

## ARGENTINA

Argentina is a federal state comprising 23 provinces with a total population of over 40 million. The results of the Additional Survey on Indigenous Populations (2004-5), published by the National Institute for Statistics and Census, gives a total of 600,329 people who recognise themselves as descending from or belonging to an indigenous people,<sup>1</sup> while the latest national census from 2010 include a total of 955,032 persons self-identifying as descending from or belonging to an indigenous people.<sup>2</sup> There are today 35 distinct indigenous peoples officially recognized.

Legally, the indigenous peoples have specific constitutional rights at federal level and also in a number of provincial states. ILO Convention 169 and other universal human rights instruments such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are also in force, with constitutional status. Argentina voted in favour of the adoption of the UN Declaration of the Rights of Indigenous Peoples in 2007.

**A**t the end of 2014, the serious health situation being suffered by indigenous peoples in the north of the country has come to the fore once more. Tuberculosis and Chagas disease are the main endemic diseases affecting these people. Because of these illnesses, deaths due to malnutrition have risen among children and adults alike. A seven-year-old boy recently died in Chaco province after being admitted to hospital for TB treatment but then discharged with no-one to provide follow-up or ensure continuity of his treatment. The head of the Nelson Mandela Studies Centre (*Centro de Estudios Nelson Mandela*), a local NGO, considers that the health system in Chaco province “operates very poorly due to political patronage, abuse, and even open and clear discrimination of indigenous communities”, and is revealing how “completely dehumanised and disorganised” it is. One additional problem is that the Ministry of Health’s Vital Statistics System conceals the cause of death: in general, death certificates state the cause of death as “illness” and do not specify the patient’s clinical history. In the case of the



above child, there was no mention of the underlying illnesses of TB and associated malnutrition.<sup>3</sup>

The situation is the same in other provinces of northern Argentina. On hearing of nine deaths due to malnutrition, the Governor of Salta admitted to the press that there were 135,000 extremely vulnerable children in his province<sup>4</sup> but emphasised indigenous peoples' misinformation and nomadic ways as the reasons

why it was difficult to address their health situation. The indigenous organisations, in contrast, maintained that this situation was due to forced displacements caused by increasing deforestation and the advancing agricultural and livestock frontier.

People have been warning about this health crisis for many years. Two years ago, the National Council for Indigenous Policy (*Consejo Nacional de Políticas Indígenas*), comprising representatives from various provinces of the country's north and south, asked the President of the Chamber of Deputies to hold urgent discussions with representatives from different communities on the state's lack of attention to health issues. This request met with no response. In an election year such as this, it is hardly surprising that candidates are now showing a concern to produce proposals and plans and are making promises of environmental conservation, water provision and attention to primary health care.

All this is taking place while there are ongoing delays in the effective implementation of Law 26160 on the "Emergency situation of indigenous community property". This law, passed in November 2006, stipulated the suspension of legal evictions for four years, and established that land and territory surveys would be conducted in the first three years. This deadline has twice been passed and had to be extended, in 2009 and 2014, without the work yet being completed.

In order to coordinate joint efforts, the National General Auditor's Office held a meeting with indigenous and civil society organisations in June 2014 to agree on the points to be implemented in a future audit of the National Institute for Indigenous Affairs (*Instituto Nacional de Asuntos Indígenas*). The issues considered included: access to land, legal status, and the effective participation of indigenous communities in policies that involves them.<sup>5</sup>

## **Forest clearing in the north of Argentina**

According to the Argentine Chaco Agro-forestry Network (*Red Agroforestal Chaco Argentina / REDAF*), the Chaco National Park incorporates around 70% of all of Argentina's native forest. It is also the most heavily deforested area. It is estimated that some 34% of the native forest of the Chaco National Park, Misionero Forest and Tucuman-Bolivian forest has now been cleared. In 2008, an alliance of non-governmental organisations and indigenous and Creole communities requested that the Supreme Court of Justice put in place precautionary measures prohibiting the "deforestation and felling of native forest in the Chaco Salteño re-

gion". Since the enactment of the Forests Law five years ago, more than 330,000 hectares have been cleared in the province, 98,894 hectares of these in areas prohibited by the Land Management Plan (Law 7543/2009). In addition, between 2008 and 2011, 53,202 hectares have been cleared in violation of the resolution passed by the Supreme Court of Justice.<sup>6</sup> Despite this, felling continues in prohibited areas, and has resulted in numerous complaints from local inhabitants and organisations. Furthermore, the ambiguity of the law has enabled the Provincial Ministry of the Environment to authorise a change in forest category in order to permit the clearing. One emblematic case is that of the Wichí community of San José de Cuchuy. In clear defiance of Provincial Decree 2789 prohibiting the clearing of areas inhabited by communities in which the survey established by Law 26160 had not yet been conducted, authorisation was given to clear 10,000 hectares around Cuchuy. Deceived and pressurised, the community members signed an agreement accepting 300 hectares and 10 houses, thereby losing 9,700 hectares of their land.<sup>7</sup>

### **Lack of guarantees protecting territorial rights**

On 28 July 2014, various members of the Wichí community of El Colorado in Formosa province were beaten up by local police who entered their settlement with numerous officials to implement a court order. The community members were accused of removing a fence that a non-indigenous family had erected on community lands. They were prosecuted and imprisoned in the local municipality for defending their territory.<sup>8</sup>

Also in Formosa province, violence is continuing against the Qom leader, Félix Díaz, from Potae Napocna Navogoh-La Primavera community. A physical attack has been reported against his son, along with shots heard during the night in the area. Also, on 3 January 2015 a 17-year-old Qom, Esteban Medina, was found dead at the side of Route 86. Medina was found near where his aunt, Norma Artaza, was found dead on 12 December. The woman had received blows to the head and Díaz believes the police were responsible, "Qom deaths are always due to a heart attack or road traffic accident, they never allow informed community members give evidence during the autopsies". According to the journalist, Darío Aranda, "all these events are taking place in an unfavourable context because the provincial government has just suffered a serious setback in relation

to the Inter-American Commission on Human Rights (IACHR), the main human rights body for the Americas; [...] this Commission has just ratified precautionary measures requiring the state to protect members of the Qom community. The provincial government requested this measure be removed but this was refused on 29 December [...]”.<sup>9</sup>

Violence erupted in the area when the territorial demands led to clashes between the community, its leader and the provincial government. On 22 December, a community assembly declared a state of alert and mobilisation due to the lack of response received from the authorities with regard to the illegal occupation of their lands by a non-indigenous settler.

In order to face up to these violent attacks, denounce the violations of their rights and keep up their struggle for lands, the Nivaclé, Pilagá, Qom and Wichí communities of Formosa province have formed an association of 33 members, chosen by self-convened community assemblies. In December, they signed a petition asking UN Special Rapporteur Victoria Tauli-Corpuz to visit the area to see for herself what was going on. They will hold their 5th meeting in early 2015, where they will consider, among other issues, two new orders for the evictions of the communities of Campo del Veinte and Santo Domingo.<sup>10</sup>

## **Territorial struggles in Tucumán**

In Tucumán province, Diaguita communities grouped together in the Union of Peoples of the Diaguita Nation of Tucumán (*Unión de los Pueblos de la Nación Diaguita de Tucumán / UPNDT*) have completed the surveys of the indigenous communities and submitted technical files for 14 communities covering an area of 450,000 hectares, 5% of which are state lands. Provincial-level prospects for getting land legalised on behalf of indigenous communities, however, are not good. Although a draft bill of law (proposed by different actors involved in the surveying) is making progress, this would not directly transfer ownership to the indigenous peoples but would instead create a State Land Commission involving indigenous peoples, state bodies and civil society representatives to conduct tasks aimed primarily at achieving the transfer of these state lands to the indigenous communities. This lack of any formal demarcation and titling procedure that would truly take the community's rights and interests into account is threatening to paralyse the slow process commenced with the approval of Law 26160 in 2006. This legal

vacuum, which amounts to a failure on the part of the state to fulfil its obligations, leaves the titling process in an uncertain situation, all the more so given that 2015 will be an election year.

This clear lack of policy and failure to implement the rules is directly linked to indigenous peoples' lack of consultation and participation in government decisions. One illustration of this is UNESCO's granting of World Heritage status to the Inca road system (Qhapaq Ñan) in June 2014. This declaration affected the archaeological site of "La Ciudadcita",<sup>11</sup> located within the territory of the indigenous community of Solco Yampa (Diaguita people) and yet their rights to consultation and participation were not respected in this regard. The provincial government merely limited itself to quoting the indigenous community's representative at the working meetings, without instigating a process of genuine participation, as stipulated in international legislation. This was despite the community, supported by UPNDT, having demanded it be involved in any decisions involving the territorial management of their community.<sup>12</sup>

The return and management of the Sacred City of the Quilmes,<sup>13</sup> which has been under discussion since 2002, is the first case of its kind in the province, and is coming up against legal, technical and political problems both between the community and the government and within the community itself.<sup>14</sup> The Quilmes are faced with the challenge of setting a precedent in terms of administering and managing their heritage in alliance with the state, and this latter cannot ignore its responsibility as guarantor of the conservation of the site and of the rights of its owners and heirs.

In addition, a violent conflict involving attempted land grabbing by *criollos* in El Nogalito community of the Lule people continues unresolved. Given the serious human rights violations suffered by this community, the Inter-American Commission on Human Rights issued a court order protecting the community in 2012, calling on the state to adopt effective measures to safeguard the life and integrity of the community and its members.<sup>15</sup> In March 2014, the IACHR convened a working meeting of the community, its legal advisors<sup>16</sup> and the Argentine state to assess the progress made in this regard. The assessment made at the meeting was not a positive one as it highlighted the state's failure to effectively protect the rights of community members. This failure has resulted in a situation of violent conflict on the community's territory along with regular threats and harassment of community members. The persistence of this situation not only represents a constant violation of their human rights but also deters members from participating in

their community. The precautionary measure granted by the IACHR offers, at least in theory, a permanent platform for dialogue and negotiation with the state, albeit not without complications, delays and negotiations on the part of the authorities. Despite the Argentine state's commitment to organise a round table in order to discuss the conditions (safety, territorial and social) that gave rise to this precautionary measure, this did not take place during 2014 and the community remains in the same dangerous situation as before.

On 28 and 29 March, the 4th Indigenous summit (*Parlamento*) of the Calchaquí Valley was held in the indigenous community of Amaicha del Valle, Tucumán province, to commemorate the 40<sup>th</sup> anniversary of the first indigenous summit "Juan Calchaquí"<sup>17</sup>, with the participation of peoples from the northern provinces of Argentina. The issues discussed at this event included the delays in the territorial surveying (established by Law 26160), particularly for Catamarca, Salta and Jujuy provinces, and one of the greatest problems affecting their territories: mineral exploitation and soya plantations. In addition, a proposal was made to exercise territorial control by occupying the land and managing its natural resources, supportive actions were agreed between settlements and it was decided to seek solidarity with other social organisations in order to face up to the conflicts on their territories.

## **Resistance and struggle: some legal outcomes**

### **Campo Maripe community (Mapuche people) – Neuquén province**

"[The oil company] YPF does not wish to admit that it is responsible for applying a law that we indigenous peoples have, namely the right to be consulted on any project the company may want to commence on indigenous territory...", stated one of the community leaders of Campo Maripe as they continued to erect a perimeter fence around the community. Subsequently, on 2 September an oil well was drilled in Campo Campana, (operated by YPF-Chevron using fracking technology). As a result, a toxic cloud enveloped the community, affecting both people and animals. The protest organisation established by the community in the face of this constant conflict forced the provincial government to give Campo Maripe legal status in October. From now on, any action that affects its territory will need to be preceded by a proper consultation process. This outcome is extremely important because the government and oil companies have been denying the com-

munity its indigenous identity and its legal status has not been recognised for the last 14 years.

### **Recognition of the right to own justice**

The Pulmarí Declaration, signed by the Office of the Attorney General (*el Ministerio Público Fiscal*) and the board of the Corporación Interestadual Pulmarí, established in 1987,<sup>18</sup> along with the indigenous communities and national and provincial (Neuquén) authorities that form part of this corporation, was published in August 2014. This establishes “recognition of and respect for the identity of the Neuquén indigenous peoples in the way that their conflicts are resolved within the context of human rights and current legislation”. In September, the Attorney General instructed prosecutors to respect this declaration in all its facets.

### **Ruling of the Office of the Attorney General**

(*la Procuración General de la Nación*)

On 8 September, the Attorney General issued a ruling in favour of the community of Catalán in Neuquén. This community had lodged an extraordinary appeal before the court following the Neuquén High Court’s rejection of an appeal for unconstitutionality submitted by the community due to the enactment of Provincial Law 2439, which created the municipality of Villa Pehuenia, and Provincial Executive Decree 2/04, calling elections for the respective municipal committee. Two primary arguments were cited by the Attorney General in his ruling: 1) the state’s failure to consult duly with the communities on a legislative decision that affects their lives; and 2) mechanisms for electing authorities that were alien to the ancestral traditions of the Mapuche people. Both arguments enabled him to conclude that, in this case, there had been a violation of indigenous rights as established and protected by domestic constitutional and international law. For this reason, the Attorney General ruled that the extraordinary appeal made by the community was admissible and that the decision should be annulled.

### **Vitality of the Mapuche people’s language**

On 18 June 2014, in the town of Zapala and in the context of the Apache-Pelays case, the Court of Appeal convened a hearing to consider the defendants’ request



for interpreters or cultural facilitators from the Mapuche people. This request had been dismissed because, according to the prosecution, the members of Winkul Newen community did not speak *mapuzugun*, and were able to understand and communicate in Spanish. With the help of anthropologist, Diana Lenton, as expert witness, the validity and centrality of the Mapuche language was confirmed. Despite the prosecutor's and the complainant's refusal, the court decided to agree to the request for an interpreter in the subsequent stages of the case and, for this, it proposed initially approaching the Mapuche Confederation of Neuquén (*Confederación Mapuche Neuquina*) for a list of possible interpreters. ○

## Notes and references

- 1 Instituto Nacional de Estadística y Censos (INDEC), 2004: *Resultados de la Encuesta Complementaria de Pueblos Indígenas—ECPI—* surveyed in 2004. [http://www.indec.mecon.ar/webcenso/ECPI/index\\_ecpi.asp](http://www.indec.mecon.ar/webcenso/ECPI/index_ecpi.asp)
- 2 See the results of the 2010 National population survey (in Spanish), INDEC: *Censo Nacional de población, hogares y viviendas 2010*. Available from: [http://www.indec.mecon.ar/nivel4\\_default.asp?id\\_tema\\_1=2&id\\_tema\\_2=21&id\\_tema\\_3=99](http://www.indec.mecon.ar/nivel4_default.asp?id_tema_1=2&id_tema_2=21&id_tema_3=99)
- 3 <http://www.centromandela.com/?p=11147>
- 4 <http://argentina.indymedia.org/news/2015/02/872005.php>
- 5 <https://agnparticipacionciudadana.wordpress.com/>
- 6 REDAF 2012, Informe Bosque nativo en Salta: les de bosques, análisis de la deforestación y situación del bosque chaqueño en la provincia. <http://redaf.org.ar/>
- 7 Aranda, D. 2014 "Arrasando vida". <http://ctanacional.org/dev/2014/09/periodico-cta-105-septiembre-de-2014/>
- 8 More information can be requested from: [vicariapueblosoriginarios@gmail.com](mailto:vicariapueblosoriginarios@gmail.com)
- 9 Aranda, D. "Debate con dos versiones por una muerte." *Página 12*: <http://www.pagina12.com.ar/diario/sociedad/3-263611-2015-01-10.html>
- 10 <http://qoomih-qom.blogspot.com.ar/>
- 11 This is an archaeological site that was located within the native territory of the Diaguita people before they were conquered by the Incas, who then incorporated it into the Qhapaq Nan Inca road system.
- 12 More information on "La Ciudadita": <http://www.elsigloweb.com/nota.php?id=140982>; <http://www.primerafuente.com.ar/noticia/551250-una-comunidad-diaguita-denuncia-que-nunca-fue-consultada-sobre-el-destino-de-la-ciudadita>; <https://www.facebook.com/UPNDT/posts/677252469011584>.
- 13 The Sacred City of the Quilmes is situated in the Calchaquí Valley. It is the site of the remains of the greatest pre-Colombian settlement in our country. It occupies around 30 hectares and is located at the foot of the Alto del Rey mountain. The site was first owned by the indigenous community, then the provincial state, then later a private concession, before finally returning into the hands of the descendants of the India Quilmes community. The ruins have been rebuilt.

- 14 Seizure of the Sacred City of the Quilmes on 07 March 2014 by a group of people from outside the community. The case that was commenced on this basis demonstrated yet again the ineffectiveness of our courts in this regard. See UPNDT press release: <http://uniondiaguita.org.ar/comunicacion-de-la-comunidad-de-quilmes-ante-la-nueva-usurpacion-de-la-ciudad-sagrada/>
- 15 <http://www.lagaceta.com.ar/nota/532965/politica/exigen-al-estado-proteja-comunidad-indigena-nogalito.html>
- 16 Fundación ANDHES (lawyers from the north-west of Argentina working on human rights and social studies). <http://andhes.org.ar/>
- 17 Considered to be one of the main Diaguita chiefs who opposed the Spaniards. In 1987, the national and provincial governments approved Law 23,612 (national) and Law 1,758 (provincial) in order to contribute 67,900 and 45,000 hectares respectively to the territorial space of (primarily) the communities of Aluminé and Villa Pehuenia.

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