

“They imprison us because we dare to
confront their power.”

“Nos tienen presas porque nos atrevimos a enfrentar al poder.”

Report from the Inter-American Legal
Delegation to Argentina
June 7-14, 2018

Free
Milagro Sala
Committee

Comité
por la libertad
de Milagro Sala



Introduction

In June 2018, a delegation of five international lawyers visited Argentina for seven days, at the invitation of two Argentine human rights organizations, the “[Asamblea Permanente por los Derechos Humanos](#)” (the Permanent Assembly for Human Rights) and “[el Comité por la Libertad de Milagro Sala](#)” (the Committee for the Liberation of Milagro Sala). Two of the lawyers, [Barbara Jackman](#) and Frederika Rotter, were from Canada, two were from Colombia (Francisco Ramirez Cuellar and Meyerly Garzon) and one (Thomas Egan) was from the United States. The trip was coordinated by legal and solidarity associations in the three countries. We have prepared this report based on the information we gathered over the course of our stay in Argentina.

The timing was appropriate for the purposes of an investigation into the current human rights situation in Argentina. Like many countries in South and Central America, Argentina has not yet fully recovered from or addressed the aftermath of the military dictatorship of forty years ago. The violence of the dictatorship was replaced by democratically elected governments. However, the latest elections in Argentina (both at the federal and local provincial levels) have changed the tenor and direction of Argentine democracy. The progress and a number of the social gains made in recent years have been compromised, as a result.

Milagro Sala and [Tupac Amaru](#)

Milagro Sala is the leader of the Tupac Amaru Neighborhood Organization. It is a co-operative organization of indigenous and marginalized communities which promotes economic, social and cultural rights for its people in Jujuy province and throughout Argentina. It was started in the early 1990s, in response to the poverty, unemployment and lack of education and social services faced by the indigenous and poor populations.

In 2003, under former Argentine president Nestor Kirchner, Tupac Amaru started constructing social housing in Jujuy Province, through co-operatives supported and financed by the then government. These co-operatives could build more efficiently and cheaply than private businesses could. Profits were re-invested into the communities, to build schools, health care centres, factories and recreational centres amongst many other things.

Tupac Amaru spread across Argentina, establishing a presence in 17 provinces. It has had a very significant presence in Jujuy Province where it started. Over the years its membership is said to have varied between approximately 70,000 to 100,000 members.

The organization hired and trained its own workers and manufactured its own building materials, such as doors, and clay bricks. It set up schools and provided social, recreational and health services throughout the province. It also distributed unemployment benefits on behalf of the government, and other welfare payments to its members.

Milagro Sala, a key leader of Tupac Amaru, became one of the most influential and well-known community leaders in Argentina. She was elected as a provincial representative to the Congress of Jujuy Province in 2013. In 2015 she resigned as provincial representative, and was elected as a member of the Parlasur, the parliamentary institution of the Mercosur trade bloc (Common Market of the South), of which Argentina is a member.

Detentions

Mauricio Macri, the leader of the centre-right Propuesta Republicana (PRO, Republican Proposal Party), won the Argentine national elections of December 2015. His government, together with that of his close associate, the newly-elected Governor of Jujuy province, Gerardo Morlaes, of the Unión Cívica Radical (UCR - Radical Civic Union) who ran under Macri's political coalition Cambiemos (Let's Change), were intent on dismantling and delegitimizing co-operative social organizations, like Tupac Amaru, and discrediting its leaders. An independent indigenous-led organization with the capacity to effectively press for the interests of the indigenous and other historically marginalized communities clearly presents both a political and economic threat to the dominant social and economic order of the country.

Governor Morales imposed new, onerous restrictions and requirements for the transfer of funds for social projects. After several unsuccessful attempts to meet with the Governor, on December 14, 2015 the Network of Social Organisations of Jujuy began a peaceful sit-in in front of provincial government headquarters. They asked for dialogue and respect for the rights and processes developed over the years. Instead, the organizations' funding was cut off.

On January 16, 2016, Milagro Sala was detained for having participated in the protest in front of government house. She was arrested under an old law enacted during the time of the military dictatorship, which made people potentially liable for the actions of protestors, if they supported or promoted the protest. Thirteen days after her arrest, a

judge reviewing the charge ordered her release. But she was not released then and has not been since. New charges were laid, and her imprisonment has been continued on the ostensible grounds of preventive detention. Milagro Sala has now been detained for about 2½ years.

On or about the same day the following leaders of Tupac Amaru were also detained: Mirta Guerrero, Gladis Díaz, Graciela López, Mirta Aizama, Alberto Cardoso and Javier Nieva. They are all still detained. Milagro Sala's husband, Raúl Noro, was also detained but released few months later due to health problems.

After Sala's detention, protests were held all over Argentina and in other countries, demanding her release. In Buenos Aires the Plaza de Mayo was occupied for three months by an encampment including all the major social and political movements of Argentina. Amnesty International launched an urgent petition.ⁱ

Over the past two years, charges have been piled on Sala: sedition, extortion, illegal association, abetting sedition, misuse of public funds, murder, and fraud. She was also charged and tried for threatening two policemen over the telephone. In that case, the prosecutor asked for four years in prison, but the charges were dismissed by a three-judge panel.

Most of the charges have yet to proceed to trial and appear to be being used as a means of ensuring that Sala remains indefinitely detained.

In 2016 Sala and two other Tupac Amaru leaders, Graciela Lopez and Ramón Salvatierra, were found guilty of one charge,ⁱⁱ which is now being appealedⁱⁱⁱ.

The case dates from events in 2009. Gerardo Morales was then a senator and in one demonstration a group of people threw eggs at him. He accused Milagro Sala of instigating the assault. The case was initiated in 2011 but languished until Morales was elected governor in December 2015.

The prosecution had two witnesses: Rene Arellano and his spouse, Cristina Chauque. The prosecution accepted that neither Milagro Sala nor Rene Arellano were present at the event where the assault took place. The prosecution also accepted that Tupac Amaru activists were not present at the event.

The accusation is based on Arellano's assertion that he was at a meeting where Milagro Sala said: "we need to trash the demonstration". Cristina Chauque was not at the event nor at the meeting but confirmed that she was told by her husband what Milagro Sala said.

During the trial the defense demonstrated that Rene Arellano and members of his family had been on the payroll of the province since Gerardo Morales assumed the position of governor. It was also demonstrated that the province gave Cooperative Newen, run by Arellano's son and in which Arellano participates, close to 3 million pesos in 2017. Between salaries and funds for the family cooperative, the Arellano family received close to 4 million pesos since charging Milagro Sala.^{iv} The legal irregularities of this case – based on highly questionable, unsubstantiated hearsay -- follow the pattern described in the previous paragraphs.

From all indications, these charges and proceedings will continue with no end in sight. Governor Morales and President Macri take the same position with respect to Milagro Sala and Tupac Amaru, characterizing it as a violent organization engaged in the repression of its own community in Jujuy. The allegations lack specificity or a clear historical factual record to support them. To the extent "factual" examples are given, further investigation does not bear them out. No historical record supports the allegations.

For example, in a press conference with Argentine President Macri, Governor Morales explained to the television audience that the police have clear evidence that Milagro Sala was responsible for three murders during her rise to power in Jujuy.^v A writer for an Argentine periodical, Pagina12, reviewed these allegations and referred to them, and all the related proceedings, as a judicial farce. One of the purported murder victims died in a hospital of leukemia, eight months after the alleged beating, supposedly orchestrated by Sala, took place. The persons responsible for another murder had already been tried and convicted after confessing to the murder.^{vi}

In a decision dated August 24 2016, the United Nations Working Group on Arbitrary Detention reviewed the judicial proceedings to date and reported that since December 2015 there had been a series of consecutive accusations and judicial processes. In concluding that Sala's detention was arbitrary it noted:

107. The Working Group finds it surprising that various persons filed criminal complaints in 2016 regarding acts that the State had

presumably been aware of since an audit conducted in 2010 and that the legal and procedural steps taken to address that situation coincided precisely with Ms. Sala's involvement in a peaceful social protest and, in, particular were initiated just days after a judge was on the point of ordering her release. The Working Group is also struck by the fact that one of the people who reported Ms. Sala said that she had made her statement as a result of pressure and threats, apparently because two of her children, who have not been subject to any legal repercussions, are implicated in similar offences.^{vii}

It concluded Sala's detention resulted from the exercise of her human rights and that her right of defence had been obstructed. It concluded that Argentina had failed to establish that her detention was an individualized, reasonable and necessary measure or that it was effected in accordance with domestic laws. These interim proceedings resulted in indefinitely depriving Sala of her liberty.

In June, 2017 the Inter-American Commission on Human Rights (IACHR) conducted a site visit in relation to a complaint about Milagro Sala's situation.

Subsequently, on July 27, 2017, it recommended immediate precautionary measures in favour of Sala because it concluded that she was in a serious and urgent situation, as her rights to life and personal integrity were at risk of irreparable harm. It concluded that the sources of danger identified added up to a situation of risk to Sala's life and integrity and required immediate measures to safeguard her rights. It specifically demanded that the Argentine authorities adopt alternative measures to pretrial detention, such as house arrest, or that she be freed pending trial with measures such as electronic monitoring.^{viii}

On November 3, 2017, after the Republic of Argentina failed to comply with this recommendation, the IACHR applied for a confirming order at the Inter-American Court of Human Rights.^{ix} It did this because it found that Argentina, rather than complying with the earlier request for interim measures, had adopted measures that put Milagro Sal in a situation of greater risk. Her house arrest was under "a strict security regime that reproduced the conditions of prison in her home". She was later returned to prison. She was experiencing a serious psychological situation, which allegedly led her to inflict an injury on herself. The IACHR concluded the treatment of Sala would seem to exacerbate the risk to her life and personal integrity. It asked the Court to confirm its measures because it believed that Milagro Sala's current situation meets the conditions of extreme gravity, urgency, and risk of irreparable damage.

Shortly afterwards, on November 27, 2017, the Inter-American Court ordered the Argentine Republic to immediately adopt the "measures of protection that are necessary" to guarantee the life, personal integrity and health of Milagro Sala. The Court also indicated, if the preventive detention of Sala continues, the State must implement house arrest in her home or any other measure "even less restrictive of ... [her] rights, such as (...) an anklet or the retention of your passport."^x

On December 6, 2017, the Supreme Court of Argentina determined that the judicial authorities in Jujuy were obliged to comply with the order of the Inter-American Court. In turn, it ordered the house arrest of Sala or any less restrictive measure.^{xi} Based on that order, on December 15, 2017, Milagro Sala was transferred to a house at La Ciénaga in Jujuy, where she remains detained under 'house arrest'. The place where Sala is detained is a large home in the countryside, big enough to be a centre for rehabilitation, a home for the elderly or even a small hospital. What it is not is an ordinary home, much less Sala's home. It is not even near her home, but kilometers away by car. It is enclosed by a high brick wall topped by rolled barbed wire, with a military encampment at the entrance.

On January 4, 2018, the Superior Court of Justice in Jujuy ordered the extraordinary extension of Sala's preventive detention for one more year, although the legal maximum of two years for this sort of custodial detention was about to expire.

This decision was made even though, as the UNWGAD had said, none of the criminal charges currently laid against Sala could justify keeping her in jail. She is not a flight risk – her home, family and community are in Jujuy. There are no grounds to suspect that she would, much less could, obstruct the investigation – apparently underway since 2010. Her former home and office were thoroughly searched and her belongings seized. The yard around her house were excavated to (unsuccessfully) look for weapons and money. No trial has yet been scheduled or held.

As we have indicated above, concurrent with the arrest of Milagro Sala, others active in Tupac Amaru, or closely working with the organization, have been arrested and held in jail, on similar 'rolling' charges. Six are now detained in Jujuy province. Despite almost universal condemnation of its conduct, the government of Jujuy province, with federal government support, has kept Sala and the other leaders in custody without trial for more than two years.

The Expedition

Our delegation concentrated its attention on the legal situation of Sala and the other detainees. However, to understand that complex situation, we met with many individuals, groups and organizations.

We arrived in Buenos Aires on June 7, 2018 and spent the evening with the Committee for the Freedom of Milagro Sala. We reviewed the ongoing legal proceedings and the current political situation.

The following morning, we left for Jujuy province located in the northwest of the corner of Argentina. It is one of the poorest regions of the country, but in natural resources, principally lithium, perhaps the richest.

In Jujuy City (San Salvador de Jujuy) we had lunch with lawyers for Tupac Amaru. We spent the afternoon touring the Barrio del Alto Comedero, a model social housing development (2700 homes) constructed by Tupac Amaru, under the leadership of Sala. We saw modest homes and schools, including a school for special needs children, a small textile factory, a metal works facility, a community center and a large swimming pool, now dry and partially demolished. The community center, medical clinic, park area and the swimming pool had been closed down by the provincial government and were in a state of considerable disrepair. We were told by our local guides that prior to the government closure these facilities had been maintained in “immaculate” condition. This community had been referred to as a “country club for the poor”.

As described above, Tupac Amaru received government funding to create the project. It built 1,000 houses a year, without using private contractors, architects or developers. Instead, the organization constructed a concrete and metal works factory, and using the labor of its members whom it trained, built houses for approximately 1/3 the cost of volume private housing companies. It also built them faster – four times faster than the private sector. Tupac Amaru is said to have built almost 7000 dwellings for the indigenous and the poor.

The Barrio is still a very impressive and exceptional community, even though all that is left is the housing and school, and a minimally functioning textile factory. After our tour of the Barrio, we met with the press, various social organizations, including unions, and learned more about the history and the current situation.

We heard from individuals about their concerns – personal, political and environmental. People recounted threatening experiences with the police, including the military police (gendarmes). Family members expressed concerns about detained individuals. We also heard serious concerns about environmental issues. We heard about the loss of access to fresh water and its toxicity, caused by mining operations. We heard nothing about any planned mitigation of these environment issues and neither did we hear of any offer or demand for compensation from any source.

Over the next days, we met with the leadership of Tupac Amaru and other community organizations. We also attended a community rally outside the main social centre of Tupac Amaru in Jujuy City, the Sede, which two days earlier had been occupied by armed military police, fenced off and closed to the public. Military police remained on the premises. All community access was cut off.

We had been scheduled to meet with community members in the Sede but the police occupation occurred the day before we arrived - without warning and with no explanation, legal or otherwise. The Sede had been the hub of many activities – swimming lessons in the pool and sports events in the gym. There was a food kitchen and a medical clinic which operated the province's only CAT scan machine. There were dental offices and offices for other social services. The Sede housed an auditorium and meeting rooms.

The Sede was occupied and shut down by order of Judge Pablo Martin Pullen Llermanos investigating an accusation of corruption against Milagro Sala and Tupac Amaru. Lawyers from the organization and witnesses were not allowed in during the occupation process. No one knows what the police or the intervening judge did inside the building. No one from the government explained what would happen to the property and resources within it. We learned afterwards that government authorities appeared to have moved the CAT scan to a local hospital.

At the rally outside the Sede we met dozens of community members who had been affected by its closure. We saw and heard from children who had been participating in competitive swimming and other sports events – now barred from their programmes. Their equipment was still locked inside the Sede. We met the kids' coaches, teachers and parents. We met retired and disabled individuals who relied on the social and medical programmes and assistance provided at the Sede. We heard that many people will go hungry without the food programme.

In the absence of a rational explanation for closing down the Sede, this action appears to be yet another government tactic designed to weaken and discredit Tupac Amaru. Considering that the leadership of the organization has been incarcerated without trial for two years or more, the closure is otherwise inexplicable. We are not aware of any explanations or reparations offered for this action. It has deprived both Tupac Amaru and the community-at-large of valuable property, programmes and services.

The closure of the common resources in the Barrio del Alto Comedero and those in the Sede appear to have the greatest impact on the most vulnerable in the community – children, the disabled and the elderly. They are the ones that used the seized resources the most.

The Prisoners

We met Milagro Sala, and the six other prisoners, two men and four women.

Milagro Sala is a frail, thin grandmother, whom we visited at her own private and isolated prison. She is being held under so-called “house arrest” in a building which Tupac Amaru had previously purchased for use as a residence for the disabled. The building has been turned into a high-tech, highly-guarded and fortified prison with a full military encampment at its entrance. The high brick walls, enclosing the building, have been topped with stout barbed wire fencing and festooned with various listening and observation devices. There is a barracks for guards behind the house.

We had to go through three guard posts, staffed by gendarmes sporting guns and clubs, and hand over all our personal possessions (purses, knapsacks, phones). Because of the restrictions on the numbers who could visit at one time, we went in two groups. Our first group was made to undergo a vigorous and thorough pat-down before we could see Sala.

Sala’s mood was low and depressed – she had been devastated by the closure of the Sede. She said that when she heard that the Sede had been closed down, she felt like her heart had been taken out of her body. She has been in detention since January 2016, an endlessly frustrating situation which has taken its toll on her: she has suffered weight loss and increasingly is subject to depression as well as other medical issues. Her family members are permitted to visit her, and her husband, Raúl Noro, lives with her (although

all must go through the security routine every time they enter). Other visitors must have advance permission; four are allowed at a time.

Sala's detention facility does not comply with the directions of the UN Working Group or the Inter-American Commission. It makes a mockery of the recommendation of house arrest. It is not Sala's home. It is a building meant for institutional use. It is isolated in the country side and would be difficult to reach without a car. It is simply another prison but this one just for her.

We visited six other prisoners: Mirta Alzama, Gladys Diaz, Mirta ("Shakira") Guerrero, Graciela Lopez and Javier Nieva, all jailed in the relatively modern facility of Alto Comedero. We also visited Alberto ("Beto") Cardozo at the men's prison at Gorriti.

All the prisoners, including Milagro Sala, were appreciative of our visits. It meant a great deal to them to know that the outside world has not forgotten them, and that foreign lawyers were taking an interest in their situation. However, none appeared terribly optimistic that their situation would change for the better any time soon.

All the prisoners, except Javier Nieva, are indigenous. They appeared to be relatively unsophisticated, from working families. We were allowed to visit two women at a time. Gladys and "Shakira" were quiet and tearful at first. Then Shakira told about her illness, and how earlier that week she had tried to kill herself. She lifted her blouse and we saw a bandage wrapped around her abdomen. She undid the bandage to show us a gruesome vertical scar that ran from the top of her ribcage to her navel. Shakira had undergone three surgeries for an abdominal complaint between August 2017 and last March 2018. Each time, she was sent back to jail to "recuperate" and she was still unwell. After the second surgery, she was told she can no longer bear children.

Gladys and Mirta were also unwell and worried about their children. The kids were being bullied because their moms were 'jailbirds'. Some had stopped going to school – even one of the boys who was close to finishing high school and had been in line for a scholarship. Some of the children were too depressed to see their friends. The moms cried when they talked about this.

Graciela Lopez is a feisty older woman. She came in with cookies and sweets which the authorities had allowed her to bake. She defiantly explained that she was Milagro's oldest friend and used to hang around to make sure that Milagro was OK. She considered

herself a political prisoner, because she was being held purely because of her connection with Milagro, nothing more. She was worried about her 80-year-old mother.

Javier Nieva was on the men's side of the same jail. We met him in a large conference room, neatly set with water, glasses and a tablecloth. Nieva had recently been transferred from the Gorriti men's prison, where he had been beaten, tortured and detained in terrible conditions. He was relieved to be transferred to Alto Comedero, which was a much less violent and oppressive institution, and where he could receive more visitors. He cried and felt the need to apologize for this. He had always tried to stay strong for his wife and kids, but with the delegation of lawyers he could not help breaking down.

We met with Beto Cardozo in the Gorriti prison, where he is being held. It is an older, depressing institution, with a reputation for being a place of violence. Cardozo brought us lots of paperwork. He desperately wants out of this evil place, at least to be transferred to Alto Comedero, where conditions are somewhat better. He is being held in a prison range with violent criminals. He has witnessed or heard of the killings of several prisoners within the last month or so. One of them was his nephew, and he is afraid. In his range, there are no toilets, so the prisoners have to do their business in public, with cans and buckets. Beatings and torture are common. There is terrible discrimination against "dark" indigenous people, and especially against Blacks. He was told, during beatings, he would be moved to Alto Comedero, if he would agree to testify against Milagro Sala.

Gorriti prison has a history of violence. In 2013, two officers, formerly from this prison, were convicted and sentenced to life and a third was convicted and sentenced to 25 years, on charges of murder and crimes against humanity. The offenses occurred during the military dictatorship. In 2014, one officer and 12 prison guards formerly from this prison, were arrested and charged with kidnapping, torture and murder. Such crimes occurred before, during and after the military dictatorship. It is likely that not all of those involved in these crimes were identified.

After visiting with the prisoners, we also met with some of their family members in Jujuy. We heard from the families how they are affected by their loved ones' imprisonment. The spouse of Beto Cardozo is particularly concerned about his situation.

Return to Buenos Aires

Following our visit to Jujuy, we returned to Buenos Aires. We met with the Ambassador of Canada, Robert Fry, who was friendly and polite. We also met with the Deputy Chief of Mission for the US Embassy, Tom Cooney. Both officials recognized that Milagro Sala and the other prisoners had been detained without trial for over two years. They acknowledged that this violated basic legal norms – the presumption of innocence, the right to a fair trial and natural justice, and so forth.

However, both diplomats pointed out that the situation of Sala and the others was normal by Argentine standards. They observed that, in Argentina, most accused criminals languish in preventative detention for years before trial. They were not persuaded that human rights violations or political motivation could be clearly established in the cases we were concerned with, although the Canadian Ambassador was well aware of Sala's situation and had made inquiries about it. In short, they would not take a position. This was disappointing but not surprising.

In Buenos Aires we also met with some of the Madres de Plaza de Mayo, surviving family members of persons disappeared by the dictatorship. We met six deputies of the Argentine congress and discussed the legal situation in Jujuy with them. Finally, we met with the Director of Human Rights in the Argentine Chancery. She listened but indicated that she could and would do nothing, since, she said, she had no power to take any action. Of all the officials we met, this woman was the most disappointing, exuding a bureaucratic dismissiveness of human rights.

We were able to visit the Espacio Memoria y Derechos -- the Ex-ESMA. This was the former naval college of mechanics in Buenos Aires, which during the dictatorship held 5,000 Argentinians, who had been kidnapped and tortured. Many were thrown, from 5,000 feet, into the ocean or the Plata River.^{xiii} We also learned that on the premises, in the very quarters where the tortures occurred, resided a Catholic bishop, whose behavior was a complete mockery of the church's belief in the "right to life". He baptized children born to pregnant women in detention – the mothers were subsequently murdered, and the children adopted.

Not until 2003 did the Argentine congress agree that the perpetrators of these crimes could be prosecuted. While some were prosecuted, most were not. The failure to comprehensively address impunity speaks to the moral and political atmosphere of Argentina today.

Legal Proceedings Against Milagro Sala

As lawyers, it is clear to us that Milagro Sala and the other detainees are being held in clear violation of the laws of Argentina and of international human rights norms, which prohibit arbitrary detention, and guarantee due process and the right to be considered innocent until found guilty. The legal system has failed these people.

As we have learned from prior reports, after the initial peaceful demonstration in late 2015, Governor Morales of Jujuy Province personally intervened in Sala's case. No prosecutor or judge initially laid charges against her nor was there any request for her arrest. However, Governor Morales introduced a bill in the legislature of Jujuy (Act no. 5895) creating a new prosecution agency, the Public Prosecution Service, headed by the Attorney General. The Attorney General, appointed by the governor, took responsibility for Sala's cases.^{xiii}

The Governor then filed a complaint against the acting prosecutor and judge supervising the case, for dereliction of duty, for failing to arrest Sala. He also appointed a juvenile court prosecutor to take over Sala's prosecution, in effect giving her a personal prosecutor. Finally, after her arrest, Governor Morales directed this same prosecutor to file additional charges against Sala, even dictating what those charges should be.^{xiv}

International Response

The conclusions of the UN Working Group contain a detailed outline of how Argentina has breached international due process norms, as well as the freedoms of speech and assembly. It also identifies violations of Argentine law.

We note that at the time of her arrest and of the laying of the sequential charges, Milagro Sala, as a member of Parlasur, an international parliament to which Argentina belongs, was supposedly immune from arrest.

Argentina is a member of both the United Nations and the OAS, and under Argentine law, both the UN Declaration of Human Rights and the OAS Declaration have constitutional status. Human rights entities of these organizations have condemned the conduct of the provincial and the federal governments of Argentina.

As noted above, in 2016 the UN Working Group on Arbitrary Detention found that the detention of Milagro Sala was arbitrary, that she should be immediately released,

damages assessed, and the violations of her human rights be investigated. The Working Group stated:

All the evidence, when analyzed sequentially, and as a whole, shows that, since 16 January 2016, when Ms. Sala was deprived of her liberty for having participated in a protest, the political and judicial authorities of the Province of Jujuy have done everything they could to keep her in prison, regardless of whether in doing so they were violating all of Ms. Sala's due process rights, the privileges that afford her protection as a parliamentarian and the rights recognized by the international legal order.

The Argentine government has refused to comply with the Working Group directive. As such it is in non-compliance with its human rights obligations at the UN level.

In July 2017 the Inter-American Commission of Human Rights (IACHR) of the Organization of American States (OAS), reiterated the concerns expressed by the UN Working Group about Sala's prolonged detention. It asked that Argentina provide a prompt response to the Working Group.

The Secretary-General of the OAS, Luis Almagro, urged Argentina to immediately release Sala. In a letter addressed to Sala, he stated: "the strongest interest in the full respect of civil and political rights, the freedom of expression, the guarantee of the process of law, as well as the careful use of preventive arrest, convince me of the need for your immediate release and freedom."^{xv}

The President of the Parlasur has indicated that Milagro Sala's detention prevents her from carrying out her duties as an elected Representative of the Parliament.

Specialized UN rapporteurs (the Rapporteur on Violence Against Women, and the Rapporteur on Indigenous Peoples) have also expressed their concerns, as have well-known organizations like Human Rights Watch^{xvi} and Amnesty International.^{xvii}

The former Attorney General of Argentina (Gils Carbo), had determined that Sala's detention is and has been illegal, on several grounds, and she should be released.

Finally, even Pope Francis, a native Argentinian, has asked that Milagro Sala be released from her illegal detention. He has sent her personal letters of support and a rosary, which he blessed. Some believe that Sala's continued detention may be the reason why Francis has not yet visited his homeland as pope. He recently flew over Argentina to visit Chile.

We conclude that the ongoing detention of Milagro Sala and the six other prisoners violates the basic legal principles of the presumption of innocence, the right to due process and to natural justice, which includes the right to be heard, and a fair trial before an impartial and neutral adjudicative tribunal. Due process also includes the right to timely justice.

The Argentine authorities should also bear in mind that where violations of human rights are occurring, member nations of the United Nations and multinational corporations, under the Global Compact, are required to cease investments. If the American and Canadian governments, among others, are aware of such violations, they are required to act appropriately, as signatories of the Universal Declaration of Human Rights and the Declaration of Rights of the OAS.

The Lithium Connection

The other serious human rights issue (or perhaps even catastrophe) is the environmental destruction occurring in Jujuy at the same time as the serious violation of the rights of indigenous people. Indigenous rights are being attacked by the provincial and federal governments' actions in leasing indigenous lands and the sale of mineral rights to foreign corporations.

The current government's first step was to end its efforts to develop a public enterprise to exploit lithium and the other mineral resources of Jujuy province. Then the government set out to involve foreign corporations in the exploitation of the province's national resources. At that time, the price of lithium, an essential and irreplaceable element in cell phones, laptops, hybrid cars, and the like was rising sharply.

It appears that the efforts to delegitimize the existing indigenous leadership and organizations may have been undertaken to clear the way for mining development. An organized indigenous community would advance the interests of its people and the community to control mining, as well as ensure that indigenous rights are respected. The

crackdown on Tupac Amaru at a time of mining expansion in one of the provinces in which Tupac Amaru operates is too coincidental not to be connected.

We have been unable to locate any reference to meaningful discussions between the provincial or federal governments in Argentina, the mining companies and the indigenous peoples in that country. Nevertheless, it is the indigenous peoples whose land and property are being seized.

In Jujuy province, as we have learned, funding was cut off for Tupac Amaru, its facilities were shuttered, and the organization and its leaders were targeted for arrest.

Throughout parts of the indigenous communal lands of Jujuy province lies lithium, a modern-day treasure. President Macri and Governor Morales have opened these lands for business. It appears that no environmental measures have been enacted to protect the communities impacted by the mining efforts.

During our meetings with residents of Jujuy we heard complaints about water – both its quality and its availability. Protection is needed. The territory is arid and mountainous and receives very little rainfall. To exploit lithium resources, vast amounts of water are required: according to some estimates, to extract one metric ton of lithium, approximately 500,000 gallons of water are needed. This process is exacerbating the existing water shortages in the region. We are aware of reports of indigenous communities that no longer have a supply of potable water.

And the scale, if not massive now, has been increasing. Three main enterprises SQM, FMC, and Albermarle are operating in the area and it is known that they have plans to greatly expand their operations. As the demand for lithium grows, so does its sale price. A metric ton of lithium currently sells for nearly \$20,000. This is sharply up from \$7,700 three years ago. Lithium carbonate is essential for the operation of many popular products for which demand is rising such as smartphones, laptops, hybrid cars, and electric cars.

It is not known whether the local indigenous population is receiving any benefit from the lithium operations. Fair compensation for lands taken is recognized under the UN Declaration on the Rights of Indigenous Peoples.^{xviii} It is not clear that these principles are being respected.

What may be of use now and in the future is to track the end-users of lithium carbonate, companies like Amazon, Samsung, Panasonic, Apple, Tesla, and General Motors, among

others.^{xix} These companies are generally more sensitive to public opinion, consumer opinion, protests, and boycotts. Often, they promote themselves as being conscientious in sourcing the raw materials that go into their products. Information about the mistreatment of the indigenous people of Jujuy could become a public relations problem for these companies.

Conclusion

We conclude that for political reasons the current administrations in Argentina and in Jujuy Province are using the criminal justice system to attack and weaken a strong and successful indigenous grassroots organization and imprison its leaders.

Many people throughout the world became involved with pressing for respect for human rights in Argentina during the years of the military dictatorship, in the 70s and early 80s. The post-dictatorship advances were welcomed. So, it is particularly sad and disturbing to see that the situation in Argentina appears to be coming full circle, that innocent people are again being subjected to arbitrary detention and harm, and that those who lived through the dictatorship are permitting human rights violations to increase again.

We raise our voices in solidarity with Argentinians to condemn these developments.

Thomas Egan
Meyerly Garzon
Barbara Jackman
Francisco Ramirez Cuellar
Frederika Rotter

July 10, 2018

For more information :
Comité por la libertad de Milagro Sala
<http://www.liberenamilagro.org/>

**Free
Milagro Sala
Committee**

Comité
**por la libertad
de Milagro Sala**



Endnotes

- ⁱ URGENT ACTION PEACEFUL PROTESTOR DETAINED, ON HUNGER STRIKE Community leader Milagro Sala has been detained since 16 January for peacefully protesting in Belgrano Plaza in San Salvador de Jujuy, a city in northwest Argentina, (19 January 2016). <https://www.amnesty.org/download/Documents/AMR1332362016ENGLISH.pdf>
- ⁱⁱ <https://www.eldia.com/nota/2016-12-29-primera-condena-a-milagro-sala-tres-anos-en-suspension-pero-sigue-presa>
- ⁱⁱⁱ <https://www.pagina12.com.ar/48465-la-condena-a-milagro-sala-camino-a-la-corte-suprema>
- ^{iv} <https://www.eldestapeweb.com/gerardo-morales-le-pago-3-millones-al-unico-testigo-del-caso-milagro-sala-n43214>
- ^v March 14, 2016, Clarin newspaper reporting on Governor Morales participating in America TV show. https://www.clarin.com/politica/morales-milagro-sala-homicidios-jujuy_0_4ySiDkJ6g.html
- ^{vi} March 20, 2016. Article by Horacio Verbisky, Pagina 12 newspaper <https://www.pagina12.com.ar/diario/elpais/subnotas/1-77099-2016-03-20.html>
- ^{vii} United Nations Working Group on Arbitrary Detention (UNWGAD), UNDoc A/HRC/WGAD/2016 No. 31/2016 re: Milagro Sala (Argentina) (Aug.24.2016)at <https://www.unwgadatabase.org/un/Document.aspx?id=3256> ; (Oct. 21, 2016), <http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session76/31-2016.pdf>
- ^{viii} OAS, Inter-American Commission on Human Rights (IACHR) Press Release IACHR Grants Precautionary Measure Related to Milagro Sala in Argentina July 28, 2017 http://www.oas.org/en/iachr/media_center/PReleases/2017/107.asp; RESOLUCIÓN 23/2017 Medida cautelar No. 25 -16, Milagro Amalia Ángela Sala respecto de Argentina <http://www.oas.org/es/cidh/decisiones/pdf/2017/23-17MC25-16-AR.pdf>
- ^{ix} OAS »Inter-American Commission on Human Rights (IACHR) » Media Center » Press Releases » 2017 » 173 IACHR Finds Failure to Comply with Precautionary Measures for Milagro Sala in Argentina and Sends Request to Inter-American Court, November 3, 2017 http://www.oas.org/en/iachr/media_center/PReleases/2017/173.asp
- ^x URGENT ACTION Social Leader Remains in Arbitrary Detention, November 17, 2016, at <file:///E:/Argentina/a%20after%20trip/AI%20Urgent%20Action%20.pdf>
- ^{xi} « La Corte Suprema confirmó la prisión preventiva de Milagro Sala y ordenó que se cumpla con el fallo de la CIDH en cuanto al arresto domiciliario Lorenzetti, Highton, Maqueda y Rosatti ordenaron que se cumpla con el fallo de la CIDH sobre la prisión domiciliaria. Rosenkrantz dispuso remitir la causa para que se pronuncien los tribunales inferiores sobre lo ordenado por la CIDH », Miércoles, 06 de diciembre de 2017, at <https://www.cij.gov.ar/nota-28773-La-Corte-Suprema-confirm--la-prisi-n-preventiva-de-Milagro-Sala-y-orden--que-se-cumpla-con-el-fallo-de-la-CIDH-en-cuanto-al-arresto-domiciliario.html>
- ^{xii} La Nacion newspaper <https://www.lanacion.com.ar/1323089-la-esma-fue-el-centro-de-su-poder-y-del-horror>.
- ^{xiii} <http://inecip.org/documentos/jujuy-ley-organica-del-ministerio-publico-fiscal/>
- ^{xiv} Horacio Verbisky, Pagina 12 newspaper <https://www.pagina12.com.ar/14352-division-de-poque>

^{xv} Letter from Secretary of the OAS to Milagro Sala, at <http://www.oas.org/fpdb/press/OSG-634.pdf>

^{xvi} Human Rights Watch, Letter to President Macri on the Sala case, José Miguel Vivanco, December 22, 2016, at <https://www.hrw.org/news/2016/12/22/letter-president-macri-sala-case>

^{xvii} Amnesty International: URGENT ACTION SOCIAL LEADER REMAINS IN ARBITRARY DETENTION, The social leader Milagro Sala has been arbitrarily detained since 16 January. The Argentine government has not complied with the UN decision of 27 October ordering her immediate release. UA: 13/16 Index: AMR 13/5152/2016 Argentina Date: 17 November 2016

^{xviii} 61/295. United Nations Declaration on the Rights of Indigenous Peoples, UN A/RES/61/295 (2 October 2007), at <http://www.refworld.org/docid/471355a82.html> Article 10 Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

^{xix} Washington Post, Todd C. Frankel and Peter Whoriskey, Tossed aside in the 'white gold' rush Indigenous people are left poor as tech world takes lithium from under their feet, December 19, 2016, at <https://www.washingtonpost.com/graphics/business/batteries/tossed-aside-in-the-lithium-rush/?noredirect=on>