Regional Report on violation of Human Rights in the Panamzonian

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

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Bibliography
The Pan-Amazonian Ecclesial Network (REPAM), which is a structure that is duly endorsed and co-founded by the regional institutions of the Catholic Church: CELAM (Latin American Episcopal Conference), the CNBB (National Conference of Bishops of Brazil and its Amazonian Commission), the CLAR (Latin America and Caribbean Confederation of Religious Men And Women), the Latin America and the Caribbean, Cáritas International, and of Episcopal Conferences, the Conference of National Religious Men And Women, with the backing of the Vatican Dicastery for Human Integral Development. The REPAM brings together various references of the Catholic Church and other groups and people of good will, that work, among other many things, giving support and working in the integral defense of the territories, giving support to vulnerable groups (special attention to the indigenous peoples and farmers) and of their rights.

The REPAM aims to work on the 9 countries (Bolivia, Brazil, Colombia, Ecuador, Guyana, Perú, Surinam y Venezuela, and the French Guyana as an overseas territory) and the Pan-Amazonian region. We are working together with a diversity of organizations and territorial institutions, ecclesial structures and international networks that have experience in Human Rights and Advocacy and also with the cooperation of the Catholic Universities and other similar institutions in the region.

The REPAM was founded in 2014 together with Pope Francis’s socio-environmental encyclical “Laudato Si” on taking care of our common house. And this is from where, the REPAM, wishes to match its vocation to a close cooperation and to the giving of direct support and promotion of the Amazonian peoples and ecclesial organizations, to strengthen the efforts in the integral defense of this territory and the defense of its multiple actors who are criminalized or threatened from a perspective of Human Rights and the Social Doctrine of the Church.

We want, mainly, to motivate a deep reconciliation of the human spirit. We are living in a time of contradictions and of one of the most determinant breakthroughs to explain fragmented reality as humankind is, the struggle between the ones who put their hopes in
a power greater than us (beyond this world) and the ones that trust absolutely and in an autonomous way, in human capacity to make this world a perfect place.

With all this in mind, we feel a call to go back to a principle of convergence so both points of view, together and integrated, would be an spiritual impulse, and will contribute to a transformation that will raise the sense of life.

The complex dialogue, but so many times fertile, between the fundamental principles of Christianity and the foundations that support the premises of human rights, requires a perspective complementarity beyond the postures that prevent closeness. The love for others, that starts with valuing him/her and craves for his dignity, supports itself in the principle of mercy. Pope Francis expresses it in the “Misericordiae Vultus” Bull, (the face of mercy) of 2015, in which he calls us to:

"Let’s open our eyes to look at the misery of the world, the wounds of our brothers and sisters deprived from dignity and let’s be generous enough to listen to their cry for help. That our hands shake theirs and get closer so they would feel the warmth of our presence, of our friendship and brotherhood. So that their claim turns into ours and together we would break the wall of indifference... “ (MV No.15).

We are called to be fellow human beings if we want to build a different society; where the unequal and where the Human, universal, inalienable, independent, and indivisible Rights proposals’ are consolidated, and where, for the ones that believe, must be based on the principle of acceptance and love for others: “I have come to give you life, an abundant life” (Jn. 10, 10).

" That is why the church values mankind and fights for its rights, for their liberty, for their dignity. This is an authentic fight of the Church, while human rights are infringed... the church feels persecuted, fells uncomfortable. Because the church (...) can not allow the image of God being stepped on by others..." (Beato Óscar Romero. 1977).

That is why the REPAM and its Human Rights axle has as an objective to turn into a platform to work coordinately, structuring processes in which the owners of the territories are the ones that demand their rights, and we go along with them in their searches and struggles. In such a way, the REPAM acts as a force articulator to connect the working structures between territory and the ones that impact on a regional and international basis.

Therefore, the REPAM has created a School which specializes in the “promoting, defense and demanding of the Human Rights in the Pan-amazonian region”, that is the result of a deep discernment that starts with the listening to the screams and hopes of reality, to really get into this reality, to adopt a ecclesial story with lights and shadows, staying there with the
ones that suffer the impacts of this world system that cannot stand it any more and that pro-
duces more and more disposable people every time, to repeat what he the Pope points out.

This school has been promoted and coordinated, since its first edition, by the Executive
Secretariat of REPAM, in coordination with the Human Rights axle and is the result of the
efforts of different structures as: Missionary Indigenous Council (CIMI), Missionary Itinerant
Team, the Amazonian Anthropological and Practical Application Center (CAAAP), Caritas
Ecuador, Caritas Spain, the Human Right Center of the Catholic University of Ecuador, spe-
cial advisors (DPLF) the InterAmerican Commission on Human Rights –CIDH-), and other
structures, international church web (congregations, universities, Episcopal Conferences,
the UN Permanent Mission of the Holy See, specialized agents and centers), in Washington,
New York and Europe. And, in its second edition, we will have the support of social centers
and universities that work on the Pan-Amazonian reality.

Nevertheless, the essential work has been done by the territories themselves, (13 territo-
ries participated in the First Edition Of Our School that supports this evidence) who have par-
ticipated in the formation processes, reply, document registry, and international incidence
actions, each one at its own pace according to their reality, possibilities, and support of the
of the local instances of the 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 axle, and specially by Caritas Spain, who we deeply thank.

This document can be used to affirm our preferential option as Church and REPAM for
the most impoverished, threatened, excluded and can be also used to affirm 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: violation of Human Rights in the Pan Amazonian Region

The amazonian region is one of the ecosystems that are the most bio – socially diverse in the planet. It has 5.5 million square kilometers that feeds on huge rivers that come together in nine countries: Venezuela, Colombia, Ecuador, Perú, Brasil, Surinam, Guyana, Guyana Francesa and Bolivia. The Panamazonian Region shares unique characteristics due to the bio-geographical location that is composed of a great cultural and biological diversity: 33 million people, 380 indigenous communities, 140 communities in voluntary isolation, 240 spoken languages belonging to 49 linguistic families.

The availability of resources determined that in various moments of history people in the highlands considered the Amazona area as a place to be conquered. In the countries that share the Amazon basin que can register military, religious, comercial, and industrial ventures oriented to control its territory and in that way incorporate the natural resources reserves to the national economies. These isolated and often unsuccessful efforts during the precolumbian and colonial times, turned more systematic and constant in the first decades of the XX century until in the second half of that century, great portions of the Amazon territory was finally colonized, the closer and more accessible from the highlands, on the boundaries of colonization and where the resources are extracted.

The impact of the colonization policies, occupation of territories and the extraction of resources in the Amazon area have been of great impact on the ancestral peoples. The projects for the enlargement of the agricultural frontier led to internally displace people, kill them or subject them to servitude. Rubber tapping, gold mining and chestnut production were often done by slave indigenous labor. The execution of modern hydrocarbon and mining projects occupy spaces, pollute the environment and cause irreparable losses to the culture and social peace of the affected peoples.
In the most remote areas, ancestral people continue their lives in their traditional ways (even the ones in voluntary isolation), meanwhile the government’s policies and the extractive, industrial and commercial projects are insistently and forcefully pushing to enlarge their frontier to the pristine forest that constitute their home. Maybe the most compelling and dramatic feature of the nowadays Amazon region is the growing presence of armed actors. The national armies of each state have been strongly present in the region, sometimes motivated by border conflicts as an example we have the one between Ecuador and Peru, being the Amazonian region a boundary area, the presence of the military is permanent. On occasions, these military forces act as an armed wing of public policies of colonization, territorial occupation and the extraction of natural resources. The actions of illegal organized armed groups has turned the Amazonian region in a conflict zone and its habitants in victims of political violence.

The extractive industries and the illegal crops, multimillionaire activities based on the intensive exploitation of natural resources, rip the wealth of the soil at the expense of devastating impacts on the Amazonian environment and the health and social peace of the settlers. The profit is transferred to international financial markets to benefit a few. Little or none returns to the region to ease life conditions of the affected populations. In relation to these processes, the Amazonian population, indigenous and farmers, in general has assumed the role of “victims or affected” and that is how they are seen by the social and public policies of the states.

Nonetheless, the indigenous people, the farmers, riverine communities and the other various communities that have occupied these territories have developed production practices and lifestyles that are conscious with the environment that provides them with natural resources for their survival. And others even being more conscious of their reality have turned into actors, human and nature right defenders, because of the outrages and abuses caused by the external hegemonic interests. They are sure that the best response to negligence and silence has been resistance and persistent work in the activities that have laid the foundation of their Amazonian identity.

In the last decades of the XX century, the International Human Rights law has had an important development, in this context, the economic, social and cultural rights, the environmental rights and the collective rights of indigenous peoples have made progress through the approval of many international instruments. The majority of the eight Amazonian countries are part of the main international human rights treaties: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the Convention 169 of the ILO, Charter of the American Convention on Human Rights, American Convention on Human Rights, the Protocol of San Salvador on Economic, Social and Cultural Rights, among others. We can also include the main multilateral and international environmental agreements, like the Convention on Biological Diversity.

The indigenous people, farmers, settlers, riverine communities and all the ones that defend human rights and nature know that they have a very big challenge against a world that has chosen a mental monoculture and a cultural hegemony to communicate their complaints. Despite the creation of diverse regulatory frameworks and principles of protection of their human rights they know that they have to constantly speak out and remind the
world about their rights and make those rights that are institutionally recognized in the human rights framework be respected. They are conscious that many of the realities they live should be made known, same as the proposals and alternatives they have to make a better living under a real recognition that will highlight diversity and interculture having a clear compromise to protect their common house, their land, their natural resources, the Pacha Mama - “mother earth”, they also accept that they have to team up and share their struggles that are common to the whole region.

This report is acknowledged as a mean or tool that can reveal the many realities, problems and common factors of the Amazon region, the purpose of this report is to help the communities to identify their voices and become a constant reminder so that we don’t forget arbitrariness and violation of human rights and above all the recognition of such claims persists latently.

The present work’s main feature is being the result of a team work between the grassroots organizations and collectivities which starting on their conception want to report systematic violence. The 13 territorial references of human rights violation that will be presented hereafter not only evidence problems, data, or geographical locations, but are the result of various voices committed to the defense and promotion of human rights, that also suggest and work on mechanisms to obtain protection guarantees for those rights.

1.2.- Methodology of the analysis of reality:

As we have shared in previous pages, the cross-cutting of human rights of the REPAM has been accompanying situations of violation of human rights of various farming, River -dwellers and indigenous communities since the preparation of the first “School for the Promotion, Defense and Enforceability of Human Rights in 2016 (Coca-Ecuador): with the clear purpose of giving protagonism and empowering the territory and mainly the people and peoples that inhabit them, live in them and are living everyday the violation of its dignity.

Since then, four have been the objectives of the report that we have presented:

Picture 1.
• **Narrative of the reality**: It was carried out by the protagonists of this same reality. They are their same voices, images, the ones that support today’s systematization, the gathering of information of was the reality yesterday and the particular requests for a different tomorrow.

• **Interrelation of Human Rights**: The perspective of Human Rights employed in our analysis carries within it the need to make us conscious that even though we have chosen to focus on the violation of one Human Right per each territory, it is each and every one of the Human Rights that are violated with different magnitude and this is happening in all of the five countries that are part of this study: water, housing, health, protection of their civil and political rights, prior consultation which is free, well-intentioned and well informed, territory, collectivity. It is the dignity of the people and the peoples which we are analyzing against the profit of an economic system which focuses on the temporary achievements and effectiveness.

• **Legal analysis**: Besides analyzing the economic, sociological, psychological, relational, historical reality of the people and the peoples, we consider it is essential to carry out a detailed study of the regulations and public policies that the reference States are implementing to support a market economy that does not have its center view and attention in the Amazonian people and peoples. That is the reason why we have relied on teammates that pair with these realities in the same territory and are **members of the REPAM network**

• **Proposals for Public Policies and Regulations**: Each narrated reality encourages and leads to change proposals for such realities. That is how in this document we will find concrete proposals for each and every one of the 13 realities, ending with an specific section containing the conclusions we came up with and common proposals for the Pan Amazonian region.
As we can see, a methodology

- that starts with the territory and its changing reality, and refers to all its spheres (environment, relational, economic, legislative, sociological, historical, political...)
- that locates itself in the center and organizes it starting with the narration (visual, oral and written) of the people and the protagonists of such reality and that are the ones who are violated on their Human Rights.
- that focuses in one violated right in a significant way.
- To later put the same lens up higher and not miss the global reference to all the rest of the rights that add up to attack brutally the collective and personal dignity of the peoples and people that dwell in the Pan Amazonian region.
Chapter 2.

Violation of the human rights in the farming, riverine and indigenous communities: 13 realities that have an amazonian bolivian, brazilian, peruvian, colombian and ecuadorian face.

As we shared in the previous paragraphs, we have selected 5 Human Rights that significantly are violated in these 13 territories and peoples.

Analyzing deeply in each one of them we quickly get to the other rights that in a clear interrelated way, find their way, gratification and guarantee (access to justice) seriously hurt. These Rights are: Direito Humano à livre determinação, como princípio elementar do exercício dos Direitos coletivos.

- Human Right to free determination, as a basic principle of the collective rights practice.
- Human Right to identity.
- Human Right to not be criminalized because of the defense of Human Rights.
- Human Right to have water
- Human Right to a habitat

They work as a flashlight to focus on each one of the rights and from there widen the spectrum little by little until we complete the brutal reality of Human Rights violation that the Pan amazonian region lives in its farming, riverine, and indigenous communities everyday and for hundreds of years now.
2.1. Human Right to free determination, as a basic principle of the collective rights practice:

The collective rights have turned into the social assets for the political demands of the indigenous peoples, their battles against an hegemonic power have not lost the collective sense and the common interest of their demands. In that way, the sense of these rights has turned into the pre-condition for the revitalization of the political autonomy and the cultural identity.

The right to free determination is based on a principle upon which other fundamental values of liberty and equality are derived.\(^1\)

What was mentioned before can be demonstrated in article 1 of the International Conventions on Civil and Political Rights (PIDCP) and the International Covenant on Economic, Social and Cultural Rights (PIDESC) that determines:

> All peoples have the right of self-determination. Todos los pueblos tienen el derecho de libre determinación. 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 the indigenous peoples. The first one is referred to the substance of the principle of auto determination, that in itself holds a constitutive and a continuous aspects, and the second one to its reparative aspect.

The constitutive aspect requires that the design of the governmental institutions substantially evidence the result of the guided processes by the willingness of the people or peoples that are being governed.\(^2\) Accordingly, the continuous aspect requires that the design of the political institutions, independently from the processes that took them to their creation or transformation, lets people live, develop, and be capable of making significant decisions in the economic, social and cultural issues permanently.\(^3\)

Finally the reparative aspects refer to the effective and specific repairing actions for the acknowledgement or claim of the substantial elements of the free determination when the rights have been violated, these actions are the reflection of the set of international rules created for the protection of the indigenous peoples.

To make it simple, the understanding of the free determination follows a process of own identification and acknowledgement of the political and social self-management that will allow the collectivity to live under their own life conception, reflecting automatically dignity in respect and recognition.

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2. 2Ibid. Page. 151
3. 3Ibid pages 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, like freely establishing their political condition, freely pursuing their economic, social and cultural development; the same as pursuing their right to be autonomous or to self-govern in the internal and local issues, as well as to have available resources to finance their functions autonomously.\textsuperscript{4}

Referring to this, Article 7 of the ILO Convention 169 recognizes the indigenous people’s right to decide on their own priorities on their development process, in the way in which it affects their lives, beliefs, institutions and spiritual wellbeing and the territory they occupy or use in any way, and to control, as far as possible, their own economic, social and cultural development.

The reason for this regulation is given by the capacity the indigenous people must decide on their destiny and life, which must be respected by all state authorities and society.

**Violation of the right to have a Territory.**

The first signs of self-determination are related to the control of the physical space where they can develop all which is related to their ways of life, that is why the territory and the availability of natural resources are important elements. For this reason, Articles 20 and 32 of the Declaration\textsuperscript{5} determine the right of the indigenous peoples to enjoy safely their own means of survival and development, and the right to determine and establish the priorities and strategies for their development or the use they give to their land or territory and other resources.

The right to the territory is not limited to the land allocation, this right starts with the culture a community or a group of people identify in their own space where they develop their daily activities. As well as the territory determines a relation with home it also extends to an interpretation of human productivity either to obtain natural resources or to create new ways of production.

For the indigenous group Mundukuru of Brazil, the logic of limiting the use and occupation of their territory makes no sense in their social and political structures because the land they use and occupy gives meaning to their Wolds and they consider territory much more than just a physical space: is their natural habitat, jungle, with rivers, with all the creatures that move around, the place where they survive, of their own history, of their own social organization, of their own politics.

In the InterAmerican system, the territorial rights of the indigenous people and tribes are mainly founded in the Article XXIII of the American Declaration, and the Article 21 of the American Convention. The evolving and integral interpretation of the American Convention has permitted that the InterAmerican Commission (IACHR) and of the Inter-American Court (IACHR) give a sense of protection to the indigenous people’s rights and tribes related to their land and natural resources.

The Inter-American Court (IACHR) interpreted in its Article 21 of the American Convention

\textsuperscript{4} Referent articles 3 and 4 of Universal Declaration of Indigenous Peoples.

\textsuperscript{5} 5 Universal Declaration of Indigenous Peoples.
making a reference to the right to have property, the protection extends since indigenous people, have a very close relationship with their land, as well as with the natural resources of such ancestral territories and the intangibles elements that derive from them.6

It has been stated that the territory is the most significant factor for the development of the indigenous peoples and it is directly related to the effective enjoyment both culturally and socially. The Inter-American Court (IACHR), has also highlighted that the territorial rights of the indigenous people are related to the "collective right to survive as an organized group, having total control of its habitat as a necessary condition for reproduction of their culture, for their own development and to fulfill their life plans."7

This way, the states have the obligation to guarantee their effective participation in the decisions related to any issue that affects their territory, taking in account the special relation between the indigenous and tribal people and their land and the natural resources and considering their interpretation of the principle of self-determination.

Such is the importance of the right to the land, that in 2009 the IACHR published the report “Rights of the Indigenous and tribal people over their ancestral land and its natural resources” in this report, among other important aspects, it mentions that “The indigenous and tribal peoples have unique ways of life and their cosmovision is based on a close relation with the soil. The territory traditionally used and occupied by them are a main factor in their physical, cultural and spiritual vitality. This unique relation with their traditional territory can be expressed in many different ways, depending on the particular indigenous group we may be talking about and the specific circumstances; it can include the traditional use or presence, the preservation of sacred or ceremonial sites, settlements or sporadic farming, seasonal or nomadic collection of products, hunting and fishing, the customary use of natural resources or other featuring elements of the indigenous or tribal culture. As the Inter-American Court of Human Rights, “for the indigenous communities, the relation with their land is not merely a matter of possession and production but rather a material and spiritual element which they shall enjoy the full measure even to preserve their cultural legacy and transmit it to future generations”. "The guarantee to the right to the communitarian property of the indigenous peoples should take in account that the land is closely related to their traditions and oral expressions, costumes and languages, their culinary art, and rituals, customary law, the way they dress, philosophy and values."8

Based on the above, it is important to denounce the lack of consideration of the States regarding the ones mentioned above, as well as the breach of their duty to guarantee and respect the right to territory, which has caused serious risk to 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 the Acre state in Brazil. In this specific case there is identified the lack of demarcation of the territories of the indigenous people, therefore, there is still no suitable regulation. Besides the people highlight that the violation to the right to territory has caused plundering and thefts of natural products and has also facilitated the old practice of land-taking. There is no doubt that

7 IDH Court. Yake Axa Indigenous Community against Paraguay Case. Merits, Reparations, and Costs. 2005, paragraph 146
8 Inter-American Commission on Human Rights, Indigenous and tribal people rights over their ancient lands and natural resources, paragraph 1 (http://www.oas.org/es/cidh/indigenas/docs/pdf/Tierras-Ancestrales.ESPdfl)
the lack of efficiency of this right causes that principles correlated to the territory like the inalienability may not be respected leading to land trade and the concession to extractive industries, and other rights like the one to prior consultation.

In this context, the Inter-American Commission stresses that the protection guarantees to the right of property under the inter-American human rights instruments can be invoked by the indigenous and tribal peoples regarding territories that they own, but that has still not been titled formally, demarcated or delimited by the State. In the same line, following pronouncements of the IAHR Court “the States cannot grant concessions for exploration or exploitation of natural resources that are located in territories that have not been delimited, demarcated or titled, without an effective consultation and without the informed consent of the people”.9

In the procedural framework for the fulfillment and protection of their human rights of the indigenous peoples, especially the ones in voluntary isolation, it is important to mention the precautionary measures granted by the InterAmerican Commission (IACHR) for Ecuador on May 10th, 2006 in favor of the Tagaeri y Taromenani peoples, who live in the Ecuadorian Amazon Region and nowadays live in voluntary isolation or unseen. They declared: “the Interamerican Commission requests the Ecuadorian state government adopts effective measures to protect life and the personal integrity of the Tagaeri and Taromenani members, specially, adopt the neccessary measures to protect the territories they inhabit, including the actions required to prevent the entry of third parties”.10

As a result the ecuadorian State government implemented a precautionary measure plan for the protection of the Tagaeri y Taromenani indigenous peoples. In the framework of this plan, the Ministry of the Environment created a map of the historical presence, which revealed the mobility patterns of these groups in a certain territory. However, with the state government’s decision to exploit the oil blocks 31 and 43 the Ministry of Justice (that now controls the precautionary measure plan) published a new distribution map, which also served as a foundation to declare oil exploitation as of national interest.

This example illustrates the importance of delimiting the territory of these groups. In the first place, there should be a clear boundary line concerning their territories which will respect their ways of life. On the other hand, the delimiting should not be made subject of arbitrariness from the state government, as there could be interests that are opposed to the rights of the indigenous peoples.

This way, facing delays and omission from the state governments for the collective recognition of the territories, many indigenous peoples handle their own procedures of self-demarcation of the land as a process of accusation for how the soil has been affected and for the irresponsible and excessive use of the resources and they even design protocols or institutional political and legal structures that calls to respect their territory and their autonomy.

For the protection of the territories of the indigenous people and nationalities in case of exploration and exploitation of natural resources and their right to participate in the decisions

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concerning issues that are of their interest, the international instruments recognize the right to prior consultation. That is to say, that this right is directly attached to the protection of the territory and the natural resources found in it since it guarantees that the distinctive traditional ways of life and that the cultural identities, social structures, economic systems, customs, beliefs and traditions will be respected, guaranteed, and met by the state governments.

The prior consultation has been seen from a wider perspective when it keeps in mind the material fulfilment of the collective rights, that is why it finds its foundation in the self determination of the indigenous peoples. Referring to that, in the Declaration, the prior consultation has been related to various rights that undoubtly express the principle of self-determination of the peoples.

For these reasons, the prior consultation has been treated as the right to give a free, prior, informed consent and as a fundamental dimension of the self determination of the indigenous peoples in the way we allow them to freely structure their political condition and their economic, social, and cultural development as owners of their own destinies.

11 IDH Court. Samaraka people against Surinam Case, 2007
12 IDH Court. Samaraka people against Surinam Case, 2007
13 Amazonic Legal Network, 2013, page 14
14 Permanent Forum on Indigenous Issues, 2011 7
2.1.1. Awajún Wampis Peoples (Peruvian Amazonian Region):

Coordination: Amazonian Center of Anthropology and Practical Application –CAAAP. Peru

I. Introduction:

The Awajún and Wampis of the Cenepa have developed their collective life as peoples, on an ancestral territory that extends from 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 the twenty five world biodiversity hotspots. According to the international institutions, the hotspot located in the Tropical region of the Andes mountains – where the Condor mountain range is located and where traditionally the Awajún, Shuar, Achuar and Wampís Peoples live in a harmonious interrelation – is the richest and most diverse in the world, there we can find one sixth of all the plants in the whole planet in less than one percent of the land area.

Because of its rich biodiversity, the area is extremely vulnerable in terms of its ecology and the human beings that inhabit the area. That is the reason why incompatibility between mining activities and the very existence of the Awajún and Wampis is reasonably beyond any doubt. Therefore, despite the importance of the territories, the established agreements regarding the defense of the territory of the indigenous people, have not been carried out. For that reason, and based on these failures to comply mining concessions have been granted and are being granted without any prior consent in a very 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 witness how their territory is given in concession to the gold and copper mining companies, and how the Environmental Impact Statements (DIAs) and the Environmental Impact Studies (EIAs) are adopted without them even being consulted. Up to now, no mining concession within the area has gone through any prior consultation process to get the free, prior and informed consent of the indigenous communities.

The Awajún and the Wampis

The Awajún and Wampis peoples belong to the Jibaro ethno-linguistic family. In the area of the Amazonas department, these peoples are located along the riversides of the Santiago, Domingusa, Cenepa, Marañón, Nieva, Chiriaco, and the section of the Marginal Highway Bagua-Nieva.

According to the Second Census of the Indigenous Communities of the Amazonian Region of 2008 developed by the National Institute of Statistics and Informatics (INEI), the

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15 Collaboration of Héctor F. Rodríguez, lawyer at CAAAP and Richard O’Dianna
16 “Hotspot” (”punto caliente”) is a term coined by the English ecologist Norman Myers in 1988 to refer to critical eco-regions that concentrate high percentages of biodiversity and that are found in environmental emergency for the planet. The hotspots contain 1500 or more endemic species of plants and have lost collective manner at least 86 percent of their original vegetation. The sum of the areas that still exist in the hotspots are barely a 2.3 percent of the Earth’s Surface but near the 50 percent of all the vascular plants and a 42 percent of the terrestrial vertebrates only exist in the hotspots. This includes the 75 percent of the animals, birds and amphibians that are the most threatened of the planet.
Awajún has a population of 55,366 inhabitants, while the Wampis have a population of 10,613 inhabitants. According to this same institution, the Awajún have 281 communities, while the Wampis have 61 communities.

Having warrior traditions, the Awajún and Wampis resisted the conquering attempts of the Incas Túpac Yupanqui and Huayna Cápac. When finally the Spanish conquerors invaded them motivated by the idea of finding gold, the Jibaros 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 nation. Dozens of youngsters from these two groups participated in two international conflicts with their neighboring country Ecuador, being part of the military reservists in falsa Paquisha in 1981 and in the Cenepa in 1995. 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 to defend their territory or hunt. With the purpose of developing this attitude, the Awajun children are prepared to have the vision of Ajútap, the spirit of the brave warriors. In this way, the territory is a main element of their cultural identity, since in their territory is where the forest and river spirits dwell which are the ones that give them the vision. The Awajun youngsters visit the sacred waterfalls (tuna) and after a routine of exercises they obtain the vision (that appears as a wild animal) to know how to act among their people and in society. If before the Awajun youngsters wanted to be good warriors, nowadays they pursue intellectual and professional leadership. This is evident now when we find the young Awajun trying to obtain public sector jobs and participate actively in politics. The people get organized and looks for opportunities to participate in the public life of the country. Proof of this is the development of the “Political Agenda for Well-being of the Indigenous People”, it was developed in the year 2011 and it includes the demands and proposals of the people in 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 stat consultation processes to formulate a special legislation for the participation of indigenous people in election processes.

In the social aspect, the Awajun people present a segmented structure (without any central authority or power) and the domestic cells are formed by a group of endogamic families.

Within their main activities we have the slash and burn agriculture (bananas, cassava, corn, rice, and wheat), hunting (small and medium size animals like wild pig, white-lipped peccary, majaz, carachupa and monkeys using firearms only a few keep using the blowgun with curare poisoned arrows), fishing (catfish, boquichico, carachama and mullet, fishing imperatively in a collective way except in the Marañon river) and besides all these activities they also do gathering.

Both in education and in health they face serious problems. On one side, the quality of services is very poor, and another big problem they face is the difficulty to access to those services. Additionally, neither the educational service nor the health service have an intercultural approach.
Maps of their territory

Map 1

Map 2
II. Violation of human rights:

In this report we will concentrate in four cases:

- The Afrodita mining project in the bordering district of Cenepa;
- The oil spill in the Awajun communities of the Chiriaco area;
- The construction of the Lorena hydroelectric power plant in the district of Imaza (Bagua); and
- The socio-environmental conflict and the legal process regarding the Plot of land 116.

In these processes we have identified that the indigenous communities rights are severely affected by the Peruvian state government. Therefore, in the following lines we seek to give a brief summary of the cases focusing on the rights that have been affected in each case, how they are developing and the impact that the Amazonian Center of Anthropology and Practical Application (CAAAP) has had in the territory.

1. Afrodita mining project in the Cenepa:

In the year 2005 huge mining concessions were assigned to different companies that would end up damaging directly and specifically the indigenous population since the government ignored the agreements that had reached with the communities. In this context, the mining company Afrodita could move in one part of the territory that has a great amount of auriferous deposits, called El Tambo.
Being this the case, the Afrodita mining company installed some platforms and digged tunnels without even having the Environmental Impact Study approved, this was later explained when it was known that the Regional Government of Amazonas had given some permissions to the mining company. Even though, in December of 2016 the Regional Government of Amazonas annulled the resolution that declared the indigenous territory and the Amazonian forest as fallow land and in February of this year declare that the request from the Afrodita mining company was without merit, they could not usufruct from any possession from those territories.

Despite this, the mining camp is still installed in the indigenous territory in the middle of a legislative ambiguity. Referring to this Zebelo Kayak, expresident of the ODECOFROC, in the hearing of the Right of the indigenous people and Amazonian communities to their territory that took place on the 17 of March of 2017 in the Inter-American Commission on Human Rights (IACHR), he mentioned:

“[…] there are mining operations being performed in the part of the Afrodita mining Company without there being any approval of 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 drinking water, we see fish that are dying, but the company up to now, keeps saying that they are not operating, but us, as inhabitants of the area, travel and see that they are operating. This brings…is bringing terrible consequences of danger in the use of the water, fish are dying, the children, specially mothers of families that directly benefit from the water are in danger because of drinking of it. Lastly, they haven’t even invited us to know what type of studies or impacts there were going to be, they are only doing exploration activities” (Right of the indigenous people and Amazonian communities to their territory, 2017).

Based on this, we evidence the violation of the consultation right and from there to the self determination of the indigenous people to choose their own development program.

Data on the mining project.

- **Location:** Condor Mountain Range, in the border line with Ecuador, district of the El Cenepa, province of Condorcanqui, departament of the Amazonas, Peru.
- **Altitude:** From the 1200 up to the 2050 msnm.
- **Project Holder:** Afrodita Mining Company (Compañía Minera Afrodita SAC (CMA))
- **Extension area of the project:** they cover a total area of 5008.75 hectares.
- **Population that is affected by being in the area of direct influence:** It covers an area of 9.9 hectares, which includes the areas that will be impacted by the platforms, new roads to have access to the area, ditches, and new installations for the supporting facilities (camps and shops).
• **Population that is affected by being in the area of direct influence:** is the surface where the activities that will be carried out can impact in any way the biological, physical and social aspects of it, covers an area of 66.6 hectares.

**Affected rights:**

1. **Right to prior consultation:** this right implies that the state government of Peru must require and make sure that the companies and the public and private institutions that can probably perform activities that will have a direct or indirect impact on the indigenous peoples perform a prior, free and informed consultation before any action is taken. According to that, the state government violated this right when it allowed mining concessions without having a prior, free and informed consultation. The government should have assured that before giving permissions to the mining companies and approving any environmental management tools in the areas corresponding to the Awajún of the Cenepa people. We have to mention that this right is established in the: Artigo 2º da Constituição Política, na Lei de Consulta Prévia Nº 29785 (que forma parte do bloco de constitucionalidade).

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

2. **Right to have a territory (art.15 of the ILO Convention 169):** As a consequence of the omission of prior consultation when the government allowed Afrodita Mining Company to be the holder of the concession, they took over part of the traditional Awaju territory, limiting in that way, the use and enjoyment of the natural resources as well as its communal property.

3. **Right to self determination (article 2.1. of the Constitution):** When the government granted the territories and sacred sites in favor of mining interests, without any prior, free and informed consultation, the full freedom of the communities were violated, as well as the pursuing of their plans and life collective projects and transmitting them to future generations.

4. **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 a consequence of the exploration activities the impacts go from visual quality, noise level and up to the violation to the diversity of the terrestrial flora and fauna.
In the same way, we can see other rights like: the right to an identity, the communal property, the natural resources among others.

**Present situation:**

Our role in this case was to give support in the legal and political impact working together with the communities and indigenous organizations in the area of the province of Condorcanqui, with the technical advisory of some institutions of the civil society like CooperAcción and the Legal Defense Institute (IDL) and some others that have a pastoral and productive profile like the Agricultural Service for the Investigation and Economical Promotion- SAIPE. In this context, we finally accomplished the goal of making the company leave the territory. Even though the Afrodisita Mining Company is not in the area performing mining activities, we still find some machinery that could damage the Awajun territory.

2. Oil spill in the chiriaco communities.

On the 25th of January, 2016, due to the fact that the North Peruvian Pipeline, operated by the state company Petroperu, lacks maintenance, three thousand barrels of oil were spilled in the Inayo gorge, in the Imaza district, province of Bagua, Amazon region, affecting more than 45 Awajun communities in the area. Thereto, Petroperu far from implementing any remedial measures according to the contingency protocols established in the environmental management plan to somehow counteract the damage that had been caused by the fissure of the pipe and the subsequent oil leakage, they hired boys, girls and adults from the Aawaju people to do the cleaning of the oil spill without giving them any protection equipment against the chemical substances present in petroleum, that way, exposing them to contamination and omitting their responsibility for making up for the environmental damage caused by the spill.
To such a degree that on February 9th the heavy rains caused that the oil, that could not be kept in the gorge anymore overflows and gets to the Chiriaco river, which in turn, is connected to the Marañon river, increasing the environmental liabilities in the territory and the vulnerability of the Awaju population, which have ended up in serious health and nutritional problems. After that, a group of institutions from the civil society among which we find the Amazonian Center of Anthropology and Practical Application (CAAAP), the Legal Defense Institute (IDL) and the National Coordinator of Human Rights financed the evaluation through blood and hair tests practiced to 25 boys, girls and teenagers of the Chiriaco area that participated in the cleaning tasks in the subsequent days to the spill to witness the effects of this event in the health of the population. The results evidenced that the children had high concentrations of heavy metals in the blood, this is associated to the exposure of their bodies to petroleum and to the consumption of water and food that were contaminated with these substances. Later, even engineers from Petroperu accepted in front of national media that “Some children have come after picking up some oil and we have given them a reward […] for each cylinder they brought in” (Manuel Suero, 2016)

After this evidence, a great amount of the population of these communities started being aware of the impacts in their health, therefore a group of leaders and representatives of these communities (Nazareth, Wachapea, Nuevo Progreso, Pakún, etc) helped by CAAAP, IDL and the Coordination decided to file a complaint for protection against the government to remedy the affectation to their health rights and demand the execution of a health plan that will verify the affectations that the oil spill has caused. The demand was placed in the Civil Court of Bagua on November of 2017 and they are awaiting judgement.

Picture 3

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

- **Date in which the oil spill was produced:** January 25, 2016.
- **Location:** North Peruvian Pipeline, in the Imaza district, province of Bagua, Amazon region.
- **Project Holder:** Petroleum Company of Peru SA- Petroperú SA.
- **Extension area of the oil spill:** Along the Inayo gorge, 3.5 km

Affected rights:

1. **Right to good health and to live in an adequate and well balanced environment:**
   The affectation to this right is due to the oil spill that caused the Awajun territory to be exposed to the petroleum which brought different negative environmental impacts, such as
   a. **In the river:** Caused by the contamination derived from the oil spill, some black spots were formed that mixed with the water polluting the plants and animals that live in it.
   b. **On land:** The oil contaminated all the flora that was found in the area and also the crops. As a consequence, the animals also got affected since they are exposed to it, absorb and ingest it when they move around in a polluted area.
   c. **In the air:** Contamination occurs when vapor comes out of the oil since petroleum generates them.

   We need to mention that the responsability of Petroperú and the existence of environmental liabilities like the presence of heavy metals in the water, health problems derived from the oil spill of the North Peruvian Oilpipe have been acknowledged by the Inspection and Evaluation Organism (OEFA) by Resolution 1217-2018 OEFA/DFSAI.

2. **Right to good health:** In the case´s framework, this right is clearly violated due to the exposure to petroleum brings along exposure to harmful substances like the heavy metals. In this specific case, the Ministry of Health of Peru has identified that these metals can enter our body in three ways:
   a. **By the skin:** By absorption, which means, by contact with the oil directly or in the river which is contaminated.
   b. **By the mouth:** By ingestion, eating or drinking any food that has been contaminated. In this specific case, it is mainly as they eat fish or water, which are traditionally part of the Awajun diet.
   c. **By the nose:** When someone breathes polluted air.

   When the substances enter our body, the petroleum produces illnesses that can be visible or not and they can appear immediately or some could have a long process to appear like for example: dermatitis, damage to the nervous system like motor dysfunction, and the decrease of sensorial and motor skills, mental health affections, digestive system damage, damage to bones, muscles and problems with the reproductive system, like causing spontaneous abortion or infertility.
All this has been evidenced by various testimonies brought by the people 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 attending a health care institution and demanding they take a sample of hair, urine, blood, etc. so they can verify it in a laboratory. In the specific case, of the Awajun, the people were blood tested so they verified contamination by heavy metals. We need to add that besides this right others have also been violated, like the right to life, the right that children have to special protection.

Regarding this issue, in the documentary “Petroleum: Tsegas jatai ishamamu”17 the mayor of the city of Imaza assures that when they tell him that there is a mining canon or an oil canon he replies that what they have is “a contamination canon”

**Resent situation:**

On November 15, 2017, the First Civil Court of Bagua, Amazonas, sustained a complaint for advocacy presented by the Nazareth community and others that are also affected, against the Ministry of Health and other state organisms and offices for the oil spill that took place on January 25th, 2016. The demand was presented with the aid of the Legal Defense Institute (IDL) and the National Coordinator on Human Rights, with whom up to now, follow the case. In the same way, it is important to mention that the OEFA, the organism that is in charge of the environmental inspection admitted ( through resolution 1712-2018-OEFA-DF-SAI) that the oil spill produced in Chiriaco and, and also the environmental liabilities derived from it, are a consequence of the negligence of Petroperu since they did not complete an adequate maintenance of the Oilpipe.

Despite this, there is no answer yet ; whereby in the documentary “Petroleum: Tsegas jatai ishamamu” (Fear to the deadly poison), the Apu of the community, Noberto Wamputsag expresses “The [total] total state abandoned us as always, one complains or talks about our rights, [but] even though we are affected, nothing happens in Peru”. (Fuentes & Dinos, 2018)

As part of our impact activities, in the framework of this case, we created the documentary Petroleum:Tsegas jatai ishamamu”(Fear to the deadly poison), which has been successfully presented in spaces such as the Forum of the Indigenous People in the Summit of the Americas (SOA) and in another event organized by the Amazonian Center of Anthropology and Practical Aplication (CAAAP) in coordination with the congresswoman María Elena Foronda.

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

“ that the children were affected by poisoning metal […] so, the consequences who is going to attend? […] as the Apu of the community I presented the documents so they repair the damage, but up to now there is no answer […] where do we go now?” 18

According to that, even if the environmental liabilities have been accepted the remedial actions are still diffusive and there is still a lot to do.

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18 ibid
3. Lorena hydroelectric power plant:

On the 19th of May, 2015, the Amazonas Energy Company S.A.C. got the temporary concession of the Plot 116 for a period of time of two years, which on the 26th of May, 2017 was extended for five more months by the Ministry of Energy and Mining. It is so that until October 2017 the company carried out the activities that the temporary concession allowed it to. We have to mention that this company is the branch office of the Brazilian firm Andrade Gutiérrez, one of the companies involved in the corruption scandal of Odebrecht.

As of the date, the project has been stopped. Nevertheless, once the Environmental Impact Study is approved the company will seek to obtain the permanent concession of the project. According to that, since we are talking about a hydroelectric power plant that implies the displacement of Awajun communities not only the prior consultation but the consent will be required.

Data:

- **Location**: Aramango, province of Bagua, Amazonas region
- **Population that is affected in the direct influence area**: 1,107 habitants.
- **Native communities that are directly affected**: Tutumberos, Tsuntsunsna, Numpat-kaim, Paik y los anexos Shawi, Najem (anexos de Tutumberos) and Wampush (anexed to the Paik); el El Muyo village and the following settlements: Chingaza, Montenegro, Miraná, La Libertad, San Antonio, Puerto Perlamayo, Magdalena y Pomará.
- **Communities or settlements that are indirectly influenced**: we find the following settlements: Campo Seis, Aramango, Bellavista, El Porvenir, La Hermosa, Monte Seco and Las Guayusas.

![Activities that the affected population performs](chart.png)
Affected rights:

1. **Right to prior consultation:** Even though the Ministry of Energy and Mining has stated that in case of a temporary concession there is no need to have a prior consultation, the ILO Convention No.169 which was ratified by the state of Peru in 1994 and is in effect since February 2nd,1995 in its Articles 6 and 7 states that prior consultation has to be applied in any event that could affect the indigenous peoples in any way. In that sense, since any territorial concession brings an impact to it, it is the obligation of the state government to consult. Unfortunately, to discuss this case, only participative workshops have been held, the company mentions that through those workshops they have reached agreements with the communities. However, these workshops are not part of a consultation process they are only informative workshops.

Furthermore, taking in account that the area were the project is located is an area with a humid forest, where two of the main activities of the population take place:

a. Agricultural activity specially cocoa, coffee, bananas, rice, and corn.

b. Fishing, because of the great amount of fish.

There is a clear violation of the rights to self-determination, territory and cultural identity.

Present situation:

On October 30th the company announced that they would stop their activities due to the economic conditions which were not favorable to sell energy. Up to now the project is suspended and the definite concession is still pending.

As part of our role to participate and follow the case, the 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 divided in three rounds: before, during and after the EIA and they were as follows:

- **First workshop:** Took place in the community house of the Nativa Najen community on May 30th, 2017
- **Second workshop:** It took place on May 30th, 2017 in El Muyo village. 79 people participated and the theme was mainly the causes and consequences of the project.
- **Third workshop:** Took place in the native community of Alto Nupatkaim
- **Fourth Workshop:** It took place on May 31st, 2017 in the Tutumberos settlement with 41 people.
- **Fifth workshop:** It took place in the Tutumberos community with 42 people
- **Sixth workshop:** It took place in the Montenegro community with 51 people and 9 questions.
- **Seventh workshop:** Took place in the native community of Tsuntsunsna with 34 people and 6 questions.
- **Eighth workshop:** Took place in the native community of Tipico with 20 people and 6 questions.
It is important to mention that these workshops are not a prior, free and informed consultation rather they are only informative meetings.

4. Plot 116:

Plot 116 is located in the provinces of Condorcanqui and Bagua of the Amazonas region, and in the province of Datem of the Marañón in the Loreto region. It has a total area of 658,879.677 hectares overlapping the ancestral territory of the Awajún y Wampis Indigenous Peoples as well as the Protected Natural Areas: The Santiago Comaina Reserved Area (in the 36.6 % of its extension) and the Tuntanain Reserve (48.5 %).

In the year 2006 the Ministry of Energy and Mines issued the supreme Decree No. 066-2006-EM through which approved the License Contract for the Exploration and Exploitation of Hydrocarbons for Plot 116, HOCOL Peru S.A.C was the company that held the contract. Initially this project had an approved Environmental Impact Study (EIA) for the digging of up to two oil exploratory wells. In November, 2009 the EIA was modified through a Ministerial Resolution N° 571-2008-MEM/DM, allowing the perforation of 4 exploratory wells, in October 2011, the General Direction of Energetic Environmental Issues of the MINEM, through the Directorial Resolution N° 283-2011 MEM/AAE, approves a new EIA which authorizes the exploration of two more wells from a platform located in the native community of Wasap and the construction of a base camp in the Ciro Alegría village (district of Nieva).

In the process of approving the new EIA, the Company developed some informative workshops and public audiences in three communities (Kashap, Nieva y Ciro Alegría), still, these workshops should have taken place in 73 communities that were being affected which are located in the province of Condorcanqui, in the districts of Nieva, Cenepa and Santiago. We have to mention that these workshops were developed to give information, and there were not meant to be a prior consultation.

In July 2013, the Awajún Wampis peoples, represented by the indigenous organization ORPIAN- P and other organizations, making use of their right to petition, they ask to have a prior consultation about Plot 116. They did not determine the issue that should be consulted.

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

On December 3th 2013, since the MINEM´s refusal, the indigenous organizations appealed against the judgment so the action is raised to the Vice Ministry of Interculturalism. On March 14th, 2014,

the Vice Ministry answered denying the consultation petition, arguing that it is not possible to consult regulations that have already been approved before the Law of Prior Consultation entered into force, as it is the Supreme Decree that we mentioned before.
The Vice Ministry supported itself in the Second Final Complementary Amendment of the Prior Consultation Law, which states that the regulation does not overrule administrative measures issued before they went into effect, as to say measures issued before 2011.

In the year 2014 the indigenous organizations ODECOFROC, CEPPAW and FISH held a number of meetings to face this situation and decided to present a request for defense against MINEM and Petroperu because they omitted the Prior Consultation process in the Plot 116 concession, asking for the nullification of the administrative provisions that approved the granting of Plot 116 (DS 066-2006-EM) and the Environmental Impact Study (RD 283-2011-MEM-AAE).

The complaint was presented before the Fourth Constitutional Court of the Supreme Justice Court of Lima on August 12th, 2013 and was admitted on December 10th, 2014. This is the first request for defense for omission of the consultation regarding hydrocarbons admitted by the Judicial Power. Up to now, the request is in second hearing because the defendants presented an appeal.

**Data:**

- **Location:** Mainly in Amazonas region – province of Condorcanqui, in the districts of Nieva, Rio Santiago and El Cenepa. It also covers part of the provinces of Bagua, Amazonas region and the Datem of the Marañón in the Loreto region. However, the area were we find the hydrocarbon activities of Plot 116, are in the Alto Marañón river basin, that is located in the province of Condorcanqui and the district of Imaza in the province of Bagua.

- **Extension:** 658,879.677 hectares and it overlaps 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 to two: 36.9 % of the territory of the ANP Reserved Zona Santiago Comaina, and the 48.5% of the del territory of the ANP Tunanain Communal Reserve.

**Affected rights:**

1. **Right to prior consultation:** Due to the fact, that according to the ILO Convention 169 the communities have the fundamental right to demand from the state government a prior consultation before any measure that will affect them, as the resource exploitation, that regulation is part of the International Law of Human Rights and is valid in Peru since 1995, but with a subsequent date, on December 12th, 2006, without prior consultation, the state government published D.S. n° 066-2006-EM authorizing to sign a contract with HOCOL Peru, SAC (which was later suspended by Mariel et Prom Peru and Pacific Stratus Energy companies) granting the license for Exploration and Exploitation of Hydrocarbons in Plot 116, this contract was signed on December 2006 and is valid up to now).

As a consequence, the exploration activities carried out without listening to the voice of the communities that own the land, turn into a serious and permanent affectation, on one hand,
to the right of prior consultation and consent, and on the other hand to the right to have a territory, health, cultural identity and a physical, social and cultural well being, the enjoyment of a balanced and adequate environment, etc, that is why communities asked:

a. To stop the violation to the right of consultation, consent, territory, health, cultural identity, to live in a healthy environment acknowledged in the ILO Convention 169 and the Political Constitution of Peru and in the Inter-American Court of Human Rights IDH.

b. The suspension of the exploration activities in Plot 116 that are being done now or will be done in the future in the provinces of Condorcanqui, Bagua (Amazonas) and Datem of the Marañón (Loreto) until completing the prior consultation to obtain the free, prior and informed consent of the native communities that live in the area of Plot 116.

c. The invalidation of D.S. n° 066-2006-EM, that allowed the subscription of the license contract to explore and exploit hydrocarbons in the plot 116, and of the R.D. n° 283-2011- MEM/AAE, that valued the EIA to exploit 2 exploratory, oil wells, since both of the measures were not consulted to the indigenous people susceptible to be affected, even though they were issued after 1995, which is the year in which the ILO Convention 169 was approved.

d. Order MINEM and PETROPERU that, in case of signing another new contract to license exploration and making a new EIA, the communities have to consulted and they have to get the consent of the indigenous people that are susceptible of being affected.

e. Order MINEM and PETROPERÚ dispose the removal of the two companies, Mariel et Prom Peru and Pacífica Stratus Energy, from the indigenous peoples territory and of any other company that is operating with them according to the contract that was signed, while the consultation is not processed. This removal has to include any other entities or companies that in a direct or indirect way are connected to the previously mentioned companies.

Present Situation:

In first instance, the Fourth Constitutional Court of Lima declared as founded the protection claim presented on August of 2014 by the Organization for the Development of the Border Communities of the Cenepa (ODECOFROC), the Special Permanent Commission of the Awajún and Wampis (CEPPAW) and the Indigenous Federation of the Shawit Section (FISH), the organizations that represent the Awajún and Wampis leaded by Zebelio Kayap, Wrays Pérez, Santiago Manuín and Ananías Shawit, such claim exposed the omission of the consultation for Plot 116 in the district of the El Cenepa, province of Condorcanqui and the department of the Amazonas.

Such ruling, as Zebelio Kayak mentions, is the “visible claim of the invisible” to order not only to process the consultation but to obtain the consent of the indigenous people that were affected. In that sense, the judge declared in the sentence that the legislative instruments,

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19 Ex-president of the Development Organisation in the Frontier Communities in Cenepa (ODECOFROC).
20 “Pamuk” or president of the Autonomous Territorial Government of the Wampis Nation.
within which the contract is processed, has no legal effects. Whereby the sentence demands the suspension of the activities until the consultation is done and orders the Ministry of Energy and Mines (MINEM) the removal of the petroleum companies until the mentioned consultation is processed. **Unfortunately, the ruling was appealed by the defendants, and at the moment the case is in second instance. In this context, on January 9th, 2018, a public oral hearing was held in which both parties presented their arguments, on our side we made it clear that is important to have a consultation and consent.**

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

> "If the right to consultation is a constitutional right a regulation of a lower level (the supreme decree of the contract) cannot null that right [...] In our claim we asked that, that the contract would be consulted, the Environmental Impact Study [...] It is our right"

**Special reference to actions of international impact:**

On March 17th, 2017, in the Interamerican Comission of Human Rights (CIDH) headquarters, in Washington, USA., some cases were presented in a thematic hearing "Right to territory of the Indigenous peoples and Amazonian communities" where two cases from Brazil, one from Ecuador, and one from Peru were presented, they were backed by the Ecclesial Pan Amazonian Web (REPAM), who were the ones that requested hearing to the supranational organism. For the Peruvian case, the leader of the indigenous Awajún community, Zebelio Kayap, presented the case about the conflict in the Plot 116 with the oil company.

In that event Zebelio Kayak, ex president of the ODECOFROC, explained that what motivated them to be there was:

> "The ancestral territory of the Awajún and Wampis peoples is in danger, and our own government accepts it [...] Our home, our habitat is in danger because of the difficulty to develop our culture and education, the health is threatened by these transnational companies who do not respect the indigenous peoples that we have lived ancestrally, for millions of years in this part" (Right of the indigenous peoples and Amazonian communities to the territory, 2017).
In this sense, the indigenous leader insisted in the issue that was being taken to the IACHR and the motivation behind it, he explain that the objective was that the mining company as well as the oil company will be removed from the area.

"removed until the Peruvian state government applies the prior consultation with good faith and 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 before us because we also want to be respected and we deserve our rights." 

What was mentioned by the indigenous leader, about the Plor 116 case, also permitted to get the the constant violations of the right to the territory on the table, in that way the other rights are also compromised like dignifying life, education, and health among others. That is why, the REPAM asked only one thing, ask the IACHR compile a thematic report about the right to the territory and offered to work together in this project. About this, Francisco Eguiguren, president of the Rapporteurship, expressed...
"We need to strengthen efforts to make the State Governments meet all the requirements and make them understand [...] that there is no need for discussion about the rights of the indigenous people to be consulted [...] Therefore, the commission will give due attention on how to back the compromise of the state governments to comply their obligations". 23

With all this, we see that the IACHR is an ally to support these topics about the defense of the right to the territory and the prior consultation.

III. Proposals:

• **Free health screenings for the population that was exposed:** The Regional Health Departments (DIRESA) should organize health screenings on the exposed population and practice subsequent testing on the population that has been diagnosed with heavy metals in the blood. This practice has the purpose of monitoring and giving a sanitary response to the needs of the people that were affected.

• **Strengthen the responsiveness of the health service provider:** nationally as well as regionally, mitigate the risks and exposure due to the oil spill. And since this is a possible circumstance, we have to activate protocols that will permit a quick response, to prevent mayor health problems in the collective as well as individual levels.

• **Start and strengthen programs to have access to safe drinking water:** With the purpose of preventing further contamination of the population due to unsafe water, since this is of vital importance and use. In this context, these programs have to be supervised by a competent authority, that can coordinate in the different levels of the government. We have to mention that these programs have to focus on an intercultural health approach. Likewise, in order to have a quicker response in case of oil spills the idea is to improve the health system infrastructure and assure resources to each health facility in which there should be enough personnel, medicines and/or alternative treatments.

• **Incorporation of all the population to the National Integrated Health Service (SIS):** Promote that all the population be incorporated to the SIS program, which should have all the benefits to cover the health requirements of medical conditions associated to cancer or any other after-effect coming from the exposure to dangerous chemicals. In the same way, we have to guarantee the financial coverage coming from the state government and push compensation mechanisms through related to the environmental damage and the health problems caused to the population in general as well as at an individual level, all this leading to an environmental remediation as well as repairing for any the damages that were caused.

23 ibid
• **Creation of integral territories**: This is part of an strategy and a solution designed by the indigenous peoples and organizations that 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 in the indigenous autonomy that is the faculty that they have to organize and direct their internal life, according to their own values, institutions, and mechanisms, within the state framework to which they belong. This proposal is sustained in a legal, anthropological, historical and geographical foundations that seek recognition from all the levels of the state government.

We also need to mention that there are some indigenous peoples in the Amazonian Peruvian region that have already designed recognition mechanisms for territorial autonomy like the ones the Wampi community developed, they have formed the Autonomous Territorial Government of the Wampi Nation. Other indigenous peoples like the Awajun, the Achuar are in the same process of forming and consolidating these legal – political strategies for the defense of their territories.

In this line, it is a necessity, for the well-being of all these cases that we continue with the processes and we verify that the state government abides by its obligations related to Human Rights of the indigenous peoples. According to what has been said, in the Peruvian case the need to reinforce the importance of making the right to prior consultation at a national level more effective, stands out.
2.1.2. Tagaheri and Taromenani People. (Ecuadorian amazonian region)

Coordination: Apostolic Vicariate of Aguarico. REPAM of Ecuador

I. Introduction:

A The legend says that Waorani people came from an anaconda: The story tells that once upon a time the anaconda was laying in the sun in a very big beach and an eagle came and took it with its claws. The anaconda tried to escape but could not do so, the eagle tore the anaconda apart, split it in 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 born.

“The indigenous people in voluntary isolation and the ones in initial contact are entitled to human rights in a unique situation of vulnerability, and one of the few that cannot fight for their own rights. This reality makes assuring the respect to their rights significantly important. Inasmuch as they are unable to defend their own rights, the State governments, international organisms, members of the civil society and all the others entitled to defend human rights are the ones called to assure that their human rights are respected as well as of all the inhabitants of the Americas, taking in account each and every particular situation”.

1.1. Context

In the Yasuni National Park in the area of the Yasuni, Tivacuno, Tiputini, Cononaco, Cononaco Chico and Tiwino rivers we find the indigenous peoples in voluntary isolation. In their territory there a couple of blocks: Campo Armadillo, Campo Tiwino and Campo Cononoco, These peoples are known as the Tagaeri and Taromenani who belong to the cultural trunk of the Waorani nation, who since the50s were forced to have contact with North American evangelical missionaries of the Summer Linguistic Institute (ILV).

The life and existence of these Tagaeri-Taromenane peoples has depended on the pendulum of the extractive policies in Ecuador. After many years of ignoring their existence in 2006 a plan on precautionary measures is given by the Inter-American Commission on Human Rights
IACHR for the recognition of their territory and the respect to their ancestral life. Forced by the local public pressure and by the action of the IACHR, the national government of the time designs the Plan for Precautionary Measures to abide the recommendations made by the Court regarding the guarantee of the protection of the PIA against the real threat of a mass extinction.

The Inter-American Commission on Human Rights declared, in the case of the indigenous peoples “there is a direct relation between the self determination and the right to the territory and the natural resources” which becomes really relevant when we are talking about groups in voluntary isolation or initial contact. The respect to the human rights of the groups in voluntary isolation or initial contact has to be framed within the respect of their self determination, respect to life, to physical, cultural and psychological integrity of the peoples and its members, right to health and the right over their land, their territory and its natural resources that they have used and occupied ancestrally.

In 2007, the state government designs for the first time a Protection Policy of Indigenous peoples in isolation IPI, and suggests the initiative of protection of the Yasuni ITT, the objective was to protect the life of the people on voluntary isolation and the Yasuni biodiversity.

In that sense, the state government has been insufficient to care for the life of these peoples and even the same government has maintained a double discourse regarding their existence and is more interested in the financial objectives than the protection of these groups.

On September, 2013 the ex president of Ecuador, Rafael Correa declares as legal the exploitation of the Yasuni, the justification for such action is that the initiative to keep the petroleum underground had failed. Based on this, the Ministry of Justice declares, according to their report and investigation, that there is no presence of the Tagaeri –Taromenane groups in the area of the Yasuní ITT, assuring that are only rumors what had been assured. The purpose of these declarations was to continue with the public policies of economic development based on the extractive model. (tenth round of bidding, blocks 17,14 and Armadillo).27

Map 5

27 The Summer Linguistic Institute (ILV) is a Baptist religious group that arrived in Ecuador in 1952 during the presidency of Galo Plaza Lasso with whom he signed an agreement to establish a linguistic basis for the translation from the Bible to Indigenous languages. This agreement was extended to the Amazon by the president Velasco Ibarra, in 1956.
II. Situation:

Along the first decade of the XXI century, a series of territorial pressure, interethnic conflicts and the expansion, specially of the oil and wood extractive boundaries, ended up in the outbreak of violent conflicts with the isolated peoples motivated by three main factors: a) the persistence of historical conflicts among some clans Waorani and Taromenane; b) the multifactor pressure over the territories of the PIA’s caused by the expansion of the coloniza-
tion boundaries, the expansion of the extractive activities, the Waorani approximation to the isolated peoples territory, among other important elements.28 As a result of this reality, there have been violent contacts with the IPI.

**VIOLENT CONTACT EVENTS WITH THE PIA’S IN ECUADOR 2003–2016**29

<table>
<thead>
<tr>
<th>Date</th>
<th>Type of Event</th>
<th>Actors</th>
<th>Place</th>
<th>Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>Assault in a Taromenane house and the members die</td>
<td>Waorani, Baibeiri group y other allies.</td>
<td>Jungle of the Mencaro river</td>
<td>At least 15 Taromenane</td>
</tr>
<tr>
<td>2005</td>
<td>Woodcutter attacked and killed with arrows</td>
<td>Taromenane/ Woodcutters</td>
<td>Shiripuno/Cononaco Chico</td>
<td>1 dead person (Johnny Espanha)</td>
</tr>
<tr>
<td>2006</td>
<td>Many woodcutters attacked with arrows</td>
<td>Taromenane/ Woodcutters</td>
<td>Cononaco Chico</td>
<td>1 dead person, 2 feridos</td>
</tr>
<tr>
<td>2008</td>
<td>February</td>
<td>Taromenane attack to a woodcutter</td>
<td>Taromenane/ Woodcutters</td>
<td>Shiripuno</td>
</tr>
<tr>
<td>2008</td>
<td>March</td>
<td>One woodcutter is killed with an arrow</td>
<td>Taromenane/ Woodcutters</td>
<td>Rumiyacu</td>
</tr>
<tr>
<td>2008</td>
<td>April</td>
<td>Waorani expedition against a Taromenane house</td>
<td>Wane Cahuiya and five more waorani</td>
<td>Rumiyacu</td>
</tr>
<tr>
<td>2009</td>
<td>August</td>
<td>Taromenane attack in the Los Reyes community</td>
<td>Taromenane/ settlers</td>
<td>Los Reyes/Pindo-Hormiguero road</td>
</tr>
<tr>
<td>2013</td>
<td>March</td>
<td>Attack to Ompure and Buganey</td>
<td>Taromenane/ Waorani</td>
<td>Yarentaro (waorani settlement – Block 16)</td>
</tr>
<tr>
<td>2013</td>
<td>March</td>
<td>Waorani revenge expedition against Taromenane house</td>
<td>Waorani/ Taromenane</td>
<td>Ahuemuro river (approximately)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2 taromenane girls were kidnapped</td>
</tr>
<tr>
<td>2016</td>
<td>January</td>
<td>Waorani couple is attacked on the Shiripuno riverside</td>
<td>Taromenane/ Waorani</td>
<td>Shiripuno/Cononaco Chico</td>
</tr>
</tbody>
</table>

The Ecuadorian State government made a commitment to the InterAmerican Commis-
sion on Human Rights to abide the Plan for the measures and respect to the vulnerability of the peoples in voluntary isolation and accepted to guarantee the following rights: the right to life, right to personal integrity, to personal liberty, equality in the law, to free mobility, the right to be isolated and not contacted, to legal guarantees, to good health, to a healthy environment, to food and education according to their ancestral terms and customs”. Up to now the results have not been effective.

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28 EPU-PIAS. Ivonne Dávila
29 Idem
The precautionary measures provided by the constitution for the peoples in voluntary isolation have been framed in the strategies to potentiate the principle of intangibility, assure the physical, cultural and territorial existence of these peoples and face the external threats. Such measures are not effective and will not be while there are more proposals of public policies based on oil exploitation focused on the economic development that violate the collective rights.

The interethnic massacres that have taken place from the 2003 to the 2013 evidence that the PIAs are still in a situation of extreme vulnerability up to the point that we deny their existence, the conception of territory for the Tagaeri Taromenane is the complete jungle, there are no boundaries for them.

Once we grant environmental licenses that allow oil activities in the ancestral territory of the PIAs; once we delimit insufficiently the area, and call it Intangible Zone, we pretend to keep the peoples limited in a fixed area, not having access to their traditional gathering places; once we auction oil exploitation in ancestral territories, there is a breach of the precautionary measures established in 2006 by the AICHR in favor of the Tagaeri Taromenane peoples.

The state government efforts have been insufficient to care for the life of the indigenous peoples in isolation. In the following lines, we will synthetize the main threats that lead to violations of the rights of the isolated indigenous peoples.

- Territorial Downsize
- Waorani – Taromenane Interethnic Conflict
- Inobservance of the precaution principle.
- Ineffective application of the reparation principle in the Indigenous Isolated Peoples policies.
III. Analysis related to the violation of rights

1. Right to live free in a territory as it is provided in the legal instruments at national, regional and international levels.

....When I had everything ready. Nenki Wenga communicated with his father sun and asked. Him how far he had to go into the jungle to fulfil the mission that he gave him. The god, the sun answered that he did not have to go much further, since what he had to do is deliver the wisdom and the spirit that would light The Wao people.

The young man was happy to hear the mission he had been assigned, to spread his blood across the world. Using a magic force his spirit will turn into a jaguar to give courage to all his warriors. Earlier the Waoranis had been lost, disoriented but the sun’s son showed them the way and guided them.30

The IPI do not know about boundaries, nor about tangible or intangible zones, they move around depending on the season seeking to satisfy the needs of survival. It is a state’s obligation to protect their rights inside and outside the intangible zones. The oil concessions are not justified to generate economic sources that will satisfy the need of the majority against the total violation of the constitutional rights or the minority. With the violation of the right to territory the following rights are threatened: right to life, to personal integrity, to liberty, to equality before the law, to free mobilization, to legal warantees, right to good health, to a healthy environment, to food and education according to their ancestral customs.

2. Right to self determination to not be contacted.

The constant confrontations and the reactions to the threatening coming from the outside world evidence the resistance and the rejection of these people to contact the outside world. The principle of no contact is the expression of the right of the indigenous peoples in voluntary isolation to self determination. One of the reasons to protect the rights of the indigenous peoples in voluntary isolation is the cultural diversity, and the loss of its culture is a loss for humanity. Like the IACHR and the Inter - American Court of Human Rights have mention in other opportunities, the indigenous people have the right to a cultural identity and that the states governments guarantee their right to live in their ancestral territories to be able to preserve their identity.31

Some say that nowadays the voluntary isolation has turned into a forced isolation without food, surrounded by an aggressive world, with no tools, and possibilities to survive, in this case we would be the right to be contacted for that there is no minimal possibility.

30 IMA, Fabián Nenquimo. “Gereros of the Jungle”
31 Indigenous peoples in voluntary isolation and initial contact in the Americas: Recommendations for full respect for their human rights IACHR.
Everybody’s life is important, The Yasuni is a national cause.

On August 2013, after the announcement of the president of Ecuador to end the initiative to protect the Yasuni ITT National Park and start the exploitation of oil in the Tagaeri y Taromenani IPI territory, the YASunidos organization started the process to organize a popular consultation procedure to exercise the right to organize a national popular consultation so the citizens would be the ones to decide to leave or not the oil underground and generate a binding declaration on the side of society, under the protection of the right of participation, to decide about the exploitation or not of the petroleum in the Yasuni ITT National Park. The YASunidos organization abiding all the requested requirements ordered by the state government and the National Election Council presented 856,704 registries or signatures and a box with 14 files containing the copies of those identification documents, more than 60% of the total of the presented signatures were rejected, as a result, the national consultation was denied. There were a lot of administrative and legal complaints but they were also denied for technical reasons and for no other no apparent reason.

As we can evidence, the economic interest are the ones that always matter the most, leaving scruples aside and creating tricky arguments to silence the voices in favor of the ones without a voice, the IPI, neither the Amazonian area is valued for its biodiversity but for the the money that people can get from it through the exploitation of its resources.

The current government of Mr. Lenin Moreno, has handled a political discourse of protection of Yasuni. He has also mentioned he is listening to hundreds of environmental and social
organizations, and that is why he decided to include one question in the national popular consult on February 4th of 2018 about the enlargement of up to 50,000 hectares of the Intangible Yasuni Zone and the reduction in one third of the oil exploitation area in the ITT (Ishpingo, Tambococha, Tiputini)32 area.

The question included in the consult was: "Do you agree to increase the intangible zone in at least 50,000 hectares and reduce the authorized oil exploitation area (authorized by the National Assembly) in the Yasuni National Park from 1030 hectares to 300 hectares?".

At the moment the intangible zone of the Yasuni National Park includes 758,051 hectares, according to the Executive Decree 2187 subscribed by the ex-president Alfredo Palacio. According to the presented arguments by the Executive to the Constitutional Court, the increase in the area looks to protect the indigenous peoples in voluntary isolation and the preserve the environment. In that document the affected area is not specified. That lack of clarity suggests many interpretations:

"The question in the consult is in its essence ambiguous, it is limited to ask about the extension of the intangible zone and the authorized oil exploitation area, we should leave aside the concept of national interest of article 407 of the Constitution of the Republic, that allows the oil activity in protected areas and prime the concept of "public interest" for the biodiversity conservation as it is established in articles 14 and 400 of the Constitution. The question should have been formulated as such: "Do you accept to keep the petroleum under ground in the Yasuni National Park? It is evident that the "legislation of Ecuador is contradictory not only with the protected areas objectives, but with the international treaties like the Convention on Biological Diversity of which Ecuador is part."

"the question itself does not change much the reality in the exploitation of blocks 31 and 43" authorized by the National Assembly in 2013. The Biosphere Reserve in the Yasuni is considered one of the most biodiverse places in the planet and homes more than two million species. Even if the exploitation area is reduced to 300 hectares, the impacts of it would be exactly the same, since we have not taken in account that, up to now, the environmental damage has already overpassed that extension of land. The exploration phase, the construction of roads, air and water contamination, the noise of the machinery have already caused an impact in the ecosystems. With the consult question, opening new wells is not prohibited and if that is not included, the impact would be the same and in an area like the Yasuni, the decrease in the flora and fauna populations will affect directly the indigenous people in isolation, who base their survival in these resources.

32 Source: Yasunidos
The opinions are very diverse, each one from their point of view and interest, but the only true thing is that if we do not defend the Yasuni, as a IPI territory we are accomplices of its forced disappearance by permitting that little by little we entrench them, 500 more or less hectares, they will continue being affected while the economic interests prevail in the governing authorities of our country and in our own consciences.

Photo 7. Description: The Tiputini oil field, limits with the Yasuni Nacional Park, it started to produce the first oil barrels at the beginning of September 2016.

IV. Recommendations:

1. **Widen the protection area of the Tagaeri Taromenane** (ZITT) taking in account their settlement territories, hunting corridors and mobility.

2. Propose a **delay in the hydrocarbons extractive activities** in Block 66 Campo Armadillo.

3. Establish the **conditions for a Peace Agreement** between the Waorani Nationality and the IPI.

4. The state government should design a pacifying **process and peace agreement** with the Waorani nationality to prevent confrontations and conflict with the Tagaeri/Taromenane, defining reparative policies that will restore the victims, in the best way possible, the life conditions that they had before the conflict.

5. The intangible zone should **consider the mobility patterns of the indigenous isolated** groups “this is a historical debt of Ecuador with Human Rights”

6. We should leave aside the concept of national interest article 407 of the **Constitution of the Republic**, that allows the oil extraction in protected areas, and prevail the concept of “public interest” to preserve biodiversity according to what is established in articles 14 and 400 of the Constitution.

7. **The Ecuadorian legislation is contradictory not only in the objectives of the protected areas**, but also in the international treaties like the Convention on Biological Diversity (CBD) being Ecuador a member.
2.1.3. Yaminawa people (Brazilian Amazonian Region):

Coordination: Indigenist Missionary Council, Regional Western Amazonia CIMI Brasil

I. Introduction:

The projects of the REDD+, Russas, Valparaíso and Purus are private projects oriented to the carbon market and they act internally, on the territories were small riverine, settlers and extractives communities are located. For a better understanding of these projects, we recommend the reading and studying of the report - Investigative Mission and Incidence of the Platform- Human, Social, Cultural and Environmental Rights, the report is titled “GREEN ECONOMY, FOREST PEOPLES, TERRITORIES: Violation of the Rights in the Acre State.” This document has oriented us, not only in the debate in the Acre issue but also has guided us in the preparation of the text that we now present.

Photo 8: Nawa- For the demarcation against oil exploration

Even though the REDD+ projects are a private initiative, we highlight the featuring role of the government of Acre and the affiliated NGOs since they are the ones that motivate, help and implement these projects, they have even implemented a law so the projects can be made possible, not only the carbon projects, other public projects also, including the indigenous land, they have caused very serious changes in the social structures of these peoples and evident violations to their rights.

The violations caused by the oil and gas exploitation in the region of the Valle de Juruá have a different characteristic, that even if the project is a private initiative, the exploitation
project was presented and defended by Tião Viana (PT/AC) who at that moment was Senator of the Republic and actual governor of Acre. In this case we have to highlight the participation of the CIMI- Missionary Indigenous Council- representing the indigenous peoples and the Public Federal Ministry that derived from a preliminary decision from the Federal Justice, that was suspending the actions of the bidding company, Petrobras, and imposed some conditions to the regulatory organs like Ibama

I.1. Indigenous Peoples and the territorial situation in the Oriental Amazonian Area.

Map 7: “In the map, in the left side, the predominant color, Green, corresponds to the territory of the Diocese of Cruzeiro do Sul, and the right side, lighter, corresponds to the Diocese of Rio Branco.”
<table>
<thead>
<tr>
<th>Nº</th>
<th>Nº</th>
<th>Indigenous Territory</th>
<th>Peoples</th>
<th>Municipality</th>
<th>Actual Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>01</td>
<td>Alto Purús River</td>
<td>Huniku and Madina</td>
<td>M. Urbano and Santa Rosa</td>
<td>Registered</td>
</tr>
<tr>
<td>02</td>
<td>02</td>
<td>Headwaters of the Rio Acre</td>
<td>Jaminawa</td>
<td>Assis Brasil</td>
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<td>03</td>
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<td>Katukina</td>
<td>Tarauacá</td>
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<td>04</td>
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<td>Huniku</td>
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<td>Jaminawa/Arara Bagé River</td>
<td>Arara and Jaminawa</td>
<td>Marechal Thaumaturgo</td>
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<td>Ashaninka/ Isolados</td>
<td>Feijó</td>
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<td>26</td>
<td>Huniku Serlingal Inde-pendência</td>
<td>Kaxinawá</td>
<td>Jordão</td>
<td>Reserve/Dominial</td>
</tr>
<tr>
<td>27</td>
<td>27</td>
<td>Arara de Igarapé Humaitá</td>
<td>Arara</td>
<td>Porto Waiter</td>
<td>Registered</td>
</tr>
<tr>
<td>28</td>
<td>28</td>
<td>Arara da Amônia</td>
<td>Apolima-Arara</td>
<td>Marechal Thaumaturgo</td>
<td>Bounded⁸⁴</td>
</tr>
<tr>
<td>29</td>
<td>29</td>
<td>Curralinho</td>
<td>Huniku</td>
<td>Feijó</td>
<td>To Identify⁷⁵</td>
</tr>
<tr>
<td>30</td>
<td>30</td>
<td>Jaminawa de Guajará</td>
<td>Jaminawa</td>
<td>Sena Madureira</td>
<td>Without ordinances</td>
</tr>
<tr>
<td>31</td>
<td>31</td>
<td>Jaminawa del Rio Caeté</td>
<td>Jaminawa</td>
<td>Sena Madureira</td>
<td>Without ordinances</td>
</tr>
<tr>
<td>32</td>
<td>32</td>
<td>Naua</td>
<td>Naua</td>
<td>Mâncio Lima</td>
<td>Judicialized territory⁷⁶</td>
</tr>
<tr>
<td>33</td>
<td>33</td>
<td>Seringal Guanabara</td>
<td>Manchineri</td>
<td>Assis Brasil</td>
<td>To Identify</td>
</tr>
<tr>
<td>34</td>
<td>34</td>
<td>Xinane</td>
<td>Isolated</td>
<td>Feijó</td>
<td>To Identify</td>
</tr>
<tr>
<td>35</td>
<td>35</td>
<td>Kontanawa</td>
<td>Kontanawa</td>
<td>Marechal Thaumaturgo</td>
<td>Without ordinances</td>
</tr>
<tr>
<td>36</td>
<td>36</td>
<td>Chandless</td>
<td>Insolated</td>
<td>M. Urbano y Santa Rosa</td>
<td>Without ordinances</td>
</tr>
<tr>
<td>37</td>
<td>37</td>
<td>Estrário</td>
<td>Jaminawa y Kulina</td>
<td>Santa Rosa</td>
<td>Without ordinances</td>
</tr>
</tbody>
</table>
The claimed territory of Kampu, was burnt down in 2006, all the houses in Nukini, which was inhabited since the area was expanded, were also burnt.

<table>
<thead>
<tr>
<th>No</th>
<th>Indigenous Territory</th>
<th>Peoples</th>
<th>Municipality</th>
<th>Actual Situation</th>
</tr>
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<tbody>
<tr>
<td>01</td>
<td>Igarapé Capana</td>
<td>Jamamadi</td>
<td>Boca do Acre-Am-</td>
<td>Registered</td>
</tr>
<tr>
<td>02</td>
<td>Inauini/Teunini</td>
<td>Jamamadi</td>
<td>Boca do Acre-Am y Pauini-AM</td>
<td>Registered</td>
</tr>
<tr>
<td>03</td>
<td>Boca do Acre BR 317 – km 45</td>
<td>Apurinã</td>
<td>Boca do Acre-Am</td>
<td>Registered</td>
</tr>
<tr>
<td>04</td>
<td>Apurinã BR 317 – km 124</td>
<td>Apurinã</td>
<td>Boca do Acre-Am</td>
<td>Registered</td>
</tr>
<tr>
<td>05</td>
<td>Carnicuã</td>
<td>Apurinã</td>
<td>Boca do Acre-Am</td>
<td>Registered</td>
</tr>
<tr>
<td>06</td>
<td>Kaxarari</td>
<td>Kaxarari</td>
<td>Lábrea-Am y Extrema-RO</td>
<td>Registered</td>
</tr>
<tr>
<td>07</td>
<td>Monte/Prinavera/Goiaba</td>
<td>Apurinã e Jamamadi</td>
<td>Boca do Acre-Am</td>
<td>To identify</td>
</tr>
<tr>
<td>08</td>
<td>Iquirema</td>
<td>Jamamadi</td>
<td>Boca do Acre-Am</td>
<td>To identify</td>
</tr>
<tr>
<td>09</td>
<td>Lurdes</td>
<td>Jamamadi</td>
<td>Boca do Acre-Am</td>
<td>To identify</td>
</tr>
<tr>
<td>10</td>
<td>Cajuero</td>
<td>Apurinã</td>
<td>Boca do Acre-Am</td>
<td>To identify</td>
</tr>
<tr>
<td>11</td>
<td>Valparaiso</td>
<td>Apurinã</td>
<td>Boca do Acre-Am</td>
<td>To identify</td>
</tr>
<tr>
<td>12</td>
<td>Caiapucuã</td>
<td>Jaminawa</td>
<td>Boca do Acre-Am</td>
<td>Territory that has been divided by th Legal Land Program To Identify.</td>
</tr>
<tr>
<td>13</td>
<td>São Pauloino</td>
<td>Jaminawa</td>
<td>Boca do Acre-Am</td>
<td>To Identify/ in conflict.</td>
</tr>
<tr>
<td>14</td>
<td>Maracaju</td>
<td>Jamamadi</td>
<td>Boca do Acre-Am</td>
<td>Without providence</td>
</tr>
</tbody>
</table>

The highlighted territory (in red) is the land that has serious problems because of its lack of guarantee to the right to territory and the majority not even providence. The right to territory is guaranteed in the Federal Constitution of Brazil but it is not respected. In the state of Acre, like it is listed in the previous chart, we still have 18 areas that have to be demarcated and identified. We also had the territories were the indigenous people live in isolation, which are:

**Isolated People of Chandless**- Located in the upper part of the Purus river, in the Chandless river, in the border with Peru. This group has been identified by the CIMI in 2002, and an identification award was published in 2003. In 2016 the Funai (National Foundation for the Indigenous People) has recognized the veracity of the award and the existence of this indigenous group.

**Isolated groups of Tapada** – Also identified by the Cimi team in 2000, (I was a member). Up to now, the Funai refuses to recognize this indigenous peoples. This group is located in a strip of land located in the headwaters Igarapé Tapada (this is were the name comes from) affluent of the Igarapé Novo Recreio in the Juruá river canal in the border with Peru.

**Isolated groups of Breu** – Peoples that is in the headwaters of the Breu river, an affluent of the Jurua river. The existence of this peoples was also announced in 2002, by the Cimi of Cruzeiro do Sul work team (Rose and me) Also in this case, up to today, the Funai refuses to recognize the existence of these peoples because the government of Brazil and the state of Acre have interest on this land because of exploitation of timber.
**Isolated groups of Jordão** – In this region, headwaters of the Jordão river, border with Perú, The Funai itself recognizes the presence of at least four peoples in situation of isolation. Nevertheless, the invasions to their land persists and there has not been any provision up to this moment.

*Photo 9: Marunawa old lady*

*Photo 10: Marunawa peoples*
II. Rights that have been violated or denied

1. Right to the territory that has been delimited and protected:

We, the indigenous people of the State of Acre, Brazil, see our rights violated. Our legislation is being changed to allow the exploitation of our territories. The Brazilian Government and the Government of Acre are creating laws that make it impossible the delimiting of our territory and by this, threaten our lives and the ones of future generations.

The Brazilian Federal Constitution (CF), in its article 231, guarantees the right to territory to the indigenous people. According to this same constitution, all the indigenous territories should be delimited by the year 1994. However, as we have seen, this regulation has never been observed and, as a consequence, many of the indigenous peoples still do not have the regularization of their territories. Let’s see what the brazilian constitution says about the right to the land:

Art. 231. We recognize the Indian social organization, customs, languages, beliefs and traditions and the original rights over the territory they traditionally occupy, it is in the Union’s competence, delimit them, protect them and ensure respect to all their goods.

§ 2º The territory that is traditionally occupied by the Indians are destined to be a permanent possession, and this way, the exclusive profit of the richness of their soil, rivers and the lakes that are in it. (...)

§ 5º It is prohibited to remove the indigenous groups from their land, except, “ad referéndum” of the National Congress, in case of a catastrophe or plague that endangers its population, or the interests of the sovereignty of the Country. After the deliberation of the National Congress, guaranteeing, under any hypothesis, their immediate return, when there is no risk.

§ 6º All acts designed to occupy, control or possess the lands referred to in this article, will be canceled and deleted, without any legal effects or the exploitation of the natural resources of the soil, rivers and lakes in them, without affecting the main interests of the Union, except as a Law, referring to the benefits that derive from the occupation in good faith.

(Brazil, Constitution 1998)

We have been able to evidence, then, that the rights over the territory is based on tradition. This means, that, our law understands that the indigenous people, by being native inhabitants, are also owners of the land. Also, article 231 is explicit saying that it is the Union’s competence to delimit those lands, protect them and enforce the right to respect them. So,
the no delimiting of the indigenous land involves serious violations of the constitutional rights.

In the specific case of Acre and South of the Amazon, we have seen, we have 17 land without demarcation, without mentioning the land inhabited by the people in isolation that are not officially recognized. Besides being a serious violation to the right to territory, the lack of demarcation of the indigenous territory enables plundering and theft of natural products and eases the old practice of fraudulent appropriation of land (with false titles). Let’s see what the constitution says about tradition:

§ 1º The land traditionally occupied by the Indians are the ones that are inhabited on a permanent basis, the ones that are used in their productive activities, the ones that are essential to preserve the environmental resources necessary for their wellbeing and the ones that are necessary for their physical and cultural reproduction, according to their uses, customs and traditions. (Brazil, Constitution 1998)

Now, delimiting the traditional land, indigenous land, is also guaranteeing the right to a physical and cultural reproduction of these peoples, at the same time that we protect the environment. So, delimiting the indigenous land has a very important and positive impact in the solution of environmental problems that also impacts the social and cultural life of the peoples.

Another important element that we have to mention is the one related to the delimiting and regulating process of these lands. The Constitution itself determines that the federation, the Federal Government, is the one that is directly responsible of its demarcation and protection. It also says, that the organ of assistance for the Indians is the one that is in charge of carrying out
the anthropological studies the are needed for the identification and subsequent delimitation. In this case the national organ that is responsible for this is the FUNAI - National Foundation for the Indian, which is linked to the Ministry of Justice. Let’s then see what the law says in the governmental decree edited and published on January 8th, 1996:

Art. 1º The indigenous land that is mentioned in the article 17, I, of the Law no 6001, December 19,1973, and article 231 of the Constitution, will be administratively delimited by the initiative and orientation of the federal organ of the assistance to the Indian, according to what this decree declares.

Art. 2º The delimiting of the lands that have been traditionally occupied by the Indians will be based in the work developed by qualified anthropologists, who will develop, within the period of time established by the head of federal organ of assistance to the Indian, the Anthropological Study for identification.

§ 1º The federal organ for assistance to the Indian will designate a specialized technical group, formed preferably by members of the same organ and coordinated by the anthropologist, to perform further complementary ethnographical, sociological, legal, cartographical and environmental studies and the evidence of the land tenancy needed for the delimitation. (Brazil, Decree No 1.775, of January 8th,1996.)

Even if for many, this is an unfavorable decree for the indigenous peoples, decree 1775 has been useful to sustain the petitions for land demarcation. This decree, as the decree231, of the CF, have been target of the ruralists and others linked to ecobusiness and the financing of nature. Acre has been an important exponent, in the sense of making changes to the legislation, to create better opportunities for economic interests.

Since there are so many indigenous lands in Acre pending of delimiting means that we are very far from finding solution to the problem and on the other hand, the problem deepens. In Acre there is a the false discourse saying that all the indigenous lands are regularized and that it is the most protected region in the environmental matter. This discourse has been widely spread, and to tell the truth, there has not been any opportunity to say anything otherwise. Few are the voices that are raised against the lie called sustainability, part of the so-called Green Economy. The CIMI, like the Dossier Acre group, have made the claims and every time possible telling the truth of the ingigenous peoples.

The situation of the indigenous peoples in isolation is even more precarious if we consider that these peoples have no contact, they are unable to defend themselves since they neither are aware of the legislation that protects them nor the legislation whose objective is to get hold of their territory. Under these circumstances, Article 1775/96 says.
Art. 7º The federal body of assistance to the Indian will be able, enforcing the law, specified in section VII article 1º of the Law nº 5.731, December the 5th. 1967, regulate the entry and transit of third parties in areas were isolated Indians presence is proved, as well as taking the necessary measures to protect de Indians. (Brazil, Decree nº 1.775, January the 8th. 1996.)

In the case of Acre, in recent years, mainly from 2006, the attacks to the territories of isolated peoples have been intensified with explicit concerns of forcing the contact, on one hand and in the other, denying their existence as a way to clear the territories for timber management plans and petroleum and gas exploitation. The Regional Funai coordination works like a position of trust to the State Governor, therefore, it first attends the governor’s interest and then to what is legally established in the Constitution, supporting the State Law Nº 2.308 October the 22nd. 2010, known as SISA law, which we will discuss later. The law has the objective of making the release of indigenous lands easier, among others for programs like Environmental Services Payment–PES, especially the mechanisms of REDD (Reduced Emissions from Deforestation and Forest Degradation), mechanisms used in plundering and expropriation of territories.

From the right to a protected and demarcated territory emanates other rights, and in the case of Acre, consequently, other violations to these rights, like the right to the exclusive beneficial usufruct, the right to prior consultation and others that we will see later. At the moment, we emphasize that the non-demarcation of the indigenous lands obeys to a market planning, basically for three reasons: I. direct appropriation of the lands, making them available to the market, since they cannot be negotiated, be leased or sold, this lands are “out of the market”. II. The appropriation of the natural assets of the non-demarcated territories like water, forests, mineral resources, drugs and of course, to serve the carbon credits market. III. Implementation of major infrastructure works to satisfy the necessities related to power generation and transport.
§4° The lands of which this article is talking about are inalienable and unavailable, and the rights over these lands are indefeasible. (Brazil, Constitution 1998)

As the Constitution itself affirms, indigenous land are inalienable and, they are indeed, out of the market and unavailable. In other words, indigenous lands are exclusively destined to physical and cultural reproduction of the peoples that traditionally occupies it. It also mentions that the rights over this lands never become extinct.

2. Right to “Exclusive” usufruct

In the previous section, we have pointed out and legally supported the territorial recognition, the demarcation, respect and protection of this territories, based on the Federal Constitution of Brazil, our major law, and the Decree 775/96.

In this section we are going to talk about the exclusive usufruct and the right over the property of the territories. For this reason, we are going to consider what the Federal Constitution of Brazil says, without prejudice of other complementary legislation, since all the legislation derives from the Constitution which is the highest law. Let see:

§ 2° The lands traditionally occupied by the indigenous peoples are destined to be their permanent possession, corresponding to them the exclusive usufruct over the wealth of the soil, rivers and lakes that we find in it. (Brazil, Constitution 1998)
The 2º paragraph of the Federal Constitution is objective, when talking about the usufruct, without leaving any doubt about it. Therefore, no one, neither groups nor companies or other interested parties can benefit from existing assets in indigenous lands. In addition, as well as territory, the usufruct has the ultimate purpose to guarantee the physical and cultural reproduction of the people. Only the underground is not included in the exclusive usufruct of the people and the reason is simple: in the underground are the minerals and they are exclusive property of the Brazilian State. Nevertheless, and deepening in the subject a little more, the Constitution says:

§ 6º There will be annulled and suppressed, without legal effects, the acts in which the objective is to control and possess the lands to which this article refers, or the exploitation of the natural resources of the soil, rivers and lakes they contain, without prejudice of the interest of the Union, according to complementary legislation, without producing any annulment or direct suppression the compensation or actions against the Union, except, in the form of law, regarding the derivative beneficiaries of bona fide occupation. (Brazil, Constitution 1998)

Any act which the aim is the occupation, control or possession of indigenous lands which is not their own people, will be considered a legal null act. Therefore without any effect. Therefore without any effect. Once again, the Constitution reaffirms the exclusive usufruct. In the case of bona fide possession, the Union must compensate to the benefactors, which not means the recognition of possession or the right to usufruct. This continues belonging exclusively to the indigenous peoples and, it must be considered that the rights to the land are imprescriptible and inalienable. To regulate this the Decree 1775/96 says:

Art. 4º Verified the presence of non Indian occupants in the demarcation area, the land tenancy federal body will give priority to the respective resettlement according to the survey realized by the technical group, noted the corresponding legislation. (Brazil, Decree nº 1.775, January the 08th. 1996)

It is important to mention, in this case, that the presence of the Federal body meant to accompany the non indigenous people, NICLR - National Institute for Colonization and Land Reform, also has a fundamental role considering that it is this institute´s responsibility the resettlement of non indigenous occupants and it is Funai´s responsibility to proceed to due compensation, when corresponds. The resettlement has high priority in case of bona fide occupation. Even when the resettlement is considered a priority, thereby, the occupation is bona fide, the non indigenous occupants must leave and they cannot coexist in the territory since the usufruct is exclusive to indigenous peoples.
Based on the exclusive usufruct instrument, the ones that are against the implementation of projects and programs such as REDFD (Reducing Emissions from Deforestation and Forest Degradation), since these mechanisms and projects overlays to the territories and are characterized as a violation of rights.

"The set of these mechanisms, commonly named as green Economy, based in the use of natural resources and the commodification or financialization of nature, in Acre, has been violently applied against indigenous people and traditional communities. Against Green Economy, there is an articulated group known as Dossier Acre, which performs criticisms based on research and analysis on the impacts in life and culture of indigenous peoples. This group has publish a special document for Rio +20, Peoples Summit held in Rio de Janeiro in 2012, named: "DOSSIER ACRE: the Acre that the traders of nature hide". It presents an analysis of lies and fallacies of the government of Acre related to the profits of the Green Economy. It is a document of obligatory reading for those who want to understand how the government of Acre has articulated and modify the legislation to give place to the appropriation and use of traditional and indigenous territories through manipulation and cooption of leadership and supported in a sophisticated propaganda and media system".

Photo 13
3. Right to prior, free and informed consultation

Brazil signed the ILO Convention 169 - the International Labor Organization, that convention has the status of law and has to be integrally applied. This means, that the convention is part of the constitutional law of Brazil. So, let’s see what the convention says regarding the right to prior, free and informed consultation in article 6°:

1. When The governments apply the provisions of the present Convention, they have to:
   a) consult the peoples that are involved, using appropriate procedures and particularly through the institutions that represent them, each and every time that any legal or administrative measures that could affect them directly;
   b) establish the means by which the interested peoples could participate freely, at least in the same amount as the other sectors of the population, in all levels, to adopt decisions in elective institutions and administrative organisms and of any other issues responsible for policies or programs that involve them;
   c) establish the means for a full development of the institutions and initiatives of the peoples, and in the cases which are appropriate provide the funds need to do so

2. The consults that are part of the application of this convention should be made of good faith and in an appropriate manner according to the circumstances, in order to reach an agreement and achieve a consent on the proposed measures. (ILO Convention 169)

We think, it is very clear that the convention forces the signing countries to fulfil the right to consultation, that in this case is equal to the right of a full and harmonious life. However, this right deeply differs from the right to veto, even though, in some cases, this would be implicit. In Brazil, specially in Acre, this right is, absurdly, neglected and there are no cases in which there has been a consult for implementing any project, what so ever.

When Brazil ratified ILO Convention 169, the legislator wanted to make it clear and reaffirm the Brazilian position: let’s see what the Decree 5.051 says:

The PRESIDENT OF THE REPUBLIC, in use of his attributions given by article 84, section IV of the Constitution:

Considering that the National Congress has approved, through Legislative Decree n°143, on June 20th, 2002, the text of the ILO Convention 169 - the International Labor Organization on the Indigenous and Tribal Peoples, adopted in Geneva, on June 27th, 1989
Considering that the Brazilian Government deposited the ratification instrument to the Executive Director of the ILO on July 25, 2002;

Considering that the Convention has come into international force on September 5, 1991 and for Brazil on July 25, 2003 according to what has been established in art. 38;

**DECREES:**

Art. 1º The ILO Convention 169 – the International Labor Organization on Indigenous and tribal Peoples, adopted in Geneva on June 27, 1989, added to this decree, it will be fully implemented and complied in all its content.

Art. 2º It is subject to approval of the National Congress, any act that will result from the revision of the Convention that imply costs or onerous and unforeseeable commitments that will affect the national patrimony, as is established in art. 49, incise I, of the Federal Constitution

Art. 3º These Decree comes into force on the date of its publication. (DECREE Nº 5.051, 2004).

With the previously mentioned decree, we can evidence that the Brazilian government assumes unconditionally what the Convention recommends. This posture of the Brazilian government, however, in the case of Acre, has not been met, absolutely. Up to the point, where the same Acre state government created a law, called the SISA law- Estate System to incentivize Environmental Services. We also need to mention that the project of oil and gas exploitation of the Valle de Juruá region, like the SISA law, have been imposed to the Acre peoples, specially to the indigenous communities, with no consultation at all.

Through a Public Civic Action numbered nº 1849-35.2015.01.3001, turned in to the Public Federal Ministry, and attended by the federal judge Dr. João Paulo Morreti de Souza, Substituting Federal Judge in Cruzeiro do Sul, Acre, has decided to suspend the oil and gas exploitation in the Cruzeiro do Sul, valle de Juruá, Estado de Acre. As a public announcement in his page of the MPF- Public Federal Ministry, and says as follows:

*The Federal Judge João Paulo Morretti de Souza declares, in the decision, that we have to consider the studies made by prestigious sources that suggest various types of possible and probable prejudice against the population and the environment in the regions where they are applying the extraction model of fracking with great risk to water resources, minerals, flora, fauna and also for human life, in what is referred to everyday life of the peoples of the region, as well as to the increase of birth defects in the surrounding communities, that could be related to the presence of exploitation ventures of shale gas.*

*In the decision it was also considered to not apply the prior, free and informed consultation to the traditional peoples of the region, violating the Convention nº 169 of the International Labor Organization*

*It determined that PETROBRAS suspends, within a period of 10 (ten) days, all and any...*
act derived from the bidding of block AC-T-8 and the contract on the production of hydrocarbons in the Sedimentary Basin of Acre, conventional and nonconventional resources, under penalty of a daily fee of 100 reales, besides the other legal sanctions that correspond.

Additionally, PETROBRAS is temporarily prohibited from performing any activity, including overflights, investigations, inspections in situ or any other measure related to exploitation and production of hydrocarbons in that area, before the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar)is carried out, provided in the interministerial disposition nº 198/2012, of the Ministry of Mines and Energy while the prior, free and informed consultation takes place according to what is prescribed in the ILO Convention 169 to the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fee, in case of not complying the legal order, until it ceases completely, the fee of 200 reales, besides the other legal sanctions that correspond.

It is also prohibited, temporarily, that the Union and the ANP proceed with any other auction procedure to exploit or produce hydrocarbons in the Sedimentary Basin of Acre, while the before the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar) is carried out provided in the interministerial disposition nº 198/2012, of the Ministry of Mines and Energy while the prior, free and informed consultation takes place according to what is prescribed in the ILO Convention 169 to the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fee, in case of not complying the legal order, until it ceases completely, the fee of 200 reales, besides the other legal sanctions that correspond.

It is prohibited that the IBAMA, extends any licence for any type of activity related to the exploitation and production of hydrocarbons in the Sedimentary Basin of Acre, while the before the Environmental Evaluation of the Sedimentary Area (AAAS – for its acronym in Portuguese: Avaliação Ambiental da Área Sedimentar) is carried out provided in the interministerial disposition nº 198/2012, of the Ministry of Mines and Energy while the prior, free and informed consultation takes place according to what is prescribed in the ILO Convention 169 to the indigenous and traditional peoples, directly or indirectly affected by the venture, under penalty of a daily fee, in case of not complying the legal order, until it ceases completely, the fee of 200 reales, besides the other legal sanctions that correspond.

This is an initial decision and it may appealed against. The case can be followed in the web page of the Federal Justice of Cruzeiro do Sul, Acre, case number 0001849-35.2015.4.01.3001. (FEDERAL PUBLIC MINISTRY, AC 2015).

The Action that resulted in the process nº 0001949-35.2015.4.01.3001 developed because of many petitions made by the initiative of the civil society, indigenous and riverine communities always along with the CIMI- Missionary Indigenous Council, which organized several reunions, seminars and courses in the region, specially about the technique called fracking. The Amazon river basin is considered the biggest fresh water basin in the world. In these reunions, the REDD projects and the misuse of the resources destined to the indigenous peoples in the administration of the Acre government through the ONGs and the state secretaries were reported.
4. Attacks to the constitutional laws and regulations:

The Brazilian State has been, in a certain way, taken over by a political group and treated as it was their own particular farm. This has been happening over all our history. The big oligarchies always ruled and misruled in our country. Numerous attacks and destitution of presidents, leaders assassinations, and all sorts of attacks to the laws and regulations were common weapons used by these political oligarchies. Nowadays, we notice a recrudescence of the actions of the oligarchies and, as a consequence, we have attacks to the laws and regulations and direct attacks also to the territories. The only interest they have in the territories is to take over them and increase their power and income in a concentration of the profit, which is very high.

In the National Congress, Federal Chamber and Senate, there are many proposals to change the legislation or create new laws that have as an objective to make it more difficult to demark the indigenous land, quilombos and traditional communities, as to open new spaces for attacks to the common and natural goods, and of common and fundamental use. There is a clear attack to the laws and regulations that rule the commerce, trade and financing of these goods, like the changes made to the Forestry Code. I mention the Forestry Code, among other reasons, since the writer of it in the Federal Senate has been precisely, the Senator Jorge Viana, from PT de Acre, ex governor and brother of the ex senator, author of the oil and gas exploitation project, and actual governor of the state of Acre, Tião Viana.
Among all the proposals to modify the national legislation, the ones that refer to the indigenous peoples, the PEC – Amendment Proposal to the Constitution, with the number nº 215 is the one that threatens the territories the most, it includes all interests against the indigenous peoples and opens the territories to capital and market. Let’s some of the main proposals in a text published by the ISA- Socioenvironmental Institute:

Proposal for the Amendment to the Constitution 65/2012. The end of the environmental licenses

The PEC 65/2012 simply ends with the environmental licensing, the main instrument of control and prevention of socioenvironmental damage provided in the law. It stipulates that the mere presentation of an Environmental impact Study (EIA-Rima) of a project will imply an authorization that starting from then, it cannot be canceled or suspended. In case the project is approved, there will not be any deep analysis of socioenvironmental viability on any act. The affected populations and ecosystems will be left to mercy of good faith of businessmen.

The PEC has gone back to the Constitution and Justice Commission (CCI) of the Senate PEC, that will consider, in a short time, the contrary view of senator Randolfe Rodrigues (Rede-AP). Immediately, the Project will go the plenary and if it is approved, to the Chamber, it has been included in “Brazil’s Agenda”, which is a set of priority proposals of the president of the Senate Renan Calheiros (PMDB-AL). The author of the PEC is senator Acir Gurgacz (PDT-RO). In one interview he has accepted that the proposal could benefit his family business. In the Federal Supreme Court (STF), Gurgacz is center of an action, he is accused of falsifying documents and is subject of an accusation of public felony, and other actions in other legal instances (see), The ISA has published an editorial about this and has been participating in the mobilization against the PEC, along with the Public Federal Ministry (MPF) and other organizations. Express your opinion on the project in the Senate’s website, sign the petitions of Avaaz and Change.org against it.

Project of Senate Bill 654/2015: !Environmental Licensing without stopping!

The PLS pretends to weaken the Environmental Licensing, reducing to up to eight months the time for licensing of mayor works which are considered strategic for the government, “fast track”. The project attracts the attention of great companies, as contractors, many of them recently named because of the famous corruption scandals. If the law passes, the disaster risk could increase, like the Mariana (MG) and the difficulties to prevent and mitigate the socioenvironmental damage caused by them. The answer does not forsee any public audiences and eliminates a series of steps to licensing, including the tree phase system (prior license, installation and operation). During the process, if any government organ involved in the process does not comply, automatically, the license is considered approved, “who says nothing agrees”.

The project can be voted in any moment in the Senate Floor. If they approve it, it goes to the Chamber. The proposal is of senator Romero Jucá (PMDB-RR) and related by the senator Blairo Maggi (PR-MT), actual minister of Agriculture and one of the major producers of
soya in the world. Juca is one of the greatest enemies of the indigenous rights, is subject of four investigations in the STF and two legal actions in the Federal Justice System. (Read more). He is also mentioned in the Lava Jato and Zelotes operations. Maggi is object of an investigation in the STF, accused of money laundering and one action in the Federal Justice System for administrative dishonesty. The Isa has prepared a manifest, signed by more than 130 organizations, and an note asking to discuss more deeply about this issue. The two documents have been very important in the mobilization against the PLS. Express your opinion on the project in the Senate´s website, sign the petitions in the Public Petitions and send messages in the Panela de Pressão(pressure Cooker) against the proposal.

**Senate Law Project 620/2015 > ¡Biodiversity in danger!**

The PLS has as an objective to authorize the implementation of parks and aquaculture areas on up to 0,5 % of the surface of lakes, reservoirs and dams of hydroelectric power plants, that are in control of the Union. With that excuse, weakens or ends with the devices that control the activities of the area. For example, it permits the fishing activity without a license, concession or, authorization or any register emitted by the organ that controls the activity. The proposals opens up a way to the introduction of non native species to the area, one of the major threats to biodiversity, to fishery and aquaculture with native fish. The project can be voted in any moment in the Constitution and Justice Commission of the Senate. If they approve it in other commissions of the house, it goes directly to the Chamber, without going through the plenary. The proposal is of senator Marcelo Crivella (PRB-RJ), who is candidate for mayor of Rio and was the Minister of Fishery in Dilma´s period and handles a lot of big companies in the area. The ISA has published an article about this topic and has delivered a technical note against the proposal. Please vote against the PLS in the in the Senate´s website.

**Proposal for an Amendment to the Constitution 215/2000 > The great threat to the rights of the indigenous peoples.**

It is one of greatest threats to the rights of the indigenous peoples granted in the Constitution and one of the main struggles of the ruralists. It pretends to transfer, from the Federal Government to Congress, the decision over the Indigenous Lands, besides opening the area to high socioenvironmental impact businesses, we can foresee a series of difficulties in the demarcation of the territory. In the case the project is approved, the recognition of Indigenous Lands will be definitely paused. The project can be can be voted in the plenary of the Chamber. If it is approved it goes to the Senate. The relator in the Special Commission of the Chamber is the ruralist congressman Osmar Serraglio (PMDB-PR), allied to Eduardo Cunha (PMDB-RJ). The ISA has emitted a technical report about the consequences of the possible approval of the of the PEC and has also emitted a manifest signed by 48 senators against it. This organization has actively backed the National Mobilization of the Indigenous people, the main group against the PEC. Please sign the petitions of the Avaaz, Public Petition and Ipetition against the PEC.

**Proposal for an Amendment to the Constitution 76/2011 > Opening wide the doors of the Indigenous Peoples.**
The author is, again, senator Blairor Maggi (PR-MT), the proposal intends to open the Indigenous Lands to the installation of hydroelectric plants, which are ventures with a high potential of destruction of the environment and the traditional ways of life of indigenous peoples. We are waiting for the Senate Floor to vote. If they approve it, it goes to the Chamber. Together with the indigenous leaders, ISA has denounced the project in the Weather Conference in Paris (COP-21), on December, 2015, one of the major events regarding the Environment in History (read here). Vote against the proposal in the Senate’s Website.

**Legislative Projects 1.216 and 1.218/2015 >** More delays and difficulties for the demarcations.

In practice, they pretend to make the demarcations of the indigenous people territories more difficult, for example, imposing the “temporary framework” to prove the right to the territory: if they approve it, the only recognized territories would be the ones that were occupied by the indigenous peoples at the time of enactment of the law in the Federal Constitution on October 5, 1988. The projects are in the Constitution and Justice Commission of the Chamber, and from there it goes to the plenary. If they are approved, comes the Senate. The author of the PL1216, is the ruralist congressman Covatti Filho (PP-RS), and is financed by agroindustrial companies.

**Legislative Projects 1.610/1996 > ¡No Mining in Indigenous Land!**

This is another project of which the author is senator Romero Jucá (PMDB-RR), it has as an objective to allow mining in Indigenous Lands. The proposal threatens the indigenous peoples and the environment, since mining is an activity of great socio-environmental impact. The Indian communities have not been consulted regarding the proposal opposed to what is said in Convention 169 of the International Labor Organization, of which Brazil is a signer. The writer of the Special Commission that analyses the project in the Chamber, is congressman Édio Lopes (PMDB-RR), he has a demand for economic malfeasance in the STF, he has received donations for the campaign of the Vale mining company and the contractors involved in the Lava Jato Operation (see the interview). If it is approved in the Special Commission, the PL goes to the plenary. Since many years ago, the ISA is following the process of the project. To this project, we need to add the petitions of investigation of the Indigenous Lands in the Amazonian area, all this to call attention to the threat they are suffering.

**New Mining Code (PL 37/2011) > Mining: ¿who is interested?**

It pretends to simplify the necessary procedures for mining activities, that generally have great socio-environmental impacts. It involves very little environmental, social and occupational safeguarding measures for the areas and populations that are affected. The proposal involves the interest of great mining companies, since it weakens the power of the state government to regulate access to the public sector to the natural resources. The actual writer of the project, congressman Laudívio Carvalho (SD-MG), is finishing a new proposal but we still do not know what text it is going to be voted on, in what instance (commission or plenary), or when it is going to be passed. The Vale mining company is among the donors.
of the campaign of the congressman. Carvalho was the writer of the project defended by the weapon industry that pretends to have free access to guns. The ISA was one of the actors of the complaint presented to the Ethics Council of the Chamber and the STF against the previous writer of the project, congressman Leonardo Quintão (PMDB-MG) who is under accusation of defending the interests of the ones that finance the campaign. The ISA has also participated in the Committee to Defend the Territories against Mining, which is a reunion of various social movements and organizations of civil society that are opposed to the project. Please sign the petition against New Mining Code.

**Legislative Proposal in the Chamber 34/2015 (in the Chamber, previous PL 4.148/2008) > ¿Is it transgenic? ¡We need to know!**

The project ends with the obligation to include the symbol “T” in the packages, that shows when a product is transgenic. The proposal was approved in the Chamber and then, rejected in the Science and Technology Commission of the Senate, all this, after the ISA and the allied organizations publicly expressed their opinion against the project in a public audience. The proposal is voted at the moment in the Agricultural Commission of the Senate, after this, it goes to the social and environmental commissions. The author of the PL, congressman Luís Carlos Heinze (PP-RS), is one of the ruralist parliamentarians that are more radical and one of the main artificers of projects against the indigenous peoples and the environment in the Chamber. In 2013, in a discourse Vicente Dutra (RS), said that “Quilombos, Indians, gays, lesbians” are “everything that is no good”. He is in the center of an investigation of the Lava Jato Operation in the STF. Among the ones that finance his campaign are big agro industrial companies and the Queiroz Galvão contracting company, also involved in the Lava Jato Operation (ISA, Congress activates it; and the threats to the socio-environmental rights persists 2017).

We have, as we can see, various proposals to modify the national legislation with the objective to strengthen business sectors as the agro industrial and the mining harming the rights that have been historically conquered. There is not, on behalf of the affected communities and peoples, any guarantee or safe guard related to human and socio-environmental rights which are left in the last plane.

We also have proposals and even laws that are valid in the state of Acre and have as an objective, precisely, facilitate the access of economic resources to the territories with the purpose of continuing with the exploitation, merchandising and financing of nature and the common goods. A clear example of this is law 2308, known as SISA law (Acre, 2010).

“The state system of incentives to environmental services- SISA, incentives program of environmental services- ISA Carbon and other programs of environmental services and ecosystem programs of the state of Acre and other provinces” (Cursiva ipsis litteris).
Art. 1° The State System of Incentives to Environmental Services - SISA is created with the objective of encouraging the preservation and increase of the supply of the following eco systemic products and services.

I. The attainment, conservation, keeping and increasing of the inventory and the reduction of carbon flow;

II. The conservation of the natural beauty;

III. The conservation of the socio biodiversity;

IV. The conservation of the water and the hydric services;

V. The regulation of the climate;

VI. The valorization of culture and of the traditional eco systemic knowledge;

VII. The conservation and improvement of the soil. (ACRE, law 2308/2010)

The curious thing of this type of initiative is that, since the prior, free and informed consultation process does not take place, the government of Acre gives a third party the analysis of the questions and relies on “looks likes” that will not have the point of view or is even close to the communities and are derived of agreements that have never been cleared in an adequate way. For example, in this case, the SISA, the government of Acre acted and acts in perfect harmony under the orientation and the agreement of the following institutions WWF – EMBRAPA – GIZ – GCF – FOREST TRENDS – CTA – SOS AMAZÔNIA – GCP – CPI – GTA – UFAC – IPAM – EII. All of these are institutions that, in a way, are interested in the environmental issue and are somehow motivated by receiving big quantities to develop activities that encourage, aid and spread the initiatives that are, in first instance, “sustainable” but are really encouraging false solutions to the socio-environmental problems, and at the same time, favor the process of commercializing and financing of the common goods and nature as a whole.

The law 2308/210 that created the SISA is undoubtly unconstitutional since it pretends to legislate about issues and territories that are of exclusive concern of the Union, like is the case of indigenous lands and national parks. The text of the law makes it clear that the SISA is responsible, for example, to regulate the capture of carbon as well as its flow. This is of exclusive concern of the Union that does not have a complete legislation on the topic yet. The text also mentions that: “Conservation of the scenic beauty” means that the SISA will act in the protection, or not, of the area that they consider as part of the scenic beauty allowing them to include areas of national preservation, parks and even indigenous territories.

In section VI of the law, we can see more explicitly the intervention of the government of the state of Acre: “valorization of culture and of the traditional eco systemic knowledge”. Here we, very clearly, focus on the indigenous territories and its cultures and traditions. Now, as we have seen before, the action on these territories is exclusive competence of the Federal Government through the Funai – National Foundation for the Indian and the goods present in those territories are of exclusive usufruct of the communities.
There are several proposals and institutional laws in Brazil that are in full force and all of them affect, restrict and reduce access to the rights that have already been conquered. In law 2308 there is a sole paragraph that makes reference to the competence of the government of the state of Acre in this way:

*Sole paragraph. The state public authority has competence for the management, planning, carrying out, implementing, monitoring, evaluation of actions and the creation of regulations that have as an objective the environmental protection of forests, hunting, fishing, fauna, conservation of nature, defense of the soil and of natural resources, control of contamination, and in this way, the reduction of gas emissions of the green house effect by deforestation and forest degradation, the accumulation of forest carbon by the state and the provision and conservation of other environmental eco systemic products (…) (ACRE, 2010).*

*And based on these laws and proposals, is that the state of Acre specifically and the government of Brazil in general, set out and is working on the process to dismantle the legislation that protects and gives guarantees to the individual, collective and socioenvironmental rights to an extent that was never thought of.*

III. Conclusions and proposals:

The situation of the indigenous peoples lands in Acre and Sur del Amazonas, that are not demarked, invaded and exploited, is directly connected to what we call Green Economy, to the Oil and Gas Exploitation and the subsequent violations of the rights. Changing this reality requires, necessarily, a group of processes and initiatives that can impact governments, the one of the State of Acre, Brazilian, from other countries, also people and organizations of the civil society and the ones that Defend Rights.

It is appropriate that we protest to prevent the tragedy that is coming and often comes disguised in the form of sustainability and protection to the common goods and the peoples that depend on them. The concentration of the income and profits is a great threat to the planet and the original peoples in an specific way because they depend more directly on these resources understood as natural. When we defend the territories, we are also defending life of the peoples and life in the planet. We have the purpose of adding to the number of fighters, in a web, that will strengthen the fight and at the same time open spaces to criticize the development model based in the profit at any cost, and the construction of another world where the rights are respected and life is preserved.

We refer to the content of the open letter, published on October, 2016, in which the indigenous and riverine peoples, traditional communities and organizations address the society in general and the authorities suggesting getting together to demand ordinances:

WE, the indigenous native peoples (Apolima-Arara; Arara; Apurinã; Arara do Bagê; 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 with our responsibilities (CIMI; Dioceses de Cruzeiro do Sul; CPT- Pastoral of the Children; Diocesan Cáritas; Catechetical Pastoral ; COMIDI, University Professors y Legal Assessorial of the Dioceses), got together during the 5th to 7th of October, 2016 in a seminar with the theme: Commodification of nature, threats to the usufruct of the territories and human rights, we decided to express ourselves through this instrument, open letter, about the problems that that mortify us and as well as to demand answers to our problems from the authorities and adequate public policies according to our needs.
We will not allow that people force us to accept the execution of projects or we will not accept the projects that are presented by the ones that say are our representatives when they are not, but rather belong to government or non governmental organizations or even in an individual way. Among other projects, we highlight the projects of REDD, forest management, petroleum and gas exploitation, specially through fracking, and also projects of a "so called" infrastructure like the construction of roads and railways without a prior, free and informed consult of the communities.

We repudiate the lack of respect and the ideas of reducing our rights as a way to survive, as well as the attacks to our culture and customs, through criminalizing, as an example we have the ways of managing the environment, crops, hunting, fishing etc. We have been violently attacked, criminalized and penalized, giving us unpayable and unjust fees because they act on our only way to survive. Even more serious is that the state government has participated to punish us in the name of private interests.
We assume, as we have always done, our responsibilities, but, we confirm that the attacks to nature, to our common house, are mainly caused by the great industries and central sectors of capitalism and sectors that are only focused on development, based on the unrestrained consumption and the concentration of resources and wealth and the distribution of poverty. Some projects that are presented as sustainable, are really a farce and are false solutions that end up sanctioning and criminalizing the communities, while they transfer the profit of the natural resources to private and even international companies.

We demand that a detailed investigation is carried out to know about the resources that were assigned to the communities, of which the communities were not even aware of or had any access to them. With this information, we decided to activate the Public Ministry so they act in our favor and take the needed measures.

The right to prior, free and informed consultation, besides being ignored in general in Brazil, is particularly worrying in the state of Acre, since a couple of projects implemented by some groups are being publicized as sustainable, while, they are truly, no more than new ways, sophisticated ways of appropriation, plundering and exploitation of territory.

VI. Abbreviations

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

**Coordination:** Cáritas Bolivia

**I. Introduction:**

1. **Ancestral Territory**

The Bolivian Amazon area extends, despite the political-administrative reduction, at almost thirteen percent (12.9%) of the total national territory (1,098,581 Km²). However, other criteria have also been used to define this area, like the ecological or the biome that represents a 43% and the river basins that represent the 65% of the Bolivian geography. Nowadays it is still a territory with great cultural and ancestral richness that is reflected in the 29 native indigenous peoples, some of them with great risk of extinction specially the ethnic minorities.
The “Indigenous Territory and National Park Isiboro Secure” TIPNIS together with the “Tsiman Forest Area” makes up one only territory: an indigenous ancestral territory. Even many years ago, it used to be much bigger, but especially on the northern side, the plain (pampa) ecosystem, was little by little taken over by economic interests attracted by the potential it offered for the livestock activities.  

The ancestry of the territory has been questioned when the government tries to implement economic measures like extractivism or infrastructure, denying the historical, cultural and spiritual milestones of the indigenous peoples that inhabit this territory.

1.2. General data

The TIPNIS is located in the Beni and Cochabamba departaments, includes the Ballivian Moxos, Marban, Ayoropa Chapare provinces. Possesses na Ejecutorial TCO-NAL-000229 title, where they recognize the TIPNIS Subcentral, as the only collective owner of the Territory with a total surface of 1,236,296 hectares.

It is a protected area of Bolivia which was declared a National Park through D.S. N°7401 on November 22, 1965 and declared National Park through D.S. 22610 on September 24, 1990: as a consequence of the March for the Territory and Dignity that started August 16, 1990 in the city of Trinidad, more than 300 men and women left for the seat of government, to look for recognition, since their territory was being invaded by the lumber dealers. During all this time the Government never controlled or looked after this area at all; the forests were regulated by the drainage of the water in the plain and at the same time regulated the climate in the nearby valleys that are highly productive, meanwhile great extensions of wetlands, swamps and marshes have an important role in the hydrological functioning of the region.

The indigenous peoples of the Moxeño-Trinitario, Yuracare and Tsimanin inhabit the area even before the Spanish colonization took place. According to the studies, there are some isolated indigenous peoples among them the Yuracares and Yuquis, and we have confirmed, indigenous tsimanes communities in voluntary isolation.

There are 64 indigenous communities of the Tsimanes, Yuracare y Moxeño-Trinitario peoples, that ancestrally own and inhabit within the Isiboro Secure Indigenous Territory and National Park.

37 Interview: Technician of the Subcentral TIPNIS
38 CPMB = Central of indigenous peoples of Beni; TIPNIS = Indigenous Territory and Isiboro Secure National Park; CIDOB = Confederation of indigenous peoples of Bolivia.
At the moment the communities are distributed in the following zones:

**SECURE RIVER ZONE:** Asunta, Usve, Oromomo, Areruta, La Curva, Santo Domingo, San José, Puerto Totorá, Cachuela, Villa Hermosa, La Capital, Santa Rosa del Secure, 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 Patío, 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 a special reference to the communities that are surrounded by settlers or farmers: Santísima Trinidad, that has 190 families, Fátima de Moleto has 10 families, Isarsama has 5 families, José de Moleto has 35 families, Limoncito del Isiboro, San Antonio de Moleto has 15 families, Santa Anita has 5 families and Puerto Patiño, that no longer exists. In these communities, we have the organizing system of the settlers since they are in the polygon 7 (colonization zone)

1.3. Socioeconomic Situation

The access to the TIPNIS is by land. From Trinidad: San Ignacio de Mojos, San Lorenzo, Santo Domingo over the Secure river; waterway to the communities of Trinidad, Memoré River, Isiboro and flying to the communities that have an airport like, Asunta, Oromomo, Puerto San Lorenzo, Centro de Gestión y Santísima Trinidad and from Cochabamba or Santa Cruz by land in the rout to Villa Tunari through the communities of Chipiriri, Eterasama, Samusabete, Isinuta, Puerto Patio, Santísima Trinidad.

The communities are far away from one another and to get to the road that the government pretends to build, these communities would have to take out their products from their land up to the community and then, either by land or through the river, up to the highway either if the destination is Beni or Cochabamba.

Referring to education, it counts with 6 nucleus 46 sectional schools distributed in the
following way; Gundonovia 5 sectionals, Santos Noco 7 sectionals, Oromomo 6 sectionals, San Miguel del Isiboro 10 sectionals, Pedro Ignacio Muiba 7 sectionals, Cipriano Barace 11 and 5 over the limits.

It has a population of 4,563 inhabitants (according to the TIPNIS 1994 census) distributed as follows: Mojeños 68 %, Yuracare 26 %, Chimanes 4 %, however, the settlers established in the red line (150 Km.) in 47 labor unions and with 4,000 families; that would be 7,000 habitants (according to the information gotten from the National Institute of de Agricultural Reform based on the eviction processes that are pending); also, the settlers in the depreciation zone, south of the TIPNIS there are 15,000 habitants.

This enormous difference of population involves a great rate of vulnerability in terms of losing territory against the constant advances of new settlements.

The social organizations of the TIPNIS are:
- Indigenous Territory Sub Center and the Isiboro Sécure “TIPNIS” National Park
- Ethnic Peoples Center Mojeños del Beni (CEPM-B)
- Indigenous Nationalities Council of the South (CONISUR)
- Indigenous Women Sub-Center TIPNIS

Talking about health, in the territory there are no hospitals and even if there are some sanitary stations or health centers there is no medicine, what the generally have is paracetamol and even with those we have difficulties, things even get worse when we see there is no health personnel present at those centers in a periodic way in the territory, there is also a KATHERY center, which is administered by the Vicentine Sisters, as a social service of the Catholic Church that contributes with the formation of medium level technical professionals, specialized in Agriculture and Veterinary.

1.4. Present situation of the Tipnis:

Describing the situation of the Tipnis is complex due to the political, economic and social conditions even though, we can highlight the following:

a.- The actual situation of the indigenous movement worries because of the division of the organizations generated by the political intervention of the State Government party, due to the leadership instability and the permanent threats of the broken structures within them.

On the other hand, according to information given by the communities, and the geographical location of of the alleged highway, the benefits that it would bring, would be strengthening of of the illegal farming of coca and the formation of more labor unions.

Taking in account that the indigenous peoples are surrounded by farming communities, the other consequences the new highway would bring would be “violence between communities, colonization, indiscriminate exploitation of natural resources, school dropout, increase in drug trafficking and an increase in indigenous woman trafficking”. 39

39 https://www.pressreader.com/bolivia/el-deber/20170822/281779924245883
http://www.ftierra.org/index.php/publicacion/boletines/171-boletin-trimestral-doce-n-12-tipnis-bajo-asedio
a.- **Law Nº 266 of intangibility**, will make the expansion of the coca production valleys over the red line possible, in the center of the territory. Nowadays, settlers and thirds (individual homeowners) try to trespass the territory despite its title of collective ownership, according to testimonies of people, the coca farmers are already selling lands lengthwise the highway.

b.- **The advance in the coca** growing, means the destruction of the forest and after a few years, soil depletion because of the intensive use and the agrochemicals used in it (later those lands will not be productive) and the constant trespassing of the settlers and others to the Native Communitarian Lands.

c.- **The destruction of the forest coverage has various environmental consequences:** The presumption is that it will affect the capability of catchment of rain water (function carried out by forests and wetlands or Yomomaes), function of regulation of the hydrological flow, this way floods will be worse in the rainy season while in dry season there will be less water, thus, more chances for fire to be caused. This will affect the availability of water in rivers and for fish, who will also be threatened by contamination caused by pesticides.

To summarize, in relation to the megaprojects, the construction of the highway in the middle of the Tipnis, could affect the hydrological system in the region and worsen the floods. In
the same way, we estimate that the highway will make it easier for the settlers, coca growers, timber merchants, hunters and other predating agents to enter, it will also affect the base of the natural resources and the life system of indigenous communities.

The advantage of having a road between Trinidad y Santa Cruz will benefit, not the Tipnis, but the inhabitants that will use it and specially the settlers and the coca growers.

The intensive use of the soil in behalf of the coca growers in the southern part of the TIPNIS has meant that these territories suffer of an accelerated wearing out of the soil. The growing of coca has caused the loss of natural nutrients of the land, depletion and erosion of it, with very little possibilities to recuperate these territories; the indigenous peoples understand the territory like a space free to use being this a problem of ethnic logic that, since many years ago, are facing on one side, the coca growers, that have a parcel conception and on the other hand, the Amazonian indigenous people as conservers of their territory and their customs (hunting and fishing).

1.5. Possible Effects of Law 969:

- The water supply is in risk, as a consequence of the deforestation of the Isiboro Secure forest
- Expanding of the coca fields

This law is clearly a flagrant violation of the political constitution of the State regarding biodiversity protection of the indigenous territories without any prior consultation (IOLT Convention 169- International Labor Organization), violation of the international treaties and human right conventions at an international level.
II. Resistance process:

1. The Eighth March:

Since the denominated “First Indigenous March for Territory and Dignity” in 1990 with which the territory was recognized through Supreme Decree, there have been 20 years of constant resistance and fighting for the rights; but one milestone that marks the resistance process is the 2011 march, called the “Eighth March” that starts on the 15th of August and gets to the Plaza Murillo the 19th of October 2011. After 65 days of marching, 1600 people participated.

These people were, as they had been for many years, brutally intervened by the National Police, they were hit, persecuted, kidnapped, burdened, transferred against their will, mothers and fathers separated from their children, others could scape to the forest and were not captured; the courage of the San Borja and Rurrenabaque made it possible to rescue the kidnapped, preventing another plane from landing to take the indigenous people to unknown destinations, scaring away the policemen that were guarding the people who participated in the march.

What happened those days:

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

On September 28, there was an overwhelming national strike called by the Bolivian Workers’ Union (COB) and some other groups supporting the Indigenous Territory and National Park Isiboro Sécure (TIPNIS).

Eight attempts to have a dialogue fail. The March Committee only demanded that the new change policies be implemented and to not permit that the old development schemes attempt against the Indigenous Territories.

President Evo Morales tried several times to negotiate, starting a public consultation in Oromomo And Santo Domingo, disregarding all the territorial representation. He was also present in the northern part of Cochabamba, running consultations, delivering works, participating in 6 assemblies with federations from the tropic.

A complaint was carried out by initiative of the Political Movement No Fear (MSM) over irregularities in the contract and outrage to Human Rights for the intervention in the march. As the allegations of the Ombudsman and the Permanent Assembly of Human Rights Bolivia.

Achievements made by the march.

The great achievement was the enactment of the Shot 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, declares it natural and sociocultural patrimony, preservation ecological zone, historical reproduction and habitat of the Chiman, Yuracaré y Mojeño-Trinitario peoples.
That is why it is of primary interest of the Bolivian state government. It declares that Villa Tunari - San Ignacio de Moxos highway will not go through the TIPNIS, prohibiting the human settlements and land occupations by outsiders, declaring these activities as illegal and that the possible evictions with intervention of the public force if it would be necessary. (Arts. 3 and 5 of Law 180).

In addition, the Regulation (D.S. N0 1146 of February 24, 2012) was issued on October 24, 2011, almost 4 months later. Agreements are carried out on record in order to attend the 16 demands of the fighting platform established by the Indigenous and Native Peoples from the point of view of the existence of indigenous peoples and the protection of the rights of all Bolivians and Mother Earth (including the protected areas).

2. The Ninth Native March:

In this new march the demands are

• The enforcement and going into effect of Law 180,
• Respect to the participation and social control in the designing, construction, execution and monitoring of the regulations and public policies of the Plurinational State.
• That they would be in coordination and agreement with the Indigenous native peoples and nations, respecting their structures, as well as with the other social groups of society;
• We demand the government’s compromise to construct the legal regulations and public policies with full and effective participation,
• We ask for a National Agenda of readjustment of the process of construction and implementation of the Plurinacional Communitarian state
• We demand from the government the removal of the settlements, illegal occupations of the territories, illegal coca plantations inside the TIPNIS and that they would be carried out with the CPEMB, TIPNIS y CIDOB and that a follow up will be done since the government is the one called to eliminate the illegal coca plantation and land occupations without any allegation
• And we ask for the immediate removal of the military ships of the Bolivian Armed Forces as well as the servicemen and the officials in charge of carrying out the consultation in the TIPNIS.

3. Resistance actions nowadays:

With the enactment of Law 969 which cancels intangibility, despite the resistance of the Organic Sub central of the organization, there have been a series of subsequent events, such as

1) The election of the new board of directors of the Bolivian Confederation of Indigenous Peoples (CIDOB), in reaction to the complaint Indigenous in resistance present—

40 CPEMB= Central de Pueblos Indígenas del Beni; TIPNIS= Territorio Indígena y Parque Nacional Isiboro Secure; CIDOB= Confederación de Pueblos Indígenas de Bolivia.
ed. It is a board of directors promoted by the government and sustained by the distribution of economic resources “as an example paying bus tickets for them” to regional leaders.

2) Subsequently, people are convened to two encounters of Indigenous leaders, one by the Bolivian Confederation of Indigenous Peoples CIDOB, which was recently chosen and where the Bolivian president participated and apparently the majority of Indigenous leaders from the TIPNIS communities took part and the other one called by the Subcentral of the TIPNIS itself; which was conducted with the presence of the Human Rights Permanent Assembly, and Civil Society groups in which a series of events42 that threatened the security of the Indigenous leaders participating on the encounter that took place in the Management Centre, as the testimonies of the people there evidence.

“On the way, police stopped “chatas” people who carried food, tools and fuel, there were some word exchanges between them and the navy officers, screams and community members in the Port of the Management Center. There were scuffles and screams - that kept the convoy that arrived from moving, the people came out, and tried to stop them there were scuffles and screams, the military left and the people went back to the meeting; on the way back there were no problems even if we were afraid of the retaliation that the government could take against us”43

After the meeting that took place in the Management Centre many leaders lived moments of tension and fear for their lives, reason why they declared themselves in clandestinity according to the testimonies, being the intervention of the president of the Human Rights Permanent Assembly necessary.

“We make known that, at the beginning of this year (2018) a group of the board of directors headed by the president of the women section of the TIPNIS traveled to some of the communities from TIPNIS to inform about the activities that are being carried out and to find out how to strengthen the resistance of their fight to defend their territory”.

Despite the series of complaints made by the native people of the TIPNIS, principally the ones affected by the project of the highway that crosses the territory, in distinct means of communication, as well as in meetings held with the Indigenous Pastoral and the Pan Amazonian Ecclesiastical Network in Bolivia, they have ratified that “although the government of Bolivia has approved laws in favor of Mother Earth, in the discourses of the president and vice-president they show themselves as indigenous communities defenders but it is different

41 https://www.pressreader.com/bolivia/el-deber/20170822/2817799024245883
42 http://www.ftierra.org/index.php/publicacion/boletines/171-boletin-trimestral-doce-n-12-tipnis-bajo-asedio
in practice since they are violating the rights, because they do not respect the organizations and in different ways they are threatening the leaders who defend it.”

Among other performed actions, there is also the introduction of a leader delegation from the organizations of the indigenous peoples, from the TIPNIS Subcentral, they presented themselves in the Conference of the Parties (COP) 23 that took place in the city of Bonn, Germany and also before the Ethic Rights of Nature International Court, complaining about the threatens they face due to the Bolivian government intention to build the highway in the middle of the forest.

In that sense, it was made known during the meeting of the Defense of the Indigenous Territories Coordinator, held the 24th and 25th February 2018, in the city of Santa Cruz where they presented a complaint before the International Court of Ethic Rights of Nature, admitting the process and announcing the arrival of the Investigation and Observation Commission to Bolivia in August 2018.

4. Testimonies of the Indigenous Peoples of the TIPNIS

*Mega Projects: Interviews made to the officers and ex-leader:*

An ex-leader talks about the mega projects of the central government:

Lizards: lizard hunting is taking place, and “It does not benefit the indigenous people, they do not pay well for the skin, is a personal business that benefits the person that negotiates at that moment, it is rather harming the territory because in some time, the lizards are going to be exterminated”.

Chocolates: It only benefits a group of families and it is only one time a year and the money gotten is only enough to survive.

Power lines: There are only electricity producing light engines and the power lines, it worked for the inauguration by the government officers but they did not work any longer because there is no fuel, the engines are deteriorating, there is no maintenance and the community members, we, do not know how they work because they never gave us any instruction and when they gave them out they do it to people who belong to their political party and they do not inform the rest about anything.

My Water: It does not work, the only benefit is the tanks where rain water is accumulated.

Schools: For the community members of the Secure, Ichoa there is no ben-

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45 Positions expressed by representatives of the TIPNIS in meetings with the indigenous Pastoral and REPAM January 2018
efit from the mega projects of the government, before we had schools, the parents were interested in their children learning how to read and write and when the children grew up they looked for a wife for them and for the girls, a husband and the people were more honest, they lived a quiet life, as a community member of the Trinitaria Yuracare, in their community they collected maggots, they grilled them and ate them, they also ate “ajipa” and other types of worms.

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

Highway: According to the interview made to Matilde Noza, she mentioned that they gave them engines and then made them sign blanc papers telling them that they were the receipts of the electricity bills, however they were lying, because supposedly they were the consent that they wanted the highway in the middle of the TIPNIS; she sees no benefit to the highway because her community stands next to the Isiboro River approximately five days from the highway to the community, such a highway will only benefit the communities that are near the road to Cochabamba Buen Pastor, Santisima Trinidad; the road that they asked the previous authority was one that did not divide the TIPNIS in half but benefited many communities.

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

Vice-president of the TIPNIS

She refers to the march: She tells us that she participated in the march because it is necessary to protect their territory for their children and grandchildren, besides they would not have a place to plant rice, bananas and would not have anything to eat, that would affect the 64 communities of their ethnicity; she sees with concern that the Bolivians support the Indigenous people up to there but the people are afraid of the retaliation from the government; as a consequence of the gases thrown to the marchers there are some indigenous people that got sick, battered, some have tumors, nightmares, they do not see any justice and despite everything she will continue fighting.

Another leader (woman) comments

“She says that thanks to the march they achieved the protection of the territory stated in Law 180, but today with Law 969 this protection disappeared and the construction of the highway in the middle of the TIPNIS is develop-
ing specially on the side of the settlers”.

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

III. Human Rights that are threatened according to the current regulatory framework

Concerning the native indigenous farming peoples that dwell in the area:

a. Collective right to an authentic, prior, with good faith, free and informed Consultation (art. 30 num. 15 and article 403 of the CPE; art. 6 of the ILO Convention 169; article 19 of the UN declaration on the rights of the indigenous peoples.

The national government before carrying out the Consultation of Law 222, has already made the decision to build the highway Villa Tunari- San Ignacio de Moxos through the indigenous territory and National Park Isiboro Secure (TIPNIS), in 3 sections, for this, it has asked for a loan from Brazil, approved through Law 005 on April 7, 2010 this loan was approved according to the budget that is included in the corresponding financial law. The contract has been signed through the Bolivian Road Authority (ABC) and also signed a contract for the construction with the OAS Ltda. Construction company of Brazil.

In this context, it is irrelevant that the construction of section two (2) of the highway has not started yet when the prior and good faith Consultation does not exist. Being this a right and a requisite to approve the construction of public works but also as a right and requisite to make legal and administrative decisions that allow such construction.

The national government has not only adopted the legal and administrative decisions to carry out this construction without previously going through the Consultation, but also, before the consultation of Law 222, the government signed the contract with OAS. It is unthinkable that there would be a contract with these characteristics, millionaire loan for its execution, paying a lump sum, how can the total amount be payed in advance if the contracting company does not know what is the final design of the three sections of this highway. As a prove of this we have the orientation of sections 1 and 2 of the highway and its articulation with the TIPNIS.

For this reasons, the Consultation of the Law 222 was not done previously but rather afterwards, this was not done with good faith but with bad faith, it is not free but rather manipulated by the national government that from the beginning has not adopted a neutral role in this issue, and it is not informed but rather subjected to commercial advertising that the national government made through spots in different TV channels. As a consequence, the right to prior, authentic, good faith, free and informed Consultation as the right of the Indigenous Territory and National Park Isiboro Secure, was violated, as was violated the national and international
regulation that recognizes it as article 30 number 15 and 403 of the Political Constitution of the State, the article 6 of the ILO Convention 169 and article 19 of the UN Declaration on the Rights of the Indigenous People adopted through Law 3760 on November 7, 2007

b. **Collective Rights to free determination and territoriality, to protection to the sacred sites, to live in a healthy environment, with an adequate management and sustainable utilization of the ecosystems, to autonomous management of the indigenous territory, shared management of protected areas, to exclusive use and management of forest areas, to community or collective property of the Indigenous Territory and National Park Isiboro Sécure and to territorial integrity of the indigenous territory** (arts. 30 II numerals 4, 7 and 17, 385 II, 388, 393, 394 III and 403 of the CPE; arts. 2 inc. b, 4 nums. 1 and 2, 7 nums. 1 and 4, 13, 14 nums. 1 and 2, 15 num. 1 of the ILO Convention 169; arts. 3, 4, 5, 23, 26, 29, 32 of the UN Declaration on the Right of the Indigenous Peoples)

These rights are threatened by the failure of the authorities to guarantee that the highway Villa Tunari – San Ignacio de Moxos does not go through the Indigenous Territory and National Park Isiboro Sécure (constitutional compromise that in first instance was assumed by Law 180 and later was left aside by Law 222 and today they eliminate it with the famous law of abrogation of intangibility).

The directors, of the Indigenous Territory and National Park Isiboro Sécure, in exercise of their sovereign collective rights, to free determination and territoriality, to indigenous autonomous management, to shared management of protected areas according to their regulations and procedures and to community or collective property of this territory have already decided that the Villa Tunari – San Ignacio de Moxos will not go through the heart of the TIPNIS; this decision has been recognized by the national government through Law 180 on October 24th, 2011.

This government recognition of Law 180 was conferred on the directors of the TIPNIS as a consequence of the Eighth Indigenous March made from their place of origin to the city of La Paz; this march was a peaceful means of demanding attention and social protest to the violation to the collective rights that were already threatened by the design, budget, loan and contract of the Villa Tunari – San Ignacio de Moxos highway. The demanded authorities, instead of fulfilling their constitutional, international and legal obligation and duty guaranteeing these collective rights, again they threaten them and place them in risk of violation through the abolition of Law 180 in the TIPNIS.

Este reconocimiento estatal de la Ley Nº 180 fue obtenido por los titulares del territorio TIPNIS como consecuencia de la octava marcha indígena que realizaron desde el lugar de origen hasta la ciudad de La Paz; medio pacífico de reivindicación y protesta social que evitó la violación de estos derechos colectivos que ya se encontraban amenazados con el diseño, presupuesto, préstamo y contrato de la carretera Villa Tunari – San Ignacio de Moxos. Las autoridades demandadas, en lugar de cumplir su obligación o deber constitucional, internacional y legal, de garantizar estos derechos colectivos, nuevamente los amenazan y los sitúan en riesgo de violación a través de la abrogación de la Ley 180 en el TIPNIS.

**Collective right to a healthy, protected and balanced environment (arts. 33 y 34 CPE).**
If, as a consequence of the Consultation made afterwards and of bad faith carried out by the demanded authorities and by the abrogation of Law180, the construction of the Villa Tunari – San Ignacio de Moxos highway, would occur, going through the heart of the territory and Isiboro Secure National Park (TIPNIS) this would lead us to deforestation of the forest, soil degradation of important extensions of land over the surface on which the paved road would be constructed and also of the adjacent areas as a consequence of the progressive and expansive process of establishment of incomer settler groups that would use the land not only as a place to live but to plant and use it as fields of intensive crops as the coca leave bushes and other destined to industrial and commercial exploitation, not to mention the connected activities as infrastructure, good and service provision, that have a significate impact on contamination and degradation of the healthy environment.

Some time after the construction of this road and, as a consequence of it, the TIPNIS, as the lung of Bolivia and the world will stop being so, turning into different urban centers densely populated and with the hustle and bustle of industrial and commercial activities that would take place in a highly contaminated environment, by the rising, expansive and uninterupted dynamic, that a progressive and developing model, western type, implies, maximizing the production of coca, and the exchange and consumption of goods and services. That way not only the TIPNIS would be affected as an indigenous territory but also, and especially, as a National Park and as an Ecological Protected Area.

This attempt against the environment and ecology, takes on great dimensions when we realize that there are various alternative segments of this road that are technically viable and financially sustainable, this well known fact, has been publicly demonstrated before national and international public opinion in discussions taken place in the past few months. If, between the administrative measures that the government has to take, one or many are less harming to the environment than others, no doubt for the right, justice and reasonability the government has the obligation of implementing the least harmful rather than the ones that harm the most. There would not be an adequate relation from beginning to end, if the government opted for the measure that is the most harmful.

For the reasons that are expressed here, the collective right to a healthy, protected and balanced environment, and for the fault pointed to the requested authorities, the right is under threat of violation.

The article 33 of the Political Constitution of the State establishes that the exercise of this right should permit the individuals and communities of these and future generations, apart from other living things, to develop in a normal and permanent way.

Article 34 of the Political Constitution of the State establishes that any person acting as an individual or representing a community, has the faculty to set legal actions in defense of the right of the environment, without this going against the obligation of the public institutions to act individually against the attempts to the environment.
IV. Conclusions and proposals:

Facing the threats that the indigenous peoples are victims of, particularly in the TIPNIS, it is urgent to have a strengthening process of the social organizations that represent the organism and also taking in account the resolutions issued by the board of directors which are the following:

In the meeting that took place in the Management Centre, the Subcentral organism of the TIPNIS and the ex-leaders that were present at the moment, issued two resolutions. In the first resolution, they decided to: “Reject the enactment of Law 969 of August 13, 2017 that sets aside Law 180, they make clear that they reject the road that divides the heart of the TIPNIS, to complain in front of the international organisms that the indigenous peoples and nationalities of the TIPNIS are in risk of extinction and ethnocide with the approval of the law that breaks the intangibility, Law 969. They also decided to: take popular action, legal actions for violation to the indigenous territories, legal actions against alleged consultations, take measures if necessary, make vigils, workshops, forums, marches, popular actions and they also compromise themselves to together defend the TIPNIS and demand from the government the respect that they owe the patrimony and the people of Bolivia”

In the second resolution they decide among other things: “Declare themselves in state of emergency and alert, to take legal actions if the case requires and they call to national unity and active and permanent citizen participation in the knowledge and defense of the natural richness of the indigenous territories and protected areas”.

The peoples that inhabit the TIPNIS ask the national government the derogation of Law 969 signed on August 13, 2017 that sets aside Law 180 and, as a consequence, demand that infrastructure projects like the construction of the highway Cochabamba a San Ignacio de Moxos will not be carried out.
2.1.5. Munduruku People (Brazilian Amazonian Region)

Coordination: Indigenist Missionary Council. North regional II CIMI Brasil.48

I. Introduction: Tapajós and the indigenous peoples that live there

The Tapajós river basin embraces a part of the states of Mato Grosso and western Pará and it is one of the biggest affluent of the Amazonas river. Known since the Portuguese invasion as Mundurukânia, the middle and upper regions of the Tapajos River are inhabited by, at least, 13 thousand Indians from the Munduruku and Apiaká communities, apart from a great diversity of traditional and coastal communities that the river influences its margins and also the margins of its principal affluents, the Jamanxim, Juruena and Teles Pires rivers. In the lower region of the Tapajós and its affluent Arapiuns, there are at least 12 different ethnic groups, that are divided in 9 thousand indigenous communities, among them the Borari, Arapiun, Kumurara, Tupinambá, Maytapú, Tapajó, Tapuia, Jaraki, Munduruku, Munduruku Kara Preta, Arara Vermelha and Apiaká communities.


With archeological sites of Indian blackland all over the Tapajós River basin, the rich culture and biodiversity in the Tapajós River have been constructed since millions of years ago by the indigenous peoples that inhabited and still inhabit it now. Many other villages of
the Munduruku peoples - this is the reality of the people of which this report is about- are over these archaeological sites that in the native language of the people they call it \textit{Katomp}. These lands are very fertile because their antecessor’s occupied them but also recuperated them, for many different generations, and this is an important characteristic that could define a place where complete families migrate to start new villages. These lands have also been known by the archeologists because they are archaeological sites since the “blacklands come from a process of continuous occupation," there was human presence since thousands of years ago and there are many vestiges that give evidence of such.

The Munduruku people are historically known as a warrior group, known for cutting the head of their enemies and putting them in spears all along the way to their homes. Nowadays the Munduruku people do not cut heads anymore but the warrior spirit is still the sam. The name Munduruku means red ant and it is said that it has been given to these people because of their historical enemies and also regarding their special formation for fighting during wars. The adopted strategies for combat have changed as well as the face of their enemies, before marked with traditional paintings from other indigenous communities and today principally by suits and ties of \textit{pariwats}\footnote{Enemigo en la lengua Munduruku.} that are part of the government.

In the Munduruku cosmology, their community, as well as the Tapajós river, have been created by a really powerful Munduruku named Karosakaybu. The Tapajós was born from the juice gotten from three bones of tucumá. All the forest, the rivers, the trees, the fish, the animals, even the sky and the light came from the transformation of Munduruku Indians into these elements and for this reason, they are also their keepers.\footnote{Comerciantes que vendían productos por el río, conocidos como “drogas del sertón” que eran: azúcar, sal, cachaza, etc.}

For them, there is no difference between what is Munduruku, fish and trees, provided that “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, trees, but in their kingdom they are people like us”, explains a community chief. For this reason, they understand that, the obligation of every person in the community -woman, men, child, chiefs, shamans, warriors- is to protect the territory, as the warrior (woman) says:

\begin{quote}
"Not only men are warriors, but women are also. It is important that women know about education, health, as well as how to defend our territory, 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”.
\end{quote}

For a long time, the internal region of the upper Tapajós\footnote{RAMOS, Andre en https://pib.socioambiental.org/pt/povo/munduruku/786} has been a place traditionally occupied by them, but with time they established in the margins of the Tapajos and Cururu rivers because of illnesses, like measles, that decimate complete populations.

The rubber cycle, in the Amazon, was started in this region at the end of the 19th Century.
with the extraction of latex, through a syringe, used in rubber production. It has also influenced the migratory processes to the river margins due to the *regatões* who exchanged drugs (drogas del sertón) for products the indigenous people obtained from the forests, like rubber. All of these products were exported to countries in Europe and North America, but with the exploitation of latex in the Asiatic continent the rubber cycle in the Amazon fell into decline.

### Areas inhabited by the Munduruku peoples now in the Tapajós

<table>
<thead>
<tr>
<th>Name</th>
<th>Municipality</th>
<th>Type</th>
<th>Situation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Praja do Indio</td>
<td>Itaituba</td>
<td>Indigenous Reserve</td>
<td>On its way</td>
</tr>
<tr>
<td>Praja do Mangue</td>
<td>Itaituba</td>
<td>Indigenous Land</td>
<td>Homologated</td>
</tr>
<tr>
<td>Sawre Muybu</td>
<td>Itaituba</td>
<td>Indigenous Land</td>
<td>Delimited</td>
</tr>
<tr>
<td>Sawre Juybu</td>
<td>Itaituba</td>
<td>-</td>
<td>In study</td>
</tr>
<tr>
<td>Sawre Apompu</td>
<td>Itaituba</td>
<td>-</td>
<td>In study</td>
</tr>
<tr>
<td>Sai Cinza</td>
<td>Jacareacanga</td>
<td>Indigenous Land</td>
<td>Regularized</td>
</tr>
<tr>
<td>Munduruku</td>
<td>Jacareacanga</td>
<td>Indigenous Land</td>
<td>Regularized</td>
</tr>
<tr>
<td>Munduruku- Taquara</td>
<td>Belterra</td>
<td>Indigenous Land</td>
<td>Declared</td>
</tr>
<tr>
<td>Bragança Marituba</td>
<td>Belterra</td>
<td>Indigenous Land</td>
<td>Declared</td>
</tr>
</tbody>
</table>

For the Munduruku, the logic of delimiting and demarcating the limits of the territories for the use and permanence make no sense in the social and political structure of their people. The spaces they use, the ones that have significance to their world, is a place that goes even further than a physical one, like a wise chief says:

> “This is our natural habitat, with forests, rivers, with all the creatures, this is a place where the Munduruku circulate, this is a territory, and not only where there is a village, or where there is a limit of a demarked area, it is everything that is around and that is why the Munduruku have no limit. For us this is our survival area, but also is a place where to encounter our own history, our own politics, our own social organization, it is not only the place where we work the fields, is to learn from the heritage our ancestors left us and that needs protection, not only to destroy. Territory is not only where the village is or where the limits are. It is a patrimony that our ancestors left us to care for it”

Every day that goes by, the pressure increases over the territory through the invasion of timber merchants, palm tree growers, farmers and “garimpeiros” (do small mining) and land demarcation. The recognition of the Federal Constitution of Brazil for native peoples, has turned into the most viable way to save part of this huge patrimony left by their ancestors, which is the Amazon region. The Tapajó river “is the cradle of the Munduruku” tells the chief, “has a lot of history, a lot of sacred sites, where there is more concentration of Munduruku, where they had their ceremonies and rituals”.

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53 Comerciantes que vendían productos por el río, conocidos como “drogas del sertón” que eran: azúcar, sal, cachaza, etc
54 Conozca más en: https://pib.socioambiental.org/pib/povo/munduruku/194
Onslaughts of the government in the region

A series of megaprojects and infrastructure projects are envisaged for the Amazon area with the intention of constructing new routes that will enable the flow of commodities to the world market. The works, are part of the Plan for Growth Acceleration (PAC) I and II of Brazil’s government, along with the initiative for the Integration of the Regional Infrastructure of South America (IIRSA) which is the program that has as an objective the integration of the 12 countries of South America with a more modern infrastructure in transportation and energy.

In the west of the Pará State, this programs involve different national and foreign investments, that in the last years, have grown in a considerable way. In the city of Itatuba (PA), in the middle of the Tapajos, appear a number of bulk carrier ports in the margins of the river and in the city. There are at least, 26 the ports that are foreseen for the region and among the ones that are really interested are the multinational companies like Cargill, Bunge y Cianport.

In a sort of a domino effect, where an infrastructure work tries to justify its existence due to the construction of a (mega) project that is coming up, the creation of transshipment cargo stations (ETC), waterways, railways, hydro electrical power plants and the paving of the main highways, cannot be understood as isolated projects that fulfill different interests, but yes, as the continuous and simultaneous construction of infrastructure which priority is to benefit and enable the expansion of the agribusiness and mining in the region.

This way, the rise of these ports is directly related to the continuation of the paving of the
road of Cuiabá-Santarém and Transamazonica (BRs 163 and 230, respectively). As far as the infrastructure is concerned, the execution of the works has turned into one of the principle goals pursued by the representatives of the agribusiness taking in account that this route is strategic for the flow of grains and commodities, bringing together the center-west to the northern part of Brazil.

The new flow path, known as “the way out to the North” is the cheapest alternative to get to the ports Barcarena (PA) and continue out through the ocean to other countries that consume the products in Asia and Europe, in this way, the habitual route, which is longer, is cleared. This route has as arrival points, the ports of Santos-SP and Paranagua-PR. There are various impacts to the paving of the road as: increase of speculation in the tenancy of the land, illegal deforestation, fraudulent ownership of lands, lines that enable the flow of illegally extracted wood, expansion of extensive farming, soy and other monocultures plantations.

Furthermore, it is expected a 7 hydroelectric plant complex, named: São Luiz of Tapajós, Jatobá and Chacorão, in the Tapajós river, Cachoeira do Caí, Cachoeira dos Patos, Jardim do Ouro and Jamanxim, in the Jamaxim river. The UHE of São Luiz de Tapajós, at the moment left aside, would be the largest of them and the third largest of the country and it would cause a flood of 729 square kilometers, that would directly affect the indigenous peoples of the Apiaká, Munduruku, Pimental, Montanha and Mangabal communities and in an indirect way, to the Indians of the Sateré-Mawe ethnic group of the Indigenous land Andirá-Marau and the communities of São Luiz de Tapajós and Vila Rayol, among others. Facing the intensity of the onslaughts of great amounts of money in pursuit of the expansion of agribusiness and of the big projects in the Amazonian area, the indigenous peoples of the western Paranaguá resist with the same intensity.

In the case of the plant of São Luiz de Tapajós, after the recommendation of the Public Federal Ministry (MPF) and the technical opinions of the National Indian Foundation (FUNAI), as the final limit for the answer to the 180 inconsistencies found in the Environmental Impact Studies conducted by the company, the Brazilian Institute of Environmental and Natural Renewable Resources (IBAMA) has archived the license for this work. Despite this victory of the indigenous peoples and “beiradeiros”, this does not mean that the project will not be retaken by the government, according to what the president of Eletrobrás and the general director of the National Electric System Operator (ONS) announced, only a few months after it was archived, that the hydroelectric plant could be done in 2022.

Meanwhile, the environmental impact studies for UHE of Jatobá, in the middle of the Tapajos, do not stop and they are reviewed in the IBAMA, with time limit on December 2018, since on January 3rd 2018 the National Agency of Electric Energy accepted the technical viability studies of the hydroelectric plant. The socio-environmental impacts will directly affect the beiradeiros (population settled in the river) of the Montanha and Mangabal communities and it will be necessary to move them inside the Agro extractive Settlement Project (PAE), the area that they occupy and live on will be flooded. The impacts in their

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56 Conozca más en: http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2016/violacoes-direitos-povo-indigena-munduruku
57 Ver más en: https://pib.socioambiental.org/pt/noticias?id=172535
58 Ver más en: https://pib.socioambiental.org/pt/noticias?id=172535
ways of life are unavoidable due to, the alteration in the dynamic of the river, as well as the changes in the reproduction of fish, among other irreversible changes in the ecosystem and in the sacred places with which these populations relate.

II. Violations and threatens to human rights

“They are violations against our nature, against our Tapajos”.

The constitutional rights of the Indians are expressed in an specific chapter of the constitution of 1988 (title VII, “Of Social Order”, chapter VIII, “Of the Indians”), but the fight for the recognition of these rights has a long trajectory. With the return of democracy to Brazil after 21 years of military dictatorship, in the discussion for a new Constituent in 1987-1988 there was an important and decisive citizen participation in its elaboration, but the issue with indigenous peoples was not considered as a priority. Thanks to the intense pressure by the indigenous communities and the organisms that supported them, it was possible to think of and build a different perspective with which the Brazilian government dealt with these communities. What the government had been doing up to then, was to imposed the idea that the indigenous peoples should “integrate” to the Brazilian society in a way in which their customs and traditions would be incorporated to society.

This logic of assimilation, understood “being Indian” as a stage of evolution to overcome, up to the point where everyone would simply be “Brazilian citizens”. This, however, is broken with the Federal Constitution of 1988 when indigenous peoples rise the flag so that the Brazilian government recognizes the socio-cultural and linguistic diversity of the indigenous peoples, “ and the protection of their lands and goods, tangible and intangible”. The article 231, from the 7 chapter of Federal Constitution, establishes “We recognize the Indian social organizations, customs, languages, believes and traditions, and the ancestral rights, over the lands they traditionally occupy, it is a Union issue to delimit them, protect them and make all their goods be respected”. Even though they ensure all these rights in the Federal Constitution of 1988, the Brazilian government continues with the colonizing way of dealing with the indigenous peoples and their traditionally occupied territories.

In a visit to Brazil on March, 2016, the Special Rapporteur on indigenous rights of the United Nations (UN) Victória Tauli-Corpuz, could closely evaluate the projects and actions taken by the Brazilian government, the ones that were planned and the ones that are ongoing, that would somehow impact the indigenous peoples in the country. Among the worries that the Special Rapporteur had was the non-compliance with the legislation that guarantees the prior, free and informed consultation based on the International Labor Organization (ILO) Convention 169 before the construction of any entrepreneurship that would impact the life of these peoples.

59 https://pib.socioambiental.org/pt/c/direitos/constitucioes/introducao
60 Ver: https://www.cimi.org.br/direitos-indigenas/
61 Ver: http://www.planalto.gov.br/ccivil_03/constitucioes/constitucioes.htm
The construction of the Usina Hydroelectric Power plant of Belo Monte, and the hydroelectric complex of São Luiz de Tapajós, have been two emblematic cases mentioned by the rapporteur and that are responsible for violations to indigenous rights, violations that do not only precede the construction of the megaproject, but they also continue, even after it is ready, like is the case of BeloMonte that has not consulted the indigenous peoples of the 11 areas that are directly impacted by and has not either complied with the stipulated conditions. In these two cases, and even when the Federal Public Ministry intercedes in favor of the indigenous peoples, the legal system uses a legal mechanism that was a carryover from the military dictatorship that is the Safety Suspension (SS) and “therefore the law turns into an obstacle, instead of a guarantee, for implementing the rights of the indigenous peoples”.62

This measure that allows to reverse sentences in favor of the indigenous peoples, can suspend various civil rights in favor of economic interests of the federal government, and has been considered when giving authorizations for entrepreneurships of great socioenvironmental impact.

Ignoring the original rights of the indigenous peoples as the ones of the communities and other native people. The Safety Suspension “has already been used 12 times to tear down obstacles in the project of the Tapajos river, so, eight more were used in the Belo Monte” (Palmquist, 2014).

In the recommendations made by the UN to the Brazilian government, includes the need to revise the use of the Safety Suspension mechanism since it has had the only purpose of affecting the primary rights of the indigenous peoples, the rights obtained even before the formation of the State Government. All this, with the only intention of implementing great enterprises with irreversible socioenvironmental impact, capable of causing a real ethnocide. She also recommended the continuation of demarcation of the indigenous lands—which has not been done up to today- and also the enforcement of ILO Convention 169, in what is related to the prior, free and informed consultation.

2.1 Attacks to the indigenous peoples constitucional rights

In the national context, facing the onslaughts of the Federal government to capitalize, even more, the Amazonian area, the indigenous peoples are still threatened of being banned from their territories that have been traditionally occupied by them. With very clearly outlined goals to monitor the interests of capital, with construction of megaprojects and infrastructure that benefit mainly the multinational interests and of big national companies, the National State Government - along with private companies- does not save any efforts so these projects get implemented, even though this means the destruction and death of the indigenous peoples and riverine communities.

With that idea in mind, they undermine the rights of the indigenous peoples of living their

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62 Report of the mission to Brazil of the Special Rapporteur on the rights of the indigenous peoples. Informe de la misión a Brasil de la Relatora Especial sobre los derechos de los pueblos indígenas.
ways of life, with their territory and territoriality, to add other values to those areas: simply economical and political.

In the wake of these “developmentalist” projects of the State government, in which the indigenous peoples are considered obstacles for development in the region, various Law Proposals (PL), Interim Measures (MP), Constitutional Amendments (PEC) and other decrees are implemented to make access more difficult to public policies or to take rights away.


Among the measures, we can highlight the Constitutional Amendments (PEC) 215/2000, that transfers from the executive to the legislative the power of deciding on the demarcation of the indigenous land, approved by the Especial Commission of the Chamber of representatives on October 2015, the author of the report was the ruralist Osmar Serraglio. In Brazil, the one in charge of the demarcation of the indigenous land is only the Executive power (National Indian Foundation, Ministry of Justice and Presidency), since this an administrative function of the State that has the obligation of identify, demark and protect the land traditionally occupied by native peoples. According to what is stablished in decree 1775/1996, the process of demarcation of the indigenous lands has to follow the following steps suggested by the National Indian Foundation (FUNAI):

I) Identification and delimiting studies; in charge of the Funai
II) Administrative contradiction;
III) Declaration of limits, in charge of the Ministry of Justice
IV) Physical demarcation, in charge of the Funai;
V) Carry out a technical cadastral survey of community territory, evaluation of the implemented improvements carried out by the non indigenous occupants, in charge of the Funai along with the register of the non indigenous occupants, in charge of the Incra;
VI) Homologating of the demarcation, in charge of the presidency of the Republic of Brazil;
VII) Removal of the non indigenous occupants, paying them the improvements they made in good faith, in charge of the Funai, and redress the non indigenous occupants who meet the profile stablished in the reform document, in charge of the Incra;
VIII) Complete the process of land registration in the Secretary of Heritage of the Union, in charge of the Funai; and
XI) Banning of areas for the protection of isolated indigenous peoples, in charge of the Funai.

Effectively, Pec 215/2000 gives the National Congress the last word on the delineation of indigenous lands, this means the decision of the delineation of the native peoples lands is in charge of the political interests of ruralists, businessmen and mining companies, this again means that it depends on them to delineate or not.

63 Congressman of the party of the Democratic Movement of Brazil of the State of Parana (PMDB) - PR.
The time frame, that is also found in the report of Pec 215, has been one of the 19 limitations imposed by the Supreme Federal Court (STF) for the delineation of the Raposa do Sol indigenous land, but these limitations would not be related to other processes of land delineation, it would therefore be, for this case only. The time frame contemplates, uniquely, the delimitation of the lands that were occupied on October the 5th 1988, date of the latest Federal Constitution promulgation, but this thesis does not take in account the violations and the usurpations committed against these communities, before the mentioned date. For Lia Zanotta, member of the Anthropology Brazilian Association (ABA), in the temporary frame “deletes and makes the occupation of the native lands of indigenous peoples invisible since the native populations have been displaced and relocated” many times by Brazilian governments.

All of these measures are created to undermine one of the main resistance and fighting ways of the indigenous peoples, the Federal Constitution. The Sawre Muybu village chief, expresses his great concern for the attacks perpetuated by the government that can invalidate the Sawre Muybu Indigenous Lands delineation, besides facilitating the invasion to the territory and encouraging the increase of violence against Indigenous peoples:

“In our fight of 2017, we have not conquered all of our victories, but we are going to continue fighting for the delineation and the control of our lands. The big projects that come to our region to destroy our lands and the laws the government is creating to ignore our rights so that the big enterprises are able to destroy our lands and our rights. Neither are we going to be able to make it nor prevent them from entering our territory if the laws are approved. I have been alerting our relatives to fight for our territory, because we are going to keep fighting for our rights and for the guarantee of them”.

The Detailed Report of Identification and Delimitation (RCID for its acronym in Portuguese - Relatório Circunstanciado de Identificação e Delimitação) of Sware Muybu published in the Union Official Bulletin (DOU for its acronym in Portuguese- Diário Oficial da União) on April 2016, it is the first and fundamental stage of the delineation process of the indigenous territory. This big conquer, however, is threatened by the time frame thesis, quoted in the eight replies (part of the second stage of the delineation process- administrative contradiction) to the report of Sawre Muybu, that pleads there was no permanent occupation of indigenous people before October 1988, even if archeology proves it so.

All the responses against the report come from mining and energetic interests from public and private enterprises, Mines and Energy Ministry (MME), Environmental Ministry (MMA), National Gold Association (Anoro), Vermelho River Mining Company, Diamond Import And Export, National Industrial Confederation (CNI) and the Tapajós Consortium, constituted by enterprises that are interested in the construction of the hydroelectrical plant of São Luiz de Tapajós (Eletrobrás, Eletronorte, GDF Suez, Copel, Cemig, Neoenergia, EDF and Camargo Corrêa).

65 Ver en https://www.cimi.org.br/2017/08/38848/
Despite the thesis of temporary frame has been considered by many jurists and anthropologists as unconstitutional, on July 20th 2017, president Michel Temer officializes the thesis of the temporary frame through a Union General Advocacy Judgement67 (AGU) published in the Union Official Bulletin (DOU) making it a legally binding instrument so every public administration is forced to consider the mentioned thesis for any procedure of land delineation.

### 2.1.2 Law Project 1610/1996

The municipalities of Itaituba and Jacareacanga, arise, mainly, because of the garimpeira activity during the 1980 decade, and it continues to be the activity with most economic flow of those cities. These garimpos, mainly illegal, of gold and diamond, are also found in Indigenous lands, as is the case of the biggest garimpo of the region, Chapéu do Sol, inside the Sawre Muybu, causing insecurity and leaving the villages in a vulnerable situation regarding the garimpeiros. Also, they are exposed to river contamination and the water table of cyanide and mercury, that puts life forms, health and nutritional safety of these indigenous people and beiradeiros at risk. Besides, the constant invasion of the territory violates not only the physical space where they belong and where they survive, but also their spiritual world:

> “White people are destroying our nature, when they find crafts from our ancestors they do not respect them, they do not respect the old world, and that is only to harm the Munduruku people. The garimpeiros find a piece of craft from our ancestors and they take it, my father, who is a shaman, recommended the piece to be given back, because if not, that may cause to much harm. We asked them to give it back because the spirits would come against us, a lot of accidents may happen in our communities, we may suffer a lot. What is found from the ancients should be left in the same place, because spirits cry, they are our relatives from before, but the pariwat do not understand”.

To his, we must add the threatens of the New Mining Code and the Law Project 1610/96, which aims to regulate mining inside Indigenous Lands, widen the veins, that are already open, of these ancestral territories for mining activity. All along Teles Pires and Tapajos rivers, for example, there exists a series of mining extraction requests that, in many cases, are in the limit of Indigenous Lands and even affect them. Until 2015, there existed 279 requests of investigation and farm in Munduruku Indigenous Lands, 19 in Sai Cinza Indigenous land and 79 in Kayabi Indigenous land.68 With the discussion of the regulation for mining in Indigenous territories, the invasions and pressure of garimpeiros are intensifying inside Indigenous Lands.

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67 Dictamen n. 001/2017/GAB/CGU/AGU
68 Ver en: https://www.socioambiental.org/banco_imagens/pdfs/10147.pdf
2.1.3 *Infringements of the national and international legislations*

It is important to highlight that, the public and private authorities, walk together in the carrying out of these projects violating the legislation that protects the indigenous peoples and the native traditional communities as the International Labor Organization (ILO) Convention 169, regarding the prior, free and informed consultation required before the construction of any enterprise that impacts over their lives. This is an important point to understand how the Brazilian government excludes from the debate to those that will be the most affected, when they announce the implementation of these projects without consulting the community or peoples that would be affected.

The ex president of the Funai, María Augusta, has declared through a video recorded by the Munduruku on October, 2014, that the slowness with which the government published the Official Journal of the Union. (DOU), The Report on Identification and Delimiting of the Indigenous Sawre Muybu Land (RCID), which was available since 2013, was due to the hydro electrical interests that the Brazilian government has in the indigenous territory. At that time, the plans to define the construction of the São Luiz de Tapajós Hydroelectric Power Plant were on the table at the Ministry of Mines and Energy (MME) as so was the denial of the traditional occupation of Munduruku y beiradeiros in the territory. The government also used interim measures and laws to disaffect Conservation Units (CBUC), that were looked as impediments for the construction of the power plant.

In the Indigenous Land of the Sawre Muybu, the villages Dace Watpu, Sawre Muybu and Karo Muybu, for example, would be completely flooded because of the construction of the hydroelectric power plant of São Luiz de Tapajós, but the removal of the indigenous peoples from their villages is prohibited by the Federal Constitution:

§ 5º It is prohibited to remove the indigenous peoples from their lands, except, “ad referendum” from the National Congress, in case of a catastrophe or plague that would endanger their population, or in cases of the country’s sovereignty, after the liberation of the National Congress, guaranteeing, under any hypothesis, their immediate return when the risk no longer exists.

The TI Sawre Muybu that owns the territory that overlaps with the National Forests (FLONA for its acronym in Portuguese – Florestas Nacionais) of Itaituba I and II they suffer the onslaughts of the illegal timber merchants, small miners and palm cutters. The Chico Mendes Biodiversity Institute (ICMBio), organization that is responsible for the FLONAs (Environmental Conservation Unit) and the IBAMA, all remain quiet even with the repetitive allegations presented about threatens to the indigenous peoples territories, what is left then, should the Munduruku create their own ways of resisting and defending their territory and culture.

Additionally, there are interest of the organism to auction part of the FLONA next to the Sawre Muybu and across from the Agroextractivist Project (PAE) Montanha e Mangabal for the

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69 See in: https://vimeo.com/111974175
70 https://www.jusbrasil.com.br/jurisprudencia/busca?q=ARTIGO+231+DA+CONSTITUI%C3%87%C3%83O+FEDERAL
forest management, ignoring the presence of the indigenous peoples and the socio environmental problems that could worsen, like the illegal wood extraction in indigenous land and the beiradeira community. In March of this year, however, Apiaká, Munduruku y los beiradeiros de Pimental, Montanha and Mangabal peoples prevented the continuation of public audiences on the forest concession of more than 300 thousand hectares of the FLONA, until they consult with all the peoples that would be affected, according to the consultation procedure.71

There are two urban villages in Itaituba, Praia do Indio and Praia do Mangue, that are the villages with the most cultural, social and territorial impact. With the expansion of the agribusiness towards the region, and together with the uncontrolled rising of ports, even in the border of the reserves, they are, every time, more and more confined to smaller spaces that prevent them hunting, gathering, and agriculture. There is also the planning of the National Agency of Terrestrial transportation(ANTT) whose intention is to build a railroad that connects the city of Sinop-MT to Miritituba, district of Itaituba - PA

For this to be implemented, there was an important reduction of Conservation Units(UC), increasing even more the conflicts in the region, fomenting the invasion to others UCs. This is also done without any prior, free and informed consultation, but the Munduruku succeeded in stopping the two public audiences that took place in the cities of Itaituba and Novo Progresso. The railroad can impact about 19 indigenous areas in the whole way and none of these communities has been listened to. The Federal Public Ministry has recommended the suspension of the public audiences until the consultations are carried out, based on the International Labor Organization (ILO) Convention 169, but the ANTT has continued with the process even after two blocked audiences and the recommendation of the MPF.72

2.1.4 Decree 1.969/2018 of the state of pará about the regulation of prior consultation

On January 24th, 2018, the government of the state of Pará published in the Official Bulletin of the Uniión (DOU) decree 1.969/2018 that institutes a study group to prepare a national plan of prior consultation with the communities and the native peoples of Para. The study group would be formed by: the Secretariat of State and Justice; the Extraordinary Secretariat of State of Social Policy Integration; State Attorney-General of the state of Para; Secretariat of State of Environment and Sustainability; the Secretariat of State of Economic Development; Mining and Energy and the Civil House.

The decree has been instituted, with no participation or consultation to the peoples or native communities affected by the measure, this is where the violation to the International Labor Organization (ILO) Convention 169, starts. The ILO regulation ensures the participation and consultation of these peoples once some legal measures, that affect their lives, have been created. The decree does not either guarantee the effective participation of these peoples and communities according to what has been mentioned in the recommendation note of the Federal Public Ministry of Para and of the Union and the Public Defender of the

71 More on the action in: http://www.cimi.org.br/site/pt/?system=news&conteudo_id=9197&action=read
72 http://www.cimi.org.br/site/pt/br/?system=news&conteudo_id=9603&action=read
Union so the measure will be revoked, since the decree is unconstitutional and violates the right to an effective consult and participation of these peoples to decide upon administrative and legal changes in their territories.

A national consultation plan, in a reality where a great diversity of indigenous peoples and traditional communities live together, that have social organizations and policies on their own, in which they find their own ways to dialogue and to make decisions that are culturally different, with territories that are threatened and pressured by the government and the great companies for the construction of mega enterprises; taking all this in account, it is very clear what the real intention is: facilitate the approval of these projects inside the communities and make that approval in an autonomous way, according to their structures of cultural, social, and political organization; and another important thing is to weaken the right to a prior, free and informed consultation as it is established in the (ILO) Convention 169.

Besides the public organisms as the National Prosecuting Authority and the Public Defender’s Office, the indigenous and riverine peoples take up a stance against the measure demanding respect to its consultation protocols and do not accept that any study group, formed by any secretariat makes the national state plan for the consultation because they consider that they violate the legislation and the international treaties.

2.2. Militarization of indigenous lands

Facing the resistance of the indigenous and riverine peoples, against the presence of investigators in the region to visualize and get the necessary information for the studies required for the implementation of the hydroelectric power plants in São Luiz de Tapajós and Jatobá, without been consulted in a prior, free and in an informed way, on March, 2018 the federal government created a presidential decree so the Federal Police, the Federal Traffic Police, the National Force of Public Security and the armed forces came along with the 80 investigators who were responsible for the study of the technical viability of the hydro electrical complex inside the indigenous territory and native communities. Known as Operation Tapajos, this government initiative, is even up to now remembered because of the trauma it caused in the peoples around the Tapajos river to see their territories violated by the national armed forces. A letter from the Mundukuru peoples expresses their outrage by such an arbitrary action:

We, chiefs, leaders, and warriors of the Munduruku peoples have always fought and will continue to do so, to defend our forests, our rivers, and of our territory, since it is from our mother nature where we get what we need to survive, but the government who is the one called to protect us, sends the armed forces to kill us, threaten us and invade our villages, lately there is disrespect for our peoples, they threaten and kill us, using their armed forces as if the indigenous peoples were terrorists or thieves.

74 Carta completa en: http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=6766&action=read&page=6
The memories of the traumas caused by the armed forces are also registered in the narrations that go back to 2012, just one year before the Tapajos Operation, in the El Dorado Operation, a Munduruku Indian from the Teles Pires community, Addenilson Kirixi, was murdered by a Federal Police representative. This operation had the intention of being a mega-operation against illegal garimpos in the San Pablo, Rio de Janeiro, Rio Grande del Sur, Mato Grosso and Pará states, but the violent traces in the government actions, once again mark the history of Mundurukânia.

2.3.- Destruction of sacred places and disorders caused by the pariwat to the munduruku cosmology

In the Teles Pires river there was a place called Cachoeira de Sete Quedas, Mundurukus’ sacred frame that names them as Karobixexe. The place is, consecrated by them for being a place where the Munduruku spirits go when they die and only shamans can enter. “The Karobixexe is a dwelling place for the dead, for our ancestors, if somebody dies they go there, it is like a place for them, heaven” explains the expert Jairo Saw of the Sawre Aboy community. The Karobixexe has been destroyed to give place to the hydro electrical plant of Teles Pires and the sacred funerary urns for ancestors of the Munduruku community have been removed from this place and have been taken to a museum in the Alta Floresta city (MT) by the “archeology company” that was hired by the company that is responsible of the power plant. The fact of removing the urns has caused deep impacts in the Munduruku people as they have get involved with the with what is sacred in their world, irritating the spirits that they should protect. In Munduruku cosmology, explains Jairo Saw, when we do not succeed in protecting the dwelling place of the ancestors, the life of the whole population is in danger due to the fact that.
the spirits that were there, as they feel 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, climatic change impact, natural disasters, tragedies, all of these things due to the destruction that causes anger and desire of taking revenge. Somebody that is not Indian will not understand this, these disasters are because of this, spirits are looking for a peaceful place. This is what we feel. Every accident that happens is because of this.

This removal of the urns has motivated woman, shamans, boys, girls, community chiefs, warrior men and woman to takeover, for a second time, the place where the São Manoel power plant workers are in the state of Mato Grosso. The river, with the same name, is inhabited by Apiaká, Kayabi and Munduruku indigenous peoples and the power plant construction is in an advanced stage. This power plant is also responsible for the destruction of sacred sites of the Munduruku world, el Dekoka’a (Morro de los monos), (Monkey snout), place where the mother of the fish lives. No hydroelectrical that has been constructed has asked the traditional indigenous peoples and communities who would be affected, even with insistent recommendations from the MPF. For this to be possible, they used the Security Suspension (SS).

Photo 21: Leaders in reunion inside the work place of the power plant São Manoel on July 2017

All of the places that are considered sacred by the Munduruku people have relations that interconnect them. Therefore when one of these places is destroyed the other ones also suffers the impacts. The chief of the community explains how this occurs:
There (Karobixexe) is a connection with other mountains, with another cascade there is a connection with those who live in those places, a path that exists and that unites them. There is one in the Juruena, one in Kepruxa, one in São Luiz de Tapajós cascade and another one here in the Jamanxim near the door to hell.

In the Sware Muybu territory, there are many sacred places for the Munduruku people that are being threatened by the hydroelectrical constructions and invaded by illegal activities of garimpeira and wood exploitation. In a place known as Daje Kapap Eipi, name that is given to the whole territory and means sacred passage of the pig, is the place where the historical events for this community happened:

In our Sawre Muybu territory, there is a sacred place where the son of Karosakaybu was persecuted, he crossed to the other shore of the Tapajos river and the MDK that had been transformed into pigs, were persecuted as the son of Karosakaybu, then they got down to the riverside to catch him as well, they got to the other riverside that is also named narrow and do. Since they were the mdk from the past and had an incredible ability, they strengthen the margins of the Tapajos so they could go through. The way of karosakaybu that is under the ground and that is called earthworm way is a type of tunnel, secret passage under the ground. Therefore, they had control over the place and could shorten their way to be anywhere.

Photo 22: The community chief pointing to the sacred place where the pigs crossed over with the son of karosakaybu.

This way, the destruction of any part of the Munduruku territory, whether to give place to the big undertakings from the government or for the exploitations or other interests that destroy and interfere with their worlds (spiritual, physical, social, political) violates completely all the rights that have been conquered with a lot of effort by the native people in the national and international legislations.
III. Resistance and autonomous warp in tapajos

“Territory is a patrimony that our ancestors left us to care for it”.

Facing these attacks and government legitimated violations, fighting strategies are adopted so the process does destroy, once again in history, the Amazon communities. One of them is to elaborate the consultation protocols for the Munduruku in the middle of the Tapajos, for the Munduruku Santareno in the highlands, of the beiradeiras communities of Montanha and Mangabal, of Pimentel and São Francisco.75 The communities make the protocols, and explain the government and the companies how the prior, free and informed consultations have to be carried out, as it is guaranteed in the ILO OIT Convention 169 with their peoples, that way their customs, social organization and culture are respected.

3.1 Auto demarcations

The auto demarcations of the middle section of the Tapajos river, led by the Munduruku of the TI Sawre Muybu, initiated in 2014, were produced through alliances with Beradeiros of Montanha and Mangabal. On April 2016, the report of identification and delimitation of the TI

Sawre Muybu was published but this—which is only one part of the demarcation process—had no progress and with the changes in the legislation, in the judicial and executive, the report guarantees, the conquest of their territory, less and less each time. Due to the government’s delay in demarcating Sawre Muybu, they, themselves, have decided to do the demarcation of the territory, expel invaders, monitor and denounce all the frequent invasions in the indigenous land. According to the Cacique:

We are threatened by loggers, garimpeiros, palm cutters and the looming dam. We know of the lack of government, of the outrage of the laws. For this reason, we decide to do the demarcation. We know that this also gives us security, and if the government is decided by this demarcation it will be very good for us. This land is our heritage, and from here we get our livelihood. From the water we get fish and the forest is our market. It’s our survival.  

Currently, the Beradeiros of Montanha and Mangabal are also performing the auto demarcation of the Agro-extractivist Project (PAE), and the warp of resistance and autonomy is consolidated throughout the basin and “with this, we materialize the physical frontier of a dispute” placed many years ago in the Judiciary system”, putting in check the arbitrary actions of the state government that conflict with the interests of indigenous people and peoples of traditional communities.

In the lower section of the Tapajos, for example, several peoples have reaffirmed their ethnicity, once unnoticed and silenced by the colonialism of being, of power and of thought. Once they faced discrimination, racism and even genocide of their peoples, many felt threatened by belonging and being identified as indigenous and found, in the silencing and concealment of their identity, an strategic way of survival.

Now, these peoples go through a process of ethical reaffirmation and fight for the recognition of their ethnicities and territories. The Borari and Arapim peoples, for example, of the Maró indigenous land auto demarcated their territory in 2007 and are now organized in an autonomous way to control and monitor it against the insistent invasions of loggers. For a leadership the need to make the demarcation arises after the constant invasions to the territory;

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 to threaten our custom and interests [...] From 2000, the indigenous movement began to emerge in TI Maró, mainly in the new village, with discussions on how to defend our territory. We made a study on the family tree of our people, and it concluded that we were Borari and came from

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76 Interview in https://ru-clip.com/video/BEUxy1sHFr8/autodemarcacao%CC%A7a%CC%83o-munduruku.html
77 https://apublica.org/2014/12/batalha-pela-fronteira-munduruku/
Alter do Chão. At that time, we decided that it was necessary to take a piece of the ground for us, because the territory was already divided into many parts.

The Tupinambá of the Extractivist Reserve (Resex) have also initiated the demarcation and fight so their ethnicity is recognized, and they can manage the territory with autonomy.

3.2 PROPOSALS: Protocols for the prior consultation of communities

The Mundukuru consultation protocol, carried out in the villages Waro Apompu, Mundukuru indigenous land, and in the indigenous land Praia do Mangue on September 2014, had full participation of its people: men, women, children, shamans, midwives, warriors, women warriors and chiefs. There, the Munduruku people demands that the International Labor Organization Convention 169 complies with a prior, free and informed consultation before the planning of any undertaking that impacts in any way their lives and territories:

So that the people of Munduruku can decide, we need to know what will really happen. And the government must listen to us. Before starting the consultation, we demand the demarcation of the indigenous land Sawre Muybu. We know the report is ready. We have the video of Funai’s presidency admitting that the demarcation does not occur because of the hydroelectric power plant. The Government is not acting with the good faith demanded by the consultation (Convention No. 169, article 6). We will never accept to be moved.

This way, the collectivity put a consultation protocol together so that the government and companies, which intend to build any entrepreneurship in these regions, know how to consult these communities before starting any part of the construction process. There, they establish the way, who and where should be consulted, in such a manner that their ways of life and social organization are respected:

The Munduruku of all the villages-of the upper, middle and low Tapajos river -should be consulted, even those located in indigenous lands not yet demarcated [...] chiefs[Captains], men warriors, women warriors and leaders must also be consulted. The chiefs (caciques) 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, give ideas, prepare the food, make homemade remedies and have a lot of traditional knowledge [...] University students, Munduruku pedagogues, students of Ibaorebu, young people and children also have to be consulted, as they are the generation of the future [...] Our organizations (indigenous Council Munduruku Pusuru Kat Alto Tapajós-Cimpukat, Da’uk, Ipereg Ayu, Kerepo, Pahyhyp, Pusuru and Wixárima) must also participate but can never be consulted on an individual basis.

As well as guidance on how the consultation process should happen:
The Government cannot consult us when they have already made the decision. The consultation must be made before anything else. All meetings must be in 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. at work time in the field, drill or plantation; at the time of extraction of the chestnut; in the time of the flour; in our feasts; on Indian day). When the federal government comes to consult our village, they can’t get to 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 talks. The government doesn’t need to be afraid of us. If you want to propose something that will affect our lives, come to our house. We will not accept dialogue with consultants, we want you to consult us, who have the power of decision. The meetings must be in Munduruku language and we will choose the translators. In these meetings, our knowledge must be considered, at the same level as the Pariwat (non-Indian). 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 of our trust, who will be pointed ou by us. The expenses of our presence, 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 (military police, federal police, federal Transit Police, Army, National Public Security Force, Brazilian intelligence agency or any other force of Public or private security). We will use bow and arrow 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 full 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 image.

In the lower Tapajós region, indigenous peoples are also under pressure due to the construction of large enterprises and, as this is happening in an hegemonic way, they are not consulted and they are marginalized in that process. With the positive experiences of creating protocols of consultation for each community and understanding that this is also a very important fighting instrument, the indigenous peoples of the Bajo Tapajós intend to give continuity to the construction of their protocols of Consultation in 2018—already carried out in some of them—with the intention of forcing the Brazilian government and the companies that comply with the international conventions and with The internal legislation of the country.

Así, de la misma manera en la cual la cuenca del Tapajós sufre todos estos ataques y amenazas, las formas de resistencia se estructuran de la misma manera: indígenas, riberenos y quilombolas se unen y planifican estrategias de lucha en común y comparten experiencias para que todos tengan acceso a herramientas importantes para sus luchas.
Los protocolos de consulta es una de ellas, y es necesario que los organismos nacionales e internacionales sepan sobre los protocolos para exigir, de acuerdo al convenio 169 de la OIT, que estos pueblos sean de una vez por todas consultados e informados antes de cualquier intervención, de manera tal que sus costumbres y tradiciones los oriente.

Thus, in the same way in which the Tapajós basin suffers all these attacks and threats, the forms of resistance are structured in the same way: indigenous, riverines and quilombo inhabitants unite and plan fighting strategies in common and share experiences so that everyone has access to important tools for their battles. The Protocols of consultation are one of them, and it is necessary that the national and international organizations know about the protocols to require, according to Convention 169 of the ILO, that these peoples are once and for all, consulted and informed before any Intervention, so that their customs and traditions are the ones that show them the way.

3.3 What do the munduruku want?

Nós We want the Brazilian government to demarcate our lands, and we women and men, are going to fight for it. Even if it is demarcated we will continue to fight for it in the same way. (Claudeth Saw)

Our leaders do not think about protecting us, we are defending what is ours but also in favor of non-indigenous people, because we know that nature is a heritage of humanity. People can't destroy. So, perhaps, we can live in a new, better world, and we want the whole world to listen to us and make the Brazilian government respect our rights! (Jairo Saw Munduruku)
2.2. HUMAN RIGHT TO IDENTITY:

The right to identity is related to cultural integrity that includes the idea of the right of Amazonian peoples to exercise and maintain their culture, to which we can add a series of measures to be taken by the states governments, so that it remains intact, is reproduced, and if the case requires so, can be developed in the best terms.79

The Inter-American Court has expressed that traditions, customs, languages, art, rituals, knowledge are, among others, aspects of the identity of indigenous peoples, which, in function of their environment, its integration with nature and its history, its members transmit it and recreate it from generation to generation.80

The way in which each of these aspects is transmitted and recreated from generation to generation is through participation or taking part in cultural life. This right is recognized in articles 15 of the ICESCR, and 14 of the San Salvador Pact, and consists on:81

a) Participation in cultural life: The right to act freely; to choose their own identity; to identify with one or more communities, or to change their minds; to participate in the political life of society; to exercise their own cultural practices and to express themselves in the language of their choice.

b) Access to cultural life: The right to know and understand their own culture and that of others, through education and information, and to receive education and quality training with full respect to their cultural identity

c) The contribution to cultural life: The right of everyone to contribute to the creation of the spiritual, material, intellectual and emotional demonstrations of the community.

Violation of the right to indigenous identity

The UN DESC Committee in its General Comment No. 21 described the components of the culture concept as follows:

The concept of culture (...) comprises, among other things, forms of life, language, written and oral literature, music and songs, non-verbal communication, religious systems and beliefs, rituals and ceremonies, sports and games, production methods or technology, the natural environment and the one produced by the human being, the food, the dress and the dwelling, as well as the arts, customs and traditions, by which individuals, groups and communities express their humanity and the sense that they give to their existence, and they set up a vision of the world that represents their encounter with the external forces that affect their lives.

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79 Castro Felipe, Dissertation: The Oil extractive policy frete to the rights of indigenous peoples. PUCE, 2016, pg 46.
80 HDI cut. Case of the Kichwa indigenous people of Sarayaku vs. Ecuador, 2012, p. 66
81 Committee DESC. General Comment N º 21, 2012

Regional report on the violation of Human Rights in the Panamazonia 111
Therefore, the recognition of these rights in relation to the culture of indigenous peoples entails the idea that each people exert their cultural identity according to their own way of seeing the world. Likewise, one of the principles to guard identity is interculturality, that is to say the coexistence, the relationship, the dialogue, the interchange between cultures, must be given in the framework of the mutual respect, since each of them has the right to develop its potentialities to the maximum, and to learn from that contact.\textsuperscript{82} This principle guides individual and collective participation in decision-making, planning and management of public affairs, and in the peoples’ control of State institutions and society. This is complemented by the capacity of social organizations to formulate proposals and demands in the social aspect. In other words, for the full exercise of cultural identity of indigenous people, State and society must act in respect, through participation and decision-making in public affairs, with respect and recognition of other ways of seeing life and the world.

The DESC committee has established a framework of obligations that States must fulfil 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, so that it should: take legal and other measures to ensure equality and non-discrimination in the exercise of law; respect for each person to identify or not with various communities and their right to change their minds; the respect and protection of all persons to exercise their own cultural practices, within the limits of respect for human rights; The elimination of barriers that inhibit or limit people’s access to their culture or others; And to allow and promote the participation of indigenous peoples in the formulation of laws and policies that concern them.\textsuperscript{83}

Despite this, the extractive activities in the Amazon have left a significant balance of loss of cultural identity to the communities and peoples as are the cases concerning the indigenous Yanomami and Yekwana in the area of Brazil and indigenous communities Mosetén in Bolivia, not only due to environmental impacts but also to social impacts that weaken the social structures that have been woven.

**Violation of the right to peasant identity.**

In order to understand the dynamics and situation of the peasants in the Amazon, it is important to identify their close relationship with the land, their activities and natural resources, so that within a global context related to their activities, agriculture is highlighted as their means of life and work of smallholders and landless workers. According to the study carried out by the Advisory Committee of the Human Rights Council on the promotion of the rights of peasants and others that are working in rural areas, it is stated that about 10 per cent of the world’s hungry people subsist through traditional primary activities such as fishing, hunting and grazing.\textsuperscript{84} Therefore, any other activity that would undermine these practices, such as competition for natural resources and indiscriminate exploitation, leads to consequences such as the dispossession of land and thus, a severe impact on the exercise of other rights as for example health, education, food etc.

\textsuperscript{82} Castro Felipe, Dissertation: The Oil extractive policy frete to the rights of indigenous peoples. PUCE, 2016.
\textsuperscript{83} Committee DESC. General Comment Nº 21, 2012
\textsuperscript{84} Doc A/HRC/19/75, Para. 19
The lack of protection guarantees against interference and devaluation of their work has obliged the peasants to negotiate 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 caused the plundering of peasant population in rural areas and thus the proletarianization, the loss of food sovereignty, the lack of access to natural resources, hence the decline in their self-sustaining economy.85

The main cause that could contain the series of problems that identifies the Amazon region is the discrimination and vulnerable exposure of peasants, this type of violence manifested in the daily life of societies, as well as consequence of various states’ inobservance and their non-compliance of obligations. This is how the same human Rights Council of the United Nations has identified the main causes of discrimination and infringement of peasants’ rights, which are: expropriation of 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 the rights of these people.86

To all this, we have to add the lack of access to processes of social rights justice due to the lack of understanding and adjustment to the peasant’s reality, this, above all, by disregarding the identity value of these communities, and their closeness to the land and water, causing their struggle to be reduced to vague interpretations of regulations imposed by civilization, related to private property, empowering states to expropriate their lands or force evictions by discrediting their traditional possession.

According to the Universal Declaration on the Rights of peasants and other people working in rural areas in Art.17, their right to land and territory is understood as the space to maintain their different political, economic, social and cultural institutions that ensure their right to participate fully, as well as to guarantee their food sovereignty and access to natural resources, respecting their right to the seeds, to the knowledge and practice of traditional agriculture.

Given this, it should be pointed out that the peasant identity is linked to the territory because of the treatment and usage of the land, it is in this way that their traditional knowledge of agriculture, fishing and livestock are generated, constituting values, know-how and particular practices of these groups that need to be respected, protected and guaranteed for biological and cultural preservation.87

The identity of the peasants must arise from their own perspective and their daily bond with the work on the soil, highlighting the set of knowledge that this generates and that turns them into autonomous and sovereign groups.

On this basis, it is appropriate and necessary to present territorial peasants of the Amazon as the community of the Vereda de Chaparrito in Colombia and the community of Yurimaguas in Peru, who live daily battles for the recognition of their identity, identity that is embodied on work and linked with the land that has led them to develop alternative knowl-
edge to promote solidarity-community economies, sovereignty and food autonomy based on their right to seeds and sustainable production practices that ensure a friendly and responsible environment. They have also highlighted the importance of their right to participation and association for decision-making and to be able to defend land and water against arbitrary government interferences because of the expansion of extractivism, monocultures and mega projects.
2.2.1 Peasant identity, sovereignty and food autonomy in the Colombian southeast, “Vereda Chaparrito”

Coordination: Pastoral Social Regional of Colombian Southeast

Photo 25: Sunset on the Vereda Chaparrito

I. Introduction:

Thanks to fertile land, geographical location, climatic conditions, and access to a good amount of natural resources, Colombia is, undoubtedly an agricultural country.

In that sense, the United Nations Food and Agriculture Organization (FAO) said that Colombia “is one of the five most important countries to be a global food pantry”

However, it seems that the national strategy has target sectors such as mining and hydrocarbons and large-scale agriculture with a focus on agro-fuels. Without taking into account the needs of rural populations, which, according to the 3rd National Agricultural Census, live in poverty, are forgotten by the state government and are the most affected by the armed conflict.

88 Colaboration of Haszel Dallaa Contreras Sierra
However, with the Final Peace Agreement, there is an opportunity to improve living conditions, in particular for peasant communities, this, according to point one of the agreement, towards a new Colombian countryside: Integral Rural reform, which proposes, as fundamental purposes, the access and use of land, national rural plans, development programs with territorial focus (PDET); with a strong component of monitoring and demanding its fulfillment from the government’s side.

The Regional Social Pastoral Ministry of the Colombian Southeast, in its effort to accompany, assist and train the communities, covering over 42% of the country’s territory approximately, has witnessed how the fight for control of great national and international economic interests are depriving the peasants, indigenous peoples and settlers from their lands, in order to access to the natural richness’s, which in this case, corresponds to the region of the Amazon and Orinoquia.

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, seldom culturally and almost never in our affections, feelings and fears, but always appear people who make us become aware of our territories being full of what moves us to take care of it and protect it” Father Henry Soler
Everything that the human being does is related to the Earth, is of great importance for our life. Without it, we would not have access to food, we would not have a place to inhabit and build our homes, and all those who work in the field could not.90

However, in an holistic view, the land without the territory cannot be recognized, Darío Fajardo proposes to understand it as: “Two intimately related concepts. By land the physical and productive basis of a territory is understood. By territory, we understand the set of relations and representations that are built from the Earth”

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 to be evicted, to work in his own land and to obtain products, to administer and to preserve the forests (article 4 Declaration of the Rights of the peasant).

b. Peasant identity.

“My crop is my wealth and my land my Identity”

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

“I am a working man, I am a young worker of the fields and for peasants, I reward my sweat harvesting my crop, young people, children, women tell about the resistance of the peasant who demands the rights of his land and if I sing, I sing about my land, my identity. Young man I want you to analyze the customs of your grandfather. Go and defend your roots, let’s take care of our soil, joy to the peasant!, listen to those beautiful phrases through which the Earth identifies itself “

According to the Declaration on the Rights of peasants,91 “The Peasant is all Man or woman who has a direct and special relationship with land and nature through the production of food or other agricultural products. “But the concept of territory allows us to understand the peasant identity, because one of those relationships that is generated between the land and the peasant is the cultural: defined by the customs, beliefs and ways of life of the inhabitants, according to the trajectory of the human group, and which generates rooting and identity to the territory and appropriation of it.”92
The identity of the peasants must be born from their own perspective, they need to be recognized as analytical subjects of their own development, to deal with identity we must understand that they start constructing it through their own narrations, stories and histories that make up family and communitarian life, that set of ideas that emerge through their culture, their history, as children of the Mother Earth. We want, from the contributions of the same people in the territory, to show the social construction of the rural identity told by their protagonists, since they are the ones who make it up.

“The agrarian worker can only be subordinated to be a laborer, to be a worker of an entrepreneur, and we say no, the peasant has a cultural construction that leads him to have a direct relation with the land, to link the family to the activity of production of food, to take care of the seeds, is a protector of the environment and none of that is the agrarian worker. So our commitment to reform the Constitution is for it to say: peasants have preferential rights because it is a social group of special protection, “explains Senator Castilla.

Therefore, we must recognize the indestructible union between land and peasants, the value of their local agricultural knowledge, the values of their agriculture and their relation with nature, their cultural forms and ways of life, which must be preserved and protected as local cultural heritage of the nation, because not only their own existence is at risk, but history, the history of us, of all.
Ways of protecting land, territory and peasant identity

The rooting of peasants to the territory, should not only be based on the love for their land but on the fact that it gives them what is necessary for their survival and family economy, for this there are alternatives, such as:

- **Social or Solidarity economy:** Unlike the current economic system that favors individualism, it points to organizational and solidarity processes for the development of partners’ economic projects. In this sense, there are proposals such as community stores and revolving credit funds.

- **Sustainable production:** That responds to the current needs of environmentally friendly agriculture and reflects the responsible relations with the land and the consumer. An example in this direction is agro-ecology.

- **Citizen Participation:** The guarantee of the right to land and territory is linked to social processes of association and participation of the rural population that exercise their capacity to make decisions and influence the state in the destiny of the lands and those who inhabit them. One of the most powerful mechanisms in the country, in the hands of the communities, has been the popular consultations to determine their rejection of mining and oil exploitation in their territories, mainly dedicated to agriculture.

c. Sovereignty and food autonomy

The International Movement Vía Campesina defined food sovereignty as the right of peoples to healthy and culturally appropriate food, produced through sustainable methods, as well as their right to define their own agricultural systems and food. It is based on the development of a model of sustainable peasant production that favors communities and their environment, and 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, and not as it has been developed in which the decisions are taken by transnational food producers. To confront this reality, some of the peasants of the Colombian southeast, as active subjects, have led to changes in that static model of rural development imposed by others, which does not take into account their realities, but instead of giving up, have given steps in this self-determination of their food and agriculture systems, these developments have been given in: The care of its seeds, the clean production, **the local marketing and the exchange of knowledge.**
Ways of protecting farmers’ food sovereignty

Human and natural agriculture is the art of cultivating people, harvesting the sun, propitiating and preserving the soil and its natural food, 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*

**• Own seed Care**

The seeds constitute the foundation of food production for all human beings, its importance lies on the fact that it does not die but is renewed, giving birth to hundreds of replacements of the original seed which is why man, since the dawn of civilization, has kept the best samples to re-cultivate them, ancient technique that at the light of new policies, is illegal, which opposes to the right of the peasant to keep, sow, develop their own varieties and exchange, give or sell their seeds.

Therefore, the resistance of peasants is evident in strategies such as seed houses and seed custodians, which favors the rescue and storage of local varieties, important for the maintenance of agro-ecological diversity. and sociocultural communities and peoples.

**• Clean Production**

In Colombia, small producers are the ones that dedicate a greater percentage of their farm to agriculture, many have started in alternative agricultural production practices in harmony with nature. In this sense, there are different strategies: the circular orchards in terraces with the objective of maintaining, conserving and/or increasing the biodiversity and fertility of the soils, forging the food security in the territory, as well as a strategy of adaptation to climate change.

Also, the successional agroforestry systems (SAFS), which allow to establish mechanisms of rural family economy that not only imply the cultivation process until the moment of the harvest but also the processes of transformation and marketing of products in peasant markets. Another measure, are the Diverse Edible Forests that are made up of diverse plant species, which according to their condition and purpose, are located in different floors (consortia) and heights (strata), where starting with the pioneer species of short cycle, the necessary and specific conditions are created for the establishment of the next group of plant species and so on until reaching the last floor or consortium where the primary species or the so-called climax forests.

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Local marketing: Farmers’ markets

“Dear Chaparrito, Old Chaparro where I began to work in the farm in the spring, the spring when I formed my home in the company of my husband and social pastoral, and with its beautiful teachings, put us to work, in the Peasants’ Plaza to be able to progress, my dear municipality awaits for us with joy because we bring the freshest products of the region that with these coins we can take home and so we can succeed, thanks I give to my God and Social Pastoral 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, to fair prices that propitiate relations of friendship, histories of life, uses and customs, allows the articulation of the families in the process, highlighting the role of women as protagonists in the consolidation of union and identity.
• **Exchange of knowledge and flavors**

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

![Photo 28: Peasant market](image)

**Photographic record of the PSR.**

### III. Legal framework and violations of peasants' rights

**a. Legal framework for the protection of the rights of the peasantry in Colombia**

The legal protection of peasants has been advancing in the international order with the Declaration on the Rights of peasants and other people working in rural areas, made in the year 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 legal framework of protection provided by the Political Constitution of Colombia,96 is the group of provisions of: social function of the property (Article 58) the guarantee of progressive land access of agricultural workers and the provision of services of education, health, housing, social security, recreation, credit, communications, product marketing, technical and business assistance (Article 64) special protection for food production (Article 65) the obligation of agricultural credit (Article 66) which constitutes the basis for the action of the State to improve the income and quality of life of the peasants.

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According to the Constitutional Court, agrarian property is covered by constitutional provisions 60, 64 and 66, and it establishes that access to land not only implies securing an ownership title but also improving the quality of life of people, the constitution summarizes the guarantees of the rural property as:

1. The right of agrarian workers not to be stripped of their property or to be driven to get rid of it on the pretext of their unproductivity, without offering alternatives to make them productive;
2. The right to the enjoyment of the property is not going to be affected without sufficient and powerful justification;
3. The right to the State to adopt progressive and non-regressive measures aimed at stimulating, promoting and favoring access to the property of agricultural workers and improving their quality of life and human dignity;
4. The right to, in this same way, also protect food safety. (C-644-2012)

However, on the provision of article 65 of the Constitution concerning the right to adequate food and food safety, the court assures that:

“The protection of food production is based on two rights: social individual right to adequate food and not to suffer hunger, and the collective right of food safety, which can be recognized in the Constitution in various precepts that come sharply from the international human rights law” (C-644 of 2012)

Although in the constitutional order there are guarantees, in the framework of the legislation and the public policy it has not been possible to translate these precepts in real facts of protection to the Colombian peasantry.

b. Acts of violation to human rights of peasants

The rights of peasants are at risk, this is happening as a result of standards that end up being oppression instruments, or omissions of the state government before their realities. Situations that are described in the following terms:

• ZIDRES Law

Law 1776 of 2016 by means of which the zones of rural, economic, and social development are created and developed ZIDRES,97 this law is in force with the approval of the constitu-

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tional examination in sentence C-077 of 2017, the National Government will proceed to its delimitation through document CONPES.

However, 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 can be proposed by any person or associative company. But big companies would have many more advantages to execute them. Stringent requirements such as financial and administrative viability, land acquisition capacity and access to technical assistance are established. And there is no support for peasant associations to be able to fulfil them.

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

They assume, without proving it, that the peasant production is inefficient by nature and that therefore it is necessary to favor the production on a large scale. The biggest risk is that it launches the message that the peasant economy has no place in the country’s rural development model. Either the peasants become great entrepreneurs, or they will be replaced by them.

Certified seeds

"We are seeds, at the time the government issued this law and prevents us from making seed exchange is as if we were taking away our identity, our roots as peasants which we are" Marco Martínez, Vereda Chaparrito

The controversy started with resolution 970/2010 which obliges farmers to store, commercialize and use certified seeds (produced by large domestic or foreign companies) which generates two problems: that the use of creole seeds and the storage of seeds for future planting is illegal.

Aunque fue derogada la disposición, la lucha sigue vigente, pues existen fuerzas que siguen insistiendo en la eliminación de estas prácticas tradicionales, milenarias; en razón a beneficios económicos que produce la propiedad intelectual de semillas certificadas.

Although the provision was repealed, the fight is still in force, as there are forces that continue to insist on the elimination of these traditional, millenary practices; Because of the economic benefits that the intellectual property of certified seeds produces.

Mining and hydrocarbons in the Colombian Amazon

According to an investigation done by Rights, Diversity and Forests (DEDISE) 147 projects were identified, they were implemented in the Amazon, of which 70% correspond to

100 Ibidem.
the mining energy sector with mining and hydrocarbon extraction projects. According to data from 2008, 106 mining titles had been awarded in Caquetá, Guaviare, Putumayo, Amazonas, Guainía, Vaupés, Cauca, Nariño, Meta and Vichada, these titles amounted up to 95300 hectares. On the year 2011, the current titles were 128 equivalent to 100,600 hectares, 0.20% of the Colombian Amazon and for 2013, 180 titles equivalent to 107,900 hectares were recorded.103

As the development of law 1450 of 2011, resolution 045 of 2012 is issued, which declares strategic mining areas (AEM) equivalent to almost 22.3 million hectares, of which 17.5 million correspond to the departments of Amazonas, Guainía, Guaviare, Vaupés, Vichada and Choco, distributed in 202 blocks, corresponding to 15.4% of the national territory. The AEM overlap with 70 indigenous shelters, in addition to four natural national parks: Túparro, Puinawai, Nukak, Yaigoje Apaporis.

- **Land Decree**

Although point 1. Integral Agrarian Development Policy Of The General Agreement For The Termination Of The Conflict And The Construction Of A Stable And Lasting Peace is an opportunity to solve the historical problems of rural communities, their regulation does not meet the expectations and guidelines of this agreement, one such case is the decree 902 of 2017 by means of which measures are taken to facilitate the integral rural reform envisaged in the Final Agreement on land matters, specifically the procedure for accessing and formalizing the land and also the land fund.

So far it is the most important regulation, as it seeks to resolve the issue of land formalization, including the vacant ones, this is the central topic of the origin of the armed conflict in Colombia. The regulation has received quite a lot of criticism but the academy has a more impartial debate in the following terms:

- Among the advances, one is to give legal support to the Land Fund, to offer faster and easier ways of resolving agrarian conflicts, such as the use of a single procedure for all matters; to structure a massive plan of free formalization of the land; centralize the information about the beneficiaries of the state programs in the field, with the Register Of Management Subjects, RESO.

- As for the Micos: It propitiates that great landowners have the right to the use of vacant lots without the restriction of the limit of the family agricultural units (UAF); it opens to the possibility of legal people requesting the use of barrens, and for forest reserves to be given out and allows large entrepreneurs to own part of associative projects with small farmers without taking in account the relative size of the partners.104

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104 Leon J. (2017, April 24) The advances, the challenges and the micos of the decree to land the agrarian point. The empty chair.
c. Vereda Chaparrito

The Vereda Chaparrito is located in the municipality of Puerto Concordia-Meta. The area is legally is formed by three plots: Filleta, Angosturas I and Angosturas II that total approximately 1100 hectares. At the time the territory that forms Chaparrito was a vacant lot, which the Colombian Institute of Agricultural Reform (INCORA) awarded in the following way:

- In resolution No. 1021 of September 26, 1996, INCORA awards the property called the “Pafliera”, with an extension of 636 hectares; to José Edilberto Rey Baquero and María Elena Ríos Guativa.
- In resolution NO. 1000 of September 25, 1996, INCORA awards the plot called Angosturas II; With an extension of 280 hectares and 4764 meters to Mr. Luis Enrique Gómez Alvarado.
- In resolution No. 079 of March 24, 1998, INCORA awards the plot called Angosturas I; With an extension of 187 hectares, to Mr. Luis Enrique Rodríguez Martínez.

The above evidences a phenomenon of concentration of land in few hands, it is worth highlighting that the person who bought the aforementioned land has other properties around the area of Chaparrito, mostly for cultivation of African palm; It is possible to visualize its production at the entrance of the plot and the surroundings in the place known

In addition, this municipality was the focus of the armed conflict, with the presence of illegal armed groups both FARC-EP and paramilitaries, which encouraged the illicit cultivation of coca to the farmers in the area, because they assumed that they had no economic alternatives, although they recognize that with poor infrastructural conditions, lack of technical capacity, they make it very difficult to produce and sell their agricultural products.

These illegal processes, have consequences in the personal and collective life of the communities because it generates a culture of the speed, of the easy, of the wrong, forgetting the communitarian work, solidarity and the exercise of its political role: either on the board of Communal action or in the shaping of associations to manage productive projects.

Photo 29: Entrance to the Vereda Chaparrito, P. S. R Photographic file
However, with the advent of The National Government’s Coca-Growing Eradication Policies, without any substitution plan, people spent times of difficult situation, mainly hunger.

In this situation in which the peasant families of the Vereda Chaparrito, are at risk of being dispossessed, even if they have been living in them, by an apparent legality in the titles of property, 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 nutrition needs of individuals, without harmful substances, and acceptable to a given culture; The accessibility of these foods in ways that are sustainable and that do not hinder the enjoyment of other human rights. The availability implies that people can obtain them by themselves (by exploiting productive land) or by means of distribution, elaboration and marketing systems that work properly. Includes nutritional sufficiency, cultural acceptability of food, and sustainability of food practices. In the case of accessibility, it is composed of physical, geographical, economic and non-discriminatory.
IV. Proposals

a. Legal – Polítical

The approach of these strategies should be aimed at working on the implementation of the Havana Agreements,\textsuperscript{105} 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 Rural Area: The Intedral Rural Reform established the following measures for a transformation of the rural area and an integral rural reform:

1. Access to land, through formalization, restitution and equitable distribution of it, together with promoting the proper use of land in accordance with its vocation.

2. Provision of public goods and services such as education, health, recreation, infrastructure, technical assistance, food and nutrition, among others, that provide well-being and good living for the rural population. Through territorially focused development programs (PDET), and National Plans For an Integrated Rural Reform.

3. System for the progressive guarantee of the right to food.

On point 2, Political participation; it will have to focus on making people integrate spaces like: Special Constituent Of Peace and Local Councils For The Reconciliation And Coexistence; to put in the debate the needs of the territory.

It also applies to the other measures that are included in the Agreement, also the point on the solution to the problem of illicit drugs and reparation to the victims. There is an opportunity to improve conditions, as long as, the citizens and competent entities monitor and demand its fulfilment from the government.

b. Alternative proposals

Going along with these previous proposals, there must be some alternative strategies like the processes of integrated human development. These processes seek to integrate organizational, productive and incidence procedures, where human beings, day by day, look forward to improve their overall relations with their families and communities and with nature and territorial entities. Maintaining this dialogue between nature, people and community, will help to develop more harmonious and well-being relationships, which translate into a GOOD LIVING in harmony between people and creation.

\textsuperscript{105} www.altocomisionadoparalapaz.gov.co/procesos-y-conversaciones/Paginas/Texto-completo-del-Acuerdo-Final-para-la-Terminacion-del-conflicto.aspx
The current project, thanks to the cooperation of Caritas Luxembourg, offers support to 85 families from the departments of Meta and Guaviare, specifically the area of Chaparrito, Alto Mielon, Mereles; In Guaviare Simón Bolívar, Acacias, La Dos Mil and Baja Unión. These communities that have been affected by different armed groups but who have managed to overcome this wave of violence and are in search of better living conditions. They are territories of agricultural and livestock usage, in the region of the plain and the Amazon area. The soils are very acid and have two very well marked seasons, one is summer, with scarcity of water, and the other is winter with excessive rainfall.

This process seeks to make families overcome and eliminate illicit crops that for more than a decade were their main source of income, in this sense, the process focuses on generating agricultural production experiences that respect and coexist with all forms of life and allow them to face the weather conditions of the area, it also focuses on strengthening food safety and the local economy. Together with the above, a plan of training and field work is proposed, to motivate the communities to generate a new lifestyle and to recover, in the families, the culture of farmer-producer and the rooting in the territory, strengthening the union of the communities, promoting reconciliation and peace.

In addition to the challenges of the lack of formalization of their lands, which is not a problem only of these communities but in general of the rural populations of the country, it is evident that there are families in possession of their lands for more than 10, 15, 20 years, and for lack of legal certainty, are at risk of being deprived from their land at any time, which is why the project accompanies the communities with legal advice in the process they carry out for the qualification of their grounds.

However, all of the above allow these communities to be in the process of knowing and demanding their rights, suggest strategies for the defense of the land and the resistance in the territory. They have also started with an economy that is based on family farming and resistant to climate change; this is why, this strategy is a good option to be reproduced and to extend its 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, then I helped in that chore and it was where I learned this art of coffee, now I am a producer of the farmers’ market, I plant “Pure Breeze” coffee. In my farm called Los Alcaravanes, for more than 19 years we have owned and worked the land, we have circular orchards where there are pineapple, cassava, banana, fruit trees, pastures, cane and bole.

We have a problem that is the issue of the land, we want to have the titles of our lands, a wealthy land lord who is a producer of palm oil wants to take our land away from us, push us out, not let us work or sow our plantations, which all peasants have the right to work in a dignified manner to bring our children forth.

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

Photo 31: Coffee producer at farmer market, photographic record P.S. R.
2.2.2. Violation of human rights in the other Amazonians: The River-dwellers

Coordination: Land Ministry – Vicariate of Yurimaguas, Peru

I. Introduction:

1. Brief historical notes:

Geographically, the district of Yurimaguas is located in the Loreto region, located in the northeast of Peru, in the Amazon region. Limiting to the north with Ecuador and Colombia, East with Brazil, South with Ucayali and to the West with San Martin and Amazon. With 368 852 km² (28% of Peru’s territory) is the most extensive department, and the seventh largest Subnational entity in South America and all of Latin America. The Loreto territory has more than one million inhabitants, populated by various indigenous groups and peasants called river-dwellers.

The district of Yurimaguas has as capital the city of Yurimaguas, located at the confluence of the Huallaga and Paranapura rivers. The name of Yurimaguas, for some, comes from the fusion of the Yuris with the Omaguas Indians. Extinguished nowadays.

The province is home to 40,506 indigenous inhabitants, distributed in 243 indigenous communities, classified in 11 ethnic groups and in turn in 5 ethnolinguistic families, the percentage representativeness of the indigenous population is the largest in the region of Loreto with 48%. This allows us to see the folklore or multicultural richness of the people and how interesting the ethnic groups, that play a very important role in the conservation of the forests and the environment, can turn out to be.

Like any tropical city, its average temperature is maximum 31 °c and the minimum is 21 °c, and by the location (low 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 expelled by the Spaniards in the year 1767. It is also reported that the Spanish navigator Francisco de Orellana faced 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 in the hands of the rubber tree growers and forced hundreds of indigenous people to slavery; during this period the rivers of the jungle were explored, selective timber material was commercialized and the city of Iquitos was established as the department capital.

Loreto is also the most diverse Peruvian department in ethnicities and Indigenous lan-

106 Collaboration of: Idelia Calderón.
107 https://es.wikipedia.org/wiki/Departamento_de_Loreto
108 INEI 2012
109 https://es.wikipedia.org/wiki/Yurimaguas
guages and today, the most affected territory by the constant oil spills and the depredation of forests due to the expansion of oil palm crops, rice and wood trafficking.

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

The Economy of Peru is the fifth largest economy of Latin America in terms of nominal domestic gross product (PBI) and has traditionally been a reflection of its varied and complex geography. For the year 2017 the total economy will amount to 192,169 million dollars, if we divide among the 31 million inhabitants, we have a PER CAPITA GDP of 5,726 dollars and a GDP per capita of 13,018 dollars.

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

In this context of wealth, there is the other side, that of the peasants. The ones who are suffering from the political games. Peasants who, thanks to mega projects, to the issuing of laws that make the negative impacts generated by investments in their ancestral territory more flexible, the ones that are being expropriated; are being taken away from their environment; from their food. The government is forgetting its main function: defending the dignity of the human person.

In this report we will detail some violations that are facing the river-dwelling communities over these years in this part of the Amazon: Yuri Maguas.

2. Background of public policies and intervention in the territory:

The Ministry of Agriculture until the enactment of the Law 22175 allocated large extensions of land to individuals throughout the Amazon area, which have remained uncultivated and abandoned.

Facing this palpable reality, the government issues Law 22175 Law of Native Communities And Of Agricultural Promotion Of The Jungle Regions And The Jungle Brow Zone that, in one of its considered aims has as an objective to incorporate the native community to the national economic life in equitable and dignified conditions. In this same regulation the figure of abandonment is created, that is to say, if the land is given out free of charge, the owner has the obligation to make economic life (till the land), otherwise, that person could be accused of having abandoned the land, reversing the appeal in favor of the state. The main objective of this regulation in the orderly occupation of the Amazonian soils in colonization projects. However, since it was not accompanied by economic resources for effective colonization, this objective did not prosper.

Facing this, regulations were issued that allowed the free occupation of the land

110 https://es.wikipedia.org/wiki/Econom%C3%ADa_del_Per%3BA
111 International Monetary Fund
guaranteeing possession, among them are the Legislative Decree 1089 and its regulation established and establishes now, that the possessors of areas of state free use became owners one year from the occupation of the land and in 5 years, became full owners in areas even titled and registered in Public records by private individuals.

Complementary to this regulation, the Legislative Decree 663, Law for the Promotion Of Economic Activity In The Amazon Area, was issued, this decree allowed the allotment of land up to 10000 hectares for agro-industrial projects with the incentive that it was enough to have the approval of a viability study to become the owner of the land, but in its complementary provisions it made an exception where these projects should respect the right of the owners.

These packs of laws have allowed a large sector of the population to get hold of territory in areas that sometimes do have a proof of ownership and sometimes only in fact, since the government has been, for all purposes, absent in this matter to grant such records.

There has been the phenomenon of the incorporation of the Amazon area to the national community by means of air, land (the construction of the transoceanic) and fluvial communication, awakening the interests of the companies that struggle to occupy enormous areas of the Amazon region ignoring the right of the owners. Legislative Decree 30230 even goes further, to encourage large projects, it even ignores the properties that are not properly georeferenced. This law not only has legalized the expropriation but ignores any advances in the regulations of legal security over the land. With the argument that the economy of the country is getting worse, the environmental laws have turned more flexible to motivate investment, even if the proposed activities are environmentally non-friendly. This phenomenon of focusing the development of the Amazon only from the economic point of view, leaving aside important factors such as the social, the ecological and the interest of the future generations, is allowing the trafficking of the land. There are thousands of possessors and owners who are deprived of their possessions and property, under the pretext that they are not fully identified.

To complete this policy of spoliation to the owners and smallholders, in a non-transparent way, a regulation was issued that established that the Amazonian lands were matter of common legislation, which does not establish any restriction for the concentration of the land in few hands, as provided by law 22175.

It deserves special mentioning the fact of the lack of political will to delay the titling of the territories of the peasant and native communities to obviate the process of consultation in the development of projects.

The San Martín region anticipating the conflicts and the irrational use of the land, approved the Economic And Ecological Zoning By Regional Ordinance, classifying land use according to the greater use capacity. The Supreme Decree 1089, envisaged that once the economic and ecological zoning was approved, it became a compulsory instrument for the rational use of the land. Notwithstanding this particular rule which, under the Supreme Decree 1089, was of compulsory application, in practice, the reading was different. Completely ignoring all this regulation, 10 thousand hectares were awarded to the Agricultural Company of the Caynarachi S. A for the cultivation of oil palm. As a result of the population’s
claim, the company gave 7 thousand hectares back; the other 3 thousand hectares suffered logging, disappearances of springs of water and destruction of all Amazonian life to give way to the planting of oil palm.

The new policy to take over the 7 thousand hectares was forming associations, human groups that appear suddenly, equipped with chainsaws and a violent attitude, enter, cut, burn and convert the areas into palm farmland. This way of operating, eliminates several procedures: the approval of the environmental impact study, the authorization for deforestation, the payment of the right to deforest, among other procedures. Another consequence of the occupation made by these groups is that when they transfer the areas they “worked” on (illegally logged), the buyer makes the lawsuit as legal “granting of supplementary title” to finally turn the illegal land into legal. Interestingly, the company Palmas del Shanusi is the one that has filled the Mixed Courts of supplementary title claims.

If we make a general view, the native and riverine communities, who are the real owners of what we know today as Amazonian region, have been left without land and what little they have achieved after years of struggle, overlap with mining requests, oil zones, great interest projects, among others. In particular: Nothing that was theirs belongs to them. On the other hand, we find the great concentration of the land in few hands, the plundering of the land to the holders, some are owners through illicit means, some end up being servants, the persecution of the defenders, the pollution of the waters by the spread of pesticides in the upper parts of the river that with the rain are dragged to the lower parts where the villages settle, the persecution of the landholders with legal proceedings accusing them of deforestation, the corruption of the government officials and the omission of their duties, the trafficking of wood, the illegal qualifications, the non-valorization of the natural resources, the weak organization of the civil society, the omission of the titling to the native communities, the promulgation of anti-environmental laws, the nullity of the records of possession, the prioritization of mega projects on detriment of native communities, the constant oil spills. In conclusion, we have a specialized national government that runs over rights and, in name of national interest, which is no other than the interest of the business sector, is disappearing life: our Amazon.

3. Context:

The Apostolic Vicariate of Yurimaguas also known as the Apostolic Vicariate of San Gabriel de la Dolorosa of the Marañón, is located in the Amazonian jungle of Peru. It is an extensive vicariate with jurisdictions covering the regions of San Martín and Loreto, which are divided into provinces and districts. The provinces of Alto Amazonas and the Datem of the Marañón in Loreto and Lamas in the San Martín region.

The affected communities of whom we will mention are located in the province of Alto Amazonas. The city of Yurimaguas is the capital, with a population of 118,238 inhabitants.
Regional report on the violation of Human Rights in the Panamazonia
The Yurimaguas district concentrates 60.5% of the population. In this province the indigenous population represents the 20.01% of the total, and is distributed in 115 communities belonging to seven ethnicities, of which we have the Chayahuitas or Shawi (district of Yurimaguas, Balsapuerto, Jeberos, Santa Cruz and Teniente César López Rojas) and Coca-ma (district of Santa Cruz).113

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

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

II. Impact and human rights violations

2.1. Situation of the indigenous communities in the province of alto amazonas.

The sociocultural patterns of the province are very complex. We have on the one hand, the Amazonian indigenous sociocultural pattern, the settler-migrant sociocultural pattern and the urban sociocultural pattern.

In the indigenous population the predominance is of the ethnic groups of the Chayahuitas or Shawis, Jeberos, Cahuapanan, Cocama Cocamilla, and Tupi Guarani or Candoshi.

They are communities that are somehow “more protected than River-dwellers “ in terms of legal physical sanitation of the territories they occupy.

Have constitutional protection, prior consultation laws and international surveillance. However, the government justifies itself with the argument of National interest or Public Need. It omits carrying out the prior consultation to the communities when their collective rights, their physical existence, the cultural identity, quality of life are or will be affected..

114 Law of Native Communities and agrarian development of the jungle and the forest brow. Decree-Law No. 22175
115 Exercise of the jurisdictional function by the peasant and native communities. The authorities of the peasant and native communities, with the support of the peasant rounds, can exercise the jurisdictional functions within their territorial scope in accordance with the customary law, provided that they do not violate the fundamental rights of the person. The law establishes the forms of coordination of such special jurisdiction with the courts of peace and with other instances of the judiciary, article 149, Political Constitution of Peru, 1993.
116 https://es.wikipedia.org/wiki/Ley_de_consulta_previa
117 “Inviolability of property right, the right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good and within the limits of law. No one can be deprived of his property except, exclusively, because of national security or public necessity, declared by law, and after payment in cash of a compensation that includes compensation for the eventual damage (...)”, Art. 70, Constitution Politics of Peru, 1993.
The government and the communities have different look at development policies. The authorities, for example former President Alan Garcia, has commented that the Amazon communities are not “First class citizens”\textsuperscript{118} because of the fact of having a different vision of development, and that also “The majority’s interest in the minority must prevail”\textsuperscript{119}. This has generated constant conflicts. The Baguazo\textsuperscript{120} for example.

The main problems that we have assisted the indigenous communities regarding the violation of their rights during the period 2012 to 2017 have been:

- Invalidity of property titles
- Overlapping of the property titles
- Territory usurpation
- Border conflicts
- Penal and administrative penalties for non-observance of forest permits
- Wood logging
- Omission of the qualification of its territory
- Division of its territory during the qualification process
- River and lake pollution

\textsuperscript{118} https://www.youtube.com/watch?v=PACBHIH4kH0
\textsuperscript{119} The lands of the jungle and forest brow regions will be used in harmony with the social interest, article 28th of Law 22172.
\textsuperscript{120} https://drive.google.com/file/d/0B_Afa15_UyaRMTg5MjIyNDAtZmVmZC00MGRkLWJlYjktNjc2OGQzZScyYmU0/view?drp=1&N=en#
We present a case where the nullity of the title of two indigenous communities in the district of Lagunas is requested.

2.2. Situation of river-dwelling communities in the province of alto亚马逊as:

River-dwelling communities are the other Amazonian they are not considered indigenous but, like them, they live in the forest and have almost the same customs; with the difference that land ownership is not collective, but individual. These communities are the most vulnerable because of the lack of adequate legislation that recognizes ownership of the areas that make communal life.

This conception of ownership has generated loopholes and legal disadvantages. On one hand, according to the capacity of greater use of the land, when the area that is being considered qualifies as forestry and of protection, the procedure for the qualification does not apply. The vast majority of the areas that form the Amazon and where river-dwelling communities are settled, qualify as forestry and protection. Even indigenous communities can obtain qualification if the area qualifies as forestry. Therefore, in this extreme situation they are going to be precarious possessors subject to eviction, never owners. To further complicate the situation, one of the requirements for the title, required by the Agrarian Directorate, both of Loreto and San Martín, is to demonstrate economic exploitation.

121 Law 29763, article 37. Prohibition of change of the current use of the land (forest and protection). In lands of greater forest-use capacity and greater use capacity for protection, with or without plant cover, the change of current use to agricultural purposes is prohibited. The granting of property titles, certificates or records of possession on land of a public domain with a capacity to use forestry or protection with or without forest cover, is prohibited. As well as any kind of recognition or installation of public service infrastructure, under responsibility of the involved officials.

122 The part of the territory of the native communities which corresponds to lands with forest suitability shall be ceded to them in use and their use shall be governed by the legislation on the matter, article 11, Act No. 22175.
The Amazonian man has as a custom to cut the trees in an area of one or two hectares, enough for them plant their crops, then they let it rest for a while (what is known as purma) to be used again. With this custom the exploitation of the land has been sustainable and environmentally friendly. A coastal peasant has approximately 35 to 40 hectares. Not all the area is used for crops. Logically, by demanding economic exploitation, they are obliged to cut the trees, thus losing traditional practice.

The pieces of land which are located on the banks of the rivers are also not subject of titling. They are considered fringes and of exclusive property of the state. Precisely, the communities are seated on the banks of the rivers and many of their short-term products such as rice, beans, corn are sown in these areas.

The state does not consider convenient to title the plots (there is no political will). This implies that, for the cadastral reading of the State, in the absence of titled areas, the land is free and available to sell, allot, given in concession and/or ready to execute projects of great national interest. If the communities are not native river-dwelling communities, they are not subject of entering the process of prior consultation envisaged in both Law No. 29785 and Convention 169. We could demand the right of participation envisaged in the political Constitution, however, if they cannot prove the real right over the area which they occupy, it is not viable.
Title qualification impediments apply only to communities. For the business sector, the procedure is flexible. A clear example is the award of 10,000.00 hectares in the Amazon forest to the company Palmas del Shanusi (Grupo Romero). Before the award was granted, the communities had already requested the qualification and conservation of these areas, being rejected by the type of forest, which was not suitable for agriculture. Up to now 3,000,000 hectares have been converted into oil palm crops, 7,000.00 have been legally processed.

The main problems that have been assumed as a church in defense of the river-dwelling communities have been:

- Expropriation
- Invasions
- Deforestation complaints
- Water shortage
- Deforested
- River and lake contamination
- The inquity
- Eviction of possession
- The lack of titling of the territory they occupy

2.2.1 Ownership as a problem for river-dwelling communities and an opportunity for the companies.

“Ius in re” or right in property gives you the power to do whatever your will desires over what is yours. Thus, the river-dwellers who have managed to clear the legal situation of their property, have entered the dynamics of “trafficking with the land” without having clear rules on the transfer of ownership or sale of property on land located in Amazonian area. This traffic far from being an opportunity to grow and increase the quality of life has generated multiple problems and submitted themselves to a new style of life, slavery: they have stopped being the masters and owners of their lands to become dockers.

The misfortune of the communities has been a growth opportunity of for the businesses, as a sample case, the ROMERO group, that has extended its oil palm cultivation area in a simple way but with some legal complications like those that we detail:

Allegations of deforestation for both the purchasing company and the farmer that transferred the land.

124 http://barranquita-barranquita.blogspot.com.es/
125 https://www.youtube.com/watch?v=2PkvCR6NApU
126 http://www.roriente.org/2017/12/11/comunidades-de-san-pedro-de-mainujay-y-jorge-chavez-piden-a-la-agencia-agraria-solucionar-problema-de-sobreposicion-de-palmas-del-shanusi/
127 http://www.roriente.org/2013/02/19/fredesaa-se-pronuncia-en-contra-la-deforestacion-ocasionada-por-grupo-romero/
128 http://www.roriente.org/2018/03/24/el-agua-don-de-dios-y-un-derecho-humano/
130 http://www.roriente.org/?s=contaminacion+de+la+quebrada+cotoyacu
In order to evade both criminal and administrative responsibilities, they have developed modalities for acquiring properties. One of those ways is, by transfer contracts of the property or possession, another is by selling the property with clauses where they established that the transferee of the plot ceded the completely deforested area, when it was really not. When the State Attorney made a field inspection found that many areas that are supposedly described as deforested, have virgin forest. The others with recent logging, at the date of inspection. Therefore, the Environmental Prosecutor’s Office has promoted research to 69 peasants from the community of Túpac Amaru. The company has been incorporated into the process and is being accused and investigated for the crime of logging (deforestation).

2.2.2 Supplementary titling: illegal transfer can become legal.

About the trafficking of possessions, the company, to avoid any questioning, has demanded from the transferee (a peasant) the granting of a supplementary title before the Mixed Court of Yurimaguas. It is known that the defendants are not going to answer (because of their present condition they are unreachable). The process will be cleared and the sentence issued. A light reading on the subject, lets us see that finally the company is going to get hold of areas where the titling does not proceed.

Those areas that the company allegedly obtained through purchase contracts and/or possession transfer contracts are areas occupied by communities. The real possessors have not been the ones who trafficked with the land, but it was the farmer who did it, thanks to corruption. 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 Prosecutor to evacuate the community of San Pedro de Mayrujay. In the face of the complaint, a meeting was held with the representatives of the company, officials responsible for the titling of the Agrarian Agency and members of the communities of the Valley. It was clarified that the company did not have any document issued by the competent entity proving that they own the disputed piece of land, however, they continue to disturb the possessors.

131 Article 36. Deforestation authorization: The deforestation consists in the withdrawal of forest cover by any method that leads to the loss of the natural state of the forest resource, in areas covered by any category of the National Forest heritage, for the development of productive activities that do not have the purpose of a sustainable forest management, such as the installation of infrastructure, the opening of roads, communication, including access roads to forest production areas, production or transport of energy, as well as energy, hydrocarbon and mining operations. Requires prior authorization from the SERFOR or the regional Forestry and Wildlife Authority according to the level of environmental assessment required in each case, according to the provisions of the National environmental impact assessment system and according to what is established in the Regulation of this law.

If these disforests could affect the peasant and native communities, the right to the prior consultation of the ILO Convention 169 is a must. In conjunction with the submission of the application, the activity holder attached the impact assessment. Approved by the competent authority according to the activity to be developed. This assessment shows that the proposed activity cannot be carried out elsewhere and that the technical alternative guarantees compliance with the legally required environmental standards. Also ensures that the area of deforestation is the minimum possible and will be carried out with the best existing technology, practices and methods to minimize possible environmental impacts and including avoiding high conservation value areas. It also indicates the fate of the extracted forest products.

No deforestation is permitted in land reserves for indigenous peoples in isolation or initial contact. If the authorization is to proceed, the value of the forest resources to be withdrawn is paid on the basis of an integral valuation and 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 enabled, in the form to indicate the corresponding forest authority. Where these forest products are a matter of marketing, the right of use is further paid. The regulation lays down the applicable conditions

132 http://www.roriente.org/2017/04/24/comunidad-de-jorge-chavez-y-san-pedro-de-mayrujay-enfrentados-por-territorio-con-empresa-palmas-del-shanusi/
2.2.3 The property as a right that affects other rights.

The situation of the COTOYACU community is worrisome. It is not the only one. In the district, there are several communities that have this problem. Cotoyacu is the only one that resists. Despite the authorities’ deaf ears, they continue with their struggle.

The community had two important sources of water: the Quebradas del Cotoyacu and Yanayacu. Both have been diverted, drained or dried, and the wetlands that were the ones that stored the water to avoid the diminishing in summer times and overflowing in winter times, have been cleared and in its place we find the oil palm and rice.133

In the month of July the population has noticed the death of fish and the presence of heavy machinery. Verification of the area was requested from the Water Authority. Indeed, the ravine

133 [Link](http://www.roriente.org/2014/08/28/palma-acelera-monocultivo-agroindustrial-desarrollo-que-destruye/)
was being diverted using heavy machinery with authorization of the Water Authority.\textsuperscript{134}

The criminal acts on water resources are solely the responsibility of the National Government.

2.2.4. Testimonies of impact on human rights.

After receiving constant complaints and in order to create communal defense strategies, a meeting of all the representatives of the communities affected by the Romero company was convened. The testimonies collected below are textually written and are also being annexed to this document.

Photo 36: River-dwelling communities lider of Jorge Chávez.

"We have conflicts with the palms. We have suffered invasion of mountains "

«Our Ancient Elders have left this mountain to work. Great mighty have taken over these mountains. We, as the new generation, have entered and found everything invaded by the powerful company. Our authorities (government) themselves try to hinder the constancy and qualifications we request. Having a title is securing the property. By the invasion we have contamination of our streams: the Aguajillo and Cunchiyacu. Our lakes are contaminated by the substances they put in. The company goes to the Agrarian Agency and the Agrarian stands in the way. We are managing the titling with the municipality but we cannot get the titles. More than 700 hectares of forest and more than 600 of deforested wetlands»

\textsuperscript{134} [http://www.roriente.org/2017/07/19/autoridad-nacional-del-agua-sancionara-a-empresa-que-viene-contaminando-el-agua-de-la-quebrada-cotoyacuillo-y-cotoyacu/}
Political leader of the district of Lieutenant César López.

"It is forbidden to pass (referring to the free transit of the community members). The company has gone with prosecutor and police to intimidate. The problem is that the authorities are colluding. 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 humanity because the wetlands are life and the government says nothing: "It is a massacre".

Community leader of Cuipari.

"Unfortunately there are some authorities who signed the file for the "Grupo Romero" to enter. Thinking it will do good to the ravine. The ravine has opened, it was raining and the water did not come out. Because of that situation the plants were dying. For that situation they open the ravine. It's their way of thinking."

Main problems faced.

"Deforestation; they misleadingly buy pieces of land; presence of figureheads, intermediaries, some are from the same community; burning of the forest (burned over a thousand hectares). It was reported and nothing was done."
“They prohibit the owners to enter. There is a check point where they control us, they ask us questions even if they know us. It’s an uneasiness that is caused all the time.

The authorities who lend themselves to corruption. As is the Agrarian Agency that they care little. They laugh.”

Photo 38

Community leader of Cotoyacu

“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 deforestation, they began to drain of the wetlands, to dry them and to plant crops. Then they started with the contamination with agrochemicals... we have no water.”
"We cut the trees because we were authorized. We did not cut the trees just for cutting... All activity generates impact. The world works like this... We cannot allow any deforestation to exist. The forest is what we are looking after...


“The issue of conflicts over territories is in the vast majority in all communities...we cannot title the plots if there are any conflicts”– Director of the Agrarian agency, Eng. José Velasco Quispe

Photo 39: Cotoyacu gorge

drained by: Idelia Calderón.
“We pursue 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 the palm of the Shanusi without intervening in their work. We want San Pedro de Mayrujay and Jorge Chavez to have the best living conditions. Have a promising future..”.
Political representative of the District of Teniente César López Rojas.

2.3 The right to identity of river-dwelling communities:

River-dwelling communities communities have no legal existence. There is no exclusive law as native and farmer communities do. Sociologically, these communities are there, but the way they determine themselves does not have legal protection yet. The only way to prove their existence on the government’s approach is when they manage to categorize themselves as a village, where the managed area is recognized as “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”.

Categorization does not give them any real right over the area they occupy or use in any way.
for hunting, fishing and seasonal migrations in winter time.

In the judgment of the Constitutional Court issued in the EXP. No 01126-HC-TC, reference is made to the non-native communities of Teniente Acebedo y del Diamante; the DS No. 045-93-AG in its Art. 1 allows to constitute communal and multicommunal enterprises of agricultural services, as private legal entities, to the farming native communities, to the villagers, and to the “Peasant groups”, within these peasant groups we would include the riparian communities but they are not expressly called as such.

These communities, no matter what we call them, river-dwellers, non-native or peasant groups, which after all, are the same, are settled throughout the adjacent areas of 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 of their members even if a project to be executed can affect the life of these communities.

The Constitutional Court in sentence issued in the EXP. 0005-2003-AI-TC, has instituted the principle of coherence. It considers the right as a system and the system is as a set of interrelated parts. The various regulations are related among them and work harmoniously with each other. This means, according to the thought of the Constitutional Court, that in order to arrive to a conclusion, it has to be systematically interpreted, both to the Constitution of the State, and to 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 to its dignity are the supreme goals of society and the State. He adds article 2, that everyone has the right to equality before the law. It emphasizes that no one can be discriminated on grounds of origin, economic condition or any other nature, therefore:

2.3.1. Why cannot river-dwelling communities have legal existence and legal status as indigenous and peasant communities?

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 riparian are the other Amazonians who guard the Amazon, they need the state and its work to respond to their call.

Law 27795 of Demarcation and Territorial organization, in its article 2, with heading basic definitions, in the numeral 2.3, points out that the political and administrative areas: regions, provinces, districts, have a population characterized by their historical identity, culture, and a geographic scope supporting their social, economic and administrative relations. As it is observed for the success of demarcation and territorial organization, population and its geographical area turn into a main factor, for the support of its social, economic and administrative relations. In this important objective, the participation of the large number of riparian communities, cannot be neglected. These communities really exist but are marginalized by not having legal existence and personality.

The organization of the physical area– land use; promoting neighborhood participation in local development; the generation of employment and the development of the micro and small enterprise, in charge of the municipalities (Art. 73 numeral 1 of the Law 27972), cannot be carried out without the participation of the riparian communities, within their territorial
constituency, which are numerous.

The Arts. 2, Inc. 17, 58 of the Constitution of the National Government, establishes the fundamental right of any natural or legal person to participate, either individually or associated, 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 legal status, are left out of this fundamental economic activity that enriches the economic life of the nation.

River-dwelling communities have the right to participate in the discussion of the “Municipal Participatory Budget” to which they belong, but they cannot do it because of the marginalization and the lack of legal identity since all these records cannot be registered in the social and local organizations that are foreseen in article 73 numeral 5.3, of the Organic Law of municipalities.

Other rights and activities that cannot be accessed by riparian communities, which would not be idle, can be inventoried, but the marginalization of riparian communities is so evident that it does not require further comment.

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 integral 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,139 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.

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139 Association “7 Falls”, an organization dedicated to stopping land trafficking. http://www.roriente.org/?s=jeberillos+denuncia+invasion
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 revindications 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 complemented 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 issues, 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 Amazonia Region

**Coordination:** Indigenist Missionary Council, Regional North, Cimi, Brazil\(^{140}\)

Illegal Mining and the Violation of Human Rights in Yanomami Indigenous Villages and Territorial Land.

![Photo 41](image)

**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, Mucajai, 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.

\(^{140}\) Colaboration of Vanildo Peres Da Silva
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 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 Mucajai and Uraricuera Rivers, and 500 canvas tents in each of the camps established in the towns of Paapiu, Mucajai 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 Rio 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- Tapirapecó” 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 Erebato Rivers in Bolívar State, areas inhabited by the Ye’kwana and Sanôma (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 Indian Foundation (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, Pada- mo, and Metacuni in the State of Amazonas and in areas such as the Caura and Erebato Rivers in the State of Bolivar.

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.”

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 Erebato 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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141 Report from the PGTA’s First T opical Office for Yanomami Indigenous T erritory, elaborated by Hutukara and ISA (September 6-11, 2016, Lake Caracara-rani-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 Sanôma 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.”

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).
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.
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:

**Gersonei (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. 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’kwanà, 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 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 sup-
port of ISA, the Protection Front, the ICMBio. IBAMA\textsuperscript{144} also took action to destroy mining pumps. I’m going to talk with our 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.

\textsuperscript{144} Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA)
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 Konapê por and dragging the canoes around the waterfall we call the Koxoro pora. The next day we found signs of the Moxi hatêtêma [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 woman 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, Caracarana Lake-RR), guides the work done by the Yanomami and Ye’kwana Peoples:
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<th>OBJECTIVE</th>
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<tr>
<td>Combat illegal mining</td>
<td>• Increase dialogue with the communities that support illegal mining, informing them of its negative consequences</td>
<td>Associations, the Special Indigenous Health Secretariat (SESAI), FUNAI, the Army, ICMBio, ISA, Oswaldo Cruz Foundation (Fiocruz), dioceses and universities.</td>
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<td>• Prepare and use audiovisual material developed for Yanomami and Ye'kwana youth.</td>
<td>Associations, SESAI, FUNAI, ICMBio, ISA, Fiocruz, dioceses and universities.</td>
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<td>• Carry out investigations on environmental and human contamination.</td>
<td>Associations, ICMBio, SESAI, ISA, universities, institutes dedicated to investigation.</td>
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<td>• File complaints through the proper channels with the competent organizations and government bodies.</td>
<td>Communities, associations, FUNAI, ICMBio, SESAI.</td>
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<td>• Carry out constant monitoring and management operations.</td>
<td>FUNAI, Army, IBAMA, Federal Police (PF), ICMBio.</td>
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<td>• Support territorial monitoring bases and sharing facilities.</td>
<td>Communities and FUNAI.</td>
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<td>• Improve mechanisms to punish crimes related to illegal mining.</td>
<td>Federal Prosecution Service (MPF), PF, IBAMA.</td>
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<td>• Reactivate and structure protective bases in strategic areas within the limits of the TIY, such as the Korekoremae Demarcation Base.</td>
<td>FUNAI, Army, PF, IBAMA, communities and associations</td>
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<td>• Identify and arrest those who finance illegal mining.</td>
<td>PF and MPF</td>
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<td>• Strengthen the coordination between peoples of the Pan-Amazon in order to combat illegal mining.</td>
<td>Associations, ISA, FUNAI, dioceses, ICMBio</td>
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<td>• Utilize international mechanisms to fight illegal mining in the TIY.</td>
<td>ISA and Funai</td>
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<td>• Public awareness campaign to influence public opinion concerning illegal mining in TIY</td>
<td>Associations, ISA, FUNAI, dioceses, ICMBio</td>
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<td>• Destroy the clandestine landing strips used for illegal mining..</td>
<td>Army, PF, IBAMA and FUNAI</td>
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<td>• Develop alternative forms of income for communities involved in illegal mining (for example, ecotourism).</td>
<td>Associations, FUNAI, ICMBio, Army, ISA, Rios Profundos (a social organization), communities, Municipal and State Secretariats</td>
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<td>OBJECTIVE</td>
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| Promote indigenous autonomy in the monitoring of their territory. | • Create a Yanomami and Ye’kwana monitoring system.  
• Training in the use of new monitoring technologies (GPS, internet, drones).  
• Support with equipment and logistics.  
• Impede the entrance of invaders, such as fishermen, hunters, loggers, and piassava collectors, etc.  
• Impede the entrance of alcoholic drinks to the communities.  
• Mobile inspection teams on the rivers and highways.  
• Install signs along the borders of the TIY and conservation sites in the area.  
• Reactivate protective bases in strategic locations.  
• File complaints through proper channels with the competent organizations and government bodies.  
• Create alternative forms of income for the Yanomami and Ye’kwana who are involved in illegal fishing and hunting.  
• Block the reopening of the Northern Highway within the TIY. | Associations, FUNAI, ICMBio, SESAI, IBAMA, Army and ISA.  
Associations, FUNAI, ICMBio, IBAMA, Army and ISA.  
Communities, FUNAI and Army  
FUNAI, IBAMA, ICMBio, Army and PF.  
Funai and ICMBio  
FUNAI, Army, PF, communities and associations  
Communities, associations, FUNAI, ICMBio, SESAI  
Associations, FUNAI, ICMBio, Army, ISA, Rios Profundos and communities  
MPF, FUNAI and associations.  
Associations, ISA, Rios Profundos, dioceses, Secoya (a social organization), Ministry of Communication, Amazonian Protection System (SIPAM) and FUNAI. |
| Impede the entrance of invaders, such as fishermen, hunters, loggers, and piassava collectors, etc. | Build secondary shabonos (traditional dwellings). | Shamans, associations and leaders. |
| Guarantee the right to consultation regarding the implementation of government projects and public policies that affect the TIY. | Build secondary shabonos (traditional dwellings). | Communities and leaders. |
| Facilitate territorial mobility | Widen, perfect and organize the radio network that currently exists in the TIY for exclusive use by communities and associations. | Communities and leaders. |
| Strengthen the unity among indigenous organizations in the TIY | Agreements formalizing the use of the exclusive frequency (who will be responsible for it, specific schedules, priority use).  
• Stimulate exchanges between associations and leaders in the TIY. | Associations, FUNAI, ICMBio, Rios Profundos, Secoya and dioceses.  
Associations and leaders. |
<table>
<thead>
<tr>
<th>OBJECTIVE</th>
<th>HOW?</th>
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<tbody>
<tr>
<td>Strengthen indigenous participation in the discussion forums regarding territorial management.</td>
<td>• Participate in national and international seminars and forums.</td>
<td>Associations, FUNAI, ICMBio.</td>
</tr>
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<td></td>
<td>• Participate in the councils that manage the area’s conservation units and FUNAI’s regional committees.</td>
<td>Communities, associations, SE-SAI, FUNAI, ISA, Rios Profundos, Secoya and dioceses.</td>
</tr>
<tr>
<td>Value Yanomami and Ye’kwana cultures and foster their appropriation of their territory.</td>
<td>• Strengthen shamanism among young people.</td>
<td>Communities, associations and FUNAI.</td>
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<td></td>
<td>• Combat religious proselytism</td>
<td>Associations and leaders.</td>
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<td></td>
<td>• Organize a conference and show movies that depict the consequences suffered by indigenous peoples.</td>
<td>Communities, associations, ISA, Rios Profundos, Secoya, dioceses, ICMBio, FUNAI, National Institute of Historic and Art Heritage (IPHAN) and universities.</td>
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<td></td>
<td>• Value and record elders’ knowledge</td>
<td>Communities.</td>
</tr>
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Photo 43

Author: Sister Mary Agnes (Consolata Missionary Sisters)
2.2.4. Indigenous peoples within Maridi Nacional Park (Pilón Laja Reserve), Bolivia:

Coordination: Caritas Bolivia

I. Introdução:

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 scare activities.

Twenty-nine different indigenous peoples inhabit the Amazon (without including Agro-Bolivians): Araonas, Ayoreos, Baures, Cavineños, Cayubabas, Canichanas, Chacobos, Chiquistanos, Ese Ejjas, Guarayos, Guarasugwe, Itonamas, Joaquimianos, 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, Quichibey and Tuichi 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 Iturrealde 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. 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, 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.

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.


4. Some Tsimane 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 total
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) Mosetén 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 000020,148 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 Mosetén, which is currently being revindicated and promoted among the youth. Their central institution is the Mosetén Indigenous People’s Organization (OPIM), which is affiliated with CEPILAP and CIDOB.

It is tradition that the Mosetén People were given this name by the Franciscan priest Gregorio Bolivar between 1620 and 1621, originally as “Moxetenes”, since they lived adjacent to the Indigenous People of Moxo.149

2. Socioeconomic Situation of the Mosetén Indigenous People:

With regards to education, schools do exist within Mosetén territory, but generally only up to the primary level; for this reason Mosetén youth leave their communities to continue their studies outside of Mosetén 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.

148 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.
149 Alvaro Dias Astete - Investigator.
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.

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 Mosetén 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 Mosetén 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 Hydroelectric 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 Mosetén 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.”

According to the information provided by the Solón Foundation, “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.” 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.”

150  http://www.ende.bo/noticia/noticia/57
151  https://fundacionsolon.org/
152  http://www.fundacionsolon.org
4. Indigenous Leaders’ Views on the Dams:

Four indigenous territories would be affected by the project: Mosetén, 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 Mosetén communities, 5 communities located in areas belonging to the Pilón Lajas Tsimane and Mosetén 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 Mosetén communities; this was the first time that ENDE approached the communities, accompanies by the ATIKA and GEO DATA consortium.153 According to the testimony of local leaders,

“they arrived at the Municipality of Palos Blancos and made contact with the Mosetén 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 Mosetén 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 Mosetén communities. ENDE, ATIKA and GEO DATA 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.”154

153 This is the consortium in charge of carrying out that design and environmental impact study for the Bala and Chepete dams.
154 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 Mosetén territory mentions that, “...we no longer have any institutions to support us like before (about five years ago), ... the last one was LIDEMA\(^{155}\) 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 Mosetén 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 Mosetén 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.”


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.  

They are waiting attentively for the results of the final design study and the procedures 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

156  http://www.geodata.it/
III. Human rights being threatened according to the current legal framework.

O avanço no reconhecimento dos Direitos Humanos e, em particular, dos Direitos dos Po- vos Indígenas Camponeses Indígenas “PIOCs” pelo Estado Plurinacional da Bolívia, é o produto de uma longa luta pela sua reivindicação.

Um fato histórico nefasto foi a promulgação da lei “Ex vinculação” de 1874, lembrada pela expropriação de terras comunais aos indígenas e, desta forma, também tentou despojá-los de sua identidade cultural; levou mais de sete décadas para posicionarmos na “Revolução de 1952”, um ano depois é lograda uma medida conhecida como “Reforma Agrária”, que teve como objetivo a distribuição de terras aos “índios” através dos sindicatos e comunidades. Mais tarde, em 1990, foi realizada a primeira marcha indígena “Pelo Território e Dignidade”, que iniciou um processo de consolidação dos territórios indígenas além de conseguir que em 1994 se reformasse parcialmente a Constituição Estadual de 1967 dando à Bolívia o caráter “Multiêtnico e Pluricultural”, e a promulgação da Lei 1715 do Instituto de Reforma Agrária, que estabelece a Titulação das terras de origem comunais.

1. Legal Framework:

1.1 International Norms

As part of the advances made in consolidating the achievements resulting from the “indig- enous 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 Plurina- tional State of Bolivia are:


1.2. The Political Constitution of the Plurinational State of Bolivia

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; Law to Establish a Framework for Autonomy and Decentralization “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.

2.- Law No. 073, December 29, 2010; Jurisdictional Demarcation Law, which regulates the limits between Native Indigenous Peasant Jurisdictions and other constitu-

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160 http://www.planificacion.gob.bo/uploads/mercotes/Ley%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20%20...
tionally recognized jurisdictions regarding various competencies mentioned in the CPE.

3. **Law No. 070, December 20, 2010**: “Avelino Sĩñani - 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”.

4. **Law No. 1551, April 20, 1994**: 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**: Agricultural and Fishing Production Revolution, and, along with it, Law No. 338, January 25, 2013; 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 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, indefeasible, 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.

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163 Article 3.1 of the Education Law

164 Article 3.1 of the Education Law


167 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.
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, 312,168 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 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;**
- **Formulate national action plans on business and human rights** and ensure that

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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.’

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.’

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 community 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, po-
lice, 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* 183:172 “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 interdisciplinairy, 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.”

172 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

Photo 45:

Fotografia: 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 Valparaiso 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.
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) and water as rights.

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 vulnerability 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.”

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175  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.
Map 21: "The Amazon, with its 7.4 million km², 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 m³ of water flow per second, and contains approximately 20% of the world’s surface freshwater. The 476,000 km² 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.

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.
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.

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.177

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.178

178 Yariquí 1x; Topoyaco 1 y 2
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.

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 (Putumayo, Piedmont, Huila) and the world (Oriente Petrolero -Lago Agrio, Ecuador); the current and future scenarios related to energy and mining projects; 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.

179 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.

180 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.

181 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.
Nogal Concession:

The Technical Specifications of the Contract for the Nogal APE Oil Exploration Concession 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

182 Contract N. 03. Date: October 22, 2012 between Emerald Energy Plc and the Agencia Nacional Hidrocarburos (Colombia’s National Hydrocarbon Agency).
# Summary of the socio-environmental conflict related to Nogal:

<table>
<thead>
<tr>
<th>Year</th>
<th>Environmental Studies; Environmental Management Plan</th>
<th>Stratigraphic Well</th>
<th>Seismic Operations</th>
<th>APE Nogal Licensing</th>
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<tbody>
<tr>
<td>2014</td>
<td>- Meetings, socialization of the results</td>
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<td>- Rejection by communities, organizations and local authorities</td>
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<td></td>
<td>- Rejection of the results of the Environmental Studies for the Environmental Management Plan</td>
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<td>- Pressure by armed individuals-groups to favor the company’s interests</td>
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<td>2015</td>
<td>- Peaceful civil protest: protest at the bridge “La Resistencia”.</td>
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<td></td>
<td>- Public forces attack the population</td>
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<td></td>
<td>- Departmental fieldwork, mobilization and national support</td>
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<td>- Dialogue with local and national institutions</td>
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<td></td>
<td>- Construction of the stratigraphic well</td>
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<td>2016</td>
<td>- Failures in the process for obtaining land easements</td>
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<td>- Attack by public forces on people protesting and monitoring Emerald Energy’s activities</td>
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<td>- Hunger strike by a peasant leader, protests</td>
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<td></td>
<td>- Bad socio-environmental practices used by the company during seismic operations</td>
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<tr>
<td></td>
<td>- Conflicts and protests related to seismic activity (stemming from company activities) in the northern part of the Department</td>
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<td>- Round table discussion with national authorities</td>
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<td>2017</td>
<td>- Realization of the Independent Geo-Environmental Study of the Environmental Impact of Exploratory Perforation on the Area 5</td>
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<td></td>
<td>- Application by Emerald Energy to ANLA for an Environmental License to build 10 multi-well oil platforms</td>
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<td></td>
<td>- Request for a Public Hearing on Environmental Issues with ANLA by 675 leaders of the Comisión por la Vida del Agua</td>
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<tr>
<td>2018</td>
<td>- ANLA organizes the Public Hearing on Environmental Issues with the participation of more than 2,000 people opposed to the Nogal Project</td>
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### RELEVANT EVENTS

- 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&M/A)

### CONSEQUENCES/IMPACTS

- Division within the communities
- Militarization of the area
- Violation of human rights and other freedoms
- Criminalization of protests

- Damage to the soil, water, and mountains (forest)
- Human rights violations
- Lack of confidence in the peace process with FARC EP7

- Worsening of the socio-environmental conflict
- Evidence of inequality-discrimination in the conditions for participation in the Public Hearing
- ANLA lacks credibility

### MECANISMOS DE PROMOÇÃO DE DEFESA E EXIGIBILIDADE

- Early warnings given to the competent environmental authority, Corporación para el Desarrollo Sustentable de la Amazonía (Corpoamazonía) (Corporation for the Sustainable Development of the Southern Amazon)

- Presentation of citizen initiated reforms to legal norms
- Popular action and petition for the implementation of precautionary measures
- Community consultations
- Community protests at the village and municipal levels
- Formation of the Departmental Working Group for the Defense of Water and Territory

- Agreements with municipalities for the implementation of precautionary measures for the environment
- Departmental demonstration-protest (20,000 people)

- Supervision of precautionary measures decided by popular action
- Independent geo-environmental and legal evaluations
- Regional and departmental protests
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 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 the

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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”184

Photographs 51: Images from the Community Assembly on May 11, 2015 in which the Municipality ratifies the rejection of the project.

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

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184 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.
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.

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.
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 Columbian 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.”

“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

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 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." 186

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; 187 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
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.188

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.189

“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.

188 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.

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.

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

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. 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.

190 Motto or slogan taken up during protests by the Departmental Movement for Water Defense within the territory of Caquetá.
191 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-REVICTIMIZATION (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 Valpararáiso that were monitoring seismic operations carried out by Petrosismic (contractor for Emerald Energy).

“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.”192

Additionally, new armed groups have appeared to dispute territorial control (extortion, control of coca production)193 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.”194

192 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.
193 FARC dissidents, criminal gangs, petty crime.
"We don’t agree with the measures taken by the Company and the Government, because in Valparaiso 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."[195]

Photographs 57: Departmental protests rejecting mining and energy extraction activities and defending environmental patrimony, the water and the land.


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 [196]

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196 “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.
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.”

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 km², 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 m³ per second, and contains approximately 20% of the world’s surface freshwater. The 476,000 km² 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.”

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.

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), 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.

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 a consequence of the State’s colonization policies (cutting down forest to award land to colonists) and, furthermore, that this damage is repairable, 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 repairable, 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.

“‘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.’"\(^{201}\)

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:
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 Amazónica 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. 202

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.

60 threatened species exist in the area203 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 to differentiate national mining and energy policy in such a way that its standards restrict or

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203 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 amau 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.
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, 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.

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.

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

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204 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.
205 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.
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. 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).

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 mitigate 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

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207 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 Tense and financed by Cáritas Alemania (Caritas Germany).
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.208

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.


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.

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 Environ-
mental 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.
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 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,209 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 appropriation 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.

• 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\(^{210}\) 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.\(^{211}\)

- 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.\(^{212}\)

At the level of the International System of Human Rights, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)\(^{213}\) 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,\(^{214}\) 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.


\(^{211}\) [www.oas.org/37ag/docs/eng/2349.doc](http://www.oas.org/37ag/docs/eng/2349.doc)

\(^{212}\) [http://www.oas.org/37ag/docs/eng/2349.doc](http://www.oas.org/37ag/docs/eng/2349.doc)

\(^{213}\) [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)

\(^{214}\) [http://www2.ohchr.org/english/issues/water/docs/ICESCR_GC_15.pdf](http://www2.ohchr.org/english/issues/water/docs/ICESCR_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. 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, which makes the same explicit recognition and confirms that it 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, 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, 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 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;

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;

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)\footnote{https://www.un.org/sustainabledevelopment/water-and-sanitation/} 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.
2.4.1. Kukama people (Peruvian Amazonian Region)

Coordination: Amazonian Centre for Anthropology and Practical Application CAAAP Peru

"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 but its power is being able to defeat even the strongest on the face of the earth.

221 Collaboration 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 Kukuma, 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 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:

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 Loreten. 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).

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.
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.
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 arguments
that Acodecospat 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 Maranón 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.

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 Apú Ander Ordoñez – CCNN Tupac Amarú.

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 Maranón River, we know that 40% are children and 25% elderly individuals, with the remaining 35% being made up of young and middle-aged adults.
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 peals, 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 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:**222 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.

- **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 known 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 integral 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 process for the Amazon Waterway begins. Nevertheless, it is decided to go back to a previous stage, the Informational 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,223 food,224 to health,225 education,226 environment,227 cultural rights,228 land,229 development,230 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

223 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(e) 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.

224 Contemplated in Articles 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.

225 Contemplated in Article 25.1 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.

226 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.

227 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.

228 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)(iv) and 7 of the ICERD and Articles 3 and 14 of the PSS.

229 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.

230 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: Lawyer. Asamblea del Pueblo Kukama en la CCNN Dos de Mahyo San Pablo de Tipishca el 22.10.2017

Source: Nancy Verónica Shibuya Briones, Advogado do CAAAP

“WIKARITAMA, 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. 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 agroindustries, 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.

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.

57. The human right to adequate housing, including the adequacy of the surrounding environment, ease of access, and the enjoyment of communal spaces (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, Colombian, Brazilian, Ecuadorian and Bolivian 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) that, in General Comment No. 7, 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, 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 Lagar Community, highlights for a second time what she had already manifested before the United Nations Human Rights Council in Geneva in 2015: “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 con-
sultation 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 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 integral 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 noninterference 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 “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, Article 11 of the ICESCR, Article 23 of the American Declaration on the Rights and Duties of Man and Article 26 of the American Convention on Human Rights) 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 and, to a lesser degree, in the 2030 Agenda (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, 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 Marañón) regions of the Amazon.

We will look at whole communities – boys, girls, adolescents, women and men – whose

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plight confronts us with a brutal violation of the human rights to land and adequate housing, 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” 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, 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, 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 an integrally higher quality of life cannot be considered progress.” (Laudato Si’ 194).²⁵³

Only in this way will our planet really be a **“common home”**.
2.5.1. Tundayme Community - Ecuadorian Amazonian Region

Coordination: Congregation of sisters Ursuline of Jesus- REPAM Ecuador.\textsuperscript{254}

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 \textsuperscript{255} of the local GAD \textsuperscript{256} of Tundayme, the parish’s population consists of 854 people; 56.7\% of them are younger than 19 years of age.

Map 29:

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

\textsuperscript{254} Collaboration of María de los Ángeles Marco Teja.
\textsuperscript{255} Metropolitan Plan for Territorial Organization and Development Plan
\textsuperscript{256} Decentralized Autonomous Government
\textsuperscript{257} 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, PEng; Jeremy P. Haile, PEng.; and Joseph Rokosh, PEng. Corriente Resources, October 30, 2007.
the Shuar indigenous people’s ancestral territory. “The Condor Mountain Range is known for 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.”

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).

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.

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Since 2000, the Canadian junior enterprise, Corrientes Resources, is present in the area, 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”.259 “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.”260

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”. 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 integral 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.”

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” (CASCOMI). 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.

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 CASCOMI 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. \[262\]

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 Chuchumletza.

\[262\] “La herida abierta del Cóndor”, 2017, p. 72-73.
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).
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 Panguí. 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 13 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.

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”.263
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.

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 integral reparation from a human rights perspective.

- 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.

• This 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”.264

264 Ibid. p. 232-234.
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\textsuperscript{265} 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,\textsuperscript{266} 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.”\textsuperscript{267}

\textsuperscript{265} Universal Periodic Review
\textsuperscript{266} Inter-American Commission on Human Rights
\textsuperscript{267} 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” 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)”\(^{269}\) 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”\(^{270}\) 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.”\(^{271}\)

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

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\(^{268}\) 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.


\(^{271}\) Ibid, pág 80
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, which is considered strategic for national defense.272

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 that 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].”273

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).

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.

272 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
273 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.\textsuperscript{274}

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.

\textbf{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.\textsuperscript{275}” During the Canadian company Corrientes Resources’ time in the area, their logic regarding land appropriation 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 appropriation, 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.


• 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 appropriation 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.”

• “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.”

• 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 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.\footnote{La herida abierta del Cóndor, 2017, p. 231-232}

- 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 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 integral repair of the damage caused to families and the environment; free circulation and access to natural resources.
2.5.2. Communities in Buriticupú, Brazilian Amazonian Region

Coordination: Justiça nos Trilhos

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, 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 km², or approximately 10% of Brazilian territory and encompasses three Brazilian states (the southeast 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 Tucurui 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 892 km 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. As a result, the responsibility for operation of the EFC 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.

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.283

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;284 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


283 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.

284 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.

285 Um olhar sobre Buriticupu, 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. 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.

Furthermore, the two communities form part of an area called the Área de Influencia Directa del Emprendimiento (a Project’s Direct Influence Area), the project being the widening of the Carajás Railway-EFC. 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.

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286 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.
287 Established in the concession contract signed with the Federal Union of Brazil (Transportation Ministry) in 1997, with a duration of 30 years.
288 Martins, Marlúcia Bonilício e Oliveira, Tadeu Gomes, (2011), Amazônia Maranhense: diversidade e conservação [The Maranhão Amazon, Diversity and Conservation], p. 71
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 than 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\(^\text{289}\) 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 croplands 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 pota-
ble 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 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\(^{290}\) 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.

\(^{290}\) 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.

- 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 km² and is 720 kilometers long. During the work done to widen the EFC, the river was affected by

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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 populations 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.
• 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 Concordia was granted the right to a safe overhead crossing. 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.

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292 Nevertheless, it must be noted that the building of the Vila Concordia overpass was only achieved in response to large popular protests in the area in 2012.
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.

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”. 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.

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

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293 “Corredor de Carajás” is the expression currently used to refer to all of the territory located along or around the EFC.
and solidary society as one of its fundamental objectives (Art. 3, Numeral I).

The legal expert Ingo Wolfgang Sarlet\textsuperscript{295} declares that: “The dignity of persons, as an 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).

\section*{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.

\subsection*{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\textsuperscript{296} establishes the rules for the realization of this process, which must be overseen by IBAMA,\textsuperscript{297} according to the


\textsuperscript{296} 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.

\textsuperscript{297} The Brazilian Institute for the Environment and Renewable 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. 7.736 and possesses the structure
responsibilities that were assigned it by National Environmental Policy.

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. 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). 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. 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. 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.

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.

298 CONAMA Resolution No. 257, Article 4.
299 CONAMA Resolution No. 001, Article 2.
300 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.
301 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.
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 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 302

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”;303 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

302 Procedure No. 0026295-47.2012.4.01.3700, presented in the 8th Federal Jurisdiction of the Judicial Section of Maranhão State by the Sociedad Marañense de Derechos Humanos [Maranhão Society for Human Rights], the Consejo Indigenista Missionero [the Indigenous Missionary Council], and the Centro de Cultura Negra del Consejo de Marañão [the Maranhão Council’s Black Cultural Center] against Vale S.A. and IBAMA.

303 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.
time, the contract between BNDES\textsuperscript{304} and Vale S.A. was signed to finance the project; this project is still ongoing.

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.\textsuperscript{305}

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.

\subsection{2.1.3. The Criminalization of Social Protest}

As has already been mentioned, the communities affected by the EFC have been mobilizing to reindicate 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.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{304} Brazilian State Company whose principal objective is to finance investments in all sectors of the economy.
\item \textsuperscript{305} In his decision, the President of the Federal-Regional Tribunal of the 1st Region argues that: “In this moment it is evident that the paralysis of the construction projects would be much more pernicious to the environment and to the general population than their continuance”.
\end{itemize}
\end{footnotesize}
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 protect 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 integral 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 integral 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 integral 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 opportunely 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 in provided by the States.

- Restitution of the land and property affected by forced evictions and the integral 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 integral 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.”
Bibliography

- ANAYA, J. Los pueblos indígenas en el derecho internacional. Madrid: Editorial Trotta, 2005, págs. 139 -140
- CASTRO Felipe, Disertación: La política extractiva petrolera frete a los derechos de los pueblos indígenas. PUC, 2016,
- CEDHU, Minería a gran escala y apropiación de tierras. Estrategias empresariales en el caso del proyecto Mirador, 2017
- CIDH, Criminalización de las defensoras y los defensores de derechos humanos, 2015.
- CIDH, Derecho al territorio de los pueblos indígenas y comunidades amazónicas, 161 Periodo de Sesiones, Washington, 2017
- Colectivo de Investigación y Acción Psicosocial, 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". Ecuador, 2017"
- Condorqanqui al Desarrollo, Estas son las distancias de la Minera Afrodita en las Comunidades Originarias, 2015
• El Espectador. Artículo: “La paz nos va a permitir sacar más petróleo de zonas vedadas por el conflicto”. Abril 14 de 2016.
• FUENTES, D., & Dinos, P.J. (Dirección). “Petróleo: Tsegas jatai ishamamu” [Película], 2018
• Hurtado, J. (Dirección). Presentación del documental de denunci «Petróleo, tsegas jatai ishamamu [Película], 2018
• León J, Los avances, los retos y los micos del decreto para aterrizar el punto agrario. La silla vacía, 2017
• LUIPERS Jim, estudio para E-Tech International, 2012
• MARTINS, Marlúcia Bonifácio e Oliveira, Tadeu Gomes, Amazônia Maranhense- diversidade e conservação, 2011.
• MIOTTO, Tiago, Ocupar e resistir al modo Munduruku, Porantin, octubre de 2016.
• Movimientos dos pequeños agricultores MPA do Brasil, Casa de semillas criollas. Instituto cultural padre Josimo. Porto Alegre, Brasil, 2009
• Panantza & San Carlos copper project, preliminary assessment report, Morona Santiago, Ecuador.
• QUIJANO, LA. COLONIALIDAD, PODER, GLOBALIZACIÓN Y DEMOCRACIA. Revista Novos Rumos, n. 37, 2002.
• Red Jurídica Amazónica, 2013, pág. 14
• SACHER William, “Revisión crítica parcial del Estudio de Impacto Ambiental (EIA) del proyecto Mirador de la empresa Ecuacorriente, Ecuador”, 2011.


• TENJO M; Alvarez P. La Amazonia colombiana: Análisis de las inversiones que amenazan los derechos de los pueblos y sus bosques. Derechos, Diversidad y Selvas (DEDISE), 2015


Journals:


• RODRÍGUEZ D.; Rodríguez C.; La 970 y el futuro de las semillas. La Silla vacía, 2013


• VELASQUEZ W. Bosques comestibles diversificados. Revista semillas No. 57, 2015

Interviews:

• Autodemarção Munduruku, 2014 Entrevista en https://ru-clip.com/video/BE-7xy1shfF8/autodemarcac%CC%A7a%CC%83o-munduruku.html

• SUERO, Manuel i. d. (21 de Febrero de 2016). Daño irreparable en la selva: dos derrames de petróleo en 10 días. (J. Chuquitaypa, Entrevistador)
Treaties internationals

- Alto comisionado de las Naciones Unidas, Estudio sobre derechos de los campesinos y otras personas que trabajan en áreas rurales, Doc A/HRC/19/75.
- Convención Americana de Derechos Humanos, Estados americanos 1969
- Convención Internacional sobre la Eliminación de todas las formas de Discriminación Racial, Naciones Unidas. Comité para la eliminación de la discriminación racial. 1965
- Convenio 169 Sobre pueblos indígenas y tribales de la Organización Internacional del Trabajo, 1989
- Declaración americana de los Derechos y Deberes del Hombre, La IX Conferencia Internacional Americana, Bogotá 1948.
- Declaración de las Naciones Unidas sobre los derechos de campesinos y de otras personas que trabajan en las zonas rurales, Naciones Unidas, 2018
- Declaración de las Naciones Unidas sobre los derechos de los pueblos indígenas. 2007
- Declaración de Rio sobre el medio ambiente y el desarrollo, Naciones Unidas, 1992
- Declaración sobre el derecho al desarrollo. 1986
- Declaración Universal de Derechos Humanos, Naciones Unidas, 1948
- El derecho humano al agua y al saneamiento, Resolución aprobada por la Asamblea General, 28 de julio de 2010
- Observación general N° 14, El derecho al agua (artículos 11 y 12 del Pacto Internacional de Derechos Económicos, Sociales y Culturales), Comité de los derechos del niño, 2013
- Observación general N° 15, El derecho al agua (artículos 11 y 12 del Pacto Internacional de Derechos Económicos, Sociales y Culturales), Comité de Derechos Económicos, sociales y Culturales, 2002
- Observación general N° 21, Derecho de toda persona a participar en la vida cultural (artículo 15, párrafo 1 a), del Pacto Internacional de Derechos Económicos, Sociales y Culturas
- Observación general No. 15, Derecho al agua (Art. 11 y 12) del Pacto Internacional de Derechos Económicos, Sociales y Culturas, 2002
- Observación General No 7. El derecho a una vivienda adecuada (párrafo 1 del artículo 11 del pacto)
- Pacto Internacional de Derechos Económicos Sociales y Culturales, Naciones Unidas 1976
- Protocolo Facultativo de Derechos Económicos Sociales y Culturales, Naciones Unidas, 2008
Regional report on the violation of Human Rights in the Panamazonía

- Resolución aprobada por la Asamblea General: Transformar nuestro mundo: La Agenda 2030 para el Desarrollo Sostenible, 2015

Jurisprudence International:
- Corte IDH. Caso Comunidad Indígena Yakye Axa Vs. Paraguay. Fondo Reparaciones y Costas. 2005,
- Corte IDH. Caso del Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012,
- Corte IDH. Caso del Pueblo Saramaka Vs. Surinam, 2007

Local low:

Bolivia:
- Constitución Política del Estado Plurinacional de Bolivia, 2009
- la Ley N° 1700; Nueva Ley Forestal, 1997
- Ley de medicina ancestral boliviana, no. 0459, 2013
- ley 1715 Ley del Instituto Nacional de Reforma Agraria (INRA), 1996
- Ley Reconducción Comunitaria de la Reforma Agraria, no. 3545, 2006
- Ley del Medio Ambiente N° 1333 de 22 de abril 1992
- Ley de Participación Popular N°1551, de 1994
- Ley de Revolución Productiva Comunitaria Agropecuaria Nº 144, 2011
- Ley de Organizaciones económicas campesinas, Nº 338, 2013
- Ley de Protección del territorio indígena y Parque Nacional Isiboro Sécure-Tipnis, No. 180, 2011
- Ley Ley que convoca a Consulta a los pueblos Indígenas del Territorio Indígena y Parque Nacional Isiboro Sécure - TIPNIS No. 222, 2012
- Ley No. 266 de No intangibilidad del Tipnis, 2017
- Ley Ley de Proteccion, Desarrollo Integral y Sustentable del Territorio Indígena Y Parque Nacional Isiboro Secure – Típnis.No . 969, 2017
Brazil:

- Código de Minería PL 37/2011
- Constituição da República Federativa Do Brasil De 1988
- Decreto 1.969 del Estado de Pará sobre la reglamentación de la consulta previa, 2018
- Decreto no. 1775, 1996
- Ley estatal no. 2308, 2010
- Ley no. 6001, 1973

Colombia:

- Constitución Política de Colombia, 1991
- Ley 2ª de 1952, Aguas continentales naturales del helo bioma Amazonia y Orinoquia, 1952
- Ley ZIDRES no. 1776, 2015

Ecuador:

- Código Orgánico del Ambiente, 2017
- Código Orgánico Integral de Garantías Penales, 2014
- Constitución de la República del Ecuador, 2008
- Decretos Ejecutivos Número: 229 y 230 sobre convocatoria a Referéndum y Consulta Popular, 2017
- Ley de Hidrocarburos, 1978
- Ley de Minería, 2009

Peru:

- Código civil, 1984
- Constitución política de Perú, 1993
- Jurisprudencia del Tribunal Constitucional Peruano: STC 5854-2005-AA/TC.
- Ley 27037. de promoción de la actividad económica en la Amazonía. 1998
- Ley 22175, Ley de Comunidades Nativas y de Desarrollo Agrario de la Selva y Ceja de Selva 1978
• Ley 24656, Ley General de Comunidades Campesinas, 1991
• Ley de Consulta Previa No.29785, 2011
• Ley de Rondas Campesinas No 27908, 2003
• Ley Nº 27795 Ley de demarcación y Organización Territorial, 2002
• Ley No 29763, Ley Forestal y de Fauna Silvestre, 2011
• Tribunal Constitucional en la sentencia emitida en el Exp. 0005-2003-AI-TC

Virtual Source:

• Caballero, Víctor. 3 Datos Rápidos para entender Todo Sobre El Derrame de Petróleo en la Selva, 2016 Recuperado el 10 de Mayo de 2018, de Utero.pe: http://utero.pe/2016/02/15/3-datos-rapidos-para-entender-todo-sobre-el-derrame-de-petroleo-en-la-selva/
• CIMI, Direitos indígenas, Ver: https://www.cimi.org.br/direitos-indigenas/


• Funai admite: interesse hidrelétrico compromete demarcação de Territoio Indígena, Brasilia 2014, Ver en: https://vimeo.com/111974175


• Informe en minoría de la Comisión especial para investigar y analizar los sucesos de Bagua, abril 2010 https://drive.google.com/file/d/0B_Afa15_UyaRMTg5MjljNDAtZm- VmZC00MGRkLWJlYktNjc2OGQzZTcyYmU0/view?drrp=1&hl=en#


• Instituto Socioambiental, Direitos constitucionais dos índios, 2018 https://pib.socio- ambiental.org/pt/c/direitos/constitucioes/introducao

• Instituto Socioambiental, Mineração em Terras Indígenas na amazônia brasileira, 2005.

• Instituto Socioambiental, Quadro geral dos povos Ver más en: https://pib.socioamo- biental.org/pt/noticias?id=172535 Jusbrasil.https://www jusbrasil.com.br/jurisprudencia/busca?q=ARTIGO+231+DA+CONSTITUI%C3%87%C3%83O+FEDERAL

• La Santa Sede, Enciclica Laudato Si,

• LACERDA, Rosane, Direitos Indígenas, Conselho Indigenista Missionário, Ver: https:// www.cimi.org.br/direitos-indigenas/
• Memorial presentado por Leilani Farha, Relatora Especial de las Naciones Unidas sobre una vivienda adecuada como un componente del derecho a un nivel de vida adecuado, y sobre el derecho a la no discriminación en este contexto, a manera de Amicus Curiae ante la Corte de Constitucionalidad de la República de Guatemala para el caso de la Comunidad de Laguna Larga. En: https://www.ohchr.org/Documents/Issues/Housing/AmicusBriefConstitutionalCourtGuatemala.pdf

• Ministério Público Federal, O projeto de Usina Hidrelétrica Sao Luiz do Tapajós e as violações aos direitos do povo Indígena Munduruku, 2016 Conozca más en: http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2016/violacoes-direitos-povo-indigena-munduruku

• Ministério Público Federal, O projeto de Usina Hidreléctrica Sao Luiz do Tapajós e as violações aos direitos do povo indígena Munduruku, 2016, en: http://www.mpf.mp.br/pa/sala-de-imprensa/documentos/2016/violacoes-direitos-povo-indigena-munduruku


• ONU, Relator Especial sobre los derechos humanos al agua potable y el saneamiento, http://www.ohchr.org/SP/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIn-dex.aspx

• Polito Rodrigo, Ramalho André, Projeto da usina de Tapajós pode ser retomado, Instituto Socioambiental, 2016 https://pib.socioambiental.org/pt/noticias?id=172535


• Secretaria Nacional de planificación y Desarrollo, Se reconocen los esfuerzos del Ecuador en la promoción y protección de los derechos económicos, sociales y culturales, en http://www.planificacion.gob.ec/se-reconocen-los-esfuerzos-del-ecuador-en-la-promocion-y-proteccion-de-los-derechos-economicos-sociales-y-culturales


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