the owner can be accused of having abandoned the land, reversing its ownership to the State. The main objective of this law was the orderly and organized occupation of Amazonian land in colonization projects. However, since it was not accompanied by the provision of economic resources to enable an effective colonization, this objective was not accomplished.

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<sup>123</sup> [https://es.wikipedia.org/wiki/Econom%C3%ADa\\_del\\_Per%C3%BA](https://es.wikipedia.org/wiki/Econom%C3%ADa_del_Per%C3%BA)

<sup>124</sup> International Monetary Fund

**Facing this problem, norms and regulations were issued allowed the free occupation of the land and guaranteeing its possession. Among these regulations is Legislative Decree 1089.** It established and establishes up until now that those occupying and working State land become owners of it after one year. After five years of occupation they can even become the owners of land titled and registered to private individuals.

As a complement to this regulation, **Legislative Decree 663: The Law for the Promotion of Economic Activity in the Amazon Area** was issued, allowing the allotment of up to 10,000 acres of land at a time for agro-industrial projects. It came with an incentive: approval of a project's viability study was sufficient to be named owner of the land. However, other provisions in the decree state that these projects should respect the rights of those who currently occupy the land.

This group of laws has allowed a large sector of the population to get a hold of territory in these areas, sometimes with documents showing proof of ownership and at other times only by occupying it due to government slowness in granting land titles.

Recently, there have been more attempts to incorporate the Amazon Region into national communal life by means of air, land (the construction of the transoceanic highway) and fluvial communication. These efforts have caused companies to become interested in occupying enormous areas of the Amazon Region while ignoring the rights of landowners. **Legislative Decree 30230, in its efforts to encourage large projects, even ignores ownership of properties that have not been properly georeferenced.** This law has not only legalized land expropriation, but ignores many advances that had occurred in the regulations guaranteeing legal security of land ownership. Supported by the argument that the economy of the country is getting worse, environmental laws have become more flexible to encourage the invasion of the Amazon by environmentally damaging projects. This phenomenon of focusing on the Amazon's development from only an economic point of view, leaving aside important factors such as social and ecological aspects and the interests of future generations, has resulted in land trafficking. There are thousands of land possessors and landowners who are being deprived of their possessions and property under the pretext that these have not been fully or properly identified.

To complete this policy of expropriating and plundering small landowners and small landholders, a regulation was issued, in a totally non-transparent way, that established that Amazonian land ownership should be governed by the country's regular legislation, which does not establish any restrictions regarding the concentration of land ownership in a few hands, as opposed to the restrictions provided by Law 22175.

It deserves special mention the lack of political will to title peasant and native communities' land in order to obviate the need for a consultation process during project development.

The San Martín Region, anticipating possible conflicts and the irrational use of land, approved the **Economic and Ecological Zoning by Regional Ordinance**, which classifies what land can be used for based on the soil's characteristics and the activities that such characteristics best allow for. **Supreme Decree 1089** envisaged that once the economic and ecological zoning was approved, it would become a compulsory instrument dictating rational land use. Notwithstanding this particular norm, which, under Supreme Decree 1089,



was of compulsory application, in practice the law's reading has been different. Completely ignoring all of this regulation, 10 thousand hectares were awarded to Caynarachi S. A., an agricultural company, for cultivating palm oil. As a result of the population's opposition, the company gave 7 thousand hectares back. The other 3 thousand hectares were logged, lost their natural water springs, and suffered the destruction of all Amazonian life in order to make way for palm oil planting.

The new way of taking over the other 7 thousand hectares is through the forming of associations, groups of people that appear suddenly, armed with chainsaws and a violent attitude, who enter, cut down, burn, and convert the areas into palm plantations. This process eliminates several legal hurdles: there is no longer any need for the company to obtain the approval of an environmental impact study, the authorization to deforest the land, or pay for the right to deforest, among others. After these groups occupy the area, they transfer the areas they "worked" on (that is, illegally logged) to a buyer. The buyer then asks to be granted a "supplementary title" in order to give this land, which has an illegal origin, legal standing. Interestingly, Palmas del Shanusi (a palm oil company) has filled the country's Mixed Courts with petitions for the granting of supplementary land titles.

In general, the native and riverine communities, who are the real owners of what we know today as the Amazon Region, have been left without their land, and what little land they have obtained after years of struggle is being overlapped and undermined by mining requests, petroleum extraction zones and other projects of interest to companies and/or the State. To be concrete: Nothing that was theirs belongs to them. At the same time, we find a great concentration of land ownership in a few hands, the violent plundering of or expropriation of small landholder and landowner's land by illicit means, the cancellation or closing of right-of-ways and easements, the persecution of those who defend these communities' rights, water pollution because of the spread of pesticides around the upper parts of rivers that with the rain are dragged down to the lower areas where villages and settlements are, the persecution of landholders with legal proceedings accusing them of deforestation, the corruption of government officials and the dereliction of their duties, wood trafficking, illegal land titling, little consideration of the value of natural resources, the weak organization of civil society, the lack of land titling for the native communities, the promulgation of anti-environmental laws, the nullification of land possession records, the prioritization of megaprojects to the detriment of native communities, and constant oil spills. In conclusion, we have a national government specialized in trampling rights and which, in the name of national interest – which is none other than the interest of the business sector – is killing off life itself: our Amazon.

### 3. Context:

The Apostolic Vicariate of Yurimaguas, also known as the Apostolic Vicariate of San Gabriel de la Dolorosa of Marañón, is located in the Amazon Jungle of Peru. It is a large vicariate; it has jurisdiction over territory covering parts of the San Martín and Loreto Departments, which are divided into provinces and districts. It includes the provinces of Alto Amazonas and Datem del Marañón in Loreto and Lamas in San Martín.



The communities whom we will presently discuss are located in the Alto Amazonas Province. Its capital city is Yurimaguas, with a population of 118,238 inhabitants.<sup>125, 126</sup>

Map 13



**MAPA DE LA PROVINCIA DE ALTO AMAZONAS  
DEPARTAMENTO DE LORETO**



125 INEI-2013

126 The first of the following maps shows Loreto Department in Perú. The second details Alto Amazonas Province, which forms part of Loreto Department.





The Yurimaguas District concentrates 60.5% of the province's population. In Alta Amazonas, the indigenous population represents 20.01% of the total, and is distributed among 115 communities belonging to seven ethnicities, of which we have the Chayahuitas or Shawi (the Yurimaguas, Balsapuerto, Jeberos, Santa Cruz and Teniente César López Rojas Districts) and Cocama (Santa Cruz District).<sup>127</sup>

Table 1: Projected population of Alto Amazonas Province, divided by districts, 2013-2015

Department, Province, and District	Total	2013 Men	Women	Total	2014 Men	Women	Total	2015 Men	Women
Department Loreto	1'018,160	531,538	486,622	1,028,968	537,202	491,766	1'039,372	542,646	496,726
Prov. Alto Amazonas	118,238	61,529	56,709	119,257	62,063	57,194	120,221	62,568	57,653
Yurimaguas	71,146	36,526	34,620	71,676	36,789	34,887	72,170	37,032	35,138
Balsapuerto	16,754	8,676	8,078	17,097	8,861	8,236	17,436	9,044	8,392
Jeberos	5,067	2,743	2,324	5,170	2,802	2,368	5,271	2,860	2,411
Lagunas	14,309	7,535	6,774	14,313	7,538	6,775	14,308	7,537	6,771
Santa Cruz	4,435	2,414	2,021	4,442	2,418	2,024	4,449	2,421	2,028

## II. Impacts on and Violations of Human Rights

### 2.1. The Situation of the Indigenous Communities in Alto Amazonas Province

The sociocultural patterns of the province are very complex. There are the Amazonian indigenous sociocultural pattern, the settler-migrant sociocultural pattern and the urban sociocultural pattern.

Within the indigenous population the Chayahuitas or Shawis, Jeberos, Cahuapanan, Cocama Cocamilla, and Tupi Guarani or Candoshi ethnic groups predominate.

They are communities that are, in a way, "more protected than the river-dwellers" in terms of the legal and physical protection<sup>128</sup> of the territories they occupy.

They have constitutional protection,<sup>129</sup> prior consultation laws,<sup>130</sup> and international vigilance of their well-being. However, the government, justifying itself with the argument of **national interest or public need**<sup>131</sup> does not carry out the prior consultation of the communities when their collective rights, physical existence, cultural identity, and/or quality of life are or will be affected.

<sup>127</sup> Ecological and Economic Zoning-EEZ of Alto Amazonas Province, Loreto Department. (2015). 174 pages. 1000 copies printed.

<sup>128</sup> The Law of Native Communities and Agrarian Development of the Jungle and Jungle Highlands. Decree-Law No 22175.

<sup>129</sup> The exercise of jurisdictional authority by peasant and native communities: "Authorities of rural and native communities, in conjunction with the peasant patrols, may exercise jurisdictional functions at the territorial level in accordance with common law, provided they do not violate the fundamental rights of the individual. The law provides forms for coordination of such jurisdiction with Justices of the Peace and other bodies of the Judicial Branch." Article 149 of the 1993 Political Constitution of Peru. [http://www.congreso.gob.pe/Docs/files/CONSTITUTION\\_27\\_11\\_2012\\_ENG.pdf](http://www.congreso.gob.pe/Docs/files/CONSTITUTION_27_11_2012_ENG.pdf)

<sup>130</sup> [https://es.wikipedia.org/wiki/Ley\\_de\\_consulta\\_previa](https://es.wikipedia.org/wiki/Ley_de_consulta_previa)

<sup>131</sup> "The right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good, and within the limits of the law. No one shall be deprived of his property, except, exclusively, on grounds of national security or public need determined by law, and upon cash payment of the appraised value, which must include compensation for potential damages. (...) ", Art. 70, of the 1993 Political Constitution of Peru.

Photo 32



The government and the communities have different perspectives on developmental policies. The authorities, for example former President Alan Garcia, have commented that the Amazon communities are not **“first-class citizens”**<sup>132</sup> because of the fact that they have a different vision of development, and that also, **“The majority’s interest must prevail over that of the minority”**.<sup>133</sup> This stance has generated constant conflict, such as the Bagua Massacre.<sup>134</sup>

The main problems concerning the violation of indigenous communities’ rights, with which we have assisted and accompanied them between 2012 and 2017, have been:

- The nullification of their property titles
- Overlapping property titles
- Territorial usurpation
- Border conflicts
- Penal and administrative penalties for non-observance of forest permits
- Logging
- Omissions regarding the titling of their territory
- Division of indigenous territory during the titling process
- River and lake pollution

132 <https://www.youtube.com/watch?v=PACBHIH4kH0>

133 The land of the jungle and jungle highland regions will be used in harmony with the social interest. Article 28 of Law 22172.

134 [https://drive.google.com/file/d/0B\\_Afa15\\_UyaRMTg5MjlyNDAtZmVmZC00MGRkLWJlYktNjc2OGQzZTcyYmU0/view?ddrp=1&hl=en#](https://drive.google.com/file/d/0B_Afa15_UyaRMTg5MjlyNDAtZmVmZC00MGRkLWJlYktNjc2OGQzZTcyYmU0/view?ddrp=1&hl=en#)



## 2.2. The Situation of Riverine Communities in Alto Amazonas Province

River-dwelling communities are *the other Amazonians*; they are not considered indigenous but, like them, they live in the jungle and have almost the same customs, with one of the few differences being that with them land ownership is not collective, but individual. These communities are the most vulnerable because of the lack of adequate legislation recognizing ownership of the areas necessary for their communal life.

Photo 33



River-dwellers' conception of land ownership has resulted in loopholes and legal disadvantages. On the one hand, according to land capability classification, when the area being considered for titling is classified as most apt for forestry or conservation, the titling procedure does not apply. The vast majority of areas that form the Amazon and where river-dwelling communities are settled are classified as being most apt for forest or conservation use.<sup>135</sup> Not even indigenous communities can obtain land titles if the area is classified as most apt for forest use (although they can still use it for their activities).<sup>136</sup> Therefore, in this extreme situation the river-dwellers are always only going to be precarious possessors of the land subject to eviction, never owners. To further complicate the situation, one of the requirements for land titling, required by the Agrarian Directorate, both of Loreto and San Martín, is the demonstration of economic exploitation.

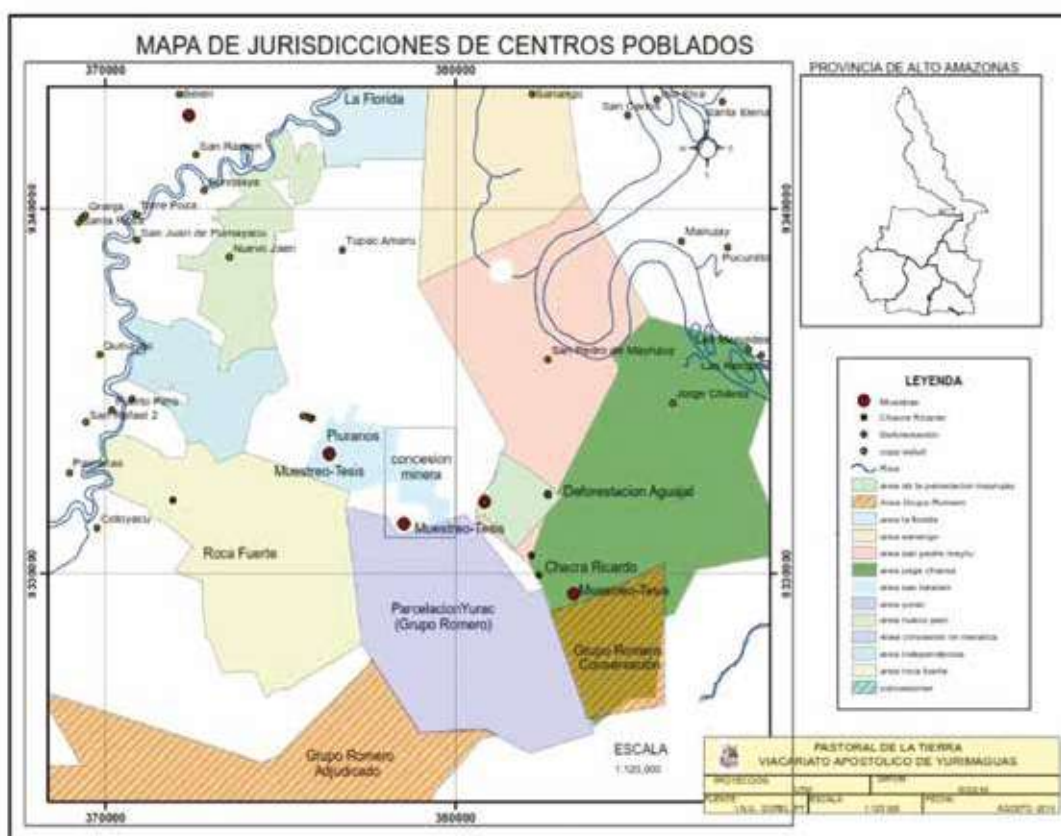
<sup>135</sup> Law 29763, Article 37. Prohibition against changing the current land use of land classified as being most apt for forest or conservation use. Land classified as being most apt for forest or conservation use, being with or without plant cover, is prohibited from being converted into land used for agricultural and fishery purposes. The granting of property titles, certificates or records of possession for public domain land classified as most apt for forest or conservation use, with or without forest cover, is prohibited, as is the recognition or installation of any kind of public service infrastructure, being held as responsible those public officials involved in such cases.

<sup>136</sup> The part of native communities' territories which has been classified as being for forest use shall be ceded to them for their use; this use shall be governed by the legislation on the matter. Article 11 of Act No 22175.

This is a problem because the Amazonian peasant has the custom of cutting down trees in an area of one or two hectares at the most, a space large enough for them to plant crops, and then letting the land rest for a while (in what is known as *purma*) before using it again. Through the use of this custom, land exploitation becomes sustainable and environmentally friendly. A riverine peasant occupies approximately 35 to 40 hectares, but not all of it is used for crops. Logically, if evidence of economic exploitation is demanded in order to obtain a land tile, peasants become obliged to cut down the trees on all of their land, thus losing their traditional practice.

The parcels of land located on riverbanks are also not subject to titling. They are considered as border strips and are the exclusive property of the State. Riverine communities, however, live right on the riverbanks and many of their short-term crops, such as rice, beans, and corn, are sown in these areas.<sup>137</sup>

Map 14



The State does not consider it convenient to title riverine communities' land plots (there is no political will for it). This implies that, according to the cadastral interpretations of the State, since there are no communities holding land titles in these areas, the land is free and available to sell, allot, give in concession, and/or use for ready-to-execute projects of great national

<sup>137</sup> The following map shows the jurisdictional boundaries of various population centers in the Yurimaguas District of Alto Amazonas Province including land controlled by Grupo Romero (Romero Group).

interest. Since the riverine communities are not indigenous communities, they do not qualify for the prior consultation process envisaged in both Law No 29785 and ILO Convention 169. While they could demand the right of participation enshrined in the Political Constitution, since they cannot prove ownership of the territory they occupy, this route is not viable.

These impediments to land titling only apply to communities. For the business sector, the procedure is flexible.<sup>138</sup> A clear example is the awarding of 10,000 hectares in the Amazon forest to the Palmas del Shanusi (Grupo Romero) Company.<sup>139</sup> Before the award was granted, the communities had already requested the titling and conservation of these areas; their requests were rejected because of the forest type, which was classified as unsuitable for agriculture. Up until now, 3,000<sup>140</sup> hectares have been converted into palm oil cropland while 7,000 hectares are still being considered by the courts.

**The main issues the Church has tackled in defense of river-dwelling communities have been:**

- **Land expropriation;**<sup>141</sup>
- **Invasion of land;**
- **Complaints regarding deforestation by Romero Group;**<sup>142</sup>
- **Water shortage;**<sup>143</sup>
- **Deforestation by peasants;**<sup>144</sup>
- **River and lake contamination;**<sup>145</sup>
- **The lack of prior consultation;**
- **Eviction from possessed land; and**
- **The lack of titling of the territory they occupy.**

### *2.2.1 Ownership as a Problem for River-Dwelling Communities and an Opportunity for Companies*

Legal right in property gives one the power to do what one pleases with what belongs to them. The river-dwellers who have managed to obtain legal title for their property have been hurt by land trafficking since they don't understand the rules for transferring possession and land sales. This land trafficking, instead of giving them opportunities to grow and increase their quality of life, has generated multiple problems. They have lost ownership of their land and become slaves, serving others.

<sup>138</sup> [http://www.cifor.org/publications/pdf\\_files/infobrief/5206-infobrief.pdf](http://www.cifor.org/publications/pdf_files/infobrief/5206-infobrief.pdf)

<sup>139</sup> <http://barranquita-barranquita.blogspot.com.es/>

<sup>140</sup> <https://www.youtube.com/watch?v=2PkvCR6NApU>

<sup>141</sup> <http://www.roriente.org/2017/12/11/comunidades-de-san-pedro-de-mairujay-y-jorge-chavez-piden-a-la-agencia-agraria-solucionar-problema-de-sobreposicion-de-palmas-del-shanusi/>

<sup>142</sup> <http://www.roriente.org/2013/02/19/fredesaa-se-pronuncia-en-contra-la-deforestacion-ocasionada-por-grupo-romero/>

<sup>143</sup> <http://www.roriente.org/2018/03/24/el-agua-don-de-dios-y-un-derecho-humano/>

<sup>144</sup> <http://www.roriente.org/2014/08/26/denuncia-a-campesinos-que-talan-aguajales-y-represan-aguas-del-pumayacu-esta-judicializado/>

<sup>145</sup> <http://www.roriente.org/?s=contaminacion+de+la+quebrada+cotoyacu>



These communities' misfortune has been a growth opportunity for businesses. For example, Romero Group has enlarged its palm oil cultivation area in a simple way, even though there have been some legal complications like allegations of deforestation against both the purchasing company and the farmer selling the land.

In order to evade both criminal and administrative responsibilities,<sup>146</sup> companies have developed alternative methods for acquiring properties. One example is the use of contracts transferring possession of property or selling property which contain clauses that establish that the transferee of the plot is ceding it completely deforested when, in fact, it is not. When regulators have done field inspections they have found that many areas described as supposedly deforested are in fact covered in virgin forest; others show recent logging near the date of inspection. Thus, the Environmental Prosecutor's Office has started investigations of 69 peasants from the Túpac Amaru Community. The company has also been incorporated into the process and is being accused and investigated for the crime of illegal deforestation.

### 2.2.2 *Supplementary Titling: Illegal Land Transfers Can Become Legal*

Concerning the trafficking of land possession: The company, to avoid questions, demands from the landowner (a farmer), the granting of a supplementary title before the Mixed Court of Yurimaguas. They know that the defendant/s are not going to respond to the summons to court. The process will be allowed and a sentence issued. A superficial reading of things shows that the company will end up getting a hold of areas that they should not be able to title.

The areas that the company has allegedly obtained through purchase contracts and/or possession transfer contracts are areas occupied by communities. The real possessors of the land are not those who transferred it; those who transferred it did so in a corrupt way. Even if the transfer is legalized by judicial processes such as the demand for a supplementary title, in the end, the illegal is being legalized and the real owners are being left without land. For example, the company has used police officers and the Public Ministry to evict the community of San Pedro de Mayrujay. Facing complaints, a meeting was held with representatives of the company, officials belonging to the Agrarian Agency who were responsible for the titling of the land, and members of the communities.<sup>147</sup> It was clarified that the company did not have any document issued by the competent entity proving that they owned the disputed piece of land. However, they continue to harass the land's possessors.

<sup>146</sup> Article 36. Authorization for Deforestation: Deforestation consists in the removal of forest cover using any method that leads to the loss of the natural state of the forest resource, in any areas which have received classification as belonging to National Forest Patrimony, regardless of the category, in order to develop/carry out productive activities that do not have as their purpose sustainable forest management, such as the installation of infrastructure or opening of communication lines, including access roads to forest production areas; the production or transportation of energy; and energy, hydrocarbon and mining operations. Deforestation requires prior authorization from SERFOR or the regional forestry and wildlife authority in accordance with the level of environmental assessment required for each case, in line with the dispositions of the National Environmental Impact Assessment System and what is established in the regulations for implementing this law. If the deforestation could affect peasant and native communities, the right to prior consultation established by ILO Convention 169 must be honored. Along with the application, the petitioner must attach an impact assessment approved by the competent authority and in accordance with the activity to be carried out. This assessment shows that the proposed activity cannot be carried out elsewhere and that the alternative technical proposal guarantees compliance with the legally required environmental standards. Also, it ensures that the area to be deforested is the minimum area possible, and that the deforestation will be carried out with the best existing technology, practices, and methods to minimize possible environmental and social impacts, including avoiding areas with high conservation value. It also indicates the fate of the extracted forest products. No deforestation is permitted in territorial reserves for indigenous peoples in isolation or in the process of initial contact. If authorization is given, the value of the forest resources that will be removed will be paid for based on a comprehensive evaluation of their value and within an adequate time-frame, and, in the case of the activities referred to in the first subparagraph, an ecosystem compensation area of equivalent dimensions to the affected areas shall be created according to the manner indicated by the appropriate forest authority. When these forest products are also commercialized, the right of use must also be paid. The law's regulatory document lays down the applicable conditions.

<sup>147</sup> <http://www.roriente.org/2017/04/24/comunidad-de-jorge-chavez-y-san-pedro-de-mayrujay-enfrentados-por-territorio-con-empresa-palmas-del-shanusi/>





Photo 34



Photo 34 BY: Idelia Calderón

### 2.2.3 Property as a Right that Affects Other Rights

The situation of the Cotoyacu Community is worrisome. It is not the only community with this problem; there are many in the district. Cotoyacu, however, is the only community that resists. Despite the authorities' deaf ears, they continue with their struggle.

Photo 35



Photo 35 BY: Idelia Calderón

The community had two important sources of water: the Cotoyacu and Yanayacu Gorges. Both have been diverted, drained or dried up, and the wetlands that stored water, preventing drought in the summertime and flooding in the wintertime, have been logged and cleared away, and in their place, rice and palm oil crops grow.<sup>148</sup>

<sup>148</sup> <http://www.roriente.org/2014/08/28/palma-aceitera-monocultivo-agroindustrial-desarrollo-que-destruye/>

In the month of July, the population noticed the death of fish and the presence of heavy machinery. They asked for verification of what was occurring in the area from the Water Authority. Indeed, the gorge was being diverted using heavy machinery with authorization from the Water Authority.<sup>149</sup>

Criminal acts related to water resources are the sole responsibility of the national government.

#### 2.2.4. Testimonies Concerning the Impact on Human Rights

After receiving constant complaints and in order to create communal defense strategies, a meeting was convened of all the representatives of the communities affected by the Romero Company. The testimonies collected below have been transcribed exactly as spoken.

Photo 36: Leader of the Jorge Chávez Riverine Community.



Photo 36 BY: Idelia Calderón

"We have conflicts with the palms. We have suffered the invasion of mountains."

"Our ancient elders have left this mountain [to us] to work. Mighty powers have taken over these mountains. We, as the new generation, have entered and found everything invaded by the powerful company. Our authorities [the government] themselves try to hinder the evidence of possession and the land titles we request. Having a title is how one secures the property. Because of

149 <http://www.oriente.org/2017/07/19/autoridad-nacional-del-agua-sancionara-a-empresa-que-viene-contaminando-el-agua-de-la-quebrada-cotoyacuillo-y-cotoyacu/>



the invasion we have contamination of our gorges: the Aguajillo and Cunchiyacu. Our lakes are contaminated by the materials the company uses. The company goes to the Agrarian Agency and the Agrarian blocks our way. We are organizing the land titling with the Municipality but we have not been able to title the land. More than 700 hectares of forest and more than 600 of wetlands have been deforested."

Photo 37: Leader of the Jorge Chávez Riverine Community



Photo 37 BY: Idelia Calderón

#### **Political Leader of the Lieutenant César López District:**

"It is forbidden to pass [through the area] (referring to the free transit of the community members). The company has gone out with the public prosecutor and police to intimidate [us]. The problem is that the authorities are colluding [with the company]. More than 900 hectares of wetlands felled. If you kill a person, they will put you in jail. We are killing a whole bunch of people because the wetlands are life and the government says nothing: "It is a massacre."

#### **Leader of the Cuipari Community:**

"Unfortunately, there are some authorities who signed the authorization for the "Romero Group" to enter [here]. Thinking they will do good to the ravine. The ravine has been opened; it was raining and the water did not come out of the ravine. Because of that situation, the plants were dying. Because of that situation they opened the ravine [diverting the water]. It's their mentality. "

## The Main Problems Faced

"Deforestation: They misleadingly buy pieces of land; [through] the presence of figureheads, intermediaries. Some are from the same community itself. The burning of the forest (more than 1,000 hectares were burned). It was reported and nothing was done".

"They prohibit the landowners to enter. There is a checkpoint where they control us, they ask us questions even though they know us. It's a distress that they cause us all the time."

The authorities who lend themselves to corruption. Like the Agrarian Agency, which cares little. They laugh [at us]."

Photo 38



Photo 38 by: Idelia Calderón.

### Leader of the Cotoyacu Community:

"Before the arrival of the company, we had clean water that we could drink without any problem. Ten years ago, the company came taking over the territories of the communities. Since that time they began with the deforestation of the primary forests. After the deforestation, they began to drain wetlands, to dry them up and to plant crops. Then they started to contaminate with agrochemicals... we have no water."





Photo 39: The Cotoyacu Gorge being drained



drained by: Idelia Calderón.

"We cut down trees with authorization. We don't cut down trees just for the sake of cutting them down... All activity generates an impact. The world works like this... We cannot allow any deforestation to exist. The forest is what we are taking care of..." – Geral Quintana, head of Palmas' Environmental Department, sustains when facing allegations of evictions and arbitrary occupation of territories of riverine communities.

"The issue of conflicts over territory is [present] in the vast majority, in all of the communities... Land titles cannot be issued if there are any conflicts"- Eng. José Velasco Quispe, Director of the Agrarian Agency

Image 40: The Cotoyacu Gorge, deforested, with Dr. Vanesa Vela, environmental regulator, inspecting the area



"We aspire to have better living conditions... Communities have awakened to this globalized world. They understand that they can have these living conditions living as brothers, as neighbors of Palmas del Shanusi without interfering in their work. We want San Pedro de Mayrujay and Jorge Chavez to have the best living conditions. To have a promising future." -- Political representative of the Lieutenant César López Rojas District.

### 2.3 River-Dwelling Communities' Right to Identity

River-dwelling communities have no legal existence. There is no specific law for them as peasant<sup>150</sup> and native<sup>151</sup> communities have. Sociologically, these communities exist, but the way the way that they express their self-determination does not have legal protection. The only way to demonstrate their existence within the government's view is when they manage to categorize themselves as a village;<sup>152</sup> in such a case the area managed by the village is established by a **"a technical-geographical process by which the territory is organized based on the definition and delimitation of the political-administrative circumscriptions at a national level"**.<sup>153</sup> This categorization does not give them any real right over the area they occupy or use, be it for hunting, fishing or seasonal migrations in winter time.

<sup>150</sup> Law 24656, the General Law of Peasant Communities, Art. 2.- Peasant communities are organizations of public interest, with legal existence and juridical personhood, composed of families that inhabit and control certain territories, linked by ancestral, social, economic and cultural ties, expressed in communal ownership of the land, communal work, mutual aid, democratic government and the development of multisectoral activities; their ends are oriented towards the full realization of the communities' members and the country.

<sup>151</sup> Law 22175, the Law of Native Communities and the Agrarian Development of the Jungle and Jungle Highlands, Art. 7 - The State recognizes the legal existence and juridical personhood of the native communities.

<sup>152</sup> Law N° 27795, the Law of Territorial Demarcation and Organization

<sup>153</sup> Ibid, Article 2.





In the judgment handed down by the Constitutional Court in EXP. No 01126-HC-TC, reference is made to the non-native communities of Teniente Acebedo and Diamante; Supreme Decree No 045-93-AG, in Art. 1, allows for the constitution of communal and multicommunal agricultural and fishery enterprises as private juridical persons by peasant communities, native communities, autonomous peasant patrols and “peasant groups “. These peasant groups would include the riverine communities even though they are not expressly named as such.

These communities, no matter what we call them, river-dwellers, non-native or peasant groups – in the end, they are the same – are settled along the areas adjacent to the river banks in the jungle. They have enormous influence on the economic and social life of the Peruvian State. However, they are marginalized, without any individual or social participation or consultation of their members when projects are being executed that affect the lives of these communities.

The Constitutional Court, in sentence EXP. 0005-2003-AI-TC, has instituted the principle of coherence. It considers the law to be a system and the system is made up of a set of interrelated parts. The various regulations are in agreement with each other and work harmoniously together. This means that, according to the thought process of the Constitutional Court, in order to arrive at a legal conclusion, the law has to be systematically interpreted, both the Constitution of the State and the other laws that integrate the Peruvian juridical system.

According to Art. 1 of the Constitution, the defense of the human being and the respect of their dignity are the supreme goals of society and the State. Art. 2 adds that everyone has the right to equality before the law. It emphasizes that no one can be discriminated on the grounds of their origin, economic condition or any other characteristic, therefore:

### *2.3.1. Why Can't River-Dwelling Communities Have Legal Existence and Juridical Personhood as Indigenous and Peasant Communities Do?*

Discrimination is outlawed, and it is the duty of the State and society to respond to the reality and needs of the community. If we take into account that the river-dwellers are the other Amazonians who protect the Amazon, they need the State to respond to their call.

Law 27795, the Territorial Demarcation and Organization Law, in Article 2, with the heading “Basic Definitions”, in Numeral 2.3, points out that political and administrative areas: regions, provinces, and districts, have a population characterized by their historical identity, culture, and a geographic scope supporting their social, economic and administrative relations. As can be seen, in order for territorial demarcation and organization to be successful, population and its geographical area, which supports its social, economic and administrative relationships, are basic and important factors. In order to achieve this important objective, the participation of the large number of riverine communities cannot be neglected. These communities really exist but are marginalized by their lack of legal existence and juridical personhood.



The organization of the physical area, including land use, the promotion of neighborhood participation in local development, the generation of employment and the development of micro and small enterprise, are responsibilities of the municipalities (Art. 73, Numeral 1 of Law 27972), and they cannot be carried out without the participation of the numerous riverine communities within their territorial constituency.

Art. 2, Subparagraphs 17 and 58 of the Constitution, establish the fundamental right of any natural or legal person to participate, either individually or in association, in the economic life of the nation, in order to obtain a profit or material gain. River-dwelling communities, since they have no legal existence and juridical personhood, are left out of this fundamental economic activity that enriches the economic life of the nation.

The riverine communities have the right to participate in the discussion of the **“Municipal Participatory Budget”** of the municipality to which they belong, but they cannot do this since, because of their marginalization and lack of juridical personhood, they cannot register themselves as social and local organizations as established in Article 73, Numeral 5.3, of the Organic Law of Municipalities.

Other rights and activities that cannot be accessed by riverine communities could be listed here, but the marginalization of riverine communities is so evident that no further comment on the subject is required.

### *2.3.2. Who Recognizes the River-dwellers as Legally Constituted Communities?*

Peru's Constitution does not give regional governments the power to grant legal existence and juridical personhood to river-dwelling communities, nor does it give that power to municipal governments. According to the principle of assigned powers, if there is legislation, generally the constitution or another law, that grants the power to dictate legal norms to an organ of the State, the norms that this organ issues are constitutionally valid; however, if this organ has not been granted such power, any norms that it issues which are not already national law will be unconstitutional. Since the power in question has not been granted to regional governments nor municipal ones, the competent authority for issuing a law recognizing the legal existence of communal institutions is Peru's Congress. Examples of this power being used can be found in the Peasant Patrols' Law No. 27908, which, in Article 1, recognizes the juridical personhood of Peasant Patrols (a form of local defense squad); the same occurs with Law No. 24656, which, in Article 2, grants peasant communities legal existence and juridical personhood; and also Article 7 of Law No. 22175, the Indigenous Communities' Law, in which the State recognizes the legal existence and juridical personhood of indigenous communities. Congress has had to act in this way since this power has not been delegated to any other State organ different from the Legislature.

We have already seen that river-dwelling communities have less protection than peasant communities and indigenous communities, even though they have the same level of importance; therefore, it is the duty of Peru's Congress to elevate them to the same legal condition, taking into consideration that Congress only develops and passes laws when the nature of things demands it.



This same law, while recognizing the legal existence and personhood of river-dwelling communities, must also authorize their inscription in the Public Registry, since, as Article 2024 of the Civil Code mandates, all juridical persons that have been established by law have the right to be registered.

While Article 89 of Peru's Constitution only references peasant and indigenous communities, this does not mean that granting legal existence and juridical personhood to a river-dwelling community is unconstitutional.

Peru's Constitutional Tribunal, in a sentence handed down on October 3, 2003, in Exped. No. 0005\_2003\_AI\_TC., has emphasized that the Constitution is a complete whole, that is, that its clauses should not be interpreted as if they were isolated or separate from the other parts of the document, rather that the congruity and meaning of the Constitution as a whole must always be preserved. Thus, a law granting juridical personhood to river-dwelling communities would not violate Article 89 of the Constitution since this same document contains a great number of other clauses that refer to the fundamental rights of the person, their right to participate in economic and social life both individually and collectively, the right of initiative, and others, which are not just the patrimony of the indigenous and peasant communities but rather of all human groups.

In Law No. 27908, the Peasant Patrols' Law, Congress expressly established that these Patrols would support the peasant and indigenous communities in the exercise of their jurisdictional functions, and in maintaining their security and social peace; nevertheless, it makes no reference to other communities. This lukewarm and marginalizing focus, without doubt, was influenced by the literal interpretation of Article 89 of the Constitution, however the lack of State presence in providing security, social peace and other needs has been verified in other communities, encompassing a much larger territory than what is occupied by indigenous and peasant communities. Therefore, this omission was fixed through the additional norms issued regarding the law (approved in No. 025-2003-JUS), which, in Article 5, mention that Peasant Patrols can also be organized in small villages. Thousands of small villages that exist outside the area covered by indigenous and peasant communities have benefitted, being included in a measure that previously had been circumscribed to just indigenous and peasant communities. The unitary nature of the Constitution supports this inclusion since the security, peace, and resolution of armed conflicts through reconciliation are not just needs of the peasant and indigenous communities but of other communities as well. Even though a large amount of time has passed, this inclusion has not been accused of being unconstitutional. Seen in this light, the legal recognition and assigning of juridical personhood to river-dwelling communities, having been passed into law, would not be subject to accusations of being unconstitutional since it is in line with the unitary nature, content and spirit of the Constitution.

We know that laws take a long time to be passed and that the problem of the river-dwelling communities is worsening, reaching unsustainable proportions. A response can no longer be postponed such that a transitory solution must be sought.

We believe that, based on the constitutional right to free association, the river-dwelling communities could rapidly be constituted as a civil organization (or organizations), followed by the name of each community and the place in which it is located.

Under the previously cited Article 2024 of the Civil Code, they would then have access to inscription in the Public Registry without any problem.

At the same time, the already mentioned law should be debated and passed, giving legal recognition and juridical personhood to the river-dwelling communities.

In the Organic Law for Regional Governments, Law No. 27867, Article 6 mentions that regional development consists in the coherent and efficacious application of the policies and instruments of economic, social, population, cultural, and environmental development through plans, programs and projects that seek to generate the conditions necessary to create economic growth in harmony with demographic dynamics, equitable social development and the conservation of natural resources and the environment, all directed towards the full exercise of human rights by both men and women in equal conditions.

In Article 8, Numeral 4, it mandates regional governments, basing their work on the principle of inclusion, to develop policies and government actions directed towards promoting economic, social, political and cultural inclusion; this also applies to social groups that have been traditionally marginalized and excluded by the State that dwell in rural areas.

The river-dwelling communities, even though they exist sociologically, are marginalized, which means that the regional government, working with local governments, should generate policies to promote their inclusion in economic, social, cultural and political life. The best tool for materializing this objective would be the issuing of a regional ordinance that declares the comprehensive development of the river-dwelling communities and their recognition to be a regional necessity and social and cultural interest.

At the same time, municipalities should issue local ordinances that declare river-dwelling communities to be recognized communal institutions and their inscription in the registries of social and neighborhood organizations to be a local necessity and social interest, such as is foreseen in Article 73, Numeral 5.3, of the Organic Law Concerning Municipalities, Law No. 27972.

### *2.3.3. Categorization does not resolve the deeper problem: legal security for river-dwellers' lands.*

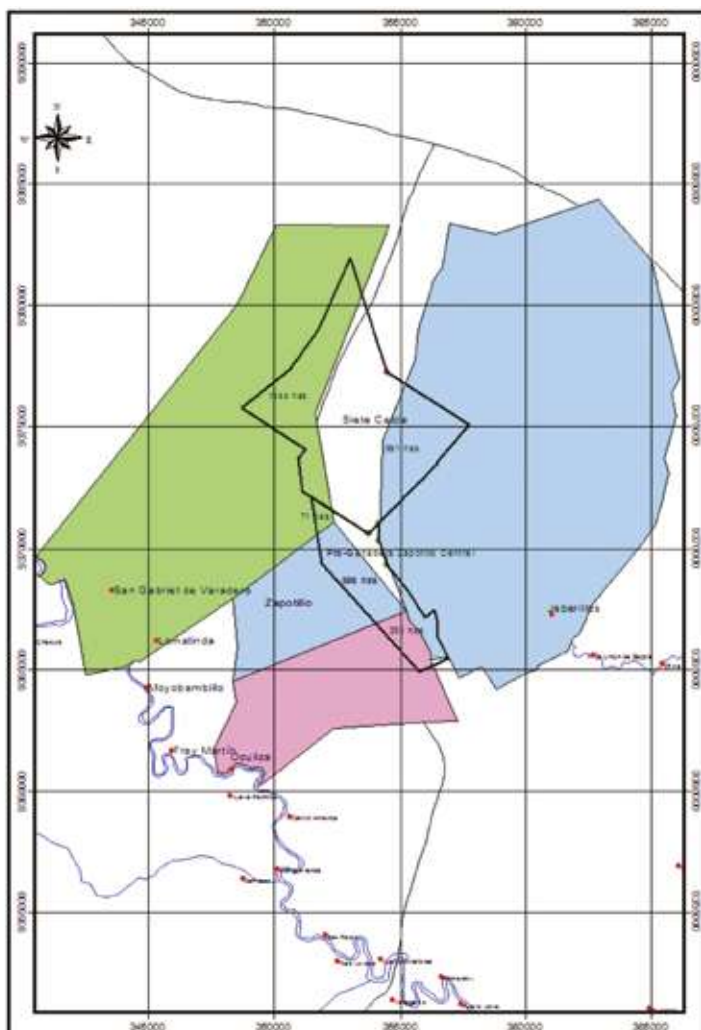
Even though many indigenous communities and population centers have been legally categorized as such, a process which included taking into account their populations and economic activities, including agricultural ones, their lands are still in danger. The administrative authority continues to issue acts of possession and even land titles or other land use documents for land found within their territory to third parties who are not community members.

The Asociación 7 Caídas,<sup>154</sup> arguing that categorization is not the same as land titling, has solicited land titles for the categorized territories and the agrarian authority has responded favorably petitioned. The Jeberillos community filed a suit regarding deforestation of their land by outsiders. After a drawn out process, criminal responsibility was declared, including a sentence of 4 years in jail for those responsible.

154 Association "7 Falls", an organization dedicated to stopping land trafficking. <http://www.oriente.org/?s=jeberillos+denuncia+invasion>



Map 15



### III. Conclusions and Proposals

#### 3.1 What are we doing?

Confronted with countless cases in which the native and river-dwelling communities' rights have been trampled, the Catholic Church's Pastoral de la Tierra ("Land Ministry") created a project to accompany those affected, following the guide of the Church's social doctrine which promotes the defense of those people who have been left unprotected or have been discarded.

To begin with, the communities did not know that they had a right to petition, to bring demands to the State. Thinking he did not have this right, the peasant was afraid to petition. Now, the peasant's efforts to demand the fulfillment of his rights revindicates him, it turns him into a protagonist, he does not just ask for explanations but makes demands.

Information is also a constitutional right. The socialization of transparency laws and their contents has empowered the peasants' right to ask for information, which helps them to objectively assert their rights.

Today the peasants know that natural resources are governed by the Equity Principle, and therefore must serve to promote the elevation of the standard of living of the greatest possible number of people, and, in this vein, have organized themselves into associations and peasant patrols, looking to defend their land possession, their property, avoiding the pillaging of, and defending the environment.

There are various administrative and judicial mechanisms that the peasant employs to defend his land possession, both in action and in documentation. He has taken up the idea that possession through documentation is a means to obtain the title to the land, fulfilling the respective judicial and administrative requirements.

He is conscious that the right-of-way easements that connect production centers with consumption centers and allow communication between them are inalienable public property, and that their closing off is a crime. Knowing this, he has become empowered to defend the access roads to his land in order to avoid isolation, the slow strangulation that looks to force him to abandon his land.

He has become empowered knowing that polluting water is a crime and today the communities, of their own initiative, bring their appeals to the Water Authority and the Public Ministry, demanding respect for headwaters and limits on the use of pesticides that, being carried downstream, kill the wild fish, animals and plants that feed the jungle population.

The peasant, taking into account Law No. 22175, argues that the State's intervention in the Amazon is justified in order to give dignity to the peasant. In the areas that have been influenced by our project, the people find that it is no longer an indignity to pertain to a native community, but rather a strength, a healthy form of life, supported by the constitutional and international right to respect for bioculturalism.

Today, he cares for his forest, protecting it from destruction by illegal logging. With the revindication of his ancestral ways of carrying out agriculture and benefitting from the forest, this is the best way for him to live sustainably and healthily.

### 3.2 Conclusions.

It is evident that having a legal existence and juridical personhood grant security to all types of juridical persons, whether they are called peasant communities, indigenous communities or any other form of juridical personhood, since the reality is that nobody enters into a relationship with a person that does not exist. Acknowledging the sociological existence of the river-dwelling communities –and the Constitution's prohibition of discrimination and marginalization with regards to equal participation in the socioeconomic life of the nation— giving legal existence and recognizing the juridical personhood of the river-dwelling communities can no longer be avoided.

Current norms, apart from mandating inscription in the Public Registry, also demand legal recognition by the administrative authority, including inscription in municipal registries,





for social organizations, **and thus should be complimented by regional and municipal ordinances that provide access to this recognition and registry for river-dwelling communities.**

The incoherence between the law and the irregular practices of the administrative authority is evident, since even with the recognition of a community's categorization based on their population and territory (the latter being the foundation of the socioeconomic activity of the categorized population), deeds to property and acts of possession are still granted to people who do not form part of the community that has been categorized.

The recognition of the influence of river-dwelling communities is vital; they contribute to both the economic and sociocultural life of the nation. At the same time, given that the State has not made itself present in these areas, it is undeniable that these communities should not be excluded but rather included and promoted within economic and sociocultural activities.

**In conclusion, the passing of a law that grants legal existence and juridical personhood to river-dwelling communities is of vital importance, as well as facilitating their access to administrative registries.**

### 3.3 Recommendations.

The juridical person who has the power of legislative initiative should present a bill granting legal existence and recognition to the river-dwelling communities.

**A regional ordinance should be issued declaring a regional need to protect and promote the river-dwelling communities since they are of vital importance to the cultural and economic life of the region.**

**Finally, municipal ordinances should be issued, recognizing and inscribing the river-dwelling communities in the corresponding municipal registries.**

**As a transitory measure, while the previously cited law is being debated and passed, in order to avoid the discrimination and marginalization of the river-dwelling communities, these should be organized as juridical persons, associations within the context of private law, in order to have access to the Public Registry, without putting aside the pursuit of the measures already proposed above.**





## 2.2.3. Yanomami People- Brazilian Amazon

**Coordination:** Indigenist Missionary Council, Northern Region, CIMI -Brazil<sup>155</sup>

### **Illegal Mining and the Violation of Human Rights in Yanomami Indigenous Villages and Territorial Land.**

Photo 41



Author: Sister Mary Agnes (Consolata Missionary Sisters)

## I. Introduction:

Ever since their territory was invaded by thousands of illegal miners at the end of the 1970s, the greatest challenge to the physical and sociocultural survival of the Yanomami and Ye'kwana People has been the illegal exploitation of gold.

This invasion, widely documented in both Brazil and Venezuela, has caused enormous damage to the indigenous population and great environmental destruction, especially in the region containing the headwaters for the Orinoco, Mucajaí, Parima and Catrimani Rivers. Records indicate that, at the peak of the gold rush, around 20% of the Yanomami population died, victims of diseases, hunger, violence and other impacts generated by the mining.

At the end of the 1980s and beginning of the 1990s, just in Brazil, it is estimated that the 40,000 illegal miners were operating in Yanomami and Ye'kwana territory, being about five

<sup>155</sup> In collaboration with Vanildo Pereira Da Silva.



times larger than the indigenous population that was living there at the time. A survey realized by the official indigenous organization and Brazil's Federal Police, taken at this same time, identified 82 clandestine runways used to support the illegal mining, 200 rafts pumping gravel in the Mucajaí and Uraricuera Rivers, and 500 canvas tents in each of the camps established in the towns of Paapiu, Mucajaí and Waikás.

The tragedy that befell the indigenous communities led to a national and international campaign that resulted in the demarcation of the Yanomami Indigenous Territory in Brazil, announced in 1992 during Eco 92, carried out in Río de Janeiro. After this demarcation, the Federal Police strongly suppressed illegal mining, destroying landing strips, arresting illegal miners and confiscating equipment.

This action in Brazil caused some of the illegal miners to leave the area and cross the border into Venezuela, such that, at the beginning of 1993, around 10,000 to 15,000 illegal miners were thought to be operating along the border. During this same year, the "Massacre of Haximú" occurred, the name given to the killing spree in which 16 Venezuelan Yanomami, mostly women and children, were cruelly murdered in their "shabono" (traditional house) by a group of illegal Brazilian miners. This was the first case tried by the Brazilian justice system in which the accused were condemned for genocide.

After this massacre, and alongside "Operation Free the Jungle", which was occurring on the Brazilian side of the border, Venezuela inaugurated a plan to control and keep vigilance on the border area, beginning military operations and creating a National Guard post at the headwaters of the Orinoco River. The objective was to root out the illegal miners, detain and prosecute those involved in gold exploitation along the entire Venezuelan-Brazilian border and stop hundreds of motorized pumping machines that were being used to remove plant cover from the soil and sediments from the rivers. The Venezuelan Government, nevertheless, as opposed to what happened in Brazil, instead of recognizing the rights of the indigenous territories, created protected areas for environmental conservation, such as the "Alto Orinoco-Casiquiare" Biosphere Reserve, and the "Parima- Tapirapécó" and " Serranía la Neblina" National Parks.

These actions to protect the territory, accompanied by the permanent presence of national officials, were maintained during the majority of the 1990s. However, governments began to neglect these efforts arguing that they did not have sufficient resources to continue high-cost aerial operations in difficult to access areas. Thus, illegal mining and its consequences became a chronic and cyclical problem.

Beginning in 2002, reports concerning a new invasion by illegal miners began to surface in both countries. In 2004 and 2005, due to changes in Venezuelan health policy for the region, which resulted in the dismantling of the radio network operating in the area, the Yanomami could no longer communicate regarding the invasion; with the simultaneous rise in gold prices in the international market, the situation worsened. During the following years, the illegal miners were operating in all of the Caura and Erebató Rivers in Bolívar State, areas inhabited by the Ye'kwana and Sanöma (a Yanomami subgroup) People, causing contamination and other grave environmental damage. In order to fight against the worsening crisis, the Venezuelan Government created Plan Caura in 2010, its objective being to stop illegal mining, preserve mineral resources and restore the soil in the region.

On the Brazilian side, beginning in 2008, the Hutukara Yanomami Association (HAY), created in 2004, began denouncing the significant growth of the presence of illegal miners in indigenous territory. In response, in 2011, the National Foundation for Indigenous Peoples (FUNAI, a Brazilian government body that promotes and carries out policies to support the country's indigenous peoples) created the Yanomami and Ye'kwana Ethnic-Environmental Protection Front, which helped suppress and better understand the illegal mining dynamic.

In the beginning, the Federal Police responded to Hutukara's claims trying to damage the indigenous organization and prosecute its president. Nevertheless, given the strength of the evidence compiled by Hutukara within the indigenous communities, all presented through the proper channels, the Police had to change their strategy; previously, illegal mining had been understood as a minor crime (mining without a license), now they began to see it as a complex web of criminal activities. The Federal Police began to investigate those financing the gold exploitation and their base of operations in Boa Vista, capital of Roraima State.

In two large police operations, Xawara in 2012 and Warari Koxi in 2015, the Federal Police identified groups of pilots, jewelers and illegal miners that formed a criminal network, with connections to four other Brazilian States and two DTVMs (Movable Goods and Title Distributors) located in the cities of São Paulo and Río de Janeiro. The Yanomami Indigenous Territory chain of illegal gold production formed part of this network, which, according to Federal Police, moved more than \$360 million Brazilian Reales per year.

In Venezuela, in 2011, the Horonami Yanomami Organization was formed to represent and defend the rights of the Yanomami People, obtain the comprehensive protection of their traditional territory and to elaborate favorable public policies in conjunction with public and private institutions. In February 2012, as part of their role, Horonami informed representatives of government institutions of the presence of permanent illegal mining camps around Momoi, Hokomawë and Parima, as well as other areas within Yanomami territory. This information resulted in the realization of military helicopter flights over the area, with the participation of the indigenous organization, which confirmed the presence of these camps.

In the same way, other indigenous organizations in Venezuela keep denouncing and alerting governments regarding the risks and impacts associated with illegal mining in their territories. Nevertheless, during 2013, 2014 and 2015, the invasion of illegal miners continued at a worrying rate and reports now show increases in their activity in Alto Ocamo, Padamo, and Metacuni in the State of Amazonas and in areas such as the Caura and Erebató Rivers in the State of Bolívar.

In Brazil, besides the actions undertaken by the Federal Police, other oversight activities are being carried out by the Brazilian Armed Forces and other federal entities, focused on combatting the crimes being committed along the border. It is necessary to continue these suppressive actions; in isolation they are insufficient. Currently, it is estimated that 5,000 illegal miners operate in Yanomami territory. In September 2016, just along the Uraricuera River, FUNAI has counted more than 50 illegal mining rafts, as well as other equipment, on the banks of the Novo River, a tributary of the Apiaú River.



## II. RIGHTS VIOLATIONS: Negative Impacts of Illegal Mining on the Yanomami and Ye'kwana Peoples

### 1. Health Consequences

The use of mercury forms part of the traditional process used in mining to facilitate the separation of gold from sediments. Part of this mercury is dumped into the rivers and streams and the other part is thrown into the air. Once in the atmosphere, it tends to fall back to earth in other areas surrounding the mining zone. The flow of the rivers and the fish that ingest the mercury can carry it to more distant places. Human mercury contamination occurs primarily through consumption of contaminated fish, generally carnivorous and of a large size.

Mercury is a highly toxic metal and the damage it causes tends to be grave and permanent, for instance, alterations in the central nervous system that cause cognitive and motor problems, vision loss, heart disease and other maladies. In pregnant women, that damage is even worse since the mercury affects the fetus, causing serious deformations.

The testimonies given by Yanomami living in areas where illegal mining takes place are dramatic:

Photo 42



Photograph 42. By: I Mary Agnes (Consolata Missionary Sisters)



**Yanomami testimony, N. R. Community (leader of Alto Río Catrimani Region):** "The miners, with their machines, destroy much of the river bank and dirty the waters. This water is contaminated. Even though they say that they don't dump mercury in the river, when they extract the gold, our children get sick. The women also contract diseases from the miners; the Yanomami get sick when they consume contaminated water [water contaminated by mining activities]. One man (F. Yanomami) got sick because of the mercury contaminated water, his belly swelled up: he is still hospitalized in the Casa de Apoyo a la Salud del Indígena (CASAI) in Boa Vista. The doctors took out the water from his intestines but he swelled up again."

**Maranhão (Yanomami leader in Homoxi):** "FUNAI, I ask your help to find a solution for my community. I am undergoing a great difficulty within my community, I don't know where to ask for help, I don't know where to find FUNAI. I don't know if I should ask for help in Brasilia or in Boa Vista. I urgently need you to end the illegal mining. I know that you will tell me that you don't have the resources for this, but my community is at grave risk, water is not even getting to our community. I want you to fix this tomorrow, FUNAI. ¿Where am I going to hunt and fish? The health services team is also suffering a lot. We have to dig holes to find water so that they can bathe. If you end the mining, will you give me a net [symbolically, restoring his ability to fish]? If you don't end it, my son, my brother and I will end it our way. I would like to end it legally."<sup>156</sup>

In 2010, worried by the mercury contamination from illegal mining activity in the area, the Kuyujani Organization, consisting of 53 Ye'kwana and Sanöma communities from the upper and lower parts of the Caura River, asked the La Salle Foundation for the Natural Sciences and the Wildlife Conservation Society to undertake a study of the levels of mercury in the fish in this river basin, a fundamental part of the communities' diet. The investigation verified the presence of dangerous levels of mercury. Fish consumed from the Caura River contained mercury levels of up to 1.8 milligrams per kilogram, when the healthy limit for occasional fish consumers, established by the World Health Organization (WHO), is only 0.5 milligrams per kilogram.

Another scientific study solicited by the Kuyujani, carried out between 2011 and 2012 by the La Salle Foundation, the Universidad de Oriente and Wildlife Conservation Society found a high level of mercury contamination among the indigenous communities inhabiting the upper and lower parts of the Caura River. Hair samples from 152 children and women in five communities (three Ye'kwana and two Sanöma communities that live along the Caura and Erebató Rivers) were analyzed. In this sample, 92% had mercury levels above that established by the WHO as allowable for the human body. 36.8% of those samples had more than 10 milligrams per kilogram, and 7.2% had 10 times the mercury allowed by the WHO.

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<sup>156</sup> Report from the PGTA's First Topical Office for Yanomami Indigenous Territory, elaborated by Hutukara and ISA (September 6-11, 2016, Lake Caracará-RR).





Another important study was carried out in November 2014 in Brazilian territory. In response to petitions from the Hutukara Yanomami Association (HAY) and the Ye'kwana Peoples Association of Brazil (Apyb), an investigative team from the Oswaldo Cruz Foundation, in association with the Socio-Environmental Institute (ISA), visited 19 towns in the Papiú and Waikás Regions. 239 hair samples were taken, prioritizing the population groups most vulnerable to contamination: children, women of reproductive age and adults with a history of direct contact with mining activity. They also collected samples of 35 fish species that are a fundamental part of these communities' diet.

The most alarming case was found in the Sanöma Community of Aracaçá, in the Waikás region, where 92% of the samples taken presented high levels of contamination. This community, of all those sampled, was the one closest to mining activity. In the Papiú Regions, where the lowest contamination levels were found (6.7% of the samples analyzed), there is less mining activity.

The testimony of the village's own leader leaves no doubt regarding the gravity of what is occurring:

**Luís (Kayanau Yanomami leader):** "In my community, Torita, there is a lot of illegal mining. I want FUNAI to help us kick the illegal miners out. There are 25 mining machines operating in the community, Valmor landing strip, Pau Grosso landing strip, Élio landing strip. There are also landing strips in Homoxi, Xamathau landing strip. Mourão landing strip. In Textoli, they're building one. The Couto Magalhães River is very dirty. An operation has to be carried out. Get moving Anderson, ask the federal government for money, ask them for money, and when the money gets here again, let's do another operation."<sup>157</sup>

Brazil is a signatory of International Labor Organization Convention No. 169 concerning Indigenous and Tribal Peoples, which was incorporated into the State's internal regulations via Decree No. 5.051/2004. This Convention not only establishes that all States "shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories" (Article 13), but also that the right of the indigenous peoples to ownership and possession of their land must be recognized (Article 14), stating: "Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession " (14.2).

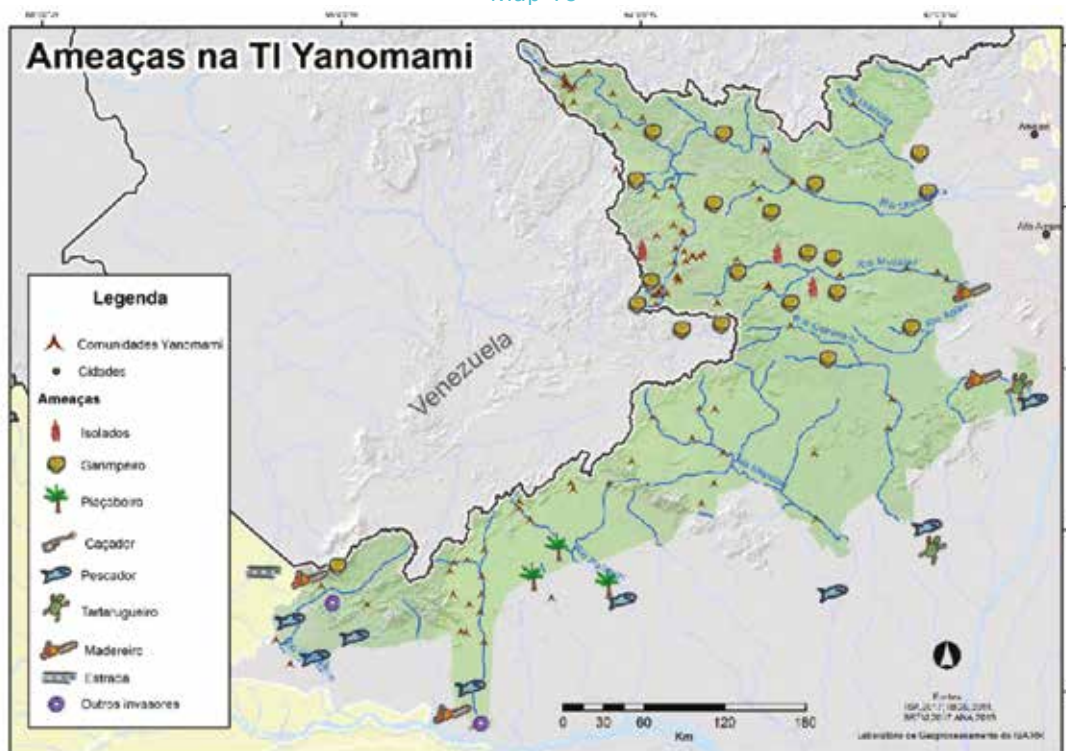
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<sup>157</sup> Report from the PGTA's First Topical Office for Yanomami Indigenous Territory, elaborated by Hutukara and ISA (September 6-11, 2016, Lake Caracaranã-RR).

## 2. Environmental Consequences

The environmental degradation resulting from illegal mining activity has caused grave damage to fragile forest ecosystems (in the Amazon) through the destruction of natural water flow, the accumulation of non-biodegradable solid waste, the formation of contaminated lagoons (which favor the reproduction of vectors that carry malaria and other diseases), alterations to and deterioration of the natural landscape and the emigration of fauna from their habitats. According to the atlas “Amazonía bajo presión [Amazon under Pressure]”, elaborated by RAISG (Geo-Referenced Socio-Environmental Amazon Information Network) in 2012, an important increase in illegal, semi-mechanized, small-scale river-based gold mining has been registered in various places within the Amazon Region. In the Yanomami and Ye'kwana Territories in Brazil and Venezuela, indigenous organization have denounced, during the past years, the growth of mining activity, which not only impacts the environment but has also has significant sociocultural consequences. Illegal mining consists of a system of relationships into which some indigenous peoples have been inserted. Indigenous women have been forced into sexual exploitation in the mining camps and some indigenous men end up in the mines as heavy labor or illegal miners in working relationships that are akin to slavery. In some cases, the economic resources gained from illegal mining have led to the abandoning of plantations, hunting and other subsistence activities, directly impacting the economic balance of the communities.

## Map 16



Yanomami communities and organizations have been denouncing this situation and opposing this activity for many years. Nevertheless, the indigenous position does not seem to be being taken seriously, since the problem continues after many years and with dramatic consequences for the affected communities. The following testimonies, excerpts from the Report from the PGTA's First Topical Office for Yanomami Indigenous Territory, elaborated by Hutukara and ISA (September 6-11, 2016, Lake Caracaranã-RR), demonstrate the gravity of the situation:

**Gersoni (TANER):** *"It's very important that the whole world, both close and far away, know and talk about our community's problems. [...] FUNAI, in Boa Vista, has to respond to this. It's been abandoned. The illegal miners, when they come, they also bring with them a lot of alcoholic drink. This is destroying the lives of our young people, the young people are already half crazy, when they see something new they want to try it. There are more than 600 illegal miners inside, destroying. I've never gotten to see it, but I know of it, they're being directly transported there. Because of this, I ask all the present institutions: let's fight this before all of the world is contaminated. FUNAI in Boa Vista has to look for these people. If the guerrillas kill these non-indigenous, the Federal Police and FUNAI won't be able to do anything. Before this happens, look for their relatives."*

**Junior (HWENAMA):** *"There are many warepë (illegal miners) in our region. The authorities kick them out, but after a month they return. [...] I went to one of the communities and it made me sad. The elders there told me: hey friend, don't kick the illegal miners out, they're the ones that bring us food and tools. What am I to do after hearing this? The associations have to converse a lot with the elders, with the young women, to explain the problems that illegal mining brings, the hunger because the fish, the meat, the food will disappear and run out. The associations have to talk insistently with the communities. And other entities should support them, FUNAI, ICMBio.<sup>158</sup> In Surucucu there aren't any illegal miners because they are afraid of us. They're in other regions... they're entering directly to the Uraricuera River, they're in direct contact with the Ye'kwana, but afterwards this was talked about with the newspaper. We have grave problems in the Yanomami Indigenous Territory (TIY). A lot of illegal miners. But we still haven't achieved a dialogue with the Yanomami. Primarily to talk about the illegal mining. In the TIY there is no oversight, the only ones that are there are the Yanomami. But the army is also there, in three border regions: Auaris, Surucucu and Maturacá. Other communities have a lot of contact with the illegal mining. It doesn't matter if the authorities kick the illegal miners out, a week, a month later they come back, since they aren't punished. We talk about how the negative consequences [of illegal mining] are going to affect all of the Yanomami. Last month I was in a community, we had a meeting, and I left very sad. One leader asked me to leave the illegal miners alone because they bring materials for the plantations. And how did*

158 The Chico Mendes Institute for Biodiversity Conservation is the administrative arm of Brazil's Ministry of the Environment.

*that leave me? When Mr. Catalano was head of coordinating the Protection Front, there were operations [against the miners]. Nowadays there are no operations and during this time, the [illegal mining] invasion has grown a lot. Summer was very difficult in the TIY and destroyed many plantations, so then the Yanomami go to the illegal miners to offer their labor in exchange for food. What is the Government doing to resolve this situation? It's the Yanomami people themselves that have to control their territory. If something happens to us, the Yanomami, because we launch an operation [against the miners], and conflict occurs, we are going to hold the Federal Government responsible."*

**Felipe (Ye'kwana):** *"Some of our youth are involved in illegal mining in Waikas. Last year, 2 young people were arrested, but in spite of this they keep working in illegal mining. Our leaders need to do something. Even when they're told about the importance of nature, the young people don't listen. A few days ago I saw 30 rafts and 35 boats by the river. I had already denounced the presence of airplanes and rafts, and because of this they threatened me. I gathered [the necessary] documentation and sent it to FUNAI. They called me to threaten me: "Hey tuxaua, are you gathering evidence?" Someone took the complaint I filed and brought it to the illegal miners. ICMBio and the Army, you have to make plans not just for one day, two days, but one month, six months. That would diminish the illegal mining invasion."*

**Mateus (Ye'kwana):** *"There has to be harmony and unity in the fight for the Territory. The hand that's on this poster means "it give me peace, it gives me freedom". This land does not just belong to the Yanomami, it doesn't just belong to the Ye'kwana, it's a forest reserve that supplies air to the entire world."*

**Davi (HUTUKARA):** *"Today I'm going to speak up, because it's time to hold people accountable. The other associations already said it. But I'm going to repeat it. Before, FUNAI was courageous. In 1975, the Brazilian Government opened the Northern Highway, opened the way for the invaders to enter, the illegal miners, the jaguar and crocodile hunters, the loggers. The illegal miners also came in through this road that the Federal Government opened. [...] Convention 169, where it says they have to consult us. Our Brazilian Government, 30 or 40 years ago, had a project to protect us, but it's weakened. The Government doesn't want to recognize our right. They weren't born here, they were born in Europe, in Portugal. The land was approved, registered, signed off by the Federal Government of Brazil, but it's not protected. Because of this the invaders keep coming, invading. They have their businessmen that send them to look for gold [...] In 2013, 2014, 2015, we realized an expedition along the borders of our territory to monitor what was going on, it was us, the Yanomami, with the support of ISA, the Protection Front, the ICMBio. IBAMA<sup>159</sup> also took action to destroy mining pumps. I'm going to talk with our*

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159 Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA)



*Ye'kwana relative. The young people are involved in the mining. They're bringing the illegal miners gasoline for a little bit of money. They're earning so much! [sarcastically]. I'm talking about both indigenous and non-indigenous. We're in the wrong too. You all aren't recognizing my fight [...] Do I have a raft and pump in the RR? No, no I don't. I want the invaders far away. On the other side of the mountain, that's the Government's land, there it's fine, but here, this is Yanomami indigenous land, I don't want them here."*

The relationship that the indigenous peoples have with their land needs to be understood as different from the view taken by the "western white man"; it should be considered as an extension of the indigenous personality, necessary for the recognition of their identities, and life and cultural relationships. For the indigenous peoples, the land represents much more than a material or patrimonial good. These lands are part of the very identity of the communities, they allow them to manifest their culture and traditions, reproducing these customs and bequeathing them to their descendants. The protection of the permanent possession of this cultural space is an indispensable condition for the protection of all of the indigenous peoples' collective rights.

It should be noted that, in this case, illegal mining does not just hurt a Yanomami leader, rather the entire people suffer the negative consequences of the exploitation. The destruction, for example, of natural resources within indigenous land, or the contamination of rivers, puts at risk the physical survival of the Yanomami People, directly modifying their culture since it compromises the communities' food source, introduces diseases and alters traditional indigenous habits.

Even though the Federal Constitution guarantees the indigenous people the permanent possession of the land that they have traditionally occupied and the exclusive use of the natural resources found there (Article 231, § 2), these precepts are not respected, which has caused many conflicts and negative impacts for the Yanomami.

ILO Convention 169 foresaw that the ethnic and cultural diversity of indigenous peoples should be respected in all of its dimensions and supports the rights of the indigenous peoples to their land and the natural resources found there. It obligates governments to adopt measures to protect and preserve the environment in the territories inhabited by indigenous groups (Article 7), and mandates that these groups have the right to set their own priorities regarding their processes of economic, social and cultural development.

Article 15 of ILO Convention 169 also establishes that the rights that the indigenous peoples have to the natural resources found in their territories and to decide regarding their use, administration and conservation, should be especially protected, and affirms that in the supposed case in which these resources belong to the State, governments should establish consultation procedures in order to determine the possible damages that might result for affected peoples.



### 3. Cultural Consequences

Confronted with the permanent violence suffered by the Yanomami and Ye'kwana peoples, cruelly aggravated by alcoholism and prostitution, the life and culture of young indigenous people is falling apart. The desperate testimonies rendered by the indigenous peoples reveal the countless problems caused by the illegal mining within their traditional territory:

**R. Yanomami, N. R. Community (leader of the Alto río Catrimani Region):**

*"One day I went to visit the illegal miners [that live nearby]. I went with many women and children that were going to ask them for food. The miners want to make themselves out to be friends and say that, while they're extracting the gold, they give rice, crackers and sugar to the Yanomami. Because of this, the Yanomami say that they like the illegal miners, and have lived beside them for many years. The Yanomami told me that, when I visited the illegal miners, not to speak ill of them, since they give them [the Yanomami] shotguns and cartridges, things that nobody else give them. I went with my wife and they told me that they [the illegal miners] wouldn't touch her because they already have women for themselves. One of them [these women] is called M. Yanomami: for a long time she has lived with the miners. When I went, I saw her: she was pregnant and I found her in the miners' kitchen. She told the other women that they shouldn't be afraid of the miners, that they don't bring diseases and that they don't have penises like those that the Yanomami have. Then, M. Yanomami had sexual relations with many miners. The miners that had sexual relations with her were very violent and they hurt her: she had trouble walking and vaginal bleeding. The miners took her to the Health Center. They said that maybe she had malaria and she was sent to Boa Vista. She stayed a while in CASAI, where they diagnosed her with a urinary infection. Once she had been cured, she went back to live again with the miners.*

*Other women have sexual relations with the miners. They are M., L., S. and C. Yanomami. The miner named Tulio, says he has taken M. Yanomami for himself. That she is now their woman. Seeing everything that happens, I remain worried, thinking that other women might become infected with the diseases transmitted by the illegal miners.*

*"There are some Yanomami that work together with the illegal miners, like T. Yanomami and M. Yanomami, that have been with them since they were very young and because of this they defend them. Other adults and young people like to work with the miner's pumping machines. For example, E. Yanomami got his shotgun from the miners. To them, the miners are good. Other Yanomami that work there are M., J. and R. The Yanomami extract gold and get juice from the miners. The Yanomami say that they want the shotguns, food and clothing that the miners distribute in exchange for the gold that they extract from*





*our land. Other Yanomami hunt for the miners in exchange for cartridges, nets, etc. These Yanomami warned me to not speak ill of the miners. In spite of all the negative consequences [the miners have brought], they defend them. But I don't like them. Now, the Yanomami that got shotguns from the miners use them to fight. In the mining store, they get alcoholic drinks, when Mônica or Moraes distribute them. You can get alcoholic drinks in exchange for 2 grams of gold, but for 5 grams you can get enough to get drunk. When the men and women are drunk, they fight, and the men end up cutting the women. "I live there, because of this I am very worried."*

ILO Convention 169 provides many effective options to eliminate obstacles that interfere with indigenous peoples' ability to fully enjoy their human rights and fundamental liberties. On the one hand, it promotes respect for their culture, religion, social and economic organization and their identity as a people, which no democratic law-abiding State or social group can deny them; and on the other hand, it incorporates mechanisms for the participation and consultation of interested indigenous peoples, through their organizations or representatives, in the processes relating to the planning, discussion, execution and decision-making regarding their problems, as a way of guaranteeing the integrity, recognition, respect and promotion of their cultural, religious and spiritual values.

### **Letter from the Haihi u Community, Catrimani Mission Region (TIY)**

**October 7, 2017**

#### **10th Yanomami Indigenous Women's Encounter**

During the 10th Yanomami Indigenous Women's Encounter, we heard and wrote down the testimony of Y. Yanomami, who told of her trip along the Catrimani River, where she found many illegal miners working above the Poraquê Waterfall:

"Yes, I saw where a lot of illegal miners live and work. Because of this I am very worried. The miners are set up in the way that I am going to describe to you. On August 31, 2017, while I was traveling up the Catrimani River, a little ways beyond the Pacuri Waterfall [waterfall that is situated above the Poraquê Waterfall, but below the mouth of Lobo d'Almada River, which is a tributary on the right side of the Catrimani River], I found three miners who had set up a camp with two tents. Then we continued going up the river, passing the waterfall that we know as Konapë por and dragging the canoes around the waterfall we call the Koxoro pora. The next day we found signs of the Moxi hatëtëma [groups of Yanomami that are live in voluntary isolation].

On September 2nd, we went up another part of the river and around 2:00 p.m. we arrived at a spot where the remains of mining activity were evident. Nearby we arrived at a place where many miners live, where there are tents, a large raft with a pump and a radio station.

On September 3rd, at 7:00 p.m. we arrived at a landing strip where we found four rafts, two motors with pumps and other machines, a radio station, three tents, a store where they sell alcohol, a place where the miners have sexual relations and a warehouse. The leader of that mining camp is known as Tipio.

On September 4th, even further up, we found other illegal miners working with motors and pumps in order to spray water [at high-pressure] and destroy the river banks, as well as other machines. There we saw Yanomami that work in the illegal mining, the name of one of them is M. Yanomami, who lives in Alto Catrimani.

We know that in the stream we call the Hwaia u [a tributary on the right side of the Uxi or Lobo d' Almada River], other illegal miners are working where our fathers had plantations and the ashes of our elders are buried. There is a large landing strip there.

All these miners are dirtying and contaminating the Catrimani River, they contaminate the fish, which die, they wreak havoc on the river which has been reduced to a muddy stream. This also happens: the miners give alcohol to the Yanomami in Alto Catrimani, and when the men are drunk they grab the women there to have sexual relations with them. One women suffered violence from many miners and almost died: she spit out blood and had problems walking. She was brought to CASAI. The miners give the Yanomami firearms and bullets in exchange for sexual relations with their women."

Because of all that is happening, we are sending this testimony, this document to you, the non-indigenous leaders. We want to expel the illegal miners from our territory. Respond as quickly as you can to our request. We don't want our children to die. All the time we are drinking contaminated water, because of this the children get sick and our adults as well.

Because of this, we insist on asking for your help and we write this document during the 10th Yanomami Indigenous Women's Encounter.

### III. Political and Legal Proposals

The indigenous movement and their colleagues have filed complaints and organized protests to defend their rights, their territories, their autonomy and their different lifestyles. Confronted with this predatory development model that does not take into account the existence of the indigenous peoples and violates their constitutional rights, many proposals for territorial protection and oversight have been put into place in TIY. The PGTA's Executive Report for the TIY, elaborated by Hutukara and ISA (November 2016, Caracaranã Lake-RR), guides the work done by the Yanomami and Ye'kwana Peoples:



OBJECTIVE	HOW?	WHO?
Combat illegal mining	<ul style="list-style-type: none"> <li>• Increase dialogue with the communities that support illegal mining, informing them of its negative consequences</li> </ul>	Associations, the Special Indigenous Health Secretariat (SESAI), FUNAI, the Army, ICMBio, ISA, Oswaldo Cruz Foundation (Fiocruz), dioceses and universities.
	<ul style="list-style-type: none"> <li>• Prepare and use audiovisual material developed for Yanomami and Ye'kwana youth.</li> </ul>	Associations, SESAI, FUNAI, ICMBio, ISA, Fiocruz, dioceses and universities.
	<ul style="list-style-type: none"> <li>• Carry out investigations on environmental and human contamination.</li> </ul>	Associations, ICMBio, SESAI, ISA, universities, institutes dedicated to investigation.
	<ul style="list-style-type: none"> <li>• File complaints through the proper channels with the competent organizations and government bodies.</li> </ul>	Communities, associations, FUNAI, ICMBio, SESAI.
	<ul style="list-style-type: none"> <li>• Carry out constant monitoring and management operations.</li> </ul>	FUNAI, Army, IBAMA, Federal Police (PF), ICMBio.
	<ul style="list-style-type: none"> <li>• Support territorial monitoring bases and sharing facilities.</li> </ul>	Communities and FUNAI.
	<ul style="list-style-type: none"> <li>• Improve mechanisms to punish crimes related to illegal mining.</li> </ul>	Federal Prosecution Service (MPF), PF, IBAMA.
	<ul style="list-style-type: none"> <li>• Reactivate and structure protective bases in strategic areas within the limits of the TIY, such as the Korekoremae Demarcation Base.</li> </ul>	FUNAI, Army, PF, IBAMA, communities and associations
	<ul style="list-style-type: none"> <li>• Identify and arrest those who finance illegal mining.</li> </ul>	PF and MPF
	<ul style="list-style-type: none"> <li>• Strengthen the coordination between peoples of the Pan-Amazon in order to combat illegal mining.</li> </ul>	Associations, ISA, FUNAI, dioceses, ICMBio
	<ul style="list-style-type: none"> <li>• Utilize international mechanisms to fight illegal mining in the TIY.</li> </ul>	ISA and Funai
	<ul style="list-style-type: none"> <li>• Public awareness campaign to influence public opinion concerning illegal mining in TIY</li> </ul>	Associations, ISA, FUNAI, dioceses, ICMBio
	<ul style="list-style-type: none"> <li>• Destroy the clandestine landing strips used for illegal mining..</li> </ul>	Army, PF, IBAMA and FUNAI
	<ul style="list-style-type: none"> <li>• Develop alternative forms of income for communities involved in illegal mining (for example, ecotourism).</li> </ul>	Associations, FUNAI, ICMBio, Army, ISA, Rios Profundos (a social organization), communities, Municipal and State Secretariats



OBJECTIVE	HOW?	WHO?
Promote indigenous autonomy in the monitoring of their territory.	<ul style="list-style-type: none"> <li>Create a Yanomami and Ye'kwana monitoring system.</li> <li>Training in the use of new monitoring technologies (GPS, internet, drones).</li> <li>Support with equipment and logistics.</li> </ul>	<p>Associations, FUNAI, ICMBio, SESAI, IBAMA, Army and ISA.</p> <p>Associations, FUNAI, ICMBio, IBAMA, Army and ISA.</p> <p>Communities, FUNAI and Army</p>
Impede the entrance of invaders, such as fishermen, hunters, loggers, and piassava collectors, etc.	<ul style="list-style-type: none"> <li>Impede the entrance of alcoholic drinks to the communities.</li> <li>Mobile inspection teams on the rivers and highways.</li> <li>Install signs along the borders of the TIY and conservation sites in the area.</li> <li>Reactivate protective bases in strategic locations.</li> <li>File complaints through proper channels with the competent organizations and government bodies.</li> <li>Create alternative forms of income for the Yanomami and Ye'kwana who are involved in illegal fishing and hunting.</li> </ul>	<p>FUNAI, IBAMA, ICMBio, Army and PF.</p> <p>Funai and ICMBio</p> <p>FUNAI, Army, PF, communities and associations</p> <p>Communities, associations, FUNAI, ICMBio, SESAI</p> <p>Associations, FUNAI, ICMBio, Army, ISA, Rios Profundos and communities</p> <p>MPF, FUNAI and associations.</p>
Guarantee the right to consultation regarding the implementation of government projects and public policies that affect the TIY.	<ul style="list-style-type: none"> <li>Block the reopening of the Northern Highway within the TIY.</li> </ul>	<p>Associations, ISA, Rios Profundos, dioceses, Secoya (a social organization), Ministry of Communication, Amazonian Protection System (SIPAM) and FUNAI.</p>
Facilitate territorial mobility	<ul style="list-style-type: none"> <li>Build secondary shabonos (traditional dwellings).</li> </ul>	<p>Shamans, associations and leaders.</p>
Strengthen the unity among indigenous organizations in the TIY	<ul style="list-style-type: none"> <li>Widen, perfect and organize the radio network that currently exists in the TIY for exclusive use by communities and associations.</li> <li>Agreements formalizing the use of the exclusive frequency (who will be responsible for it, specific schedules, priority use).</li> <li>Stimulate exchanges between associations and leaders in the TIY.</li> </ul>	<p>Communities and leaders.</p> <p>Associations, FUNAI, ICMBio, Rios Profundos, Secoya and dioceses.</p> <p>Associations and leaders.</p>



OBJECTIVE	HOW?	WHO?
Strengthen indigenous participation in the discussion forums regarding territorial management.	• Participate in national and international seminars and forums.	Associations, FUNAI, ICMBio.
	• Participate in the councils that manage the area's conservation units and FUNAI's regional committees.	Communities, associations, SESAI, FUNAI, ISA, Rios Profundos, Secoya and dioceses.
Value Yanomami and Ye'kwana cultures and foster their appropriation of their territory.	• Strengthen shamanism among young people.	Communities, associations and FUNAI.
	• Combat religious proselytism	Associations and leaders.
	• Organize a conference and show movies that depict the consequences suffered by indigenous peoples..	Communities, associations, ISA, Rios Profundos, Secoya, dioceses, ICMBio, FUNAI, National Institute of Historic and Art Heritage (IPHAN) and universities.
	• Value and record elders' knowledge	Communities.

Photo 43



Author: Sister Mary Agnes (Consolata Missionary Sisters)



## 2.2.4. Indigenous peoples within Maridi Nacional Park (Pilón Laja Reserve), Bolivia:

Coordinated by: Caritas Bolivia

### I. Introduction:

Bolivia declared its independence in 1825. Its territory covers 1,098,581 square kilometers and is divided into 9 Departments (Chuquisaca, Cochabamba, Tarija, La Paz, Santa Cruz, Potosí, Oruro, Pando and Beni); the current population is 10,027,254 people (2012 Census) with 36 recognized Native Indigenous Peasant Peoples (PIOCs), as well as Afro-Bolivians (Bolivians of African descent). The country recognizes itself as being plurinational and intercultural and its primary sources of income are the exportation of raw materials (primarily minerals and hydrocarbons), as well as agriculture, livestock raising, logging and other smaller scarce activities.

Twenty-nine different indigenous peoples inhabit the Amazon (without including Agro-Bolivians): Araonas, Ayoreos, Baures, Cavineños, Cayubabas, Canichanas, Chacobos, Chiquitanos, Ese Ejjas, Guarayos, Guarasugwe, Itonamas, Joaquinianos, Lecos, Machineris, Maropas, Moré, Mosetenes, Movimas, Moxeños, Nahuas, Pacahuaras, Sirionos, Tacanas, Toromonas, Tsimane, Yaminahuas, Yukis and Yuracares. Their livelihood is based on hunting, fishing, gathering and cultivating small areas of land (“chacos”). In terms of agricultural production, their primary crops are banana, yucca, vegetables and rice, most of which are used for family consumption. The principal access roads to their territories are the highways that connect major cities, like Trinidad, with other medium-sized towns, such as the Trinidad – La Paz highway to the east, the Trinidad – Cobija highway to the north (which also connects to towns such as Riberalta and Guayaramerín) and the Trinidad - Santa Cruz highway to the south. Few smaller roads exist connecting highways to Amazon communities, some of which are only passable during the dry season. There is waterway access via the Mamore, Beni and Madre de Dios Rivers; there are also rivers that permit internal navigation within areas like the Isiboro Sécure National Park and Indigenous Territory (TIPNIS), such as the Chapare, Ichilo, Isiboro, Sécure and Ichoa Rivers, among others. In the Northern Amazon, the Muchanes, Quikibey and Tuicchi Rivers are notable examples.

The **Pilón Lajas Reserve** is located in the northern part of La Paz Department, in the Provinces of Sud Yungas, Larecaja and Franz Tamayo and in the western part of Beni Department in Ballivián Province. It was created on April 9, 1992, (the Bolivian State, via Supreme Decree No. 23110, created the Pilón Lajas Indigenous Territory and Biosphere Reserve in April 1997; according to the framework laid out in the National Institute for Agrarian Reform (INRA) Law, it is registered as **Ancestral Communal Land**). Nearby, the **Madidi National Park and Integrated Management Area** ([PN-ANMI Madidi], formally created via Supreme Decree No. 24123 on September 21, 1995) can also be found, located solely within La Paz Department, in the Provinces of Abel Iturralde and Franz Tamayo.





## 1. Information about the Indigenous Peoples, especially regarding Mosetén Indigenous Territory:

### a) Leco Indigenous People

The Leco Indigenous Territory (TIL) is located in La Paz Department, in the Provinces of Franz Tamayo and Larecaja, with an approximate population of 4,000 people.<sup>160</sup> The Leco People are represented by two social organizations: the Indigenous Committee for the Leco de Apolo Community (CIPLA), which has begun the process for titling its land, and is affiliated with CIDOB,<sup>161</sup> and the Indigenous and Native Peoples of Larecaja (PILCOLO), which has the title for 7,165 hectares of land according to Executive Title PILCOL – TCO.<sup>162</sup>

### b) Tsimane Indigenous People

Located in Beni Department, in the Provinces of Ballivián, Moxos and Yacuma; with an approximate population of 8,528 people. Their territory has a special characteristic since it has been titled and legally recognized as belonging not only to them, but shared with other indigenous peoples, being recognized and ratified by the National Institute of Agrarian Reform. Their territory can be divided into four parts:

1. Tsimane or Chiman territory (TICH), recognized by Supreme Decree No. 22611 on September 24, 1990, with a surface area of 401,322.8054 hectares.
2. Pilón Lajas Indigenous Territory, with a surface area of 369,264.4362 hectares, recognized via Supreme Decree No. 23110 on April 9, 1992, being shared with the Mosetén and Tacana Indigenous Peoples.
3. Multiethnic Indigenous Territory (TIM), with a surface area of 343,262.4479 hectares. Recognized via Supreme Decree No. 22611 on September 24, 1990, and shared with the Moxeño, Yuracare and Movima Indigenous Peoples.
4. Some Tsamine communities also inhabit the TIPNIS, which was recognized via Supreme Decree No. 22610 and is shared with the Moxeño and Yuracare Peoples.

In general, the Tsimane People's social organization revolves around the Tsimane Great Council, affiliated with the CIDOB, which represents them at the national level. However, a few communities form part of the organizations representing indigenous peoples in TIPNIS, the TIM and the Pilón Lajas Indigenous Territory.

### c) Tacana Indigenous People

Located within Pando Department, in the Provinces of Madre de Dios and Manuripi; in La Paz Department in the Province of Abel Iturralde; and in Beni, in the Province of Ballivián. Their to-

<sup>160</sup> [http://www.amazonia.bo/indigena\\_completa.php?codigo\\_enviado=sDUWfzT1kFmsW7oXBxZsuiTCi02IDGB4FU9o5aifSyg=](http://www.amazonia.bo/indigena_completa.php?codigo_enviado=sDUWfzT1kFmsW7oXBxZsuiTCi02IDGB4FU9o5aifSyg=)

<sup>161</sup> CIDOB, Confederación de Pueblos Indígenas de Bolivia [Confederation of Indigenous Peoples, Bolivia]

<sup>162</sup> <http://www.inra.gob.bo/InraPb/paginaController.jsessionid=FBE976E6A47E14D634FA7C413B592010?cmd=noticia&id=8982>

tal population consists of 7,056 people. When they applied for their land title they petitioned the State for two areas, one called Tacana I, which has been granted a title for 389,303 hectares and the other Tacana II, whose land titling process is still underway. Their primary social organization is the Tacana People's Indigenous Council (CIPTA), which is affiliated with both the La Paz Indigenous People's Central Authority (CEPILAP) and the Tacana Indigenous Organization (OITA) which is also affiliated to the Bolivian Amazon Region's Indigenous People's Central Authority (CIRABO), both of which are affiliated to the CIDOB.

#### *d) Masetén Indigenous People*

This indigenous territory is located in the Departments of La Paz and Cochabamba, with a titled surface area of 100.831 hectares according to Title TCO-NAL 000020,<sup>163</sup> issued on April 11, 2001. It is divided into two blocks (A and B). The land was titled within the framework of Law No. 1715 (the law for the National Institute of Agrarian Reform) and currently consists of 12 communities, 5 located in Block A and 7 in Block B, with an approximate population of 1,800 people. Their native tongue is Masetén, which is currently being revindicated and promoted among the youth. Their central institution is the Masetén Indigenous People's Organization (OPIM), which is affiliated with CEPILAP and CIDOB.

It is tradition that the Masetén People were given this name by the Franciscan priest Gregorio Bolívar between 1620 and 1621, originally as "Moxetenes", since they lived adjacent to the Indigenous People of Moxo.<sup>164</sup>

## **2. Socioeconomic Situation of the Masetén Indigenous People:**

With regards to education, schools do exist within Masetén territory, but generally only up to the primary level; for this reason Masetén youth leave their communities to continue their studies outside of Masetén territory (although only when their parents' economic condition permits this). Other difficulties include the small number of contracts issued for teachers for the area and their tendency to abandon their posts, as well as the small number of hours designated for educational purposes, a reality that occurs primarily in the most distant and difficult to access communities. It should also be noted that their education does not comply with proper standards for quality.

With regard to healthcare, there are clinics, but these lack adequate equipment and the medicines necessary for emergency treatment. However, the greater problem is the lack of health personnel such as nurses and doctors, and specialists are unheard of. The Municipalities try to cover these needs, but the budget allocated is small; therefore, one form of dealing with these problems is to use traditional medicine, which is effective in the majority of cases.

The communities which are closest to major population centers tend to have electricity, but no other basic services, which are even less present in the more distant communities. Some of the more distant communities have solar panels which were installed to help support education.

<sup>163</sup> TCO, Tierra Comunitaria de Origen [Native Communal Land]. Law 1715 "INRA Law = National Institute of Agrarian Reform," passed in 1996 and modified by Law 3545, the Land Redistribution Act, el número de esta ley estuvo incorrecto. No olviden corregir en la versión Española. creates three ways to title land, one of which is known as SAN-TCO, which is takes into account collective property and ancestral territories.

<sup>164</sup> Alvaro Díaz Astete - Investigator.



Water for human consumption is delivered through pipes, but is not necessarily safe to drink; in the more distant communities, water comes from streams and rivers which are becoming more and more contaminated. Other basic services do not exist.

The main economic activities are agriculture (carried out on small plots of land), fishing, hunting and gathering and working as day laborers on large farms where livestock are raised or helping with the harvest; this means they do not have access to social security or other employment benefits.

### 3.- Analysis of the Situation: Threats to Territory

Map 17: National Institute of Agrarian Reform



The activities that currently threaten the lives and human rights of the indigenous peoples in the Bolivian Amazon are, in general: highway construction, hydrocarbon exploration (this activity was undertaken in Mosesten around Lliquimuni up until April 2016, but nothing was found according to the State company “Yacimientos Petrolíferos Fiscales Bolivianos”), mining activity and logging. For the Leco, Tacana, Tsimane and Mosesten Peoples large hydroelectric megaprojects, such as the Bala and Chepete dams, are a significant threat.

Upon noticing the assessment studies being carried out for the Bala- Chepete Hydro-electric Project, begun in 2015 and 2016, the indigenous peoples initiated resistance activities, generally headed by social organizations that represent the territories that would be affected by the environmental, social, cultural and economic impacts of the project. These included organizations like the Commonwealth of Indigenous Communities, in coordination with regional and territorial associations.

At the same time, between September and October 2015, the National Electric Company (ENDE) has tried to raise awareness in some Masetén communities regarding the initial study done for the megaproject.

These are some of the facts related to the initial study done for the megaproject by ENDE: *“The project is located on the Beni River; according to the original assessment study (ENDE 2016), the project is divided into two parts: Component 1: Chepete, located 70 km upstream of Rurrenabaque, in the Province of Franz Tamayo (La Paz), and Component 2: Bala, which is near the area known as the Straight of Bala in the Beni River, 13.5 km upstream from San Buenaventura and Rurrenabaque, located in Abel Iturralde Province (La Paz) and General Ballivián Province (Beni), respectively.”*<sup>165</sup>

According to the information provided by the Solón Foundation,<sup>166</sup> *“3,214 people live within the areas that would be flooded by the Chepete and Bala dams, and another 1,950 live in the surrounding areas. A total of 5,164 people would need to be relocated, almost all of which are indigenous people-peasants. This figure is equal to the number of permanent residents living in the city of San Buenaventura. 424 species of flora exist in the area, 201 species of land mammals, 652 bird species, 483 amphibian and reptile species and 515 species of fish. The environmental data sheets do not specify how many of these species could disappear forever nor how many members of each species might be affected.”*<sup>167</sup> *“GEODATA concludes that the best option is the construction of a dam in Chepete, 400 meters above sea level and a smaller dam in El Bala. The dam in El Bala will not be larger than 25 or 30 meters with a gradient of 22 meters. The Chepete dam will be much larger, at least 156 meters above sea level.”*

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<sup>165</sup> <http://www.ende.bo/noticia/noticia/57>

<sup>166</sup> <https://fundacionsolon.org/>

<sup>167</sup> <http://www.fundacionsolon.org>



Map 18



Map 18: by: Solón Foundation

#### 4. Indigenous Leaders' Views on the Dams:

Four indigenous territories would be affected by the project: Mositén, Tsimane, Leco and Tacana, as well as intercultural communities.

According to community leaders, 49 communities would be affected by the flooding from the construction of the hydroelectric dam: 6 Mositén communities, 5 communities located in areas belonging to the Pilón Lajas Tsimane and Mositén Central Authority (CRTM), 3 Tacana communities, 2 Lecos de Larecaja communities and 33 intercultural communities.

During October 2016, the National Government, via the National Electric Company (ENDE), carried out a process to socialize the results of the initial assessment study with some of the Mositén communities; this was the first time that ENDE approached the communities, accompanied by the ATIKA and GEODATA consortium.<sup>168</sup> According to the testimony of local leaders, *“they arrived at the Municipality of Palos Blancos and made contact with the Mositén Indigenous People’s Organization to let them know that they were going to enter the area to socialize the project (which they did) with two Mositén communities, Covendo and Inicua .... which raised the alarm and caused worry in the organizations and their representatives.”* Other testimony by the leaders ratify this fact, having made a petition for support in which they manifest that *“... the government has already begun the study for the Bala-Chepete project and is even realizing the socialization of the project in Mositén communities. ENDE, ATIKA and GEODATA companies. What’s worrying is that they only talk about the great benefits the dam will bring to the country and to the indigenous peoples. This is worrying because they don’t give truthful information regarding the negative impacts, and because of this they could make bad decisions.”*<sup>169</sup>

<sup>168</sup> This is the consortium in charge of carrying out that design and environmental impact study for the Bala and Chepete dams.

<sup>169</sup> E-mail from September 2016.

At the same time, it became known that during the socialization in the two communities, ENDE had made a list of all those who attended, which the company then used to publish on its digital media that the communities had accepted the construction of the dams; nevertheless, the communities note that they wrote a document in which they manifested that they were not satisfied with the assessments and reports made by ENDE since these only showed the positive effects of development and economic income for the communities without mentioning any of the negative effects.

Another testimony from an inhabitant of Mositén territory mentions that, "...we no longer have any institutions to support us like before (about five years ago), ... the last one was LIDEMA<sup>170</sup> with the Solón Foundation, but now there is very little support and it is necessary to work in a different way to raise awareness among the people and strengthen the territory, that they know their culture, especially the youth..., this work, we've begun in 2017, but it's necessary to expand it to all of the communities, but we don't have sufficient resources for this, although OPIM is supporting these initiatives..."

## II. Processes of Resistance:

### 1. Position of the Mositén Indigenous People's Organization (OPIM)

OPIM is currently in a process of dialogue in order to take a position as an organization regarding the dams. We reproduce some of the opinions expressed by representatives of the Mositén People's governing body:

- "According to the first socialization that ENDE carried out regarding the results of the initial study, the community leaders have been made to understand that the valid results will be those published at the end of the study and with the government's official recognition."
- "The Leaders have been cautious regarding the topic of the dams because they want to maintain unity within the organization and the territory for when appropriate actions are to be decided."

### 2. The Commonwealth of Indigenous Communities: A Battlefield in Defense of the Territories Affected by the Dams.

This organization has existed since 2002 and was formed to help defend the communities and people that would be affected by the projects. Direct actions have been carried out since 2016, such as vigils, and the blockade of the Beni River in November of that same year, resulting in the abandonment of the area by SERVICONS, a subcontractor of GEODATA, an Italian company.<sup>171</sup>

They are waiting attentively for the results of the final design study and the procedures

170 Liga de Defensa del Medio Ambiente [Environmental Defense League], <http://pueblosindigenas.bvsp.org.bo/php/level.php?lang=es&component=19&item=43>

171 <http://www.geodata.it/>





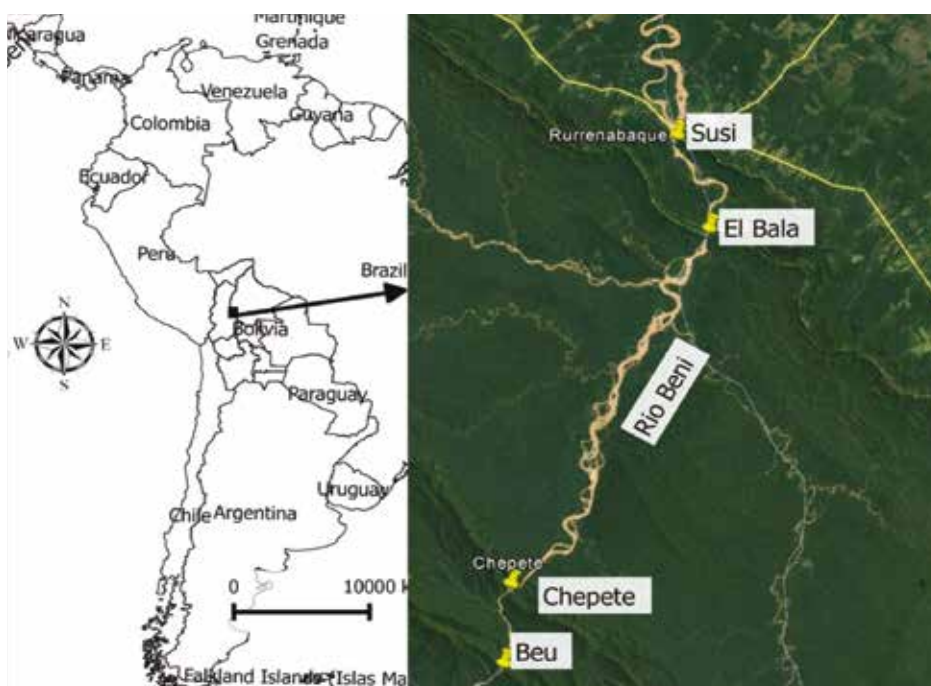
that the Government will thereafter carry out to socialize the results and fulfill the human right to prior consultation: although the Bolivian Government has already announced that it will carry out a public consultation after which it will begin the contracting process for building the dams.

In testimonies gathered at different events and encounters, like the one realized in February 2018 in Santa Cruz by the Territorial Defense Coordinator, members have related how in different moments and in different ways the Government, through ENDE, has tried to divide their organization as it has done with the rest of the organizations at the national level.

It was also made known in July 2017 that there are organizations that have signed agreements of understanding with ENDE, such as CEPILAP and CRTM, authorizing information gathering and other studies within their communities.

Finally, there is visible worry concerning the environmental, social and economic impacts, which have been rated as severe, especially those that will alter national parks like Pilón Lajas and Madidi. And the consequences would not just affect the communities within the dams' territory but all those who live in cities and populations further into the Amazon.

Map 20: IAGUA



### III. Human rights being threatened according to the current legal framework.

The advances that have been made in recognizing human rights in the Plurinational State of Bolivia, especially the **Rights of the Native Indigenous Peasant Peoples (PIOCs)**, is the product of a long fight for their revindication.

A nefarious historical event was the promulgation of the “Separation” law of 1874, which took away the indigenous people’s communal land and also tried to take away their cultural identity. More than 7 decades had to pass before the “Revolution of 1952”; a year later, a measure known as “Agricultural Reform” was introduced, which looked to redistribute land to the indigenous peoples through their organizations and communities. In 1990, the first indigenous march occurred, called “For Territory and Dignity”, which initiated a process of territorial consolidation favoring the indigenous people. In 1994, the Political Constitution was partially modified to characterize Bolivia as “multiethnic and polycultural”, ending with the promulgation of Law No. 1715 concerning the National Institute of Agrarian Reform and establishing Communal Land Titling for Native Lands.

#### 1. Legal Framework:

##### 1.1 International Norms

As part of the advances made in consolidating the achievements resulting from the “indigenous peoples’ fights”, Bolivia adopted international norms that favor them: the Political Constitution of the Plurinational State of Bolivia, in accordance with Articles 13-IV and 256, opens the Bolivian justice system up to include the human rights derived from international treaties and conventions, providing for their preferential application and most favorable interpretation, and, according to the second part of Article 410-II “...*the constitutional body of law includes the international treaties and conventions on human rights and communal rights ratified by the country...*,” placing them on the same legal level as fundamental rights.

The relevant international norms and treaties that have been recognized by the Plurinational State of Bolivia are:

1. **Convention 169 of the International Labor Organization, titled the “Convention concerning Indigenous and Tribal Peoples in Independent Countries”<sup>172</sup>**, ratified via Law No. 1257 on July 11, 1991, two years after the adoption of the Convention.
2. The **“United Nations Declaration on the Rights of Indigenous Peoples,”<sup>173</sup>** ratified by Law No. 3760 on November 7, 2007.

172 [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

173 [https://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)



## 1.2. The Political Constitution of the Plurinational State of Bolivia<sup>174</sup>

In 2009, as a result of the Constituent Assembly, the new Political Constitution of Bolivia (CPE) was promulgated. This Constitution is considered to be extremely advanced with regards to human rights material and especially collective rights: from Article 1, it declares “Bolivia is constituted as a Unified Social State of Plurinational Communitarian Law, free, independent, sovereign, democratic, intercultural, decentralized and with autonomous regions. Bolivia is founded on plurality and political, economic, judicial, cultural and linguistic pluralism, within the country’s process of integration.” Based on this model of the state, the CPE amply covers collective rights, guaranteeing the **“Free Determination” of the Native Indigenous Peasant Peoples (PIOCs)**, and, to mention just a few of the norms put in place by the Constitution to favor their territories, recognizes ancestral values and principles, guarantees their political rights, social and economic rights, education, culture, social communication, the right to administer their own justice through the “Native Indigenous Peasant Jurisdiction”, political participation, integration with the rest of the states (departments), autonomy with delegated powers and competencies, the environment, natural resources, land and territory, ...

At the same time, the CPE also envisions guarantees and “actions of defense” to protect the rights established for all Bolivians:

- Action for Liberty (Art. 125 CPE)
- Action of Constitutional Protection (Art. 128 CPE)
- Action for Protection of Privacy (Art. 130 CPE)
- Action of Unconstitutionality (Art. 132 CPE)
- Action of Compliance (Art. 134 CPE)
- Popular Action (Art. 135 CPE)

## 1.3. Laws, Supreme Decrees and other Norms

It is necessary to summarize the judicial instruments which have been passed to adapt Bolivia’s legal framework to the CPE and/or to implement what has been established by the CPE in favor of the Native Indigenous Peasant Peoples (PIOCs):

- 1.- **Law No. 031, July 19, 2010;<sup>175</sup> Law to Establish a Framework for Autonomy and De-centralization** “Andrés Ibáñez,” which primarily promotes the right of the PIOCs to create their own governing bodies and to directly elect their authorities, establishing mechanisms for implementing this, procedures, limitations and covering other topics related to the consolidation of their autonomy.

<sup>174</sup> [www.mindef.gob.bo/mindef/sites/default/files/nueva\\_cpe\\_abi.pdf](http://www.mindef.gob.bo/mindef/sites/default/files/nueva_cpe_abi.pdf); [https://www.constituteproject.org/constitution/Bolivia\\_2009.pdf](https://www.constituteproject.org/constitution/Bolivia_2009.pdf)

<sup>175</sup> <http://www.planificacion.gob.bo/uploads/marcolegal/Ley%20N%20031%20DE%20AUTONOMIAS%20Y%20DESCENTRALIZACION.pdf>

- 2.- **Law No. 073, December 29, 2010;**<sup>176</sup> **Jurisdictional Demarcation Law**, which regulates the limits between Native Indigenous Peasant Jurisdictions and other constitutionally recognized jurisdictions regarding various competencies mentioned in the CPE.
- 3.- **Law No. 070, December 20, 2010;**<sup>177</sup> **“Avelino Siñani - Elizardo Pérez” Education Law**, which promotes the implementation of an educational system that “reaffirms the culture of the Native Indigenous Peasant Peoples, intercultural communities and Afro-Bolivians as part of the construction of a Plurinational State and Dignified Way of Life”.<sup>178</sup>
- 4.- **Law No. 1551, April 20, 1994;**<sup>179</sup> **Popular Participation Act**, promotes the integration of indigenous and peasant communities into the legal, political and economic life of the country, and also issues norms regarding juridical personhood as a way to favor participation in public administration.
- 5.- **Law No. 144, June 25, 2011;**<sup>180</sup> **Agricultural and Fishing Production Revolution**, and, along with it, **Law No. 338, January 25, 2013;**<sup>181</sup> **Regarding the Role of Peasant and Native Peoples’ Economic Organizations (OECAS) and Communal Economic Organizations (OECOM) in Achieving the Integration of Sustainable Family Agriculture and Food Sovereignty**, which promotes economic activities within the framework of the right to agriculture, and the formation of their own organizations.
- 6.- **Law No. 0459, December 19, 2013; Bolivian Ancestral Medicine Act**, regulates the exercise, practice and integration of traditional ancestral Bolivian medicine within the national health system.
- 7.- **Law No. 1333, April 22, 1992, the Environment Act, along with Law No. 1700, the New Forest Law**, which promote the protection and conservation of the environment and natural resources, regulating man’s actions in relation to nature and the PIOC’s exclusive use of forest and natural resources.
- 8.- **Law No. 1715, October 18, 1996, concerning the National Institute of Agricultural Reform and Law No. 3545, November 28, 2006, concerning Communal Land Redistribution in Agrarian Reform**, which establish collective land titles for PIOC’s, known as “Native Communal Land,” guaranteeing their access and ownership, preserving the rights of<sup>182</sup> the present and future generations, while promoting the active participation of the PIOC’s in the steps prior to the land titling, based on the premise of fulfilling their social and economic functions. Finally it establishes the “indivisible, inalienable, immune from seizure, inalienable and irreversible [character of the land ownership, which] is not subject to taxes on agricultural property,” ratified in the 2009 Constitution.

176 <http://www.defensoria.gob.bo/archivos/Ley073.PDF>

177 [http://www.sipi.siteal.iipe.unesco.org/sites/default/files/sipi\\_normativa/bolivia\\_ley\\_nro\\_070\\_2010.pdf](http://www.sipi.siteal.iipe.unesco.org/sites/default/files/sipi_normativa/bolivia_ley_nro_070_2010.pdf)

178 Article 3.1 of the Education Law

179 [http://www.oas.org/juridico/spanish/blv\\_res16.pdf](http://www.oas.org/juridico/spanish/blv_res16.pdf)

180 <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92466/107727/F1045538051/BOL92466.pdf>

181 <http://extwprlegs1.fao.org/docs/pdf/bol120900.pdf>

182 Article 394-3 of the CPE.



## 2. Violated and Threatened Human Rights:

The Plurinational Bolivian State is neglecting its duties to protect and guarantee the following rights and freedoms for its people:

- **The right to the collective ownership of territory:** the flooding of indigenous territories will deprive the affected communities of their right to freely enjoy their natural resources and would represent not only a territorial uprooting but also a cultural, spiritual and socioeconomic one.

The legal norms that protect this right are Articles 2, 30-I, 30-II-4, 394-III, 403-I and the 7th Transitional Mandate (related to Article 293-I) of the CPE; Article 13 of ILO Convention 169, the Convention concerning Indigenous and Tribal Peoples in Independent Countries; and Articles 8 and 26 of the United Nations Declaration of the Rights of Indigenous Peoples.

It is important to note that this territory enjoys protection as a natural park and forest preserve, besides having the Executive Land Title issued by the National Institute for Agrarian Reform.

- **The right to be consulted,** the Bolivian State decided to begin the initial assessment studies for the Bala and Chepete dams without consulting those living in the territories that could be affected by the project and there was no indigenous participation in the assessments. One important moment for participation would have been before initiating the bidding and contracting processes for the studies; a second important moment for participation should occur prior to the approval of the Environmental Impact Study. The ministries in charge of the project are responsible for carrying out these previous consultations; in the case of the Bala and Chepete dams, this would be the Ministry of Energy.

The legal norms and international conventions that reference this right include Article 30-II-15 of the CPE, Art. 32.2 of ILO Convention 169, and Article 6, related to Article 7.1 of the United Nations Declaration of the Rights of Indigenous Peoples.

## IV. Conclusions and proposals:

In conclusion, it must be emphasized that the Bolivian State has not complied with international norms regarding the protection of human rights and indigenous peoples, which form part of the CPE, and especially in relation to the right to prior consultation.

The resistance processes initiated by the indigenous peoples in defense of their rights has resulted in the Government's interference with their social organizations, fragmenting them or creating parallel organizations, co-opting leaders and silencing their bases with offers of education and health infrastructure projects.

The State has not been transparent regarding information about the assessment study process, such that when the State has socialized the Bala and Chepete dam project, it has not provided all of the information having to do with the social, cultural, environmental and economic impacts for those inhabiting the territory, and has limited itself to sharing only the



supposed benefits that the project would bring to the country as a whole.

### Proposals:

1. That the Bolivian State comply with the established procedures and standards for prior consultation.
2. That the Bolivian State, taking into account the framework of Indigenous Peoples' right to self-determination, respect territorial organizations, both their structure and their territorial boundaries.
3. That the Bolivian State suspend construction of the Bala and Chepete Dams because of the negative environmental, social, cultural and economic impacts that they will cause.

Photo 44: Plurinational Communication Agency



Photo 44 Plurinational Communication Agency





## 2.3. THE HUMAN RIGHT TO THE NON-CRIMINALIZATION OF THE DEFENSE OF HUMAN RIGHTS:

The repression and criminalization of movements that defend human rights continues to claim more victims every year throughout the world; the vast majority of cases are related to the defense of territory and ancestral and traditional ways of life (The Annual Report of Front Line Defenders establishes that, **in 2017, 312<sup>183</sup> people in 27 countries were killed because of their defense of the environment. 80% of the murders took place in four countries: Brazil, Colombia, Mexico and the Philippines).**

In his 2016<sup>184</sup> Report, presented to the **United Nations Human Rights Council, the Special Rapporteur on the situation of human rights** refers to this trend: “The assassination of environmental human rights defenders is only part of the overall violence they face. The submissions received by the Special Rapporteur show that **environmental human rights defenders confront numerous threats and violations, including violent attacks and threats to their families, enforced disappearances, illegal surveillance, travel bans, blackmail, sexual harassment, judicial harassment and use of force to dispel peaceful protests.** Such violations are committed by State and non-State actors, and take place in the context of the overall stigmatization, demonization and delegitimization of environmental human rights defenders. In some countries, violations are intertwined with the overall climate of criminalization of their work, **especially in the context of large-scale development projects**”.

The report establishes recommendations for all the agents involved (the international community, United Nations organizations and agencies, the Third Sector, etc.); we emphasize those referring to States and businesses:

### Recommendations Directed to States:

- **Reaffirm and recognize the role of environmental human rights defenders** and respect, protect and fulfil their rights;
- **Ratify ILO Convention No. 169** and guarantee the right to consultation and participation of indigenous communities in decisions at every stage of a project's life cycle;
- **Ensure a human rights-based approach to development in all relevant legal and policy regulations, including multilateral and bilateral agreements or contracts, and establish mechanisms for due diligence** concerning the protection of environmental human rights defenders and the environment;
- Ensure a preventive approach to the security of environmental human rights defenders by **guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses;**

183 [https://www.frontlinedefenders.org/sites/default/files/annual\\_report\\_digital.pdf](https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf)

184 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/247/09/PDF/N1624709.pdf?OpenElement>



- Formulate **national action plans on business and human rights** and ensure that they, as well as environmental impact assessments, are developed in full transparency and with meaningful participation prior to the granting of permission or concessions for the implementation of any business or development project;
- Guarantee **the effective implementation of any precautionary or urgent measures** granted to environmental human rights defenders by regional human rights mechanisms;
- Develop **protection mechanisms for environmental human rights defenders, taking into account the intersectional dimensions** of violations against women defenders, indigenous peoples and rural and marginalized communities;
- Ensure **prompt and impartial investigations** into alleged threats and violence against environmental human rights defenders and bring to justice direct perpetrators and those that participated in the commission of crimes;
- **Engage with investors and business enterprises to uphold their human rights responsibilities and sanction those companies associated with violations against defenders, both at home and abroad.**

#### **Recommendations Directed to Businesses:**

- Adopt and implement relevant international and regional human rights standards, **including the Guiding Principles for Business and Human Rights and the Voluntary Principles on Security and Human Rights**;
- Fulfil legal and ethical obligations, including **rigorous human rights due diligence, and perform human rights impact assessments** for every project, ensuring full participation by and consultation with affected communities and environmental human rights defenders;
- Refrain from physical, verbal or legal attacks against environmental human rights defenders and meaningfully **consult with them in the design, implementation and evaluation of projects, and in due diligence and human rights impact assessment processes**;
- **Disclose information related to planned and ongoing large-scale development projects** in a timely and accessible manner to affected communities and environmental human rights defenders;
- Establish the **grievance mechanisms** necessary to avoid, mitigate and remedy any direct and indirect impact of human rights violations;
- **Ensure that private security companies and other subcontractors respect the rights of environmental human rights defenders** and affected communities and establish accountability mechanisms for grievances.

Our document ***“Position of the Panamazonian Ecclesial Network of the Catholic Church in Light of the Violation of the Right to Territorial Property of Indigenous***



**Peoples and Amazonian Communities in South America**” (Public Hearing before the Inter-American Commission on Human Rights (IACHR) - 161st Period of Sessions – Washington D.C., 2017) delved more deeply into this issue in sections 85 to 89:

*“85. The rights of those who defend human rights are in a critical state, especially for those who fight for the rights to land and natural resources and relating to other environmental issues, since these groups and individuals are particularly exposed to acts of aggression and the violation of the rights enshrined in the United Nations Declaration on Human Rights Defenders.*

*86. ‘As noted by the Commission, the criminalization of human rights defenders through the misuse of criminal law involves the manipulation of the State’s punitive power by State and non-State actors in order to hinder their work in defense and thus prevent the legitimate exercise of their right to defend human rights. The manipulation of the criminal justice system is intended to delegitimize and halt the course of action of the individual that has been accused, and thus paralyze or weaken his or her causes.’<sup>185</sup>*

*87. This problem confronts many defenders of human rights and the rights of nature, such that their repression has become generalized practice in Latin American countries because of these groups’ and individuals’ defense of territory rights.*

*89. The defense of territory by peasant groups is tied to the search for social guarantees that can act in support of the regulatory and legal guarantees of their rights. Generally, States do not channel peasants’ social resistance towards a fruitful dialogue with them. Instead, States tend to clamp down on social resistance seeing it as a threat, since it runs contrary to public policies of development and Government discourse. Thus, the social guarantees that peasants fashion for themselves, that is their forms of social resistance, are criminalized, putting at risk not only the physical and psychological well-being of these individuals and collectives, but also the democratic nature of each State.*

**90. The IACHR has emphasized the important role of defenders of human rights, specifying that: ‘The misuse of criminal law to criminalize human rights defenders not only undermines the credibility and legitimacy of their work, but threatens their central role in consolidating the rule of law and strengthening democracy. Furthermore, it deters the promotion and protection of human rights. When defenders are criminalized for their legitimate activities related to the defense of human rights, this spreads fear among other human rights defenders that can result in silencing their causes and claims, which impedes the full realization of the rule of law and democracy. Additionally, this situation may encourage impunity, since it dissuades defenders from lodging complaints and victims of human rights violations from seeking the support of human rights defenders to present their claims, seriously hindering their ability to access justice.’<sup>186</sup>**

Section 2.3, developed over the following pages, **denounces the situation of a peasant community in the Colombian Amazon in the Department of Caquetá; this com-**

<sup>185</sup> IACHR, Criminalization of the Work of Human Rights Defenders, OEA/Ser.LV/II. Doc. 49/15 31, December 2015, para. 43. <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf>.

<sup>186</sup> Ibid., para. 30.

**munity has socially organized itself to resist hydrocarbon exploitation in the area.**

This organization has created channels for participation and asserting their rights, not just through protests but also based on institutional guarantees. Nevertheless, in 2015, police, army and mobile riot units attacked a social protest of peasants who wanted to block the arrival of machinery belonging to the oil company Emerald Energy for the construction of a stratigraphic well. These repressive acts resulted in fourteen wounded (three gravely wounded and eleven lightly wounded) and more than twenty people suffering beatings.

As Pope Francis says in **Laudato Si 183**:<sup>187</sup> *“Environmental impact assessment should not come after the drawing up of a business proposition or the proposal of a particular policy, plan or programme. **It should be part of the process from the beginning, and be carried out in a way which is interdisciplinary, transparent and free of all economic or political pressure. It should be linked to a study of working conditions and possible effects on people’s physical and mental health, on the local economy and on public safety.** Economic returns can thus be forecast more realistically, taking into account potential scenarios and the eventual need for further investment to correct possible undesired effects.*

*A consensus should always be reached between the different stakeholders, who can offer a variety of approaches, solutions and alternatives. The local population should have a special place at the table; they are concerned about their own future and that of their children, and can consider goals transcending immediate economic interest. We need to stop thinking in terms of “interventions” to save the environment in favour of policies developed and debated by all interested parties. The participation of the latter also entails being fully informed about such projects and their different risks and possibilities; this includes not just preliminary decisions but also various follow-up activities and continued monitoring. Honesty and truth are needed in scientific and political discussions; these should not be limited to the issue of whether or not a particular project is permitted by law.”*

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<sup>187</sup> [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html)





### 2.3.1 Vulneration and violation of Human Rights in a socio-environmental conflict related to the development of the nogal oil exploration concession by the emerald energy company, plc Colombia, in the municipalities of Morelia and Valparaiso – Caquetá, Colombian Amazon

**Coordination:** Southern Vicary, Diocese of Florencia. Caquetá, Colombia<sup>188</sup>

Photo 45:

**MORELIA Y VALPARAISO  
SE CUIDAN, SE QUIEREN;  
NO SE COMPRAN, NO SE VENDEN,  
SE RESPETAN, SE LIBERAN Y SE DEFIENDEN**



Fotografía: Agencia Plurinacional de Comunicación. sugerencia ponerla al pie de la foto

## 1. Introduction:

This report gathers the history of how the problem of a few families and peasant communities in the municipalities of Morelia and Valparaíso in the south of Caquetá became a cause shared by many communities, organizations and thousands of people, and how it inspired the citizen movement for the Defense of Water and territory in the Amazonian Caquetá.

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<sup>188</sup> Collaboration of: Grisel Ximena Lombana Cortés



In this sense, it gives an account of the processes of social and communal organization and citizen participation that have been undertaken for the promotion, defense and assertion of human rights, especially the rights to water and territory, based on and protected by the Precautionary Principle and the Preventive Rule, it being all citizens' duty and right to care for and protect the environment (Political Constitution of Colombia, Art. 8)<sup>189</sup> and water as rights.<sup>190</sup>

In the context of the socio-environmental conflict generated by the forced implementation of the Nogal Oil Project, the current section presents the situation of vulneration and violation of the human rights and fundamental freedoms of the communities, organizations, leaders and peasant families of Caquetá affected by the negative socio-environmental practices of the Emerald Energy company and its contractors during the implementation of the Nogal Project, as well as the actions and omissions of local and national institutions regarding the protection of the rights and liberties of the rural population, which has suffered frequent discrimination as a subject of rights.

It aims to motivate the international community and human rights organizations to contribute to the respect, protection and guarantee of the human rights of the communities affected by the Nogal Oil Project, which is projected to last more than 30 years; and for them to call out and control the action of the Colombian State to ensure compliance with the international treaties for the protection of the Amazon, as it is the common patrimony of all humanity.

And finally, it is a basis for the promotion, defense and assertion of human rights before national and local institutions, bound by international treaties and national legislation to preserve the Amazon, as well as to guarantee and respect the rights of its peoples.

It is the result of the participation of leaders from the southern part of the Department of Caquetá in the School for the Promotion, Assertion and Defense of Human Rights in the Pan-Amazon Region, activity carried out by the human rights wing of the Panamazonian Ecclesial Network - REPAM.

***“Water is the source of life, it is the All, it is the principle of dignity, it is life for every living being on earth.”<sup>191</sup>***

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189 [https://www.constituteproject.org/constitution/Colombia\\_2005.pdf](https://www.constituteproject.org/constitution/Colombia_2005.pdf)

190 Water is the greatest source of identity and pride for the communities and organizations of Caquetá, it is the foundational principle of the citizen movement for the defense of water and territory in the south of Caquetá and its Department; to act before negative impacts are generated, to defend the forms of traditional life, and environmental and cultural heritage.

191 The concept of water expressed by leaders of the Comisión por la Vida del Agua (Commission for the Life of the Water) of southern Caquetá. Working documents, Southern Vicary of the Diocese of Florencia, 2013.





Map 21: "The Amazon, with its 7.4 million km<sup>2</sup>, represents 4.9% of the world's land mass and covers parts of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela. The Amazon River basin is the largest in the world with an average of 230,000 m<sup>3</sup> of water flow per second, and contains approximately 20% of the world's surface freshwater. The 476,000 km<sup>2</sup> of the Colombian portion of the Amazon represents 6.4% of the total Amazonian biome and 41.8% of the national territory. It is made up of the Departments of Amazonas, Caquetá, Guainía, Guaviare, Putumayo and Vaupés." Image: South Vicary Archives.



Image: South Vicary Archives

Map 22: Southern part of the Department of Caquetá. Morelia and Valparaíso are two municipalities affected by the implementation of the Nogal Oil Project by Emerald Energy. Image: South Vicary Archives



Image: South Vicary Archives

## II. Context:

The history of the region has always been marked by a form of colonization based on extractivism, and war (since the 1933 conflict between Colombia and Peru). The people and peasant families that colonized the region and presently live there arrived more than 30 years ago fleeing from partisan violence.

They have survived various armed conflicts: the guerrillas M-19 (1970 - 1990) and the FARC (1980 - 2015); paramilitary terror (1997 - 2006) and military persecution (1970 -2015); and they have suffered the socio-environmental consequences of two centuries of bonanzas such as rubber, quina, the fur, wood and wildlife trades, coca production, and currently oil, mining, agribusiness, environmental services and green businesses.

Despite the fear and apathy that resulted from the war, the care and defense of the area's water resources against the negative impacts of mining and energy extractivism served as the main catalyst for the population to overcome their fears and join efforts and wills to act for the preservation of the Amazon; for this reason, it constitutes the foundational principle on which the organization and participation of the area's citizens is based in defense of the water and the Amazonian territory of Caquetá.

Picture 46: Logo and motto of the *Comisión por la Vida del Agua* (Commission for the Life of the Water) of southern Caquetá. Created in 2012.



The *Comisión por la Vida del Agua* (Commission for the Life of the Water) of southern Caquetá, is a space for citizen integration and coordination at the regional (southern Caquetá) and municipal levels (6 municipalities), a place where people and social, educational, environmental, community and church organizations come together, sharing objectives and interests regarding the defense and protection of their environmental heritage, especially the area's water resources in the Amazon foothills.



Photograph 47: Meeting of the regional Comisión por la Vida del Agua. Representatives of the municipal commissions. Morelia. Headquarters of the Southern Vicary.



Image: Southern Vicary. 09707/15

Oil exploration in the department of Caquetá dates back to 1952 when Shell began operations in San Vicente del Cagúan; in the 1960s, Texas started work in the southern part of Caquetá in the Municipality of Solita. Both exploratory projects found important oil reserves, but activities were suspended given the characteristics of the oil (heavy crude), which at the time had a low market price.<sup>192</sup>

In 2006, the British company Emerald Energy (now backed by Chinese capital) initiated seismic operations in the town of Los Pozos, part of the jurisdiction of the Municipality of San Vicente del Cagúan; in 2009, they started the extraction of heavy crude; San Vicente is currently the only municipality in Caquetá where there has been oil extraction since 2009.

Later, between 2010 and 2012, a new boom in oil exploration occurred: Allange Energy began conducting seismic exploration and constructing platforms in the Yurayaco Inspection, within the jurisdiction of the Municipality of San José del Fragua; nevertheless, it closed its operations citing problems with protests. This same operation was later resumed by Pacific Rubiales; however, the company's interventions caused socio-environmental conflict with the local communities due to their bad socio-environmental practices (contamination of water sources, breaking commitments to the local community, mistreatment of workers, among others); they are currently planning to abandon the 3 platforms they built.<sup>193</sup>

among others); they are currently planning to abandon the 3 platforms they built.<sup>194</sup>

<sup>192</sup> National Secretariat of Social Ministry Cáritas, Colombia. Memories of the first Oil Forum. Oil Extraction in Caquetá: Laws, Risks-Advantages and Commitments. 2012. Presentation by: Edilberto Ramón Endo. Secretary of the Departmental Government of Caquetá.

<sup>193</sup> Yariquí 1x; Topoyaco 1 y 2

<sup>194</sup> Students from Gabriela Mistral School, located in the Municipality of Belén de los Andaquíes, made an audiovisual report documenting negative impacts of oil exploration activities in the area. The Southern Vicary has organized meetings and interviews and has promoted the lodging of complaints and petitions, and the denouncing of environmental damage and other types of problems related to oil company activities.

Photographs 48: Environmental impact of oil exploration activities in the areas surrounding Cristalina, Cedro and Cerrito San José del Fragua. Landslides and erosion, damage to water sources because of the diversion of rivers from their original courses, and the filling in of wetlands. Deterioration of containment walls.



Image: Southern Vicary Archives. Photographs taken during Community Environmental Monitoring in 2013.

In In 2011, C&C Energy began seismic exploratory operations in both northern (Puerto Rico) and southern (Morelia, Belén, San José, Albania, Curillo) municipalities; in the south, there is evidence of environmental damage due to the exploratory operations, principally affecting the access to and quality of domestic drinking water.

The negative socio-environmental consequences that oil exploration and extraction have been observed to cause to water, communities, and nature in the Department of Caquetá, as well as in other areas of the country<sup>195</sup> (Putumayo, Piedmont, Huila) and the world (Oriente Petrolero -Lago Agrio, Ecuador); the current and future scenarios related to energy and mining projects;<sup>196</sup> as well as the bad practices of companies and contractors are the basis for opposing the development of oil projects in Caquetá as an Amazonian region.

<sup>195</sup> As part of the process of accompanying organizations and communities within the context of the Socio-Environmental School, one of the primary strategies was the exchange of experiences with other territories affected by oil company activities; in this way, seeing, smelling, touching, listening to testimonies and talking with the affected peoples, the Caquetá leaders strengthen the foundations for their fight.

<sup>196</sup> Southern Vicary and Censat Agua Viva ONG. Current and Future Scenarios within the Territory of the Department of Caquetá Tied to the Development of Energy and Mining Projects and Green Economy Projects. An investigation, it represented the first alarm raised backed by a strong technical foundation concerning the possible consequences of the new extractivist boom in the Amazon region of Caquetá, 2013.





Photographs 49: Top section: Taken in Pozo La Mary I, 2015. Piamonte Cauca, Community Environmental Monitoring of the impact the oil platform has on local water. Bottom section: Taken in Lago Agrio, Ecuador, during a visit realized by members of the School for the Promotion, Defense and Assertion of Human Rights in the Pan-Amazon. REPAM, 2015, Toxitour.



Image: Southern Vicary .

## Nogal Concession:

The Technical Specifications of the Contract for the Nogal APE Oil Exploration Concession<sup>197</sup> cause fears that in the long term (the Contract is for 30 years with the possibility of extensions) there will be negative consequences for the respect and guarantee of human rights and for the Amazon.

**Object:** Exploration and production activities according to specific programs in exchange for remuneration (royalties, economic rights, training, institutional strengthening and technology transfer). Not for gas, or tar sands.

**Reach:** Exploration, Evaluation, Development and Production within the assigned area.

**Exploration Period:** 6 years

**Extraction Period:** 24 years, with possible 10+ year extension

<sup>197</sup> Contract N. 03. Date: October 22, 2012 between Emerald Energy Plc and the Agencia Nacional Hidrocarburos (Colombia's National Hydrocarbon Agency).

<sup>198</sup> This was organized and overseen by the Southern Vicary, financed by Caritas Germany and carried out by Corporation Terrae.

<sup>199</sup> ANLA is short for the Colombian National Authority for Environmental Licensing

<sup>200</sup> The lack of confidence and trust in the peace process comes from the fact that: (1) mining and energy issues were not part of the negotiation agenda and (2) the president of Ecopetrol and the Minister of Mining declared that the peace process would allow extractivist companies to enter areas that were previously considered off-limits because of the conflict.

## Summary of the socio-environmental conflict related to Nogal:

	2014	2015	2016	2017	2018
	ENVIRONMENTAL STUDIES; ENVIRONMENTAL MANAGEMENT PLAN	STRATIGRAPHIC WELL	SEISMIC OPERATIONS	APE NOGAL LICENSING	
RELEVANT EVENTS	<ul style="list-style-type: none"> <li>Meetings, socialization of the results</li> <li>Rejection by communities, organizations and local authorities</li> <li>Rejection of the results of the Environmental Studies for the Environmental Management Plan</li> <li>Pressure by armed individuals-groups to favor the company's interests</li> </ul>	<ul style="list-style-type: none"> <li>Peaceful civil protest: protest at the bridge "La Resistencia".</li> <li>Public forces attack the population</li> <li>Departmental fieldwork, mobilization and national support</li> <li>Dialogue with local and national institutions</li> <li>Construction of the stratigraphic well</li> </ul>	<ul style="list-style-type: none"> <li>Failures in the process for obtaining land easements</li> <li>Attack by public forces on people protesting and monitoring Emerald Energy's activities</li> <li>Hunger strike by a peasant leader, protests</li> <li>Bad socio-environmental practices used by the company during seismic operations</li> <li>Conflicts and protests related to seismic activity (stemming from company activities) in the northern part of the Department</li> <li>Round table discussion with national authorities</li> </ul>	<ul style="list-style-type: none"> <li>Realization of the Independent Geo-Environmental Study of the Environmental Impact of Exploratory Perforation on the Area. 198</li> <li>Application by Emerald Energy to ANLA<sup>199</sup> for an Environmental License to build 10 multi-well oil platforms</li> <li>Request for a Public Hearing on Environmental Issues with ANLA by 675 leaders of the Comisión por la Vida del Agua</li> </ul>	<ul style="list-style-type: none"> <li>ANLA organizes the Public Hearing on Environmental Issues with the participation of more than 2,000 people opposed to the Nogal Project.</li> </ul>
CONSEQUENCES/IMPACTS	<ul style="list-style-type: none"> <li>Lack of confidence in Emerald Energy, since they began implementing the project without social license and because of irregularities in the environmental study carried out by one of their contractors (C&amp;MA)</li> </ul>	<ul style="list-style-type: none"> <li>Division within the communities</li> <li>Militarization of the area</li> <li>Violation of human rights and other freedoms</li> <li>Criminalization of protests</li> </ul>	<ul style="list-style-type: none"> <li>Damage to the soil, water, and mountains (forest)</li> <li>Human rights violations</li> <li>Lack of confidence in the peace process with FARC EP<sup>200</sup></li> </ul>	<ul style="list-style-type: none"> <li>Worsening of the socio-environmental conflict</li> </ul>	<ul style="list-style-type: none"> <li>Evidence of inequality-discrimination in the conditions for participation in the Public Hearing</li> <li>ANLA lacks credibility</li> </ul>
MECANISMOS DE PROMOÇÃO DEFESA E EXIGIBILIDADE	<ul style="list-style-type: none"> <li>-Early warnings given to the competent environmental authority, Corpoamazonia (Corporation for the Sustainable Development of the Southern Amazon)</li> </ul>	<ul style="list-style-type: none"> <li>-Presentation of citizen initiated reforms to legal norms</li> <li>-Popular action and petition for the implementation of precautionary measures</li> <li>-Community consultations</li> <li>-Community protests at the village and municipal levels</li> <li>-Formation of the Departmental Working Group for the Defense of Water and Territory</li> </ul>	<ul style="list-style-type: none"> <li>-Agreements with municipalities for the implementation of protectionary measures for the environment</li> <li>-Departmental demonstration-protest (20,000 people)</li> </ul>	<ul style="list-style-type: none"> <li>-Supervision of precautionary measures decided by popular action</li> <li>-Independent geo-environmental and legal evaluations</li> <li>-Regional and departmental protests</li> </ul>	<ul style="list-style-type: none"> <li>-Public Hearing on Environmental Issues, ANLA</li> </ul>





## 2. Human Rights Violations and Vulneration of Fundamental Liberties by Extractivist Companies

The rights prioritized by the local communities and organizations are:

- Free, prior and informed consent (as opposed to non-recognition, inequality, discrimination and exclusion)
- Non-criminalization of peaceful civil protests (guarantees of non-repetition, no re-victimization, no social stigma)
- And finally, WATER as a fundamental right, to prevent contamination and preserve its sustainability (access, quality, use) and to preserve the Great Amazon River Basin.

### The project has been implemented without a social license:

As a result, the forced implementation of the project (imposed by the Central Government with the use of public force to bring company machinery into the area) is responsible for the generation of socio-environmental conflict due to oil company activity and, therefore, the potential and real negative consequences for the human rights<sup>201</sup> and fundamental freedoms of the population that traditionally inhabits the territory.

Photograph 50: May 4, 2015, the peasant leader José Antonio Saldarriaga chains himself to the bridge over la Vereda La Cacho, which is the point of access to the rural village of Curvinata – Valparaíso where Emerald Energy would build its stratigraphic well; he has the support of the Curvinata community.



Ever since Emerald Energy arrived in Caquetá (2014) to socialize the start of the project in the Municipalities of Belén de los Andaquíes, Morelia and Valparaíso, local authorities (mayors, councilmen), communities and organizations expressed their concerns and rejection towards the project, given the vulnerable condition of the Amazon, specifically that of

201 United Nations Human Rights Office of the High Commissioner. The Corporate Responsibility to Respect Human Rights. New York and Geneva, 2012. [https://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf)

the Amazonian foothills in the south of Caquetá, point at which they alerted the Departmental Environmental Authority - Corpoamazonia:

“Again and again the participants of the meeting expressed that they did not want Emerald Energy to intervene in the region. The owners of the land manifested that their land ownership and property rights should be respected”<sup>202</sup>

Other proof of this rejection includes the May 11, 2015 Manifesto in which the peaceful civil protests undertaken by families and communities directly affected by the project is supported and legitimized at the municipal level in the Community Assembly; the minutes and statements resulting from the dialogue related to the socio-environmental conflict generated by Emerald Energy; as well as the minutes of the community consultations (2015 - 2016) where the communities say that they do not agree with the implementation of this type of project in the area.

Photographs 51: Images from the Community Assembly on May 11, 2015 in which the Municipality ratifies the rejection of the project.



Image: Southern Vicary

202 Minutes, Emerald Energy, December 11, 2014, in which the communal preoccupation and rejection of the project is made manifest; they also include a statement and agreement by the company to not proceed with the Project without social license.



At the same time the project has not been submitted to a prior, free and informed consultation; a broad interpretation of ILO Convention 169, to which Colombia is a party, demonstrates that this procedure for guaranteeing rights must be carried out from the moment project planning begins, before granting a developmental concession or signing contracts, not at the moment in which field work starts.

Although the technical file of the National Hydrocarbons Agency mentions the presence of two indigenous reservations (Gorgona and Getuchá), Emerald Energy has ignored this omission in the certification of the non-existence of indigenous communities in the area that they received in their concession from the Ministry of the Interior; they ignore as well the fact that the contract signed by them with the National Hydrocarbons Agency has a duration of 30 years with the possibility of extensions, and within that course of time and the probable expansion of the project, they will affect indigenous territories; it must be mentioned as well that in the indigenous cosmovision of territory, territorial limits do not exist.

Photograph 52: Image published on Facebook rejecting the Nogal Oil Project, as well as the other 44 oil concessions granted in the Department.



Image: Facebook page, Comisión por la Vida del Agua.

The development of the project violates the right of free, prior and informed consent of the people and families that have traditionally inhabited the territory; at the same time it ignores Articles 8 and 79 of the Colombian Constitution, which mandate the caretaking and protection of natural resources; as well as Constitutional Court Judgments (such as C 123/14 and T - 445/16) that recognize municipalities as part of the state, with rights over the subsoil; they protect territorial autonomy and agreements with territorial authorities for the protection of a healthy environment through the principles of coordination, concurrence

and subsidiarity; as well as their function of ordering the territory, the regulation of land use headed by municipal authorities, the protection of environmental and cultural heritage, the sustainable exploitation of natural resources, and the participation of communities in decisions that may affect them, among other things.

At the same time, the lack of consultation of peasant communities and peasants in general, that is, not taking into account their voice and representation as political subjects of rights, represents a serious type of discrimination based on class; in addition, it ignores the progress made by the United Nations in regards to the recognition of the rights of the rural population:

*“Article II, Numeral 4: Peasants have the right to participate in policy design, decision-making, implementation, and monitoring of any project, programme or policy affecting their land and territories.”<sup>203</sup>*

“Why did we start the resistance in Valparaíso? Because we do not want the violence to return and displace us again, or that natural resources, especially water, become contaminated. In all the places where there are mining and energy extraction, the damages are palpable; this territory is the Amazon.”

Photograph 53: Children, young adults, older adults, all of them are opposed to the project and participate in the process of defending the area's water and territory. Image taken from the Municipal Community Assembly.  
Source: Southern Vicary



Source: Southern Vicary

Another way in which the right to participation in the decision-making processes of local and national government bodies has been undermined is the exclusion of representatives and peasant communities affected by the Oil Project from spaces of dialogue; in 2015, none of the agreements recorded in the meeting minutes were honored; in 2016, in the context of the socio-environmental conflict in the south and north of the Department related to seismic

203 United Nations Human Rights Council. Declaration on the Rights of Peasants and Other People Working in Rural Areas. 2013. [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPleasants/A-HRC-WG-15-1-2\\_En.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPleasants/A-HRC-WG-15-1-2_En.pdf)





operations, a space for dialogue was once again opened, but it was never concluded due to the non-attendance of government officials to the agreed upon meetings with local organizations and communities.

"On top of the bones and blood of peasants left by the war, in the post peace treaty era, oil platforms and multinational projects are being constructed, rights and liberties are being violated."<sup>204</sup>

It is the communities' judgement, that through both actions and omissions during the development of the Nogal Project, the Colombian State and the Emerald Energy Company have violated and vulnerated rights and freedoms, that the guiding principles for human rights and businesses have been violated;<sup>205</sup> there is uncertainty and concern about the progression of the project to a more aggressive exploratory stage like the APE Nogal Exploratory Drilling Area, for which the company has been requesting an environmental license from the National Authority for Environmental Licensing in Colombia.

Photograph 54: On June 30, 2015, public forces suppress a protest on the La Resistencia Bridge to facilitate the entry of Emerald Energy's machinery into the village of Curvinata (Municipality of Valparaíso) in order to construct a stratigraphic well.



Image: Southern Vicary Archives

204 Comisión por la Vida del Agua. Working Document. Southern Vicary.

205 Violation of Guiding Principles 11 and 12, The Corporate Responsibility to Respect Human Rights

The development of the oil project in times of peace building, has again brought war and violence to the area; the families and communities that have been victims of Emerald Energy's oil activities in the municipalities of Morelia and Valparaíso are also victims of previous social and armed conflict (the FARC guerrillas and paramilitaries destroyed the region); 80% of the families left the territory, forcibly displaced by the war (2000 - 2006). Later (between 2007 and 2010) they returned to the area under guarantees offered by the State through different programs.

Beginning with the demobilization of paramilitary forces (2006) and later continued through the peace process and agreements with the FARC, the construction of peace in the area began including both family and government efforts. However, the right to peace has been violated by both Emerald Energy and the State, because the development of the Nogal Oil Project has led to a resurgence of violence and generated new conflicts, this time socio-environmental in nature.

During the first half of 2015, the development of the Nogal Project (the stratigraphic well) was permeated by the influence of armed individuals and groups (former paramilitary personnel and commanders of guerrilla factions); many of these exercised pressure on the leaders of community and social organizations in order to promote Emerald Energy's interests.<sup>206</sup>

During 2015 (stratigraphic well) and 2016 (seismic operations), several cases of abuse by public authority occurred, consisting in attacks by public forces on the civilian population, which at the time was realizing peaceful protests (attacks were conducted by the riot police and the police and army's energy and mining battalion); said attacks constitute an abuse of public authority and a grave violation of the rights to life, freedom and personal integrity:

**Attacks with firearms, gas and rubber bullets against the defenseless civilian population: 22 wounded (4 gravely), more than 20 people beaten, 10 individuals illegally detained (later released). Damage to property (fences, lighting, posts and trees on three farms), vehicles and peasants' means of labor (horses, riggings, motorcycles); attack with gas and rubber bullets on a farm where women and children were present.**<sup>207</sup>

"I, as a peasant on the day of August 15, 2016, in the village of Lusitania, we were verifying the work that they (the company) were doing when, lamentably, we were attacked by the national army, event in which I was injured in the back by a firearm, being remitted to Valparaíso and Florencia, seeing, sadly, the pressure, that was seen being exercised by the state, by the government, on me. I had to pass 9 days in the hospital, four of them in the Intensive Care Unit, all this just for defending natural resources, for defending life, water. At this moment I still have not received any reparations from the state, my case is in Military Penal Court where it has still not been resolved. This has been difficult for me, my family, my wife and my son, because psychologically my son has been very bad off, and I don't feel well

206 These former paramilitary and guerrilla leaders pressured the presidents of communal action committees and the leaders of social organizations to attend meetings where they were directed not to oppose the activities of Emerald Energy.

207 Southern Vicary. Working Document. Report on the Context and Situation of Human Rights. Southern Caquetá. Nogal Case. 2015





in regards to my health, they didn't take the bullet out of me, I still have it inside of me, this has hurt me a lot because I cannot work." Testimony of Wilson Vaquiro, Leader of the Comisión por la Vida del Agua de Valparaíso. Agua de Valparaíso.

Photograph 55: Harassment by the army of a pilgrimage dedicated to "The Life of the Water" – Florida, Valparaíso, August 8, 2015



During 2015 and 2016, the area was militarized, public forces occupied and remained around the school and invaded stables in some of the surrounding farms at least two times (defying international humanitarian law, [IHL]); public forces interfered with communal activities, one religious (the pilgrimage for "The Life of the Water") and one a meeting among residents of Florida, Valparaíso. In the community of Curvinata, public forces prohibited the entrance of United Nations representatives to the area; they had come to verify and follow up on an alert given to them by communal organizations.

***Neither war that kills us nor peace that oppresses us***<sup>208</sup>

The criminalization of peaceful civil protests is another expression of the violence generated by the implementation of the Nogal Oil Project: from 2015 to 2018 there have been many cases of harassment, provocation, threats and intimidation toward leaders of social organizations, and the inhabitants of both rural and urban areas.

One of the primary spokespersons for the resistance has been the victim of stalking, which led him to abandon his farm for security reasons; he considers himself to be a victim of forced displacement due to oil company activity.<sup>209</sup> Other families from the project's area of influence that oppose the oil company's activities have manifested their decision to leave the area if oil extraction begins.

208 Motto or slogan taken up during protests by the Departmental Movement for Water Defense within the territory of Caquetá.

209 During 2016 and 2017, on repeated occasions, unknown men stalked him at his home in the Department's capital; in 2017 one of Emerald Energy's leaders filed a legal complaint against him for slander. There is a regular stigmatization of leaders and social organizations ("they are spreading fake news, they incite violence, they don't want progress") and the closing down of spaces of dialogue like the Departmental Hydrocarbon Committee and the Round Tables set up to dialogue with the national government and the media.

These situations represent, both for community leaders and families, a new threat of forced displacement, this time imposed by oil activity; this situation violates the principles of NON-REPETITION and NON-REVICITIMIZATION (IHL).

Photograph 56: In July of 2016, José Antonio Saldarriaga begins a hunger strike to protest the attack by riot police (ESMAD) on peasants in Morelia and Valparaíso that were monitoring seismic operations carried out by Petrosismic (contractor for Emerald Energy).



Image source: El Espectador. July 4, 2016. Written by the Environment Section.

***“80% of the people than inhabit Valparaíso were displaced by paramilitary violence between 2002 and 2006; we returned due to necessity, because other places one does not feel at home, one feels strange, and also because the government offered us certain guarantees; although really these were more a result a communal action, a lot of words from politicians, but few deeds; in fact, a lot of abuses.”*<sup>210</sup>**

Additionally, new armed groups have appeared to dispute territorial control (extortion, control of coca production)<sup>211</sup> now that the FARC have gone; with the systematic assassination of leaders, their criminalization, and people and organizations put on notice, the number of cases of human rights violations (the right to life, the right to liberty, the right to personal integrity) keeps increasing.

“In a Colombia that is trying to consolidate peace after the agreements signed with the FARC eleven months ago, violence against social leaders, activists and community representatives has not abated. The National Ombudsman Office of Colombia calculates that last summer, that is until July, 186 people had been killed within the span of one and a half years. According to the Foundation for Peace and Reconciliation, since November 24, 2016, 89 murders and 282 attacks have been recorded.”<sup>212</sup>

210 Comisión por la Vida del Agua (Valparaíso) meeting. Proceso sistematización experiencia en defensa del agua y el territorio [Process for systematizing the experiences of defending water and territory] . South Vicary Archives. 2017.

211 FARC dissidents, criminal gangs, petty crime.

212 Maneto, Francisco. El País. October 19, 2017. [https://elpais.com/internacional/2017/10/19/colombia/1508364052\\_311617.html](https://elpais.com/internacional/2017/10/19/colombia/1508364052_311617.html).



"We don't agree with the measures taken by the Company and the Government, because in Valparaíso just about everything bad that can happen has happened, they've violated human rights, not just once or twice but many times. On June 30, 2015, we were protesting peacefully near the Florida community, at the La Cacho Bridge, and the Company arrived with the army, they abused us, they intimidated us, they threatened us, they threw tear-gas bombs at us, and the people tried to hide themselves in a nearby house, to cover themselves, but their efforts were in vain, ... they are destabilizing us, we don't want any more displaced people, we don't want more violence, we..., I am proud, I don't feel shame saying that I am a peasant, because of this I defend Caquetá's water and land."<sup>213</sup>

Photographs 57: Departmental protests rejecting mining and energy extraction activities and defending environmental patrimony, the water and the land.



Images: Departmental Working Group for the Defense of Water and Territory. 2016

Factors such as the advancement of the Nogal Project towards a new exploratory phase (19 thousand hectares, 10 multi-well oil platforms); the fact that mining and energy extraction activities have grown as a consequence of the end of formal conflict in the area; and the fact that rejection of the oil project is found throughout the Department make it seem likely that that current conflict (and new ones) will only worsen, taking into account precedents already seen during seismic operations in the north of the Department in 2016.

"With this peace, we hope to have the possibility of entering Caquetá in a much stronger way, entering Putaymayo, Catatumbo, sites that were difficult to go into before. Peace should permit not only Ecopetrol but all the oil companies in the country to enter these regions and generate development there..." Palabras Presidente de Ecopetrol.<sup>214</sup>

<sup>213</sup> Testimony of Leonel Barreto, inhabitant of Valparaíso. Preparatory meeting for the Public Hearing on Environmental Issues, APE Nogal. March 2018

<sup>214</sup> "La paz nos va a permitir sacar más petróleo de zonas vedadas por el conflicto [Peace is Going to Let Us Extract Oil from Areas Cut Off by the Conflict]". El Espectador. April 14, 2016.

Photograph 58: "Riots occurred around midnight in the municipality of El Paujil when an oil company tried to enter a rural area accompanied by public forces. In this same area, a group of people has been protesting for several days to show their rejection of hydrocarbon extraction in the area".



Source: [www.rcnradio.com](http://www.rcnradio.com). Photograph taken by Juan Pablo Sánchez.

In the case of the Nogal Concession in Valparaíso and Morelia, the advancement towards a new phase of exploration and the antecedents of bad socio-environmental practices on the part of Emerald Energy and its contractors during previous stages are factors that will likely contribute to the generation of new situations that could escalate the conflict.

At the sociocultural level the gravest consequence of the project's development has been the ruptures created in the social fabric, the divisions within the community; being in favor or against the project has generated tension, mistrust, dislike, distance and enmity between people that were friends, neighbors and companions. This situation is affecting the sociocultural fabric of the territory and is another factor that feeds the conflict.

During the development of seismic operations (2016), the greatest number of irregularities was found in the process for obtaining easements; there were many cases of the use of deception, pressure and the abuse of trust to obtain permits. Some people signed in good faith, but were later negatively affected by the procedures carried out by Petroseismic (contractor for Emerald Energy), which put cables in unauthorized sites, detonated explosives in the foothills or near bodies of water and unilaterally changed the usage areas agreed upon in their easements.

"The process of constructing a durable, long-lasting and sustainable peace must take into the account the fact that if sustainable development is not a part of the implementation of the peace accords, Colombia could run the risk of incentivizing the depredation of the environment, which, paradoxically, has been 'protected' by the conflict, since it has maintained natural reserves, parks, forests and great biodiversity far away from "civilization", from extractivist industries and from the highways."<sup>215</sup>

215 Ramírez Alzate, Herley. "Un 90% de los municipios del Caquetá, serán incluidos en procesos del Post Conflicto. [90% of the Municipalities in Caquetá Will Be Included in the Post Peace Process]" Editorial Amazónico. January, 2016. [www.editorialamazonico.com.co](http://www.editorialamazonico.com.co). Cited in Finca Amazónica: Una Experiencia de Vida. Sistematización Colectiva. [Amazonian Farm. A Life Experience. Collective Systematization]. Southern Vicary, Diocese of Florencia.





Only in a development process that takes into account the necessary equilibrium between economic growth and dignified living, within a framework of social, economic, political and environmental sustainability, where regional development is founded on appropriation by the community of its own territory, as well as local identity, will it be possible to speak of a long lasting and stable peace in the area, because peace is exercised by fulfilled citizens and implies the guarantee and living out of their rights and respect for their support of life and the preservation of the Amazon.

## Caquetá is the Amazon, biodiversity, water:

"The Amazon, with its 7.4 million km<sup>2</sup>, represents 4.9% of the world's land mass and covers parts of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela. The Amazon River basin is the largest in the world with an average water flow of 230,000 m<sup>3</sup> per second, and contains approximately 20% of the world's surface freshwater. The 476,000 km<sup>2</sup> of the Colombian portion of the Amazon represents 6.4% of the total Amazonian biome and 41.8% of the national territory. It is made up of the Departments of Amazonas, Caquetá, Guainía, Guaviare, Putumayo and Vaupés."<sup>216</sup>

The technical file for the Nogal Project demonstrates the ecosystemic importance of the area that would be affected by it: (it is a Biosphere Reserve for the Andes Mountain Belt and an Amazon Rainforest Reserve, - 2nd Law of 1952, Continental Waters of the Amazon-Orinoco Helobiome), therefore, the studies that are carried out to prevent, mitigate and repair damage and negative impacts to this area are of fundamental importance.

Photographs 59: Images of: Wetlands characteristic of oil concession's area of influence; popularly known as "cananguchales" because of the abundance of this palm tree, they are at risk because of pressure from the expansion of agriculture, livestock raising and oil activities. Panorama of the Bodoquero River, tributary of the Caquetá River, which forms part of the Great Amazon River Basin.



Images: Southern Vicary Archives

<sup>216</sup> Ramírez, Juan Carlos. Amazonía Posible y Sostenible. [The Possible and Sustainable Amazon]. Digital booklet. Alianza Cepal, Patrimonio Natural, Parques Nacionales Naturales y la Fundación Moore. [www.cepal.org](http://www.cepal.org). April, 2012.

The way in which the environmental studies were realized and presented by the contractor C&MA during the exploratory stage caused mistrust and a lack of confidence in the company within local communities and organizations given the notable omissions and biases in the interpretation of the data that minimized the environmental impact caused by the project. The results of an independent geo-environmental study of the original Environmental Impact Assessment (EIA) presented by Emerald Energy confirm the doubts and suspicions of the community regarding the original report:

The EIA presented by Emerald lacks a detailed analysis of the superficial geology of the area; this analysis is necessary to understand the configuration of the water dynamics in the area that sustain ecosystems and human activities in the region. The lack of this analysis could result in a poor ability to visualize or predict the effects of the project on water resources in an area where there is direct contact between these and the inhabitants of the territory (both human and non-human) which are sustained by them.

The dumping of industrial and domestic waste water is the primary source of contamination of surface and ground water sources and the surrounding soil in areas surrounding oil projects, whether these are in the exploratory or productive stage, though the stages vary in the amount of waste water produced. In the current case, in agreement with statements made by Emerald Energy-C&MA (2017)<sup>217</sup>, the EIA considered various alternatives for waste water disposal: i) dumping on unpaved roads, ii) spraying the waste water into interior areas of the oil platforms, iii) reinjection of waste water and formation water into the ground, iv) disposal of waste water in infiltration fields and v) treatment and final disposal of waste water by third parties. The dumping of waste water into surface water sources was discarded.

In general, the information provided by Emerald Energy was unclear, lacking a rigorous analysis to identify possible contamination risks associated with the dumping of industrial and domestic waste water, especially regarding the effects of using methods like reinjection, infiltration fields or a spray system.

The risks associated with a spray system or soil infiltration for disposal of industrial and domestic waste water include the alteration of the physical and chemical properties of the area's soil and water. There is contamination risk for both surface water and ground water, the first because of runoff and the second via filtration.

The principal rivers affected by the project are the Bodoquero and the Pescado, both tributaries of the Caquetá River and the great Amazon River. In addition to the danger caused by oil projects, mining, logging, and species trafficking (among other problems) also loom large over the area.<sup>218</sup>

As part of their arguments, the Government and oil companies blame the peasant population for the high rate of deforestation and its impact on the environment; the area's peasants recognize this reality but also consider that it is the responsibility of the State since it is

217 C&MA; Emerald Energy, 2017. Estudio de Impacto Ambiental para el área de interés exploratorio Nogal. [Environmental Impact Study for the Area of Exploratory Interest in the Nogal Concession]. Capítulo 3.

218 Southern Vicary, Diocese of Florencia. Evaluación geo ambiental e hídrica del proyecto de perforación exploratoria del bloque petrolero El Nogal en los municipios Morelia y Valparaíso – Caquetá, para la defensa del agua y el territorio. [Geo-Environmental and Hydric Evaluation of the Exploratory Perforation Project in the Nogal Oil Concession in the Municipalities of Morelia and Valparaíso – Caquetá, For the Defense of Water and Territory]. Carried out by Corporación Terraé and financed by Cáritas Alemania (Caritas Germany). 2017. This is the Independent Geo-Environmental Impact Study previously mentioned in this section.





a consequence of the State's colonization policies (cutting down forest to award land to colonists) and, furthermore, that this damage is reparable, in fact, important steps have already been taken for its mitigation and repair, and that oil operations would worsen environmental problems in the Department.

***“5 years of mining and energy extraction activities can cause the same amount of damage that our ancestors caused in 100 years; but the damage caused by our ancestors is reparable, the damage caused by oil companies is irreparable.”***

Photograph 60: In 2016, the country lost 178,597 hectares of forest. This represents a 44% increase from the year prior.



Source of image and text: [elespectador.com](http://elespectador.com). "Se disparó la tasa de deforestación en Colombia. [Colombia's Deforestation Rate Takes Off]." *El Espectador*. June 6, 2017.

"There is no name for what is happening in the Amazon in Guaviare and Caquetá. Rich individuals buy up entire rural areas and order the deforestation of 200 to 500 hectares at a time. The lowliest peasants level 1 to 15 hectares. We are all guilty."<sup>219</sup>

The peasant families and communities of this zone have decided to concentrate on taking care of and preserving the environment, on creating a dignified way of life founded on good peasant practices, through their cultural identity; they consider the construction of the Finca Amazónica (approximate translation: "Amazon Farm") to be an alternative way of living:

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<sup>219</sup> Mebarak, José Yunis. "Lo que está pasando en Amazonia es ilegal, inmoral e irracional. [What Is Happening in the Amazon Is Illegal, Immoral, and Irrational]." *Espectador.com*. Medio Ambiente [Environmental Section]. March 2, 2018.

Picture 61 Cover page of Systematization of Experiences in the Finca Amazónica. Life Experiences in Southern Caquetá.



Image: Southern Vicary Archives

The project of constructing the Finca Amazónica is born of the necessity to find for the population an alternative, dignified way of life that is in harmony with the environment. The starting point is understanding the Amazon which is currently in a progressive state of deterioration caused by the indiscriminate logging and burning of the forest, which has produced the extinction of species, erosion, soil compaction because of the extensive raising of livestock, the migration of clay soil, which favors flooding, and the decline of fish stocks. This situation is worsened by the contamination of the area's primary water sources by waste from laboratories that process coca leaves and aerial fumigation with chemicals.

***The Finca Amazazónica is the fundamental basis of our lives, a virtue and an opportunity for development, the most sacred gift and legacy that God has given***



***us, it's our second mother; our homeland where we can live in peace, where we and our families can feel secure, where we can produce many foods to meet our basic needs, to sustain our families; where we have our own scientific laboratory to develop new experiences; it is a business, and if we manage it well, it gives us good returns. It allows us to have roots in the region, to be community leaders setting an example and to share experiences with friends and community; it is a heritage that must be taken care of since it represents our future and that of our children.***<sup>220</sup>

Picture 62: Mico bonito found in Caquetá. It is a primate species endemic to the region, vulnerable and at risk of extinction. It lives in the area where the oil project is taking place.



Image: Valparaíso community.

60 threatened species exist in the area,<sup>221</sup> demonstrating its great vulnerability and the inappropriateness of realizing an activity with such a large environmental impact as oil exploration and extraction, with all the noise, toxic gas production and road construction it entails. Such a project could collapse the fragile balance of what remains of the ecosystem and bring an end to the jungle, which is the home of all of these endangered species.

The developmental vision shared by those of the Department of Caquetá, which has been expressed through decisions regarding regional planning and territorial administration, highlights the option to preserve the Amazon and progress in the compliance with international treaties to which Colombia is party.

Given the condition of the Amazon as a part of the world's common heritage (both for its public use and general interest) and the area's environmental vulnerability, it is necessary

<sup>220</sup> Southern Vicary, Diocese of Florencia. Finca Amazónica: Una experiencia de vida en el sur del Caquetá. Sistematización colectiva. Caquetá 2016.

<sup>221</sup> This includes more than 20 species of flora; also threatened are 13 mammal species, like the Tití del Caquetá; 24 amphibian species are threatened; there are also 8 species of reptiles of ecological interest, of which the charapa arrau stands out as a species in critical danger of extinction in Colombia while the terecay turtle is also considered to be endangered. Source: Estudio Terrae, as previously cited.

to differentiate national mining and energy policy in such a way that its standards restrict or prohibit (as the case may be) these activities in the Amazon. This has been one of the demands of the peasant communities affected by the Oil Project since 2014.

Various spaces for civil participation have pushed regional planning and territorial administration towards policies that take care of and work to preserve the Amazon's patrimony; many local governments' Guides for Land Use incorporate environmental determinants, social agreements and the promotion of protected environmental areas, as well as management plans for them. Municipal development plans include components to strengthen institutions and citizens in caring for the environment.

Nevertheless the Central Government refuses to recognize the decentralization of authority demanded by the Constitution and that, within the administrative structure of the country, the municipalities, being territorial entities, are a constitutive part of the Colombian State, and therefore have the power to make decisions regarding the use of the subsoil within their associated rural communities. The State's position ignores Sentence No. 455.

Within Colombia's legal framework, the application of a guiding principle of environmental rights, such as the precautionary principle,<sup>222</sup> falls under the figure of INDUBIO PRO NATURA, giving the benefit of the doubt to the environment; that is to say even when there is scientific uncertainty regarding environmental consequences, this is not an obstacle to the implementation of measures designed to protect this collective right.<sup>223</sup>

It has been concluded that a large quantity of natural springs exist in the area and that each dwelling gets its supply of water for domestic use and human consumption from a type of water source called "moyas." In the water studies realized during communal environmental monitoring, a process guided by the South Vicary, in a sample of 120 families living within the area of influence of the oil concession in Morelia and Valparaíso, a high level of water quality was found, suitable for human consumption and domestic use, guaranteeing the fundamental right to water of these families:

As can be appreciated, the physical and organoleptic qualities of the bodies of water observed during testing denote intact bodies of water free from outside seepage (beyond normal aquifer processes by which water enters the "moyas"), with a minimum of sediments, these being organic and resulting from ecosystem activity related with the large amount of plant cover in the area. The water is odorless, a property of clean freshwater, and clear (*being observed in its natural movement, the water does have any apparent color*). The water is crystalline in appearance; physical and organoleptic analysis is done comparing samples from the bodies of water with distilled water (clear, tasteless, odorless, without solid particles or any apparent color); the waters are transparent, which indicates that they originate from natural and physically clean water sources; very few sediments are observed. Taste analysis reveals water with a neutral flavor (that is, tasteless) without evidence of clay or dirt or their corresponding tastes.<sup>224</sup>

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222 Principle No. 15 of the Rio de Janeiro Convention. Ratified by Colombia via Article 1 of Law 99, 1993. It forms a part of the "constitutional block", that is, constitutional law.

223 Legal arguments used by the Popular Action Group. First used by leaders of the Comisión por la Vida del Agua de Valparaíso against Emerald Energy in 2015.

224 Community Environmental Diagnosis Report. Municipalities of Valparaíso and Morelia. South Vicary, 2017.





In light of Observation No. 15 of the Committee on Economic, Social and Cultural Rights, the access to, quality and adequacy of the water supply is primarily endangered by two factors: on the one hand, being a possible object of contamination, and, on the other hand, the lack of community participation in the decision-making processes related to water resources because of the discriminatory practices of private entities, in this case Emerald Energy in the Nogal Oil Concession.

There are numerous factors that contribute to water pollution during the exploration for and extraction of hydrocarbons in the Amazon territories; in the case of the Nogal Project the independent evaluation that was done raises alarms because of the presence of phenols detected in the stream known as “la Raicita”, which was the primary body of water altered by Emerald Energy’s work during the project:

The level of phenols in La Raicita is approximately five times the stipulated limit for water used for human consumption as defined by Decree No. 1594 in 1984.<sup>225</sup> During the construction of the stratigraphic well, the company’s work directly affected this stream; it is the closest body of water, along with the Pescado River, to the areas worked on by the company; the fact that it is contaminated with phenols is preoccupying because of the interconnection between bodies of water (“moyas”, “cananguchales”, streams, rivers, ground water).

Picture 63: Poster made for the Campaign for the Care and Defense of the Amazon Territory of Caquetá. Made by the Comisiones por la Vida del Agua.



Image: South Vicary Archives.

There are also risks associated with reinjection, like the contamination of groundwater and increased geological instability due to the process of fracturing. It can cause seismic activity because of the geological faults found in the river basin. At the same time, this procedure ignores the differences in salinity found among river basins.

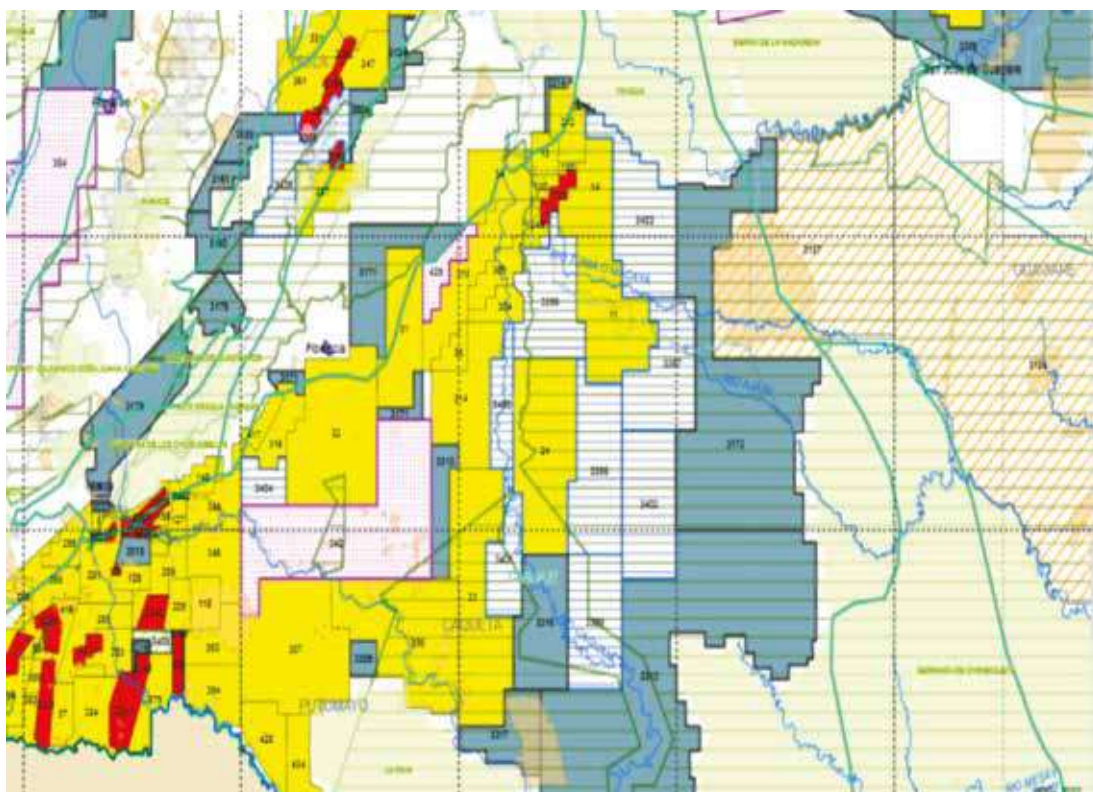
Emerald Energy plans to construct extractive wells in established zones that are near running water sources and that have a high potential for flooding, where the remaining areas of natural vegetation such as riparian forest, floodplain forest and wetlands serve to miti-

<sup>225</sup> Local communities have asked the National Government to realize an independent environmental evaluation since 2014; the study was organized and managed by the South Vicary, carried out by Corporación Terrae and financed by Cáritas Alemania (Caritas Germany).

gate the effects of the nearby rivers' flooding and filter contaminants acquired upstream. Nevertheless, the work done by oil companies can generate drastic change in the water's chemical characteristics, altering the fragile equilibrium currently maintained by the natural vegetation, causing the death of species with low tolerance for these chemical changes, resulting in the loss of the remaining natural vegetation within these flood zones. In the same way, there is a growing risk of reduction in the water available for consumption and for use in productive activities, including agriculture and livestock raising by the human populations present in the region; they will be the people most affected by alterations and deterioration in the natural environment, given that they depend on it for their livelihood.<sup>226</sup>

The environmental institutions and authorities have failed through omission in their responsibility to protect the environment, to demand that States block efforts by third parties to diminish the local right to water. Necessary and effective legislative and other types of measures must be adopted to prevent, for example, the denial by third parties of equal access to potable water, the contamination of water sources, or the unequal exploitation of hydric resources, including natural water sources, wells and other water distribution systems.

Map 23: Territorial Map. National Hydrocarbon Agency, 2015. Department of Caquetá.



In spite of civic participation efforts and the recourse to various mechanisms, the institutions and entities responsible for defending rights in the event of socio-environmental conflict have responded insufficiently; the unequal conditions and risk to the Amazon territory in Caquetá are great given that 44 oil concessions have been granted in the Department.

226 Vicary Study – Terrae. 2017.





### III. Proposals and Demands:

Taking all of these considerations into account, we urge international organizations that defend human rights to:

- Continue and strengthen efforts to solidify in internationally binding treaties the rights defended in the United Nations' Declaration on the Rights of Peasants and Other People Working in Rural Areas and the Guiding Principles for Businesses and Human Rights.
- Influence and call attention to the Colombian Government regarding the importance of integrating and complying with the International Covenant on Civil and Political Rights; as well as the various treaties protecting the Amazon region, resulting in the participative construction (as the Constitutional Court has mandated) of standardized norms for mining and energy exploration and extraction activities in the Amazon Region.
- Demand, through appropriate channels, that the Colombian Government comply with their responsibility to organize prior consultations, as stipulated in ILO Convention 169; that these have a binding character, thus transcending the idea of consent, and that the inclusion of the peasant population be obligatory during the exercise of this right.
- As part of the international community's role as guarantor of the post-conflict peace process and human rights, ensure the guarantee of the same for the peasant population and the preservation of the Amazon as it confronts the threat represented by the boom in mining and energy extractivism.
- Include in the Chinese State's Universal Periodic Review (UPR) a section concerning the violation of rights committed by the Chinese funded oil company Emerald Energy.
- Include in Colombia's UPR report the violation of rights related with the implementation of oil company activities, having become a causal factor for violence and displacement.
- Strengthen local institutions in their decision-making processes and environmental management within the territory as well as mechanisms for civil participation in such a way that these be efficacious for the protection and guarantee of rights.

#### **Colombia's Government is urged to:**

- Suspend all oil exploration and extraction activities in the Nogal Concession given the results of the independent technical study that call attention to possible negative consequences, the notable flaws and shortcomings in the environmental impact study done by the company, judicial arguments, and the negative socio-environmental practices used by the company (and their contractors) in the course of their development of the project.
- Evaluate the impact of oil exploration and extraction on the Department of Caquetá between 2002 and 2018; according to the results, take corrective action to repair damage and restrict oil operations in the Department and the Amazon. Comply with the Right to Petition delivered within the framework of the Public Hearing on Environmental Issues regarding the verification of water quality in the stratigraphic well and related projects.
- Support the right to prior consultation with regards to the indigenous communities



registered in the National Hydrocarbon Agency's technical file for the area; as well as those that inhabit Valparaíso, even if they are not officially organized or registered with the Ministry of the Environment, as long as they can demonstrate that they are in the process of organizing themselves. Create a guiding mechanism for obtaining the free, prior and informed consent of peasant communities.

- Generate the conditions necessary so that the mechanisms and spaces for civil participation regarding environmental issues and those relating to regional organization and planning, as well as the guarantees for access to information and decision-making processes, opportunely and efficiently strengthen the rights of the peoples that inhabit the Colombian Amazon, complying with the corresponding legal decisions reached by the Court.
- Incentivize, recognize and include municipally protected areas in the National System of Protected Areas and prohibit oil operations there; create, develop and monitor environmental management plans.
- Comply with the treaties regarding the protection and preservation of the Amazon, mitigation of climate change and respect for human rights; in this vein, generate the conditions and guarantees necessary to ensure the construction and development of a differential public policy for the Amazon foothills.
- Promote and develop policies, programs and projects that incentivize best practices in the traditional agricultural, livestock raising and fish farming activities in the region; strengthen the peasant family economy as the foundation for the construction of a stable and long-lasting peace in the region.

#### **Local authorities are urged to:**

- Comply with the civil and constitutional mandate to strengthen territorial autonomy, and the principles of precaution and prevention regarding rights and liberties. In this vein, incentivize actions destined to promote and preserve community.
- In order to ensure an effective civil participation in environmental matters, strengthen the spaces and scenarios for participation with effective tools for prevention, monitoring and control; as well as the guarantees for the participation of civil society, especially those communities and organizations affected by extractivist activities, specifically oil operations in the Nogal Concession.

To the people, families, communities, organizations, entities and organizations that care for and defend the Caquetá Amazon, strength in PANAMAZONIAN unity. Thankfulness for your commitment and sacrifice. Promises to stand by your side and continue strengthening your organization..



## 2.4 THE HUMAN RIGHT TO WATER:

**“Even as the quality of available water is constantly diminishing,** in some places there is a growing tendency, despite its scarcity, to privatize this resource, turning it into a commodity subject to the laws of the market.

Yet *access to safe drinkable water is a basic and universal human right, since it is essential to human survival and, as such, is a condition for the exercise of other human rights.*” Pope Francis (Laudato Si 30)

In this section, 2.4, the daily reality of the **Kukuma People, inhabitants of the Peruvian Amazon**, the violation of their right to water and their right to life (repeated again and again in local testimonies) warns us of the brutal change that is occurring in the ancestral relationship with nature which goes hand in the hand with the so-called “development” that is limited to the economic sphere and which benefits only a few while going against fundamental principles of human rights like universality, interdependence, indivisibility and progressivism.

**Large oil projects and construction of sizeable waterways to facilitate the transportation of commerce** contaminate and modify the structure of natural waterways and transform an ancestral resource, water, into a basic necessity as the local population suddenly cannot use or enjoy it.

**The Inter-American Commission on Human Rights** – OAS (IACHR), in Chapter 4.A of its 2015 Annual Report,<sup>227</sup> titled: *Access to Water in the Americas an Introduction to the Human Right to Water in the Inter-American System* already manifests how one of the greatest difficulties related to potable water access is that of *“persons who are in the area of influence of projects*, as well as by remote communities that depend on safe drinking water sources *affected by extraction activities*. The petitioners indicated that such circumstances would be rendered even more severe by the absence of effective measures to counter this problem and by *the enactment of national standards that would favor the expropriation of, and priority access to, water by sectors that carry out the extraction of resources”*; and also that the *“access of indigenous peoples to their ancestral land and the use and enjoyment of the natural resources are directly linked to securing food and access to clean water”*.

The IACHR makes the following **recommendations to the member states** of the Organization of American States (OAS):

- **Designing, implementing, and effectively enforcing an adequate regulatory framework** to guarantee access to water fit for human consumption in sufficient amounts and without discrimination on the territory under the state’s jurisdiction, especially for historically discriminated persons and groups and with particular consideration given to children, adolescents, women, persons with disabilities, and elderly persons.

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<sup>227</sup> <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/InformeAnual2015-cap4A-agua-EN.pdf>

- Regarding persons living in poverty and extreme poverty who cannot afford safe drinking water supply, **implementing mechanisms to guarantee supply of minimum amounts of safe drinking water in keeping with international standards.**
- **Preventing, mitigating, and suspending the adverse impacts** on human rights and in particular the obstacles to access to water for persons, groups, and communities who are impacted by extraction, development, and investment activities.
- **Conducting prior, adequate, effective consultations with the peoples and communities in keeping with international standards applicable to the matter,** whenever there are intentions to undertake any natural resource extraction activity or project on indigenous lands and territories or to draw up an investment or development plan of any other kind that would entail potential impacts on their territory, especially with respect to possible impacts on the access to quality water in adequate amounts for a dignified life.

Article 20 of the **Social Charter of the Americas**<sup>228</sup> recognizes that water is a human right and establishes that “Member states recognize that ***water is fundamental for life and central to socioeconomic development and environmental sustainability*** and that non-discriminatory access by the population to safe drinking water and sanitation services, in the framework of national laws and policies, contributes to the objective of combating poverty. Member states, in keeping with their national realities, undertake to continue working to ensure access to safe drinking water and sanitation services for present and future generations”, later developing this stance in two OAS resolutions:

- Resolution AG/RES.2349 (XXXVII-O/07): “Water, Health, and Human Rights”, in which the OAS explicitly recognizes **the ancestral use of water by urban, rural, and indigenous communities.**<sup>229</sup>
- Resolution AG/RES.2760 (XLII-O/12) “The Human Right to Safe Drinking Water and Sanitation”, in which **the OAS explicitly recognizes this right within the Inter-American System.**<sup>230</sup>

At the level of the International System of Human Rights, **Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)**<sup>231</sup> has been interpreted for years to mean that “the right of everyone to an adequate standard of living” includes, as is obvious, universal access to potable water and sanitation without discrimination based on the area one lives in or for other reasons.

General Comment No. 15 on the ICESCR,<sup>232</sup> made in 2003, develops the human right to water highlighting the following characteristics:

- a. Availability.** The water supply for each person must be sufficient and continuous for personal and domestic uses. Some individuals and groups may also require additional water due to health, climate, and work conditions.

228 [http://www.oas.org/en/information\\_center/default.asp](http://www.oas.org/en/information_center/default.asp)

229 [www.oas.org/37ag/docs/eng/2349.doc](http://www.oas.org/37ag/docs/eng/2349.doc)

230 <http://www.oas.org/en/sedi/dsd/elpg/resources/ag2760.pdf> lo

231 [www2.ohchr.org/english/bodies/cescr/docs/ngos/NHRCK\\_RoK\\_41.doc](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/NHRCK_RoK_41.doc)

232 [http://www2.ohchr.org/english/issues/water/docs/CESCR\\_GC\\_15.pdf](http://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf)



**b. Quality.** The water required for each personal or domestic use must be safe, therefore **free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Furthermore, water should be of an acceptable colour, odour and taste for each personal or domestic use.**

**c. Accessibility.** Water and water facilities and services have to be accessible to everyone **without discrimination**, within the jurisdiction of the State party.

In 2010 two additional resolutions were made:

- By the United Nations General Assembly, Resolution No. 64/292:<sup>233</sup> The Human Right to Water and Sanitation, explicitly recognizes that *the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights*
- By the United Nations Human Rights Council, Resolution No. A/HRC/15/L.14,<sup>234</sup> which makes the same explicit recognition and confirms that is binding for member states.

The creation in 2003 of the figure of **Independent Expert on Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation**,<sup>235</sup> and the later renewals of this mandate as **Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation**, created sufficient tools to monitor and control United Nations member States regarding the guarantee of this human right.

In her **2014 Annual Report**,<sup>236</sup> the Special Rapporteur made known to the United Nations Human Rights Council the primary violations of the human right to water and sanitation and encouraged the use of mechanisms like the Optional Protocol for the ICESCR<sup>237</sup> to denounce the States responsible for these violations.

Regarding the obligation of the States to respect this right, one of the most common violations is:

**Pollution, deviation and exhaustion of water resources:** *"Pollution and over-abstraction of water resources through industrial activities or dumping are among the most commonly identified threats to the realization of the human rights to water and sanitation. Where such pollution or over-abstraction results from State action, such as (a) dumping of waste and sewage, (b) the activities of State-controlled extractive industries, or (c) licensing of projects predicted to result in human rights violations, States may be in violation of their obligation to respect the rights to water and sanitation."*

The Rapporteur recommends in his Report that States (referring to the previous paragraph) should:

- a) Recognize the full range of violations of the rights to water and sanitation and ensure access to justice for all such violations;

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<sup>233</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/64/292&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/64/292&Lang=E)

<sup>234</sup> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G10/163/09/PDF/G1016309.pdf?OpenElement>

<sup>235</sup> <http://www.ohchr.org/SP/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx>

<sup>236</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/069/10/PDF/G1406910.pdf?OpenElement>

<sup>237</sup> <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx>



- b) Ensure that a comprehensive human rights framework is embedded in legislation, policy and practice with the aim of both preventing and remedying violations;
- c) Ensure that international law and jurisprudence on the rights to water and sanitation are used in interpreting and applying domestic legislation, regulations and policies;
- d) Ensure that the rights to water and sanitation are taken account of in administrative decisions interpreting legislation and exercising any discretion conferred by relevant legislation;
- e) Raise awareness on economic, social and cultural rights and the human rights to water and sanitation in particular so that individuals know their rights and will be able to claim them in the case of violations;
- f) Ensure that victims of violations are entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition, and that the legislative framework requires courts to provide both restorative and transformative remedies;
- g) Ensure that judges, prosecutors and decision-makers have adequate human rights education and training, including on economic, social and cultural rights, by making training on those rights part of law school curricula and providing ongoing training;
- h) Ensure that individuals and groups do not face barriers in access to justice, whether economic, physical, linguistic, cultural or other, and take measures to overcome such barriers, including by means of legal aid;
- i) Ensure that national human rights institutions and other relevant bodies have an explicit mandate to:
  - i) identify and address violations of the rights to water and sanitation, adopting a comprehensive approach;
  - ii) receive complaints of violations of rights to water and sanitation; and
  - iii) require remedial and transformative action on violations of the rights to water and sanitation;
- j) Provide comprehensive information in their periodic reports to treaty monitoring bodies, the universal periodic review process and relevant regional mechanisms for the prevention of violations of the human rights to water and sanitation;
- k) Ratify or otherwise accept all optional communications procedures, including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocols to the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Elimination of Discrimination against Women, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, including their inquiry mechanisms;
- l) Ensure that civil society organizations working to address violations of the rights to water and sanitation are properly resourced, have access to relevant information and can participate in decision-making processes.





At the political level, the 2020 Agenda for Sustainable Development Goals (SDG),<sup>238</sup> contains a goal (SDG No. 6) dedicated to **ensuring access to water, its sustainable management, and access to sanitation for all**. Its subgoal, 6.6, looks to **protect and reestablish water-related ecosystems** by 2020, including forests, mountains, wetlands, rivers, aquifers and lakes.

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<sup>238</sup> <https://www.un.org/sustainabledevelopment/water-and-sanitation/>



## 2.4.1. Kukama People (Peru)

**Coordination:** Amazonian Centre for Anthropology and Practical Application CAAAP Peru<sup>239</sup>

*"The defense of territory for indigenous peoples is interpreted by them to have only one meaning: it is the defense of life, life in relation to water, life in relation to the land, life in relation to animal and plant resources, life in relation to the spirits, everything is perfectly connected in such a way that each one supports the others in defense of life".*

Photo 64:



The "isula" is a ferocious ant that inhabits the jungle, its bite tends to be extremely painful and therefore, is used as a means of defense. This ant might be miniscule in size put its power is being able to defeat even the strongest on the face of the earth.

<sup>239</sup> Colaboration of Nancy Verónica Shibuya Briones



One afternoon, on the Banks of the River Marañón, a group of "isulas" was found traveling in lockstep along a path carrying on their shoulders everything that they might be able to use to feed themselves since winter is coming and it's necessary to take provisions; suddenly, nearby, the shouts of various children make them lose control, you see a black oil stain is traveling downstream in the water, the water that they drink is now contaminated, and therefore the food that the river provides them with; the children, carried in their mothers' laps cry, just like their mother, without finding any consolation; this perverse "development" to which nothing else matters, not even the lives of the thousands of people that live there. Suddenly the isulas leave their food and draw near to the river to taste the water, an ugly taste and a bad smell emanate from it, they decide then to follow the trail of the black oil stain to see where it was coming from, after two hours of walking, the smell became stronger and stronger, the panorama was deplorable, far away some men were trying to use sacks to remove the oil in the river, some were vomiting from the odor, but nothing could undo the damage that was done, suddenly thunder announced the coming of a strong rain and peoples' moods became even tenser because the oil would begin to move more rapidly, contaminating the river even faster. Then the isulas heard the sounds of a motorboat, they were coming to sprinkle their powder to hide the signs of the crude and make the people believe that they had already cleaned up everything, but determined to avoid this, the isulas followed the nearest path in order to reach the oil company's workers and supervisors, and when they could feel their presence, they began to bite as many and as much as they could. The oil company workers ran, frightened, not knowing from where the attack was coming; they fought using all their strength against the insulas but after a few minutes they gave up in defeat and decided to board their boat and flee downstream; they were unable to cover the oil with the chemical they use to trick the common people, trying to cover up the environmental disasters that they cause because of their carelessness, which harms the lives of thousands of common people, hurting the ecosystem where they live and work.

The isulas had an objective, that the company's workers no longer trick the common people and public opinion, so that everyone would know the reasons why the Kukama People is demanding respect for its territories, and thus, for the lives of the generations to come.

**Apu Rusbell Casternoque – CCNN Tarapacá.**

## I. Introduction:

The Kukama people find that this event reflects what they live daily, always threatened by the actions of third parties that try with all their strength to eradicate what the Kukama have always cared for, without holding anything back, because for the Kukama, everything is important, be it small or large, beautiful or what to others might be ugly.

This life lived in harmony has been threatened since the oil boom invaded the area almost four decades ago; the River Marañón, whose banks are inhabited by the Kukama on both sides, is the river that, since the beginning of the oil boom, has and continues to be subjected to environmental contaminants generated by extractivist activities. In fact, within the heart of the Pacaya Samiria National Reserve, Lot 8X can be found; this concession has caused and continues to cause a series of nefarious environmental and social consequences.

The Kukama Kukamiria People possess a cultural relationship with water, recreated in their rivers, lakes, streams, in every bit of water that exists in their territories; in short, for them the river is everything, their culture, their life. Nevertheless, this relationship is little understood by others who live in the area, who see the river as a way to generate resources and wealth, a vision that is supported by the State and its policies which tend to exclude those who are most vulnerable. Several years ago, the Peruvian State, through its executive power and other autonomous arms, designed a series of actions meant to cover public expenditures at the cost of the riches that the Peruvian Amazon could provide them, that is to say, they saw the Amazon as a rich source of potential products, that, upon extracting them, could be turned into a source of income, but they did not bother to evaluate who might be affected by this, because throughout Peru's history, the Amazon has only been seen as a resource dispenser, not a territory with rich social traditions, better said, with a rich culture, with native populations.

Nowadays, the threats to the area not only come from extractive activities but from the fact that these and others like them are meant to benefit everyone except the most vulnerable. We not only have to deal with oil activity, logging and monocultures, but at this moment the Amazon Waterway is being constructed. This Waterway would permit uninterrupted water traffic 365 days a year in the Huallaga, Ucayali, Marañón and Amazon Rivers, making it possible to navigate between the Atlantic and Pacific Oceans, since as we have found out upon investigating the project more fully, it forms part of the IIRSA Norte (a megaproject that not only includes Peru but also Brazil), a fact that alerted the Kukamas to bring legal action to defend their territory.

Since the Rubber Era until now, the battle of the Kukama People has focused on revindicating their culture, their identity, their language and fundamentally their ancestral territory, that is, the place where their culture develops. They fight to preserve all that their territory contains, like its plant resources, animals, minerals, the rivers, the streams, their lakes, and all of the spirituality that gives them the power to be a strong people that, in spite of the constant attempts to eradicate them, continue standing tall. They have been the object of violations of the right to life, to health, among others, after all, as has already been noted, the **Marañón River**, where the Kukama live, has and continues to be the subject of environmental contamination from the Tigre, Corrientes and Pastaza Rivers because of the hydrocarbon



extraction activities carried out in the area during the last 44 years. The water of these rivers is completely contaminated with heavy metals, and to continue with the construction of the Amazon Waterway, which implies the dredging of these rivers, would multiply the negative effects of the contamination by stirring up the sediments that contain these heavy metals, leaving us in a desperate situation with regards to water and the food that the river gives us. Furthermore, the river life would surely be altered and destroyed, the ecosystems would be altered, leaving the Kukama people without food. In addition to this, we have oil activities being carried out in the heart of Kukama territory, that is to say the oil concession found within the Pacaya Samiria National Reserve, one of the most important wetlands found in the country and within the Pan-Amazon area.

## II. Violation of the kukama people's Human Rights:

The case that today calls our attention is the defense of the rights of the Kukama People who have remained tireless knocking on doors in their efforts to make heard their pleas to respect their rights.

2.1. The Kukama Kukamiria People fight against a serious problem, **the non-recognition of the integrity of their ancestral territory**. This violation of the right to territory is occurring within various contexts:

### 1. Oil Extraction in Lot 8X – Battery 3 Yanayacu.

This site is located within the Pacaya Samiria National Reserve; it should be noted that the Peruvian State never consulted the Kukama People regarding oil exploration and extraction within their territory, they did not even consult them regarding the creation of a protected nature preserve within their territory, thus violating their territorial rights, their right to prior consultation, their right to self-determination, health, to live in a safe environment in equilibrium, their right to physical integrity, and to life itself.

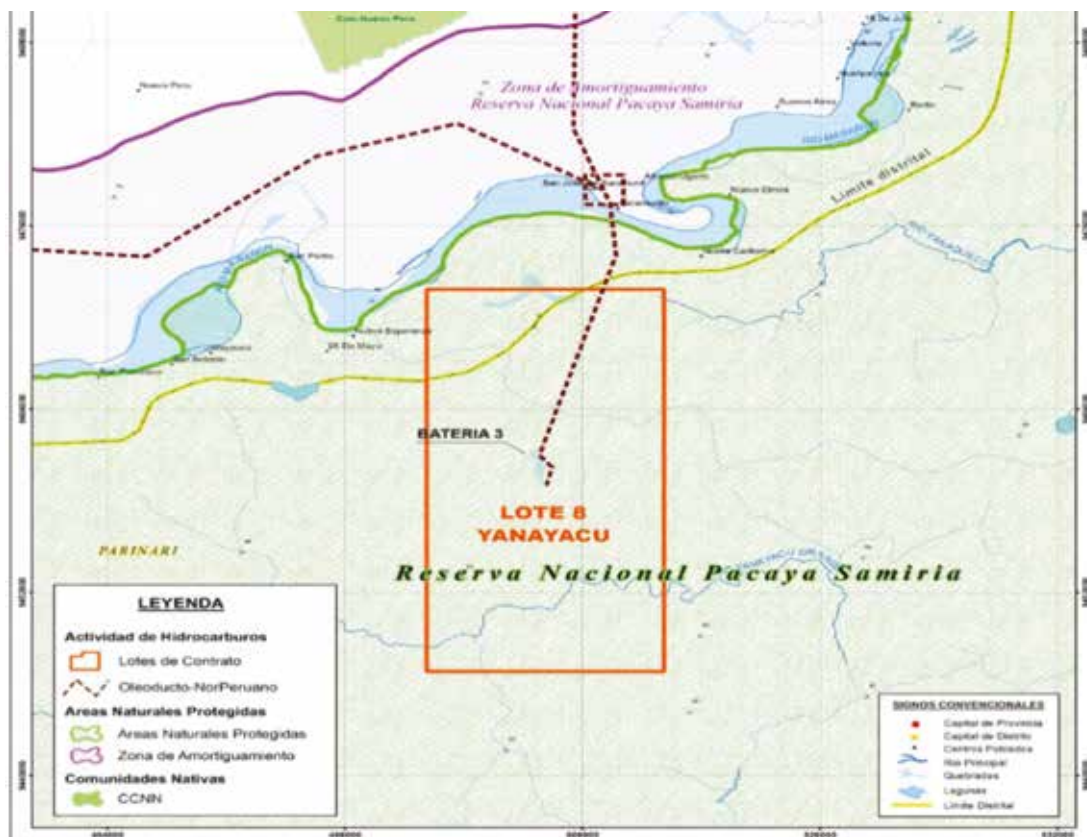
Map 24



Source: Acodecospat.

Battery 3 Yanayacu forms part of the Northern Peru Oil Pipeline, which has as its base Lot 8X, which connects Lots 8 and 192, which have provided oil to the country for more than 44 years. This battery is located approximately 16 km to the south of the Marañón River, within the districts of Nauta, Parinari and Urarinas, in the province of Loreto. It is made up of 3 platforms – 22, 38 and 60 – connected by walkways, occupying 400 meters from the north-east to the southeast and 100-150 meters from east to west on the western bank of a lagoon (today almost non-existent) within the Pacaya Samiria National Reserve (within the heart of Kukama Kukamiria territory).

Map 25



Source: Acodecospat

During the 1970s, Petroperú began activities in Lot 8X – Battery 3 Yanayacu; in 1996, it handed over the Lot to **Plus Petrol Norte SA**. Since the 1970s up until now, the State’s auditing activities with regards to environmental issues has been null, or at least that is one way of expressing it, given that what should be a large wetland, one of the few that exists in South America, has been slowly contaminated by the dumping of formation water and the constant oils spills that have occurred but been covered up during all this time.

This oil concession within the heart of the Kukama territory, polluting the wetlands that make up this area that, in turn, connect into the water sources for the Pacaya, Samiria and Marañón Rivers, became a poison that has slowly killed, without any explanation or attention, children, the elderly, and all types of animals and plants that are located in the surrounding area.



Photograph 65 Pipelines in awful condition, demonstrating how badly oil activities are carried out.



Source: Acodedcospat

Photograph 66 Within the interiors of the Pacaya Samiria National Reserve, there exist exposed pools of crude oil which contaminate the environment and the area's natural resources.



Source: Acodedcospat

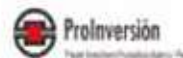
We are talking about a population of at least 25,000 individuals in the area, that, confronted with the State's indolence, migrate to other places searching for quality of life, since they cannot find it in their community, breaking sociocultural patterns and contributing to the loss of cultural identity, thus violating their human rights.

## 2. Amazon Waterway

It has already been mentioned in previous paragraphs how this project constitutes an atrocity since its implementation would stir up environmental contaminants currently mixed in with the rivers' sediments, which would pollute the water even more; it would destroy the rivers' ecosystem, including fish spawning beds, among other things, action which in turn would infringe upon the rights to food, health, life and identity, among others.

## HIDROVÍA AMAZÓNICA:

Ríos Marañón y Amazonas, tramo Saramiriza – Iquitos – Santa Rosa;  
 río Huallaga, tramo Yurimaguas – Confluencia con el río Marañón; río  
 Ucayali, tramo Pucallpa – confluencia con el río Marañón



**AREA DE DESARROLLO DE LA CONCESION:** Ríos Ucayali, Huallaga, Marañón y Amazonas (Departamentos de Loreto y Ucayali).

Rio	Tramo	Longitud (km)
Amazonas	Confluencia Ucayali – Santa Rosa	598
Ucayali	Pucallpa – Confluencia Marañón	1.248
Marañón	Saramiriza – Confluencia Ucayali	621
Huallaga	Yurimaguas – Confluencia Marañón	220
<b>Longitud Total</b>		<b>2.687</b>



Source: Proinversion

The Pan-Amazon is, for its inhabitants, the place where they live, their home, their common home, which they share with other living creatures, with their brothers. Nevertheless, for the transnationals, it constitutes a great business opportunity which provides them with resources and raw materials that, in turn, help them to promote and take control of large projects like the Amazon Waterway Megaproject which includes the Huallaga, Ucayali, Marañón and Amazon Rivers; this project is part of the North IIRSA, which has the objective of connecting the Atlantic and Pacific Oceans, improving trade among the countries involved.

The underlying argument for carrying out this project is that our system of waterways is the principal means of transportation in the region and since natural conditions are not optimal in this sense, water transportation becomes slow and scarce during the summer season, causing great losses to the businessmen who transport their products this way.

Therefore, the primary objective of this project is to create a system capable of developing and maintaining safe water transportation 24 hours a day, 365 days a year. To achieve this, it is necessary to dredge the rivers in order to guarantee the depth and width of the canal, to install measuring stations for water levels, monitoring systems, and a system to remove tree trunks that become embedded in the river bed, among others.





Source: Proinversion

All of the actions described in the previous paragraph would generate a notable environmental impact with a multiplier effect, especially within the Marañón River Basin, since, as has already been mentioned in the previous numeral, the river contains latent pollution from past oil activities such that, for example, the dredging of the river would stir up sediments containing heavy metals, turning it into a doubly effective lethal weapon.

Upon the Peruvian State's initial announcement regarding the Amazon Waterway Project, Acodecospat (a Kukama organization made up of 63 Kukama communities), presented a constitutional complaint requesting judicial support. The Peruvian State was ordered to vacate the original public bidding for the project and to carry out a process of prior consultation with the Kukama People and all others who would be affected by the project. In 2014, as a result of this judicial action, the first steps for the prior consultation process were initiated.

The prior consultation process was difficult and exhausting, taking into account the economic effects expected by both those who are in favor of the project and those who are against it; the State, using mechanisms to divide resistance, was able to convince many indigenous organizations to give their support to the project, thus diminishing the strength of the ar-

guments that Adecospat used during its judicial process, which, it should be stated, it won twice (both the original suit and the appeal), marking a legal precedent for indigenous groups.

This project would not just affect the Kukama Kukamiria People who inhabit the Marañón River, but also the Peoples who live around the other rivers, where approximately 100,000 original indigenous inhabitants of the area reside, and this does not even include the indirect effects on surrounding small towns.

### 3. Exploratory Activities in Oil Concessions within the Pacaya Samiria National Reserve's Buffer Zones.

In lots **193**, **174** and **194**, oil exploration activities would bring nefarious consequences, since, in addition to the problems already described in the previous numeral, the Kukama Kukamiria would again be exiled from their territory, since without water and without natural animal resources to sustain themselves, they would be obligated to migrate, generating social conflicts with other ethnic groups.

Within the ancestral territory of the Kukama People, specifically the buffer zone around the Pacaya Samiria National Reserve, the Peruvian State has identified three areas, concessions 193, 173 and 194, that would form part of the oil exploration process; nevertheless, confronted by complaints from the Kukama People and the political and media efforts made by them, the exploratory activities have been paralyzed, since, in order to begin these activities, the indigenous communities affected must first be consulted regarding them.

Map 28



Source: Adecospat

In addition to the environmental disaster that we already live with, we are now confronted by this problem that has stalked us since 2013; until now, the prior consultation process has been paralyzed again and again, which could give the Kukama People a certain sense of peace, nevertheless, it is not sufficient to justify slackening our efforts.

We have not healed the wounds caused by oil companies in Lot 8X – Battery 3 Yanayacu and now they threaten us with beginning new oil exploration activities; the environmental and social impact that these would cause would eradicate the Kukama population residing in the area.



Photograph 67 "These are the things that motivate us to defend our territory against oil activity, we are already polluted, look at our lakes, they are not water but crude oil which our children will drink and eat from,... and they continue acting in the same way, we cannot permit it, they are killing us slowly." Testimony by Apu Ander Ordoñez – CCNN Tupac Amarú.



Source: Adecospat

As can be appreciated, these problems affecting the Kukama People are not laughable, but rather, alarming. These actions are intended to exterminate the native people, whose roots are their ancestral territory, where they not only live out their culture but their entire life; the life of future generations is being put at risk.

In the Peruvian Amazon ethnic populations are disappearing for many reasons; this is why the Kukama People have not become discouraged in defending their rights even when they receive attacks against their own lives and way of living. It is impossible to identify the exact population that would be affected by the oil project, but we can get an idea. Of the 25,000 Kukamas that live on the banks of the Marañón River, we know that 40% are children and 25% elderly individuals, with the remaining 35% being made up of young and middle-aged adults.

Photo 68: Source: Nancy Verónica Shibuya Briones, CAAAP Lawyer. View of the Marañón River, October 23, 2017.



Source: Nancy Verónica Shibuya Briones, Advogado do CAAAP. Lawyer. View of the Marañón River, October 23, 2017.

Lurdes Irarica Manihuari, inhabitant of the CCNN San Gabriel – Marañón River, was telling us that forty years ago life in her community was beautiful, they bathed in the river, enjoying it by her children's side every afternoon, they would eat the most delicious fish, that only an Amazon native can taste, her "pango" as she called it, accompanied with banana or yucca was a delight... (she remains in silence for several seconds, suddenly a tear rolls down her face as she remembers those years), now Miss, everything is bad, the river isn't the same, the fish taste like oil, the water is oily and smells bad, our paddies don't produce rice like before, our grandchildren aren't born nor grow up healthy, now when a child is born we don't know if we should rejoice or not, because now we live with hunger, without water and without healthy food, what awaits them?, what awaits them?!!! If we already don't know in what water we should bathe ourselves, if we use the river water we get sick, we get "scales" on our skin (she is referring to itchy rashes that appear), our skin peels, our finger and toenails break, our hair falls out, we can't maintain long hair, our essence as Kukama women is disappearing, and now who pays attention to us? Who comes to our aid? Who?... (I ask her to remain calm, it's frustrating to hear them and not know what to say to calm their pain). If we drink the river water, it hurts us, we get sick, if we collect rain water we also get sick, it makes us cold, the older ones like me, we suffer more, it's the impotence of wanting to do something but not getting anywhere. We clamor to the State to help us and they leave us a bottle of water and then



Source: Nancy Verónica Shibuya Briones, Advogado do CAAAP. Lawyer. View of the Marañón River, October 23, 2017.





go away, who will give us back our health? Who will give us back our peace? Who will give us back the life that is slowly being extinguished? Who will give us back this life, cruelly lost? This development crushes us, it doesn't recognize our rights, the State laughs at the weakest, that is, us, the indigenous peoples, it's for this reason that we fight Miss, we will not rest until we achieve justice for our generations...

### III. Chronology of an everyday violation of Human Rights:

As has been previously mentioned, the greatest problem that the Kukama Kukamiria People have is the non-recognition of the integrity of their ancestral territory and with it, the violation of their human rights. These problems are recurring; we describe their chronology in the following pages:

- February 25, 1972:<sup>240</sup> Supreme Decree No. 06-72-PE is issued, declaring the area of influence known today as the Pacaya Samiria National Reserve to be off-limits, despite it being the area where the Kukama People live.
- February 4, 1982: Supreme Decree No. 016-82-AG is issued, establishing the creation of and boundaries for the Pacaya Samiria National Reserve, covering a surface area of 208,000,000 hectares; in this document the establishment of new settlements is prohibited as well as all types of natural resource utilization, excepting those related to oil operations. This norm violates the Kukama People's right to territory since they have ancestrally inhabited this zone.
- January 25, 2007: Supreme Decree 007-2007-AG modifies the original boundaries of the Reserve, enlarging it and taking away even more of the Kukama's territory.
- In 1970, Petroperú begins oil exploration activities in Lot 8X within the interior Pacaya Samiria National Reserve, and with it, the socio-environmental catastrophe suffered by the Kukama People also begins.
- Between 1971 and 1995, waste water is dumped into the ecosystems within the interior of the Pacaya Samiria National Reserve, affecting our right to life. We did not understand why our brothers were dying without any explanation.
- Since 1995, more than 75% of formation waters are dumped in the Marañón River, completing its contamination with heavy metals.
- In 2012, the FECONACO, FEDIQUEP, FECONAT and ACODECOSPAT Federations unite and enjoin the State to heed their demands, resulting from the hydrocarbon activities in the area, after almost 40 years of oil extraction.
- Through Supreme Resolution N° 200-2012-PCM (June 28, 2012), a Multisectoral Commission is created as part of the PCM (Presidency of the Council of State Ministers); within it, the Working Groups for Social and Environmental Issues are created.

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<sup>240</sup> The Kukama Kukamiria People traces its ancestral existence from the Rubber Era; therefore the creation of the Pacaya Samiria National Reserve should take into consideration the existence of indigenous peoples in the area.

- In May 2013, the social and environment diagnosis begins in each of the river basins in order to identify the impacts occasioned by oil activities.
- On June 14, 2013, an oil spill occurs, in spite of there being an emergency barrier (200-300 meters in diameter) in place; until now, no work to permanently remedy this problem has been undertaken.
- In September 2013, taking into account the environmental diagnoses concerning the river basins, teams are ordered to enter the area to monitor zones impacted by extraction activities.
- Supreme Resolution No. 212-2013-PCM extends timeframe for the resolution until July 31, 2014.
- January 20, 2014: The results of environmental monitoring are made know in Lima; the State recognizes that the river water is not apt for human consumption since it contains heavy metals, and because of its total and fecal coliforms.
- March 31, 2014: Supreme Resolution No. 119-2014-PCM is issued, creating a temporary Multisectoral Commission named "The Development of the Pastaza, Tigre, Corrientes and Marañón River Basins in the Department of Loreto". The primary objective of the creation of the Multisector Commission is to improve the social and environmental conditions of the inhabitants of the four river basins previously mentioned, favoring the comprehensive development of the area and supporting the implementation of public and private development projects and the execution of projects.
- May 17, 2014: Ministerial Resolution No. 136-2014-MINAM is issued, which declares a Sanitary and Environmental Emergency for the Marañón River Basin, given the evidence of water pollution that has made the water unsuitable for human consumption.
- May 27, 2014: The Multisectoral Commission for the Development of the Four River Basins is officially instated, beginning the process of formal dialogue with the State regarding the demands made by the population affected by oil activities.
- In June 2014, an oil spill occurs in CCNN San Pedro del Marañón, in the district of Urarinas, which belongs to the Marañón River Basin.
- March 10, 2015: the first public acknowledgment is signed by the President of the Council of Ministers, representatives of various sectors, representatives of the federations, and others, in which the State recognizes its inaction in relation to more than 40 years of extractivist activities and makes commitments to the River Basins.
- March 14, 2015: for the first time a provisional drinking water plant is installed in CCNN Solterito in the Marañón River Basin.
- April 16, 2015: Law No. 30321 is passed, creating the Emergency Fund for Environmental Remediation; its objective is to finance remedial actions for areas impacted by hydrocarbon activities which have caused health and environmental risks.
- April 28-30, 2015: The plan for the prior consultation process for the Amazon Waterway is approved.
- August 12, 2015: The Dialogue Stage of the prior consultation for the Amazon Waterway begins. Nevertheless, it is decided to go back to a previous stage, the Informa-



tional Stage (where the process is made known to the public), which pushes back the calendar for the prior consultation process.

- September 18-22, 2015: The Dialogue Stage of the prior consultation process for the Amazon Waterway begins.
- September 24, 2015: The Teniente López Act is signed as a consequence of the State's delays in fulfilling its commitments to the River Basins.
- November 4, 2015: The José Olaya Act is signed, which lays out several points that favor the Four River Basins.
- January 22-23, 2016: The First Session of the Multisectoral Group for the Amazon Waterway Project is convened, which begins to carry out the agreements adopted during the prior consultation process.
- July 5, 2016: A commission is instated to carry out the process of land titling for the native communities that inhabit the Pastaza, Corrientes, Tigre and Marañón River Basins, process that permits many communities living in the Marañón River Basin to title their land. However, it also brings to light the impediment that many of the communities have in accessing this procedure (a procedure that would give them legal security), since they live in areas located in the interior of the Pacaya Samiria National Reserve.
- December 23, 2016: Supreme Decree No. 039-2016-EM is issued which creates additional regulations related to Law No. 30321, legal material that is the result of contributions from state actors that have known about the issues involved and the indigenous communities that have participated in the process.
- February 28, 2018: The provisional treatment plants installed to create safe drinking water for the communities as an alternative measure after the Environmental Emergency was declared have stopped functioning because of lack of funding, leaving the communities without this vital resource; they have had to go back to consuming the river water which is not safe for human consumption due to its heavy metal content.



## IV. Proposals and Demands:

Until now, the State has not completely fulfilled the agreements made to help the River Basins affected by extractivist activities even though legal documents now exist that recognize the existence of violations of human rights against the indigenous populations that reside in the area.

From the evidence mentioned in the current chapter describing the problems affecting the area we can affirm the past and current violations of a series of rights like access to water,<sup>241</sup> food,<sup>242</sup> to health,<sup>243</sup> education,<sup>244</sup> environment,<sup>245</sup> cultural rights,<sup>246</sup> land,<sup>247</sup> development,<sup>248</sup> and therefore the violation of the right to life.

Alfonso López Tejada, president of Acodecospat, a Kukama Kukamiria organization, manifested the following during the last Kukama People's Assembly on October 22, 2017: "Since this organization was formed, it has embarked on a series of battles against the State at its local, regional, national and international levels (this last one having to do with socio-political processes) with the objective of demanding the unconditional respect of the rights that have been systematically violated; it has promoted resistance to the intransigence of the State with regards to continuing the dialogue related to problems generated by oil activities in Lot 192; this activity that the State promotes and defends has brought irreversible harm to the indigenous peoples, like the deterioration of our health, and obviously, of our territories.

The Kukama People, knowing how these rights have been violated, have taken up the fight on behalf of the Indigenous Peoples affected by more than 40 years of oil extraction, they commit to continue firmly in this fight and we affirm that development occurs only according to the measure in which it does not affect or violate our collective rights, since over the course of time it has been demonstrated that the announced development has not reached us, because our fundamental needs are not being attended to, like comprehensive health care, a food security that not only implies food but the vital liquid that is water, a resource that has been catastrophically affected, since our river basins no longer contain water that is apt for human consumption; the right to education is a latent social problem with serious deficiencies up until now, not only with regards to the lack of infrastructure but also

241 Contemplated in Articles 3 and 25.1 of the Universal Declaration of Human Rights (UDHD); Articles 1.2, 11.1, 11.2 and 12 of the ICESCR; Article 14.2(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Articles 24.2(c) and 27 of the Convention on the Rights of the Child (CRC); and General Comment No. 15 concerning Articles 11 and 12 of the ICESCR.

242 Contemplated in Article 25.1 of the UDHD; Articles 11.1 and 11.2 of the ICESCR; Articles 12 and 14.2(g) and (h) of the CEDAW; Articles 24.2(c), 27 and 30 of the CRC; Article 12 of Protocol of San Salvador (PSS); and General Comment No. 12 concerning Article 11 of the ICESCR.

243 Contemplated in Article 25 of the UDHD; Articles 10.3 and 12 of the ICESCR; Articles 11.1(f), 12, 14.2(b) and (h), and 16.1(e) of the CEDAW; Article 24 of the CRC; Articles 5(e)(iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Article 10 of the PSS; and General Comment No. 14 concerning Article 12 of the ICESCR.

244 Contemplated in Article 26 of the UDHD; Articles 13 and 14 of the ICESCR; Articles 10 and 14.2(d) of the CEDAW; Articles 23.3, 28 and 29 of the CRC; Articles 5 (e)(v) and 7 of the ICERD; Article 13 of the PSS; and General Comments No. 11 concerning Article 14 and No 13 concerning Article 13 of the ICESCR.

245 Contemplated in Article 25 of the UDHD; Articles 1.2, 4, 11 and 12 of the ICESCR; Article 14(g) of the CEDAW; Article 29(e) of the CRC; Article 2.2 of the ICERD; and Article 11 of the PSS.

246 Contemplated in Articles 26 and 27 of the UDHD, Articles 1 and 15 of the ICESCR, Articles 1, 3, 5(a), 10(c) and 13(c) of the CEDAW, Articles 8.1, 8.2, 20, 29, 30 and 31 of the CRC, Articles 5(e)(vi) and 7 of the ICERD and Articles 3 and 14 of the PSS.

247 Contemplated in Articles 2, 4 and 17 of the UDHD; Articles 6, 7, 11, and 11.2(a) ICESCR, Articles 11, 13, 14.2(a), (e), (g), and (h), and 16.1(h) of the CEDAW; Articles 2, 27 and 30 of the CRC; and Articles 1, 3, 6, 7, 13, 14, 15, 16, 17 and 20 of the ILO Convention 169.

248 Contemplated in Articles 22, 25, 27 and 28 of the UDHD; Articles 1, 6, 7, 9, 11, 12, 13 and 15 of the ICESCR; Articles 11, 13 and 14 of the CEDAW; Articles 24, 26, 27, 28 and 32 of the CRC; Article 5 of the ICERD; and Articles 1, 2, 4, 6, 7 and 8 of the Declaration on the Right to Development.



relating to the use of materials that are adequate for our culture and being able to have bilingual teachers that respond to our needs; basic situations like these: food, health, education are only some of the grave problems that our Indigenous Peoples must face with regards to the development that the State so anxiously promotes, benefitting oil companies and only a select sector of the population.

It is because of this that our entire Kukama People **ENJOINS** the State to attend to the demands of our brothers because they are legitimate and because they correspond to a fight that is inexhaustible, we invoke the State to assume its role as guarantor of rights and not a contrary role towards the Indigenous Peoples that over the course of years have demonstrated their predisposition and participation in dialogue, and the **UNITY** that differentiates us from other defensive fronts and which has permitted us to confront together the problems currently present within our territories and we will continue to confront them with **DIGNITY** because we are human beings with the same rights and we deserve that they be respected.

Brothers, we are a part of a battle to continue constructing the recognition and respect of our collective rights, because we deserve a **DIGNIFIED LIFE**, which implies being able to live in complete freedom, free to promote and direct our agenda that looks to achieve the unconditional and complete respect of our rights.

We **ENJOIN** the State to attend to the comprehensive demands of the Indigenous Peoples, because our fight will never be in vain. Let us continue, brothers and sisters, with strength in this arduous labor to achieve the recognition not just of our inherent rights but to visibly maintain their defense."

Photograph 69: Source: Nancy Verónica Shibuya Briones, CAAAP Lawyer.



Source: Nancy Verónica Shibuya Briones, Advogado do CAAAP.

**“WIKÁ RITAMA, STRENGTH OF OUR PEOPLE”**

**“WE DEFEND LIFE, WE DEFEND THE FULL LIFE OF OUR PEOPLE”**



## 2.5. THE HUMAN RIGHT TO ADEQUATE HOUSING:

As we have already proposed during the Public Hearing before the Inter-American Commission on Human Rights ([IACHR] - 161st Period of Sessions – Washington D.C., 2017) in our document *“Position of the Panamazonian Ecclesial Network of the Catholic Church in Light of the Violation of the Right to Territorial Property of Indigenous Peoples and Amazonian Communities in South America”* referring to the situation concerning the rights to land and adequate housing of peasant people:

*“54. To be able to comprehend the dynamics and situation of peasants in the Amazon, one must understand their close relationship with the land, their activities, and the natural resources they use. Looking at things in this global context, agriculture stands out as the sustaining force and primary work of small land owners and landless laborers. According to a study realized by the **Human Rights Council Advisory Committee regarding the promotion of the rights of peasants and other people working in rural areas**, around 10% of the people in the world who suffer from hunger live off of primary production activities like fishing, hunting and the grazing of livestock.<sup>249</sup> Therefore, any activity that interferes with these practices, like the competition for natural resources or their indiscriminate exploitation, leads to consequences such as land dispossession, having a severe impact on the exercise of other rights like the right to health, the right to education, etc.*

*55. The lack of protective safeguards against external interference and the devaluation of their work has forced the peasant sector to negotiate away their land through such mechanisms as renting, mining right of ways, advanced land sales, the use of land for monocultures, etc. on account of extractivist projects and the expansion of agroindustry, **resulting in the dispossession of their land. Because of this, peasants have suffered proletarianization, the loss of sovereignty over their food supply, a lack of access to natural resources and the decline of their self-sustaining economy.**<sup>250</sup>*

*56. The primary cause of the problems found in the Amazon Region is the discrimination against and the vulnerability of the peasant population, a type of violence experienced daily in society, but also the result of States’ negligence with regard to their obligations. The Human Rights Council of the United Nations has determined and specified the primary sources of discrimination against and violations of peasant’s rights: **land expropriation, forced evictions and displacements**, sex discrimination, the lack of agrarian reform and rural development policies, the lack of minimum wages and protection of workers’ rights, and the criminalization of movements that defend and protect peasants’ rights.<sup>251</sup>*

***57. The human right to adequate housing, including the adequacy of the surrounding environment, ease of access, and the enjoyment of communal spaces***

249 United Nations Human Rights Council. Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas. Doc A/HRC/19/75. 2012, para. 19. [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-75_en.pdf).

250 Quevedo Ramírez, T. Agroindustria y concentración de la propiedad de la tierra [Agroindustry and the Concentration of Land Ownership], 2013. In: Vera Puebla, M. (ed.) Del campo a los tribunales: Herramientas para el litigio estratégico y la resolución de casos de Derechos Humanos de las campesinas y campesinos en el Ecuador [From the Country to the Courts: Tools for Strategic Litigation and the Resolution of Human Rights Cases for Ecuadorian Peasants]. FIAN Ecuador, Quito, 2017, p. 3.

251 United Nations Human Rights Council. Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas. Doc A/HRC/19/75. 2012, para. 24.



**(General Comment No. 4, United Nations International Covenant on Economic, Social and Cultural Rights) is violated, both in its collective (communal) and personal (private property or other types of tenancy) forms, when forced evictions occur, followed by obligatory displacement and relocation (without family and/or community participation regarding the process). Most often these forced evictions, displacements and relocations are caused by the invasive arrival of large-scale agroindustry, production of biofuel, giant dams or hydroelectric projects and/or extractivist industries, among others. These complex situations cause a double dispossession or double eviction – eviction from adequate housing and removal from one’s land – uprooting entire communities from their natural environment, inhabited by them for generations, and seriously modifying their habitat/ecosystem.”**

This “**double dispossession**” or “**double eviction**” has occurred because of the Peruvian,<sup>252</sup> Colombian<sup>253</sup>, Brazilian,<sup>254</sup> Ecuadorian<sup>255</sup> and Bolivian<sup>256</sup> States’ failure to comply with the obligations that they assumed when they signed and ratified the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**<sup>257</sup> that, in General Comment No. 7,<sup>258</sup> develops the same theme found in Article 11.1 (adequate housing) of the ICESCR, referring to **the prohibition of forced evictions, even when these are done according to the law (regardless of whether the nature of the property is private or public), without alternative lodging being provided by the competent public entities, and, as mentioned in the previous paragraph, and/or without the participation of the people affected by the displacement.**

In Article 4.5 of the **Declaration of the Rights of Peasants and Other People Working in Rural Areas**,<sup>259</sup> presented in 2013 to the United Nations Human Rights Council by the open-ended intergovernmental working group on the rights of peasants and other people working in rural areas: *Peasants have the right to security of tenure and not to be forcibly evicted from their lands and territories. No relocation should take place without free, prior and informed consent of the peasants concerned and after agreement on just and fair compensation and, where possible, with the option of return.*

The United Nations Special Rapporteur on Adequate Housing, in her Amicus Curiae Brief before the Constitutional Court of the Republic of Guatemala in the case of the Laguna Larga Community,<sup>260</sup> highlights for a second time what she had already manifested before the United Nations Human Rights Council in Geneva in 2015:<sup>261</sup> “Evictions should never render individuals homeless. The prohibition of evictions leading to homelessness is immediate, absolute and is not subject to available resources”. In addition, “Eviction without full consultation with those affected is a clear violation of international human rights. The obligation to explore every alternative to eviction, never to evict into homelessness and to ensure that

252 <https://www.pj.gob.pe/wps/wcm/connect/7ef81100495423e78593f5cc4f0b1cf5/PactolInternacional+de+Derechos+ESC.pdf?MOD=AJPERES>

253 [https://www.mininterior.gov.co/sites/default/files/upload/SIIC/Jurisprudencia/antes1991/ley\\_74\\_de\\_1968.pdf](https://www.mininterior.gov.co/sites/default/files/upload/SIIC/Jurisprudencia/antes1991/ley_74_de_1968.pdf)

254 [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en)

255 <http://www.planificacion.gob.ec/se-reconocen-los-esfuerzos-del-ecuador-en-la-promocion-y-proteccion-de-los-derechos-economicos-sociales-y-culturales/>

256 <https://www.lexivox.org/norms/BO-L-2119.xhtml>

257 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

258 [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f6430&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fICESCR%2fGEC%2f6430&Lang=en)

259 [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/A-HRC-WG-15-1-2\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPLeasants/A-HRC-WG-15-1-2_en.pdf)

260 <https://www.ohchr.org/Documents/Issues/Housing/AmicusBriefConstitutionalCourtGuatemala.pdf>

261 [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/54](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/54)

residents are adequately consulted about resettlement plans should be applied under domestic law to both private and public land or property owners”.

The violation of the human right to adequate housing (understood according to its comprehensive and holistic expression as including the relationship with one’s surroundings or habitat, as developed in General Comment No. 4 of the ICESCR), given its substantial interrelationship with all other human rights, *“while manifestly breaching the rights enshrined in the Covenant, [through] the practice of forced evictions[,] may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non interference with privacy, family and home and the right to the peaceful enjoyment of possessions.”* (General Comment No. 7, ICESCR).

This interrelationship was also established in 2010 by the **Inter-American Commission on Human Rights (Organization of American States)** in the report<sup>262</sup> *“Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter American Human Rights System”*, in which **the violation of the right to possession and enjoyment of land is intertwined with the violation of the right to live, the right to health, economic and social rights, the rights to cultural identity and religious freedom, worker’s rights, the right to self-determination and the rights to psychological and mental integrity**. The repair of the physical, moral and material damage produced when all these rights are violated is almost impossible, or very difficult, to achieve.

The human right to adequate housing (Article 25 of the **Universal Declaration on Human Rights**,<sup>263</sup> Article 11 of the **ICESCR**, Article 23 of the **American Declaration on the Rights and Duties of Man**<sup>264</sup> and Article 26 of the **American Convention on Human Rights**)<sup>265</sup> has been considered a key right, because of its interrelationship with other human rights and because of the integral nature of rights in general, within the **New Urban Agenda**<sup>266</sup> and, to a lesser degree, in the **2030 Agenda**<sup>267</sup> (Objectives for Sustainable Development). The United Nations Special Rapporteur on Adequate Housing indicates, in her report to the United Nations Human Rights Council in 2015,<sup>268</sup> that one of the gravest challenges and priorities facing governments in regards to the complete fulfillment of this right within their agendas, is the situation of the violation of the right to land; at the same time she established the urgent need to put an end to forced evictions (especially in cases of forced evictions en masse of entire populations or peoples).

In section 2.5 of the current report, we will find the testimonies of peasant communities in the Ecuadorian (Tundayme – Cordillera del Cóndor) and Brazilian (Buriticupú – Estado de Maranhão) regions of the Amazon.

We will look at whole communities – boys, girls, adolescents, women and men – whose plight confronts us with a brutal violation of the human rights to land and adequate housing,

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262 <https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf>

263 <http://www.un.org/en/universal-declaration-human-rights/>

264 <http://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf>

265 [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.pdf](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf)

266 <http://habitat3.org/wp-content/uploads/NUA-English.pdf>

267 <https://undocs.org/en/A/RES/70/1>

268 [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/54](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/54)



seen through two prisms that reflect the same reality: the supremacy of financial gain over people's human dignity and over their human rights.

In Tundayme, the entire community has suffered a "double dispossession-double eviction" from their housing and their land; being violently removed from the area with no provision of alternative housing, all so that surface mining can take place.

In Buriticupú, the community suffers from the construction of a large railway line for the transportation of highly-contaminating heavy mining material within their urban periphery; in addition, the people living there do not have a recognized right to land use, which makes it easy for the government to cede this right to extractivist companies.

Already in 2005, the UN-HABITAT Program, in its report, "Indigenous Peoples' Right to Adequate Housing",<sup>269</sup> in Recommendation No. 14 concerning forced evictions, asked United Nations member states to do everything possible to avoid the eviction of indigenous peoples from their homes and lands:

Governments, in conjunction with international financial institutions and other lending agents, should undertake human rights impact assessments with indigenous communities prior to initiating development projects in indigenous areas ensuring the principle of free, prior and informed consent. If the assessment reveals that violations of the rights of indigenous peoples may result, such projects must be re-negotiated.

International, regional and national financial institutions and other organizations play a vital role in facilitating major development projects by providing various forms of financial and technical support. It is imperative that the internal policies of these institutions regarding development projects and indigenous peoples be revised and applied in a manner that ensures conformity with contemporary international human rights norms of general application such as the ICESCR, the CEDAW and the ICERD, as well as international law particular to indigenous peoples such as ILO Convention No. 169 and any relevant national laws, treaties, agreements or pending agreements regarding the rights of indigenous peoples.

*"Land, housing and work," is what Pope Francis asked for in his Address to the World Meeting of Popular Movements in 2014,<sup>270</sup> in which he also said: "At the beginning of creation, God created man and woman, stewards of his work, mandating them to till and to keep it (cf. Gn 2:15). I notice dozens of farmworkers (campesinos) here, and I want to congratulate you for caring for the land, for cultivating it and for doing so in community. **The elimination of so many brothers and sisters campesinos [that have suffered uprooting] worries me, and it is not because of wars or natural disasters that they are uprooted.** Land and water grabbing, deforestation, unsuitable pesticides are some of the evils which uproot people from their native land. This wretched separation is not only physical but existential and spiritual as well because there is a relationship with the land, such that rural communities and their special way of life are being put at flagrant risk of decline and even of extinction."*

*"The Lord God then took the man and settled him in the garden of Eden to cultivate it and care for it," (Genesis 2, 15); and in order for this to happen, "it is not enough to balance,*

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<sup>269</sup> <https://www.ohchr.org/Documents/Publications/IndigenousPeoplesHousingen.pdf>

<sup>270</sup> [https://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco\\_20141028\\_incontro-mondiale-movimenti-popolari.html](https://w2.vatican.va/content/francesco/en/speeches/2014/october/documents/papa-francesco_20141028_incontro-mondiale-movimenti-popolari.html)

*in the medium term, the protection of nature with financial gain, or the preservation of the environment with progress. Halfway measures simply delay the inevitable disaster. **Put simply, it is a matter of redefining our notion of progress.** A technological and economic development which does not leave in its wake a better world and a comprehensively higher quality of life cannot be considered progress.” (Laudato Si 194).<sup>271</sup>*

Only in this way will our planet really be a “*common home*”.

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<sup>271</sup> [http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco\\_20150524\\_enciclica-laudato-si.html](http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html)







## 2.5.1. Tundayme Community – Ecuador

**Coordination:** Congregation of sisters Ursuline of Jesus- REPAM Ecuador.<sup>272</sup>

### I. Introduction:

Tundayme is a rural parish in the southern part of the Ecuadorian Amazon, situated within the Province of Zamora-Chinchipe and bordering with the Province of Morona Santiago. According to the PDOT<sup>273</sup> of the local GAD<sup>274</sup> of Tundayme, the parish's population consists of 854 people; 56.7% of them are younger than 19 years of age.

Map 29: Source<sup>275</sup>. In Report on Forced Evictions. Ecological Action. December, 2015.



In terms of topographical relief, the parish is located in the “Cordillera del Cóndor” (Condor Mountain Range), an especially sensitive zone both on the physical and social level, because of its high rainfall and seismic activity, its level of endemism and mega-diversity, and for being the Shuar indigenous people's ancestral territory. “The Condor Mountain Range is known for

<sup>272</sup> Colaboration of María de los Ángeles Marco Teja.

<sup>273</sup> Metropolitan Plan for Territorial Organization and Development Plan

<sup>274</sup> Decentralized Autonomous Government

<sup>275</sup> Panantza and San Carlos Copper Project, Preliminary Assessment Report, Morona Santiago, Ecuador. By John Drobe, Professional Geologist (PGeo); John Hoffert, Professional Engineer (PEng.); Robert Fong, PEEng.; Jeremy P. Haile, PEEng.; and Joseph Rokosh, PEEng. Corriente Resources, October 30, 2007.

its variety of habitats and micro-habitats, since, as it is separated from the rest of the Western Mountain Range by the Zamora River Valley, it contains moorlands, forests, scrublands, and wetlands that are very distinct from the rest of the Andes. It is calculated that the Condor Mountain Range is home to 600 species of birds, including 14 species in danger of extinction (Birdlife International), 120 species of amphibians and 59 species of reptiles. In each hectare of the Mountain Range, more than 220 species of trees have been found. Recent studies report the discovery of 20 new plant species, 41 new frog species, and four new species of reptiles, including Ecuador's smallest continental vertebrate, a dart frog."<sup>276</sup>

Mirador is a copper and gold mining megaproject in Tundayme parish. Its objective is to extract 60,000 tons of rock per day in a surface mine 1,000 meters deep and 1.5 kilometers wide. This activity brings with it the consumption of 250 liters of freshwater per second and the production of at least 325 million tons of waste. In the case of Mirador, the copper that is to be extracted from the mine is principally found in the form of copper sulfates, that is, it contains sulfur, which causes pollution because of acid rock drainage (ARD).

Photo 70: Mining work in the Wawaime River Basin. Source: CASCOMI.



Source: CASCOMI

Mining companies' interest in the area goes back decades, but it is since the 90s that mining activities have intensified because of the high price of minerals and the implementation of neoliberal structural adjustment programs in South America. The armed conflict with Peru in 1995 was not unrelated to these interests.

After signing a peace accord in Brasilia, Brazil in 1998, both Ecuador and Peru signed memorandums of understanding to facilitate mining operations in the border area by private capital.

Since 2000, the Canadian junior enterprise, Corrientes Resources, is present in the area,

<sup>276</sup> "Entretelones de la megaminería en el Ecuador" [Behind the Scenes of Mega-Mining in Ecuador], William Sacher, Michelle Báez, Manuel Bayón, Fred Larreátegui, Melissa Moreano. 2<sup>a</sup> ed. June, 2016. p. 13.



implementing a policy of land acquisition that has been characterized by cover-ups, deception and abuse.

In the middle of 2010, the Chinese company Tongling-CRCC bought all of the Mirador project from the Canadians. Their affiliated company in Ecuador is ECSA. Finally, on March 5, 2012, ECSA/Tongling-CRCC and the Ecuadorian Government signed the first contract for large scale copper mining in Ecuador.

In their necessity to buy more land for mineral exploitation and confronted with the refusal of locals to sell, the Company has obtained land easements since 2013 through ARCOM (the State Agency for the Regulation and Control of Mining); these are non-appealable executive acts through which the legitimate owners of these lands are evicted from them in exchange for an economic compensation fixed by ARCOM under the figure of rent; the easements last for 25 years and are renewable.

Up until this moment, 32 families in Tundayme have been evicted from their land using this mechanism, violating proper legal procedure and the human rights of those affected.

All of this region is the territory of the Shuar indigenous people, present in the area since before Spanish colonization. During the second half of the twentieth century, some areas of Shuar territory were colonized as a result of national government programs tied to agrarian reform during the 1960s and 1970s. At present, it can be said that the Shuar families and colonists coexist. All of them have a strong tie to the land, either because of its sacredness in the case of the indigenous people, or because of the consciousness of being involved in the promotion of the Ecuadorian State via the construction of a living border (the colonizing population contributed with its efforts to the clearing of the forest to build houses and new population centers, initiating productive agricultural and livestock raising activities, inaugurating new roads and demanding the State's presence in an area then in territorial dispute with Peru).

## II. Legal framework.

The year 2006 represented a decisive moment in the anti-mining resistance at the national level, coinciding with the rise to power of Rafael Correa and the political movement ALIANZA PAÍS. Their governmental plan included a political proposal that looked to designate 40% of the national territory as protected areas and implement severe environmental controls for all activities. The convocation of a National Constituent Assembly led to the approval of a new constitution on September 28, 2008 via referendum.

The most relevant legislation with regards to the present case is the issuance of Constituent Mandate No. 6 (Mining Mandate, April 18, 2008) , which, with the intention of restoring order to the sector, dictates that all mining concessions that don't fulfill certain parameters indicated by the mandate (such as being located in a protected area, near headwaters or water sources, that were given without prior consultation, that were part of land grabbing...) must revert to the State without any type of compensation. The Mining Law that was passed during the next year (January 29, 2009), does not invalidate the Mining Mandate; nevertheless, the first has not been completely carried out. The Mirador Project never reverted to the State.



Various irregularities committed during this time, such as land acquisition and the non-fulfillment of Constituent Mandate No. 6, have been recognized by the General Comptroller in a report delivered on September 24, 2013.

Mirador has been designated as a PEN (Strategic National Project), with a Level 1 priority, such that the company has found an ally in the State, which has not been the case for the Ecuadorian citizens negatively affected by the project.

## Demands for Easements.

As has already been mentioned, the eviction process initiated by ECSA since 2006 also included administrative demands for the granting of easements against those who refused to sell their land, especially against those persons that have, in an organized way, tried to return to the lands from which they were irregularly displaced. “In these processes it is the State itself, through the Agency for the Regulation and Control of Mining (ARCOM) that, at the petition of the mining company, applied the legal framework that was approved in 2009, according to which people should obligatorily leave their lands and homes in exchange for an economic compensation that does not cover either the material or immaterial losses that the granting of an easement implies. This process, of an administrative character, is not controlled by a judge, and does not admit opposition to the eviction order or an appeals process, violating the minimum content inherent in the rights to legal security and due process”.<sup>277</sup> “Finally, the State has ordered public forces to evict families that have refused economic compensation to leave their lands and homes, [evictions] in which private security guards contracted by the company have participated, and where, additionally, acts of physical aggression have been carried out against the population.”<sup>278</sup>

Photo 71: CASCOMI



Source: CASCOMI

277 SACHER William, “Revisión crítica parcial del Estudio de Impacto Ambiental (EIA) del proyecto Mirador de la empresa Ecuacorriente, Ecuador”. [Partial Critical Revision of Ecuacorriente’s Environmental Impact Study for the Mirador Project, Ecuador]. 2011.

278 “La herida abierta del Cóndor. Vulneración de derechos, impacto socio-ecológico y afectaciones psicosociales provocados por la empresa minera china Ecuacorriente S.A. y el Estado ecuatoriano en el Proyecto Mirador”. [The Open Wound of the Condor: Violation of Rights, Socio-ecological Impact and Psychosocial Consequences Precipitated by the Chinese mining company Ecuacorriente, S.A. and the Ecuadorian State in the Mirador Project]. Colectivo de Investigación y Acción Psicosocial, Ecuador, 2017. p. 70.



The number of applications for easements seems to be unlimited. As was just cited, ECSA bought more than 4,000 hectares of land in the region and estimated that it needs to use 2,043 hectares more during the development of the exploratory phase of the mining project. The Mining Law establishes that no mining concession can have land titles equaling more than 5,000 hectares. Nevertheless, the mining contract between the State and the company Ecuacorriente S.A. includes a clause that orders the creation of an “Area of Related Activities”, that is not to be understood to be part of the concession area and that “enjoys the protection of the State [...] allowing the Mining Concession to solicit the easements and administrative support that it deems necessary”<sup>10</sup>. At the same time, the contract establishes a “Protection Area” that serves to “protect and guarantee the security of people and workers in the area surrounding the project and mining operations”; the size of this area is unlimited and can include “land that has been granted to the Mining Concession, owned by the State, special areas, protected forests, communities, towns and belonging to third parties in general.”

In practice, the “Area of Related Activities” and “Protection Area” permit the company to encompass an undefined area of territory, being able to ask for unlimited easements. Confronted with this, the inhabitants of the area could not feel more powerless.

## The Rights of Nature.

Ecuador’s Constitution is pioneering and a reference for others with regards to the rights of nature. We cite Article 71 of the Constitution: “Nature, or Mother Earth, where life reproduces and is carried out, has the right to the comprehensive respect of its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

Every person, community, people or nationality will have the right to demand that the public authority fulfill the rights of nature”. The other articles that mention the rights of nature (Art. 72, 73, 406 y 407) place the State as guarantor of its conservation.

We highlight Article 72: “Nature has the right to be restored. This restoration will be independent of the obligations of the State and natural and juridical persons to indemnify individuals or collectives that depend on the natural systems [that have been] affected. In the case of grave or permanent environmental damage, including those caused by the exploitation of non-renewable natural resources, the State will establish the most effective mechanisms to eliminate or mitigate the detrimental environmental consequences”.

The application of these measures is completely pertinent to the Tundayme case.





### III. Violated rights.

#### 1. The Right to Housing.

##### *The Active Process of Reterritorialization Carried Out by ECSA and the Ecuadorian State: Forced Evictions.*

The neighborhood of San Marcos was selected by the mining company as the location for its tailings pond, and in the immediate area, its mining camp. In fact, the first properties bought by the company (which did not disclose what it would be using them for) in the first decade of the 2000s were those that currently contain the mining camp. This area is where the company focused its land acquisition effort.

In 1984, a chapel and “3 de noviembre” school were built on a piece of land donated by Polibio Arévalo Pacheco to the community. When Polibio Arévalo later sold his properties to ECS in 2006, he obtained from the company their promise to hand over to the community the land he has previously donated to them. However, the company did not fulfill its promises, thus taking advantage of the innocence and good will of the local people.

“The Environmental Impact Study for the exploitation phase of the Mirador Project that served as the basis for the State’s authorization of the project and the posterior signing of the contract between ECSA and the Ecuadorian State sustains that, as of November 2010, the populated area of San Marcos no longer existed and that 95% of the families had moved to live in Tundayme or other places and that only two families continued to live there. Additionally, as of 2009, the church and school had stopped functioning. This Environmental Impact Study was approved by the Environmental Ministry on February 24, 2012.”<sup>279</sup>

Nevertheless, the persons and families of San Marcos, Kiim (Quimi) Valley, Wawaim Alto, Tuntaim (Tundayme), Namakunts, Kiim (Quimi), Manchiñas (Manchinatza Alto) and their surroundings, outraged by Ecuacorriente’s violation of the rights of their communities, decide to convene themselves and, after better understanding the situation in which the area finds itself and a wide-ranging debate, resolve to strengthen their communal organization (which already existed), establish it as a juridical person and register it as an indigenous organization in the Council for the Development of the Native Peoples and Indigenous Communities of Ecuador (CODENPE), taking the name of the “Amazon Community for Social Action Condor Mountain Range Mirador” (CASCAMI). They take up the challenge of denouncing at both the administrative and judicial levels what they considered illicit and fraudulent processes of land acquisition and decide to return and occupy San Marcos, from which they had been displaced in a deceitful manner by the mining company ECSA with the consent of the State. They make the school their community headquarters and begin to meet frequently to work on the acute problems facing their territory and the families negatively affected by large-scale mining. All of this, as a reflection of their right to resist, is recognized by Article 98 of the Ecuadorian Constitution.

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279 “La herida abierta del Cóndor”, 2017, p.71.





In San Marcos, the first eviction consisted in **the destruction of the neighborhood's chapel and the school. On May 12, 2014**, at approximately 6 p.m., workers from the mining company entered San Marcos with heavy machinery, backed up by at least 50 members of the national police, and demolished "3 de noviembre" school and the neighborhood chapel, alleging that the land was private property belonging to the mining company.

The company states that it had ecclesiastic permission [to destroy the chapel], but the bishop of Zamora Chinchipe, Monsignor Walter Heras, manifested before a public notary that the chapel of San Marcos had been constructed in 1983 through community labor on land donated to the community, and therefore, was not on land belonging to the Vicary and that the Vicary, therefore, had no power to cede it to the company.

It is clear that through the destruction of these communal and symbolic spaces, the company and the State look to deterritorialize, that is to alienate the inhabitants from their living spaces.

"The people, seeing what happened with the destruction of the school and the chapel, decide to repopulate San Marcos. To that end, **Don Luis Arévalo granted the rights to two hectares of his land to CASCOTI** so that various families belonging to the organization that don't have housing, or that are young people without resources, or whose homes are far away and need their daughters to go to the nearest school, could have a place to live. He also grants these rights in order to no longer be alone in his efforts to confront the mining company's harassment. The families that repopulated San Marcos, in the majority of cases, either lived there in their youth or their parents lived there during their youth, or they went to San Marcos' school, or they had land there where they worked, carrying out agricultural or fish farming activities. The repopulation began around February or March 2015 and the collective land title is dated July 25, 2015. In summary, a property owner in San Marcos donated some of his land to help repopulate the town that had existed many years before the arrival of the mining company.<sup>280</sup>

In addition to the events already described, three other violent evictions have occurred:

One year and four months after the destruction of San Marcos' chapel and school, on **September 30, 2014** at 4 a.m., 135 members of the national police equipped with anti-riot gear and private security guards contracted by ECSA initiated a new, physically and psychologically violent eviction of 9 families, including the destruction of their homes, in the San Marcos area, citing the fulfillment of an easement that had been granted to ECSA. Additionally, the police executed an operation in the area that impeded access to Tundayme as far as Chuchumbleta.

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280 "La herida abierta del Cóndor", 2017, p.72-73.



Photograph 72: Participation by the National Police and other agents of the State in the mass evictions of community members.



Source: CASCOMI

On **December 16, 2015 ARCOM ordered a new forced eviction.** “Various families evicted on this date confirm that the eviction process, just like the previous one, occurred at or before sunrise, between 2 a.m. and 6 a.m., that policemen, other police functionaries and lawyers were present, as well as mining company workers who executed the evictions. There was no prior or opportune notice, no written eviction notice was presented to the families, and in spite of the fact that the families asked for a prudent amount of time for them to dismantle their houses themselves and move their belongings, the evictions occurred immediately and in a short amount of time. As in the previous eviction, the police used force to prevent resistance and make it easier for mining company workers to dismantle the houses, which, in the end, were destroyed by heavy machinery.” (“La herida abierta del Cóndor”, 2017 p. 50).

Photograph 73: Destruction of homes and burying of the debris.



Source: CASCOMI



Finally, on February 4, 2016, mining company workers, the national police, officials from the Ministry of Social and Economic Inclusion (MIES), officials from the Mining Ministry and officials from the Provincial Government of Zamora Chinchipe, underhandedly evicted the elderly Shuar, Rosario Wari, more than 95 years old, from her original home and, trying to camouflage the eviction as a social intervention, moved her to El Pangui. But the elderly woman manifested repeatedly, and full of tears, her lack of desire to leave the land of her ancestors, and, following the eviction, suffered a severe emotional crisis. It should be noted that Rosario Wari had already been forcibly evicted by the company thirteen years before. Finally, it should be mentioned that her family has brought her back to live in her original location as a bare minimum humanitarian act.

Photograph 74: Shuar woman evicted from her ancestral territory in 2016.



Source: CASCOMI

All in all, 116 people were affected. Almost half, 52, were children or adolescents. 12 were over 65 years old.

Of the 26 families evicted from Tundayme, 19 were living permanently in the homes that were destroyed, while 7 families lived their occasionally depending on the agricultural activities being carried out at the time. In addition to the loss of housing, the loss of their sources of livelihood must also be taken into account, as they form part of these 26 families' right to work.

These evictions resulted from the enforcement of "10 resolutions for easements issued by ARCOM which affected 18 families, while another 8 were not included in ARCOM resolutions but were living on a collectively owned property whose title was held by CASCOMI"; 100% of the affected families were members of CASCOMI, and none of them received formal notification from ARCOM or any other public authority that gave them anticipatory notices of the date and hour in which the evictions were to be realized, they only knew that an easement process had been initiated, such that 100% of the affected families were surprised at or before dawn by the presence of public forces, mining company workers and other

public officials in the same moment that the evictions and destruction of homes began”.<sup>281</sup>

Finally, it should be added that on May 13, 2016, eight families of the Shuar community Yanua Kim, family members of José Tendetza Antún, an anti-mining leader who was assassinated on December 2, 2014, were evicted from their territory by Ecuacorriente S.A., which used heavy machinery to destroy their land and crops; as a result, later rains flooded their homes. The total destruction provoked by Ecuacorriente has put at risk the survival of these families.

Photographs 75: Belongings of evicted families.



Source: CASCOMI

The forced evictions experienced in Tundayme were a systematic violation of rights:

- “The persons and families involved were never allowed to actively participate in the analysis of alternatives to the forced evictions. In fact, no participatory processes ever occurred — the community was never informed that the mining company would need peasant or indigenous land to develop their project; there were not even any environmental or indigenous consultations prior to the granting of concessions.
- The easement granting process not only restricts the human rights to property and housing, they are of an administrative character instead of a judicial one, thus they do not allow opposition nor impugnation; they only determine the value of the compensation that must be given as a result of the eviction.
- The compensations only include a calculation accounting for the value of the land during the period of time in which the residents must be evicted, and do not include the value of other material and immaterial losses; as such they do not qualify as comprehensive reparation from a human rights perspective.

281 Ibid. p. 93.



- The families have not been able to realize inventories of the belongings that were affected by the evictions, nor have they been able to register the non-material losses that they confront. The State has not done this either.
- The families were forced to confront material losses due to the violence of the evictions in which heavy machinery damaged or destroyed their sources of livelihood, the tools they used to work, their belonging and household items, without giving them a chance to protect or rescue them. After the destruction, the company's machinery dug giant holes in the earth to bury the physical debris left over from the eviction process.
- The robbery and loss of money has also been denounced.
- These evictions were carried out during the dawn hours, without prior notification. People were given only 5 minutes to exit their homes before they were obligated by force to leave their land and allow the destruction of their homes.
- Even though public officials were present, no judicial eviction orders were presented. Those evicted knew that easement processes had been initiated against them but were never given prior and opportune notification of the evictions nor of the date and hour in which they would occur.
- Excessive operations were carried out in which more than 130 police participated, who, in addition, acted using force and violence to execute the evictions as quickly as possible.
- The State permitted that non-state agents contracted by ECSA (private security guards) participate in and execute the evictions.
- Acts of physical and psychological aggressions were committed against the population.
- The operations included the blocking of access to Tundayme Parish as far as Chuchumbletza, that is, they isolated the eviction area. No neutral observers were present to account for the respect given to the human rights of the affected individuals nor the fulfillment of international human rights standards.
- No emergency plans were prepared to take into account the specific needs of children, women, the elderly, individuals with disabilities or those with significant health conditions. On the contrary, the manner in which the evictions took place violated the particular rights of these people.
- During the evictions, several women denounced cases of sexual harassment committed by some of the security guards and personnel contracted by the company.
- There was no pre-planned process for relocating the families nor immediate assistance given to the displaced families. Neither the State nor the company considered providing the families with essential foods, lodging and housing, appropriate clothing, essential medical services, sources of livelihood or the protection of their animals in order to diminish the effects of the eviction.

Thus, these evictions directly affected the human rights of 116 Shuar and mestizo people (32 families) living in Tundayme and Güisme parishes, including their freedom of transit and residency, their economic and social rights to housing and work, their right to physical, psychological and sexual integrity, and their right to live free from violence".<sup>282</sup>

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<sup>282</sup> Ibid. p. 232-234.



Photograph 76: Source: CASCOMI



Source: CASCOMI

We would like to mention the international calls to action that the Ecuadorian State has received regarding its lack of protection of rights, both through acts of commission and omission. Thus, in the UPR<sup>283</sup> prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), Geneva and presented to Ecuador during the 13th period of sessions, between May 21 and June 4, 2012, in the chapter entitled “Right to Life, Liberty and Personal Security,” the OHCHR expresses worry in regards to the presumed abuses and violence used by armed forces against some indigenous peoples with the objective of securing the interests of extractivist companies. In the same way, in the UPR presented to Ecuador on May 1, 2017, recommendations were given with the objective of strengthening the current situation of indigenous peoples in relation to the impacts generated by oil and mining exploitation activities in indigenous territories and how these relate to the exercise of fundamental rights.

The IACHR,<sup>284</sup> during the 154th period of sessions, during March 2015, made the following recommendations to the Ecuadorian State: “The participating organizations presented information concerning the Shuar people’s opposition to the oil and mining projects the State of Ecuador has implemented in their territories without having carried out prior, free, and informed consultations. The organizations stated that these projects have led to the destruction of their lands and crops and to an escalation of violence. Further, they indicated that as a consequence of the Shuar people’s efforts to resist, three of their members have been killed, and these deaths have not been properly investigated and remain unpunished. [...] For its part, the Inter-American Commission expressed its concern regarding the failure to respect the right to prior, free, and informed consultation; the criminalization of and attacks on indigenous leaders; and the infringements on the right to a good environment and the right to water. The Commission also urged the State to respond to these allegations of human rights violations, stressing the importance of working together with civil society organizations.”<sup>285</sup>

283 Universal Periodic Review

284 Inter-American Commission on Human Rights

285 [http://www.oas.org/en/iachr/media\\_center/preleases/2015/037a.asp](http://www.oas.org/en/iachr/media_center/preleases/2015/037a.asp)





## 2. The Rights of Nature.

### *Cóndor, a Biodiverse Paradise, is Threatened.*

The concessions given to the Mirador Project encompass a portion of the western sub-Andean mountain range known as the Condor Mountain Range, which extends roughly 150 kilometers from north to south and reaches a maximum altitude of 2,900 meters above sea level, having an approximate area of 97,000 hectares.

The Condor Mountain Range houses a notable amount of biodiversity and is the region with the greatest amount of endemism in the world. The varying ranges of altitude and humidity have resulted in a variety of ecosystems, and its importance has been recognized by the organization Conservation International, being included in its list of “hotspots”<sup>286</sup> in the Tropical Andes.

It houses up to 16 different ecosystems within the lowlands of the Amazon forest and in its highland plateaus. In regards to its flora, it has been estimated that the Condor Mountain Range is home to the greatest diversity on the planet; some of the most representative data includes the high concentration of vascular plants (more than 4,000 species) and around 400 species of bryophytes (Missouri Botanical Garden, 2015). “The number of previously unknown species stands out, as is the case of 26 of the 40 species of orchids that were collected as a part of projects carried out by the International Tropical Timber Organization (OTTI, 2004)”.<sup>287</sup> With respect to the fauna, diverse endangered species find refuge in the Condor Mountain Range. “The marsupial *Caenolestes condonensis*; the butterflies *Pseudocharis* sp. and *Macrosoma* sp.; and several fish species, *Creagrutus kunturus*, are apparently new to science”.<sup>288</sup> It should also be noted that the “Shuar Mura Nunka Reserve, in the Ecuadorian part of the Condor Mountain Range, integrated itself with the Podocarpus-El Cóndor Biosphere Reserve (RBPEC), first recognized by UNESCO in 2007.”<sup>289</sup>

The Condor Mountain Range is also a key water source for the Amazon. It is covered daily by low-lying clouds that deposit their humidity in diverse ecosystems, causing streams, rivers and watersheds to form, which in the end, deliver their water to the great Amazon rivers such as the Marañón.

In general the Condor Mountain Range region has suffered a low level of human intervention: as evidence, one can look at the data referring to land use in Tundayme Parish: 85.12 % is natural forest, 5.59% is vegetation that has been affected by previous human intervention, 9.24% is grazing land or cropland, 0.5% is land with human intervention and 0.05% consists in established human settlements.

On March 23, 2005, the Environmental Ministry, via Ministerial Agreement No. 137, declares the Condor Mountain Range to be an “protected forest and vegetation area”, specifying “the need to declare and demarcate protected forest and vegetation areas in the Condor Mountain Range, paying special attention to those that most contribute to the conservation of the soil and wildlife; that are located in areas that contribute to the preservation of hydrographic basins; and that are located on the eastern border between Ecuador and Peru,

<sup>286</sup> According to Conservation International, in order to designate an area as a hotspot, it needs to fulfill two strict criteria: first, it needs to contain at least 1,500 endemic species of vascular plants (approximately 0.5% of the total number of vascular plants that have been identified on the planet); second, it needs to have suffered at least a 70% loss of habitat surface area compared to its original expanse.

<sup>287</sup> “Mineras chinas en Ecuador: nuevas dependencias” [Chinese Mining Companies in Ecuador: New Forms of Dependency], Gloria Chicaiza, 2014, p.77.

<sup>288</sup> CHICAIZA Gloria, “Mineras chinas en Ecuador: nuevas dependencias”, 2014, p.77.

<sup>289</sup> Ibid, pág 80

which is considered strategic for national defense.”<sup>290</sup>

Taking into account these facts, extractive mining activity is both invasive and destructive for the area. The exploitation of the Mirador mine will generate more than 326 million tons of highly dangerous waste.

Modern industrial mining consists in the extraction of enormous quantities of rock from the earth’s subsurface; these rocks contain a large variety of chemical elements: arsenic, lead, chromium, cadmium, sulfur, etc. These chemical elements, while buried in the earth’s subsurface, remain in a chemical state that does not put at risk the surface ecosystems. Once the rock is brought to the surface, however, it is altered by exposure to rainwater and air and these elements are then freed in quantities that are dangerous for the water, soil and air. This is called Acid Rock Drainage (ARD). William Sacher talks of the dangers related to ARD, as cited by “Cordillera del Cóndor: Frontera límite hacia la Gran Minería [Condor Mountain Range: Frontier for Large-Scale Mining]”.<sup>291</sup>

Source: Sacher (2011: 25-27)

One of the most problematic types of contamination caused by mining activity is Acid Rock Drainage (ARD), which the World Bank considers one of the gravest because of its severe and permanent effects on the environment. This phenomenon occurs when rain water, or even air, enters into contact with the rocks that have been brought up from the subsurface to the surface due to mining activity, accumulating in piles of debris, in the mining crater or in the mines’ waste dikes. The chemical reactions between the rain water (or the humid air) and the rocks contribute to the oxidation of sulfured minerals. This generates a high risk of unusual levels of acidification in runoff, a risk that becomes much more pronounced when the rocks are full of sulfur (that is, when they contain molecules of metal atoms bonded to sulfur atoms).

These drainage or runoff waters follow their course to surface water sources or groundwater sources and acidify them such that ARD can irreversibly affect both surface and groundwater quality in the affected basins. The consequences of this acidification can be catastrophic for the fauna and flora that are not prepared to live in such an acidic environment. In the gravest cases, species and entire communities of fish disappear, which permanently alters aquatic ecosystems. As has been indicated in the 2005 EIA 2005, the environmental importance of controlling [pH] relates to the fact that if the waters are very acidic, they can cause the death of rivers and streams. This was the case in the Tsolum River in British Columbia (Canada). An upstream ARD caused by a copper mine caused salmon to disappear in the river.

According to Canada’s Ministry of Natural Resources, “the ADR that occurs in debris piles is a challenging problem for the mining industry in Canada; [...] the debris piles that generate ADR represent an important threat to the environment and have to be monitored, being an important cost for the mining industry.”

In regions with high seismic activity or that are frequently exposed to heavy rains, like Ecuador, the risk of this type of accident increases dramatically. Future generations run the risk of living with permanent contamination.

290 MAE, Ministry Agreement No. 137, “Bosques de la Cordillera del Cóndor en el cantón Gualaquiza,” [Condor Mountain Range Forests in Gualaquiza County], Preamble and Article 1

291 Gloria Chicaiza y Beatriz Rodríguez-Labajos, 2012, p. 5.



Various studies have demonstrated the technical deficiencies in the Mirador Project; these easily predictable problems could have dramatic consequences for the environment.<sup>292</sup>

Even today, the local inhabitants already suffer the deterioration of the environment, especially in regards to the lack of water and its contamination.

Photograph 77: Diversion of rivers carried out as part of the execution of mining activities, which caused flooding and damage to housing.



Source: CASCOMI

## IV. Conclusions and recommendations.

- “The Condor Mountain Range is one of the most biodiverse regions in the world, and also one of the least explored scientifically. Its natural and cultural (and therefore spiritual) richness is most threatened by short term extractivist policies for large scale gold and copper exploitation.”<sup>293</sup> During the Canadian company Corrientes Resources’ time in the area, their logic regarding land expropriation had to do with their strategy as a junior enterprise: looking to grab mostly uninhabited land in order to turn it over to a bigger company with the financial capacity to exploit it; their discourse touting fair treatment was just another mechanism used by them to gain acceptance; their practices were characterized by fraud and deception.
- The Chinese consortium Tongling-CRCC continues with the same dynamic of land expropriation, taking advantage of the possibilities that national legislation provides them (mining easements), supporting themselves with the State’s discourse that revolves around the redistribution of wealth and the importance of large-scale mining income to achieve this end.

<sup>292</sup> Jim Luijpers, 2012, Study for E-Tech International; Steven H. Emerman, “Effect of Scaling on the Safety of Earthen Dams: Application to a Proposed Expansion of the Mirador Mine, Ecuador”, 2016; William Sacher, “Revisión crítica parcial del Estudio de Impacto Ambiental (EIA) del proyecto Mirador de la empresa Ecuacorriente, Ecuador”, 2011.

<sup>293</sup> CHICAIZA Gloria, “Mineras chinas en Ecuador: nuevas dependencias”, 2014, p.135.

- China has become Ecuador's largest lender (it is the first time that Ecuador has owed so much money to just one country, in the past its debts were held by multilateral banks). Their loans have interest rates well above what international organizations charge, are guaranteed using oil or other raw materials and include an investment policy in which Chinese businesses participate.
- The State has renounced its functions and responsibilities deciding to not intervene in the control and vigilance of land expropriation processes carried by mining companies, both in the exploration phase and current exploitation phase. "Even worse, the State has permitted that these transnational actors and their economic interests reconfigure national territory in the Condor Mountain Range, self-injuring their territorial sovereignty."<sup>294</sup>
- "Since the moment that concessions were granted up to and including the exploration phase, the territories belonging to population groups have been conceived of and treated exclusively [in terms of] individual rights, negotiable and able to be expropriated, to the detriment of the collective and communal vision of the earth, distancing the State from its plurinational nature and from its responsibility to protect the rights of peasants and indigenous. (...) For not even a moment has the right to land and territory been considered a fundamental human right. On the contrary, civil law has been placed above the Constitution and international human rights treaties that guarantee the validity and exercise of the right to land, a right on which other fundamental rights depend, such as the right to housing, the right to an occupation and to work, the right to personal security and liberty, the right to freedom of expression and information, the right to education."<sup>295</sup>
- The mining concessions that have been considered here are in violation of the Constituent Mining Mandate of 2008, which invalidates all the administrative actions taken by the State in its wake. The lack of will by the State regarding necessary vigilance for the fulfillment of the Mining Mandate has led to the violation of national laws and rights.
- The report rendered by the General Comptroller of Ecuador also demands an immediate and obligatory response, which has not been carried out.
- This report mentions the lack of prior consultation. This must always occur before a concession is granted and be carried out according to international standards. In the case of the Mirador Project, no prior consultation occurred.
- Those who openly oppose the project suffer stigmatization, harassment and criminalization, not finding any support from State institutions.
- With regard to the evictions, "as Ecuador's Constitution recognizes, it is the obligation of States to avoid committing forced evictions. Ecuador's Constitution prohibits these in Article 42, and additionally indicates that when public policies, in this case extractivist policies, threaten to violate human rights, these policies must be modified

294 Minería a gran escala y apropiación de tierras. Estrategias empresariales en el caso del proyecto Mirador [Large Scale Mining and Land Expropriation: Business Strategies in the Case of the Mirador Project], CEDHU 2015, p.93

295 Ibid, pág 94-95



or suspended in order to prevent such violations. Nevertheless, the Ecuadorian State, in spite of knowing the need for land to develop the Mirador Project, has not taken action to prevent the violation of the rights of the peasant and Shuar families affected; on the contrary, it has given permits to ECSA and helped with the easement granting process, facilitating the eviction from their lands.”<sup>296</sup>

- Whatever the case, having arrived at that point, the evictions should have been realized according to international standards marked out by the United Nations Office of the High Commissioner for Human Rights (OHCHR). But the reality of the situation has been completely different.

## Recommendations:

- That the Ecuadorian State fulfill its own legislation guaranteeing the rights of nature consecrated in the Constitution.
- That the mining company’s States of origin (previously Canada, now China), through legislation and the adoption of political and administrative measures, ensure that their companies (those whose headquarters are located within their jurisdiction) respect human rights when they operate outside of national territory. The exploratory companies should also assume responsibility for damages that their activities have caused to the rights of local populations.
- That companies, especially CRCC/Tongling, abstain from using the national justice system to present administrative and judicial demands as a form of persuasion to accept the decisions made by the company. They should also abstain from working in areas inhabited by indigenous peoples unless they have obtained their free, prior and informed consent with respect to the project in question.
- Respect for the exercise of the right to land, realizing an independent revision of land acquisition deals carried out by each successive mining company and the current situation of those individuals that were induced to sell their land to the companies, in order to obtain a detailed evaluation of the impact this has had on the living conditions and right to housing of the affected persons.
- That the Constitutional Court quickly resolve the cases relating to the Mining Mandate, given that the prolonged delay in its fulfillment means the continued violation of the human rights and rights to nature that the State sought to protect via this Mandate.
- That mining companies active in the Condor Mountain Range suspend their operations until the flawed actions resulting from non-compliance with the Mining Mandate have been resolved.
- That the dictates of Ecuador’s General Comptroller, made in 2013, be carried out.
- That the State’s General Comptroller begin a general auditing process (administrative, economic, social, environmental), to make known the state of the concessions that have been made (and the mechanisms through which they were granted) and the

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296 “La herida abierta del Cóndor”, 2017, p. 231-232.



current projects underway, including the Mirador Project.

- That the Agency for Regulation and Control of Mining (ARCOM) stop receiving and processing demands for easements until the State has carried out a thorough consultation regarding the Mirador Project, based on trustworthy and detailed information relating to the project's territorial, social, and environmental reach.
- Restitution of lands and properties affected by the forced evictions and comprehensive reparation of the damage caused to families and the environment; free circulation and access to natural resources.







## 2.5.2. Communities in Buriticupú, Brazil

**Coordination:** Justiça nos Trilhos<sup>297</sup>

### I. Introduction:

The following report deals with the violations of the individual and collective rights of the inhabitants of two rural communities located within Maranhão State, in an area that belongs to the Legal Amazon;<sup>298</sup> it considers the socio-environmental impacts caused by a string of activities carried out by giant mineral exploitation projects located in the Amazon Region, especially the Grande Carajás Project, and the expansion/widening of the Carajás Railway, both executed by the transnational company Vale, S.A..

#### 1.1 Historical Context – Grande Carajás Project

In the 1970s and 1980s the Brazilian State, through the activities of the Vale do Rio Doce Company (CVRD), at that time state-owned, created and executed the largest mineral exploitation project in the whole country, located in the northern region (Amazon region); the project is known as the Grande Carajás Project. It occupies a total area of 900,000 km<sup>2</sup>, or approximately 10% of Brazilian territory and encompasses three Brazilian states (the south-east part of Pará, northern part of Tocantins and the southeastern part of Maranhão).

Large construction projects had to be carried out in order to implement Grande Carajás, including the Tucuruí Hydroelectric Plant, one of the largest in the world, the Carajás Railway (EFC) and Ponta de Madeira Port. The Carajás Railway, designed and built at the end of the 1970s and during the first half of the 1980s, was inaugurated on February 28, 1985. It is 892km long, connecting the mining province of Carajás, in Pará, with the ports of Itaqui and Ponta de Madeira in São Luís do Maranhão.

In 1997, during the presidency of Fernando Henrique Cardoso, the Vale do Rio Doce Company (CVRD) was privatized, becoming the transnational company Vale S.A.<sup>299</sup> As a result, the responsibility for operation of the EFC<sup>300</sup> was transferred to Vale through a signed concessionary contract between the Federal Union of Brazil and the transnational company.

The Carajás Railway, as already mentioned, is 892 km long, connecting the mining province of Carajás with ports in São Luís do Maranhão, on the northern coast of the country, which makes this railway responsible for the transportation of all the iron ore extracted from the Carajás Mountains.

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<sup>297</sup> Collaboration of Ana Paula Dos Santos

<sup>298</sup> The Legal Amazon was defined by Law No. 1806/53 and occupies approximately 5,020,000 km<sup>2</sup>, including all of the states in the Northern Region (Acre, Amapá, Amazonas, Pará, Rondônia, Roraima y Tocantins), all of Mato Grosso State, and the cities of Maranhão State found to the west of meridian 44° W. Since 2007, the region is supervised by SUDAM (Superintendency for the Development of the Amazon), a self-sufficient federal body tied to the Ministry of National Integration. Its role is to promote the inclusive and sustainable development of the Amazon.

<sup>299</sup> The Vale do Rio Doce Company was not only considered to be one of the principal state enterprises, but also public patrimony of incalculable worth since it operates in one of the richest areas of mineral deposits in the world. Its privatization sparked around 100 popular actions (a type of legal challenge), many of them still being processed.

<sup>300</sup> The Railway is used for both cargo and passenger transport.

Additionally, the EFC connects two other important railways, the Transnordestina and the North/South Railway, facilitating the exportation of grain produced in other states in Brazil.

Thirty-five trains circulate simultaneously on the railway, including the longest regularly operating cargo trains in the world, containing 330 train cars and being 3.3 km long. The longest trains are tasked with transporting iron ore. Currently 24 of these cargo trains travel the EFC each day, 12 in each direction.<sup>301</sup>

Currently, the Railway passes through twenty-three municipalities in Maranhão State and another four in Pará State, in addition to land belonging to indigenous peoples, plantations and conservation areas. The existence of the railway impacts the lives of around 100 groups of people, with distinct characteristics, many of whom have inhabited the territory since before the construction of the Railway and who have since had to live with the consequences of its functioning.

Recently, in 2009, the EFC obtained its first environmental license through a corrective licensing process;<sup>302</sup> many of the environmental impacts resulting from the railroad's construction and functioning have not been previously studied, much less mitigated or compensated for.

Since 2011, these impacts have worsened and become greater because of the large scale construction projects to widen the Railway. Currently, most of these construction projects have been completed.

Map 30: Source: Fundação Vale [Vale Foundation] (2011).<sup>303</sup>



301 With the passage of time, a favorable international environment caused Vale, S.A. to triple the initial volume of iron ore being extracted and transported (the majority of which is exported) from the Carajás Mountains, currently totaling 169.2 MMTA (169.2 million metric tons per year). In order to achieve this, it was necessary to increase the number of train cars and the frequency of trains running on the EFC. In the next two years, the Company hopes to reach 230 MMTA.

302 La Licencia de Operación Correctiva (LOC, Corrective Operating License) is the environmental license designed for projects that are already in operation but which have not yet been granted an environmental license. EFC.

303 Um olhar sobre Buriticupú, MA, Fundação Vale (2011) is one of the documents.

The widening of the EFC is necessary, from a logistical standpoint, to increase mineral exploitation in Carajás. Large projects are already being implemented in the region, for example, Supplementary Project 40 MMTA in Serra Norte (the northern mountains) and S11D in Serra Sul (the southern mountains, with plans for another 90 MMTA) and the Capacitação Logística Norte Project (CLN), which looks to double the width of the EFC along its entire route and includes the construction of a new 100km railway artery that will connect the Serra Sul with the EFC, and the expansion of the Ponta da Madeira Port with the construction of a new platform.

The complexity of defining and analyzing potential impacts of the railway's widening on the surrounding communities should be highlighted, taking into account the specificity of each one of them (some of them very old and extremely distinct because of their different ways of life). Because of this, the present report limits itself to the identification, documentation and analysis of violations related to EFC operations (both prior and current) in two rural communities located in the municipality of Buriticupú in Maranhão State.

## **II. Human Rights violations resulting from widening the efc railway in the communities of Vila União and Vila Concórdia, located in Buriticupú, Maranhão**

The communities of Vila União and Vila Concórdia are rural border communities located in a federal rural settlement area.<sup>304</sup> They belong to the Settlement Project PA União, Portugal and Santo Antônio, created on July 11, 1991 after an intense process of fighting for the land. The occupation of the territory began decades earlier as a consequence of the waves of landless peasant migrants moving there from other parts of Maranhão and other states in the North and Northeastern Regions of Brazil.

Although their land rights have been recognized, the majority of the inhabitants of the area still do not have definitive land titles. They only have possession rights for their parcels of land. At the same time, the transnational company Vale S.A. has possession rights for the area where the Railway passes plus forty meter on each side of the tracks.<sup>305</sup>

Furthermore, the two communities form part of an area called the Área de Influência Directa del Emprendimiento (a Project's Direct Influence Area), the project being the widening of the Carajás Railway-EFC.<sup>306</sup> This means that the company involved has recognized, through its own Environmental Study, that the projects it will undertake affect the area's environment, and as a consequence, the way of life of these two populations.

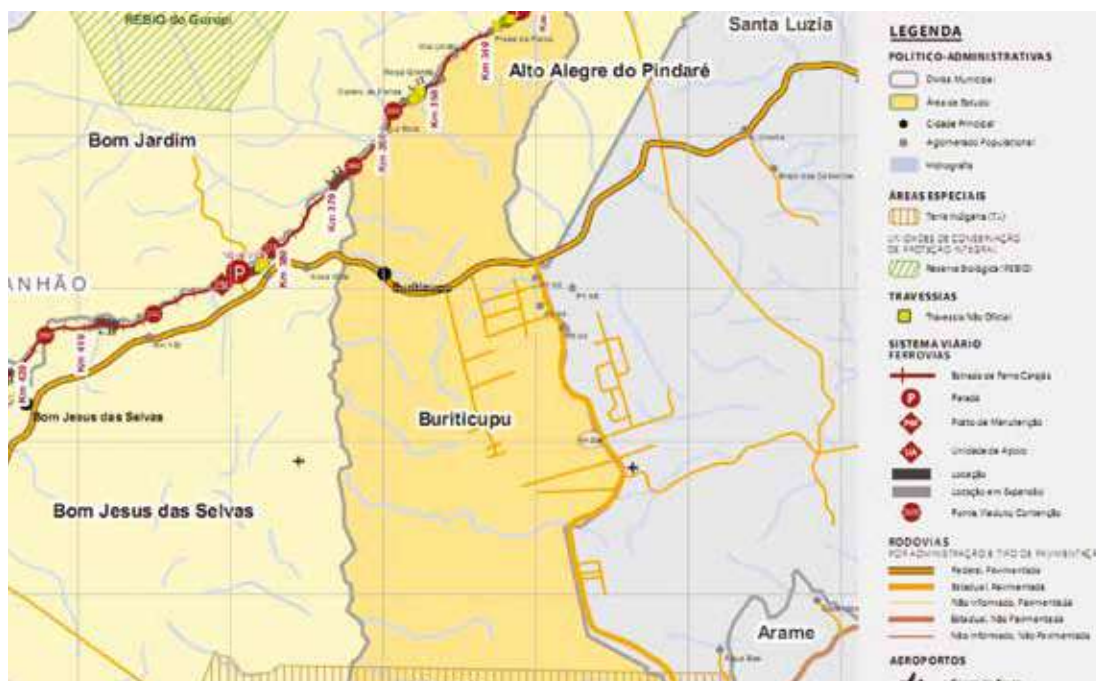
304 In this case a "settlement" refers to an area of collective property belonging to the national government that was part of agrarian reform. The families that reside there are "settled" and possess a federal concession to use the land.

305 Established in the concession contract signed with the Federal Union of Brazil (Transportation Ministry) in 1997, with a duration of 30 years.

306 Martins, Marlúcia Bonifácio e Oliveira, Tadeu Gomes, (2011), Amazônia Maranhense- diversidade e conservação [The Maranhão Amazon, Diversity and Conservation], p. 71



Map 31



Source: Fundation Vale (2011).

Around 850 individuals live in Vila União and Vila Concórdia, distributed among 184 families. The population consists primarily of laborers that work in agriculture and livestock raising. A significant part of the two groups is also composed of river-dwellers that engage in fishing as complementary activity to generate income and sustenance for their families, taking advantage of the Pindaré River, an important tributary that passes through the area.

One of the problems characteristic of the Railway construction process, since the initial construction of the first rail line up until and including the recent construction projects to widen it (now concluded along this part of the Railway), has been the complete lack of respect on the part of the State and the transnational mining company for the organizational structure of these communities. Vila União and Vila Concórdia, like many other towns, have been literally cut in half by the Railway: on one side are the houses, stores, the school and the health clinic (the basic infrastructure necessary for a population), and on the other, their sources of livelihood (croplands and the Pindaré River).

This has had the following consequences:

- Impediments to the free circulation of people within the territory: the flow of trains is intense and almost uninterrupted, which makes it difficult to cross between these two spaces of communal living. When the widening of the EFC is finished, the flow will be even greater: with only 28 minutes between trains, even at nighttime. Another recurring problem is when trains stop on the tracks. When the company decides to stop a train, for technical or other reasons, it does not inform anyone regarding the motive for the action nor the amount of time the train will be stopped on the tracks. On these occasions, the only way the communities' inhabitants can cross the tracks (the trains



are more that 3km long) is to pass underneath the train cars, being thus exposed to all the inherent risk that entails since the train can start moving again at any moment without previous warning. This situation is a grave threat to the physical integrity, personal security and lives<sup>307</sup> of the populations affected by the project.

Photograph 78: Train stationed in front of one of the rural communities of Maranhão.



- In the same vein, it's important to note that while the Railway has cut both communities in half, only in Vila Concórdia has an overpass been constructed to permit crossings by pedestrians and motorcycles. This type of overpass is considered secure since it permits people to cross the tracks at a level different from that of the Railway (just like tunnels and viaducts). However, the people who live in Vila União need to travel, every day, from their community to the neighboring one to cross the tracks safely; or, if they decide on the less safe route, they can cross directly from their homes to the crop-lands and river. Again, it's the affected population that must choose between risking themselves crossing under train cars or traveling a long way to cross at a safer point.
- The lack of safe places to cross the tracks is a recurring problem in the communities that have been divided by the EFC and also causes direct material damages to the inhabitants, especially as a consequence of the farm animals that are killed.
- As can be deduced from the above situations, the Railway impedes the free circulation of people within their own territory since it: increases the amount of time that they need in order to travel between their houses and fields (which also requires more physical effort) making their working conditions more difficult, makes it harder to access potable water, diminishes opportunities for leisure and communal living (the Pindaré River is an important source of leisure and social space for the people that live in these communities), generates material losses, and, finally, puts at risk the security, physical

307 The National Agency for Land Transportation (ANTT) is the federal organization responsible for overseeing the EFC. According to the ANTT, between 2006 and 2007, there were 132 grave accidents involving cargo trains with 108 victims, of which 99 died or suffered serious injuries. The data is not divided according to municipalities. More information can be found at: [http://www.antt.gov.br/ferrovias/Anuario\\_Estatistico.html](http://www.antt.gov.br/ferrovias/Anuario_Estatistico.html), (March 19, 2018).

integrity and lives of the people. It is undeniable that these situation negatively impact the quality of life and organizational structure of the communities.

- Environmental disequilibrium. The constant passing of cargo trains near the communities in question causes: a) air pollution caused by iron ore dust, since the train cars carrying the ore are uncovered; b) noise pollution caused by the passing trains, by train horns<sup>308</sup> and, during the work to widen the Railway, by the heavy machinery used to compact the soil; c) tremors, or ground vibration, caused by the trains; during the widening of the Railway, the heavy machinery also intensified them. The weight and friction of the trains on the tracks act as transmitters of weight/energy that propagate throughout the area causing movement in soil and walls, generating instability in the towns' buildings and causing an unpleasant physical sensation for the people who live in the area.
- The environmental changes previously described most visibly and gravely affect the health and quality of life of the areas' inhabitants, especially of the most vulnerable population groups such as children, adolescents and the elderly, causing or aggravating respiratory diseases, altering the quality of sleep and nighttime rest, and affecting the ability to socialize, among other issues equally damaging to the physical and mental well-being of each person.
- The right to education is also affected since the noise, dust and tremors affect the quality of the teaching given and the learning ability of the children and adolescents (there is only one school for both communities, located in Vila Casa Azul).
- On the other hand, with regards to the tremors, these affect the physical structure of the buildings in the area, causing cracks or aggravating pre-existing structural flaws, causing the displacement of roof tiles and the destruction of small wells, all of which violate the right to dignified housing that these individuals possess, and without taking into account the potential risk of injury and the loss of rights such as those to physical integrity, security and life itself.

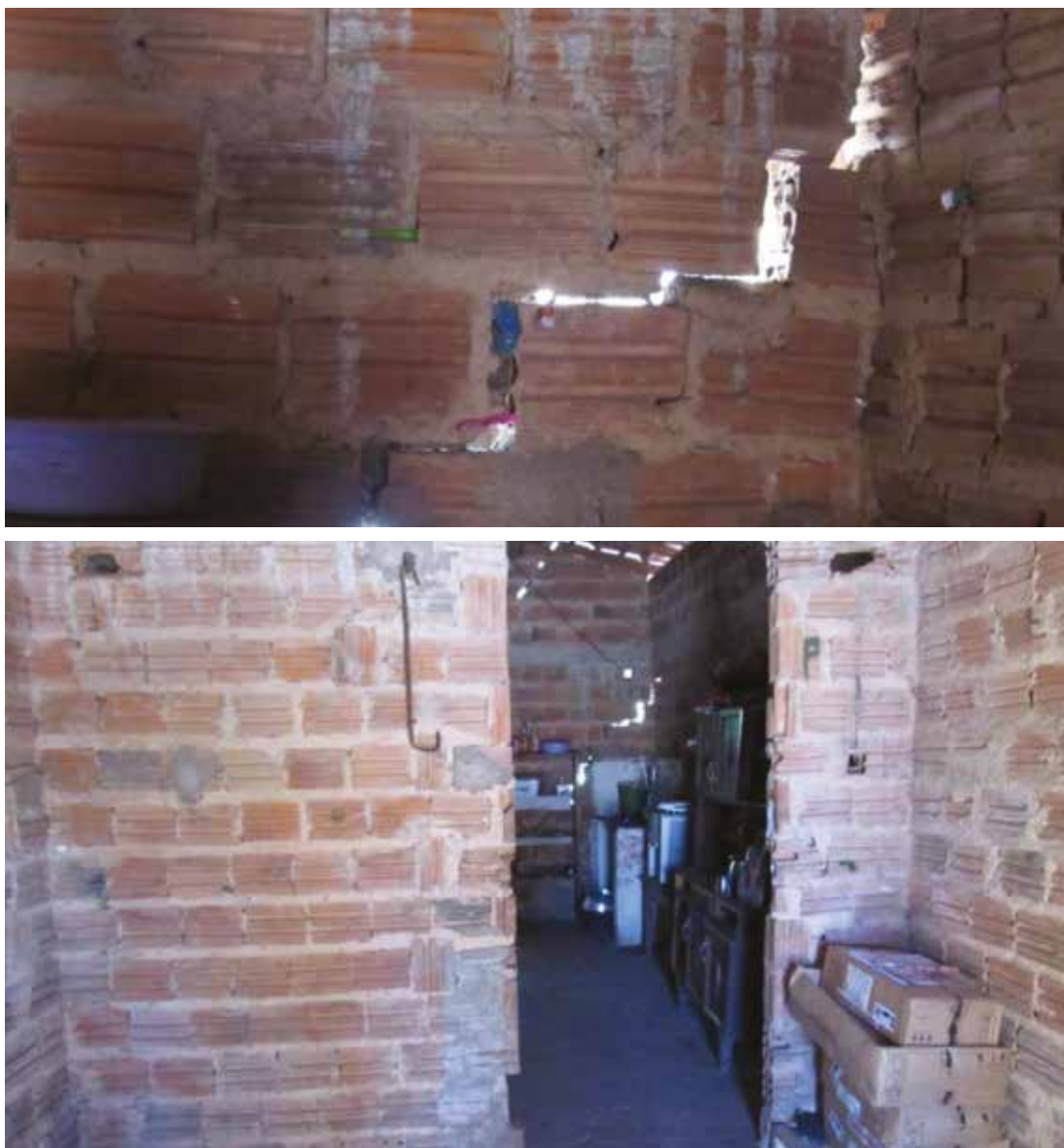
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308 The train horns are sounded in emergency situations or when the train draws close to the perimeter of a rural community or neighborhood in order to communicate that it is drawing near.





Photographs 79: Cracks in houses located around the EFC, which occurred after work to widen the Railway was begun.n.



- Environmental degradation. A particularly grave situation is the degradation of the Pindaré River, an important river located at the edge of the territory of the communities in question. The Pindaré River is the primary tributary of the Mearim River, which is the largest river in Maranhão State. It occupies an area of 40,000 km<sup>2</sup> and is 720 kilometers long.<sup>309</sup> During the work done to widen the EFC, the river was affected by the dumping of construction material in the river bed, causing sedimentation along the river banks. In addition, the construction projects diverted river water for use in construction. The communities noted a significant decrease in river volume and fish pop-

309 Martins, Marlúcia Bonifácio e Oliveira, Tadeu Gomes, (2011), Amazônia Maranhense- diversidade e conservação, p. 71.

ulations in all of the branches of the river in the region, which is a grave threat to the right to food and a dignified life for the communities of Vila União and Vila Concórdia.

- Finally, it is important to highlight the spiritual dimension of the earth and Pindaré River for the people that live in the communities which have been referred to in this report.
- In Vila União and Vila Concórdia, the people possess a rather special relationship with the land and the Pindaré River: they see them as something valuable both from a sentimental and spiritual point of view (as well as essential rights in order to maintain the necessary conditions for a dignified life). It is very common for the people to mention how, in past times, they fed their children with the food that they produced and that there was great abundance. They also relate the difficulties that were had in the fight for land and how important the unity among all of them was to winning that right. They are experiences that have favored a sense of belonging to the territory. The ways of relating to the river are diverse: the oldest inhabitants have a mother-child relationship; the waters are the great mother that fed them, that welcomed them with abundance when they arrived in the area, that protected them in difficult moments... it is life itself.
- The constant alterations in the communities' landscape influence the relationship between the people and the territory, damaging the identity and memory of these communities. In this way, it is also necessary to highlight that the environmental degradation of the Pindaré River and the transformation in the landscape surrounding their communities damage the groups' cultural patrimony and landscape heritage

Photograph 80: Pindaré River



- Breach of signed agreements made by the company to the communities. During the work to widen the EFC, Vale S.A. realized meetings with the inhabitants of the two communities and promised to carry out actions to mitigate and repair the negative



impacts caused by their construction work. The public meetings in Vila União and Vila Concórdia were characterized by a lack of precise and clear information regarding the impacts that the construction work would cause and also by a series of signed agreements that were never fulfilled by the company.

- One of Vale S.A.'s signed agreements concerned the construction of a wall along the railroad and safe overpasses to cross the tracks. These two interconnected measures would diminish the risk of death, both for people and animals, since they would both impede access to the tracks and permit free circulation at the installed overpasses. Nevertheless, the wall was never built and only the community of Vila Concórdia was granted the right to a safe overhead crossing.<sup>310</sup> Currently, this overpass is in a deplorable state and no longer offers adequate safety conditions (possibly because the construction material used was of low quality or because of a lack of maintenance by Vale S.A.). In Vila União, the company never fulfilled the signed agreement and did not build an overpass.

Photographs 81: Overpass located in Vila Concórdia. Overpass' protective mesh in precarious conditions.



Other signed commitments that the company made to the communities were: a) improvements to the communities' access road (the only access road suffered grave deterioration because of intense use by the company's heavy trucks during construction); and b) the offer of employment openings for the communities' members.

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<sup>310</sup> Nevertheless, it must be noted, that the building of the Vila Concórdia overpass was only achieved in response to large popular protests in the area in 2012.



In the first case, the company only realized improvements to the access road during the time in which it used it for its construction projects. Even though it continues to be damaged by the constant passing of train traffic, the company has not realized the promised road maintenance.

In the second case, the company only partially fulfilled its signed commitments since it contracted less people from the communities than what was originally agreed upon, and it gave them the most back-breaking and worst paying Jobs.

Even though the construction projects to widen the EFC have been completed in the area, their impact remains. What has been seen is a gradual worsening of the violations of the rights previously mentioned, since no measures are being implemented to mitigate or repair these violations and the growing amount of train traffic, as a direct and immediate consequence of the project, only tends to intensify them.

This reality is marked by diverse conflicts between the communities and the company responsible for the railway work. Those affected by the negative impacts of the project are starting to, little by little and in greater numbers, become aware of their rights and to identify those responsible for the violations they have suffered, and the institutions and legal instruments available to revindicate their rights.

The social protests looking to revindicate these rights, both against the company and the State, are constant along the length of the Railway; nevertheless, the communities often find themselves harmed when they exercise their rights to freedom of association, expression and thought since both the company and the State try to criminalize their fight and resistance by using judicial measures against them. In Vila União and Vila Concórdia, significant protests have taken place since the beginning of the project to widen the railway, being especially noteworthy the protest in Vila Concórdia in 2012 (through which that community obtained the right to the construction of a railway overpass), and in Vila União in 2016. In this last protest, none of the demands made by the community were met and one community leader was criminally charged by the company, even though it was a peaceful protest carried out within the framework of the law. Cases of criminalizing human rights defenders are repeated along the “Corredor de Carajás”.<sup>311</sup> Since the beginning of construction to widen the EFC, 170 individuals have been charged by the Vale S.A. transnational mining company in Pará and Maranhão States (between 2013 and 2017), among them people from indigenous and quilombola (rural Afro-Brazilian) communities.<sup>312</sup>

All of these cases of violation of rights are interconnected and interrelated, having a negative impact, as has already been seen, on the quality of life of those living in these communities. The Federal Constitution of Brazil (1998) consecrates the dignity of human persons as the basis of the Republic (Article 1, Numeral III) and establishes the creation of a free, just and solidary society as one of its fundamental objectives (Art. 3, Numeral I).

The legal expert Ingo Wolfgang Sarlet<sup>313</sup> declares that: “The dignity of persons, as an

311 “Corredor de Carajás” is the expression currently used to refer to all of the territory located along or around the EFC.

312 Domenici, T. (2017). Processados pela Vale [Charged by Vale], Pública - Agência de Jornalismo Investigativo, <https://apublica.org/2017/11/processados-pela-vale/> (consulted on March 13, 2018).

313 SARLET, Ingo Wolfgang. (2008) Dignidade da Pessoa Humana e Direitos Fundamentais na Constituição Federal de 1988 [Dignity of the Human Person and Fundamental Rights in the Federal Constitution of 1988], 6. ed., Porto Alegre: Livraria do Advogado, p. 88-89.



indispensable basis for all fundamental rights, demands and presupposes the recognition and protection of these fundamental rights in all of their dimensions. That is, when the fundamental rights inherent to the person are unrecognized, their very dignity is denied them.”

As well as protecting the fundamental rights to housing, health, food, education, and the social rights regarding work and a healthy environment, the prohibition of social degradation must be guaranteed.

The value of the dignity of persons is reaffirmed through its recognition by international treaties to which the Brazilian State is an adhering party: (the International Convention on Civil and Political Rights and International Convention on Economic, Social and Cultural Rights, both from 1966 and approved by the General Assembly of the United Nations; the American Convention on Human Rights or Pact of San José, in 1969; and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights or Protocol of San Salvador, in 1988, among others).

## 2.1 Omissions of the Brazilian State Regarding the Negative Impacts Resulting from Projects Realized by Vale S.A.

Once the negative impact and repercussions of Vale’s projects on the right to a dignified life for the members of the communities in question has been understood, it becomes important to describe and analyze the role of the State in these violations.

Initially, as has already been mentioned, one must highlight the lack of a study done to analyze and mitigate or repair the damages caused by the construction of the first rail line, which have only worsened and intensified during the last 30 years.

The initiation of the endeavor to widen the EFC also contributed in a significant way to the intensification of the negative impacts on communities and there is no doubt that there will only be new impacts during the next few years, above and beyond the intensification of those that already exist, given the projections that the company has released regarding the increase of mineral exploitation in the Carajás Mountains, derived especially from the S11D Project.

### 2.1.1. The Breach of Principles and Norms Regarding Environmental Matters

The initial stage for planning projects that might have an environmental impact is the moment in which an environmental license must be obtained. CONAMA<sup>314</sup> establishes the rules for the realization of this process, which must be overseen by IBAMA,<sup>315</sup> according to the responsibilities that were assigned it by National Environmental Policy.

314 The National Council on the Environment (CONAMA) is a consultative and deliberative arm of the State that forms part of the National Environmental System (SISNAMA). Created by Law No. 6.938/81, it is in charge of National Environmental Policy, as decided by Decree No. 99.274/90.

315 The Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) is a self-sufficient federal body, tied to the Environmental Ministry, with juridical personhood under public law and financial and administrative autonomy. It was created in 1989 by Art. 2 of Law No. 7.735 and possesses the structure established by Decree 8.973, issued on January 4, 2017. Its primary functions are those related to federal environmental policing power and the execution of activities such as the federal concession of environmental licenses, environmental quality control, authorizing the use of natural resources and the oversight, monitoring and control of the environment. Additionally it realizes other complementary and subsidiary activities for the Federal Union, in conformity with the currently applicable legislation

According to Brazilian legislation, three phases must be completed in the process of obtaining an environmental license: a) prior licensing: planning stage in which IBAMA must analyze the environmental viability of the project and its location; b) installation license: IBAMA authorizes the beginning of construction for the project; c) operational license: IBAMA authorizes the functioning of the completed project.

During the process of environmental licensing, IBAMA consults environmental organizations, institutions that oversee historical patrimony and entities that represent the affected communities. Public hearings are the main form in which the affected communities participate in the decision-making process.

One of the criteria taken into account when considering the possibility of granting an environmental license is the size of the impacts that the project's realization could cause: if it could cause significant environmental impact at the national or regional level than IBAMA must oversee the process.<sup>316</sup> Legislation also indicates that certain activities that could modify the environment can only be carried out pending the elaboration of an Environmental Impact Study (EIS) and its corresponding Environmental Impact Study Report (EISR).<sup>317</sup> The activities carried out to widen the railway are included in the activities that require an EIS and EISR. Even though the endeavor in question has to do with the widening of a railway, a project that affects an entire region, IBAMA authorized the environmental licenses (prior, installation and operational) according to the application submitted by Vale S.A., through a "simplified" regime, in total contradiction with environmental legislation.<sup>318</sup> This was a grave omission on the part of the federal organization in charge of environmental management/oversight with regards to the fulfillment of its responsibilities.

One of the principal consequences of the simplified licensing process is the removal of the requirement to undertake an EIS-EISR. The Environmental Impact Study is an important mechanism for measuring the negative impact that a project will cause, and the measures that must be taken to minimize, compensate for, and/or repair that impact. At the same time, the Environmental Impact Study Report is important to guarantee the full comprehension and the adequate dissemination of the study's results. The lack of realization of the EIS-EISR resulted in various violations of the rights of the communities affected by the project, such as the underestimation of the size of the communities and the area affected by the project, the lack of free, prior and informed consent from traditional communities and indigenous peoples' affected by the project, etc.<sup>319</sup> In its place, the company only did an Environmental Study and the complimentary Basic Environmental Plan EA-PBA for the project, which are much more limited in scope.

IBAMA also has the responsibility to oversee the fulfillment of the conditions mandated in the environmental licenses that it approves, this being another area of omissions committed by the entity, primarily in relation to levels of noise pollution, the monitoring of the tremors

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316 CONAMA Resolution No. 237, Article 4.

317 CONAMA Resolution No. 001, Article 2.

318 The basis for disregarding these basic rigors of Brazilian environmental legislation might be the fact that the project in question could be considered to fall within the dictates of CONAMA Resolution No. 349/2004, which had taken effect a few months prior and which regulated the granting of environmental licenses both to railway projects with a small environmental impact and those projects already in operation.

319 According to CONAMA Resolution No. 001, issued on January 23, 1986, EISs should contain detailed environmental diagnostic studies that take into account the biological, socioeconomic and environmental impacts of the project, defining alternative intervention methods or forms of mitigating impacts, and include the elaboration of programs to follow-up on and monitor the positive and negative impacts of the project. The EISR should contain the conclusions of the EIS and present them in clear and understandable language in order to satisfy societal demands for information about the project and its impacts





caused by the heavy machinery used in the construction projects and the river sedimentation caused by the dumping of construction waste.

### 2.1.2. Access to Justice

The rural communities of Buriticupú are located at a great distance from the headquarters of the municipal offices and do not have adequate means of public transportation to travel there; these factors obstruct their ability to access judicial institutions.

The Buriticupú district currently functions with two judges (until a few months ago, it had only one), covering a region that contains two municipalities and 100,000 inhabitants. The district currently has more than 12,000 judicial processes underway, which significantly limits access to justice in Buriticupú.

Cases that fall under federal jurisdiction must be processed in the city of São Luís, located 400km away from the rural communities in question. At the same time, both the State and Federal Prosecutors Offices and Public Defense Offices lack the structure and personnel necessary to attend to all the existing demand.

Besides the structural problems, the communities' access to justice was blocked by the lifting of the court ordered stay originally granted in Public Civil Suit (ACP) No. 0026295-47.2012.4.01.3700, presented in the 8th Federal Jurisdiction of the Judicial Section of Maranhão State.

The illegalities present during the process to obtain the environmental license for the widening of the EFC, previously explained, resulted in legal action before the courts with the objective of putting a stop to the violations of rights they caused. In 2012, three civil society organizations in Maranhão State, with the assistance of the Public Defense Office, filed a Public Civil Suit that questioned the process through which the project's environmental licenses were granted and requested their nullification and an immediate suspension of construction until these irregularities were remedied.

On July 26, 2012, the environmental licensing process was suspended for 15 days due to the preliminary decision handed down regarding the previously mentioned Public Civil Suit.<sup>320</sup> Lamentably, this court ordered suspension was lifted after a higher legal body (the Federal Regional Tribunal of the 1st Region) accepted Vale S.A.'s petition to "nullify the preliminary suspension/stay";<sup>321</sup> the Tribunal decided that the suspension of construction and of the environmental licensing process, in spite of their illegality, **constituted a threat to the public order and national economy.** (emphasis added).

After two months, IBAMA issued the installation license for the project. Around the same time, the contract between BNDES<sup>322</sup> and Vale S.A. was signed to finance the project; this project is still ongoing.

320 Procedure No. 0026295-47.2012.4.01.3700, presented in the 8th Federal Jurisdiction of the Judicial Section of Maranhão State by the Sociedad Maraense de Derechos Humanos [Maranhão Society for Human Rights], the Consejo Indigenista Misionero [the Indigenous Missionary Council], and the Centro de Cultura Negra del Consejo de Maranhão [the Maranhão Council's Black Cultural Center] against Vale S.A. and IBAMA.

321 The use of this judicial mechanism, the "nullification of a preliminary suspension/stay" was the object of a hearing before the Inter-American Commission on Human Rights during its 152nd period of sessions in 2014. On this occasion, Mr. Alaíde Abreu da Silva, of Buriticupú, was present to denounce the use of this judicial measure as a way of guaranteeing the continuance of the projects related to the widening of the EFC.

322 Brazilian State Company whose principal objective is to finance investments in all sectors of the economy

The suspension of a court ordered stay is permitted by Brazilian legislation as a mechanism that can be used by a tribunal to nullify the effects of a judge's preliminary decision when it considers that such a decision poses a threat to public order, public health, public safety or the public economy. Therefore, it permits political analysis of the case in question, not just legal analysis.

At the same time, Brazilian tribunals' jurisprudence understands and establishes that private companies (when they have been given a concession or permission to lend public services) can legitimately request the suspension of a court ordered stay when the petition is in the public interest, given the nature of the public services assigned to them.

In the present case the suspension of the court ordered stay was given under the pretense that this would be detrimental to the public order and the economy. Two of the points that were analyzed as a basis for the decision were the supposed losses that Vale S.A. would incur because of the suspension of the construction project (approximately 40 million Brazilian Reales) and the social cost of the massive layoffs that the companies executing the project might initiate.<sup>323</sup>

It should be stated that other civil suits questioning the legality of the environmental licensing process for the widening of the EFC are currently being processed by the judicial system in Pará and Maranhão State. One of the most critical points is the lack of prior consultation of local people, traditional Amazon communities, according to the terms of ILO Convention 169, accepted and ratified by the Brazilian State.

### *2.1.3. The Criminalization of Social Protest*

As has already been mentioned, the communities affected by the EFC have been mobilizing to revindicate their rights. The lack of spaces for dialogue and mediation plus the already described delays and inefficacy of judicial decisions to put a stop to the violations brought about by the projects to widen the EFC have forced the communities to realize diverse peaceful protest activities, for example, blocking access roads to quarries that supply the construction projects, and in some cases, blocking the railway itself.

Confronted with these social protest activities, Vale S.A. has used security forces and legal means to persecute the protestors, especially those inhabitants of the area that have assumed leadership roles in defense of their communities' collective rights. Besides the criminal charges brought by the company against these individuals, in some cases security personnel have used excessive force and violence against protestors.

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323 In his decision, the President of the Federal Regional Tribunal of the 1st Region argues that: "In this moment it is evident that the paralyzation of the construction projects would be much more pernicious to the environment and to the general population than their continuance".



### III. Experiences of struggle and resistance in Vila Uniao and Vila Concórdia

Since 2007, thanks to the presence of the Comboni Missionaries in these two communities, they have been possible to offer support for their struggles and resistance. Based on greater knowledge of the reality facing these communities, a coalition of members of the Catholic Church, investigators, professors, university students and social movements and organizations have given life to new initiatives, resulting in the formation of the Rede Justiça nos Trilhos ("Railway Justice Network").

Through a series of activities, including formation, encounters with other communities to exchange information and experiences, and legal and communicational help, the Rede Justiça nos Trilhos has been supporting the struggles and resistance of the communities affected by the EFC all along the Corredor de Carajás.

These encounters strengthen the life, spirituality, mysticism, faith, and, primarily, the struggles and resistance within the territories, always with the objective of finding alternatives to the State's forced development plan for these communities. Among the activities realized in the communities in question, the raising of awareness regarding rights, the realization of a course on agroecology and legal support for the people who have been criminally charged stand out.

The work to raise awareness concerning rights has helped the communities to understand the different impacts the railroad widening has had on their lives and the different responsibilities of those involved (the company and/or the State) and to identify the mechanisms that exist for them to demand the fulfillment of their rights.

The course on agroecology's objective was to stimulate productive practices based on an alternative model to that imposed on the region (mineral exploitation and its associated megaprojects) within a framework of emancipation.

The legal support given to the individuals criminally charged by the company has given a certain sense of security and confidence to popular leaders as they confront the difficulties and threats they have suffered. For example, in 2016, one of the leaders of Vila União was criminally charged by the company because of their social protest activity; this legal action was judged to be improper and dismissed, which signified a victory for the community. In a wider sense, the legal team has helped with collective legal actions that target the company as the only party responsible for the damage caused to diverse and distinct communities along the EFC.

Additionally, a communications team has published various articles to make the problems of the communities more visible and to give them a voice in a conflict that has been symbolically impregnated with great violence and the excessive use of force. Another important role that this team has had is the motivation of young people to register and document the daily violations of rights that they undergo.

Since its beginning, Justiça nos Trilhos has worked to empower the leaders of the communities affected by the Carajás Railway by way of concrete actions, directed toward the



defense of life and territory, drawing near to the people and their reality, listening to their desires, giving voice to their revindications and denunciations, supporting their struggles and resistance.

In 2016, members of Rede Justiça nos Trilhos and of the communities affected by the EFC were part of a type of “school” for the defense and assertion of human rights, carried out by the Panamazonian Ecclesial Network (REPAM), in which they could present the violations of human rights tied to the chain of mining activities, and specifically, the impacts of the EFC. From this encounter commitment was born to bring more and more information and guidance to these communities regarding their rights, and strategies to defend them.

Once the members of the Rede and communities affected by the EFC returned to their territory, they put into effect various activities that they had learned in the REPAM “school”; leaders also came up with new initiatives to continue the defense of a dignified life for these communities. Thanks to the support of REPAM it was possible to organize a strategy to assert rights through a denunciation made in a thematic hearing before the Inter-American Commission on Human Rights. After several months of compiling all of the documentation possible relating to the history of the conflict, its impacts, and the rights violated, it was possible to realize this denunciation.

## **IV. Demands of the vila união and vila concórdia communities**

Given the violations of rights that have occurred, the communities of Vila União and Vila Concórdia demand that the Brazilian State:

- 1) Consider, within an opportune time, all of the suits and legal actions that have been presented regarding possible illegalities in the environmental licensing process for the projects related to the widening of the EFC, especially the Public Civil Suit previously mentioned here.
- 2) If these illegalities are proven, the consequent damages should be recognized, rapidly applying measures for their comprehensive reparation, of which the following should be emphasized: Initially, the environmental licenses related to the widening of the EFC should be nullified with the immediate stoppage of work on the EFC. Additionally, until Vale S.A. finishes the complete implementation of reparative measures, the company should be declared “not apt” to participate in any contract with public banks that relate to the financing of its projects. In the case of projects that are currently in progress, the release of remaining funds should be suspended, and previously released funds should be rescinded when appropriate until the company has carried out all of the measures necessary for the recuperation of the environment in damaged areas and the comprehensive reparation of the affected communities.
- 3) Rigorous and rapid criminal investigations of the possible environmental crimes previously mentioned;
- 4) Constant oversight of the activities of Vale, S.A. by the competent authorities, in particular ANTT and IBAMA;



5) The regularization of land ownership in the territories.

The communities also demand that Vale S.A. recognize the impact caused by their work and the application of the necessary measures to mitigate, compensate for and/or repair the damage caused. Even if the company does not explicitly recognize the violations that have been treated here, it must better its corporate practices of social responsibility and respect for human rights, meeting the following list of demands, without taking away from the validity of others that are being discussed or that might be agreed upon later:

- 1) Implementation of all of the infrastructure necessary to guarantee the security of those crossing the Railway: the construction and constant maintenance of a viaduct in Vila União; the repair and constant maintenance of the existing bridge in Vila Concórdia; the construction of a wall to enclose the tracks; the installation of adequate lighting around the safe crossing sites (to be carried out by both the company and the State);
- 2) Repair and constant maintenance of the access roads to the communities, since the wear caused by the heavy machinery used to maintain the railroad deteriorates these access roads within a short period of time;
- 3) Implementation of soundproofing measures in necessary places, especially schools and health centers;
- 4) Covering the top of all the train cars on cargo trains that carry iron ore in order to avoid air pollution;
- 5) The implementation of measures to diminish the tremors caused by the passing of trains and heavy machinery that the company needs to use near inhabited areas;
- 6) Elimination of cargo train transport during the night hours;
- 7) Environmental recuperation of all of the areas degraded by the projects to widen the EFC (the Pindaré River and adjacent areas);
- 8) Implementation of improvements in the area's cell phone system;
- 9) Implementation of a water storage system;
- 10) Construction of a sports center to be used by both communities;
- 11) Financing of projects that incentivize family agriculture in order to gradually diminish the dependence of the communities on mining.





# Chapter 3.

## Conclusions and proposals:

### 3.1 In Relation to the Violation of the Right to Free Determination, as a Basic Principle of the Exercise of Collective Rights:

- **Recognition and delimitation of integral territories at the national, regional and international levels:** Part of the strategy and response of indigenous organizations and peoples that have decided to oversee and control their own territories according to their customs, traditions, beliefs and political decisions. In this vein, the integral territories are based on indigenous autonomy, which is the faculty that indigenous peoples have to organize and order their internal life according to their own values, institutions and mechanisms, within the framework of the State to which they pertain. This proposal is based on legal, anthropological, historic and geographic foundations that seek the recognition of all levels of government. It should be mentioned that some indigenous peoples in the Amazon have already achieved some form of recognition of their territorial autonomy, such as the Wampis in the Peruvian Amazon and the consultation protocols “Munduruku do médio Tapajós” developed by the Munduruku of the Santareno high plains in the communities of Pimental and São Francisco near Montanha y Mangabal, in the Brazilian Amazon. Other indigenous peoples have also begun such processes (Awajún, Achuar...).
- **Land access for peasant communities** through the formalization, restitution and fair distribution of the land, at the same time promoting the adequate use of the land according to their need:
  - Implementation of public goods and services such as education, health, recreation, infrastructure, technical assistance, food and nutrition, among others,



which will improve the wellbeing and provide better living conditions for the rural population.

- **Specific and priority protection for IPVI** (Indigenous Peoples living in Voluntary Isolation):
  - Expand their protected areas (intangible zones) taking into account their settlement areas, their hunting routes and their migration patterns.
  - Moratorium on extractive activities around said zones.
  - Establish peace agreements and dialogue among the surrounding indigenous peoples, quilombas (rural communities of African heritage) and peasants.
  - The intangible zones should take into consideration the migration patterns of the indigenous peoples in voluntary isolation.
- **Reformulation of the concept of national interest, to be substituted by the concept of “common” or “public” interest** regarding oil, extractivist and commercial activities in protected areas.
- **Respect and assumption of the responsibilities entailed in the international treaties signed and ratified by the countries that make up the Pan-Amazon (ILO Convention 169, the Convention on Biological Diversity, ICESCR, etc.).**
- **The urgent development of a strategy to strengthen the Panamazonian territories’ representative social organizations**, taking into account the resolutions issued by their internal governing organizations (traditional and/or ancestral).
- **Respect and honoring by national governments and regional and international governing bodies of the decisions taken by Panamazonian territories’ representative social organizations** when they reject large water, mining, agricultural, fish farming, renewable and non-renewable energy projects, etc. (in their different phases of design and execution).
- **Create and favor internal monitoring systems** that alert the communities when confronted by processes that undermine their territory.
- **Strengthen local institutions in their environmental decision-making processes and management/oversight as well as their civil participation mechanisms**, making them effective protectors and guarantors of human rights.
- **Fulfillment by Panamazonian governments of the treaties regarding the protection and preservation of the Amazon, the mitigation of climate change, and respect for human rights**, thus generating the conditions and guarantees necessary to build and develop a differential public policy for the Amazon foothills.
- Promotion and development of policies, programs and projects that incentivize the use of best practices in traditional agricultural and fishing production in the traditional communities of peasants and river dwellers; and the strengthening of the peasant family economy as the basis for the construction of a stable and lasting territorial peace in rural areas.



- Respect for the structure and territoriality of the area's governing organizations within the framework of the peoples' right to self-determination.
- The honoring by national, regional and international bodies of the processes of territorial demarcation carried out by the local peoples based on their internal and ancestral organization and governance.
- Fulfillment of ILO Convention 169 and its enforcement in indigenous territories: the approval and honoring by governments of the protocols for prior consultation elaborated by the communities (See Point 5.1).
- In this way, the government and companies that wish to begin the construction of business or other endeavors in the region will know, through the prior consultation protocol developed by the community, the correct form of consulting them before beginning any part of the construction process. This protocol specifies the place(s) where the consultation should be carried out, the people who should be consulted, and the form that the consultation should take, thus ensuring the respect of the community's way of life and social organizations, and may include activities like:
  - Organizing conferences and showing films that demonstrate the impacts suffered by indigenous peoples,
  - Valuing and registering the knowledge of the elders of the community.

### 3.2 In Relation to the Violation of the Human Right to Identity:

- **The promotion and sustaining of dialogue with the essence of the Panamazonian communities:** design and execution of alternative strategies like the processes of comprehensive human development, which seek to integrate organizational, productive and other relevant processes which human beings use to daily better their internal (with their families and communities) and external (with nature and territorial entities) relationships. Maintaining this dialogue among Nature, individuals and the community will help to develop more harmonious relationships and greater wellbeing, which are translated into a BUEN VIVIR ("good living") between people and creation.
- **Peasant Identity:**
  - Work processes, reflective spaces and empowerment as subjects of rights.
  - Design and elaboration of national, regional and international norms and recognitions that grant legal existence and juridical personhood to peasant and river-dwelling communities, facilitating their access to the administrative registration process.
  - Continue and strengthen the efforts to solidify in binding international treaties the United Nations Declaration on the Rights of Peasants and the Guiding Principles for Businesses and Human Rights.
  - Declarations protecting and promoting peasant and river-dwelling communities since they are of vital importance for the cultural, social, environmental and economic life of the Pan-Amazon.



- Promotion of productive agricultural experiences that respect and can cohabitate with all forms of life, permitting those in the territory to successfully confront edaphoclimatic conditions in order to strengthen food security and the local economy.
- Field work and formative processes to motivate the communities to create a new lifestyle and revindicate within families the peasant-production culture and rootedness in the land, strengthening the unity among communities, reconciliation and peace.
- **Indigenous identity:**
  - **Increase dialogue with the communities, informing them** of the negative impacts of informal mining, megaprojects and other projects that notably modify their lives.
  - **Reactivate and structure protective social bases and organizations** in strategic places.
  - **Carry out awareness-raising campaigns** at all levels (national, regional, and international) concerning the reality affecting indigenous peoples in the Pan-Amazon.
  - Extend, perfect and organize the already existing **radio network** for exclusive use by associations and communities.
  - **Strengthen the indigenous participation in national, regional and international forums** discussing territorial management.
  - The valuing of indigenous culture within the framework of territorial protection:
    - Strengthen shamanism among young people.
    - Combat religious proselytism.

### 3.3 In Relation to the Violation of the Human Right to the Non-Criminalization of the Defense of Human Rights

- Generate the necessary conditions so that the mechanisms and spaces for civil participation in environmental matters and territorial organization and planning, as well as the guarantees to access to information and decision-making processes, efficiently and opportunistly support the rights of the peoples that inhabit the Pan-Amazon and protect their defenders.
- Take into account the principles regarding prevention and defense of rights and liberties during the elaboration of public policies and the development of legislation (both at the local and national levels).



- **To ensure effective civil participation in environmental matters, the spaces and scenarios for that participation must be strengthened with effective tools for prevention, monitoring and control; the same can be said for the guarantees regarding civil society participation,** especially regarding those communities and organizations affected by megaprojects (extractivist, large-scale agriculture and fish farming, water projects, etc.).

### 3.4 In Relation to the Violation of the Human Right to Water:

- **Free screenings for populations exposed to water contamination:** health screenings should be organized in the exposed populations, with follow-up exams for members of the population who test positive for significant levels of heavy metals. The objective is to follow up on and organize an adequate health response according to the needs of affected individuals.
- **Strengthen the response capacity of the health sector:** both nationally and regionally, in order to mitigate the risks related to exposure to oil spills and other water pollution (in both surface and groundwater). Given that such spills and contamination are highly probable, protocols should be developed and activated that permit a rapid response in order to prevent greater damage to the health of affected populations, both in individual and collective terms.
- **Initiate and strengthen programs to administer safe water:** in order to prevent affected persons from receiving continued contamination during their water consumption, a primary survival need. In this vein, these programs should be supervised by a competent authority which coordinates between different levels of government (local and national). It should be mentioned that these programs should be carried out within an intercultural understanding of health. At the same time, in order to ensure a more agile response from the health sector during oil spills, health centers need infrastructure improvements and better resources, including adequate personnel and medicine or alternative treatments.
- **System for universal access to health care (prevention and follow-up):** Promote universal access to health care for all people, which should include all the coverage benefits necessary to confront health ailments relating to cancer symptoms and other possible health repercussions. In the same vein, state financial coverage must be guaranteed along with the promotion of mechanisms to compensate environmental and health damages both at the population and individual levels permitting both environmental remediation and the repair of the damages caused.
- **Analysis and study of damage to hydrographic (drainage) basins and the elaboration of plans to alleviate and remedy such damage.**





### 3.5 In Relation to the Violation of the Human Right to Land and Adequate Housing:

- **That the States fulfill their international (United Nations) and regional (Organization of American States) obligations** with respect to the human right to land and adequate housing (New Urban Agenda, Sustainable Development Objective No. 11, signed and ratified treaties).
- **That the origin States for companies involved in extractivist**, water, agricultural and fish farming projects, etc. ensure, through the adoption of appropriate laws and political and administrative measure, that these companies (whose headquarters are located within the origin State's jurisdiction) respect human rights when they operate outside of the origin State's national territory. Exploratory companies should also assume responsibility for the damage that their projects have caused to the human rights of local populations.
- **Respect for the exercise of the right to land, realizing an independent revision of the land acquisition process carried out by successive mining companies and the current situation of the people** who were induced to sell their land to these companies, in order to obtain a detailed evaluation of the impact of these acquisitions on the living conditions and right to adequate housing of the affected persons.
- **Fulfillment by Panamazonian Governments of General Comment No. 7 on the International Covenant on Economic, Social and Cultural Rights**, which prohibits forced evictions unless alternative housing is provided by the States.
- **Restitution of the land and property affected by forced evictions and the comprehensive reparation of the damages caused** to families and the environment; free circulation and access to natural resources.
  - In cases in which illegalities have been (or will be) proven, the consequent damages must be recognized with rapid implementation of the necessary measures for their comprehensive reparation, among which the nullification of permits and the cessation of operations stand out.
  - The companies that have committed illegalities should be declared "not apt" to enter into any kind of contract with public banks in order to finance their projects. In the case of projects that are currently in progress, the release of remaining funds should be suspended, and previously released funds should be rescinded when appropriate.
- The impacts caused should be recognized, applying measures to mitigate, compensate for and repair the damage. Even if the company does not explicitly recognize the violations that have been treated here, it must better its corporate practices of social responsibility and respect for human rights, undertaking the measures necessary to restore a dignified and adequate living space for communities, a safe, happy and "common home."

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