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# Rolling back social and environmental safeguards in the time of COVID-19

The dangers for indigenous peoples and  
for tropical forests



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ROLLING BACK SOCIAL AND ENVIRONMENTAL  
SAFEGUARDS IN THE TIME OF COVID-19



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Human Rights Clinic  
Yale Law School



Forest  
Peoples  
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Front cover: Women are part of the monitoring of the Xakriaba territory, Brazil, 2020. In addition to making and wearing protective masks.

Credit: Edgar Kanaykō / If Not Us Then Who

Previous page: Kichwa woman in San Martín, Peru

Credit: Miluska Elguera Solar / FPP

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# Foreword

Dear friends,

This crucial report demonstrates how states and other actors are using the COVID-19 pandemic as an opportunity to roll back social and environmental safeguards. In doing so, they are **eroding the rights of indigenous peoples in the five most tropically forested countries of the world**.

Indigenous peoples have protested against actions by states that have used the crisis as an excuse to erode their rights while failing to provide indigenous peoples with the support and assistance they need to deal with the pandemic. In their responses, many governments have increasingly criminalised indigenous human rights defenders or legitimised or even facilitated the threat and use of violence against them. These actions clearly demonstrate the continuing lack of accountability of states, and the lack of respect of businesses, for the rights and wellbeing of indigenous peoples. Indigenous peoples' lack of access to justice is present at all levels—local, national, regional and global, and it allows this culture of impunity to prevail.

This report highlights indigenous peoples' realities and their efforts to protect their territories, livelihoods and way of life during the pandemic in the face of extraordinary difficulties. It also emphasises indigenous peoples' calls for the respect and protection of their right to self-determination, particularly self-governance of their territories. The exercise of this right enables indigenous peoples to strengthen their social cohesion and resilience, to practice their sustainable livelihoods, maintain their indigenous food systems, and to ensure the stewardship of biodiversity in their territories which is critical in preventing future pandemics.

Many indigenous peoples rely on already fragile ecosystems for their sustenance, survival, culture and dignity. The respect and protection of the rights of indigenous peoples to their lands, territories and resources, and to self-governance, is indispensable for the sustainable management of our planet's limited resources. The respect and protection of these rights is therefore not only essential for their survival, but for the survival of us all in overcoming this crisis.

Rolling back environmental and social protections in the name of promoting economic recovery is adding insult to injury for indigenous peoples. This step in the wrong direction will further marginalise indigenous peoples and worsen inequality and injustice. It will also exacerbate the global climate crisis. Indigenous peoples, as stewards of nature, will continue to bear the brunt of this man-made problem.

Indigenous peoples, social movements, and civil society organisations should strengthen solidarity and cooperation to oppose the unjust actions that governments and businesses are taking in the name of economic recovery. The pandemic can never be an excuse to trample upon human rights and destroy our planet. Instead, the pandemic must serve as a catalyst for transformative change, ending the over-exploitation of natural resources, advancing a 'just transition', addressing inequality within and between nations, and guaranteeing the rights of all, including indigenous peoples.

Likewise, indigenous peoples' values—of solidarity, upholding the common good, cooperation, caring for each other, reciprocity and nurturing nature for future generations—should underpin all recovery actions.

Sincerely,  
**Joan Carling**

*Director, Indigenous Peoples Rights International*

# Summary

**Countries have responded to the COVID-19 pandemic by weakening or removing legal and policy protections for indigenous peoples' rights.** New evidence reveals a dangerous trend: In the five countries with the world's largest areas of tropical forest<sup>1</sup>—Brazil, Colombia, the Democratic Republic of the Congo, Indonesia and Peru—governments have been rolling back social and environmental laws, regulations and safeguards out of 'economic necessity' and exploitative opportunism.

**In all five countries, the COVID-19 pandemic has been characterised by policies and practices that violate the rights of indigenous peoples.** They include legislative and regulatory change; the exclusion of indigenous peoples from decision-making processes; the expansion of industrial activities; increased land grabbing, illegal mining and illegal logging in or near indigenous territories; and an alarming growth in the criminalisation of, and violence against, indigenous human rights defenders.

## Key findings

1. **States are prioritising the expansion of the energy sector, infrastructure, mining and logging and the development of industrial agriculture in or near indigenous territories,** while failing to protect the land and self-determination rights of indigenous peoples, including their right to free, prior and informed consent to projects affecting their lands and lives.
2. **States are not enforcing domestic or international law prohibiting land grabbing and are facilitating illegal deforestation, agribusiness expansion and mining in or near indigenous peoples' territories.** Despite an overall economic slowdown, deforestation is surging and is likely to get worse in 2021 as governments continue to promote the expansion of industrial-scale extractive industry activities.
3. **States have developed and are enacting land-use and planning policies and potentially harmful regulations that violate indigenous peoples' rights,** and have unilaterally weakened regulations for prior consultation, compounding the harm caused by existing policies and regulation.
4. **Indigenous peoples who try to assert their rights are facing increased violence, arrests and criminal prosecution** in a climate of inflammatory lies and disinformation.

This process of deregulation and associated rights-violating policies and practices, the full extent of which have yet to come to light, is likely to get worse as **governments continue to favour economic recovery over human rights and the environment.** Already, throughout the pandemic, governments have treated indigenous peoples' health and lives as less important than the expansion of mining, logging and industrial agriculture in or near their territories, which has often spread COVID-19 within their communities.

**The exploitation of the pandemic to grab land for mining, logging and industrial agriculture is a significant threat not just to indigenous peoples but to vast areas of tropical forest within their customary lands and territories.**

## Indigenous peoples are asserting their rights

Indigenous peoples have taken steps to protect their rights by, for example: continuing to self-demarcate and monitor their lands, territories and resources; developing laws and protocols on free, prior and informed consent; filing legal challenges to government misinformation, harmful deregulation proposals and abusive actions; and using national, regional and international human rights mechanisms to draw attention to their situation and seek remedies. Advocacy has focused on strengthening indigenous communities' autonomous self-governance institutions and on securing tenure and the territorial control necessary for them to achieve self-determined development and economic resilience.

### What needs to be done immediately?

- **All governments must implement economic recovery in accordance with the United Nations Declaration on the Rights of Indigenous Peoples;** ensure indigenous peoples' right to self-determined development; uphold their state obligations under international human rights treaties; and show political support for and commitment to promoting the effective implementation of the UN Guiding Principles on Business and Human Rights.
- **International financial institutions and multinational corporations with supply chains in tropical forested countries must uphold their obligations** to ensure that their business practices do not benefit from or contribute to indigenous rights violations or deforestation and the resulting contributions to global warming.
- The pandemic is being used as an excuse to justify regressions in compliance with international standards on the individual and collective rights of indigenous peoples. Therefore, **donor governments, international financial institutions, and other international and multilateral bodies must demand that the governments of highly tropically forested countries guarantee the rights of indigenous peoples** so that they can freely manage their territories and resources. These guarantees must include protection of indigenous leaders and community monitors who protect their territories from state-sponsored activities conducted without 'good faith' consultation and consent.
- Indigenous traditional land management and forest protection systems have proven to be much more efficient and effective than state conservation policies. Therefore, **international development institutions, conservation organisations, and those funding them should redirect their funds to indigenous peoples** and their institutions, including forest management and monitoring programmes.
- **Donor governments and international development institutions should encourage the governments of highly tropically forested countries to provide, protect and fund systems of indigenous participation,** at all levels, in decisions about programmes and projects that may affect indigenous territories.
- **Organisations offering COVID-19 response and recovery funding or programmes must enhance their due diligence** and related social and environmental safeguard systems, monitor rigorously, and provide accessible and effective grievance mechanisms to ensure that social and environmental safeguards are fully implemented. These measures are particularly important for international organisations that offer finance or technical assistance to high-risk sectors, such as mining, agribusiness, energy and large-scale infrastructure, and that help shape public policy and legislation.
- **All governments should enact legislation that requires their companies to undertake human rights and environmental due diligence across their supply chains.** Consultation should be held with indigenous peoples to capture their perspectives on due diligence measures.

# About this report

Since the outbreak of COVID-19, the world's five most tropically forested countries have been rolling back social and environmental legal protections in the name of economic recovery. To what extent this is happening and how it affects the rights of indigenous peoples, the forests they depend on, and the global climate—now and in the longer term—is the subject of this report.

The pandemic has disrupted many aspects of life, including the normal channels of information-sharing between local communities and civil society. Anecdotal evidence indicates that in many places, especially in remote forests and rural areas, where many communities do not have internet access or other reliable forms of electronic communication, it has been difficult, if not impossible, for civil society organisations to meet with communities and their leaders and representatives to share what is happening. Such disruptions have made it especially difficult to understand and bring attention to rights abuses in a timely manner.

In this report, the authors—a partnership of several civil society organisations, Forest Peoples Programme (FPP), the Lowenstein International Human Rights Clinic of Yale Law School, Middlesex University London School of Law, and in-country researchers—attempt to address this recent gap in knowledge. We are motivated by a sense that, if civil society waits until the pandemic has ended, some of these changes will have progressed too far to correct.

This is the first systematic analysis of how rollbacks of social and environmental laws, regulations and safeguards during the pandemic exacerbate the threats and harms to indigenous peoples and other forest-based communities and their territories. Other studies have analysed the impacts of COVID-19 responses on biodiversity<sup>2</sup> and on the health of indigenous communities.<sup>3</sup>

We draw largely from five country-specific studies<sup>4</sup> prepared by researchers based in Brazil, Colombia, the Democratic Republic of the Congo, Indonesia and Peru.

## Focus of research

We focus on indigenous rights violations perpetrated by governments, by both action and inaction, by private corporations, and by powerful armed groups. Based on our review of academic journals, white papers, media reports, statements and reports by indigenous peoples, and interviews conducted for the five country-specific studies, we explore:

- Processes for consultation and for obtaining prior consent from indigenous peoples and affected communities for policies, laws and projects affecting their lands and their lives.
- Procedures and regulations for land-use change; national macroeconomic policies that favour expansion of industrial agriculture and/or mining into indigenous territories; and government tolerance of illegal activities in these territories.
- Impunity for people acting illegally and with violence and governments' use of arrest and criminal prosecution of indigenous people and defenders.
- The ability of indigenous peoples and civil society to advocate against rollbacks of social and environmental safeguards.
- The effects of safeguard rollbacks on rights-holders and specific groups.
- The effects of private-sector actions on human rights and the environment.

By noting the patterns of recently increasing encroachments, this report sheds light on the difficult and continuing challenges that indigenous peoples and forest-dependent communities are facing in the context of the COVID-19 pandemic. Drawing on themes identified in the five country-specific reports and on further research into relevant global regulatory rollback trends, the report highlights the most serious trends, to direct national and international attention to the greatest threats to the rights of indigenous and forest peoples and to the environment.





Left: Jamanxim National Forest,  
Para, Brazil  
Credit: Paralaxis

Below: Nahua hunters in the  
Peruvian Amazon  
Credit: Johan Wildhagen



# Introduction

## **The chronic failure to recognise, respect and protect indigenous peoples' land rights**

Long before the outbreak of COVID-19, states were failing to adequately recognise, respect and protect the land rights of the world's approximately 500 million indigenous people and the 1.2-1.4 billion people who depend on forests.<sup>5</sup> Customary lands are estimated to cover at least 50 per cent of the global landmass.<sup>6</sup> Much of this customary land is not formally titled or officially recognised by governments; under statutory laws, customary landholders legally own only ten per cent of the global landmass, with only a further eight per cent designated formally to them.<sup>7</sup>

This lack of legal recognition of indigenous territories and ineffective implementation of laws protecting collective property or occupation rights leave community lands vulnerable to expropriation and invasion by 'legal' and illegal economic actors—extractive industry companies and operators, agro-industry interests, and settlers and organised land traffickers (e.g., in Brazil, Peru and Colombia). A core problem in many countries (e.g., Peru and Indonesia) is that national legal frameworks fail to establish effective protections for untitled collective customary lands. In other cases (e.g., Peru and the Democratic Republic of the Congo (DRC)), national laws fail to recognise the property rights of indigenous peoples over uncultivated forests and rangelands, assigning ownership and control to the state.

## **Legitimising violence and intimidation in a time of crisis**

During a pandemic, which threatens health and livelihoods, the continuing and persistent threats to indigenous peoples' land rights, food security and economic stability (from encroaching corporate expansion) require especially urgent attention. Before the COVID-19 pandemic, indigenous rights defenders and environmental activists already faced deadly violence in many parts of the world.<sup>8</sup> Throughout the pandemic, rather than experiencing guaranteed protection during this critical time, these activists have experienced increased violence and threats of violence. In Colombia, for example, according to the United Nations, at least 120 human rights defenders were murdered in 2020.<sup>9</sup> Criminal groups have committed some of these murders, although the identity of the perpetrators is not always clear.

Government officials in various countries have historically framed indigenous peoples as an obstacle to development in order to legitimise the use of force and violence against them. These same governments now seek to portray indigenous peoples as obstacles to urgently needed economic recovery.

## Indigenous land rights are critical in the fight against global climate change



Victoria Tauli-Corpuz, the former UN Special Rapporteur on the Rights of Indigenous Peoples, Geneva, 2015  
Credit: UN Geneva / Jean-Marc Ferré / [Flickr](#)

Providing indigenous peoples with titles to customary land is an essential tool in the fight against climate change.<sup>10</sup> A study from the Peruvian National Academy of Sciences found that issuing legal title to indigenous communities in the Peruvian Amazon enabled them to protect their forests from deforestation and other disturbances better than before they had land titles.<sup>11</sup>

Across the world, where indigenous peoples and other local communities have legal rights to their lands, those lands store more carbon, produce fewer emissions, and have much lower deforestation rates than lands owned by other actors.<sup>12</sup> Indigenous peoples are better than non-indigenous landholders at preserving the ecosystems and biodiversity present on their lands, and they are better at restoring damaged lands.<sup>13</sup>

*"Indigenous peoples' traditional knowledge about the environment is a valuable resource which can contribute to addressing climate change."*

**—Victoria Tauli-Corpuz, former UN Special Rapporteur on the Rights of Indigenous Peoples<sup>14</sup>**



## **Pandemic response is no excuse for states to violate their international human rights obligations**

International law requires that states recognise and respect indigenous peoples' collective rights to their lands, territories and resources; it also requires that states ensure that processes for indigenous peoples' free, prior and informed consent (FPIC) are in place when considering measures that might directly or indirectly affect their rights or wellbeing.<sup>15</sup> International human rights bodies have made clear that these rights apply during the COVID-19 pandemic,<sup>16</sup> even if "the impossibility of conducting prior informed and free consent processes" means that legislation or administrative measures cannot be passed or projects cannot be approved.<sup>17</sup> FPIC requirements and the rights underpinning them have been affirmed by international and regional human rights bodies in their jurisprudence and recommendations to states. They are embodied in peoples' right to self-determination, set out in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and established as customary international law.<sup>18</sup> They are also inherent in the requirement for non-discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>19</sup> The rights of indigenous peoples are protected under the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and ILO Convention No. 169,<sup>20</sup> among other international and regional legal instruments. The UN Declaration on the Rights of Indigenous Peoples, which acts as an interpretive guide for these instruments and codifies existing international law, contains the clearest articulation of these rights.<sup>21</sup>

The UN Declaration also affirms indigenous peoples' right to the conservation and protection of the environment and to the productive capacity of their lands or territories and resources.<sup>22</sup> Moreover, states have human rights obligations to ensure the "enjoyment of a safe, clean, healthy and sustainable environment"; many of these obligations are synthesised in the Framework Principles on Human Rights and the Environment, which provide, "States should require the prior assessment of the possible environmental impacts of proposed projects and policies."<sup>23</sup> This right of indigenous peoples to a healthy environment has also been affirmed by the Inter-American Court of Human Rights and the African Commission on Human and Peoples' Rights.<sup>24</sup> In addition, international law requires the protection of human rights defenders,<sup>25</sup> including environmental human rights defenders<sup>26</sup> and indigenous rights defenders.<sup>27</sup>

## **Economic recovery or human rights – a false dichotomy**

The COVID-19 pandemic has caused a global recession that will likely be long-lasting and far-reaching. The pandemic's effects on indigenous peoples around the world will be particularly profound.<sup>28</sup> These challenges require strong government responses; yet, rather than focusing on policies that could foster holistic, sustainable economic growth, governments in the world's most tropically forested countries have largely been prioritising short-term economic gains at the expense of their human rights obligations to indigenous peoples.

As UN Independent Expert on Foreign Debt and Human Rights Juan Pablo Bohoslavsky has argued, the idea that governments must choose between economic recovery from COVID-19 and human rights obligations presents a false dichotomy. In Bohoslavsky's view, to bolster a holistic economic recovery, "[s]tates should invest in nutrition, housing, education, and local small-scale environmentally sustainable farming and agricultural production", which will provide more economic stability in the long term.<sup>29</sup>

# Deforestation surges through the COVID-19 pandemic

Since the onset of the COVID-19 pandemic, forested countries have been weakening, repealing or neglecting to implement social and environmental safeguards for indigenous and forest peoples' land rights. Increased deforestation arising from legal and illegal logging, mining, agribusiness and hydrocarbon extraction has been reported in many forested countries around the world.<sup>30</sup>

Extractive industries and illegal mining are also threatening indigenous lands in the Amazon,<sup>31</sup> and, during the pandemic, extractive companies and commercial interests have been putting pressure on governments to allow expanded mining access.<sup>32</sup> In a study on the impacts of COVID-19 on indigenous rights, one interviewee explained that, "[d]uring the quarantine, illegal loggers have been taking advantage of extracting the resources of indigenous peoples in their community".<sup>33, 34</sup>

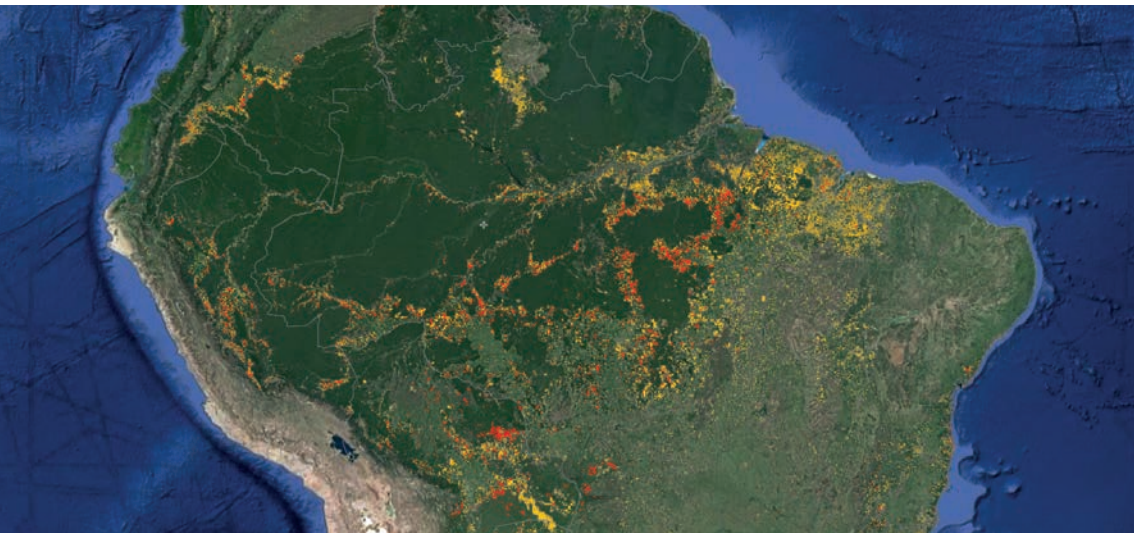
The maps shown below illustrate the threats faced by the indigenous peoples who are dependent on these forests for their livelihoods and survival.

### Legend

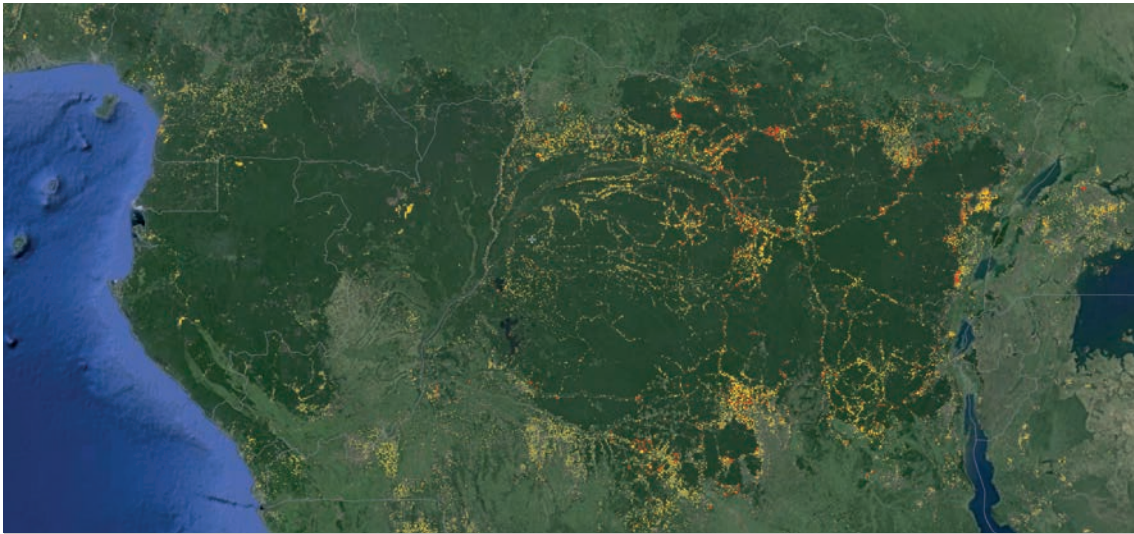
**Yellow:** Land deforested during the period 2015–2019  
**Red:** Land where more than 50 per cent of the canopy was lost in 2020  
Credit: Global Forest Watch, World Resources Institute

### Notes

The red areas represent deforestation that occurred over a shorter timeframe than the yellow areas. The red areas do not represent total loss of forest cover, only instances where the loss exceeded 50 per cent.



Amazon Basin



Congo Basin



Indonesia



# Snapshot of key findings by country

In all five countries, the COVID-19 pandemic has been characterised by policies and practices that violate indigenous peoples' human rights. They include legislative and regulatory change; the exclusion of indigenous peoples from decision-making processes; increased land grabbing, the expansion of industrial agricultural; illegal mining and illegal logging in or near indigenous territories; and an alarming growth in the criminalisation of, and violence against, indigenous human rights defenders.

## Brazil

**Land grabbing:** Data collected by the UN Special Rapporteur on the Rights of Indigenous Peoples reveals an increase in land grabbing in several indigenous territories during the COVID-19 pandemic.

**Expansion of illegal and industrial mining:** In October 2020, Brazil's Vice President Mourão publicly defended continued illegal mining on indigenous peoples' lands during the COVID-19 pandemic. The Brazilian mining authority has received more than 3,000 requests to mine on indigenous peoples' land in the Amazon and has kept them on file, rather than rejecting them immediately, as it is required to do. There were 145 new requests filed in 2020, the highest number of requests in 24 years. Efforts are also underway to enact legislation legalising mining on indigenous lands.

**Undermining human rights and environmental protections:** The government has exploited the pandemic to undermine legal protections of rights at a time when opposition by indigenous peoples and civil society is difficult. Between March and May 2020, the government passed 195 executive acts aimed at directly or indirectly dismantling or bypassing environmental laws. These acts have provided impunity for illegal land grabbing in indigenous territories.

**Negative health impacts:** Land grabbing, mining and logging have had profound health impacts. For example, as of September 2020, land invasions had caused at least 159 cases of COVID-19 among indigenous communities in the Xingu River basin.


**Indigenous peoples' responses:** Unable to rely on the state for protection, indigenous peoples and traditional communities have established joint strategies for protecting their lands from an escalation of invasions and illegal mining and logging.

**Deforestation has increased during the pandemic:** For example, in April 2020 alone, deforestation of the Brazilian Amazon increased by 64 per cent compared to the same month the previous year.



Left and below: The Association of the Satere-Mawe Indigenous Women are making protective facemasks in Manaus, Brazil, 2020  
Credit: Raphael Alves / IMF / Creative Commons





During the pandemic, mining, agro-industry and illegal resource exploitation and trade have correlated closely with increased violence and threats to social and indigenous leaders.

## Colombia

**Rights-denying land-use policies:** The government's strategy for economic reactivation has accelerated changes to land access, appropriation, tenure, and regulations for the use of territories, most of which are areas where indigenous peoples have customary land rights. The government is handing over these lands to corporations through the creation of business development zones.

**Weakened consultation processes:** A presidential directive signed in September 2020 weakened already-flawed guidelines for consultation on development projects. The directive, among other changes, limits development projects' "area of influence"—the geographic areas affected by projects and on which indigenous peoples likely affected by the projects must be consulted. Mining and agro-industry also continue to expand undeterred.

**Continued expansion of mining and agro-industry in indigenous lands:** In September 2020, in the middle of the pandemic, La Federación Nacional de Cultivadores de Palma de Aceite (Federation of Palm Growers, Fedepalma) announced that Colombian palm oil production was set to increase 10 per cent in 2020—a concerning announcement as the presence of oil palm plantations often correlates with homicides, land grabbing, deforestation and other environmental impacts, and forced displacement of Afro-descendant and indigenous communities.

**Increased violence against indigenous leaders:** During the pandemic, mining, agro-industry and illegal resource exploitation and trade have correlated closely with increased violence and threats to social and indigenous leaders. In 2020, 110 murders of indigenous leaders and human rights defenders were recorded by Indepaz, a non-government organisation that is part of the national network of peacebuilding organisations. This was 26 more killings of indigenous leaders than Indepaz recorded in 2019.

**Deforestation has worsened during the pandemic:** During the first half of 2020, deforestation increased by 83 per cent compared to the first half of the previous year.





Left: Land grabs have taken place across Colombia  
Credit: Vicki Brown / FPP

Below: A medicinal plant garden in an indigenous reserve in Colombia  
Credit: Camilla Capasso / FPP



## Democratic Republic of the Congo

**Rights-denying land-use policies:** The government, despite its inability during the pandemic to consult with and secure communities' free, prior and informed consent, advanced two national policies with direct consequences for indigenous land rights. The policies do not protect the rights of indigenous peoples, including their economic, social and cultural rights and their rights related to the environment.

**Expansion of logging and mining concessions:** The government, in secrecy, allocated timber concessions to Chinese corporations, despite an ongoing and longstanding moratorium on new concessions. Moreover, the expansion and development of mining projects has not slowed. The high-profile Kamo-Kakula copper mine in Lualaba province, a joint venture of Canadian Ivanhoe Mines (39.6%), Chinese Zijin Mining Group (39.6%) and the Congolese government (20%), is a clear example of how weakened environmental and social standards, approved in July 2020, enabled operations to commence in 2021. While the project does not impact on indigenous peoples, it is illustrative of the government's rollbacks on environmental and social safeguards in order to facilitate large-scale mining.

**Criminalisation of indigenous rights defenders:** The government has continued to arrest and criminalise indigenous human rights defenders during the pandemic. In February 2020, following a rushed trial, 8 Batwa community members received prison sentences, some for 15 years, for re-settling in their own lands in Kahuzi-Biega National Park. Their subsequent appeals have been postponed multiple times. The Batwa had been evicted, losing their means of subsistence, in 1975, when the park was extended.



Village in the Democratic Republic of the Congo  
Credit: Pacifique Mukumba Isumbisho





An indigenous man from Long Isun in Indonesia uses GPS to map his community's territory in East Kalimantan  
Credit: Angus MacInnes / FPP


## Indonesia

**Rights-denying legislative reform:** The Omnibus Law on Job Creation, passed in October 2020 without participation of indigenous peoples and despite their opposition, weakens environmental protection laws and laws regulating impact assessments, land use and public consultation. Defended by the government as a response to the pandemic-induced economic recession, the law seeks to streamline environmental licensing. It introduces the concept of 'abandoned land', which directly violates indigenous peoples' customary land and resource rights and places their livelihoods at risk.

**Denial of participatory and consent rights:** The Indigenous Peoples' Alliance of the Archipelago (AMAN) argues that the Omnibus Law's suppression of public participation violates the state's obligation, under the International Convention on the Elimination of All Forms of Racial Discrimination, to obtain free, prior and informed consent from indigenous peoples for decisions affecting their lands and lives. AMAN also alleges that the law erodes already-weak protections for indigenous peoples' land rights and will facilitate widespread land grabs. Moreover, the law eliminates the ability of communities directly affected by a proposed project to challenge the project's environmental permit once it is granted, in court or by other means.<sup>35</sup> Economists have criticised the law for attracting investors who will have little regard for indigenous peoples' rights or for environmental protection.

**Violence and criminalisation to clamp down on protests:** The Omnibus Law has led to protests, which have prompted a harsh response from the government, including acts of violence. The Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI) recorded at least 16 cases of companies seizing community land during the pandemic. When corporate entities have clashed with land rights activists, the state has often responded by criminalising the activists rather than holding the corporations accountable.





Logging activities that affected indigenous peoples living in voluntary isolation, such as the Mashco Piro, resumed in July 2020, despite the strong objection of indigenous peoples' organisations.

## Peru

**Continued failure to address conflicts and harms caused by extractive industries:** Mining, oil, gas and forestry projects have been associated with widespread social conflict and violations of indigenous peoples' rights; in 2019, the Peruvian ombudsman documented more than 134 active social conflicts in relation to socio-environmental and mining issues. During the pandemic, the speed with which the government came to the aid of these economic sectors contrasts with its protracted delays—sometimes spanning decades—in fulfilling its commitments to address the causes of these conflicts and the profound impact of these sectors on indigenous peoples' rights.

**Prioritisation of extractive industries over indigenous rights:** In May 2020, government decrees declared that the economy would reopen in four phases, with forestry, mining and hydrocarbon the first sectors to be restarted. Environmental fines were deferred and environmental and social monitoring reports suspended. In June, the Ministry of Energy and Mines sought to reframe oil and coal as strategic platforms to promote economic recovery post-COVID-19.

**Attempts to impose virtual consultation processes:** When mining resumed in Peru in May 2020, the Minister of Economy and Finance proposed virtual consultations with indigenous communities to accelerate mining project approvals.

**Continued impunity for harms to indigenous communities and for increased violence:** Throughout the pandemic, oil spills have continued in indigenous territories, but companies have not been held to account. Logging activities that affected indigenous peoples living in voluntary isolation, such as the Mashco Piro, resumed in July 2020, despite the strong objection of indigenous peoples' organisations. Illegal logging and mining intensified in and around indigenous territories during the pandemic, and agribusinesses invaded indigenous territories to grow coca commercially. No action was taken by the responsible authorities. During the pandemic, four indigenous leaders active in defending land rights have been killed by unknown actors; the state has failed to respond to advance alerts.



Left: A Wampis cacao farmer in the Peruvian Amazon  
Credit: Vicki Brown / FPP

Below: Achuar community members in Peru  
Credit: Tom Griffiths / FPP




# Key findings in detail

## **Finding 1/4: Governments subordinate indigenous peoples' rights to state and corporate economic interests**

Across the world's most tropically forested countries, a worrying trend has emerged during the COVID-19 pandemic: Under the guise of economic necessity, governments have prioritised and responded quickly to assist the energy, mining and industrial agriculture sectors to keep operating, and to expand, but have generally failed to protect indigenous peoples' land rights.

The UN Special Rapporteur on the Rights of Indigenous Peoples has stated that, given the unforeseen risks posed by COVID-19, "[t]he resumption or continuation of business activity occurring on indigenous territory should take place only with the renewed consent of concerned indigenous groups."<sup>36</sup> In fact, the Special Rapporteur has argued that "[s]tates should consider a moratorium on all logging and extractive industries operating in proximity to indigenous communities" during the COVID-19 pandemic,<sup>37</sup> as it is effectively impossible to obtain and maintain their free, prior and informed consent (FPIC) at this time.

FPIC requires that indigenous peoples are able to exercise their autonomous deliberation and decision-making processes with full access to relevant information and without any external constraints—which is impossible during a pandemic that requires social isolation and strong biosecurity measures. Governments have failed to uphold both the FPIC standard and the territorial, self-determination and cultural rights that the standard protects and upon which it is premised. Instead, the governments of all five countries have promoted, facilitated and supported increased industrial activity during the pandemic, including in sectors that directly affect indigenous people's rights and territories.



Under the guise of economic necessity, governments have prioritised and responded quickly to assist the energy, mining, and industrial agriculture sectors to keep operating, and to expand, but have generally failed to protect indigenous peoples' land rights.



“We need to make an effort while we are in this calm moment in terms of press coverage, because they are only talking about COVID, and push through and change all the rules and simplify norms.”

**Ricardo Salles, Brazil's Environment Minister**

### **Brazil – Mining continues despite severe risks to indigenous peoples**

In October 2020, Brazil's Vice President Mourão publicly defended continued illegal mining on indigenous peoples' lands during the COVID-19 pandemic.<sup>38</sup> He did this despite constitutional provisions that prohibit mining in indigenous lands until Congress has passed legislation that authorises and regulates it.<sup>39</sup> Major mining projects that profoundly affect indigenous peoples—such as the Belo Sun gold mine near the Juruna territory, which, if it proceeds, will be the largest gold mine in Latin America—continue to be pursued despite legal challenges and the failure to respect FPIC protocols and ensure environmental protection, as mandated by Brazil's federal courts.<sup>40</sup> As with many other extractive industry projects, the Belo Sun mine compounds the harms caused by other large-scale projects in or near indigenous peoples' territories—in this case, the nearby Belo Monte Dam, the impact of which the federal prosecutor has classified as ethnocidal.<sup>41</sup> Meanwhile, President Bolsonaro and his government have downplayed the dangers of the COVID-19 pandemic,<sup>42</sup> and, at one time, the President even vetoed the provision of aid aimed at addressing the threat of COVID-19 to indigenous communities.<sup>43</sup>

Indigenous peoples and civil society have warned the government that the pandemic poses severe risks to indigenous peoples' survival, due to their isolation and inadequate access to health care.<sup>44</sup> Information provided to the UN Special Rapporteur on the Rights of Indigenous Peoples indicates that indigenous communities in Brazil have a COVID-19 fatality rate that exceeds the national average by 150 per cent.<sup>45</sup> Estimates suggesting that up to 40 per cent of indigenous people living close to mining sites are particularly prone to infection indicate the extent to which continued mining activity constitutes an environmental, economic and health disaster for indigenous peoples.<sup>46</sup> COVID-19 has also damaged indigenous peoples' ability to exercise their right to self-governance and self-determination; to politically mobilise; and, due to the deaths of prominent elders and leaders, to maintain and transmit traditional knowledge.<sup>47</sup>

The extent to which the government has failed indigenous peoples on the issue of COVID-19 has led to serious concerns that the government is taking advantage of the pandemic to quash indigenous peoples' political dissent.<sup>48</sup>

## Colombia – As coal price collapses, gold fever takes hold, fracking is expedited and oil palm continues to expand

Before the pandemic, coal represented a large portion of Colombia's extractive industries. It accounted for 65 per cent of the country's mining GDP and 69 per cent of its mining exports, and it made Colombia the leading producer of coal in Latin America and fifth worldwide.<sup>49</sup> The collapse of coal prices during the pandemic has led the government to promote other extractive sectors.<sup>50</sup> For example, a presidential decree authorised, without adequate impact studies, pilot fracking projects to expedite non-conventional oil and gas deposit extraction.<sup>51</sup>

While the international price of coal fell during the pandemic, gold prices rose by more than 30 per cent, presenting the country with, as the Minister of Mines and Energy declared, a "golden opportunity for the country".<sup>52</sup> In the second quarter of 2020, gold production rose by more than 14 per cent, from 8.7 to 10 tons, compared to the same period in 2019.<sup>53</sup> Much of Colombia's gold is concentrated in indigenous peoples' territories.<sup>54</sup> These territories also have high levels of criminal activity and concentrated presence of armed groups. Before the pandemic, armed groups involved in illegal gold mining frequently violated the rights of indigenous peoples and ethnic communities. The rise in gold production risks provoking further land invasions, dispossession and violent environmental conflicts in Colombia and other countries.<sup>55</sup>

Although the government of Colombia has continued to push large-scale mining investments and operations for economic recovery, it has not supported artisanal mining because it is often conducted without formal paperwork. Of the 14,357 mining sites that have been recorded in Colombia, 63 per cent are conducted informally.<sup>56</sup> Much of this informal mining is an ancestral practice, carried out by ethnic populations as a livelihood strategy. The government treats ancestral mining without formal state permits ('mining titles') as a criminal activity.

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*"Ancestral mining has allowed communities to secure their livelihoods. The government has put illegal mining and ancestral mining in the same package. To control illegal mining, we have to do an analysis within the communities, to provide them the necessary tools so that it is a good and fair mining practice."*

**– Rutilio Vargas, Programa de Desarrollo y Paz del Chocó, a civil society organisation, Colombia**

Some communities have asserted their right to control ancestral mining territories in accordance with their own laws and practices. For example, in 2012, the Embera Chamí people of the Cañamomo Lomapieta indigenous reserve developed a regulatory framework governing all forms of mining in their territory, which included resolutions related to FPIC and ancestral mining and one prohibiting medium- and large-scale mining.<sup>57</sup> Despite the Constitutional Court's recognition, in 2016, of their right to regulate ancestral mining, and its affirmation that their protocols and procedures on FPIC had to be respected,<sup>58</sup> efforts to initiate mining projects have continued without consultation and FPIC. According to a leader from the Cañamomo reserve, "[t]he gold fever ... and price increases mean that there are very strong threats to the communities and that companies are persisting in the territory in defiance of our indigenous authority."<sup>59</sup>

Colombia is the leading producer of palm oil in Latin America; in 2020, it produced more than 1.6 million tons of palm oil, amounting to one third of total production in Latin America and two per cent of global production.<sup>60</sup> Palm oil plantations have been expanding into the territories of indigenous peoples and black communities in Colombia for over a decade.<sup>61</sup> Their presence in an area often correlates with homicides, land grabbing and forced displacements.<sup>62</sup> Despite this troubled history, La Federación Nacional de Cultivadores de Palma de Aceite, Fedepalma (Federation of Palm Growers), in a letter to Colombia's President Duque, positioned palm oil as a solution to the economic crisis. Increasing the production of palm oil, the federation argued, would "allow the agro-industry to confront the economic situation and the national health situation caused by covid-19 in Colombia".<sup>63</sup> The federation announced in September 2020 that Colombian palm oil production was set to increase by 10 per cent in 2020.<sup>64</sup> The territories and forests of indigenous peoples, such as the Nukak of Guaviare, are already under threat as a result of this expansion.<sup>65</sup>

## DRC – As exports fall, indigenous peoples are excluded from policy discussions

In the Democratic Republic of the Congo (DRC), the economic downturn caused by the COVID-19 pandemic is dire. The World Bank predicts a fall of 2.2 percent in the DRC's GDP,<sup>66</sup> a large part of it the result of a reduction in exports from extractive industries. Civil society fears the incentive that this economic downturn creates for increased industrial activity to bolster economic growth in the near future, which could generate major threats to indigenous peoples and other forest communities. So far, throughout the pandemic, the steps that the government has taken to continue or to increase industrial activities in forest areas have not included consultation with indigenous peoples and affected communities, and, at times, these activities have directly violated these peoples' rights.

The government issued a nationwide lockdown in response to the coronavirus. The lockdown applied equally to rural and urban communities, despite COVID-19 being mostly confined to urban centres, where population density is highest, with few cases recorded in rural communities in forested areas. The lockdown indiscriminately barred forest communities from engaging in typical means of earning a living—selling farm produce and other goods at markets—as well as other important community activities.

The fear of COVID-19 being transmitted from cities and towns to rural communities also became a barrier to consultation channels between the government and forest communities. Even though meaningful consultations are impossible in this context, the government pressed ahead with its deliberative processes for new policies that affect the rights of indigenous and forest peoples. One of these policies is the National Land-Use Planning Policy (PNAT), a pillar of the government's priority to advance economic growth and development. This policy is discussed further in Finding 3.



Tshiefu Village, DRC  
Indigenous women of Tshiefu village are denouncing poverty as one of the consequences of deforestation in their village  
Credit: Patrick Kipalu





Samuel Nipaq patrols the Long Isun community's ancestral lands in East Kalimantan, Indonesia  
Credit: Angus MacInnes / FPP

### Indonesia – New job creation law likely to attract ‘dirty’ investors

In October 2020, the Indonesian legislature passed the Omnibus Law on Job Creation despite significant protests from indigenous peoples' groups and civil society. The law significantly rolls back both social and environmental safeguards, purportedly to facilitate economic growth and expand industrial development in Indonesia.

The law weakens requirements of environmental impact assessments for new development projects by striking out strict requirements for public participation in corporate planning processes.<sup>67</sup> Moreover, once a proposed project's environmental permit is granted, communities directly affected by the project are no longer able to challenge the permit in court or by other means.<sup>68</sup>

Economists have criticised the law for attracting investors who will have little regard for indigenous peoples' rights or environmental protection rather than ensuring that economic investment in Indonesia supports long-term sustainable development. An economist at the Institute for Development of Economics and Finance (INDEF) in Indonesia, Bhima Yudhistiara Adhinegara, said, “There will be investors, but they’ll be dirty investors. Investors who have higher environmental standards will not like investing in Indonesia because they will face pushback not just in Indonesia but also in their home countries.”<sup>69</sup>

## Preventing indigenous peoples from participating in legislative decision-making processes in Indonesia



Omnibus Law protests 2020 in Padang, Indonesia  
Credit: Wikimedia Commons, Creative Commons

In an egregious illustration of a government actively preventing indigenous peoples from contributing to decision-making processes during COVID-19, in April 2020, Tommy Indriadi from the Indigenous Peoples' Alliance of the Archipelago (AMAN) in Indonesia was kicked out of an online deliberation process on the Omnibus Law on Job Creation, which was hosted on Zoom by the Indonesian House of Representatives (Dewan Perwakilan Rakyat, DPR). Indriadi reported that he was then deliberately blocked from re-joining the call, despite the DPR's promise that the call was open to the public for comment.<sup>70</sup>

According to a recent submission by AMAN and other indigenous peoples' organisations to the Committee on the Elimination of Racial Discrimination, this suppression of public participation violates the state's obligation to obtain free, prior and informed consent from indigenous peoples who will be directly affected by many of the law's provisions. This raises questions about the legality of the DPR's Omnibus Law drafting process.<sup>71</sup>

*"This Law is about investment, it does nothing to protect Indigenous people's customary lands. It [the Omnibus Law] will make it easier for companies to grab land."*

**—Rukka Sombolinggi, Chairwoman of AMAN<sup>72</sup>**

## Peru – Forestry, coal and oil to kickstart the economy

Mining and hydrocarbon extraction are considered pillars of the Peruvian national economy. Mining generates 10 per cent of GDP and 60 per cent of Peru's exports;<sup>73</sup> oil and gas generate 70 per cent of the national energy supply.<sup>74</sup> Both sectors are associated with widespread social conflict; in 2019 alone, the Peruvian Ombudsman documented more than 134 social conflicts in relation to socio-environmental and mining issues.<sup>75</sup>

In December 2020, the Peruvian ombudsman reported that there were 129 active socio-environmental conflicts and that mining and oil and gas projects in or near indigenous peoples' territories continued to be the source of most of these conflicts.<sup>76</sup> During the pandemic in 2020, the speed with which the Peruvian government has come to the aid of the forestry, mining and energy sectors contrasts sharply with its protracted delays—sometimes spanning decades—in complying with its existing commitments to indigenous peoples affected by these sectors. An emblematic example is the government's failure to implement agreements on remediating environmental harms and addressing the health impacts of oil exploitation with federations representing more than 100 indigenous communities in the Pastaza, Corrientes, Tigre and Marañon river basins; health emergencies have been declared in the territories of these communities due to decades of unremedied oil contamination.<sup>77</sup>

On 3 May 2020, Supreme Decree No. 080-2020-PCM declared that the economy would reopen in four phases. First among the sectors allowed to reopen were forestry, mining and hydrocarbon extraction. A few days later, Legislative Decree No. 1500 established measures to improve and optimise the execution of public, private and public-private investment projects. The regulation included measures aimed at facilitating the reactivation of mining and other extractive industry activities during the pandemic. These included:

- Authorising virtual, rather than in-person, civil participation in environmental management.
- Deferring fines imposed by the Organismo de Evaluación y Fiscalización Ambiental (Environmental Evaluation and Inspection Agency).
- Suspending environmental and social monitoring reports.

Logging has also long posed significant threats to indigenous peoples in Peru, including those who are living in voluntary isolation. Indigenous peoples' organisations have denounced the effect that reactivating logging has on these vulnerable peoples. For example, in July 2020, the Federación Nativa del Río Madre de Dios y Afluentes, which represents indigenous peoples in the Madre de Dios region of the Peruvian Amazon, denounced the authorisation granted to the Catahua lumber company to enter territories inhabited by the Mashco Piro, an indigenous people living in voluntary isolation.<sup>78</sup>

In March 2020, when the government declared a national public health state of emergency, mining was not listed as an essential activity.<sup>79</sup> Under pressure from mining companies, the Ministry of Energy and Mines published a communiqué on 17 March indicating that the Ministry of Economy and Finance had agreed to include mining in the list of essential activities.<sup>80</sup> In June 2020, the Ministry of Energy and Mines, state-owned Perupetro, and the Peruvian Society of Hydrocarbons jointly sought to present the hydrocarbon sector as coming to the rescue of the national economy in response to COVID-19. The plans to reactivate the oil industry included deferring corporate payment of royalties to the government, changing royalty regulations, postponing investments, reconfiguring the industry through fixing prices, and revising contract terms.<sup>81</sup> Perupetro also proposed that oil exploitation should be deemed to be "in the national interest" and that the North Peruvian Oil Pipeline be classified as a strategic asset of the state.<sup>82</sup> Activists and scholars fear that doing this could enable oil exploration and exploitation in indigenous peoples' territories without requiring prior consultations aimed at obtaining their free, prior and informed consent. This attempt to reframe coal and oil as strategic vehicles to promote economic recovery in Peru is alarming, not only from an environmental perspective but also from the perspective of indigenous peoples' rights. Most oil fields are in the Amazon region of Loreto in or near the territories of indigenous peoples, and their impact on these peoples has been, and continues to be, disastrous.



## Wampis people win struggle to keep oil company out and stop the spread of COVID-19



An oil pipeline through Wampis territory in the Peruvian Amazon  
Credit: Jacob Balzani / Mongabay

Hydrocarbon extraction has not stopped in Peru during the COVID-19 pandemic, raising tensions between oil companies and indigenous peoples who have tried to control access to their territories to protect the health and wellbeing of their communities.

GeoPark oil company personnel continued to enter the territory of the Wampis indigenous people during the pandemic, contravening both the community's attempts to control the spread of COVID-19 and the government's public health decrees. In response, the Gobierno Territorial Autónomo de la Nación Wampís (the Autonomous Territorial Government of the Wampis Nation) filed an allegation with the criminal prosecutor against GeoPark management.<sup>83</sup>

On 15 July 2020, following an arduous campaign demanding the oil company's withdrawal, the state-owned Petroperú announced that GeoPark would leave Wampis and Achuar territories.<sup>84</sup>

*"It is not a final victory; it is a step forward in our struggle. If that lot [oil concession] continues to exist, it will be like an open wound where a fly can lay its eggs and grow worms."*

— **Wrays Perez, President of the Gobierno Territorial Autónomo de la Nación Wampís**<sup>85</sup>

## Finding 2/4: Increased impunity under domestic law for land grabbing and illegal logging and mining

Throughout the pandemic, governments have allowed private actors to engage in illegal land grabbing, deforestation, mining and related activities with increased impunity. Earlier, this report highlighted instances of governments reacting to the pandemic by implementing policies that favour economic growth while failing to protect the rights of indigenous peoples. Many of these policies violate international environmental and human rights law,<sup>86</sup> despite, in some instances, being formally legal under domestic law. This section highlights acts that equally violate international law and domestic law.

The increased impunity with which private, non-indigenous actors are engaging in illegal economic activity is particularly dangerous in the pandemic context—in forest areas near where indigenous peoples and forest communities live, people engaging in these illegal activities have often brought the coronavirus to remote communities, with devastating results.<sup>87</sup> This is characteristic of the five countries analysed here, as well as many other heavily forested countries.

In Guyana, for example, the government exempted the mining industry from COVID-19-related restrictions and revoked prior orders marking certain areas as off limits to mining. This has severely undercut indigenous peoples' ability to control the movement of people and the coronavirus through their lands.<sup>88</sup>

Similarly, at the height of the pandemic's outbreak in the Philippines, the government cancelled previous suspensions of several mining companies' licences, many of which had originally been revoked due to a lack of environmental and social compliance. Because these mines' operations overlap with indigenous peoples' lands, the renewed licences put these communities at severe risk.<sup>89</sup>

Despite an overall economic slowdown, deforestation has surged during the COVID-19 pandemic due to three main factors:

- Governments have had less capacity, or were less willing, to monitor forests and control illegal mining and logging.
- Governments gave higher priority to the expansion of industrial-scale extractive industry activities.
- Indigenous peoples' capacity to defend their lands from encroachment by outsiders has been restricted.

These factors, notably the higher priority given by governments to the expansion of industrial-scale extractive activities, are likely to continue in 2021 and lead to a continued rise in deforestation.



Left: Nuevo Lamas de Shapaja, San  
Martin, Peru  
Credit: Tom Younger / FPP

Below: A Kichwa woman tending her  
crops in Mishkiyakillu, Peru  
Credit: Vicki Brown / FPP





## **Brazil – Illegal deforestation and mining expand as government monitoring is scaled back**

In April 2020, deforestation of the Brazilian Amazon had increased by 64 per cent compared to the same month the previous year<sup>90</sup>—an especially concerning statistic given that, in 2019, Brazil saw its greatest loss of forest cover in a decade, including in protected national parks and in indigenous peoples' territories.

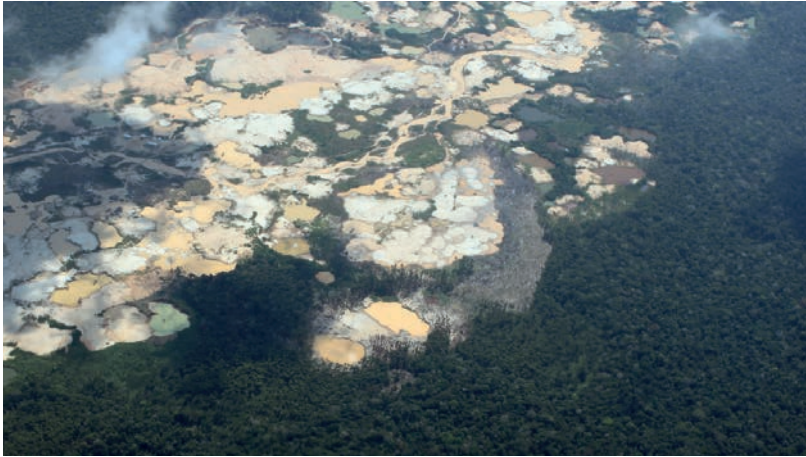
During the COVID-19 crisis, Brazil's government has reduced the capacity of the forest-monitoring agency, IBAMA, and scaled back the seizure of illegal gold-mining equipment.<sup>91</sup> Meanwhile, although mining-permit applications have increased during the pandemic (to almost 3 times the 2017 and 2018 levels), the demarcation of indigenous peoples' lands has largely been halted.<sup>92, 93</sup> Data collected by the UN Special Rapporteur on the Rights of Indigenous Peoples shows a rise in land grabbing in the indigenous lands of the Ituna/Itatá, Apyterewa, Cachoeira, Trinchiera Bacajá, Kayapó, Munduruku, Karipuna, Uru-Eu-Wau-Wau, Manoki, and Yanomami.<sup>94</sup> These reports are supported by data from the deforestation monitoring system of the Instituto Socioambiental (Socio-environmental Institute), which has shown continued and escalated illegal deforestation during the pandemic, including in lands where indigenous peoples are living in voluntary isolation, among them the Pirititi, Uru-Eu-Wau-Wau, Araribóia, and Kaxinawá do Rio Humaitá.<sup>95</sup>

In May 2020 flyovers, Greenpeace observed extensive illegal gold mining in the Munduruku and Sai Cinza indigenous lands.<sup>96</sup> This expansion in illegal mining, driven by rising gold prices and encouraged by the government's tolerance for the illegal miners,<sup>97</sup> is compounding the already-harmful effects of illegal mining on indigenous peoples' health and the environment.<sup>98</sup>

In the Xingu Basin, an area almost the size of France, indigenous peoples have experienced more land invasions and deforestation since the cancellation of IBAMA inspections. The Mëbengôkre-Xikri people of the Trinchiera-Bacajá indigenous lands reported receiving threats from outsiders who came to the region to occupy land and exploit forest resources. Unable to rely on state protective intervention, they came together with indigenous peoples and riverine and traditional communities from across the Xingu Basin to discuss the problems they were facing and establish joint strategies for action. As of September 2020, the invasion had resulted in at least 159 cases of COVID-19 within the indigenous community.<sup>99</sup>

Although mining-permit applications have increased 91 per cent during the pandemic, the demarcation of indigenous peoples' lands has largely been halted.

## Brazilian government fails to reject record number of illegal mining permit requests on indigenous peoples' lands during COVID-19




Amazon landscape scarred by open-pit gold mining in Brazil  
Credit: Rhett A. Butler / Mongabay

Brazilian mining authority Agência Nacional de Mineração (ANM) has received more than 3,000 requests to mine on indigenous peoples' land in the Amazon, including 145 new requests filed in 2020, according to a study released in November 2020 by the Mined Amazon project. This constitutes the largest number of requests filed in 24 years.

The mining authority is obligated to immediately reject these requests, which are in violation of the Brazilian constitution, but, instead, has kept them on file without rejecting them, bestowing undue legitimacy on them and actively harming indigenous land rights.

"These requests for mining exploration and mining itself, even if not granted, bring confusion and unrest to indigenous people", stated federal judge Felipe Gontijo Lopes. "By not rejecting [the illegal mining requests], the ANM fuels undue expectations of preference, thus undermining the state's duty to protect indigenous communities."<sup>100</sup>



During the first half of 2020, deforestation increased by 83 per cent compared to the first half of the previous year.

### **Colombia – Mining and exploration proceed without consultation and despite court suspension, and deforestation intensifies**

Despite the Colombian Constitutional Court's ruling (T-530) to suspend mining in cases in which affected indigenous communities did not give their free, prior and informed consent (FPIC), mining has continued during the COVID-19 pandemic. According to a representative of the indigenous communities that live in the Cañamomo Lomapieta indigenous reserve, several mining permits (titles) have been maintained even after the Constitutional Court's ruling suspended specific mining permissions. More recently, mining has also proceeded without the necessary prior consultation and in violation of the reserve's own FPIC regulation.

A Cañamomo Lomapieta reserve representative and member of its governing authority explained that the Anglo Gold Ashanti company has "[i]nstalled itself in the area of Quinchía and is undertaking a series of exploration projects without consultation. In the neighbouring indigenous reserves, the company carried out diamond exploration without consulting indigenous authorities."<sup>101</sup>

Deforestation has also intensified during the pandemic. The main causes, which appear to be the same as those before the pandemic, include land grabbing, illicit crops, infrastructure development, forest fires, extensive cattle raising, and mining. During the first half of 2020, deforestation increased by 83 per cent compared to the first half of the previous year. Much of this deforestation was concentrated in the Amazon region, where about 64,000 hectares were cleared—about 64 per cent of all deforestation in the country during that time.<sup>102</sup> Although Colombia's Minister of the Environment has announced that this trend had reversed during the second half of the year, the Institute of Hydrology, Meteorology and Environmental Studies (IDEAM) has not published official figures that justify this claim.<sup>103</sup> Deforestation in the Colombian Amazon is concentrated in the north of the region, mainly in the departments of Guaviare, Caquetá, Putumayo, Meta and Vichada—precisely where the agribusiness and extractive frontier is advancing.<sup>104</sup>

The increase in deforestation is, in part, due to the lack of state capacity to counteract logging, which is regulated by private armed groups instead of the state. According to Rodrigo Botero, Director of the Foundation for Conservation and Sustainable Development, outsiders have taken advantage of the pandemic to clear more forest in the Amazon and further their deforestation and land-grabbing agenda.<sup>105</sup> Outsiders seeking to exploit the forest have threatened national park officials during the emergency and forced indigenous communities to leave or abandon their lands, leaving the forest unprotected.<sup>106</sup>



## DRC – Government secretly cedes forested land to corporations, against domestic law

Civil society groups in the DRC have reported increased impunity for illegal land grabbing during the COVID-19 pandemic.<sup>107</sup> In one significant example of the state ceding land to industry, contrary to domestic law, the government issued nine new concessions to Chinese corporations in early 2020 despite an ongoing moratorium on new commercial logging agreements that has been in place since 2002. The concessions, spread throughout the provinces of Equateur, Tshuapa, Mai Ndombe and Mongala, and the former province of Orientale, cover more than 20,000 square kilometres of forest.<sup>108</sup>

The government allocated these timber concessions in secrecy. Although civil society groups have repeatedly requested the public release of the concession contracts for the purpose of accountability, the government has declined to make them public. When questioned about the contracts, the government asserted that they are new terms of previously issued concessions and, thus, do not violate the moratorium. Indigenous and forest peoples had no role in this renegotiation of terms, which violates the principle of prior consultation and free, prior and informed consent. In late September 2020, two local environmental protection organisations formally asked the Congolese Council of State to cancel the nine new contracts.<sup>109</sup> At the time of writing, this request had not been resolved.

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*“The law that applies to the forest sector has been violated, in addition to a certain number of its implementing decrees, through the issuance of these nine concessions.”*

**– Augustin Mpoyi, Council for the Defence of the Environment through Legality and Traceability, Democratic Republic of the Congo<sup>110</sup>**

The expansion and development of mining projects has not slowed, much less stopped, during the pandemic. In one high profile example, the corporations in charge of the Kamoa-Kakula copper mine in Lualaba province, in which the Congolese government has a 20 per cent stake, have advanced their project during the pandemic, including securing, in July 2020, the approval of a modification of the project’s environmental standards.<sup>111</sup> While the project does not impact on indigenous peoples, it is illustrative of the government’s rollbacks on environmental and social safeguards in order to facilitate large-scale mining.

## Indonesia – Corporate land grabbing accelerates while COVID-19 restrictions hamper forest monitoring

Palm oil plantations are rapidly clearing forests to expand their operations, in violation of national law and international zero-deforestation commitments of major brands.<sup>112</sup>

Between March and May 2020, the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia, YLBHI) recorded 16 cases of companies seizing local community land, affecting more than 70 families in eight provinces. These seizures included instances of companies deploying security forces to intimidate community members. The YLBHI described this as a notable acceleration in corporate land seizure compared to pre-pandemic records.<sup>113</sup> These land grabs have continued throughout the pandemic, while the capacity of state forestry agencies to monitor customary lands and protected areas has been hampered by government restrictions on movement and governmental capacity constraints.<sup>114</sup>

In one egregious example of land grabbing from September 2020, the state-owned agribusiness company PT Perkebunan Nusantara II (PTPN II) started bulldozing indigenous peoples' customary land in Pertumbukan village in the province of North Sumatra. They were met with protests by indigenous women, who tried to block the heavy machinery from entering their territory.<sup>115</sup> The company's security forces clashed with the women, reportedly kicking and pushing many of them, leading to at least one woman being hospitalised.<sup>116</sup>

Inun, one of the women involved in the protest, recounted a harrowing story to a Mongabay reporter:

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*"We were pushed, our children were trampled on. These old women who were lifted were just thrown aside and into the ditch, into a puddle. We couldn't keep them from entering. We were outnumbered. Where's the government? Please help us, please help us return our customary land which was forcibly taken by PTPN II."*<sup>117</sup>

## Peru – Companies let off the hook for oil spills in the Amazon

In Peru, corporations have continued to expand extractive activities and damage the environment during the pandemic with impunity from government sanctions. Eight of the 14 oil spills that occurred during the pandemic occurred at Frontera Energy's Lot 192 in the Amazon.<sup>118</sup> Lot 192 extends across the territories of Quechua communities along the river Pastaza; the territories of the Achuar, Quechua, and Urarinas of the Corrientes River; and Kichwa territory in the Tigre River valley. Fifty years of oil exploitation, contamination and spills in this oil concession have had a devastating impact on indigenous peoples' rights, their health and the environment. There has been no concerted attempt by the government or the companies involved to remediate the harms caused. Recent spills have compounded these major harmful impacts.<sup>119</sup> Yet, to date, Frontera Energy has not faced any consequences. The company has not been held responsible for damages resulting from these spills, and it has not committed to improve its practices. The spills not only harm the environment; they also violate the rights of the indigenous peoples that occupy the area and contribute to the destruction of their ancestral lands.<sup>120</sup>

The Vice Minister of Energy and Mines has committed to providing 183 million Peruvian *soles* (about US\$50 million) to rehabilitate sites affected by oil extraction in Lot 192.<sup>121</sup> However, this is a tiny fraction of what is required to remediate the harm caused, and, years after the extent of the damage was evident, it remains unclear when these funds will arrive or how they will be used. Moreover, despite the critical environmental damage that has occurred, Petroperú's president has started looking for new private investors to continue operating Lots 192 and 64, describing the lots as central to the Peruvian energy sector.<sup>122</sup> If oil companies are not held accountable for environmental destruction, social harm, and their contribution to the violation of indigenous peoples' rights, there is no guarantee that such disasters will not recur.

The Peruvian government's COVID-19 restrictions have not prevented the continuing illegal logging and mining that threaten indigenous peoples' territories. On the contrary, illegal activities have intensified in indigenous territories and their surroundings during the pandemic. In response to rising international gold prices, illegal gold miners have ramped up operations in Tambopata National Reserve, a protected area of tropical rainforests, and other areas in the Amazonian region Madre de Dios.<sup>123</sup> In May 2020, the Center for the Ashánika of the Ene River, an indigenous organisation representing 18 Ashánika communities, alleged that settlers were invading their territories to commercially grow coca.<sup>124</sup> In the northern Amazon, the Autonomous Territorial Government of the Wampis Nation warned of illegal logging in the Kanús basin.<sup>125</sup> The indigenous peoples of the Ucayali are in a similar situation—drug traffickers and illegal loggers have begun using the Ucayali River as a main route for transporting their goods.<sup>126</sup> The limited government interventions that have taken place in illegal mining areas have not deterred these activities; instead, miners have shifted their work to other areas. Indigenous organisations have alerted the government to the presence of drug traffickers and illegal loggers in their territories, but authorities have not responded to these alerts.



### Finding 3/4: Governments push through harmful land-use and planning policy changes

There is increasing evidence that governments in tropically forested countries have been actively exploiting the pandemic to push through changes to land-use and consultation policies that are harmful to indigenous peoples' rights. These legislative changes directly contradict the UN Special Rapporteur's recommendation that governments "[r]efrain from introducing legislation or approving extractive or similar projects" affecting indigenous peoples' territories during the COVID-19 pandemic until it is possible to obtain free, prior and informed consent (FPIC).<sup>127</sup>

Governments have also failed to enact necessary legislative changes or policies to protect indigenous peoples' rights during the crisis. Instead, they have left in place already-inadequate mechanisms that are severely hampered by the pandemic or, worse, they have tried to impose virtual, rather than in-person, consultation processes, which are inconsistent with indigenous peoples' cultural and self-governance rights.

There is increasing evidence that governments in tropically forested countries have been actively exploiting the pandemic to push through changes to land-use and consultation policies that are harmful to indigenous peoples' rights.

## **Brazil – Government exploits the pandemic to divert attention from reforms that enable land grabs**

On 22 April 2020, the Brazilian government's Fundação Nacional do Índio (National Indian Foundation, FUNAI) issued Normative Instruction N° 9/2020,<sup>128</sup> authorising the certification of private properties inside indigenous lands that have yet to be fully formally recognised. As a result, at least 237 unfinished demarcation processes for indigenous lands were put at risk.<sup>129</sup> Since then, the number of farms encroaching on indigenous peoples' lands has increased enormously.

This reform and other legislative changes of its kind had been proposed in years before COVID-19. The government has intentionally and proactively exploited the pandemic to pass legislation at a time when indigenous peoples and civil society are less able to push back. During a ministerial meeting in May 2020, Ricardo Salles, Brazil's Environment Minister, proclaimed, "We need to make an effort while we are in this calm moment in terms of press coverage, because they are only talking about COVID, and push through and change all the rules and simplify norms."<sup>130</sup>

A study found that between March and May 2020, the government of Brazil passed 195 executive acts, including ordinances, decrees and other measures, aimed at directly or indirectly dismantling and bypassing environmental laws, a huge increase over the 16 acts passed in the same period in 2019.<sup>131</sup> The study concluded that, together, these acts have provided land-grabbers with impunity for illegally settling on protected and indigenous land.<sup>132</sup>

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*"We need to make an effort while we are in this calm moment in terms of press coverage, because they are only talking about COVID, and push through and change all the rules and simplify norms."*

— **Ricardo Salles, Brazil's Environment Minister, May 2020**<sup>133</sup>

## Colombia – Government proposes re-zoning uncultivated land for agribusiness and curtails consultation with affected indigenous peoples

The Colombian government's strategy for economic reactivation has accelerated changes to regulations for land access, appropriation, tenure, and use of 'uncultivated' territories, which, under existing law, must be allocated on a priority basis to vulnerable rural populations. For example, on 2 September 2020, the National Land Agency published a draft agreement for the creation of business development zones.<sup>134</sup> The agreement proposes new regulations for distributing vast areas of uncultivated and so-called vacant lands, or *tierras baldías*.<sup>135</sup> The government has called these lands an underutilised resource, but most of them are areas where indigenous peoples have customary land rights or where other ethnic and rural communities have pre-existing tenure rights. Establishing business development zones would concentrate the distribution of *tierras baldías* among corporations for mass agro-industrial, extractive and forest-related development projects. This proposal contravenes provisions of Law 160, passed in 1994, that establish "the promotion of progressive access" to the *tierras baldías* for indigenous peoples, ethnic communities and rural citizens to "improve the income and quality of life of the rural population" and prevent the concentration of land among wealthy landowners.<sup>136</sup>

Diana Sanchez, Director of the Minga Association, a human rights organisation, explained that "[t]he territories considered 'agricultural frontier' zones, such as those that the ZDE [business development zones] intends to intervene in, are the very epicentres of conflict due to the already incessant extraction of wood, minerals, coal and oil, even in times of the pandemic." The new zones would also significantly erode indigenous and Afro-descendant peoples' territorial rights in areas that have been classified by the state as *tierras baldías*.

Since the beginning of the pandemic, the government has also been taking steps to curtail FPIC procedures to obtain indigenous peoples' consent for development projects. On 27 March 2020, President Ivan Duque authorised the use of online prior consultations for development projects. He made this change without consulting indigenous peoples or Afro-descendant communities and organisations, as required under Colombian law, ILO Convention 169 and other international human rights instruments ratified by Colombia.<sup>137</sup> Digital consultations are at odds with indigenous peoples' right to be consulted in a culturally appropriate manner and fail to respect their traditional decision-making practices. In addition, requiring indigenous peoples to gather during a pandemic to make collective decisions is contrary to the recommendation of the UN Special Rapporteur that, to save lives, no consultations should be held during the pandemic.<sup>138</sup> Unsurprisingly, indigenous peoples mobilised to oppose the decree. Nevertheless, the first virtual consultation, regarding a solar-energy development, took place in September 2020.

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*"[The President's measures] limit the possibility that indigenous peoples can give their opinions on projects that may affect them."*

— Indigenous Secretariat of the National Commission for Indigenous Territories, Colombia





A Humanitarian Zone in Antioquia, Colombia, created for communities displaced during the armed conflict  
Credit: Vicki Brown / FPP

Compounding this issue, on 9 September 2020, President Duque signed Directive No. 8, establishing new guidelines for managing the prior consultation process for new development projects. The directive makes the timelines for consultation even more rigid instead of providing the flexibility needed to respect customary collective decision-making and meet communities' needs during the COVID-19 crisis. For example, the directive limits development projects' "area of influence"—the areas affected by projects and on which those approving the projects are required to consult with indigenous peoples.

The directive also empowers the Dirección de la Autoridad Nacional de Consulta Previa (National Directorate on Prior Consultation of the Ministry of the Interior) to use a "proportionality test" if there is an "unjustified" absence of community representatives. This test allows the directorate to analyse—without the participation of directly affected communities—the impacts that projects would have on them.<sup>139</sup> In one example of the potential harms of this directive, in October 2020, an administrative judge in the city of Pasto allowed the licensing process for aerial glyphosate spraying of illicit crops to resume after the Ministry of the Interior held that the project would not affect indigenous and Afro-descendant peoples and ethnic communities peoples. The decision was made despite a report by the Technical Secretary of the National Indigenous Territories Commission indicating that one million hectares of ancestral indigenous territories would be affected.<sup>140</sup>

## **DRC – Fears for land rights and food security as government enacts planning policies**

During the COVID-19 pandemic, the Congolese government has enacted several land-use and planning policies. As mentioned earlier, the government has deliberated on the National Land-Use Planning Policy, a major instrument of its economic agenda, with little input from indigenous and forest peoples or civil society. These groups have expressed concern that this process has been a serious failure of the state's responsibility to use its land-planning policy to ensure customary land rights and food security for impoverished and isolated indigenous communities.

Meanwhile, the government has maintained domestic laws that, for the purpose of public health or security, allow it to derogate from its responsibility to ensure the right to food security in protected areas.<sup>141</sup> In June 2020, the government adopted the National Plan for the Revival of Agriculture. Despite the plan's obvious impact on the land and rights of indigenous and forest peoples, its justification fails to prioritise indigenous peoples' rights, social rights, or rights related to the environment.<sup>142</sup>

Finally, the government has continued pre-pandemic policies that have been tremendously damaging to indigenous and forest communities. These damaging policies are diverse, ranging from pro-industry practices to the designation and maintenance of indigenous lands as national parks in the face of sustained protest.

## **Indonesia – New legislation introduces concepts similar to the colonial concept of *terra nullius***

As noted in Finding 2, the Indonesian legislature passed the Omnibus Law on Job Creation in October 2020. It includes massive modifications to procedures for land-use change by, for example, facilitating the re-designation of land from forest area to agricultural land. The Omnibus Law also introduces concepts similar to the colonial concept of *terra nullius*, asserting state ownership over untitled lands, or 'nobody's land'; this makes it easier for the government to grant permits to extractive industries on these lands, thus undermining indigenous peoples' customary land rights, which the government has delayed recognising.<sup>143</sup>

The Omnibus Law was passed without adequate opportunity for indigenous peoples' consultation. In light of the concrete and long-term impacts on indigenous peoples' land rights, this clearly violates the state's obligation to obtain free, prior and informed consent.<sup>144</sup>

Meanwhile, the Bill on the Recognition and Protection of Indigenous Peoples Rights has remained before the Indonesian legislature for almost a decade without progress towards enactment.<sup>145</sup> The Indonesian government has also failed to fully comply with the 2012 Constitutional Court ruling providing additional protections of customary rights in forests.<sup>146</sup>

## Peru – Government discards online consultations for reopening mines

In 2011, in the context of widespread and serious social conflict triggered by the extractive industry, Peru adopted the Law on the Right of Prior Consultation of Indigenous Peoples. In keeping with ILO Convention 169, Article 3 of the law recognises that consent is the objective of consultations. However, this commitment is undermined by Article 15, which holds that extractive-industry projects may proceed without indigenous peoples' FPIC. Further deficiencies in the regulation and implementation of this law have meant that consultations carried out under it have failed to protect the self-governance, territorial and cultural rights of indigenous peoples. Instead, the law serves to legitimise often-unwanted and environmentally destructive large-scale mining and energy projects.

In May 2020, when mining resumed in Peru, the Minister of Economy and Finance raised the possibility of carrying out virtual prior consultations to speed up the authorisation of mining projects.<sup>147</sup> To facilitate prior consultation during the pandemic, the Ministry of Economy and Finance transferred funds to the Ministry of Culture, ostensibly to help identify the indigenous peoples in the areas surrounding the 23 mining projects prioritised by the national government—however, their primary purpose was to accelerate the approval of mining projects.<sup>148</sup>

Indigenous peoples' organisations have highlighted that this rapid transfer of funds demonstrates the state's interest in promoting consultation processes only when they facilitate mining projects and not when they would protect the collective rights of indigenous peoples. These organisations have strongly criticised and rejected the proposal for virtual prior consultations. In July 2020, faced with strong opposition from indigenous peoples and a lack of any solid legal basis upon which to proceed, the Minister of Energy and Mines abandoned this attempt to carry out virtual pre-consultations.<sup>149</sup> However, there is no guarantee that future attempts will not be made to further weaken the duty of the state to consult in good faith with indigenous peoples to obtain their FPIC.

Although Peru is one of the few countries in the world to have adopted a law requiring consultation with indigenous peoples, the government has consistently placed limitations on, rather than upheld, indigenous people's rights. Its attempts to carry out virtual consultations, although abandoned, fit within this longer history of making promises to uphold rights while simultaneously undercutting them.

## Finding 4/4: Rights advocates face intimidation, arrest and violence

Since the onset of the COVID-19 pandemic and the implementation by governments of the damaging policies described above, indigenous peoples and civil society organisations supporting them have advocated for the protection of their rights and interests. They have protested the rollbacks of safeguards through legal channels, where these were accessible, and through political mobilisation and demonstrations.<sup>150</sup>

Indigenous peoples' advocacy in response to government failings has often been met with increased criminalisation of their activities and with violence. In recent years, there has been an alarming increase in the criminalisation of, and the use of violence and intimidation against, indigenous representatives who try to assert their peoples' rights. For many indigenous peoples, the pandemic, instead of affording them some respite from these oppressive actions, exposed them to more oppression, as monitoring mechanisms ceased to function and access to justice became more restricted.<sup>151</sup>

The burden on indigenous rights defenders has been enormous. Throughout the pandemic, rights advocates—indigenous rights advocates, in particular—have faced criminal punishment and threats of criminal punishment more often, as well as increased violence and threats of violence.<sup>152</sup> In addition to directly violating their rights, these tactics effectively silence indigenous peoples and facilitate further widespread violations of their land, self-governance and cultural rights.

**Table 1. Actions taken by indigenous peoples to advocate against the rolling back of social and environmental safeguards during the COVID-19 pandemic in 2020**

<b>Brazil</b>	<p>Continued to insist on compliance with FPIC protocols and to demand effective participation in environmental and social impact assessments.</p> <p>Demonstrated against the drought caused by the Belo Monte hydroelectric power plant.</p> <p>Developed institutional partnerships to establish communications infrastructure in communities to protect their health and lives.</p> <p>Filed complaints to the government about the vulnerability of indigenous peoples' territories due to the increase in invasions and illegal extraction of natural resources.</p>
<b>Colombia</b>	<p>Exposed problems with proposed changes to prior consultation processes.</p> <p>Collectively organised to strengthen indigenous control of territories.</p> <p>Organised the March for Dignity and <i>mingas</i> (collective mass protests).</p> <p>Continued to insist on compliance with FPIC protocols and with rulings of the Constitutional Court.</p> <p>Filed multiple legal challenges to fast-tracked consultation processes for controversial policies, including aerial herbicide spraying of crops cultivated for illicit use.</p>
<b>DRC</b>	<p>Organised in response to being excluded from drafting and deliberations of the national land-use planning policy.</p> <p>Continued to protest the designation of Kahuzi-Biega National Park, including through occupation by ancestral landowners.</p> <p>Resisted the expansion of a palm oil plantation in Boteka.</p>
<b>Indonesia</b>	<p>Continued to protest against the Omnibus Law.</p> <p>Submitted a request to the Committee on the Elimination of Racial Discrimination for urgent action on the suppression of indigenous rights.</p> <p>Led by indigenous women, land rights activists staged demonstrations against land grabbing.</p>
<b>Peru</b>	<p>Continued to insist on respect for autonomous decisions taken by indigenous governments.</p> <p>Opposed the expansion of extractive industry and logging into territories inhabited by indigenous peoples living in voluntary isolation.</p> <p>Legally challenged oil exploration in their territories.</p> <p>Used overseas OECD complaint mechanisms to demand redress for harms to environmental and human rights.</p>



## Brazil – Violence and sustained threats against indigenous representatives

During the COVID-19 pandemic, indigenous representatives, including members of the Articulação dos Povos Indígenas do Brasil (the National Network of Indigenous Peoples of Brazil), have faced sustained threats of violence and criminal punishment in retaliation for their resistance to industrial activities, deforestation and land grabbing.<sup>153</sup> These intimidation tactics have been compounded by violence committed against their communities in the Amazon aimed at displacing them from their lands in the name of both state-sanctioned and illegal industrial expansion.<sup>154</sup>

In the Xingu Basin, the construction and operation of the Belo Monte hydroelectric power plant—which has violated many of its own licensing constraints—have had a devastating impact on nearby indigenous communities. In addition to displacing indigenous families, it has dramatically decreased the flow of the Xingu River, upon which these peoples depend for their livelihoods. As of November 2020, Norte Energia, the Belo Monte concession holder, was in the process of diverting a stretch of the Xingu River representing about 80 per cent of its 1,640 km length. This diversion is inducing a perennial drought in the area, which will be devastating for the indigenous communities that rely on the river for their survival and way of life. In the midst of the pandemic, these communities mobilised and staged a demonstration, expressing their opposition to the plans.

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*"We, the indigenous and riverside peoples of Volta Grande do Xingu, are here united in this letter and in our demonstration to defend the waters of the Xingu and our lives. Belo Monte, since it started, has wanted to divide us in the same way that it did the river. But we, like the Xingu, did not give up fighting for our lives. Belo Monte and the impacts of the plant want to kill us little by little as they are doing with the river and the fish. Our knowledge needs to be respected by the authorities. We are helpless. We request the protection of justice!"*

— Extract from a letter from indigenous communities in the Xingu Basin, Brazil<sup>155</sup>



Mëbengôkre-Xikrin warriors arrive in Altamira for a meeting on the impacts of the Belo Monte hydroelectric power plant in 2012  
Credit: Thais Regina Mantovanelli

## Colombia – Assassinations, massacres, and marching for dignity

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*"We continue to be killed very easily during the pandemic because we are all at home complying with the mandatory quarantine and no one can move. But it turns out that the people who want to silence us are moving without a problem .... I have received messages threatening that ... they were going to burn me and my family so that I would not come to spread the virus."*

— **Danelly Estupiñan, human rights defender, Proceso de Comunidades Negras, Colombia**<sup>156</sup>

Colombia is currently the most dangerous country in the world for human rights defenders, according to Global Witness.<sup>157</sup> Most violence is concentrated in the departments of Cauca, Antioquia, Norte de Santander, Valle del Cauca, and Putumayo.<sup>158</sup> In 2019, Indepaz, the Instituto de Estudios para el Desarrollo y la Paz (Institute for Study of Development and Peace), a non-government organisation that is a member of the national network of peacebuilding organisations, documented the killing of 84 indigenous leaders and human rights activists.<sup>159</sup> These community members were killed for defending the peace agreement, the rights of displaced persons to land restitution, and indigenous territories. Threats to indigenous leaders have increased during the pandemic.<sup>160</sup> The UN has called for greater protection of indigenous leaders, noting that at least 120 human rights defenders were murdered in 2020, 12 more killings of human rights defenders than the UN documented in 2019.<sup>161</sup>

Testimonies from community and indigenous leaders show that COVID-19 confinement measures heightened their vulnerability,<sup>162</sup> by providing armed groups an opportunity to strengthen their military capacities and systematically recruit minors.<sup>163</sup> Armed groups have also been pressuring social and indigenous leaders to control indigenous populations and to restrict their movements within their territories. During the pandemic, violence has been increasing not only against indigenous peoples but also against social leaders generally—in 2020, according to Indepaz, 310 social leaders and human rights defenders had been killed by paramilitary groups and other armed actors.<sup>164</sup>

Impunity for violence against social leaders continues. The government has offered to relocate threatened social leaders to urban areas and provide them with armoured cars and bulletproof vests.<sup>165</sup> This protection strategy is often unavailable to all community members facing threats, it weakens communities' capacity to organise, and it fails to address the causes and origins of the violence.

Nevertheless, in several parts of Colombia communities have mobilised peacefully to protect their lands and communities from violent actors. One example is the Cimarrona Guard, a community-organised self-protection body that guards the territory of Afro-descendant peoples in the Northern Cauca from external threats, similar to indigenous guards in indigenous peoples' territories. Mobilisation has also included mass public protests organised by indigenous and Afro-descendant peoples and rural communities. Between 25 June and 10 July 2020, about 60 Afro-descendant, indigenous and peasant organisations organised the Great March for Dignity—a 600-kilometre march from the southwest of the country to Bogotá.<sup>166</sup> The marchers were protesting, among other issues, ongoing violence against social leaders, the criminalisation of protest, and the recent rape of an indigenous girl by members of the military.

In early October 2020, indigenous and Afro-descendant organisations called a meeting with President Ivan Duque, and the demands were similar: that, in light of the impunity with which social leaders were being murdered, the government ensure implementation of the peace accord and guarantees of the right to life.<sup>167</sup> The president did not attend the meeting. The indigenous organisations decided to march again to Bogotá to present their demands to the entire country. As in the Great March for Dignity, around 8,000 people travelled 600 kilometres for the protest. The government, rather than engaging with them and seeking to understand and address their concerns, failed to respond.

## Colombia's indigenous and black community guards – mobilising for human rights protection and civil resistance

Afro-descendant and indigenous guards play a central role in organising and conducting collective activities in Colombia. The Cimarrona Guards, for example, are men and women who are taught from a young age to defend their territory and preserve life.

For the Consejo Regional Indígena del Cauca (Regional Council of Indigenous People of Cauca), the indigenous guard “[i]s conceived as an ancestral organism of its own and as an instrument of resistance, unity and autonomy in defense of the territory and the life plan of the indigenous communities. It is not a police structure, but rather a humanitarian and civil resistance mechanism”.



Indigenous guards during a collective mass protest, or *minga*, in Cali, Colombia. October 2020  
Credit: Maria del Rosario Arango Zambrano / FPP

## **DRC – Government campaign of repression and criminal sanctions continues during pandemic**

When the Congolese government began to advance deliberations on the National Land-Use Planning Policy (PNAT) without meaningful consultation with indigenous and forest communities, community leaders and civil society began to organise to convince the government to allow them to contribute. The communities' response, like the government's deliberations on the policy, was ongoing at the time of writing.

Indigenous and forest peoples in the DRC have a history of organising responses to government policies that violate their rights, and the government has a history of punitive and, at times, violent responses. The Kahuzi-Biega National Park in South Kivu is emblematic. In 1975, the government expelled the area's indigenous Batwa occupants to extend the park's borders into the Batwa's lands.<sup>168</sup> For 45 years, the Batwa communities have demanded justice and reparations for this violation of their land rights, which has left them in severe poverty. In late 2018, some Batwa moved back onto the lands from which they had been expelled. This sparked a long series of confrontations between Batwa land defenders and park administrators,<sup>169</sup> who responded with repression and criminal sanctions.

This response has continued through 2020 and the COVID-19 pandemic. Thirteen Batwa were imprisoned for alleged destruction of the environment and association with wrongdoers, which has been how the government has treated the Batwa's traditional uses of the land for survival. Five of these Batwa community members were arrested and imprisoned without trial and accused of illegal possession of weapons and participation in a militia, some in February 2019 and some in October 2019, before being released in September 2020.<sup>170</sup> The other eight were convicted in February 2020 for illegal possession of weapons, criminal conspiracy and malicious destruction of Kahuzi-Biega National Park. The expedited trial was conducted by a military tribunal that lacked jurisdiction to judge the offences and failed to uphold the community members' due process rights.<sup>171</sup>

The sole exception to this campaign of using the criminal law against indigenous community defenders has been the early release in August 2020 of just four incarcerated community members due to the risk of COVID-19 spreading in DRC prisons, which lack adequate sanitation. On the other hand, the government has used the pandemic as an excuse to delay the hearing of several convicted community members' appeals.<sup>172</sup>

Despite these dangers, indigenous communities continue to fight for their ancestral lands. Because of insufficient guarantees from l'Institut Congolais pour la Conservation de la Nature (Congolese Institute for the Conservation of Nature) and provincial authorities, the Kalehe Batwa communities have refused all of the government's attempts to negotiate their departure, and have continued to occupy the area designated as national park.<sup>173</sup>

Indigenous and forest peoples in the DRC also continue to resist violations of their rights by companies. In Boteka, 17 villages have been affected by the establishment and expansion of a palm oil plantation owned by Canadian firm Feronia.<sup>174</sup> The plantation has increasingly encroached upon the communities' ancestral lands, causing conflict between the company and the communities. In 2020, the communities challenged the human rights violations, arbitrary arrests, deforestation, and the deprivation of resources that they rely on for their livelihood and that have resulted from the encroachment.<sup>175</sup>





Left and below: Monitoring territory for illegal logging in Shipibo community of Panaillo, Ucayali. June 2018  
Credit: Tom Younger / FPP



## Indonesia – Protests against new Omnibus Law met with violence

The passage of Indonesia's Omnibus Law on Job Creation in 2020 was met with widespread protests, including by the Aliansi Masyarakat Adat Nusantara (Indigenous Peoples' Alliance of the Archipelago –AMAN), other Indonesian indigenous peoples' collectives, civil society organisations, student groups and labour unions.<sup>176</sup> In October 2020, AMAN, in partnership with several other groups, filed a request for urgent action with the UN Committee on the Elimination of Racial Discrimination, citing the law's serious impact on indigenous peoples' land rights.<sup>177</sup>

The protests have prompted a harsh response from the government, including acts of violence. The Commission for Missing Persons and Victims of Violence, an Indonesian human rights organisation, reported that it received more than 1,500 complaints alleging violence by security officials after only three days of protests over the Omnibus Law in Jakarta in early October 2020.<sup>178</sup>

### Farmers evicted and threatened with criminal charges in Sumatra as company bulldozers roll in



Maswan of the Sungai Landai Mandiri Farmer Group shows a photo of her farmland in the conflict area in Sumatra, Indonesia  
Credit: Elvira Diana / Mongabay Indonesia

In September 2020, in the midst of the ongoing pandemic, conflicts reared up again between pulp-and-paper company PT Wira Karya Sakti (WKS) and farmers who claim that the company is intruding on customary land in Jambi, Sumatra, Indonesia. This dispute dates back to 2007 and resulted in WKS security officials killing a farmer protester in 2015.

According to reports by Konsorium Pembaruan Agraria (the Consortium for Agrarian Reform, KPA), PT WKS has started to bulldoze farmland and evict farmers in Jambi again, despite an agreement between the farmers and the company that the company would suspend activity in conflict locations and respect previous delineations of farmland.

"PT WKS conducted the eviction of farmers' huts and gardens. This was met with resistance from 45 mothers," says Fran Dodi, Regional Coordinator of KPA.<sup>179</sup> Dodi states that it is "clear that the company has violated the agreement," since some of the evicted farmers have legal deeds to the land.<sup>180</sup>

The company has increased security in the area, and three farmers have already received police summonses that allege security disturbances,<sup>181</sup> a worrying indication of the government's determination to use threats of criminal prosecution as a form of intimidation.

"The company uses village officials to suppress these farmers as well," says Martamis, Chairman of the Tebo Farmers Union, Jambi.<sup>182</sup> "They lure and scare farmers from farming on the site. But [the farmers] have no choice; it's their land."



## Peru – Indigenous leaders assassinated after government fails to offer protection

Since the onset of the COVID-19 health emergency in Peru, four indigenous leaders involved in defending their lands against encroachment by outsiders have been killed by unknown actors.

- Arbildo Meléndez Grández, a Katataibo leader from the native community of Unipacuyacu, was murdered in April 2020; he was fighting for the titling of his community's territory while also confronting third parties taking advantage of the pandemic to invade it.<sup>183</sup> The regional indigenous organisation has blamed an outsider who settled in the community, and has demanded an investigation into the murder.
- Gonzalo Pío Flores, an Ashánika leader of the native community of Nuevo Amanecer Hawaii, was assassinated in May 2020. La Fédération Internationale pour les Droits Humains, an international federation of human rights organisations, has linked his murder to the community's lack of security of land tenure and the presence of illegal loggers on their lands. Flores and a member of his community had received threats and had been attacked by people linked to the logging companies. In 2014, Flores and other members of the community sought protection for their land rights through the courts, and their case has been pending before the Constitutional Court since 2018.<sup>184</sup>
- Lorenzo Wampagkit Yampik, a park ranger of the Chayu Nain Communal Reserve, was murdered in July 2020.<sup>185</sup> At the time of writing, his killers remained unknown. Servicio Nacional de Áreas Naturales Protegidas (the Peruvian Service for Natural Protected Areas) has called for the responsible authorities to investigate and ensure that those responsible are brought to justice.
- Roberto Pacheco Villanueva, son of the vice president of the management committee of the Tambopata National Reserve, was assassinated in September 2020; he and his father were trying to prevent illegal loggers and miners from encroaching into the forest reserve in the Madre de Dios region, one of the most illegally mined and violent areas in Peru.<sup>186</sup> Since 2016, the father and son presented many allegations of deforestation to the prosecutor in Madre de Dios, which, at the time of writing, had not been processed.

Three of these indigenous leaders and human rights and environmental defenders had warned the government of the threats they were receiving and had requested protection. State authorities failed to respond, despite a 2019 Ministry of Justice protocol that guarantees the protection of human rights defenders.

In September 2020, a group of indigenous organisations requested a hearing from the Inter-American Commission on Human Rights to testify about how systematic corruption linked to illegal logging, palm oil, acquisition of lands and trafficking of drugs contributes to violations of indigenous peoples' rights to life, security, justice and territory in Santa Clara de Uchunya, Unipacuyacu, Nuevo Amanecer Hawaii, and Alto Tamaya-Saweto.<sup>187</sup> Testimony at the hearing explained how state authorities ensure violators' impunity through judicial processes and impose obstacles to the exercise of indigenous peoples' rights. Following the indigenous leaders' presentations to the Inter-American Commission on Human Rights, several of them began to receive death threats and, at the time of writing, were under police protection, some of them unable to return to their communities.



Left: Sunset over the Santiago (Kanus) River in Wampis territory in the Peruvian Amazon  
Credit: Vicki Brown / FPP

Below: The Wampis village of Soledad  
Credit: Vicki Brown / FPP





# Recommendations

## Governments in tropically forested countries

1. Immediately reverse all legislative, administrative and policy measures that were taken or are planned in the name of COVID-19 recovery and that serve to weaken environmental and social safeguards for indigenous peoples' rights. Cancel all concessions or licences that have been granted to mining, logging, energy and agribusiness projects in or near indigenous peoples' territories during the pandemic. Indigenous peoples' input should be sought when developing this legislation.
2. Stop using COVID-19 recovery as a pretext to further shrink civic and democratic spaces and as cover for the illegal allocation and appropriation of indigenous peoples' lands and territories and for the criminalisation, repression and persecution of human rights defenders.
3. Assess, with the full and effective participation of indigenous peoples, all land-use change regulations and land governance and planning policies developed during the pandemic and ensure their full compliance with indigenous peoples' rights.
4. Abandon proposals for virtual consultation processes and ensure that prior consultation processes guarantee the right to free, prior and informed consent (FPIC). Support indigenous peoples' initiatives to realise their rights, exercise autonomy, implement their FPIC protocols and laws, and pursue economic self-determination, as core elements of COVID-19 recovery processes.
5. Enact legislation giving full effect to indigenous peoples' internationally recognised rights. Ensure that COVID-19 economic recovery measures are fully aligned with these rights by adopting stronger environmental and social safeguards through transparent and effective participatory processes.
6. Ensure that measures to uphold the rights of indigenous peoples and customary landowners include new and effective legal protections for customary lands to safeguard against expropriation and the imposition of state concession agreements with domestic and transnational businesses.
7. End all disinformation campaigns that stigmatise indigenous peoples and that label them as 'anti-development', incite violence towards them, or contribute to their criminalisation. Drop all criminal charges against indigenous persons who have been arbitrarily detained for defending rights to customary lands. Act urgently, in collaboration with indigenous peoples, to guarantee the safety of indigenous rights defenders.
8. Thoroughly investigate illegal mining, logging, land grabbing and organised crime in indigenous peoples' territories and related killings and violence, and punish those responsible.
9. Urgently tackle the root causes of violence and forest conflicts, giving particular attention to measures to stop land trafficking, deforestation, and fraudulent land privatisation and accumulation by commercial actors and land-grabbers.
10. Demarcate and title indigenous peoples' territories, recognise their governance structures, explore alternative non-extractive forms of development with the indigenous peoples concerned, and ensure that indigenous peoples can effectively participate in strategic planning for the use of land and resources.
11. Respect the right of all indigenous peoples to give and withhold FPIC—in accordance with their own laws, customs and protocols—to any concessions, licences or projects that could affect their rights. Ensure their full and effective participation in processes that might affect their identities, lives, livelihoods and cultural integrity, especially those related to their lands and territories.
12. Enact and enforce robust environmental and social safeguards, consistent with international standards and law, including guarantees that pandemic recovery initiatives respect international human rights law, including, in particular, the rights of indigenous peoples.
13. Recognise and respect indigenous peoples' self-determined development plans and priorities and their rights to govern their territories, to maintain and develop their cultures, and to have a healthy environment.

## **Governments in consumer, donor and extractive-industry home countries**

1. Develop legislation to regulate corporate governance and deforestation-risk commodities, with provisions requiring compliance with applicable international human rights and environmental law. This legislation should be developed whether or not the activity is legal under the producer country's law, and should establish related robust obligations for human rights due diligence on businesses, including international financiers (e.g. banks, investors, asset managers). Indigenous peoples' input should be sought when developing this legislation..
2. Enforce strong standards for environmental, social and human rights protections in any development assistance to governments, particularly to ensure the rights of indigenous peoples to own, manage and control their lands and territories and their rights to free, prior and informed consent.
3. Support grassroots and indigenous-led movements and international alliances by pressuring governments of highly tropically forested countries to a) reverse and guard against the weakening of environmental and social safeguards and b) ensure that all pandemic recovery activities fully comply with the rights of indigenous peoples.
4. Offer technical and financial assistance directly to indigenous peoples affected by the pandemic to enable them and their representative structures to a) exercise more control over their lands, territories and resources and b) improve their health and economic outcomes.
5. Raise awareness of potential transnational human-rights and environmental impacts of expanding large-scale infrastructure, industrial agriculture and extractive industries.
6. Ensure that legal and administrative frameworks provide effective judicial and non-judicial remedies, criminal and/or civil liability for violations of the rights of indigenous peoples and customary landowners by domiciled corporations, as a result of their operations, investments and supply chains in other countries, and hold these corporations legally accountable for their contributions to any such violations.
7. Conduct and publicise participatory evaluations of the human rights impacts and risks of home companies' operations on the rights of affected indigenous peoples overseas.

## **Negotiators at the United Nations Framework Convention on Climate Change COP 26**

1. Promote and secure the rights of indigenous peoples in new global climate commitments, including targets, strategies and investments, and recognise indigenous peoples' contributions to combating global warming and stemming biodiversity loss.
2. Recognise the crucial role of traditional knowledge and customary governance and management systems in guiding sustained and effective responses to the COVID-19 pandemic and in preventing future pandemics.
3. Endorse and promote binding legal regulations on corporate governance, international finance and conflict commodities to address commodity-driven harms to human rights, forests and the global climate.
4. Embrace alternative development pathways that reduce over-exploitation, inefficient production, and excessive consumption of resources.

## Regional organisations

1. Urgently press member states to adopt stronger environmental and social protections in all COVID-19 economic recovery plans related to land use and tropical forests.
2. The European Union should adopt a legal framework to halt and reverse human rights abuse, deforestation and climate damage driven by European Union trade, consumption and finance, including explicit protections for the rights of indigenous peoples in line with international law and the recommendations of the European Parliament.
3. The European Union should implement the recommendations of the 2014 Study for the European Parliament Directorate-General for External Policies of the Union on indigenous peoples, extractive industries and human rights (Document number: EXPO/B/DROI/2013/23) [PDF].

## International financial institutions

1. Urgently assess the risks and opportunities in COVID-19 recovery interventions and pinpoint
  - a) strategies not only to prevent harm but also to directly support indigenous peoples, and
  - b) initiatives that strengthen indigenous peoples' autonomy, economic resilience, tenure security, and territorial governance and control.
2. Based on such an assessment, and in direct consultation with indigenous peoples and their representative organisations, develop an indigenous-specific action plan for COVID-19 recovery approaches that are human rights-based, empowering to indigenous peoples, and sustainable.
3. Comply with social and environmental safeguards in all pandemic-recovery interventions in borrower countries, including in programmatic and technical assistance loans, credits and grants enabling public policy and regulatory change.
4. Ensure robust due diligence is conducted on all pandemic-recovery lending and aid portfolios, including projects in support of legislative and judicial reform, to prevent any weakening of internationally guaranteed human rights or constitutional rights.
5. Use loans and grants to foster transitions to sustainable, locally appropriate economies, and cease finance for industrial agribusiness and extractive developments that drive abuse, dispossession, the conversion of forest to agriculture, emissions, and water pollution, and that increase the risk of releasing pathogens into the environment.
6. Adopt a policy, for all financed projects, of zero tolerance for direct and indirect threats, attacks and human rights violations against human rights defenders, including indigenous defenders.

## Private investors

1. Ensure that all new and existing loans and investments, direct and indirect, respect and promote international human rights and environmental standards, including the UN Guiding Principles on Business and Human Rights, international and regional human rights treaties, and the UN Declaration on the Rights of Indigenous Peoples, including, in particular, standards on good tenure governance and the requirement of free, prior and informed consent.
2. Ensure that investments in tropically forested countries do not support projects that  
a) destroy or degrade the environment and thus threaten the right of indigenous peoples and local communities to a healthy environment, and/or b) jeopardise ecosystems and ecological resources on which their livelihoods depend.
3. Enhance due diligence, monitoring, and supervision of investments, portfolios and assets in countries where indigenous peoples' rights are not adequately protected, where land and forest conflicts are reported, and where safeguards have been weakened during the pandemic, especially for indirect forms of investment through, for example, financial intermediaries and the funding of parent companies and corporate groups.
4. For all financed projects, adopt a policy, and specific due diligence practices, of zero tolerance for direct and indirect threats, attacks, and human rights violations against human rights defenders, including indigenous defenders.

## Companies connected to supply chains where deforestation is a risk

1. Upgrade environmental and social governance systems to fully implement the UN Guiding Principles on Business and Human Rights and adopt and apply integrated human rights and environmental due diligence (see, for example, the Accountability Framework's guidelines on ethical supply chains to combat deforestation and rights abuse).
2. Adopt a policy, and specific due diligence practices, of zero tolerance for direct and indirect threats, attacks, and human rights violations against human rights defenders, including indigenous defenders.

## Country-specific recommendations

Recommendations for Brazil, Colombia, the Democratic Republic of the Congo, Indonesia and Peru are included in the five country studies that contributed to this report.<sup>188</sup>

Next page: The Wampis village of Soledad, in the Peruvian Amazon  
Credit: Vicki Brown / FPP







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