

**EVALUATION OF COMPLIANCE WITH THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS IN THE FRAMEWORK OF THE PRESENTATION OF THE FIFTH PERIODICAL  
REPORT BEFORE THE HUMAN RIGHTS COMMITTEE  
117° PERIOD OF SESSIONS**

**RIGHTS OF INDIGENOUS PEOPLES IN ARGENTINA**

**MAY 2016**

Esteemed committee experts:

This report was prepared by the Parliament of First Nations, the Observatory on Human Rights and Indigenous Peoples (ODHPI), Human Rights Attorneys of Northern Argentina (ANDHES), Chaco Argentina Agroforestry Network (REDAF), Association of Lawyers in Indigenous Law (AADI), (the Social Accompaniment group of the Anglican Church of Northern Argentina (ASOCIANA), the Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa), the Center for Legal and Social Studies (CELS), the United Board of Missions (JUM-Chaco), the National Secretariat of Indigenous Peoples of the Permanent Assembly for Human Rights (APDH), the National Pastoral Indigenous Team (ENDEPA), OCLADE (Claretian work for development) and the Masters Program in Human Rights of the National University of Salta.

The objective of this presentation is to provide the United Nations Human Rights Committee with a report that covers the current situation of the indigenous peoples of the Argentine Republic. This information will help to assess the fulfillment of the State's obligations with respect to article 24 of the International Covenant on Civil and Political Rights (ICCPR).

This report includes a section with questions and proposed recommendations for each of the problems addressed in the report for the committee's consideration at the evaluation hearing scheduled for the 117 period of session and for the issuance of its Concluding Observations on Argentina.

We are aware that the information contained in this report does not address all of the human rights issues pertaining to the country's indigenous peoples. That said, we have included the main ones—with references to some of the most illustrative cases—to compensate for the lack of information submitted by the State to the Committee.

It is the hope of all of the organizations that participated in the drafting of this report that it will be useful in the assessment of the enforcement of the rights enshrined in the ICCPR in Argentina. We are available to expand on or clarify any points as deemed necessary.

Sincerely,

**Parliament of First Nations**

**Observatory on Human Rights and Indigenous Peoples (ODHPI)**

**Human Rights Attorneys of Northern Argentina (ANDHES)**

**Agroforestry Network Chaco Argentina (REDAF)**

**Association of Lawyers in Indigenous Law (AADI)**

**Social Accompaniment of the Anglican Church of Northern Argentina (ASOCIANA)**

**Civil Association for the Rights of Indigenous Peoples (ADEPI-Formosa)**

**United Board of Missions (JUM-Chaco)**

**Center for Legal and Social Studies (CELS)**

**National Secretariat of Indigenous Peoples of the Permanent Assembly for Human Rights (APDH)**

**National Pastoral Indigenous Team (ENDEPA)**

**Claretian work for development (OCLADE)**

**Masters Program in Human Rights of the National University of Salta.**

## I. INTRODUCTORY STATEMENT

As the committee experts will agree, the effectiveness of the mechanism of periodic evaluation to determine the degree of fulfillment of the obligations arising from the International Covenant on Civil and Political Rights relies, in large part, on the information made available to the committee when it is assessing the situation in the country under evaluation. In this regard, the report presented by the State within the framework of the evaluation mechanism is one of the main available sources. In this context, it is important to note that the Argentine Republic has a new government as of December 10, 2015. As such, all information submitted by the State to the committee must be analyzed and assessed against the public policies of the new government.

## II. TERRITORY

Indigenous peoples' property rights over the territories they traditionally occupy are recognized by the legal system of the Argentine Republic. Despite this, there is a profound difference between the regulations and their enjoyment and effective exercise of their rights.

Article 75, subsection 17 of the National Constitution recognizes the right of ownership of the lands traditionally occupied by indigenous peoples. Also, article 18 of the National Civil and Commercial Code recognizes this right in a similar manner

In addition, Law 26.160, which will remain in effect until November of 2017, was issued in the face of an emergency situation created by the numerous evictions of indigenous peoples from their territories. This Law suspends the execution of eviction rulings and procedures and the implementation of a survey of their territories to carry out a "regularization" of land ownership. , **Despite the importance of the law to stop the evictions, the land titling of the territories on behalf of indigenous peoples upon completion of the survey is not among the State's objectives under the law.** From this perspective, neither the Law 26.160 nor the actions of the State can be valued as a procedure aligned with international standards that then ensures the reception of territorial claims and the indigenous peoples' subsequent enjoyment of the right of ownership. In addition, it is extremely worrying that the State has not delivered the technical survey folders to the consulted indigenous communities within the framework of the Law 26.160, even though several years have gone by since its completion.<sup>1</sup> It is extremely important that they receive this document given that in the majority of cases it is the only public document that contains their territorial claim.

**The territory of the communities, even that of the few who have managed to obtain their land titles, is at risk because control over their natural resources is not effectively assured.** In recent years, some progress has been made in terms of titling community lands, but at the same time authorizations for land clearing, forestry or mining exploitations have risen dramatically, which put the community balance at risk. There is also serious concern in regard to the environmental pollution caused by such activities, carried out without rigorous environmental impact studies or participatory hearings.

One particular case occurs in the so-called Chaco Region: 22% of Argentina's land area corresponds to the eco-region of the Gran Chaco Americano, encompassing all or part of 13 provinces in the north. The Chaco Region is the ancestral territory of many indigenous peoples, such as the Wichí people, Iyojwaja (Chorote), Nivaklé (Chulupí), Qom (Toba), Moqoit (Mocoví), in addition to the numerous peoples who inhabit the region in Paraguay and Bolivia, representing transborder peoples in some cases. According to the Complementary Survey of Indigenous Peoples (ECPI) carried out by INDEC in 2004, 136,000 persons belonging to indigenous communities are living in the Argentine Chaco.

The dry forests of this region are undergoing a devastating process of deforestation, mainly native forests, which are cleared to create new land for mono-crop plantations such as soybeans. The high profitability of agricultural

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<sup>1</sup> This is the case, among many others, of the Wichí communities El Traslado, Zopota and El Escrito which have still not received a folder with the technical information despite a ruling in their favor from the Federal Chamber of Appeals of Salta ordering the state to demarcate and reveal the data. The ruling was obtained in the case of "Chief Roberto Sánchez and the Zopota community and El Escrito Chief Bautista Frías with the national government without amparo (a judicial protection against the action of authorities)," dated February 23, 2011.

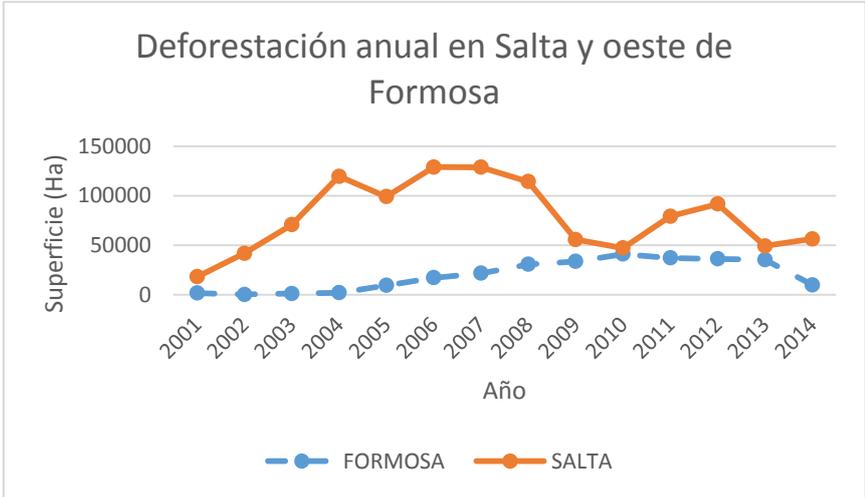
crops, especially soybeans, led to an increase in the price of land in the provinces located in the core area for agribusiness—the Pampas region—activating interest in purchasing or leasing land in provinces like Chaco.

This led to a very strong pressure to appropriate territories inhabited by indigenous and peasant communities, with consequent eviction scenarios and multiple orders of clear cutting. In the face of this growing conflict related to land and territory, and in response to complaints of indigenous, peasant and human rights organizations, the Law No. 26.331 of Minimum Budgets for Environmental Protection of Native Forests and Law No. 26.737 of Protection to National Domain over the Property, Possession or Ownership of Rural Lands, known as the act to regulate the foreign ownership of land, were sanctioned, in addition to the aforementioned Law No. 26.160.

Law 26.331 forced the provinces to draft a Land Management Plan for Native Forests, which stated that the areas for conservation and sustainable use must be differentiated from those wherein changes in land use could be authorized through a participatory mechanism with the indigenous communities, among others. Although this is a step forward as it is the only land-use plan conducted to date and it establishes that addressing the interests of the indigenous communities that make their livelihood from the land is a priority criterion (criterion 10 of the law), **its implementation has been particularly controversial in the provinces of the Chaco region**, product of the pressure exerted by business sectors related to agribusiness.

The seriousness of this situation comes from the pressures faced by the indigenous communities as a result of authorization requests for land clearing and planting on their traditional territories without a complete survey of all of the indigenous communities and their territories, nor have the appropriate measures been adopted so that they have a property title, which would confer them legal certainty. The cases of Salta and Formosa are particularly worrying. In Salta, there are serious problems with monitoring and alternative participatory mechanisms to land clearing. In Formosa, the forest management plan protects only 25% of the province's native forests, leaving the rest in conditions that expose them to the advance of deforestation without any prior resolution to the land rights claims made by the indigenous peoples.

The following table illustrates the situation of deforestation in Salta and in western Formosa since 2001:



This represents the current and potential risk for many communities that inhabit the region, since they do not have the recognition of their territories granted by land titles, or, if they do have them, they only represent a small portion of the land area.

In the Chaco region, there are emblematic cases of this relationship between clearing and deforestation with the absence of government action to protect and recognize the land rights of indigenous peoples. Some of them are discussed below:

*.-Miraflores, department of General Güemes, Chaco*

In 1930, Qom Chiefs Soria, Leiva and Alegre accepted a proposal made by the national government to vacate the territory where they were settled in the city of J.J. Castelli, to occupy 10,000 hectares in Miraflores. In 1994, the town of Miraflores was created on 300 hectares of indigenous land. The Land Commission of Miraflores, comprised of Qom and Wichí families filed a claim on the 10,000 ha. The court ruled in favor of the indigenous community's ownership rights over the territory, however, to date, the national government has not formalized any proposal of this guaranteed right.

*.-Large Reserve or Reserve of the West, department of General Güemes, Chaco*

In 1991, the Chaco provincial government recognized the existence of the indigenous territorial reserve of the West, which ended up demarcating 308,000 hectares of native forest after some reforms. Indigenous peoples Qom, Wichí and Moqoit convened by the State, and duly consulted, created an organization to administer the territories, it is called MOWITOB. The Chaco provincial government acknowledged the organization's status as a non-governmental juridical person but in December 2015 a provincial executive branch decrees divided the territory and recognized non-indigenous occupations. To date, there is no property title.

*.-Wichí community El Pajarito, department of Patiño, Formosa.*

The community initiated the administrative process with the Land Institute of the province of Formosa to claim recognition of their historic indigenous territory. The provincial state government granted an occupancy permit temporarily delimiting the territory, as a prelude to the measurement and titling. However, a family of neighbors interrupted the traditional indigenous possession, in addition to the involvement of interests of new real-estate developers eager to expand the agricultural frontier and sell these lands, which aggravated the territorial conflict. The El Pajarito community is constantly suffering attacks, such as damages to wire fencing along the perimeter of the community, destruction of property markers, arson attempts on their homes and other structures, and threats made at gunpoint. Of all the communities in the area, this community is the only one that has access to the Bermejo River, this being the historical territory of several communities. The community initiated the administrative process to get the property title without any concrete results to date.

*.- PAMPA THE 20 community, department of Patiño, Formosa*

Pampa THE 20 is a Wichí community, the origin of several surrounding communities. It is a historical, spiritual, place of concentration of the Wichí people since time immemorial. It was inhabited on a permanent basis until the 1980s, when some families in the community moved closer to the town to access basic services. In 2012, all the families of the community decided to settle down permanently in Pampa THE 20. As a result of this decision, people began to come forth claiming rights over the traditional territory. Since that time, and with the support of the police, they have tried to evict them permanently, performing acts of violence on their material possessions, committing acts of intimidation, harassment and violence on some community leaders, injuring several of them, in one case severely.

Members of the community filed 17 criminal charges for acts of violence suffered, which were archived by the intervening authorities. At the same time, persons with a claim on the territory initiated a criminal case for usurpation and an injunction for usurpation. The judge ruled that the families be evicted. The ruling was not executed in the end, in good part because of the pressure by the families, who organized a protest. In addition, the community initiated a lawsuit denouncing violations of due process in the judicial process.

*.-Communities of San José, Cuchuy and others, department of San Martín, province of Salta.*

The Wichí communities San José (ChustajLhokwe), Cuchuy and neighboring communities are losing their ancestral territories in the face of the advance of deforestation. In addition, there is an ongoing process of companies and individuals buying and selling titles of the lands they inhabit. Thus they have been driving out indigenous groups, forcing them to move urban centers; others remain, still resisting in restricted spaces with the loss of their forests and natural, cultural and historical property. This has triggered various conflicts with peasant neighbors and private companies that put pressure on the communities so that they leave and cede their rights

on their territories so they can be clear cut. The use of agrochemicals on fields already in production has affected the natural water sources and the health of members of the Wichí community, which is surrounded by large expanses of soybeans, corn and bean crops.

In 2008, a judicial process of territorial claims was initiated in the federal courts of the province of Salta—with the assistance of a public defender—which sought an injunction to halt deforestation on their territories. In 2009, the Federal Judge of Oran recused himself after a large body of evidence was presented, and referred the case to the National Supreme Court of Justice (CSJN). Only in October 2013 did the CSJN declared itself incompetent to hear the case, at which point it passed the case to the Court of Justice in Salta. As a result, the indigenous communities were left without a public defender because their defense attorney from Public Ministry had no provincial jurisdiction. In 2015, the Court of Justice of Salta notified the indigenous communities that they needed to appoint a lawyer in the case under penalty of being found in contempt, at which point the trial would continue in absentia.

To date, the trial is pending, waiting for a ruling from the Court of Justice of Salta. The lack of community property titles for their territories exposes communities to a constant situation of risk and insecurity. From the date of the filing of their territorial claim to the present day, indigenous peoples, in this case alone, have lost 17,579 hectares of native forest in their territory.

## **II.a. The case of the Lhaka Honhat Association of Indigenous Communities (Our Land)**

An emblematic case in terms of the re-vindication of the ancestral lands of indigenous peoples in the Argentina is that of the Lhaka Honhat Association of Indigenous Communities (Lhaka Honhat Association) in the province of Salta. It is formed by 71 communities that represent around 7000 people who recognize the association as their legitimate representative.

Since 1983, the Lhaka Honhat Association has made countless efforts to obtain the State's recognition of their property rights on the now former fiscal lots 55 and 14, territories in which the communities live. Communities are demanding that the State delimit and demarcate their ancestral territory of 400,000 hectares and give them a collective title. Of a total of 643,000 hectares, which involve the now former fiscal lots 55 and 14 of the department of Rivadavia, the State must demarcate the 400,000 hectares pertaining to the indigenous communities and the 243,000 hectares for eligible Creole families and move these families out of the ancestral territory. It should be noted that many of the Creoles have erected solid and wire fences, upsetting the integrity of the indigenous territory and preventing the free passage of the communities, when several are hunter-gatherer societies.

On August 4, 1998, the Lhaka Honhat Association, with the representation of CELS filed a petition before the Inter-American Commission on Human Rights (IACHR) for: the lack of legal recognition of the territory of traditional occupation of the indigenous communities; the construction of various works and exploration of hydrocarbons in the traditionally indigenous territory without any respect for any Inter-American standard regarding free, prior and mandatory consultation; for the tolerance of allowing third parties to install fences, wired fences, illegal logging of trees and grazing of cattle in traditionally indigenous territory; failure to respect, protect and take effective measures to ensure the full enjoyment of the right to community property. On January 26, 2012 the Inter-American Commission approved the merits report 2/12 in which it stated that various rights enshrined in the American Convention on Human Rights had been violated to the detriment of the communities represented by the Lhaka Honhat Association and made several recommendations to the Argentine government to ensure their claim to their ancestral territory. The IACHR is currently overseeing the implementation of these measures since whether the case is passed on the Inter-American Court of Human Rights or not depends on its effective implementation.

On May 29, 2014, decree 1498/14 was approved. It transfers the ownership of 400,000 hectares of the now former fiscal lots 55 and 14 to the indigenous communities that make up Lhaka Honhat and 243,000 hectares to eligible Creole families. This decree legally recognizes the territorial ownership of the Lhaka Honhat communities. Even though this measure is an important step toward compliance with the recommendations of the merit report 2/12, there is still a lot to do: the demarcation and delimitation of all of the indigenous land is incomplete; not all of

the Creole families have agreed to relocation; not even 5% of the necessary infrastructure works for the Creole families to be relocated have been completed; no measures have been taken to combat illegal logging; no progress has been made to remove fences and wire fences in the indigenous territory; among other pending actions.

### III. PRIOR CONSULTATION.

Indigenous people systematically demand respect of their right to consultation, to the free, prior and informed consent and participation in all matters affecting them. Unfortunately, the indigenous peoples of Argentina repeatedly report the violation of those rights and the consequences as a result. Despite the provisions of the Constitution and the international human rights instruments signed by Argentina, there are no regulated procedures for consultation with indigenous peoples.

The State has not produced the legal conditions to ensure the consultation of indigenous peoples affected by actions and/or projects of development, investment or infrastructure. In any case, it has become a discretionary practice, in which projects are chosen unilaterally, as are the indigenous peoples to be consulted and the modality used. It is commonplace that in the few cases in which there is any consultation, none of the project documentation, environmental impact studies or records are translated into the native language of the affected indigenous people.

Usually they are practices in which coercive decisions take precedence, where pressures are imposed, with manipulation of indigenous leaders, corruption, creation of fake organizations, and falsification of documents; jointly or separately, they violate indigenous rights, and for years sometimes they exercise multiple dominance to strong arm them in favor of the interests of big business and its patrimonial interests, without considering the vital interests at stake and the development of communities and indigenous peoples.<sup>2</sup>

**In the Argentina, indigenous people are not adequately consulted about public or private projects that affect them.** Many allegations exposed the situation. Some of them are discussed below.

#### *III.1.- Case of the Las Salinas community*

Thirty-three indigenous communities that traditionally inhabit territories that today form part of the provinces of Salta and Jujuy are demanding respect for their rights of participation and consultation within the framework of the *amparo* initiated before the National Supreme Court of Justice in November 2010. They denounced that lithium exploration is advancing on their economic, social and cultural activities in breach of the national and international legislation, inasmuch as they have no participation, nor are they consulted about the implementation of productive projects on their territories.

Mining projects are authorized by the provinces of Salta and Jujuy based on environmental impact studies conducted by the companies involved in the projects, which, in general, do not include procedures of participation or consultation with the affected indigenous peoples. As a result, these people's traditional ways of life, their representative institutions and their customary law are not respected.

ILO Convention No. 169, article 15, to which the Argentine government is a party, states "*The rights of the people concerned to the natural resources pertaining to their lands shall be specially safeguarded*" *These rights include the right of these peoples to participate in the use, management and conservation of such resources*".

**There are no specific mechanisms to ensure participation in the benefits derived from investment projects for the development or exploitation of natural resources.** In relation to the mineral resources, Convention No. 169 states that indigenous communities "*shall wherever possible participate in the benefits of*

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<sup>2</sup> Report from the National Indigenous Pastoral Team (ENDEPA) and the OCLADE Foundation for the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Rutere, dated May 17, 2016.

*such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities” but this does not occur.*

We understand that both the federal State and the provinces breach international commitments assumed by ratifying Convention No. 169 - Law 24.071 and the United Nations Universal Declaration of Indigenous Rights. We are aware that the Argentine federal system delimits the areas of competence between the two levels, but in issues related to indigenous law, the attributions are concurrent and, hence, the responsibilities are shared.

Without any specific mechanisms that regulate the processes of participation and consultation, in the case of investment or development projects, private companies have the same obligations that are applied to the general population, i.e., obligation to participate in legally non-binding public hearings and to carry out environmental impact studies. Government control is minimal and limited to formal matters.

Governments do not carry out proper consultation on mining exploration and exploitations that take place on indigenous territories; companies invade the ancestral territories and force indigenous communities to file grievances and claims with the Direction of Mining, the Direction or secretariats of the Environment and initiate of judicial proceedings under conditions of absolute inequality.

### *III.2. The Council of Indigenous Participation.*

The absence of consultation on issues affecting indigenous peoples is exhibited in the State's response to the historical demand in this respect: it created an Advisory Council of Participation of the Indigenous Peoples of Argentina without consulting with indigenous peoples.

The national government issued Decree 672/2016 for the creation of the aforementioned body but failed to consult all the involved indigenous peoples. This led numerous indigenous organizations, through the Parliament of Indigenous Nations,<sup>3</sup> to manifest their rejection of the decree: (a) it was prepared and approved without participation or consultation with the indigenous people, organizations and communities around the country; (b) it does not address the fundamental demands of recent decades: the law of community land ownership and the right to free, prior and informed consent, through the completion of the consultation that the government is required to carry out; (c) that aims to form an Advisory Council with representatives of indigenous authorities from all over Argentina that imposes a work table and political dialogue hastily put together with only some organizations; (d) that will center on the emergency and the current situation, but avoiding the greatest threats to indigenous territories, such as the extractive industries: fracking, mega-mining, mono crops of soy, lumber; and their most serious consequences: clear cutting, displacement of communities, eviction, prosecution, pesticides; (e) that breaks up and encourages the dispersal of peoples by creating a body dependent on the government, rather than strengthen organizations in the regions where the policies of provincial governments already lack support because they lead to repression, deaths along the way and political and judicial persecution; (f) that creates a native bureaucracy and distorts the objectives of organizations and their authorities, which are to depend on their own institutions, and not the current government, weakening their leaders ideologically, who end up defending a personal source of employment; (g) that creates a new body which overlaps with other satellite bodies of the state created by the previous administration.

### *III.3.-Gas pipeline in Northwest Argentina (NEA)*

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<sup>3</sup> The organizations that expressed their rejection are: Indigenous Plurinational Council; Coordinator of the Parliament of the Mapuce Chewelche of Rio Negro; The Committee of the Native Peoples of the Province of Buenos Aires and CABA; Qullamarka Coordinator of Kolla Communities and Organizations of Salta; Community of India Quilmes. Tucuman; Indigenous Union of the North of Salta. UNIS; Ojo de Agua de Yavi Indigenous Community. Jujuy; South American region coordinador of the Continental Link of Indigenous Women; General Pueyrredon Indigenous Social Organization. OSPI; Newen Lelfun Mapu. La Pampa; Diaguito Cacano Atamisqui Community. Santiago del Estero; Jujuy Pluricultural MCP community movement; Amaicha del Valle indigenous community. Tucuman; Secretariat of indigenous peoples of the CTA; Indigenous Peoples Team SERPAJ; Kintu Kimvn Community. Los Toldos. Province of Buenos Aires; Tehuelche Mapuche Peñi Mapu. Olavarría. Province of Buenos Aires; National Council of Indigenous Women CONAMI; Assembly of the Qom People of Rio Bermejito. Chaco.

Several organizations and indigenous communities protested against the execution of the gas pipeline in Northwest Argentina (NEA) because no consultation process had been carried out among the indigenous peoples affected. The pipeline along much of its lengths runs through the territory of various indigenous peoples: Wichí, Toba, Tapiete and Chorote, among others, in the provinces of Salta and Formosa.

Works were initiated without addressing allegations regarding the environmental, social and cultural impacts that a work of such magnitude represents. There was no prior consultation so that community members could express free, prior and informed consent.

The Lhaka Honhat Association, which represents 71 indigenous communities, had to present a request before the Inter-American Commission on Human Rights, within the framework of the international case No. 12.094, in order to achieve the suspension of the works that were crossing through their traditional territory without the necessary social, cultural and environmental impact studies. The information generated by the contractor—Vertua—omitted the serious consequences on the strategic paleo-river beds over which the water consumed by indigenous communities runs. Lhaka Honhat Association had to use studies from specialized experts because the administrative proceedings and submitted environmental impact studies were only in Spanish language, which represented a blatant obstacle, hindering indigenous peoples' access to the information and in order to identify the serious effects it could have on their physical and cultural survival. That is why, at a meeting held on September 17, 2015 in the city of Buenos Aires between the State, the province of Salta, the company ENARSA and Lhaka Honhat, within the framework of the aforementioned international case, they agreed to suspend works in the part to the territory that pertained to the Lhaka Honhat communities and promised to generate additional information about returning the paleo-river beds to their original elevation to avoid the diversion of waterways; dispose of waste without polluting the environment and ban burying garbage and waste on traditional territory; granted petitioners access and control over the works on their territory; and provide weekly informational updates about the work to be performed; among other actions.

But the rest of the indigenous communities affected by the execution of the works, which include the communities of Tartagal, Rivadavia, Banda Sur of the province of Salta and those of Formosa did not have the same luck and the construction of the gas pipeline was imposed upon them without consultation or participation.

#### *III.4. Situation of the Nivaklé people in the province of Formosa.*

The Nivaklé people traditionally inhabit the area of influence of the Pilcomayo River, in the current territory of the province of Formosa and the neighboring Republic of the Paraguay, as such they are a transborder people. This identity and history is not recognized by the government of Formosa, hindering the delivery of documents of identity to its members, transgressing international regulations for transborder indigenous peoples. At the same time, the lack of recognition prevents the processing of the legal status of their communities, stretching between the towns of Laguna Yema and Las Lomitas to the North of national route 81, which hinders the processing of community land titles, essentially making it impossible for them to exercise the right to consultation as long as their indigenous legal status is denied.

#### **IV. INSTITUTIONAL VIOLENCE AGAINST INDIGENOUS PEOPLES.**

Acts denounced by indigenous communities are extremely worrying, particularly that they are subject to violence directly by government agents or with their acquiescence. In most cases, they are actions produced within the framework of judicial proceedings in which the aim is to evict them from their territory.

Despite the fact that the Law 26.160, which suspends evictions of indigenous communities, is in effect, there have been cases in a context of extreme violence. Evictions and alleged violence have been possible because not all the territories of the indigenous peoples of Argentina have been surveyed. This generates legal insecurity for indigenous peoples, a situation that third parties and/or governments take advantage of to strengthen their claims to the detriment of the territorial rights of the communities. In addition, the inequality of arms contributes to the use of violence, which systematically, with limited exceptions, is denounced in judicial proceedings involving indigenous peoples and their communities.

Next, we will review some of the reported cases.

In the province of **Salta**, on May 12, 2016, members of the community Diaguita Calchaquí Condor Huasu, of the Quebrada de San Lucas, department of San Carlos, were violently evicted. A complaint was publicly made after a group of police officers and the Justice of the peace of the town of Cafayate, acting in compliance with a court-order eviction ruling issued by the judge María Virginia Toranzos de Lovaglio, who went to the homes of Martina Herrera and Santos Arjona, and when they did not find the individuals they were looking for, they took their belongings and destroyed their homes. Representatives of the Union of the Peoples of the Diaguita Salta Nation denounced that the court order was obtained to satisfy the interests of the company San Carlos S.R.L., who wants the land that belongs to the territory of the community.<sup>4</sup>

In the province of **Tucumán**, on October 12, 2009, Darío Amín, citing the lifting of the temporary injunction that protected the community (in a federal procedure) which had not yet been announced, entered and opened fire on 30 villagers that were defending their traditional territory. Mr. Amín along with two former police officers - Luis Humberto Gómez and Eduardo José Valdivieso Sassid - shot at residents (including elderly people, women and children) who were defending their territory peacefully. The villager Javier Chocobar (68 years) was killed in the attack and three community members suffered serious injuries Delfín Cata, Emilio Mamaní and Andrés Mamaní (the community's current chief).

Once the event was over, the case entered at the seventh Prosecutor's Office, overseen by Attorney Arnoldo Suasnábar and Judge Lidia Emma Nucci (Magistrate Court of the II nomination). It was entered as a homicide, for the murder of Don Chocobar, and murder in the first degree in the case of Andres and Emilio Mamaní, based on the information gathered by the presiding prosecutor, who determined that the defendants acted premeditatedly with an active participation to go heavily armed and with total impunity in carrying out shooting. In addition, that none of the three defendants had a permit to carry firearms, for which they were also charged with the crime of illegally carrying firearms.<sup>5</sup> In August 2011, Judge Emma Lidia de Nucci ruled that there is enough evidence against defendants and requested the trial. To date, they waiting for a date to be set for the start of the trial.

Also in the province of Tucuman, the Chief of the India Quilmes community was arrested in June 2015, as a result of the conflicts over the management of their sacred site known as "Ruin of Quilmes"—currently usurped for economic exploitation—, in an attempt made by the chief to recovery the territory. The conflict that led to the arrest of the chief is part of the struggle for rights to the territory of the community of the Sacred City of Quilmes, recovered in 2007 and, since then, managed by the community after intense claims made to the government, which had granted it in concession to a businessman. Between 2013 and 2014, a group outside the community usurped it by force. Currently, the community cannot use and or manage their sacred site, a victim of violations of their rights to their community territory for over more than a decade.<sup>6</sup>

In the month of July 2015, as advised by the Organization ANDHES, the Diaguita people suffered another violent eviction attempt against its community. Businessmen Bruno and Roberto Petech (representatives of the cement company Lules) along with other people entered the territory of the community. They were armed and their intention was to remove by force the families residing there. They fired their guns at the villagers, despite the police presence, and assaulted them, wounding three Indigenous women, two with bullet wounds and one with an arm fracture. Despite the evidence<sup>7</sup>, the Petech brothers, who had been on the run for seven days, were freed immediately after their arrest. At present, the cause is at a standstill without any movement by the Tucumán justice, which enables a framework of impunity for landowners and businessmen, who have decided to continue

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<sup>4</sup>See publication Nuevo Diario de Salta, May 21, 2016, with statements made by David Pastrana and Héctor Fabian, representatives of the Union of the Peoples of the Diaguita Salta Nation.

<sup>5</sup> "Gómez, Luis Humberto, and others in regards to homicide and murder in the first degree. File N° 31295/2009." Criminal Court, Room IV. Capital Judicial Center.

<sup>6</sup> Fourteen members of the Indian community Quilmes are awaiting a trial date as a result of a series of complaints of usurpation filed by a group of landowners starting in 2008. The courts ignored the insistent requests from the defense attorneys, framing the case within the parameters of the indigenous law.

<sup>7</sup> <http://www.lagaceta.com.ar/nota/645756/policiales/tension-tafi-valle-se-enfrentaron-tiros-disputa-terreno.html>

with the armed encroachment, acting with impunity, on the territory of the indigenous communities of the province.<sup>8</sup>

Furthermore, in the province of **Formosa** there have been several episodes that demonstrate a situation of structural discrimination and severe repression against indigenous communities.

The *Potae Napocna Navogoh* community "La Primavera" lies 174 kilometers from the city of Formosa, within a short distance of the Pilcomayo River on the border with the Republic of Paraguay. Before the creation of the province of Formosa, the national government recognized the property of different portions of land in favor of the community. However, over time, tension around the ancestral territory has risen. The conflict worsened in 2007 when the Institute of Colonization and Fiscal Lands of Formosa gave the provincial National University a part of the traditional territory claimed by the community for the construction of a University Institute. The community began a series of claims to prevent works from advancing on their territory. These claims led to reprisals against members of the community. In July 2010, the conflict worsened at the beginning of the task of clearing and preparing the ground for the construction of the aforementioned Institute. As claim and protest, the community decided to carry out a blockade along the national route N° 86 that runs through the territory claimed by the community.

In the afternoon on November 23, 2010, on the occasion of the protest that members of the community were conducting, security forces came down severely on protesters causing the death of a member of the community, Roberto López and police officer Eber Falcón. Fierce police repression generated dozens of wounded, some of whom were gravely injured. Security forces also burned down the homes of several members of the community. Furthermore, close to 30 people—including elderly, pregnant women, mothers with their babies and even children aged between 4 and 17 years—were detained for more than 24 hours. Many of those children were detained alone, not allowed to communicate with their parents. Members of the community suffered cruel treatment while they were detained; many of the wounded were handcuffed and when they fell asleep in their cells, the guards would throw hot water on them.

As a result of this situation, on November 30, 2010, CELS, along with the National Office of Public Defense, requested the IACHR to adopt precautionary measures to protect the life and integrity of community members and of Félix Díaz, their leader. On April 21, 2011, the IACHR granted this request, which is still in effect to this day.

After the violent repression, the Formosa justice opened three criminal cases against Félix Díaz and other members of the community in order to criminalize their work as a defender of the rights of indigenous peoples and delegitimize their struggle. At the same time, no action was taken to investigate the responsibility of the police of the province of Formosa in the repression. While Felix is still being criminalized and is possibly facing jail time, the provincial justice acquitted the police officers. Meanwhile, after five years, a resolution is still pending from the National Supreme Court of Justice in the legal underlying cause in dispute, which is the possibility of the community's full enjoyment of the ancestral territory.

The case of the *Potae Napocna Navogoh* "La Primavera" community is not at all isolated. It is another example of the serious situation of institutional violence that indigenous communities in Formosa are subject to. In this context, it is worth mentioning that on August 16 and 17, 2002, the provincial government undertook an illegitimate and extremely violent police operation without judicial authorization, characterized by a special cruelty against the Nam Qom indigenous community of Qom people (Toba). More than 100 policemen violently entered the community carrying out massive and indiscriminate arrests, mistreating and torturing its members: women, men, children and elderly. During the grave operation, several homes were destroyed and raided without a warrant, all in the presence of the Prosecutor and a judge, who then was the judge who presided over the investigation of the facts.

The criminal process that ensued at the internal level involved serious irregularities: complainants did not have an impartial tribunal; they did not have the chance to request measures or appeal against the decision of the

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<sup>8</sup> <http://apaprensa.com.ar/ciertos-empresarios-contratan-gente-como-bruno-petech-como-brazo-armado-para-sacar-a-las-comunidades-de-sus-territorios-y-venderlos/>

acquittal of the police officers; during many of the statements, there was not a Qom interpreter (Qom lac'taqa), and the representatives of the victims were not allowed during the interrogations. In short, the judicial investigation was not serious, diligent or effective and was rife with acts of discrimination. The criminal case was definitively closed on August 25, 2004. CELS presented the case to the Inter-American Commission of Human Rights in March 2005. In 2013, the IACHR issued its admissibility report No. 5/13, which, to date, has not been answered by the State. Argentina's lack of response is extremely worrying because it continues to impede the community from finally getting justice and reparation for the serious acts they were subject to. This picture of the situation grew worse in recent times because the community was again victim of severe repression on September 30, 2015 which ended with several wounded at the hands of the province's security forces.<sup>9</sup>

Other incidents of particular violence and discrimination against indigenous communities in Formosa took place on March 24, 2015, when Wichí<sup>10</sup> community members were violently repressed. Around 150 members of the Formosa Wichí communities barricaded route 81 in the access to Ingeniero Juárez demanding housing, land titles, work, among others. Police came out to the route and indiscriminately fired rubber bullets against the demonstrators, which included children. Agustín Santillán, a community leader, was struck by five rubber bullets and another member was shot in one eye.

Also, around 8:00am on July 28, 2014, a police operation with more than 100 agents raided a dozen of trucks at the homes of four families of the Wichí community, who belong to the Satuktes Civil Association, of Chief El Colorado, located in the department of Ramón Lista, in Western Formosa. The police acted based on an alleged theft of a motorcycle belonging to a Creole with whom the Wichí community had had territorial problems. Their belongings were destroyed and several people were injured. In the framework of the operation, police officers fired rubber bullets, injuring Ricardo Tejada with two shots. Ricardo was taken to the hospital for emergency surgery. Before and after his operation, he was handcuffed to the bed. In addition, during the police operations, four of his brothers, Esteban, Avelino, Manuel and Rogelio were arrested and subjected to a judicial process with serious irregularities.

#### *IV.1. Institutional violence in the judicial system*

Institutional violence is represented by the submission of members of indigenous peoples to the judicial system when the necessary measures have not been adopted to ensure the equality of arms and, fundamentally, the possibility that they can enjoy the guarantees of due process to defend and attain the respect of their rights.

The Argentine Republic, which is a federal country, has a federal judicial system and each province that comprises it has its own judicial system. In the majority of the country's procedural systems, with some partial exception in the cases of Neuquén and Chubut provinces, there are no provisions to ensure the participation of the members of indigenous peoples under conditions of equality. Thus, structural problems can be identified, including: (a) lack of knowledge of indigenous institutions on behalf of judicial operators; (b) lack of interpreters and translators in native language from the stage of consultation to the full development of the proceedings; (c) lack of legal assistance specialized in indigenous rights; (e) difficulties for production of proof in judicial processes—especially civil proceedings—because expenses and fees charged beforehand by the experts and/or to cover travel fees for expert witnesses<sup>11</sup> cannot be paid if the money is not available; (f) absence of specialized experts.

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<sup>9</sup> <http://www.noticiasformosa.com.ar/2015/10/01/barrio-namqom-aborigenes-se-enfrentaron-con-la-policia-en-el-corte-de-la-r11/>

<sup>10</sup> See article "Formosa: reprimen a integrantes de la Comunidad Wichí, hay heridos" from March 25, 2015 on Agencia de Noticias de Redacción <http://www.anred.org/spip.php?article9535>

<sup>11</sup>The case of the Caraparí indigenous community presented before the Federal Justice of the province of Salta is paradigmatic as it has a judicial process against the Argentine State and the oil company Refiner for damages generated by a pipeline running through its traditional territory in which the only testing measures that have not yet been produced are the forensic anthropological, psychological and the quantification of environmental damage. Experts have requested money for expenditure within the judicial process but the community does not have the resources to respond to them. The community requested support from the National Institute of Indigenous Affairs, who replied that it didn't have the budget to cover evidence in judicial proceedings. Given that response, the community asked the provincial judge to request the National Supreme Court of Justice to the same end but was told that prior to that measure that they indicate what the rule was whereby that state authority should cover the costs of expert testimony. Since then, it has been three years and they cannot

### Questions for the State:

- Are the administrative areas of the structure of the State dedicated to the indigenous peoples contained in the report going to be maintained? If modifications are made, please indicate what they are and what impact they will have on the fulfillment of the State's obligations with respect to article 24 of the ICCPR.
- What measures are being taken to prevent the eviction of indigenous peoples and ensure the effective enforcement of the emergency of the possession and indigenous community property laws?
- What are the reasons for the delay in the territorial survey ordered by Law 26.160? Why haven't the technical survey folders been delivered to all of the surveyed indigenous communities?
- What measures are being taken to prevent, investigate and punish acts of violence against members of indigenous communities committed by public officials and private individuals? What measures have been adopted and will be adopted so that indigenous communities can effectively access justice in defense of their rights and have equality of arms?
- What measures are being taken to ensure indigenous peoples' enjoyment of the rights to participate and to consultation in all projects and actions that affect them?
- Since the enactment of the Law 26.160 (2006) thousands of hectares of forests in indigenous territories have been cleared, causing irreparable losses and de-facto evictions. Is there any mechanism foreseen for indigenous people to seek reparation for the violation of their rights? Has a system of reparation been envisaged for damage caused to indigenous peoples as a result of the loss of their territories and natural and cultural assets?

**Recommendations to the State:**

- Adopt concrete and uniform federal mechanisms to ensure that indigenous peoples can enjoy in the practice their rights as stated in the Constitution and the provincial constitutions, ILO Convention No. 169 and the United Nations Declaration of Rights of Indigenous Peoples.
- Adopt measures to avoid the eviction of indigenous peoples and ensure the effective enforcement of the emergency of the possession and indigenous community property law. Deploy all measures to expedite the process of territorial survey prescribed by Law 26.160, in order to create a map of the location of the indigenous territories and to act accordingly.
- Implement the available means to guarantee the security of indigenous peoples who today suffer threats, harassment, violence and evictions. Adopt measures to prevent acts of violence against members of indigenous peoples both by public officials and private individuals, and to punish public officials who fail to meet with current legislation in the field of indigenous law.
- Take steps to legally establish procedures of demarcation and titling of indigenous lands, in accordance with current international standards; and so that indigenous communities and their members can effectively access justice in defense of their rights and have clarity in regard to the legal channels to be used.

**Recommendations on the situation of the communities of Lhaka Honhat:**

- Complete as soon as possible the demarcation and delimitation of the territory of the indigenous communities of the Lhaka Honhat Association of Indigenous Communities.
- Deliver the collective title in favor of the 71 communities that form part of the Lhaka Honhat Association of Indigenous Communities.
- Implement the necessary infrastructure works in order to complete the relocation of the Creole families outside the ancestral territory of indigenous communities that form part of the Lhaka Honhat Association of Indigenous Communities.