

SACRIFICING RIGHTS IN THE NAME OF DEVELOPMENT

INDIGENOUS PEOPLES
UNDER THREAT IN THE
AMERICAS

**AMNESTY
INTERNATIONAL**



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Amnesty International is a global movement of more than three million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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INTERNATIONAL**



OVERVIEW

*"[T]here are many unused resources (...), which are not generating investment and employment. And all this for the taboo of old ideologies, for laziness, (...) or for the law of the dog in the manger that says: 'If I don't do it, nobody will do it'."*¹

*"There may be nice rhetoric that (...) Indigenous leaders repeat. (...) We cannot hold [those] extremist positions. We cannot be beggars sitting on a bag of gold. Those fundamentalisms, those dogmatisms just immobilise us."*²

*"I think that when we are speaking of such an important development project, things should probably be discussed with more calm. (...) I don't think any democratic government has the intention to create problems with their Indigenous peoples. The worst thing [human rights bodies] can do is to exacerbate the issue treating [Indigenous people] as if they were victims, like the victims of dictatorships."*³

*"Like it or not, we are going to build that road [through the Indigenous territory]."*⁴

These are a few examples of how some presidents and regional leaders from the Americas, across the ideological spectrum, refer to Indigenous peoples' rights and their struggles. The false and dangerous dichotomy of "development vs. Indigenous peoples' rights" is widespread in the continent. It is based on the flawed argument that extractive or other development projects that serve national interests by increasing national wealth and generating jobs cannot be "obstructed" by Indigenous peoples who are "just" a fraction of society. Thus, when Indigenous communities organize themselves to demand respect for their rights, the state and other actors accuse them of blocking the growth of the entire country.

This response has had devastating consequences for the human rights of Indigenous peoples in the region. As the cases that Amnesty International has documented in the region show, frequently laws are passed and development projects are carried out without respecting the right of Indigenous peoples to be consulted and to give their free, prior and informed consent. These cases are the tip of the iceberg of a regional trend.⁵ Human rights violations,

¹ President Alan García of Peru (2006-2011), [El Comercio](#), 28 October 2007.

² President Rafael Correa of Ecuador, [Discurso en la Cumbre Presidencial y de Autoridades Indígenas y Afrodescendientes de la ALBA](#), Otavalo, 25 June 2010.

³ José Miguel Insulza, Secretary General of the Organization of American States, [BBC Brasil](#), 4 May 2011.

⁴ President Evo Morales of Bolivia, [La Razón](#), 30 June 2011.

⁵ See Argentina, Brazil, Canada, Colombia, Ecuador, Guatemala, Mexico, Panama and Peru examples.

social conflict and sometimes violent clashes between Indigenous peoples and security forces could have been avoided if states had followed their obligation to hold consultations prior to going ahead with development projects. Indigenous leaders and community members also face criminal prosecutions under charges that seem to be disproportionate and politically motivated.⁶ Moreover, in many countries, Indigenous peoples continue to face many obstacles to gain legal recognition of their rights over their traditional lands. In many countries state officials forcibly evict them or threaten them with eviction on an ongoing basis.⁷ Indigenous leaders and community members are often threatened, intimidated and sometimes killed in conflicts over their lands. Those conflicts usually involve both state and non-state actors. The latter are usually interested in Indigenous peoples' lands for commercial enterprises.

The violations of rights described above are the result of an entrenched discriminatory attitude against Indigenous peoples of the Americas and a lack of acceptance of their different way of being, seeing, and acting in the world; which is part of a historical legacy that current democratic states have failed to reverse. In addition to suffering from the aforementioned problems, indigenous women are affected by gender based violence and the impunity that often surrounds these cases.⁸

Amnesty International believes that economic development cannot be pursued as a zero sum game in which the rights of Indigenous peoples are sacrificed – to do so would undermine the principle of the universality of rights. Human rights norms guarantee the right of Indigenous peoples to take part in the decisions that affect their lives and territories, without discrimination. These norms exist to overcome centuries of marginalization and discrimination that have put Indigenous peoples in vulnerable situations and where decisions that deeply affect them -even to the point of threatening some peoples' physical or cultural survival- are taken without their participation.

Within this context, Indigenous peoples in the region have increasingly organized to defend their rights and are today at the forefront of the struggle for their rights and for equality. Courts all over the region and international and regional intergovernmental bodies are increasingly recognizing Indigenous peoples' rights.⁹ The United Nations Declaration on the

⁶ See Ecuador, Peru and Mexico examples.

⁷ See Argentina, Brazil, Chile, Colombia and Paraguay examples.

⁸ See Canada, Mexico and USA examples.

⁹ For example the Mapuche Indigenous communities of Huenctru Trawel Leufú and Mellao Morales have achieved successful court rulings in Argentina this year. In both cases judges stopped plans of oil and mining companies to carry out extractive projects until the communities have been consulted. Also this year, the Supreme Court of Chile ordered consultation with Indigenous peoples according to international standards prior to implementing a new territorial plan that would affect Indigenous peoples from San Pedro de Atacama. Recent Colombia Constitutional Court rulings on cases submitted by Afro-descendant and Indigenous communities have reaffirmed the right to consent in those cases in which economic projects are deemed to have substantive impact on territorial or cultural rights.

Rights of Indigenous Peoples enjoys region-wide recognition, now that Canada and the USA - which voted against it initially – endorsed it in 2010.

On the International Day of the World's Indigenous People, Amnesty International wishes to highlight a few of the cases documented across the region that demonstrate the situation of many communities, as well as the dignity and determination with which they defend their rights.¹⁰ Rather than speaking on behalf of Indigenous Peoples, Amnesty International's aim is to amplify their voices, through cases and testimonies gathered in our work with Indigenous peoples in the Americas.

Amnesty International calls upon leaders in the region to take decisive and urgent action to fulfil their obligations to defend and protect Indigenous peoples' rights. In particular, governments should, in collaboration with Indigenous peoples:

- Enact legislation to fulfil the right to consultation and free, prior and informed consent in line with international and Inter-American human rights system standards.
- Abstain from granting concessions, authorizing exploration and exploitation activities or carrying out any other development projects that can affect Indigenous peoples without proper consultation, according to international and inter-American standards.
- Take urgent action to resolve land disputes and abstain from evicting indigenous peoples until those claims are resolved.
- Create and preserve the conditions for Indigenous leaders and community members to peacefully defend their rights without fear of reprisals, especially by avoiding the improper use of the criminal justice system to discourage their work as human rights defenders.
- Take due diligence measures to protect Indigenous women from violence, as well as prosecute and punish those responsible for these abuses.
- Take measures to fully implement the rights enshrined in the United Nations Declarations on the Rights of Indigenous Peoples.

¹⁰ For more information about the cases and situations mentioned in this document see the Background Information section, at the end of this document.

ARGENTINA

Many Indigenous peoples continue to be at risk of being forcibly evicted from their ancestral lands, even when national legislation has suspended all such evictions until November 2013. Community members from the Quilmes Indigenous Community in Tucumán province were evicted from their homes in 2009 and 2010 and the police tried to evict them again in April 2011. Several Indigenous leaders from nearby communities have been threatened and one of them has been killed in an attempt to stop them from claiming access to the ancestral territories of their communities.

In November 2010, 400 police officers violently dispersed a demonstration carried out by the Toba Qom Indigenous community of Formosa province. The demonstrators had mounted a roadblock in protest at plans to build a university on traditional lands. The police also burned down the community's temporary homes. At least one police officer and one member of the community were killed in the clashes. In the same province, the Indigenous Pilagá community of El Descanso continue their struggle for justice over development projects that were undertaken without consultation with the Indigenous peoples and that they claim affected their traditional territories. Amnesty International documented threats and intimidation against members of these communities and their lawyers.

BRAZIL

On 1 June 2011 Brazil's environmental agency approved the construction of the Belo Monte dam on the river Xingu in the Amazon area. The decision has defied an order from the Inter-American Commission on Human Rights to suspend the construction of the Belo Monte dam until the rights of local Indigenous communities are fully guaranteed. Local Indigenous organizations and NGOs have argued that the dam could displace thousands of families and threaten the livelihoods and health of numerous Indigenous communities in the state of Pará. The Inter-American Commission had ordered the suspension until Indigenous communities were fully and effectively consulted – including by having access to a Social and Environmental Impact Assessment of the project in their languages – and measures were put in place to protect the lives of Indigenous communities living in voluntary isolation.

Indigenous peoples fighting for their constitutional rights to traditional lands continue to face discrimination, threats and violence. The situation is particularly grave in the state of Mato Grosso do Sul, where Guaraní-Kaiowá communities face constant persecution from gunmen hired by local farmers. In spite of efforts on the part of federal prosecutors to speed up the process to recognize the rights of Indigenous peoples to traditional lands, the process remains stalled.

“We have suffered too much with so much violence within and against our communities... We are not asking, we are demanding rights: demarcation of our lands with urgency so that we can return to live in peace, with happiness and dignity” –

Open letter from the Guaraní-Kaiowá to the then President Luiz Inácio Lula da Silva

CANADA

Despite the overall high standard of living enjoyed by most Canadians, Indigenous peoples experience widespread impoverishment and deprivation. A 2010 government study found that for some Indigenous communities the gap in education, jobs, income, and housing is actually widening. An estimated 20,000 people in First Nations communities across Canada have no running water or sewage.

A Parliamentary committee has called for a comprehensive plan of action to stop violence against Indigenous women and girls. Indigenous women in Canada are three to five times more likely than non-Indigenous women to die as a result of violence. The government response has been piecemeal at best. Police are not even required to systematically record whether or not the victims of violence are Indigenous.

“Refusing to keep track of the numbers of our sisters and daughters who have been murdered or gone missing is just another way of ignoring this tragedy.”

Gwenda Yuzicappi, whose 19-year-old daughter Amber Redman was murdered in Saskatchewan in 2005.

On 29 April 2011, a pipeline spilled 4.5 million litres of crude oil into wetlands in the traditional territory of the Lubicon Cree in northern Alberta. For decades, the provincial government has been allowing massive oil and gas development on Lubicon land with little protection for their culture, health and livelihoods.

The Inter-American Commission on Human Rights, which is currently reviewing a complaint brought by the Indigenous Hul’qumi’num Treaty Group of Vancouver Island, has found that the available means to resolve land rights disputes in Canada are not effective remedies to protect those rights.¹¹

In November 2010, Canada endorsed the UN Declaration on the Rights of Indigenous Peoples. Indigenous Peoples’ organizations have urged the government to implement the Declaration in a principled manner.

CHILE

Indigenous peoples in Chile continue to struggle for rights over their territories and natural

¹¹ Inter-American Commission on Human Rights, Report No. 105/09, Petition 592-07, Admissibility, Hul’qumi’num Treaty Group, Canada, 30 October 2009.

resources. There are several allegations of excessive use of force by security forces during Indigenous peoples' protests for territorial claims, and many have been prosecuted for their participation. UN bodies and experts have criticised the content and the use of the anti-terror law, often used to prosecute those Mapuches that participated in social protest, including at least five children.

Mapuches in jail often denounce violations of due process and unfair and discriminatory trials. Four men of Indigenous Mapuche origin sustained a three-month-long hunger strike earlier this year. Héctor Laitul Carrillanaca, Ramón Llanquileo Pilquimán, José Henuche Reimán and Jonathan Huillical Méndez claim that they have suffered an unfair trial due to specific procedures established in anti-terror legislation. The Supreme Court has reduced the convictions against them but rejected their request for a retrial.

Indigenous groups on Rapa Nui (Easter Island) protested in 2010 against the continuing failure on the part of the authorities to return their traditional lands to them. The government set up working groups to discuss their concerns in September, but many clan members objected to the terms of the discussion. In December, more than 20 people were injured in violent clashes between security agents and clan members occupying buildings and land. Military tribunals opened an investigation about the alleged excessive use of force by security forces. Rapa Nui members are being charged for their participation in the protests.

COLOMBIA

Indigenous, Afro-descendant and peasant farmer communities are particularly hard hit by the on-going human rights crisis in Colombia. These communities face killings, threats and other human rights violations and abuses committed by the security forces, paramilitaries and guerilla forces. On the one hand, human rights violations and abuses are committed as part of efforts to secure military control of regions. On the other, they are often committed to advance powerful economic interests and undermine the capacity of Indigenous and Afro-descendant communities to oppose the development of these interests on their lands.

For Indigenous and Afro-descendant communities forced displacement and the actions of the parties to the conflict have exacerbated the already critical socio-economic crisis they face. Restrictions on freedom of movement imposed by the conflict are having a devastating effect on Indigenous Peoples.

Despite the threats they face Indigenous Peoples and Afro-descendant communities have organized at regional and national level to campaign for their human rights. The National Indigenous Organization of Colombia (Organización Nacional Indígena de Colombia, ONIC), launched a campaign in 2010 focusing on the human rights crisis faced by Indigenous Peoples and on particularly vulnerable Indigenous groups.

“We have got the commitment of the government to move forward in the establishment of a state policy on Indigenous Peoples in concert with Indigenous Peoples; we have secured unity amongst Indigenous Peoples; and we have put the issue of Indigenous groups at risk of disappearance on the agenda”

Luis Evelis Andrade, President of ONIC

In January 2009, the Colombian Constitutional Court issued a ruling highlighting the situation of Indigenous peoples whose cultural and physical survival were at risk either from the dislocation caused by displacement and dispersion or as a direct result of violence and declining numbers.

ECUADOR

The Indigenous Kichwa community of Sarayaku has been campaigning since 2002 for their right to be consulted regarding extractive projects in their ancestral territory. In 1996 the state granted permission to an oil company to carry out oil exploration on their ancestral land without their consent. In 2002 and 2003 engineers carried out explosions as part of the exploration activities. Since then, 1,400 kilograms of dynamite remain underground in Sarayaku territory. On 6 and 7 July 2011 members of the community and their lawyers from Fundación Pachamama and the Centre for Justice and International Law presented their case to the Inter-American Court of Human Rights. The Court is expected to issue its ruling by the end of the year.

“If they want to carry out such a damaging activity, we want to be consulted and if we say no, they should respect us”

Patricia Gualinga, member of the Sarayaku community, speaking to the Inter-American Court of Human Rights

The government has launched this year a tender for potential extractive projects in Indigenous areas. The extent to which Indigenous communities have been adequately consulted on these issues remains unclear.

Scores of Indigenous leaders and community members have reported state harassment through the judicial system. The authorities have initiated criminal proceedings against many of them for alleged crimes committed in the context of grassroots demonstrations against extractive industries. Indigenous peoples have been denouncing that these proceedings are an attempt to curtail freedom of expression and association, as well as to impede these leaders from continuing their work defending Indigenous rights.

For instance, in June 2010, investigations were opened against two Indigenous leaders – Marlon Santi, former President of the Confederation of Indigenous Peoples of Ecuador and Delfín Tenesaca, leader of the Kichwa Confederation of Ecuador, for terrorism and sabotage. The investigation was linked to their participation in a demonstration in Otavalo in protest at their exclusion from a summit of the Bolivarian Alliance for the Peoples of Our America (ALBA) countries. According to information received by Amnesty International, no evidence of their participation in criminal acts at this demonstration has been presented, which could suggest that these leaders are facing charges for terrorism and sabotage for having led a

protest.

GUATEMALA

In June 2011, retired General Héctor Mario López Fuentes, 81, was arrested and charged with genocide and crimes against humanity for his role in massacres in Indigenous communities nearly three decades ago. Under his command, it is alleged that Guatemalan security forces killed some 317 Indigenous Maya in the Ixil Triangle in the Quiché region of the country's western highlands. A UN-backed truth commission found that the military's counter-insurgency operations in the Ixil Triangle amounted to acts of genocide, with 32 separate massacres targeting the Indigenous Maya-Ixil population.

“As survivors of the internal armed conflict, we demand justice be done against those responsible for the genocide committed against the Maya-Ixil people, including Héctor Mario Lopez Fuentes, Ríos Montt, Mejía Victores and other high-level military commanders that have escaped”

Julia Cortez, legal representative of the Association for Justice and Reconciliation

In May 2010, the Inter-American Commission of Human Rights ordered the suspension of operations at the Marlin gold mine in the San Marcos department in light of the allegations made by the Indigenous Maya Mam and Sipakepense communities that mining began without their free, prior and informed consent, and that the mining has produced grave consequences for their lives, personal integrity, and property, as well as the environment. In June 2011, the State declared that it would not comply with the Inter-American Commission's order to suspend mining activities, and the mine continues to operate.

MEXICO

In April 2011 local peasant farmers and Indigenous communities to be affected by the construction of the Parota Hydroelectric dam in Guerrero state won an important court judgement. The judges ruled that a community assembly organized by the local government in order to obtain authorization for the expropriation of land had been conducted unlawfully and was invalid. The communities have called for the project to be dropped.

The Mexican Congress is considering a bill which would define the right of Indigenous people to consultation in relation to development projects that may affect them. The UN has pointed out that, as it stands, the bill falls short of recognising the right of Indigenous people to free, prior and informed consent. Several civil society organizations have told Amnesty International that the bill has not been adequately consulted with the Indigenous movement.

Indigenous people, particularly women, continue to suffer violence and discrimination in many parts of the country. The Inter-American Court of Human Rights ruled in favour of Indigenous women Valentina Rosendo Cantú and Inés Fernández Ortega in 2010 but the authorities have so far failed to implement the judgements. Both women were sexually assaulted by soldiers in 2002 and, after exhausting domestic judicial avenues, they appealed to the Inter-American Court to get truth, justice and reparation. These emblematic cases

continue under military jurisdiction, the perpetrators remain at large and no reparation has been provided to Valentina Rosendo and Inés Fernández.

“When I started my struggle, I didn’t imagine that I would reach the point where I am now. [...] The hope that I have always had is because of my daughter. I do not want my daughter to experience the same that happened to me. And for many other women, that’s why I am fighting, I am looking for justice”

Valentina Rosendo

Obtilia Eugenio Manuel, Raúl Hernández Abundio and other leaders of the Me’phaa Indigenous People’s Organization (Organización del Pueblo Indígena Me’phaa, OPIM) have suffered for years a campaign of harassment, intimidation and killings in order to stop them from promoting Indigenous rights in their communities in the state of Guerrero.

PANAMA

In the province of Bocas del Toro, construction of the Chan-75 Dam has been taking place for several years. The local authorities have been negotiating with hundreds of families from the nearby Ngöbe Indigenous communities about relocation from their ancestral land so that the area can be flooded. In September 2009, the United Nations Special Rapporteur on the Rights of Indigenous Peoples noted that the dam had “a significant impact on the Indigenous communities in the surrounding area” and concluded that none of the communities was adequately consulted, nor did they have the opportunity to give their consent in relation to relocation.

Some of those families that have not yet relocated say that their promised compensation has only been partly fulfilled. The lives, safety and livelihoods of those families who are still in their homes may be at risk. According to reports, flooding started in June 2011.

“The government sold all the nature and the river without consulting with different Ngöbe communities. I demand that the government guarantee the right to life, to education, to housing, for my children and for all the people affected along the Changuinola river”

Luis Abarco, member of the Ngöbe Indigenous community of Charco de la Pava

PARAGUAY

The right to traditional lands is crucial to Indigenous Peoples in Paraguay, as elsewhere. It is a vital element of their sense of identity, livelihood and way of life. Nevertheless, the last Census of Indigenous Peoples in 2002 calculated that 45 per cent of Paraguay’s Indigenous Peoples did not enjoy definitive legal ownership of their land.

The Yakyé Axa and Sawhoyamaxa communities belong to the Enxet ethnic group of Indigenous peoples. For years they have been forced to live in temporary homes on the verge of a highway, unable to sustain their traditional activities, hunting, fishing and gathering honey, because their traditional lands are in the hands of private owners. In 2005 and 2006,

the Inter-American Court of Human Rights ordered Paraguay to return the ancestral land of both communities and set a three year deadline. However, Paraguay has failed to fully comply with the court orders and uphold the rights of these communities.

“This is doing us a lot of harm because living conditions here on the roadside are very hard. We live badly, we are losing our language and this affects the children most. [...] The law is in our favour, but it is not complied with... It is only recognized on paper”

José González, Sawhoyamaxa community

In 2010 the Inter-American Court of Human Rights ruled in favour of a third community, the Xákmok Kásek community, condemning the violation of indigenous peoples rights and ordering the State to give their traditional lands back to this community. In June 2011, and after 10 years of struggle, the authorities agreed to grant security of tenure to the Kelyenmagategma Indigenous community in Puerto Colón.

PERU

In order to make their rights a reality, Indigenous groups are campaigning for domestic legislation which would recognize their right to free, prior and informed consent. They came close to having a consultation law enacted in 2010 but former President Alan García refused to promulgate it. A 2010 Constitutional Court ruling urged the government to pass and implement this legislation. More recently, Indigenous peoples have criticized several legislative and administrative measures relating to mining and forestry which, despite affecting Indigenous rights, have not been consulted with them.

The systematic failure on the part of the state to hold good faith consultations with Indigenous peoples on development projects that may affect their rights has eroded trust between authorities and Indigenous peoples. The absence of dialogue has often resulted in violent clashes between activists and security forces. The relatives of those killed near the town of Bagua in 2009 are still calling for truth, justice and reparation. A military-police court; which is neither independent nor impartial, convicted three members of the security forces in March 2011, but the convictions could block proceedings currently underway in civilian courts. Nobody has been convicted for acts of violence, including the killings of civilians and police officers, which took place at the time. According to the Ombudsman's Office, similar clashes have occurred elsewhere in the country.

Indigenous activists allege that criminal prosecutions are politically motivated as part of an apparent campaign to stop them from campaigning for their rights and restricting their right to freedom of expression and association.

UNITED STATES OF AMERICA

The rates of sexual violence perpetrated against Native American and Alaska Native women in the USA are at epidemic proportions – more than one of three Indigenous women will be raped in their lifetimes and nearly 86 percent of perpetrators are non-Native men.

In July 2010, Congress passed the historic Tribal Law and Order Act of 2010 to begin addressing issues of public safety in Indian Country and giving survivors of sexual violence a better chance of obtaining justice. Introduced in response to concerns raised by tribal organizations, the law seeks to improve coordination between law enforcement agencies and takes steps to restore tribal resources and authority.

“The Tribal Law and Order Act provides beginning steps to empower tribal governments to take more direct action in cases of violent crime and to hold perpetrators accountable for their crimes. Empowering tribal law enforcement personnel to protect their communities is the key”

Sarah Deer, member of the Native American and Alaska Native Advisory Council, Amnesty International USA

In December 2010, President Obama formally announced the long-awaited US endorsement of the UN Declaration on the Rights of Indigenous Peoples. Congress is now undergoing a process of review to evaluate the domestic policy implications of endorsing and ensuring compliance with the Declaration.

BACKGROUND INFORMATION

The following list provides further information on the state of Indigenous rights in the Americas. For the full library of Amnesty International publications on this issue, please consult www.amnesty.org.

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["Fighting for the future of our children": Indigenous rights in the Sacred Headwaters region, British Columbia, Canada](#), 9 September 2009.

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[Mine activists beaten and threatened](#), 3 March 2011.

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[Attacked Indigenous women risk reprisals](#), 10 September 2010.
[Amnesty International welcomes the release of prisoner of conscience Raúl Hernández](#), 31 August 2010.
[Effective protection remains an illusion for Mexican defender at risk](#), 21 July 2010.
[Justice demanded for attack on human rights observers in Mexico](#), 5 May 2010.
[Indigenous human rights defender in danger](#), 15 March 2010.
[Indigenous women imprisoned unjustly](#), 11 February 2010.
[Freedom for Indigenous woman wrongly imprisoned for three years on fabricated charges](#), 17 September 2009.

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[Indigenous families' homes to be flooded](#), 25 May 2011.

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[Briefing to the UN Committee on the Elimination of Racial Discrimination](#), 8 July 2011.
Through our own eyes: [Water, food and health](#); [Work](#); [Our rights, our hopes](#); [Education and culture](#), 7 December 2010.
["We are only asking for what is ours" – video clip](#), 1 December 2010.
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