



The Militarization of Indigenous Lands: A Human Rights Approach

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1. Background:

The Expert Mechanism on the Rights of Indigenous Peoples calls for contributions to the study on "The Militarization of Indigenous Lands: A Human Rights Approach". This is a daily occurrence in many countries around the world. Several peoples have been dispossessed of their natural assets, lands and territories that have been converted into different state and private projects: protected areas, tourist parks, nature reserves or in the worst cases, extensive areas used for exploration and mining.

2. Presentation

This contribution focuses on sharing the reasons that have motivated the militarization of indigenous peoples' territories, pointing out the mechanism used by the State of Guatemala for this purpose, and identifying the sectors favored by such practices.

It also draws attention to the State's international commitments regarding the rights of indigenous peoples and makes some recommendations for urgent action.

3. IITC's contribution to the study

Guatemala currently has a territorial extension of 108,899 km², inhabited by the Mayan, Xinka and Garifuna peoples. The first two already inhabited these lands before the Spanish conquest in 1524 and the subsequent delimitation of the current borders.

These peoples have suffered the imposition of colonial policies, since they were expelled from their territories of origin - areas of high fertility - to rustic areas because of state policies of large-scale production, thus favoring the agenda of industries, today, these same peoples are being harassed again, because such lands that originally seemed unpleasant, actually guard minerals of importance to the industry.

These practices translate into pain, since disrupting the land, territories and resources of indigenous peoples means disturbing their existence in general, as their lives are directly linked to nature. In addition, the vision, cosmovision and relationship with the land and

territories has a deep meaning for Indigenous Peoples, as it is considered the basis of survival because everything that their lands produce is used to develop and live integrally. The land is not considered a material to generate money but part of the indigenous habitat where biodiversity, ecology and agriculture are developed, where food is enjoyed for the sustenance of the family and the community.

This is the fundamental reason why Indigenous Peoples defend to the death and resist leaving their lands when military, paramilitary gangs, private guards occupy their territories for the purpose of plundering and dispossession.

Defending one's own territory through denunciations and public demonstrations is a survival strategy with high risks; the defenders of the territory are quickly accused, arrested and sentenced for crimes that carry prison sentences in order to intimidate communities and entire peoples. Other experiences include attacks against physical integrity, and even exile, as in the case of Lolita Chavez, who for denouncing the logging of trees by a company in Quiché, was persecuted and had to go into exile.

The institutions in charge of criminal prosecution become instruments of harassment towards indigenous peoples. There are cases where indigenous peoples are ignored in the public discourse to make way for extractive activities, as in the case of the Xinka people in Guatemala.

All the harassment, persecution, intimidation, attacks, sexual violations and others that indigenous peoples suffer in their collective territories of ancestral property have the purpose of taking over the livelihoods of these peoples and promote mining and hydroelectric construction without any benefit for these peoples. The companies are installed without the State complying with its commitment to attend to the affected indigenous peoples' communities.

In Guatemala, militarization occurs through the imposition of the norms contained in the Public Order Law dating back to 1965, article 1 of which stipulates that it applies in cases of invasion of the national territory, serious disturbance of the peace, public calamity or activities against the security of the State. In recent years, this norm has been recurrently used to guarantee the operation of industries dedicated to mining and hydroelectric generation.

Under this norm, all protests against extractive industries, against the imposition of protected areas, claims of non-compliance with the right to consultation to obtain free, prior and informed consent, the fight against corruption and impunity, are classified as serious disturbances of the peace that threaten the security of the State and are used as State violence.

There are two mechanisms of militarization of the lands and territories of Indigenous Peoples. One form is the occupation, intimidation, violations of all kinds that produce armed elements members of the National Civil Police, especially when eviction resolutions are given against populations, regardless of the life and integrity of men, women, elders, boys and girls.

The other mechanism is applied by sending private security guards, who use the same forms of operation as members of the police, and have even assassinated leaders of the organizations or organizational structures of Indigenous Peoples. These security guards repress, assassinate, rape women and other acts in order to intimidate the population.

According to estimates, private security agents number more than 250,000 members for a small country of barely 16 million inhabitants. These guards commit all kinds of abuses against the population, especially when they are hired by landowners, mining companies, industrial companies that come to indigenous territories. They commit all kinds of human rights violations, such as intimidation, terrorizing the population with their actions, burning homes, assassinating leaders and in the worst cases committing rape against women, such as what happened against Margarita Caal Caal, a Maya Q'eq'chi woman.

These agents are not registered with the Ministry of Labor or the Police Academy, nor with the Guatemalan Social Security Institute because their work is not legally declared, so it is difficult to quantify how many civilian armed men there are. The owners of the civilian armed men's companies do not pay them the minimum wage, nor do they recognize their labor rights.

It is essential to know that in Guatemala there are lands and territories that have been converted into protected areas, national parks and tourist parks or used for African palm production that have been falsely used as conservation or environmental recovery projects in the REDÑ program.

The following are three fully documented examples of militarization to favor resource exploitation, granted to private companies:

Year	Decree	issued Industry benefited
2008	2008 State of prevention. Governmental Decree Number 3-2008 dated June 22, 2008	Cemento San Gabriel, located in San Juan Sacatepéquez.
2012	2012 State of siege Governmental Decree Number 1-2012	Hidro Santa Cruz, located in Santa Cruz Barrillas, Huehuetenango.
2021	2021 Governmental Decree Number 9-2021 dated October 23, 2021.	Compañía Guatemalteca de Níquel (CGN), a subsidiary of the Russian and Swiss firm Solway Investment Group.
2021	2021 Governmental Decree Number 11-2021, dated December 21, 2021	Conflict in the municipalities of Santa Catarina Ixthucacán and Nahualá.

- a. The construction of the Cementos San Gabriel production plant, in San Juan Sacatepéquez, generated discontent among the Kaqchikel Mayan people. For this reason, in 2005, twelve communities declared their resistance and opposition to the mining plant, due to the decision of the Ministry of Energy and Mines to grant three licenses covering a third of the municipal territory without any consultation. In the context of the tense atmosphere, the death of a worker of the cement producer occurred, which led the president of that period, Álvaro Colom Caballeros, to impose a state of prevention. After declaring this measure, on June 23, three thousand police and soldiers with tanks, militarily occupied Las Trojes, raided the houses in search of 25 people from a list they were carrying. But several of them had left their homes and hid in the bush for several days so as not to be captured. During the 15 days that the exceptional situation lasted - it ended on July 6 - the residents of the 12 communities were subjected to abuses of power by PNC agents and military personnel stationed in the area.
- b. During the government of Otto Perez with his "iron fist" strategy, on April 12, 2012, he published Decree 63-2012, which established the installation of the Alejandro Gramajo Military Police Brigade in San Juan Sacatepéquez. Under this same government, on October 4, 2012, members of the Maya K'iche' people of the 48 Cantones de Totonicapán were murdered. They were protesting against the reform of the teacher's career and demanded the nationalization of electric energy, their disruption was generated in one of the main routes of the country, blocking traffic to force the government to listen to their demands.
- c. c. Recently, the government of Guatemala restored on Thursday, January 6, 2022, the operating permit for the Fénix mine, owned by a Swiss firm, which had been prohibited from operating since 2019 by a decision of the highest court in the country, the Constitutional Court. Since 2019 the Constitutional Court (highest court in the country) ordered CGN to suspend the mining license, for not having carried out prior consultation."

4. Responsibility of the State in the violation of human rights and rights of Indigenous Peoples.

In the last 2 years (2020-2021) at least 7 states of exception and states of siege have been declared in different parts of the country, especially affecting indigenous peoples' territories.

The current government of President Giammattei takes militarized measures in a justified manner with COVID 19, but in practice, the real objective of these military measures is to demobilize the organization of Indigenous Peoples, organizations that fight for the defense of their lands and territories, to capture leaders for the criminalization of the indigenous movement, such as what

happened in Estor Izabal, when the resistance of the Mayan Q'eq'chies inhabitants who opposed the operation of the mining company FENIX was dismantled.

The seriousness of the matter is that the Ministry of Energy and Mines carried out a lack of consultation with the local inhabitants, which it called Pre-consultation, but in reality there was no genuine participation of the entire population; only a few groups and leaders participated, mediatized by fear and/or purchase of prior will, in order to give their endorsement to the restart of the operations of the mine mentioned above.

The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society (1996) establishes that the new army doctrine will be oriented towards respect for the Political Constitution of the Republic, human rights, international instruments ratified by Guatemala in military matters, the defense of 'national sovereignty and independence, the integrity of the country's territory and the spirit of firm and lasting peace agreements. The United Nations Declaration on the Rights of Indigenous Peoples establishes that military activities shall not be carried out in the lands or territories of indigenous peoples, unless justified by a relevant public interest reason or unless it has been freely agreed with the indigenous peoples concerned, or unless they have so requested (Article 30.1) States shall consult effectively with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, before using their lands or territories for military activities. (Article 30.2)

The American Declaration on the Rights of Indigenous Peoples establishes that military activities shall not be carried out in the lands or territories of indigenous peoples, unless justified by a relevant public interest reason or unless it has been freely agreed upon with the indigenous peoples concerned, or unless they have so requested (Article XXX.5).

Considering that the reason for the use of military forces is due to the interest of taking the existing wealth in the territories of indigenous peoples, the State must guarantee its international commitment to attend to the consultation established in ILO Convention 169 based on Article 46 of the Political Constitution, which refers to the preeminence of international law in matters of human rights.

The violations to human rights and rights of Indigenous Peoples when imposing states of siege and states of exception in specific areas or at the national level is because: it prohibits the freedom of demonstration, association, mobilization; 'violates the freedom of assembly, prohibits the movement of people, among other facts. If the population does not comply, it is taken to jail, without any trial.

5. Recommendations:

- a. The State of Guatemala must comply with its commitment to carry out the consultation for the free, prior and informed consent of the indigenous peoples every time it makes administrative decisions that directly affect them, as established in Convention 169 of the International Labor Organization, ratified by Guatemala, as well as the content of the United Nations Declaration on the Rights of Indigenous Peoples. In addition, that it respects the integrity of the principles, statements and articles of the UN and OAS Declarations on the rights of Indigenous Peoples.
- b. Adjust the doctrine of the army to the new rules of democratic societies, especially to recover the provisions of the Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society (1996).
- c. That private security companies adjust to the rules established by the Law that regulates private security services, Decree-52-2010, and that the General Directorate of Private Security Services be strengthened to fulfill its mandate. Since elements of private companies have also participated in harassment and attacks against indigenous peoples as indicated in the case of Margarita Caal Caal.
- d. The companies that have benefited from coercive measures against indigenous peoples must compensate for all damages caused in the territories of these peoples.
- e. That the companies adjust their actions to the principles and rules of respect for human rights.
- f. That the government of Guatemala be called to account for its excessive use of states of emergency and states of siege.
- g. That Guatemala eliminate the existence of private security forces because they become agents of repression without the control of government authorities.