



# Lithium Fever: Indigenous Peoples' Rights Under Attack in Jujuy, Argentina

International Fact-finding Mission Report (21-25 August 2023)

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# Foreword

In the months after the international fact-finding mission to Jujuy province, carried out from 21 to 25 August 2023, the political situation in the province and more generally in the Republic of Argentina took a turn for the worse, confirming and exacerbating the issues observed.

The reforms to Jujuy's provincial constitution are still in force, despite the procedural and substantive problems highlighted in this report. Neither the lack of free, prior and informed consultation of indigenous peoples, nor the severe restrictions on the exercise of the right to protest resulting from its provisions, were sufficient to allow the judicial challenges that were filed both before the provincial and federal judiciary to move forward.

The Federal courts declared their lack of jurisdiction in the matter, despite arguments on the unconstitutionality of the reform, and referred the discussion back to the provincial courts, which in turn failed to make any substantive progress. Several organisations and communities consider that filing a complaint at the international level is the only remaining option.

After several months of sustained protests against the reform of the provincial constitution both in Jujuy and in Buenos Aires, the intensity of the demonstrations gradually diminished. The indigenous communities paid a high price for the protests, not only in terms of efforts to maintain them for weeks, but also the level of criminal prosecution they faced.

On 10 December 2023, a new national government took office. During his first days as president, Javier Milei enacted the Decree of Necessity and Urgency (DNU) 70/2023, with a very broad scope to modify or abolish state structures directly without needing Congress approval. Under the pretext of maximum deregulation of economic activity, the government also dismantled or hollowed out offices and agencies dedicated to the protection of rights, such as the Ministry of Women, Genders and Diversities (abolished in December), the National Institute against Discrimination, Xenophobia and Racism (whose closure was announced in February 2024) and the National Institute of Indigenous Affairs (INAI), the only national body specialising in indigenous issues, where employees have not been assigned tasks and which has been paralysed since December.

In addition, the DNU repealed the Land Law, allowing for unrestricted foreign ownership of land. It also repealed laws that created the National Mining Trade System and the National Mining Information Bank, thus depriving the state of important tools to regulate extractivism.

Meanwhile, the executive branch submitted an ambitious legislative package to Congress seeking extraordinary powers for a period of two years, and proposed to move forward with other reforms aimed at loosening controls on extractive activities and weakening environmental protection, such as the proposed changes to the Glaciers Law and the Forestry Law. This bill did not make it through the parliamentary debate process, and has been rejected for the time being, although the president has announced that he intends to resubmit it to Congress.

The current National Government also proposed a major change in the way the state deals with social protest. It abandoned a long-standing tradition of giving priority to political negotiation over with regard to public demonstrations in order to embrace a paradigm very similar to the one that was deployed in Jujuy during the protests against the constitutional reform. The starting point is the restriction of the right to protest, on the basis that any public demonstration that involves any disruption to the movement of people is a flagrant offence.

The new approach of the National Government also includes the criminalisation of social organisations, as in the case of Jujuy. Amendments to the National Criminal Code were proposed to increase the severity of crimes such as hindering land transport, as set out in Article 194, and to create new categories of offence to punish those who organise, call for or spread protests.

The consequences of these decisions were seen on the streets: all demonstrations in Buenos Aires since December 2023 have involved the militarisation of the city, and some of them (such as those on 31 January and 1 February 2024 in front of the Congress) met with harsh repression, with tear gas and rubber bullets used indiscriminately, including shots aimed at the faces and eyes of the demonstrators. This criminal pattern of police action—a pattern that has been used to repress social unrest in Chile and Colombia—was also seen in Jujuy.

# 1. Introduction

Jujuy is one of the 23 autonomous provinces making up the federal state of the Argentine Republic. It is located in the north west of the country, bordering the Plurinational State of Bolivia and the Republic of Chile. According to the official census, it is one of the provinces with the highest percentage of indigenous population in the country.

On 20 June 2023, the Jujuy Province approved the modification of 193 of the 212 articles of its Provincial Constitution,<sup>1</sup> through a Constitutional Convention that was in session for less than a month.

The constitutional reform was the subject of numerous and prolonged citizen protests. During and after its approval, different social sectors in Jujuy criticised the lack of citizen participation and the exclusion of indigenous peoples' voices in the constitutional process. They also denounced provisions in the new Constitution, which severely restrict the right to protest and undermine the rights of indigenous peoples over their ancestral territories and water sources.

Eight international civil society organisations with extensive experience in human rights and environmental rights carried out an international fact-finding mission to Jujuy from 21 to 25 August 2023. Members of the International Federation for Human Rights (FIDH),<sup>2</sup> the Interamerican Association for Environmental Defense (AIDA), Brot für die Welt/Bread for the World, the Economic, Social and Cultural Rights Project (ProDESC), the Human Rights Law Centre (HRLC), the Centre for the Study of Law, Justice and Society (Dejusticia), Movement Law Lab (MLL) and the Global Network of Movement Lawyers (GNML) participated in this initiative.

The objective of the international fact-finding mission was to document, through fieldwork and access to direct sources, potential violations of human and environmental rights that occurred in the context of the constitutional reform, including the repression and criminalisation of people who participated in and promoted protests against it. To this end, the mission interviewed civil society actors, representatives of indigenous peoples and provincial and national authorities. Meetings took place both in San Salvador de Jujuy, the provincial capital, and in rural communities located in the towns of La Quiaca, Salinas Grandes, Susques, Humahuaca, San Roque and Purmamarca.

The international fact-finding mission acknowledges that the Provincial Government of Jujuy, as well as the National Government of the Argentine Republic, offered the necessary guarantees for the visit to take place and provided information on the human rights context, respecting the right to defend human rights. It is also grateful for the trust of the representatives and members of indigenous and rural communities and human rights and environmental defenders, who shared their testimonies with the mission. To all of them, we express our recognition and solidarity with their struggle for human rights.

This report contains the main findings of the international mission, based on the field visit, the review of primary and secondary documentary sources and the processing of the information gathered during and after the visit to Jujuy, through interviews with more than one hundred people.<sup>3</sup>

The report describes how the process to adopt the new Jujuy Constitution failed to include mechanisms to guarantee the free, prior and informed consultation of the 11 indigenous peoples living in the province. Guaranteeing this right was essential as the reform established a legal framework with direct repercussions on their territories and ways of life.

It also analyses how the constitutional reform has further exacerbated the lack of protection and legal

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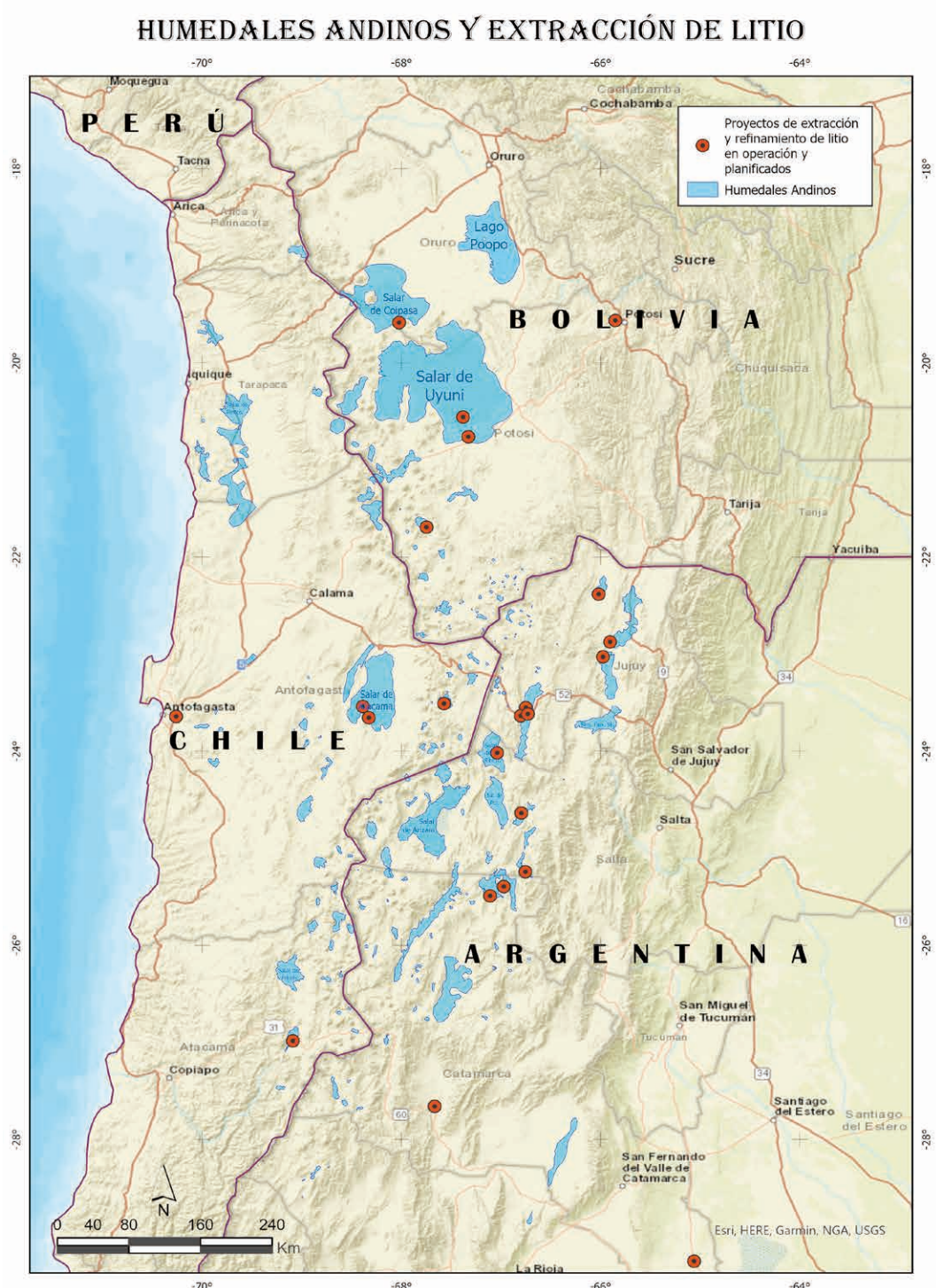
1. Within the Argentine federal system, each province has the power to establish its own Constitution, which must not contradict the National Constitution. On this point, Article 5 of the Argentine National Constitution establishes that "Each province will enact for itself a constitution under the republican representative system, in accordance with the principles, declarations and guarantees of the National Constitution; and which will ensure its administration of justice, its municipal regime, and primary education."

2. The *Observatorio Ciudadano de Chile* and the *Comisión Mexicana de Defensa y Promoción de Derechos Humanos*, member organisations of the International Federation for Human Rights (FIDH), participated in the mission.

3. The Annex to this report includes a list of the 25 face-to-face and virtual meetings held by the international fact-finding mission during and after its visit to Jujuy.

insecurity for indigenous peoples over their ancestral territories. The new Constitution authorises “productive use” activities on public lands, as well as the large-scale use of water. This provision affects a significant number of Jujuy’s indigenous communities, whose ancestral territories overlap with public lands, due to the authorities’ failure to protect indigenous collective property through delimitation, demarcation and land titling.

The report suggests that the new constitutional regime governing public lands and water must be understood within the context of the expansion of lithium extractivism in Jujuy. Over the last 20 years, provincial authorities have granted lithium exploration and mining concessions on indigenous ancestral territories without ensuring free, prior and informed consultation with the communities. These projects are characterised by the use and contamination of large volumes of water. Moreover, they are likely to increase in the coming years, given the province’s location in the “Lithium Triangle”, the main world reserve of the mineral in the form of brines.



Map of Andean wetlands and lithium extraction projects on the borders of Argentina, Chile and Bolivia.  
© David Cañas, AIDA (2024) based on OpenStreetMaps.

The report also analyses the way in which the new Constitution introduced a permanent and disproportionate restriction on the right to protest by providing for a general ban on street and road blocks. These forms of public demonstration are legitimate and protected by the freedom of peaceful assembly. Under international law, in order not to negate the essence of the right to protest, authorities must tolerate the “inherently or deliberately disruptive” effect that demonstrations may have on public space and freedom of movement.<sup>4</sup>

Finally, the report documents cases of people who were repressed and criminalised for their participation in the demonstrations against the constitutional reform. These cases reveal that the provincial police, instead of protecting public protests, dispersed them through the arbitrary use of force and indiscriminate arrests. The authorities also initiated proceedings under the law on crimes and misdemeanours against demonstrators, based on an improper characterisation of citizen mobilisations as disturbances of public order and threats to institutional stability.

The report’s analysis of what happened in Jujuy, and Argentina’s obligations under international law to guarantee and facilitate public protests and demonstrations, is of relevance in the country’s current context. Events in Jujuy Province marked the beginning of a trend, which since December 2023, with Javier Milei’s election as President of the Argentine Republic, is being replicated by the National Government, consisting of the adoption of major regulatory reforms that directly affect people’s rights, while imposing disproportionate restrictions on the right to protest.

On 14 December 2023, the Ministry of Security of the Nation adopted Resolution 943/2023, which approved the “Protocol for maintaining public order in the event of road closures”. The so-called “Anti-picketing protocol”<sup>5</sup> establishes that any public demonstration that interrupts or slows down the movement of vehicles and people constitutes a flagrant offence, and must be dispersed by police and security forces. The protocol also orders the collection of information on the persons and organisations that participated in and convened these demonstrations, in order to bring criminal and administrative proceedings against them, as “perpetrators, accomplices, instigators and organisers” of an offence.

UN Special Procedures have criticised the content of the protocol as being contrary to international standards. The Special Rapporteurs on the right to peaceful assembly and association, freedom of expression and the situation of human rights defenders reminded the National Government that the authorities cannot prohibit a demonstration on the grounds that “disorder may or may not occur”.<sup>6</sup> Furthermore, they pointed out that, by declaring that demonstrations are offences, “the executive would be assuming excessive powers..., criminalising the right to protest, which is a fundamental human right”.<sup>7</sup>

As underlined by the country’s human rights organisations, the protocol is a clear attempt to limit and discourage the exercise of the right to protest in a context of structural adjustments that threaten to violate human and environmental rights.<sup>8</sup> The ministerial resolution was adopted six days before the Presidency promulgated the Decree of Necessity and Urgency (DNU) No. 70/2023, “Bases for the reconstruction of the Argentine economy.” With this decree, in force since 29 December 2023,<sup>9</sup> the

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4. Human Rights Committee (2020). *General Comment No. 37 on the right to peaceful assembly (article 21)*. CCPR/C/GC/37. 17 September 2020. Para. 44.

5. Government of Argentina (2023). “La ministra de seguridad, Patricia Bullrich, anunció el nuevo protocolo de actuación anti-piquetes”. 14 December 2023. Available at: <https://www.argentina.gob.ar/noticias/la-ministra-de-seguridad-patricia-bullrich-anuncio-el-nuevo-protocolo-de-actuacion-anti>

6. Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders. Communication sent to the Government of the Argentine Republic. OL ARG 3/2024. 23 January 2024. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28762>

7. *Ibid.*

8. CELS (2024). “Con un nuevo protocolo, Patricia Bullrich quiere impedir la protesta social”. 14 December 2024. Available at: <https://www.cels.org.ar/web/2023/12/con-un-nuevo-protocolo-patricia-bullrich-quiere-impedir-la-protesta-social/>

9. As of 22 March 2024, when this report was finalised, the presidential decree of necessity and urgency was in force and its constitutionality was being analysed by the Supreme Court of Justice. On this issue, see: *El País* (2024). “El incierto futuro del megadecreto de Milei tiene en vilo a los argentinos”. 5 February 2024. Available at: <https://elpais.com/argentina/2024-02-05/el-incierto-futuro-del-megadecreto-de-milei-tiene-en-vilo-a-los-argentinos.html> See also, *El País* (2024). “El Senado argentino asesta un duro golpe a Milei con el rechazo del megadecreto de recortes”. 15 March 2024. Available at: <https://elpais.com/argentina/2024-03-15/el-senado-argentino-asesta-un-duro-golpe-a-milei-con-el-rechazo-del-megadecreto-de-recortes.html>

executive adopted more than 300 measures, including the repeal or modification of laws on real estate, labour, environment and public health.<sup>10</sup>

The DNU promotes an intensification of the extractivist model through the elimination of frameworks for the protection of human and environmental rights. Thus, for example, the presidential decree repealed the Land Law (26.737), which defined a “Regime for the Protection of the National Domain over the Ownership, Possession or Tenure of Rural Lands,” which contained restrictions aimed at preventing land grabbing by foreign investment projects. The repeal of this law increases the risk of territorial dispossession of indigenous and peasant communities without title to the lands on which they live and work.<sup>11</sup>

The decree also repealed Laws 24.523 and 24.695 which established public information systems on mining activities. By eliminating these databases, the National Government has weakened existing state controls on mining, while limiting people’s right to access environmental information, including information related to activities that may have adverse impacts on the environment.<sup>12</sup>

The National Government attempted to give the restrictions on the exercise of the right to protest established in its ministerial protocol the force of law. Accordingly, on 27 December 2023, the Presidency registered a bill entitled “Law on Bases and Starting Points for the Freedom of Argentines” which included, among many other points, amendments to the penal code to impose pecuniary and criminal sanctions on those who participate in, organise or coordinate a demonstration that hinders public transport.<sup>13</sup> This bill also provided for the repeal and modification of environmental protection laws, thus enabling extractive activities to be carried out in protected ecosystems such as native forests and glaciers.<sup>14</sup>

Although the bill known as the “omnibus law” was not approved by the House of Representatives, in March 2024, the President publicly announced his intention to resubmit it to Congress for debate and a vote.<sup>15</sup>

In light of the measures adopted and announced by the National Government of the Argentine Republic, this report recalls the duty of the authorities to manage demonstrations of discontent and social unrest from the perspective of dialogue, negotiation and the guarantee of rights.<sup>16</sup> When authorities allow the use of police and punitive measures to deal with disruptive behaviour typical of protests, they limit the channels that citizens can choose to express and amplify their dissent, claims and demands, as well as to participate in the shaping of public affairs. In other words, they weaken one of the key foundations of the democratic functioning of society.<sup>17</sup>

The following report is structured in five parts. The first sets out the context of the lack of protection of indigenous land rights and the expansion of lithium extractivism surrounding the adoption of the reform of Jujuy’s provincial Constitution. The second part analyses how the reform’s approval procedure and

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10. For a detailed analysis of the rights affected by the Presidential Decree DNU 70/2023, see CELS (2024). “Milei’s Decree: unconstitutional and incompatible with international law”. 8 January 2024. Available at: <https://www.cels.org.ar/web/en/publicaciones/mileis-decree-unconstitutional-and-incompatible-with-international-law/>

11. *Ibid.*

12. *Ibid.*

13. For a detailed analysis of the implications of the bill on the exercise of the right to protest, see: CELS (2024). “*Observaciones del CELS sobre los artículos que afectan los derechos relacionados con la protesta y manifestaciones públicas (Arts. 326 a 343 del proyecto del Poder Ejecutivo)*”. 9 January 2024. Available at: [https://www.cels.org.ar/web/wp-content/uploads/2024/01/20240115\\_CELS\\_LEY-OMNIBUS\\_observaciones\\_PROTESTA.docx.pdf](https://www.cels.org.ar/web/wp-content/uploads/2024/01/20240115_CELS_LEY-OMNIBUS_observaciones_PROTESTA.docx.pdf)

14. For a detailed analysis of the implications of the bill on the protection of the environment, see: CELS (2024). “*Observaciones del CELS sobre los artículos que afectan a la protección del medio ambiente (Arts. 241 y 497 al 503 del proyecto del Poder Ejecutivo)*”. 9 January 2024. Available at: [https://www.cels.org.ar/web/wp-content/uploads/2024/01/20240115\\_CELS\\_LEY-OMNIBUS\\_observaciones\\_MEDIO-AMBIENTE-1.pdf](https://www.cels.org.ar/web/wp-content/uploads/2024/01/20240115_CELS_LEY-OMNIBUS_observaciones_MEDIO-AMBIENTE-1.pdf)

15. *La Nación* (2024). “*Milei cita a los gobernadores este viernes para impulsar una nueva ley omnibus, el paquete fiscal y Ganancias*”. 5 March 2024. Available at: <https://www.lanacion.com.ar/politica/el-gobierno-pretende-volver-a-impulsar-la-ley-omnibus-completa-con-el-paquete-fiscal-incluido-y-nid04032024/>

16. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 10.

17. According to the Human Rights Committee, protest is a pillar of democracy, as it allows people to participate collectively in shaping their societies, through the public manifestation of ideas, dissent, complaints and demands. Human Rights Committee (2020). *General Comment No. 37 on the right to peaceful assembly (Article 21)*. CCPR/C/GC/37. 17 September 2020. Para. 1.



its provisions on public lands, water, environment and social protest are incompatible with international human rights standards. The third part describes how indigenous peoples played an important role in the protests against the reform, by mobilising in defence of their rights to land and water. The fourth part contains cases documented by the mission involving the repression and criminalisation of protesters. Finally, the fifth part sets out a series of recommendations addressed to the authorities, companies and international human rights organisations, which are intended to contribute to the effective guarantee of the rights of indigenous peoples and of freedom of peaceful assembly and social protest.

## 2. Context of Jujuy's provincial constitutional reform

### 2.1 Indigenous peoples in Jujuy and lack of protection of their land rights

Jujuy has one of the largest indigenous populations in Argentina. According to official census data, in 2010 the province had a population of 673,307 inhabitants, 52,545 of whom identified themselves as indigenous. In other words, 7.8% of the population of Jujuy recognised themselves as indigenous, more than triple the country's average indigenous population of 2.4%. In rural areas of the province, the percentage of indigenous population was 33%.<sup>18</sup>

Jujuy Province is the ancestral territory of the Atacama, Chicha, Guaraní, Fiscara, Kolla, Omaguaca, Ocloya, Quechua, Tilian, Toara and Toba indigenous peoples. According to the Jujuy Ministry of Human Rights and Indigenous Peoples, these 11 peoples are grouped into more than 300 communities, of which 274 have legal status.<sup>19</sup> A significant proportion of the communities are concentrated in the Puna region, where the population is predominantly from the Atacama, Kolla and Quechua peoples. These communities have maintained their culture and traditional ways of life associated with the transhumant herding of llamas, sheep and goats, small-scale agriculture and the artisanal and communal extraction of salt from the Andean salt flats.

Following the reform of its National Constitution in 1994, the Republic of Argentina recognised the ethnic and cultural pre-existence of indigenous peoples, as well as the communal possession and ownership of land they traditionally occupy.<sup>20</sup> Argentina's regulatory framework also integrates international obligations and standards relating to the protection of indigenous peoples' rights. In this regard, the constitutional reform of 1994 conferred constitutional rank on international human rights treaties, including the American Convention on Human Rights,<sup>21</sup> which in Article 21 recognises the right of indigenous peoples to collective property.<sup>22</sup>

In addition, the state of Argentine ratified ILO Convention No. 169, which was approved and passed into national law by the National Congress through Law 24.071 of 1992. This instrument enshrines a series of rights in favour of indigenous peoples, including the recognition of their rights of ownership and possession over their traditionally occupied lands and territories, as well as the protection of their participation in the use, administration and conservation of their natural resources.

It also establishes that indigenous peoples have the right to define their development priorities, to participate in decision-making on policies that concern them, and to be consulted in a free, prior, informed manner on measures that may affect them directly, including the implementation of projects

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18. INDEC (2015). "Censo Nacional de Población, Hogares y Viviendas 2010: Censo del Bicentenario. Pueblos Originarios. Región Noroeste Argentino". 2015. Pág. 33 y 34. Available at: [https://www.argentina.gob.ar/sites/default/files/pueblos\\_originarios\\_noa.pdf](https://www.argentina.gob.ar/sites/default/files/pueblos_originarios_noa.pdf)

19. Ministry of Human Rights and Indigenous Peoples (2023). Technical Report 3. *Comunidades Indígenas con relevamiento territorial comunitario indígena*. March 2023. p. 3. Available at: <http://derechoshumanosypueblos.jujuy.gob.ar/wp-content/uploads/sites/79/2023/09/Informe-T%C3%A9cnico-N%C2%B0-3-Comunidades-Abor%C3%ADgenes-con-RETECI.pdf>

20. In this regard, Article 75(17) of the Constitution of Argentina establishes that the Congress is responsible for recognising "the ethnic and cultural pre-existence of the Argentine indigenous Peoples," "the legal status of their communities, and the communal ownership and possession of the lands they traditionally occupy."

21. According to Article 75(22) of the Constitution of Argentina, international human rights treaties, including the American Convention on Human Rights, "have constitutional rank, do not derogate from any article of the first part of this Constitution and are to be understood as complementary to the rights and guarantees recognised by it."

22. In the words of the Inter-American Court of Human Rights (IACtHR): "indigenous communities might have a collective understanding of the concepts of property and possession, in the sense that ownership of the land 'is not centred on an individual but rather on the group and its community'. This notion of ownership and possession of land does not necessarily conform to the classic concept of property, but deserves equal protection under Article 21 of the American Convention." I/A Court H.R. *Case of Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of 29 March 2006. Series C No. 146. Para. 120.

for the exploration or exploitation of natural resources in their territories.<sup>23</sup>

Despite the recognition of the right to communal property in the Argentinean legal system, most indigenous peoples in Jujuy find themselves in a situation of legal insecurity in relation to the territories they have ancestrally owned. As of July 2023, only 73 of the more than 300 indigenous communities in the province held communal property titles.<sup>24</sup> This means that approximately 70% of them are settled on land that has not been recognised by the authorities to be under indigenous ownership. In most cases, indigenous ancestral territories are legally considered “public lands”, i.e., property that is not in the “private domain of natural or legal persons” and therefore belongs to the state.<sup>25</sup>

The overlap between indigenous ancestral territories and public lands is a problem that has been identified by provincial authorities for at least 50 years. In this regard, in 1974, the Jujuy Provincial Legislative Assembly ordered that public lands in the Puna and Quebrada de Humahuaca regions be “awarded preferentially to the natives,” considering that they “belonged to indigenous communities.”<sup>26</sup>

There is a generalised context in Argentina of lack of protection of indigenous land rights, which was recognised by the state itself in 2006 with the adoption of National Law 26.160. This law was enacted in response to an emergency situation in terms of indigenous possession and ownership caused by evictions and other forms of dispossession experienced by the communities, as well as by the lack of effective recognition of their land rights.<sup>27</sup>

To address this situation, Law 26.160 ordered the suspension of judgments and procedural or administrative acts involving the eviction from lands traditionally used by indigenous communities. It also instructed the National Institute of Indigenous Affairs (INAI) to carry out a “technical-legal-cadastral survey” of the indigenous territories with the aim of achieving the “legalisation of ownership”.<sup>28</sup> The suspension of evictions was extended until 2013 by National Law 26.554 of 2009. Subsequently, Presidential Decree 805/2021 renewed the validity of this regulation until 2025.

Despite the provisions of Law 26.160, evictions of indigenous communities in Jujuy were carried out until December 2015,<sup>29</sup> almost a decade after the suspension of evictions had been ordered.<sup>30</sup> As regards the survey of the ownership situation of indigenous territories, as of March 2023 this process had been completed in only about 60% of the existing communities in the province, and in about 20% of them it had not even begun.

According to the Ministry of Human Rights of Indigenous Peoples of Jujuy, by the first quarter of 2023, 180 indigenous communities had their territories surveyed, while in 39 communities this procedure was underway.<sup>31</sup> In the case of 59 communities, the Ministry highlighted that their territories had not been

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23. On this point, see Articles 6, 7, 13, 14 and 15 of ILO Convention No. 169.

24. Ministry of Human Rights and Indigenous Peoples (2023). Technical Report No. 4. *Comunidades indígenas de Jujuy con decreto provincial de reconocimiento de posesión y propiedad comunitaria de las tierras que ocupan*. July 2023. p. 3. Available at: <http://derechoshumanosypueblos.jujuy.gob.ar/wp-content/uploads/sites/79/2023/09/Informe-T%C3%A9cnico-N%C2%B0-4-Comunidades-con-Decreto-de-Reconocimiento.pdf>

25. Article 2 of Provincial Law 3169/74, which established the Public Land Regime in Jujuy.

26. *Ibid.* Article 4.

27. In the rationale for submitting the bill to Congress, it was stated that this law sought to “contribute to the policies that are already being implemented but that have not yet achieved their objective of recognising the communal ownership of the lands occupied by the communities.” In particular, it was highlighted that the indigenous communities were “victims of evictions and conflicts in relation to their effective possession [of the lands],” which meant that the solutions sought in the matter were “belated, ineffective or merely palliative for a territorial situation made worse by the evictions or conflicts experienced by the community.” I/A Court H.R. (2020). *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment of 6 February 2020. Para. 54.

28. Articles 3 and 4 of Law 26.160 of 2006.

29. Jujuy Government (2023). “*Tierras: Jujuy es escenario de un histórico proceso de reconocimiento y ampliación de derechos de pueblos indígenas*”. 31 July 2023. Available at: <https://prensa.jujuy.gob.ar/pueblos-indigenas/tierras-jujuy-es-escenario-un-historico-proceso-reconocimiento-y-ampliacion-derechos-pueblos-indigenas-n112080>

30. It was only on 27 October 2016 that the Legislative Assembly of Jujuy approved Law 5968, by which the province adhered to the provisions of National Law 26.160 and the extensions enshrined in National Laws 26.554 and 26.894.

31. Ministry of Human Rights and Indigenous Peoples (2023). Technical Report 3. *Comunidades Indígenas con relevamiento territorial comunitario indígena*. March 2023. pp. 5 and 6. Available at: <http://derechoshumanosypueblos.jujuy.gob.ar/wp-content/uploads/sites/79/2023/09/Informe-T%C3%A9cnico-N%C2%B0-3-Comunidades-Abor%C3%ADgenes-con-RETECI.pdf>

surveyed, nor did they have titles proving their collective ownership.<sup>32</sup> More than half of the communities affected by this state omission live in the Puna region and belong to the Kolla and Quechua peoples.<sup>33</sup>

In 2020, the Inter-American Court of Human Rights (IACHR Court) concluded that the existing legal regulations in Argentina were insufficient and inadequate to provide legal certainty to the right to indigenous communal property when faced with the actions of third parties or state agents themselves.<sup>34</sup> For this reason, the Court ordered the state of Argentina to immediately adopt all legislative and/or administrative measures necessary to realise the land rights of indigenous peoples,<sup>35</sup> including the demarcation, delimitation and titling of their ancestral territories.<sup>36</sup>

According to the IACHR Court, land titling must protect the collective nature of ownership of indigenous territories, the administration of which must be autonomous, and this title cannot be taken away by proscription, seized or transferred, or subject to liens or attachments.<sup>37</sup> It must also ensure the security and permanence of indigenous peoples' control and use of the natural resources that are necessary for their survival, development and the preservation of their way of life.<sup>38</sup>

## 2.2 Lithium extractivism in Jujuy: impacts on indigenous peoples' rights and on the environment

Jujuy's constitutional reform was promoted by the provincial government in a context of strong international pressure for the development of the lithium industry. The mineral has gained international relevance for its use in the manufacture of lithium-ion batteries, which are found in electric vehicles, mobile devices and renewable energy storage technologies, such as solar panels. According to the International Energy Agency (IEA), global demand for lithium will increase by up to 40 times, depending on the transport and climate policies implemented by countries.<sup>39</sup>

Argentina has the largest lithium reserves in the world after Chile and Australia.<sup>40</sup> In 2022, it produced approximately 33,000 tonnes of lithium carbonate equivalent (LCE) with an export value of USD 696 million. The country ranked as the world's fourth largest producer behind Australia, Chile and China.<sup>41</sup>

Lithium has been extracted in Argentina since the late 1990s in the Puna. This high mountain ecoregion covers 60% of Jujuy Province<sup>42</sup> and is the ancestral territory of the Kolla, Atacama and Quechua indigenous peoples. It is also home to aquatic ecosystems of great fragility and environmental importance, such as the high Andean wetlands, made up of a complex network of salt flats, lagoons, meadows and wetlands.<sup>43</sup>

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32. *Ibid.* p. 9.

33. According to official estimates, of the 59 indigenous communities with legal status that do not have a technical-legal-cadastral survey of their territories, nor a community property title, 33 are from the Puna region, 13 from the Yungas region, 11 from the Quebrada de Humahuaca region and 2 from the Valles. *Ibid.* pp. 19-23.

34. I/A Court H.R. (2020). *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. Judgment of 6 February 2020. Para. 353.

35. *Ibid.* Paras 353 and 354.

36. *Ibid.* Paras 96 and 97.

37. *Ibid.* Para. 327.

38. *Ibid.* Para. 94.

39. International Energy Agency (2021). "The Role of Critical Minerals in Clean Energy Transitions". Available at <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions/executive-summary>

40. USGS (2023): Mineral Commodity Summaries. Available at: <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-lithium.pdf>

41. Rosario Stock Exchange (2023). "El Complejo Litio podría ser el quinto complejo exportador argentino antes que termine la década". 1 September 2023. Available at: <https://www.bcr.com.ar/es/print/pdf/node/100791>

42. Government of Jujuy. *Geografía de Jujuy*. Available at: <https://jujuy.gob.ar/geografia/>

43.

Plurinational Andean Salt Flat Observatory (2021). "Salares andinos. Ecología de saberes por la protección de nuestros salares y Humedales". pp. 53, 72 and 100. Available at: [https://cl.boell.org/sites/default/files/2021-03/Libro\\_Salares%20Andinos\\_version\\_definitiva\\_castellano.pdf](https://cl.boell.org/sites/default/files/2021-03/Libro_Salares%20Andinos_version_definitiva_castellano.pdf)



Salinas Grandes Andean Salt Flat. August 2023 © Teresa Hoffman.

The Andean salt flats of Argentina, Chile and Bolivia hold approximately 70% of world reserves of lithium in the form of brines.<sup>44</sup> These underground deposits of water and salts within the salt flats have high concentrations of lithium, and their exploitation is the easiest and most economically profitable of all methods for extracting the mineral. For this reason, the Puna region shared by the three countries is also known as the “Lithium Triangle”.<sup>45</sup>

According to the National Mining Secretariat, in May 2022, there were more than 40 lithium brine projects in Argentina, spread across the Puna provinces of Jujuy, Catamarca and Salta. Two of these were in the extraction stage, six were under construction, approximately 10 were in advanced exploration and the remainder were at the initial exploration or prospection stage.<sup>46</sup>

The extraction of lithium from brine has a high water footprint and is highly polluting. It requires large volumes of water that are contaminated with substances such as lime, caustic soda, sodium carbonate and calcium hydroxide,<sup>47</sup> making it impossible to consume and use for agriculture. It is estimated that the production of one tonne of lithium carbonate requires approximately 300,000 litres of fresh water.<sup>48</sup> The enormous amount of water required for lithium mining severely impacts the water balance of an ecosystem characterised by high solar radiation and low rainfall, where water is scarce and precious.

44. CLACSO/IEALC (2019). “*Litio en Sudamérica. Geopolítica, energía y territorios*”. 2019. p. 16. Available at: [https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio\\_en\\_Sudamerica.pdf](https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio_en_Sudamerica.pdf)

45. *Ibid.* pp. 16, 53, 54 and 223.

46. National Mining Secretariat (2022). “*Estado de la Minería en Argentina*”. May 2022. Available at: [https://www.argentina.gob.ar/sites/default/files/estado\\_del\\_sector\\_minero\\_secmin\\_mayo\\_2022\\_1.pdf](https://www.argentina.gob.ar/sites/default/files/estado_del_sector_minero_secmin_mayo_2022_1.pdf)

47. Plurinational Andean Salt Flat Observatory (2021). “*Salares andinos. Ecología de saberes por la protección de nuestros salares y Humedales*”. pp. 53, 54, 118, 119. Available at: [https://cl.boell.org/sites/default/files/2021-03/Libro\\_Salares%20Andinos\\_version\\_definitiva\\_castellano.pdf](https://cl.boell.org/sites/default/files/2021-03/Libro_Salares%20Andinos_version_definitiva_castellano.pdf) See also, CLACSO/IEALC (2019). “*Litio en Sudamérica. Geopolítica, energía y territorios*”. 2019. p. 225. Available at: [https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio\\_en\\_Sudamerica.pdf](https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio_en_Sudamerica.pdf)

48. Marconi, P.; Clark, A. (2023). FARN Environmental Report 2023. Available at: <https://farn.org.ar/iafonline2023/articulos/3-1-humedales-altoandinos-o-mineria-de-litio-en-salmuera/>

Lithium extraction methods also jeopardise the sustainability of high Andean wetlands and, consequently, the present and future availability of water in the region. Since the brines are part of the water system of the salt flats, drilling operations cause a phenomenon known as “cross-contamination.” In other words, extraction affects the boundaries that separate the brine from the fresh water available in the basin, leading to salinisation.<sup>49</sup> It also causes a reduction in the level of salt flats, and displacement of freshwater, resulting in the disappearance of meadows, lagoons and other water bodies.<sup>50</sup>

The impact of lithium exploration and extraction in the high Andean wetlands directly affects the Kolla, Atacama and Quechua indigenous peoples, whose relationship with these ecosystems has been essential for the development of their traditional ways of life. In these ecosystems, the communities find good quality water, food and pastures for raising domestic livestock, as well as protection from the effects of climate fluctuations.<sup>51</sup> For centuries, the indigenous peoples of the Puna have coexisted with these ecosystems, promoting their conservation<sup>52</sup> and considering them an essential part of their identity, world view and cultural practices.<sup>53</sup>

## 2.2.1 Violation of the right to free, prior and informed consultation when granting concessions to lithium exploration projects

Jujuy Province declared lithium a strategic natural resource through Decree No. 7592/11 of 2011. As grounds for this declaration, the decree established that the province possessed reserves of great value and a geostrategic position in the “Lithium Triangle”, and therefore that the mineral should generate sustained growth in Jujuy’s economic development. It reaffirmed that, in accordance with Article 124 of the National Constitution of Argentina, the province has the “original dominion” over lithium.<sup>54</sup>

To date, Jujuy Province has played a leading role in promoting lithium mining, through alliances between the public company *Jujuy Energía y Minería Sociedad del Estado* (JEMSE) and transnational companies. The first project for the extraction of the mineral was developed in the Olaroz salt flat in the Susques department, territory of the Atacama people, and was implemented by the company *Sales de Jujuy*, with the participation of JEMSE (8.5%), the Australian company *Orocobre* (65%) and the Japanese company Toyota (25%).<sup>55</sup> In addition, operations began on the *Cauchari-Olaroz* project, developed by the mining company of the *Exar S.A.* project, with Canadian (*Lithium Americas*) and Chinese (*Ganfeng Lithium*) capital and JEMSE’s minority participation.<sup>56</sup>

The Salinas Grandes and Laguna Guayatayoc Basin, home to 33 Kolla and Atacama communities with a population of around 7,000 people, is another area which has been under pressure for

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49. Plurinational Andean Salt Flat Observatory (2021). “*Salares andinos. Ecología de saberes por la protección de nuestros salares y Humedales*”. pp. 53, 54, 118, 119. Available at: [https://cl.boell.org/sites/default/files/2021-03/Libro\\_Salares%20Andinos\\_version\\_definitiva\\_castellano.pdf](https://cl.boell.org/sites/default/files/2021-03/Libro_Salares%20Andinos_version_definitiva_castellano.pdf) See also, CLACSO/IEALC (2019). “*Litio en Sudamérica. Geopolítica, energía y territorios*”. 2019. p. 225. Available at: [https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio\\_en\\_Sudamerica.pdf](https://biblioteca-repositorio.clacso.edu.ar/bitstream/CLACSO/15276/1/Litio_en_Sudamerica.pdf)

50. *Ibid.*

51. Plurinational Andean Salt Flat Observatory (2021). “*Salares andinos. Ecología de saberes por la protección de nuestros salares y Humedales*”. p. 53. Available at: [https://cl.boell.org/sites/default/files/2021-03/Libro\\_Salares%20Andinos\\_version\\_definitiva\\_castellano.pdf](https://cl.boell.org/sites/default/files/2021-03/Libro_Salares%20Andinos_version_definitiva_castellano.pdf)

52. *Ibid.*

53. For example, the Kolla and Atacama Communities of the Salinas Grandes and Laguna de Guayatayoc Basin in Jujuy have affirmed that the salt flats are part of their history and identity. From their perspective, “salt is not an economic resource, but a ‘living being’: it has a maturation cycle, just like crops.” Kachi Yupi. *Procedimiento de consulta y consentimiento previo, libre e informado para las comunidades indígenas de la Cuenca de Salinas Grandes y Laguna de Guayatayoc* (2015). p. 13. Available at: <https://farn.org.ar/kachi-yupi-huellas-de-la-sal/>

54. According to Article 124 of the National Constitution of Argentina, “Provinces have the original dominion over the natural resources existing in their territory.”

55. Sales de Jujuy is a joint venture between the Australian company Allkem Limited, the Japanese group Toyota Stsusho Corporation (TTC) and Jemse SE. See: [https://mapa.conflictosmineros.net/ocmal\\_db-v2/nombres/view/2277](https://mapa.conflictosmineros.net/ocmal_db-v2/nombres/view/2277) and Marchegiani P., Höglund Hellgren, J. and Gómez L. (2019). *Lithium extraction in Argentina: a case study on the social and environmental impacts*. Available at: [https://farn.org.ar/wp-content/uploads/2019/05/DOC\\_LITHIUM\\_ENGLISH-1.pdf](https://farn.org.ar/wp-content/uploads/2019/05/DOC_LITHIUM_ENGLISH-1.pdf)

56. This is a project with an estimated investment of 741 million dollars, with a projected production of between 60,000 and 80,000 tonnes of lithium carbonate. See: <https://lithioargentina.com/comunidades/jujuy-y-el-litio-como-se-desarrolla-y-claves-de-su-crecimiento-en-la-zona/>

lithium development. In 2009, the Australian company *Orocobre* started to conduct exploration in Salinas Grandes. The presence of machinery and workers, the impacts caused by the drilling of wells in the salt flats, and the lack of free, prior and informed consultation led to the formation of the “Board of the 33 Communities of the Salinas Grandes and Laguna Guayatayoc Basin” in 2010. Since then, the communities have been expressing their resistance to lithium mining in their ancestral territories.

This resistance has led to various actions, including the filing of lawsuits at the provincial and federal levels, as well as complaints to the UN Committee on Economic, Social and Cultural Rights and the Inter-American Commission on Human Rights (IACHR).<sup>57</sup> In 2015, with the support of various non-governmental organisations, the communities living in the Salinas Grandes and Laguna de Guayatayoc Basin drew up the Kachi Yupi (*Huellas de Sal*) Protocol for Consultation and Free Prior Informed Consent.<sup>58</sup> This protocol was presented to the authorities with the aim of being recognised and used as the culturally appropriate procedure for the coordination between public authorities, companies and communities.

Although the Jujuy authorities claim to recognise the validity of this protocol,<sup>59</sup> in practice the province has continued to grant lithium exploration concessions in the salt flat basin without consulting the indigenous communities. For example, the Canadian mining company Dajin Resources was granted an exploration concession for 93,000 hectares in Salinas Grandes in 2016. The same occurred in 2017, in the Laguna de Guayatayoc area, with an exploration project by the Australian company Horizon Resources announcing the “Guayatayoc Norte 2017” project.<sup>60</sup>

The international fact-finding mission was informed of the approval in March 2023 of a lithium exploration project by the companies *Lithos S.A.* and JEMSE on 11,000 hectares that form part of the Kolla de Lipán community’s territory in Salinas Grandes.<sup>61</sup> As in previous projects, these initiatives are located on indigenous ancestral territories, which are considered by Jujuy Province as “public lands”, since the authorities have not made any progress in terms of titling them as community property.

During the visit to the community of Lipán, in the locality of El Moreno, Tumbaya department, the international mission found that exploration had been approved without complying with basic international standards for prior consultation. Given the direct impact that lithium exploration and mining would have on the existence, enjoyment, use and value of the ancestral indigenous territory, the authorities should have consulted the communities in a free, prior and informed manner.<sup>62</sup> This consultation should have been undertaken in good faith, using culturally-appropriate procedures, involving the representative institutions of the communities, respecting their traditional decision-making practices, and with the aim of reaching an agreement<sup>63</sup> or obtaining their consent.<sup>64</sup>

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57. The latter was declared admissible by the IACHR and is currently being processed pending a report on the merits.

58. Kachi Yupi. *Procedimiento de consulta y consentimiento previo, libre e informado para las comunidades indígenas de la cuenca de Salinas Grandes y Laguna de Guayatayoc* (2015). Available at: <https://farn.org.ar/kachi-yupi-huellas-de-la-sal/>

59. Information provided by Natalia Sarapura, Jujuy Minister of Human Rights and Indigenous Peoples, at a meeting held on 25 August 2023 in San Salvador de Jujuy during the fact-finding mission.

60. Marchegiani et al. (2019); Jerez Henriquez (2018). “*Impacto socioambiental de la extracción de litio en las cuencas de los salares altoandinos del cono sur*”. Available at <https://www.ocmal.org/wp-content/uploads/2018/08/InformeLitio.pdf>

61. Plurinational Andean Salt Flat Observatory (2023). Press release: “*Comunidades de Angosto-El Moreno en Argentina alertan irregularidades en aprobación de proyecto minero de exploración de litio*”. 13 March 2023. Available at: <https://salaes.org/comunidades-de-angosto-el-moreno-en-argentina-denuncian-grave-irregularidad-en-aprobacion-de-proyecto-minero-de-exploracion-de-litio/>

62. According to the IACHR Court, states must ensure that third parties or agents of the state abstain from carrying out “actions, infrastructure works or undertakings on indigenous territory that could affect its existence, value, use or enjoyment by the communities.” In cases where such acts are carried out, they must be preceded by free, prior and informed consultation of the indigenous communities. I/A Court H.R. (2020). *Case of Indigenous Communities Members of the Lhaka Honhat (“Our Land”) Association v. Argentina*. Judgment of 6 February 2020. Para. 328.

63. Article 6 of ILO Convention No. 169. In the same vein, I/A Court H.R., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of 27 June 2012. Series C No. 245. Para. 177.

64. According to the IACHR Court, states have an obligation to consult and obtain the free, prior and informed consent of Indigenous Peoples “regarding large-scale development or investment projects that would have a major impact within [the] territory.” I/A Court H.R., *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Para. 134.



Visit of the international observation mission to the Kolla Lipán indigenous community in Salinas Grandes. August, 2023  
© Briseida Aragón Juárez

According to testimonies gathered in meetings with community representatives, as well as documents handed over to the international fact-finding mission, the project was approved without prior information, during a meeting held with a few people from the community, convened by the Municipal Commissioner of El Moreno, with the presence of the provincial government and representatives of the companies JEMSE and *Lithos S.A.* The representative institutions of the community did not participate in the meeting.

In terms of the decision-making process, the authorities organised an individual and secret vote, after the companies offered jobs to attendees. This procedure was a clear violation of the agreements reached by all the communities of the Salinas Grandes and Guayatayoc Basin, according to which none of them would negotiate individually on any issue affecting the natural resources of the territory.<sup>65</sup>

In the near future, the Kolla and Atacama peoples are expected to continue to face threats of territorial dispossession caused by the expansion of lithium extractive projects over the Salinas Grandes and Laguna de Guayatayoc Basin. According to an indigenous leader from the area who met with the mission, by 2023 at least 30 companies had submitted applications for lithium exploration in that part of the province alone. He said that, given their awareness of what has happened in other salt flats where lithium is being extracted, the communities will continue to resist such applications.

## 2.3 Racism and structural discrimination against indigenous peoples in Argentina

Racism is a persistent problem that deeply affects the indigenous and Afro-descendant populations of Argentina. This form of discrimination is not only manifested in individual acts, but is also rooted in the country's institutional structures and practices.

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65. Plurinational Andean Salt Flat Observatory (2023). Press release: "Comunidades de Angosto-El Moreno en Argentina alertan irregularidades en aprobación de proyecto minero de exploración de litio". 13 March 2023. Available at: <https://salares.org/comunidades-de-angosto-el-moreno-en-argentina-denuncian-grave-irregularidad-en-aprobacion-de-proyecto-minero-de-exploracion-de-litio/>



The recent political crisis in Jujuy exacerbated a worrying pattern of persecution and targeted violence against indigenous peoples, in flagrant violation of internationally recognised human rights.<sup>66</sup> In 2016, the UN Special Rapporteur on contemporary forms of racism drew attention to the alarming levels of repression exercised in different parts of the country against mobilisations by indigenous groups to claim their rights, as well as the impunity enjoyed by security forces in cases of racial discrimination.<sup>67</sup>

On the latter point, in May 2023, the UN Committee on the Elimination of Racial Discrimination (CERD) published a report on the situation in Argentina,<sup>68</sup> praising certain measures adopted by the country, such as the establishment of the Indigenous Peoples' Interministerial Board and of the National Programme on People of African Descent and Human Rights. However, it expressed concern about the lack of information on cases of direct application of the Convention by Argentinean courts and recommended that the state take appropriate measures to ensure its systematic application in all state institutions.

In addition, it urged the state of Argentina to strengthen the National Institute to Combat Discrimination, Xenophobia and Racism, to guarantee the full and effective participation of indigenous peoples and Afro-descendant communities in the institutions that represent them, and to provide the National Institute of Indigenous Affairs (INAI) with sufficient resources to fulfil all aspects of its mandate.

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66. United Nations Declaration on the Rights of Indigenous Peoples, ratified by Argentina through Law No. 26.554, approved on 3 November 2009 and promulgated on 1 December 2009, and the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Argentina through Law No. 18.168, approved on 18 November 1969 and promulgated on 17 December 1969.

67. *UN News* (2016). "La situación de los pueblos indígenas en Argentina es terrible". 24 May 2016. Available at: <https://news.un.org/es/audio/2016/05/1414611>

68. Committee on the Elimination of Racial Discrimination (2023). *Concluding observations on the combined twenty-fourth to twenty-sixth periodic reports of Argentina*. 24 May 2023. CERD/C/ARG/CO/24-26.

# 3. Jujuy's provincial constitutional reform and its impact on human and environmental rights

## 3.1 Approval of the constitutional reform without prior consultation and effective participation of indigenous peoples

The reform of Jujuy's provincial Constitution was approved on 20 June 2023. It included amendments on issues of particular relevance to the interests and rights of indigenous peoples, such as the administration and disposal of public lands, the water regime, environmental conservation, and the exercise of the right to peaceful assembly and social protest. Despite the above, the international fact-finding mission found that there were no mechanisms in place for prior consultation and participation of indigenous peoples to ensure that their needs, demands and proposals were incorporated into the new constitutional provisions and their formulation and decision making.

According to international human rights law, all regulations that may directly affect indigenous peoples must be subject to prior consultation with them, insofar as they establish mandates, definitions and criteria that may have an impact on their environments and ways of life.<sup>69</sup> The effective guarantee of this right requires that indigenous peoples be consulted "at all stages of the process of producing regulations."<sup>70</sup> To this end, they must have timely access to all the information necessary to understand the scope of these measures, as well as to request additional information or technical advice.<sup>71</sup>

Indigenous peoples also have the right to participate, on an equal footing, "in decision-making on matters and policies that affect or could affect their rights."<sup>72</sup> To this end, states must ensure the establishment of mechanisms for the direct involvement of indigenous communities, "within their own institutions and according to their values, practices, customs and forms of organisation."<sup>73</sup>

In the case of decisions on environmental matters, the right to participation is reinforced. In accordance with the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, also known as the Escazú Agreement,<sup>74</sup> people, especially vulnerable groups such as indigenous peoples, have the right to access information, meaningful participation and justice in environmental matters in order to prevent and/or redress human rights violations and impacts on the environment.

From the outset, the constitutional reform process violated the rights of indigenous peoples. The adoption of Law 6302 of 27 September 2022, through which the Legislative Assembly of Jujuy Province declared the need for constitutional reform, was not preceded by free and informed consultation. Nor were the indigenous peoples able to participate effectively in the formation of the Constitutional Convention. According to testimonies gathered by the international fact-finding mission, the communities did not have the necessary information to understand the implications of the constitutional reform process, which left them at a disadvantage and without real representation.

In this regard, the testimony of a leader of one of the communities of the Salinas Grandes and Laguna Guayatayoc Basin is illustrative. He told the fact-finding mission: "Most of the people did not understand the constitutional aspect. They went to vote blindly, and that is how the members of the Constitutional Convention were elected, who later worked in support of the government. We participated in the election

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69. I/A Court H.R. (2020). *Case of Indigenous Communities Members of the Lhaka Honhat ("Our Land") Association v. Argentina*. Judgment of 6 February 2020. Para. 355. In the same vein, ILO (2013). *Understanding the Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. pp. 12-13. Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_205230.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_205230.pdf)

70. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. A/HRC/12/34/Add.6, Appendix A. 5 October 2009. Para. 20.

71. *Ibid.* Para. 46.

72. I/A Court H.R. (2005). *Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 23 June 2005. Series C No. 127. Para. 225.

73. *Ibid.*

74. The Escazú Agreement was approved and integrated into the Argentine legal system through Law 27.566 of 2020.

of members through a public vote in favour of constituents who were already on the lists of the political parties. That is how Morales [Jujuy Governor] is using it to say that we elected our constituents, but we did not genuinely participate.”

Once the constitutional process had started, approval of the reform was rushed. Although by law debates were supposed to last 90 days, the new constitutional text was approved in less than a month. The Constitutional Convention was inaugurated on 22 May 2023 and was presided over by the then Provincial Governor,<sup>75</sup> Gerardo Morales, who was also the promoter of the reform.<sup>76</sup> On 16 June, debates were concluded and the Convention approved the constitutional reform project, with 40 of the 48 possible votes.<sup>77</sup> On 20 June the new constitutional provisions were sworn into law.

In order to carry out its work, the Constitutional Convention did not establish bodies to consult and ensure the participation of indigenous peoples. Of the eight working commissions foreseen in its internal regulations, none was tasked with listening to indigenous communities and involving them in the reform. According to an indigenous reference person interviewed by the international fact-finding mission: “There was no commission set up to focus on this specific aspect in advance; that part was not done. It was completely ignored.”

Although Article 33 of the Constitutional Convention’s internal regulations established that the commissions should “listen to the different sectors of the community directly concerned by each of the issues within their remit,” this provision was not accompanied by a procedure for its implementation. In other words, indigenous peoples did not have the necessary clarifications to be able to participate, including information on the conditions for access to the commissions, as well as the forms and times of their interventions.

The constitutional reform process was also characterised by a lack of information and publicity regarding both the debates and the text of the reform project itself, which limited the opportunities for indigenous peoples, and citizens in general, to learn about the proposal, publicly debate and discuss its contents, and present their observations and concerns. It was not until 2 June 2023, 12 days after debates began, that communities had access to the draft reform through unofficial channels.

However, this text did not contain proposals relating to all the articles to be reformed. Thus, for example, the amendments proposed to the article on the rights of indigenous peoples (Article 50 on “protection of indigenous peoples”)<sup>78</sup> were presented on 10 June 2023 as part of the Opinion of the Commission on “Declarations, Rights, Duties and Constitutional Guarantees”.

The various restrictions on indigenous peoples’ participation in the constitutional reform process were summed up by a leader of one of the communities of the Salinas Grandes and Laguna de Guayatayoc Basin, who said: “We did not have access in a prompt and appropriate manner, we were not consulted about the reform and its concrete approval. The Morales [Jujuy Governor] government never set up a commission to deal specifically with this issue [the reform] and to visit the communities, throughout the province, hold workshops and debates so that people could become familiar with its provisions and make a decision. That didn’t happen.”

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75. In order to hold the positions of Head of the Provincial Government and President of the Constitutional Convention at the same time, the Governor of Jujuy had to request a special permission, which was granted by the Provincial Legislative Assembly. *El País* (2023). “La reforma exprés de una Constitución provincial activa las protestas en el norte de Argentina”. 20 June 2023. Available at: <https://elpais.com/argentina/2023-06-20/la-reforma-expres-de-una-constitucion-provincial-activa-las-protestas-en-el-norte-de-argentina.html>

76. *Clarín* (2023). “Gerardo Morales impulsa una nueva constitución en Jujuy que le dará más poder a los oficialismos”. 3 June 2023. Available at: [https://www.clarin.com/politica/gerardo-morales-impulsa-nueva-constitucion-jujuy-dara-poder-oficialismos\\_0-Vv6Vt1XqzT.html](https://www.clarin.com/politica/gerardo-morales-impulsa-nueva-constitucion-jujuy-dara-poder-oficialismos_0-Vv6Vt1XqzT.html)

77. *El País* (2023). “La reforma exprés de una Constitución provincial activa las protestas en el norte de Argentina”. 20 June 2023. Available at: <https://elpais.com/argentina/2023-06-20/la-reforma-expres-de-una-constitucion-provincial-activa-las-protestas-en-el-norte-de-argentina.html>

78. Jujuy’s provincial Constitution, which dates back to 1986, provided in its Article 50 for the province’s duty to “protect the indigenous peoples by means of adequate legislation conducive to their integration and economic and social progress.”



"No to the reform. Indigenous peoples". Demonstration of indigenous communities against constitutional reform held on national route 9 at the access to La Quiaca. August 23, 2023 © David Mejía-Canales

The violation of the rights to free, prior and informed consultation and to participation continued throughout the constitutional reform process, despite the express requests of the indigenous peoples to have mechanisms for the effective exercise of their rights. In this regard, the international fact-finding mission had access to a petition, submitted on 31 May 2023, in which representatives of the Guaraní, Ocloya, Tilian, Omaguaca, Kolla, Quechua and Chicha peoples asked to be heard by the pro-government bloc of the Constitutional Convention, as well as for the application of international principles on the right to free, prior and informed consultation.

Subsequently, on 1 June 2023, representatives of the above seven indigenous peoples established the Plurinational Constitutional Convention, an organisational platform aimed at promoting respect for their world views in the constitutional reform. Within the framework of this platform, the indigenous peoples agreed to deliver formal submissions to the three party blocs represented in the Constitutional Convention to demand the guarantee of their right to free, prior and informed consultation.<sup>79</sup>

Despite the presentation of these formal submissions, the reform process continued and the new constitutional provisions were approved without taking into account the communities' demands. According to a testimony gathered by the fact-finding mission, "When the constituents were already working, we went to San Salvador de Jujuy and asked to present submissions, stating that we had not been consulted in a free, prior and informed manner and that for us this reform would have no validity whatsoever. They received our submissions, but the reform was approved anyway."

According to the information gathered by the international fact-finding mission, the authorities established only two contacts with indigenous peoples during the constitutional reform process, which were not aimed at effectively guaranteeing their rights, but rather at giving a semblance of participation in the constitutional reform. First, the Jujuy Ministry of Human Rights and Indigenous Peoples reportedly

79. *Jujuy Dice* (2023). "Se conformó la convención constituyente plurinacional", 1 June 2023. Available at: <https://www.jujuydice.com.ar/noticias/jujuy-3/se-conformo-la-convencion-constituyente-plurinacional-53432>

sent each indigenous community in the province a document endorsing the reform project several days before its text and contents became public information.<sup>80</sup>

It appears that the document was a model deed, by which the communities recorded their adherence to the entire reform, after concluding that Article 50 of the provincial Constitution (on “the protection of indigenous peoples”) should be brought into line with Article 75(17) of the Constitution of Argentina (on the ethnic and cultural pre-existence of indigenous peoples).<sup>81</sup> Indigenous leaders denounced these documents as a deceptive manoeuvre to obtain “consent to the violation of our acquired rights,” and called on communities not to sign them.<sup>82</sup>

Secondly, during the reform process, the Constitutional Convention held a meeting with 10 of the 20 Jujuy Councillors on Indigenous Participation.<sup>83</sup> Such hearings failed to comply with the requirements of ILO Convention No. 169. As the Special Rapporteur on the rights of indigenous peoples pointed out, one-off meetings with indigenous leaders do not constitute a systematic consultation process in which indigenous peoples have opportunities to participate in “a genuine exchange with continuity and time to at least have the possibility of reaching agreements.”<sup>84</sup>

Setting up a meeting with half of the members of the Council on Indigenous Participation cannot be considered a culturally appropriate consultation procedure that involves indigenous peoples’ representative institutions and respects their traditional methods of decision-making.<sup>85</sup> The Councillors were appointed to represent the communities in the design and implementation of INAI’s policies and programmes, but not for the discussion of constitutional reform.<sup>86</sup> Moreover, most of them were elected before the pandemic, so by the time of the hearing with the Constitutional Convention, their terms of office had expired and they had not been reappointed in accordance with the applicable regulations.

In any case, following the approval of the new provincial Constitution, most of the Councillors on Indigenous Participation publicly rejected the reform and denounced the lack of guarantee of the right to free, prior and informed consultation. In a joint declaration, which was made available to the international fact-finding mission, issued on 22 June 2023, 14 Councillors from the Chicha, Ocloya, Kolla, Omaguaca, Tilián, Quechua, Guaraní and Atacama peoples demanded that the reform be declared unconstitutional “as a result of the prejudicial failure to CONSULT the members of the indigenous peoples.”

The exclusion of indigenous voices during the constitutional reform, in addition to constituting a clear violation of their human rights, calls into question the democratic nature of the constitutional reform process and the very legitimacy of the new constitutional text. In this sense, the Office of the UN High Commissioner for Human Rights (OHCHR) expressed its concern that the approval of the reform “lacked meaningful and sufficient participation of all stakeholders, especially indigenous peoples,” and recalled that the effective exercise of this right is central “to give legitimacy to a legal body as significant as a provincial constitution.”<sup>87</sup>

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80. *Ibid.* In the same vein, *La Izquierda Diario* (2023). “Grave. Gobierno de Jujuy: presionan a comunidades indígenas para que avalen Reforma antiderechos”. 2 June 2023. Available at: <https://www.laizquierdadiario.com/Gobierno-de-Jujuy-presionan-a-comunidades-indigenas-para-que-avalen-Reforma-antiderechos>

81. *Ibid.*

82. *Ibid.*

83. Information provided by Natalia Sarapura, Jujuy Minister for Human Rights and Indigenous Peoples, at a meeting held on 25 August 2023 in San Salvador de Jujuy during the fact-finding mission.

84. Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people. A/HRC/12/34/Add.6, Appendix A. 5 October 2009. Para. 22.

85. According to the Rapporteur on the rights of indigenous peoples, international human rights standards require consultations with Indigenous Peoples to be adequate, meaning they must be carried out through their representative institutions and take into account their traditional decision-making practices. With regard to the criterion of representativeness, although “a model of representative institution is not imposed, what is important is that these are the result of a process that is internal to the indigenous peoples themselves.” In addition, this institution must “respond to a plurality of identity, geographic and gender perspectives,” in accordance with the principles of proportionality and non-discrimination. *Ibid.* Paras 26-31.

86. The National Institute of Indigenous Affairs (INAI) established the Council on Indigenous Participation in 2004, as a forum for the participation of indigenous peoples in the elaboration and execution of their programmes and policies, including the issues of land survey and social services.

87. OHCHR (2023). “Argentina: ONU Derechos Humanos pide reducir tensiones y evitar retrocesos tras aprobación de reforma constitucional en Jujuy”. 21 June 2023. Available at: <https://acnudh.org/argentina-onu-derechos-humanos-pide-reducir-tensiones-y-evitar-retrocesos-tras-aprobacion-de-reforma-constitucional-en-jujuy/>

## 3.2 Incompatibility of the provisions of the constitutional reform with international human rights and environmental standards

### 3.2.1 On the issue of public lands, water and the environment: lack of protection of indigenous land rights and promotion of lithium extractivism

The constitutional reform introduced modifications to the regulation of public lands, water management and environmental conservation. The changes aggravate the lack of protection and legal insecurity of Jujuy's indigenous peoples over their ancestral territories, while at the same time seeming to favour the development of the lithium extraction industry. The new articles give priority to the productive exploitation of the province's public lands and water, establishing a regulatory framework conducive to the deployment of extractive projects on indigenous territories, the massive use of water for lithium production, and mining intervention in ecosystems of special environmental importance such as the high Andean wetlands.

Article 94 provides for the regulation of public lands, stating that they are "an asset intended for work and production." It also establishes that "the administration, disposal and purpose of public lands open to productive use" will be subject to statutory regulation. According to this article, in order to guarantee the productive use of public lands, the law will establish "support schemes that promote territorial development and the socio-economic interest of the province."

This regulation blatantly disregards indigenous peoples' right to communal property, as it grants the provincial legislative assembly the power to administer, dispose of and decide on the purpose of lands that are under indigenous control. The so-called public lands are, for the most part, territories in the ancestral possession of indigenous peoples, which have not been subject to delimitation, demarcation and titling by the authorities. This state omission is particularly serious in the Puna region, where applications and concessions for lithium exploration and extraction in Jujuy are concentrated.

Even when indigenous peoples do not have title to their ancestral ownership, states have the obligation to protect their land rights.<sup>88</sup> In a 2020 decision, the IACHR Court reminded the state of Argentina that the ancestral possession of their lands by indigenous peoples has equivalent effects to those of a state-granted property title. According to the Court, the titling of indigenous territories "declares the pre-existing right; it does not constitute the right."<sup>89</sup>

When the authorities adopt the necessary measures to guarantee indigenous property, including the granting of title deeds, one of their immediate duties is to abstain from acts which might lead the agents of the state or third parties to affect the existence, value, use or enjoyment of the ancestral territories.<sup>90</sup> Contrary to this duty, the new Jujuy Constitution grants the provincial Legislative Assembly the power to authorise "productive use" activities that may have a direct impact on the integrity of indigenous territories and their natural resources, including lithium exploration and extraction projects.

Furthermore, the new constitutional framework fails to provide for free, prior and informed consultation with the indigenous communities that live on the so-called public lands, as a requirement for the approval of productive use activities. This omission represents a breach of the obligation to ensure that any

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88. I/A Court H.R. (2005). *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 15 June 2005. Series C No. 124; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of 17 June 2005. Series C No. 125; *Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations and Costs*. Judgment of 25 November 2015, among others.

89. I/A Court H.R. (2020). *Case of Indigenous Communities Members of the Lhaka Honhat ("Our Land") Association v. Argentina*. Judgment of 6 February 2020. Para. 95.

90. I/A Court H.R. (2005). *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 15 June 2005. Series C No. 124. Para. 211. In the same vein, *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172. Para. 194. See also, I/A Court H.R. *Case of the Garifuna Community of Triunfo de la Cruz and its members v. Honduras. Merits, Reparations and Costs*. Judgment of 8 October 2015. Series C No. 305. Para. 264.

plan or decision affecting ancestral territories is subject to consultation with indigenous peoples.<sup>91</sup> The guarantee of this right is fundamental, as it is a necessary safeguard to prevent this type of intervention from denying the existence of indigenous persons as peoples.<sup>92</sup>

The text of the constitutional reform also establishes a new water regime. Article 95 provides that the Jujuy Province has exclusive competence to “regulate the use and exploitation of all waters in its territory” (paragraph 1).<sup>93</sup> It also establishes that waters may be for “industrial” consumption (paragraph 8) and that the authorities shall grant concessions and permits for “productive” use (paragraph 4).

The new constitutional provision does not adequately address integrated management of basins, nor does it recognise the traditional uses of water by indigenous communities. On the contrary, it prioritises the large-scale exploitation of water sources, thus making it easier for water to be used in lithium extraction projects, which are also called “water mega-mining”.<sup>94</sup>



«Water is life. No to the reform». Mural alluding to the constitutional reform, with messages aimed at respecting the right to water. Purmamarca, August 2023 © Adriana Abramovits

The constitutional reform opens the way to water concessions that can damage ecosystem cycles and remove the protection of an environmental asset that is fundamental for the existence of indigenous communities and the preservation of their traditional ways of life. On this point, it should be stressed that the authorities have the duty to ensure the security and permanence of the natural resources existing

91. I/A Court H.R., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations*. Judgment of 27 June 2012. Series C No. 245. Para. 300. In the same vein, I/A Court H.R. (2010). *Case of Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of 24 August 2010. Series C No. 214. Para. 157.

92. *Ibid.*

93. This provision contradicts the National Constitution, which states that the regulation of natural assets is an area of competence shared between the provinces and the state.

94. Marconi, P., Clark, A. (2023). FARN Environmental Report 2023. Available at: <https://farn.org.ar/iafonline2023/articulos/3-1-humedales-altoandinos-o-mineria-de-litio-en-salmuera/>

in indigenous ancestral territories,<sup>95</sup> due to the role they play in enabling them “to continue living their traditional way of life,” and enjoying “their distinctive cultural identity, social structure, economic system, customs, beliefs and traditions.”<sup>96</sup>

In relation to water, the IACHR Court has emphasised that states have two additional obligations. First, they must ensure that indigenous peoples are able to plan, exercise and control their access to water.<sup>97</sup> Second, they must protect water sources within their territories “from encroachment and unlawful pollution.”<sup>98</sup>

Finally, the new provincial Constitution contains a series of provisions on the environment. Article 22 provides for the right of people to “enjoy a healthy and balanced environment” (paragraph 1), as well as the obligation to “restore, repair and compensate” any environmental damage (paragraph 2). However, the constitutional text does not mention the duty of the authorities to protect the environment, thus evading their responsibility for the preservation of ecosystems, especially the high Andean wetlands, whose protection is not reaffirmed in any constitutional provision.<sup>99</sup>

This omission is confirmed by Article 10 of the new constitutional text, which establishes that the authorities will be responsible “for the damage they cause to the property or rights of individuals,” but does not include any provision regarding their responsibility for damage to the environment. The regulatory gaps in the new constitutional text in this area are worrying in view of the measures that should be adopted by the authorities to prevent environmental degradation, especially that caused by the expansion of lithium exploration and extraction projects in the high Andean wetlands, and the resulting impact on the rights of the indigenous peoples living in the Puna region.

According to international human rights standards, states have a duty to exercise due diligence to avoid activities under their jurisdiction causing harm to the environment.<sup>100</sup> In the event that environmental degradation compromises the enjoyment of rights of vulnerable groups, such as indigenous peoples, the authorities are “legally obliged” to address these impacts.<sup>101</sup>

### **3.2.2 The “right to social peace” and the prohibition of road and street blocks: disproportionate restrictions on peaceful assembly and social protest**

Article 67 of the constitutional reform establishes a new right within the Jujuy legal system, specifying that “All persons have the right to live in a society based on social peace, mutual tolerance and peaceful democratic coexistence, free from violence and intimidation” (paragraph 1). The article also establishes that, as a mechanism to protect the exercise of this right, the law “shall provide as a minimum (...) the prohibition of street and road blocks, as well as all other disturbances to the right to free movement of persons and the improper occupation of public buildings in the Province” (paragraph 4).

The international fact-finding mission agrees with the observations of social organisations, activists, experts and communities, that this article is substantively incompatible with Argentina’s international

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95. In the words of the IACHR Court, “the right to use and enjoy their territory would be meaningless in the context of indigenous and tribal communities if said right were not connected to the natural resources that lie on and within the land.” Consequently, a duty incumbent upon states is to “ensure the security and permanence of their control and use of the natural resources, which in turn, maintains their very way of life”. *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172. Para. 122. In the same vein, I/A Court H.R. (2014). *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama*. Judgment of 14 October 2014. Para. 112.

96. I/A Court H.R. (2014). *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v. Panama*. Judgment of 14 October 2014. Para. 112.

97. I/A Court H.R. (2020). *Case of Indigenous Communities Members of the Lhaka Honhat (“Our Land”) Association v. Argentina*. Judgment of 6 February 2020. Para. 230.

98. *Ibid.*

99. Fundación Ambiente y Recursos Naturales/FARN (2023). “Reforma constitucional en Jujuy”. 23 June 2023. Available at: <https://farn.org.ar/wp-content/uploads/2023/07/Documento-FARN-reforma-constitucional-en-Jujuy.docx-1.pdf>

100. I/A Court H.R. (2020). *Case of Indigenous Communities Members of the Lhaka Honhat (“Our Land”) Association v. Argentina*. Judgment of 6 February 2020. Para. 208.

101. *Ibid.* Para. 209.



commitments to guarantee human rights. In the words of the OHCHR, the new constitutional text opens “the way to regression in terms of peaceful assembly,” given that it prioritises vehicular and pedestrian traffic over the effective exercise of this right.<sup>102</sup>

Freedom of peaceful assembly entails “a legitimate use of public spaces and other places.”<sup>103</sup> For this reason, its exercise can take different forms, including the occupation of public buildings, roadblocks<sup>104</sup> and other collective actions that cause intentional or unintentional disruptions to vehicular and pedestrian movement or daily activities.<sup>105</sup>

These disruptions of daily life “do not call into question the protection such assemblies enjoy.”<sup>106</sup> They are inherent or deliberate consequences of the exercise of the right, which require “a significant degree of toleration” on the part of the authorities, private entities and citizens in general,<sup>107</sup> as they are part of the functioning of a plural and democratic society, “in which diverse and sometimes conflicting interests coexist and find the forums and channels in which to express themselves.”<sup>108</sup>

Despite the above, Jujuy’s new provincial Constitution enshrines a general and absolute prohibition of forms of social protest, such as street and road blocks, which are protected under the freedom of peaceful assembly. This prohibition in itself compromises the essence of the right,<sup>109</sup> and as such, constitutes a flagrant breach of the state’s duty to safeguard public protests and demonstrations.

As part of the obligation to promote an enabling environment for the exercise of the right of peaceful assembly, states must put in place a legal and institutional framework within which the right can be exercised effectively.<sup>110</sup> They must also refrain from hindering public protests and demonstrations,<sup>111</sup> through general or blanket bans on their modes, places or times of exercise, which are intrinsically disproportionate.<sup>112</sup> In a democratic society, “the right to protest must be considered the general rule, and limitations to this right must be the exception”.<sup>113</sup>

The new constitutional text also stigmatises the exercise of the right to freedom of assembly by unduly equating it with acts of intimidation and violence that threaten social peace and democratic

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102. OHCHR (2023). “Argentina: ONU Derechos Humanos pide reducir tensiones y evitar retrocesos tras aprobación de reforma constitucional en Jujuy”. 21 June 2023. Available at: <https://acnudh.org/argentina-onu-derechos-humanos-pide-reducir-tensiones-y-evitar-retrocesos-tras-aprobacion-de-reforma-constitucional-en-jujuy/>

103. Human Rights Committee (2020). *General Comment No. 37 on the right to peaceful assembly (Article 21)*. CCPR/C/GC/37. 17 September 2020. Para. 47.

104. According to the IACHR, “forms of protest are varied and include, but are not limited to, occupations – whether of a public or private building or school campus – and roadblocks.” IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 8, 89 and 142.

105. Human Rights Committee (2020). *General Comment No. 37 on the right to peaceful assembly (Article 21)*. CCPR/C/GC/37. 17 September 2020. Para. 7.

106. *Ibid.*

107. *Ibid.* Para. 44.

108. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 86.

109. In this regard, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated: “A certain level of disruption to ordinary life caused by assemblies, including disruption of traffic, annoyance and even harm to commercial activities, must be tolerated if the right is not to be deprived of substance.” Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 32.

110. Human Rights Committee (2020). *General Comment No. 37 on the right to peaceful assembly (Article 21)*. CCPR/C/GC/37. 17 September 2020. Para. 24.

111. *Ibid.*

112. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 30.

113. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 32.

coexistence. On this point, the Human Rights Committee<sup>114</sup> has expressly emphasised that disruptions to the movement of people and vehicles do not justify the characterisation of protests as involving violence.<sup>115</sup>

In a democracy, states must act based on the presumption that public demonstrations are lawful<sup>116</sup> and peaceful.<sup>117</sup> By establishing that street and road blocks *per se* represent a threat to public order, Jujuy's provincial Constitution renders such gatherings permanently unprotected and authorises the imposition of additional restrictions to prevent them from taking place.<sup>118</sup> In blatant contradiction to international treaties, the prohibition enshrined in the new constitutional text opens the way for the authorities to regularly resort to the use of force, as well as the application of the law on crimes and misdemeanours, to disperse and punish people who participate in legitimate and protected forms of social protest.

These provisions also have a discriminatory impact on the indigenous peoples of Jujuy. These historically excluded populations have faced institutional frameworks not conducive to their participation, and serious barriers to access that inhibit the effective exercise of their rights. The guarantee of the right to public demonstration deserves special protection in this case, since roadblocks, among other forms of protest, constitute a means of expressing their demands, defending their rights and influencing the decisions that affect them.<sup>119</sup>

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114. The Human Rights Committee is the body that oversees the implementation by states parties of the International Covenant on Civil and Political Rights (ICCPR). The Republic of Argentina approved the ICCPR through Law No. 23.313 of 1986. This instrument also has constitutional rank, in accordance with the provisions of Article 75, paragraph 22 of the Constitution of Argentina.

115. According to the Human Rights Committee, "violence" typically entails the use by participants of physical force against others that is likely to result in injury or death, or serious damage to property. Mere pushing and shoving or disruption of vehicular or pedestrian movement or daily activities do not amount to "violence". Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Para. 15.

116. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 88.

117. Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Para. 17.

118. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 83 and 86.

119. *Ibid.* Paras 15-16.

## 4. Defence of ancestral territory and water: protests against constitutional reform

The process of debate and approval of the new provincial Constitution was accompanied by protests and mobilisations by broad sectors of Jujuy society. Since 22 May 2023, when the work of the Constitutional Convention began, social and political movements, trade union organisations and indigenous peoples have been demonstrating their rejection of the contents of the reform and the lack of citizen participation in its adoption, through rallies, marches and roadblocks in different parts of the province.

On 14 June 2023, indigenous peoples undertook the third *Malón de la Paz*.<sup>120</sup> Under the slogan “Up with the Wiphala, down with the reform” and “Water is worth more than lithium”, various indigenous communities marched to demand respect for their rights in the constitutional reform process. The mobilisation that began in Abra Pampa, also known as the capital of the Puna region, ended on 16 June 2023 at the provincial Legislative Assembly in San Salvador de Jujuy. Upon arriving in the provincial capital, the indigenous peoples decided to continue with the public demonstrations indefinitely, after learning that, that same day, the Constitutional Convention had approved the constitutional reform project behind closed doors.



Demonstration of the Third Malón of Peace at the Supreme Court in Buenos Aires. August 26, 2023 © Briseida Aragón Juárez

120. The mobilisation was named after the historic march of 1946, in which the indigenous peoples of northwestern Argentina walked from Abra Pampa to Buenos Aires to demand the titling of their ancestral territories. The second *Malón de la Paz* took place sixty years later in 2006. Agencia Presentes (2023), “Jujuy: pueblos indígenas resisten la reforma constitucional”. 17 June 2023. Available at: <https://agenciapresentes.org/2023/06/17/jujuy-pueblos-indigenas-resisten-la-reforma-constitucional-y-defienden-el-agua/>

As a result of the escalation of protests, on 19 June, the then provincial Governor publicly acknowledged that the new constitutional text was raising concerns among indigenous peoples and announced that two of its articles would revert to their original wording.<sup>121</sup> The following day, before swearing in the Constitution, the Constitutional Convention met to remove the amendments made to Articles 36 (on private property) and 50 (on indigenous peoples' rights).

These constitutional provisions blatantly violated the rights of indigenous peoples. Article 36 contained provisions aimed at preventing indigenous land claims and authorising the eviction of communities that did not hold title to their ancestral territories.<sup>122</sup> Article 50, while recognising the ethnic and cultural pre-existence of the indigenous peoples of Jujuy and establishing the state's duty to guarantee their collective property,<sup>123</sup> limited the right to prior consultation to measures that directly impacted the communities.<sup>124</sup> According to ILO Convention No. 169, this right must be guaranteed with respect to measures which "may affect them directly" (Article 6.1).

After the withdrawal of these provisions and the swearing in of the provincial Constitution, indigenous protests continued. The international fact-finding mission found that, more than two months after the adoption of the new constitutional text, a roadblock was still in place in Abra Pampa and around 67 communities from La Quiaca, Salinas Grandes, Susques, Humahuaca, San Roque and Purmamarca remained active. Some of them, such as the communities of Salinas Grandes and San Roque, set up permanent roadside camps, from which they informed passers-by of their resistance to the approved constitutional reform.



«A government of peace does not mistreat the people». Permanent roadside camps for indigenous peoples. August 2023 © Adriana Abramovits

121. Government of Jujuy (2023). "Se hizo lugar al reclamo. Morales: 'No se tocará nada de las comunidades indígenas'". 19 June 2023. Available at: <https://prensa.jujuy.gob.ar/morales-no-se-tocara-nada-las-comunidades-indigenas-n111650>

122. Article 36 established that "any non-consensual occupation by one or more persons that prevents the owner of the property from exercising his or her rights under this Constitution and the law shall be considered a serious violation of the right to property". It also stated that "a special law shall determine the conditions for eviction, and for the holder or holders of the affected right to be able to immediately exercise their rights, even if the perpetrators of the non-consensual occupation claim to represent or to assert the rights of the people."

123. Article 50 recognised "the ethnic and cultural pre-existence of the native communities and indigenous peoples of Jujuy and guarantees respect for their identity, spirituality, cultural heritage, ancestral knowledge and the right to bilingual and intercultural education." It also assigned to the state the responsibility to "recognise both the legal status of the communities within the provincial territory and the communal possession and ownership of the lands they traditionally occupy, in order to guarantee and reaffirm the territorial integrity of the province within the nation."

124. According to this article, the state guaranteed "the right to participation and prior and informed consultation of the native communities recognised in the province with respect to their natural resources and the interests that directly affect them."

According to the testimonies gathered by the mission, with these demonstrations the indigenous peoples sought to denounce their exclusion from the constitutional process, as well as the threat that the new constitutional text represented for the integrity of their ancestral territories, given that it favours the extraction of lithium and other minerals found there. In this regard, a leader of one of the communities of the Salinas Grandes and Laguna Guayatayoc Basin stated that the indigenous peoples were opposed to the new Constitution, since “the articles that refer to the environment, water and land are designed to plunder and eliminate the communities in the areas where lithium and other minerals are found”.

In the same vein, an indigenous leader told the mission that the reform of the provincial Constitution was detrimental to the rights of indigenous peoples, insofar as it established a legal framework which favoured their dispossession: “The reform of the provincial Constitution was precisely intended to remove the use of the territory, the issue of water, to remove the communities... it is the communities that today have the water, look after it and have small production plots. The pressure is permanent, both from the state and from the companies.”

An indigenous leader from Abra Pampa underlined the lack of legitimacy of the new provincial Constitution, given the exclusion of indigenous communities from crucial decisions on the future of their ancestral territories: “They steal our wealth, they give us crumbs. They pollute our land. We have nothing, this constitutional reform is not for us; we have been excluded from the whole process at every step and we don’t have the capacity to change it or even get help from the courts because they will just do whatever the Governor wants to do.”



“We are millenary peoples. We raise our food on our land, we sow it with the wind, it grows with the water, the sun gives it energy. We are Pacha”. Demonstration of indigenous peoples of the Puna against the constitutional reform. August 2023 © Adriana Abramovits

Most of the testimonies of indigenous leaders collected by the international fact-finding mission emphasised that the communities’ protests and public demonstrations were a way of defending their ancestral territories, and especially their right to water. They said that the authorisation provided for in the provincial Constitution for large-scale water concessions put the survival of indigenous peoples at serious risk. As one indigenous community member in Humahuaca summed it up: “The Constitution seeks to sentence us to death, they are taking away our water.”

Similarly, an indigenous leader from Abra Pampa stressed: “We want the Constitution annulled because it allows water pollution, and we raise animals. What are we going to eat?” Another indigenous leader from the Puna region said, “Water is our blood. They are taking all the water. What future will my daughter have? That’s why I fight. That’s why we organise, that’s why we take the fight for our rights to the streets. We have to fight for our lands”.

## 5. Repression and criminalisation of protests against constitutional reform

The international fact-finding mission documented cases of repression of persons participating in public demonstrations against the constitutional reform. According to the information gathered, in response to the mass gatherings and roadblocks, the provincial authorities resorted, inter alia, to the arbitrary and disproportionate use of force, arbitrary detention of demonstrators, as well as the application of the law on crimes and misdemeanours against those who promoted and/or participated in the protests.

In one case, the criminalised persons were arbitrarily detained and subjected to acts that could constitute torture and cruel, inhuman, and degrading treatment. The mission also documented cases of selective attacks against women in reprisal for their participation in public protests, as well as racist and discriminatory acts against indigenous communities who mobilised in defence of their rights to territory and water.

According to the chronology established by the mission, three milestone events were highlighted, in which the most representative and severe restrictions on the rights of the demonstrators occurred. Firstly, the eviction of the Purmamarca roadblock, which took place on 17 June 2023. Since the previous day, the permanent assembly of the third Malón de la Paz had been positioned at the crossroads of National Routes 52 and 9.<sup>125</sup> These roads, in addition to connecting the country with Chile and Bolivia, are known as the *ruta del litio* (lithium route), due to their use by trucks carrying the mineral extracted from the Andean salt flats.<sup>126</sup>

Secondly, the dispersal of the mass protests on 20 June 2023 outside the provincial Legislative Assembly in San Salvador de Jujuy. On that day, the Constitutional Convention swore in the new Jujuy Constitution, while the Legislative Assembly building was cordoned off with perimeter fences and surrounded by hundreds of police officers.<sup>127</sup>

Finally, the repression of the demonstrations held on 1 July 2023 in Humahuaca. The previous afternoon, the community gathered near the premises of the Municipal Council to demand that it issue a declaration on the constitutional reform and the lack of free, prior and informed consultation of indigenous peoples in the constitutional reform process. In the early hours of the morning, after the Municipal Council announced the approval of a declaration rejecting the constitutional reform, a heavy police operation was deployed.<sup>128</sup>

### 5.1 Arbitrary and disproportionate use of force

According to the information gathered by the international fact-finding mission, the Jujuy provincial police and its specialised Infantry and Cavalry forces used arbitrary and disproportionate force in the dispersal of demonstrations and roadblocks. As a result, several people participating in the demonstrations suffered serious physical injuries, including permanent eye injuries.

The testimonies collected indicate that, in order to break up the demonstrations, the provincial security forces indiscriminately used less-lethal weapons, such as rubber bullets and tear gas, and even beatings. The events of 16 June 2023 at the roadblock in Abra Pampa illustrate this point.

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125. Agencia de Noticias Tierra Viva (2023). "El gobierno de Jujuy traba los modelos de desarrollo elegidos por las comunidades indígenas". 4 July 2023. Available at: <https://agenciaterraviva.com.ar/el-gobierno-de-jujuy-traba-los-modelos-de-desarrollo-elegidos-por-las-comunidades-indigenas/>

126. Página 12 (2023). "Jujuy: Bajo amenaza de más represión". 21 June 2023. Available at: <https://www.pagina12.com.ar/560244-jujuy-bajo-amenaza-de-mas-represion> In the same vein, Agencia Presentes (2023). "Allanamientos y detenciones ilegales en Jujuy: 'Están metiendo miedo'". 13 July 2023. Available at: <https://agenciapresentes.org/2023/07/13/allanamientos-y-detenciones-ilegales-en-jujuy-estan-metiendo-miedo/#::~:~:text=%C2%ABEst%C3%A1n%20metiendo%20miedo%C2%BB,-De%20todos%20esos&text=La%20noticia%20de%20las%20nuevas,el%20corte%20mismo%20en%20Purmamarca.>

127. *Ibid.*

128. Página 12 (2023). "Represión en Humahuaca: otro joven perdió un ojo". 1 July 2023. Available at: <https://www.pagina12.com.ar/563954-represion-en-humahuaca>

According to protesters' accounts, around 30 police officers from the Infantry attempted to remove them from the public road, using rubber bullets, tear gas and beatings with blunt objects directed at the demonstrators as group. The police intervention took place without any prior verbal warning or any opportunity to disperse voluntarily. According to one person interviewed by the mission: "Before the repression, they never gave a warning for children and the elderly to leave."

The international mission received testimonies indicating that as a result of the indiscriminate use of tear gas, a baby and a girl had to be hospitalised. The protesters also reported that after that day an atmosphere of terror settled over the roadblock, with daily messages announcing that the police would arrive to crack down on them again.

The action taken fails to comply with international standards in this area, which establish that the dispersal of a protest must be exceptional,<sup>129</sup> given the risks involved for the safety and bodily integrity of the demonstrators.<sup>130</sup> Furthermore, when the authorities resort to such measures, "the assembly and participants should be clearly and audibly informed" of the decision to disperse, and should be given reasonable time to disperse voluntarily.<sup>131</sup> In such operations, "force should be avoided" by law enforcement officials,<sup>132</sup> and efforts should be made to "differentiate between violent individuals in an assembly and others".<sup>133</sup>

The information gathered by the observation mission also indicates that the provincial police fired rubber bullets and tear gas at the heads of demonstrators, causing eye injuries in three cases. The first case occurred on 17 June 2023 during the removal of the Purmamarca roadblock, where a 17-year-old teenager lost his right eye from a rubber bullet fired by the police.

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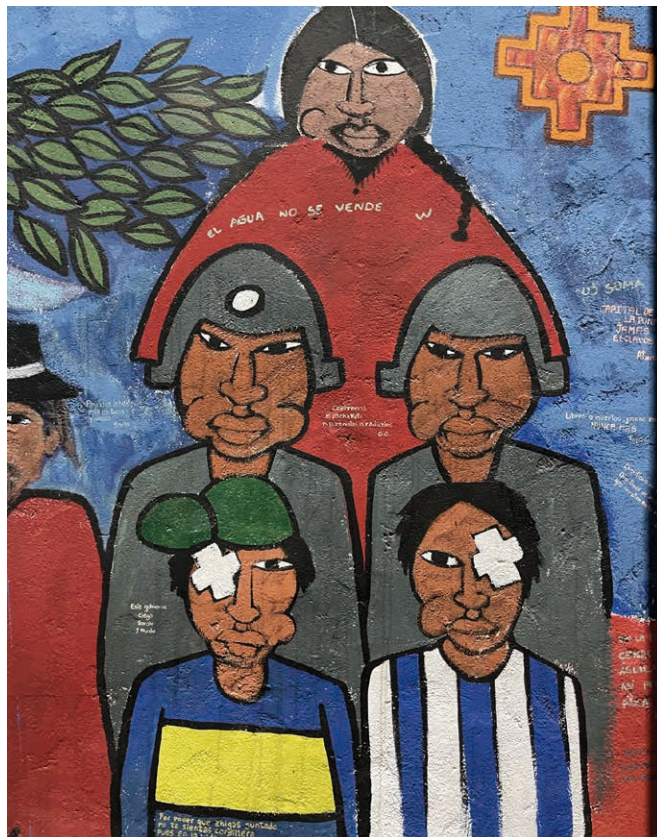
129. Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Para. 85

130. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 61.

131. *Ibid.* Para. 63.

132. Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Paras 85-86.

133. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 61.



Mural alluding to eye injuries caused by the arbitrary use of force by the Provincial Police of Jujuy, Purmamarca, August 2023. © David Mejía-Canales

The victim told the media that, in the chaos of the dispersal, he ran to the side of the road to take cover. When he saw that the police officers were retreating, he stood up, at which point he was shot in the eye.<sup>134</sup> He said that he was shot at close range and another protester helped him by throwing him to the ground, as the police continued to shoot at him.<sup>135</sup> The minor was reportedly hit by a total of seven rubber bullets, two of which were aimed at his face and the remaining five at his arms and legs.

In meetings with the Ministry of Public Security<sup>136</sup> and the Jujuy Public Prosecutor's Office,<sup>137</sup> the authorities confirmed their knowledge of the case to the international fact-finding mission. However, more than two months after its occurrence, a criminal investigation aimed at clarifying the facts and identifying those responsible had not been initiated. According to the Attorney General's Office, in the absence of a complaint from the victim, it was not possible to initiate proceedings to prosecute the police officers involved.

Under international law, when a person is injured during the deployment of public force, the authorities must initiate, immediately and ex officio, criminal investigations to determine the nature and origin of the injuries,<sup>138</sup> as well as to verify the lawfulness and legitimacy of the use of force.<sup>139</sup> The lack of a complaint does not constitute grounds for the authorities to fail to respond, since "it is the state's

134. *Télam* (2023). "Un menor perdió un ojo por una bala de goma que recibió durante la represión policial". 19 June 2023. Available at: <https://www.telam.com.ar/notas/202306/631648-jujuy-represion-morales-joven-ojo.html>

135. *Radio con Vos* 88.9. "Habló el joven que perdió un ojo en la represión en Jujuy: 'Qué Morales venga a dar la cara'". 20 June 2023. Available at: <https://www.youtube.com/watch?v=qOGu4Uc4Yk&t=170s>

136. Meeting between the international fact-finding mission delegation and Guillermo Corro, Jujuy Minister of Security on 25 August 2023 in San Salvador de Jujuy.

137. Meeting between the international fact-finding mission delegation and officials of the Public Prosecutor's Office on 24 August 2023 in San Salvador de Jujuy.

138. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 271.

139. I/A Court H.R. (2015). *Case of García Ibarra et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 17 November 2015. Series C No. 306. Para. 108.



obligation to provide a satisfactory and convincing explanation of what happened and to refute the allegations of its responsibility by means of adequate evidence."<sup>140</sup>

The second case of eye injury occurred on 20 June 2023 in San Salvador de Jujuy. Trade union organisations stated that members of the Infantry fired rubber bullets at people protesting outside the provincial Legislative Assembly, hitting municipal worker Jorge Rodríguez, who lost his left eye.<sup>141</sup> Protester Nelson Mamani was also injured. The media reported that the victim had to undergo surgery after being hit in the head by a tear gas canister.<sup>142</sup>

The third case brought to the attention of the international fact-finding mission was that of the young Joel Paredes, which occurred on 1 July 2023, during the operation to disperse the protests in Humahuaca. The victim lost his right eye from the impact of a rubber bullet. According to the public complaint filed by his mother, the young man was supporting the demonstration by playing the bass drum with a music band.<sup>143</sup>

At the meeting held in Humahuaca, the community alerted the international fact-finding mission to the under-reporting of cases of people injured in this police operation. They said that there were demonstrators who, almost two months after the events, still had rubber bullets embedded in their bodies. These people reportedly did not go to the health services for fear of being detained or receiving a penalty for misdemeanour.

International human rights bodies have repeatedly held that where less-lethal weapons are used, security forces must take all reasonable efforts to limit their indiscriminate, lethal or harmful effects.<sup>144</sup> In particular, it is a state duty to prevent inappropriate or abusive use that can cause death and serious injury, such as firing rubber bullets at close range and into the upper part of body, firing tear gas at people's bodies, or using tear gas and irritants against children and the elderly.<sup>145</sup>

## 5.2 Arbitrary deprivation of liberty

The information gathered by the international fact-finding mission indicates that the Jujuy provincial police carried out arbitrary arrests of demonstrators, journalists, public officials and even people who were not participating in protests against the constitutional reform. These arrests were allegedly carried out in a large-scale and indiscriminate manner, as part of operations to disperse public demonstrations. In order to justify the deprivation of liberty, the provincial security forces are said to have abused the concept of *flagrante delicto*.

One obstacle to the documentation of cases of arbitrary detention, identified by the international fact-finding mission, was the lack of availability of complete, updated and detailed official data on all detentions carried out during the protests. According to the IACHR, such information should be publicly available.<sup>146</sup> The only official information to which the mission had access was provided by the Prosecutor for Criminal Policy Rodrigo Gabriel Fernández Ríos, who stated that during the protests of

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140. *Ibid.*

141. *Télam* (2023). "Jujuy: un trabajador municipal perdió un ojo al ser baleado en la represión del martes". 22 June 2023. Available at: <https://www.telam.com.ar/notas/202306/631939-juju-trabajador-municipal-ojo-baleado-represion.html> See also, *Página 12* (2023). "Confirman que un trabajador municipal perdió un ojo en la represión del martes". 22 June 2023. Available at: <https://www.pagina12.com.ar/559989-represion-en-jujuy-la-policia-tira-gases-lacrimogenos-y-bala#:~:text=Confirman%20que%20un%20trabajador%20municipal,perdi%C3%B3%20uno%20de%20sus%20ojos>

142. *Página 12* (2023). "Palos, balas, heridos y detenidos para inaugurar la Constitución de Gerardo Morales". 21 June 2023. Available at: <https://www.pagina12.com.ar/560237-palos-balas-heridos-y-detenidos-para-inaugurar-la-constituci> See also, *Televisión Pública Noticias* (2023). "Jujuy, en alta tensión: un herido grave". 20 June 2023. Available at: <https://www.youtube.com/watch?v=JTKlb-GSXWM>

143. *Página 12* (2023). "Represión en Humahuaca: otro joven perdió un ojo". 1 July 2023. Available at: <https://www.pagina12.com.ar/563954-represion-en-humahuaca>

144. Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Para. 87. See also, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 55.

145. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 121-122.

146. *Ibid.* Para. 135.

17 June in Purmamarca, 20 June in San Salvador de Jujuy and 1 July in Humahuaca, around 70 people were detained.<sup>147</sup>

According to the Prosecutor, the vast majority of them were released as soon as the Jujuy provincial police handed them over to the Attorney General's Office, apparently without further consequences. He said that no evidence was found to show that, at the time of their arrest, the persons were caught in flagrante delicto, as the police claimed. According to him, it would seem that provincial security forces had committed "excesses".

The figures provided by the Attorney General's Office contrast with data from civil society organisations, who claim that approximately 90 people were detained in these three demonstrations. Meanwhile, publicly available information indicates that the arrests could have amounted to more than one hundred: 27 in Purmamarca,<sup>148</sup> 69 in San Salvador de Jujuy<sup>149</sup> and five in Humahuaca.<sup>150</sup>

The cases documented by the international fact-finding mission suggest that the high number of people deprived of their liberty in the three events could be explained by the indiscriminate use of detention by the Jujuy provincial police. In this regard, the events of 17 June 2023 in Purmamarca show that people were detained simply for participating in or being present at the public demonstration. According to the statements of one of the persons detained in these events, in order to clear the roadblock, the police not only fired rubber bullets and tear gas, but also detained people.<sup>151</sup>

Among the 27 people who were deprived of their liberty were indigenous demonstrators (mostly women), a 17-year-old,<sup>152</sup> and even a tourist who was at the side of the road and was not participating in the protests.<sup>153</sup> The provincial security forces also detained people who, in the framework of their duties, were observing and accompanying the rally, such as journalists Luciano Aguilar, from *La Izquierda Diario*, and Camilo Galli, from the digital newspaper *El Submarino*, and the provincial legislator and Constitutional Convention member, Natalia Morales.

The arrests of the latter three people are representative of the arbitrary way in which the provincial security forces proceeded. The journalists were detained despite wearing press badges identifying them as journalists and telling the security forces that they were covering the demonstration.<sup>154</sup> In the case of the provincial legislator, the police used excessive force to immobilise and detain her. As recorded in several videos, the public official was dragged along the ground for more than

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147. Information provided during a meeting between the international fact-finding mission delegation and officials from the Jujuy Public Prosecutor's Office on 24 August 2023 in San Salvador de Jujuy.

148. On 19 June 2023, Jujuy Minister of Security, Guillermo Corro, confirmed that 27 people had been arrested in Purmamarca on 17 June 2023. *Somos Jujuy* (2023). "Enfrentamientos en Purmamarca: 'Recuperaron la libertad todos los detenidos', aseguró el ministro de Seguridad". 19 June 2023. Available at: <https://www.somosjujuy.com.ar/jujuy/enfrentamientos-purmamarca-recuperaron-libertad-todos-detenidos-aseguro-ministro-seguridad-n74891>

149. *Página 12* (2023). "Palos, balas, heridos y detenidos para inaugurar la Constitución de Gerardo Morales". 21 June 2023. Available at: <https://www.pagina12.com.ar/560237-palos-balas-heridos-y-detenidos-para-inaugurar-la-constitucion>

150. *Página 12* (2023). "Jujuy: detenciones, allanamientos y hasta policías en la universidad". 13 July 2023. Available at: <https://www.pagina12.com.ar/567514-jujuy-detenciones-allanamientos-y-hasta-policias-en-la-unive>

151. PTS (2023). "Natalia Morales 'Hay 16 detenidos aún, la mayoría son mujeres de las comunidades indígenas'". 19 June 2023. Available at: <https://www.youtube.com/watch?v=cuVLM4gtRxo> See also, *La Izquierda Diario* (2023). "Desde Jujuy. Natalia Morales: Hay 16 detenidos aún, la mayoría son mujeres de las comunidades indígenas". 19 June 2023. Available at: <https://www.laizquierdadiario.com/Natalia-Morales-Hay-16-detenidos-aun-la-mayoria-son-mujeres-de-las-comunidades-indigenas>

152. IACHR. "Argentina Must Respect Standards for Use of Force During Protests in Jujuy Province". 20 June 2023. Available at: [https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media\\_center/preleases/2023/127.asp](https://www.oas.org/en/iachr/jsForm?File=/en/iachr/media_center/preleases/2023/127.asp)

153. On the circumstances of his detention, the tourist Cristian Oviedo, who was reportedly deprived of his liberty for 30 hours in the Alto Comedero neighbourhood prison in San Salvador de Jujuy, told the media: "They grabbed me without saying anything. I wasn't even taking part in the march or in the blockade. I had just got out of the car. Two policemen grabbed me, they put me in a police truck, the only thing I heard in all the shouting, and the force used by the police who wouldn't let me do anything, was a lawyer who said, 'Tell me your full name', and I shouted 'I'm a tourist! When I said my name, they covered my mouth and put me inside the truck and closed the canvas'. The tourist was released when his case was "dismissed for lack of prosecutorial merit". *Tiempo Argentino* (2023). "Habla el turista detenido en Jujuy: 'Sentí que era como en los videos que vi de la dictadura'". 19 June 2023. Available at: <https://www.tiempoar.com.ar/informacion-general/turista-detenido-jujuy-dictadura/>

154. *La Izquierda Diario* (2023). "Jujuy: tras la represión en Purmamarca Gerardo Morales mantiene a dos periodistas presos". 18 June 2023. Available at: <https://www.laizquierdadiario.com/Jujuy-tras-la-represion-en-Purmamarca-Gerardo-Morales-mantiene-a-dos-periodistas-presos>

half a block by about five policemen who pulled her by her limbs.<sup>155</sup>

According to the information gathered by the international fact-finding mission, those arrested on 17 June 2023 in Purmamarca were transferred to the penitentiary establishment No. 7 of the Alto Comedero neighbourhood in San Salvador de Jujuy, for allegedly having been caught in flagrante delicto. In some of the cases known to the mission, the authorities told individuals that they had been “accused” of hindering the normal operation of land transport.<sup>156</sup> This would mean that detention was based on conduct typical of a demonstration on public roads, which is inadmissible under international law.<sup>157</sup>

In other cases, the authorities failed to respect essential safeguards for the protection of the liberty of individuals, as they did not inform them of the reasons for their arrest, nor did they inform them of the offences they were alleged to have committed.<sup>158</sup> One protester interviewed by the mission stated: “I was held incommunicado for 30 hours and I did not make a statement because I was never informed of the charges against me”. On 19 June 2023, the Jujuy Minister of Security, Guillermo Corro, reported that the 27 people detained in Purmamarca had been released.<sup>159</sup>

Under international law, any indiscriminate, mass arrest “prior to, during or following an assembly” is arbitrary and therefore unlawful.<sup>160</sup> According to the Human Rights Committee, a protester may only be deprived of his or her liberty when there is evidence of involvement in acts likely to result in injury, death or serious damage to property, and in no circumstances may it be used to prevent the exercise of the right to protest.<sup>161</sup> In the case of journalists and others involved in monitoring the smooth conduct of demonstrations, such as public officials, the authorities must guarantee their protection and the effective exercise of their functions, for which “they must not face reprisals or other harassment, and their equipment must not be confiscated or damaged”.<sup>162</sup>

The demonstrators who gave their testimonies to the international mission also pointed out that, during the protests against the constitutional reform, the provincial police allegedly used private vehicles, in some cases without number plates, to transport the detainees.<sup>163</sup> This is reflected in the testimony of provincial legislator and Constitutional Convention member Natalia Morales. She told the mission that while in state custody she was searched and the police demanded that she hand over her mobile phone, which was allegedly subject to a seizure order. After she demanded to see the warrant, and insisted that

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155. Canal 5 Noticias. “Fuera de Agenda | Myriam Bregman habló sobre la detención de Natalia Morales en Jujuy”. 18 June 2023. Available at: <https://www.youtube.com/watch?v=jUhj06D6iSM> See also: *La Izquierda Diario* (2023). “Nuevo video: así se llevaban detenidos a Natalia Morales y a Lucho Aguilar”. 18 June 2023. Available at: <https://www.izquierdadiario.es/Nuevo-video-asi-se-llevaban-detenidos-a-Natalia-Morales-y-a-Lucho-Aguilar>

156. Article 194 of the Penal Code of Argentina provides that the offence of obstructing the public highway is committed by “anyone who, without creating a situation of common danger, impedes, hinders or obstructs the normal operation of land, water or air transport or public services of communication, water supply, electricity or other energy services.” This offence is punishable by a prison sentence of three months to two years.

157. According to the IACHR, “in principle, criminalisation per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly”. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 187.

158. According to the Human Rights Committee, persons deprived of their liberty benefit from various safeguards for the protection of their rights. The first is that “they shall be informed, at the time of arrest, of the reasons for the arrest”. The second is that “they shall be promptly informed of any charges against them”. Human Rights Committee (2014). General Comment No. 35 on Article 9 (Liberty and security of person). CCPR/C/GC/35. 16 December 2014. Para. 24.

159. *Somos Jujuy* (2023). “Enfrentamientos en Purmamarca: ‘Recuperaron la libertad todos los detenidos’, aseguró el ministro de Seguridad”. 19 June 2023. Available at: <https://www.somosjujuy.com.ar/jujuy/enfrentamientos-purmamarca-recuperaron-libertad-todos-detenidos-aseguro-ministro-seguridad-n74891>

160. Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (Article 21). CCPR/C/GC/37. 17 September 2020. Para. 82.

161. *Ibid.* Paras 15 and 82.

162. *Ibid.* Para. 30.

163. The irregular use of private vehicles to transport detainees is a practice that was also documented by the media during the demonstrations of 20 June 2023 in San Salvador de Jujuy. Police and Infantry officers reportedly patrolled the centre of the capital, in vans without police logos, detaining without warrants any person they thought looked suspicious. *Página 12* (2023). “Una a una, la flota de represión al servicio de la policía de Gerardo Morales”. 22 June 2023. Available at: <https://www.pagina12.com.ar/560646-una-a-una-la-flota-al-servicio-de-la-policia-de-gerardo-mora> See also, *La Izquierda Diario* (2023). “Grave. Tras la represión, la Policía de Morales hace una cacería con detenciones arbitrarias en Jujuy”. 20 June 2023. Available at: <https://www.laizquierdadiario.com/ve/Tras-la-represion-la-Policia-de-Morales-hace-una-caceria-con-detenciones-arbitrarias-en-Jujuy>

it was illegal, the security forces took her away in a white vehicle with tinted windows, which had no licence plate or police identification logos.

On 21 June 2023, the then Chief of Police of Jujuy province, Horacio Herbás Mejías, publicly acknowledged the use of private vehicles in official duties. According to his statement, the police received “disinterested” support from third parties, from whom they had to “ask for help because we did not have enough police vans, they are vehicles for arrests, and they also brought water and food to the police officers”.<sup>164</sup>

In order to respect human rights, deprivation of liberty must comply with the procedures established by law.<sup>165</sup> This means, *inter alia*, that they must be carried out by officials who are fully identified and authorised to carry out arrests.<sup>166</sup> Moreover, the failure to identify the officials and vehicles used for an arrest hinders the process of accountability for the actions of state agents during public demonstrations, which should be promoted by the authorities.<sup>167</sup>

### **5.3 Prosecution of protesters and opponents of the constitutional reform under the law on crimes and misdemeanours**

The international fact-finding mission documented the cases of 34 people criminalised both for their participation in the protests and for their opposition to the constitutional reform promoted by the provincial government. According to the information gathered, the Jujuy Public Prosecutor’s Office and the provincial Ministry of Security initiated proceedings under the law on crimes and misdemeanours to punish conduct related to the exercise of the freedoms of peaceful assembly, association and freedom of expression. These were characterised by rapid progress of the proceedings. In one documented case, the criminalised individuals were arbitrarily deprived of their liberty and subjected to acts that could constitute torture and cruel, inhuman and degrading treatment.

A case that illustrates the seriousness of the criminalisation of social protest in Jujuy is the conviction of the lawyer and human rights defender Alberto Nallar. During the constitutional reform process, the lawyer was known for his work as a legal advisor on the scope of the reform and for his support to indigenous communities, trade unions and social organisations that demonstrated against the new constitutional text.

On 24 October 2023, just three months after the initiation of the investigation against him, Alberto Nallar was sentenced to three years and six months in prison, a fine of 7 million pesos (approximately USD 7,000) and disqualification from practising his profession. At the time of writing, March 2024, the lawyer was at liberty, as the conviction was not final. However, between 13 July and 18 August 2023 he was held in pre-trial detention under house arrest.<sup>168</sup>

The judicial authorities found him responsible, as perpetrator, in a joinder of causes of action, for incitement to commit offences, incitement to collective violence and instigation to riot. This conviction was said to be based on his interventions in the protests of 17 June 2023 at the blockade of National Route 9 in Purmamarca, and on 10 July 2023 at the blockade of National Route 66, near the Jujuy International Airport.<sup>169</sup>

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164. *Ibid.*

165. Human Rights Committee (2014). General Comment No. 35 on Article 9 (Liberty and security of person). CCPR/C/GC/35. 16 December 2014. Para. 11.

166. *Ibid.* Para. 23.

167. According to the Special Rapporteur on the rights to freedom of peaceful assembly and of association, accountability for the actions of state agents during public demonstrations is an obligation of the state, which must be ensured through judicial and non-judicial processes, as well as investigations by an independent oversight body. Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66. 4 February 2016. Para. 94.

168. FIDH (2023). “Argentina: El abogado Alberto Nallar condenado a tres años y seis meses de prisión”. 5 December 2023. Available at: <https://www.fidh.org/es/temas/defensores-de-derechos-humanos/argentina-el-abogado-alberto-nallar-condenado-a-tres-anos-y-seis#:~:text=55%20del%20C%C3%B3digo%20Penal%20y,contra%20de%20la%20reforma%20constitucional>

169. *Página 12* (2023). “Condenaron al abogado que cuestionó la reforma en Jujuy”. 25 October 2023: <https://www.pagina12.com.ar/605912-prision-efectiva-para-el-abogado-que-cuestiono-la-reforma-en>

The conviction of the lawyer and human rights defender Alberto Nallar shows a disproportionate and arbitrary use of the criminal justice system that resulted in the imposition of severe and excessive sanctions for the legitimate exercise of the right to protest and defend human rights. As the IACHR has established, the application of offences such as incitement to violence or the commission of offences shows a narrow and biased interpretation of the facts of social protest, as it characterises as criminal acts “conduct commonly observed in protests... such as roadblocks or disorderly acts that, in themselves, do not affect interests such as the life, safety or freedom of persons.”<sup>170</sup>

The international fact-finding mission also learned of another case of criminalisation directed against 20 people who participated in the protests of 20 June 2023 in San Salvador de Jujuy, including indigenous leaders and leaders of political groups and social and trade union organisations. On 9 November 2023, five months after the start of the investigation, the Special Attorney General’s Office for Economic Crimes and Crimes against Public Administration charged them as co-perpetrators of the offences of resistance to authority, doubly aggravated minor injuries against members of the police security forces and damage to public property. According to the information gathered by the mission, at the time of writing this report, the accused persons were still at liberty awaiting the indictment hearing, which would initiate the trial stage.

In the indictment, the Attorney General’s Office stated that, in order to impede the work of the Constitutional Convention, this group of people allegedly entered the building of the Legislative Assembly of Jujuy where they broke windows and set fire to the premises. They also allegedly clashed violently with members of the provincial security forces, causing injuries to at least 46 police officers.<sup>171</sup>

According to the information provided by the legal representatives of the accused, this reflects an unjustified collective attribution of criminal conduct by the Attorney General’s Office, without clear demonstration of the participation of each of them in the commission of the offences. The evidence presented was limited to video footage from the public monitoring system and videos disseminated by social networks and the media that record the participation of the 20 accused individuals in the public demonstrations.

The criminal prosecution of individuals for their activities in promoting and leading public demonstrations not only severely restricts the freedoms of assembly, association and expression; it also contributes to the consolidation of an insecure and adverse environment for the exercise of the rights to protest and defend human rights. On the one hand, it conveys an intimidating message that can dissuade broad sectors of society from participating in protests, due to the risk of arrest and prosecution.<sup>172</sup> On the other hand, it delegitimises human rights work<sup>173</sup> by presenting it as a criminal activity, deserving of the distrust of the authorities and society.

The international mission also documented a case of criminalisation and arbitrary detention in Humahuaca that constitutes a worrying example of the use of punitive power to sanction the exercise of the right to protest. During its visit, the international mission delegation met with three young men between the ages of 22 and 27, one of them with a disability, who were criminally prosecuted for their participation in the public demonstration of 1 July 2023. According to the information provided, in its theory of the case, the Attorney General’s Office considered that on that day, a group of municipal councillors, including the president of the Humahuaca Municipal Council, were illegally deprived of their liberty, as they could not leave the premises, due to the crowd of demonstrators that gathered in the surrounding area.

The young men were charged with seven offences, including death threats, injury to individuals and damage to public property, resisting authority, kidnapping for extortion aggravated by gender violence (given that the Council President is a woman), as well as use of weapons and sedition. According to the Attorney General’s Office, the accused “publicly raised up against the Constitution of the province, carrying sticks, stones, and making bonfires.”<sup>174</sup>

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170. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 207, 208 and 212.

171. Jujuy Public Prosecutor’s Office. Specialised Attorney General’s Office for Economic Offences and Offences against Public Administration No. 2. Indictment. Case No. P 271479 MPA/23. 9 November 2023.

172. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 190-192.

173. Report of the Special Rapporteur on the situation of human rights defenders. A/70/217. 30 July 2015. Paras 47-49.

174. *Página 12* (2023). “Jujuy: detenciones, allanamientos y hasta policías en la universidad”. 13 July 2023. Available at: <https://www.pagina12.com.ar/567514-jujuy-detenciones-allanamientos-y-hasta-policias-en-la-unive>

The charges against the young men are disproportionate. On the one hand, the inclusion of offences such as kidnapping for extortion and gender violence shows an instrumentalisation of the law to punish consequences inherent to public gatherings, such as restrictions on the movement of people. On the other hand, the application of the crime of sedition improperly assumes that a public demonstration constitutes an armed uprising, and that a group of people who hold grievances against state authorities represent a threat to institutional order.<sup>175</sup> The authorities used one of the most severe criminal offences in the Argentine legal system to prosecute legitimate actions of social protest.

According to the IACHR, in order to avoid criminalising the exercise of rights involved in a public demonstration, it is necessary to avoid “formalistic application of criminal concepts, which isolates the behaviours it seeks to punish from the context in which they occur (the exercise of the right to social protest).”<sup>176</sup> Likewise, justice authorities should refrain from applying criminal offences related to maintaining public order to social protests.<sup>177</sup>

The international fact-finding mission received information indicating that the criminal proceedings against the young men may be based on fabricated evidence. According to one of them, the indictment stated that he was seen committing criminal acts at a time when he was not participating in the demonstration. He said, “They indicated a time when I wasn’t even in Humahuaca. They said I was there at 6:40 p.m., when I actually arrived at 10 p.m.”

The young men also indicated to the mission delegation that, as a result of the criminal proceedings initiated against them, they were arbitrarily deprived of their liberty between 15 and 20 July 2023.<sup>178</sup> In its analysis of the facts, the international mission found that their detention was carried out without respecting essential safeguards for the protection of their liberty and integrity, such as detention in places officially recognised for this purpose, prompt access to a lawyer and immediate communication with family members. These procedural safeguards are intended to prevent people from being removed from the protection of the law, as well as to reduce the likelihood of torture and ill-treatment.<sup>179</sup>

In the interviews, the young men said that on 15 July 2023, in the morning hours, they went to the police station in Humahuaca, in response to an official request received the night before. Once there, the Jujuy provincial police arrested them and took away their mobile phones, without producing a court order authorising either action. While in police custody, they were subjected to acts that could amount to torture and cruel, inhuman and degrading treatment.

According to their account, the police transported them for approximately 12 hours in the cargo box of a van before taking them to penitentiary establishment No. 7 in the Alto Comedero neighbourhood of San Salvador de Jujuy. According to the information gathered by the mission, this transfer was not carried out by the official route that connects Humahuaca with the capital of Jujuy, which takes approximately two hours, but by an alternative route that leads to the Andean hills.

During the time they were detained in the van, the young men had no possibility to communicate with their families or a lawyer, nor were they given any information about where they were going, which made them extremely fearful. The families did not receive any information about their whereabouts. The mother of one of them told the mission that, in the absence of information about her son, she filed a missing person’s report: “My son was summoned and detained pending his appearance in court... I spent 17 hours without having any news of my son. I filed a missing person’s report.”

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175. The crime of sedition, set out in Article 229 of the Penal Code of Argentina, punishes those who “arm one province against another, take up arms to change the local constitution, depose any of the public powers of a province or federal territory, wrest from it any measure or concession or prevent, even temporarily, the free exercise of its legal powers or their formation or renewal under the terms and in the manner established by law.”

176. IACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Para. 195.

177. *Ibid.* Para. 210.

178. For more information, see *Página 12* (2023). “*Relatos en primera persona de los allanamientos y las redadas en Jujuy: Quieren sembrar terror, miedo y escarmiento*”. 23 July 2023. Available at: <https://www.pagina12.com.ar/570447-relatos-en-primera-persona-de-los-allanamientos-y-las-redada>

179. Human Rights Committee (2014). General Comment No. 35 on Article 9 (Liberty and security of person). CCPR/C/GC/35. 16 December 2014. Paras 56 and 58.

Throughout the journey by road, the young men remained handcuffed, most of the time with their hands behind their backs. At one point, according to one of them, “They took us to the *puente de la banda* and several hooded men got in.” They were then taken into the Hornocal mountains, located at an altitude of 4,760 metres. There, one of them said that he was on the verge of decompression due to the altitude. In his words: “They didn’t tell me where they were going and they took us to the Hornocal mountains. I was alone in the back of the van. At one point I felt like I was going into cardiac arrest.” Another said: “In the Hornocal mountains, I thought they were going to beat me to death, I couldn’t breathe.”

Finally, at around 5 a.m. on 16 July 2023, the young men were taken to the prison in San Salvador de Jujuy. According to their account, four hours after their arrival, they attended a hearing where they were charged with the above-mentioned offences. On 20 July 2023, they were released, subject to a commitment to report to the Humahuaca police station every 15 days, in order to prove that they had not absconded.

During the interviews conducted on this case, the international fact-finding mission found that the actions of the authorities had a serious psychosocial impact on the young men and their families. In addition to a lack of trust in the authorities, the young people men mentioned that after their detention they experienced sleeping difficulties, anger, as well as fear of loud noises and of being detained again. One of the men decided to voluntarily commit himself to a neuropsychiatric service because of the impact on his mental health. As a result of the events, another resigned from his position as union delegate. The silencing of social organisation activities is one of the most recognised intimidating effects of the criminalisation of social protest.<sup>180</sup>

The information gathered by the international mission also indicates that the Department for Misdemeanours, a police unit attached to the Jujuy Ministry of Security, initiated misdemeanour proceedings against demonstrators for exercising their right to peaceful assembly. The intervention of the provincial executive calls into question the independence and impartiality of these proceedings.

In at least 10 cases, individuals have been punished with excessive fines. As one person interviewed reported, these proceedings have “resulted in the imposition of fines of 2.3 million pesos [approximately between USD 2,000 and USD 3,000], in expedient proceedings without guarantees, in which after 48 hours of failure to appear, judicial compulsion is triggered.” In most cases, the fines amounted to more than 10 times the monthly salary of the sanctioned persons, which ranges from 100,000 to 200,000 pesos (approximately USD 100 to USD 200).

In all known cases, proceedings were based on misdemeanours which, due to their vagueness and ambiguity, enable the prosecution and punishment of conduct typical of a protest, such as remaining in a public space or interrupting the movement of vehicles and people. The documents to which the mission had access showed that the demonstrators had been prosecuted and sanctioned for the commission of conduct that, according to the provincial Code on Misdemeanours, threaten public peace and road safety, including public disorder and nuisance, disturbance to third parties and failure to give way to ambulances, police or fire fighting vehicles.<sup>181</sup>

According to the testimonies gathered by the mission, in some cases, individuals were prosecuted for acts carried out during protests at which they were not even present. All of them, however, were known for their critical stance on the constitutional reform, as well as for having participated in and led other public demonstrations against it. These cases demonstrate that the law on misdemeanours was not used to protect a compelling public interest, but rather to punish the social and political activity of people who opposed the approval of the new provincial Constitution.

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180. ACHR (2019). *Protest and Human Rights: Standards on the rights involved in social protest and the obligations to guide the response of the State*. OEA/Ser.L/V/II CIDH/RELE/INF.22/19. September 2019. Paras 191-193.

181. These offences are provided for respectively in Articles 69, 70, 71 and 90 of the Jujuy Code on Misdemeanours, adopted by Law No. 5860 of 2014.

## **5.4 Gender-based violence: reprisals against women in the aftermath of protests**

The international fact-finding mission documented cases of selective persecution and violence against women because of their participation in the public protests against the constitutional reform. According to the information gathered, following the rallies and roadblocks, two women protesters and a lawyer representing indigenous communities were subjected to physical attacks, threats and harassment by hooded men and members of the Jujuy provincial police. In all cases, the attacks were carried out in or around the women's homes, suggesting prior monitoring and surveillance. In one of the cases, as a result of the harassment, the demonstrator was forced to relocate.

During the visit to Abra Pampa, the international fact-finding mission received information about a late-night attack on two indigenous women who participated in the demonstration on 16 June 2023. These attacks aggravated the climate of intimidation and generalised fear in the community which, according to the testimonies gathered by the mission, was installed with the repression of the roadblocks and the increased presence of the police in the locality.

A 62-year-old woman reported that, after the protest, she was beaten by a group of hooded men on her way home. She told the mission: "On 16 June I was at the crackdown. We defended ourselves with our flags and they [the police] were shooting bullets at us... Then I started to feel pursued because the police were on more corners. On Sunday 13 July, at around 12:30 a.m. I was returning home and three hooded young men, about 18 or 20 years old, beat me and now I'm very afraid to go out. This is a new situation for us." At the time of the interview, the mission observed that the woman had a bruise on one eye caused by the beating.

Another witness reported that a woman protester was forced to relocate from her home after a plainclothes policeman illegally entered her home and she was harassed by the police five times. The witness said: "A plainclothes policeman entered her house at 2 a.m. and asked her if she lived alone... She called the police and they never arrived. She had to run out of her house because they threatened her five times. Her brother, a policeman, has been asked about her."

During the visit to Humahuaca, the international mission received information about illegal surveillance carried out by the provincial police against a female lawyer representing two indigenous communities who expressed their opposition to the constitutional reform. According to the information provided, after the demonstration on 1 July 2023, unmarked vans were identified taking photos of her home, as well as the regular presence of police officers in the vicinity of her home.

The cases documented by the mission indicate the use of physical aggression, threats, intimidation and surveillance as a form of harassment and reprisal against women for their participation in or support of public demonstrations. These types of attacks are of particular concern, as in addition to controlling the exercise of rights through fear and coercion, they reinforce patterns of structural gender discrimination, according to which women's participation in society should be restricted to the private sphere.

## **5.5 Racism and discrimination against indigenous communities**

The international fact-finding mission recorded situations that show a pattern of persecution and racist violence against indigenous peoples during the political crisis in Jujuy. Statements collected from protesters in various locations in Jujuy highlight the systematic racism and verbal attacks by the police and the provincial government.

In Abra Pampa, a largely indigenous community near the Bolivian border, the authorities dismissed their demands for water and territorial protection, showing blatant disregard for the community and promoting offensive stereotypes. Community members reported that both the government and the police discriminated against them, using expressions such as: "Are they going to fight for water if they don't even wash?", or verbally expressing a desire to see them dead, and questioning the need for land for their people.



In Purmamarca, the mission gathered testimonies indicating the desecration of sacred spaces and disrespect for indigenous cultural identity, including the removal of symbols such as the Wiphala<sup>182</sup> or Viltipoco.<sup>183</sup> According to one of the testimonies received, “Sacred spaces were desecrated, they took down the Wiphala, they removed Viltipoco from the square, they want to erase our culture.”



Demonstrators from the indigenous communities of the Salinas Grandes Basin and Laguna de Guayatayoc wave whipalas at the junction of Abrapampa and Moreno. August 23, 2023. © Briseida Aragón Juárez

The mission documented a series of acts of racism and discrimination against indigenous peoples, including racist insults, hate speech and attacks on symbols of cultural identity. These cases reveal a worrying persistence of racism and contempt towards indigenous peoples and their symbols which not only violates their fundamental rights, but also perpetuates racist stereotypes.

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182. The Wiphala is a square flag of seven colours, a sacred and ancestral symbol of the indigenous Andean peoples. In contemporary history it has become an emblem of the resistance of the native peoples not only of Bolivia, but of the entire continent.

183. Viltipoco was a historic Quechua indigenous leader, who as political and military chief of Humahuaca and Purmamarca commanded a war of resistance against the invasion of their lands by the Spanish Empire in 1594.

## 6. Recommendations

Based on the information gathered during the visit to the province, as well as the analysis presented in this report, the international fact-finding mission makes a series of recommendations to prevent the continuation of a context of violence and disregard for human rights in Jujuy, as well as to contribute to ensuring the protection and respect for the human rights of the population, especially the human and environmental rights of indigenous peoples and the freedom of peaceful assembly and social protest.

The recommendations are addressed to both the national and provincial authorities, economic actors, including companies and the states in which they are domiciled, which are directly or indirectly involved in the province, as well as international human rights organisations.

### 6.1 To the National Authorities

Bearing in mind that according to the Constitution, laws and international treaties signed by Argentina, the Argentine state is the main guarantor of the human rights set out therein, the international mission makes the following recommendations:

#### **To the National Government:**

- Refrain from promoting regulations that disproportionately restrict the exercise of the right to peaceful assembly and social protest, including measures that prohibit the modes, places or times citizens can choose to demonstrate publicly, or criminalise protected forms of protest such as roadblocks.
- Refrain from speeches that stigmatise the legitimacy and legality of the exercise of the right to social protest and foster adverse social imaginaries against those who participate in, call for or lead public demonstrations.
- Promote action to ensure robust processes of accountability for the actions of security forces during public demonstrations. In cases where state agents have engaged in conduct that violates human rights, such as unlawful use of force, accountability should also cover commanding officers who have failed to exercise effective control over forces and take measures to prevent, eradicate or denounce abuses of power.
- Ensure that security forces intervening in protests and public demonstrations prioritise the protection of the life, liberty and integrity of individuals, and refrain from arbitrary detention and cruel, inhuman and degrading treatment.
- To this end, the executive branch should adopt protocols for the use of force that are transparent and compatible with international human rights standards, which, among other measures, include: i) the prohibition of the use of firearms to control public demonstrations; ii) the prioritisation of dialogue and negotiation in the management of protests; iii) the protection of the work of journalists and public officials involved in monitoring the proper conduct of demonstrations; iv) the full identification of law enforcement officers involved in protest dispersal operations; and v) the prohibition of the deployment on the ground of law enforcement officers who are under investigation for unlawful acts, until the proceedings against them are concluded or they are acquitted.
- Refrain from promoting regulations that favour extractive initiatives, such as lithium exploration and extraction, that are potentially harmful to indigenous peoples and the enjoyment of the right to a safe, clean, healthy and sustainable environment.
- Refrain from promoting regulations that remove or weaken existing legal frameworks for the protection of human and environmental rights, especially in the context of business activities, including the dismantling of offices and agencies dedicated to the protection of rights.
- Conclude as a matter of urgency the technical land survey process of the indigenous communities of Jujuy, led by the National Institute of Indigenous Affairs (INAI), in order to ensure that the ownership of their ancestral territories enjoys legal security against the actions of third parties or state agents themselves.

- Provide the National Institute of Indigenous Affairs (INAI) with adequate human, technical and financial resources so that it can fulfil its mandate and swiftly conclude the technical-legal-cadastral survey process of Jujuy's indigenous ancestral territories. This process is essential for the communities to gain access to the titling of their collective property.
- Refrain from speeches that promote negative, stigmatising and discriminatory social attitudes towards indigenous peoples.
- Provide sufficient human, technical and financial resources to the institutions in charge of combating racism, such as the National Institute against Discrimination, Xenophobia and Racism (INADI) and the Ombudsman's Offices, so that they can fully comply with their mandate and provide the necessary support to victims of ethnic and racial discrimination.
- Conduct regular training programmes on diversity, racial equality and human rights issues for judges, public defenders, law enforcement officials and other public officials. These programmes should aim to strengthen effective implementation of anti-discrimination legislation and promote a culture of tolerance and respect for human rights.

#### **To the National Congress:**

- Urgently adopt the necessary legislative and regulatory measures to ensure that the right to indigenous community property enjoys legal security against the actions of third parties or state agents themselves, in accordance with the orders of the IACHR Court in its judgment in the *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*.
- Refrain from approving legislative and regulatory measures that affect or weaken the protection and guarantee of the rights of indigenous peoples in the context of business activities, especially the recognition of their ownership and possession of ancestral territories and the right to be consulted in a free, prior and informed manner on measures that could directly affect them.
- Refrain from adopting legislative and regulatory measures that disproportionately restrict the exercise of the right to peaceful assembly and social protest, including measures that prohibit the modes, places or times citizens can choose to demonstrate publicly, or criminalise protected forms of protest such as roadblocks.
- Adopt measures to strengthen the enforcement of the National Law on Discriminatory Acts (Law 23.592), in order to effectively address racism and xenophobia in all its forms.

#### **To the National Supreme Court of Justice:**

- Promptly consider and hear constitutional actions and writs of habeas corpus that are brought before it with the aim of having the provincial Constitution of Jujuy declared unconstitutional in those aspects that contravene the national Constitution.
- Resolve any disputes brought before it related to the reform of the provincial Constitution of Jujuy, based on a rigorous control of conventionality that takes into account the scope of international human rights standards on the rights to prior consultation and collective ownership of indigenous peoples and the freedom of peaceful assembly.

## **6.2 To the Province of Jujuy**

#### **To the Provincial Government:**

- Refrain from using police force to intervene in and repress public demonstrations, recognising the serious consequences of this action on the rights of those who participated in the protests against the reform of the provincial Constitution.
- Ensure that security forces intervening in the course of protests and public demonstrations give priority to the protection of the life, liberty and integrity of persons, especially groups with special protection such as indigenous peoples, children and adolescents, and the elderly.
- Develop and implement a protocol for the use of force in Jujuy consistent with the guidelines of international law on the matter.

- Put an end to the process of criminalisation of social protest that began through the use of ordinary law against people who participated in the protests against the reform of the provincial constitution.
- Respect the right of indigenous communities to be consulted in a free, prior and informed manner on measures that may directly affect them, including the implementation of investment projects in their ancestral territories. To this end, the provincial executive branch must take into account the provisions of ILO Convention No. 169, transposed into national law by Law 24.071 of 1992, and international treaties such as the American Convention on Human Rights, which have constitutional rank.
- Refrain from imposing, without adequate processes of free, prior and informed consultation with indigenous communities, investment projects that could affect their ancestral territories, such as projects for the exploration and mining of lithium.
- Recognise as applicable in cases of investment projects likely to affect indigenous peoples, the Kachi Yupi (*Huellas de Sal*) Protocol for consultation and free, prior and informed consent developed by the communities of the Salinas Grandes and Laguna de Guayatayoc Basin.
- Refrain from promoting measures or carrying out acts that could lead state agents or third parties to affect the existence, value, use or enjoyment of indigenous ancestral territories that are awaiting demarcation, delimitation and titling.

#### **To the Provincial Legislative Authorities:**

- Repeal Articles 69, 70, 71 and 90 of the Code of Misdemeanours of the Province of Jujuy, which were arbitrarily used to criminalise people who participated in or promoted protests against the reform of the provincial Constitution.
- Facilitate, through legislation, the grant of communal title to their ancestral territories to all indigenous communities that have completed the land survey process.
- Guarantee full compliance with international environmental law, international human rights law and the National Constitution when planning, drafting and approving projects or laws that could affect the rights of indigenous peoples.
- Refrain from adopting legislative and regulatory measures that disproportionately restrict the exercise of the right to peaceful assembly and social protest, affect the guarantee of indigenous peoples' rights in the context of business activities, and undermine the protection of ecosystems and the conservation of the environment and water.

#### **To the Provincial Judicial Authorities:**

- Investigate with due diligence the allegations of abuses committed by police forces in the context of the public demonstrations against constitutional reform, and adequately and effectively punish the officials found responsible.
- Conduct independent and swift criminal proceedings against those who participated in, convened or led the protests against the reform of the provincial constitution.
- Decide independently, promptly and taking into account international standards on the right to peaceful assembly, the appeal brought against the conviction of lawyer and human rights defender Alberto Nallar.
- Refrain from criminalising social protest by applying criminal offences related to the guarantee of public order, such as sedition, to conduct that is part of the legitimate exercise of the right to peaceful assembly.
- Proceed independently and swiftly with the criminal proceedings brought by provincial state bodies against persons who participated in, convened or led the protests against the constitutional reform.

#### **To the Ombudsman of the Province of Jujuy:**

- Take a proactive and autonomous role in the promotion, protection and defence of the rights of people who exercised their right to protest in the context of the constitutional reform and were repressed for this reason.

### **6.3 To public and private companies actively engaged in mineral exploration or mining activities in the province, or acquiring or planning to acquire minerals or processed products originating in the province.**

- Comply with their human rights obligations, especially in relation to the rights of indigenous peoples and the protection of the environment. To this end, companies should implement human rights and environmental due diligence processes aimed at preventing their operations from adversely affecting human rights and the environment. These processes should be developed in accordance with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, with a specific focus on indigenous rights as set out in the UN Declaration on the Rights of indigenous peoples and ILO Convention No. 169. In case of human and environmental rights impacts, companies should establish effective mechanisms for remediation, mitigation and non-repetition.

### **6.4 To importing states and states in which companies operating or planning to operate in Jujuy, or acquiring or planning to acquire natural resources or processed products originating in the province, are domiciled**

- Establish legislative and administrative mechanisms to make their companies operating in the province of Jujuy accountable for preventing and mitigating risks of human rights and environmental violations, with a specific focus on compliance with the rights of indigenous peoples. These mechanisms could include ambitious legislation for corporate due diligence of supply chains with effective sanctions and corrective mechanisms.
- Promote active transparency processes regarding the dissemination of information related to negotiations and documents concerning partnerships with Argentina, such as the strategic partnership on raw materials value chains concluded in 2023 by the European Union in the framework of its industrial strategy<sup>184</sup> and the regulation on critical raw materials.
- Reduce the absolute consumption of raw materials and fundamentally restructure raw material-intensive production and consumption sectors.

### **6.5 To international human rights bodies**

#### **To the Inter-American Commission on Human Rights:**

- Accept the petition presented by the Communities of Salinas Grandes and Laguna de Guayatayoc regarding the lack of free, prior and informed consultation in the implementation of mining projects in their ancestral territories, as well as the request for precautionary measures filed in relation to the repression they suffered in the context of the provincial constitutional reform.
- Follow up on concerns expressed by the Argentinean society about undue restrictions on the right to social protest, and violations of indigenous peoples' rights to free, prior and informed consultation, collective property and access to water, as provided by the IACHR Court in its case law.

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184. European Union (2023). Memorandum of Understanding on a strategic partnership on sustainable raw materials value chains between the European Union and the Argentine Republic. 13 June 2023. Available at: [https://single-market-economy.ec.europa.eu/document/download/50334763-5a5d-4055-9ec1-3e1d39379748\\_en?filename=MoU\\_EU\\_Argentina\\_20230613.pdf](https://single-market-economy.ec.europa.eu/document/download/50334763-5a5d-4055-9ec1-3e1d39379748_en?filename=MoU_EU_Argentina_20230613.pdf)

**To the Office of the United Nations High Commissioner for Human Rights:**

- Follow up on the concerns expressed by indigenous peoples and communities in Jujuy, and Argentine civil society in general, about undue restrictions on the right to social protest.
- Conduct, through the Regional Office for South America, a visit to the province of Jujuy aimed at facilitating a dialogue between the provincial and national governments and the social sectors affected by the constitutional reform and the repression of protests.

## Annex: Meetings held by the international fact-finding mission during and after its visit to Jujuy

1. Teachers' Union CEDEMS, San Salvador de Jujuy, 22 August 2023.
2. Multi-sector, San Salvador de Jujuy, 22 August 2023.
3. Members of Salinas Grandes Communities, 22 August 2023.
4. Members of Abra Pampa Communities, 22 August 2023.
5. Members of La Quiaca Communities, 22 August 2023.
6. Members of Susques Communities, 23 August 2023.
7. Communities who demonstrated at the blockade of national roads 9 and 52, Purmamarca, 23 August 2023.
8. Diego Funes, Regional Prosecutor's Office, San Salvador de Jujuy, 24 August 2023.
9. Rodrigo Gabriel Fernández Ríos, Prosecutor for Criminal Policy, San Salvador de Jujuy, 24 August 2023.
10. Gastón Remy, Provincial MP, PTS-Frente de Izquierda, San Salvador de Jujuy, 24 August 2023.
11. Alberto Nallar, lawyer and human rights defender, San Salvador de Jujuy, 24 August 2023.
12. Advisory Council of the Local Mechanism for the Prevention of Torture, San Salvador de Jujuy, 24 August 2023.
13. Fundapaz and Endepa, San Salvador de Jujuy, 24 August 2023.
14. Lawyer, San Salvador de Jujuy, 24 August 2023.
15. H.I.J.O.S., San Salvador de Jujuy, 24 August 2023.
16. Movimiento Nacional Campesino-Indígena MNCI, San Salvador de Jujuy, 24 August 2023.
17. Javier de Bedia, Ombudsman of the Province of Jujuy, San Salvador de Jujuy, 25 August 2023.
18. Teachers' Union CEDEMS, San Salvador de Jujuy, 25 August 2023.
19. Multi-sector against reform and multi-sector on women, San Salvador de Jujuy, 25 August 2023.
20. Natalia Morales, provincial legislator and Delegate to the Constitutional Convention, PTS-Frente de Izquierda, 25 August 2023 (*virtual*).
21. Guillermo Corro, Jujuy Minister of Security, Natalia Sarapura, National legislator for the Province of Jujuy, Sonia Ochoa, Secretary for Indigenous Peoples, Team of the Ministry of Human Rights and Indigenous Peoples, Team of the Ministry of Security, San Salvador de Jujuy, 25 August 2023.
22. Tercer Malón de la Paz, Buenos Aires, 26 August 2023.
23. Alejandro Marmoni, President of the National Institute of Indigenous Affairs (INAI), 28 August 2023 (*virtual*).
24. Horacio Pietragalla, Secretary of Human Rights of Argentina, Paula Álvarez Carreras and Emiliano Quinteros, Human Rights Department of Argentina, 30 August 2023.
25. Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales, ANDHES, 2 February 2024 (*virtual*).





**Brot**  
für die Welt

### **Bread for the World**

Brot für die Welt (Bread for the World) is the globally active development and relief agency of the Protestant regional and free churches in Germany. Its aim is to achieve a world without hunger, poverty and injustice, in which everyone has the opportunity to live in dignity.

<https://www.brot-fuer-die-welt.de/en/bread-for-the-world/>

  
**Movement  
Law Lab**

### **Movement Law Lab and the Global Network of Movement Lawyers (GNML)**

A network of movement lawyers across the world who work with organised communities and social movements fighting for human rights, self-determination and a healthy planet. The GNML seeks to build a solidarity-based and strong community of practice of movement lawyers globally who can address crises at the transnational level using innovative legal strategies that build the power of movements for social, economic, and environmental justice.

<https://www.movementlawlab.org/about/global>

  
GLOBAL  
NETWORK OF  
**MOVEMENT  
LAWYERS**  
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Human  
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Law  
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### **HRLC**

The Human Rights Law Centre uses strategic legal action and policy solutions to support people and communities to eliminate inequality and injustice and build a fairer Australia.

<https://www.hrlc.org.au/>

**Dejusticia**

### **Dejusticia**

A centre for legal and social studies located in Bogotá, Colombia. We are dedicated to strengthening the rule of law and promoting human rights in Colombia and the Global South.

<https://www.dejusticia.org/>



### **Observatorio Ciudadano**

The Observatorio Ciudadano is a non-governmental organisation dedicated to the promotion, documentation and defence of human rights. It was created in September 2004, as the Observatorio de Derechos de los Pueblos Indígenas, to raise the awareness of Chilean society and government on the realities faced by the country's indigenous peoples, and the need to guarantee respect for and recognition of their internationally protected individual and collective rights.

<https://observatorio.cl/>



### **AIDA**

The Interamerican Association for Environmental Defense (AIDA) is a non-profit organisation that uses the law and science to protect the environment and communities impacted by environmental harm in Latin America. We are driven by our mission to strengthen people's capacity to guarantee the individual and collective right to a healthy environment.

[www.aida-americas.org](http://www.aida-americas.org)



### **PRODESC**

ProDESC's fundamental objective is to defend and promote economic, social and cultural rights (ESCR), in order to contribute to their implementation, justiciability (the possibility to demand compliance before the courts) and enforceability, and thus to build a fairer and more equitable society.

<https://prodesc.org.mx/>

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The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organizations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organizations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organizations and actors of change.

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This publication is supported by the *Agence Française de Développement* (AFD). However, the ideas and opinions presented should not be interpreted as representing the views of the AFD.

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FIDH is an  
**international human rights  
NGO**  
federating **188** organizations  
from **116** countries

**fidh**

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 188 member organizations in 116 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organization**

Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.