

## **UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE**

### **CONTRIBUTION TO THE REVIEW OF ARGENTINA**

#### **Human Rights Situation of Indigenous People**

**Civil society report prepared jointly by the Asociación de Abogados/as de Derecho Indígena (AADI),<sup>1</sup> Asociación de Mujeres Abogadas Indígenas (AMAI) and the Center for Legal and Social Studies (CELS)<sup>2</sup>**

#### **I. Preliminary remarks**

1. The Argentine State does not have a comprehensive policy to address the historical demands of indigenous peoples, nor to protect and promote their rights, failing to comply with most of the recommendations issued during the last Universal Periodic Review (UPR). Nor does it have an indigenous administrative agency at the federal or provincial level with a budget and "robust" capacities to implement measures in favor of indigenous communities and provide solutions to the situations they face. Even though there are some laws and norms that recognize certain aspects of the territorial rights of the communities (for example, the suspension of evictions), they have not been implemented or are insufficient. They also encounter strong resistance from private actors (landowners, extractive enterprises) and from the State itself, especially from provincial governments and the judiciary.
2. This report covers five key areas. It also includes an Annex with cases that represent, in our opinion, the most serious and complex issues that indigenous peoples have endured in Argentina since the last evaluation.

#### **II. Right to territory**

3. The Argentine legal system recognizes indigenous peoples' property rights over the territories they traditionally occupy in Article 75, paragraph 17 of the National Constitution. Article 18 of the National Civil and Commercial Code also contains similar language. Despite this, there is a profound difference between the regulations and the effective exercise of their rights, in non-compliance with international recommendations.<sup>3</sup>
4. As a result of the emergency generated by judicial eviction orders against indigenous people from their own territories, Law 26.160 was passed in 2006. It ordered the suspension of the execution of eviction procedures and sentences.

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<sup>1</sup> Asociación de Abogados/as de Derecho Indígena [Association of Indigenous Law Attorneys] is a network of lawyers specialized in indigenous law with presence in every region in the country.

<sup>2</sup> The Center for Legal and Social Studies (CELS) is a non-governmental organization that has been working since 1979 to promote and protect human rights in Argentina. CELS carries out strategic litigation, research, and public-policy advocacy in Argentina and through international and regional human rights organizations.

<sup>3</sup> See A/HRC/37/5 recommendations 107.171 and 107.172

Moreover, it called for a survey of their territories in order to carry out a "land-title regularization." This law was extended on several occasions. The last extension expired on November 23, 2021. The Executive Branch then extended it by means of a Decree of Necessity and Urgency (DNU 805/2021). The fact that, during the whole legislative period, the need to extend the law was not given priority and at the last moment, when the time was too short for its treatment, the Executive Power decided to extend it by decree, is a matter of concern. This is the first time in 15 years that this has happened.<sup>4</sup>

5. According to the official records of the National Institute of Indigenous Affairs (INAI), since the Law was enacted 15 years ago, compliance has been limited. **Of the 1,779 communities listed in the INAI registry, 747 communities have completed the survey, 258 have a resolution in process, 122 have initiated the survey, and 652 have not yet been surveyed.**<sup>5</sup> It is of particular concern that **more than 58% of the communities do not have their survey completed**. Not having a resolution that recognizes the current, traditional, and public land occupation, as indicated by law, makes the communities vulnerable to possible dispossession, court cases, and encroachment of their territorial rights. At the same time, it reflects the non-compliance with the recommendation made to the Argentine State in the last UPR.<sup>6</sup>
6. Although Law 26,160 is an important tool, it does not establish any procedure for the titling of lands that are determined to be of traditional use in the surveys. Nor has there been any progress in the State's obligation to establish a national law on indigenous community property, in accordance with recommendations in the last observation on Argentina drafted by the Committee on Economic, Social and Cultural Rights (CESCR).<sup>7</sup> Even the bills that were before Congress have lost their parliamentary status.
7. The Inter-American Court of Human Rights (I/A Court HR) in 2020 obliged Argentina to adopt legislative and/or other measures to provide legal certainty to the human right of indigenous community property.<sup>8</sup> In its interpretation judgment, the I/A Court HR called for the adoption of the necessary measures to guarantee

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<sup>4</sup> We also refer to what was stated by the Committee on Economic, Social and Cultural Rights (CESCR) in 2018, in relation to its concern regarding this point. See E/C.12/ARG/CO/4 "18. The Committee is concerned at the lack of full compliance with the results of the land survey of indigenous communities, the demarcation of their territories and the prohibition of evictions from indigenous community lands under Act No. 26160. The Committee is also concerned that to date no mechanisms have been established for the titling of land traditionally occupied by indigenous peoples." 19.a The Committee recommends that the State party "ensure the full and coordinated implementation of Acts Nos. 26160, 26554, 26894 and 27400 at both the national and provincial levels, complete the demarcation processes in all provinces and grant community land titles to indigenous communities."

<sup>5</sup> Data extracted from official lists available at <http://datos.jus.gob.ar/dataset/listado-de-comunidades-indigenas/archivo/f9b57566-3e7c-4449-b984-49a26897eb77> Registry last modified in February 2022.

<sup>6</sup> See A/HRC/37/5 recommendation 107.177

<sup>7</sup> See A/HRC/37/5 recommendation 107.177

<sup>8</sup> I/A Court HR. CASE OF THE INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT ASSOCIATION (OUR LAND) V. ARGENTINA. JUDGMENT OF FEBRUARY 6, 2020. Merits, reparations and costs). Series C, No. 400, dispositive point/para. 15. Available at:

[https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_400\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf)

indigenous peoples their right to free, prior and informed consultation.<sup>9</sup> In this particular case, it also condemned Argentina to grant a single title of communal ownership of the 400,000 hectares of traditional lands to the Indigenous Communities of the Lhaka Honhat Association. According to the judgment, the Argentine State violated a series of rights: it did not generate the mechanisms to guarantee the right to communal property, it did not give them a title-deeds, without internal subdivisions, and it did not consult the communities when it made modifications to their territories.

8. In addition to the delay in the fulfillment of territorial surveys and the lack of a procedure that would allow the titling of lands of traditional occupation or the claiming of lands that have been dispossessed, there are judicial processes and concrete measures in place to carry out eviction actions on territories of traditional occupation of the communities. In many cases, the evicted territories or those subject to attempted evictions have been surveyed by the State within the framework of Law 26.160 in spite of the fact that the law suspends all evictions. The communities also experience situations of harassment, whether judicial, administrative, police or private and corporate violence, to force them to abandon their territories and/or their claims to them. The failure of the Argentine State to guarantee the right of indigenous peoples to their communal property has generated serious conflicts. We refer to some of them in the annex of cases and in section III of this report.

### **III. Infringement of indigenous peoples' rights by extractive activities**

9. Infringement of indigenous peoples' rights by extractive activities has worsened profoundly since the last evaluation despite recommendations made in 2017.<sup>10</sup> In its last evaluation of Argentina in 2018, the CESCR expressed its concern about "the repeated violation of the right of indigenous peoples to be consulted and to free, prior and informed consent, particularly in relation to extractive activities taking place in the Provinces of Jujuy, Salta, Neuquén and Chubut, and about the lack of information on reparations awarded to communities whose rights have been infringed."<sup>11</sup> The Committee also recommended "that the State party ensure that indigenous peoples are systematically consulted for the purpose of obtaining their free, prior and informed consent at the national and provincial levels before concessions are granted to State-owned companies or third parties for the economic exploitation of the lands and territories traditionally occupied by those peoples. In particular, the Committee recommends that, for the implementation of the right to be consulted and to free, prior, and informed consent, the State party uses the protocols drawn up and agreed upon with indigenous peoples, in order to ensure that factors specific to each person and each case are taken into account."<sup>12</sup> However, these recommendations have not been complied with. Within the federal system of government, both at the national and provincial levels,

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<sup>9</sup> I/A Court HR. CASE OF THE INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT ASSOCIATION (OUR LAND) V. ARGENTINA. Interpretation of the judgement on merits, reparations and costs. Judgement on November 24, 2020. Series C, No. 420, dispositivo point/para. 2. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_420\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_420_ing.pdf)

<sup>10</sup> See A/HRC/37/5 recommendations 107.173, 107.175, 107.178.

<sup>11</sup> See E/C.12/ARG/CO/4, para. 20.

<sup>12</sup> See E/C.12/ARG/CO/4 , para. 21.

socio-environmental conflicts rooted in extractivism and its negative consequences for indigenous peoples and their territories have not been averted. The threat of fracking, mega-mining, oilseed monoculture, and the forestry industry have an impact on deforestation, displacement of communities, evictions, prosecution, and agro-toxins.

10. This situation has become more complex as a result of the COVID-19 pandemic due to the obstacles to effective access to justice (March 2020 to date). The I/A Court HR granted a public hearing on Friday, October 9, 2020, to a group of organizations and experts representing 10 countries in the region to address the challenges and obstacles facing justice systems during the pandemic.<sup>13</sup> Among the obstacles that emerged were the virtual modalities that were implemented for the effective fulfillment of the judicial function and the digital gap that these generate in the most vulnerable sectors; sanitary passes for circulation; the establishment of minimum shifts for attention to urgent matters in judicial establishments that limited access to the courts to specific emergencies where environmental complaints were not prioritized; the delay in the administration of justice through the suspension of judicial periods due to the pandemic, among others. In addition to the sanitary restrictions that limited judicial activity.
11. The health emergency, sectoral pressure from specific economic sectors (mining, forestry and agribusiness) and the connivance or omission of the State have favored the increase in extractive activities. The lack of regulations governing the free, prior and informed consultation and consent of indigenous communities for development projects in their territory further aggravates the situation. The following sections address these situations in detail.

#### *Deforestation of native forests*

12. Failure by the provinces to update the land-use planning (OTBN), as is periodically required by the Native Forest Law (National Law 26.331), facilitates the indiscriminate logging of peasant and indigenous territories in the Gran Chaco Argentino (in the northern part of the country). The provinces of Salta, Chaco, Formosa and Santiago del Estero are among those with the highest deforestation rates and with outdated OTBNS. For instance, in the province of Chaco, in 2021, the Argentine Federal Court of Appeals in Administrative Matters<sup>14</sup> ordered the suspension of deforestation and management plans or land-use change plans throughout the province until the OTBN has been updated. There is little or no indigenous participation in the new OTBN, in violation of the latest environmental regulations on participation and environmental information, such as the Escazú Agreement (Law 27,566). In the province of Salta, indigenous communities coexist with soybean fields, airplanes that have their landing strip on indigenous

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<sup>13</sup> Coverage of the news of the call for proposals and the identified obstacles. See:

<https://aciij.org.ar/la-cidh-concede-audiencia-publica-sobre-los-desafios-y-obstaculos-de-los-sistemas-de-justicia-durante-la-pandemia-del-covid-19/>

<sup>14</sup> First Chamber of the Court of Appeals in Administrative Litigation of Single Instance, Natalia Prato and Silvia Geraldine Varas, to render judgment in the present case entitled: "CONCIENCIA SOLIDARIA AL CUIDADO DEL MEDIO AMBIENTE S/ ACCION DE AMPARO" [action for the protection of constitutional rights], Case. N 11344/20. Participation of APDH Argentina as amicus curiae.

lands, and the constant clearing of the little native forest that remains.<sup>15</sup> The government of Salta does not control illegal logging, nor does it control fumigation in densely populated areas. Extensive illegal logging in Salta was also the subject of the Inter-American Court's ruling.<sup>16</sup>

### *Contamination by agrotoxins*

13. The phenomenon of "pampeanization" refers to the expansion of agricultural practices and technologies from the subregion known as "pampa húmeda" to regions with other ecological characteristics. This phenomenon is the result of technological innovations (agrochemicals, fertilizers and hybrid seeds) that led to an intensification of land use and higher productivity. These processes of pampeanization toward the semi-arid Chaco region are characterized by an expansion of the agricultural frontier and intensive agro-livestock practices.<sup>17</sup> Therefore, the phenomenon of pampeanization of indigenous and peasant territories in the Gran Chaco region has among its direct consequences the contamination of soils and water due to the use of pesticides.
14. In order to exemplify the effects of the use of toxic agrochemicals on human health, we can mention a case that occurred in the province of Chaco: in October 2021, Don Panos carried out aerial spraying of its crops within its agricultural establishment using toxic agrochemicals but failed to comply with the sanitary and environmental protocols established for this application technique. Unaware of the strong wind, the wind direction and irregularities in the prescription agronomics, the poor agricultural practices resulted in the aerial drift of the applied pesticides toward the urban and rural areas of the towns of Presidencia Roca and Pampa del Indio. Tragically, at least 700 people,<sup>18</sup> including members of the Qom indigenous communities,<sup>19</sup> suffered damage to their health as a result of intoxication. All of these observations are based on the report,<sup>20</sup> sampling and survey carried out by the "Red de Salud Popular Dr. Ramón Carrillo" [The Dr. Ramón Carrillo People's Health Network].<sup>21</sup> The network provided several of the

<sup>15</sup> The clearing is done by loggers who come in at night, cut down the trees and then sell the wood to sawmills.

<sup>16</sup> I/A Court HR. CASE OF THE INDIGENOUS COMMUNITIES OF THE LHAKA HONHAT ASSOCIATION (OUR LAND) V. ARGENTINA, para. 255 and 256, 262-265.

<sup>17</sup> Salizzi, Esteban (2011). Expansion of soybean cultivation, productive "pampeanization" and socio-territorial movements: the experience of the MOCASE. IX Sociology Conference. School of Social Sciences, University of Buenos Aires, Buenos Aires. <https://www.aacademica.org/000-034/660>. Manzanal, M. (2017). Territory, Power and soybean cultivation in the Latin American Southern Cone. The Argentinean case. Agrarian World, 18(37), e048. <https://doi.org/10.24215/15155994e048>. Another useful case study of the phenomenon that can be analyzed is related to the wetland ecosystems of the Paraná delta. Available at:

<https://www.argentina.gob.ar/ambiente/faros-de-conservacion>

<sup>18</sup> Information available at:

<https://www.anred.org/2021/11/11/chaco-la-justicia-suspende-fumigaciones-en-campos-de-eurnekian-luego-de-que-700-personas-fueran-hospitalizadas/>

<sup>19</sup> Information available at:

<https://infogom.com.ar/index.php/interior/8242-don-pano-fumigacion-con-agroquimicos-provoca-vomitos-y-diarrea-en-la-poblacion-de-general-roca-el-gobierno-mira-para-otro-lado>

<sup>20</sup> On December 1 and 2, 2021: The Dr. Ramón Carrillo People's Health Network, taking into account the data collected on November 10, organized and carried out a "Survey of the health status of the population exposed to spray drift in Roca Province." They visited 60 families (65% in urban areas, 7% in periurban areas and 28% in rural areas).

<sup>21</sup> A non-governmental, non-profit organization that promotes primary care for the human rights to health and a healthy environment. The Network is organized in teams to carry out its dissemination work on the determining factors of health, the causes of environmental pollution and human rights, with emphasis on the right to health and a healthy environment. It has become, in fact, a provincial entity of reference as a recipient of complaints for infringement of the biocide law

victims with care, took photographs, and documented the damage. The preliminary results were sent to the Undersecretary of Health Promotion, the Ombudsman's Office, the Mayor of Presidencia Roca, and the Ministry of Health of the Nation. Drinking water reservoirs, natural watercourses, plants and animals are also at risk of contamination.<sup>22</sup> In view of the public and media coverage of what happened, and in addition to the judicial precedents<sup>23</sup> of the bad agricultural practices of the establishment in question, a group of affected people<sup>24</sup> filed an environmental protection lawsuit with an injunction against the company to suspend all spraying and requesting the intervention of the State to investigate the events. The acting Magistrate Judge of the city of General San Martín, Luis Eugenio Allende, granted the precautionary measure and ordered the suspension of all types of agrochemical spraying until it can be verified that the spraying is carried out in accordance with the applicable regulations, ensuring the safety for the environment and the population in general. The judge singled out the Secretary of Territorial Development and Environment of Chaco for an alleged violation of its duty of supervision and oversight.

15. In view of the provincial government's failure to respond to the judicial request to obtain biological and physical samples of the damages, fundraising campaigns were carried out to collect funds to carry out the biological and chemical expert tests and to record the level of damage to the population's health. Currently, another criminal case is being processed.<sup>25</sup> In all the legal proceedings, both the victims and the "Red de Salud Popular Dr. Ramón Carrillo" have provided evidence requested by the courts in order to achieve environmental justice.<sup>26</sup> Currently, a judicial measure has partially modified the precautionary effects at the company's request, allowing it to continue spraying only using ground-based applications.<sup>27</sup>

#### *Urban solid waste pollution*

16. In the province of Chubut, one of the biggest current problems is inadequate Integrated Solid Waste Management (ISWM). One indirect consequence of

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(2026-R) and hazardous waste law (777-R) in cases of violation of environmental norms and/or perception of damage to human health and the environment.

<sup>22</sup> Information available

at:<https://www.biodiversidadla.org/Noticias/Fumigaciones-illegales-en-Chaco-Si-este-conflicto-hubiese-ocurrido-en-CABA-1-a-respuesta-hubiera-sido-otra>

<sup>23</sup> We are referring to the complaints filed by families from Campo Medina, Campo Nuevo, Pampa Chica and Lot 104 of Pampa del Indio. Year 2010. Other: Peace Court of Pampa del Indio, file initiated by Mr. Juan Capra in 2006, File No. 788 - Page PI 1210 - Volume VII "CAPRA, JUAN BAUTISTA S/EXPOSITION." Other: Peace Court of Pampa del Indio, File 64/08, title: "Chaparro, Miguel and other s/Alleged Misdemeanor - Summary Offense." Other: Criminal Investigation Prosecutor's Office No. 1 of General San Martín: File "Peñaloza, Mariano and others s/Complaint" and, File No. 940/2010-5 "BABUGIA JOSE AUGUSTO s/ CONTAMINATION in a manner hazardous to health and the environment s/Infringement of Law No. 24.051" of the Third Criminal Court of Resistencia.

<sup>24</sup> Case titled "SILVESTRI FACUNDO SEBASTIÁN AND LATAPIÉ GUSTAVO RAÚL S/ ACCION DE AMPARO" [action for the protection of constitutional rights], Case No. 2575/2021-5.-

<sup>25</sup> Case No. 2586/2021-5 titled as: "SILVESTRI FACUNDO SEBASTIAN S/ INFRINGEMENT OF LAW NO. 24.051 ON HAZARDOUS WASTE."

<sup>26</sup> Report submitted by the Ramón Carrillo Network in the criminal case by official response No. 238/2022, Case No. 2586/2021-5 and titled: "SILVESTRI FACUNDO SEBASTIAN S/INFRINGEMENT OF HAZARDOUS WASTE LAW 24051."

<sup>27</sup>Information available at:

<https://www.chacodiapordia.com/2021/12/09/a-pesar-de-la-cautelar-una-jueza-autorizo-a-fumigar-en-el-establecimiento-don-panos/>

extractive activities is the inefficient policies for the use of resources and the end disposal of waste.

17. In the towns of Esquel and Trevelin, the Nahuelpan indigenous community's fields are located next to the urban solid waste treatment plant (PTRSU). This treatment plant was established without free and informed prior consultation of the indigenous community that ancestrally inhabits the territories. As a result of the State's failure to adequately manage and dispose of the waste, the indigenous families suffer the effects of urban contamination from the plant due to poor treatment of the waste, which causes damage to their lands adjacent to the plant due to aerial and terrestrial drift.<sup>28</sup> Garbage deposited on their land destroys and contaminates their fields and surface and natural waters, leading to the death of the animals that consume the waste. Moreover, fencing and posts along more than 4 kilometers of land, which divide the community's lots and the PTRSU plant, suffer damage and breakages due to the accumulation of bags and plastics, which weigh them down.
18. In light of this situation, the Mapuche-Tehuelche "Nahuelpan" Community has decided to file a complaint in 2022 for feared damages and preventive action.<sup>29</sup> Among the evidence offered and the grounds for filing the lawsuit, the previous judicial precedents of third parties neighboring the PTRSU plant were taken into account, as well as the soil and water reports made in those instances by the Argentine Federal Police<sup>30</sup> that demonstrate the contamination of heavy metals due to high levels of Nickel and Cobalt in sediments coming from the PTRSU Esquel. This conflict is still ongoing.

#### **IV. Violence against indigenous communities**

19. Violence against indigenous communities, perpetrated by the State and by individuals associated with economic interests, is a historical phenomenon that persists today. The Human Rights Committee evaluated this in 2016 in its fifth periodic report. Moreover, it issued a recommendation aimed at protecting indigenous peoples.<sup>31</sup> The CESCR in its 2018 evaluation of Argentina also expressed its concern about the threats, violence and criminalization of indigenous communities as a result of their territorial claims.<sup>32</sup>

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<sup>28</sup> Information on the the conflict is available at the following link:

<https://revistacitrica.com/comunidad-nahuelpan-entre-la-contaminacion-y-el-despojo.html>

<sup>29</sup> The lawsuit filed led to an ongoing legal proceeding. Namely: NAHUEL PAN MAPUCHE COMMUNITY v/ Municipality of Esquel S/ Report of feared damage. File No. 93/2022. Civil, Commercial and Labor Court (Esquel) - Clerk's Office 1.

<sup>30</sup> Report made by the Environmental Crimes Unit of the Argentine Federal Police" produced in the proceedings: FCR 7174/2021 "NN: N.N. s/CRIMINAL ENQUIRY. COMPLAINANT: SUAREZ , FELIPE Y OTRO," filed in the Federal Court of Esquel, presided over by Judge Guido Otranto. The other precedent is similar, as it appears from the evidence produced in the proceedings: "SANDOVAL, DANIEL ADRIAN v. ESQUEL MUNICIPALITY AND OTHERS s/ ACCION DE AMPARO [action for the protection of constitutional rights]" (CASE. No. 132/2019), a lawsuit that claimed that potentially environmentally damaging activities carried out at the PTRSU should cease.

<sup>31</sup> See CCPR/C/ARG/5 para. 38 "[...]. The State party should also provide effective protection for indigenous peoples from any and all acts of violence and see to it that the parties responsible for those acts are brought to justice and duly punished and that the victims are provided with appropriate redress."

<sup>32</sup> See CESCR, concluding comments in the fourth periodic report of Argentina, 2018, para. 16 "the Committee is concerned at reports of a number of cases of threats and violence in recent years against defenders of the human rights of indigenous peoples, communities of African descent and lesbian, gay, bisexual, transgender and intersex persons, and at the trend towards violent confrontation and criminalization of persons who seek the restitution of indigenous territories."

20. Different forms of violence are deployed to usurp indigenous communities' lands. When communities organize and reclaim or recover their lands, they are frequently repressed and criminalized. There is also structural racism in the security forces that translates into police abuses against members of indigenous ethnic groups. In recent years, symbolic violence has intensified in the form of stigmatization campaigns that seek to assimilate indigenous communities with "terrorists" and "threats to national sovereignty" as a way of justifying repression and denying access to their land.<sup>33</sup>

*Repression and criminalization in response to territorial claims*

21. The use of police and security forces to carry out violent evictions of communities, with or without a court order, is a recurring practice. Between 2016 and 2019, the National Government deployed a particularly violent strategy against Mapuche communities in Patagonia, in the southern part of the country, which included raids and incursions with militarized federal forces, illegal intelligence practices, criminalization of leaders and repression of public demonstrations in support of the Mapuche. In 2017, these violent interventions caused the deaths of Santiago Maldonado and Rafael Nahuel.<sup>34</sup> A recent judicial ruling of the Criminal Court of Chubut condemned a police chief who, in January 2017, led an operation that the Court described as an irrational, thoughtless and disproportionate armed attack that generated very high damages and risks to the lives and physical and psychological integrity of the community's members.<sup>35</sup> The National Government abandoned this strategy in 2020. However, not all provincial governments have followed suit. In Río Negro, in 2021, police forces set up a barricade isolating the Quemquemtrew community, which prevented it from having any contact with the outside world for almost two months. In this context, multiple situations of abuse and police harassment of the members of the community were reported.

22. In the provinces of northwestern Argentina, multiple situations of violent police evictions were documented. In Salta, in July 2020, 90 families of the Guaraní community Cheru Tumpa were evicted by 100 police officers of the provincial police. The repressive operation, which included racist insults, left 18 people injured, including children and the Buruvichí (Chief). A young man was also arrested after asking the police to show him the eviction order.<sup>36</sup> In Jujuy, the Tusca Pacha de los Alisos Palpalá Community, of the Kolla People, was evicted on October 23, 2020, by the Infantry Corps of the Provincial Police, even though there were pregnant women, children, and officials of the Indigenous Rights area of the National Government on site. The police proceeded to use physical force and fired rubber bullets directly at the community members' bodies, injuring seven people. There were also arbitrary arrests of journalists and human rights defenders, who

<sup>33</sup> The information presented in this section implies non-compliance with multiple recommendations made to the Argentine State during the last Universal Periodic Review, especially those referring to the construction of a comprehensive or multisectoral strategy to address the violations suffered by indigenous peoples (recommendations 107.22, 107.24 and 107.25), end structural discrimination (107.33 and 107.179), guarantee access to justice for indigenous communities (107.32, 107.170 and 107.180) and ensure the protection of human rights defenders (107.75), among others.

<sup>34</sup> See <https://www.cels.org.ar/web/publicaciones/coordinacion-represiva-contra-el-pueblo-mapuche/>

<sup>35</sup> See <https://www.cels.org.ar/web/2021/06/lof-cushamen-confirman-condena-al-jefe-de-infanteria-policial/>

<sup>36</sup> See <https://www.pagina12.com.ar/281403-hicimos-un-hogar-donde-no-habia-nadie>

were violently taken to the police station in the area.<sup>37</sup> Also in Jujuy, the provincial government used the police to violently enter the lands of the El Querusiyal community in order to ensure the construction of a road to benefit mining interests in the area. (The community opposes its construction.)<sup>38</sup> Community members denounced acts of vandalism, including the destruction of ceremonial spaces.

*Violence committed by private individuals linked to economic interests and no state protection.*

23. The violence suffered by indigenous communities also comes from armed gangs made up of private individuals hired by landowners or other persons linked to economic interests. Sometimes these gangs are made up of police officers who act outside their working hours. The impunity with which these gangs operate stems from the absence of state protection against them, as well as the connivance of police and judicial officials. In the few cases in which a judicial investigation was launched, it has been impossible to identify the masterminds who perpetrate these crimes.
24. Despite the fact that these activities have caused deaths in recent years,<sup>39</sup> the State has not taken measures to stop them. Thus, in Santiago del Estero, attacks by armed gangs are periodically repeated in the area of Bajo Hondo, department of Juan F. Ibarra. There, the attacks registered in 2021 and 2022 caused fires in the community causing injuries. Some of these events even occurred with police officers present. Not only has the Judiciary failed to investigate these incidents, but in a ruling that is not yet final, it ordered the eviction of the indigenous community. In the province of Río Negro, the Buenuleo community suffered an attack in April 2020, a few days after the removal of police protection that had been ordered in the framework of a habeas corpus due to previous aggressions.
25. This situation, and several others that preceded it, were denounced before the Inter-American Commission on Human Rights, which issued precautionary measures to protect the life and integrity of the community.<sup>40</sup> Almost two years later, some of the people involved were convicted of threats, injuries and violation of domicile.<sup>41</sup> In 2021, in the context of the aforementioned repression of the Quemquemtrew community in Río Negro, two armed individuals shot at members of the community, causing deaths and serious injuries.<sup>42</sup> The armed persons, who were employees of a businessman who is claiming title over the community's

<sup>37</sup> These acts of violence were denounced by the human rights organization ANDHES before the Public Prosecutor's Office, however, no progress has been made in the investigation. See <https://andhes.org.ar/andhes-denuncio-graves-hechos-de-violencia-institucional-en-contra-de-la-comunidad-indigena-tucapacha-de-los-alisos-en-jujuy/>

<sup>38</sup> See [https://endepa.org.ar/endepa\\_22/tilcara-comunidad-el-querusiyal-denuncio-acciones-de-vandalismo-y-usurpcion-en-su-territorio/](https://endepa.org.ar/endepa_22/tilcara-comunidad-el-querusiyal-denuncio-acciones-de-vandalismo-y-usurpcion-en-su-territorio/)

<sup>39</sup> We are referring to the murders of Javier Chocobar in Tucumán in 2009 and of Cristian Ferreyra in Santiago del Estero in 2013.

<sup>40</sup> IACtHR Resolution 23/2020 Precautionary Measure No. 954-19 Lof Buenuleo Mapuche Community regarding Argentina, May 14, 2020. Available at: [http://www.oas.org/en/iachr/decisions/pdf/2020/res\\_23-20%20mc-954-19\\_ar\\_en.pdf](http://www.oas.org/en/iachr/decisions/pdf/2020/res_23-20%20mc-954-19_ar_en.pdf)

<sup>41</sup> See <https://www.pagina12.com.ar/409330-bariloche-condenaron-a-quienes-atacaron-a-la-comunidad-mapuc>

<sup>42</sup> Specifically, Elías Garay and Gonzalo Cabrera.

lands, entered the territory despite the presence of a police barricade that was supposed to prevent all entry and exit.<sup>43</sup>

#### *Racist violence committed by security forces*

26. Police violence against indigenous communities is related to political and economic decisions, but also to the racist component that permeates police forces throughout the country. This structural racism in the police is expressed in violence during evictions, as well as in other patterns of abuse that victimize people of indigenous ethnicities, both in rural and urban areas.
27. In recent months, these situations have become especially visible in the province of Chaco. In 2020, since the beginning of the COVID19 quarantine, there have been reports of police violence against members of indigenous communities.<sup>44</sup> The numerous abusive situations and the high number of police arrests made at the beginning of the quarantine in various cities of the province led to the filing of a collective and preventive habeas corpus in defense of freedom of movement by the Committee for the Prevention of Torture of the province, which was rejected by the Superior Court of Justice of the province.<sup>45</sup> On May 31, 2020, in the city of Fontana, members of the Chaco Police -several of them out of uniform- broke into the house of a family of the Qom ethnic group, made up of a woman and her children, four of them minors, without a search warrant and in the early hours of the morning. There they were tortured, beaten and humiliated. They were then taken to a police station where the beatings and torture continued. The seriousness of these facts led the Committee for the Prevention of Torture of Chaco, the plaintiff in the criminal case, to request that the police officers be brought to trial for the crime of torture.<sup>46</sup> However, in April 2022 the case was elevated to oral trial with ten policemen accused of harassment and aggravated concealment.
28. On the other hand, on June 11, 2021, the provincial police used violent force, firing lead bullets, to break up a fight between neighbors in a low-income neighborhood inhabited by indigenous communities. Josué Lago, a 22-year-old Qom youth, was hit by a police bullet and died instantly. In the subsequent investigation, impunity was sought for the police officers involved.<sup>47</sup> One year after Lago's murder, no one has been arrested<sup>48</sup> even though two police officers were identified in expert reports as the perpetrators of the shooting. The Committee for the Prevention of Torture of Chaco, which is involved in this case, opposed the release of the

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<sup>43</sup>See

<https://www.cels.org.ar/web/2021/11/el-asesinato-de-elias-garay-en-cuesta-del-ternero-lo-que-ocurre-cuando-el-estado-no-resuelve-un-conflicto/>

<sup>44</sup> We refer to the attack with lead bullets against the Washek community at the beginning of April and the allegations of mistreatment against the inhabitants of the Toba neighborhood, among others.

<sup>45</sup> See <https://www.anred.org/2020/05/05/chaco-ante-la-violencia-policial-presentan-un-habeas-corpus-colectivo/>

<sup>46</sup> See <https://prevencióntorturachaco.com.ar/brutalidad-policial-causa-b-banderas-argentinas-2020/>

<sup>47</sup> See  
<https://www.chacodiapordia.com/2021/10/14/caso-josue-lago-hay-una-altisima-tasa-de-impunidad-en-delitos-cometidos-por-fuerzas-de-seguridad/>

<sup>48</sup> See  
<https://www.chacodiapordia.com/2022/06/11/crimen-de-josue-lago-avanzamos-en-la-investigacion-para-pedir-la-detencion-de-uno-o-mas-policías-involucrados/>

accused policemen and argued that the case should be classified as a doubly aggravated homicide because it was motivated by racial hatred and committed by a member of the security forces.<sup>49</sup>

29. In view of these extremely serious cases, it is worth recalling the recommendations made to the Argentine State more than ten years ago by the Human Rights Committee in relation to the "LNP" case, where the victim was an adolescent female member of the Qom people.<sup>50</sup> In turn, the Committee on the Elimination of Racial Discrimination noted in 2016 made recommendations to Argentina in this regard.<sup>51</sup>

## V. Obstacles to accessing justice

30. Indigenous peoples face many obstacles when it comes to accessing justice, despite recommendations made during the last UPR.<sup>52</sup> The justice administration system does not apply the legal framework of the human rights of indigenous peoples or does so in a regressive or restrictive manner. There is still a lack of intercultural perspective in the intervention of the judiciary and other sectors of the administration of justice: there is no cultural adaptation of judicial processes involving indigenous rights, nor are measures adopted to adapt the assistance provided to indigenous persons. In this regard, free proceedings have not yet been implemented for indigenous communities, who, in order to initiate legal action, must apply for the benefit of litigation at no cost. The claims of the communities are processed in judicial processes whose procedures and mechanisms do not provide effective judicial protection, either due to the deadlines and terms, the delay in reaching a decision, or evidentiary issues, among others. At the same time, most courts do not guarantee the participation of linguistic interpreters to guarantee the right to their mother tongue or native language.
31. Despite the entry into force of Law 26.160, judicial processes aimed at evicting communities continue. There are also no specific mechanisms to manage the communities' legal claims in relation to fundamental rights such as consultation and participation. Thus, tools or processes that are not procedurally adequate continue to be used, which makes it difficult for the justice administration system to respond quickly because of their long duration.
32. The justice administration system has failed to address the structural discrimination<sup>53</sup> against indigenous communities and individuals. Symbolic and

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See

<https://www.diarionorte.com/206194-el-comite-de-prevencion-de-la-tortura-sera-querellante-en-la-causa-por-el-crimen-de-jose-lago>

<sup>50</sup> Human Rights Committee (UN), "Case LNP v. Argentine State, Communication 1610/07, July 18, 2011. There, it was pointed out to the Argentine State that it should "(...) ensure that the case is not repeated (...) that the State has the obligation to prevent similar violations in the future, in particular by ensuring equal access to the courts for the victims of aggressions."

<sup>51</sup> UN Committee on the Elimination of Racial Discrimination, observation 24 b of December 5, 2016. "Adopt measures to ensure the safety of indigenous peoples who suffer threats, persecution and other violent acts by both public officials and private individuals, and prevent, investigate and punish such acts."

<sup>52</sup> See A/HRC/37/5 recommendation 107.180

<sup>53</sup> CERD acknowledged the structural discrimination of indigenous peoples in Argentina as early as 2016. It noted that: "The Committee remains concerned about the persistent structural discrimination against indigenous peoples and people of African descent and the invisibility of people of African descent in terms of their rights. Structural discrimination prevents

cultural barriers persist, as well as the communities' distrust of judiciary personnel.<sup>54</sup> One aspect that contributes to this reality is the differentiated manner in which complaints against indigenous persons progress compared to actions or claims initiated by the communities themselves, which - in general - do not receive an adequate response, are archived, or are not investigated.

## VI. Rights of indigenous women and girls

33. Structural racism and discrimination against indigenous peoples have a particularly strong impact on women and girls. Environmental violence or the destruction of nature often leads to gender-based violence, including sexual assault, domestic violence, and forced prostitution.<sup>55</sup>
34. There are emblematic cases in Argentina of violations of the rights of indigenous women in violation of international recommendations. These cases are included in the annex.
35. In 2022, a group of indigenous women gathered near the town of Pluma de Pato, in the province of Salta. They presented a letter addressed to the provincial Minister of Security and Justice. They denounced that Creole biological parents do not recognize their filiation and demanded the right to the identity of their children. The text was drafted after the First General Assembly of Indigenous Women of Route 81 called "Nehuayiè-Na'tuyie thaká natsas-thutsay-manses" (let us accompany our children and adolescents). This meeting was a direct consequence of the murder of the girl Pamela Julia Flores, in mid-January (see annex of cases). They demanded reparations for "the damage caused" by men who in many cases sexually abused a woman and then rejected the child/ren conceived as a result of the abuse. For the first time, a group of indigenous women from the province of Salta denounced the ongoing rape and sexual abuse committed by "Creole" men to the detriment of girls and women of the indigenous peoples and the consequences that these practices have on them, on the communities and, particularly, on the children conceived under these circumstances.<sup>56</sup>

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indigenous peoples and people of African descent from enjoying the minimum international standards for development, including those set out in the Sustainable Development Goals." See: CERD/C/ARG/CO/21-23, Concluding observations on the combined twenty-first to twenty-third periodic reports of Argentina, December 9, 2016. Just a few articles for reference:

<https://www.endepa.org.ar/cerd-en-argentina-existe-discriminacion-estructural-contra-pueblos-indigenas-y-migrantes/> and <https://www.pagina12.com.ar/326208-tenemos-que-evitar-la-discriminacion-hacia-los-pueblos-indig>; <https://www.pagina12.com.ar/257209-nos-han-condenado-a-vivir-en-el-olvido>.

<sup>54</sup> For more information, see "Acceso a la Justicia de los Pueblos Indígenas" [Access to Justice for Indigenous Peoples] Although it is a publication from 2010, the obstacles systematized therein persist to this day. The document is available at: [www.mpd.gov.ar](http://www.mpd.gov.ar)

<sup>55</sup> According to the International Indigenous Women's Forum (IIWF/FIMI) "environmental violence—also called ecological violence—forms part of the human rights agenda at the international level. It is understood as the deliberate lethal exposure to pesticides, mining waste and other sources of toxic pollution, environmental violence causing illness in people, as well as forced migration from their ancestral territories. The loss of these lands leads to the extinction of traditional knowledge and both imbalance and disharmony with the environment: the deterioration of organization systems, security, food sovereignty, and the relationship with Mother Earth." See:

<https://fimi-iiwf.org/indigenous-women-against-environmental-violence/?lang=en>

<sup>56</sup> In the letter, the women make four requests to the Minister of Security and Justice. 1) "Arbitrate the necessary means so that the Judiciary Branch investigates and intervenes with the full weight of the law to give us back the rights that were denied to us, as well as to give them back to our children;" 2) "urgently summon authorities, ministries or agencies that

36. To ensure that indigenous women enjoy all their human rights, States must adopt measures to empower them, enable their effective participation in the civil and political sphere, and improve their socio-economic situation.

**Questions for the State:**

1. What steps have you taken to initiate a discussion of an indigenous community property bill that incorporates the necessary procedures for consultation with indigenous peoples?
2. What measures have you taken to initiate a discussion of a bill on free, prior and informed consultation of indigenous communities that incorporates the necessary procedures to achieve proposals, projects and debate and dialogue with indigenous peoples? Indicate, specifically, if any meetings, hearings, budget forecasts, or meetings with indigenous communities have taken place.
3. What measures will the national government take to complete the survey pursuant to Law No. 26.160 throughout the national territory as soon as possible? In particular, what measures or steps have been taken to ensure that all the provinces implement the law uniformly throughout the country, particularly in view of the differences in the criteria in the survey agreements between the federal government and the provinces and their uneven level of progress in each one of them?
4. Why does the State evict indigenous communities that have been surveyed and recognized by INAI? Indicate if any meetings have been held with the provincial judicial branches, with the federal chambers, in order to avoid these situations.
5. What concrete measures has the federal government designed or plans to design to avoid the harmful consequences to the environment and indigenous and peasant communities due to the use of pesticides, especially in regard to the cases and situations we've seen in different Argentine provinces?
6. What concrete measures has the federal government designed or plans to design to avoid the harmful consequences to the environment and communities due to the failure to implement the forest law and the rules set therein aimed at preventing the clearing and destruction of native forests? In particular, indicate if there are any proposals—or plans to design proposals—to ensure the adherence and compliance with the forest law in a uniform manner in every Argentine province.
7. What measures have been taken to guarantee the protection of indigenous communities against aggressions by armed gangs that respond to landowners and business owners?

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have competence;" 3) make "available the interdisciplinary teams of the Ministry, summoning lawyers, psychologists, social workers and competent personnel trained to assist in the filing of our case;" 4) "Furthermore, and understanding the seriousness of such a complaint and the sensitivity of the information, we also request that you provide us with protection and accompaniment throughout the process to protect our identities, as well as the identities of our underage children." They requested that the Ministry "guarantee the safety of both mothers and children once this complaint is made public." The text closes with the following eloquent words: "This letter is a request for justice, a request for reparation for our women, our children, our families and our community."

8. What measures have you taken to eradicate structural racism in the police and security forces?

9. What public policies are being planned or implemented in order to eradicate the violence suffered by indigenous women, girls and adolescents? Were these policies designed in consultation with the affected indigenous communities?

**Recommendations for the State:**

1. Enact a law on Indigenous Community Property, in accordance with international standards and the rulings of the Inter-American Court of Human Rights.

2. Enact a law on free, prior and informed consultation, that guarantees the necessary mechanisms to comply with this state obligation, and guarantees indigenous participation in matters directly related to indigenous peoples and their communities.

3. Guarantee the implementation and effectiveness of the indigenous territorial survey law and the suspension of evictions in a uniform manner throughout the country. Simultaneously complete the internal legislative procedures to extend the law by means of an explicit Congressional resolution, as well as to provide the necessary budgets for federal and provincial authorities to complete the indigenous territorial surveys, in accordance with the requests and demands of the indigenous communities themselves.

4. Suspend evictions and establish mechanisms for dialogue and mediation with the participation of the State, provincial governments, and the relevant jurisdictions of the judiciary in all those situations of territorial disputes that are currently before the courts.

5. Establish a work plan to prevent and eradicate discrimination and racism against indigenous peoples.

6. Train the members of the Justice Administration System in matters of human rights of indigenous peoples, in particular, in all matters related to the right to community territory, the right to free and informed prior consultation for the purpose of reaching agreements with indigenous communities.

7. Promote legislative measures aimed at creating or improving the judicial processes through which the territorial claims of indigenous peoples are processed and adopt specific measures to guarantee access to culturally appropriate justice every time the justice administration system intervenes in a process involving indigenous persons or communities.

8. Establish protection and access to justice mechanisms to prevent and eradicate violence against indigenous women.

9. Based on the above, provide greater hierarchy and funding to state agencies that manage public policies for indigenous peoples.

10. Complete as soon as possible the demarcation and delimitation of the territory of the indigenous communities of the Association of Indigenous Communities of

Lhaka Honhat, deliver the collective title in favor of the communities of the Association of Indigenous Communities of Lhaka Honhat and carry out the necessary infrastructure works to complete the relocation of Creole families outside the ancestral territory of the indigenous communities of the Association of Indigenous Communities of Lhaka Honhat.