

SCHOLARLY ARTICLE

## Overcoming Silencing Practices: Indigenous Women Defending Human Rights from Abuses Committed in Connection to Mega-Projects: A Case in Colombia

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### Abstract

Many of those who dare to raise their voices in defence of human rights in response to abuses committed in connection to mega-projects are being repressed in the Americas. In this context, Indigenous women leaders face multiple forms of violence, including gender-based violence. The prevailing narrative of ‘progress’ and ‘development’ that accompanies mega-projects in the region often stands in stark contrast to their lived experiences, as Indigenous women human rights defenders frequently face silencing practices from companies, authorities and other groups including paramilitary forces. In this article, I contend that Indigenous women leaders have managed to overcome the silence that is being imposed on them. But what are silencing practices? What does gender-based violence mean in this context? How do Indigenous women leaders overcome silencing practices? The article responds to these questions by focusing on the Wayúu Women’s Force mobilization in Colombia and drawing on the emerging ‘braided action’ theoretical framework.

**Keywords:** business and human rights; Colombia and the Americas; human rights defenders; Indigenous women leaders; mega-projects

### 1. Introduction

In 2019, Jakeline Romero Epiayuu, a Wayúu Indigenous woman leader from Colombia, visited Canada for academic and advocacy purposes.<sup>1</sup> She was also interested in learning about First Nations’ experiences facing the challenges of mega-projects in their territories in the north

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<sup>1</sup> I want to express my gratitude to the Indigenous women leaders who have shared their knowledge and experiences with me. On this occasion, I would like to give special thanks to Jakeline Romero Epiayuu and her organization, the Wayúu Women’s Force (FMW). Without them, it would not have been possible to develop my study and consolidate this article.

of the Americas. I facilitated a face-to-face meeting with Marlene Hale, a Wet'suwet'en Indigenous woman leader from Canada. They were very interested to learn about each other's experiences and the findings of my doctoral investigation, which focuses on the impact of Indigenous women-led mobilizations on the practice of corporate actors involved in mega-projects in Latin America.<sup>2</sup> By mega-projects, I mean large-scale extractive, development and investment projects. Mega-projects usually have a major impact and, in principle, are designed to benefit many people. Commonly, these projects involve substantial resources, time, size and risks to the environment and to human rights.<sup>3</sup> As the dialogue between the three of us evolved, the differences among the two experiences and others in my broader set of cases were obvious,<sup>4</sup> but the similarities were striking.<sup>5</sup> We all found worrying and revealing, the ways in which different forms of violence were being used in the context of mega-projects to silence Indigenous women and their mobilization in defence of Indigenous dignity, rights and territories.

Indigenous women leaders and many of those who dare to raise their voices in defence of human rights in response to the abuses committed by state and business actors involved in mega-projects are being severely repressed throughout the continent.<sup>6</sup> Indigenous women leaders also have to face multiple forms of violence, including gender-based violence associated with such projects.<sup>7</sup> The prevailing narrative of 'progress' and 'development' that accompanies mega-projects in the Americas usually stands in stark contrast to the lived experiences of the Indigenous communities they impact and those who defend the rights of these communities; in the cases I study, Indigenous women.<sup>8</sup>

<sup>2</sup> This extensive dialogue took place in the context of my doctoral investigation. My postdoctoral investigation, which originated from that dialogue, studies a case in Canada applying the *braided action* theoretical framework. The research question asked in my PhD study was: in the face of extreme violence, what explains the success (defined as a favourable change in corporate practice) of some Indigenous women-led social movement organizations defending human rights from the abuses committed in connection with mega-projects in Latin America? To answer this question, I used a multi-level combined qualitative comparative analysis. I developed three different comparative analyses (within-country, over time and cross-national comparisons) with seven in-depth case studies in Colombia, Ecuador, Honduras, Mexico and Peru. Nancy R Tapias Torrado, *Indigenous Women Leading the Defence of Human Rights from the Abuses by Mega-Projects in Latin America, in the Face of Extreme Violence* (University of Oxford: DPhil thesis, 2020), <https://ora.ox.ac.uk/objects/uuid:3a1393b3-1a8b-4341-bb6e-7a33897db5c7> (accessed 10 October 2021).

<sup>3</sup> Paul Gellert and Barbara Lynch, 'Mega-Projects as Displacements' (2003) 55:175 *International Social Science Journal* 15; IACHR, 'Indigenous Peoples, Communities of African Descent, Extractive Industries' (2015), <http://www.oas.org/en/iachr/reports/pdfs/ExtractiveIndustries2016.pdf> (accessed 28 October 2021); EJAtlas, 'Global Atlas of Environmental Justice', <https://ejatlas.org/> (accessed 28 October 2021) documents social conflicts around environmental issues, and most of these are related to mega-projects. The database includes 3,533 cases globally, with 1,259 in the Americas.

<sup>4</sup> These cases, including the Colombian case briefly presented in this article, were all selected using a methodology that I thoroughly explain in my PhD thesis. After perusing over 3,000 entries of relevant information (e.g., urgent actions, human rights reports, public statements, case features), I identified a 'universe' of 24 cases of interest.

<sup>5</sup> These insights are being developed in my postdoctoral investigation. The documentary 'Invasion' is a good starting point to understand the mobilization led by Wet'suwet'en women. See Unist'ot'en, 'Invasion', <https://unistoten.camp/media/invasion/> (accessed 28 October 2021).

<sup>6</sup> Part III of this article explains this worrying situation.

<sup>7</sup> IACHR, 'Indigenous Women and Their Human Rights in the Americas' (2017), <http://www.oas.org/en/iachr/reports/pdfs/IndigenousWomen.pdf> (accessed 28 October 2021); Inmaculada Barcia, 'Women Human Rights Defenders Confronting Extractive Industries: An Overview of Critical Risks and Human Rights Obligations' (2017), [https://www.awid.org/sites/default/files/atoms/files/whrds-confronting\\_extractive\\_industries\\_report-eng.pdf](https://www.awid.org/sites/default/files/atoms/files/whrds-confronting_extractive_industries_report-eng.pdf) (accessed 28 October 2021); Tapias Torrado, note 2.

<sup>8</sup> In principle, those projects should bring progress to the affected communities but, although some have made important contributions, they have more often led to further human rights violations, social conflicts and environmental destruction. The high number of killings and attacks against those defending the human rights of communities affected by mega-projects has further compounded this worrying situation. IACHR, note 3.

Indigenous women human rights defenders (WHRDs) have to face numerous challenges in their process of mobilization and are subjected to mutually reinforcing human rights abuses.<sup>9</sup> Too often, the state has failed to respect and protect fundamental rights such as free, prior and informed consent (FPIC).<sup>10</sup> When communities mobilize to defend their rights, they are usually attacked and criminalized.<sup>11</sup> When the mobilization leaders are Indigenous women, they frequently face additional challenges and gendered attacks in the 'public' domain and in their families, communities and organizations.<sup>12</sup>

In this article, I argue that some Indigenous women leaders have managed to overcome attempts to silence them and that examining how they have done so yields important insights for the field of business and human rights (BHR). To develop this argument, I recognize the strength, voice and agency of these women as individuals and as part of collectives. Despite very limited resources and protection, and at very high costs to themselves, their loved ones and their organizations, some Indigenous WHRDs have managed to overcome silencing practices. But what are silencing practices? What is gender-based violence in this context? How do Indigenous women leaders manage to overcome the attempts to silence them? To respond to these questions, I focus on key moments of a contemporary mobilization led by Indigenous women defending human rights from abuses committed in connection with mega-projects in Colombia. I also draw on international human rights law and intersectional sociological analyses, building on the *acción trenzada* (*braided action*) theoretical framework that emerged from my doctoral investigation that draws upon the experiences of these women as protagonists in transformative actions.<sup>13</sup>

By placing the experience of Indigenous women leaders at the centre of the analysis, I aim to contribute a much-needed intersectional and gendered analysis to BHR discussions on the issue of extractivism.<sup>14</sup> Business-related human rights abuses disproportionately affect Indigenous Peoples and those who defend their rights, and these abuses are heightened for Indigenous WHRDs.<sup>15</sup> The imperative to address the human rights impacts of business activities in connection with mega-projects, including the protection of environmental and human rights defenders against abuses, and the need for this to be done using a gender-responsive and intersectional approach, has been recognized in international and regional policy and human rights fora.<sup>16</sup> However, there are still many issues that must be

<sup>9</sup> Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli Corpuz', A/HRC/30/41 (6 August 2015); Human Rights Council, 'Situation of Women Human Rights Defenders: Report of the Special Rapporteur on the Situation of Human Rights Defenders', A/HRC/40/60 (10 January 2019).

<sup>10</sup> UN General Assembly, 'United Nations Declaration on the Rights of Indigenous Peoples', A/RES/61/295 (2 October 2007); Human Rights Council, 'Free, Prior and Informed Consent: A Human Rights-Based Approach, Study of the Expert Mechanism on the Rights of Indigenous Peoples', A/HRC/39/62 (10 August 2018).

<sup>11</sup> Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples', A/HRC/39/17 (10 August 2018); IACHR, [note 3](#).

<sup>12</sup> Tapias Torrado, [note 2](#).

<sup>13</sup> *Ibid.*

<sup>14</sup> On the concept of extractivism (and neoextractivism), see Henry Veltmeyer and James Petras, *El Neoextractivismo: ¿Un Modelo Posneoliberal de Desarrollo o el Imperialismo del Siglo XXI?* (México: Crítica, 2015).

<sup>15</sup> Human Rights Council, [note 11](#).

<sup>16</sup> Human Rights Council, 'The Guiding Principles on Business and Human Rights: Guidance on Ensuring Respect for Human Rights Defenders', A/HRC/47/39/Add.2 (22 June 2021); Human Rights Council, 'Gender Dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/41/43 (23 May 2019); UNECLAC, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (Santiago: UN, 2018); Human Rights Council, 'The Human Right to a Safe, Clean, Healthy and Sustainable Environment', A/HRC/48/L.23/Rev.1 (5 October 2021); Itzá Castañeda Camey et al, 'Gender-Based Violence and Environmental Linkages: The Violence of Inequality' (2020), <https://portals.iucn.org/library/sites/library/files/documents/2020-002-En.pdf> (accessed 28 October 2021).

better understood with respect to Indigenous women's leadership of movements to stop human rights abuses committed in connection with mega-projects so that these women leaders can be more effectively supported.<sup>17</sup>

The article proceeds as follows. First, I very briefly present the *braided action* theoretical framework (Part II). I then provide a characterization of silencing practices (Part III). Following this, I highlight the situation of the *Sutsüin Jieyuu Wayúu* (Wayúu Women's Force – FMW) mobilization in Colombia and discuss how these Indigenous women leaders have overcome silencing practices (Part IV). In the conclusion, I draw these different ideas together and argue that the process of reaffirmation may provide Indigenous women's groups with critical tools to overcome silencing practices in the context of mega-projects (Part V).

## II. The Braided Action Theoretical Framework

Indigenous women leading the defence of human rights in connection with mega-projects have gained some recognition and support, but they have also faced numerous attacks.<sup>18</sup> Yet, despite the extreme violence used against them, these women have not been silenced. This is certainly true in the case of FMW and Jackeline Romero Epiayuu, which is the focus of this article. The *braided action* theoretical framework can help us to understand how Indigenous women have managed to overcome silencing practices.

The *braided action* framework is a metaphor and a theory that draws on the knowledge and experience of Indigenous women-led mobilizations in the Americas as well as legal, intersectional and sociological studies.<sup>19</sup> It has a distinct approach as it places Indigenous women leaders at the centre of the analysis, and recognizes that the elements that shape their experience of mobilization and its impact are not mutually exclusive. In this regard, the *braided action* framework draws on Kimberlé Crenshaw's critical intersectionality theory that demonstrates the inability of a single-axis framework of analysis to fully capture dynamic forms of oppression and power based on gender and ethnicity.<sup>20</sup> Multiple factors and dimensions intersect in the individual and collective identities and experiences of Indigenous WHRDs.<sup>21</sup> Intersectionality not only renders visible the forms of oppression and

<sup>17</sup> Their efforts are crucial for them, for their peoples and the rest of humanity. See Human Rights Council, 'Recognizing the Contribution of Environmental Human Rights Defenders to the Enjoyment of Human Rights, Environmental Protection and Sustainable Development', A/HRC/40/L.22/Rev.1 (20 March 2019); UNEP and OHCHR, *Human Rights and Biodiversity: Key Messages* (Nairobi: UNEP, 2021); David R Boyd and Stephanie Keene, 'Human Rights-Based Approaches to Conserving Biodiversity: Equitable, Effective and Imperative' (2021), <https://www.ohchr.org/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf> (accessed 28 October 2021); FAO and FILAC, *Forest Governance by Indigenous and Tribal Peoples: An Opportunity for Climate Action in Latin America and the Caribbean* (Santiago: FAO, 2021).

<sup>18</sup> Those who killed the Lenca leader Berta Cáceres tried to silence her forever; but they did not realize that she had already implanted a powerful transformative mobilization that could not be stopped in Honduras and beyond. Her murder brought even more attention to her struggle and many other similar ones in the Americas. See, e.g., the several documentaries on Indigenous women-led mobilizations in the context of mega-projects at Mutual Aid Media, 'La Lucha Sigue', <https://www.mutualaidmedia.com/la-lucha-sigue-film> (accessed 28 October 2021).

<sup>19</sup> Tapias Torrado, note 2.

<sup>20</sup> Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 78:2 *University of Chicago Legal Forum* 139; Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43:6 *Stanford Law Review* 1241.

<sup>21</sup> Stéphane Guimont et al, 'Approaching Violence Against Indigenous Women in the Americas from Relational, Intersectional and Multiscalar Perspectives' (2020) 45:1 *Canadian Journal of Latin American and Caribbean Studies* 5; Mara Viveros, 'La Interseccionalidad: Una Aproximación Situada a la Dominación' (2016) 52 *Debate Feminista* 1.

attacks that these women face, it also helps to understand their agency, contributions and impacts in challenging them.

In this vein, the *braided action* framework builds on and adapts the Archimedes' Lever analogy proposed by Bernal-Bermúdez, Payne and Pereira.<sup>22</sup> The Archimedes' Lever model was originally developed to study accountability efforts regarding economic actors' participation in past atrocities. However, I use it to study the impact of Indigenous women-led mobilizations on the practice of corporate actors involved in mega-projects in Latin America, which have not yet been researched in a systematic manner.

The Archimedes' Lever model acknowledges a dynamic of forces in the context of imbalanced power relationships. It argues that the right tools in the hands of the relatively weak can lift the world. This model has the following essential parts: the weight to be lifted; the force applied to lift the weight and to keep it down; and the placement of the fulcrum.<sup>23</sup> In the *braided action* framework I adapt this model to show that while Indigenous women-led organizations face many attacks, disadvantages, challenges, oppressions and a history of discrimination and violence, they are able to use this minimally favourable context (fulcrum), and the tools available, to produce a change. Very importantly, the model helps to show that the mobilization force comes from the territory and *braids* to it the power of external actions. Overcoming attacks intended to silence them *forever* are actions that *braid* power, strengthening the tools that help Indigenous women-led mobilizations to have a human rights impact.<sup>24</sup>

In this regard, the *braided action* framework also builds upon Indigenous women's knowledge and experience as human rights defenders (HRDs), who take individual or collective *action* to advance the effective enjoyment of human rights.<sup>25</sup> For many Indigenous Peoples in Latin America, *braids* in their hair, clothes, textiles and other hand-made objects are distinctive characteristics of their culture. Furthermore, the metaphor of the *braid* has been used by several Indigenous cultures in the Americas to talk about their power;<sup>26</sup> including the power of mobilizing together. The explanation provided by Karmen Ramírez Boscán, founding member and leader of FMW, is central to this analysis: 'We use ropes to knit our hammocks and our *mochilas* ... One rope represents one individual; it can be easily broken. Three united ropes forming one braid cannot be broken ... It represents a national process of Indigenous women ... defending the territory.'<sup>27</sup>

With this framework, I argue that with a tough *braid of action*, Indigenous women-led mobilizations can pull down a lever to lift human rights and achieve a change in corporate practice. In the framework, human rights are to be lifted; thus, the weight is created by the

<sup>22</sup> Leigh A Payne, Gabriel Pereira and Laura Bernal-Bermúdez, *Transitional Justice and Corporate Accountability from Below: Deploying Archimedes' Lever* (Cambridge: Cambridge University Press, 2020).

<sup>23</sup> Ibid.

<sup>24</sup> The complete analysis and framework are available in my doctoral thesis.

<sup>25</sup> Human rights defenders (HRDs) are protected under international human rights law. Article 1 of the 1998 UN Declaration on HRDs establishes that the defence of human rights is a right in itself. Thus, as a human right, it implies responsibilities for state and non-state actors, including business. See UN General Assembly, 'Report of the Special Rapporteur on the Situation of Human Rights Defenders', A/72/170 (19 July 2017); OHCHR, 'Fact Sheet No. 29, Human Rights Defenders: Protecting the Right to Defend Human Rights', <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf> (accessed 28 October 2021).

<sup>26</sup> See, e.g., Robin Well Kimmerer, *Braiding Sweetgrass: Indigenous Wisdom, Scientific Knowledge and the Teachings of Plants* (Minneapolis: Milkweed Editions, 2013); James Borrows et al, *Braiding Legal Orders: Implementing the United Nations Declaration on the Rights of Indigenous Peoples* (Waterloo: Centre for International Governance Innovation, 2019).

<sup>27</sup> Karmen Ramírez Boscán, 'Hilos de Resistencia – Fuerza de Mujeres Wayuu', *NotiWayuu* (26 February 2013), <http://www.notiwayuu.com/2013/02/hilos-de-resistencia-fuerza-de-mujeres.html> (accessed 28 October 2021).

abuses that have been committed in connection with the mega-project (e.g., lack of FPIC). Veto players (alliances of state and corporate actors and others supporting them<sup>28</sup>) seek to keep the weight down, as the *status quo* benefits their interests. Indigenous women-led mobilizations aim to lift human rights by *braiding actions*. The *braid*, lashing to the lever, can pull it down and produce a favourable change. The fulcrum (institutional and normative human rights framework) gives them an opportunity to do that, but it does not do the work for them. Thus, the *braid of action* is an essential tool.

The *braid of action* – a unique ‘weapon of the weak’<sup>29</sup> for Indigenous Peoples – combines four crucial factors (*strands*). Three emerge from the internal capacity of the movement: transforming the power in the territory into mobilization; effective leadership by Indigenous women; and using human rights framings. The fourth is a reaction to an external factor: a grave human rights abuse – usually severe repression – involving a business. These four strands interwoven in a tough braid of action are capable of *harnessing* a strong mobilization power, achieving *success* (i.e., a favourable change in business behaviour) over materially powerful forces. However, if some of the strands are weak or frayed, the braid cannot achieve this *success*.

The *braid of action* is a dynamic model.<sup>30</sup> Thus, while the Indigenous women-led mobilization may build power, veto players also use their power to favour their interests. Sometimes, veto power is exerted through silencing actions. It is the nature of these silencing practices that is explored in the next part of the paper.

### III. Characterizing Silencing Practices

Violence directed at HRDs, and in particular WHRDs, is pervasive in the Americas and other parts of the world.<sup>31</sup> A common aspect is its silencing intention. Too often, critical voices are repressed with violence so that states and businesses are able to perpetuate or generate conditions that benefit their interests at the expense of rights-holders. These conditions accentuate difficulties for those defending human rights, while they also embolden the aggressors. Silencing practices occur at the intersections of silencing actions and conditions. Silencing actions aim to halt and punish the defence of human rights. Oppressive silencing conditions undermine HRDs and aggravate oppressive actions and their impact. The experiences of Indigenous WHRDs are shaped by who these defenders are (intersecting identities) and what they do in defence of human rights (actions); and they need to be understood within specific contexts and circumstances.<sup>32</sup> This also implies considering the conditions that accentuate the detrimental impact of the silencing practices.

<sup>28</sup> I explain the concept of veto players further in the next part of the paper.

<sup>29</sup> James C Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985).

<sup>30</sup> The four *strands* overlap among each other and, operating with their own mechanisms, they gather strength. To explain their dynamics and mechanisms, I build upon the learnings from cases and analytical sociology. See Peter Hedström and Richard Swedberg, *Social Mechanisms: An Analytical Approach to Social Theory* (Cambridge: Cambridge University Press, 1998).

<sup>31</sup> OHCHR, ‘UN Human Rights Office, Inter-American Commission Launch Joint Action Plan on Protection of Human Rights Defenders in the Americas’, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22301&LangID=E> (accessed 28 October 2021); Human Rights Council, ‘Final Warning: Death Threats and Killings of Human Rights Defenders’, A/HRC/46/35 (24 December 2020).

<sup>32</sup> Enrique Eguren and Chanta Patel, ‘Towards Developing a Critical and Ethical Approach for Better Recognising and Protecting Human Rights Defenders’ (2015) 19:7 *The International Journal of Human Rights* 896.

## Silencing Conditions

Indigenous Lenca leader Berta Cáceres explained that the struggles of Indigenous women are conditioned by ‘a capitalist, racist and patriarchal depredation’.<sup>33</sup>

Patriarchal oppression silences Indigenous women. Indigenous women have endured violence, discrimination and exclusion.<sup>34</sup> There is chronic invisibility of the role and diversity of Indigenous women as leaders and as agents of change.<sup>35</sup> The arrival of mega-projects, as part of a patriarchal socio-economic system, has further exacerbated that exclusion, invisibility and silencing oppression.<sup>36</sup> Oppressive silencing practices are reflected in the exclusion of Indigenous women from negotiations, decision-making and leadership roles. For example, women are frequently not recognized on land titles, which leads to disempowerment and lack of representation within decision-making processes.<sup>37</sup> When Indigenous women manage to influence negotiations, they often do so as secondary figures.<sup>38</sup> Even when Indigenous women are in top leadership roles, business and state actors favour negotiating with men.<sup>39</sup> As Lorena Cabnal explains, this is a manifestation of ‘multidimensional patriarchy’, which connects Western patriarchy with ancestral patriarchy, oppressing Indigenous women.<sup>40</sup>

Regarding racist oppression, Indigenous women and their peoples have traditionally been neglected, marginalized and silenced. For centuries, Indigenous Peoples have been custodians of territories with uniquely fragile ecosystems that are vitally important for ensuring the sustainability of the environment and humanity. Their spirituality, knowledge and cultures are very rich and diverse.<sup>41</sup> Nevertheless, Indigenous Peoples have too often been discriminated against and excluded from participation in decision-making that directly affects them. Large-scale projects are often developed in their territories, threatening their survival as individuals and collectives.<sup>42</sup> An Indigenous woman leader eloquently explained: ‘Below in the city and plantations, we did not exist. Our lives were worth less than the

<sup>33</sup> Berta Cáceres, ‘Berta Cáceres Acceptance Speech, 2015 Goldman Environmental Prize Ceremony’ (23 April 2015), <https://www.youtube.com/watch?v=AR1kwx8b0ms> (accessed 28 October 2021).

<sup>34</sup> FIMI, ‘Mairin Iwanka Raya: Indigenous Women Stand Against Violence’ (2006), <https://fimi-iwfw.org/wp-content/uploads/2020/07/Mairin-Iwanka-Raya-ENG.pdf> (accessed 28 October 2021); Barcia, note 7.

<sup>35</sup> Amnesty International, ‘Indigenous Peoples’ Long Struggle to Defend their Rights in the Americas’ (2014), <https://www.amnesty.org/en/documents/AMR01/002/2014/en/> (accessed 28 October 2021); CEPAL et al, ‘Mujeres Indígenas en América Latina: Dinámicas Demográficas y Sociales en el Marco de los Derechos Humanos’ (2013), [https://repositorio.cepal.org/bitstream/handle/11362/4100/1/S2013792\\_es.pdf](https://repositorio.cepal.org/bitstream/handle/11362/4100/1/S2013792_es.pdf) (accessed 28 October 2021).

<sup>36</sup> As discussed in my thesis, for example, expert ancestral local knowledge about the territory is often ignored or treated with contempt; Kuntala Lahiri-Dutt, ‘The Megaproject of Mining: A Feminist Critique’ in Stanley D Brunn (ed.), *Engineering Earth* (Dordrecht: Springer, 2011) 329; Margreet Zwarteeven, ‘Men, Masculinities and Water Powers in Irrigation’ (2008) 1:1 *Water Alternatives* 111.

<sup>37</sup> ECLAC, *Guaranteeing Indigenous People’s Rights in Latin America: Progress in the Past Decade and Remaining Challenges* (Santiago: UN, 2014).

<sup>38</sup> Leah Horowitz, ‘“It Shocks Me, the Place of Women”: Intersectionality and Mining Companies’ Retrogradation of Indigenous Women in New Caledonia’ (2017) 24:10 *Gender, Place and Culture* 1419; Ciaran O’Faircheallaigh, ‘Women’s Absence, Women’s Power: Indigenous Women and Negotiations with Mining Companies in Australia and Canada’ (2013) 36:11 *Ethnic and Racial Studies* 1789.

<sup>39</sup> IACHR, note 3, para 212.

<sup>40</sup> Lorena Cabnal, ‘Acercamiento a la Construcción de la Propuesta de Pensamiento Epistémico de las Mujeres Indígenas Feministas Comunitarias de Abya Yala’, *Feminismos Diversos: El Feminismo Comunitario* (2010), <https://porunavidavivible.files.wordpress.com/2012/09/feminismos-comunitario-lorena-cabnal.pdf> (accessed 28 October 2021) 15–16, 18.

<sup>41</sup> FAO and FILAC, note 17.

<sup>42</sup> IACHR, note 3; UN Department of Economic and Social Affairs, Indigenous Peoples, ‘State of the World’s Indigenous Peoples (SOWIP)’, <https://www.un.org/development/desa/indigenouspeoples/publications/state-of-the-worlds-indigenous-peoples.html> (accessed 28 October 2021).

machines and the animals. We were like rocks, like plants along the road. We did not have voices. We did not have names. We did not have tomorrow. We did not exist'.<sup>43</sup>

In Latin America, Indigenous Peoples are among the most disadvantaged groups. '[C]omplex sociohistorical processes that date back more than 500 years, have fed into discriminatory practices that are still in place and involved systematic dispossession of their territories, with grave consequences for their well-being'.<sup>44</sup> This dispossession is compounded by structural inequalities that Indigenous Peoples experience in accessing education, health and other fundamental rights.<sup>45</sup>

In terms of capitalist oppression, while mega-projects are frequently justified in the name of 'development', they have mainly served the interests of large national and transnational corporations. Mega-projects are an example of neoliberal policies that have reduced the role of the state while simultaneously strengthening the position of corporations, including their complex business and financing networks.<sup>46</sup> Mega-projects are part of a continuum of accumulation of power and capital that subordinates and dispossesses Indigenous Peoples for the commodification of their territories.<sup>47</sup>

Indigenous Peoples' disadvantageous situation is frequently called 'poverty', and states and businesses often promote mega-projects as the opportunity to alleviate it.<sup>48</sup> However, when these projects arrive in Indigenous territories, too often, human rights abuses associated with the business activities become prevalent, a social division is created and violence is exacerbated. Furthermore, Indigenous communities' worldviews and ancestral practices that have allowed them to survive for centuries and effectively protect their territories are regarded with contempt and put in jeopardy by the corporate and state actors implementing mega-projects, further exposing Indigenous communities and their leaders to violent silencing actions.<sup>49</sup>

### Veto Players' Silencing Actions

In addition to these oppressive silencing conditions and daily struggles (e.g., childcare, finding food and clean water), Indigenous women leaders also have to deal with veto players' silencing actions intended to create fear, halt Indigenous women leaders' mobilization processes and maintain the *status quo* so that mega-projects can advance. Thus, attacks against Indigenous WHRDs and their groups are usually a manifestation of veto power. Veto players are the alliances of state and corporate actors, and others supporting them – sometimes even illegal actors – who can take action to stop changes or to maintain the *status quo* that favours their interests in mega-projects.<sup>50</sup> For example, veto players may work only with communities that are open to their 'benefits', exacerbating or promoting dangerous divisions and confrontations. In other cases, state and corporate actors are direct

<sup>43</sup> See her speech in Deborah J Yashar, *Contesting Citizenship in Latin America: The Rise of Indigenous Movements and the Postliberal Challenge* (Cambridge: Cambridge University Press, 2005) xiii.

<sup>44</sup> ECLAC, note 37, 5.

<sup>45</sup> UN Department of Economic and Social Affairs, Indigenous Peoples, note 42.

<sup>46</sup> David Ibarra, 'La Erosión del Orden Neoliberal del Mundo', *CEPAL - Serie Estudios y Perspectivas México - No. 145* (2013), [https://www.cepal.org/sites/default/files/publication/files/4930/M20130577\\_es.pdf](https://www.cepal.org/sites/default/files/publication/files/4930/M20130577_es.pdf) (accessed 28 October 2021) 60–61; Sarah Soule, *Contention and Corporate Social Responsibility* (New York: Cambridge University Press, 2009).

<sup>47</sup> David Harvey, *The New Imperialism* (Oxford: Oxford University Press, 2003); James Petras and Henry Veltmeyer, *Globalization Unmasked: Imperialism in the 21st Century* (Halifax: Fernwood Publishing, 2001).

<sup>48</sup> Tapias Torrado, note 2.

<sup>49</sup> IACHR, note 3.

<sup>50</sup> Payne, Pereira and Bernal-Bermúdez, note 22.

aggressors, even sometimes being complicit in assassinations by hiring hitmen such as those who murdered Berta Cáceres in 2016.<sup>51</sup>

Veto power can be exerted through legal mechanisms, media actions, social division, undue pressure or attacks against Indigenous women leaders and their groups; it has been consistently documented in the Americas.<sup>52</sup> Three out of every four killings of HRDs in the world take place in the region; and in more than 40 per cent of cases, leaders are challenging human rights abuses committed in the context of mega-projects, mostly defending Indigenous rights.<sup>53</sup> These abuses include killings, attempted killings, death threats, criminalization and intimidation. Frequently, attacks concern the mining, renewable energy and agro-industrial sectors.<sup>54</sup>

The case in the following part of the paper shows how silencing actions and conditions intersect, articulating into silencing practices. It provides important insights into the impact of silencing practices on Indigenous women leaders, their organizations and communities. However, as my analysis does not end with their victimization, I also discuss how, in the particular case of FMW, these Indigenous women leaders have managed to overcome the imposition of silencing practices.

#### IV. The Sutsüin Jieyuu Wayúu in Colombia

##### *The Process of Mobilization*

In the last two decades, Wayúu leader Jakeline Romero Epiayuu and her organization, the *Sutsüin Jieyuu Wayúu* (Wayúu Women's Force – FMW), have been struggling against numerous human rights violations committed in the Wayúu territory in La Guajira department, Colombia. Their human rights advocacy has challenged powerful state and business actors.<sup>55</sup> As a result, they have faced numerous attacks and challenges, including gender-based violence.

<sup>51</sup> Nina Lakhani, *Who Killed Berta Cáceres?: Dams, Death Squads, and an Indigenous Defender's Battle for the Planet* (London: Verso, 2020); Nina Lakhani, 'Berta Cáceres Assassination: Ex-Head of Dam Company Found Guilty', *The Guardian* (5 July 2021), <https://www.theguardian.com/world/2021/jul/05/berta-caceres-assassination-roberto-david-castillo-found-guilty> (accessed 28 October 2021).

<sup>52</sup> See, among others, the following reports: Amnesty International, 'Transforming Pain into Hope: Human Rights Defenders in the Americas' (2012), <https://www.amnesty.org/en/documents/AMR01/006/2012/en/> (accessed 28 October 2021); Amnesty International, 'Defending Human Rights in the Americas: Necessary, Legitimate and Dangerous' (2014), <https://www.amnesty.org/en/wp-content/uploads/2021/05/AMR0100032014ENGLISH.pdf> (accessed 28 October 2021); Global Witness, 'On Dangerous Ground' (2016), <https://www.globalwitness.org/en/campaigns/environmental-activists/dangerous-ground/> (accessed 28 October 2021); Global Witness, 'Defenders of the Earth: Global Killings of Land and Environmental Defenders in 2016' (2017), <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/> (accessed 28 October 2021); Frontline Defenders, 'Annual Report on Human Rights Defenders At Risk in 2017' (2017), [https://www.frontlinedefenders.org/sites/default/files/annual\\_report\\_digital.pdf](https://www.frontlinedefenders.org/sites/default/files/annual_report_digital.pdf) (accessed 28 October 2021); Frontline Defenders, 'Global Analysis 2018' (2019), [https://www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2018.pdf](https://www.frontlinedefenders.org/sites/default/files/global_analysis_2018.pdf) (accessed 28 October 2021); Global Witness, 'Last Line of Defence' (2021), <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/> (accessed 28 October 2021); Arnim Scheidel et al, 'Environmental Conflicts and Defenders: A Global Overview' (2020) 63:102104 *Global Environmental Change* 1.

<sup>53</sup> OHCHR, note 31.

<sup>54</sup> BHRRC, 'Human Rights Defenders & Civic Freedoms Programme', <https://www.business-humanrights.org/en/bizhrds> (accessed 28 October 2021).

<sup>55</sup> Karmen Ramírez Boscán, *Desde el Desierto: Notas sobre Paramilitares y Violencia en Territorio Wayúu de la Media Guajira* (Maicao: Cabildo Wayúu Nóina de Campamento, 2007); Tapias Torrado, note 2.

FMW has long struggled against human rights harms related to the prolonged armed conflict in Colombia,<sup>56</sup> and the human rights abuses committed in connection with several mega-projects affecting the Wayúu people (e.g., hydroelectric dams, wind parks and tourist resorts). The Cerrejón mine is the oldest and largest of these mega-projects.

Cerrejón started two decades before the emergence of FMW in the 2000s. In 1976, the state company Carbones de Colombia SA (Carbocol) was created to manage all coal resources in Colombia, in the same year signing a joint venture contract with the International Resources Corporation (Intercor) to develop Cerrejón.<sup>57</sup> Intercor is a subsidiary of Exxon (now called ExxonMobil). The contract was for 33 years and then extended until 2034. In the early 2000s, Carbocol and Intercor sold their shares to a consortium composed of Anglo American, BHP and Glencore.<sup>58</sup> Cerrejón produces about 32 million tons of coal every year, which is half of Colombia's total coal export.<sup>59</sup> Cerrejón manages an operation that includes:<sup>60</sup> the mine (five open pits); a railway; a port (in Bahía Portete); and a vast supporting infrastructure (e.g., two airports, housing for 2,500 people).

In the last two decades, FMW has played a visible role in the struggle against the human rights abuses related to Cerrejón, and Jakeline Romero Epiayuu has been one of its most vocal leaders. The Wayúu people is composed of about 30 clans identified by the maternal bloodline. Jakeline is part of the Clan Epiayuu. She is from El Zahino, in Barrancas municipality, one of the areas impacted by Cerrejón.<sup>61</sup> In her childhood, her family was hopeful about the progress promised by Cerrejón. Jakeline's uncle, Venancio, was an authority in her community and one of the many Wayúu who initially worked there. 'I remember him saying, and excuse my language, but he had a job cleaning the bathrooms ... "this land belongs to us, why am I cleaning the gringo's shit?"'.<sup>62</sup> Venancio became a critical voice. Later, he was forcibly disappeared. Jakeline's family never knew who the perpetrators were.<sup>63</sup>

<sup>56</sup> The Wayúu people and, in general, La Guajira department, have been deeply affected by the Colombian armed conflict. The 2016 Peace Agreement brought hope to the country, but the situation continues to be very difficult. For example, from 2016 to April 2021, more than 900 community leaders and HRDs were killed. See Jurisdicción Especial para la Paz, 'Sistema Integral solicita a la Defensoría del Pueblo adoptar una resolución defensorial que trace hoja de ruta para poner fin al asesinato de líderes sociales y excombatientes de las Farc-EP' (19 April 2021), <https://www.jep.gov.co/Sala-de-Prensa/Paginas/Petici%C3%B3n-a-la-Defensor%C3%ADa-del-Pueblo-de-informe-y-resoluci%C3%B3n-defensorial-por-grave-situaci%C3%B3n-de-DDHH.aspx> (accessed 28 October 2021); Centro Nacional de Memoria Histórica, 'La Masacre de Bahía Portete: Mujeres Wayúu en la Mira' (2010), [https://www.centrodememoriahistorica.gov.co/descargas/informes2010/informe\\_bahia\\_portete\\_mujeres\\_wayuu\\_en\\_la\\_mira.pdf](https://www.centrodememoriahistorica.gov.co/descargas/informes2010/informe_bahia_portete_mujeres_wayuu_en_la_mira.pdf) (accessed 28 October 2021); 'El Gobernador de Miedo: El Portazo de la JEP a Kiko Gómez', *Semana* (14 August 2021), <https://www.semana.com/nacion/articulo/jep-rechaza-sometimiento-del-exgobernador-kiko-gomez--noticias-hoy/694537/> (accessed 28 October 2021).

<sup>57</sup> Regarding the origin of Cerrejón, the irregularities on the contract and the disadvantages for Colombia and the Wayúu, see Isa Ponce-Jiménez, *Wayúu Women: Indigenous Responses to Neoliberal Adjustments and Constitutional Reforms in Colombia* (Northern Arizona University: PhD dissertation, 2006).

<sup>58</sup> BHRRC, 'Cerrejón Coal (Joint Venture Anglo American, BHP & Glencore)', <https://www.business-humanrights.org/en/companies/cerrejon-coal-joint-venture-anglo-american-bhp-glencore/> (accessed 28 October 2021).

<sup>59</sup> Cerrejón, 'Resumen del Proyecto de Expansión Iiw'uyaa para Grupos de Interés' (2011), <https://www.slideshare.net/riorancheria/resumen-del-proyecto-de-expansin-iiwouyaa-para-grupos-de-inters> (accessed 28 October 2021).

<sup>60</sup> More information is available at Cerrejón, 'Nuestra Operación', <https://www.cerrejon.com/nuestra-operacion> (accessed 28 October 2021).

<sup>61</sup> The Zahino is not considered an area of influence by Cerrejón as it is eight kilometres away from the mine (fieldwork notes).

<sup>62</sup> Jakeline Romero cited in Caroline O'Doherty, 'Activist Visits Ireland to Highlight Abuse at Colombian Coal Mine and Irish Links to It', *Irish Examiner* (8 April 2019), <https://www.irishexaminer.com/breakingnews/ireland/activist-visits-ireland-to-highlight-abuse-at-colombian-coal-mine-and-irish-links-to-it-916353.html> (accessed 28 October 2021).

<sup>63</sup> Tapias Torrado, note 2.

In the early 2000s, the armed conflict was particularly intense in La Guajira and paramilitary groups targeted many Indigenous communities.<sup>64</sup> In 2004, a group of about 50 paramilitaries committed serious crimes against the Bahía Portete community, punishing the Wayúu women leaders.<sup>65</sup> After serious crimes against her family, Karmen Ramírez Boscán founded FMW, together with women from Bahía Portete<sup>66</sup> and from her community in Campamento.<sup>67</sup>

In their daily activities, Wayúu women started to talk about the horrors of the armed conflict and the work of FMW. Jakeline Romero joined in 2008. Given Jakeline's leadership in the south of La Guajira, she became particularly active there, where the Cerrejón mine is located. Initially, FMW focused only on the rights of victims of the armed conflict. Visiting the communities, however, many serious concerns about Cerrejón emerged. FMW realized that the communities were alone fighting a giant, and those concerns became central to their mobilization.<sup>68</sup>

As the Indigenous women's mobilization evolved, so did the mine's expansion plans. For the development of Cerrejón, there was no FPIC with the affected communities.<sup>69</sup> In fact, the corporation acknowledges that 'social aspects' of the operation 'lagged' and failed to respect international standards; thus, after the recommendations of a 2007 expert panel, Cerrejón adopted a new corporate social responsibility approach.<sup>70</sup> Cerrejón has received several awards for its environmental and social responsibility initiatives.<sup>71</sup> However, it has also faced numerous complaints about human rights abuses, several of them regarding its recent plans for expansion.<sup>72</sup>

In the early 2010s, to double its production, the company planned to expand operations diverting the Ranchería river for 26 kilometres.<sup>73</sup> After a very intense mobilization process of communities against the proposed expansion, supported by FMW, Cerrejón announced the suspension of that expansion. The company claimed, however, that this decision was due to the low price of coal on the international market.<sup>74</sup>

Despite that explanation, Cerrejón was already progressing with another plan. Soon after, the communities learnt about Cerrejón's project 'La Puente', which required diverting the Bruno creek (a main tributary stream to the Ranchería river) for 3.6 kilometres to access 35 million tons of coal reserved there. In response, in early 2015, FMW led the campaign 'We are all the Bruno creek!'. They carried out several activities to explain that 'diverting the

<sup>64</sup> Francisco 'Kiko' Gómez, a former governor of La Guajira facilitated the arrival of paramilitary groups to the department and was also involved in several crimes. Centro Nacional de Memoria Histórica, [note 56](#); *Semana*, [note 56](#); Ramírez Boscán, [note 55](#).

<sup>65</sup> Centro Nacional de Memoria Histórica, [note 56](#).

<sup>66</sup> At one point, the women from Bahía Portete continued in a separate organizational process, given the complexities of their case.

<sup>67</sup> Ramírez Boscán, [note 55](#).

<sup>68</sup> Tapias Torrado, [note 2](#).

<sup>69</sup> CINEP and Programa por la Paz, 'Minería a Gran Escala y Derechos Humanos: Lo que el Des-arroyo Trajo a la Guajira' (2020) 61 *Revista Noche y Niebla* 59; Tapias Torrado, [note 2](#).

<sup>70</sup> Cerrejón, [note 59](#), 23.

<sup>71</sup> See, e.g., Cerrejón, 'Membresías y Reconocimientos', <https://www.cerrejon.com/nosotros/membresias-y-reconocimientos> (accessed 28 October 2021).

<sup>72</sup> See the last few paragraphs of this section.

<sup>73</sup> La Guajira is a desert area, water is scarce, and the Rancheria and its tributaries are the main water source for the Wayuu.

<sup>74</sup> 'Cerrejón Pospone Estudios sobre la Posible Desviación del Río Ranchería', *Semana* (9 November 2012), <https://www.semana.com/cerrejon-pospone-estudios-sobre-posible-desviacion-del-rio-rancheria/163934/> (accessed 28 October 2021).

Bruno is like cutting the veins of Wounmainkat, our great mother earth.<sup>75</sup> For several months, the demonstrations continued.<sup>76</sup> In May 2016, in response to a *tutela* filed by Wayúu leader Lorenza Gil Pushaina from La Horqueta II community,<sup>77</sup> the Administrative Tribunal of La Guajira suspended the environmental licences granted to Cerrejón to divert the Bruno creek, a decision confirmed by the *Consejo de Estado* (Supreme Administrative Court).<sup>78</sup> In July and August 2016, FMW presented the situation before several United Nations human rights mechanisms; while locally, the mobilizations carried on.<sup>79</sup>

A year later, the Constitutional Court of Colombia began to study the *tutelas* filed by La Horqueta II, La Gran Parada and Paradero communities. On 28 December 2017, the Court issued its decision SU-698 in favour of over 30 Wayúu communities. Among other measures, the Court ordered that the work of the Interinstitutional Working Group, composed of state and corporate representatives, should continue and ‘open the space for the participation’ of representatives of the communities and their organizations. Furthermore, it ordered the continuation of the project’s suspension and the re-establishment of the natural riverbed.<sup>80</sup> However, in June 2019, the communities and their organizations reported that they had been excluded from the Interinstitutional Working Group and that it had decided not to return the Bruno to the normal riverbed.<sup>81</sup> Indeed, in 2019, Cerrejón finished work to divert the creek.<sup>82</sup>

In light of the situation, in February 2019, the affected communities, FMW and their support network decided to file a complaint against Cerrejón’s environmental licence. The licence was granted in 1983 and has been modified over 60 times (e.g., for mine expansions). As the licensing process has been done in a fragmented way, the actual impact of the whole operation on the communities has never been assessed.<sup>83</sup> Moreover, the licence is yet to be updated to the standards of the 1991 Constitution, which protects Indigenous rights. This complaint was signed by three Senators, communities’ representatives, the Lawyer’s Collective José Alvera Restrepo (CAJAR) and Jakeline Romero from FMW.<sup>84</sup>

On 6 August 2019, the complaint was deemed admissible by the *Consejo de Estado*. Ten days later, Cerrejón publicly rejected the claim and declared that the company was facing

<sup>75</sup> Miguel Ramírez, ‘Arroyo Bruno Somos Todos!’, *Notiwayuu* (February 2015), <http://www.notiwayuu.com/2015/02/arroyo-bruno-somos-todos.html> (accessed 28 October 2021).

<sup>76</sup> See, e.g., “‘Cerrejón Debe Presentar Proyecto de Desviación del Arroyo Bruno’: Comité Dignidad por La Guajira’, *El Heraldo* (3 March 2015), <https://www.elheraldo.co/la-guajira/cerrejon-debe-presentar-el-proyecto-de-desviacion-del-arroyo-bruno-comite-civico-dignidad> (accessed 28 October 2021).

<sup>77</sup> A *tutela* is a legal action that aims to protect the most fundamental rights recognized by the Colombian Constitution.

<sup>78</sup> ‘Consejo de Estado Frena la Desviación del Arroyo Bruno en La Guajira’, *El Espectador* (19 December 2016), <https://www.elespectador.com/noticias/judicial/consejo-de-estado-frena-desviacion-del-arroyo-bruno-gua-articulo-671201> (accessed 28 October 2021).

<sup>79</sup> Miguel Ramírez, ‘Colombia en Minga se Identifica con Lucha por Arroyo Bruno de La Guajira’, *Notiwayuu* (May 2015), <http://www.notiwayuu.com/2016/05/colombia-en-minga-se-identifica-con.html> (accessed 28 October 2021).

<sup>80</sup> Sentencia SU698/17, Corte Constitucional de Colombia (2017).

<sup>81</sup> Comunidades La Gran Parada, Paradero y La Horqueta et al, ‘Carbones de Cerrejón Mantendrá Taponado el Arroyo Bruno Desconociendo Fallo de la Corte Constitucional’, *CAJAR* (12 June 2019), <https://www.colectivodeabogados.org/carbones-de-cerrejon-mantendra-taponado-el-arroyo-bruno-desconociendo-fallo-de-la-corte-constitucional/> (accessed 28 October 2021).

<sup>82</sup> Cerrejón, ‘Proyecto La Puente: ¿En qué Consistieron las Obras de Modificación Parcial del Cauce del Arroyo Bruno en el Proyecto La Puente?’, <https://www.cerrejon.com/nuestra-operacion/proyectos-estrategicos/la-puente> (accessed 28 October 2021).

<sup>83</sup> ‘Consejo de Estado Estudiará Demanda contra la Licencia Ambiental de Carbones del Cerrejón’, *CAJAR* (6 August 2019), <https://www.colectivodeabogados.org/consejo-de-estado-estudiara-demanda-contra-la-licencia-ambiental-de-carbones-del-cerrejon/> (accessed 28 October 2021).

<sup>84</sup> *Ibid*; Tapias Torrado, note 2.

imminent closure as a result.<sup>85</sup> On 26 August 2019, FMW and all the plaintiffs had to publicly declare that they were not requesting the closure of the entire operation or the loss of all jobs.<sup>86</sup> This clarification had to be made as FMW and others involved in the complaint faced death threats.<sup>87</sup>

### Attacks Targeted at FMW

The death threats received on 26 August 2019 were the latest in a long series of attacks against FMW, several of these involving gender-based violence. As the organization became more visible with their mobilization process, the attacks against them grew stronger; both within their communities and beyond them.

The Wayúu women are part of a matrilineal people with a dominant patriarchal culture.<sup>88</sup> It is not a matriarchal culture and the top leaders and decision-makers in Wayúu communities are men. Wayúu women have held many important leadership roles, but these do not include decision-making.<sup>89</sup>

Thus, FMW has faced many challenges. Male community members have questioned the legitimacy of FMW's leadership and the impact of their mobilization on traditional leadership structures. Some male members of the community have used defamation campaigns against FMW.<sup>90</sup>

The attacks targeted at FMW, however, have mainly come from external actors.<sup>91</sup> There is no evidence of direct involvement of corporate actors in those attacks. Furthermore, since 2016, Cerrejón has proactively and publicly expressed 'concern' about the attacks against FMW, detaching the corporation from any possible insinuation of a connection between the attacks and the mine.<sup>92</sup> The corporation has even called on the Colombian authorities to protect FMW leaders; and the President of Cerrejón has publicly repudiated the threats.<sup>93</sup> Such statements, however, contrast with the 2019 Constitutional Court decision on the impacts of Cerrejón and the fact that many of the attacks suffered by FMW have coincided in time with key moments of their mobilization against the abuses related to Cerrejón.

<sup>85</sup> Cerrejón, 'Cerrejón Informa', <https://www.cerrejon.com/index.php/cerrejon-informa-16/> (accessed 25 January 2020).

<sup>86</sup> 'La Demanda Contra Cerrejón Busca Frenar el Impacto Social y Ambiental de la Minería en La Guajira', CAJAR (26 August 2019), <https://www.colectivodeabogados.org/la-demanda-contra-cerrejon-busca-frenar-el-impacto-social-y-ambiental-de-la-mineria-en-la-guajira/> (accessed 28 October 2021).

<sup>87</sup> 'Amenaza en Contra la Líder Wayuu: Jazmín Romero y sus Compañeras', Sintracarbón (5 September 2019), <https://sintracarbon.org/sala-de-prensa/amenaza-en-contra-la-lider-wayuu-jazmin-romero-y-sus-companeras/> (accessed 28 October 2021).

<sup>88</sup> Alessandro Mancuso, 'Relaciones de Género entre los Wayuu: Estado de la Investigación y Nuevos Campos de Análisis' (2005) 13 *Aguaita* 39.

<sup>89</sup> Ibid; Ponce-Jiménez, note 57.

<sup>90</sup> Tapias Torrado, note 2.

<sup>91</sup> In 2004, for example, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favour of Karmen Ramírez Boscán and other leaders of FMW. Some of them had to leave the country to protect their lives.

<sup>92</sup> Cerrejón counts with very robust and proactive communications, legal and political strategies. According to BHRRC, Cerrejón has a 100 per cent rate response. See BHRRC, note 58; 'Public Letter from Cerrejon to Global Witness on the 2016 Defenders of the Earth Report', BHRRC (24 July 2017), <https://www.business-humanrights.org/fr/derni%C3%A8res-actualit%C3%A9s/public-letter-from-cerrej%C3%B3n-to-global-witness-on-the-2016-defenders-of-the-earth-report/> (accessed 28 October 2021).

<sup>93</sup> 'Colombia: Mining Company Cerrejón Publicly Condemns Threats Against Environmental Defenders and Union Members', BHRRC (17 May 2019), <https://www.business-humanrights.org/de/neuste-meldungen/colombia-mining-company-cerrej%C3%B3n-publicly-condemns-threats-against-environmental-defenders-and-union-members/> (accessed 28 October 2021).

In December 2019, the Court issued decision T-614-19, determining that Cerrejón has not complied with the due diligence standard in the United Nations Guiding Principles on Business and Human Rights (UNGPs), violating fundamental rights of the Wayúu Provincial community.<sup>94</sup> This decision reiterates the findings of the court in more than a dozen prior decisions ordering the company and relevant state institutions to protect the fundamental rights of affected communities (e.g., judicial decisions SU-698 de 2017, T-704 de 2016, T-256 de 2015 and T-528 de 1992).<sup>95</sup>

Despite the company's public denunciation of the attacks against FMW members, the timing of many of the attacks correlates with key moments in their advocacy.<sup>96</sup> For example, in May 2014, Jakeline Romero's 15-year-old daughter, Génesis Gisselle Gutiérrez Romero, also a member of FMW, received a death threat. At the time, a Wayúu delegation, including Jakeline, was visiting Europe to talk about the situation of the Wayúu, including issues related to Cerrejón.<sup>97</sup> In December 2016, Jakeline received a text message threatening violence against her daughters and mother. The message arrived while Jakeline was participating in a working group on the right to 'prior consultation', where representatives of the state and international cooperation agencies were also present.<sup>98</sup> In a further example, in 2018, pamphlets with a death threat and a paramilitary group logo were left scattered on Cerrejón's railroad. FMW was accused of 'hindering development'. This threat was made when a member of FMW was in a meeting in London with corporate representatives. In April and May 2019, several members of FMW were again threatened by the same paramilitary group. This time, the threats coincided with Jakeline's visit to Ireland to present on Cerrejón's negative impacts.<sup>99</sup>

The above-mentioned attacks are only some of many examples of the types of attacks that use gender-based violence to hinder mobilization. The targeting of Indigenous women, their daughters or their mothers is particularly significant and the Inter-American Commission on Human Rights has referred to it as 'spiritual violence'. The Commission notes that violence against Indigenous women has both individual and collective negative impacts, and attacks their identity and culture.<sup>100</sup>

For the Wayúu, the targeting of women is particularly serious. It is a deliberate strategy to turn cultural strengths (i.e., matrilineal structures and the centrality of women) into a weapon to violate their human rights and integrity as a People. For this First Nation, and generally for other Indigenous Peoples in the region, women have a fundamental role in guaranteeing their peoples' unity, identity, culture and continuity in their territory. It is an ancestral law of war that women should be left out of any violent conflict.<sup>101</sup> As Indigenous women carry life and transmit their peoples' culture to the next generations, the attacks against them are not only an attempt to silence them; they are also an attempt to silence their entire communities and the generations to come.

The analysis, however, cannot stop here. Indigenous women have not stopped their leadership and actions. They have overcome many instances of extreme violence used to

<sup>94</sup> Sentencia T-614-19, Corte Constitucional de Colombia (2021).

<sup>95</sup> Ibid; 'Ordenan al Cerrejón Proteger a los Wayuus y al Medio Ambiente', *El Espectador* (18 December 2019), <https://www.elespectador.com/noticias/judicial/ordenan-al-cerrejon-protoger-los-wayuus-y-al-medio-ambiente-articulo-896271> (accessed 28 October 2021).

<sup>96</sup> Tapias Torrado, note 2.

<sup>97</sup> 'Colombia: Threats Made Against Indigenous Defenders', *Amnesty International* (9 May 2014), <https://www.amnesty.org/en/documents/amr23/018/2014/en/> (accessed 28 October 2021).

<sup>98</sup> Tapias Torrado, note 2.

<sup>99</sup> 'Fuerza de Mujeres Wayuu Participa en Actividades sobre Extractivismo en Irlanda', *Notiwayuu* (April 2019), <http://www.notiwayuu.com/2019/04/fuerza-de-mujeres-wayuu-participa-en.html> (accessed 28 October 2021).

<sup>100</sup> IACHR, note 7, paras 49 and 80.

<sup>101</sup> Centro Nacional de Memoria Histórica, note 56.

repress them. Such a capacity needs to be better understood to find ways to support and collaborate with them more effectively for the promotion and protection of human rights. Such understanding is essential for the BHR field, if Indigenous Peoples' rights, including those of WHRDs, are to be properly safeguarded in the context of business activities.

### Overcoming Silencing Practices

In such a dynamic of forces, where an Indigenous women-led mobilization may build power, and veto players may use their power to advance their positions, Indigenous women leaders and their organizations must overcome the silencing practices used against them. Jakeline Romero Epiayuu explains how addressing these challenges is like changing *mantas* (the ancestral Wayúu dress for women):

When the threats started, fear and terror invaded me ... Fear is like a *manta*. It is like a *manta* that falls on me when I am threatened. But, after, I have to take it off and wear the *manta* of braveness to carry on ... I coexist with fear, but I do not let it dominate me.<sup>102</sup>

In such an act of mentally changing *mantas*, Jakeline and FMW use the power of reaffirmation in their struggle as a mechanism to carry on. It builds on their solid conviction, their territorial power and identity. Hence, this (and other mechanisms of the braid) are not outcomes but rather inputs to the *braid of action*. As FMW explains, a braid can be tough and resistant; however, as another Colombian leader notes, 'to resist is not the same as to endure'.<sup>103</sup> With their *actions*, they are able to increase their power to defend human rights, overcoming silencing practices.

In the Wayúu culture, FMW has faced many challenges to gain a space within leadership structures. When they faced a misogynistic campaign in social media, instigated by the male leaders of some local communities, FMW explicitly addressed the situation. They explained that they did not want to take the place of traditional authorities, and managed to transform this moment into an opportunity to open the path for more effective leadership. FMW argued that they only wanted their *pütchi* (word) to be respected as a fundamental pillar of their culture. This approach allowed them to become a loud voice of unity among diverse Wayúu communities.<sup>104</sup>

FMW Indigenous women leaders have never kept quiet after the attacks they have faced. They have confirmed and reaffirmed their struggles and voice, their identity and culture, and their strong connection to the territory. They have managed to overcome silencing practices while strengthening their mobilization power.

## V. Conclusion

Indigenous women leaders and their communities are continuously facing mutually reinforcing human rights abuses that are aggravated with the mega-projects that affect their territory. These abuses extend in time and across generations, and affect Indigenous women leaders as individuals and as part of their peoples and organizations. The mobilization by FMW offers important insights into the ways in which violence,

<sup>102</sup> 'La Defensora del Agua en Medio de la Sed de La Guajira', *Radio Nacional de Colombia* (14 November 2017), <https://www.radionacional.co/especiales-paz/jakeline-romero-epiayu-una-voz-medio-de-la-sed-de-la-guajira> (accessed 28 October 2021).

<sup>103</sup> The Goldman Environmental Prize, 'Francia Márquez, 2018 Goldman Prize Recipient South and Central America', <https://www.goldmanprize.org/recipient/francia-marquez/> (accessed 28 October 2021).

<sup>104</sup> Tapias Torrado, note 2.

discrimination and oppression operate through silencing practices. The experiences of these Indigenous WHRDs also help us to better understand the dynamics and nuances of asymmetrical power relationships, where corporate actors play a dominant role. Additionally, they confirm the need to further develop and strengthen the theory and practice of human rights-based approaches to business responsibilities with a gendered and intersectional framework.

The *braided action* framework is a contribution to better understand the agency and leadership of Indigenous women. By placing their experience at the centre of the analysis and learning from it, it is possible to understand how Indigenous WHRDs *braid actions*, which in turn opens the possibility of understanding how to better support and collaborate with them. If the BHR community is serious about protecting, respecting and remediating the human rights of Indigenous Peoples, including WHRDs, in the context of business activities, such enhanced understanding of how to support and collaborate with WHRDs is essential.

I learnt from the FMW case (and all of the cases in my broader research) that by raising their voices and making visible the situation of abuse, in the territory and outside it, Indigenous women help to build a mobilization power and advance the defence of human rights.<sup>105</sup> By reaffirming their leadership, demands, identity, culture and connection with the territory, they are able to overcome the multiple challenges they face, including the silencing actions targeted at them. The power of such a reaffirmation can be strengthened by human rights framings and the support of external actors (e.g., support networks). Reaffirmation is a mechanism that is used by Indigenous women leaders as individuals and as part of their organizations and peoples and it helps to *braid actions* and add substantial leverage to their mobilization and impact.<sup>106</sup>

Within the territory, as in the case of FMW, some Indigenous women leaders have made clear to their communities that their leadership actually reaffirms their culture. By explicitly confronting concerns about their role, Indigenous women have been able to address attacks, which sometimes even come from within their own families and communities. This has also been a way to reaffirm their legitimacy as leaders and to gain further support.

These leaders use their voice as a critical tool to raise human rights issues of concern to their communities, and in doing so, they are overcoming silencing practices being imposed by states and businesses. This resembles Indigenous communitarian feminism, as Indigenous WHRDs-leaders articulate their leading role with the collective, as a fundamental part of it, not against it.<sup>107</sup> In that vein, the *braided action* framework can help stakeholders understand the agency and impact of Indigenous women leaders, and the power in their mobilization to defend their territory and rights from abuses committed in connection to mega-projects. There is a much-needed change of narrative and approach to these pressing realities, which recognizes their victimization but learns from these Indigenous women leaders and their organizations as the protagonists of transformative change.

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<sup>105</sup> Ibid.

<sup>106</sup> As explained in my PhD thesis, not all Indigenous women manage to develop effective leadership. When they do, some cannot sustain their leadership in the face of silencing practices. These types of 'negative' cases help to confirm the analysis.

<sup>107</sup> Cabnal, note 40; Julieta Paredes, *Hilando Fino desde el Feminismo Comunitario* (La Paz: Mujeres creando comunidad, 2010).